

Case No. 16,960.

VIRGINIA v. EAKIN.

{1 Cranch, C. C. 83.}<sup>1</sup>

Circuit Court, District of Columbia.

April Term, 1802.

CRIMINAL LAW—INFORMATIONS—DISCONTINUANCE.

An information at the suit of the commonwealth of Virginia may be discontinued before appearance of the defendant.

Information for retailing spirituous liquors. In September, 1799, the presentment was made in the court of hustings, and summons issued to show cause why an information should not be filed, returnable to December, 1799. In July, 1800, the defendant being called, failed to appear, and his default was recorded, and the court ordered an information to be filed. In September, 1800, the information was filed, and a summons served on the defendant to answer it. At January term, 1802, the causes depending in that court having been by law transferred to this court, the defendant being called, failed to appear, and a *capias* was ordered returnable to this term, upon which the defendant was taken and recognized to appear. No process appears to have issued, and no proceedings had after September, 1800, until January, 1802. It was urged, for the defendant, that there had been a discontinuance.

Mr. Mason, for the commonwealth. The United States are always in court. In Virginia no cause can be discontinued. Rev. Code, 90. A summons was served on the defendant to show cause why an information should not be filed. He was in court by virtue of that summons.

THE COURT decided that the case had been discontinued, notwithstanding the act of Virginia, p. 90, and ordered the *capias* to be quashed.

KILTY, Chief Judge, *contra*.

Several other cases were dismissed on the same ground.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]