

strate that the decision is right; for if the defendant be found guilty when his witnesses are absent, and counsel unprepared, the verdict will not satisfy the public mind of his guilt.

JUDGE CHASE. It is wholly improper to go back to the former motion. Gentlemen, you misapprehend the intention of the court in postponing the cause till today—you ought to confine yourselves to the present motion. Two reasons are assigned for postponing the trial: the first, that Mr. Giles is absent, and it is inferred that the court, by not ruling a trial before, admitted his evidence to be material. The court did not enter into the question whether it be material or not. It appeared that he was within a little distance of this place, and the cause was suspended till Monday, that Mr. Giles might be summoned before that day, to attend. On Monday, you asked for a postponement of the trial for a few hours, and it was stated that perhaps he might come in the course of the day. Instead of a few hours, you had choice of continuing it till today. Mr. Giles has been summoned, and does not attend. Regularly you ought to take out an attachment against him for not attending after having been served with the subpoena and apprised that his evidence was required by the traverser. There is no reason to believe he will be here during the term of the court: you do not expect him; if such excuses as these authorize a postponement of the trial, it must be evident that this cause will never be tried. It is not necessary to say whether Mr. Giles, if present, could be sworn or not; because the traverser is not entitled, on general principles, to a continuance. Another reason assigned is, that as the jury are to assess the fine, it is essential that the traverser should have the privilege of adducing testimony to mitigate it. This may be the practice in your own state courts. Your own court will be governed by your own laws, but it does not apply to the Federal courts. The jury are not to regulate the fine. It is a mistaken idea; they have nothing to do with it. But it is stated that the coun-