

NICHOLLS V. FEARSON ET AL.

{2 Cranch, C. C. 526.}¹

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

PRACTICE—SERVICE AS TO ONE DEFENDANT
ONLY—ALIAS CAPIAS.

If the writ be against two defendants, and one only be taken, the cause is discontinued, unless an alias capias be issued against the defendant not taken, and continued by pluries, &c, until the trial term.

On the 21st of March, 1823, the plaintiff [William S. Nicholls] issued a capias ad respondendum against Samuel Fearson and Joseph Fearson, returnable on the 2d Monday of April, 1823, and which was returned "Cepi Joseph; non est Samuel." No alias capias was issued against Samuel. Joseph gave special bail, and pleaded the general issue; and now, at the trial term.

R. S. Coxe, for defendant, contended that the cause was discontinued by not continuing process against Samuel, the joint defendant named in the first capias.

J. Dunlop and Mr. Key, contra. The practice has not been uniform to issue a pluries. It has been generally done, as a matter of choice, but not of necessity. Perhaps an alias may be necessary; but if a pluries be not necessary, why should an alias?

THE COURT (nem. con.) decided that process of capias by alias, pluries, &c, must be continued against the absent defendant, until the trial term; and that, for the want of it in this case, the cause has been discontinued, and should be struck off the docket.

CRANCH, Chief Judge, and MORSELL, Circuit Judge, stated that they always understood the practice to be so in Maryland.

But Mr. Key having stated, that the precedents in Harris's Entries mention one non est only, and not being able to refer to the book now.

THE COURT said they would hear a motion to reinstate the cause, if Mr. Key should think he could support the motion.

No such motion was made, and the plaintiff brought a new suit, in which both defendants were taken. See *McCandless v. McCord* [Case No. 8,678], at March term, 1835.

{See Case No. 10,227.}

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

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