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SHERIFF—LEVY OR EXECUTION—THIRD PARTY CLAIMS—
§2329.84 R.C.—COUNTY NOT HAVING A COUNTY COURT—AP-
PLICATION TO MUNICIPAL COURT ; §§1901.18, 1901.19 R.C.

SYLLABUS:

When a sheriff or other officer making a levy of execution is presented with a claim of ownership in the seized property by a third party and there is no county court in such county, the sheriff or officer should, acting under the provisions of Section 2329.84, Revised Code, file such claim with a municipal court in the county, such courts having jurisdiction in such a case by virtue of the authority of Sections 1901.18, 1901.19, Revised Code.

Columbus, Ohio, September 24, 1958

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

"The Sheriff of Cuyahoga County has been confronted with the problem of third party claims in two cases in which he has recently levied upon chattels which are alleged by the plaintiffs to belong to the judgment debtors.

"Under Section 2329.84 of the Revised Code, pertaining to third party claims there was no special difficulty as the statute read prior to January 1, 1958. Under that former wording the Sheriff was able to resort to a justice of the peace for a determination of the validity of the third party claim.

"However, with the elimination of justices of the peace effective January 1, 1958, the statute now states that the ' . . . officer (the sheriff, etc.) forthwith shall give notice to a judge of the county court, . . .' The problem is posed by the fact that there is not now, and never has been, a county court in Cuyahoga County, inasmuch as every part of the county lies within the jurisdiction of one of the several municipal courts.

"The question presented, therefore, is: To what court, if any, may the sheriff give written notice of a third party claim?"

Section 2329.84, Revised Code, effective prior to January 1, 1958, provided:

"If, by virtue of a writ of execution issued from a court of record in this state, an officer levies it on goods and chattels claimed by a person other than the defendant, such officer forthwith shall give written notice to a *justice of the peace* of the county, which notice shall contain the names of the plaintiff, defendant, and claimant, and at the same time furnish the *justice* a schedule of the property claimed. Immediately upon the receipt of the notice and schedule, the *justice* shall make an entry of them on his docket, and issue a summons directed to the sheriff or any constable of the county commanding him to summon five disinterested men, having the qualifications of electors, to be named in the summons, to appear before him, at the time and place therein mentioned, which shall not be more than three days after the date of the writ, to try and determine the claimant's right to the property in controversy. The claimant shall give two days'

notice, in writing, to the plaintiff, or other party, for whose benefit the execution was issued and levied, his agent, or attorney, if within the county, of the time and place of trial. The claimant shall prove to the satisfaction of the justice that such notice was given, or that it could not be given by reason of the absence of the party, his agent, or attorney.” (Emphasis added)

You suggest that since the amendment of Section 2329.84, Revised Code, effective January 1, 1958, in which “judge of the county court” was substituted for “justice of the peace” that the Sheriff of Cuyahoga County is in doubt as to the proper measures to be taken with regard to property seized by virtue of a levy of execution. In addition it may be noted that Section 2715.40, Revised Code, dealing with attached property claimed by third parties, provides that proceedings shall be had with like effect as in case of property seized upon execution. Chapter 1901., Revised Code, conferring jurisdiction upon municipal courts contains the following provisions:

Section 1901.18, Revised Code:

“Subject to section 1901.17 of the Revised Code, a municipal court has original jurisdiction within its territory:

“(A) In any civil action, of whatever nature or remedy, wherein *justices of the peace have jurisdiction*;

“(E) In any action or proceeding to enforce the collection of its own judgments, or the judgments rendered by any court within the territory to which such municipal court has succeeded, and to subject the interest of a judgment debtor in personal property to satisfy judgments enforceable by the municipal court;” (Emphasis added)

Section 1901.19, Revised Code:

“Subject to section 1901.17 of the Revised Code, a municipal court has jurisdiction within the limits of the county or counties in which its territory is situated:

“* * *

“(C) In any action or proceeding, whether legal or equitable, to enforce the collection of its own judgments;

“* * *

“(E) *In any civil action or proceeding of whatever nature or remedy wherein justices of the peace have jurisdiction co-extensive with the county*; and in all civil actions for the recovery of money only where the amount claimed by the plaintiff exceeds

the exclusive jurisdiction of justices of the peace;” (Emphasis added)

