

**Case No. 920.** BANK OF THE UNITED STATES v. KURTZ.  
[2 Cranch, C. C. 342.]<sup>1</sup>

Circuit Court, District of Columbia.

Oct Term, 1822.

PRACTICE—PRODUCTION OF PAPERS—PROCEDURE.

The plaintiff cannot be nonsuited, for not producing books and papers, upon a mere notice by the defendant to produce them at the trial. There must be a motion to the court, for an order to produce them; and notice of such a motion; and an order of the court, and if the motion be not made until the cause is called for trial at the last calling of the docket, the court will continue the cause until the next term.

[Cited in *Gregory v. Chicago, etc, R. R.*, 10 Fed. 529.]

[See *Thompson v. Selden*, 20 How. (61 U. S.) 194; *Macomber v. Clark*, Case No. 8,918; *Dunham v. Riley*, Id. 4,155; *Bas v. Steele*, Id. 1,088; *Maye v. Carberry*, Id. 9,339.]

The plaintiff having been served with notice to produce the plaintiff's books, the defendant's counsel moved the court, just as the cause was called for trial, for judgment of nonsuit, under the fifteenth section of the judiciary act of [September 24th,] 1779, (1 Stat. 73,) for not producing the books.

Mr. Lear, for the plaintiff, objected that there had been no order of the court to produce them; nor any motion to the court for such an order.

Mr. Key, for the defendant, contended that he was yet in time to make the motion for an order to produce the books; and that notice of the motion was not necessary, as there had been a notice served on the plaintiff to produce them at the last term; he accordingly now made the motion; but it being the last time of calling the docket, and the cause being called for trial, the court continued it to the next term.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]