Carroll Vs. Safford

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Appellant : Carroll

Respondent : Safford

Judgement :

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Carroll v. Safford

44 U.S. (3 How.) 441

ON CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT

OF THE UNITED STATES FOR THE DISTRICT OF MICHIGAN

SYLLABUS

When the purchaser of land from the United States has paid for it and received a final certificate, it is taxable property, according to the statutes of Michigan, although a patent has not yet been issued.

Taxation upon lands so held is not a violation of the Ordinance of 1787 as an "interference with the primary disposition of the soil by Congress," nor is it "a tax on the lands of the United States." The State of Michigan could rightfully impose the tax.

It was competent for the state to assess and tax such lands at their full value, as the absolute property of the holder of the final certificate, and in default of payment, to sell them as if he owned them in fee.

In case of controversy, a court of equity is the proper tribunal to prevent an injurious act by a public officer for which the law might give no adequate redress, or to avoid a multiplicity of suits, or to prevent a cloud from being cast over the title.

The complainant resided in the State of New York, and in 1836 purchased from the United States three thousand five hundred and forty-nine and seventy-one one-hundredths acres of land in Genesee County, in Michigan. The lands were paid for in the way usually pursued by purchasers of the public domain, subject to private entry and sale. According to the laws of Congress, and the practice of the land officers, an individual wishing to purchase a tract of land makes application, in writing, to the register, specifying, in the application, the particular tract sought to be bought. The register examines and ascertains whether it is subject to entry. If it be, he gives to the applicant a memorandum, addressed to the receiver, stating the application, and that the land is subject to entry. This is taken to the receiver, and the money there paid. The receiver executes receipts in duplicate, specifying the particular tract sold and the price paid for it. One of these is delivered to the purchaser, the other to the register, and this last is transmitted to the office at Washington as a voucher against the receiver. The register then makes out a final certificate, specifying the sale, and that the purchaser is entitled to a patent. It is competent for the

purchaser to demand and take this certificate from the register; but in practice it is rarely done. Almost invariably the register retains it until he makes his monthly returns, when he transmits this certificate to the office at Washington, and on it (if the government confirm the sale) the patent issues.

In this case, the register, immediately after the entry of the land, transmitted to the proper office at Washington the patent certificates as the basis of the issue of patents for the land so entered by the complainant.

The complainant, previous to the issuing of the patents for the lands, did not enter into actual possession of them nor exercise acts of ownership over them.

Patents were issued for this land by the United States on 12 August, 1837, and not before. They were dated on that day, and were shortly after their date transmitted to the register of the land office at Ionia, in Michigan, and subsequently were delivered to the complainant.

The delay in the issuing of the patents after the entry of the land by the complainant was not at the request or in any way by the procurement of the complainant.

The patents declare that "the United States gives and grants" the lands to the patentee.

In the year 1837 and before the date and issue of the patents, these lands were assessed at their full value, and as if owned by the complainant in fee simple, for township, county, and state taxes by the proper local officers of Michigan, having full knowledge that the patents for the same had not issued, which taxes were not paid by the complainant.

The assessment rolls describe the land as owned by the complainant absolutely, and without any reservation or qualification. The valuation attached to it purported to be its entire value, as an absolute and unconditional estate in fee simple.

By the laws of Michigan applicable to this part of the case, it is made the duty of the county treasurer to sell such lands as have been taxed, and the taxes on

which have not been paid on giving a certain notice. The defendant being then and now a citizen of the State of Michigan, as County Treasurer of Genesee County, did so sell the lands described in the bill of complaint.

Two years are allowed by law for the person claiming title to the lands to redeem by paying to the treasurer the tax and charges and interest at the rate of twenty percent per annum. If not redeemed, the land was to be conveyed to the purchaser in fee simple.

The two years, the period allowed for redemption, had not expired at the time of filing the bill of complaint. The bill prayed that the assessment and sale might be declared illegal and declared void, and that the treasurer of the county might be enjoined from conveying the lands to the purchasers at the tax sale, for other relief.

