

# CASES

ARGUED AND DETERMINED

IN THE

SUPERIOR COURT OF JUDICATURE.

FOR THE

COUNTY OF COOS, MAY TERM,

A. D. 1830.

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## JOSHUA BLAISDELL *versus* JOHN L. SHEAFE.

An execution remains in force on the return day, so long as the court, to which it is returnable, continues in session that day, and no longer.

When an execution is delivered to an officer, after the court has adjourned, on the return day, his return of *non est inventus* will not be sufficient to charge an endorser of a writ.

SCIRE *facias* against the defendant, as endorser of a writ sued out by Benjamin F. Spencer, of Colebrook, in this county, against Blaisdell, the plaintiff, in this case. The cause was submitted to the decision of the court upon the following facts.

Spencer sued out a writ against Blaisdell, which was endorsed by Sheafe, as alleged in the *scire facias*. Judgment was rendered in that suit, by this court, in favor of Blaisdell, against Spencer, at November term, in this county, 1827, for \$10,58, costs of suit. Execution issued on that judgment, and on the 4th November, 1828, being the return day of the same execution, was delivered to a deputy sheriff, who made a return of *non est inventus*.

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At the time when the said execution was delivered to the deputy sheriff, on the said return day, this court had adjourned.

And it was agreed that if the said return could, under the circumstances, be considered as legal evidence of avoidance, judgment should be rendered for the plaintiff, otherwise, for the defendant.

*Pearson and Bell*, for the plaintiff.

*By the court.* It is settled, that an execution remains in force on the return day, so long as the court to which it is returnable, continues in session that day, and no longer, 1 Salk. 321, *Perkins v. Woolaston*; 6 Mod. 130, S. C.; 12 Mass. Rep. 434, *Stevens v. Bigelow*; 1 N. H. Rep. 359; Cro. Eliz. 761; 6 Mass. Rep. 20, *Prescott v. Wright*.

If the execution be delivered to an officer on the return day, at any time before the court adjourns to a future day, a return of *non est inventus* by such officer, will be sufficient to charge the endorser of a writ. But if the execution be not delivered to an officer, until after such an adjournment on the return day, the execution must be considered as no longer in force when so delivered, and the return will be irregular.

In this case, the execution was not delivered to the officer in season, and there must be

*Judgment for the defendant.*