

Case No. 16,325.

UNITED STATES v. SMITH.

[1 Cranch, C. C. 475.]¹

Circuit Court, District of Columbia.

Dec. Term, 1807.

LARCENY—LOGS IN FENCE.

Logs in a fence are not the subject of larceny, the fence being in law annexed to the freehold.

Indictment (against W. Smith) for stealing fence-logs, the property of John Orr, from a worm fence. The fence consisted of ten logs, two supporting a rider.

Mr. Morsell and Mr. Caldwell, for the defendant, contended that it was not larceny, but trespass. The fence is part of the freehold, and would have gone to the heir, and not to the executor. It could not be taken in execution. Orr was the tenant of W. Brent. Mr. Caldwell contended, the fence was the property of W. Brent (which Orr admitted in his testimony), and not of Orr.

THE COURT instructed the jury that it was a felony; but having doubts, said they would hear a motion for a new trial or in arrest of judgment, if a verdict of guilty should be found—which was found accordingly.

And on consideration, THE COURT (nem. con.) was of opinion that it was no felony; that the fence was to be considered as annexed to the freehold, and would descend with the land to the heir, and would not go to the executors.

Judgment arrested.

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