

Case No. 15,377. UNITED STATES V. HOLLAND (TWO CASES).
[3 Cranch, C. C. 254.]¹

Circuit Court, District of Columbia.

Dec. Term, 1827.

LARCENY—JOINT AND SEVERAL INDICTMENTS—EVIDENCE.

If two be separately indicted for the same theft, and one be convicted, it is necessary for the United States, upon the trial of the other, to prove that it was a joint theft, and that both were present at the act of taking the goods; but it is not necessary to charge in the indictment that the theft was joint; they may be indicted jointly or severally, as both are principals; if there be a doubt as to one whether he were present, he must be acquitted upon an indictment charging him as principal.

Negroes Margaret Holland and her daughter, Louisa Holland, were indicted separately for the same theft. Neither of the indictments mentioned the participation of the other in the crime. The jury first found Margaret, the mother, guilty. Afterwards, upon the trial of Louisa, Mr. Wallach, for the prisoner, prayed the court to instruct the jury that they could not find her guilty, unless they should be satisfied, by the evidence, that it was a joint theft, and that both were present at the act of taking the goods.

THE COURT (nem. con.) gave the instruction as prayed. It was then suggested by the prisoner's counsel, that she could not be convicted upon this indictment, because it did not charge her with jointly stealing the goods; the other prisoner, Margaret, having been convicted of the same theft.

But THE COURT (nem. con.) inclined to think, and so decided, that it was not necessary to charge in the indictment that the theft was joint, as neither of them was more or less guilty because they were together. Both were principals. 1 Chit Cr. Law, 260 (214), 267 (220), 271 (223); 2 Hale, P. C. 173, 174.

The jury found Louisa, also, guilty.

There seemed to be some doubt whether Margaret was actually present at the taking of the goods; and the court granted her a new trial, upon which Mr. Key, for the United States, entered a nolle prosequi. The other prisoner, Louisa, was sentenced to be whipped fifteen stripes, and to pay a fine of \$1, and costs.

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