

**Case No. 863.** BANK OF COLUMBIA V. BUNNEL ET AL.  
[2 Cranch, C. C. 306.]<sup>1</sup>

Circuit Court, District of Columbia.

April Term, 1822.

WRITS—ORDER FOR EXCEUTION WITHOUT JUDGMENTS—NOTARY'S AND  
ATTORNEY'S FEES—CHARTER OF BANK OF COLUMBIA.

1. An execution issued by order of the president of the Bank of Columbia, without judgment,

ought not to include the notary's fee for a protest, but if the bank releases the fee, the court will not quash the execution.

2. Such an execution may include five dollars for an attorney's fee, and the interest which has accrued upon the debt up to the time of ordering the execution.
- {3. An execution issued by order of the president of the Bank of Columbia pursuant to Laws Md. 1793, c. 30, § 14, is the commencement of the action.}

{Cited in Bank of Columbia v. Sweeny, Case No. 881.}

{See Bank of Columbia v. Baker, Case No. 862; Same v. Moore, Id. 875.}

At law. Motion by Mr. Redln, for the defendant, to quash three writs of fieri facias against the defendants [Bunnell and Robertson] as endorsers of Edward Ford's note issued by order of the president of the Bank of Columbia under the 14th section of its charter of 1793, c. 30, which authorizes him, upon nonpayment of a note made expressly negotiable at that bank, to order execution, "on which the debt and costs may be levied by selling the property of the defendant for the sum mentioned in the said note," "provided" the president shall "make oath" ascertaining whether the whole or what part of the debt due to the bank "on the said note," "is due." [See note at end of case.]

Mr. Redin made three objections to these executions:

1st. That each execution included five dollars for an attorney's fee;

2nd. That they included not only the debt, but the interest up to the time of ordering the executions; and

3rd. That each execution included \$1.75 for cost of protest.

It has been decided by this court, and by the supreme court, that it is not necessary to protest a promissory note; and the notary's fee for protesting is no part of the legal taxable costs. No attorney's fee can be taxed upon an execution.

Mr. Key, contra. Although this is an execution, yet it is the commencement of a suit. Both parties may appear at the return and litigate the case. The bank could only appear by attorney.

THE COURT (nem. con.) decided that the fee for protest ought not to be included; and (Thruston, Circuit Judge, contra) that the attorney's fee might be included. But, upon the bank releasing the cost of protest, THIS COURT (nem. con.) refused to quash the executions.

{NOTE. For a record of the levying of the writs of fieri facias on lands belonging to defendants Bunnell and Robertson in the subsequent course of litigation, see Smith v. Bank of Columbia and Bank of U. S., Case 13,011.)

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]