

Cook Vs. United States

Cook Vs. United States

SooperKanoon Citation : sooperkanoon.com/86873

Court : US Supreme Court

Decided On : Jan-28-1891

Appeal No. : 138 U.S. 157

Appellant : Cook

Respondent : United States

Judgement :

Cook v. United States - 138 U.S. 157 (1891)

U.S. Supreme Court Cook v. United States, 138 U.S. 157 (1891)

Cook v. United States

No. 1311

Argued December 11-12, 1890

Decided January 28, 1891

138 U.S. 157

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF TEXAS

SYLLABUS

By the Act of March 1, 1889, 25 Stat. 783, c. 333, "to establish a United States court in the Indian Territory, and for other purposes," the strip of public land lying south of Kansas and Colorado, and between the one hundredth and the one hundred and third meridians, and known as No Man's Land, was brought within the jurisdiction of the court for the Indian Territory so established, and was attached for limited judicial purposes to the Eastern District of Texas.

The history of and the legislation concerning the Indian Territory considered and reviewed.

By the Act of March 1, 1889, 25 Stat. 783, c. 333, the intention of Congress to confer upon the Circuit Court of the United States in the Eastern District of Texas power to try defendants for the offense of murder committed before its passage, where no prosecution had been commenced, was so clearly expressed as to take it out of the well settled rule that a statute should not be interpreted to have a retroactive operation where vested rights are injuriously affected by it, and it must be construed as operating retroactively.

The provision in Article 3 of the Constitution of the United States as to crimes "not committed within any state" that "the trial shall be at such place or places as the Congress may by law have directed" imposes no restriction as to the place of trial except that the trial cannot occur until Congress designates the place, and may occur at any place which shall have been designated by Congress previous to the trial, and it is not infringed by the provision in the Act of March 1, 1889, 25 Stat. 783, c. 333, conferring jurisdiction upon the Circuit Court in the Eastern District of Texas to try defendants for the offense of murder committed before its passage.

The Sixth Amendment to the Constitution, providing for the trial in criminal prosecutions by a jury "of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law," has reference only to offenses against the United States committed within a state, and is not infringed by the Act of March 1, 1889, 25 Stat. 783, c. 333.

The Act of March 1, 1859, 25 Stat. 783, c. 333, although it subjects persons charged with murder committed in a place under the exclusive jurisdiction of the United States, but not within any state, to trial in a judicial district different from the one in which they might have been tried at

Page 138 U. S. 158

the time the offense was committed, is not repugnant to Art. I, Sec. 9 of the Constitution of the United States as an *ex post facto* law, since an *ex post facto* law does not involve, in any of its definitions, a change of the place of trial of an alleged offense after its commission.

The Circuit Court of the United States for the Eastern District of Texas, held at Paris, in that district at the October Term, in 1889, had jurisdiction of an indictment for murder charged to have been committed in the country known as "No Man's Land" July 25, 1888.

The Attorney General having by his brief confessed, as it was his duty to do, that there was error in an important ruling in the court below entitling the defendants to a reversal, this Court reverses the judgment of that court and remands the case for a new trial.

There was, in July, 1888, a parallelogram of unorganized public land extending from the 100th meridian on the east to the 103d on the west, and from latitude 3630' to latitude 37. It was called "Public Land" upon the maps, but was commonly known as "No Man's Land." It was originally a part of the Republic of Texas, but, in the annexation, the parallel of 3630' was made the northerly line of the state, presumably in order to apply the rule of the Missouri Compromise. Kansas and Colorado were subsequently organized in part out of this acquired territory north of 3630', with their southern boundaries on the 37th parallel; the west line of the Indian Territory was fixed at the 100th meridian, and the eastern boundary of New Mexico was fixed on the 103d meridian, thus leaving this small strip of land not included in any organized state or Territory.

By the Act of March 1, 1889, 25 Stat. 783, c. 333, it was provided that

"A United States court is hereby established whose jurisdiction shall extend over the Indian Territory bounded as follows, to-wit: north by the State of Kansas, east by the States of Missouri and Arkansas, south by the State of Texas, and west by the State of Texas and the Territory of New Mexico."

It will be seen that the Indian Territory as thus defined on the west stretches to the border of New Mexico. To do this, its northern line must run upon a portion of the southern line of Colorado. But Colorado is not mentioned in the act; only Kansas.

Under the provisions of the 17th section of that act, it was

Page 138 U. S. 159

provided that this part of the Indian Territory should "from and after the passage of this act be annexed to and constitute a part of the Eastern Judicial District of the Texas for judicial purposes." P. 786.

By the Act of May 2, 1890, 26 Stat. 81, c. 102, this parallelogram was made a part of the Territory of Oklahoma; but by section 9 of that act, it was provided that crimes committed therein

"prior to the passage of this act shall be tried and prosecuted and proceeded with, until finally disposed of, in the courts now having jurisdiction thereof, as if this act had not been passed."

