

**Gibbs Vs. Gibbs**

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**Court :** US Supreme Court

**Decided On :** 1788

**Appeal No. :** 1 U.S. 371

**Appellant :** Gibbs

**Respondent :** Gibbs

**Judgement :**

GIBBS v. GIBBS - 1 U.S. 371 (1788)

U.S. Supreme Court GIBBS v. GIBBS, 1 U.S. 371 (1788)

1 U.S. 371 (Dall.)

Gibbs

v.

Gibbs

Court of Common Pleas of Philadelphia County

December Term, 1788

The case was briefly this: A certain Aaron Musgrove had brought a qui tam action against the Defendant, Ann Gibbs, in which, after a trial in the Supreme Court, he obtained a judgment on the second day of October, 1788; but no execution was thereupon issued. On the fourth day of the same month, however, the Defendant

having then confessed judgment in this Court to the Plaintiff, Benjamin Gibbs, a Fi. sa. was issued in this cause, and duly executed upon a house and lot of ground in Philadelphia; after which Mrs. Gibbs committed an act of bankruptcy, and the Sheriff paid the money levied by virtue of the Fi. sa. into the hands of the Prothonotary, to be disposed of as the Court should direct.

In the course of the argument, there were some insinuations of collusion, with respect to the second judgment; but as no proof was offered, the only question before the Court was, whether, under all

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the circumstances of the case, Musgrove's prior judgment was entitled to satisfaction out of the money levied on the Fi. sa. in preference to the subsequent judgment on which the writ had issued? See 3 State Laws 655. Sect. 30. Bradford and Sergeant, arguing in favor of the prior judgment, admitted, that it was no lien against the assignees of the bankrupt, or the general creditors under the commission; but contended, that, unless it was for the general benefit, no construction of the act of Assembly should be made to divest the lien which the priority of Musgrove's judgment had obtained: a lien, they insisted, clearly binding as to a purchaser, and, consequently, as to person levying on real estate, who is to be considered, in that respect, a purchaser. They said, that they had not been able to find any authority more in point than 1 P. Will. 737. but urged, that the want of a direct precedent was in their favor; for, if the attempt to destroy a lien of this kind could have succeeded, it must frequently have occurred in the uniform struggle that had been made to defeat the bankrupt laws of England. It was further observed, that there had be no laches on the part of Musgrove, for he could not issue an execution 'till the expiration of four days after his judgment was obtained; that it was established long before the statute of frauds, that the first judgment shall be first paid, although the execution was issued upon a subsequent one; that the statute and our act of Assembly made no other alteration in the common law, than that of substituting the day of docketing for the relation to the first day of the term; and that, therefore, independent of the bankrupt law, Musgrove's claim was indisputable. But they also contended, that, taking the bankrupt law into view, it did

not interfere between lien and lien at common law; but is merely directory in the 30. Sect. how the debts shall be paid where no execution has been levied. The words do not include the case; and a former statute, or rule of common law, cannot be repealed or annulled, by implication. Nor could the intention of the Legislature embrace it; for, that was to make an equal distribution among the creditors at large; and not to ascertain a right, as between two individuals. Whether, indeed, it is a real or pretended debt for which the second judgment is confessed, there are no means to prove from the want of a Court of Chancery; and whether the commissioners might recover the money from Musgrove is a question, that cannot affect the present controversy, or give Gibbs a right to retain it, which he would not otherwise have. Ingersol and Lewis, for the Plaintiff in the execution, stated, that by the bankrupt law, executions, mortgages, and pledges, were considered in the same light; and that the rule of law in the distribution of a bankrupt's estate, placed all other descriptions of creditors on the same footing, regarding the quantity, and not the quality of their debts. Green. B. L. 100. 101. 136. 146. 190. 12 Mod. 446. Com. Dig. 532. 2 Black. Com. 487. 1 Bac. Abr. 258. They insisted, as the property would indisputably vest in the commissioners

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if not prevented by the execution, that, therefore, the question lay properly between Gibbs and the Assignees, and not between him and Musgrove, who could not, with any shew of right retain the money against the general creditors, even if the Court were, at this time, to order it to be paid to him. They said, that the very points now made, were urged and over-ruled in the case cited for Musgrove; 1 P. Wm. 737. and it is declared in several cases, that a judgment did not bind lands any more than the teste of a Fi. sa. did goods, before the statute. Ibid. 92 Vef 239. 436. But the very existence of a prior lien in favor of Musgrove was controverted; because the act of Assembly (1 State Laws 462.3.) in respect to the docketing of judgments, only alters the law in the case of bona fide purchasers for a valuable consideration; and does not affect the case of two judgment creditors, whose liens still relate to the first day of the term. On this ground, therefore, the judgment confessed to Gibbs in the Common Pleas, is prior to that obtained by

