

ARKANSAS NATIONAL BANK *v.* PRICE.

Opinion delivered March 25, 1929.

1. EXECUTION—VALIDITY OF SALE.—Lands subject to the lien of a judgment may be sold under execution, though the judgment debtors have sold and transferred their interest to others.
2. EXECUTION—RIGHT OF REDEMPTION.—The fact that the court ordered the clerk to issue and deliver to the sheriff “a specific execution,” and ordered the sheriff to levy such execution on all of the lands of the debtors in the county in which judgment was rendered and on any real estate afterwards acquired by them before the date of their adjudication in bankruptcy, did not change the nature of the writ of execution, so far as the right of redemption is concerned.
3. EXECUTION—RIGHT TO REDEEM.—Judgment debtors and their grantees, purchasing property subject to a judgment lien, were entitled to redeem it from a subsequent execution sale, under Crawford & Moses’ Dig., §§ 4329, 4330.
4. EXECUTION—RIGHTS OF JUDGMENT CREDITOR.—A judgment creditor had a right to control the execution and stop the sale of the debtor’s property thereunder at any time, or bid for and purchase it at such sale, notwithstanding any representations by the judgment debtors or their grantees challenging the validity of the sale.
5. EXECUTION—EFFECT OF REDEMPTION.—Purchasers of lands subject to a judgment lien were entitled to redeem such lands from execution sale thereunder free from the judgment lien, which, so far as the lands were concerned, was satisfied by the execution sale.
6. EXECUTION—INJUNCTION AGAINST REDEMPTION.—Where an execution creditor failed to realize the value of lands sold under execution by bidding only a nominal amount because of its redemption by the grantees of the judgment debtors by paying the price for which it was sold, such creditor is not entitled to enjoin such grantees from receiving redemption deeds.

Appeal from Washington Chancery Court; *Lee Seamster*, Chancellor; affirmed.

STATEMENT BY THE COURT.

Appellant brought these three suits, consolidated for a hearing, on January 30, 1928, against M. L. Price, R. M. Clark and F. M. Patrick and others, their grantees of certain lands, praying an injunction against their said grantees from acquiring or receiving and the clerk of the chancery court from issuing redemption deeds for lands sold under execution of appellant against the said named defendants, and from a decree denying it relief prosecutes this appeal.

It appears from the testimony that appellant bank obtained a judgment against the said three named appellees on June 17, 1925, for \$7,585.40, costs, etc. An appeal was taken by the said defendants to the Supreme Court without supersedeas issued, where said judgment was affirmed as to them, on February 21, 1927. On May 27, 1927, a mandate was filed with the clerk of the Washington Chancery Court and entered of record, and an execution issued upon the judgment. On July 15, 1927, the said defendants filed a complaint against the sheriff, alleging that this execution was prematurely issued at the request of the bank upon a purported judgment, and that the sheriff was undertaking to levy and enforce same, which was alleged to be illegal, to the great and irreparable injury of the defendants, damages being asked by each of the defendants for specific amounts for the issuance and levy of the execution. The court found that the judgment had been rendered, and affirmed on appeal by the Supreme Court, and that an execution was duly issued on June 30, 1927, for the full amount of the judgment, notwithstanding on July 30, 1925, the sum of \$1,036.96 had been paid and duly credited thereon. It also found that the grantees of the judgment debtors, having purchased the lands after the judgment was rendered, were not entitled to any relief, and found, upon motion of the bank, that the execution should be amended, and directed the clerk to credit thereon the said amount paid as of date July 30, 1925, and denied any relief.

On the 22d day of August, 1927, all parties being present, an order and decree was made directing the clerk to deliver an execution to the sheriff, who was ordered to levy same upon all real estate owned by the said judgment debtors or either of them at the time of the rendition of the judgment on the 17th day of June, 1925, and any real estate acquired by them or either of them thereafter more than four months prior to the time of their going into bankruptcy on the 28th day of July, 1927. Under this last, or amended, execution the lands that had been owned by the said several defendants at the time of the rendition of the judgment, which constituted a lien upon them, and afterwards conveyed to their grantees, the other appellees, were sold under execution by the sheriff, and purchased by appellant. Each of the grantees paid the amount of the appellant's bid to the clerk of the court, with 15 per cent. and charges and costs for redemption of his particular lands.

