MONROVIA AUTO SERVICE, by and through its Resident Manager, KARL ZOLL, Appellant, *v.* JOHN H. RICHARDS, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 28, 1965. Decided January 21, 1966.

1. The circuit court's statutory jurisdiction of proceedings for foreclosure of a chattel mortgage cannot be defeated by private agreement between the parties. 1956 CODE 29:140 et seq.
2. A chattel mortagee's repossession and sale of the mortgaged property under color of statutory foreclosure proceedings should be held void and the proceedings dismissed when such proceedings and process executed thereunder were sham and the mortgagor was not duly afforded notice thereof.
3. A chattel mortgagee is liable on his indemnity bond for illegally repossessing and selling the mortgaged property under color of sham foreclosure proceedings and without due notice to the mortgagor.
4. The Chattel Mortgage Act, constituting Chapter 10 of the Property Law as enacted in the 1956 Code, superseded prior law governing foreclosure of chattel mortgages.
5. Repossession and sale by a chattel mortgagee of the mortgaged property will be deemed void when carried out prior to rendition of judgment in pending foreclosure proceedings.

On appeal, a *judgment* dismissing chattel mortgage foreclosure proceedings was *affirmed.*

James Doe Gibson for appellant. *Morgan, Grimes and Harmon Law Firm* (*J. Dossen Richards* of counsel) for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

An examination of the records before us in this case shows that on the 21st day of November, 1962, the present appellee entered into a chattel mortgage with the present appellant in the sum of $11,300, as security for which the appellee conditionally assigned to the appellant personal

property consisting of two Henschel trucks. On June 1, 1963, the appellant filed a bill in equity for the foreclosure of the aforesaid mortgage in the sum of $8,101.16 as balance due on the amount for which the chattel mortgage was executed.

Upon the filing of the bill, the resident judge delivered the following order to the sheriff:

> "Upon receipt of the writ of summons, complaint and the accompanying documents in the above entitled cause of action, you will forthwith seize and turn over to the petitioner or his representative the mortgaged property, *i.e.,* two Henschel trucks, 1962 model, color gray, and also serve a copy of this order on the respondent and further make your returns to court, same to be endorsed on the back of the writ of summons and filed in the clerk's office on or before the 3rd day of June, 1963 as to the manner of service. And for so doing, this shall be your lawful authority and my order."

At the filing of the case and prior to the issuance of the foregoing order, petitioner also filed, together with his bill of foreclosure, the following indemnity bond:

> "Know all men by these presents:
>
> "That whereas Monrovia Auto Service, Monrovia, Liberia, by and through its Resident Manager Karl Zoll, the above named petitioner has applied for an order of court for the seizure of two (2) Henschel trucks, Engines No. 129 and 260, now in the possession of John Richards of Monrovia, the above named respondent, the subject of a chattel mortgage.
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> "Now therefore, we, Monrovia Auto Service, Monrovia, Liberia, by and through its resident manager, Karl Zoll, the above named petitioner-principal and Joseph Harris and Dopie Wreh, freeholders and householders within the Republic of Liberia, sureties, each of which sureties is worth the amount specified in the order, *i.e.* $12,151.74, over and above all his debts and liabilities, do hereby jointly and severally under-

take pursuant to law that the said petitioner will indemnify the said respondent for all injury which he may sustain by reason of said order of court, not exceeding the amount named in said order, namely $12,151.74, if the said respondent shall recover judgment or the order of court be set aside.

"In witness whereof we have hereunto set our hands this 30th day of May 1963, at Monrovia.

[Sgd.] "KARL ZOLL,
"Petitioner-Principal.
[Sgd.] "JOSEPH HARRIS,
[Sgd.] "DOPIE WREH,
"Sureties."

The necessary writ of summons was issued pursuant to the judge's order and placed in the hands of the sheriff who served the same and endorsed thereon his returns which I shall quote for the benefit of this opinion.

"On the 7th day of June, 1963, I served the within writ of summons on the within-named John Richards of Monrovia, Liberia, defendant, who said that he did not have the trucks in his possession, but said that the said plaintiff had already taken possession of said trucks; hence I could not take nor seize the same from the defendant. I also gave him a copy of the complaint and notified the defendant to file his formal appearance in the office of the clerk on or before the 20th day of June, 1963. I now make this as my official returns to the clerk's office. Dated this 7th day of June, 1963.

[Sgd.] "HENRY ROBERTS,
"Deputy Sheriff, Mo. Co."

