

UNITED STATES V. ADDATTE.

[6 Blatchf. 76.]¹

Circuit Court, E. D. New York. March 14, 1868.

WITNESS—COMPETENCY—WIFE OF
CODEFENDANT.

Where one of two defendants, in a joint indictment against the two, is tried separately, the wife of the defendant who is not on trial, is a competent witness for the defendant who is so tried separately.

This was an indictment against the prisoner [John B. Addatte], jointly with another person, for counterfeiting the currency. The other defendant not being in custody, the case went to trial against the prisoner, separately. On the trial, the wife of the other defendant was offered as a witness for the prisoner, and, on objection, was excluded. The prisoner having been convicted, a motion was now made for a new trial, on the ground of error in such ruling.

BENEDICT, District Judge. I am of the opinion that the ruling at the trial was wrong, and that the witness was improperly excluded. On examining the question, I find the rule to be, that, when trials are separate, the wife may testify in favor of or against anyone other than her husband, except in cases where the acquittal of one defendant works the acquittal of the rest, as in cases of conspiracy, and the like. It is not contended, in this case, that the acquittal of the prisoner would work the acquittal of the other defendant, and the wife of the latter was, therefore, a competent witness. The motion for a new trial is granted.

{A motion in arrest of judgment was granted, and the prisoner was discharged. Case No. 14,423.}

¹ [Reported by Hon. Samuel Blatchford. District Judge, and here reprinted by permission.]

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