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The bill was filed in 1842, and was taken *pro confesso.* A motion was then made for a decree according to its prayer, upon which the following questions arose, upon which the opinions of the judges were opposed:

1. Whether the statutes of the State of Michigan did in fact authorize the assessment and sale of the lands in question, and whether said statutes were intended to direct the assessment for taxation of lands of the United States before the patents for them had been executed by the officers of the United States.

2. Whether the lands in question were, before the date and execution of the patents for them, subject to taxation at all, by the State of Michigan.

3. Whether, if they were subject to taxation by the state before the execution of the patents for them, it was competent to assess and tax and sell them, as the absolute property of the complainant, and at their full value, as if he owned them in fee.

4. Whether the remedy by bill in equity, and the relief sought, are proper.

The statutes of Michigan referred to in the above questions were the following:

Law of April 22, 1833.

"SEC. 1. Be it enacted by the Legislative Council of the Territory of Michigan that the taxes hereafter to be levied in this territory shall be assessed, levied, and paid in the manner hereinafter mentioned upon a valuation of real and personal estate, including property and stock in any bank, insurance company, or other incorporation, to be made as hereinafter prescribed."

"SEC. 2. The assessors of each township may divide their townships, by mutual agreement, into such number of districts, to be called assessment districts, as they may deem convenient, not exceeding the number of assessors in any such township, and in every year, between the 15 April and 1 May, shall individually, in their assessment districts, according to the best evidence in their power, make out a list or schedule of all the taxable property in the same, and bring the said lists or schedules together, and jointly value the property named in each, and set down in their assessment roll the value of buildings and lands in such township, owned or possessed by any person residing in such township, or any banking or insurance company, or other incorporation situated in such township, opposite the name of such person or incorporation; and shall also ascertain and set down in their said assessment rolls, in like manner, the value of all the personal estate of every such person, and in case any person not satisfied with such valuation shall make oath before such assessor, or either of them, who are hereby authorized to administer such oath, that the value of his or her real or personal estate does not exceed a certain sum, specifying the same, then and in every such case the assessors shall value such

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real and personal estate at the sums specified in such affidavit and no more, and every person liable to be taxed for any personal estate as aforesaid shall be taxed for the same in the township where such person shall reside at the time of making such assessment, and the assessors shall also ascertain what lands are situated

in their townships not owned by persons residing in such townships, and shall, in their assessment rolls, separate from the assessments made the estates of nonresidents, and designate such land in the following manner: if the estate be a patent or tract of land of the subdivision of which the assessors cannot obtain correct information, they shall enter the name of the patent or tract, if known by any particular name, without regarding who may be the owner thereof, and if such tract be not known or designated by any particular name, they shall state by what other land the same is bounded, and shall set down the quantity of land contained therein, and the value thereof, in the proper columns for that purpose, and the assessors shall complete their assessments on or before 1 May in every year and make out a fair copy thereof to be left with one of the board, and thereupon cause notices to be put up at three or more public places in their township setting forth that they have completed their assessment and that a copy thereof is left with one of them, naming him, where the same may be seen and examined by any of the inhabitants during ten days, and that at the expiration of the said ten days they shall meet on a certain day at a place in the said notice to be specified to review their said assessments on the application of any person conceiving himself aggrieved, and it shall be the duty of the said assessors, with whom the said assessment roll shall be left as aforesaid, during the said ten days, to submit the said roll to the inspection of any person who shall apply for that purpose, and at the said time and place the said assessors shall meet and, on application of any person conceiving himself aggrieved, shall review the said assessment, and may alter the same, on sufficient cause's being shown to the satisfaction of the said assessors or a majority of them, and the assessors or a majority of them shall make oath or affirmation and attach the same to the said assessment roll in the following, or other equivalent form, to-wit:"

" We do severally swear (or affirm) that the sums at which property is assessed in the foregoing assessment roll, are, according to our best judgment, the fair cash value of such property."

"SEC. 9. The person in possession of any real estate at the time any tax is to be collected shall be liable to pay the tax imposed thereon, and in case any other

person, by agreement or otherwise, ought to pay such tax or any part or proportion thereof, the person who shall pay the same shall and may recover the amount from the person who ought to have paid the same, and all taxes upon any real estate shall be a lien thereon and shall be preferred in payment to all other charges, and all taxes upon any personal

estate shall, in case of the death or bankruptcy of the person taxed, be preferred in payment to all other demands."

