

Case No. 15,646.

UNITED STATES v. LYLES.

[4 Cranch, C. C. 469.]¹

Circuit Court, District of Columbia.

Oct. Term, 1834.

CRIMINAL LAW—INSTIGATING ASSAULT.

It is a misdemeanor at common law to persuade, instigate, and incite another to commit an assault and battery.

The indictment charged that the defendant [Thomas W. Lyles], “intending to disturb the peace of the United States in the said county, and particularly to cause and procure a certain James Jack, in the peace of God and of the United States then and there being, to be assaulted and beaten, did persuade, instigate, and incite and endeavor to hire and employ a certain Daniel Fowler and a certain Philip Vernon then and there being, to waylay, assault, and beat the said James Jack then and there being, so that the said James Jack was hindered by the said attempts and endeavors, from going about his ordinary business, and other wrongs to the said James Jack, then and there did, to the great damage of the said James Jack, and against the peace and government of the United States.”

Mr. Neale, for the defendant, moved to quash this indictment, because, as he contended, it is no misdemeanor to incite a person to commit a misdemeanor; and such misdemeanor is not charged in the indictment, and in fact, was not committed.

Mr. Key, for the United States, cited *Rex v. Phipps*, 6 East, 464; 2 Chit. 235; *Rex v. Higgins*, 2 East, 5.

THE COURT (THRUSTON, Circuit Judge, absent) refused to quash the indictment, without prejudice to a motion in arrest of judgment

Verdict, guilty, and amerced by the jury \$20.

Mr. Neale, for the defendant, moved in arrest of judgment.

Mr. Key, contra, cited 2 Chit Cr. Law, 50, for the form of the indictment 3 Bl. Comm. 119, 120, and 4 Bl. Comm. 149.

THE COURT (MORSELL, Circuit Judge, not very clear, and THRUSTON, Circuit Judge, doubting, CRANCH, Chief Judge, not doubting) was of opinion that it is an indictable offence, and overruled the motion in arrest.

See Chit Gen Prac. Append, ii., that an attempt to commit a misdemeanor created by statute, is itself a misdemeanor. *Rex v. Butler*, 6 Car. & P. 388.

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