34 Phil. 211

**[ G.R. No. 10297. March 11, 1916 ]**

**AGAPITO BONZON, PLAINTIFF AND APPELLEE, VS. THE STANDARD OIL COMPANY OF NEW YORK ET AL., DEFENDANTS. THE STANDARD OIL COMPANY OF NEW YORK, APPELLANT.**

**D E C I S I O N**

**CARSON, J.:**
All the real questions raised by this appeal were decided in our opinion and judgment entered in this case when it was here before upon a ruling sustaining a demurrer to the complaint.

The doctrine therein announced must be held to be the law of this case and under that doctrine the judgment entered in the court below should be affirmed with the costs of this instance against the appellant. So ordered.

*Arellano, C. J., Torres* and *Araullo, JJ.,* concur.
Johnson, J., see dissenting opinion.

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*DISSENTING OPINION*

**JOHNSON, J.:**

This action was commenced in the Court of First Instance of the Province of Cavite, on the 19th day of November, 1912. Its purpose was to recover of the defendants the sum of ₱2,160, with legal interest from the month of December, 1909, and costs.

The defendant, the Standard Oil Company, presented a demurrer to the complaint, which was later overruled. Whereupon the said defendant, the Standard Oil Company, presented

its answer.

After hearing the evidence adduced during the trial of the cause, the lower court reached the conclusion that the defendant, the Standard Oil Company, was liable to the plaintiff in the sum of ₱2,160 and rendered a judgment in favor of the plaintiff and against the said defendant for said sum, with interest from the 31st of December, 1909, with costs. From that judgment the Standard Oil Company appealed to this court.

From an examination of the record, the following facts appear to be established, beyond question:

First. That in the month of November, 1909, the Standard Oil Company of New York obtained a judgment against one Alipio Locso.

Second. That in the month of November, 1909, an execution was issued upon said judgment, in favor of the Standard Oil Company against the said Alipio Locso.

Third. That said writ of execution was placed in the hands of the defendant, Leonardo Osorio, as sheriff of the Province of Cavite, for the execution of said judgment.

Fourth. That on the 3d and 9th days of November, 1909, by virtue of said execution, the defendant, Leonardo Osorio, attached seven parcels of land particularly described in the second paragraph of the complaint in the present action. The said property was attached as the property of Alipio Locso.

Fifth. That on the 23d of December, 1909, the said property was sold at public auction, to the plaintiff, Agapito Bonzon, for ₱2,160.

Sixth. That after the said attachment was issued and before the sale of the property in question at public auction, Felix Cuenca, Pablo Cuenca, and others, served written notice upon the defendant, Leonardo Osorio, as sheriff, that the property which he had attached as the property of Alipio Locso, was not the property of the said Locso, but belonged to them.

Seventh. That, notwithstanding the notice of the said Felix Cuenca and others, relating to the ownership of the land in question, the defendant, Leonardo Osorio, continued the attachment and on the 23d of December, 1909, sold said property to the plaintiff herein.

Eighth. That later, and after said sale, the plaintiff herein took possession of the parcels of land in question, which he had purchased at public sale, as above described.

Ninth. That on the 31st of December, 1909, the said Leonardo Osorio, as sheriff, delivered the said ₱2,160, the sum received in the sale of the said land, to Kincaid and Hurd, as attorneys of the Standard Oil Company of New York.

Tenth. That in the month of March, 1910, the said Felix Cuenca, Pablo Cuenca, and others, commenced an action in the Court of First Instance of the Province of Cavite, for the recovery of the possession of the land in question, from the plaintiff herein; that on the 29th of March, 1912, the judge of the Court of First Instance of the Province of Cavite, rendered a judgment in favor of the said Felix Cuenca *et al.*, and against the said Agapito Bonzon, ordering the latter to deliver to the former the possession of the land in question.

Eleventh. That on the 19th of March, 1912, the present action was commenced by the plaintiff against the defendants for the purpose of recovering the sum of ₱2,160, at the conclusion of which the judgment above mentioned was rendered and the defendant appealed to this court.

No claim was made either in the lower court or here that the defendant, in any way, participated in the alleged illegal sale of the property sold under said execution. There is no claim made by any of the parties that the purchaser was evicted from the property sold, in consequence of any *irregularity* in the proceedings concerning the sale of the same. (Sec. 470, Act No. 190). There is no claim that there was any irregularity in the proceedings, for which the defendant was, in any way, responsible. In fact, no charge of any irregularity is made, except the fact that the sheriff sold the property of one man for the purpose of paying the debt of another.

