

Case No. 3,325.

[1 Pet. C. C. 1.]¹

CRAIG'S CASE.

Circuit Court, D. New Jersey.

April Term, 1803.

PRACTICE.

At an early period, after the organization of the federal courts, the rules of practice, in force in the state courts, which were similar to the English practice, were adopted by the judges of the circuit court. A subsequent change in the practice of the state courts, will not authorise a departure from the rules so adopted in the circuit court. Rule for trial by proviso.

[Cited in *Moan v. Wilmarth*, Case No. 9,686.]

In an ejectment against Craig, on motion of Mr. Leake for a non pros., unless the cause should be brought to trial at the next term, according to the practice in New Jersey, THE COURT determined that, as at an early period after the organization of the federal courts, the judges of the circuit court had, by a rule, adopted the practice of the state courts, at which time the English practice prevailed, it would be improper to depart from it, in a special case, because the state practice is now changed, without first altering the general rule. According to the English practice, as used before and at the time the general rule was made, the defendant can only move for a rule for trial by proviso.

Mr. Leake then moved, that the plaintiff should file the issue roll, within two months, or to show cause, at the next term, why a non pros, should not be entered.

THE COURT granted the rule, the same being conformable to the English practice.

¹ [Reported by Richard Peters, Jr., Esq.]