

Voorhees Vs. Jackson

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Appeal No. : 35 U.S. 449

Appellant : Voorhees

Respondent : Jackson

Judgement :

Voorhees v. Jackson - 35 U.S. 449 (1836)

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Voorhees v. Jackson

35 U.S. (10 Pet.) 449

ERROR TO THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF OHIO

SYLLABUS

Ejectment for a tract of land commenced in 1831 which had been sold under the foreign attachment laws of Ohio, the defendants in the ejectment being in possession under the defendant in the attachment. The judgment in the Common

Pleas of Hamilton County, Ohio, in the attachment suit was entered in 1808. The writ of attachment was returnable to April, 1807, and it recited that it had been sufficiently testified to the court that the defendant, not residing in the state, was indebted to the plaintiff. The tract of land was attached and returned with an inventory and appraisal. The defendant having made default, auditors were appointed, and at December term they made a report finding due to the plaintiff \$267. The court ordered the property to be sold by the auditors. At April term, 1808, they reported they had sold the premises for \$170. The court, on inspection, confirmed the sale. The auditors afterwards conveyed by deed to Samuel Foster and William Woodward, who on the same day, 25 May, 1808, conveyed the premises to William Stanley with covenant of seizin, power to sell and general warranty, under whom the plaintiffs in the ejectment derived title. The proceedings in the attachment were in conformity with the Ohio attachment laws in all particulars except

1. No affidavit, as required by the statute, was found filed with the clerk, and the law provides that, if this is not done, the writ shall be quashed on motion.
2. Three months' notice of the attachment is to be given in a newspaper, and fifteen days' notice is to be given by the auditors, which did not appear to have been done.
3. The defendant is to be called three times preceding judgment, and the defaults recorded. No record appeared to have been made.
4. Auditors are not to sell until twelve months, and it did not appear when the sale was made.
5. The return of the sale shows a sale to Foster and Woodward, and a deed was made to Stanley, and no connection between them was shown in the record.

By the court.

"The several courts of common pleas of Ohio, at the time of these proceedings were courts of general civil jurisdiction, to which was added by the act of 1805

power to issue writs of attachment and order a sale of the property attached on certain conditions; no objection therefore can be made to their jurisdiction over the case, the cause of action, or the property attached. The process which they adopted was the same as prescribed by the law; they ordered a sale, which was executed; and on the return thereof gave it their confirmation. This was the judgment of a court of competent jurisdiction on all the acts preceding the sale, affirming their validity in the same manner as their judgment had affirmed the existence of a debt. There is no principle of law better settled than that every act of a court of competent jurisdiction shall be presumed to have been rightly done till the contrary appears. This rule applies as well to every judgment or decree rendered in the various stages of their proceedings from the initiation to their completion, as to their adjudication that the plaintiff has a right of action.

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Every matter adjudicated becomes a part of their record, which thenceforth proves itself without referring to the evidence on which it has been adjudged."

That some sanctity should be given to judicial proceedings, some time limited beyond which they should not be questioned, some protection afforded to those who purchase at sales by judicial process, and some definite rules established by which property thus acquired may become transmissible with security to the possessors cannot be denied. In this country particularly, where property which within a few years was but of little value in a wilderness is now the site of large and flourishing cities, its enjoyment should be at least as secure as in that country where its value is less progressive.

It is among the elementary principles of the common law that whoever would complain of the proceedings of a court must do it in such time as not to injure his adversary by unnecessary delay in the assertion of his right. If he objects to the mode in which he is brought into court, he must do it before he submits to the process adopted. If the proceedings against him are not conducted according to the rules of law and the court, he must move to set them aside for irregularity, or, if there is any defect in the form or manner in which he is sued, he may assign those

defects specially, and the court will not hold him answerable till such defects are remedied. But if he pleads to the action generally, all irregularity is waived, and the court can decide only on the rights of the parties to the subject matter of controversy; its judgment is conclusive unless it appears on the record that the plaintiff has no title to the thing demanded or that in rendering judgment it has erred in law. All defects in setting out a title or in the evidence to prove it are cured, as well as all irregularities which may have preceded the judgment.

