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Tax Titles

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Tax Titles.

Thesis for the Degree
of
Bachelor of Laws.

Llewellyn Davies. 92.

Contents.

I. The laws which govern the relations of man with man are constantly undergoing change. Laws which are well adapted to the wants and circumstances of one generation of men are frequently found to be grossly inadequate and lacking in many very essential qualities to the wants of the next generation. To a certain extent this has proven to be the case with the common law which forms the basis of our system of jurisprudence.

The general customs of the country, and the principles deduced from them, form essentially the common law as developed in England. It is not a law of abstract rules, but

one of principles, founded on reason and justice, and modified and adapted to the circumstances of all the cases which fall within it. This common law, so far as it was adapted to the situation and the circumstances, was adopted as the law in a majority of the states of the Union; and, where it has not been expressly abrogated by statutory changes, still remains the law of the land. Owing, in part, to the ever changing political and social views of modern times, but owing especially to the numberless inventions of the present century which very materially affect the formation of our system of juris prudence, these changes have been numerous and radical

In no branch of the law have these changes in views made more radical alterations than in the laws relating to real property. The theories of governments and the means of supporting them, so different from the theories entertained in the feudal times, is another element tending greatly to change the rules in regard to the holding of real property.

And first, let us take a look at the way in which land was held under the feudal system as compared with our modern system of land tenure. Under the former system, the tenant of the land held it, not as an owner in fee, but as a subject to some superior. No

subject to some superior in the sense in which land is held at the present time, that is, subject to the rights of eminent domain and of taxation, but as a return for some service, either menial or military, rendered the owner; and at first, the tenant held it only during life or good behavior. The tenant could not convey it, for an attempt at conveyance only resulted in his losing his right to the land, and it then reverted to the superior. Later, when the tenant held a freehold estate in the lands, and it descended to his heirs at his death, yet he could not so convey or alienate his land that on breach of condition by the alienee, the land would

revert to him without his making an entry on it. The reason for this was that, in the conveying of land in feudal times, some outward token of the conveyance was required, namely, feoffment and livery of seizin. But at the present time, when every man is the owner in fee simple of his estate, and possesses the absolute right of conveying it, he can make arrangements whereby his estate may be conveyed and is conveyed merely by force of written agreement between the parties.

At common law there was only one case in which there was an involuntary conveyance

of a man's estate, and that was for treason; but there has been a great change in this respect, and probably the most common of involuntary conveyances, at the present time, is by force of the sale of one's lands by the state for unpaid taxes. Tax titles are entirely the creature of statute. They were unknown at the common-law. But now there is not a state in the Union but that has a statute empowering certain prescribed officers to sell the real estate of delinquent tax payers and to give the purchasers good title thereto. These statutes vary greatly in their requirements as to the formalities

to be gone through previous to and at the sale, but, as this power is statutory and entirely in derogation of the common law rules, it is strictly construed, and in whatever particulars the statutes may differ as to requirements, they must, in general, be strictly followed, or the purchaser does not get a good title.

It is an absolutely necessary power of every government to impose taxes. This power is implied in the very idea of government itself. A government is established for the good of the people composing it, to protect them from the state of anarchy, and to promote their general welfare by mutual improve-

ments within, and to protect them from invasion from without. To accomplish this, there must be means by which it can be done, and where are these means to come from, if not from the people themselves. Then, as we proceed one step farther, this power to tax the people necessarily implies the right to collect that tax. A law which imposed a burden upon any part or the whole of a community would be worthless unless it also gave some one the power to enforce that burden. Thus we see the necessities which gave rise to the practice of selling land for the non-payment of taxes. The land must necessarily be taxed for the support of the government.

but as levying the tax was in itself only a form which could give no revenue, the tax laws were necessarily followed by others prescribing the way in which these taxes might be collected, and, as can be readily seen, if the power of an individual could not withhold or the taxes, in case of their non-payment, a large proportion of the taxes levied must go uncollected, and the consequence was our present statutes concerning the sale of land for taxes and prescribing the way in which these sales should be conducted in order that the purchaser might get a good title.

