

Case No. 15,425. UNITED STATES V. HUNTER (THREE CASES).
SAME V. DAVIDSON.

[1 Cranch, C. C. 446.]¹

Circuit Court, District of Columbia.

Nov. Term, 1807.

COMPETENCY OF WITNESSES—JOINT CRIME—SEPARATE INDICTMENTS.

1. If several persons, jointly concerned in an assault and battery, be separately indicted, each as for his own offence, and all tried at the same time by the same jury, one of the defendants may be examined as a witness for the others.

[Cited in *Johnson v. Chapman*, Case No. 7,378.]

2. In order to make those liable who were only present aiding and abetting, it is not necessary that they should be indicted jointly, nor with a simul cum.

Assault and battery. These were separate indictments [against John Hunter, Colin Hunter, Joseph H. Hunter, and R. H. Davidson, respectively], and not charged simul cum, &c, but were agreed to be tried at the same time by the same jury.

Mr. Taylor, for the defendants, offered John Hunter as a witness for the other defendants.

Mr. Jones, attorney for the United States, objected, unless the jury should first decide on John Hunter's case, saying that the assault of one is the assault of all present aiding and abetting, and the evidence is that one made the assault and the others were present aiding and abetting.

But THE COURT (DUCKETT, Circuit Judge, absent,) said the witness might be sworn in all the cases but his own, inasmuch as they were not jointly indicted, nor charged simul cum, &c, and the swearing the same jury in the four cases, is but as charging four separate juries.

Mr. Jones then moved to discharge the jury from the consideration of John Hunter's case.

But THE COURT refused.

Mr. Taylor then prayed THE COURT to instruct the jury that none of the defendants can be found guilty unless for his own assault and battery, and that the Others cannot be found guilty as aiding and abetting John Hunter. That they ought to have been indicted simul cum, or else jointly.

But THE COURT refused, because all present aiding and abetting are principals.

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