

Case No. 8,918.

MACOMBER v. CLARKE.

{3 Cranch, C. C. 347.}¹

Circuit Court, District of Columbia.

Dec. Term, 1828.

TRIAL—PRODUCTION OF PAPERS—ORDER OF COURT—REASONABLE NOTICE.

1. To enable a party to call upon the other party to produce papers at the trial, there must be an order of the court upon the party to produce them; that order must be served a reasonable time before the time for producing them; and there must be reasonable notice, also, of the motion for the order.

{See Bank of U. S. v. Kurtz, Case No. 920.}

2. When a juror is withdrawn on the motion of the plaintiff and consent of the defendant, who elects a continuance of the cause, he is not entitled to costs also.

R. S. Coxe, for plaintiff, having given notice to the defendant to produce them, called for a certain letter and notice of demand and notice of protest.

Mr. Morfit produced the defendant's affidavit, that he had searched diligently for the letter and could not find it. He contended that the defendant was not bound to produce the notice, as there had been no order of the court to produce it, and no notice of a motion for such an order.

THE COURT (THRUSTON, Circuit Judge, absent,) said that there must be an order of the court for the production of the papers, which order must be served upon the party a reasonable time before the time for producing them; and that the party must have reasonable notice of the motion for the order.

On motion of Mr. Coxe, and with the assent of the defendant's counsel, a juror was withdrawn, and the cause continued; THE COURT said it must be without costs, as the defendant had elected a continuance.

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