

UNITED STATES *v.* THORNE.

Circuit Court, S. D. New York. February 9, 1883.

CRIMINAL PROCEDURE.

Where the accused was ready for trial and attended court during the term fixed for his trial, and pressed the district attorney to try his case, but the district attorney omitted to call up the case; without sufficient reason existing for such omission, a motion to discharge accused on his own recognizance was refused, he being on bail at the time.

H. E. Tremaine, for the motion.

W. P. Fiero, Asst. Dist. Atty, opposed.

BENEDICT, J. This is a motion by the accused to be discharged on his own recognizance, or that his trial do immediately proceed. The ground of the application is that the accused was ready to be tried at the February term, and attended court during the term, and pressed the district attorney to try his case, but the district attorney omitted to call up the case, although the trial might have been had, and no sufficient reason existed for omitting to call up the case. The affidavits show that the accused was in court, pressing for a trial of his case at the February term, and I am by no means satisfied with the reasons assigned by the district attorney for his omission to call up the case. So far as the business of the court is concerned there was abundant opportunity to try the case at the February term, and I think it ought to have been called up. I do not, however, think it advisable to discharge the accused upon his own recognizance at this term. He is on bail, and the bail given will stand until the next term in March. If, at the opening of that term, an early day be not fixed by the district attorney for the disposition of the case, the present motion may be renewed.

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