

1798. The testimony may be of such a nature, as not to admit of all its force being reduced to the form of a deposition.

With respect to a disclosure of the facts, which depend on the testimony of the witness, we think that it is not regularly in our power to compel it; and, even if we had the power, it might be essentially wrong, in many cases, to exercise it.

Nor, do I think, that, because this is a case of ejection, the Court should be less scrupulous in ordering the trial to proceed: for, it must be recollected, that the Defendant is, at present, in possession of the premises, but will be evicted, if the cause is decided against him.

Upon the whole, the Court cannot, perhaps, lay down a general rule, for the continuance of causes; but must, under the circumstances of each case, take care that injustice is not done, either by precipitate trials, or wanton delays. In the present instance, there appears to be a fair ground for the postponement; and, therefore,

Let the cause be continued.

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*April Term, 1798.*

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Present, CHASE and PETERS, *Justices.*

The UNITED STATES *versus* WORRALL.

THE defendant was charged with an attempt to bribe *Tench Coxe*, the Commissioner of the Revenue; and the indictment, containing two counts, set forth the case as follows:

“The Grand Inquest of the *United States of America*, for the *Pennsylvania* District, upon their respective oaths and affirmations do present—That whereas on the 13th day of *May 1794*, it was enacted by the Senate and House of Representatives of the United States of America, in Congress assembled; “that as soon as the jurisdiction of so much of the headland of *Cape Hatteras*, in the State of *North Carolina*, as the President of the United States shall deem sufficient and most proper for the convenience

venience and accommodation of a light house, shall have been ceded to the *United States*, it shall be the duty of the Secretary of the Treasury to provide by contract, which shall be approved by the President of the *United States*, for building a light-house thereon of the first rate: And also, "that the Secretary of the Treasury be authorized to provide by contract, which shall be approved by the President of the *United States*, for building on an island in the harbour of *Occacock*, called *Shell Castle*, a lighted beacon of a wooden frame, 55 feet high, to be 22 feet at the base, and to be reduced gradually to 12 feet at the top, exclusively of the lantern, which shall be made to contain one large lamp with four wicks, and for furnishing the same with all necessary supplies. Provided, that no such lighted beacon shall be erected, until a cession of a sufficient quantity of land on the said island shall be made to the *United States* by the consent of the Legislature of the State of *North Carolina*:" And whereas the Legislature of the State of *North Carolina* did, on the 17th day of *July* 1794, cede to the *United States* the jurisdiction of so much of the headland of *Cape Hatteras* in the same State, as the President of the said *United States* deemed sufficient and most proper for the convenience and accommodation of a light house, and also a sufficient quantity of land for building on the said island, in the harbour of *Occacock*, called *Shell Castle*, a beacon of the kind, descriptions, and dimensions aforesaid: And whereas, afterwards, to wit, on the 28th day of *September* 1797, at the District aforesaid, *Tench Coxe*, Esq. (he the said *Tench Coxe*, then and there being Commissioner of the Revenue, in the department of the Secretary of the Treasury,) then and there was appointed and instructed by the Secretary of the Treasury, by and with the authority of the President of the said *United States*, to receive proposals for building the light house aforesaid, and beacon aforesaid: *Robert Worrall*, late of the same District, yeoman, being an ill disposed person, and wickedly contriving and contending to bribe and seduce the said *Tench Coxe*, so being Commissioner of the Revenue, from the performance of the trust and duty so in him reposed, on the said 28th day of *September* 1797, at the District aforesaid, and within the jurisdiction of this Court, wickedly, advisedly and corruptly, did compose, write, utter, and publish, and cause to be delivered to the said *Tench Coxe*, a letter, addressed to him the said *Tench Coxe*, in the words and figures following, that is to say:

" Dear Sir,

" Having had the honor of waiting on you, at different times, on the light-house business, and having delivered a fair, honest estimate, and I will be candid to declare, that with my diligent  
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1798. and industrious attendance, and sometimes taking an active part in the work, and receiving a reasonable wages for attending the same, I will be bold to say, that when the work is completed in the most masterly manner, the jobb will clear at the finishing, the sum of £1000. Now if your goodness will consider, that the same sett of men that will be wanted for a small part of one jobb will be necessary for the other, and particularly the carpenters, and smith for the iron work, and as they will want a blacksmith's shop and a sett of tools at *Cape Hatteras*, the other iron work might be made there, and sent across the sound at a small expencē, which would make a considerable saving.