"SEC. 14. Any tax heretofore laid by virtue of any law of this territory or to be laid by virtue of this act upon any real estate, and the interest and charges thereon, shall be a lien upon the same real estate until the same tax, interest, and charges shall be paid or recovered, notwithstanding the same real estate may have been divided or aliened in the whole or in part, and whenever such tax and the interest aforesaid accruing thereon shall remain unpaid for two years from 1 May following the year in which any such tax was or shall be laid, the treasurer of the proper county shall cause so much of the land charged with such tax and interest to be sold at public auction at the courthouse of the county where such lands are situated to the highest bidder as shall be necessary to pay the said tax and interest, together with all charges thereon, first giving at least four months' notice of the time and place of sale by advertisement posted up in three or more public places in said county, and also by causing a copy thereof to be published in one or more of the public newspapers printed or in circulation in said county."

"SEC. 15. On the day mentioned in the said notice, the treasurer shall commence the sale of the said lands and continue the same from day to day until so much thereof shall be sold as will pay the taxes, interest, and charges due, assessed and charged thereon as aforesaid, and the treasurer shall give to the purchaser or purchasers of any such lands a certificate in writing describing the lands purchased and the sum paid therefor and the time when the purchaser will be entitled to a deed for the said lands, and if the person claiming title to the said lands described in the said certificate shall not, within two years from the date

thereof, pay the treasurer, for the use of the purchaser, his heirs or assigns, the sum mentioned in such certificate, together with the interest thereon, at the rate of twenty percent per annum, from the date of the said certificate, the treasurer shall, at the expiration of the said two years, execute to the purchaser, his heirs or assigns, a conveyance of the lands so sold, which conveyance shall vest in the person or persons, to whom it shall be given, an absolute estate in fee simple, subject to all the claims which the Territory of Michigan shall have thereon, and the said conveyance shall be conclusive evidence that the sale was regular according to the provisions of this act, and every such conveyance to be executed by the treasurer, under his hand and seal, and the execution thereof witnessed and acknowledged in the usual form, may be given in evidence and recorded in the same manner and with like effect as a deed regularly acknowledged by the grantor may be given in evidence and recorded. "

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

The complainant filed his bill in the Circuit Court of the United States, in Michigan stating that he is the owner in fee simple of certain lands lying in Genesee County, amounting to three thousand five hundred and forty-nine and seventy-one hundredths acres, and of the value of $7,500. That in 1836 he entered these lands, paid for them, and received from the land office a final certificate. Patents were issued for them on 12 August, 1837. That the delay in issuing the patents was not at the instance of complainant. Before the emanation of the patents, the lands were assessed for taxation and sold by the defendant for the taxes thus assessed. Two years are allowed the owner to redeem the land by the act of Michigan on the payment of the tax, charges, and interest at the rate of twenty percent per annum. When this bill was filed, the time of redemption had not expired. The bill prays that the assessment and sale may be declared illegal and void and that the defendant may be enjoined from conveying the land, and other relief, &c.;

The case was considered as on a demurrer to the bill, and on the argument, the opinion of the judges were opposed on the following points:

"1. Whether the statutes of the State of Michigan did in fact authorize the assessment and sale of the lands in question, and whether said statutes were intended to direct the assessment for taxation of lands of the United States, before the patents for them had been executed by the officers of the United States."

"2. Whether the lands in question were, before the date and execution of the patents for them, subject to taxation at all by the State of Michigan."

"3. Whether, if they were subject to taxation by the state before the execution of the patents for them, it was competent to assess and tax and sell them as the absolute property of the complainant and at their full value, as if he owned them in fee."

"4. Whether the remedy by bill in equity, and the relief sought, are proper."

