

Case No. 875. BANK OF COLUMBIA v. MOORE.

{3 Cranch, C. C. 292.}¹

Circuit Court, District of Columbia.

May Term, 1828.

WRITS—EXECUTION WITHOUT JUDGEMENT BY BANK OF COLUMBIA—LIMITED
OF" ACTION—RUNNING OF STATUTE.

The issuing of the execution by the Bank of Columbia, under the act of Maryland of 1793, (chapter 30,) is the commencement of the action in regard to the statute of limitations.

{See [Bank of Columbia v. Baker, Case No. 862.](#)}

At law. This was a fieri facias issued [against James Moore] by order of the president of the Bank of Columbia under its charter of 1793, (chapter 30.) without a judgment. The defendant pleaded non assumpsit within three years next before the commencement of this suit.

Mr. Key, for the plaintiff, contended that the demand of payment, which was a necessary preliminary to the issuing of the execution, was the commencement of the suit. The demand was made five days before the expiration of the three years, but the bank could not issue the execution until ten days after the demand, which was five days after the expiration of the three years.

THE COURT (nem. con.) said that the issuing of the execution was the commencement of the suit

Verdict for the defendant.

Motion for new trial, for misdirection of the jury by the court upon this point, overruled, but a new trial was granted upon affidavit of newly-discovered evidence. {See [Bank of Columbia v. Moore, Case No. 876.](#)}

¹ [Reported by Hon. William Cranch, Chief, Judge.]