

Olcott
v.
Banfill et a. permitted to show what was a reasonable compensation ;
and on this ground, we are of opinion, that the verdict
must be set aside, and

A new trial granted.

ELIZA B. WOODWARD *versus* LABAN GATES.

Where, in the return of an extent of an execution upon the land of the debtor, the sheriff returned "*the said debtor being absent I have chosen E. W. an appraiser for the debtor,*" it was held that such appraiser was not legally appointed, and that the return was insufficient.

THIS was a writ of entry, in which the demandant counted upon her own seizin of a parcel of land in Hanover, and upon a disseizin by the tenant.

The cause was tried here upon the general issue, at November term, 1828, when it was admitted that the tenant was once seized of the demanded premises. The demandant then offered in evidence, a deed of the tenant, dated April 3, 1800, purporting to convey the same premises to D. Schofield and N. Cobb, in fee. She then offered in evidence a judgment in favor of her late husband, W. H. Woodward, against N. Cobb, rendered by the court of common pleas in this county, at February term, 1813, for \$83,58 debt, and 15,38 costs, and an execution issued on that judgment, and extended upon an undivided half of the demanded premises, on the 15th February, 1814. In the return of the extent the appraisers were stated to have been appointed as follows :—

"James Poole was appointed and chosen by the said Hutchinson, (the creditor's attorney,) as an appraiser for the creditor ; Ebenezer Woodward was appointed and chosen appraiser for the debtor, the said debtor being absent, I have chosen the said Woodward for N. Cobb, the debtor, and Samuel Alden was appointed and chosen appraiser on my part."

She then produced and gave in evidence, the will of the said W. H. Woodward, duly proved and allowed, by which all his real estate was devised to the demandant and also all his personal estate and choses in action.

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She then showed another judgment, rendered in an action of debt upon the said former judgment in favor of herself, as executrix of the said W. H. Woodward, against the said N. Cobb, and an execution issued on the last judgment and extended upon an undivided half of the same land, July 5, 1822. In the return of this last extent, the appraisers are stated to have been appointed precisely in the same manner as in the return of the first extent

A verdict was taken by consent for the demandant, subject to the opinion of the court upon the foregoing case.

Bell, for the demandant.

J. Parker, for the tenant.

By the court. The question in this case is, whether the returns under which the demandant claims the land are in law sufficient to show valid extents? The objection is, that the debtor was not notified to choose an appraiser, and that no good reason is stated why he was not notified.

Where, in the return of an extent, the officer stated that the debtor "being out of the state and in parts unknown, and not being to be found so that he might be notified," he, the officer, appointed an appraiser for the debtor, the extent was held to be valid.

So where the officer stated that the debtor not being within this state nor within his knowledge, he appointed an appraiser for the debtor, the return was held to be sufficient.

But where the officer stated that he chose an appraiser for the debtor, "the debtor neglecting to choose a man," the return was held to be insufficient.

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In the case now before us, it is not stated in the returns, that the debtor was absent from the state, nor that he was not within the knowledge of the officer. For ought that appears, he may have been actually resident in the town of Hanover at the time the extents were made. All, which the returns indicate, is, that he was not with the officer, when the appraisers were chosen. The returns are clearly insufficient.

Verdict set aside.

JOSIAH BEAN, appellant, versus BENJAMIN BURLEIGH.

When an appeal from a decree of a judge of probate is granted by this court, upon a petition for that purpose, under the statute of July 2, 1822, nothing is open to objection in the proceedings of the court below, upon the hearing here, except the grievances alleged in the petition, as the reasons of the appeal.

THIS was an appeal from a decree of the judge of probate, in this county, made on the 20th May, 1823. No appeal was claimed from the said decree within sixty days from the time of making the same, but the appellant, Bean, presented to this court, here, at May term, 1825, a petition, in which he alleged, that he was guardian of four children, heirs of John Smith, late of Holderness, deceased,—that one Thomas Burleigh had been guardian of the same children, during the years 1819, 1820, and 1821,—that the said Thomas received property belonging to his said wards for which he ought to have accounted—that the said Thomas, during the time of his said guardianship, exhibited to the judge of probate two several accounts for his services and expenditures as guardian, in which there were charges for the support of the said wards, during the years 1819, 1820, and 1821—that on the 26th March, 1822, the said Thomas exhibited his last account as aforesaid, which was allow-