UNITED STATES v. WOOD.

Case No. 16,757.

{Brun. Col. Cas. 456;[1] 2 Wheeler, Cr. Cas. 325.}

Circuit Court, D. Pennsylvania. June, 1818.

ROBBERY OF THE MAIL—CAPITAL CRIME—INDICTMENT—JURISDICTION—WRIT OF ERROR—CERTIFICATE OF RECORD.

1. Robbing the mail is a capital crime if the robbery be effected by the use of dangerous weapons, thus putting in jeopardy the life of the person having the custody of such mails, and putting him in fear and his life in peril is putting his life in jeopardy.

2. The jurisdiction of circuit courts in criminal cases is confined to offenses committed in the district where the courts sit, if committed on land, and the indictment should distinctly show on its face that the offense was committed within the jurisdiction of the court.

{3. Cited in Latterett v. Cook, 1 Iowa, 5, and Bank of Newbury v. Eastman, 44 N. H. 438, to the point that the attestation of the presiding judge is not necessary to the certificate of a record made by the clerk of a district court of the United States, that it is his certificate, or that the seal is that of the court, or that the record is in legal form; it is sufficient if the seal of the court is affixed to the record.}

Indictment {against William Wood} for having aided and abetted in the robbery of the mail.

C. J. Ingersoll, Dist. Atty., for the United States.

Z. Phillips, for the prisoner.

[2]{Mr. Ingersoll opened the cause to the jury, by detailing the facts that would be given in evidence, and concluded by reading the law on which the indictment was founded. It is contained in the 19th and 21st sections of the act "regulating the post office establishment," passed April 30, 1810 {2 Stat. 598}: "That if any person shall rob any carrier of the mail of the United States, or other person entrusted therewith, of such mail, or of part thereof, such offender or offenders shall, on conviction, be imprisoned not exceeding ten years; and if convicted a second time of a like offence, he or they shall suffer death; or if, in effecting such robbery of the mail the first time, the offender shall wound the person having custody thereof, or put his life in jeopardy, by the use of dangerous weapons, such offender or offenders shall suffer death." Section 19. "That every person who shall procure, aid, advise, or assist in the doing or perpetrating any of the acts or crimes by this act forbidden to be done or performed, shall be subject to the same penalties and punishments as the persons are subject to who shall actually do or perpetrate any of the said acts or crimes, according to the provision of this act." Section 21. Mr. Ingersoll then offered the record of the conviction of John T. Hare

and others, who were the principals in the mail robbery, and who were convicted at Baltimore.

{Mr. Phillips objected to this conviction being received by the court, because there is no attestation of the presiding judge that the certificate attached to the record is that of the clerk; or that the seal is that of the court; or that the record is in a legal form. Also, that the record is on three distinct sheets of paper, not attached or connected together.

{Mr. Ingersoll: If this were a state court, and this record certified from one county to another, as it is, would it be in form? That is the question, for the districts of the United States are part of the same country, and not foreign to each other. To require the certificate of the presiding judge would end in nothing; for then you must go farther, and get a certificate, if such a thing could be had, that he is a judge of the circuit court, which would be a difficult thing, as the judges of the supreme court are not commissioned circuit judges. Besides, the circuit judge does not appoint the clerk, and probably never sees his commission. All he knows is the acting of the clerk ex officio, and possessing and using the seal of the court.

{As to the second objection, Mr. Ingersoll observed, that the record is written in the same hand, and is connected in the matter from sheet to sheet, and there is nothing in it that can for a moment make the court doubt that it is not the entire record. It is for the court to say, from an examination of it, whether they believe it to be one record.

{Mr. Phillips: This record is signed by P. Moore, and it is impossible for this court to know, judicially, that P. Moore is clerk of the court whence the record issued; he gives the only evidence that he is a clerk, which the court will not allow. The danger of accepting a record of this kind would be very great, and might lead to very serious frauds, for it would be an easy matter for a man to sign himself clerk, and step into the clerk's office when he was absent, and attach the seal to a certificate that he was clerk. In executing commissions in civil eases, the greatest strictness is observed and required; and where the record consists of more than one piece of paper, every sheet is marked and numbered, and attached together. The same strictness should be observed in criminal cases, particularly where the life of the man is the forfeit in case of conviction.

