

CHARLESWORTH PONTIAC CO. v. WALKER.

5-3417

385 S. W. 2d 797

Opinion delivered January 18, 1965.

1. JUDGMENT—TIME OF TAKING EFFECT.—A judgment constitutes a lien on personal property from the time an execution is placed in the hands of the sheriff. [Ark. Stat. Ann. § 30-116 (Repl. 1962).]
2. JUDGMENT—PRIORITY AS TO UNRECORDED MORTGAGE.—A judgment which had ripened into a lien by virtue of an execution having been placed in the hands of the sheriff was superior to a purported bill of sale which was in fact a mortgage that had not been recorded.
3. APPEAL & ERROR—REVERSAL WITH DIRECTIONS.—Cause reversed with directions to overrule the motion to set aside the sale in view of the facts.

Appeal from Benton Circuit Court, *Maupin Cummings*, Judge; reversed.

Charles W. Atkinson, for appellant.

No brief filed for appellee.

SAM ROBINSON, Associate Justice. Appellant, Charlesworth Pontiac Company, Inc., recovered a judgment against appellee, W. E. Walker, in the sum of \$5,294.36; execution on the judgment was placed in the hands of the Sheriff who levied on certain laundry equipment purportedly belonging to appellee. The property was sold by the Sheriff under the execution. Later, J. I. Walker, uncle of W. E. Walker, intervened in the case at bar alleging that he is in fact the owner of the laundry equipment sold by the Sheriff under the execution, and asked that the sale be set aside.

A hearing was held on the motion to set aside the sale; the Circuit Court made a finding that the laundry equipment belonged to the uncle, J. I. Walker, and granted the motion. The judgment creditor has appealed.

First appellant contends that J. I. Walker is a non-resident of the State of Arkansas and should not have been permitted to intervene because he gave no bond as required by Ark. Stat. Ann. § 27-2301 (Repl. 1962). The record reveals that intervenor is a non-resident of the State; for all practical purposes he is a plaintiff, and

the cause should have been dismissed as provided by Ark. Stat. Ann. § 27-2302 (Repl. 1962).

In regard to the merits, it is clear from the record that the instrument J. I. and W. E. Walker claimed to be a bill of sale is nothing more than a mortgage, and it has not been recorded.

A judgment constitutes a lien on personal property from the time an execution is placed in the hands of the Sheriff. Ark. Stat. Ann. § 30-116 (Repl. 1962).

A judgment which has ripened into a lien by virtue of an execution thereon having been placed in the hands of the Sheriff is superior and paramount to an unrecorded mortgage. *Hawkins v. Files*, 51 Ark. 417, 11 S. W. 681; *Arkansas Bank & Trust Co. v. State Bank of Poplar Bluff*, 166 Ark. 538, 266 S. W. 977.

Reversed with directions to overrule the motion to set aside the sale.
