

## Opinion No. 13-976

January 6, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. William J. Eaton, Assistant District Attorney, Clayton, N. M.

### **JURISDICTION OF JUSTICES OF THE PEACE.**

Justice of Peace has jurisdiction in case of assault and battery and should try such a case.

### **OPINION**

{\*139} I have today received your letter of the 4th instant. I do not now recall that I ever had my attention called to the question as to whether or not the district court had concurrent jurisdiction with justices of the peace in cases of assault and battery or not, but I am quite sure that ever since I have been in New Mexico the courts have proceeded upon the theory that the jurisdiction was concurrent and not exclusive in the justices of the peace.

The case which holds otherwise to which you refer was decided at the January term, 1873, and the court appears not to have had its attention called to Chapter 31 of the Session Laws of 1872, or took the view that it did not affect the jurisdiction as to assault and battery. That act in Section 3 provides "That charges of misdemeanors and crimes, not felonies, shall be presented in the district court by indictment or information." I can see how the court might have held that this had no effect upon the jurisdictional question then under consideration, but in 1874 by Chapter 24 of the Laws of that year there was added to the section above quoted the following: "Provided, that the justices of the peace shall have co-extensive jurisdiction with the district court in all cases of misdemeanors and crimes in which they had jurisdiction before the passage of said act." These two statutory provisions reappear in Section 3426 of the Compiled Laws of 1897, and I am of opinion that by the proviso adopted in 1874, after the decision in the case of Territory vs. Valdez, 1 N.M. 548, in 1873, the jurisdiction was made concurrent in all cases of which justices of the peace had previously had jurisdiction.

I do not believe, however, that it was a proper proceeding for a justice of the peace to permit a man to give bond to appear at the district court to await the action of a grand jury in a case of assault and battery, but that it was his duty to try the case as it was within his jurisdiction, even though a man could be indicted for assault and battery. This appears to be plainly shown by Section 3320 of the Compiled Laws of 1897, and there is nothing in the next section which refers specifically to cases of assault and battery which is inconsistent with this view.

I have no doubt that you can take the matter up before the next grand jury and have the man indicted.

The suggestion of your defendant that he has been once placed in jeopardy has no foundation in the facts as stated by you. No case can be found to hold that a man has been placed in jeopardy {*\*140*} until the jury is sworn to try his case, and I understand from your letter that the jury was never so sworn.