{Mr. Phillips also objected, that it was not certified to be a full exemplification of the record.

{THE COURT overruled the objections. As to the first objection, there is no law which requires such a certificate. The act of congress of the 26th May, 1790 (1 Stat. 122), does not apply to the records of the federal courts; and even as to the records of the state courts, that act does not require a certificate of the judge that the person attesting the record is clerk. It is sufficient in this case that the seal of the court is affixed. Were it the record of a state court, the certificate of the presiding judge that it was done in due form would be necessary. As to the other objection, it is by no means fatal to the evidence,

although it is certainly improper to certify records in the way that this is, in sheets unconnected by some fastening. But if the court, upon inspection, is satisfied (as we are in this case) with the verity of this record, that is sufficient.

{Mr. Ingersoll then read the conviction of John Alexander and others, indicted for robbing the mail, from the record of the circuit court of Baltimore. He then called the following witnesses:

{Evidence.

{Owen Churchman, affirmed: In consequence of information left at my counting house by Mr. Bally, I was going to see him; on my way I met Wood, the prisoner, and another (by the name of Davis), conversing together. I followed them down to Water-street Davis went into a slop-shop. I spoke to an acquaintance to watch Wood, and went into the shop to watch Davis; he showed no money; I went out and waited. I had not been out many minutes, when a boy came out of the slop-shop with a note, and went into Mr. Pritchett's store. (The note was payable to the order of Churchman and Thomas.) Wood also went into Pritchett's store. I followed him and the boy in; Wood asked the price of flour; I caught him and sent word to have Davis secured. We took them to Mr. Baily's office, and thence to Alderman Bartram's. When I first saw Davis and Wood, supposing them to be the men described by Mr. Baily, I followed them and saw a paper pass from Wood to Davis. When at the alderman's Wood refused to give any account of the manner by which he became possessed of the money; he said he was an honest man. The alderman told him if he was honest, he would not refuse to give an account of the money. Wood replied, "If this answer will do, I found it (the note) near the market-house in Callowhill-street." I assisted in stripping him, and found a pistol in a belt under his waistcoat He acknowledged giving the note to Davis. A statement had been made by Mr. Ducker (a broker) of the manner in which the note had been presented to him; he said that Wood had been two or three times at his office, and had sold him parcels of North Carolina money; that the last time he was there, he presented this note (the one he had endeavoured to pass charged in the indictment); that he, Ducker, discovered that it was payable to Churchman and Thomas, and wanted their names to make it negotiable, and asked him whether he was one of the firm; he replied that his name was Churchman, and that he was from Baltimore; that Ducker then said, if he was one of the firm, and would endorse the note, he would purchase it; that Wood seemed confused, and

walked out. Wood said in the alderman's office, that all which Mr. Ducker had stated was correct, and acknowledged being in prison before in Philadelphia and Baltimore.

{Cross-examined: There were a number of persons in the office, about twelve or fifteen. I do not recollect any particular conversation about the robbery of the mail; if Wood was charged with robbing the mail I do not recollect it; it must have been when I was not near enough to hear. I stated, that this note must have come from the mail, but I do not recollect any particular charge, that Wood had robbed the mail. He said he was in the city when the mail was robbed, and he brought a witness who swore that he had lodged with him on the night of the mail robbery. He then called himself Alexander.

{Chester Baily, sworn: I first saw the fellow to the pistol at Havre-de-Grace. I went there on the 13th March, after hearing the mail was robbed. After the information I received from Mr. Ducker, I got a written description of Wood from him, and sent it throughout the city. Churchman came in a short time after, with Wood and Davis; I immediately saw that Wood was the man I had given a description of. We went with the prisoner to Alderman Bartram's office; the first thing done was to search Wood, and the pistol was found on him; I observed to the alderman that this was the match to the pistol found at Havre-de-Grace. I sent for the pistol; it was forwarded by mail. Wood was asked some questions about the note; he said the note belonged to him, and not to Davis. I asked him where he got it, and if he got it honestly he would tell; he said he got his money as honestly as I got mine, and afterwards he said he found it in the street.

