

Case No. 15,344. UNITED STATES v. HELRIGGLE.
[3 Cranch, C. C. 179.]¹

Circuit Court, District of Columbia.

Nov. Term, 1827.

INDICTMENT—OMISSION OF PROSECUTOR'S NAME.

The court in Alexandria county will, on motion, quash an indictment for misdemeanor, unless the name of a prosecutor be indorsed thereon, according to the Virginia statute of the 13th of November, 1792, § 24, although the defendant should have been bound by the recognizance before a justice of the peace to appear in this court to answer for the offence.

UNITED STATES v. HELRIGGLE.

Indictment for assault and battery. The defendant had been bound by recognizance before a justice of the peace to appear in this court to answer for the offence.

Mr. Taylor, for the defendant, moved the court to quash the indictment, because the name of a prosecutor was not written at the foot of the indictment before it was sent to the grand jury, according to section 24 of the Virginia act of November 13, 1792, p. 105.

Mr. Swann, for the United States, said that where the party has been recognized to appear in this court to answer for a misdemeanor, his practice has been to send up an indictment to the grand jury without the name of a prosecutor. By section 24 of the act of November 13, 1792, it is enacted as follows: "No information for a trespass or misdemeanor shall be filed in any court but by express order of the court entered on record, nor unless the party supposed to be culpable shall have failed to appear and show good cause to the contrary, having been required to do so, by a summons appointing a convenient time for that purpose, served upon him or left at his usual place of abode; and the name and surname of the prosecutor, and the town or county in which he shall reside, with his title or profession, shall be written at the foot of the information before it be filed; and of every bill of Indictment for any trespass or misdemeanor before it be presented to the grand jury." And by section 38 of the same act (page 106), it is enacted, "that in all indictments for assaults and batteries, and other offences not capital, now depending or hereafter to be prosecuted, it shall be lawful for the court before whom the same shall be depending, upon good cause to them shown, to compel the prosecutor to find security for payment of the costs; and if such prosecutor shall fail to give security accordingly, the indictment shall be dismissed with costs." By section 2 of the act of Virginia of December 2, 1795, it is enacted, "that when any presentment shall be made of any offence, by the grand jury, upon the knowledge of two of their body, the names of the grand jurymen giving the information shall be indorsed at the foot of the presentment; and when any presentment, information, or indictment shall be made, by the grand jury, of any offence, upon the testimony of a witness called upon by the court or grand jury to give testimony concerning the same, the name of such witness shall likewise be indorsed thereon; but in none of the cases above mentioned shall the person or persons, so informing, be liable to costs." On the 28th of January, 1802, after the separation of this county from Virginia, the legislature of that state passed an act (page 431) stating that "doubts have arisen whether any information can be filed, or indictment for trespass or misdemeanor be sent to a grand jury, unless the name of a prosecutor be written at the foot of such information or indictment;" and providing that no prosecutor should be required on an information or bill of indictment for a trespass or misdemeanor filed, or sent to a grand jury, on and in consequence of a previous presentment of a grand jury made on their own knowledge, or on the information of any two of their own body.

THE COURT (MORSELL, Circuit Judge, contra) quashed the indictment

See the twenty-ninth rule of practice of this court; *U. S. v. Shackelford* [Case No. 16,260], in this court at April term, 1828; *U. S. v. Hollinsberry* [Id. 15,380], at November term, 1829; *Virginia v. Leap* [Id. 16,964], in this court, April term, 1801; *U. S. v. Sandford* [Id. 16,221], July 14, 1806; *U. S. v. Jamesson* [Id. 15,466], January, 1802; *U. S. v. Singleton* [Id. 16,293], June, 1805; *U. S. v. Willis* [Id. 16,728], November, 1808; *U. S. v. Carr* [Id. 14,729], November, 1823.

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