

*IN RE MILLER.*

*District Court, E. D. South Carolina.*

May 10, 1890.

CONFLICTING STATE AND FEDERAL JURISDICTION.

Where a United States marshal is arrested, under state authority, on charge of forgery, the fact that at the time of his arrest he was on his way to serve process issued by a United States commissioner does not oust the State authorities from jurisdiction, Where it does not appear that he was arrested for any act done in pursuance of federal authority, or with the intent to interfere with the service of the process in his hands.

At Law. Petition for *habeas corpus*.

On motion to remand the prisoner to the state authorities.

*A. Lathrop*, Dist. Atty., for the motion.

*P. H. Nelson* and *W. St. Julian Jervey*, for defendant.

SIMONTON, J. W. J. Miller, a deputy United States marshal, was arrested and lodged in Lexington jail. He had with him process issued by John Bauskett, United States commissioner, and was on his way to serve the process when arrested. A writ of *habeas corpus* out of this court was issued for him on the petition of George I. Cunningham, marshal. The sheriff of Lexington, who had him in custody, makes return to the writ

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of *habeas corpus*, producing the prisoner, and stating that he had been lodged in jail under commitment by a trial justice of the state of South Carolina, upon charges of forgery and felony. It nowhere appears, in any affidavit read before me, that he was arrested under state authority for any act done in pursuance of federal authority, and warranted by it. Nor does it appear in any way that he was arrested by the state authorities with the motive or intent on the part of any one to interfere with the service of the process of the United States. Under these circumstances, I cannot do anything but remand him into the custody of the state authorities. *In re Bull*, 4 Dill. 323; Rev. St. U. S. § 753. In doing this, however, I desire to commend the action of the marshal in suing out the writ of *habeas corpus*. When any deputy marshal is arrested in possession of the process of a commissioner or of this court, the duty of the marshal is at once to learn in the most authoritative way the reason for such arrest, and the mode selected by him in this instance is the best. Let an order be prepared remanding the prisoner to the custody of the state authorities.