26 Stat. 86.

The plaintiffs in error were at October term, 1889, of the Circuit Court of the United States for the Eastern District of Texas, sitting at Paris in that state, indicted for murder committed in No Man's Land. The allegations in the indictment were as follows:

"Eastern District of Texas, ss.: the grand jurors of the United States of America, duly elected, empanelled, tried, sworn and charged to inquire into and due presentment make of offenses against the laws of the United States of America in and for the district and circuit aforesaid, on their oath in said court present: that

heretofore, to-wit, on the twenty-fifth day of July in the year of our Lord one thousand eight hundred and eighty-eight, in that section of the country lying between Kansas and Texas bounded on the west by New Mexico and extending east to the hundredth meridian of longitude, commonly called the Neutral Strip or 'No Man's Land,' in the Indian Territory, the same being attached to and constituting part of the Eastern District of Texas for judicial purposes, and within the jurisdiction of this Court,"

etc. -- then charging the homicide.

The trial at which various exceptions to the ruling of the court were duly taken, resulted in conviction and sentence, to review which this writ of error was brought. Several assignments of error were made, but the only ones considered by this Court were those which related to the jurisdiction of the court below, and the following:

" *Tenth.* The court erred in permitting the counsel for the

Page 138 U. S. 160

"

government to read from the report of Attorney General Bradford in the hearing of the jury certain statements, then to ask the witness Bradford if he did not make the statements so read in said report, and in overruling the objections of plaintiffs in error thereto. And the court erred in admitting in evidence, over the objections of plaintiffs in error, certain parts of said report, as shown of record, because said witness Bradford was placed upon the witness stand by the government as a rebutting witness after counsel for government knew what he would testify to, and said witness had testified as such rebutting witness to the exact facts that the government's counsel had expected him to testify to, and because said witness had stated that plaintiff in error, C. E. Cook, did not state to him in language or in substance the statement contained in said report; because what witness stated in said report was not a report required of him in his official capacity as Attorney General of the State of Kansas. Neither said report nor any part thereof was

relevant or competent, and is hearsay, and ought not to have been admitted in evidence.

Page 138 U. S. 165

MR. JUSTICE HARLAN, after stating the facts in the foregoing language, delivered the opinion of the Court.

The plaintiffs in error, with others, were indicted in the court below at its October term, 1889, and were convicted and sentenced to suffer death for the crime of murder alleged to have been committed on the 25th day of July, 1888, in that part of the United States designated in numerous public documents as the "Public Land Strip," but commonly called "No Man's Land." It is 167 miles in length, 34 1/2 miles in width, lies between the 100th meridian of longitude and the Territory of New Mexico, and is bounded on the south by that part of Texas known as the "Panhandle," and by Kansas and Colorado on the north.

The prosecution was based upon section 5339 of the Revised Statutes, providing that

"Every person who commits murder . . .

Page 138 U. S. 166

within any fort, arsenal, dock-yard, magazine, or in any other place or district of country under the exclusive jurisdiction of the United States, . . . shall suffer death,"

and upon the Act of Congress of March 1, 1889, establishing a court of the United States for the Indian Territory and for other purposes, and attaching a part of that territory, for limited judicial purposes, to the Eastern District of Texas. 25 Stat. 783, c. 333.

The principal assignment of error is based upon these general propositions: that at the date of the alleged homicide, the Public Land Strip was not within the

jurisdiction of any particular state or federal district, and that no court of the United States had jurisdiction to try the alleged offense, or, if any court had jurisdiction, it was not the court below, but the Circuit Court of the United States for the Northern District of Texas, or that of the district of Kansas, in which the defendants were found and arrested, and that if the above Act of March 1, 1889 -- under which alone this prosecution was conducted -- placed the Public Land Strip within the limits of the Eastern District of Texas, it did not, and consistently with the Constitution of the United States could not, give the circuit court for that district jurisdiction of offenses committed prior to its enactment.

Did Congress intend to attach the Public Land Strip to the Eastern District of Texas for any purpose? That necessarily is the question to be first considered. And it must be determined without reference to the Act of May 2, 1890, providing a temporary government for Oklahoma, for that act, while including this strip within the Territory of Oklahoma, declares that all "crimes committed in said territory" prior to its passage "shall be tried and prosecuted, and proceeded with until finally disposed of, in the courts now [then] having jurisdiction thereof," as if that act had not been passed. 26 Stat. 81, 86, c. 182, 1, 9. We will be aided in the solution of the question of jurisdiction by recalling the history of the Public Land Strip, and various acts of Congress, preceding that of 1889, which are supposed to have some bearing upon this case.

The Public Land Strip was once a part of the possessions of

Page 138 U. S. 167

Mexico. This appears from the Treaty of January 12, 1828, between the United States of America and the United Mexican States, confirming the previous Treaty of February 22, 1879, with the monarchy of Spain. 8 Stat. 372, 374. When Texas achieved its independence, this strip was within its limits. Indeed, the Republic of Texas originally embraced the present territory of the State of Texas as well as parts of what now constitutes New Mexico, Arizona, Colorado, and Kansas. On the day of its admission into the union by the joint resolution of December 29, 1845, the Judicial District of Texas was established, embracing the entire state. 9 Stat. 1,

