UNITED STATES v. INSURGENTS.

Case No. 15,442.
{3 Dall. 513.}

Circuit Court, D. Pennsylvania. 1799.

FEDERAL COURTS—SPECIAL CRIMINAL SESSIONS—POWER OF JUDGES.

[The act of March 2, 1793, empowering the judges to direct special sessions of the circuit court to be holden for the trial of criminal cases, at any convenient place within the district, nearer to the place where the offences may be said to be committed than the place appointed by law for holding the session, vests in the court a legal discretion, to be exercised upon considerations of convenience and practicability.]

[Cited in Memorandum, Case No. 9,411: U. S. v. Cornell, Id. 14,868.]

Several indictments were found against persons charged with high treason, by levying war against the United States, in the counties of Northampton and Bucks, in the state of Pennsylvania; and the prisoners having pleaded "not guilty," Lewis & Dallas, their counsel, filed a suggestion, that all the offences were charged to have been committed either in Northampton or Bucks, and moved for a trial of each indictment in the proper county, on the provision contained in the twenty-ninth section of the judicial act (1

Swift's Laws, 67 [1 Stat. 88]): "That in cases punishable with death, the trial shall be had in the county where the offence was committed, or where that cannot be done without great inconvenience, twelve petit jurors at least shall be summoned from thence." The motion was opposed by Rawle, the attorney of the district, and Sitgreaves.

BY THE COURT. The mere circumstance of delay, in trials of so much expectation and importance, though entitled to some consideration, would not be sufficient of itself to prevent a compliance with the present application. And, we think, that the twelfth section of the judicial act ought to be so construed, as to vest in the judges a power of holding a special court, in the proper county, if in other respects they do not deem it greatly inconvenient. The act of congress, passed the 2d of March, 1793 (2 Swift's Laws, p. 226, § 3 [1 Stat 333]), empowers the judges to "direct a special session of the circuit court to be holden for the trial of criminal cases, at any convenient place within the district, nearer to the place where the offences may be said to be committed, than the place, or places, appointed by law for the ordinary sessions;" but this provision does not expressly discriminate between eases of a capital, and of an inferior, nature; and a provision having been previously made for capital cases, it would be justifiable to apply this to inferior cases. At all events, any criticism upon the word "nearer" (considering the whole state as a district, or county, in relation to the United States) would not prevent our appointing a special court in the proper county, if such an appointment was, otherwise, eligible. The truth is, that the act gives to the court a legal discretion upon the subject. A trial in the proper county might have been ordered, when the offences were committed; but no candid man will say, that, at that time, such an order would have been justifiable. The next step, therefore, was to bind the offenders over to this court, having complete jurisdiction of the case; and, now, the only questions are, whether it is practicable to refer the trials to the counties, respectively, in which the offences were committed? And, if practicable, whether it can be done without great inconvenience?

On the question of practicability, two difficulties occur: (1) Whether the indictments found at this court, can be transferred to a special court? [U. S. v. Hamilton], 3 Dall. [3 U. S.] 17, 18, was cited on this point. And (2) whether the motion is not too late; for, as "the indictment ought to be considered as "inseparably incident to the trial, and in truth a part of it" (Fost. Crown Law, 235, 239), can the trial be commenced here, and be terminated elsewhere? But even if it were practicable, on legal principles, to direct a special court, can it be thought convenient, or safe, in the present state of Northampton and Bucks counties, to do so? It is evident, that nothing but an armed force has recently been sufficient to quell the insurrection, and to arrest the insurgents; and, we hope, that it will never be expected from the exercise of a judicial discretion, that a court of justice shall be voluntarily placed in a situation, where the execution of its functions, and the maintenance of its authority, must depend on the same military auxiliary.

Upon both grounds, however, we think the motion ought to be rejected. Motion refused.