

Case No. 15,610.

UNITED STATES v. LITTLE.

{2 Wash. C. C. 159.}¹

Circuit Court, D. Pennsylvania.

April Term, 1808.

WITNESS—PROCESS AGAINST—CONTINUANCE.

The court continued the cause, on the application of the defendant, a witness being absent in New Jersey; on the ground, that a state magistrate cannot issue process, for defendant's witnesses, into another state.

Indictment for a misdemeanour. The defendant was bound over by a state magistrate, and the recognizance, being returned into court, a bill was found this term. The defendant moved for a continuance, on the ground that his material witness left Philadelphia, before he was bound over, and went to New Jersey; and that, notwithstanding all his inquiries, he has not been able to hear of, or find him. The question was, whether the defendant had not been negligent, in not obtaining compulsory process, for the witness, from the magistrate who took the recognizance.

Mr. Hopkinson, for defendant, contended that the magistrate who binds over, cannot

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issue process for the defendant's" witnesses; but still less can he bind over the defendant's witnesses to appear at court. But, even if a judge of this court could have done this, which he denied, and stated this to be the practice of the state; still it is clear, that a state judge could not send process into Jersey. The defendant could not get process from the clerk of this court, until the bill is filed; or at any rate, until the recognizance is returned to it.

Mr. Dallas, contra. The right of the defendant to compulsory process is under the constitution; and if he cannot procure it from the examining magistrate, he may entirely lose the benefit of his testimony. He stated the practice differently from Mr. Hopkinson.

BY THE COURT. The objections to a state magistrate issuing process into New Jersey, are conclusive.

The cause was continued.

¹ [Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]