

Benton Vs. Woolsey

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Court : US Supreme Court

Decided On : 1838

Appeal No. : 37 U.S. 27

Appellant : Benton

Respondent : Woolsey

Judgement :

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Benton v. Woolsey

37 U.S. (12 Pet.) 27

APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF NEW YORK

SYLLABUS

The district attorney of the United States filed an information in his own name in behalf of the United States in the District Court for the Northern District of New York to enforce a mortgage given to the United States by Woolsey, one of the

defendants. This form of proceeding has been for a long time used without objection in the courts of the United States in New York, and was doubtless borrowed from the form used in analogous cases in the courts of the State of New York, where the state itself was the plaintiff in the suit. The United States may be considered as the real party, although in form it is the information and complaint of the district attorney.

It is certainly desirable that the practice should be uniform in the courts of the United States and that in all suits where the United States is the real plaintiffs, the proceeding should be in its name unless it is otherwise ordered by act of Congress.

The District Attorney of the United States for the Northern District filed in the District Court of the Northern District an information on behalf of the United States for the purpose of foreclosing a mortgage executed by Melancthon T. Woolsey to the United States in July, 1825, as a security for the payment of a debt due by him to the United States in one year after its date. The mortgage comprehended land in the County of Jefferson and in the County of St. Lawrence, New York, and it was recorded in Jefferson County on 26 November, 1830, and in the County of St. Lawrence on 10 June, 1831.

The Bank of Utica had obtained a judgment against Melancthon T. Woolsey, in the supreme court of New York on 17 October, 1816, for one thousand six hundred dollars, which judgment was docketed on 24 November, 1817. No execution was issued on this judgment until it was revived by a *scire facias* on 9 July, 1828. A *fieri facias* was then issued on the judgment, and the lands mortgaged to the United States were sold to satisfy the debt and were purchased by the Bank of Utica, to whom they were conveyed by the sheriff on 3 May, 1830. The lands in

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St. Lawrence County were sold by the sheriff January 30, 1829, and conveyed to the Bank of Utica on 15 May, 1830, having been purchased by the bank.

By the law of New York, the judgments in favor of the Bank of Utica ceased to be a lien on the lands of Woolsey after ten years against *bona fide* purchasers and subsequent encumbrances, and the district attorney, on behalf of the United States, claimed the operation of the mortgage to the United States so as to exclude the claim of the bank under the judgment upon which the land was sold and purchased by the bank to satisfy their debt. No money was paid by the bank at the time of the purchase except the expenses attending the proceedings against the land, but the bank claimed to hold the land as a *bona fide* purchaser, the property having been bought to satisfy the debt due on the judgment and without notice of the mortgage to the United States, it not having been put on record until after the proceedings under the judgment.

The district court gave a decree in favor of the defendants, and the plaintiff appealed to this Court.

The judgment of the district court was affirmed by a divided court, and no opinion was given on any of the questions raised and argued in the cause except upon a question of jurisdiction. MR. JUSTICE THOMPSON did not sit in the cause, being connected with one of the parties to it.

The Court intimated a doubt of its jurisdiction in the case, as the district attorney had instituted the suit in his own name.

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

In this case, a bill of information and complaint was filed by the district attorney of the United States in behalf of the United States in the District Court for the Northern District of New York against Melancthon C. Woolsey, the Bank of Utica and others for the purpose of foreclosing a mortgage upon certain real property, executed by the said Woolsey to the United States, on 20 July, 1825, to secure the payment of twenty-nine thousand four hundred and fifty-nine dollars and twenty-nine cents in one year from the date, with interest. The property mortgaged was

situated partly in the County of Jefferson and partly in the County of St. Lawrence in the State of New York, and the mortgage was recorded in the County

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of Jefferson, November 26th, 1830; and in the county of St. Lawrence, June 10th, 1831.

It appears, from the answer and evidence that the Bank of Utica obtained a judgment in the supreme court of the State of New York against the said Woolsey on 7 October, 1817, for sixteen thousand dollars, and the judgment was docketed November 24, 1817. No further proceedings were had upon it until May term, 1828, when it was revived by *scire facias*, and the judgment on the *scire facias* docketed July 9, 1828.

Process of *fiery facias* issued on this judgment, endorsed to levy six thousand six hundred and sixty-seven dollars and fifty cents, and the lands mortgaged to the United States in Jefferson County were sold by the sheriff on 24 November, 1828, and (with the exception of a small parcel) purchased by the bank. They were conveyed by the sheriff to the bank May 3, 1830. The lands in St. Lawrence County mortgaged to the United States were sold by the sheriff January 30, 1829, and conveyed by the sheriff to the bank May 15, 1830.

The judgment obtained by the bank, in 1817, after the expiration of ten years from the time it was docketed, ceased by the laws of New York to be a lien upon real estate against *bona fide* purchasers or subsequent encumbrances by mortgage, judgment, or otherwise, and consequently, after 24 November, 1827, it no longer bound the property of Woolsey.

The bank denies in its answer that it had notice of the mortgage in question at the time it purchased and obtained the conveyances, and there is no evidence in the record to charge them with notice. It purchased and obtained the deeds as above stated before the mortgage was recorded. No money was paid by the bank on the purchase except for expenses of sale and costs. The property was bought to secure the debt due from Woolsey, and the bank claims, by reason of that debt, to

be a *bona fide* purchaser for a valuable consideration, and, having had no notice of the mortgage to the United States, it insists that it is entitled to hold the lands discharged of the mortgage.

Some doubts were at first entertained by the Court whether this proceeding could be sustained in the form adopted by the district attorney. It is a bill of information and complaint in the name of the district attorney in behalf of the United States. But upon carefully examining the bill, it appears to be in substance a

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proceeding by the United States, although in form it is in the name of the officer. And we find that this form of proceeding in such cases has been for a long time used without objection in the courts of the United States held in the State of New York, and was doubtless borrowed from the form used in analogous cases in the courts of the state where the state itself was the plaintiff in the suit. No objection has been made to it either in the court below or in this Court on the part of the defendants, and we think the United States may be considered as the real party, although in form it is the information and complaint of the district attorney. But although we have come to the conclusion that the proceeding is valid and ought to be sustained by the Court, it is certainly desirable that the practice should be uniform in the courts of the United States and that in all suits where the United States are the real plaintiffs, the proceeding should be in their name unless it is otherwise ordered by act of Congress.

Considering the United States as the real party in the case, the question to be decided by this Court is whether, under the Act of the State of New York concerning judgments and executions passed April 2, 1813, the Bank of Utica was a *bona fide* purchaser at the sheriff's sale hereinbefore mentioned, the purchase being made not upon an advance of the purchase money, but to pay a precedent debt due to the bank by judgment.

This question has been fully argued and carefully considered by this Court. But no opinion can be pronounced on the point because the judges are equally divided

upon it. Upon this division, the judgment of the court below is necessarily

Affirmed.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of New York and was argued by counsel. On consideration whereof it is adjudged and ordered by this Court that the judgment of the said district court in this cause be and the same is hereby affirmed.

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