

Pennington Vs. Scott

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Court : US Supreme Court

Decided On : 1786

Appeal No. : 2 U.S. 94

Appellant : Pennington

Respondent : Scott

Judgement :

PENNINGTON v. SCOTT - 2 U.S. 94 (1786)

U.S. Supreme Court PENNINGTON v. SCOTT, 2 U.S. 94 (1786)

2 U.S. 94 (Dall.)

Pennington

v.

Scott*

Supreme Court of Pennsylvania

May Session, 1786

This cause being marked for trial, the defendant moved to postpone it, upon an affidavit, stating, 'that he took out a subpoena three weeks ago, as soon as the

time for holding the Court was known, and immediately employed one Rabb to serve it on the witness, who lived at a distance; that he had, likewise, sent, by the messenger, a letter to his Brother, requesting him to see that the subpoena was served, and the witness expedited, in case of any accident to Rabb; that the witness was material, without whose testimony, the defendant could not safely go to trial; that Rabb had not returned, nor had the defendant heard any thing of him since his departure; and that he thinks it probable that the attendance of the witness might be procured at the next Court.'

Yates insisted, that the defendant must produce a subpoena, and prove the service of it, in order to bring his case within the general rule.

But, by the Court: It appears that as soon as the defendant had notice of the time of trial, he took out a subpoena for

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a witness at a great distance in Washington County; but that neither the witness, nor the person employed to serve the subpoena, attends. This would not, in strictness, be a sufficient ground for putting off the cause: But it must be remembered, that the defendant, once before, at a considerable expence, brought the fame witness to Court; and when the cause was continued, without any fault imputable to him, he took the witness's deposition. Having thus, on a former, as well as on the present, occasion, pursued every prepatory step, which the law requires, to procure the attendance of the witness, we think it would be unreasonable to take advantage of any accident, that may have happened to the messenger. Footnotes

[[Footnote *](#)] Ruled at Lancaster Nisi Prius.