"I have had this morning a sett of good carpenters, four in number, as ever emigrated from the old country, as also several stone masons, offering themselves to go to *Carolina*. As I told you about the smith that I had engaged, he informed me that he had a sett of good second-hand tools offered him that might be purchased at a reasonable price—therefore, good sir, as having always been brought up in a life of industry, should be happy in serving you in the executing this job, and always content with a reasonable profit; therefore, every reasonable person would say that £1400 was not unreasonable, in the two jobs. If I should be so happy in your recommendation of this work, I should think myself very ungrateful, if I did not offer you one half of the profits as above stated, and would deposit in your hand at receiving the first payment £350, and the other £350 at the last payment, when the work is finished and completed. I hope you will not think me troublesome in asking for a line on the business by your next return and will call for it at the Post-Office, or in Third Street. In the mean time I shall subscribe myself to be, your obedient and very humble servt. to command.

*Robert Worrall.*

*Philadelphia, Sept. 28, 1797,*  
No. 26, North Third Street."

Which letter was directed in manner following, that is to say :

*For Tench Coxe, Esq.*

*At Burlington near Bristol,*

*Pennsylvania.*

"To the evil example of others in the like case offending, and against the peace and dignity of the said *United States*.

"And the Grand Inquest aforesaid, upon their respective oaths and affirmations, do further present, that *Robert Worrall*, late of the same district, yeoman, being an ill disposed person, on the 28th day of *September*, in the year aforesaid, in the district aforesaid, and within the jurisdiction of this Court, wickedly, advisedly, and corruptly, did solicit, urge, and endeavour to procure

procure *Tench Coxe, Esq.* he the said *Tench Coxe*, then and there being Commissioner of the Revenue of the said *United States*, and then and there interested and employed in the execution of the duties of the said office, to receive proposals for contracting to build a light house on *Cape Hatteras*, and a beacon on *Shell Castle* island, to contract with, and give a preference to him the said *Robert Worrall*, for the building of the said light house and beacon, and in order to prevail upon him, the said *Tench Coxe*, to agree to give him, the said *Robert Worrall*, the preference in and the benefit of such contract, he the said *Robert Worrall*, then and there did wickedly, advisedly and corruptly, offer to give the said *Tench Coxe*, then and there being Commissioner of the Revenue of the *United States*, as aforesaid, a large sum of money, to wit—the sum of *Seven Hundred Pounds*, money of *Pennsylvania*, equal in value to 1866 dollars and 67 cents, in contempt of the laws and constitution of the said *United States*, to the evil example of others in the like case offending, and against the peace and dignity of the said *United States*.”

1798.

On the evidence, it appeared, that, in consequence of instructions from the Secretary of the Treasury, *Mr. Coxe* had officially invited proposals, for erecting the Light-House, &c. mentioned in the indictment, that the defendant presented proposals; and, while they were under consideration, he sent the offensive letter, which was dated at *Philadelphia*; but *Mr. Coxe* having removed his office (in consequence of the Yellow Fever) to *Burlington*, in the State of *New-Jersey*, received the letter at the latter place, on the 28th of *September 1797*, with other dispatches from the Post-Office of *Bristol*, in *Pennsylvania*. On the receipt of the letter *Mr. Coxe* immediately consulted *Mr. Ingersoll* (the Attorney General of the State,) communicated the circumstance that had occurred to the President, and invited the defendant to a conference at *Burlington*. In this conference, the defendant acknowledged having written and sent the letter; declared that no one else knew its contents, for “in business done in his chamber, he did not let his left hand know, what his right hand did”; and repeated the offer of allowing *Mr. Coxe* a share in the profits of the contract. He then pressed for an answer; but was referred by *Mr. Coxe* to the period, when the public offices should be again opened in *Philadelphia*. Accordingly, soon after the revival of business in the City, the defendant called at *Mr. Coxe's* office; the whole subject was gone over, and perfectly recognized; the offer to give the money mentioned in the letter was repeated; and, in the fullest manner, the defendant gave *Mr. Coxe* to understand, that he would allow £700, as a consideration for *Mr. Coxe's* procuring him the contract. It was not positively stated, that the letter was produced to the defendant at this interview; but he adverted to, and unequivocally confirmed, its contents.

