

BLACKWELL *v.* PATTEN and others.*Writ of error.—Teste.*

A writ of error, issued in September, may bear *teste* of the February term preceding, and may be returnable to the next February term, notwithstanding the intervention of the August term between the *teste* and return of the writ.

March 13th, 1812. *Jones*, for the defendants in error, moved this Court to dismiss the writ of error, because it bore *teste* of February term 1810, was issued in September 1810, and was returnable to February term 1811, whereas, it ought to have been tested of August term 1810. The plaintiff in error, aware of this objection, has sued out another writ of error, which stands on a subsequent part of the docket.

\*278] \**Campbell*, on the same side.—August term is as much a term for *teste* and return of writs, as February term. Suppose, the writ bore *teste* ten years ago: it might as well be made returnable to February term 1811, as this writ which bore *teste* of February term 1810. If tested of February term 1810, it ought to have been returnable to August term 1810, and not to February term 1811. The appearance of the defendants in error only cures the want of a citation, not a fault in the writ of error itself.

March 14th, 1812. All the judges being present, THE COURT refused to quash or dismiss the writ of error, on account of the irregularity of its *teste*.

WALLEN *v.* WILLIAMS. (a)*Supersedeas.*

The court will not quash an execution, issued by the court below, to enforce its decree, pending the writ of error, if the writ of error be not a *supersedeas* to the decree.

ERROR to the Circuit Court of the district of Tennessee, to reverse a decree in chancery. The court below had issued a writ of *habere facias possessionem* to enforce its decree. The writ of error was too late to be a *supersedeas* to the decree.

*Jones*, for the plaintiff in error, now moved to quash the writ of *habere facias* as irregular, and contended, that the court below, sitting as a court of chancery, under the laws of Tennessee, could only enforce by execution decrees for the payment of money; and cited Tennessee Laws (Ed. 1807), p. 158, § 2.

*P. B. Key*, contra.—This court has no jurisdiction to quash an execution issued from the court below, and executed. But if this court had the power to do it, it would not, in its discretion, quash a process which has merely carried into effect the decree of the court below. If the decree be reversed \*279] upon the merits, the execution \*will be of no avail; but the court will not anticipate the merits, upon such a motion.

MARSHALL, Ch. J.—The writ of error is to the original decree, which did not award this writ of *habere facias*. It was awarded by a subsequent order of the court, to which no writ of error issued.

(a) March 13th, 1812. Present, all the judges.