II. "The power to impose a tax upon real estate, and sell it when there is a failure to pay the tax, is a high prerogative, and should never be exercised in doubtful cases". Beaty v. Knowler's Lessee, 4 Pet. (U.S.) 152. "This power is a statutary power depending on the will of the state and not on that of the owner." Blackwell on Tax Titles, Vol I, p 120. In the sale of an individuals land for the non-payment of taxes by the owner, the proceedings are "adverse, ex parte, summary, executive rather than judicial, special, and statutary, and have nothing to stand upon but the statute from which, if they vary, they can lay

no claim to its support. The purchaser claims under the statute; by that let his pretensions be judged. The consideration is grossly inadequate; the maxim 'caveat emptor' applies with great force to the purchaser". Blackwell on Tax Titles, Vol. I, paragraph 126.

Not by any rules of the common law does the purchaser at a tax sale claim title, but entirely by virtue of statute. The equities seem to be against him. He is getting an estate valued at hundreds and many times at thousands of dollars, for only a few dollars. The owner of the property is having his claim to it sw-

manly taken from him. It is not the exercise by the government of the right of eminent domain, for in this the owner is indemnified for his loss. It is not merely the taking of a lawful tax, for in that case the owner gets, although not always any direct benefit from the tax, yet the theory is that he gets some indirect benefit, at least, from it. But it is the taking of property without compensation and giving it to another person; therefore, it rests in the nature of things that the purchaser should, in all respects, see that the statute empowering the sale is complied with before he is allowed

to get a good title to the land sold.

Let us see what are the general requirements of the statute as to a sale of land for unpaid taxes. The essentials seem to be that there should be first a listing or valuation of the land, then the levy and the collection of the taxes, then, in case of the non-payment of the taxes, the advertisement and sale of the property; and finally follows the return and recording of the proceedings. What these requirements? In the first place, a tax to be legal must be uniform; so that, if the tax were not an uniform one, if there had been a discrimination, and the owner

whose land was being sold was the person against whom the discrimination had been made, the sale of such delinquents land would not be due process of law. The remaining general requirements of the statute will be treated of more particularly in the third part of this article.

Again, in order that the sale be a valid one, the transaction must have been a fair one in all its parts, that is, it must have been free from any fraud or connivance on the part of the purchaser and the officer who made sale; also, the officer must be one who is authorized by law to sell land under such circumstances.

and this, for the reason that as the sale is a summary proceeding, and is authorized only by statute, the officer who executes the sale must of necessity be one who is duly elected in accordance with that law and he must also follow strictly the directions of the statute in regard to the sale. In Williams v. Peyton's Lessee, 4 Wheaton (U.S.), 77, Marshall, C. J. said of the power of an officer to sell land for the non payment of taxes: "It is a naked power, not coupled with an interest, which in this particular application of it means, it is a power operating upon an estate, in which the officer who executes it has

no manner of interest, and over which he has no control other than that which the law has expressly delegated to him". If this were not so, the result would be most disastrous to the security of the citizen in his right to hold property. If every one were allowed to levy and collect taxes and sell the property of individuals for the non-payment of these taxes, government and order and security of person and property would be at an end. Every citizen or property-holder would be at the tender mercies of every other citizen or property-holder, each one eager to grasp all within his reach, and the very idea

of government would be at an end. But, in order to avoid this, a strict compliance with the directions of the statute is required; and consequently this strict compliance with the statute is usually considered a condition precedent to the validity of the sale.

A review of the cases on this point shows that this rigidity of construction has been, in the past, carried to such an extreme, in the effort of the courts to protect the individual in the enjoyment of his property, as to be almost counterbalanced by its pernicious effect upon the public treasury. The cases

tive statutes were, also, by this rigidity of construction, almost entirely deprived of any effect by the construction put upon them by the courts in their efforts to protect the individual. The effect was, naturally, that scarcely a purchaser at a tax sale could get a good title, and, by reason of the slightest defect the whole of the proceedings were declared null and void and the government was defrauded of its just revenue, while property owners were encouraged not to pay their taxes and by some circumvention in the proceedings of a sale of their property for taxes, easily obtainable, defeat the object of the sale.