The question presented to this court by the appellant is one of law only. When the right, title, and interest, of a judgment debtor to the possession of property sold by the sheriff are brought into question and it later develops that the judgment debtor had no right, title or interest in the property sold, and there are no *irregularities* in the proceedings concerning the sale, can the purchaser, upon being evicted, recover the purchase price from the judgment creditor? In case there are no *irregularities*, is the judgment creditor responsible for any illegal act on the part of the sheriff? Is not the sheriff responsible, together with his bondsmen, for any illegal act which he commits?

Section 470 of Act No. 190 was taken almost verbatim from section 708 of the California Code of Civil Procedure. Said section 470 gives the purchaser of real property at a judicial sale an action against the judgment creditor for the purchase price, when he has been

evicted—

> (*a*) In consequence of *irregularities* in the proceedings concerning the sale; or (*b*) of the reversal or discharge of the judgment.

The same article allows a revival of the judgment in the name of the purchaser, if the purchaser has failed to recover possession in consequence of irregularities in the proceedings concerning the sale, or because the property sold was not subject to execution and sale. The only irregularity complained of in the present case is that "the property sold was not subject to execution and sale." That fact is apparently not denied.

The lower court held that a lack of right, title or interest on the part of the judgment debtor in the property sold was an *irregularity* in the proceedings concerning the sale and that the purchaser might pursue his remedy under section 470 of Act No. 190.

This court, in a former decision upon the demurrer, practically decided that a sale of the right, title, and interest of the judgment debtor in property wherein he had no right, title, or interest, gives rise to an action such as the present, and held that such a sale was an *irregularity*. (No. 8851, Bonzon *vs.* Standard Oil Co. and Osorio, 27 Phil. Rep.. 141.)

I cannot give my consent to that doctrine.

The former decision of this court referred to above is based largely upon a consideration of a similar provision found in the Code of Civil Procedure of California. The supreme court of the State of California itself has interpreted said section 708. It has held said section to be remedial and that it should be liberally construed. (Cross *vs.* Zane, 47 Cal., 602; Hitchcock *vs.* Caruthers, 100 Cal., 100; Merguire *vs.* O'Donnell, 139 Cal., 6.)

In none of these cases, however, has the supreme court of California gone so far as to hold that the purchaser at a sheriff's sale may recover from the judgment creditor, in case the title fails, unless there has been some irregularity in the proceedings concerning the sale.

In numerous cases the supreme court of California has held, under section 708, that the purchaser might have the judgment revived in his favor because "the property was not subject to execution and sale." (Hitchcock *vs.* Caruthers, 100 Cal., 100.) This court, however, in its former decision repudiated the reasoning given by the supreme court of California in said decision. The former decision of the court was based largely upon the

decision in the case of Merguire *vs.* O'Donnell (139 Cal., 6). In that case, however, the "irregularity in the proceedings concerning the sale" was the fact that the execution itself was void, and it, in no way, involved the question of the quantity of the right, title, or interest which the judgment debtor possessed in the land sold. The court said, at page 8:

> "We think a sale made by a sheriff on an order of the court and a *void* execution is 'irregular,' in the extreme degree, and that a sale had on a *void* execution is void for the reason of 'irregularity in the proceedings concerning the sale.' "

It must be noted that in the above case the action was for a revival of the judgment and was not an action against the judgment creditor.

We have been unable to find a single case in the State of California interpreting said section or any case of general authority, which gives the purchaser at an execution sale a right of action against the judgment creditor, solely on the ground that the judgment debtor had no right, title or interest in the property sold, except perhaps in a case where the judgment creditor was himself the purchaser of the property at said execution sale.

In the case of Boggs *vs.* Fowler (16 Cal., 559; 76 Am. Dec., 561), the court said:

> "The doctrine of *caveat emptor* applies only to sales made upon valid judgments, and is usually invoked with reference to sales upon execution issued against the general property of the judgment debtor. (Smith *vs.* Painter, 5 Serg. and R., 225; 9 Am. Dec, 344.) In these latter cases, a defect of title is no ground for interference with the sale, or a refusal to pay the price bid. The purchaser takes upon himself all the risks as to the title, and bids with full knowledge that in any event he only acquires such interest as the debtor possessed at the date of the levy or the lien of the judgment; and that he may, possibly, acquire nothing."

