

Griffin Vs. Thompson

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Court : US Supreme Court

Decided On : 1844

Appeal No. : 43 U.S. 244

Appellant : Griffin

Respondent : Thompson

Judgement :

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Griffin v. Thompson

43 U.S. (2 How.) 244

ON CERTIFICATE OF DIVISION FROM THE JUDGES OF THE

CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

SYLLABUS

A marshal has no right to receive bank notes in discharge of an execution unless authorized to do so by the plaintiff.

If the marshal does receive such papers, the court, in the exercise of its power to correct the irregularities of its officer, will refuse a motion of the defendant to have satisfaction entered on the judgment, and refuse also to quash a second *feri facias*.

This was a motion made by Thomas Griffin and Hugh Ervin to have satisfaction entered on an execution of *feri facias*, which issued from the clerk's office of the court against them on 4 June, 1840, in favor of Robert Thompson, for the sum of \$1,740.02, with interest thereon at the rate of 8 percent per annum, from 7 November, 1839, until paid, together with costs. And also to quash an execution of *feri facias* which issued against them,

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in favor of said Thompson, on the same judgment, on 6 November, 1841.

In support of this motion, the plaintiffs below read in evidence first an execution of *fi. fa.* numbered 874, which was sued out of the court against Griffin in favor of Thompson on 1 January, 1840, returnable on the 1st Monday of May ensuing, for the sum of \$1,740.02 and the costs, this being the amount of a judgment recovered in the court on 7 November, 1839. Upon this execution was endorsed the return of the marshal, dated May 4, 1840, setting forth the levy of that process on 25 March, 1840, on certain subjects of property, the execution of a forthcoming bond by Griffin with Ervin as surety for the delivery of the property at the day and place of sale, and the forfeiture of the bond by the failure of the obligors to comply with its condition. Accompanying this return is a receipt in these words:

"January 2, 1840. Received on this execution one thousand dollars in post notes of the Mississippi Union Bank."

"WM. M. GWIN, *Marshal* "

"By his deputy, JNO. F. COOK"

The plaintiffs next produced in evidence their forfeited forthcoming bond with the execution of *feri facias* sued thereon, in favor of Thompson on 4 June, 1840,

returnable to the 1st Monday of November with the following endorsements and returns thereon, *viz.*:

" *Endorsement on fi. fa.* "

"No security of any kind is to be taken. This execution is entitled to a credit of one thousand dollars, paid 2 January, 1840, in Union post notes. See marshal's return on *fi. fa.* No. 874, to May term, 1840."

"[Signed] WM. BURNS, *Cl'k* "

" *Marshal's Return* "

"Made on this case four hundred dollars, Nov. 3, 1840. Received balance of this case, in full for costs &c.;, say five hundred and fifteen 30/100 dollars."

"WM. M. GWIN, *Marshal* "

"Nov. 3, 1840 By W. L. BATTO, *Dept.* "

They then read in support of their motion the execution of *fieri facias* sued forth against them in favor of Thompson, on 6 November, 1841, which execution is the same that the plaintiff in the court below moved to quash. Upon it is the following endorsement:

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" *Endorsement* "

"This execution is entitled to a credit of \$803.47, paid 3 November, 1840, on *fi. fa.* No. 451, to November term, 1840. No security of any kind is to be taken for balance."

"W. H. BROWN, Clerk"

"Marshal's return, 'stayed by supersedeas', received April 1, 1842."

"A. MILLER, *MI* "

"By Dept. J. S. GOOCH"

"They then read in evidence to the court the following receipts which were proved to be signed by, and in the handwriting of, John F. Cook, who at the date of said receipts, and before, was a deputy of William M. Gwin, Marshal of the Southern District of Mississippi, which receipts are in the words and figures following, to-wit.:
"

"Received of Thomas Griffin the sum of eight hundred dollars, to be applied to part payment of an execution obtained vs. him at the November term, 1839, of circuit court United States as security for I. Griffin, which amount I am to credit said execution with."

"December 10, 1839 W. M. GWIN, *Marshal* "

"By his deputy, JNO. F. COOK"

"Received of Thomas Griffin the sum of two hundred dollars in Union Bank money, to be applied to a certain execution I hold vs. said Griffin, or I am to return the said money to the said Griffin."

"February 17, 1840 JNO. F. COOK"

The said sums of \$800 and \$200, mentioned in said receipts, constituting the \$100 in post notes of the Mississippi Union Bank, returned by the marshal as received on 2 January, 1840, on execution of *feri facias* hereinbefore referred to, dated 1 January, 1840.