Congress, by an Act of September 9, 1850, 9 Stat. 446, c. 49, made certain propositions to Texas, one of which was that its boundary on the north should commence at the point where the meridian of 100 degrees west from Greenwich is intersected by the parallel of 36 degrees 30 minutes north latitude, and run from that point due west to the meridian of 103 degrees; thence due south to the thirty-second degree of north latitude; thence on the latter parallel to the Rio Bravo del Norte, and thence with the channel of that river to the Gulf of Mexico. This proposition was accepted by Texas. Oldham and White's Digest Laws of Texas, p. 55. By the same act, 2, the eastern boundary of New Mexico was established on the 103d meridian. The remaining territory of Texas, as it was when admitted into the union, passed by that act under the jurisdiction of the United States. The Territory of Kansas was organized by the Act of May 30, 1854, 10 Stat. 277, 283, c. 59, 19, its southern line being fixed on the 37th parallel of north latitude. The Territory of Colorado was organized by an Act approved February 28, 1861, 12 Stat. c. 59, 1, its eastern boundary being on the 102d meridian and its southern boundary being on the 37th parallel of north latitude. The result of all these enactments was that the body of public lands known as the "Public Land Strip" was left outside of Texas as well as of the Territories of New Mexico, Kansas, and Colorado.

Page 138 U. S. 168

By the Act of February 21, 1857, the State of Texas was divided into two judicial districts, the Western and the Eastern. 11 Stat. 164. The Northern district was established by an Act passed February 24, 1879, with courts at Waco, Callas County, and Graham, Young County, embracing 110 counties by name, including Sherman, Hansford, Ochiltree, and Lipscomb in the Panhandle, immediately south of the Public Land Strip, and Hemphill, Wheeler, Collingsworth, and Childress, immediately west of the 100th meridian, and Hardeman, Wilbarger, Wichita, Clay, Montague, Cooke, Grayson, Fannin, and Lamar, immediately south of the Indian Territory, in the central and eastern parts of Texas, but excluding the Counties of

Red River and Bowie, in the latter state, near the Arkansas line. The same act enlarges the Eastern District of Texas, and designates all the counties that should thereafter compose the Eastern and Western Districts, respectively. Under this act, the Eastern District embraced, among others, the counties next to Louisiana and Arkansas, including Red River and Bowie. 20 Stat. 318, c. 97.

An act of Congress was passed January 6, 1883, for the holding at Wichita of a term of the District Court of the United States for the District of Kansas, and for other purposes. 22 Stat. 400, c. 13. By that act,

"all that part of the Indian Territory lying north of the Canadian River and east of Texas and the 100th meridian not set apart and occupied by the Cherokee, Creek, and Seminole Indian tribes"

was annexed to the District of Kansas, and the United States District Courts at Wichita and Fort Scott, in that district, were given

"exclusive original jurisdiction of all offenses committed within the limits of the territory hereby annexed to said District of Kansas against any of the laws of the United States now or that may hereafter be operative therein."

Section 2. It was further provided:

" 3. That all that portion of the Indian Territory not annexed to the District of Kansas by this act and not set apart and occupied by the Cherokee, Creek, Choctaw, Chickasaw, and Seminole Indian tribes shall, from and after the passage of this act, be annexed to and constitute

Page 138 U. S. 169

a part of the United States Judicial District known as the 'Northern District of Texas,' and the United States District Court at Graham, in said Northern District of Texas, shall have exclusive original jurisdiction of all offenses committed within the limits of the territory hereby annexed to said Northern District of Texas against any of the laws of the United States now or that may hereafter be operative therein."

" 4. That nothing contained in this act shall be construed to affect in any manner any action or proceeding now pending in the Circuit or District Court for the Western District of Arkansas, nor the execution of any process relating thereto, nor shall anything in this act be construed to give to said District Courts of Kansas and Texas, respectively, any greater jurisdiction in that part of said Indian Territory so as aforesaid annexed, respectively, to said District of Kansas and said Northern District of Texas than might heretofore have been lawfully exercised therein by the Western District of Arkansas; nor shall anything in this act contained be construed to violate or impair in any respect any treaty provision whatever."

It is insisted on behalf of the United States that this act attached the Public Land Strip to the Northern District of Texas; that the words "Indian Territory" were used to include that strip, and that such a construction is sustained both by executive recognition and by the legislation of Congress.

Then comes the Act of March 1, 1889, c. 333, above referred to, 25 Stat. 783, which, it is contended, transferred the Public Land Strip from the Northern District to the Eastern District of Texas. By its first section, a United States court, to be held at Muscogee, is established

"whose jurisdiction shall extend over the Indian Territory, bounded as follows, to-wit: north by the State of Kansas, east by the States of Missouri and Arkansas, south by the State of Texas, and west by the State of Texas and the Territory of New Mexico."

It is given

"exclusive original jurisdiction over all offenses against the laws of the United States committed within the Indian Territory as in this act defined, not punishable by death or by imprisonment at hard labor."

Section 5. That court was

Page 138 U. S. 170

also given (6)

"jurisdiction in all civil cases between citizens of the United States who are residents of the Indian Territory, or between citizens of the United States, or of any state or territory therein and any citizen of or person or persons residing or found in the Indian Territory, and when the value of the thing in controversy, or damages or money claimed, shall amount to one hundred dollars or more, *provided* that nothing herein contained shall be so construed as to give the court jurisdiction over controversies between persons of Indian blood only."