In the case of Braham *vs.* Mayor (24 Cal., 585), the court said:

> "Against the plaintiffs' claim to be reimbursed the amount paid at the sheriff's sale, by reason of the failure of the title which they purchased, and their right to maintain this, an independent action therefor, the case of Boggs *vs.* Fowler (16 Cal., 559, 562) seems to be conclusive."

In the case of Meherin *vs.* Saunders (131 Cal., 681), the court said, "for the rule of *caveat emptor* applies to execution sales." This doctrine, however, is not universal as will be seen by an examination of the decisions of the various states.

In the case of Goodbar, White & Co. *vs.* Daniel (88 Ala., 583), the purchaser at a sheriff's sale was seeking relief because of a failure of title in the judgment debtor. The court discussed at some length the doctrine of *caveat emptor* on execution sales, and concludes:

> "The officer sells, and the purchaser buys (not the thing itself, but) the real or supposed right which the defendant in execution has to it; and the purchaser operates precisely the same as if he had bargained for and obtained a quitclaim. * * * The basis of the whole doctrine is the rule of *caveat emptor*, which is the established and well understood rule of sheriff's sales. This rule puts every holder upon inquiry as to the defendant's title. It proclaims to the purchaser that there is no warranty of title, and if he buys, he must do so at his own risk. It warns him to go and inquire before purchasing; so that, if he makes a poor bargain, by parting with his money without getting anything in return for it, he must enter no complaint—no more than if he had bargained for and obtained a mere quitclaim deed. In the language of Chief Justice Gibson in Freeman *vs.* Caldwell (10 Watts [Pa.], 9): 'The plaintiff's case may be a hard one, but it is not more so than would be the case of a stranger; and to say that every sheriff's vendee, who is deprived of the property by title paramount, shall have his money again, would destroy all confidence in the stability of judicial sales.' * * * 'If this was not the law, an execution, which is the end of the law, would only be the commencement of a new controversy.' "

In the case of Smith *vs.* Painter (5 Serg. & R., 223; 9 Am. Dec., 344), the court said:

> "The sale by sheriff excludes all warranty. The purchaser takes all risk. He buys on his own knowledge and judgment. *Caveat emptor* applies in all its force to him. If this were not the law, an execution, which is the end of the law, would only be the commencement of a new controversy; the creditor kept at bay during a series of suits, before he could reap the fruits of his judgment and execution."

In the case of McGhee *vs.* Ellis (4 Litt. [Ky.], 244; 14 Am. Dec, 124) the action was by the

purchaser against the judgment creditor, because there was no title in the judgment debtor. The court said:

> "Where a sheriff, on execution, sells the property of a stranger without the creditor's *authority* or *knowledge*, and the true owner afterwards recovers the property, the creditor *is not liable* at law or in equity to refund the purchaser his money; but the sheriff, himself, is liable; and the judgment-debtor, though not liable at law, unless he was accessory to the taking of the property, is liable in equity, because the purchaser has discharged so much of his debt."

In the case of Dunn *vs.* Frazier (8 Blackford's Rep., 432), the court said:

> "If land be sold on execution and the creditor receive the purchase-money, the purchaser cannot, either at law or in equity, recover back the money from the creditor, merely because the debtor had no title to the land.
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> "But the debtor, is in such case liable to the purchaser, in equity, for the purchase-money. (Freeman on Void Judicial Sales, 168.)"

In view of the foregoing practically universal doctrine established by the courts, and in view of the provisions of section 470 of Act No. 190, the purchaser of land sold under an execution, has a remedy only against the judgment creditor when there has been some *irregularity* in the proceedings concerning the sale. Said section does not apply to a case where the only irregularity is that the sheriff has levied upon the property of one person to pay the debt of another. In the present case the judgment was regular. The writ of execution was valid. The judgment creditor was in no way responsible for the manner in which the sheriff attempted to satisfy the judgment through the writ of execution. This court has held, in numerous cases, that the sheriff, when he levies upon and sells the property of one person to pay the debt of another, is himself liable, together with his bondsmen. In the present case the judgment creditor has committed no wrong. If any wrong was committed, it was committed by the officers of the law. The law makes them liable. His right should not be defeated by the malfeasance of others, especially until it is proven and the fact established, beyond peradventure, that there existed some irregularities, with which the judgment creditor could be charged.

It seems clear to me that the judgment of the lower court should be reversed and it should be so ordered.

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