{David Bell, sworn: I saw this note enclosed in a letter at Charleston, S. C., and put in the post office; it was directed to Churchman and Thomas. The endorsement is my father's. There were forty $100 notes enclosed in the letter.

{John Ducker, sworn: About 9 o'clock of the morning that Wood was apprehended, he sold me a $100 note on the State Bank of N. Carolina. At the middle of the day he offered me some other notes about $57, for which I did not offer enough; I wanted 40 per cent, discount. He said he must consult his brother; he stept out and then came in and agreed to sell me the notes; they were Somerset notes, of Maryland; I bought them; he then offered me this note; I asked him if he was one of the firm; he said his name was Churchman of Baltimore. I gave this statement before the alderman; Wood said it was correct, and the alderman entered his acknowledgment on the docket.

{Furman Black, affirmed: I am one of the keepers of the prison. Some day last week a gentleman called at the prison and wanted to see Wood; I went to the cells with the gentleman to see him; the gentleman addressed him by the name of Wood or Alexander, and asked him if he would do him the justice to give him an order for some money that was in the hands of Bartram. Wood observed that he had nothing to do with the robbery of the mail, that the money he got exchanged he received from John Alexander, and returned the proceeds to him; he then stated the money was found with Alexander behind

the looking glass, and it was the identical money which was the proceeds of the notes he exchanged for Alexander.

{Mr. Ingersoll here read the following order for this money, which was signed by the prisoner: "I hereby authorize Mr. J. A. Isaacs to receive of George Bartram, Esq., the sum of three hundred and thirty nine dollars, fifty cents, which was found in my possession, and taken by the officer who executed the process under which I was arrested, and which were the proceeds of Mr. John M. Patton's cheek on the Philadelphia Bank, or if the said money should not now be under the control of the said George Bartram, Esq., I authorize any person who may have the control of it, to pay the same to the said Isaacs. (Signed) William Wood. May 27th, 1818. Witness present, Seth Price."

{Thomas Hare, sworn: About the 27th of February last Wood and myself started from Baltimore; we arrived here the 3d or 4th of March; when we came here I understood that Joseph and Lewis Hare were in the city; I found them—Joseph at John Alexander's, and Lewis, at a house near there. Lewis came down to John Alexander's, and they told me about this plot of robbing the mail, which was to be executed as soon as Joseph's feet got well, which were sore by traveling. I do not recollect whether Wood was there at that time or not. They asked me if I knew who had pistols; I told them Wood had; I asked Wood to let them have his pistols; he refused at first and then consented to lend them. These look like the pistols; they were brass barrels; I never had them in my hands but once or twice; I think they received the pistols the day before they started. Sunday morning previous to the robbery John Alexander, Lewis Hare, Joseph T. Hare, W. Wood, and myself started from Alexander's house; we went into Arch street, and went up Arch street, as far as 10th or 11th street, when Wood and myself returned; the others went on to rob the mail, as they said; I returned to Alexander's house, and Wood went down town. On the Friday following, John Alexander returned, and said he had completed the business, and had received about 4,000 dollars. The next day Wood came to Alexander's; the conversation again took place about the mail robbery; Alexander told Wood that he had got about 4,000 dollars from the mail, as his share; and gave Wood a post note of 100 dollars; he said he did not know much about the note, but he would give it to him, that he expected it was good. I do not know whether

this is the note; I gave him a 100 dollar note also. Alexander gave him the note as a present, or as a compensation for the loan of the pistols. Wood was present when the pistols were cleaned; I took one to pieces to clean it.

