

Case No. 16,533a. UNITED STATES v. TOWN-MAKER.
[Hempst. 299.]¹

District Court, Territory of Arkansas.

Feb., 1836.

HOMICIDE—INSUFFICIENT INDICTMENT—REMAND OF ACCUSED.

Indictment adjudged bad; but prisoner remanded to custody on proof before the court of the commission or homicide.

Indictment for murder.

Before JOHNSON, CROSS, and YELL, JJ.

OPINION OF THE COURT. It is considered by the court that the indictment in this case, and the matters and things therein contained, are not sufficient in law for the plaintiffs to have and maintain this prosecution against the defendant, nor is he bound by the laws of the land to answer thereto; and therefore said defendant by his counsel moved for his discharge from custody, which motion was opposed by Samuel C. Roane, district attorney of the United States, on the ground that he was ready to produce evidence before the court that the defendant had committed the crime of murder. And thereupon the court overruled the motion of the defendant for his discharge from custody, and the district attorney introduced a witness, who proved that the defendant had been guilty of the homicide of a citizen of the United States, in the district of country occupied by the Osage Nation of Indians, and therefore, upon motion of the district attorney, it was ordered by the court that the defendant be remanded to the custody of the marshal, to be imprisoned until he shall be discharged according to law.

YELL, J., dissented from this order.

¹ [Reported by Samuel H. Hempstead, Esq.]