They also read in evidence to the court the following additional receipts, to-wit.:

"Thompson"

"v. Circuit Court U.S. *fi. fa.* to Nov. term, 1840"

"Griffin and Surety"

"Received of Thomas Griffin in the above stated case, the sum of four hundred dollars in Louisiana money."

"November 3, 1840 W. M. GWIN, *Marshal* "

"Per deputy, JNO. F. COOK"

"Received of Thomas Griffin the sum of five hundred dollars,

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to be applied to the payment of an execution, in the hands of the marshal, of Thompson v. Thomas Griffin and sureties."

"Nov. 1840 WM. M. GWIN, *Marshal* "

"By his deputy, JNO. F. COOK"

The said Robert Thompson then, in opposition to said motion, read in evidence to the court, the judgment pronounced at its November term, 1841, quashing so much of the return of the marshal made on the execution of *feri facias* numbered 874, which issued on the first day of January, 1840, as stated that he has "received on said execution one thousand dollars in post notes of the Mississippi Union Bank," which judgment is in the words and figures following, to-wit.:

"Robert Thompson"

"v."

"Thomas Griffin"

"Motion by the plaintiff to quash that part of the marshal's return on *fi. fa.* No. 874, to May term, 1840, which is as follows: 'January 2, 1840. Received on this execution one thousand dollars in post notes of the Mississippi Union Bank.'"

"Motion sustained and said marshal's return on said *fi. fa.* quashed, and an alias *fi. fa.* ordered to May term, 1842."

The said Thompson then introduced Joseph Holt as a witness, who being sworn, stated that he was one of the plaintiff's attorneys of record, who obtained the said judgment of \$1,740.02 against said Thomas Griffin at the November term, 1839, of the court, and that as the attorney of record of the said plaintiff (Robert Thompson), he had full authority to collect said judgment, and to control the executions which might issue thereon; that supposing the execution on said judgment when issued would come into the hands of the said "Jno. F. Cook," deputy marshal; he had a conversation with him a short time after the judgment was rendered, say sometime in the month of November, 1839, in which he notified the said Cook distinctly that good money would be required to be collected on said judgment, and that he must receive no other kind of money on the execution, when it should come into his hands. That he saw said Cook several times during the ensuing winter, but that he (Cook) never mentioned to him that he had made any collection on said judgment. That the first knowledge or intimation witness had of the receipt of the \$1,000 in post notes of the Mississippi Union Bank,

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mentioned in the return of the said Cook on the execution as collected 2 January, 1840, was in the month of May, 1840, when going into the marshal's office at Jackson, Mississippi, he found the said execution had just been returned, with the receipt of the \$1,000, in post notes of the Mississippi Union Bank, endorsed thereon as aforesaid.

Witness at once refused to receive said post notes from the marshal in part satisfaction of said execution, and has ever since refused, and still refuses to receive them. Witness further stated, that at the time referred to (May, 1840), said post notes had greatly depreciated in value, and were not worth more than fifty cents to the dollar, and that on 17 February, 1840, said post notes were worth but seventy-five cents to the dollar. That he immediately entered a motion to quash said return of the said deputy marshal (Cook), which motion was sustained by the court at its November term, 1841. Witness further stated that in a conversation he had held with said Thomas Griffin, he (Griffin) had stated that the \$800 mentioned in said receipt, dated 10 December, 1839, and the \$200 mentioned in said receipt,

dated 17 February, 1840, constituting together the \$1,000 returned as made on 2 January, 1840, in "post notes of the Mississippi Union Bank," were paid by him to said John F. Cook, deputy marshal as aforesaid, at times mentioned in the said receipts respectively, in post notes of the said Mississippi Union Bank. It was also in proof that, on 10 December, 1839, the post notes of the Mississippi Union Bank were current in the State of Mississippi, and were generally received by the sheriffs and marshal unless instructions to the contrary were given by plaintiffs or their attorneys. It was also admitted that Griffin had no actual notice of the instructions given by the plaintiff's attorney in this case to said John F. Cook, deputy marshal. This was all the evidence offered either in support or in opposition to the plaintiff's motion. Whereupon on the question whether satisfaction should be entered on said execution of *feri facias*, which was sued out on 4 June, 1840, in favor of said Robert Thompson v. Thomas Griffin and Hugh Ervin for the sum of \$1,740.02 with interest and costs as aforesaid, and also on the question whether said execution of *feri facias* which was sued out against the said Griffin and Ervin on 6 November, 1841, should be quashed, the judges were opposed in opinion, and the questions were ordered to be certified to this Court for decision.

