

SMYTHE v. BANKS.

[4 Dall. 329.]¹

Circuit Court, D. Pennsylvania.

April, 1797.

WITNESS—PRIVILEGE FROM ARREST.

Capias. The defendant was a resident of Virginia, and had been subpoenaed as a witness in the case of Symes's Lessee v. Irwine [Case No. 13,714], which was marked for trial at the present term, but was continued on the 20th of April. He was arrested on the 26th of April; and the following day, Levy moved, that he should be discharged from the arrest and process, on account of the privilege of a witness, eundo, morando, et redeundo. 4 Com. Dig. 475; 2 Strange, 1094, 986; Yin. Abr. tit. "Privilege."

BY THE COURT. The witness is, undoubtedly, privileged from arrest, for a reasonable time, to prepare for his departure, and return to his home, as well as during his actual attendance upon the court. But the privilege does not extend throughout the term, at which the cause is marked for trial; nor will it protect him while the witness is engaged in transacting his general private business, after he is discharged from the obligation of the subpoena.

¹ [Reported by A. J. Dallas, Esq.]