{Cross-examined: I believe the plan to rob the mail was made before Wood and I came from Baltimore. I knew nothing of it until I came from there. John Alexander or Joseph Hare first told me of it. I think it was Joseph; they all talked to me about it. I think I mentioned to Wood first, that they were going to rob the mail, but am not certain. Wood did not advise against it. I was not to go with them; Lewis wanted me to go, but Joseph did not want me. The three that went were to divide the spoil. I was to receive none. I did not state in my examination that I was taken sick, and returned on that account. I stated that I was unwell when it took place. Mrs. Alexander was opposed to the plan. I received two notes from Alexander, one of 100 dollars, and one of 10 dollars. I gave one of 100 dollars to Johnson, and one of 100 dollars to Wood. Joseph and Lewis Hare are my brothers. Joseph is the oldest—Lewis is younger than I am. I saw Wood whilst the three were absent; he lodged in the same house with me for two or three nights. I do not know what part Wood took but lending his pistols. He was not invited to go; they thought three were enough. Lewis said he would rather have me than Alexander, as he was afraid Alexander would tell of them, and he did not know Alexander. I made the disclosure to Mr. Bache; my motives were, Mr. Bache said he would favor me all he could. What induced me was for the sake of liberating my brothers. I supposed if I was not admitted as a witness, John Alexander would be, and we all three should be convicted, as John Alexander was present. I had not been acquainted a long time before with Wood. I formed an acquaintance with him at Baltimore. I heard of the mail robbery before Alexander came up. It was understood that the mail was to be robbed when Wood lent the pistols. I informed him when I asked him for them.

{T. W. Ludlow, sworn: Gave the same evidence as on the trial of the three principals convicted at Baltimore.

{D. Boyer, the mail carrier, was also sworn, and testified as in the former trial.

{John M. Patton, affirmed: On the morning of the day he was taken prisoner, Wood offered me 350 dollars on the State Bank of N. C. I exchanged the notes for him, and paid him in a check on Philadelphia Bank; after I paid him he left the office. I sold the notes to H. M. Prevost. When I found the notes were taken from the mail I went to Mr. P. to take a minute of the marks and numbers of the notes, which he did also.

{Richard Bache, sworn: I accompanied Wood to prison to have him searched; he protested that he had nothing to do with the robbery of the mail and refused to tell me at that time where he got the 100 dollar note that he had given Davis to pass. He told me that he lived at Deal's Tavern, up Sixth street, and afterwards that he resided at Mr. Black's. I went to him the morning after he was committed to prison, and told him the

object was not so much to punish the offenders, as to obtain the money robbed from the mail, and I urged him to tell me where it could be found; he denied knowing anything about it, and told me I might as well rob the mail as to take the money which he said he became possessed of lawfully. At the magistrate's he said that he worked on the turnpike, and received the note in payment for work done on the road. After Hare and Alexander had made a confession, I was of opinion that a fourth person had been engaged on the spot in the robbery, as the four horses had been taken from the mail wagon, and as the sum which Alexander acknowledged to have been his portion was so much smaller than that found on the persons detected at Baltimore. I went to the prison, therefore, and had Alexander, Wood and Thomas Hare brought out of their cells into the entry. Alexander there stated, that Wood knew of the robbery, and that when he came from Baltimore, he gave him the money which he had taken from the mail to exchange; that he went along with him to the broker's office in Fourth street (Mr. Ducker's); that he stood at a distance and gave Wood the money, which when exchanged, Wood returned the proceeds to him. Alexander said, that he had given the 100 dollar note to Wood for himself; Wood did not deny anything that Alexander said, but when Alexander assured me that there were but three persons actually engaged on the spot in the robbery, Wood observed that we had Alexander's confession that there were but three concerned, and he hoped we did not want to hang more than the three. I told him to be on his guard; and that persons concerned in aiding and abetting would share the same punishment as the principals. At a previous time, when I pressed him to tell me where the money was, and that it would be a serious matter to him if he did not disclose the facts, he said that he was not afraid; that no person concerned in the robbery could be admitted as a witness against him, because they had all been convicted; that Davis, who informed against him, was a convict; and that Alexander and Thomas Hare were both convicts; to which I replied, that Hare had been pardoned. Wood remarked to me, that Alexander had told me he had given up all the money, and he asked me why I suspected him. Alexander told me that he had placed the money (the proceeds of that which Wood exchanged) behind the looking glass. He did not state that Wood was to have a share in the plunder, but he said that the reason why Wood and T. Hare did not accompany them was, that they concluded three were enough; and if there were more, there

would be greater difficulty in escaping detection.

{The prisoner offered no evidence.

