

MUNCASTER v. MASON ET AL.

{2 Cranch, C. C. 521.}¹

Circuit Court, District of Columbia. Dec. Term, 1824.

EXECUTION—COUNTERMANDED AT REQUEST OF
DEFENDANT—NEW EXECUTION.

If the plaintiff has countermanded his execution at the request of the defendant, to give him time, or if he has been delayed by injunction obtained by the defendant, he may take out a new execution after the expiration of the year and day.

Rule to show cause why four executions, in favor of John Muncaster against J. Mason and W. Jones, should not be quashed, because issued more than a year and day after judgment.

E. J. Lee, for plaintiff, showed for cause, as to two of the executions, that the plaintiff had been delayed by injunction obtained by the defendant Mason, and finally dissolved under a mandate from the supreme court of the United States, and, as to the two other executions, that the plaintiff had issued his executions in due time, but had countermanded them at the particular solicitation of the defendant. See *Mitchell v. Cue*, 2 Burrows, 660; *Phillipps v. Lowndes* [Case No. 11,103], in this court, Dec. term, 1805; *Craig v. Johnson*, Hardin, 529.

Mr. Key, contra, cited *Winter v. Lightbound*, Strange, 301; *Booth v. Booth*, 1 Salk. 322, 6 Mod. 288; *Salmon v. Yates*, 1 Har. & J. 488.

THE COURT (MORSELL, Circuit Judge, contra), upon the authority of the cases cited by Mr. Lee, refused to quash the executions, upon the ground that the first executions had been countermanded at the request of the defendant and by way of indulgence. See, also, the case of *Noland v. Seekright*, 6 Munf. 185, 187.

[See Case No. 9,248.]

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

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