The seventeenth, eighteenth, and twenty-eighth sections of that act are as follows:

"SEC. 17. That the Chickasaw Nation, and the portion of the Choctaw Nation within the following boundaries, to-wit, beginning on Red River at the south-east corner of the Choctaw Nation; thence north with the boundary line between the said Choctaw Nation and the State of Arkansas, to a point where Big Creek, a tributary of the Black Fork of the Kimishi River, crosses the said boundary line; thence westerly with Big Creek and the said Black Fork to the junction of the said Black Fork with Buffalo Creek; thence northwesterly with said Buffalo Creek to a point where the same is crossed by the old military road from Fort Smith, Arkansas, to Boggy Depot, in the Choctaw Nation; thence southwesterly with the said road to where the same crosses Perryville Creek; thence northwesterly up said Creek to where the same is crossed by the Missouri, Kansas and Texas Railway track; thence northerly up the center of the main track of the said road to the South Canadian River; thence up the center of the main channel of the said river to the western boundary line of the Chickasaw Nation, the same being the northwest corner of the said nation; thence south on the boundary line between the said nation and the reservation of the Wichita Indians; thence continuing south with the boundary line between the said Chickasaw Nation and the reservations of the Kioussa, Comanche, and Apache Indians to Red River; thence down said river to the place of beginning, and all that portion of the Indian Territory not annexed to the District of

Kansas by the Act approved January sixth, eighteen hundred and eighty-three, and not set apart and occupied by the five civilized tribes, shall, from and after the passage of this act, be annexed to and constitute a part of the Eastern Judicial District of the State of Texas for judicial purposes."

"SEC. 18. That the Counties of Lamar, Fannin, Red River, and Delta of the State of Texas, and all that part of the Indian Territory attached to the said eastern Judicial District of the State of Texas by the provisions of this act, shall constitute a division of the Eastern Judicial District of Texas, and terms of the Circuit and District Courts of the United States for the said Eastern District of the State of Texas shall be held twice in each year at the City of Paris on the third Mondays in April and the second Mondays in October, and the United States courts herein provided to be held at Paris shall have exclusive original jurisdiction of all offenses committed against the laws of the United States within the limits of that portion of the Indian Territory attached to the eastern Judicial District of the State of Texas by the provisions of this act, of which jurisdiction is not given by this act to the court herein established in the Indian Territory, and all civil process, issued against persons resident in the said Counties of Lamar, Fannin, Red River, and Delta cognizable before the United States courts shall be made returnable to the courts, respectively, to be held in that City of Paris, Texas, and all prosecutions for offenses committed in either of said last-mentioned counties shall be tried in the division of said Eastern District of which said counties form a part, *provided* that no process issued or prosecution commenced or suit instituted before the passage of this act shall be in any way affected by the provisions thereof."

"SEC. 28. That all laws and parts of laws inconsistent with the provisions of this act be, and the same are hereby, repealed."

Other sections prescribe the modes of procedure in the court established by that act, and the punishment for numerous offenses.

From this history of the Public Land Strip it appears

1. that by the act of 1883, all of the "Indian Territory" north of the Canadian river and east of Texas and the 100th meridian not set apart and occupied by the Cherokee, Creek, and Seminole Indian tribes was attached to the District of Kansas, while the portion not so annexed and not set apart and occupied by the Cherokee, Creek, Choctaw, Chickasaw, and Seminole Indian tribes was annexed to the Northern District of Texas, saving actions or proceedings pending in the Circuit or District Court for the Western District of Arkansas; 2. that by the act of 1889, the court established for the Indian Territory was given exclusive original jurisdiction over all offenses against the laws of the United States committed within the Indian Territory as defined by that act not punishable by death or by imprisonment at hard labor; 3. that exclusive original jurisdiction was given by the act of 1889 to the courts of the United States sitting at Paris, Texas, of all such offenses committed within the portion of the Indian Territory annexed to the Eastern District of that state of which jurisdiction was not given to the court established in and for the Indian Territory.

Much of the discussion by counsel was directed to the inquiry whether the act of 1883 attached the Public Land Strip to the Northern District of Texas. In view of the relations which certain Indian tribes once held to that strip, under treaties with the United States, which treaties will be referred to in another connection, there are some reasons for holding, in accordance with the contention of the government, that it was so attached to that district. But it is not necessary to decide that point, for however it might be determined, the question would remain whether the Public Land Strip was not within that portion of the Indian Territory, defined in the act of 1889, which was assigned by that act for certain judicial purposes to the Eastern District of Texas. If it was, the court below had jurisdiction of the offense charged in the indictment unless the latter act is construed as having no application to offenses committed prior to its passage. The act of 1883 is chiefly important in the present inquiry as it may serve to explain the provisions of the act of 1889.

It is certain that after, as well as before, the passage of the act of 1883, various public officers and committees in Congress described the "Indian Territory" as lying east of the 100th meridian, and represented the Public Land Strip as being unattached to any judicial district. [*](#) The most significant, perhaps, of all the official documents of this class are the letter of the Attorney General of the United States to the President under date of November 15, 1887, and that of the Secretary of the Treasury to the Speaker of the House of Representatives under date of May 1, 1888. The former describes the Public Land Strip as "bounded on the north by the states of Kansas and Colorado, on the east by the Indian Territory, on the south by Texas, and on the west by New Mexico," and says that it was not then "embraced in any district established by law of the United States." The latter, speaking of the urgent need of legislation to enforce the revenue laws of the United States in the Public Land Strip, says that

"the land referred to is not embraced in any judicial district, and, not being within the jurisdiction of any United States court, the laws of the United States are inoperative, or at least cannot be enforced, therein."

