

Case No. 3,147.

CONWAY v. SHERRON.

[2 Cranch, C. C. 80.]<sup>1</sup>

Circuit Court, District of Columbia.

Nov. Term, 1813.

PART PERFORMANCE OF LAND CONTRACT.

The taking possession, and cultivating of the land by the vendee, takes the sale out of the statute of frauds.

Bill in equity by the executors of the vendor for a specific execution of a sale of land at auction; averring part performance. Plea, statute of frauds.

E. J. Lee, for plaintiffs, contended—

1st. That the statute does not apply to goods sold at auction; and that there is no reason for a difference between lands and goods in that respect. It is not necessary that the auctioneer's authority should be in writing. 1 Sugd. Vend. 57; *Simon v. Motivos*, 3 Burrows, 1921, 1 W. BL 599; *Payne v. Cave*, 3 Term R. 148; *Coles v. Trecothick*, 9 Ves. 234, 249; *Pow. Cont.* 272; *Waller v. Hendon*, 5 Vin. Abr. 524. The auctioneer is a public officer, like a sheriff or a master in chancery, &c. *Law Va. Dec.* 22,1796; *Duval v. Bibb*, 3 Call, 362.

2d. That the agreement was executed in part by the plaintiffs' suffering the defendant to take possession and enjoin the rents and profits, &c., which takes the case out of the statute. *Bell v. Andrews*, 4 Dall. [4 U. S.] 152; 1 Sugd. Vend. 72; 1 Vern. 363; 1 Ves. 220, 297; 4 Ves. 720; and *Argenbright v. Campbell*, 3 Hen. & M. 161.

THE COURT (FITZHUGH, Circuit Judge, not sitting) overruled the plea, on the ground of part execution of the agreement; and at November term, 1814, upon final hearing, decree a specific performance.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]