

Beaty Vs. Lessee of Knowler

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Court : US Supreme Court

Decided On : 1830

Appeal No. : 29 U.S. 152

Appellant : Beaty

Respondent : Lessee of Knowler

Judgement :

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Beaty v. Lessee of Knowler

29 U.S. (4 Pet.) 152

ERROR TO THE CIRCUIT

COURT OF OHIO

SYLLABUS

Ejectment. The defendant claimed the land in controversy under a tax sale which was made by a company incorporated by the Legislature of Connecticut in 1796 called "The proprietors of the half million of acres of land lying south of Lake Erie,"

and incorporated by an act of the Legislature of Ohio, passed on 15 April, 1803, by the name of "The proprietors of the half million of acres of land lying south of Lake Erie, called the sufferers' land." In 1806, the Legislature of Ohio imposed a land tax and authorized the sale of the lands in the state for unpaid taxes, giving the owners the right to redeem within one year after the determination of their minority. This act was in force in 1808. In 1808, the directors of the company, incorporated by the Legislatures of Connecticut and Ohio, assessed two cents per acre on the lands of the company, for the payment of the tax laid by the State of Ohio, and authorized the sale of those lands on which the assessments were not paid. The lands purchased by the defendant were the property of minors at the time of the sale, they having been sold to pay the said assessments under the authority of the directors of the company. *Held* that the sale of the land under which the defendant claimed was void.

The provisions in the act of incorporation of Ohio that it should be considered a public act must be regarded in courts, and its enactments noticed without being specially pleaded, as would be necessary if the act were private.

That a corporation is strictly limited to the exercise of those powers which are specially conferred on it will not be denied. The exercise of the corporate franchise, being restrictive of individual rights, cannot be extended beyond the letter and spirit of the act of incorporation.

From a careful inspection of the whole act, it clearly appears that the incorporation of the company was designed to enable the proprietors to accomplish specific objects, and that no more power was given than was considered necessary to attain those objects.

The words, "all necessary expenses of the company" cannot be so construed to enlarge the power to tax, which is given for specific purposes. A tax by the state is not a necessary expense of the company, within the meaning of the act. Such an expense can only result from the action of the company in the exercise of its corporate powers.

The provision in the tenth section

"that the directors shall have power to do what ever shall appear to them to be necessary and proper to be done for the well ordering of the interests of the proprietors not contrary to the laws of the state"

was not intended to give unlimited power, but the exercise of a discretion within the scope of the authority conferred.

This was an ejectment for lands in the State of Ohio, and on the trial in the circuit court the defendant excepted to the charge of the court and prosecuted this writ of error.

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The facts are fully stated in the opinion of the court.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

This was an action of ejectment brought in the Circuit Court of Ohio to recover possession of 1,200 acres of land, parcel of 2,400 acres, in what is called the Connecticut Reserve.

On the trial below, it was agreed that Jonathan Douglas the ancestor of the plaintiff's lessors, became proprietor of the premises in question, in May, 1792, under the laws of Connecticut granting lands to certain sufferers, and died 6 March, 1800, vested with the legal title, which he held in common with many other proprietors, the land not being set apart or apportioned to any one of the whole. That the lessors of the plaintiff were his heirs at law, and held as partners or tenants in common.

On the trial, it was proved by the plaintiff below, that on 5 May, 1808, four of the lessors were minors.

The defendant set up a title under a tax sale, which was made by the company incorporated for the management of said lands.

This company was first incorporated by the Connecticut Legislature in the year 1796. No person is named in the act, but the incorporators are designated, as the "proprietors of the half million of acres of land lying south of Lake Erie." Under this law the corporation was organized. In 1797, the Connecticut Legislature passed an amendment to this law.

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On 15 April, 1803, the Legislature of Ohio passed an act incorporating those owners and proprietors by the name of "the proprietors of the half million of acres of land lying south of Lake Erie, called sufferers' land," and by that name gave succession to them, their heirs and assigns.

This was called the sufferers' land, from the circumstance of its having been given by the State of Connecticut to indemnify the losses its citizens had sustained in the Revolutionary War.

The act of incorporation by the Legislature of Ohio required nine directors to be appointed, who were authorized to hold their meetings out of the state. In the second section, power is given to the directors to extinguish the Indian title; to survey the land into townships or otherwise to make partition, as they should order, among the owners in proportion to the amount of loss, and amongst other things, the act provided,

"That to defray all necessary expenses of said company in purchasing and in extinguishing the Indian claim of title to the land, surveying, locating, and making partition thereof, as aforesaid, and all other necessary expenses of said company, power be and the same is hereby given to and vested in the said directors and their successors in office to levy a tax or taxes (two-thirds of the directors present agreeing thereto) on said land, and have power to enforce the collection thereof."

The ninth section provides

"That all sales of rights or parts of rights of any owner or proprietor in said half million acres of land made by the collector shall be good and valid so as to secure an absolute title in the purchaser unless the said owner and proprietor shall redeem the same within six calendar months next after the sale thereof by paying the taxes for which the said right or rights, or parts thereof, had been sold, with twelve percent, interest thereon, and costs of suit."

