

## UNITED STATES V. BIRCH.

{1 Cranch. C. C. 571.}<sup>1</sup>

Circuit Court, District of Columbia. Nov. Term, 1809.

WITNESS—PROSECUTOR—LIABILITY FOR  
COSTS—SELLING LIQUOR WITHOUT  
LICENSE—SALE BY WIFE.

1. The prosecutor, whose name is indorsed on the indictment for a misdemeanor, is not a competent witness for the prosecution.
2. A selling by the wife with the assent of the husband, is a selling by the husband. The day is not material.

Indictment for selling spirituous liquors without license.

Alexander Simms, the prosecutor, whose name was indorsed on the indictment, was offered by the United States, as a witness.

E. J. Lee, for defendant [James Birch], objected that he was interested; being liable to pay the costs, according to the act of Virginia of November 13, 1792, § 25, p. 105.

Mr. Jones. It is every-day's practice in England to examine prosecutors.

THE COURT said that the interest was direct and that the witness was incompetent.

E. J. Lee contended that evidence that the defendant's wife sold, is not evidence that the defendant sold, and that the day must be proved as laid.

THE COURT said, if the selling by the wife was with the assent of the husband, it is to be considered as the selling by the husband.

Mr. Lee abandoned the point as to the day.

But THE COURT thought the day was not material.

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

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