

Case No. 16,630. UNITED STATES v. WAGNER.
[1 Cranch, C. C. 314.]¹

Circuit Court, District of Columbia.

June Term, 1806.

LARCENY—STEALING FENCE-RAILS.

It is not felony to steal rails fixed into posts inserted in the ground, if the severance of the rails from the posts and the taking and carrying away were one continued act.

Indictment [against Caspar Wagner] for stealing three fence-rails, the property of some person or persons to the jury unknown.

Mr. Law, for the prisoner, contended that the fence was part of the freehold, and therefore the defendant was only guilty of a trespass.

PER CURIAM. If the jury should be satisfied, from the evidence, that the rails were fixed in the posts for the purpose of making a fence, and the posts were fixed in the ground, and that the prisoner severed them from the posts and took them away at the same time as one continued act, the prisoner was not guilty of felony but only of a simple trespass.

Verdict, not guilty.

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