

UNITED STATES V. DAVIDSON ET AL.

{4 Cranch, C. C. 576<sup>1</sup>

Circuit Court, District of Columbia.

March Term, 1835.

CRIMINAL LAW—JOINT  
INDICTMENT—TRIAL—WITNESS.

Upon a joint indictment against two, for assault and battery, it is not a matter of right that they should be tried separately, at their request; and neither can be examined as a witness for the other unless there be no evidence against one; in which case the jury may acquit him, and then he may be examined for the other defendant.

Indictment [against Lewis G. Davidson and I. W. Stratton] for assault and battery on a negro, a servant at Fuller's Hotel.

Mr. Brent, for defendants, asked that they might be tried separately, as he wished to examine each as a witness for the other.

THE COURT said that it was perhaps in the discretion of the court to allow it, but that the defendants could not claim it as a matter of right; and that neither can be examined as a witness for the other unless it should appear that there was no evidence against one; in which case the jury may acquit him, and then he may be examined for the other; but if there be any evidence against him he cannot be examined. 1 Chit Cr. Law, 626, 627.

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