Musgrove in the Supreme Court; for the term in the Common Pleas commenced on the 7th of September; but the term in the Supreme Court did not commence until the 24th day of the same month; so that, independent of the bankrupt law, the legal relation to the first day of the term established the right of Gibbs on the present controversy. But the bankrupt law is in itself clearly decisive; and that an adverse precedent is not to be found, must prove the universal sense of the Courts of Justice in England to be in favor of the Plaintiff's doctrine. As, therefore, the general rule, with regard to an execution executed, includes his case, and excludes the case of Musgrove, it is incumbent upon the latter to shew, if he can, any exception on which he may rest his present claim. The principle, indeed, as well as the practice of the law, is on the same side. If, after the execution executed, the commissioners had taken the house and sold it, they would, undoubtedly, have been liable to Gibbs in an action for money had and received to his use: but will it be asserted that Musgrove could maintain such an action, having no execution executed? Nor can it be justly said, that the commissioners are not interested in the question now agitated; for, if the proceeds of the estate sold under the *Fi. sa.* are enough to pay both, both, according to the opposite doctrine, must be paid, and only the balance go the commissioners. But there is no case which can make a difference whether the money is, or is not, sufficient to pay the amount of the execution; and should Musgrove prevail against Gibbs, for similar reasons he must prevail against the commissioners to the manifest violation of the words and spirit of the law.

Shippen, President. The motion in this case is made in behalf of one Musgrove, who is said to be a prior judgment creditor, in order to have the money which has been levied and brought into Court under the Plaintiff's execution, paid to him instead of the Plaintiff.

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This is objected to, on the ground that the Defendant became a bankrupt previous to the serving or issuing any execution against the estate, except the present one, at the suit of the Plaintiff, and that, therefore, he alone is entitled to the money. The question arises upon the 30th Section of the bankrupt law, which enacts, 'That

every creditor having security for his debt by judgment, speciality, or other security, whereof there is no execution served and executed upon the lands, goods, and estate, of the bankrupt before such time as he shall become a bankrupt, shall not be relieved upon any such judgment, &c; for any more than a rateable part of their debts, with the other creditors.' This section of the act, is similar to one in the statute of James, and must therefore receive the same construction; and the rational and legal construction appears to be, that no judgment creditor who has not levied his execution, shall receive any benefit from his judgment, as to the estate or effects of the bankrupt, vested in the Commissioners of bankruptcy by the act, to the exclusion or prejudice of the creditors at large, but must be put upon the same footing with them; yet, as to any liens which do not affect the general creditors, he will have the benefit of them in the same manner as if the act had never been made. This construction accords with the case cited in support of the motion out of 1. Peere Wms. 737. The principle of that case, so far as respects the present purpose, is this, that where there is a prior judgment, and afterwards a sale of the land, and then a bankruptcy, the purchaser holds the land subject to the prior lien, which must be for this plain reason, that in that case there was no possibility that the creditors of the bankrupt could be prejudiced by it, the land being actually sold before the bankruptcy, and never vested in the Commissioners; and, consequently, there was no lien as to them, it could only subsist against the purchaser, and was not at all affected by the bankrupt laws, as it was indifferent to the creditors whether it subsisted or not. In the present case, there has been no act of the party previous to the bankruptcy to prevent the vesting of the estate in the Commissioners; and, consequently, all liens, if they operate at all, must operate to their prejudice; which is contrary to the express intent of the act, which directs that they shall take the estate, subject only to the claims of such judgment creditors who had levied their executions upon it. For, if any judgment creditor, who has no execution, under the idea of his having a prior lien, could have the benefit of the execution transferred to him, then not only that creditor, but all the prior judgment creditors must be satisfied, before the Commissioners could take any thing to divide among the general creditors, as they would all have an equal right with him. It is said, that, although the Court should order the prior judgment creditor to be first paid, there would be no injury done to

the other creditors, because the Commissioners might recover the money from him, if he was not intitled to it: Whether they could,

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or could not, recover it from him, will, I think, make no material difference as to the present motion. It must, however, be observed, that, if he can claim this money at all, it must be under the execution, and as execution creditors are saved, it would be very questionable whether the Commissioners could recover it from him. If they could not, then the creditors at large must be postponed to him and the other judgment creditors; if they could recover it, then it would not only be a vain thing to order the money into his hands, as he must, by a circuitry of action, be obliged to refund it, but it would, in fact, be ordering it into the hands of a person not intitled to receive it: And the consequence would be, that the real execution creditor, whose claim is saved by the act, would infallibly be cut out of his preference.

Whether this is, or is not, a bona fide debt, is not the subject of our present enquiry. If any fraud could be proved, this Court would certainly on motion set aside both the execution and the judgment, but that could not be for the benefit of the prior judgment creditor, whose claim is founded upon the execution; but for the benefit of the creditors at large under the Commission; who may still have a remedy by action, if they can shew the execution to have been collusive and unfair.

The only question, however, now before us, is whether a prior judgment creditor shall come in under this execution, which we think he cannot, as it would defeat the express intent of the bankrupt law.

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