Jones Vs. Springer

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Appeal No. : 226 U.S. 148

Appellant : Jones

Respondent : Springer

Judgement :

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U.S. Supreme Court Jones v. Springer, 226 U.S. 148 (1912)

Jones v. Springer

No. 23

Argued October 3, November 4, 1912

Decided December 2, 1912

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APPEAL FROM THE SUPREME COURT

OF THE TERRITORY OF NEW MEXICO

SYLLABUS

A *bona fide* purchaser for value of perishable property held under attachment at a sale made by order of the local court gets a good title notwithstanding bankruptcy proceedings had been instituted within four months after the attachment and had proceeded to adjudication before the sale.

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An order to sell attached property on the ground that it is perishable is not one to enforce the lien of the attachment, but one incidental to the preservation of the property, and the court having the custody has the jurisdiction to sell.

A proceeding to sell perishable property is one *in rem,* and the purchaser gets title against all the world.

A local court having the custody under attachment of perishable goods may order a sale if necessary to protect, and it is not necessary that such sale be made under General Order XVIII, 3, in order to validate it.

An order for sale of perishable property held under attachment, made by the local court within the terms of the local act, will not be set aside by this Court.

Even if the local statute permitting sales of perishable property held *in custodia legis* be broader than General Order XVIII, 3, this Court will not for that reason only set aside a sale made by the local court if within the terms of the local act.

As to whether property is perishable or not, this Court will follow the rulings of a territorial court in the absence of a strong reason to the contrary.

15 N.M. 98 affirmed.

The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This case comes here upon appeal from a judgment denying the title of the appellant, as trustee in bankruptcy, to property formerly belonging to the bankrupt and sold in this suit by order of the local court. The facts are these. The property in question is a mining dredge. It was attached on February 27, 1906, and a receiver was appointed on March 19. On May 1, a petition was filed for an order directing the dredge to be sold on the ground that it was "of a perishable nature, and liable to be lost or diminished in value before the final adjudication of the

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case" within the Compiled Laws of New Mexico, 1897, 2716, and an order to that effect was made on the same day. The ground of the finding on which the sale was ordered was that the dredge was anchored in an embanked pond fed by a mountain stream subject to heavy floods, and was liable to damage from that source. The sale took place on June 26, and the dredge was bought in good faith and without notice of the defendant's insolvency at a price of $5,000, paid into court by the appellee, Springer. The sale was confirmed on July 17. But on March 12, 1906, a petition in bankruptcy had been filed in the Northern District of Illinois against the Oro Dredging Company, the defendant in this suit. On April 23, the company was adjudged a bankrupt. On July 9, the appellant was appointed trustee, and on July 19 qualified. On August 2, he first appeared in this cause, that being the first notice of the adjudication received by the parties concerned or the court. He filed an intervening petition praying that the order of sale be set aside, the attachment dissolved, and the property turned over to him. The petition, so far as it affects the dredge, was denied, the judgment was affirmed by the supreme court of the territory, and the trustee appealed.

The main ground of the appeal is that, by 70 of the Bankruptcy Act, the title of the trustee related back to the date of the adjudication of bankruptcy, and that, as matter of law, Springer could not be a *bona fide* purchaser within the proviso of 67f, saving the title of a *bona fide* purchaser for value who shall have acquired the property by the attachment without notice or reasonable cause for inquiry. It is

argued that filing the petition in bankruptcy was a caveat to all the world, *Mueller v. Nugent,* 184 U. S. 1 , and that the above proviso can have effect only when the judgment and sale took place before the petition was filed.

We have no occasion to consider the last proposition in order to decide this case, or what effect, if any, the proviso