The 1st section of the Act of 22 April, 1833, of the Territory of Michigan provides

"That the taxes hereafter to be levied in this territory shall be assessed, levied, and paid in the manner hereinafter mentioned, upon a valuation of real and personal estate,"

&c.;

By the 2d section, the assessors of the different districts, "according to the best evidence in their power," are required to make out "a list or schedule of all the taxable property in the same" and bring the said lists or schedules together and jointly value the property named in each, and set down in their assessment roll the value of buildings in such township, owned or possessed by any person residing in such township, &c.;

"And the assessors shall ascertain

what lands are situated in their townships, not owned by persons residing in such townships, and shall, in their assessment rolls, separate from the assessments made the estates of nonresidents and designate such land in the following manner: if the estate be a patent or tract of land of the subdivision of which the assessors cannot obtain correct information, they shall enter the name of the patent or tract, if known by any particular name, without regarding who may be the owner thereof, and if such tract be not known or designated by any particular name, they shall state by what other land the same is bounded, and shall set down the quantity of land contained therein in the proper columns for that purpose."

By the 14th section, the tax, interest, and charges thereon constitute a lien on the land, though aliened, and unless paid within two years from 1 May succeeding the assessment of such tax, the treasurer of the proper county, after giving notice, is required to sell the same. And if the person claiming title to said lands shall not pay to the treasurer, for the use of the purchaser, his heirs or assigns, the sum paid by him for the lands, with interest at the rate of twenty percent per annum, the treasurer shall execute to the purchaser, his heirs or assigns, "a conveyance of the lands so sold, which conveyance shall vest in the person or persons to whom it shall be given an absolute estate in fee simple," &c;,

"and such deed may be given in evidence and recorded in the same manner and with like effect as a deed regularly acknowledged by the grantor may be given in evidence and recorded."

It is first contended "that the statutes of Michigan did not embrace the land in question, and were not intended to authorize their assessment."

In answer to this it may be said that a different construction has been put upon the above statutes by the authorities of the territory, and also of the state since its admission into the union. The practical construction of local laws is perhaps the best evidence of the intention of the lawmakers. The courts of the United States adopt as a rule of decision the established construction of local laws. And it cannot be material whether such construction has been established by long usage or a judicial decision.

But independently of the force of usage, we think the construction is sustainable. When the land was purchased and paid for, it was no longer the property of the United States, but of the purchaser. He held for it a final certificate, which could no more be cancelled by the United States than a patent. It is true, if the land had been previously sold by the United States or reserved from sale, the certificate or patent might be recalled by the United States as having been issued through mistake. I n this respect there is no difference between the certificate-holder and the patentee.

It is said the fee is not in the purchaser, but in the United States, until the patent shall be issued. This is so, technically, at law, but

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not in equity. The land in the hands of the purchaser is real estate, descends to his heirs, and does not go to his executors or administrators. In every legal and equitable aspect it is considered as belonging to the realty. Now why cannot such property be taxed by its proper denomination as real estate? In the words of the statute, "as lands owned by nonresidents." And if the name of the owner could not be ascertained, the tract was required to be described by its boundaries or any particular name. We can entertain no doubt that the construction given to this act by the authorities of Michigan in regard to the taxation of land sold by the United States, whether patented or not, carried out the intention of the lawmaking power.

But it is insisted "that the lands in question were not, before the date and execution of the patents for them, subject to taxation at all by the State of Michigan."

It is supposed that taxation of such lands is "an interference with the primary disposition of the soil by Congress," in violation of the Ordinance of 1787, and that it is "a tax on the lands of the United States," which is inhibited by the ordinance. Now lands which have been sold by the United States can in no sense be called the property of the United States. They are no more the property of the United States than lands patented. So far as the rights of the purchaser are considered, they are protected under the patent certificate as fully as under the patent.

Suppose the officers of the government had sold a tract of land, received the purchase money, and issued a patent certificate -- can it be contended that they could sell it again and convey a good title? They could no more do this than they could sell land a second time which had been previously patented. When sold, the government, until the patent shall issue, holds the mere legal title for the land in trust for the purchaser, and any second purchaser would take the land charged with the trust.

But it is supposed that because on some certificates patents may not be issued, taxation of unpatented land is an interference "with the primary disposition of the land." And it is said that in the case of *Ostrom v. Auditor General of Michigan,* before the circuit court in 1842, out of one hundred certificates, patents were refused on fourteen of them, that those lands had been sold for taxes and conveyed under the statutes of Michigan, and that the United States either retain those lands or have conveyed them to third parties.

