

**Griffith Vs. Bogert**

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**Court :** US Supreme Court

**Decided On :** 1855

**Appeal No. :** 59 U.S. 158

**Appellant :** Griffith

**Respondent :** Bogert

**Judgement :**

Griffith v. Bogert - 59 U.S. 158 (1855)

U.S. Supreme Court Griffith v. Bogert, 59 U.S. 18 How. 158 158 (1855)

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**59 U.S. (18 How.) 158**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF MISSOURI*

## **SYLLABUS**

The law of Missouri allows the lands of a deceased debtor to be sold under execution, but prohibits it from being done until after the expiration of eighteen months from the date of the letters of administration upon his estate.

Where the letters of administration were dated on the 1st of November, 1819, and the sale took place on the 1st of May, 1821, the sale was valid. In this case the *terminus a quo* should be included.

Moreover, the sale was ordered to take place on that day by a court of competent jurisdiction, and this makes the matter *rem judicatam*, and is evidence of the construction which the courts of Missouri place upon their laws.

And besides, the question of the regularity of a judicial sale cannot be raised collaterally except in case of fraud in which the purchaser was a participant.

Page 59 U. S. 159

The case is stated in the opinion of the court.

Page 59 U. S. 161

MR. JUSTICE GRIER delivered the opinion of the Court.

The plaintiffs claim the land which is the subject of controversy in this suit as heirs of Isaac W. Griffith, who died seised of the same in 1819. His estate was insolvent. Judgments were obtained against his administrators in 1820, executions were issued thereon, and the property sold by the sheriff. The defendants claim under the purchaser at this sale.

On the trial, the court below instructed the jury

"That the sheriff's deed, read in evidence under the judgments and executions also in evidence, was effectual to divest the title of the heirs of Isaac H. Griffith to the land mentioned in said deed."

It is admitted that in the State of Missouri, the lands of a deceased debtor may be taken in execution, and sold by the sheriff in satisfaction of a judgment against the administrator. And also that such deed vests in the purchaser all the estate and interest which the deceased had in the property at the time of his death. But it is

alleged that this sale is "without authority of law and void" because the execution was issued and sale made before the time limited for stay of execution against the

Page 59 U. S. 162

real estate of a decedent. The law and the facts, on which this objection to the validity of the sale is founded, are as follows:

By an act of 1817, it is provided that

"All lands, tenements, and hereditaments shall be liable to be seized or sold upon judgment and execution obtained against the defendant or defendants, in full life, or against his or her heirs, executors, or administrators, after the decease of the testate, or intestate, provided no such land, tenements, or hereditaments shall be seized and sold until after the expiration of eighteen months from the death of such ancestor or the date of the letters testamentary or letters of administration, and execution may issue against such lands, tenements, and hereditaments after the death, testate or intestate, and after the time aforesaid, in the same manner as if such person were living."

The letters of administration on the estate of Griffith are dated on the 1st of November, 1819. The sale was made by the sheriff on the 1st of May, 1821, on executions previously issued.

It is contended that the term of eighteen months from the 1st of November, 1819, had not expired on the 1st of May, 1821, and consequently the sale was without authority of law, and void.

But we are of opinion that the assumption on which this inference is based is not correct; nor the inference correct, if the assumption were granted.

If the day on which the letters of administration be counted in the calculation, the term of eighteen months had "expired" on the 1st of May, 1821.

Whether the *terminus a quo* should be so included, it must be admitted, has been a vexed question for many centuries, both among learned doctors of the civil law

and the courts of England and this country. It has been termed by a writer on civil law Tiraqueau the *controversia controversissima*.

In common and popular usage, the day *a quo* has always been included, and such has been the general rule both of the Roman and common law. The latter admits no fractions of a day; the former, in some instances, as in cases of minority, calculated *de momento en momentum*. The result of this subdivision was to comprehend a part of the *terminus a quo*. But in cases where fractions of a day were not admitted, as in those of usucaption or prescription, a possession commencing on the 1st of January and ending on the 31st of December was counted a full year. It was in consequence of the uncertainty introduced on this subject by the disquisitions and disputes of learned professors that Gregory IX, in his decretals, introduced the phrase of "a year and a day," in order to remove the doubts thus created as

Page 59 U. S. 163

to whether the *dies a quo* should be included in the term. It thus maintained the correctness of the common usage while it satisfied the doubts of the doctors.

