

Case No. 16,453. UNITED STATES V. TERREL ET AL.  
[Hempst. 422.]<sup>1</sup>

Circuit Court, D. Arkansas.

April, 1840.

ASSAULT IN INDIAN COUNTRY—FEDERAL JURISDICTION.

Assault with intent to kill, or an assault and battery when committed in the Indian country, are not punishable by the courts of the United States.

The defendants [Moses Terrel and Daniel Newman] described as white men, were indicted in the circuit court for an assault with intent to kill, committed on John Ballard, also a white man, in the Indian country west of Arkansas, on the 29th of November, 1839, and they plead not guilty; and on trial before the Hon. BENJAMIN JOHNSON, District Judge, holding the circuit court, the jury found them “guilty of an assault and battery, but not with the intent to kill.” The defendants moved in arrest of judgment, on the ground that there was no law of the United States to punish an assault with intent to kill, or an assault and battery committed in the Indian country.

F. W. Trapnall and John W. Cocke, in support of motion.

William C. Scott, Dist. Atty., against it.

OPINION OF THE COURT. This case stands on the same footing as the one against Moses Terrel [Case No. 16,452] and the same reasons for arresting the judgment apply.

There is no law at present to punish the offence when occurring upon land; and it rests with congress to provide a remedy. Assault with intent to kill, if committed on the “high seas” or within any place within the admiralty jurisdiction, and out of the jurisdiction of any particular state, is undoubtedly punishable in the courts of the United States, by fine and imprisonment, and confinement to hard labor. That is the only law on the subject, and it has no application to this case. Gordon, Dig. 939. Judgment arrested, and defendants discharged.

<sup>1</sup> [Reported by Samuel H. Hempstead, Esq.]