

Case No. 15,619.

UNITED STATES v. LLOYD.

[4 Cranch, C. C. 472.]¹

Circuit Court, District of Columbia.

Oct. Term, 1834.

ASSAULT AND BATTERY—INDICTMENT—VERDICT—WITNESS.

1. Upon an indictment for assault and battery on M. H. with intent to kill him, a verdict, “Guilty of an assault by shooting M. H. with intent to kill,” is substantially a general verdict of guilty.
2. An indictment under the penitentiary act for assault and battery with intent to kill, need not aver it to be done with malice aforethought, nor with any other evil intent than the intent to kill.
3. Upon a suggestion that a witness, whose affidavit had been taken in support of a motion for a new trial, was an idiot, the court required the witness to be brought in and examined in court, but refused to order another witness whose affidavit had also been taken for the same purpose, to be brought in and examined, his affidavit not being impeached.

Indictment [against Richard B. Lloyd] for assault and battery on Moses Hepburn, with intent to kill him. Verdict, “guilty of an assault by shooting Moses Hepburn with intent to kill, but not with malice aforethought.”

The second count charged that the defendant, &c., at &c., “with force and arms in and upon one Moses Hepburn, in the peace of God and the said United States, did make an assault, and him the said Moses Hepburn, did then and there beat, shoot, and ill treat, with intent him the said Moses, then and there to kill, and other wrongs and injuries then and there did, to the great damage of the said Moses, against the peace and government of the United States, and against the form of the statute in such case provided.”

Upon a motion in arrest of judgment, W. L. Brent, for defendant, objected that the verdict did not find a battery; and that the indictment does not charge the manner of shooting, kind of weapon, kind of shot, &c.; and does not state that the defendant unlawfully assaulted the said Hepburn; and cited 1 Russ. 585. It might have been done in his own defence.

THE COURT (THRUSTON, Circuit Judge, contra) was of opinion that the second count, and the verdict thereupon, were sufficient.

THRUSTON, Circuit Judge, thought that the indictment should have charged that the assault and battery was wilful, unlawful, or malicious, and should have set forth the manner of the beating and the weapon, &c.

Upon a subsequent argument (on the 11th of October, 1834), Mr. Brent and Mr. Fauntleroy, for defendant, cited 1 Chit. Cr. Law, 227, 228, 233, 242, 245, 276, 286, 643; and Mr. Key, for the United States, cited Chit 644.

PER CURIAM. This is substantially a verdict of guilty; for the shooting of a man is, in law, a battery upon that man, and the assault and the intent to kill are expressly found. The statute does not require that the act should be done with malice aforethought. The finding, therefore, that it was not done with malice aforethought is an immaterial finding,

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and is surplusage. The jury, therefore, have found every thing necessary to constitute the statute offence. We do not think it can be necessary, in an indictment upon this clause of the statute, to aver any other evil intent than the intent to kill, which is expressly averred; for it would be tautology to say that the defendant, with evil intent made an assault and battery on the man with intent to kill him.

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In support of a motion by the defendant's counsel, at the last term, he produced the affidavit of a woman named Frances Tattersall. Upon a suggestion that she was an idiot, THE COURT (CRANCH, Chief Judge, absent) required that she should be brought into court and examined by the judges.

The defendant now offered the affidavit of Francis Lloyd for the same purpose.

Mr. Key, for the United States, requested that this witness also should be brought in and examined in court. Mr. Brent, for the defendant, objected and said, it was not usual to examine witnesses in court upon a motion for a new trial.

THE COURT (MORSELL, Circuit Judge, contra) refused to cause the witness to be brought in and examined in court, and granted a new trial upon newly-discovered evidence; and the cause was afterwards transferred to Washington for trial.

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