The public documents to which reference has been made undoubtedly show that, in the opinion of many gentlemen in the legislative and executive branches of the government, the "Indian Territory" did not extend further west than the one hundredth meridian, and that even after the passage of the act of 1883, it remained unattached to any judicial district. So that if Congress intended by the act of 1883 to annex the Public Land Strip to the Northern District of Texas, it was informed by these documents that that act was not so construed

Page 138 U. S. 174

by certain officers of the government. But it was further informed that the public interest absolutely demanded that that portion of the public domain should no longer remain in the condition in which it had been left for many years -- namely without being clearly included in some judicial district, whereby the rights of the general government as well as of individuals could be enforced against criminals and wrongdoers of every class. No possible reason can be suggested why, at the

time of the passage of the act of 1889, the Public Land Strip should not have been brought within some judicial district.

Upon a careful scrutiny of the act of 1889, giving full effect to all of its clauses according to the reasonable meaning of the words used, yet interpreting it in the light of the previous history of the Public Land Strip and of the information communicated to Congress by public officers, we do not doubt that Congress intended to bring that strip within the jurisdiction of the court established for the Indian Territory, and to attach it, for limited judicial purposes, to the Eastern District of Texas, thus enabling the general government to protect its own interests as well as the rights of individuals. That act was so interpreted by MR. JUSTICE BREWER before his accession to this bench. *In re Jackson*, 40 F. 372. Observe that the country over which the court established by that act was to exercise jurisdiction was not described as being east of the 100th meridian and south of Kansas, nor simply as the Indian Territory but, *ex industria*, as the Indian Territory bounded

"north by the State of Kansas [the southern line of that state constituting about two-thirds of the northern boundary of the Public Land Strip], east by the States of Missouri and Arkansas, south by the State of Texas, and west by the State of Texas and the Territory of New Mexico."

If the act had bounded it on the north by Kansas and Colorado, the description, beyond all question, would have included the Public Land Strip. But the description, as it is, necessarily includes that strip, because the "Indian Territory," for which the new court, to sit at Muscogee, was established, being bounded on the north by Kansas, and west, in part, by "the Territory of

Page 138 U. S. 175

New Mexico," the eastern boundary of which is on the 103d meridian, must include within its limits the Public Land Strip, lying between New Mexico and the 100th meridian. This fact is of greater significance than the careless omission to state, in the act, that the Indian Territory, described in it, was bounded on the north by

Colorado as well as by Kansas. The court at Muscogee was given exclusive original jurisdiction over all offenses against the United States, not punishable by death or by imprisonment at hard labor, committed not simply within the Indian Territory, but within the Indian Territory "as in this [that] act defined," while the court at Paris was given exclusive original jurisdiction of all offenses against the laws of the United States within the limits of that portion of the Indian Territory attached to the Eastern District of Texas "by the provisions of this [that] act" of which jurisdiction was not given to the court at Muscogee. If Congress did not intend to bring the Public Land Strip within the jurisdiction of the court established for the Indian Territory, and, for certain judicial purposes, within the jurisdiction of the courts held at Paris, in the Eastern District of Texas, why did it declare that the Indian Territory, for which it legislated in the act of 1889, was bounded on the west "by the State of Texas and the Territory of New Mexico?" We cannot hold the words "and the Territory of New Mexico" to be meaningless simply because the northern boundary of that strip was not described with precision and fullness, especially as every consideration of policy demanded that that part of the public domain should not longer be left without courts for the protection of the government and the people.

It is contended that this interpretation of the words "Indian Territory" in the act of 1889 is wholly unauthorized by anything in the history of the Public Land Strip, for it is said that there are no facts whatever that make those words at all appropriate as embracing that strip. This broad statement is scarcely justified by the facts. By the Treaty of July 27, 1853, made and concluded at Fort Atkinson, in the Indian Territory, 10 Stat. 1013, between the United States and the

Page 138 U. S. 176

Comanche, Kioua, and Apache tribes or nations "inhabiting the said territory south of the Arkansas River," it was provided that the annuities stipulated to be given by the United States should be delivered yearly in July to those tribes, collectively at or in the vicinity of Beaver Creek, a large part of which is within the Public Land Strip. By another treaty with those tribes in 1865, 14 Stat. 717-721, the United States agreed that a certain district of country, or such parts as the

President should from time to time designate, should be, and was, set apart for their "absolute and undisturbed use and occupation," and that of "such other friendly tribes" as had theretofore

"resided within said limits, or as they may from time to time agree to admit among them, and that no white person, except officers, agents, and employees of the government, shall go upon or settle within the country embraced within said limits unless formally admitted and incorporated into some one of the tribes lawfully residing there, according to its laws and usages."

The boundaries of said district were:

"Commencing at the northeast corner of New Mexico; thence south to the southeast corner of the same; thence northeastwardly to a point on main Red River, opposite the mouth of the north fork of said river; thence down said river to the 98th degree of west longitude; thence due north of the said meridian to the Cimarrone River; thence up said river to a point where the same crosses the southern boundary of the State of Kansas; thence along said southern boundary of Kansas to the southwest corner of said state; thence west to the place of beginning."