The complaints allege that the deeds from said judgment debtors to their grantees constituted a cloud upon the title to the lands, and also that the particular grantees had each made application to the clerk of the chancery court to redeem the lands claimed by him, paying in the amount of the purchase money for particular interest, penalty and costs, and received from him a receipt for the money and a certificate of redemption; that said purchasers had no right to redeem from the sale, since each of them had appeared at the sale and notified all prospective bidders that it was illegal, and any purchaser would not acquire any title, but only a lawsuit if purchased, and prayed that each of said purchasers be enjoined from redeeming his said tract of land, and that the clerk be enjoined from issuing a redemption deed, etc.

The motion to dismiss the complaints set out appellees' several grounds therefor, and that the facts alleged did not constitute a cause of action, and answered,

admitting their payment to the clerk of the money as alleged in redemption of the lands sold.

Appellant also alleged in its complaints that all other persons present at the execution sale were deterred from bidding because of the conduct or claims of the appellees as to the illegality of the execution and sale, and that it only bid the amount specified in each of its complaints for the particular tract of land, expecting to bid higher amounts as the sale proceeded; that it was willing to pay or increase its bid for each of said tracts of land five or six times the amount bid and to the reasonable value of the property sold, which it offered to do.

J. V. Walker and *B. R. Davidson*, for appellant.

W. A. Dickson and *W. N. Ivie*, for appellee.

KIRBY, J. The appellees, judgment debtors, and their grantees of the lands sold at the execution sale necessarily sold and purchased same subject to the lien of the judgment. The appellant had the right accordingly to the execution of his judgment against the said lands levied on, notwithstanding their sale or transfer. The court below recognized such right, and refused to enjoin the sale of said property under the execution, but did order corrected and amended the execution first issued by appellant, reducing the judgment to the balance due after crediting thereon the amount shown to have been paid. The fact that the court ordered the clerk to issue and deliver to the sheriff "a specific execution directing the sheriff," and also ordered him to levy said execution on all real estate owned by the debtors or either of them in the county at the the time of the rendition of the judgment and any real estate acquired by them thereafter prior to 4 months before the date of their adjudication in bankruptcy, in no wise changed the nature of the writ as an execution, so far as the right of redemption thereunder is concerned. The execution was levied and the property sold under the procedure prescribed for the sale of property under execution, and the judgment debtors and their grantees purchasing the

property subject to the judgment lien, were entitled to redeem same from the execution sale thereof, as the court correctly held. Sections 4329 and 4330, C. & M. Digest, 23 C. J. 714, § 27; 10 R. C. L. 1346, § 138; *Beard v. Wilson*, 52 Ark. 290, 12 S. W. 567.

The appellant had the right to control the execution, to stop the sale of the property upon which it was levied, at any time, and his right to bid and purchase was in no wise limited or destroyed by any representations the judgment debtors or their grantees made at the execution sale challenging the validity thereof. It admits that it only made one bid in order to start the bidding, that it did not desire to purchase the land, and was entirely willing and desirous of its bringing its reasonable value at the sale, and even offered, in its suit to enjoin the officers and grantees of the judgment debtors from completion of the redemption and execution of the conveyances, to allow a credit upon the judgment of from three to four and five times the amount bid on the property, conceding the same to be the reasonable value thereof at the time of the execution sale.

The purchasers under their conveyances from the judgment debtors acquired all the interest owned by such debtors, subject only to the lien of the judgment and the execution thereof against it. They had the right as grantees of such judgment debtors to redeem the property from the sale under the execution in accordance with the terms of the statute providing therefor, and, having done so by payment of the required amount to the clerk, in accordance with the statute, they acquired all the interest in the land, free from any incumbrance of the judgment lien, which was satisfied, so far as they were concerned, by the execution sale. If therefore the judgment creditor, having the right to subject this property to an execution sale for satisfaction of his judgment, failed to realize the value of the property sold by bidding only a nominal amount because of its redemption by the grantees of the judgment debtors for the price at

which the property was sold, it was his own fault, since he knew what his rights were, and failed to bid more than the amount for which the lands were sold under execution.

The lands were sold under execution according to the undisputed proof, and it can make no difference here that it was claimed to have been a specific execution, since it was not a judicial sale within the meaning of such term, from which no redemption could be had.

We find no error in the record, and the judgment is affirmed.