So long as this judgment remains in force, it is in itself evidence of the right of the plaintiff to the thing adjudged, and gives him a right to process to execute the judgment; the errors of the court, however apparent, can be examined only by an appellate power, and by the laws of every country, a time is fixed for such examination, whether in rendering judgment, issuing execution, or enforcing it by process of sale or imprisonment. No rule can be more reasonable than that the person who complains of an injury done him should avail himself of his legal rights in a reasonable time or that that time should be limited by law.

The line which separates error in judgment from the usurpation of power is very definite, and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court or may be declared a nullity collaterally when it is offered in evidence in an action concerning the matter adjudicated or purporting to have been so. In the one case it is a record importing absolute verity; in the other, mere waste paper; there can be no middle character assigned to judicial proceedings, which are irreversible for error. Such is their effect between the parties to the suit, and such are the immunities which the law affords to a plaintiff who has obtained an erroneous judgment or execution.

The cases of [*Blaine v. The Charles Carter*](#), 4 Cranch 328, 2 Cond. 127; [*Wheaton v. Sexton*](#), 4 Wheat. 506, 5 Cond. 119; [*Tolmie v. Thompson*](#), 2 Pet. 157; [*Elliott v. Piersol*](#), 1 Pet. 340; [*Wright v. Lessee of Hollingsworth*](#), 1 Pet. 169; [*Taylor v. Thompson*](#), 5 Pet. 370; [*United States v. Arredondo*](#), 6 Pet. 729 cited.

The President and Directors of the Bank of the United States instituted

an action of ejectment in 1831, for the recovery of a tract of land in the County of Hamilton in the State of Ohio. On the trial of the case, in order to establish their title, they gave in evidence to the jury the proceedings in an attachment against Seth Cutter in the County Court of Hamilton County commenced in 1807, under which the tract of land in the ejectment was sold in 1808 and the sale returned by the auditors appointed by the court to make the same on 16th April, 1808. The sale was confirmed by the court at August term, 1808, and, according to the provisions of the attachment law of the State of Ohio, the auditors had previously made a deed to William Woodward and William Foster the purchasers of the property sold.

This deed was executed on 28 May, 1828, to Woodward & Foster, who on the same day conveyed the same to William Stanley.

The defendants in the ejectment claimed title to the premises, which were in their possession, under Seth Cutter. They insisted that the proceedings in attachment did not divest Seth Cutter of his title to the land, but the court instructed the jury otherwise. The jury gave a verdict in favor of the plaintiffs. To the judgment of the circuit court on the verdict the defendants below prosecuted this writ of error.

The record of the County Court of Hamilton County in the attachment against Seth Cutter, and the opinion of the circuit court upon the title derived under it by the plaintiffs below, were brought up by a bill of exceptions. The whole proceedings in the attachment are stated fully in the opinion of the Court.

MR. JUSTICE BALDWIN delivered the opinion of the Court.

This case comes up by a writ of error from the Circuit Court for the District of Ohio to reverse a judgment in an action of ejectment obtained by the defendants against the plaintiffs in error. The sole question in the court below was the validity of a sale of the premises in controversy under a judgment of the Court of Common Pleas of Hamilton County, Ohio, in a case of foreign attachment rendered against

Seth Cutter in 1808 at the suit of Samuel Foster. By the record in that case it appears that the writ was returnable to April term, 1807. It recited that the plaintiff had sufficiently testified to the judges, that the defendant, who is not residing in the state, is indebted to the plaintiff, &c.; The sheriff returned the writ with an inventory of the property attached by him in which was included the property in question, with an appraisement thereof. At the April term, the defendant was three times called and made default, whereupon the court appointed auditors to report at August term following; the order was then continued till December term, when the auditors made a report finding a debt of \$267 due the plaintiff. The court then rendered judgment on the report and ordered the property attached to be sold agreeably to law. An order of

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sale was accordingly issued to the auditors, who at the April term, 1808, to-wit on 16 April, reported that they had sold the premises to William Stanley for \$170, on an inspection of which the court granted judgment of confirmation thereof. On 28 May, 1808, the auditors made a deed to Samuel Foster and William Woodward, who on the same day conveyed the same to William Stanley, under whom the lessors of the plaintiff claimed by sundry mesne conveyances.

The consideration of the deed from the auditors to Foster and Woodward was \$170, the same as from them to Stanley, but they gave in their deed a covenant of seizin, of power to sell, and general warranty. The defendants were in possession, claiming title under Seth Cutter, the defendant in the attachment, as whose property the land was sold. The case has been submitted on printed arguments which present a full and able view and discussion of the points arising in the cause.

