

Case No. 1,838.

BRENT v. COYLE.

[2 Cranch, C. C. 348.]¹

Circuit Court, District of Columbia.

Oct. Term, 1822.

EXECUTION—WAIVER OF STAY.

A motion for a new trial, or in arrest of judgment, is a waiver of the benefit of a stay of execution agreed upon by the parties.

Mr. Ashton, for the defendant, moved to quash an execution which had been issued before the expiration of the stay agreed upon by the parties.

The verdict was rendered on the 11th of April, 1822. The defendant agreed that judgment should be entered upon the verdict, and the plaintiff agreed to stay execution two months; and that if, during the two months, any case should be carried up to the supreme court resting on the same point, the stay should be enlarged until the decision of such case by the supreme court. The defendant, however, within the two months, moved the court for a new trial and in arrest of judgment, which motions were overruled by the court on the 10th of June, 1822. Within the two months, the case of *Bank of Columbia v. Renner*, involving the same point, but not resting altogether on the same point, was taken up to the supreme court. [*Renner v. Bank of Columbia*, 9 Wheat. (22 U. S.) 581.] The execution was issued on the 3d of September, 1822.

THE COURT (THRUSTON, Circuit Judge, absent) overruled the motion, being of opinion that the defendant, by moving for a new trial and in arrest of judgment, must be considered as having waived the benefit of the agreement to stay the execution.

[NOTE. For judgment upon the merits herein, see Case No. 1,837.]

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