Richards appeared and answered to this writ on the 15th day of June, 1963. But realizing that petitioner's motive was to make a mockery of the court, Richards filed a bill of information on the 11th day of July, 1963, in which he alleged that Monrovia Auto Service had instituted a pseudo action with the aim of misleading the court

and of circumventing the authority of the court by seizing the two Henschel trucks apart from any judicial process and even before the filing of the foreclosure proceedings.

Counts 3, 4, and 5 of the information read as follows.

"3. And the informant says that although the balance due respondent by informant can be covered by the seizure by the court of only one truck, yet respondent has undertaken upon itself to seize both of informant's trucks, with a view of harassing and embarrassing him, respondent knowing fully well that these trucks are the only means whereby informant can obtain funds to complete payment. Informant contends that it is an equitable principle that he who seeks equity must do equity.

"4. And your informant says that although this action is still pending before this Honorable Court undecided, yet the respondent in utter violation of the statutes governing the foreclosure and sales of chattel mortgage properties and in violation of good conscience has undertaken and sold one of the trucks to one Vamunyah Coneh—a thing which a court of equity should not allow the respondent to do since same is in violation of law and good conscience. Informant further says that respondent's agent has informed him that he is about to sell the other one of the trucks.

"5. And your informant states that the amount which remains to be paid to the respondent can be recovered by the price of one truck in case it obtains judgment and the court forecloses the mortgage. Informant states further that the seizure of his two trucks for the amount that can be covered by the value of one of the trucks is inequitable and illegal—a thing which a court of equity ought not to allow the respondent to do."

In the returns to Counts 3, 4, and 5 of the information, Monrovia Auto Service alleged the following as Count 4 of the said returns:

"4. And also because as to Counts 3, 4 and 5, respondent says and submits that the chattel mortgage statute specifically provides that the chattel mortgagee has a right to take possession and dispose of mortgaged goods without judicial process if this can be done without a breach of the peace, as in this case when petitioner himself willingly released the trucks to respondent after the action had been filed, this being a surplusage under the law and does not vitiate."

The petition for foreclosure of the mortgage was not called for hearing by Judge John A. Dennis, then presiding by assignment, until the 15th day of May, 1964. During this interval of 349 days, the bill of information which had been filed, and which in our opinion was crucially relevant, was never disposed of; and the arbitrary and illegal act of the petitioner in the foreclosure proceeding on which contempt proceedings were maintainable was never considered. These are matters in chancery where good is never screened for bad and where relief is to be given without reasonable delay. Regarding the records in both of these matters couched in the one file, I have been urged to cite a passage of Scripture found in Verses 7 and 8 of Psalm 35, reading thus:

"For without cause they have hid for me their net in a pit, which without cause they have digged for my soul.

"Let destruction come upon him at unawares; and let his net that he has hid catch himself; into that very destruction let him fall."

Disposing of the chattel mortgage case, the judge made this decree:

"Count 1 of the answer contests the action of the plaintiff as violating the provision of the statute which directs that all actions except injunction and replevin shall commence by written direction. The records in this case show that the said action was commenced by a written direction filed June 1, 1963. Hence said count is not sustained. Coming to the issue of the

property having been already seized, the law provides that foreclosure is the only proceeding to be instituted in the case of a mortgage. *Saunders* v. *Grant*, 3 L.L.R. 152, 158 (1930). Turning over the vehicles prior to a final decree in this matter is contrary to the opinion just quoted. Next as reported in *Grant* v. *Foreign Mission Board of National Baptist Convention, U.S.A.*, 10 L.L.R. 209 (1949), the Supreme Court has held that private parties can never contract to oust the jurisdiction of the court. The trial of this case would be defeated, for its final decree would not be enforceable. Because of this legal blunder, the action is dismissed, as equity delights not to do things by half. And it is hereby so ordered."

The petitioner excepted and prosecuted an appeal on a bill of exceptions composed of two counts, which I shall quote herein for completion of a thorough outlay of all of the pleadings and matters in connection with this case:

"1. That Your Honor erred in dismissing petitioner's action because the principles of law relied upon are not applicable in a chattel mortgage proceeding, but rather a mortgage for land and an action for breach of contract. For under the law there is a difference between a mortgage for land and mortgage or pledge for personal property.

"2. And also because Your Honor failed to pass upon the very important legal issue raised in Count 2 of petitioner's complaint with reference to default in payment of the sum due in manner stipulated. Petitioner shall have the conclusive and unrestricted right to the immediate seizure and possession of the assigned property."

