

PATTON ET AL. V. BLACKWELL.

[1 Brunner, Col. Cas. 125;¹ 2 Overt. 114.]

Circuit Court, D. Tennessee.

June, 1809.

COSTS OF CONTINUANCE.

In a federal court the party obtaining a continuance must pay the costs of the term.

This case was continued on the affidavit of the defendant. The question was as to the costs of the term.

Mr. Overton, for plaintiffs.

Mr. Grundy, for defendant.

PER CURIAM. This court sits but once a year. The rule of practice in the superior courts of the state does not apply. There, we are informed, the party obtaining the continuance is not taxed with the costs of the term upon the first application. There is certainly much equity in the English practice, which obliges the party praying the continuance to pay the costs of the term. This court has the power to establish such rules of practice as may be necessary to expedite and attain justice. The party who is ready for trial is in no default; and let the cause go which way it may, he ought not to pay the costs, which he might have avoided had the defendant been ready. If this cause is continued it must be for a year; and hence it follows that an application of this kind is in the same predicament as a similar one in the superior court at the second term, when it is usual to make the party pay the costs of the term. In all cases where continuances have been obtained during the present term, the costs of the term must be paid; and this will be considered the rule of practice hereafter. [It is also the practice of the federal court where a witness is subpoenaed in several causes,

to permit him to prove his attendance in but one of the causes.]²

[For other actions by the same plaintiffs against different defendants, see Cases Nos. 10,832-10,835, and 10,838.]

¹ [Reported by Albert Brunner, Esq., and here reprinted by permission.]

² [From 2 Overt. 114.]

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