Fed. Rep. 61; Railroad Co. v. Converse, 139 U. S. 469, 472, 477, 11 Sup. Ct. Rep. 569; North Pennsylvania R. Co. v. Commercial Bank, 123 U. S. 727, 733, 8 Sup. Ct. Rep. 266; Monroe v. Insurance Co., 52 Fed. Rep. 777, 778. Tested by this rule, a careful examination of this record has satisfied us that there was no error in the ruling of the court withdrawing from the jury and instructing them to return a verdict for the defendant upon all the causes of action upon which the government went to trial except the seven submitted to the jury.

There are other errors assigned, but they were not discussed in the briefs or arguments, and are deserving of no separate consideration. There was no sufficient ground for their assignment, and no error prejudicial to the government in the trial of this case.

The judgment is affirmed.

UNITED STATES v. DUCOURNAU.[1]

(Circuit Court, S. D. Alabama. July 2, 1891.)

1. JUDICIAL KNOWLEDGE—BEER A MALT LIQUOR.
   Beer is judicially known to be a fermented liquor, chiefly made of malt, and proof of selling beer not shown to be otherwise made will support an indictment for selling malt liquor.
2. PRACTICE—COURT AND JURY.
   The jury in a criminal case are exclusive judges of the weight of what is proved, and the court will not set aside a verdict because differing with them as to the sufficiency of the evidence.

At Law. Indictment of Lotta Ducournau for carrying on the business of a retail dealer in malt liquors without a license. On motion to set aside a verdict of conviction. Denied.

M. D. Wickersham, U. S. Dist. Atty.
Smith & Gaynor, for defendant.

TOULMIN, District Judge. The indictment charges that defendant carried on the business of a retail dealer in malt liquors without a license. The evidence tended to prove that he carried on business and sold beer by the glass. The jury found him guilty. A motion is now made to set aside the verdict and grant a new trial on the grounds: First, that there was no evidence to support the verdict; and, second, that the evidence was not sufficient to establish beyond a reasonable doubt the guilt of the defendant. The contention is that proof that beer was sold does not support the charge that malt liquor was sold, but that there should be evidence that the beer sold was that made of malt. At first impression I was inclined to yield to this contention, and to hold that the evidence did not support the verdict. But from investigation and further consideration I have reached a different conclusion. Malt liquor is defined to be a beverage prepared by infusion of malt, as beer, ale, porter, etc.; and beer is defined as a fermented liquor, chiefly made of malt. If, then, beer is a liquor chiefly made of malt, and

[1] Reported by Peter J. Hamilton, Esq., of the Mobile, Ala., bar.

malt liquor is a beverage prepared by infusion of malt, beer is malt liquor, and malt liquor embraces beer. Allred v. State, 89 Ala. 112, 8 South. Rep. 56. I believe this is common knowledge, and that when one speaks of beer he must be understood to mean beer made of malt. The ordinary acceptation of the term "malt liquor" imports a fermented liquor, made chiefly of malt; and beer is a fermented liquor made chiefly of malt, as I have said. Now, there are other kinds of beer, made from vegetables, roots, and the like. When these are referred to, I think there is a prefix to the word beer; as, for instance, spruce beer, cain beer, etc. My opinion, therefore, is that the general term "beer," as defined and commonly understood, refers to beer made from malted grain, and that when any other kind of beer is meant a prefix must be added to indicate the kind referred to. The supreme court of this state has in several cases decided that the courts take judicial knowledge of the fact that lager beer is a malt liquor, and that evidence of that fact was not necessary to support an indictment charging the unlawful selling of malt liquor; the evidence in the cases referred to showing that lager beer was the liquor sold. Tinker v. State, 90 Ala. 647, 8 South Rep. 855; Watson v. State, 55 Ala. 158; Allred v. State, supra. When we consider the definition of the words "lager" and "beer," and why that beverage is commonly called "lager beer" in this country, we may justly conclude that, had the evidence in the cases referred to been that beer was sold, the court would have made the same ruling. Lager beer is a beer much used in Germany, where it is kept in casks on a frame, ("lager" signifying "bed,") placed in a cellar for that purpose, and it is the name of a similar beverage now largely manufactured in the United States. It is obviously called "lager beer" here to indicate that it is like the German beer. The fact that the word "lager" is prefixed to the term "beer" does not convey the idea that it is a fermented liquor made of malt. This idea is involved in its being called "beer," beer being a fermented liquor, chiefly made of malt. This is, I believe, known wherever it is drank or is an article of commerce.

