

PHILLIPS ET AL. V. LOWNDES.

[1 Cranch, C. C. 283.]¹

Circuit Court, District of Columbia. Dec. Term, 1805.

EXECUTION—COUNTERMANDED AT REQUEST OF
DEFENDANT—NEW EXECUTION.

When an execution is countermanded at the request of the defendant and for his accommodation, the plaintiff may have a new execution, after the year and day, without scire facias.

The plaintiffs had obtained judgment against the defendant at July term, 1804. A ca. sa. was issued, November 8, 1804, which was countermanded by the plaintiffs, and a fieri facias issued on the 21st November, 1804, which was also countermanded. On the 29th of December, 1805, Mr. Swann, for the plaintiffs, applied to the clerk for a new execution, which the clerk declined to issue, as the year and day had elapsed since the issuing of the last.

Mr. Swann now moved the court to instruct the clerk to issue a new execution, and in support of the motion filed an affidavit that the delay was at the defendant's request, and for his accommodation, and cited the case of *Michell v. Cue*, 2 Burrows, 660.

Upon the authority of which case, THE COURT permitted the plaintiff to take out his execution, leaving it open to a motion to quash, at its return. THE-COURT also examined the following authorities: 2 Show. 235; Carth. 283; Comb. 232; 2 Just. Inst. 471; Co. Litt. 290b; 2 Leon. 77, 78, 87; 3 Leon. 259; 4 Leon. 44; 1 Sid. 59; 1 Keb. 159; 6 Mod. 288.

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

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