On comparing the record of the proceedings on the attachment with the provisions of the act of 1805, Chase's Ohio Laws, 462 &c.;, the acts of the court in all the course of the cause appear to be in conformity therewith except in the following particulars, on which the objections to the validity of the sale are founded:

1. By the first section, it provides that an affidavit shall be made and filed with the clerk before the writ issues, and if this is not done, the writ shall be quashed on motion; no such affidavit is found in the record.

2. The fifteenth section directs three months' notice to be given by publication in a newspaper of the issuing of the attachment before judgment shall be entered; the eleventh section also prescribes that fifteen days' notice of sale shall be given by the auditors, neither of which appears by the record to have been done.

3. By the proviso to the eighth section, the defendant must be three times called at each of the three terms preceding judgment and make default, which defaults shall be recorded by the clerk; no entry is made of such default at the December term, 1807.

4. By the eleventh section, the auditors are prohibited from selling till the expiration of twelve months from the return of the writ, whereas the order issued before, and it does not appear when the sale was made.

5. The return of the sale by the auditors shows a sale to one

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person and a deed to others not in any mode connected with the record.

There is no provision in the law that if the several acts therein directed to be done are omitted, the sale or any other proceedings under the attachment shall be deemed void, but by the thirteenth section it is declared that every sale and conveyance made by the said auditors or any two of them by virtue of the authority herein granted shall be as binding and effectual as if the same had been made by the said defendant prior to the service of the said attachment.

It is contended by the counsel for the plaintiffs in error that all the requisitions of the law are conditions precedent which must not only be performed before the power of the court to order a sale or the auditors to execute it can arise, but that such performance must appear on the record.

The first part of this proposition is the true meaning of the law of Ohio: the various acts required to be done previous to a sale are prescribed by a proviso, which in deeds and laws is a limitation or exception to a grant made or authority conferred, the effect of which is to declare that the one shall not operate or the other be exercised unless in the case provided.

By the eleventh section, the auditors are directed, by virtue of an order of the court, to sell and convey the lands attached, provided they give notice; notice, then, is the condition on the performance of which their duty and power depend, and the act must be done to make the execution of the power consistent with the law.

But the provisions of the law do not prescribe what shall be deemed evidence that such acts have been done, or direct that their performance shall appear on the record. The thirteenth section, which gives to the conveyance of the auditors the same effect as a deed from the defendant in the attachment, contains no other limitation than that it shall be "in virtue of the authority herein granted."

This leaves the question open to the application of those general principles of law by which the validity of sales made under judicial process must be tested, in the ascertainment of which we do not think it necessary to examine the record in the attachment for evidence that the acts alleged to have been omitted appear therein to have been done. Assuming the contrary to be the case, the merits of the present controversy are narrowed to the single question whether this omission invalidates the sale. The several courts of

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common pleas of Ohio, at the time of these proceedings, were courts of general civil jurisdiction, to which was added by the act of 1805 power to issue writs of attachments and order a sale of the property attached on certain conditions; no objection, therefore, can be made to their jurisdiction over the case, the cause of action, or the property attached. The process which they adopted was the same as prescribed by the law; they ordered a sale which was executed, and on the return

thereof gave it their confirmation. This was the judgment of a court of competent jurisdiction on all the acts preceding the sale, affirming their validity in the same manner as their judgment had affirmed the existence of a debt. There is no principle of law better settled than that every act of a court of competent jurisdiction shall be presumed to have been rightly done till the contrary appears. This rule applies as well to every judgment or decree, rendered in the various stages of their proceedings from the initiation to their completion, as to their adjudication that the plaintiff has a right of action. Every matter adjudicated becomes a part of their record, which thenceforth proves itself without referring to the evidence on which it has been adjudged.

