

Case No. 842.

BANK v. LABITUT.

{1 Woods, 11.}¹

Circuit Court, D. Louisiana.

April Term, 1870.

COURTS—MOTION TO REVIEW JUDGMENT AT SUBSEQUENT TERM—INTERVENTION AND THIRD OPPOSITION.

1. Where the marshal had levied an execution on a crop of sugar and molasses, the intervention and third opposition of parties claiming a superior lien and privilege on the property, asking that the marshal be required to retain sufficient of the proceeds to pay the claim of the interveners and for judgment against the judgment debtor for the amount of said claim, is a proceeding upon the law side of the court, and the interveners are not compelled to resort to a bill in equity for relief.

{See in re Hathorn, Case No. 6,214.}

2. The judgment or order of a court finally disposing of a case, cannot be reviewed at a subsequent term on motion. The only relief for errors in law in such cases is by review, writ of error or appeal, as either may be appropriate.

{Cited in U. S. v. Millinger, 7 Fed. 187; Fischer v. Hayes, 6 Fed. 63; U. S. v. Malone, 9 Fed. 897; Allen v. Wilson, 21 Fed. 884.}

{3. A court has power at a subsequent term to set right mere forms in the judgment, to correct misprision of its clerks, and any merely clerical error, so as to conform the record to the truth.}

{Cited in Maybin v. Raymond, Case No. 9,338.}

At chambers. This cause came up at the April term, 1870, on motion to reinstate interventions and third oppositions which had been dismissed at a previous term. {Dismissed.}

J. Ad. Rosier, for the motion.

Edward Phillips, contra.

WOODS, Circuit Judge. Alex. E. Prewett and the Northern Bank of Kentucky each recovered judgment in this court on the law side against Jules Labitut, the defendant, on which executions were issued and levied on defendant's crop of sugar and molasses, made by him on his plantation in the year 1869. Before the sale under the execution, Octave Hopkins filed his intervention and third opposition in his own behalf, and an intervention and third opposition in behalf of a large number of other persons, of whom he alleges himself to be the agent and attorney in fact. In this intervention he claims that he and the persons whom he represents have a lien and privilege on said crop of sugar and molasses, superior to that of any other creditor of Jules Labitut, and prays that the marshal be directed to retain in his hands the proceeds of the sale of the crop, until the interventions and third oppositions can be heard, and that judgment against Labitut may be rendered in favor of interveners, and the marshal directed to pay first, out of the funds in his hands from the sale of said crop, the judgment in favor of interveners. On the 8th of March, 1870, during the last term of this court, these interventions and third

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oppositions were dismissed, without prejudice to the right of the parties to file a bill in chancery. On the 26th of April, during the present term of the court, a rule was taken on the plaintiffs in execution to show cause why the interventions and third oppositions dismissed on March 8th should not be reinstated and the order of dismissal rescinded. This is the rule now before the court for decision.

We think the interventions and third oppositions were improperly dismissed. That courts of common law as well as courts of equity and of admiralty possess a controlling power over money brought into these courts respectively by their process, is undeniable. It is every day's practice in the common law courts, upon rules to show cause or upon motion to examine and decide the claims of third persons to money made under execution and paid into court. These interventions and third oppositions, in a more formal and precise way, invoke a power of the law side 'of the court which in common law states is exercised upon motion or rule. They constitute a convenient and summary method of disposing of the rights of persons to property levied on under execution. And though the forms may differ in different states, the proceedings have always been considered to be on the law side of the court. In some states when property is levied on which is claimed by another, a summary proceeding is instituted by the claimant called "trial of the right of property." After the property is sold and the money is in the hands of the officer of the court, it is reached by motion, and the rights of the contestants to the fund tried and adjusted by the court. A bill in equity may be filed in a case of equitable jurisdiction. We regard these interventions and third oppositions as proceedings on the common law side of the court. The act of May 19, 1828, provides that the forms and modes of proceedings in suits in the courts of the United States held in those states admitted into the Union since the 29th day of September, in the year 1789, in those of common law, shall be the same in each of said states respectively, as are now used in the highest court of original and general jurisdiction of the same. This is the law of this court to day. Interventions and third oppositions were in use in this state, on and long prior to May 19, 1828, and we think they are authorized by the statute just quoted. These interventions were therefore improperly dismissed. But we are clearly of the opinion that the motion to reinstate them, and to rescind the order dismissing them comes too late. They were dismissed March 8, during the term which commenced on the first Monday of November, 1869, and this motion is made during the term which

commenced on the fourth Monday of April, 1870.

Nothing is better settled than this, that after a court has adjourned, it cannot set aside one of its own judgments; the judgment is binding until reversed on error. See *Bank of U. S. v. Moss*, 6 How. [47 U. S.] 31, where this whole subject is discussed and authorities collated. A mere error in law of any kind, supposed to have been committed in a judgment of a court at a previous term, is never sufficient justification for revising or annulling it at a subsequent term in this summary way on motion. A court has power at a subsequent term to set right mere forms in its judgments, to correct misprisions of its clerks, and to correct any mere clerical errors so as to conform the record to the truth; irregularities also in notices, mandates and similar proceedings, can in some cases be amended at a subsequent term, and in short, all amendments permissible under the statute of jeofails may be made at a subsequent term. But the only relief for errors in law in such cases is by review, writ of error or appeal, as either may be appropriate. The cases in which these interventions were filed, were completely disposed of at the last term of this court. The interventions were dismissed. That is the end of the matter. The cases cannot be heard again at a subsequent term by having them again placed on the docket. They have become *res adjudicata*, and can only be reached in one of the methods already indicated. Because this motion comes too late, it must be dismissed.

¹ [Reported by Hon. William B. Woods, Circuit Judge, and here reprinted by permission.]