

Case No. 15,616.

UNITED STATES v. LLOYD.

{4 Cranch, C. C. 467.}¹

Circuit Court, District of Columbia.

May Term, 1834.

INDICTMENT—MOTION TO QUASH—PROSECUTOR'S NAME ON INDICTMENT.

1. A motion to quash an indictment for want of the name of a prosecutor, is too late after verdict.
2. The court will not quash the indictment for want of the name of a prosecutor if the witnesses were called for by the grand jury; but will quash an indictment where the name of a prosecutor was not indorsed, and no order of court to send the witnesses to the grand jury, and it does not appear that the witnesses were called for by the grand jury.

Assault and battery.

In U. S. v. Turley {Case No. 16,546}, in this court, at November term, 1833, the court was of opinion that the objection, for want of a prosecutor, was too late after verdict; but agreed to hear Mr. Hewitt again in {Henry} Lloyd's cases, on that point {See Case No. 15,615.} It does not appear, however, that in these causes any thing further has been said upon it. The doctrine in Turley's Case, may, therefore, be considered as conceded.

Mr. Hewitt moved to quash this indictment.

The proceedings respecting the witnesses appeared to be as follows: On the second day of the term the witnesses were called upon by the grand jury and sworn. It appeared by the defendant's recognizance, returned by the justice, that certain persons were witnesses. Their names were indorsed on the indictment by the grand jury, who certify by their foreman, that they were called on by the grand jury. See Va. Law, pp. 105, 346.

Mr. Hewitt contended, that the act of 1795, p. 346, § 2, applies only to cases where the fact is known to some of the grand jurors of their own knowledge, and not of the information of others.

THE COURT (THRUSTON, Circuit Judge, contra) refused to quash the indictment, where the witnesses appeared to have been called upon by the grand jury. But (nem. con.) quashed another, where there was no prosecutor indorsed, and no order of the court to send the witnesses to the grand jury; and it did not appear that the grand jury had called for them.

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