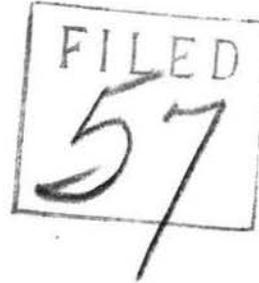


TAXATION: Owner of land sold for taxes entitled to exercise privilege of ownership until deed issues--Senate Bill 94.

5-3

April 6, 1935.



Hon. G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Mr. Marr:

Acknowledgment is herewith made of your request for an opinion of this office on the following proposition:

" The facts are these: Mr. R. in November bought 40 acres of land at a delinquent tax sale from the collector under the new tax law. He received a certificate of purchase. The land is an unenclosed uninhabitated 40 acres, with good standing timber on it. Mr. X, the owner does not live on the land, but lives on a farm in Pettis County.

Since the sale Mr. X. proceeds to come over to Morgan County on that 40 acres, and cut off the standing timber at a furious rate. If the timber is cut and removed the 40 acres has no value for anything. The purchaser at the tax sale bought the 40 acres for the timber thereon. The owner of the land who is cutting the timber, states that he is cutting the timber and selling the same, in order to redeem the land from the purchaser at the tax sale.

Now does section 8964a keep the purchaser of the tax sale out of such possession that the real owner of the land can come in for

one year and cut away all the timber and render the land useless, or can the holder of the certificate of purchase stop this waste?"

The proceeding referred to in the foregoing inquiry is authorized by the provisions of Senate Bill 94, page 425, Laws of Missouri 1933. This act consisting of some fifty sections established a new mode of procedure for the collection of delinquent real estate taxes in this state. Section 9953d of that Act provides for the issuance of a certificate of purchase as follows:

"After payment shall have been made the county collector shall give the purchaser a certificate in writing, to be designated as a certificate of purchase, which shall carry a numerical number and which shall describe the land so purchased, each tract or lot separately stated, the total amount of the tax, with penalty, interest and costs, and the year or years of delinquency for which said lands or lots were sold, separately stated, and the aggregate of all such taxes, penalty, interest and costs, and the sum bid on each tract. If the purchaser bid for any tract or lot of land a sum in excess of the delinquent tax, penalty, interest and costs for which said tract or lot of land was sold, such excess sum shall also be noted in the certificate of purchase, in a separate column to be provided therefor. Such certificate of purchase shall also recite the name and address of the owner or reputed owner if known, and if unknown then the party or parties to whom each tract or lot of land was assessed, together with the address of such party, if known, and shall also have incorporated therein the name and address of the purchaser. Such certificate of purchase shall also contain the true date of the sale and the time when the purchaser will be entitled to a deed for said land, if not redeemed as in this act provided, and the rate of interest that such certificate of purchase shall bear, which rate of interest shall not exceed the sum of ten per cent per annum. Such certificate shall be authenticated by the county collector, who shall record the same in a permanent record book in his office before delivery to the purchaser."

Section 9956a provides for the redemption of property during the two years next ensuing the sale.

Section 9957 provides in part as follows:

"If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, and on production of certificate of purchase, and in case the certificate covers only a part of a tract or lot of land, then accompanied with a survey or description of such part, made by the county surveyors, the collector of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the state, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple, subject, however to all claims thereon for unpaid taxes except such unpaid taxes existing at time of the purchase of said lands and the lien for which taxes was inferior to the lien for taxes for which said tract or lot of land was sold." * * *

The purchasers at delinquent tax sales held under the provisions of this act receive what is called a "certificate of purchase." This certificate describes the land purchased, the total amount of the tax, penalties, interest and costs, the total amount of the bid and the rate at which it bears interest. In practical effect this constitutes evidence of having advanced the sums therestated to the State of Missouri, or the governmental subdivision involved, with the understanding that if the sums so advanced are not repaid within two years following the date of advancement the holder of the certificate will be entitled to receive a deed conveying the fee simple title to the land involved in consideration of the payment of the amount set forth in the certificate. Although several sections of this act refer to "the sale" of lands and lots to discharge of the lien of the delinquent and unpaid taxes, yet it is apparent that it is the deed which conveys the title to the purchaser and not the certificate of purchase.

