

UNITED STATES V. FRINK.

{1 Brunner, Col. Cas. 90;¹ 4 Day, 471.}

Circuit Court, D. Connecticut.

1810.

CONTINUANCE—ABSENCE OF
WITNESS—AFFIDAVIT.

Where a witness in a public prosecution having been summoned, and his fees tendered to him, refused to attend, the prosecutor moved to put off the trial in order to afford time for *capias*; the court ruled that the trial must proceed, unless the prosecutor would make affidavit that he could not, in his opinion, safely try the cause without the attendance of the witness.

This was an indictment [against Daniel Frink] similar to the one stated in the preceding case. [U. S. v. Phelps, Case No. 16,041.] Peleg Palmer, of Stonington, a witness in support of the indictment was summoned last September, and his fees tendered. He now refused to attend.

The district attorney moved for a delay of the cause in order to afford time for a *capias*.

Before LIVINGSTON, Circuit Justice, and EDWARDS, District Judge.

LIVINGSTON, Circuit Justice, said the trial must go on, and the party might apply for an attachment, or bring an action for damages. Such was the rule in England and in New York. ¹²²¹ The district attorney stated that it was usual in Connecticut to delay a cause to afford time to bring in a witness.

EDWARDS, District Judge, coming in at this time, it was ruled by the court, after a short consultation, that the trial must proceed, unless the district attorney would make affidavit that he could not, in his opinion, safely try the cause, without the attendance of Palmer. More witnesses are usually summoned than are necessary, and it would be unreasonable to put off a trial on account of the absence of a witness who was

not essential, or who could state nothing further than other witnesses in court. Motion denied.

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

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