

TAX DEED RULING IS MADE BY THE SUPREME COURT

Decision Involves Points of Interest to Entire State—Three Months' Notice Required by Law.

The supreme court placed an important construction on the execution of a tax deed of interest to every county in the state through an opinion handed down late yesterday in the case of J. G. Lawrence versus Byron Defenbach, assessor and ex-officio tax collector of Bonner county et al granting a writ of mandamus to compel the assessor to execute a tax deed.

The opinion is written by Chief Justice Stewart and concurred in by Justice Sullivan. The chief justice recites the facts in the case and the issue that confronts the court as follows:

An Original Action.

"This is an original action brought in this court by J. G. Lawrence against Byron Defenbach, county assessor and ex-officio tax collector for the county of Bonner, state of Idaho, and Moses Corbelle. The purpose of the action is to secure a writ of mandamus, compelling the defendant Byron Defenbach to execute a tax deed to the applicant, upon tax sale certificates issued by the assessor and ex-officio tax collector of Bonner county for delinquent taxes assessed for the year 1907 upon certain real estate, such certificates having been transferred on the 8th of December, 1908, upon sale made of the certificates by the auditor of Bonner county to the applicant, under the laws of the state, and the applicant herein being the owner of said tax sale certificates at the time this application is made.

"The entire question is, whether section 1763 of the revised codes, as amended by section 27 of an act approved January 31, 1912, special session laws 1912, page 43, applies to the facts of this case, where a tax sale has been made under the revised codes as they existed prior to the enactment of the amendment, and a tax sale certificate has been issued and the period of redemption has expired, although no deed had been issued prior to the time such amendatory act became a law.

Facts Recited.

"The facts shown by the petition are: That in the year 1907, Moses Corbelle was the owner of the following described lands in the county of Bonner, state of Idaho, to-wit: The southeast quarter of the northwest quarter, the east half of the southwest quarter, the southwest quarter of the southeast quarter, all in section 18, township 56, north of range 2, east of Boise meridian, situated in the county of Bonner, state of Idaho; that such lands were assessed for taxes in the name of said Corbelle for the year 1907, and such taxes were not paid and became delinquent; that such property was advertised and sold according to law on the 10th day of June, 1908; Bonner county was the purchaser, and tax sale certificates therefor were issued as follows: Tax sale certificate No. 290, covering the southeast quarter of the northwest quarter of said section 18; tax sale certificate No. 291 covering the east half of the southwest quarter of said section 18; and tax sale certificate No. 292, covering the southwest quarter of the southeast quarter of said section 18; that such tax sale certificates, and each of them were sold and delivered by the county to the applicant, J. G. Lawrence, who ever since has been and now is the owner and holder of said tax sale certificates; that such tax sale certificates, and all the proceedings thereunder, up to and including the sale, were regular in all respects and in accordance with the law; that no redemption of said property or any part thereof was ever made or attempted to be made by Moses Corbelle, the party owning the property at the time the assessment was made and the tax sale was made, or any other person within three years from the date of said sale, or at any time.

Refuses Tax Deed. "On the 31st day of January, 1912, the applicant, J. G. Lawrence, applied to the defendant Defenbach, as county assessor and ex-officio tax collector, for a tax deed or tax deeds to the land and premises described in said tax certificates Nos. 290, 291 and 292, and delivered by the county to the applicant, J. G. Lawrence, who ever since has been and now is the owner and holder of said tax sale certificates; that such tax sale certificates, and all the proceedings thereunder, up to and including the sale, were regular in all respects and in accordance with the law; that no redemption of said property or any part thereof was ever made or attempted to be made by Moses Corbelle, the party owning the property at the time the assessment was made and the tax sale was made, or any other person within three years from the date of said sale, or at any time.

Does Not Apply to Execution. "It would seem from the language used in the amendatory act of section 1763, as above referred to, that it was not intended to apply to the execution of a tax deed to lands sold for delinquent taxes where the sale had been made and the time for redemption had expired and the purchaser was entitled to an absolute deed under the statute at the time such act became a law. The particular portion of the amendatory act which is relied upon by the assessor and which is not found in the statute is as follows: "Such purchaser or assignee shall serve or cause to be served a written or printed or partly written and partly printed notices of such purchase to every person in actual possession or occupancy of such land or lot, and also the person in whose name the same

TAX SHARK PUT OUT OF BUSINESS BY REVENUE LAW

New Statute Protecting Homes of Many Ada County People and Greatly Increasing the Revenues.

Five hundred homes in Ada county are being saved from the tax shark by the operation of the new revenue law. The provision of the new statute that requires the writing in of all delinquent taxes is bringing in money into the county treasury and is protecting the title to 500 homes in the county that would have otherwise been subjected to the operations of the tax shark and his attorneys.