The earlier cases at common law show the adoption of the popular usage as the general rule, but many exceptions were introduced in its application to leases, limitations &c.;, where a forfeiture would ensue. But the cases are conflicting, and have established no fixed rule as to such exceptions. Lord Mansfield reviews the cases before his time in *Pugh v. Leeds*, Cowp. 714, and comes to the conclusion

"that the cases for two hundred years had only served to embarrass a point which a plain man of common sense and understanding would have no difficulty in construing."

The rule he lays down in that case is

"that courts of justice ought to construe the words of parties so as to effectuate their deeds, and not destroy them, and that 'from' the date may in vulgar use, and even in strict propriety of language, mean either inclusive or exclusive."

It would be tedious and unprofitable to attempt a review of the very numerous modern decisions or to lay down any rules applicable to all cases. Every case must depend on its own circumstances. Where the construction of the language of a statute is doubtful, courts will always prefer that which will confirm rather than destroy any *bona fide* transaction or title. The intention and policy of the enactment should be sought for and carried out. Courts should never indulge in nice grammatical criticism of prepositions or conjunctions in order to destroy rights honestly acquired.

In the present case, there is no reason for departing from the general rule and popular usage of treating the day from which the term is to be calculated, or "*terminus a quo*," as inclusive. The object of the legislature was to give a stay of execution for eighteen months, in order that the administrator might have an opportunity of collecting the assets of the deceased and applying them to the discharge of his debts. The day on which the letters issue may be used for this purpose as effectually as any other in the year. The rights of the creditor to execution are restrained by the act, for the benefit of the debtor's estate. The administrator has had the number of days allowed to him by the statute to collect his assets and pay the debts. The construction which would exclude the day of the date is invoked not to avoid a forfeiture or confirm a title, but to destroy one obtained by a purchaser in good faith under the sanction of a public judicial sale.

If the statute in question were one of limitation whereby the remedy of the creditor would have been lost unless execution

Page 59 U. S. 164

had issued and sale been made within the eighteen months, probably a different construction might have prevailed. Yet even in such a case the precedents conflict. See *Cornell v. Moulton*, 3 Denio 12; and *Presbury v. Williams*, 15 Mass. 193

But if the correct application of the rule to the present case were doubtful, the fact that this question was raised and decided by the court between the parties to the

judgment, and that the court, after considering the question, ordered the sale to be made on the 1st of May, would be conclusive not only as *res judicata inter partes*, but as evidence of the received construction by the courts of Missouri, which it would be an abuse of judicial discretion now to overturn.

Finally, there is another view of this case which is conclusive as regards this and all other objections taken by the counsel to the validity of the sheriff's deed. It is the well known and established rule of law in Missouri and elsewhere that a judicial sale and title acquired under the proceedings of a court of competent jurisdiction cannot be questioned collaterally except in case of fraud in which the purchaser was a participant. See [Grignon v. Astor](#), 2 How. 319. The cases of *Reed v. Austin*, 9 Mo. 722; of *Landes v. Perkins*, 12 Mo. 239; *Carson v. Walker*, 16 Mo. 68, and *Draper v. Bryson*, 17 Mo. 71, show that this principle of the common law is the received and established doctrine of the courts of Missouri.

The sheriff's deed in the present case is founded on a regular judgment in a court of competent jurisdiction, and an execution on said judgment issued by authority of the court, and levied on property subject by law to be taken and sold to satisfy the judgment. The writ authorized the sheriff to sell; a sale was made in pursuance thereof by the sheriff, and a deed executed to the purchaser, which was afterwards acknowledged in open court according to law. At this time, all parties interested could and would have been heard to allege any irregularity in the proceedings that would justify the court in setting it aside. The objections to this sale do not reach the power of the court or the authority of the sheriff to sell. The issuing of an execution on a judgment before the stay of execution has elapsed, or after a year and day without reviving the judgment, the want of proper advertisements by the sheriff, and other like irregularities may be sufficient ground for setting aside the execution or sale on motion of a party to the suit or anyone interested in the proceedings, but when the objections are waived by them and the judicial sale founded on these proceedings is confirmed by the court, it would be injurious to the peace of the community and the security of titles to permit such objections to the title to be heard in a collateral action.

On every view of the case, we are of opinion that the title of the purchaser is protected by the established rules of law, and that there was no error in the instructions given to the jury by the court below.

*The judgment of the circuit court is therefore affirmed.*

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