

DAVIES v. THE STATE.

CIRCUIT COURT: *Adjourned term, how ordered.*

An adjourning order to a distant day made by the court, is sufficient entry upon the record of an order for an adjourned session.

APPEAL from *Garland* Circuit Court.

Hon. J. M. SMITH, Circuit Judge.

R. G. Davies, pro se:

No order was made by the court to hold an adjourned term. *Gantt's Digest, sec. 1164.*

No correct copy of the *sci. fa.* was served.

EAKIN, J. Appellant was surety in a bail-bond in a criminal case. The defendant failed to appear, and on the eleventh day of November, 1879, the bond was declared forfeited. Summons was issued against the bail, who answered, and upon trial judgment was rendered against him for \$500. From this he appeals.

There are several matters alleged as grounds for a new

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trial, but we deem it unnecessary to notice any, except that insisted upon by appellant in his brief. It is that the court was not properly in session when the forfeiture was taken.

The transcript shows that at the August term, 1879, of the Garland Circuit Court, on the thirtieth day of August, the court adjourned until Monday, October 27, and from time to time, continued in session from day to day until the order of forfeiture was taken, and that meanwhile other courts in the same circuit intervened. It is contended that as no special order for an adjourned session was entered of record, the term really ended on the thirtieth day of August, and the adjourned session could not be held.

“Special adjourned sessions of any court may be held in continuation of the regular term, upon its being so ordered by the court, or judge in term time, and entered by the clerk on the record of the court.” *Gantt's Digest*, 1104.

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An adjourning order to a distant day, made by the *court*, is as effectual an entry on the record of an order for an adjourned session, as can be made. There is no new term of the court. It is simply a continuation of the present one.

If the order were made in term time by the judge at chambers, the question might then arise as to what the record should show.

We see no material error in the record. The court, in the progress of the trial, suspended it a day or two, for a witness. There was no jury, and the matter was one of discretion. Under the circumstances it was fairly exercised.

Affirmed.