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MR. JUSTICE DANIEL delivered the opinion of the Court.

This Court is unable to perceive upon what principle of law either of the objects sought by the motion of the plaintiffs in the circuit court could have been accorded to them. It cannot be questioned that the defendant in that motion was entitled to the full benefit and operation of his execution, and these were to cause to be made for him of the goods and chattels, lands and tenements, of his debtor, the sum of \$1,740.02 of lawful money of the United States. With his claim thus solemnly ascertained of record, we are aware of no authority, from any source, which can compel him to commute it, or to receive in satisfaction thereof any other thing which he shall not voluntarily elect. But least of all should such an authority be recognized in a quarter more fruitful than any other of abuses in its exercise -- for instance, from the will either of the debtor or the officer whose position would

enable him in some degree to practice on both creditor and debtor. To permit either the debtor or the officer to impose upon the creditor the receipt of depreciated paper in payment would be to permit not merely a repeal of the judgment, but a violation, a virtual abrogation indeed, of the contract on which it was founded, for none can fail to perceive the thousand fraudulent devices for profit or favor which the toleration of such a practice would naturally call into action to defeat the rights of creditors. The courts of justice might thus be made to subserve only the purposes of dishonesty and be transformed into engines of monstrous wrong. It has been argued in support of this motion that banknotes constitute good and lawful payment if received; that as the law recognizes their circulation, debtors may lawfully tender them in payment, and creditors, may lawfully receive them though not legally bound to do so. From these postulates it is then attempted to draw the following conclusions: 1. That the marshal is the plaintiff's agent, who by the execution may receive the plaintiff's debt. 2. That he who may lawfully receive payment, may have a lawful tender of payment made to him. 3. That if a tender or payment of banknotes to the principal, not by him objected to, is a good tender or payment, the like tender or payment to the agent is equally good. This argument, to say the least of it, is wholly untenable. 'Tis undoubtedly true that the creditor may receive either banknotes or blank paper in satisfaction of his debt, for the reason that his power over that debt is supreme, and he may release it without payment of any kind, if he think proper. But the fallacy of the argument here

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consists in totally misconceiving the situation and functions of the marshal. He is properly the officer of the law, rather than the agent of the parties, and is bound to fulfill the behests of the law, and this too without special instruction or admonition from any person. If, then, when commanded to levy a sum of money, he make a return that he has not done this, but has of his own mere will substituted for money depreciated banknotes, his return is an admission on oath that he has both disobeyed his orders and transcended his powers, for legally he has no powers save those he derives from the precept he is ordered to obey. Can it be doubted

that upon application from those whose interests are involved in the performance of his duties by the marshal, it is the right and the duty of the court in such a case to correct the irregularities of its officer and to compel him to perform his duty? There is inherent in every court a power to supervise the conduct of its officers and the execution of its judgments and process. Without this power, courts would be wholly impotent and useless. The returns of the marshal in this case upon the final process in his hands, showing the receipt by him of depreciated bank paper in satisfaction of that process which ordered him to collect money, are held to be departures from the performance of his duty as plainly enjoined by the process itself, are deemed therefore illegal and void, and ought, upon the application of the party injured thereby, to have been set aside and annulled by the court. In conformity with the principles herein sanctioned, we therefore order it to be certified to the judges of the Circuit Court for the Southern District of Mississippi that satisfaction should not be entered on the execution of *feri facias* which was sued out in this case on 4 June, 1840, in favor of the said Robert Thompson v. the said Thomas Griffin and Hugh Ervin, for the sum of \$1,740.02 with interest and costs, and further that the execution of *fi. fa.* which was sued out against the said Thomas Griffin and Hugh Ervin on the sixth day of November, 1841, should not be quashed, and that the motion of the plaintiff in the circuit court should be

Overruled.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Mississippi, and on the points and questions on which the judges of the said circuit court were opposed in opinion, and which were certified to this Court for its opinion agreeably to the act of Congress

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in such case made and provided, and was argued by counsel. On consideration whereof it is the opinion of this Court that satisfaction should not be entered on the

execution of *feri facias*, which was sued out in this case on 4 June, 1840, in favor of the said Robert Thompson against the said Thomas Griffin and Hugh Ervin for the sum of \$1,740.02, with interest and costs, and further that the execution of *fi. fa.* which was sued out against the said Thomas Griffin and Hugh Ervin on 6 November, 1841, should not be quashed, and that the motion of the plaintiff in the circuit court should be overruled. Whereupon it is now here ordered and adjudged that it be so certified to the said circuit court.

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