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**Ransom Vs. Williams**

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**Court** : US Supreme Court

**Decided On :** 1864

**Appeal No.** : 69 U.S. 313

**Appellant** : Ransom

**Respondent** : Williams

**Judgement** :

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**Ransom v. Williams**

**69 U.S. (2 Wall.) 313**

*ERROR TO THE CIRCUIT COURT FOR*

*THE NORTHERN DISTRICT OF ILLINOIS*

## SYLLABUS

Under the statute of Illinois which authorizes execution to issue against the lands of a deceased debtor *provided* that the plaintiff in the execution shall give notice to the executor or administrator, *if there he any,* of the decedent -- a sale without

either such notice or *scire facias,* as at the common law (or proof that there were no executors?) is void. On a question of title *under this statute,* the burden of proving that his purchase was after due notice rests with the purchaser, the record of execution and sale not of itself raising a presumption that notice was given.

Ransom brought ejectment against Williams in the Circuit Court for the Northern District of Illinois. Both parties claimed title from Galbraith. The plaintiff relied upon a sheriff's deed, made pursuant to a sale under an execution upon a judgment against Galbraith and others, obtained in the state court of Ogle County on the 27th of March, 1841. The execution was issued on the 25th of November, 1847, the sale made on the 25th of November, 1848, and the deed executed on the 24th of July, 1849. The defendants claimed under a deed from Galbraith and wife dated on the 31st of May, 1842. This deed contained a special covenant against the "claims of all persons claiming, or to claim, by, through, or under him." Galbraith died in 1843, and letters of administration upon his estate were issued on the 25th of February in that year.

A statute of the State of Illinois, it is here necessary to say, authorizes execution to issue against the lands and tenements of a deceased judgment debtor,

" *provided, however,* the plaintiff or plaintiffs in execution, or his or their attorney, shall give to the executor or administrator, if there be any, of said deceased person or persons, at least three months' notice in writing, of the existence of said judgment before the issuing of execution."

There was no proof that such notice had been given to the legal representatives of Galbraith, but it was proved by the plaintiff that the premises in controversy had been sold under a prior execution, and that, on the motion of the judgment creditor, the court

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to which the execution was returned had set the sale aside, quashed the execution, and ordered that another execution should issue. This order was made on the 24th of September, 1847.

The court below charged the jury, that the want of proof of due notice to the legal representatives of Galbraith, before the issuing of the execution, under which the sale was made, was fatal to the plaintiff's case.

The jury found accordingly, and the plaintiff excepted. The correctness of the charge was the point on error here.

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MR. JUSTICE SWAYNE delivered the opinion of the Court.

By the common law, the death of either party arrested all further proceedings in the case. If the death occurred before judgment, the suit abated. If there was but one defendant, and he died after judgment, no execution could issue unless it was tested before the death occurred. In such case, it was necessary to revive the judgment by *scire facias.* The statute of Westminster 2d (13 Edward I) first gave a remedy against the lands of judgment debtors. The same rules applied to a writ of *elegit* sued out under that statute. If there was more than one defendant, and one of them died, execution might issue against all, though it could be executed only as to the survivors. It was so issued, because it was necessary that it should conform to the record of the judgment. [ Footnote 1 ]

The notice under the statute is cumulative. The plaintiff may give it, or resort to the common law remedy by *scire facias.* Executions in Illinois are required to bear test on the day they are issued. [ Footnote 2 ] When a defendant dies after judgment, and an execution is subsequently issued without the notice required by the statute having been given, or the

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judgment revived by *scire facias,* the execution is a nullity, and all proceedings under it are void. [ Footnote 3 ]

The order of the court of Ogle County, that another execution should issue, does not in our judgment affect the case. Upon the death of Galbraith, the jurisdiction of

the court as to him terminated. He was no longer before the court. When the order was made he had been dead more than four years. It does not appear that his legal representatives were present, or had any knowledge of the proceedings. The order was proper, and the execution was valid as to the surviving defendants. As to them, the process might have been executed. We cannot understand from the order, that the court intended to affect the estate of Galbraith, or those claiming under him. If such were the intention, the order having been made against parties not shown to have been actually or constructively before the court, was, so far as they are concerned, clearly void.

The authorities which require the fact of competent jurisdiction to be presumed in certain cases have no application here. The statute is in contravention of the common law, and hence to be construed strictly. The notice is a substitute, and the only one permitted for the proceeding otherwise indispensable, by *scire facias.* The provision is plain and imperative in its language, and it is the duty of a court called upon the administer it, not lightly to interpolate a qualification which the statute does not contain.

The deed from Galbraith contains a special covenant against the "claims of all persons, claiming, or to claim, by, through, or under him." If the premises in controversy should be lost to the defendants, his estate would be liable in damages; and his legal representatives were entitled to all the time which the statute allowed them after notice, to show, if they could, that the collection of the judgment ought not to be enforced.

It is contended that it was incumbent on the defendants

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to show that the proper notice had not been given. We cannot take that view of the subject. The judgment survived only for the preservation of its liens, and as the basis of future action. The statutory notice, or its alternative -- a *scire facias* -- was necessary to give it vitality for any other purpose. Upon the death of the defendant being shown, any execution issued upon it was, as to him, *prima facie*

void. This presumption could be overcome only by showing either that no legal representative had been appointed or that the notice required by the statute had been given. The plaintiff asserted a title, and it was for him to show everything necessary to maintain it. The rule on this subject is thus laid down by Chief Justice Marshall: [ Footnote 4 ]

"It is a general principle that the party who sets up a title must furnish the evidence necessary to support it. If the validity of a deed depends upon an act *in pais,* the party claiming under that deed is as much bound to prove the performance of the act as he would be bound to prove any matter of record on which its vitality might depend. It forms a part of his title; it is a link in the chain which is essential to its continuity, and which it is incumbent on him to preserve. These facts should be examined by him before he becomes a purchaser, and the evidence of them should be preserved as a necessary muniment of title."

We understand the Supreme Court of Illinois to have ruled this point in the same way. [ Footnote 5 ]

The instructions given in the circuit court were, in our opinion, correct, and the

*Judgment is affirmed with costs.*

[ Footnote 1 ]

*Woodcock v. Bennet,* 1 Cowen 711; *Stymets v. Brooks,* 10 Wendell 207; *Erwin's Lessee v. Dundas,* 4 How. 77; *Brown v. Parker,* 15 Ill. 307.

[ Footnote 2 ]

*Brown v. Parker,* 15 Ill. 309.

[ Footnote 3 ]

*Picket v. Hartsock,* 15 Ill. 279; *Brown v. Parker, ibid.,* 307; *Finch v. Martin,* 19 *id.* 111.

[ Footnote 4 ]

*Williams v. Peyton,* 4 Wheat. 79; *See also* *Thatcher v. Powell,* 6 Wheat. 127.

[ Footnote 5 ]

*Finch v. Martin,* 19 Ill. 110.

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