

Case No. 14,698. UNITED STATES V. BUTLER.  
[1 Cranch, C. C. 422.]<sup>1</sup>

Circuit Court, District of Columbia.

July Term, 1807.

WITNESS—APPEARANCE—CASE CONTINUED.

If a witness appear in court at the term mentioned in his recognizance, and no default be entered against him at that term, and the recognizance be not respited, he is not bound by the recognizance to attend at the following term, although the cause should be continued.

Scire facias against a surety of a witness, bound by recognizance to appear at June term, 1804, and not to depart without leave of court. The breach assigned was that the witness failed to appear according to the recognizance. Upon the trial of the issue the evidence offered, to show the breach, was a record of November term, 1804, stating that the witness was called and failed to appear. There was no record of the respite of the recognizance, nor of a continuance of it, nor of any order for the witness to attend again. It appeared, upon the record of June term, that the witness was allowed for four days' attendance on the prosecution at that term.

THE COURT (nem. con.) said that the record of the default of the witness at November term was not evidence of a breach of the recognizance by not appearing, unless there was a record of a respite, &c, and even then it was doubtful whether the breach assigned should not be that the witness had departed without leave of the court.

Verdict for the defendant.

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