Michigan does not warrant the title to lands sold for taxes. The deed, by the express words of the statute, when duly executed and recorded, "may be given in evidence in the same manner, and with like effect, as a deed regularly acknowledged by the grantor," &c.; The government has no right to refuse a patent to a *bona fide* purchaser of land offered for sale. But where there has been fraud or mistake, the patent may be withheld, and every purchaser at a tax sale

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incurs the risk as to the validity of the title he purchases. He incurs the same risk after the emanation of the patent. But how this interferes with "the primary disposition of the public lands" by the United States is not perceived. The sale for taxes is made on the presumption that the purchase from the government has been *bona fide,* and if not so made, the purchaser at the tax sale acquires no title, and consequently no embarrassment can arise in the future disposition of the same land by the government.

It is known to be universally the practice in the west, where lands are purchased for a residence and cultivation, that the purchaser enters immediately into the possession of them. And it may also be observed that in all the new states, lands purchased of the United States have uniformly been held liable to be taxed before they are patented. And indeed, in Ohio, under the credit system, lands were taxed after the expiration of five years from the time of their purchase, although they had not been paid for in full. There was no compact made with Michigan, as with Ohio, not to tax lands sold by the United States until after the expiration of five years from the time of sale. The Court thinks that the lands in question were liable to taxation under the authorities of Michigan.

It is contended "that such lands should not be taxed at their full value, nor should they be sold as if the claimant owned them in fee."

The statute does provide that the conveyance under a tax sale "shall vest in the purchaser an absolute estate in fee simple," &c.; Two years and more are required to elapse after the tax shall become due before the land is liable to be sold, and the deed is not to be executed before the lapse of two years after the sale, during which time the owner has a right to redeem. This is a tardy proceeding, and gives ample time to nonresidents for the payment of their taxes &c.; The land should be estimated at its full value, as the owner, having paid for it, is subjected to no additional charge for the obtainment of the patent. And although the statute may purport to give a higher interest in the land than the owner could convey, yet it does not follow that such title is inoperative. It must at least convey the interest which the owner has in the lands. Or it may be that a higher interest is conveyed. But whether such a conveyance shall take effect as in fee under the statute, when executed, or when the patent shall be issued, or at any time, it cannot be necessary now to inquire. The only inquiry is whether the land should not be estimated at its full value and sold by the state for the tax regularly assessed upon it. The effect of the title is not now before us for consideration. The conveyance of real estate, whether by deed or by operation of law, is subject to the law of the state, and it is difficult to say that any restraint can be imposed upon the local power on this subject. It cannot, however, convey a better title to the land sold for

taxes than the owner of such land,

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to whom it stands charged, possessed at the time the taxes constituted a lien, or when the land was sold. Whether the legislature may not change the character of a title, so as to make that a legal title which before was only an equity, is a very different question.

In the case of *Lessee of Wallace v. Semour and Renich,* 7 Ohio 156, the court held "that a purchaser at a sale for taxes can acquire a right which can be enforced in equity, although he has been defeated at law." But that case grew out of the peculiar phraseology of the statute. It was also decided that

"where lands have been entered and surveyed in the military district and sold for taxes before patented, that when patented, the patentee should hold the land subject to any claim which a purchaser at tax sale may have in consequence of such sale."

And in *Lessee of Stuart v. O. Parish,* 6 Ohio 477, that a purchaser of land at a tax sale before a patent was issued could not set up, in an action of ejectment, the tax deed against the patentee. In *Douglass v. Dangerfield,* 10 Ohio 156, the court said, in reference to taxing lands before the patent has been issued,

"if the right to tax exists, and that it does there has not been any serious question for many years at least, it would seem to follow that the right to collect must also exist."

Under the Michigan statutes, we have no doubt, the lawmaking power intended to tax lands that had been entered and paid for, as the lands in question, and that it had the power to impose the tax. The nature of the title of such lands, under a tax sale, not being involved in the points certified, we will not further discuss.

In regard to the fourth point certified, we entertain no doubt that in a proper case relief may be given in a court of equity. This may be done on the ground to prevent a cloud from being cast on the complainant's title or to remove such cloud; to

prevent multiplicity of suits or to prevent an injurious act by a public officer for which the law might give no adequate redress.

We answer all the questions certified in the affirmative.