

Case No. 14,861.
[4 Dall. 341.]

UNITED STATES v. COOPER.

Circuit Court, D. Pennsylvania.

1800.

WITNESSES—PRIVILEGE—MEMBERS OF CONGRESS.

[Members of congress are not exempt from compulsory process to require their attendance as witnesses in behalf of one charged with crime.]

The defendant, being indicted for a libel on the president [see Case No. 14,865] applied to the court, for a letter to be addressed by them to several members of congress (congress being in session), requesting their attendance as witnesses on his behalf. In support of the application a variety of similar cases arising under the government of Pennsylvania were referred to.

Before CHASE, Circuit Justice, and PETERS, District Judge.

CHASE, Circuit Justice. The constitution gives to every man, charged with an offence, the benefit of compulsory process, to secure the attendance of his witnesses. I do not know of any privilege to exempt members of congress from the service, or the obligations, of a subpoena, in such cases. I will not sign any letter of the kind proposed. If, upon service of a subpoena, the members of congress do not attend, a different question may arise; and it will then be time enough to decide, whether an attachment ought, or ought not, to issue. It is not a necessary consequence of non-attendance, after the service of a subpoena, that an attachment shall issue. A satisfactory reason may appear to the court to justify or excuse it.

PETERS, District Judge. I know the practice in Pennsylvania to be as it has been stated; for I have received such letters, from the supreme court, while I was speaker of the house of representatives, requesting that members might be permitted to attend as witnesses. In the present case, I should have no objection to acquiesce in the defendant's application, with the concurrence of the presiding judge. Motion refused.