

aforethought. If the deceased did seduce the defendant's wife, and begat a child with her; and if for this the defendant killed him, in law, the killing was unlawful.

Should you be of the opinion in all these things, that the defendant is guilty, then the place in which the act was committed becomes material. This would not in most cases affect the general result, provided the crime be committed within the jurisdiction of the court trying the accused.

The materiality in this case, arises in consequence of the peculiar relationship of the United States courts with the courts of the several States and Territories. The jurisdiction of the United States courts is separate and distinct from the jurisdiction of the State courts. But in the Territories, the same judges sit in matters arising out of the constitution and laws of the United States, as well as the laws of their respective Territories. This, to me, has been the most difficult part of the case. The Territorial courts being of a mixed jurisdiction partly national and partly local in their organization, it becomes important to keep in view these two jurisdictions. When sitting as a court of the United States, we must try criminals by the laws of the United States, and not by the Territorial laws; we must look to them for our authority to punish violators of the law.

When sitting as Territorial courts we must try criminals by the laws of the Territory, and look to them for our authority to punish. If the laws of the United States do not authorize us to punish in a case like the present as we are now sitting as a United States court, the defendant, for this reason, is entitled to a verdict of, not guilty.

The United States have no right to pass a law to punish criminals, except in those cases which are authorized by the constitution. These may be said

to be national in their character, and to extend to all places under the *sole* and *exclusive jurisdiction* of the United States, but they do not extend to those places within the United States, when there is an existing State or Territorial jurisdiction, unless they are to protect its necessary internal authorities, such as protecting its postal arrangements, its revenue laws, its courts and officers, and the like cases. There is a large extent of country between this city and the Missouri River, over which the United States have the *sole* and *exclusive jurisdiction*; and there is a part of this same country within the jurisdiction of the State of Missouri, and another part within the jurisdiction of this Territory.

It is the right of every American citizen to have full and ample protection in the enjoyment of life, liberty, and happiness; and the duty of the United States, in those places where it has the sole and exclusive jurisdiction, to extend that protecting hand over them; and the duty of the States and Territories in their respective jurisdictions, subject to the constitution and laws of the United States, to extend a like protecting hand. By this you will see that the United States, when it established the Territorial governments, giving them the right of legislation, created a jurisdiction within its own jurisdiction, but subject to its supervisory control: therefore it has not the *sole* and *exclusive jurisdiction* within the limits of the existing Territories.

By the 3rd section of the act of Congress, approved April 30, 1790, chapter 9, it is enacted, "that if any person or persons shall, within any fort, arsenal, dockyard, magazine, or any other place or district of country, under the *sole* and *exclusive jurisdiction* of the United States, commit the crime of willful murder, such person or persons on being thereof convicted, shall suffer death."