

FREDERICK GARFIELD WAITE, PLAINTIFF AND APPELLEE, VS. JAMES J. PETERSON ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 3636. August 20, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

The appellant (Kwong We Shing) has not caused the proof in this case to be brought here. The only question therefore is whether the facts admitted in the pleadings and those found by the court below in its decision sustain the judgment appealed from. That court found among other things as follows:

"From the evidence presented at the trial, the court finds that on December 8, 1905, one Henry Manheim delivered to L. K. Tiao Eng a diamond ring on consignment for 800 pesos, to be returned, if not sold, in sixty days; that on the 22d day of January, 1906, while the ring was in the possession of L. K. Tiao Eng, the defendant, as sheriff of Manila, levied upon the said ring; that on the 23d day of January, 1906, the aforementioned Henry Manheim, for value received, assigned all his right to and interest in said ring to the said plaintiff herein; that on the 25th day of January, 1906, the plaintiff made demand upon the sheriff of Manila, who had made the levy, as before said, for the said ring, and alleged the value thereof to be 800 pesos; that the sheriff was indemnified by the judgment creditor, in whose favor the levy had been made, as provided by law, and retained possession of the ring and sold the same at public sale; that the said Henry Manheim has never been paid for the said ring, in accordance with the terms of the contract hereinbefore mentioned or any part thereof; that at the time of the levy by the sheriff upon the said ring, as before stated, the said Henry Manheim was the owner of and entitled to possession of the said ring; that while the ring was in the possession of the sheriff the said Henry Manheim transferred his ownership and right to possession of said ring to plaintiff herein and that the plaintiff thereupon became the owner and entitled to possession of said ring."

Judgment was rendered against both of the defendants for the return of the ring, and, if that could not be had, for the sum of 725 pesos, with interest, and costs.

I. The appellant claims that by the terms of section 451 of the Code of Civil Procedure this action can not be maintained by the plaintiff because he was not the owner of the ring at the time the levy was made. In other words, as we understand it, his claim is that no action for the value of the property taken can be maintained except by the person who was the owner thereof at the time it was seized by the sheriff. We do not think that this contention can be sustained. Said section 451 is as follows:

"Claims by third persons to property levied on.—Property levied on can be claimed by a third person as his property, by a written claim, verified by the oath of such claimant, setting out his title thereto, his right to possession thereof, stating the grounds of such title, and served upon the governor, or his deputy, or officer making the levy. The officer in such case is not bound to keep the property, unless the plaintiff, or the person in whose favor the writ of execution runs, on demand, indemnify the officer against such claim by an obligation, signed by the plaintiff, with good and sufficient surety, and no claim to, such property shall be valid against the officer, or shall be received or be notice of any rights against him, unless made as herein provided; but nothing herein contained shall prevent such third person from vindicating his claim to the property by any

proper action."

The vice in the argument of the appellant consists in the fact that he assumes that section 451 is the only law which gives the plaintiff a right of action against the sheriff, and that if he is not included within that section, he can not maintain any action. This is manifestly erroneous. So far from being the origin of any rights on the part of the owner of property wrongfully taken by the sheriff, it is rather a limitation upon his rights previously existing. If property of a person is taken by the sheriff upon an execution against another person, the sheriff is liable therefor in the absence of statute, as any private person would be. When one's property is wrongfully taken by another, the former has a right of action against the person who interfered with his property, either for the recovery of the property itself or for damages for its taking, and he has his choice of these remedies. If section 451 did not exist, by the general principles of the law the sheriff would always be responsible for wrongfully taking the property of another. For the purpose of limiting the responsibility of the sheriff in such cases, and to provide that some notice should be given to him of the claims of third persons, this section requires such third persons to make such claims in writing, so that the sheriff, after the notice is given to him, can decide for himself whether he will proceed with the levy or abandon the property.

The right of action given by the general principles of law to the person whose property has wrongfully been taken from him, either to recover damages or the possession of the property, is a right which can be transferred by him, and his transferee can maintain either one of these actions against the wrongdoer. On this first claim of the appellant, then, the only question is whether this section 451 has taken away from the assignee "of the owner his right to maintain an action to recover the value of the property.

An examination of the section will show that there is no distinct statement therein, that the claim can only be made by a person who was the owner of the property at the time the levy was made. As the section is written, we do not think that it should be so construed. Such a construction would, in case of the involuntary transfer of rights, deprive the transferee of actions which might be absolutely necessary to him for the protection of his interests. If we so construed the section, we should have to hold that if the owner of the property died the day after the levy his executor or administrator would have no right to make a claim against the sheriff for the return of the property and would be deprived of an action against the sheriff for the recovery of damages for such wrongful taking. The same rule would have to be made if an order in bankruptcy was passed against the owner of the property, the day after the levy. We do not think that the section requires any such construction.

II. It is further claimed by the appellant that in no event should judgment have been entered against him—that is to say, against Kwong We Shing. It will be noticed that the court found that the sheriff was indemnified by the judgment creditor. This statement is sufficient to make the judgment creditor liable for the acts of the sheriff. In the case of *Lovejoy vs. Murray* (3 Wall. U. S., 1) the court said, at page 9:

"The demand for indemnity, and the giving of it by the defendants, proceeded upon the supposition that the sheriff would without it go no further in that direction, but would give up the property to the claimant, the present plaintiff, and make his peace on the best terms he could. By the present statute of Iowa he had a right to do this, if the plaintiff in attachment refused to assume the hazard of indemnifying him. And if there were no such statute, he had a right to deliver the property to the claimant, and risk a suit by the plaintiff in attachment rather than a contest with a rightful claimant of the goods.

"The giving of the bond by the present defendants must, therefore, be held equivalent to a personal interference in the course of the proceeding, by directing or requesting the sheriff to hold the goods as if they were the property of the defendants in attachment. In doing this they assumed the direction and control of the sheriff's future action, so far as it might constitute a trespass, and they became to that extent the principals, and he their agent in the transaction. This made them responsible for the continuance of the wrongful possession and for the

sale and conversion of the goods; in other words, for all the real damages which plaintiff sustained."

The judgment of the court below is affirmed, with the costs of this instance against the appellant, Kwong We Shing. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey JJ., concur.

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