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has upon some language in *Conner v. Long,* 104 U. S. 228 , relied upon by the appellant (*see Clarke v. Larremore,* 188 U. S. 486 , 188 U. S. 488), the proceeding not having been one to enforce the lien of the attachment, but simply an order made on a finding that, in the language of the New Mexico statute, "the interests of both plaintiff and defendant will be promoted by the sale of the property." But the proposition quoted from *Mueller v. Nugent* must be taken with reference to the facts then before the Court, and not as applicable to all intents and purposes. *York Mfg. Co. v. Cassell,* 201 U. S. 344 , 201 U. S. 353 ; *Hiscock v. Varick Bank,* 206 U. S. 28 , 206 U. S. 41 ; *In re Rathman,* 183 F. 913, 924-925. It is true that the estate is regarded as *in custodia legis* from the date of the petition, as against a subsequent attachment. *Acme Harvester Co. v. Beekman Lumber Co.,* 222 U. S. 300 , 222 U. S. 306 -307. But in a case like the present, where, under an attachment levied before the petition was filed, the property had been put into the hands of a receiver without notice of the petition, it is not true that all power and jurisdiction of the local court were ended before notice of the bankruptcy proceedings. *Eyster v. Gaff,* 91 U. S. 521 , 91 U. S. 524 -525; *Scott v. Ellery,* 142 U. S. 381 , 142 U. S. 384 ; *Jaquith v. Rowley,* 188 U. S. 620 , 188 U. S. 626 ; *Frank v. Vollkommer,* 205 U. S. 521 , 205 U. S. 529 ; *Revere Copper Co. v. Dimock,* 90 N.Y. 33.

The jurisdiction of the territorial court not having been avoided, and that court having the actual custody of the *res,* it had the power to preserve the subject matter of the controversy that necessarily is incident to such conditions. An illustration, although not a perfect analogy, is to found in *United States v. Shipp,* 203 U. S. 563 , 203 U. S. 573 . An appeal had been taken to this Court on a

petition for habeas corpus, where a prisoner was held under sentence of a state court, and, pending the appeal, this Court had ordered the custody of the appellant to be retained. Shipp was charged with contempt for having been party

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to a conspiracy that ended in lynching the prisoner. It was strongly argued that neither the circuit court that refused the writ nor this Court had any jurisdiction of the case, but it was held that whether it had jurisdiction or not, until the question was decided, this Court had authority from the necessity of the case to preserve the subject of the petition. A similar authority existed in the territorial court until the trustee saw fit to intervene, which, so far as would have appeared at the time of the sale, had anyone known of the bankruptcy proceedings, he might never do. According to Marshall, C.J.,

"a right to order a sale is for the benefit of all parties, not because the case is depending in that particular court, but because the thing may perish while in its custody, and while neither party can enjoy its use."

Jennings v. Carson, 4 Cranch 2, 8 U. S. 26 . The recognition of a power springing from necessity is of old standing in English law. *Eyston v. Studd,* Plowd. 459, 466; 2 Inst. 168; *Baker v. Baker,* 1 Ventris 313. *See further Young v. Kellar,* 94 Mo. 581; *Betterton v. Eppstein,* 78 Tex. 443; *In re Le Vay,* 125 F. 990, 992.

It is argued that, if a sale was necessary, the court of bankruptcy could have directed it under General Order 18, 3, and that its power was exclusive. But such a rule would much impair the usefulness of the principle. The trustee, if appointed, may not know the condition of the property, or be prepared to decide. The court having the actual custody of the *res* does not know of the bankruptcy proceedings. There is a necessity for immediate action and no one is ready to act. If the local court, in its ignorance, directs a sale and the purchaser is chargeable with notice that there may be somewhere a petition filed that will destroy his title, the doubt affects the price that he will give, and if the sale turns out effective, the

goods have been sacrificed. The very reason of the rule that permits a good title to be given by an authority that has

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none contradicts the limitation supposed. We are of opinion that the power of the territorial court remained. "For necessity (which is excepted out of the law) the sale in that case is good." 2 Inst. 168. The proceeding is *in rem,* against all the world, the sale stands, and the claim of the trustee is transferred to the proceeds, which ordinarily must be presumed to represent the fair value of the goods and take their place.

Finally it is argued that the court of bankruptcy must decide whether the property is perishable or not, and that this property was not within the power conferred by the statute of New Mexico. The first proposition is little more than the one last discussed in another form. But, assuming that for any reason we could go behind the findings on which the case comes here, we see no reason for doing so if the sale was within the terms of the local act. On that question, as usual, we follow the ruling of the supreme court of the territory unless there are stronger reasons to the contrary than are shown here. *Fox v. Haarstick,* 156 U. S. 674 ; *Albright v. Sandoval,* 216 U. S. 331 , 216 U. S. 339 . The act as construed, though possibly broader than General Order 18, 3, does not go beyond the principle of necessity, at least as applied to this case.

Judgment affirmed.