

Stead's Executors Vs. Course

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Court : US Supreme Court

Decided On : 1808

Appeal No. : 8 U.S. 403

Appellant : Stead's Executors

Respondent : Course

Judgement :

Stead's Executors v. Course - 8 U.S. 403 (1808)

U.S. Supreme Court Stead's Executors v. Course, 8 U.S. 4 Cranch 403 403 (1808)

Stead's Executors v. Course

8 U.S. (4 Cranch) 403

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF GEORGIA

SYLLABUS

A collector, selling land for taxes, must act in conformity with the law from which his power is derived, and the purchaser is bound to inquire whether he has so acted.

It is incumbent on the vendee to prove the authority to sell.

By the tax laws of Georgia for 1790 and 1791, the collector was authorized to sell land only on the deficiency of personal estate, and then to sell only so much as was necessary to pay the taxes in arrear.

Under those laws, the sale of a whole tract when a small part would have been sufficient to pay the taxes was void.

Stead's executors brought their bill in equity against Elizabeth Course, the widow, and Caroline Course, the infant daughter of Daniel Course, deceased, to set aside as fraudulent a deed of land made by Courvoisie, a collector of taxes for Chatham County, to Daniel Course, and to charge the land for payment of a debt due from the late firm of Rae & Somerville to the complainant's testator according to a former decree of the court. The bill charges the land as being still the estate of John Rae, deceased, formerly one of the partners in the firm of Rae & Somerville, and that all the joint funds were exhausted.

There was no appearance for the defendant Caroline, but the defendant Elizabeth appeared and pleaded that her late husband, Daniel Course, purchased the land fairly and *bona fide* at public sale from the tax gatherer for the sum of \$552.89, without notice of any claim, title or interest of the complainants in the said land, if any they have. The plea avers that the consideration money was paid to the tax gatherer; that

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he had a right to sell the land for default in payment of taxes; that the taxes were not paid at the time of sale, which was publicly made after legal notice; that Daniel Course took immediate possession and died seized thereof, and at his death it descended to his heirs, of whom the defendant Elizabeth is one. The deed exhibited was dated May 5th, 1792.

The defendant Elizabeth also answered the bill, denying fraud, &c.;

To the plea there was a replication denying that the tax gatherer had a right to sell the land, that the sale was publicly made after legal notice, and that Daniel Course was a fair and *bona fide* purchaser for a valuable consideration without notice, and averring that the pretended sale and conveyance were unfair, fraudulent, and void.

On 17 May, 1805, the circuit sustained the plea and dismissed the bill with costs.

The evidence and facts stated in the record are as follow:

1. The advertisement of the sale, in these words:

" *Sale for Taxes* "

"Will be sold, on Saturday, 5 May, at the courthouse in the City of Savannah, between the hours of twelve and one, 450 acres of land, lying and being on Pipemaker's Creek, County of Chatham. Also part of the lot No. 6, Percival Ward, together with the house thereon, seized for the payment of the taxes of 1790 and 1791."

2. The original grant from the province of Georgia to John Rae, dated November 2, 1762, describing the land as follows:

"All that tract of land, containing 450 acres, situate and being in the Parish of Christ's Church in our

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Province of Georgia, bounded on the northeast by the River Savannah, on the southeast by land of James Edward Powell, Esq., on the southwest by land of Isaac Young and land of the said John Rae, and on the northwest by Pipemaker's Creek."

3. A certificate of a return of taxable property belonging to the estate of Robert Rae, made by Samuel Hammond, Esq., for the year 1771, *viz.*, Chatham County, 282 acres tide swamp on Hutchinson Island; 450 acres pine barren, opposite the

above, on Pipemaker's Creek; Richmond and Franklin County, 1,400 acres oak and hickory land; 56 negroes; one four-wheeled carriage.

4. The following letter from Hammond to the collector, viz.,

"Sir:"

"As you are compelling me to pay the taxes due by the estate of Robert Rae, deceased, for the years 1790 and 1791, and as I have no monies in my hands of the estate, or able to raise the sum due out of my own resources, and the law allowing me the privilege of pointing to property of the estate, you are hereby noted to levy on 450 acres of land in Chatham County, laying and being on Pipemaker's Creek."

"I am your obedient servant,"

"SAMUEL HAMMOND"

There was also evidence that the land came by descent or devise from John Rae, the original grantee, to Robert Rae, whose widow (the mother of the defendant, Elizabeth Course) afterwards married Samuel Hammond.