In this case, the court issued an order of sale agreeably to law, which having been returned by the auditors and "being inspected, the court grants judgment of confirmation thereon." It is therefore a direct adjudication that the order of sale was executed according to law. They had undoubted authority to render such a judgment, and there is nothing on the record to show that it was not rightfully exercised. If the defendants' objections can be sustained, it will be on the ground that this judgment is false and that the order of sale was not executed according to law, because the evidence of its execution is not of record. The same reason would equally apply to the nonresidence of the defendant within the state, the existence of a debt due the plaintiff or any other creditor which is the basis on which the whole proceedings rest. The auditors are equally silent on the evidence, upon which they reported that debts were due by the defendant, as on the evidence of notice and due publication, but no one could pretend that the judgment that the debts reported were due shall be presumed to be false. Though the able and ingenious argument of the defendants has not been directed at this part of the judgment of the court of common pleas, the grounds of objection are broad enough to embrace it, for in resting their case on the only position which the record leaves them, they necessarily affirm the

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general proposition that a sale by order of a court of competent jurisdiction may be declared a nullity in a collateral action if their record does not show affirmatively

the evidence of a compliance with the terms prescribed by law in making such sale. We cannot hesitate in giving a distinct and unqualified negative to this proposition, both on principle and authority too well and long settled to be questioned.

That some sanctity should be given to judicial proceedings, some time limited beyond which they should not be questioned, some protection afforded to those who purchase at sales by judicial process, and some definite rules be established by which property thus acquired may become transmissible with security to the possessors cannot be denied. In this country particularly, where property which within a few years was but of little value in a wilderness is now the site of large and flourishing cities, its enjoyment should be at least as secure as in that country where its value is less progressive.

It is among the elementary principles of the common law that whoever would complain of the proceedings of a court must do it in such time as not to injure his adversary by unnecessary delay in the assertion of his right. If he objects to the mode in which he is brought into court, he must do it before he submits to the process adopted. If the proceedings against him are not conducted according to the rules of law and the court, he must move to set them aside for irregularity; or if there is any defect in the form or manner in which he is sued, he may assign those defects specially, and the court will not hold him answerable till such defects are remedied. But if he pleads to the action generally, all irregularity is waived and the court can decide only on the rights of the parties to the subject matter of controversy. Their judgment is conclusive unless it appears on the record that the plaintiff has no title to the thing demanded or that in rendering judgment they have erred in law; all defects in setting out a title or in the evidence to prove it are cured, as well as all irregularities which may have preceded the judgment.

So long as this judgment remains in force, it is in itself evidence of the right of the plaintiff to the thing adjudged, and gives him a right to process to execute the judgment; the errors of the court, however apparent, can be examined only by an appellate power, and by the laws of every country a time is fixed for such examination, whether in rendering judgment, issuing execution, or enforcing it

by process of sale or imprisonment. No rule can be more reasonable than that the person who complains of an injury done him should avail himself of his legal rights in a reasonable time, or that that time should be limited by law.

This has wisely been done by acts of limitation on writs of error and appeals. If that time elapses, common justice requires that what a defendant cannot do directly in the mode pointed out by law he shall not be permitted to do collaterally by evasion.

A judgment or execution irreversible by a superior court cannot be declared a nullity by any authority of law if it has been rendered by a court of competent jurisdiction of the parties the subject matter, with authority to use the process it has issued; it must remain the only test of the respective rights of the parties to it. If the validity of a sale under its process can be questioned for any irregularity preceding the judgment, the court which assumes such power places itself in the position of that which rendered it and deprives it of all power of regulating its own practice or modes of proceeding in the progress of a cause to judgment. If after its rendition it is declared void for any matter which can be assigned for error only on a writ of error or appeal, then such court not only usurps the jurisdiction of an appellate court, but collaterally nullifies what such court is prohibited by express statute law from even reversing.

If the principle once prevails that any proceeding of a court of competent jurisdiction can be declared to be a nullity by any court after a writ of error or appeal is barred by limitation, every county court or justice of the peace in the union may exercise the same right, from which our own judgments or process would not be exempted. The only difference in this respect between this and any other court is that no court can revise our proceedings; but that difference disappears after the time prescribed for a writ of error or appeal to revise those of an inferior court of the United States or of any state; they stand on the same footing in law. The errors of the court do not impair their validity; binding till reversed, any objection to their full effect must go to the authority under which they have been conducted. If not warranted by the Constitution or law of the land, our

most solemn proceedings can confer no right which is denied to any judicial act under color of law, which can properly be deemed to have been done *coram non judice* -- that is, by persons assuming the judicial function in the given case without lawful authority.