This disposes of the first ground on which a new trial is claimed. While the court decides whether there is any evidence on the issue in a case, and what evidence is before the jury, the jury are the sole and exclusive judges of the weight and sufficiency of the evidence. They must be convinced, beyond a reasonable doubt, by the evidence, before they can find the defendant guilty; and they alone can say whether they are thus convinced. Even if the court should differ with them in the conclusion reached as to the weight of the evidence, it would be a mere difference of opinion. And where the jury, considering the weight of the evidence, say by their verdict that it is sufficient to convince them beyond a reasonable doubt of the defendant's guilt, the court would not substitute its opinion for that of the jury, especially in a case of this sort. In saying this I do not mean to intimate that I differ with the jury in the conclusion reached by them in this case now that I am satisfied on the technical point of defense raised in the case. The motion is denied.

UNITED STATES ex rel. HAM v. CHAPEL, Sheriff.

(District Court, D. Minnesota. January 31, 1893.)

JURISDICTION OF FEDERAL COURTS — DISCRETION — PRISONER UNDER STATE PROCESS.

The United States district court has jurisdiction to discharge a person held for trial by a state court, where he is restrained of his liberty in violation of the constitution and laws of the United States, but the federal court may in its discretion refuse to exercise such jurisdiction before trial in the state court, in the absence of special circumstances requiring immediate action. Ex parte Royall, 6 Sup. Ct. Rep. 734, 117 U. S. 241; Cook v. Hart, 13 Sup. Ct. Rep. 40; Robb v. Connolly, 4 Sup. Ct. Rep. 544, 111 U. S. 624–627,—followed.

Application by J. W. Ham for Discharge on Habeas Corpus from the custody of Charles E. Chapel, sheriff of Ramsey county, Minn. Writ dismissed, and prisoner remanded.

J. F. Fitzpatrick and Martin H. Albin, for petitioner.
Pierce Butler, for respondent.

NELSON, District Judge. The petitioner seeks a discharge upon the ground of the illegality of his arrest and imprisonment under state authority. The following facts are stipulated:

"That said J. W. Ham was extradited on an indictment mentioned in his petition, and arrived at St. Paul, Minnesota, August 26, 1892. That after said J. W. Ham had been duly arraigned upon said indictment, and had duly entered a plea of not guilty thereto, a nolle prosequi was on the 12th day of December, 1892, duly entered in said case, and said case was dismissed; and that thereafter, and before said J. W. Ham had an opportunity to depart from the district court room of Ramsey county, state of Minnesota, he, said J. W. Ham, was by the sheriff of Ramsey county, Minnesota, arrested, and detained for the offense set out in the indictment, a copy of which is attached to the return to said writ of habeas corpus, and has ever since been so detained."

It is claimed that the district court of Ramsey county is without authority to try said J. W. Ham on the indictment found after his rendition to the state of Minnesota by the territory of Utah for an alleged crime in no wise connected with the crime or charge upon which his surrender was demanded and secured, for the reason that no opportunity, before his arrest upon this charge, was given "to depart or return to his domicile;" and thus, it is urged, he is restrained of his liberty in violation of the constitution and laws of the United States.

The jurisdiction of this court to discharge the prisoner from arrest and imprisonment before his trial in the district court of Ramsey county if he is restrained of his liberty in violation of the constitution and laws of the United States does not admit of doubt; but it is also well settled that the court is not bound to exercise such power, and may, in its discretion, decline to discharge the prisoner alleged to be so held, and may require him to make his defense, and raise the question of the legality of his arrest and imprisonment in the state courts. The supreme court of the United States, in Ex parte Royall, 117 U. S. 241, 6 Sup. Ct. Rep. 734, and