Yet there is a great difference in the language of the courts of the different states as to the degree of strictness required. Some use words to the effect that the statute must be "strictly construed", others that the proceedings must be "strictly regular", still others that the course pursued "ought to be exactly observed", and many others differing widely in their outward form; but about all of them can consistently be condensed to this one rule, that those requirements of the statute which are conditions precedent, as the listing and valuation of the land, the levy and collection of the tax, the notice of the sale, etc., must be strictly pursued,

that is, all those provisions which directly affect the tax-payer. But those provisions which are merely aids to the officer in the performance of his duties, that is, which are directory merely, need not be so strictly pursued, but courts will in the majority of cases allow amendments of any such irregularities. As is said in Powell v. Tuttle, 3 Comst., 401: "It is a familiar rule of law, that a special authority must be strictly pursued. When such authority is prescribed by statute, and when in its exercise it operates to divest the citizen of his property, courts cannot be too sedulous in confining it within the boundaries which the legislature have thought

fit to preside. At this day, and in this country especially, the protection of private rights demands this safeguard; and he who will review the adjudications of our courts involving this principle will be interested to observe with what uniformity and unerring jealousy the exercise of such a power has been restricted to its own specified limits."

III. Introduction.

Having attempted to give a brief sketch of the origin and general characteristics of a tax title, I will now proceed to examine in a superficial way, owing to the lack of space and time, the present condition of the law in regard to tax titles in the State of Iowa.

At the present time, all the southern and western states, and many if not all of the eastern States, have statutes empowering the sale of land for the non-payment of taxes, as well as statutes regulating the procedure of the sale. While these statutes of the different Stat

vary to some extent in their minor details, yet their main provisions are substantially the same. However, it is in the construction put upon these statutes by the courts of the different States that we must look for the great variance in the effect of the statutes.

In all jurisdictions the following points must be examined with more or less strictness in order to ascertain whether the title of the purchaser is a valid one or not, viz: The election and qualifications of the officers who are to execute the laws; listing and valuation of the land; authority to collect the tax; the demand; extinction of personalty

before attaching the land; return of the delinquent list; judicial condemnation in some states; advertisement of sale; authority of the officers to sell; the tax lien; the sale; the certificate of sale; fulfillment of conditions subsequent to the sale, as the return of the sale and record of the proceedings; giving a surplus bond in some states; locating the land; judicial confirmation of the sale in some jurisdictions, and notice to redeem; the absence of redemption; the receiving of a tax deed in due season." Blackwell on Tax Titles, Vol. I. section 2.

There are two different theories followed by the courts in the construction of the foregoing provi-

ions. One theory is that, as all these provisions are in derogation of the owners' common-law rights, they must all be construed with the utmost strictness, and so as to give the landowner the benefit of even doubt or irregularity. The other theory is that the more essential provisions, as the levying of the tax, listing and valuation of the land, the advertisement of the sale, etc, are conditions precedent to the validity of a sale, but that the provisions as to the manner of conducting the sale, etc., are merely directory and a slight variation from some of them is not necessarily fatal to the validity of the sale. As to this question, I will quote the words of

Shaw, C.J., in Torrey v. Millbury, 21 Pick. (Mass.), 67: "In considering the various statutes regulating the assessment of taxes, and the measures preliminary thereto, it is not always easy to distinguish which are conditions precedent to the legality and validity of the tax, and which are directory merely, and do not constitute conditions. One rule is very plain and well settled, that all those measures which are intended for the security of the citizen, for ensuring an equality of taxation, and to enable every one to know, with reasonable certainty, for what polls, and for what real and personal estate he is taxed, and for what all those who are liable will

him are taxed, are conditions precedent, and if they are not observed he is not legally taxed, and he may resist it in any of the modes authorized by law for contesting the validity of the tax. But many regulations are made by statute, designed for the information of assessors and officers, and intended to promote method, system and uniformity in the modes of proceedings, the compliance or non-compliance with which, does in no respect affect the rights of taxpaying citizens. These may be considered directory; officers may be liable to legal animadversion, perhaps to punishment, for not observing them; but yet their non-

servance is not a condition precedent to the validity of the tax."