1798. On these facts, *M. Levy*, for the defendant, observed, that it was not sufficient, for the purpose of conviction, to prove that the defendant was guilty of an offence; but the offence must, also, appear to be legally defined, and it must have been committed within the jurisdiction of the Court, which undertakes to try and punish it. The 8th article of the amendments to the Federal Constitution (3 *Vol. Swift's Edit. p. 456*) provides, indeed, expressly, that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial Jury of the State, or District, wherein the crime shall have been committed, &c." Now, in the present instance, there is no proof that the criminal letter was written in *Pennsylvania*; and the proof of publication and delivery is at *Burlington*, in *New-Jersey*. The first count of the indictment, therefore, must necessarily fail; and unless he is convicted upon that, he cannot be convicted on the second count; which is attempted to be supported, merely by evidence of recognizing in *Philadelphia*, a corrupt offer previously made in another place, out of the jurisdiction of the Court.

The Attorney of the District (*Rawle*) replied, that according to the decision in *Dr. Henzey's case (Burr. )* the letter being dated at *Philadelphia*, is, in itself, sufficient proof that it was written there. But the letter was put into the *Bristol* post office by the defendant; and, consequently, by his act, done in *Pennsylvania*, it was caused to be delivered to *Mr. Coxe* at *Burlington*. The opposite doctrine, indeed, would furnish absolute impunity to every offender of this kind, whose crime was not commenced and consummated in the same District: for, the defendant, it is said, cannot be punished in *Pennsylvania*, because the letter was delivered to *Mr. Coxe* in *New-Jersey*; and, by a parity of reasoning, he could not be punished in *New-Jersey*, because it was neither written, nor delivered by him, within the jurisdiction of that State. To shew that the offer of a bribe is indictable, though the bribe is not accepted, he referred to 4 *Burr. 2494. 1 Ld. Raym. 1377.*

BY THE COURT:—The letter appears by its date to have been written in *Pennsylvania*; and it is actually delivered by the defendant at a post office in *Pennsylvania*. The writing and the delivery at the Post-Office (thus putting it, in the way to be delivered to *Mr. Coxe*) must be considered, in effect, as one act; and, as far as respects the defendant, it is consummated within the jurisdiction of the Court. We, therefore, think, that the first count in the indictment is sufficiently supported. But, on the second count, there can be no possible doubt, if the testimony is credited. The defendant, in the city of *Philadelphia*, unequivocally repeats, in words, the corrupt offer, which he had previously made to *Mr. Coxe* in writing.

Verdict—Guilty on both counts of the Indictment.

