

## UNITED STATES V. ELLIS.

{1 Cranch, C. C. 125.}<sup>1</sup>

Circuit Court, District of Columbia. June Term, 1803.

## PENALTY—STATUTE—INDICTMENT.

If a statute prescribes a particular mode of enforcing payment of a penalty, it must be pursued, and indictment will not lie.

Indictment for gaming. Verdict, guilty. Motion in arrest of judgment, that the act of assembly of Virginia, which gives the penalty, provides that it shall be recovered before a single magistrate in the same manner as small debts. It contains no prohibitory words, but says only, if any one shall play, he shall pay the penalty of twenty dollars—and does not say that the penalty may be recovered by indictment.

Mr. Mason, for the United States, cited the following authorities: Rev. Code, p. 112, §§ 24–26, which speaks of indictments for misdemeanors. Section 23. The court may order the clerk to issue summons, or other process. Section 37. Where the penalty does not exceed twenty dollars, it may be sued for by petition, as in the case of other small debts. Page 106, § 1. Grand jury in district court to present all misdemeanors. Section 2. The like in county courts. Page 107, § 5, the same as section 2. Section 6. Where the penalty in the district court does not exceed twenty dollars, the court may hear without indictment; so, in county courts where it does not exceed five dollars. By Rev. Code, pp. 183–185, § 13, the act is to be given in charge to the grand jury. Act 1797, c. 2, §§ 7, 8.

Mr. Swann, for defendant, cited the gaming act (Rev. Code, p. 185), which prescribes a specific mode of recovering the penalty, and contains no prohibitory clause. 2 Hale, P. C. 171; Stubbs, Crown Cir. Comp.

93; U. S. v. Simms (Sup. Ct. U. S., Feb. 1803) 1  
Cranch [5 U. S.] 252; 2 Burrows, 803.

THE COURT arrested the judgment on the  
authority of Simm's Case, supra.

KILTY, Chief Judge, contra, thinking these cases  
differed from that.

<sup>1</sup> [Reported by John A. Hayward. Esq., and Geo.  
C. Hazleton, Esq.]

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