It was also stated as a fact that

"the relationship between the wife of Daniel Course and the wife of Samuel Hammond appeared to the court the only evidence from

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which it could be inferred that Course participated in the fraud or had a knowledge of it."

By the tax laws of Georgia for 1790 and 1791, tide swamps of the first quality are valued at 97 shillings per acre, second quality at 60 shillings, and third quality at 37 shillings; pine barrens adjoining tide swamps, and within three miles of tidewater, at 15 shillings per acre; oak and hickory lands of the first quality at 15 shillings per acre, second quality 7 shillings, third quality 4 shillings. The tax for

1790 was ten shillings, and for 1791 six shillings, on every hundred pounds' value of the lands. The taxes were to be paid by 15 December, and it was enacted that

"In case of default, the collector of the county where such defaulter shall happen shall immediately proceed against such defaulter by distress and sale of the goods and chattels, if any be found, otherwise on the land of such defaulter or so much thereof as will pay the amount of the taxes due, with costs, and in all such cases to make titles to purchasers of the property sold as aforesaid."

The collectors were required to close their accounts by 1 March and deliver the same to the treasurer, and after deducting two and a half percent on all such taxes as they shall receive, pay the remainder to the treasurer.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court as follows:

The plaintiffs, who were the creditors of Rae & Somerville, brought this bill to subject a tract of land in the possession of the defendants to the payment of a debt for which they had obtained a decree against Rae & Somerville.

The defendants plead that Daniel Course, under whom they claim by descent, is a fair purchaser, for a valuable consideration, of the premises in question, at a sale thereof, by the collector of taxes for the county in which they lie, made for taxes in arrear. The defendant also answered, denying fraud.

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A replication was filed to this plea, and on a hearing it was sustained and the bill dismissed.

In this case, the merits of the claim cannot be examined. The only questions before this Court are upon the sufficiency of the plea to bar the action and the sufficiency of the testimony to support the plea as pleaded.

On the first point, the counsel for the plaintiff has adduced authority which would certainly apply strongly, if not conclusively, in his favor if a special demurrer had been filed to the plea. But as issue has been taken on it, the Court thinks it sufficient, since it contains, in substance, matter which, if true, would bar the action.

The replication puts the matter of the plea in issue, and it is incumbent on the defendants to support it. They prove a sale by the collector on account of taxes, and adduce a deed conveying the premises to the purchaser. But this testimony alone is not sufficient to support the plea. The validity of the sale is the subject of controversy, and its validity depends on the authority of the collector to sell and on the fairness of the transaction. It would be going too far to say that a collector selling land, with or without authority, could, by his conveyance, transfer the title of the rightful proprietor. He must act in conformity with the law from which his power is derived, and the purchaser is bound to inquire whether he has so acted. It is true that full evidence of every minute circumstance ought not, especially at a distant day, to be required. From the establishment of some facts, it is possible that others may be presumed, and less than positive testimony may establish facts. In this case, as in all others depending on testimony, a sound discretion, regulated by the law of evidence, will be exercised. But it is incumbent on the vendee to prove the authority to sell, and the question respecting the fairness of the sale will then stand on the same principles with any other transaction in which fraud is charged.

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In examining the law under which this sale was made, the Court perceives that the collector is authorized to sell land only on the deficiency of personal estate, and then to sell only so much as is necessary to pay the tax in arrear. In this case, a sale is made of a whole tract of land, without specifying the amount of taxes actually due for which that land was liable and could be sold. This is proceeding in a manner not strictly regular. The sale ought to have been of so much of the land as would satisfy the tax in arrear. Should it be true that the land was actually liable

for the whole sum for which it sold, it would still be incumbent on the vendee to prove that fact, for it cannot be presumed. Every presumption arising from the testimony in the cause is against it.

Had this fact been established, the Court is inclined to think that the circumstances of the case as stated, though not perhaps amounting to proof of fraud, afford such presumptions as would render a final decree, without further testimony, unsatisfactory, and that an issue ought to have been directed on the question whether the sale was fraudulent or not. But if a whole tract of land was sold when a small part of it would have been sufficient for the taxes, which at present appears to be the case, the collector unquestionably exceeded his authority, and the plea cannot be sustained.

It is therefore the opinion of the Court that there is error in the decree of the Circuit Court for the District of Georgia in sustaining the plea of the defendants and dismissing the bill of the plaintiffs, and that the said decree ought to be reversed and annulled and the cause remanded with directions that the defendants shall answer over, and that further proceedings be had in the said cause according to equity.

Decree reversed.