The act contains no provision in favor of the rights of infants or *femes covert*.

By the tenth section of this law, it is provided

"That said directors shall have power and authority, and the same is hereby given to them and their successors, to do whatever shall to them appear necessary and proper to be done for

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the well ordering and interest of said owners and proprietors not contrary to the laws of the state."

The eleventh directs that

"Supplies of money which shall remain in the hands of the treasurer after the Indian title shall be extinguished and said land located, and partition thereof made, shall be used by said directors for the laying out and improving the public road in said tract, as this assembly shall direct."

The act is declared to be a public one in the twelfth section.

An act imposing a land tax was passed by the Ohio legislature in 1806, which remained in force in 1808. This act required entry to be made of lands for taxation. A perpetual lien was imposed on the land, whether entered or not, for the amount of the tax, and minors had a right to redeem their land sold for taxes within one year after their minority expired. It appeared in proof at the trial that at a meeting of the directors of the company convened at the court house in New Haven, on Thursday, 5 May, 1808, agreeably to a notification duly issued according to the

ordinances of said directors, it was unanimously voted by six directors, being all that were present, that a tax of two cents on the pound, original loss, be assessed on the original rights or losses, in said half million acres of land, to be paid by each proprietor thereof, in proportion to each person's respective share or loss, as set in the grant of said lands made by the State of Connecticut, to be collected and paid by the several collectors to the treasurer of this company, on or before 1 July, 1808, to defray the expenses of a tax laid by the Legislature of the State of Ohio, and other necessary expenses, for the good of the proprietors of said land.

The defendant gave in evidence the assessment of a tax upon the rights of the said Jonathan Douglas the appointment of a collector, the issuing of a warrant of collection, the advertisement of sale for taxes, the sale of a part of the right of said Douglas amounting to 1,200 acres for taxes to Elias Perkins, who conveyed the tract to the defendant.

The circuit court instructed the jury, that the directors had no power to assess said tax. And that the infant lessors were

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not concluded or bound by such assessment. To these instructions the defendant excepted. The jury found a verdict of guilty, and judgment was rendered thereon.

A reversal of this judgment is prayed for by the plaintiff in error on the following grounds:

1. The court erred in their instruction to the jury that the directors had no legal authority to assess the tax.
2. That the minor proprietors were not bound and concluded by the assessment and sale.

It is not contended in this case that this company could derive corporate powers to do any act in Ohio, in relation to the sufferers' land under the statute of Connecticut. All their powers must be derived from the law of Ohio. This law, it is insisted, is a private act, not designed for public purposes, and consequently

cannot affect the rights of any individual who did not assent to its provisions. That the provision declaring it to be a public act does not alter the principle, for the rights derived under it are of a private nature, being limited to those who have an interest in the land, and it is denied that any evidence of assent has been shown by the lessors of the plaintiff or their ancestor.

Several authorities were cited as having a bearing upon the objections thus stated. The names of the sufferers are published in the Connecticut act or resolution in 1792, with the amount allowed to each, as his indemnity for losses sustained. In this act is found the name of the ancestor of the lessors of the plaintiff. His right descended to them, subject to the same conditions by which it was originally held.

The provision of the law of incorporation that it should be considered a public act must be regarded in courts of justice, and its enactments noticed, without being specially pleaded, as would be necessary if the act were private.

That a private act of incorporation cannot affect the rights of individuals who do not assent to it, and that in this respect it is considered in the light of a contract, is a position too clear to admit of controversy. But in the present case, this objection seems not to have been made in the court below, where proof of the assent, if necessary, might have been submitted to the jury.

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From the nature of the right asserted, and the circumstances under which it was originated, this Court cannot doubt that the assent of the proprietors may be fairly presumed both to the act of Connecticut and to that of Ohio. Rights have been protected and regulated under those laws, and to the provisions of the latter are the claimants indebted, in a great degree, for the present value of the remainder of the land, which they still hold, and as has been well argued, if they participate in the benefits of the law, they can set up no exemption from its penalties.

The main question in the case is whether the directors have the power, under the act of incorporation, to assess a tax on each proprietor's share to pay a tax to the

state. That a corporation is strictly limited to the exercise of those powers which are specifically conferred on it will not be denied. The exercise of the corporate franchise, being restrictive of individual rights, cannot be extended beyond the letter and spirit of the act of incorporation. In the second section of the act, power is given to the directors to extinguish the Indian title, under the authority of the United States, when obtained; to survey and locate the land into townships, or otherwise to make partition, and to defray all necessary expenses in carrying these objects into effect, and to meet these and "all other necessary expenses of said company," the directors are authorized to levy a tax or taxes on said land, and to enforce the collection thereof. As the power to tax for the purpose of paying a tax to the state is not found among the enumerated powers of the directors, it must be derived, if it exist, under the words, "all other necessary expenses of said company," or under the tenth section, which provides that

"the directors shall have power to do whatever to them shall appear necessary and proper to be done, for the well ordering and interest of the proprietors, not contrary to the laws of the state."