{Mr. Ingersoll, the district attorney, contended, that the evidence in relation to all the counts which are not capital, was conclusive; whether the other counts were proved would depend upon the meaning which the court and jury might give to the word "jeopardy," in the 19th section of the law. With respect to the term "jeopardy," he observed that the legislature used a word for which we can recur to no code of laws for a definition. We are obliged to inquire of dictionaries for its meaning. This is the first step of departure from that precision which the law exacts in a criminal case. Dr. Johnson derives it from the French "J'ai perdu,"—I have lost—and defines it "peril," "danger"; I should rather derive it from "Je perde,"—I lose—and define it "extreme peril or danger," equivalent to, "It's all over," "I am lost," or the like. When a loaded pistol is presented with a threat to discharge it, the man aimed at may be in fear, as the driver of the mail says he was; and he may be in danger too, but not that extremity of danger which this word calls for. If the pistol had been fired, and missed or snapped, I should consider the life in jeopardy by the use of the dangerous weapon; but I doubt whether a mere menace to use a loaded pistol or naked dirk, can be considered as within the law; and it would be especially severe to apply the strongest meaning of a doubtful word, in an accessorial case like this, where the accused was not at the place of perpetration.

{In short, my difficulty is this: The word is doubtful and the ease is capital. Like the word "revolt" therefore, on which this court has refused to settle a judgment of conviction in a capital case, it appears, to me that the prosecution is liable to be defeated by the mere doubtfulness of the word used by the legislature. The best idea I have met with, of what strikes me as the true use of "jeopardy," is to be found in the Bible, in the 18th verse of the 5th chapter of Judges: "Zebulun and Naphtali were a people that jeoparded their lives unto death, in the high places of the field." Here the word means a danger of an extreme degree, approaching close to death, and such I suppose the word "jeopardy." Perhaps the idea is a refinement. But such as it is, I think proper, after some reflection, to state it, and under the impression of at least the question-ableness of the term. I shall not press that part of the case which calls for the offender's life, when it is perfectly dear upon the testimony and the law, that he is guilty of that crime which is not capital.

{Mr. Phillips, for the prisoner, stated, that as the prosecution upon the counts which charge the prisoner with the capital offence was given up, he should submit the prisoner's case upon the other counts to the jury.

{Judge WASHINGTON informed Mr. Phillips that the court did not entertain the doubt which the district attorney had expressed as to the meaning of the word "jeopardy," and that it was proper to apprize him of this in order that he might defend his client

in like manner, as if no concession had been made, or doubt expressed, by the district attorney.

[The counsel still submitted the case to the jury under the charge of the court.][3]

WASHINGTON, Circuit Justice (charging jury): The first inquiry for the jury is, whether the mail carrier was robbed of the mail, and if he was, whether it was effected by putting the life of the carrier in jeopardy by the use of dangerous weapons, or otherwise. The conviction of Joseph T. Hare, John Alexander, and Lewis Hare before the circuit court of Maryland, and the sentence of the court thereon, are evidence the most conclusive against the prisoner, that the crime for which those persons were severally convicted was committed by them. [See Case No. 15,304.] This is confirmed by the testimony of Boyer, the mail carrier, and Mr. Ludlow, the passenger. As to the nature of the offense of which Joseph T. Hare, etc., were convicted, the court does not entertain a doubt. We think that putting the mail carrier in fear, and his life in peril or danger, is putting his life in jeopardy, within the meaning and intent of the act of congress, and if the jury should be of opinion, under the circumstances which attended this transaction, that Boyer was in fear, and in danger of his life, the offense of those principals was capital. We think it our duty to give you this opinion, notwithstanding the concessions which the candor of the district attorney induced him to make. We do not however, think it necessary or proper in this case to press this point against the prisoner; and with these few observations which have been made, I leave this point to the jury.