These boundaries, it is true, included a part of the State of Texas, and the treaty was in that respect ineffectual. Nevertheless, the cession included the Public Land Strip, then a part of the public domain of the United States. By a subsequent treaty with two of the same tribes concluded October 21, 1867, 15 Stat. 581-587, they were restricted in territory to the southwest corner of the Indian Territory, but they reserved the right "to hunt on any lands south of the Arkansas River, so long as the buffalo may range thereon in such numbers as to justify the chase." These treaties are referred to as showing that as late as 1867, the Public Land Strip, in the mode of its

Page 138 U. S. 177

use, had some connection with Indians west of the Mississippi, and especially with some of those now occupying permanent reservations in the Indian Territory. That

strip, we are informed, has not been occupied by Indians since 1867, but it was not opened to settlement, and could have been used for any of the purposes that the government had in view for Indians.

There are other circumstances that are not without significance as indicating why Congress, in the act of 1889, used the words "Indian Territory" as describing not only lands east of the 100th meridian, south of Kansas, but lands north of Texas and between that meridian and New Mexico. Among them the following may be named: 1. To a report of the Commissioner of the General Land Office, made in 1864, was annexed a map "constructed from the public surveys and other official sources in the General Land Office," in which the Public Land Strip is included within the boundaries of the Indian Territory, and a similar map, "constructed from the plats and official sources of the General Land Office," under the direction of Commissioner Wilson, was issued in 1867. 2. By an Act of March 2, 1887, Congress granted a right of way through the "Indian Territory" to a railroad company, beginning at a point on the northern line of said territory at or near the south line of Kansas, crossed by the 101st meridian; thence in a southwesterly direction to El Paso, New Mexico. It could not commence at the point designated and reach El Paso by a southwesterly line without passing through the Public Land Strip. Unless that strip was, for the purposes of that act, regarded as a part of the Indian Territory, then the route to El Paso would not pass through the Indian Territory at all. 3. By the treaty of May 6, 1828, with the Cherokee Indians, the United States, besides setting apart for the use of that tribe 7,000,000 acres within the limits of the Indian Territory, guaranteed to that nation "a perpetual outlet west, and free and unmolested use of all the country lying west of the western boundary" of the limits given, "and as far west as the sovereignty of the United States and their right of soil extend." In an official communication from the Commissioner of the Land

Page 138 U. S. 178

Office to the Secretary of the Interior under date of January 29, 1886, embodied in a report made on the 11th of February, 1886, by the Judiciary Committee of the House of Representatives upon a proposed bill extending the laws of the United

States over certain "unorganized territory south of Kansas," it was said:

"It appears that the Cherokees claimed the 'Public Land Strip,' now so called, as the outlet above mentioned, and the official maps down to 1869, or later, designated said strip as *part of the Indian Territory*. I have not found in the records of this office any expressed reason why this strip was so designated on the maps, nor why that designation was changed upon the maps published after 1869."

The Commissioner recommended the passage of the proposed bill because it would take this "unorganized territory out of its anomalous condition to a certain extent, and open the lands to entry."

These circumstances are referred to not as conclusive nor as in themselves persuasive, but only to show that the Public Land Strip was regarded at different times by public officers to be part of the Indian Territory, as commonly designated, or as having such connection with the lands east of the 100th meridian, where various tribes of Indians had been located by the United States, as made it natural that it should be placed, together with the lands between that meridian and the states of Missouri and Arkansas, not occupied by the Civilized Indian tribes, under the jurisdiction of the court established by the act of 1889 or of some other court of the United States. Congress, it must be presumed, was not unaware of the fact that the words "Indian Territory" had been used by some to exclude, and by others to include, the Public Land Strip, and, to avoid misapprehension as to whether that strip was annexed to some judicial district, and perhaps for the purpose of meeting the recommendation of the Secretary of the Treasury in his letter of May 1, 1888, it speaks, in the act of 1889, of the Indian Territory not generally, but *as therein defined*. That description, we have seen, necessarily included the Public Land Strip, because it was the only part of the public domain in that part of the United States that was bounded on

the north by Kansas, as well as on the west by the Territory of New Mexico, and which immediately adjoined the Indian Territory lying east of the 100th meridian.

Much was said at the bar about the unreasonableness of the supposition that Congress intended to subject the people in the Public Land Strip to the jurisdiction of a court sitting at so great a distance as Paris, Texas, rather than to one at Graham, in the Northern District of Texas, or one at Wichita, in Kansas. Judging by the map, the distance from the Public Land Strip to Paris is not much greater than to Graham. Indeed, the facilities for reaching Paris may be quite as good as those for reaching Graham. While the court of the United States nearest to the Public Land Strip, other than the one at Muskogee, seems to be the District Court of Kansas, this fact cannot control as against the natural meaning of the words of the act.

Nor do we think that the interpretation of the act of 1889 can or ought to be affected by that of 1890, providing a temporary government for the Territory of Oklahoma and enlarging the jurisdiction of the United States court in the Indian Territory. Oklahoma, by that act, is made to include "all that portion of the United States *now known as the Indian Territory*" except . . . and except the unoccupied part of the Cherokee outlet, together with that portion of the United States known as the Public Land Strip.