*Dallas*

*Dallas*, (who had declined speaking on the facts before the Jury) now moved in arrest of judgment, alledging that the Circuit Court could not take cognizance of the crime charged in the indictment. He premised, that, independent of the general question of jurisdiction, the indictment was exceptionable, in as much as it recited the act of Congress, making it the duty of the Secretary of the Treasury to form the contracts contemplated, but did not state the authority for devolving that duty on the Commissioner of the Revenue; and, consequently, it could not be inferred, that the corrupt offer was made to seduce the Commissioner, from the faithful execution of an *official public trust*, which was the gift of the prosecution. But, he contended, that the force of the objection to the jurisdiction, superseded the necessity of attending to matters of technical form and precision, in presenting the accusation. It will be admitted, that all the judicial authority of the Federal Courts, must be derived, either from the Constitution of the United States, or from the Acts of Congress made in pursuance of that Constitution. It is, therefore, incumbent upon the Prosecutor to shew, that an offer to bribe the Commissioner of the Revenue, is a violation of some Constitutional, or Legislative, prohibition. The Constitution contains *express provisions* in certain cases, which are designated by a definition of the crimes; by a reference to the characters of the parties offending; or by the exclusive jurisdiction of the place where the offences were perpetrated: but the crime of attempting to bribe, the character of a Federal officer, and the place, where the present offence was committed, do not form any part of the *Constitutional express provisions*, for the exercise of judicial authority in the Courts of the Union. The judicial power, however, extends, not only to all cases, in law and equity, arising under the Constitution; but, likewise, to all such as shall arise under the laws of the United States, (*Art. 3. s. 2.*) and besides the authority, specially vested in Congress, to pass laws for enumerated purposes, there is a general authority given "to make all laws which shall be necessary and proper for carrying into execution all the powers vested by the Constitution in the government of the United States, or in any department or office thereof." (*Art. 1. Sect. 8.*) Whenever, then, Congress think any provision necessary to effectuate the Constitutional power of the government, they may establish it by law; and whenever it is so established, a violation of its sanctions will come within the jurisdiction of this Court, under the *11th Section* of the Judicial Act, which declares, that the Circuit Court "shall have exclusive cognizance of all crimes and offences cognizable under the authority of the United States, &c." *1. Vol. Swift's Edit. p. 55.* Thus, Congress have provided by law, for the punishment

1798. punishment of Treason, misprision of Treason, Piracy, counterfeiting any public Certificate, stealing or falsifying Records, &c; for the punishment of various crimes, when committed within the limits of the exclusive jurisdiction of the United States; and for the punishment of bribery itself in the case of a Judge, an Officer of the Customs, or an Officer of the Excise. 1. *Vol. Swift's Edit. p. 100. Ibid. p. 236. f. 66. Ibid. p. 327. f. 47.* But in the case of the Commissioner of the Revenue, the Act constituting the office does not create or declare the offence; 2. *Vol. p. 112, f. 6.* it is not recognised in the Act, under which proposals for building the Light-house were invited; 3. *Vol. p. 63.* and there is no other Act that has the slightest relation to the subject.

Can the offence, then, be said to arise under the Constitution, or the laws of the United States? And, if not, what is there to render it cognizable under the authority of the United States? A case arising under a law, must mean a case depending on the exposition of a law, in respect to something which the law prohibits, or enjoins. There is no characteristic of that kind in the present instance. But, it may be suggested, that the office being established by a law of the United States, it is an incident naturally attached to the authority of the United States, to guard the officer against the approaches of corruption, in the execution of his public trust. It is true, that the person who accepts an office may be supposed to enter into a compact to be answerable to the government, which he serves, for any violation of his duty; and, having taken the oath of office, he would unquestionably be liable, in such case, to a prosecution for perjury in the Federal Courts. But because one man, by his own act, renders himself amenable to a particular jurisdiction, shall another man, who has not incurred a similar obligation, be implicated? If, in other words, it is sufficient to vest a jurisdiction in this court, that a Federal Officer is concerned; if it is a sufficient proof of a case arising under a law of the United States to affect other persons, that such officer is bound, by law, to discharge his duty with fidelity;—a source of jurisdiction is opened, which must inevitably overflow and destroy all the barriers between the judicial authorities of the State and the general government. Any thing which can prevent a Federal Officer from the punctual, as well as from an impartial, performance of his duty; an assault and battery; or the recovery of a debt, as well as the offer of a bribe; may be made a foundation of the jurisdiction of this court; and, considering the constant disposition of power to extend the sphere of its influence, fictions will be resorted to, when real cases cease to occur. A mere fiction, that the defendant is in the custody of the marshal, has rendered the jurisdiction of the

King's

*King's Bench* universal in all personal actions. Another fiction, 1798. which states the Plaintiff to be a debtor of the Crown, gives cognizance of all kinds of personal suits to the *Exchequer*: And the mere profession of an Attorney attaches the privilege of suing and being sued in his own Court. If, therefore, the disposition to amplify the jurisdiction of the Circuit Court exists, precedents of the means to do so are not wanting, and it may hereafter be sufficient to suggest, that the party is a Federal Officer, in order to enable this Court to try every species of crime, and to sustain every description of action.