The earlier decisions of the Iowa courts adhered with the greatest strictness to the former of the two doctrines. But there is a tendency in the more recent decisions to construe the directory provisions of the statute with much less strictness than formerly. In the leading case of Scott v. Babcock, 3 Greene (Iowa), 133, the court says: "It is the duty of the purchaser to show step by step, that everything has been done which the statute makes essential to the execution of the power." And again from the same case: "A sale of land for the payment of taxes is a proceeding in derogation of the well established prin-

ciples of the common law, therefore such a sale can only take place after all the requirements of the statute, from the first proceedings under it, up to the last, have been strictly performed. Nothing can be supplied from intendment. Those things which the statute requires to be done, must be done, or nothing passes by the sale. It is only upon condition of a compliance with the statute that it authorizes a sale to be made, and hence, if the conditions have not been complied with, the sale is unauthorized and void."

Thus it is seen that the Iowa courts, in their earliest decisions, started with the idea that, as these statutes which provide for the sale

of land for the non-payment of taxes are in derogation of the common law rights of the owners of the land, the statutes must be construed with the greatest of strictness. But on an examination of the later cases decided by that court, it will be seen that there has been a decided change in the views of the court. And we will now proceed to inquire into the present condition of the law in that state, as gathered from the more recent decisions of the court in its interpretation and construction of the statutes

1. A great number of the earlier decisions in the different states apply this rule of strict construction to the authority of the officer who sells,

by requiring him to be duly elected and qualified. But the tendency at the present time is to the view that if the officer is acting in good faith, supposing himself to have been duly elected and qualified, the sale will be a valid one. "That an assessor was not duly qualified when, acting as an officer de facto, he assessed the property does not invalidate such assessment, or affect the validity of a sale for taxes. Provided always that the officer acted in good faith." Allen v. Armstrong, 16 Iowa, 508.

2. The land, in order that the sale may be a valid one, must have been listed and assessed. This provision is construed strictly. Any irregularity in this regard is fatal

to the title of the purchaser. So, "a failure to carry forward on the tax lists of the year the taxes for which the land is sold, is fatal to the sale." Burke v. Early, 72 Iowa, 273. Proper records of such assessment should be made and filed in the county treasurer's office. "If no such records found in the said office, the sale is prima facie fraudulent and will be set aside" Early v. Whittingham, 43 Iowa, 166. The listing and assessing of the lands must be made by the proper officer, but it is held that, "where the assessor employed another to make the valuations of property, which were afterwards submitted to him for correction and approval, the assessment was valid." Snell v. the City of Fort Dodge, 45 Iowa, 564. For the full protection of

the tax payer, and in order that he may examine the lists and assessments and see that nothing has been entered therein to his prejudice, a return and acceptance of the list is required.

3. Whether parol evidence is admissible to aid in the description of the premises when the lists and assessment returns are defective in that particular is a question over which there is much discussion. Probably parol evidence will be admitted to explain any latent defect, but, if the defect be patent in the description, then no extrinsic evidence will be admitted to cure the defect. Parol evidence is admissible, not for the purpose of adding to or varying the description contained in the certificate of purchase, but

of applying that description to its subject matter". Judd v. Anderson, 57 Iowa, 345.

4. In case there should be any reasonable doubt as to who is the owner of certain land, it may be taxed by the officer to an unknown owner, and a sale of the land for the non-payment of these taxes will give the purchaser a valid title as against the owner. "The fact that land was assessed as belonging to an unknown owner, when the records of the county disclosed the name of the owner, will not invalidate a sale of the land for taxes. The presumption will obtain that the assessor did his duty and that the name of the owner was, in fact, unknown to him". The Canning

Town Co. v. Davis, 44 Iowa, 622.

5. The statute provides that a demand shall be made of the taxpayer that he pay his back tax before his land can be sold for the non-payment of such taxes. This statute is strictly construed, the most convincing evidence being required to show that such demand has been made. A deed of a tax sale is by statute prima facie evidence of the regularity of the proceedings, but, "the deed is not conclusive evidence that a demand has been made." Lathrop v. Hawley, 50 Iowa, 42.

