

Case No. 6,938.

HURST v. RODNEY.

[2 Wash. C. C. 49.]<sup>1</sup>

Circuit Court, D. Pennsylvania.

April Term, 1807.

EXECUTION AGAINST REAL ESTATE—NOTICE OF SALE.

Quere, whether under the act of the assembly of Pennsylvania of 1705, relative to the sale of lands taken in execution, personal notice of the time and place of the sale should not be given by the sheriff.

This was a rule to show cause why an execution issued against the defendant by the plaintiff [upon a judgment upon a verdict obtained in Case No. 6,937], and levied on the defendant's land, which had been sold; should not be set aside. The ground of the motion was, that the defendant had not received personal notice of the time and place of sale; and it was founded on an act of the assembly of Pennsylvania, passed in 1705, c. 153, § 4; which directs, that before any sale of land taken in execution shall be made, the officer shall cause so many writings to be made as the debtor shall reasonably require, or so many without such request, as may be sufficient to give notice of such sales, and of the day and hour when, and place where the same shall be, and what lands are to be sold, which notice shall be given to the defendant; and the said papers shall be fixed up by the officer in the most public places of the county, ten days before the sale. The plaintiff showed cause, that the time and place of sale had been duly advertised in the public papers; and it was agreed, by the bar, that this had always been the practice, and that personal notice had been seldom given, and it was not deemed necessary.

THE COURT observed that the words of the law were very strong indeed, and seemed to require personal notice; but that if evidence of notice could be brought home to the defendant in any way, as that he had seen the paper in which it was advertised, or that he took that paper, it might be sufficient; or even an acquiescence under the sale, if known to the defendant, might do. But as the uniform practice was stated to be in conformity with the course pursued in this case, it might be an important consideration, whether it ought now to be disturbed.

Before THE COURT gave any final opinion, the parties consented to setting aside the sale, both being dissatisfied with it. The purchaser of the property having also agreed to it.

<sup>1</sup> [Originally published from the MSS. of Hon. Bushrod Washington. Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]