This case was called and heard on the 28th day of October. Counsellor James Doe Gibson argued for the appellant and cited opinions of this Honorable Court which bear no similarity to the case in point as far as our interpretation of the law is concerned. In *Elias Brothers* v. *Gibson*, 11 L.L.R. 218 (1952), the Court was not fore-

stalled or precipitated by the terms of the mortgage as happened in the case at bar. And in *Kanawaty* v. *King*, 14 L.L.R. 241 (1960), there is no similarity. Counsel further belabored the point that His Honor D. W. B. Morris as resident judge of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, had issued an order directing that the trucks in question be seized by the sheriff and delivered to the petitioner upon his receipt. In fact, however, counsel knew that the said trucks had never been seized by the sheriff according to those orders and that the plaintiff had already seized them and taken them away. When required by the Court to produce this receipt or exhibit it from the record for inspection, he was found caught in his net because recourse to the sheriff's returns to the writ certified that the two trucks had been seized upon plaintiff's own initiative. In conclusion, he rested on these two points: (1) that the law upon which the trial judge relied in his ruling was not applicable to the issues at bar; and (2) that the trial judge was without legal authority to review a decision of his colleague.

Those were some of the unprofessional intrigues which counsel felt would advance his cause. Such unprofessional acts have a tendency to cast aspersions on the grade and quality of our practitioners and bring discredit to our courts and the profession if judges are not alert. Appellee's counsel on the other hand maintained in his argument that Judge Dennis was not incapacitated in any legal way from hearing the law issues raised in the pleadings and the ruling thereon since no ruling had been previously made on the said pleadings; but before resting on the close on his side, the Court took recess to meet again at 3 o'clock in the afternoon. On resuming Court in the afternoon according to announcement, appellant's counsel failed to appear, which was interpreted to be an abandonment of his cause; hence there was no alternative other than for appellee's counsel to continue his argument and close, which was done.

There is no indication in the record on appeal that any

judge except Judge Dennis had previously ruled on the pleadings; nor is this made a ground of exception in appellant's bill of exceptions. Hence the question was improperly argued, but the Court tolerated it because appellee raised no objection. The citation of law which he claimed the trial judge wrongly applied and relied upon is as follows.

> "There is a difference between a mortgage of land and mortgages or pledges of personal property in regard to the right of the mortgagee after default of the mortgagor. In the latter case, there is no necessity to bring an action of foreclosure, but the mortgagee upon due notice may sell the personal property, and title from the sale will be *bona fide* and will rest absolutely in the purchaser." *Saunders* v. *Grant*, 3 L.L.R. 152, 158 (1930).

In our opinion the court below did not wrongly apply this citation because this case was not dismissed by the court below upon the principle of law stated in the cited case but rather it was dismissed upon the principle stated by this Court in *Grant* v. *Foreign Mission Board of National Baptist Convention, U.S.A.*, 10 L.L.R. 209 (1949), which forbids parties from attempting to oust the jurisdiction of the courts as was done by the appellant, plaintiff below, in the case at bar.

The opinion of this Court in *Saunders* v. *Grant, supra,* was predicated upon the law then in vogue which is not applicable in the present case because the Chattel Mortgage Act, constituting Chapter 10 of the Property Law as enacted in the Liberian Code of Laws of 1956, has superseded the law which was then in force. The opinion in question was explicitly based upon the law then effective which is no longer effective under our present statutes.

Even then the criterion, as we observe, was that of giving notice before a seizure and sale by the mortgagee. But in this case, although the appellant, as plaintiff below filed his bill for foreclosure of the chattel mortgage as the

law directs, yet without the authority of the court or any other notice, he arbitrarily, illegally, and clandestinely assumed to seize the two trucks and make a disposition of them by sale.

Count 1, therefore, of the bill of exceptions, is not well taken and is hereby dismissed.

Dilating on Count 2, this Court says that since the petition of the plaintiff, now appellant, was entirely unmeritorious, it was not legally required of the court below to have ruled on the counts *seriatim*, especially when Count 2 thereof was the count which sought to oust the court of its jurisdiction. Since the case was disposed of on a jurisdictional issue, it appears to us that the grounds were sufficient for dismissal.

The petitioner was without right under the law to seize the trucks and dispose of them; and his doing so left nothing for the court to dispose of. The trucks being the subject matter under the chattel mortgage, and they having been disposed of, there was nothing left on which the mortgage could be foreclosed; hence the court below did not err in dismissing the plaintiff's petition; and by his act the appellant has rendered himself liable under his indemnity bond.

The ruling of the court below is sustained and hereby affirmed with costs against the plaintiff, now appellant. And it is hereby so ordered.

Judgment affirmed.