

Case No. 7,698.

EX PARTE KENNEDY ET AL.

[4 Cranch, C. C. 462.]¹

Circuit Court, District of Columbia.

March Term, 1834.

HABEAS CORPUS—EXECUTION—JUDGMENT—IRREGULARITY.

An execution against two only, upon a judgment against three, without a suggestion of the death of one, is void, on its face.

The return upon the habeas corpora, was, that the prisoners [Kennedy and Devlin] were-held upon writs of ca. sa. which stated the judgment to be against the prisoners and one Hugh Tierney, and required the officer to take the two prisoners only, without suggesting the death of Hugh Tierney.

Mr. Hoban and Mr. Coxe, for prisoners.

Z. C. Lee and Mr. Dunlop, contra.

THE COURT (THRUSTON, Circuit Judge, absent) discharged the prisoners, being of opinion that the execution against two only, upon a judgment against three, without a suggestion of the death of one, was void on its face. See Tidd, Prac. 1029; Bac. Abr. tit. "Execution," G, 1; 2 Evans' Harris, 115, 303.

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