6. The order in which the property of the delinquent is taken for unpaid taxes in the different jurisdictions depends on the requirements

of the different statutes. The general rule being that personal property must be taken first, and the real property taken as a last resort. In some few states a seizure of the person of the delinquent is allowed until he pays the tax, but this is not the general rule; it is not the rule in Iowa. The deed given in the tax sale is made conclusive evidence of the regularity of the proceedings in this regard.

7. It is a well established principle that where a court of record has jurisdiction to render a decree, the judgment is conclusive upon parties and privies. Where the statute requires a judicial condemnation of the land, or in other words,

makes a judgment against the land a condition precedent to the sale of the land for taxes, such judgment is conclusive upon all parties and in all respects. "When a decree of foreclosure for the delinquent taxes had been rendered by a court of competent jurisdiction, a bill to set aside the decree and redeem the property on the ground of having paid the taxes with the exception of one year immediately previous to the sale, will be of no avail unless collusion or fraud is shown". McGahen v. Carr, 6 Iowa. 330. But when the court has not, as yet, any jurisdiction of the subject matter or of the parties, the judgment is a nullity and may be impeached collaterally.

8. The law is ever jealous of the rights, public and private, of its citizens, especially their property. It is one of the aims of the constitutions of the different states to protect the individual in the enjoyment of his private property. The two cases in which the government itself seemingly violates this principle are, first, that of taking property by the right of eminent domain and, second, that of taxing the property of individuals for public purposes. These are only seeming cases, however, for the owner is indemnified when his land is taken under the right of eminent domain, and he, in theory, receives a benefit in the expenditure by the government

of the taxes levied upon his property. But a proceeding which is in derogation of all an individuals common law rights is that of selling his land for the non-payment of taxes. However, in this proceeding, the law is extremely jealous in guarding the individual from imposition. He is given every chance in order that he may pay his taxes and thus save his property from being sold at an enormous sacrifice, as is usually the case in such sales. The land must be listed and assessed and other requirements complied with that have been given above; and as a last warning and opportunity to the owner to pay his tax and save his

land, and in order to give the public notice of the fact of the sale in order to arouse competition in the sale, notice of such sale is required to be given to the owner as well as to the public in general. The general rule is that, in the notice, must be given a description of the premises sold but the contrary rule seems to prevail in Iowa. The notice fixes the time of sale. The delinquent is bound to know that the taxes on his land have not been paid. The law notifies him that all delinquent lands are required to be offered for sale. He cannot shield himself from the consequences of his neglect merely from the fact that the published notice did not contain

a description of the land in question. Knowing that his lands are delinquent, it ought to occur to him that any omission is a mere mistake, and he should govern his actions in accordance with such suggestions". Shaver v. Johnson, 52 Iowa, 476.

9. The validity of a tax sale depends in a great measure on the power or authority of the officer to sell. If his powers are construed liberally or, in other words, if the provisions of the statute in regard to his conducting the sale are directory merely, then the sale will be upheld as a valid one, even though the requirements of the statute be not fully complied

with. On the other hand, if the provisions of the statute are deemed conditions precedent to the validity of the sale, then the statute will be strictly construed, and the officer will be held to perform every detail as directed before he can give a good title to the purchaser. The true criterion, in construing the powers of the officer, seems to be "to ascertain whether, if the statute were held merely directory, any substantial right of property of the citizen would be infringed." Blackwell on Tax Titles. In the case of City of Dubuque v. Wooton, 28 Iowa, 571, an ordinance of the City of Dubuque, respecting the levy and assessment of a special tax on

adjacent lots, for grading and macadamizing the street in front thereof, provided that the resolution of the council, by which such tax should be levied, should be published for two weeks in the official paper of the city, and that the tax should thereupon be due and payable. As a matter of fact this publication was not made as required by the statute passed. The court held that the statute requiring this publication was not directory merely but was mandatary and was a condition precedent to the validity of the tax levied which, in its turn, must have been a valid tax in order that a tax title gained under the

sale of the land by an officer for unpaid taxes, should be a valid one.

10. The statute provides in express terms as to the conditions of the sale. It must be a public one, and all facts required to exist by the statute, before the sale, must exist, or there can be no valid sale.