

Case No. 4,712.

FEARSON V. UNITED STATES.

[1 Hayw. & H. 48.]¹

Circuit Court, District of Columbia.

Dec. 11, 1841.

ELECTIONS—PRESENCE OF ALL THE JUDGES.

Held, not necessary that all the judges of an election appointed under the resolution of the board of aldermen and board of common council of the corporation of Georgetown, approved February 20, 1841, should be present to constitute a legal session of the said judges of election.

Error to the criminal court.

Joseph N. Fearson was indicted for unlawfully breaking and entering a certain room in the county of Washington within the corporation of Georgetown, in which certain judges of election, duly and lawfully appointed by the mayor, recorder, aldermen and common council of the corporation, were executing their duty and office, and were then counting” and ascertaining the ballots and votes that had been given, and that the said Joseph N. Fearson, having then and there forced himself into the said room and into the presence of said judges as aforesaid, and so engaged in the discharge of their duty and office as aforesaid, did then and there by violence and threats and loud noises interrupt and obstruct the said judges in the discharge of their said duty and office, and then and there staid and continued in the said room making a great noise and tumult therein for a long space of time, to wit for the space of two hours, and thereby during all that time greatly disturbed and hindered them in the execution of their office, &c.

On said indictment the jury brought in a verdict of guilty. Thereupon the criminal court, Judge James Dunlop presiding, rendered the following judgment: “That the said Joseph N. Fearson be fined, forfeit and pay to the United States as well the sum of \$30 for the offense aforesaid as the costs of the suit”

Before the jury retired, the defendant by his attorney, filed in court the following bill of exceptions: “In this case the United States offered in evidence the charter of Georgetown and also a resolution of the corporation¹ of Georgetown,² and offered evidence tending to prove that the traverser disturbed and interrupted the judges of election as charged in the indictment. It also appeared from the evidence that “John Cox, the mayor of Georgetown, one of the judges of election, was present at the election from the opening of the polls to the closing of the same, but that he then retired, and that at the time of the interruption of the judges of election who were then counting the votes, the mayor of Georgetown, one of the judges of election, was absent but that all the other judges of election were present at the time of the interruption. Whereupon the traverser

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prayed the court to instruct the jury, that such being the case the said judges of election were not legally in session, and that the traverser on that ground was entitled to an acquittal, which said instructions the court refused. The traverser excepts and prays the court to sign this bill of exceptions, which is accordingly done this 27th of October, 1841.”

James Hoban, for petitioner.

F. S. Key, for the United States.

After argument of counsel the judgment of the criminal court was affirmed.

¹ [Reported by John A. Hayward, Esq., and here reprinted by permission.]

² Resolved by the board of aldermen and board of common council of the corporation of Georgetown that John I. Stull, Charles C. Eckle, John Myers, Louis Carbery and Judson Mitchell, or a majority of them, be and that are hereby appointed judges of the next general election, and of all elections which may be necessary to be held until the fourth Monday of February, 1842. H. Addison, Pres. Board of Common Council. Clemt. Cox, Recorder and Pres. Board of Aldermen.

Approved February 20, 1841. John Cox, Mayor.