But another ground may, perhaps, be taken to vindicate the present claim of jurisdiction: it may be urged, that though the offence is not specified in the Constitution, nor defined in any act of Congress; yet, that it is an offence at common law; and that the common law is the law of the *United States*, in cases that arise under their authority. The nature of our Federal compact, will not, however, tolerate this doctrine. The 12th article of the amendment, stipulates, that "the powers not delegated to the *United States* by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People." In relation to crimes and punishments, the objects of the delegated power of the *United States* are enumerated and fixed. Congress may provide for the punishment of counterfeiting the securities and current coin of the *United States*; and may define and punish piracies and felonies committed on the high seas, and offences against the law of nations. *Art. 1. §. 8.* And, so, likewise Congress may make all laws which shall be necessary and proper for carrying into execution the powers of the general government. But here is no reference to a common law authority: Every power is matter of definite and positive grant; and the very powers that are granted cannot take effect until they are exercised through the medium of a law. Congress had undoubtedly a power to make a law, which should render it criminal to offer a bribe to the Commissioner of the Revenue; but not having made the law, the crime is not recognized by the Federal Code, constitutional or legislative; and, consequently, it is not a subject on which the Judicial authority of the Union can operate.

The cases that have occurred, since the establishment of the Federal Constitution, confirm these general principles. The indictment against *Henfield*, an *American* citizen, for enlisting and serving on board a *French* privateer, while she captured a Dutch merchant ship, &c. expressly charged the defendant with a violation of the treaties existing between the *United States* and the *United Netherlands*, *Great Britain*, &c. which is a matter cognizable under the Federal authority by the very words of the Constitution. The jurisdiction in the indictment  
against



1798. against *Ravata*, was sustained by reason of the Defendant's official character as Consul.\* And in a recent prosecution by the State of Pennsylvania against *Ebeaffer*, in the Mayor's Court of Philadelphia, a motion in arrest of judgement was over-ruled by the Recorder (Mr. *Wilcocks*) though the offence consisted in forging claims to Land-Warrants, issuable under the resolutions of Congress; and although the cognizance of all crimes and offences, cognizable under the authority of the Union, is exclusively vested in the District and Circuit Courts.

*Rawle* (the Attorney of the District) observed, that the exception, taken in support of the motion in arrest of Judgement, struck at the root of the whole system of the national government; for, if opposition to the pure, regular, and efficient administration of its affairs, could thus be made by fraud, the experiment of force might next be applied; and doubtless with equal impunity and success. He concluded, however, that it was unnecessary to reason from the inconveniency and mischief of the exception; for, the offence was strictly within the very terms of the Constitution, arising under the laws of the United States. If no such office had been created by the laws of the United States, no attempt to corrupt such an officer could have been made; and it is unreasonable to insist, that merely because a law has not prescribed an express and appropriate punishment for the offence, that, therefore, the offence, when committed, shall not be punished by the Circuit Court, upon the principles of common law punishment. The effect, indeed, of the position is still more injurious; for, unless this offence is punishable in the Federal Courts, it certainly is not cognizable before any State tribunal. The true point of view for considering the case, may be ascertained, by an enquiry, whether, if Mr. *Coxe* had accepted the bribe, and betrayed his trust, he would not have been indictable in the Courts of the United States? If he would be so indictable, upon the strongest principles of analogy, the offence of the person who tempted him, must be equally the subject of animadversion before the same judicial authority. The precedents cited by the Defendant's Counsel, are distinguishable from the present indictment. The prosecution against *Henfield* was not expressly on the treaty, but on the law of nations, which is a part of the common law of the United States; and the power of indicting for a breach of treaty, not expressly providing the means of enforcing performance in the particular instance, is itself a common law power. Unless the judicial system of the United States justified a recourse to common law against an individual guilty of a breach of treaty, the offence, where no specific

\* See *ant.* p. 297.