Section 9954a refers specifically to the conditions under which a purchaser may take possession of the land prior to the issuance of a deed. This section reads in part as follows:

"The purchaser of any tract or lot of land at sale for delinquent taxes, homesteads excepted, shall at any time after one year from the date of sale be entitled to the immediate possession of the premises so purchased during the redemption period provided for in this act, unless sooner redeemed: Provided however, any owner or occupant of any tract or lot of land purchased may retain possession of said premises by making a written assignment of, or agreement to pay, rent certain or estimated to accrue during such redemption period or so much thereof as shall be sufficient to discharge the bid of the purchaser with interest thereon as provided in the certificate of purchase. The purchaser, his heirs or assigns, may enforce his rights under said written assignment or agreement in any manner now authorized or hereafter authorized by law for the collection of delinquent and unpaid rent;
* * *

After the expiration of one year the purchaser of the certificate may, under certain circumstances, take possession of the lands, but possession may be retained by the owner even during the second year if the purchaser of the certificate is assured the payment of the rental value of the land. The purchaser must of course credit any such sums received on the certificate of purchase as this section further provides:

"Any rent collected by the purchaser, his heirs or assigns, shall operate as a payment upon the amount due the holder of such certificate of purchase, and such amount or amounts, together with the date paid and by whom shall be endorsed as a credit upon said certificate, and which said sums shall be taken into consideration in the redemption of such land, as provided for in this act.* * *

This provision for the possession of the land prior to the date of the obtaining of the fee is but additional security to insure that the holder of the certificate of purchase will receive the sum represented by the certificate with interest. This is not to be taken as any evidence of title as such a construction would be contrary to the requirement that the amount received as rent be credited on the certificate. The Courts of this state have heretofore had similar tax laws before them for consideration. In the case of Kohle vs. Hobson, 215 Mo. 213, the Court considered a certificate of purchase issued by the City of Kansas City under a city tax law provision somewhat similar to the state tax law under consideration. In respect to the nature of the certificate of purchase the Court stated, l. c. 220:

"The certificate of purchase did not, of course, pass the title, but only entitled the purchaser, or the defendant as his assignee, to a deed passing the title at the expiration of two years from the time of the tax sale, during which time any of the cotenants had the right to redeem the land; and defendant's purchase of the certificate of purchase, as before stated, amounted to nothing more than a redemption from that sale, and inured to the benefit of his wife and her cotenants.* * * *"

Although much older, the case of Donohoe vs. Veal, 19 Mo. 331, is particularly applicable. In considering this case it should be remembered that the present tax law is patterned after the ancient tax laws of this state and modified somewhat by provisions adopted from the tax laws of other states. In 1847 and 1849 the State of Missouri collected taxes by virtue of a tax law very similar to the one now effective. Section 9 of the law of 1845 provides for the issuance of a certificate of purchase to the highest bidder at the annual sale for taxes. The law of 1847 which was amendatory to the Law of 1845 contained innumerable features similar to the present tax law. The following analysis show the similarity.

LAW OF 1847

Sec. 8. Said lands and town lots may be redeemed at any time***** by the party paying to the collector the full amount of taxes, costs, and interest,* * * *

Sec. 5. On the first Monday of June annually* * *the Register of Lands shall cause all the lands and town lots remaining unredeemed in his office* * *to be advertised in some newspaper published in the City of Jefferson, to be sold on the first Monday in October next thereafter, at the place of holding courts in the respective counties, and shall immediately transmit four copies thereof to the collectors of each county* * * *

Sec. 10. All the lands and town lots remaining unredeemed on the first Monday in October, annually shall be publicly exposed to sale by the collectors, for the taxes interest and costs due thereon, * * *the sales to be continued from day to day,* *until all the lands and town lots are offered, and if no person will pay the taxes, interest, and costs, due* * * the collector shall report said land or town lot 'unsold', to be disposed of as hereinafter provided."