In favor of this construction, it has been ingeniously argued that partition not having been made of the land, it could not be entered for taxation as required by the law of the state. That the half million of acres must be entered on the duplicate of the collector as one tract, and that it would be

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impracticable for the collector to ascertain and collect from each proprietor his just proportion of the tax. That many of the proprietors are nonresidents, and that any proportion of them, being desirous of paying their part of the tax, would not be discharged by doing so, as a part of the entire tract, involving their interests, would be liable to be sold for any balance of the tax which remained unpaid.

Whether partition was made of the land when the directors assessed the tax does not appear, nor is it considered a fact of much importance in the case. No argument drawn from convenience can enlarge the powers of the corporation.

Was the tax imposed a "necessary expense of said company" within the meaning of the act?

That these words would cover the expense of necessary agents to assess and collect a tax legitimately imposed by the directors is clear, and also other incidental expenses, arising from carrying into effect the powers expressly given, but do they invest the directors with a new and substantive power? If they do, how is the exercise of the power to be limited? Must it depend upon the discretion of the directors to determine all necessary expenses of the company?

Ample provisions are found in the state law imposing a land tax, for the assessment and collection of the tax. A lien is held on all the taxable land in the state, whether entered for taxation or not, and if the tax should not be paid by a time specified, the collector was authorized, after giving notice, to sell the smallest part of the tract which would bring the amount of the tax.

For the convenience of nonresidents, district collectors were appointed who were required to hold their offices at places named in the act. The collector for the district including the sufferers' land held his office at Warren within what is called the Reservation of Connecticut.

The law imposing the tax operates upon the land in controversy, and raises a lien, the same as on any other taxable lands in the state.

It appears, therefore, that it was not the intention of the legislature to look to the corporation for the payment of the tax assessed under the law, but to the land, as in all

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other cases. And if any part of the land had been sold by the state in which minors had an interest under the law, they had a right to redeem it within a year after they became of age. This is an important provision, and is not contained in the act of incorporation.

The agents of the state were paid for their services out of the tax collected, those of the corporation by the company. It would seem, therefore, that the tax collected by the state would be less expensive to the proprietors than if collected by their own agents, and less hazardous to their rights, as the interests of minors were protected. If, therefore, the argument drawn from convenience could have any influence, it could not operate favorably to the power of the directors.

The power to impose a tax on real estate and to sell it where there is a failure to pay the tax is a high prerogative, and should never be exercised where the right is doubtful.

In the preamble to the Ohio act of incorporation there is a reference to the Connecticut act and to the cession of the reserve by that state to the Union, and a statement that it was annexed to the State of Ohio. And as a reason for the passage of the act, it is stated that said

"half million of acres of land are now within the limits of Trumble County in said state, and are still subject to Indian claims of title, wherefore, to enable the owners and proprietors of said half million acres of land, to purchase and extinguish the Indian claim of title to the same (under the authority of the United States when the same shall be obtained) to survey and locate the said land, and to make partition thereof to and among said owners and proprietors, in proportion to the amount of losses, which is or shall be by them respectively owned,"

&c.; These are the objects to be accomplished by the act of incorporation, and which could not be attained by the individual efforts of the proprietors. In the eleventh section of the act it is provided

"That supplies of money which shall remain in the hands of the treasurer, after the Indian title shall be extinguished, and said land located and partition thereof made, shall be used by said directors for the laying out and

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improving the public roads in said tract, as the legislature should direct."

From a careful inspection of the whole act, it clearly appears that the incorporation of the company was designed to enable the proprietors to accomplish specific objects, and that no more power was given than was considered necessary to attain these objects.

The words "all necessary expenses of the company" cannot be so construed as to enlarge the power to tax, which is given for specific purposes. A tax to the state is not a necessary expense of the company within the meaning of the act. Such an expense can only result from the action of the company in the exercise of its corporate powers.

The provision in the tenth section that the

"directors shall have power to do whatever shall appear to them to be necessary and proper to be done for the well ordering of the interest of the proprietors not contrary to the laws of the state"

was not intended to give unlimited power, but the exercise of a discretion within the scope of the authority conferred.

If the words of this section are not to be restricted by the other provisions of the statute, but to be considered according to their literal import, they would vest in the directors a power over the land, only limited by their discretion. They could dispose of the land and vest the proceeds in any manner which they might suppose would advance the interest of the proprietors. It is only necessary to state this consequence to show the danger of such a construction. The restrictions imposed in other parts of the statute very clearly demonstrate that it was not the intention of the legislature to invest the directors with such a power. Upon a full view of the various provisions of the act of incorporation, the Court does not find a power given to the directors to assess a tax, as has been done in the case under consideration, to pay a tax to the state. The judgment of the circuit court must therefore be

Affirmed with costs.

