

Maxfield v. Levy.

generally, for the defendants; and that in *Calbraith & Co. v. Searight*, the verdict would have been for the plaintiffs, but with only six pence damages.

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APRIL TERM, 1797.

Present—IREDELL, Justice, and PETERS, District Judge.

SMYTHE v. BANKS.

Privilege of witness.

A witness is 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.

CAPIAS. The defendant was a resident of Virginia, and had been subpoenaed as a witness in the case of *Sims's Lessee v. Irvine*, 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 Str. 1094, 986; Vin. Abr., tit. Priv.

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*.

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*MAXFIELD'S Lessee v. LEVY. (a)

THE SAME v. THE SAME.

Jurisdiction.

A colorable and collusive conveyance to the lessor of the plaintiff in ejectment, for the purpose of bringing the suit in a federal court, will not give it jurisdiction; and the court will, on motion, dismiss the suit. (b)

This jurisdiction of a federal court is not *prima facie* general, but special.

THE opinion of the Court was delivered in this case, in the following terms:

IREDELL, Justice.—A motion was made for a rule to show cause why these ejectments should not be dismissed, upon an allegation that it appeared, by an answer to a bill in equity, for a discovery, in this court,

(a) An outline of this cause was given in 2 Dall. 381; but I comply with the subsequent request of the presiding judge (whose death was greatly lamented by the bench and the bar), in publishing the opinion of the court at large.

(b) A deed, executed for the purpose of giving jurisdiction to a federal court, will not avail in that respect. *Hurst's Lessee v. McNeil*, 1 W. C. C. 70.