

Case No. 16,403.

UNITED STATES v. STIEN.

{13 Blatchf. 127.}¹

Circuit Court, E. D. New York.

Sept. 20, 1875.

CRIMINAL LAW—FORFEITURE OF RECOGNIZANCE—FUGITIVE FROM JUSTICE.

A defendant in an indictment moved to set aside a forfeiture of a recognizance given by him for his appearance to answer the indictment, on the ground of irregularities as to the time and place of calling him to appear, and of entering the forfeiture. He had absconded to avoid a trial on the indictment, and was a fugitive from justice. *Held*, that the motion must, for that reason, be denied.

{Cited in *U. S. v. Evans*, 2 Fed. 150.}

Asa W. Tenney, U. S. Dist. Atty.

John J. Allen, for defendant.

BENEDICT, District Judge. This is a motion made in behalf of Christian A. Stien, to set aside a forfeiture of a recognizance given by him for his appearance to answer an indictment found against him. The application is based upon irregularities as to the time and place of calling the defendant to appear, and of entering the forfeiture. The application is opposed upon several grounds—among others, that the defendant has absconded and fled the country, for the purpose of avoiding trial for the offences with which he is charged in the indictment referred to, and is now a fugitive from justice. The fact that the defendant has so absconded, not being denied, furnishes a proper ground for the denial of this motion, made as it is on behalf of the defendant. The presence of the accused in court when any proceeding is being taken in his cause, made necessary by the law in many instances, is always desirable, and, under circumstances such as this case presents, a refusal to hear argument in absence of the defendant seems to be a proper course.

Nor should one under indictment be permitted to defy the authorities by flight, and, at the same time, through an attorney, to appeal to them to act in his behalf. See *In Genet*, 3 N. Y. Sup. Ct. [3 Thomp. & C.] 734; *Brinkley v. Brinkley*, 47 N. Y. 49.

The motion is, accordingly, denied, without passing upon any of the questions raised as to the regularity of the forfeiture in question.

¹ [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]