

Case No. 15,700.
[1 Gall. 387.]¹

UNITED STATES v. McNEAL.

Circuit Court, D. New Hampshire.

May Term, 1813.

CRIMINAL LAW—INDICTMENT—VARIANCE.

If an indictment charge the perjury to be committed at the circuit court, held on the 19th day of May, and the record show the court to have been held on the 20th day of May, the variance is fatal.

[Cited in *U. S. v. Bornemann*, 35 Fed. 826.]

[Cited in *Dill v. People*, 19 Colo. 469, 36 Pac. 231. Cited in brief in *State v. Conley*, 39 Me. 85. Cited in *Rhodes v. Commonwealth*, 78 Va. 696. Cited in brief in *Wead v. Marsh*, 14 Vt. 82.]

Indictment for perjury [against John McNeal]. The perjury was assigned in swearing at a trial, before the circuit court of the United States, holden at Portsmouth, on the 19th day of May, A. D. 1811, that one Thomas Wilson was not a man of truth, but was reputed and considered as a man of bad character, as to speaking truth, and was not believed; and that his word was not taken nor believed among his neighbors. On producing the record of the trial, it appeared that the circuit court was first holden, in that year, on the 20th day of May, the 19th day of May being Sunday.

Mr. Humphreys, for the United States.

Mason & Webster, for defendant.

Before STORY, Circuit Justice, and SHERBURNE, District Judge

THE COURT held the variance fatal, and the defendant was acquitted.

¹ [Reported by John Gallison, Esq.]