LAW OF 1933

Section 9952a. provided however, delinquent taxes, with penalty, interest and costs, may be paid to the county collector at any time before the property is sold therefor.* * *

Section 9952b. The county collector shall cause a copy of such list of delinquent lands and lots to be printed in some newspaper of general circulation and published in the county, for three consecutive weeks, one insertion weekly, before such sale, the last insertion to be at least fifteen days prior to the first Monday in November. * * * *

Section 9952a. All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge* * * on the first Monday of November of each year* * *

Section 9952c. On the day mentioned in the notice, the county collector shall commence the sale of such lands, and shall continue the same from day to day until so much of each parcel assessed or belonging to each person assessed, shall be sold as will pay the taxes, interest and charges thereon, * * * *

LAW OF 1847

Sec. 11. The several collectors shall * * * file in the office of the Clerk of the County Court * * * the certified list * * * with a remark opposite to each tract of land or town lot setting forth the disposition made of it, if sold, to whom, and the amount paid by the purchaser, or if not sold, the amount for which it was offered for sale, * * * * *

Sec. 23. Any land or town lots which may be sold under the provisions of this act, for taxes, interest and costs due thereon, may be redeemed at any time within two years from the date of such sale by the claimant, * * * * * paying * * * * * for the use of the purchaser double the amount of taxes, interest and costs, for which the same may have been sold. * * * * *

Sec. 23. Lands or lots belonging * * * to minors, may be redeemed at any time before the expiration of one year from the time the youngest of said minors shall become of full age. "

LAW OF 1933

Section 9953. If at the first offering of sale of any tract of land or lot * * * no person shall bid therefor a sum equal to the delinquent taxes thereon with interest, penalty and costs, then the clerk of the sale shall note such fact in his record of sale and the county collector shall note a recital thereof in his record containing the list of delinquent lands and lots, * * * * *

Sec. 9955. The clerk of the county court shall attend, * * * * * as the clerk of the sale * * * * * and shall enter the same on a sufficient record book giving a description of the proper tract or lot, showing how much of each was sold, to whom, and the price, or whether the same remains unsold. * * * * *

Sec. 9956a. The owner or occupant of any land or lot sold for taxes, * * * may redeem the same at any time during the two years next ensuing * * * By paying to the county collector, for the use of the purchaser, his heirs or assigns, the full sum of the purchase money named in his certificate of purchase and all the costs of the sale together with interest at the rate specified in such certificate, * * * * *

Sec. 9956b. Infants, idiots, insane persons and persons in confinement may redeem any lands * * * within two years after the expiration of such disability, * * * * *

LAW OF 1847

Sec. 29. Where lands and town lots have been sold* * *and shall not be redeemed in two years from the time of such sale, the Register of Lands shall, upon application, execute good and sufficient deeds of conveyance* * *conveying the lands or town lots in such deed,* * * **

Sec. 30. Such deeds* * *shall * * *be received as evidence in all courts in which the title to any land or town lot* * *shall be brought in question, and such deed shall be prima facie evidence of title in fee simple, in the purchaser.* * * **

LAW OF 1933

Sec. 9957. If no person shall redeem the lands sold for taxes within two years from the sale, * * *the collector of the county in which the sale of such lands took place shall execute to the purchaser,* * *a conveyance of the real estate sold, which shall vest in the grantee an absolute estate in fee simple.* * * **

Sec. 9957a. Such deed shall be prima facie evidence that the property conveyed was subject to taxation at the time assessed, that the taxes were delinquent and unpaid at the time of sale, of the regularity of the sale of the premises described in the deed, and of the regularity of all prior proceedings, that said land or lot had not been redeemed and that the period therefor had elapsed, and prima facie evidence of a good and valid title in fee simple in the grantee of said deed,* * * **

