

PLANT *v.* ANDERSON.*

(Circuit Court, N. D. Alabama. 1883.)

1. EXECUTION—SHERIFF.

An execution delivered to the sheriff of one county, and by him acted under, is invalid in the hands of the sheriff of any other county. It is the imperative duty of the first sheriff to return it into court, and it ceases to have force or effect.

2. SHERIFF'S DEED.

A sheriff's deed cannot be impeached collaterally.

PARDEE, J. In this case the jury was waived and the cause was tried by the court. The plaintiff claims under a sheriff's deed reciting two judgments, two executions, a levy, and a sale to plaintiff's vendor, and a conveyance from the grantee in the sheriff's deed to plaintiff. The only question raised is as to the life and validity at the time of the sale of one of the executions, by reason of its first having been delivered to the sheriff of Franklin county, who represents he levied on property in Colbert county, and then the execution was not returned to the court, but was handed over to the sheriff of Colbert county, who proceeded to sell the property. That the sheriff of Colbert county made another levy before selling is recited in his deed, but not returned on the execution. The authorities cited in 7 and 9 Ala. go far towards holding that an execution delivered to the sheriff of one county and by him acted under, is invalid in the hands of the sheriff of any other county.

It is the imperative duty of the first sheriff to return it into court, and it ceases to have force and effect. On the other hand, it is clear that a sheriff's deed cannot be impeached collaterally. None of these matters do I find it necessary to pass upon.

The other judgment, execution, levy, and sale appear to be unimpeached, and are sufficient to make out plaintiff's title, which is anterior to, and better than, defendant's title.

The suit was commenced February 12, 1879; the rents due, therefore, commence from twelfth February, 1878. The evidence shows the rents to be worth from \$7.50 to \$8 per month, or \$90 to \$96 per year.

Let a judgment be entered for the plaintiff for the property, and for rents at \$90 per year from February 12, 1878.

*Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

AMERICAN IRON CO. v. ANGLO-AMERICAN ROOFING CO.

(Circuit Court, S. D. New York. May 25, 1883.)

PATENTS FOR INVENTIONS—WANT OF NOVELTY.

There is no patentable novelty in the subject-matter of a patent for a metallic roofing or covering made of a series of corrugated shingles, to be secured to the roof by nails, as are ordinary wooden shingles, one shingle overlapping another, so as to cover the nail holes in the lower shingle.

WALLACE, J. The claim of complainant's patent, alleged to be infringed by defendant, is for "a metallic roofing or covering, made of a series of corrugated shingles." The metal shingles are secured to the roof by nails, as are ordinary wooden shingles, one shingle overlapping another, so as to cover the nail holes in the lower shingles.

There is no patentable novelty in the subject-matter of the claim. Metallic roofing laid in small sheets, the edges of which were lapped over each other by various devices, was old. Corrugated metal roofing was old. Corrugated metallic roofing laid in sheets, a section of one sheet overlapping part of another sheet, is described in the patent granted to Charles C. Scarf, June 10, 1869; and the gist of his invention was in employing a felt lining for the corrugated metal plates, in order to make the joints or seams tight.

This being the prior state of the art, it was open to the patentee to improve the mode of fastening the sheets or plates of corrugated metal. If he had employed new devices, or old ones that were not obviously applicable, but were useful, his improvement might have been invention. What he did, however, was merely to adopt for the fastening and laying of his metallic shingles the means which had always been employed for laying and fastening wooden shingles. Such an application of old instrumentalities to a new but cognate use, did not involve original thought or inventive skill.

The bill is dismissed.