

Case No. 16,458. UNITED STATES v. THARP.
[5 Cranch, C. C. 390.]¹

Circuit Court, District of Columbia.

March Term, 1838.

ASSAULT WITH INTENT TO KILL.

Upon an indictment under the penitentiary act for the District of Columbia [4 Stat. 448], for assault and battery with intent to kill, it is not necessary to show that the crime would have been murder, if death had ensued.

Indictment [against William Tharp] for assault and battery. The first count charged it to be with intent to kill one William Walker, against the form of the statute. The second count charged a common assault and battery at common law.

Mr. Coxe, for defendant prayed the court to instruct the jury, upon the first count, that if the offence would not have been murder, in case Walker had been killed, it is not a case within the penitentiary act for the District of Columbia.

But THE COURT refused; MORSELL, Circuit Judge, saying that the point had been decided by this court in Alexandria (alluding to U. S. v. Lloyd) at October term, 1834 [Case No. 15,617].

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