Section 1901.21 (A), Revised Code, provides in pertinent part:

“In any civil case or proceeding if no special provision is made in sections 1901.01 to 1901.38, inclusive, of the Revised Code, the practice and procedure shall be the same as in courts of common pleas. If no practice or procedure is provided for in the courts of common pleas, *then the practice or procedure of justice of the peace courts shall apply.*” (Emphasis added)

It is apparent from an examination of the statute relative to the courts of common pleas that no procedure is provided for the trial of the right of property as provided in Section 2329.84, *supra*. Therefore, Section 1901.21, *supra*, provides, in the absence of a practice or procedure in the court of common pleas, that the practice or procedure of the justice of the peace courts shall apply. This provision and Section 1901.21, *supra*, were not amended by either House Bills 914 or 937, 102nd General Assembly, providing for the new system of county courts. I am of the opinion, however, that such failure to amend Section 1901. 21, *supra*, does not deprive municipal courts of any jurisdiction which they previously had under the quoted portions of Chapter 1901., *supra*. I am strengthened in this view by the express provisions of the County Court Act, House Bill 914, 102nd General Assembly, Section 1907.012, Revised Code, reading as follows:

“*A county court shall have jurisdiction in motor vehicle violations, other misdemeanors and in all other actions in which a justice of the peace court had jurisdiction under Chapters 1909., 1917., 1919., 1923., 2329., 2931., 3111., 3305., 3707., 3771., 3773., 3781., 4143., and 4513. of the Revised Code. All actions in a county court shall proceed in the manner provided for proceedings in a justice of the peace court under Chapters 1911., 1913., 1915., 1917., 1921., 2335., 2933., 2935., and 2937. of the Revised Code.*” (Emphasis added)

This language, to be given any effect, must refer to the system of justice of the peace courts *as it existed prior to the creation of the county courts*. Therefore, we have a specific system of courts, no longer in existence, whose procedure and jurisdiction has been transferred to or which was possessed by other courts.

It is an established principle of statutory construction that when a reference statute is repealed such repeal has no effect on referring statutes.

The principle is stated in 37 Ohio Jurisprudence, 339, 340:

“An adopted statute is not regarded as amended by the reference statute. When in one statute a reference is made to an existing law in prescribing the rule or manner in which a particular thing shall be done or for the purpose of ascertaining powers with which persons named in the referring statute shall be clothed, the effect generally is to revive or continue in force the statute referred to not for the purposes for which it was originally enacted, but merely for the purpose of carrying into execution the statute in which the reference is made. The law referred to is, in effect, incorporated with, and becomes a part of, the one in which the reference is made as fully as if the former had been repeated verbatim in the latter and, so long as that statute continues, will remain a part of it. The power conferred by the reference statute is the same power conferred by the statute referred to and is subject to the same limitations stated in the proviso of the latter section.”

See also 50 American Jurisprudence, pp. 57, 59.

Applying this principle to the instant case, it is apparent that the reference in Chapter 1901., Revised Code, to the jurisdiction, practice and procedure in justice of the peace courts has the effect of continuing the statutes relating to such provisions of justices of the peace courts as they relate to municipal courts.

It could not have been the intention of the legislature to deprive officers of the protection afforded by Section 2329.84, *supra*, when enacting the County Court Act and repealing the provisions relating to justice of the peace courts. The sheriff is required by the provisions of Section 311.08, Revised Code, to execute every summons or other process directed to him. This statutory command he cannot avoid. The legislature recognizing this situation provided for a summary proceeding under the provisions of Section 2329.84, *supra*, to protect the officer making levy. See *Armstrong v. Harvey*, 11 Ohio St., 527, and 22 Ohio Jurisprudence 2d, 99, *et seq.*

Therefore, it is my opinion and you are accordingly advised that when a sheriff or other officer making a levy of execution is presented with a claim of ownership in the seized property by a third party and there is no county court in such county, the sheriff or officer should, acting under the provisions of Section 2329.84, Revised Code, file such claim with a municipal court in the county, such courts having jurisdiction in such a case by virtue of the authority of Sections 1901.18, 1901.19, Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General