

Case No. 16,546. UNITED STATES v. TURLEY.
[4 Cranch, C. C. 334.]¹

Circuit Court, District of Columbia.

Oct Term, 1833.

ASSAULT WITH INTENT TO KILL—INDICTABLE CRIME—ARREST OF JUDGMENT.

1. An indictment will not lie, under the penitentiary act [4 Stat. 448], for an assault with intent to kill; there must be a battery also.
2. The want of the name of a prosecutor, written on the indictment, is not a good ground for arresting the judgment.

The first count in the indictment was for simple assault and battery. The second count was for an assault with intent to kill Basil S. Hurdle. Upon the first count the jury found the defendant guilty, and amerced him \$500. Upon the second count they found him “guilty, by an attempt to kill Basil S. Hurdle.”

Mr. Hewitt, for defendant, moved in arrest of judgment, (1) because the verdict on the second count is too vague, and (2) because the name of a prosecutor was not written on the indictment.

THE COURT (nem. con.) arrested the judgment on the second count, because the penitentiary act only punishes assault and battery with intent to kill, and this count is for assault only.

THE COURT, also, was of opinion that the objection for want of the name of a prosecutor was too late after verdict; but agreed to hear Mr. Hewitt again, upon that point, in H. Lloyd's Cases [Cases Nos. 15,613-15,617].

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