WARFIELD v. WIRT.

Case No. 17,174.
{2 Cranch, C. C. 102.}[1]

Circuit Court, District of Columbia. June Term, 1814.

EXECUTION—MOTION TO QUASH.

The Court will not, upon motion, quash the return of a fi. fa. levied upon an equity of redemption.

Mr. Wallach, in support of the motion, cited the following authorities: Statute De Mercatoribus, 13 Eliz. 1, St. 3; The Statute Staple, 27 Eliz. c. 3; 23 Hen. VIII. c. 6; 5 Geo. II. c. 7; 2 Cruise, 106; Keech v. Hall, 1 Doug. 21; Pow. Mortg. 227, 232; Birch v. Wright, 1 Term R. 378; Moss v. Gallimore, Doug. 270; Bac. Abr. tit "Execution." Com. Dig. tit. "Execution." Scott v. Scholey, 8 East, 467; Cadogan v. Kennett, Cowp. 432; Hartwell v. Chitters, Amb. 308; Lyster v. Dolland, 1 Ves. Jr. 431; Burden v. Kennedy, 3 Atk. 739; Burgess v. Wheate, 1 W. Bl. 135; Turner v. Fendall, 1 Cranch {5 U. S.} 115; Plunket v. Penson, 2 Atk. 294; Esp. N. P. 447; Laws Md. 1794, c. 60, § 10, which provides the mode of getting at equitable interests, by application to the chancellors, and the recent act of Maryland

land to subject equitable interests to execution.

F. S. Key, contra, admitted the old doctrine in England to be as contended for by the defendant. But it has been decided in Maryland that no release is necessary by a mortgagee to a mortgagor to enable the latter to maintain ejectment. The statute 5 Geo. II. c. 7, ought to be construed to make equitable interests liable upon fieri facias. An equitable title to land is a real estate. Estate means right to land, whether legal or equitable. The act of 1794, c. 60, § 10, applies only to cases of equitable title by contract, &c., where the creditors are without remedy either at law or in equity, where the vendee has not paid the money, and the creditor has no right to step in and pay it for him, and avail himself of the benefit of the contract.

Mr. Key also mentioned the case of Campbell v. Morris {3 Har. & McH. 535}, in the court of appeals in Maryland, in which an attachment of an equity of redemption was supported by that court, against the opinion of the general court; but he admitted that some of the judges of the court who decided that case had certified that although that point seems to be decided in that case, yet they did not mean to decide it.

Mr. Law, in reply, cited Tidd, Prac. 919.

THE COURT (nem. con.) refused to quash the return, because the point did not appear upon the return; and they also doubted their jurisdiction to decide the question upon such a motion, or to quash a return upon any such ground.

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