

Pulliam Vs. Osborne

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Court : US Supreme Court

Decided On : 1854

Appeal No. : 58 U.S. 471

Appellant : Pulliam

Respondent : Osborne

Judgement :

Pulliam v. Osborne - 58 U.S. 471 (1854)

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Pulliam v. Osborne

58 U.S. (17 How.) 471

APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE MIDDLE DISTRICT OF ALABAMA

SYLLABUS

Although, by the laws of Alabama, a lien upon property accrues from the delivery of the execution to the sheriff or marshal, and the rights of creditors claiming under the same jurisdiction are adjudged accordingly, yet the same rule does not apply

where a controversy arises between executions issued by a court of the United States and a state court.

In such a case, the rule is that whichever officer, the sheriff or the marshal, acquires possession of the property first by the levy of the execution obtains a prior right, and a purchaser at a judicial sale will take the property free from all liens of the same description.

This case originated in the District Court of the United States for the Middle District of Alabama between Samuel Woodward, plaintiff in execution, and Amos Albritton, claimant, defendant, who were afterwards represented by their administrator and executor respectively. It was a contest as to the superior validity of executions issued out of a state court and a United States court under the following circumstances:

" *United States Execution*"

" 1842"

"May term. Woodward's judgment against Pulliam in the District Court of the United States for the Middle District of Alabama."

" *June 10. Execution issued.*"

" *October 26. Marshal levied on the negroes.*"

" *State Execution*"

" 1842"

"April 19. Two judgments against Pulliam in the district Court of Pickens County."

"May 4. Executions on these issued."

"July 12. Sheriff levied on certain slaves. Bonds given for their forthcoming on first Monday in August."

"August 3. Execution on these forthcoming bonds."

"September 21. Execution levied on the negroes named in the issue in this case."

"October 3. Sheriff sold slaves to Albritton."

Upon the trial, the court instructed the jury as follows, *viz.*,

"On the case being submitted to the jury, the court charged the jury that if the executions which issued on the two judgments against Pulliam were levied upon sufficient property, and a bond given for the forthcoming of the property on the day of sale, in each case, which bonds were forfeited and thus returned by the sheriff, and that afterwards executions were issued on the judgments rendered on the said forthcoming bonds, against the said Pulliam and his surety in the said forthcoming bonds, which said executions did not come to the hands of the sheriff until some days after the execution in favor of the plaintiff was received by the marshal; that the said plaintiff had the priority of lien on the property of Pulliam, and that the said negroes levied upon by the marshal, in said case, were liable to satisfy the execution of the said plaintiff, notwithstanding they had been levied upon and sold by the sheriff under the execution against Pulliam and his surety in the forthcoming bonds; to which charge claimant excepts, and prays the judge of this Court to sign and seal this bill of exceptions, which is accordingly done."

"WM. CRAWFORD [SEAL]"

This instruction being in favor of Woodward, the plaintiff in execution, Albritton sued out a writ of error and carried the case to the Circuit Court of the United States, for the Fifth Judicial Circuit, Southern District of Alabama.

In April, 1853, that court passed an order "that the said cause be transferred to the Supreme Court of the United States, according to the statute in such case made and provided."

MR. JUSTICE CAMPBELL delivered the opinion of the Court.

This was an issue in the district court, under a statute of Alabama, Clay's Digest 213, 62, 64, for the trial of the

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right to property taken under an execution from that court, in favor of the appellee, and claimed by the testator of the appellant, as belonging to him, and not to the defendant in the execution.

It appeared on the trial that at the delivery of the execution to the marshal in favor of the appellee, the property belonged to the defendant, and that the levy was made before the return day of the writ; but that before this levy, the property had been seized and sold to the claimant by a sheriff in Alabama, under executions issued from the state courts, upon valid judgments, after the teste and delivery of the executions from the district court.

The district court instructed the jury, that a sale under a junior execution from the state court did not divest the lien of the execution from the district court, and that the writ might be executed notwithstanding the seizure and sale under the process from the state court.

The lien of an execution, under the laws of that state, commences from the delivery of the writ to the sheriff, and the lien in the courts of the United States depends upon the delivery of the writ to their officer. But no provision is made by the statutes of the state or United States for the determination of the priorities between the creditors of the respective courts, state and federal. They merely provide for the settlement of the priorities between creditors prosecuting their claims in the same jurisdiction.

The demands of the respective creditors, in the present instance, were reduced to judgments, and the officers of either court were invested with authority to seize the property.

The liens were consequently coordinate or equal, and in such cases, the tribunal which first acquires possession of the property, by the seizure of its officer, may dispose of it so as to vest a title in the purchaser, discharged of the claims of creditors of the same grade.

This Court applied this principle, [Williams v. Benedict](#), 8 How. 107, to determine between judgment creditors in a court of the United States, and an administrator holding under the orders of a probate court of a state; in [Wiswall v. Simpson](#), 14 How. 52, in favor of a receiver holding under the appointment of a court of chancery of a state and a judgment creditor; in [Peale v. Phipps](#), 14 How. 368, in favor of a trustee in possession, under the order of a county court, against such a creditor; and in [Hagan v. Lucas](#), 10 Pet. 400, between execution creditors issuing from state and federal jurisdictions. The same principle has been applied, in several state courts, in favor of the purchasers at judicial sales of steamboats, and other

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crafts subject to liens in the nature of admiralty liens. *Steamboat Rover v. Stiles*, 5 Black 483; *Steamboat Raritan v. Smith*, 10 Mo. 527; 19 Ala. 738; and is recognized in the courts of common law and admiralty in Great Britain. 4 East. 523; 2 Wms.Ex'rs 888; *The Saracen*, 3 W.Rob.

In Alabama, the *bona fide* purchaser at a judicial sale, made to enforce a statutory lien, takes the property discharged of liens of the same description, whether the subject of sale be land or personal property. *Wood v. Gary*, 5 Ala. 43; 12 *id.* 838; 11 *id.* 426. The propriety of the rule is fully vindicated by the statement in [Hagan v. Lucas](#), 10 Pet. 400, where this Court said:

"A most injurious conflict of jurisdiction would be likely often to arise between the federal and state courts, if the final process of the one could be levied on property which had been taken by the process of the other. The marshal or the sheriff, as the case may be, acquires by a levy as special property in the goods, and may maintain an action for them. But if the same goods may be taken in execution at

the same time, by the marshal and the sheriff, does this special property vest in the one or the other, or both of them? No such case can exist; property once levied on remains in the custody of the law, and it is not liable to be taken by another execution in the hands of a different officer, and especially an officer acting under a different jurisdiction."

The instruction of the district court is erroneous, and its judgment is therefore

Reversed and cause remanded.

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ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Alabama, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the District Court of the United States for the Middle District of Alabama in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said District Court of the United States for the Middle District of Alabama, with directions to award a venire facias *de novo*.

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