

Collins Vs. Riggs

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Court : US Supreme Court

Decided On : 1871

Appeal No. : 81 U.S. 491

Appellant : Collins

Respondent : Riggs

Judgement :

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Collins v. Riggs

81 U.S. (14 Wall.) 491

ERROR TO THE CIRCUIT COURT FOR

THE NORTHERN DISTRICT OF ILLINOIS

SYLLABUS

To redeem property which has been sold under a mortgage (as is alleged, irregularly), it is not sufficient to tender the amount of the sale. The whole mortgage money must be tendered, or, if suit be brought, be paid into court.

In this case, Riggs had brought ejectment in the court below against Collins to recover a lot, one of the several ones mentioned in the preceding case as having been mortgaged by Russell

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to the United States, and bought by Corcoran from the United States after the foreclosure by the government of their mortgage and the purchase in by them of all the several lots included in it. Riggs was the grantee of Corcoran.

The lot in controversy in this case, like that in controversy in the preceding case, had been conveyed previously to the mortgage, by a deed not put on record, to Breese.

On the trial, the defendant made the same objections to Riggs's title, that in the preceding case he had made to Morris', to-wit, that Breese, as grantee of Russell of the lot prior to the date of the mortgage to the United States, and so owner of the equity of redemption, had not been brought into the foreclosure suit, and assuming this to be true, the defendant inferred and assumed that the mortgage was still, therefore, in existence. He then offered to prove that during the pendency of the present suit in ejectment, he had tendered to Riggs the amount for which this *particular lot now in controversy had been struck off* at the marshal's sale, together with the taxes, interest, and costs, informing the plaintiff at the time of this tender that he, the defendant, was willing to treat him, the plaintiff, as the equitable assignee of *so much* of the mortgage as had been paid at the sale for the land in controversy and that he wished to redeem the said land, and that he, the defendant, made the tender for that purpose, which tender the plaintiff declined to receive, the defendant offering to prove further that the said sum of money was then paid into court as a tender to redeem the land in controversy from the mortgage.

The court below decided simply that the evidence as presented was not competent or sufficient to constitute a defense to the action, but upon what ground this decision was made did not appear.

MR. JUSTICE BRADLEY delivered the opinion of the Court.

It is clear that the criterion by which the amount tendered was gauged was incorrect. To redeem property which has been sold under a mortgage for less than the mortgage debt, it is not sufficient to tender the amount of the sale. The whole mortgage debt must be tendered or paid into court. The party offering to redeem proceeds upon the hypothesis that, as to him, the mortgage has never been foreclosed and is still in existence. Therefore he can only lift it by paying it. The money will be subject to distribution between the mortgagee and the purchaser, in equitable proportions, so as to reimburse the latter his purchase money and pay the former the balance of his debt.

Judgment affirmed.