

BROWN V. DONEGHEY.

1. EXEMPTIONS: *Notice of filing schedule when waived by creditor.*

When a justice of the peace refuses to issue a supersedeas to restrain the sale of exempted property, on account of the failure of the debtor to give the creditor the five days' notice of filing his schedule, and the debtor appeals to the circuit court and the creditor appears there and resists the right of exemption he thereby waives the required notice.

APPEAL from *Faulkner* Circuit Court.
Hon. G. W. DENISON, Special Judge.

E. A. Bolton for appellant.

Five days' notice was not given as required. *Sec. 3006 Mansf. Digest.* The statute must be complied with. *41 Ark., 249.*

The appellee *pro se*.

The law as to notice is simply *directory*, not mandatory. Any notice to the creditor which protects him from fraud, surprise or imposition satisfies the spirit of the law. *1 Burr., 447; Potter's D. W. on Stat., 224; Thompson on Home & Ex., sec. 652-3, 833.*

46 Ark.—32

COCKRILL, C. J. This case is ruled by the case of *Garrett Bros. v. Wade, ante*.

The appellee's property was held by a constable under execution. He applied to the justice of the peace, who issued the writ, to file his schedule of exempted property and issue a supersedeas to restrain the sale. The notice required by the statute had not been served on the plaintiff in execution five days before the schedule was offered, and the justice refused to issue the supersedeas for that reason. The defendant thereupon filed an affidavit and bond for appeal to the circuit court to prevent the sacrifice of his exemptions. *Winter v. Simpson, 42 Ark., 411*. The creditor followed the case and resisted the right of exemption in the circuit court, where the matter was heard *de novo*, but the court awarded the debtor his exemptions, and the creditor appealed to this court. His only contention is that he had no legal notice of the debtor's intention to claim his exemptions. As we have before decided, his voluntary appearance and resistance of the right of exemption was a waiver of notice.

Affirmed.
