UNITED STATES v. TAYLOR.

Case No. 16,437.

{4 Cranch, C. C. 731.}[1]

Circuit Court, District of Columbia. Oct. Term, 1836.

QUASHING INDICTMENT—PRACTICE—CRIMINAL STATUTES.

1. In a criminal prosecution the court will not hear a motion to quash the indictment until the defendant has been taken.
2. When a statute creates an offence, and directs the particular mode of prosecution, that mode must be pursued.

The defendant {William Taylor} was indicted for playing at cards in a public place, contrary to the statute of Virginia, of December 8, 1792, § 5, which imposes a fine of $20 upon conviction before a justice of the peace, to be levied by distress and sale of the offender's goods by warrant from the justice.

Mr. Neale, for defendant, at the last term, before the defendant was taken, offered to move the court to quash the indictment.

But THE COURT (THRUSTON, Circuit Judge, contra) refused to hear the motion until the defendant should be taken.

The defendant being now taken, Mr. Neale moved the court to quash the indictment, upon the ground that the only mode of recovery of the penalty prescribed by the statute is by a conviction before a justice of the peace; according to the case of U. S. v. Simms, 1 Cranch {5 U. S.} 252.

And upon that ground THE COURT quashed the indictment.

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

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