

TAYLOR V. VAN METER.

Decided May 3, 1890.

1. *Trial before court—Motion for a new trial—When necessary.*

In a trial of a cause before a judge sitting as a jury, the sufficiency of the evidence to sustain the finding of facts, in the absence of a motion for a new trial, is not presented on appeal.

2. *Tax sales.*

A sale for taxes on a day not appointed by law is void.

3. *Tax deed—Meritorious defense.*

The statute limiting the time for testing the validity of tax sales (Mansf. Dig., sec. 5791) does not cut off any meritorious defense to a tax deed.

APPEAL from *Craighead* Circuit Court, Jonesboro District.

J. E. RIDDICK, Judge.

F. G. Taylor for appellant.

There was no evidence showing when the sale commenced, and in the absence of evidence to the contrary it will be presumed to have commenced on the proper day. Black on Tax Titles, sec. 93; 36 Wis., 308; 37 Iowa, 68. The collector had the right to adjourn the sale from day to day. Acts 1883, p. 266, sec. 129. But if the sale was made on a day not provided by law it was cured by sec. 154, Rev. Act, 1883. 62 Miss., 433.

T. P. Chambers for appellee.

1. There was no motion for a new trial in the court below, and this court will not consider objections or errors. 27 Ark., 464; 26 Ark., 415; 27 Ark., 549.

2. The sale having been made on a day not provided by law is void. 33 Ark., 748.

1. Trial before court—Motion for new trial necessary.

PER CURIAM. 1. There is a special finding of facts by the court and no motion for a new trial. The sufficiency

of the evidence to sustain the finding is, therefore, not presented. *Smith v. Hollis*, 46 Ark., 17.

2. That a sale for taxes not made on a day appointed ^{2. Tax sales.} by law is void, was ruled in *Vernon v. Nelson*, 33 Ark., 748. Substantially the same provisions of the statute relied upon by the appellant to cut off this defense were in force when that case was decided. In the subsequent case of *Radcliffe v. Scruggs*, 46 Ark., 96, it was explained that these <sup>3. Tax deed—
Meritorious de-
fense.</sup> provisions of the statute could not now be construed so as to cut off any meritorious defense to a tax deed.

Affirm.
