

## BENTLY vs. CUMMINS, AS ADM'R.

The Circuit Court cannot set aside a sale made under an execution, on the motion of the defendant therein, without notice to the purchasers.

*Writ of Error to Pulaski Circuit Court.*

In January, 1846, Ebenezer Cummins, as administrator of William Cummins, deceased, filed a motion, in the Pulaski Circuit Court, to quash an execution, and set aside the return thereon, and the sale made by virtue thereof, which had issued from said court to the sheriff of Phillips county, at the suit of Bently against said E. Cummins as such administrator, and under which slaves had been levied on and sold to Swain and Maddox. Bently appeared, and demurred to the motion, the court overruled the demurrer and quashed the execution, &c. No notice was served upon the sheriff of Phillips county (Bostwick) or the purchasers under the execution.

Bently brought error.

RINGO & TRAPNALL, for the plaintiff. The law is well settled that persons, interested as Maddox, Swain, and Bostwick were, should

be made parties to any action of proceeding affecting their rights, and have notice of the same, and unless they have such notice, the court acquires no jurisdiction to determine their rights: and if it assumes such jurisdiction its proceedings and judgments are null and void. *State Bank v. Marsh*, 2 *Eng. Rep.* 390. *Pennington's ad. v. Gibson use &c.*, 1 *Eng. Rep.* 447. *Hickey et al. v. Smith et al.*, 1 *Eng. Rep.* 456. *Woods, ex parte*, 4 *Ark. Rep.* 532. *Clark v. Grayson*, 2 *Ark. Rep.* 149.

E. CUMMINS, *pro se.*

OLDHAM, J. The only difference between this case and that of the *State Bank v. Marsh*, 2 *Eng. Rep.* 390, is, that the plaintiff in the execution appeared, and the court took jurisdiction and set aside the sale. No notice was served upon the purchasers under the execution, of the intended motion, nor did they appear.

In the above case it was held that "the Circuit Court did not acquire such jurisdiction over 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 decision of the Circuit Court is reversed.

---