

Tyrell's Heirs Vs. Rountree

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Court : US Supreme Court

Decided On : 1833

Appeal No. : 32 U.S. 464

Appellant : Tyrell's Heirs

Respondent : Rountree

Judgement :

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Tyrell's Heirs v. Rountree

32 U.S. (7 Pet.) 464

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF WEST TENNESSEE

SYLLABUS

Ejectment. On 12 February, 1807, an attachment was regularly issued by the Court of Williamson County, Tennessee, and was, on the 13th of the same month, levied on a tract of land, the property of the defendant in the suit. Judgment by

default was entered on 15 October, 1807; the property was on motion condemned, and a writ of *venditioni exponas* issued on the 24th, which came into the hands of the sheriff on 28 October, who sold the property under it on 2 January, 1808. The County of Williamson was divided on 16 November, 1807, and that part of the land for which this ejectment was brought lay in the new county called Maury. *Held* that the process of execution for the sale of the land under which it was sold by the sheriff was a direction to the sheriff to sell the specific property, which was already in his possession, by virtue of the attachment, and was already condemned by the competent tribunal. The subsequent division of the county could not divest his vested interest or deprive the officer of the power to finish a process which was already begun.

An ejectment was brought by the plaintiffs in error to September term 1830, in the Circuit Court of West Tennessee for the recovery of a tract of land which, in the lifetime of the ancestor of the plaintiffs, had been taken in execution and sold by the sheriff to satisfy a debt for which judgment had been obtained in Williamson County in the State of Tennessee.

The suit was commenced by attachment, and the land for which this ejectment was instituted was attached on 13 February, 1807, the sheriff having made the following return to the writ of attachment: "Came to hand 13 February, 1807, about nine o'clock, and levied immediately on an undivided half of 3,840 acres of land on both sides of Sugar Creek," &c.;, being William Tyrell's right and interest therein. On 25 October, 1807, the plaintiff obtained judgment for his debt, and on motion the property attached was condemned and a writ of *venditioni exponas* was ordered on

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the same day. The writ was issued on 24 October, 1807, and the property was sold on 2 January, 1808. The defendants in error derived their title under this sale.

On the trial of the ejectment in the circuit court, evidence was given which proved that, at the time the attachment was laid on the land, it was situated in Williamson

County, and that on 16 November, 1807, the Legislature of Tennessee passed an act dividing the County of Williamson and erecting part of the same into a separate county, denominated Maury County, and that a portion of the land in controversy was situated in Maury County when the same was sold by the Sheriff of the County of Williamson.

The counsel for the plaintiffs requested the court to charge that whether the said judgment of the Court of Pleas and Quarter Sessions of Williamson County was void or not, the sale under it was void as to that part of the land which was situated in the County of Maury at the time of the sale, and that the sale and conveyance of the Sheriff of the County of Williamson did not transfer that portion of the land. The charge of the court was that neither the judgment nor the proceedings in Williamson County were void for anything appearing or not appearing on the face of said judgment and the record thereof. The court also charged the jury that if a portion of the land in controversy was situated in the County of Maury at the time of the sale thereof by the Sheriff of Williamson, under the judgment of Molloy's executors, yet that such sale was good, and vested the title in the purchasers, as the land was all situated in Williamson at the time of the levy, where public notice of the sale was given, until within a few days of the sale, and that the sale was good by relation to the levy. The counsel for the plaintiffs excepted to the charge of the court thus given, and a bill of exceptions was sealed by the court. Judgment having been rendered for the defendants, the plaintiffs prosecuted this writ of error.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

In this case the plaintiffs in error contend that the circuit court misdirected the jury, in consequence of which the verdict ought to be set aside, the judgment reversed, and a *venire facias de novo* awarded.

They had brought an ejectment for a tract of land, the title to which was shown to have been in their ancestor, but which the defendants claimed under a

conveyance thereof, made by the Sheriff of Williamson County, in West Tennessee, in pursuance of a sale made by him under a writ of *venditioni exponas*, issued on a judgment rendered in a suit commenced by attachment. On 12 February, 1807, the attachment was regularly issued and was levied on the 13th of the same month on the land in controversy. The defendants in the attachment did not appear or replevy the property, but made

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default, on which judgment was rendered on 18 October, 1807. On motion, the property attached was condemned and a writ of *venditioni exponas* awarded, which issued on the 24th and came to the hands of the officer on 28 October, 1807, who sold on 2 January, 1808. The plaintiffs proved that the County of Williamson was divided on 16 November, 1807, and that part of the land for which the ejectment was brought, lay in the new county called Maury. He therefore moved the court to instruct the jury that the sale was void as to that part of the land which was situated in the County of Maury, at the time of the sale, and that the conveyance of the sheriff did not transfer that portion of it. The court instructed the jury that the sale was good by relation to the levy. To this instruction a bill of exceptions was taken, and the cause is brought up by writ of error.

The counsel for the plaintiffs in error has argued the cause as if the process under which the sale was made had been the usual execution awarded on a judgment rendered against a person brought into court by regular process. Without inquiring whether his objections to the charge would have been well founded had that been the character of the case, it is sufficient to observe that in the actual cause, the land itself was attached. Not having been released, it remained in the custody of the officer subject to the judgment of the court. An interest was vested in him for the purposes of that judgment. The judgment did not create a general lien on it, but was a specific appropriation of the property itself to the satisfaction of that particular judgment. The process which issued did not direct the office to levy it on the property of the defendants, but to sell that specific property which was already in his possession by virtue of the attachment, and was already condemned by the judgment of the competent tribunal. The subsequent division of the county could

not divest this vested interest, nor deprive the officer of the power to finish a process which was rightly begun. There is no error in the charge, and the judgment is affirmed with costs.

Judgment affirmed.

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