The next question is, whether the prisoner did aid, advise, or assist in the perpetration of a crime committed by the principals. If Thomas Hare, who has given testimony oh the part of the prosecution, is believed by the jury, he has clearly proved that the prisoner not only participated in the plan formed for robbing the mail, and aided its execution by his countenance and advice, but that he lent his pistols to the principals, with a distinct knowledge of the criminal purpose for which they were borrowed; and that he accompanied the perpetrators of the crime a short distance on their journey to the place of its intended execution. In addition to the testimony of this witness, Mr. Bailey has proved the exact similitude of the pistol found upon the prisoner at the magistrate's, and that found at Havre-de-Grace, near to the spot where the robbery was committed. Should the jury be of opinion that the prisoner is guilty of the offense charged against him as capital, according to the explanation of the law given by the court they may find him

generally guilty. If they should think him guilty of assisting only in a simple robbery of the mail, or that the life of the mail carrier was not in jeopardy, according to the meaning of that word as given by the court, then they will find him guilty on the third or fourth count, and not guilty on the others. If they think him not guilty of any offense, they will find him not guilty.

The jury retired at half past three o'clock, and at five returned with a verdict of guilty. On being called over and asked separately, one of them dissented from the verdict given in; after some observations from the court they again retired, and at half past six o'clock brought in a verdict of guilty.

Motion in arrest of judgment and for a new trial. The prisoner being brought before the court to receive sentence of death, Zalegman Phillips, Esq., his counsel, moved for a new trial, and in arrest of judgment.

WASHINGTON, Circuit Justice. This is a motion in arrest of judgment, and various causes have been assigned, but as the decision of the court will be given on the first two, it will be unnecessary to state the others. These were: 1st. That the verdict is against law and against evidence. 2d. That the jury have convicted the defendant capitally, to wit, on the first, second, fourth, and fifth counts, of the indictment, when the attorney of the United States expressly stated to them, that he did not ask a conviction on these counts, as he considered the law very doubtful, and would be satisfied with a conviction on the third and sixth counts of the indictment, and that in consequence thereof the prisoner's counsel did not enter into any examination of the law and facts in his behalf, as applying to the said mentioned counts, believing them to have been abandoned by the attorney of the United States.

The first objection then is to the style of the court, which, it is contended, should be the circuit court for the Eastern district of Pennsylvania; this change being produced by the act of congress "to divide the state of Pennsylvania into two judicial districts," passed on the 20th April, 1818 [3 Stat. 462]. It is not contended that the style of the court is altered in express terms, but it is supposed to arise necessarily from the division of the state and the jurisdiction assigned to the Western court. There might be some color for this argument, if the law had created a new circuit court for the Western district, in which case there would seem to be a propriety, at least, in distinguishing that Court from this, by calling that the Western, and this the Eastern circuit court. But it will appear from a correct analysis of the law, that the style of the Western court is the district court for that district, in contradistinction to the district court for the Eastern district, and that the division of the state into two districts is in reference to those courts. The title of the act is, "An act to divide the state of Pennsylvania into two judicial districts." Section 1 divides the state of Pennsylvania into two districts, and designates their respective boundaries. Certain counties shall compose one district, to be called the Western district, and the

residue of the state shall compose another district, to be called the Eastern district; and the terms of the circuit court for said Eastern district shall be held at Philadelphia, and the terms of the circuit court for the Western district shall be held at Pittsburg. Sec. 2. Richard Peters, Esq., now judge of the district of Pennsylvania, is assigned as the judge to hold the courts in the Eastern district, and to do all things appertaining to the office of a district judge under the constitution and laws of the United States. Sec. 3. The president is to appoint a district judge for the Western district, and he shall do and perform all such duties as are enjoined on or in any wise appertain to a district judge of the United States. Sec. 4. The circuit court shall be held for the Eastern district at Philadelphia, at the time and in the manner now directed by law to be held for the district of Pennsylvania, and the district court for the Western district, in addition to the ordinary jurisdiction and powers of a district court, shall, within the limits thereof, have jurisdiction of all causes, except of appeals and writs of error, cognizable by law in a circuit court, and shall proceed therein in the same manner as a circuit court, and writs of error shall lie to the circuit court in the said Western district in the same manner as from other district courts, to their respective circuit courts. Sec. 5. The president shall appoint the district attorney and marshal for the Western district; the district attorney and marshal for the Western district of Pennsylvania to be district attorney and marshal respectively for the Eastern district. Section 6 directs how civil causes shall be removed, and in all its terms has reference to civil causes, and to the district court for the Western district. It is true that the word "circuit" is used in the first section in connection with the Western court; but the other parts of the law show, most obviously, that this was an inaccuracy of expression, since in every other section it is styled a district court. It has not only the style and jurisdiction of a district court, but it is subordinate to the circuit court in the Eastern district in the same manner as other district courts are to their respective circuit courts. It is true that the Western district court has the same jurisdiction assigned to it as is exercised by the circuit court. But this circumstance does not constitute it a circuit court.

