

Case No. 15,566. UNITED STATES v. LARNED.
[4 Cranch, C. C. 335.]¹

Circuit Court, District of Columbia.

Oct Term, 1833.

FORGERY—INDICTMENT—SURPLUSAGE—JUDGMENT.

Quære, whether, in an indictment under the penitentiary act [4 Stat. 448], for forging a “paper writing,” it must not be averred to have been done “to the prejudice of the right” of some person; and whether upon an indictment for a felony, judgment may be rendered as for a misdemeanor; and whether, if the facts stated in the indictment do not amount to felony, the word “feloniously” may not be rejected as surplusage, and judgment given as for a misdemeanor?

The prisoner [Joseph Larned] who was convicted at the last term [Case No. 15,565] for

UNITED STATES v. LARNED.

feloniously forging, uttering, &c., a certain paper writing, &c. (being a certificate of freedom), was brought up and sentenced to the penitentiary, under the 11th section of the penitentiary act of March 2, 1831 (4 Stat. 448); CRANCH, Chief Judge, doubting, because the indictment does not charge it to have been done “to the prejudice of the right of any person, body politic,” &c.; and because no statute in force here makes it felony; and because judgment as for a misdemeanor cannot be given on an indictment for felony. **U. S. v. M’Carthy [Case No. 15,656]** But quære, whether, if the facts stated in the indictment do not amount to felony, the word “feloniously” may not be rejected as surplusage, and judgment given as for a misdemeanor? If the indictment does really charge a felony, I think the authorities are pretty clear that judgment cannot be given upon it, as for a misdemeanor. See 1 Chit. Cr. Pl. 195, 281, 286, 287, 289; Fost. Crown Law, 424; Cro. Jac. 607; 11 Coke, 58; 2 Hale, P. C. 170; 2 Leach, 1107; Hawk. P. C. bk. 2, c. 25, § 110; Bac. Abr. “Indictment” (H.) 2; Hardr. 21; 8 Term B. 536; 2 East, P. C. 985, c. 19, § 58; 2 Hale, P. C. 192; 1 Hale, P. C. 449; 3 Chit. Cr. Pl. 1022; 1 Chit. Or. Pl. 367”369; Schofield’s Case, 2 East, P. C. 1028; Westbeer’s Case, 2 Strange, 1137; Joyner’s Case, Kelyng, 29; 1 Chit. Cr. Pl. 456, 638, &c.; 2 Hale, P. C. 172; 2 Hen. VII., 10b.

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