REPORTS

OF

C A S E S

ARGUED AND DETERMINED

IN THE

SUPREME COURT OF APPEALS

OF

VIRGINIA :

WITH SELECT CASES,

RELATING CHIEFLY TO POINTS OF PRACTICE,

DECIDED BY

THE SUPERIOR COURT OF CHANCERY

FOR

THE RICHMOND DISTRICT.

VOLUME II.

BY WILLIAM W. HENING AND WILLIAM MUNFORD.

FLATBUSH, (*N. Y.*)
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1809.

DISTRICT OF VIRGINIA, TO WIT:

BE IT REMEMBERED, That on the twenty-first day of March, in the thirty-third year of the Independence of the United States of America, WILLIAM W. HENING and WILLIAM MUNFORD, of the said district, have deposited in this office the title of a book, the right whereof they claim as authors, in the words following, to wit:

"Reports of Cases argued and determined in the Supreme Court of Appeals of Virginia: "with Select Cases, relating chiefly to Points of Practice, decided by the Superior Court of "Chancery for the Richmond District. Volume II. By William W. Hening and Wil- "liam Munford."

IN CONFORMITY to the act of the Congress of the United States, entituled, "An act for "the encouragement of learning, by securing the copies of maps, charts, and books, to the "authors and proprietors of such copies, during the times therein mentioned;" and also to an act, entituled, "An act, supplementary to an act, entituled, an act for the encouragement "of learning, by securing the copies of maps, charts and books, to the authors and proprie- "tors of such copies, during the times therein mentioned, and extending the benefits thereof "to the arts of designing, engraving and etching historical, and other prints."

WILLIAM MARSHALL,
(L. S.) Clerk of the District of Virginia.

opinion, that the decree of the Chancellor ought to be reversed, and a perpetual injunction awarded, as to both judgments; for the first against *Woodson* being *void*, no damages can be given against the sheriff for any errors he might have committed in levying the execution founded thereupon.

MARCH, 1803.

Woodson and Royster v. Barrett and Company.

Judge ROANE said it was a plain case; and that, in his opinion, there was less reason for taking it out of the statutes against gaming than appeared in the cases cited from *Washington*.

Judge FLEMING concurring, the decree was reversed, and injunction made perpetual.

Price *against* Crump and others.

Friday, March 11.

WILLIAM PRICE, on the 11th of *September*, 1802, exhibited his bill in the Superior Court of Chancery, for the *Richmond* District, against *Julius Crump*, *Benjamin Sheppard*, and *Daniel Burton*; in which, among other things, he stated that a judgment obtained in *Henrico* County Court by a certain *Thomas Catlett* against *Crump*, had been assigned to him for a valuable consideration, by *Robert Brooke*, agent for the said *Catlett*, with liberty to sue out any execution thereon, in the name of the said *Catlett*, for his own benefit, against the said *Crump*; that, by virtue of the said agreement and assignment, he took out a writ of *fieri facias* against *Crump*, on the 11th day of *August*, 1801, which, "*on the same day*, was de- "livered to *Benjamin Sheppard*, deputy-sheriff, acting un- "der *John Harvie*, sheriff of *Henrico* County;" that *Crump* was also indebted to him in two bonds, assigned to him, on which he had brought suits then depending, in the same County Court; that on the said 11th day of *August*,

Money *bona fide* lent to a sheriff, and applied by him to his own use, prior to his receiving a writ of *fieri facias* against the lender is not liable to satisfy such execution, either at law, or in equity; notwithstanding the same money was *originally* deposited in his hands as a *pledge* for certain purposes.

MARCH, 1808.

Price v. Crump and others.

