

SMITH v. MIDDLETON.

{2 Cranch, C. C. 233.}¹

Circuit Court, District of Columbia. April Term, 1821.

JUDGMENT—SUPERSEDEAS—SURETIES.

A supersedeas judgment is absolutely void, unless acknowledged by the original defendant and two sureties.

{Cited in *Chesapeake & O. Canal Co. v. Barcroft*, Case No. 2,644.}

This was a motion to quash a ca. sa. issued against Middleton alone, upon a supersedeas judgment against Alexander McCormick, and the defendant Middleton. The judgment was confessed by McCormick with only one surety, whereas the act of Maryland of 1791 (chapter 67) requires that the judgment should be confessed by the principal and two other persons.

Mr. Key, for defendant, contended that the supersedeas judgment was a mere nullity. It was a special jurisdiction given to a magistrate out of court, and must be strictly conformable to the power given by the statute, or it is absolutely void.

Mr. Taney, contra. The statute requiring two sureties was for the benefit of the plaintiff, and he alone has a right to complain, if only one be taken. The principal debtor has had the full benefit of the supersedeas, and the plaintiff had waived the error.

THE COURT (nem. con.) stopped Mr. Key in reply, and said that the supersedeas judgment was absolutely void.

Ca. sa. quashed.

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

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