

## UNITED STATES V. BARTLE.

{1 Cranch, C. C. 236.}<sup>1</sup>

Circuit Court, District of Columbia. June Term, 1805.

ASSAULT AND BATTERY—EVIDENCE IN  
MITIGATION—MOLITER MANUS.

1. In Virginia, upon the plea of not guilty to an indictment for assault and battery, evidence may be given to the jury in mitigation of the fine which they are to assess.
2. The carpenter and bricklayer who are building a house have a right to remove, gently, all persons who come into the building without authority, if they will not depart upon request.

Indictment for assault and battery on George Coryell.

C. Lee, for defendant [Samuel Battle], asked the witness, Preston, whether he had heard Coryell use threats to break up and injure Bartle, or any prior quarrel, in order to discredit the witness Coryell, and to mitigate the fine, which, by the law of Virginia, is to be assessed by the jury.

Mr. Jones, the district attorney, objected, that it was not a justification, nor could be given in evidence in mitigation of the fine.

But THE COURT permitted the question to be asked.

THE COURT, at the request of the defendant's counsel, instructed the jury that if they should be of opinion, from the evidence, that Coryell, without right, came into the building on which Bartle was doing the carpenters' work, and upon being requested, refused to go out of the building, then Bartle had a right gently to put him out; and that if Bartle, under such circumstances, did gently put Coryell out, without any unnecessary violence, he was not guilty of an assault in so doing.

Mr. Jones moved the court to instruct the jury, that if Bartle came into the apartment where Coryell was, for the sole purpose of turning him out of the building, it was an assault.

But THE COURT (nem. con.) refused to give the instruction as prayed.

THE COURT was further of opinion that it was no necessary to prove that Coryell was interrupting the business, or impeded it any way, but that the possession was in the carpenter and bricklayer, and either of them had a right to order away all persons having no right to enter the building; and if they refused to depart, had a right to put them out without using any unnecessary violence.

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

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