Other and additional similarities in these laws could be pointed out. The Act of 1847 in fifteen out of the thirty-nine sections refers to the proceeding in words importing "a sale of delinquent lands and lots", just as in the present law words importing such a "sale" are used frequently. Except for a few differences in the manner of administration, the proceedings are almost identical and the object attained is the same. The relative rights of the various

parties to the proceeding are also very very similar. In the Donohoe case heretofore referred to, the Plaintiff had bought a certificate of purchase to the land involved in October of 1848. February 10, 1851, he received a deed from the Register of Lands, pursuant to law as no redemption had been made within the two years provided. The evidence in the case proved that the Defendant who was the title owner to the property at the time of sale for taxes had cut trees from the land after the date of sale for taxes, to-wit, October of 1848, but before the date of the execution of the deed by the Register, to-wit, February 10, 1851. The trees cut by the Defendant owner were of considerable value and Plaintiff felt that he had not received what he had purchased because of the removal of the timber by the Defendant. Plaintiff instituted this action to recover the value of the trees removed, but could only rely on his certificate of purchase to show his interest in the land at the time of the removal of the trees. The Court in considering this issue held that the Plaintiff to establish any right in the land could only do so by virtue of the deed and not by the certificate of purchase. In holding that the title under the deed did not relate back to the date of sale so as to give plaintiff an interest in the land during such period, the Court stated, l. c. 335:

"It is to be observed that, in neither of these acts is there any intimation that the deed is to afford any evidence of title in the purchaser, prior to its date. In the absence of any such provision, the deed can have no such effect, unless the previous proceedings contemplated the passing of the title to the purchaser before the time appointed for making the deed. If the law did not propose to give the purchaser the title to the land, until two years should elapse from the time of the purchase, then it did mean that the title should remain in the owner for that period, and the right of the purchaser was, to receive his money, with a high penal interest, during the delay of redemption. It appears very clearly to be the design of these two acts, that the title of property sold for taxes shall remain undisturbed, until the deed is actually executed by the register; and that, until that act is performed, the title is in the former owner.

Such being the design of the acts, the doctrine of relation cannot be applied to such deed, to give it an effect and operation contrary to the meaning of the law, by allowing the persons claiming under it, to maintain, not only actions of trespass for injuries done after the sale, and before the conveyance by the register, but actions for rents, issues and profits accruing during that period. The whole scheme of these acts very plainly shows that such a construction, or applying the fiction of relation to such a case, would be contrary to the intention of the Legislature."

This case has been referred to approvingly in later decisions of our Supreme Court. In 1874 and 1875 a proceeding somewhat similar was in effect for the collection of State and County taxes. In the case of Hilton vs. Smith, 134 Mo. 449, 33 S. W. 464, the Court had for decision the interest of a holder of a certificate of purchase in the lands covered by the certificate, and what, if any ownership such certificate evidenced prior to the giving of a deed, in the event the property was not redeemed during the redemption period. The Court stated, l. c. 465:

"At the time the back-tax suit was commenced, interpleader Smith held certificates of the purchase of the land at collector's sales for taxes levied for the years 1874 and 1875. The time allowed by the law (2 Wag. St. p. 1202, Sec. 208), in which the owner could redeem, had expired, and he was, and for some time had been, entitled to a deed. What title to, interest in, or lien upon land, a certificate of purchase secures to the holder is a question upon which there is a difference of opinion. It may be said, generally, that the right is no larger than the statute gives. The law of 1872 only gives the right to the redemption money in case the land is redeemed, and to a deed when the time of redemption has expired. In the absence of provisions of law defining the rights of the holder of a certificate of purchase, the generally accepted rule is that until the delivery of a deed he takes no

title to the land, either legal or equitable. Black, Tax Titles, Sec. 322; Burroughs, Tax'n 321. The rule is announced by this court in Donohoe vs. Veal, 19 Mo. 336, as follows: 'If the law did not propose to give the purchaser title to the land until two years should elapse from the time of the purchase, then it did mean that the title should remain in the owner for that period; and the right of the purchaser was to receive his money, with high penal interest, during the delay of redemption. It appears very clearly the design of the two acts that the title to the property sold for taxes shall remain undisturbed until the deed is actually executed by the register, and that until that act is performed the title is in the former owner.' It was further held in that case that the doctrine of relation did not apply to such sales, and the title acquired under the deed did not relate back to any prior act or proceeding. The law of 1857 made the certificate prima facie evidence of title, yet the court held that it never intended to confer title, but was mere evidence of title, authorizing the purchaser to take possession of the premises for a limited period. Clarkson v. Creely, 40 Mo. 114. In Parsons v. Viets, 96 Mo. 413, 9 S. W. 908, this court, in considering the rights of one holding a certificate acquired under a sale made pursuant to the laws of 1872, held that he acquired thereunder no right to the possession of the premises, and in taking possession he was a trespasser and disseisor. After the period allowed for redemption has expired, as was the case here, the holder of the certificate has a mere naked right to demand and receive a deed from the collector. The law thereafter gives him no lien upon the land for any sum, except, in case his title fails, he may secure a lien under 2 Wag. St. p. 1206, Sec. 219. Pitkin v. Reibel, 104 Mo. 511, 16 S. W. 244.

