

UNITED STATES v. CLASSEN.

*Circuit Court, S. D. New York.*

July 5, 1890.

CRIMINAL LAW—NEW TRIAL—CONTINUANCE OF MOTION.

A motion for a new trial in a criminal case may properly be postponed to a later term on defendant's application, because of the absence of his principal counsel, where the defendant is in custody, and waives his right to apply to be released on bail.

At Law.

*Edward Mitchell*, U. S. Dist. Atty.

*Benj. B. Foster*, for defendant.

BENEDICT, J. In this case, application is made by the defendant to postpone the hearing of the motion in arrest of judgment, and for a new trial, until the October term, upon the ground that the counsel mainly responsible for the conduct of the defense at the trial is compelled to join his family in Europe, and will be unable to take part in the argument unless the same be postponed until the time of his return. The defendant is now imprisoned, and accompanies the application for a postponement with a waiver of any right to apply to be released from confinement on bail. The district attorney declines to consent to the postponement. It seems to me, however, that the desire of the accused to have the counsel mainly responsible for the conduct of his defense at the trial already had, take part in argument for a new trial, is reasonable; and inasmuch as the accused is now confined in prison, and under his waiver must remain in confinement during the delay applied for, I am unable to see that the ends of justice will suffer by granting the application. The motion for a new trial, and in arrest of judgment, is therefore set down to be argued on the First day of the October term.