

UNITED STATES V. BIRCH ET AL.

{3 Cranch, C. C. 180.}¹

Circuit Court, District of Columbia. Nov. Term, 1827.

WITNESS—NEGRO—JOINT INDICTMENT.

A colored man is not a competent witness in Alexandria against a colored man indicted jointly with white men for a riot.

James Birch, a white man, was indicted jointly with others for a riot. One of the defendants, William Bill, was a colored man.

Mr. Swann, for the United States, offered Wilfred Mortimer, a colored man, born of a white woman, as a witness for the prosecution against the colored defendant, William Bill.

Mr. Mason, for defendants, objected.

By the 5th section of the Virginia act of 7th of December, 1792 (page 187), it is enacted that “no negro or mulatto shall be a witness, except in pleas of the commonwealth against negroes or mulattoes; or in civil pleas where negroes or mulattoes alone shall be parties.”

THE COURT (THRUSTON, Circuit Judge, absent), rejected the witness; because it was a joint indictment and the defendants had pleaded jointly; and the testimony, if given against one, would operate against all.

¹ [Reported by Hon. William Cranch, Chief Judge.]