Case No. 16,401. UNITED STATES v. STEWART.[1]
SAME v. WRIGHT.

{2 Dall. 343; Whart. St. Tr. 172.}

Circuit Court, D. Pennsylvania. 1795.

TRIALS FOR TREASON—TIME ALLOWED DEFENDANT FOR BRINGING WITNESSES—RIGHT TO BAIL.

{1. In trials for treason, especially where the trial is held in a county distant from that in which the crime is laid, the prisoner is entitled, in all cases, after being furnished with the names of the witnesses against him, to a reasonable time in which to bring testimony from the counties in which those witnesses live.)

{Cited in Logan v. U. S., 144 U. S. 304, 12 Sup. Ct. 630}

{2. Where a person indicted for treason obtained a postponement on the ground of the absence of witnesses, but afterwards, when the court was about to adjourn for the term, announced his readiness to proceed to trial with the same witnesses previously available, *held*, that this would not entitle him to be released on bail, the court being then unable to hear the case.}

The prisoners being brought to the bar, on separate charges of high treason, Lewis read their depositions, stating the absence of material witnesses in both cases, and moved to postpone the trials 'till an opportunity was given, to procure the attendance of those witnesses from the western counties. He urged, the general inconveniency of a commitment and trial at so great a distance, from the scene of the criminal transaction; the friendless situation of the prisoners, and the poverty of the witnesses; and he alledged, that, under such circumstances, an immediate trial would be a mere ex parte proceeding. To shew the lenity with which persons thus charged have always been treated, he cited Fost. Crown Law, 1, and to account for the delay in procuring the witnesses, he observed, that as the act of congress (1 Story's Laws, 63, § 29 {1 Stat. 88}) declared, that "in cases punishable with death, the trial shall be had in the county where the offence was committed," if it could be done without great inconvenience, the prisoners might reasonably have expected that indulgence, until the motion for a special court had been refused, on account of the peculiar difficulties of the ease, in opposition to the general inclination of the judges. Nor could there be any preparation for trial 'till the charge was known, and the names of the witnesses who were to prove the indictments. By the practice under the constitution and laws of Pennsylvania (and the case is the same here) a defendant cannot have compulsory process to bring in his witnesses, before he has sworn that they are material; and he cannot so swear 'till he knows the charge and the witnesses that support it. It is essential to the administration of justice, and to the feelings of humanity, that the defendants should have time to investigate the characters of witnesses, and to bring proofs in contradiction to the accusation. Hence, even in England, where the counties are generally smaller than in this country, a period of ten days is allowed, between the time of furnishing lists of the

witnesses and jurors, and the time of trial. 7 Anne, c. 21; 4 Bl. Comm. 345. And altho' the act of congress (1 Stat. 112, § 29) only says that copies of the indictment and a list of the jury and witnesses shall be delivered to the prisoner "at least, three entire days before he shall be tried," yet it must certainly be the intention of the legislature to afford an opportunity to canvass the characters of the witnesses, or the provision would be nugatory: that opportunity cannot be deemed to commence 'till he knows their names, and it cannot be deemed to be compleat, unless he has had time to send for information to the places in which they reside. The court will, therefore, exercise a discretion as to the length of time to be allowed, in proportion to the distance; and, conformably to the case in Fost. Crown Law, 1, the time so allowed for preparation, will be subsequent to the delivery of the copy of the indictment, and the lists of witnesses.

Rawle (attorney for the district) premised, that an acquiescence in the present motion, would, probably, put off the trial for the term. He urged, that the prisoners must long ago have known the nature of the charge, and the proofs necessary to their defence; and ought to have made an earlier application for the aid of the court to procure their witnesses. Due diligence has not been used, nor, indeed, is it so stated in the affidavits; and it is not only necessary to satisfy the court that the witnesses are material; but also that the party applying has been guilty of no laches, or neglect, in omitting to apply to them and endeavouring to procure their attendance. 3 Burrows, 1513. Ever since the 20th April, there has been an opportunity to make this motion; which was not the case in Fost. Crown Law,

1, as that arose before a special court, acting under a special commission, for special purposes. Nor can there be a just reason to object to the trial's coming on, because of the place at which the court is held. On the motion for a special court, sufficient was disclosed to shew, that the indictments would be presented in Philadelphia; and it was a mere speculation afterwards to suppose that another place would be appointed for the trials; particularly as all the jurors and witnesses had been actually summoned.

BY THE COURT. The only argument of weight in support of the present motion, is that which relates to the period of furnishing the prisoners with the names of the witnesses; but it is, of itself, conclusive: for, unless an opportunity were afterwards given to investigate the characters, and trace the conduct of the witnesses, it would be nugatory and delusive to furnish the list of their names. The act directs notice to be given; this must be intended for the purpose alluded to, and, for the attainment of that purpose, time is, undoubtedly, necessary. It must, therefore, be considered as a rule in this case, and in all other cases of a similar nature, that a reasonable time shall be allowed, after a list of the names of the witnesses is furnished to the prisoners, for the purpose of bringing testimony from the counties in which those witnesses live. The trials of Stewart & Wright were, accordingly, postponed; and it was then agreed that they should not be brought on 'till the trial of the other prisoners, who were ready for trial, was concluded; but so much time was consumed in this previous business, that the judges declared they could not longer protract the sitting of the court, on account of other circuits, and, therefore directed the cases of Stewart & Wright to be continued generally 'till the next term. It appeared, however, that on the preceding day, Lewis had informed the attorney for the district, that he would proceed to trial in the case of Stewart, with the testimony already in his possession, though he expected other witnesses; and, on this ground, as the court was about to break up, he moved, that Stewart should be admitted to bail.

But, BY THE COURT, it was Stewart's own fault, not the fault of the prosecutor, that the trial was postponed. He has now the same witnesses, that he had at the time of the postponement; but the judges cannot, consistently with their other duties, enter on the trial. It is true, that we have established it as a principle, that no laches should be imputed to the prisoner, for taking time to Send into the counties where the witnesses for the prosecution reside, after he had received notice of their names; but that is not the case at present. Stewart has no claim upon the legal discretion of the court; and, indeed, the circumstances must be very strong, which will, at any time, induce us to admit a person to bail, who stands charged with high treason.

[1] [This was one of the trials arising out of the so-called "Whiskey Insurrection," occurring in western Pennsylvania in the year 1794. For a full account of the proceedings, see U. S. v. Insurgents, Case No. 15,443.]