

Williams Vs. Peyton's Lessee

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Court : US Supreme Court

Decided On : 1819

Appeal No. : 17 U.S. 77

Appellant : Williams

Respondent : Peyton's Lessee

Judgement :

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Williams v. Peyton's Lessee

17 U.S. (4 Wheat.) 77

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF KENTUCKY

SYLLABUS

In the case of a naked power not coupled with an interest, the law requires every prerequisite to the exercise of that power should precede it.

The party who sets up a title must furnish the evidence necessary to support it. If the validity of a deed depends on an act *in pais*, the party claiming under it is as much bound to prove the performance of the act as he would be bound to prove any matter of record on which the validity of the deed might depend.

In the case of lands sold for the nonpayment of taxes, the marshal's deed is not even *prima facie* evidence that the prerequisites required by law have been complied with, but the party claiming under it must show positively that they have been complied with.

The opinion of the Court was delivered by MR. CHIEF JUSTICE MARSHALL.

This is an ejectment brought in the Circuit Court for the District of Kentucky by the original patentee against a purchaser at a sale made for nonpayment of the direct tax imposed by the Act of Congress of

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14 July, 1798, c. 92. After the plaintiff in the circuit court had exhibited his title, the defendants gave in evidence the books of the supervisor of the district showing that the tax on the lands in controversy had been charged to the plaintiffs and that they had been sold for the nonpayment thereof. They also gave in evidence a deed executed by the marshal of the district in pursuance of the Act of March 3, 1804, and proved by Christopher Greenup, the agent of the plaintiff, that there were tenants on the land and that he did not pay the tax nor redeem the land. Upon this evidence, the court, on the motion of the plaintiff, instructed the jury

"That the purchaser under the sale of lands for the nonpayment of the direct tax, to make out title, must show that the collector had advertised the land and performed the other requisites of the law of Congress in that case provided, otherwise, he made out no title."

The defendants then moved the court to instruct the jury

"That the deed and other evidence produced by them and herein mentioned was *prima facie* evidence that the said land had been advertised and the other

requisites of the law of Congress as to the duty of the collector in that respect had been complied with,"

but the court refused to give the instruction, and on the contrary instructed the jury

"That said deed and other evidence was not *prima facie* evidence that the said land had been advertised according to law, nor that the requisites of the law had been complied with."

The defendants excepted to this opinion. The jury found a verdict for the plaintiff, and the judgment

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rendered on that verdict is now before this Court on writ of error.

As the collector has no general authority to sell lands at his discretion for the nonpayment of the direct tax, but a special power to sell in the particular cases described in the act, those cases must exist or his power does not arise. It is a naked power, not coupled with an interest, and in all such cases the law requires that every prerequisite to the exercise of that power must precede its exercise; that the agent must pursue the power, or his act will not be sustained by it.

This general proposition has not been controverted, but the plaintiffs in error contend that a deed executed by a public officer is *prima facie* evidence that every act which ought to precede that deed had preceded it -- that this conveyance is good unless the party contesting it can show that the officer failed to perform his duty. It is a general principle that the party who sets up a title must furnish the evidence necessary to support it. If the validity of a deed depends on an act *in pais*, the party claiming under that deed is as much bound to prove the performance of the act as he would be bound to prove any matter of record on which its validity might depend. It forms a part of his title; it is a link in the chain which is essential to its continuity and which it is incumbent on him to preserve. These facts should be examined by him before he becomes a purchaser, and the evidence of them should be preserved as a necessary muniment of title. If this be

true in the general, is there

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anything which will render the principle inapplicable to the case of lands sold for the nonpayment of taxes?

In the act of Congress there is no declaration that these conveyances shall be deemed *prima facie* evidence of the validity of the sale. Is the nature of the transaction such that a court ought to presume in its favor anything which does not appear or ought to relieve the party claiming under it from the burden of proving its correctness?

The duties of the public officer are prescribed in the 9th, 10th and 13th sections of the Act of 14 July, 1798, c. 92. If these duties be examined,

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they will be found to be susceptible of complete proof on the part of the officer, and consequently on the part of the purchaser, who ought to preserve the evidence of them at least for a reasonable time. Their chief object is to give full notice to the proprietor and furnish him with every facility for the voluntary payment of the tax before resort should be had to coercive means. In some instances, the proprietor would find it extremely difficult, if not impracticable, to prove that the officer had neglected to give him the notice required by law. It is easy, for example, to show that the collector

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has posted up the necessary notifications in four public places in his collection district, as is required by the 9th section, but very difficult to show that he has not. He may readily prove that he has made a personal demand on the person liable for the tax, but the negative, in many cases, would not admit of proof.

The 13th section permits the collector, when the tax shall have remained unpaid for one year, having first advertised the same for two months in six different public

places within the said district and in two gazettes in the state, if there be so many, one of which shall be the gazette in which the laws of such state shall be published by authority, if any such there be, to proceed to sell, &c.; The purchaser ought to preserve these gazettes and the proof that these publications were made. It is imposing no greater hardship on him to require it than it is to require him to prove that a power of attorney, in a case in which his deed has been executed by an attorney, was really given by the principal. But to require from the original proprietor proof that these acts were not performed by the collector would be to impose on him a task always difficult and sometimes impossible to be performed.

Although this question may not have been expressly and in terms decided in this Court, yet decisions have been made which seem to recognize it. In the case of [Stead's Executors v. Course](#), 4 Cranch 403, in which was drawn into question the validity of a sale made under the tax laws of the State of Georgia, this Court said, "it is incumbent on the vendee to prove the authority

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to sell." And in [Parker v. Rule's Lessee](#), 9 Cranch 64, where a sale was declared to be invalid because it did not appear in evidence that the publications required by the 9th section of the act had been made, the Court inferred that they had not been made and considered the case as if proof of the negative had been given by the plaintiff in ejectment. The question whether the deed was *prima facie* evidence, it is true, was not made in that case, but its existence was too obvious to have escaped either the court or the bar. It was not made at the bar because counsel did not rely on it, nor noticed by the judges, because it was not supposed to create any real difficulty.

It has been said in argument that in cases of sales under the tax laws of Kentucky, a deed is considered by the courts of that state as *prima facie* evidence that the sale was legal. Not having seen the case or the law, the Court can form no opinion on it. In construing a statute of Kentucky, the decisions of the courts of Kentucky would unquestionably give the rule by which this Court would be guided, but it is the peculiar province of this Court to expound the acts of Congress and to give the

rule by which they are to be construed.

Judgment affirmed with costs.

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