

tions can they perform if they cannot use force? In executing the processes of the courts, must they call on the nearest constable for protection? Must they rely on him to use the requisite compulsion, and to keep the peace, whilst they are soliciting and entreating the parties and by-standers to allow the law to take its course? * * * It [the United States] must exercise its powers, or it is no government. It must execute them on the land as well as on the sea, on things as well as persons. And to do this it must necessarily have power to command obedience, preserve order, and keep the peace; and no person or power in this land has the right to resist or question its authority so long as it keeps within the bounds of its jurisdiction."

The relator, Daniel McSweeney, must be discharged from custody.

UNITED STATES v. THOMAS.

(District Court, W. D. Virginia. September 17, 1891.)

OBSTRUCTING JUSTICE—ASSAULTING WITNESS AFTER CASE DISMISSED.

Rev. St. U. S. § 5399, providing that every person who by threats or force endeavors to intimidate or impede any witness "in any court of the United States," or by threats or force endeavors to impede the due administration of justice therein, "shall be punished," etc., does not apply to the act of one, who, two months after a prosecution against him before a United States commissioner has been dismissed, beats a person who had appeared therein as a witness against him.

At Law. Indictment for beating a witness and obstructing justice.

Walter Thomas had been a witness on behalf of the United States, before a United States commissioner in Floyd county. The commissioner, upon examination, dismissed the case. Two months afterwards, Walter Thomas was assaulted and beaten by a gang of men, at his house, in the night-time. The men who made the assault were indicted under section 5399, Rev. St. U. S. The defendant was tried separately. Counsel for the defendant took the position that, as Walter Thomas was not at the time of the beating a witness in any court of the United States, or in any cause pending therein, defendant could not be prosecuted under this section of the statutes. The evidence developing the fact that the said Walter Thomas was not at that time a witness in any case before any court of the United States, under either recognizance or subpoena, the court sustained the position of counsel for the defendant.

W. E. Craig, U. S. Dist. Atty.

Z. G. Dobyms and B. S. Pedigo, for defendant.

PAUL, J., (after stating the facts as above.) This is an indictment under section 5399, Rev. St. U. S., which provides that—

"Every person who corruptly, or by threats or force, endeavors to influence, intimidate, or impede any witness or officer in any court of the United States in the discharge of his duty, or corruptly, or by threats or force, obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice therein, shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three months, or both."

In this case it is shown by the evidence that Walter Thomas, on whom the alleged violence was committed, had been a witness against the accused on a warrant issued by and tried before a United States commissioner. This trial was had before the commissioner about two months before the alleged beating took place, and the warrant was dismissed by the commissioner, and the relation of Thomas as a witness was ended with the dismissal of the warrant. At the time of the alleged assault he was not under recognizance or subpoena as a witness, nor is it shown from the evidence that it was contemplated by the government to use him in the further prosecution of the case, which had been dismissed by the commissioner, or in any other case, either in an actual or contemplated prosecution. His relation to the court as a witness was entirely severed, and he stood upon the same footing as every other citizen of the state, and entitled to the same protection under her laws. The court cannot concur in the view of the United States attorney that the protection given a witness, under this section, follows him after he has been discharged as a witness, and the court has no further power or control over him as such. The court is of opinion that the protection of the law, under this section, is coincident and continuous with the power of the court over the witness, to compel him to attend and give evidence in some pending case; and, when this relation between the court and the witness ceases, the protection of the law, under this section, is terminated. The language of the statute is, "intimidate or impede any witness or officer in any court;" not after this relation is ended. Nor does the court think that the offense charged here falls within the clause applying to the "obstructing or impeding the due administration of justice," as contended by the United States attorney. This clause is intended to apply to acts done to prevent the proper administration of justice in a pending cause, not in a cause already ended, or one not yet begun. While the remote effect of acts of violence of this kind may be to deter timid persons from putting on foot prosecutions against violators of the law, this cannot be said to be obstructing or impeding the due administration of justice, in the sense contemplated by this section of the Revised Statutes. For injuries of the kind complained of here, and sought to be prosecuted under this section, another section (5406) of the Revised Statutes makes provision, and witnesses who have testified before the courts of the United States are not left to the mercy of combinations of lawless men to do them injuries for having testified against them.

The jury will find a verdict of not guilty.

UNITED STATES v. EWING *et al.**(District Court, D. South Dakota. October 14, 1891.)*

1. INDIANS—CRIMES ON RESERVATIONS—JURISDICTION OF UNITED STATES COURTS.

Act Cong. June 30, 1834, (4 St. at Large, 729,) defines the territory which should be known as the "Indian Country," including therein the region now included in the Dakotas, and provides that the laws of the United States relating to the punishment of crimes within the "exclusive jurisdiction of the United States shall be in force in the Indian country," except as to crimes committed by Indians against each other. By treaty of April 19, 1858, (11 St. at Large, 743,) with the Yankton tribe, whereby certain lands were ceded, and 400,000 acres reserved to the Indians, the United States agreed to protect them in their possession thereof, and also in "their persons and property therein during good behavior." Act Cong. March 2, 1861, (12 St. at Large, 239,) creating the territory of Dakota, provides that nothing therein contained shall be construed to "impair the rights of persons or property pertaining to the Indians in said territory, and that all the Indian lands therein shall be excepted out of its boundaries and jurisdiction" until title is extinguished by treaty with the United States. Act Cong. Feb. 22, 1889, providing for the organization of the states of North and South Dakota, declared that "the people of said states do agree and declare that they forever disclaim all right and title * * * to all lands lying within said limits, owned or held by any Indian or Indian tribes," and that the same "shall be and remain under the absolute jurisdiction and control of the congress of the United States." *Held*, that the United States district court has jurisdiction of an indictment against a white man for stealing the horses of an Indian on the Yankton reservation, under Act Cong. April 30, 1790, (Rev. St. § 5356,) which provides for the punishment of larceny committed "within any of the places under the sole and exclusive jurisdiction of the United States."

2. INDICTMENT—VENUE.

An indictment for a larceny committed "in the county of Charles Mix, in the district aforesaid, and at a place in said county of Charles Mix within the Great Sioux Indian reservation and within the Indian country," sufficiently alleges the venue, although the name "Great Sioux Reservation" is more properly applicable to another Sioux reservation in the state.

At Law. On demurrer to an indictment for a larceny committed on an Indian reservation.

Wm. B. Sterling, U. S. Dist. Atty.

Hoppaugh & Ellis, for defendants.

Before SHIRAS and EDGERTON, JJ.

SHIRAS, J. In the indictment found in this case the defendants are charged with the crime of larceny, it being averred that they, on the 16th day of April, 1889, did steal five horses, the property of one Thomas Hunter, an Indian of the Sioux tribe, the venue of the offense being laid in Charles Mix county, in the district of South Dakota, within the Great Sioux Indian reservation and within the Indian country. The indictment does not state whether the defendants are Indians or white men; and in support of the demurrer it is urged that this court does not have jurisdiction of crimes committed by white men on the Indian reservation in Charles Mix county, or to state the proposition in the language used in the brief of counsel for defendants:

"The point we make is this: It is absolutely necessary to aver in the indictment that the persons charged with the crime were Indians, because, if they were not Indians, the court would have no right or authority to try them. If these defendants are white men, there is no jurisdiction over them vested in the United States courts. If they are white men, there is no law or