

UNITED STATES v. FULLERTON.

{7 Blatchf. 177.}¹

Circuit Court, S. D. New York. March 16, 1870.

CRIMINAL LAW—INSTRUCTIONS TO ACQUIT.

On the trial of an indictment for a misdemeanor, after testimony had been given on both sides, and the evidence was closed, the court directed the jury to acquit the defendant, on the ground that the evidence did not warrant a conviction.

{Cited in U. S. v. Anthony, Case No. 14,459; U. S. v. Babcock, Id. 14,487}

In this case, which was an indictment for a misdemeanor, after testimony had been given, at the trial, on the part of both the prosecution and the defence, and the evidence was closed, the counsel for the defendant requested the court to instruct the jury to acquit the defendant [William Fullerton], the ground of the request being that the evidence was such as not to warrant a conviction.

Edwards Pierrepont, Dist. Atty., and Benjamin F. Tracy, for United States.

Edwin W. Stoughton, John K. Porter, John E. Burrill, Grenville T. Jenks, and Clarence A. Seward, for defendant. 1226 Before WOODRUFF, Circuit Judge, and BLATCHFORD, District Judge.

THE COURT, after hearing a discussion by the respective counsel as to the power of the court to give such an instruction in any case, and thus take the case from the jury, held that, inasmuch as the court would have the power, if the defendant were convicted by the jury on the evidence, to grant him a new trial, if it should be of opinion that the verdict was against the evidence, it had the power, if it was of opinion that a verdict of guilty would not be warranted by the evidence, to direct the jury to acquit the defendant on that ground. The court, being of opinion that the

evidence did not warrant a conviction, directed the jury to acquit the defendant, which was done.

¹ [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]

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