The boundary of the country "now known as the Indian Territory" and included in said Territory of Oklahoma is given, and the Public Land Strip is, separately, bounded "east by the 100th meridian, south by Texas, west by New Mexico, and north by Colorado and Kansas." This may be regarded at most as simply a declaration by Congress that the country then "known as the Indian Territory" did not include the Public Land Strip, and therefore that each should be separately described by its boundaries. But that does not prove that Congress did not intend in 1889 to include the Public Land Strip in the "Indian Territory," *as defined by the act of that year*. On the contrary, the Oklahoma act, when it bounds that strip on the "west by New Mexico," tends to show that substantially similar words used in describing the

Indian Territory mentioned in the act of 1889 had reference to the Public Land Strip.

Looking at this question in every light in which it may be considered, we repeat the expression of our opinion that the Public Land Strip, west of the 100th meridian, bounded on the south by Texas, on the west by New Mexico, and on the north by Colorado and Kansas, was annexed by the act of 1889 to the Eastern District of Texas for such judicial purposes as by that act appertained to the court held at Paris in that district.

Was it competent for the court below to try the defendants for the offense of murder committed prior to the passage of the act of 1889? We do not doubt that Congress intended to confer upon that court jurisdiction to try such cases. By the express words of the act, the courts to be held at Paris, Texas, were given exclusive original jurisdiction of "all offenses committed against the laws of the United States" within that part of the Indian Territory attached to the Eastern Judicial District of Texas, of which jurisdiction was not given, by the same act, to the court established for that territory. The only exception made is in the proviso to the eighteenth section, declaring, among other things, that no prosecution commenced before the passage of the act should be in any way affected by its provisions. This, in connection with the previous part of the same section, defining the jurisdiction of the court below, necessarily imports that where no prosecution had been commenced, it should have authority to try all offenses punishable by death or imprisonment at hard labor committed no matter when, within the new territory over which its jurisdiction was extended. No other interpretation can be reasonably given to the act. If the Public Land Strip was placed by the act of 1883 in the Northern District of Texas, or if the defendants, having been apprehended in Kansas, were amenable, prior to the act of 1889, to the district court in that state, the jurisdiction of the United States court of neither of those districts had attached, by the commencement of a prosecution, before that strip was annexed to the Eastern District of Texas. In so interpreting the act of Congress, we do not

infringe the settled rule that courts uniformly refuse to give to statutes a retrospective operation, where rights previously vested are injuriously affected, unless compelled to do so by language so clear and positive as to leave no room to doubt that such was the intention of the legislature. [*United States v. Heth*](#), 3 Cranch 399, [7 U. S. 413](#) ; *Chew Heong v. United States*, [112 U. S. 536](#) , [112 U. S. 559](#) . The saving of only pending prosecutions shows that Congress did not except any offense against the United States of which the court below was given jurisdiction.

It is contended that the act, so construed, is in violation of Section 2, Article III, of the Constitution, supplemented by the Sixth Amendment. The former provides that

"The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but, when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed."

The latter provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

In respect to that clause of the Sixth Amendment declaring that the "district shall have been previously ascertained by law," it need only be said that if those words import immunity from prosecution where the district is not ascertained by law before the commission of the offense, or that the accused can only be tried in the district in which the offense was committed -- the district having been established when the offense was committed -- the amendment has reference only to offenses against the United States committed within a state. [*United States v. Dawson*](#), 15 How. 467, [56 U. S. 487](#) -488; *Jones v. United States*, [137 U. S. 202](#) , [137 U. S. 211](#) -212. The second section of Article III and provided, in respect to crimes committed in the states, that the trial by jury should be had within the state where

the crime was committed. The Sixth Amendment added the further guaranty, in respect to the place of trial, that the district should have been previously ascertained by law, leaving the trial of offenses not committed within any

Page 138 U. S. 182

state to be controlled by the second section of Article III. The requirement in the latter section is that the trial "shall be at such place or places as the Congress may by law have directed." "As crimes," said Mr. Justice Story, commenting upon this section,

"may be committed on the high seas and elsewhere out of the territorial jurisdiction of a state, it was indispensable that in such cases Congress should be enabled to provide the place of trial."

2 Story's Const. 1781. It was consequently provided in the Act of April 30, 1790, 1 Stat. 114, c. 9, 8, that

"The trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular state, shall be in the district where the offender is apprehended, or into which he may first be brought."

And such was the law when the crime with which the defendants are charged was committed. Rev.Stat. 730, 5339. But for the passage of the act of 1889, and if the Public Land Strip was not attached by the act of 1883 to the Northern District of Texas, the defendants could have been indicted and tried in the District of Kansas, where they were apprehended. *Jones v. United States*, above cited. So that the contention of the defendants is in effect that in respect to crimes committed outside of the states in some place within the exclusive jurisdiction of the United States, Congress is forbidden by the second section of Article III of the Constitution from providing a place of trial different from the one in which the accused might have been tried at the time the offense was committed. We do not so interpret that section. The words "the trial shall be at such place or places as the Congress may by law have directed" impose no restriction as to the place of trial except that the trial cannot occur until Congress designates the place, and

may occur at any place which shall have been designated by Congress previous to the trial. This was evidently the construction placed upon this section in *United States v. Dawson*, above cited, where the Court, speaking by Mr. Justice Nelson, said:

"A crime, therefore, committed against the laws of the United States out of the limits of a state is not local, but may be tried at such place as Congress shall designate by law. This furnishes an answer to the argument

Page 138 U. S. 183

against the jurisdiction of the court, as it respects venue, trial in the county, and by jury from the vicinage, as well as in respect to the necessity of particular or fixed districts before the offense."