1801, *Sheppard* had in his hands 400 dollars, belonging to *Julius Crump*, on which he ought to have levied the execution; instead of doing which, he made a *special return;* (a copy whereof was inserted in the record) stating, that "no effects were found in his bailiwick, except 400 dollars, "which were deposited in his hands by said *Julius Crump*, "to indemnify him as bail on two writs which he had "served on him, wherein *William Price*, assignee, &c. "was plaintiff, and the said *Crump* defendant," &c. that the said reason assigned in the *special return* had ceased to operate, for that *Daniel Burton* became *special bail* in the said suits, and thereby discharged the deputy-sheriff from his responsibility as *common bail;* that the said *Crump* had no estate on which the said execution could be levied, except the said 400 dollars, which still remained in the hands of the said deputy-sheriff, and which, (*the complainant charged,*) by an agreement between the said deputy-sheriff and *Crump*, the said deputy-sheriff *was to use, and to pay Crump interest thereon.* The complainant contended that, by virtue of the execution, and on delivery thereof to the sheriff, he had a *lien* on the said sum of money; and prayed that it might be subjected to the payment of his several claims against *Crump:* requiring the defendants to discover, *when* the said execution was *delivered* to the said sheriff: and particularly, the said deputy-sheriff to say, when the said 400 dollars were paid or delivered to him by the said *Crump*. *Sheppard*, in his answer alleged, that, some short time after the money had been deposited in his hands, for the purposes expressed in his return on the execution, to wit, on the 8th day of *August*, 1801, it was agreed between *Crump* and him, that he "might employ the said mo-"ney for his own benefit, upon paying a certain interest "to the said *Crump;* that he *did accordingly employ it for* "*his own use, on the same 8th day of August*, and had "not one shilling in his hands of the money of the said "*Crump* on the 11th day of *August*, 1801," (being the date of the execution,) "except that he was *indebted* to the

" said *Crump*, and bound to pay the sum of 400 dollars in " manner aforesaid ; but he was not bound to restore the " *specific* money." *Crump*, in his answer, as to these points, referred to *Sheppard's* answer as his own. The other circumstances in the case, being foreign to the point on which the cause was decided, need not be mentioned ; except that the above allegations in the answers, as to the particular *time of the loan*, were neither supported, nor contradicted, by the depositions. The late Chancellor, observing that, if the loan of the 400 dollars were a *fair transaction*, and *preceded* the delivery of the *fieri facias* to the officer, the property never was bound by that precept ; that it had not been suggested in the bill that the loan, a fact admitted by the plaintiff, (*for so he charges*,) was not a *bona fide* contract ; and that the defendants, who were required by the bill to discover *when* the said execution was delivered to the said *Benjamin Sheppard*, had declared, that the loan was even before the emanation of the execution ; in which they had not been contradicted ; dismissed the bill at the plaintiff's costs, who, thereupon, appealed to this Court.

Wickham, for the appellant. The only question is, can the sheriff levy a *fieri facias* delivered to him to be executed, upon money in his hands belonging to the debtor ? or rather, must he not return the execution, *ready to satisfy ?*

The Chancellor has admitted the proposition ; but says, that in this case, it was not *money in the hands* of the officer, but a *debt* due from the officer to the debtor of the plaintiff.

In *Armistead* v. *Philpot*,(*a*) it was decided that, " if a " plaintiff cannot find sufficient effects of the defendant, to " satisfy his judgment, the Court will order the sheriff to " retain, for the use of the plaintiff, money which he has " levied, in another action, at the suit of the defendant." The old authorities were against taking *money* in execution ; but the rule is now otherwise. In this country, it is

(*a*) 1 *Doug.* 230.

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clear, that money in the officer's hands is liable: whether a rule of Court is necessary or not, I cannot say; but it amounts to the same thing. *Here*, the application was to a Court of Equity; and, if the money was a *pledge*, *that Court* could direct its application.

(a) 1 *Vern.* 398, 399.

In *Smithier* v. *Lewis*,(a) the Court directed money *lent* to be applied; and in *Angell* v. *Draper*, (the next case in the same book,) the same principle was recognised; but it was adjudged that it should be *after execution sued out*; for, until then, the goods were not bound by the judgment.

Even if there were other claims for which the money was pledged, the plaintiff was entitled to a decree, after satisfying those claims. 9 *Mod.* 153.