specific penalty was to be found in the treaty, would, therefore, remain unpunished. So, likewise, with respect to *Ravara*, although he held the office of a Consul, he was indicted and punished at the common law. The offence charged in *Republica v. Shaffer*, did not arise under the laws of the *United States*; but was simply the forgery of the names of private citizens, in order to defraud them of their rights; and even as far as the forgery might be supposed to deceive the public officers, it was a deception in regard to a mere official arrangement, for ascertaining transfers of donation claims, and not in regard to any act directed by law to be performed. But a further distinction presents itself. The donations to the soldiers were founded upon resolutions, of the *United States* in Congress, passed long before the adoption of the present Constitution. The Courts of the several States therefore held a jurisdiction of the offence, which, without positive words or necessary implication, was not to be divested. The case did not come within the expressions in the Constitution, "cases arising under the Constitution and laws of the *United States*," &c. nor has it been expressly provided for by any act under the present Constitution. The criminal jurisdiction of the Circuit Court, which, wherever it exists, must be exclusive of State jurisdiction, cannot, perhaps, fairly be held to operate retrospectively, by withdrawing from the State Judicatures powers they held, and duties they performed, previously to the Constitution, from which the Circuit Court derived its birth.

CHASE, *Justice*. Do you mean, Mr. Attorney, to support this indictment solely at common law? If you do, I have no difficulty upon the subject: The indictment cannot be maintained in this Court.

*Rawle*, answering in the affirmative, CHASE, *Justice*, stopped *M. Levy*, who was about to reply, in support of the motion in arrest of judgment; and delivered an opinion to the following effect.

CHASE, *Justice*. This is an indictment for an offence highly injurious to morals, and deserving the severest punishment; but, as it is an indictment at common law, I dismiss, at once, every thing that has been said about the Constitution and Laws of the *United States*.

In this country, every man sustains a two-fold political capacity; one in relation to the State, and another in relation to the *United States*. In relation to the State, he is subject to various municipal regulations, founded upon the State constitution and policy, which do not affect him in his relation to the *United States*: For, the Constitution of the Union, is the source of all the jurisdiction of the national government; so that the departments of the government can never assume any power, that is

1798. not expressly granted by that instrument, nor exercise a power in any other manner than is there prescribed. Besides the particular cases, which the 8th section of the 1st article designates, there is a power granted to Congress to create, define, and punish, crimes and offences, whenever they shall deem it necessary and proper by law to do so, for effectuating the objects of the government; and although bribery is not among the crimes and offences specifically mentioned, it is certainly included in this general provision. The question, however, does not arise about the power; but about the exercise of the power:—Whether the Courts of the *United States* can punish a man for any act, before it is declared by a law of the *United States* to be criminal? Now, it appears to my mind, to be as essential, that Congress should define the offences to be tried, and apportion the punishments to be inflicted, as that they should erect Courts to try the criminal, or to pronounce a sentence on conviction.

It is attempted, however, to supply the silence of the Constitution and Statutes of the Union, by resorting to the Common law, for a definition and punishment of the offence which has been committed: But, in my opinion, the *United States*, as a Federal government, have no common law; and, consequently, no indictment can be maintained in their Courts, for offences merely at the common law. If, indeed, the *United States* can be supposed, for a moment, to have a common law, it must, I presume, be that of *England*; and, yet, it is impossible to trace when, or how, the system was adopted, or introduced. With respect to the individual States, the difficulty does not occur. When the *American* colonies were first settled by our ancestors, it was held, as well by the settlers, as by the Judges and lawyers of *England*, that they brought hither, as a birth-right and inheritance; so much of the common law, as was applicable to their local situation, and change of circumstances. But each colony judged for itself, what parts of the common law were applicable to its new condition; and in various modes, by Legislative acts, by Judicial decisions, or by constant usage, adopted some parts, and rejected others. Hence, he who shall travel through the different States, will soon discover, that the whole of the common law of *England* has been no where introduced; that some States have rejected what others have adopted; and that there is, in short, a great and essential diversity; in the subjects to which the common law is applied, as well as in the extent of its application. The common law, therefore, of one State, is not the common law of another; but the common law of *England*, is the law of each State, so far as each state has adopted it; and it results from that position, connected with the Judicial act, that the common law will always apply to suits between citizen and citizen, whether they are instituted in a Federal, or State, Court. But

