

- TAXATION:
- (1) Co-tenants may redeem undivided interest in real estate or redeem entire interest and hold as trustee for the other co-tenant the interest such co-tenant formerly owned.
 - (2) Mortgagee may, within statutory period, redeem from stranger purchasing certificate at tax sale. Record owner may within statutory period, December 8, 1937 redeem from mortgagee

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Dear Mr. Long:

We wish to acknowledge your request for an opinion of November 24, 1937, which is as follows:

"The Collector of this County has requested that I secure a ruling on the following situation relative to the tax redemption law for him.

"A and B own a piece of property together which was sold for taxes to C. Within less than one year A redeems this property from C and pays the taxes for the following year and is given a deed at the end of the two year period. Can A redeem all of the property when he has only a part interest and if he does can he cut out the interest of B who was a joint owner with him?

"A owns a piece of real estate on which B has a mortgage. The property is sold to C for taxes and B, the holder of the mortgage, redeems the property. Does he thereby get a good title and cut off the interest of A?"

I

Section 3114, 1929 statutes, relating to tenants in common, is as follows:

"Every interest in real estate granted or devised to two or more persons, other than executors and trustees and husband and wife, shall be a tenancy in common, unless expressly declared, in such grant or devise, to be in joint tenancy."

Therefore, your first question is one of the rights of tenants in common who have an undivided interest in or share in real estate.

Section 9955b, 1933 Session Acts, at page 436, providing who may redeem an undivided share in real estate, is as follows:

"Any person claiming an undivided share in any land out of which an undivided part shall have been sold for taxes, may redeem his undivided share by paying such portion of the purchase-money, interest, penalty and subsequent taxes as he claims of the land sold."

One having an undivided interest in real estate could therefore, under the above statute, redeem his undivided interest therein.

We are unable to find anything in said statute prohibiting such party from redeeming the entire interest in the land but in event that he did redeem the entire interest in the entire tract he would hold the interest of his co-tenant in trust for such co-tenant, who could assert his rights under such redemption.

The confidential relation of tenants in common and an implied obligation on the part of each to protect the common title is construed in the case of *Hinters v. Hinters*, 114 Mo. 1. c. 29, in the following language:

"Tenants in common occupy a confidential relation to each other, and because of this relation there is an implied obligation on the part of each to sustain and protect the common title. It is, therefore, a general rule that if a tenant in common buy up an outstanding title or incumbrance, the purchase will be deemed to have been made for the benefit of all the co-tenants, the other co-tenants being bound, however, to contribute their respective proportions of the consideration paid for the outstanding title or incumbrance. Freeman on Co-tenancy & Partnership (2 Ed.) secs.151,156; Allen v. DeGroodt, 105 Mo. 442. In this case Julius Hinters, one of the co-tenants, caused the property to be sold under the deed of trust to the end that he could acquire the entire legal title at the amount of the incumbrance which was not more than a sixth part of the value of the property; and there can be no doubt but that he took and held that title in trust for himself and his co-tenants. The plaintiffs have the undoubted right to call upon him and his estate for an accounting and for title, unless barred by the statute of limitations."

In Kohle v. Hobson, 215 Mo. 1. c. 217, the same rule is stated, the case of Hinters v. Hinters, supra, being quoted therein, said rule being stated as follows:

"As a general rule, one tenant in common cannot purchase, for his own exclusive use and benefit, an interest in real estate which is the common property of himself and others; but when he does so he holds the title thus acquired as the trustee for the use and

benefit of his cotenants, who may compel him to convey to them their respective interests, upon refunding to him the amount expended in the acquisition of the title and costs attending the sale and execution of a deed or deeds to the party or parties interested.

* * * * *

"In the case last cited it is held that, where one of the tenants in common of a tract of land which had been sold for taxes, instead of redeeming directly from the sale, made an agreement with the holder of the certificate of purchase that the latter should take out a tax deed thereon and then convey the premises to the former, which was done, the transaction amounted to but a redemption for the benefit of both tenants in common, and that a court of equity would compel the one taking a conveyance of the tax title to convey to the other one undivided half of the tax title upon payment of half the cost thereof.

