

Case No. 16,758. UNITED STATES v. WOODRUFF.
[4 McLean, 105.]¹

Circuit Court, D. Illinois.

June Term, 1846.

SELECTION OF JURORS—STATE PRACTICE—RULES OF COURT.

1. A jury being called, the counsel for the defendant objected, on the ground that the jury had not been selected as the act of congress requires.
2. That act requires, in the selection of jurors, that the state practice, as near as may be, shall be followed.
3. It was *held*, that the defendant had a right to claim the selection of jurors according to law, and on that ground his cause was continued.
4. And the court adopted a rule, that at a proper time before each term, names of suitable persons for jurors should be selected throughout the state, put into a box, and a sufficient number drawn out, and inserted in the venire as jurors.

[Followed in *U. S. v. Collins*, Case No. 14,837. Cited in *Brewer v. Jacobs*, 22 Fed. 234; *U. S. v. Richardson*, 28 Fed. 69.]

At law.

Mr. Gregg, U. S. Dist. Atty.

Mr. Butterfield, for defendant

McLEAN, Circuit Justice. Mr. Butterfield appeared for the defendant, and the cause being called, objected to a trial, on the ground that the jurors had not been summoned

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conformably to the act of congress of the 20th of July, 1840 [5 Stat 394]. That act required the jurors to be selected as jurors were selected under the state laws. By an early rule of this court, the "clerk is required to issue a venire facias, commanding the marshal to summon twenty-four persons to serve as traverse jurors." By the act of September 24, 1789, § 29 [1 Stat. 88], it was provided, "that jurors in all cases to serve in the courts of the United States, shall be designated by lot or otherwise in each state respectively, according to the mode of forming juries therein now practiced, so far as the laws of the same shall render such design practicable by the courts or marshals of the United States," etc. As that law applied only to states then organized, other laws have been passed as applicable to the states subsequently admitted. That was the object of the act of 1840. By the act of Illinois, of the 3d of March, 1845, for the selection of jurors, it is made the duty of the county commissioners to select the jurors. Now, this court can not call upon any officers of the state to perform this duty, but we are bound to conform as nearly as may be to the state practice. The venire under the above rules, leaves the selections of jurors to the marshal, as his convenience shall permit. This does not, therefore, conform to the state practice. The jurisdiction of this court extends throughout the state, consequently the jurors should be selected from the state at large, and their names should be inserted in the venire. The court will, therefore, adopt a rule requiring the clerk and marshal to select the jurors from the state at large, previous to each term, and to conform in doing so, as near to the state practice as may be practicable. As the defendant is entitled to a jury selected under the laws of congress, which, as far as may be, adopts the laws of the state, we think, for the reasons stated, he is entitled to a continuance of the cause.

¹ [Reported by Hon. John McLean, Circuit Justice.]