

STATE BANK *vs.* MARSH.

Before a court can pass upon and determine the rights of an individual, he must have either actual or constructive notice of the proceeding.

*Writ of Error to the Circuit Court of Independence County.*

THE facts sufficiently appear in the opinion of the court.

LINCOLN, for the Bank.

BYERS & PATTERSON, and PIKE & BALDWIN, contra.

OLDHAM, J. This was a proceeding by petition to set aside the sheriff's return upon, and a sale of property under an execution issued against the bank upon a judgment in favor of Marsh. No notice of the intended application appears to have been given either to the plaintiff, sheriff or purchaser, nor does the record show an appearance by either of them. It has frequently been decided by

this court, that notice either actual or constructive must be served upon a party before a court is authorized to determine his rights, or by judicial sentence divest him of them. In this case the circuit court did not acquire such jurisdiction of the persons of the parties claiming right under the sheriff's sale so as to divest them of those rights by setting aside the sheriff's return and the sale of the property. The court, by overruling the motion, did not take jurisdiction or pronounce a final judgment which may be reviewed on error by this court: the writ of error is therefore dismissed.