But the fact is not as the Chancellor has presumed. *Sheppard* held the money, at the *time the execution was delivered to him* as *officer*, not as *borrower*. His answer is the only evidence of his holding as a *borrower*; but the answer is not evidence so far as it is not responsive to the bill. The plaintiff states that the money *was lent*; but he does not say that the loan was *before* the execution came to the sheriff's hands. At that time the money was held to indemnify the sheriff as *bail* at the plaintiff's suit. His *return* on the execution proves this: and is the proper evidence; for his answer cannot be received to contradict it, unless he allege a mistake and prove it. By his return, he admits that he did not hold as a *borrower*, but as a *public officer*.

Warden, for the appellee. There has been no decision *in this Court* that *money* is subject to an execution. But if a sheriff, *indebted* to a debtor, against whom an execution issued, was bound to return it, *ready to satisfy*, it would indeed be a new doctrine: and this is that case.

The objection that the sheriff's answer is not responsive to the bill is incorrect; for it appears on inspecting the bill and answer, to be completely responsive, and is, therefore, evidence.

But the decree is correct for another reason: the plaintiff had no right to come into *Chancery* upon an assigned judgment.

Randolph, on the same side. This is a new doctrine in this country. The case is that of an assignment of a judgment purchased by the plaintiff, for less than its nominal amount, of a man who called himself an agent of *Catlett*; and *Catlett* is no party to this suit; neither is there any proof that the *agent of Catlett*, as he calls himself, had any power to sell. The plaintiff, therefore, had no title to the judgment; and, of course, his suit cannot be supported.

As to the other point. The money in the sheriff's hands became a *debt* on the 8th of *August*, and on the 11th of the same month, the execution was put into his hands: if so, that execution could not reach the money. This is proved by the answers; and the sheriff is not estopped by the *return*; for, in that, he had no business to state any thing as a private individual, and, therefore, returned what was proper: but when giving his answer, ought to have stated what he did; *not contradicting* the return, but mentioning additional circumstances.

Wickham, in reply. There is no rule of law or equity against purchasing a *judgment*: so may *open accounts* be purchased, and recovered by a suit in equity; which is the rule in *England*. As to the objection to the *price* given, *Crump* has certainly no right to make it: for, if *Catlett* was satisfied to sell for less than the nominal amount, he had a right to do so. It was not necessary to make *him* a party, because the defendants do not, by their answers, object to the *right* of the plaintiff to have the *benefit of the judgment*. Neither was it necessary to prove the assignment: but, in fact, it is proved by the deposition of *Brooke*, the agent.

I admit there is no adjudged case in this country upon the principal point: but the principle is clear; in the same

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manner as a judgment creditor can bring a bill against a mortgagor and mortgagee to compel a sale, and to be paid his debt out of the proceeds, after paying the debt secured by the mortgage.

So if a *debt* was due to *Crump*, and afterwards the plaintiff had proceeded against him by execution, he might still sue *in equity* to be paid out of that debt: and in this case, the ground for jurisdiction is as strong as possible, because the money was held as a *trust.*

But, here, the sheriff's return shews that he held the 400 dollars, *as Crump's money;* not as a *debtor*, but *as holding Crump's money;* and the bill does not authorise him to state a different case than is made by the return. The officer may have money as an officer, and, by a collateral agreement, agree to pay interest; yet he continues to hold as officer. As, where the sheriff has returned, so much money made on an execution, and the plaintiff being about to move against him, he agrees, if the motion be not made, to pay the money at next Court, with interest; he is bound to pay the interest, yet holds the money as officer.

Saturday, 12th *March*, 1808, the Judges delivered their opinions.

Judge TUCKER. The principal question in this case is, whether money deposited in the hands of a deputy-sheriff, as a pledge for some particular purposes, and afterwards lent by the owner thereof to the sheriff, and applied by him to his own use, three days before the issuing and delivery of the execution against the goods and chattels of the lender, was liable to satisfy that execution. The Chancellor decided that it was not, and dismissed the plaintiff's bill: and I concur with him in that decision, and am of opinion, that the decree ought to be affirmed.

Judges ROANE and FLEMING concurring, the decree was AFFIRMED.