Herbert Ellsworth, the assessor, is sending out with the notices the amounts of the delinquent taxes that stand on the books of the county and that make the property subject to sale and to a clouded title. He believes that hundreds of homes will be protected in this county alone by the operation of the new law and that it will do away, to a large measure at least, of the operations of the tax sharks that have fed on such legal complications heretofore.

The delinquent tax has been a source of great revenue for the shark. It has enabled him to go into a home and question the title to property that had before been thought perfect. It has permitted him to gain possession of titles through tax sales and to hold up the owner until he could pay the amount that was demanded for a perfect title and a quit claim to the estate.

Operations of Belle S. Smith. Most prominent among these has been Belle S. Smith, who has from time to time through the last few years gathered in an interest in many of the tax titles of the county. Litigation over these titles has reached the courts in various forms. One of the last suits of this kind was against an abstract company for the amount that had to be paid to her to quiet the title that the company had said was perfect.

Some of the notices contain evidence of delinquent taxes due nine and ten years ago. The person who bought the property, in many instances, was given what he thought was a clear title. He probably never knew of the unpaid taxes still due the county and all of this it has been subject to sale for that amount. Such a delinquency constitutes a cloud upon the title of the land and improvements involved and enables the shark to extract money from the owner in any amount that he may demand to stave off execution.

Provisions of New Law. Under the new revenue law as passed by the last session of the legislature, the assessor must place in writing the amount of delinquent taxes that are outstanding against the property when he sends out of his office the notice that this year's taxes are due. The scheme is found to be protecting hundreds of homes in every part of the county.

"The people of Ada county are not as hard up as the legislature thought they would be," said the assessor in speaking of the provision for the partial payment of taxes. "Most of the taxes are being paid in full, although the property owner is enabled, under the new law, to pay one-half at this time and the rest at any time before next July if his taxes amount to more than \$20.

"The partial payment receipt is not being issued to as many taxpayers as had been anticipated. Most of them seem to have money enough to pay the amount in full and are not taking advantage of their opportunity to meet part of their taxes at this time."

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livered to said Defenbach, county assessor and ex-officio tax collector, the sum of \$6.32 for the making of each deed, to which Defenbach as such assessor and ex-officio tax collector was entitled for his fee in making such deeds; that the defendant, as assessor and ex-officio tax collector refused to issue said deeds or to deliver them to the applicant. The reason assigned by the defendant was that the legislature of the state at a special session thereof, convened on the 15th day of January, 1912, had enacted a law requiring that before tax deeds should issue certain notice should be given to the owner of

stands upon the records in the recorder's office if, upon diligent inquiry, he can be found in the state, as least three months and not more than five months before the expiration of the time of redemption on such sale.

Orders Deed to Issue. Concluding his opinion Chief Justice Stewart orders the deed to issue, using the following language:

"If this construction was maintained, then the act in question would affect the right of property acquired by the purchaser at a sale, and the right of redemption remaining to the owner, which are fixed by the law in force at the time of sale, and extend the right of redemption beyond the time fixed by the law at the time the same was made. This cannot be done. Robinson versus Howe, 13 Wis. 841; Black on Tax Titles, 175; Merrill versus Dearling, supra.

"For these reasons we are of the opinion that a writ of mandamus should issue in this case. It is therefore ordered that a writ of mandamus be issued in this case, directing Byron Defenbach, county assessor and ex-officio tax collector of Bonner county, state of Idaho, to make, execute and deliver to J. G. Lawrence tax deeds to the following lands and premises under tax sale certificates Nos. 290, 291 and 292, to-wit: The southeast quarter of the northwest quarter, the east half of the southwest quarter and the southwest quarter of the southeast quarter, all in section 18, township 56, north of range 2 east of Boise meridian, situated in the county of Bonner, state of Idaho. Costs in this case awarded to plaintiff."

Court's Syllabus.

The syllabus of the court follows: "First—Section 1763, revised codes, as amended by special session laws, page 43, requires the purchaser at tax sale, or assignee thereof, to serve or cause to be served, a written or printed, or partly written and partly printed notices of such purchase to every person in actual possession or occupancy of such land or lot, and also the person in whose name the same stands upon the records in the assessor's office, if upon diligent inquiry he can be found in the state, at least three months and not more than five months before the expiration of the time of redemption on such sale.

"Second—Held in this case that section 1763, revised codes, as amended by special session laws 1912, page 43, was not intended to apply to the execution of a tax deed to lands sold for delinquent taxes, where the sale had been made and the time for redemption had expired, and the purchaser was entitled to an absolute deed under the statute at the time such act became a law.

"Third—The general rule and principle which should apply in this case is that all statutes are to be so construed, if possible, so to be valid, and requires that the statute shall never be given a retrospective operation, when to do so would render it unconstitutional, and the words of the statute admit of any other construction."

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