The second objection to the caption is that it states the presentment to be by the grand jury of the United States, inquiring for the district of Pennsylvania, when in truth there

is no such district, and the jury had no power to inquire except for the Eastern district. The answer to this objection is that the caption is consistent with the truth of the case, and would therefore have been faulty had it been qualified as the prisoner's counsel has contended it ought to have been. The venire issued before the passage of the law in question to summon the grand jury for the district of Pennsylvania, and on the 11th of April, some days before the passage of this act into a law, they were sworn and affirmed to inquire for the body of the district of Pennsylvania. The indictment, therefore, is with strict propriety found by the grand inquest of the United States inquiring for Pennsylvania district upon oath and affirmation, inasmuch as they were legally sworn and affirmed to inquire for the whole district. Nevertheless, there remains to be considered under this head a very interesting question, which is, does this indictment show that this court has jurisdiction of the offense charged to have been committed by the prisoner? This question resolves itself into two others. Although the grand jury were sworn and very properly to inquire for the district of Pennsylvania, yet could they, after the passage of this law, inquire of offenses committed on land out of the Eastern district of Pennsylvania? And if they could not, then secondly, does the indictment sufficiently show that the offense of which the prisoner stands convicted was committed within the jurisdiction of the court? The court has not been able to find any act of congress which in express terms fixes the jurisdiction of the circuit courts in criminal cases by the place in which the offense was committed. But the court is clearly of opinion, upon the fair and reasonable construction of the different laws upon this subject, that the jurisdiction of the circuit court in criminal cases is confined to offenses committed within the district for which those courts respectively sit, where they are committed on land. See the eleventh, twenty-third, and twenty-ninth sections of the first judiciary act [1 Stat. 78, 85], and the third section of the act of the 2d March, 1793,—2 Laws, 225 [1 Stat. 333].

It was contended by the district attorney that the jurisdiction of the Western district court does not extend to criminal cases; but the court cannot give its assent to this construction of the law. The fourth section declares that that court, in addition to the ordinary jurisdiction of a district court, shall, within the limits of the Western district, have jurisdiction of all causes, except appeals and writs of error, cognizable by law in a circuit court. Now, as it is clear that a circuit court has jurisdiction of all offenses prohibited by the laws of the United States committed at, sea or on land within the district where the court sits, it follows, from the general expressions above quoted, that the Western district court has the cognizance of the offenses limited as to jurisdiction as the circuit courts are. If, then, this court has not jurisdiction of offenses committed within the Western district, and the Western court has, the next question is, does this indictment sufficiently show that the offense of which the prisoner is convicted was committed within the jurisdiction of this court? The allegation in all the counts is that the offense was committed at the

district of Pennsylvania. It might then have been committed as well in the Western as in the Eastern district, and the court cannot help the indictment in this respect by any presumptions, or because we know from the evidence that the offense was committed in this city. It is indispensable that the indictment should distinctly show that the court has jurisdiction of the offense, and it ought, therefore, to have laid it to have been committed in the Eastern district. And since it might be proper in some cases of a capital nature to try the cause in the county where the offense was committed, there would seem to be a propriety in stating the county, also in the indictment, though on this point we give no positive opinion at this time, the ease not requiring it. Upon the whole, we are of opinion that the judgment must be arrested for the reason which has been stated.

{For a second indictment, upon which the jury found the prisoner guilty, see Case No. 16,756.}

[1] {Reported by Albert Brunner, Esq., and here reprinted by permission.}

[2] {From 2 Wheeler, Cr. Cas. 325.}

[3] {From 2 Wheeler, Cr. Cas. 325.}