

Case No. 16,330.

UNITED STATES v. SMITH.

[4 Cranch, C. C. 727.]¹

Circuit Court, District of Columbia.

March Term, 1836.

BAIL—DISCRETION OF MAGISTRATE.

1. If the indictment does not describe an indictable offence, the magistrate, who takes the bail in the case, has a discretion as to the amount of the bail, and no corrupt motive can be imputed to him on account of the smallness of the amount in which the bail is taken.

[Cited in U. S. v. Ringgold, Case No. 16,167.]

2. The act not being illegal, the court will not permit evidence to be given of a corrupt motive.

Indictment [against Fleet Smith] for taking insufficient bail upon a bench-warrant against Miller for “keeping a certain gaming-table called a faro-bank.”

Mr. Brent and Mr. Bradley, for defendant, prayed the court to instruct the jury that the prosecution cannot be sustained, as this court has quashed the original indictment against Miller, on the ground that it did not describe an indictable offence. The bench-warrant which issued upon the presentment was “to answer to a certain misdemeanor, as it is presented,” without further description of the offence; and upon reference to the presentment, it does not appear that any offence is charged.

Mr. Dunlop, for the United States, contra, contended that the magistrate had no right to judge of the validity of the indictment, nor whether it was an indictable offence.

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Mr. Bradley and Mr. Brent, in reply, cited Starkie, Ev. 168, and 2 Chit. Or. Law, c. 8, pp. 144, 158.

THE COURT (MORSELL, Circuit Judge, absent) instructed the Jury, that as the indictment did not describe an indictable offence, and the justice had discretion as to the amount, no corrupt motive can be imputed to him from the smallness of the bail taken. It was not an illegal act, and therefore the motive is immaterial.

And CRANCH, Chief Judge, added, that if any corrupt act was done to obstruct the due course of justice, it might be the ground of a separate count, or indictment; but upon this count the act of taking the bail in \$20 only, not being illegal, the court will not admit evidence of a corrupt motive.

¹ [Reported by Hon. William Cranch, Chief Judge.]