

**Case No. 182.** ALEXANDRIA v. BROCKETT.

[2 Cranch, C. C. 13.]<sup>1</sup>

Circuit Court, District of Columbia.

Nov. Term, 1810.

INSTRUCTIONS—MATTER IN ISSUE.

When the issue is joined upon a matter of law, the court will not, at the prayer of either party, instruct the jury upon the matter of law, submitted to the jury by the pleadings.

At law. Debt for the penalty of two hundred dollars under a by-law against burning oyster-shells in Alexandria.

The defendant pleaded that the penalty of the by-law was not a reasonable penalty, upon which the plaintiff took issue.

Upon this issue the plaintiff moved the court to instruct the jury that if they should be satisfied that in the year 1803 (the year the by-law was passed) the yellow fever prevailed in the town, and was generally supposed to have been caused by burning oyster-shells, then the penalty was reasonable.

THE COURT (THRUSTON, Circuit Judge, absent) refused to give any instruction to the jury upon the subject, the parties having by their pleadings put the reasonableness of the penalty in issue to the jury. If the party offers an issue as to matter of law, the other party may demur; if he joins issue, he cannot afterwards submit the matter of law to the court.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]