

Hershfield Vs. Griffith

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Court : US Supreme Court

Decided On : 1873

Appeal No. : 85 U.S. 657

Appellant : Hershfield

Respondent : Griffith

Judgement :

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Hershfield v. Griffith

85 U.S. (18 Wall.) 657

APPEAL FROM THE SUPREME COURT

OF THE TERRITORY OF MONTANA

SYLLABUS

The preceding case affirmed, the case here having been a proceeding to obtain satisfaction of a mortgage.

Griffith sued Starr in one of the district territorial courts of Montana on a mortgage on certain property, the suit being brought under the Civil Practice Act, quoted in the preceding case, an act passed under circumstances there set forth, and which it is necessary for the reader to possess himself of in order to understand at all this case. One Hershfield intervened, asserting that he had a mortgage on the property of a date prior to that sued on by Griffith. The court gave judgment in favor of Griffith, and Hershfield took the case to the supreme court of the territory, which affirmed the judgment below. Hershfield now brought the case here by appeal, assigning among other errors the blending of equity and common law jurisdiction.

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MR. JUSTICE BRADLEY delivered the opinion of the Court.

The only point made in this case is that being one of equity jurisdiction, it was tried by jury as an action at law. This being so, it would seem that under the Seventh Article of Amendments to the Constitution, it should have been removed by writ of error, and not by appeal. But that aside,

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we have just decided in *Hornbuckle v. Toombs* that equitable as well as legal relief may be pursued by the form of action prescribed by the territorial legislature. There is no complaint that this was not done, or that substantial justice was not administered between the parties.

Judgment affirmed.

Dissenting, JUSTICES CLIFFORD, DAVIS, and STRONG.