So, in [*United States v. Jackalow*](#), 1 Black 484, [66 U. S. 486](#) :

"Crimes committed against the laws of the United States out of the limits of a state are not local, but may be tried at such place as Congress shall designate by law, but are local if committed within the state. They must then be tried in the district in which the offense was committed."

If Congress -- as it did in the act of 1790, which may be regarded as a contemporaneous construction of the Constitution -- may provide for the trial of offenses committed outside of the states, in whatever district the accused is apprehended, or into which he may first be brought, it is difficult to perceive why, such crimes not being local, it may not provide a place of trial where none was provided when the offense was committed, or change the place of trial after the commission of the offense.

It is said that the construction we place upon the second section of Article III makes it obnoxious to the *ex post facto* clause of the Constitution. In support of this position, reference is made to *Kring v. Missouri*, [107 U. S. 221](#) , where it was declared that any statute passed after the commission of an offense which, "in relation to that offense or its consequences, alters the situation of a party to his

disadvantage," is an *ex post facto* law. This principle has no application to the present case. The act of 1889 does not touch the offense nor change the punishment therefor. It only includes the place of the commission of the alleged offense within a particular judicial district and subjects the accused to trial in that district, rather than in the court of some other judicial district established by the government against whose laws the offense was committed. This does not alter the situation of the defendants in respect to their offense or its consequences. "An *ex post facto* law," this Court said in [*Gut v. State*](#), 9 Wall. 35, [76 U. S. 38](#) , "does not involve in any of its definitions a change of the place of trial of an alleged offense after its commission."

Page 138 U. S. 184

Another contention of the defendants is that the indictment is fatally defective in that it fails to sufficiently show when Cross -- the person alleged to have been murdered -- died, or that he died within a year and a day from the infliction upon him of the alleged mortal wounds, or from the effect of such wounds, or within the territory in the jurisdiction of the court in which they were tried. As the Attorney General and the solicitor general submit this question without argument and without any suggestion in support of the indictment, and as the judgment must, for reasons to be presently stated, be reversed, leaving the government at liberty to find a new indictment if its officers shall be so advised, we will not extend this opinion by an examination of the authorities cited by the defendants to show the present indictment to be defective.

At the trial below, one of the defendants' counsel, who had been Attorney General of Kansas, and who, in that capacity, made to the governor of that state a report touching the death of Cross immediately after it occurred, was called in rebuttal as a witness for the prosecution. That report contained various statements purporting to have been made by the defendants and which connected them with the killing of Cross. Although the witness stated that the report was based upon hearsay evidence merely, was thrown together hastily by a stenographer, and was incorrect, and that the defendants had not made the statements therein attributed

to them, certain parts of it were admitted in evidence to the jury against the objection of the defendants. The record shows that this report was read in evidence to show that the witness had made different statements at another time and place. And the court, in its charge, said to the jury:

"The instructions given above are limited, so far as the evidence is concerned, by the following instructions: the portions of Attorney General Bradford's report were admitted in evidence to be considered by you as to whether or not the statements therein contained were made by the parties to said Bradford, said Bradford now being attorney for the defendants and denying the truth of the statements therein contained, and as to whether or not

Page 138 U. S. 185

these statements were ever made to said Bradford is a question of fact to be considered by you from all the evidence upon that subject. And if you believe the statements were not so made to said Bradford, you are to disregard the same; but, if you believe from the evidence that they were so made to said Bradford, then you are instructed to consider them as evidence, but only as to such parties by whom they were made."

The jury were thus informed that this report, although merely hearsay, was substantive evidence upon the issue as to whether the defendants were present at, and participated in, the killing. The representatives of the government in this Court frankly concede, as it was their duty to do, that this action of the court below was so erroneous as to entitle the defendants to a reversal. Numerous other errors are said to have been committed at the trial to the prejudice of the defendants, but as such alleged errors may not be committed at the next trial, it is not necessary now to consider them.

For the error above mentioned, the judgment is reversed, and the cause remanded, with directions to grant a new trial.

* Report of Commissioner of Indian Affairs, 1872, p. 33; Letter of Commissioner of General Land Office to Durant, September 17, 1873, Rec.Com.Gen.Land Office,

vol. 27, p 304; Report of Land Commission, p. 462; Report Com.Land Office, 1884; House Judiciary Committee, Rep. No. 2030, July 2, 1864; *id.*, Report, Doc. No. 389, February 11, 1886, embodying letter of Commissioner Land Office of January 29, 1886; House Com. on Territories, 1887, Report No. 1684; *id.*, 1888, Rep. No. 2857; *id.*, Feb. 7, 1888, Rep. 263.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com