"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."

The rule is stated in *Stephens v. Ellis*, 65 Mo. l. c. 461, where, at a partition sale of land under a decree of court, the buyer is part owner, such judicial sale severs the co-tenancy and the buyer cannot make the former co-tenant contribute to extinguish incumbrances but in the following paragraph the same decision states that the above rule does not apply to the rights of cotenants under a tax sale in the following language:

"The payment of money to remove a tax or other lien by the cotenant during the tenancy, or the expenditure of money to preserve the common property, presents entirely different considerations. And so in regard to voluntary partitions. *Jones v. Stanton*, 11 Mo. 433; *Picot v. Page*, 26 Mo. 399."

In *Becker v. Becker*, 254 Mo. l. c. 681, the above excerpt in *Stephens v. Ellis*, supra, is quoted. Also, in the *Becker* case, supra, the court gives its conclusion as to the rule on this point in *Kohle v. Hobson*, supra, which is in the following language:

"In *Kohle v. Hobson*, 215 Mo. 213, the life tenant in possession permitted land to be sold for taxes. The husband of one of the tenants in common procured a third person to buy the property, and before the time for the redemption of the certificate of purchase had the certificate assigned to him. Suit was brought to redeem by one of the cotenants who was a minor at the time of the tax sale. Held, that the purchase of the certificate of redemption did not confer title and that its purchase by a husband of one of the cotenants before the time for redemption created a trust which inured to the benefit of all of the cotenants."

The rule stated in *Jones v. Stanton*, supra, l.c. 280, and quoted in the above opinions, is as follows:

"Jones being a co-tenant with his brother's heirs, was as much bound to pay the taxes as they were. Each of the owners were severally liable for them. If a tract of land is mortgaged for a joint debt by two, will the discharge of the incumbrance by one of them vest the legal title in him to the whole? He who pays the debt is not without recourse against his co-debtor, but by doing that which he was bound to do, he cannot, under the pretence that another was liable to do the same thing, deprive him of his rights. In the case of *Williams v. Gray*, 3 Greenl. 207, two non-residents held in common an unsettled tract of land, which without their knowledge, was sold for the non-payment of the State taxes; and they afterwards made partition by mutual deeds of release and quit-claim, in common form; after which one of them, within the time of redemption, paid the tax to the purchaser at the sheriff's sale, from whom he took a deed of release and quit-claim to himself alone, for the whole tract; it was held that this payment, and deed enured to the benefit of them both; that the party paying had his remedy by action against the other for contribution; and that he who had not paid might still maintain a writ of entry against the other, for his part of the land. So in the case of *Van Horne v. Fonda*, 5 Johns. Ch. R. 388, that where two devisees are in possession of land, under an imperfect title, devised to them by

their common ancestor, one of them cannot buy up an outstanding or adverse title, to disseize or expel his co-tenant, but such purchase will enure to their common benefit, subject to an equal contribution to the expense."

CONCLUSION

Therefore, it is the opinion of this Department that one co-tenant may redeem from a purchaser at a tax sale the interest of his covenant as well as that of his own, but, by such redemption, he holds the original interest of his co-tenant in trust for such co-tenant.

II

In an opinion rendered by this Department July 25, 1935, to G. R. Breidenstein, of Kahoka, Missouri, it was held that the mortgagee, although purchasing at a tax sale, cannot prevent the owner from redeeming within two years. Copy of said opinion is inclosed herein.

An opinion rendered by this Department to Mr. J. K. Robbins, New Madrid, Missouri, On October 15, 1935, under the subject of the right of redemption from tax sales, in conclusion, under sub-section III, states:

"Without question, in the event the improvement district or the mortgagee exercised their right of redemption, the record owner of the land could within the statutory time redeem from the

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improvement district of the
mortgagee."

A copy of the above opinion is inclosed here-
with.

Respectfully submitted

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APPROVED:

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SVM LC

Inclosures