The line which separates error in judgment from the usurpation

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of power is very definite, and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court, or may be declared a nullity collaterally when it is offered in evidence in an action concerning the matter adjudicated or purporting to have been so. In the one case, it is a record importing absolute verity; in the other, mere waste paper; there can be no middle character assigned to judicial proceedings, which are irreversible for error. Such is their effect between the parties to the suit, and such are the immunities which the law affords to a plaintiff who has obtained an erroneous judgment or execution. It would be a well merited reproach to our jurisprudence if an innocent purchaser, no party to the suit, who had paid his money on the faith of an order of a court, should not have the same protection under an erroneous proceeding as the party who derived the benefit accruing from it. A purchaser under judicial process pays the plaintiff his demand on the property sold; to the extent of the purchase money, he discharges the defendant from his adjudged obligation. Time has given an inviolable sanctity to every act of the court preceding the sale which precludes the defendant from controverting the absolute right of the plaintiff to the full benefit of his judgment, and it shall not be permitted that the purchaser shall be answerable for defects in the record from the consequence of which the plaintiff is absolved. Such flagrant injustice is imputable neither to the common or statute law of the land. If a judgment is reversed for error, it is a settled principle of the common law coeval with its existence that the defendant shall have restitution only of the money; the purchaser shall hold the property sold; and there are few, if any states in the union who have not consecrated this principle by statute.

This great rule, established for the protection of purchasers on the faith of judicial process, will be utterly prostrated, encouragement will be given to defendants in judgments, their heirs and privies, to take advantage of the security into which honest purchasers have been lulled, if any judicial proceeding which could stand the test of a writ of error or appeal, if taken in time, or had become irreversible directly could be avoided collaterally.

Acts of limitation become useless if a defendant is allowed to evade them by avoiding judgments or executions on the suggestion of defects or omissions in the record which can be reviewed only by an appellate court; a direct premium is held out for delaying the resort to the mode pointed out by law for correcting the errors of judicial

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proceedings. His debt is paid by the purchaser; the property purchased is restored to the defendant without any obligation to refund, and that which was, when sold, of little value, and bought at its full price paid to the defendant's use, becomes his rightful estate when the remote outlot has become a mart for commerce and covered with valuable improvements. Had he brought his writ of error in time and reversed the judgment or execution on which it was sold, justice would have been done him by a restitution of the purchase money, and to the purchaser by leaving him in the quiet enjoyment of the property purchased. Such are the consequences of the doctrines contended for by the defendants' counsel in their objections to the proceedings on the attachment; none of them affect the jurisdiction of the court or its authority to order or confirm the sale; the acts omitted to be noticed on the record are not judicial, but ministerial, to be performed by the clerk or auditors. It was a good ground for a motion to quash or suspend the proceedings for irregularity if they had not been done in fact, and as the judgment was by default, perhaps the omission to state them on the record may have been good cause for reversal on a writ of error. But on an inspection of these proceedings collaterally, we can judicially see only what the court has done, not whether they have proceeded *inverso ordine*, erroneously, according to the proof before them, or what they have omitted, or ought to have done. They have adjudged that the order

of sale was executed agreeably to law; nothing appears on the record to impugn their judgment; it must therefore be taken to be true in fact and valid in law. Their order of sale was a lawful authority to the auditors to sell; it was a full justification to them in obeying it; it was executed in virtue of the authority granted by the law to the court, which has not exceeded its jurisdiction, and the deed of the auditors passed the title to the premises in controversy to the purchaser.

It has not been thought necessary to review the various cases cited in the argument. The principles which must govern this and all other sales by judicial process are general ones adopted for the security of titles, the repose of possession, and the enjoyment of property by innocent purchasers, who are the favorites of the law in every court and by every code. Nor shall we refer to the decisions of state courts or the adjudged cases in the books of the common law. Our own repeated and uniform decisions cover the whole case in its most expanded view, and the highest considerations call upon us so to

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reaffirm them, that all questions such as have arisen in this cause may be put at rest in this and the circuit courts. In *Blaine v. Charles Carter*, a ship had been sold under executions issued within ten days after judgment, contrary to the express prohibition of the twenty-third section of the Judiciary Act; but no writ of error was taken out. The court declared that if the executions were irregular,

"the court from which they issued ought to have been moved to set them aside. They were not void, because the marshal could have justified under them, and if voidable, the proper means of destroying their efficacy had not been pursued."

The decree of the circuit court was affirmed and the money ordered to be paid over to the execution creditor. [8 U. S. 4](#) Cranch 328, [8 U. S. 333](#) .