Our Courts have frequently pointed out the distinction between the status of a purchaser at an execution sale and at a tax sale. This is concisely put in the case of Boyd vs. Ellis, 107 Mo. 394, 401:

"The title did not pass to the purchaser at the tax sale, until the execution of the deed, to him as his assignee. But the law is well settled that a sheriff's deed relates back to the sale as against the defendant in the execution, those in privity with him, and strangers with notice."

From the foregoing citations of our own Appellate Courts it is certain that purchasers at tax sales have been considered as having but limited and restricted rights; that the bona fide title owner of the land is to be given every consideration as against the purchaser of the land at a sale sale.

Considering the tax law now effective in this State, we believe that the new tax law does not give the purchaser at the tax sale any greater interest in or title to the land purchased than did these previous tax laws. While it is true that under the provisions of Section 9954a, possession of the land may be taken from the title owner by the purchaser, it is clear that this possession is not given so that the purchaser may exercise any rights as owner, nor is it given to prevent the owner from committing waste on the property, but is simply given as additional security to the purchaser to insure the payment of the amount of the tax certificate at an earlier date than would otherwise be possible. In our opinion this conditional right of possession prior to the expiration of the redemption period is not to be construed as evidencing an intention to vest any kind of title to the land in the purchaser of the certificate, nor does it increase his interest in the land during the first year of the redemption period. It seems clear that under the present law the right of the purchaser is but to receive his money with interest at the rate specified and that it is a bare right which the courts will not extend when the rights of the actual title owner of the property would by such extension be restricted.

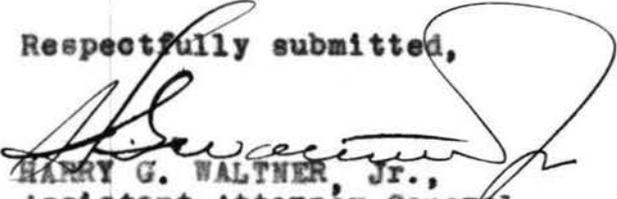
April 6, 1935.

We are not unmindful of the decisions of other States in respect to this proposition. Without question authorities in many states will be found where the holder of the certificate was permitted both to enjoin the cutting, and after the expiration of the redemption period, to sue for the value of the timber removed. Generally speaking these decisions are based upon the provisions of the particular law involved. In Maryland and South Dakota, the title passes at the date of sale and the title obtained by the purchaser is construed to be as a new grant from the sovereignty. In Michigan the owner of the land after sale only has a right to a re-conveyance of the property, 154 N. W. 572. In Wisconsin there is a special statutory provision allowing an injunction proceeding against the owner for waste, 69 Wis., 326; 34 N. W. 80. The same is true as to the State of Minnesota. In Florida the tax certificate is in itself evidence of title and becomes a vested right at the expiration of the redemption period with the execution of a deed. Thus the title of the purchaser relates back to the date of purchase, 131 So. 136. The same is true in Mississippi, 110 So. 790. Because of the particular statutory provisions involved, and the policy of the Appellate courts of these states in construing the tax laws, we do not feel that the decisions in these states are persuasive as to the issue involved herein.

CONCLUSION.

It is accordingly the opinion of this Department that the purchaser of a certificate of purchase at a tax sale held under Senate Bill 94, page 425, Laws of Missouri, 1933, receives no title to the land involved until the execution of the deed contemplated by that law, and that under the circumstances described in your request, to-wit, that the timber is being removed by the owner for the purpose of raising funds to redeem the land from the tax sale, the holder of the certificate of purchase is without remedy at law to prevent the owner from severing and removing the timber from the land involved.

Respectfully submitted,


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APPROVED:

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