But the question recurs, when and how, have the Court<sup>s</sup> of 1792.  
the *United States* acquired a common law jurisdiction, in criminal cases? The *United States* must possess the common law themselves, before they can communicate it to their Judicial agents: Now, the *United States* did not bring it with them from *England*; the Constitution does not create it; and no act of Congress has assumed it. Besides, what is the common law to which we are referred? Is it the common law entire, as it exists in *England*; or modified as it exists in some of the States; and of the various modifications, which are we to select, the system of *Georgia* or *New-Hampshire*, of *Pennsylvania* or *Connecticut*?

Upon the whole, it may be a defect in our political institutions, it may be an inconvenience in the administration of justice, that the common law authority, relating to crimes and punishments, has not been conferred upon the government of the *United States*, which is a government in other respects also of a limited jurisdiction: but Judges cannot remedy political imperfections, nor supply any Legislative omission. I will not say whether the offence is at this time cognizable in a State Court. But, certainly, Congress might have provided, by law, for the present case, as they have provided for other cases, of a similar nature; and yet if Congress had ever declared and defined the offence, without prescribing a punishment, I should still have thought it improper to exercise a discretion upon that part of the subject.

PETERS, *Justice*. Whenever a government has been established, I have always supposed, that a power to preserve itself, was a necessary, and an inseparable, concomitant. But the existence of the Federal government would be precarious, it could no longer be called an independent government, if, for the punishment of offences of this nature, tending to obstruct and pervert the administration of its affairs, an appeal must be made to the State tribunals, or the offenders must escape with absolute impunity.

The power to punish misdemeanors, is originally and strictly a common law power; of which, I think, the *United States* are constitutionally possessed. It might have been exercised by Congress in the form of a Legislative act; but, it may, also, in my opinion be enforced in a course of Judicial proceeding. Whenever an offence aims at the subversion of any Federal institution, or at the corruption of its public officers, it is an offence against the well-being of the *United States*; from its very nature, it is cognizable under their authority; and, consequently, it is within the jurisdiction of this Court, by virtue of the 11th section of the Judicial act.

1798. The Court being divided in opinion, it became a doubt, whether sentence could be pronounced upon the defendant; and a wish was expressed by the Judges and the Attorney of the District, that the case might be put into such a form, as would admit of obtaining the ultimate decision of the Supreme Court, upon the important principle of the discussion: But the counsel for the prisoner did not think themselves authorized to enter into a compromise of that nature. The Court, after a short consultation, and declaring, that the sentence was mitigated in consideration of the defendant's circumstances, proceeded to adjudge,

That the defendant be imprisoned for three months; that he pay a fine of 200 dollars; and that he stand committed, till this sentence be complied with, and the costs of prosecution paid.

#### HOLLINGSWORTH *versus* ADAMS.

FOREIGN ATTACHMENT returnable to the present Term. The defendant was stated to be a citizen of *Delaware*, in the process which had issued; and *M. Levy*, having produced an affidavit in proof of that fact, moved to quash the writ, on the ground, that the Federal Courts had no jurisdiction, in cases of *Foreign Attachment*. By the 11th section of the Judicial act (1 Vol. *Swift's Edit.* p. 55) it is expressly provided, that "no person shall be arrested in one District for trial in another, in any civil action before a Circuit, or District, Court: And no civil suit shall be brought before either of the said Courts against an inhabitant of the United States, by any original process, in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ." Now, this is a civil suit, brought here by original process against the defendant, who is an inhabitant of another district, and was not found in Pennsylvania at the time of serving the writ.

*Thomas* and *Hallowell*, on behalf of the plaintiff, wished for time to enquire into the practice; but not being able on the next day to assign any satisfactory reason in maintenance of the action,

THE COURT directed the writ to be quashed with costs.

#### WILKINSON *et al.* *versus* NICKLIN *et al.*

THIS was an action brought by the Indorsees of a Bill of Exchange, drawn by *M<sup>c</sup>Clenachan and Moore*, upon *George Barclay*, of *London*, in favor of the defendants, and by them indorsed