In *Wheaton v. Sexton*, the case turned on the validity of the sale of real estate by the marshal of this district by virtue of an execution, in which the language of this Court is:

"The purchaser depends on the judgment, the levy and the deed. All other questions are between the parties to the judgment and the marshal. Whether the marshal sells before or after the return, whether he makes a correct return or any return at all to the writ, is immaterial to the purchaser, provided the writ was duly issued, and the levy made before the return."

[17 U. S. 4](#) Wheat. 506.

In *Tolmie v. Thompson*, there had been a sale under an order of the orphan's court of this district, which had been confirmed by them and a deed made to the purchaser, the validity of which was questioned on objections similar to those now under consideration. The court said

"Those proceedings were brought before the court collaterally, and are by no means subject to all the exceptions which might be taken on a direct appeal. They may well be considered judicial proceedings; they were commenced in a court of justice, carried on under the supervising power of the court, and to receive its final ratification. The general and well settled rule of law in such cases is that when the proceedings are collaterally drawn in question and it appears on the face of them that the subject matter was within the jurisdiction of the court, they are voidable only. The errors and irregularities, if any exist, are to be corrected by some direct proceeding, either before the same court to set them aside or in an appellate court. If there is a total want of jurisdiction, the proceedings are void and a mere nullity, and confer no right, and afford no justification, and may be rejected when collaterally drawn in question."

The purchaser is not bound to look beyond the decree when

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executed by a conveyance if the facts necessary to give jurisdiction appear on the face of the proceedings, nor to look further back than the order of the court.

"If the jurisdiction was improvidently exercised or in a manner not warranted by the evidence before it, it is not to be corrected at the expense of the purchaser, who

had a right to rely upon the order of the court as an authority emanating from a competent jurisdiction."

[27 U. S. 2](#) Pet. 163, [27 U. S. 168](#) .

"When a court has jurisdiction, it has a right to decide every question that arises in the cause, and whether the decision be correct or not, its judgment until reversed is regarded as binding in every other court."

[Elliott v. Piersol](#), 1 Pet. 340; [27 U. S. 2](#) Pet. 169.

In *Taylor v. Thompson*, this Court affirmed a principle of the common law that the sale of a term of years under a *fiery facias*, issued after and while the defendant was in execution under a *ca. sa.* on the same judgment was good when made to a stranger to the execution. [30 U. S. 5](#) Pet. 370.

In the *United States v. Arredondo*, it was laid down as an universal principle that when power or jurisdiction is delegated to any public officer or tribunal over a subject matter, and its exercise is confided to his or their discretion, the acts so done are valid and binding as to the subject matter, and individual rights will not be disturbed collaterally for anything done in the exercise of that discretion within the authority and power conferred. The only questions which can arise between an individual claiming a right under the acts done and the public or any person denying their validity are power in the officer and fraud in the party. All other questions are settled by the decision made or the act done by the tribunal or officer unless an appeal or other revision of their proceedings is prescribed by law. [31 U. S. 6](#) Pet. 729-730.

These are rules of property which have been established so far as the authority of this Court can do it. They apply to and must govern this case on the broad principles laid down, and none of them come into collision with any construction given to the laws of Ohio, prescribing the mode of transferring real estate by judicial process. On the broadest ground, therefore, which has been taken in any of the specified objections to the proceedings of the court of common pleas in the attachment suit; we are most clearly of opinion that none of them can be sustained

without the violation of principles which ought to remain inviolable.

The remaining objection is that the auditors did not make their

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deed to the person who purchased at the sale under the order of the court. This is a matter entirely between such person and those to whom the deed was made. To Cutter it is immaterial to whom the conveyance was made; his right was extinguished by the sale and confirmation. It is equally immaterial to those who claim under Cutter who received the deed -- Stanley, the purchaser, or Foster the plaintiff. It was a matter between themselves which can have no effect on the validity of the sale, were it unexplained. But connecting the record with the deeds, their inspection removes the objection for the reasons stated in the argument of counsel. Samuel Foster was the principal creditor and plaintiff in the suit; Stanley purchased, but took his deed from Foster and Woodward with their covenants of seizin, warranty, and title. Had he taken a deed directly from the auditors, it must have been without any covenants. The object was evidently to have an assurance of the title, for both deeds were executed and acknowledged on the same day, and the consideration of both was the same.

The judgment of the circuit court is

Affirmed.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Ohio and was argued by counsel, on consideration whereof it is ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs.