

Case No. 16,485. UNITED STATES v. THOMPSON.
[4 Cranch, C. C. 335.]¹

Circuit Court, District of Columbia.

Oct. Term, 1833.

LARCENY—INDICTMENT FOR SECOND OFFENCE—AVERMENT OF PRIOR
CONVICTION.

To charge the prisoner, as for a second offence, an averment, that, on the 2d day of October, 1832, at a circuit court of the District of Columbia, for the county of Alexandria, the prisoner “was tried and convicted of larceny, as by the record of the said court doth appear,” without averring that the conviction was by judgment, and reciting the record of conviction, &c, is not a sufficient averment to justify the court in sentencing the prisoner to the penitentiary, upon an indictment for stealing 55 cents.

This was a common indictment for stealing forty-three cents, and one silver coin of the value of twelve and a half cents. At the foot of which was the following addition: “And the jurors aforesaid further find, that, heretofore, to wit, on the second day of October, in the year of our Lord, 1832, at a circuit court of the District of Columbia, for the county of Alexandria, then duly sitting, the said Henry Thompson was tried and convicted of larceny, as by the said record of said court doth appear.”

THE COURT (THRUSTON, Circuit Judge, contra) was of opinion that this was not a sufficient averment to justify the court in sentencing the prisoner to the penitentiary, as for a second offence, under the 13th section of the act of March 2, 1831 (4 Stat. 448). See 1 Hale, P. C. 324, 685, 686; 1 Hawk. P. C. c. 70, § 25; 3 Inst. 46, 172; 1 Chit Cr. PL 459, 460; 2 East, P. C. 919.

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