BRAY V. UNITED STATES, 1852-NMSC-001, 1 N.M. 1 (S. Ct. 1852)

RICHARD BRAY

vs.

THE UNITED STATES

[NO NUMBER IN ORIGINAL]
SUPREME COURT OF NEW MEXICO
1852-NMSC-001, 1 N.M. 1
January 1852 Term

Error from the District Court for the County of Santa Fe. The opinion states the case.

COUNSEL

Garey and Pillan, for the plaintiff in error.
W. West, for the defendant in error.

JUDGES

Mower, J.
AUTHOR: MOWER

OPINION

*{*1}* **{1}** The facts in this case are briefly these, as presented by the record: Bray was indicted at the last September term of the district court of the United States for the county of Santa Fe, for an assault with intent to kill, in one count, and for a common assault in another count. It was averred that the offense was committed in the county of Santa Fe, in the month of April, 1851, without any allegation that it *{*2}* was committed against the laws of the United States. Upon the trial, the jury found Bray guilty of a common assault only, acquitting him upon the first count, and assessing a fine against him for the sum of twenty-six dollars and fifty cents. The counsel for Bray moved for an arrest of this judgment, assigning the following causes: first, the venue is improperly laid; second, there was no law in force punishing assault in the territory of New Mexico at the time the assault is alleged in the indictment to have been committed; third, the offense charged in the second count, on which the defendant was convicted, is not an indictable offense; fourth, and for many other and manifest errors apparent on the record. The court below refused to arrest the judgment, but entered a judgment on the verdict, and the counsel for the defendant filed his bill of exceptions, alleging this refusal as error, and the case comes into this court for a readjudication.

{2} Passing by some questions of the gravest magnitude raised by the consideration of all of the features of the case presented, the court is disposed to follow the course of the argument adopted by counsel on both sides, and decide the cause upon the third point suggested in the motion in arrest. It is admitted in the argument by both parties that the offense committed is one against the laws of the territory, and not one against the laws of the United States. Now, by the original law of congress (sec. 7, Organic Law, p. 47), power is given to the legislature of the

territory over all the rightful subjects of legislation, and no one will deny the definition of crimes and misdemeanors, and a prescription of the mode of punishment are not pre-eminently among these rightful subjects of legislative action; but the same act goes still further, and for all territorial purposes provides that the jurisdiction of all the courts provided for by the law, both appellate and original, shall be as limited by law (sec. 10, p. 48), thereby conferring upon the legislature the power of limiting and defining the jurisdiction of each court erected by the organic law so far as it regards the regulation of the municipal and criminal affairs of the territory, with the exception that no power can be *{*3}* given to justices of the peace when the title and boundaries of land are in question, or when the debt or sum claimed shall exceed one hundred dollars. In the exercise of these powers the legislature of the territory, at its first session, enacted the law under which it is claimed that this offense was committed, but expressly provided that it should be punished in a summary manner before a justice of the peace, and declared in the same section that all other cases should be indictable: Kearny Code, secs. 8 and 11 of art. 3, Crimes and Punishments, pp. 54, 55. This construction is sustained by the Spanish reading of the law and the report of General Kearny to congress, Ex. Doc., No. 60, Cong. Rep. 1848, p. 200; besides, good sense will show a manifest defect in the English section, which is fully supplied and remedied by the Spanish exposition of the text. This inference is further corroborated by another section, under the title of Practice in Criminal Cases, which also prescribes the punishment of this offense, before a justice, in a summary manner: Kearny Code, sec. 33, p. 88. From a consideration of these different sections, collectively, there can be no doubt of the intention of the legislature to give to justices of the peace absolute and exclusive jurisdiction of this and other minor offenses; thus insuring to the community an ample and speedy punishment of all offenders in these respects, which is the best guaranty against a frequent repetition of the misdemeanor, and relieving the higher courts of a burden of cases which would only increase the cost to the public, and in a manner trammel up and clog the wheels of justice in these courts. But it is contended, that by the organic law, congress has conferred common law as well as chancery jurisdiction on the supreme and district courts: Sec. 4 of Organic Law. This is true, but in the same section it is provided that the jurisdiction is to be limited by law. The evident intention of this section is to clothe these courts with equity and law powers for the purpose of discharging with fullest effect the duties assigned to them by congressional and territorial legislation.

{3} It can not be argued that, by virtue of this section, these *{*4}* courts have cognizance of offenses at common law, without legislative sanction, for it is expressly decided in the case of **The United States** v. **Hudson,** 11 U.S. 32, 7 Cranch 32, 3 L. Ed. 259, that the "courts of the United States have not jurisdiction derived from the common law to define and punish criminal offenses;" and in the case of **Wheaton et al.** v. **Peters et al.,** 33 U.S. 591, 8 Peters 591, 8 L. Ed. 1055, it is held that "there can be no common law except by legislative adoption." The same point is also reaffirmed in the case of **Kendall** v. **The United States,** 37 U.S. 524, 12 Peters 524, 9 L. Ed. 1181. If, then, as it appears from these decisions, the exercise of these high functions by the district and supreme courts depends upon statutory enactment in criminal cases, where shall we find the statute by virtue of which the district court can take cognizance of a common assault

and battery? It is not written in the criminal code of the United States, nor in the organic law, while the law of the territory, which defines the crime and punishment, in positive terms, confers exclusive jurisdiction upon justices of the peace. But it is said that when the crime is created by law, then the common law jurisdiction of the district court affixes. We think not; for if the district court could countervail the prerogative of the legislature in prescribing the mode of trial and the tribunal, it might go further and substitute the common law penalties, which have long since been abolished in England, because of their cruel and inhuman character. This practical absurdity will be claimed by none; yet, if the rules laid down by the legislature for the punishment of offenses against territorial laws can be disregarded in one respect, by virtue of this common law jurisdiction, the same force of reasoning would warrant the above incongruous conclusions.

{4} The decision of the court is, therefore, that in this case the judgment of the district court of the United States for the county of Santa Fe be reversed, and the case be remanded to the said district court, with instructions to dismiss the case for want of jurisdiction, and to discharge the respondent, and that the plaintiff in error recover his costs, to be taxed.

{5} Let it be certified accordingly.