UNITED STATES v. LLOYD.

Case No. 15,617.

[4 Cranch, C. C. 468.][1]

Circuit Court, District of Columbia. Oct. 18, 1834.

ASSAULT AND BATTERY—UPON SLAVE.

1. A simple assault and battery on a slave is not an indictable offence. A simple assault upon a slave, even with intent to murder him, is not an offence at common law.

2. There must be a battery, as well as an assault with an intent to kill, to bring the case within the penitentiary act [4 Stat. 448]. The court refused to quash the indictment without prejudice to a motion in arrest of judgment.

[This was an indictment against Henry Lloyd.]

Assault and battery. The first count was for a simple assault and battery upon a slave. The second count was for assault (not assault and battery) with intent to kill and murder, a negro slave, Harry.

Mr. Brent, in arguing to the jury, contended that the second count is not a good count under the penitentiary act, which requires that there should be a battery as well as an assault with an intent to kill.

Mr. Key, contra, that it is a good count at common law.

Verdict, guilty on both counts, and amerced by the jury $20 on the first count.

THE COURT (nem. con.) was of opinion, that a simple assault and battery on a slave, is not an indictable offence; that a simple assault upon a slave, even with an intent to murder him, is not an offence at law; that

the second count was had under the penitentiary act, because it did not charge a battery.

CRANCH, Chief Judge, doubted of this, because the murder of a slave is a felony, and an assault with intent, to commit a felony is a misdemeanor, at common law.

October 18, 1834. A new indictment was this day found by the grand jury against the defendant. The first count was for publicly and cruelly beating Harry, a slave. Second count for assault and battery with intent to murder the slave, Harry.

Mr. Brent, for the defendant, moved to quash the indictment, because, he contended, it was not an offence to assault and beat a slave, even with intent to murder him.

THE COURT (nem. con.) refused to quash the indictment, without prejudice to a motion in arrest of judgment, if the verdict should be against the defendant.

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

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