Moore Vs. Brown

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Appeal No. : 52 U.S. 414

Appellant : Moore

Respondent : Brown

Judgement :

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Moore v. Brown

52 U.S. (11 How.) 414

ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE

CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF ILLINOIS

SYLLABUS

According to the statute of limitations passed by the State of Illinois, a defendant is ejectment who had been in possession of the land by actual residence thereon, having a connected title in law or equity deducible of record from the state or the

United States or from any public officer or other person authorized by the laws of the state to sell such land for the nonpayment of taxes &c.;, might defend himself by pleading that he had been in possession as aforesaid for seven years.

But where a defendant offered a deed in evidence purporting to be a deed from an officer authorized to sell for taxes, and the deed upon its face showed that the officer had not complied with the requisitions of the statute, this was a void deed, made in violation of law, and did not bring the defendant within the benefit of the statute of limitations.

He must have a connected title from someone authorized to sell, and in this case the officer was not so authorized. The deed was not, therefore, admissible in evidence.

The whole case was contained in the certificate, which was as follows:

" *The United States of America, District of Illinois* "

"At a circuit court of the United States begun and held at Springfield, for the District of Illinois, on Monday, 7 June, in the year of our Lord 1847, and in the seventy-first year of our independence."

"Present, the Hon. John McLean and the Hon. Nathaniel Pope, Esquires."

" *JOSHUA J. MOORE v. JAMES BROWN, ALFRED BROWN"*

" *HARMON HOGAN, and JOSEPH FROWARD"*

" *State of the Pleadings* "

"This is an action of ejectment, brought under the statute of the State of Illinois, and plea not guilty of withholding the premises, according to the same statute."

"This cause coming to trial this term, the plaintiff proved title in himself, regularly derived from the United States, and by special agreement the possession of the defendants was admitted."

"The defendants then proposed to prove that they had been possessed of the premises in question by actual residence thereon, having a connected title thereto in law or equity, deducible of record from a public officer of the State of Illinois, authorized by the laws of the state to sell land for the nonpayment of taxes, for the term of seven years next preceding

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the commencement of this suit, and as the first link of evidence towards making such proof, stating that they would follow it up by other complete proofs, offered in evidence a deed made by the Auditor of Public Accounts of the State of Illinois, which deed is in the words, figures, and seal following, to-wit:"

" The Auditor of Public Accounts of the State of Illinois, to all who shall see these presents, greeting:"

" Know ye that whereas I did, on 9 December, 1823, at the Town of Vandalia, in conformity with all the requisitions of the several acts in such cases made and provided, expose to public sale a certain tract of land, being the south half of section thirty-five, township twelve north, in range one west of the fourth principal meridian, for the sum of $10.81, being the amount of the tax of the years 1821 and 1822, with the interest and costs chargeable on said tract of land. And whereas, at the time and place aforesaid, Stephen Davis offered to pay the aforesaid sum of money for the whole of said tract of land, which was the least quantity bid for, and the said Stephen Davis has paid the sum of $10.81 into the Treasury of the state, I have granted, bargained, and sold, and by these presents, as auditor of the aforesaid state, do grant, bargain, and sell, the whole of said south half of section thirty-five, in township twelve north, in range one west of the fourth principal meridian to Stephen Davis, his heirs and assigns, to have and to hold said tract of land to the said Stephen Davis and his heirs forever, subject, however, to all the rights of redemption provided for by law."

" In testimony whereof, the said auditor has hereunto subscribed his name and affixed his seal this 20 June, 1832."

"J. T. B. STAPP, *Auditor* "

" *State of Illinois, State Recorder's Office, ss.* "

" I certify that the within deed has been duly recorded in this office in Vol. F, page 281. Given under my hand and seal of office, at Vandalia, this 31 May, A.D. 1833."

"JAMES WHITLOCK, *State Recorder* "

Fees 43 3/4 record

37 1/2 cert. and seal

$0.81 1/4

"Which deed includes the premises in question in this suit, to the introduction of which deed the plaintiff objects on the ground that by reference to the face of the deed and the law as it then stood, 'An act entitled An Act for levying and collecting a tax on land and other property,' approved February 18, 1823, it appeared that the sale for the nonpayment of

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taxes had been made by the auditor at an earlier day than he could according to law possibly do. And so it occurred as a question whether said deed was admissible in evidence for the purpose and in the connection for and in which the defendants offered it, the objection aforesaid notwithstanding, on which question the opinions of the judges were opposed. Whereupon, on motion that the point on which the disagreement has happened may during the term be stated under the direction of the judges and certified under the seal of the court to the Supreme Court, to be finally decided, it is ordered, that the foregoing statement of the case and facts, made under the direction of the judges, be certified according to the request of the plaintiff, and the law in that case made and provided. "

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MR. JUSTICE WAYNE delivered the opinion of the Court.

Upon the trial of the cause, after the plaintiff had introduced his testimony and rested his case upon it, the defendants, in order to bring themselves within the limitation act of Illinois passed in 1835, offered in evidence as the foundation of their title a deed from the Auditor of Public Accounts of the State of Illinois. It purports to have been executed by virtue of a sale made on 9 December, 1823, for the nonpayment of taxes under the Revenue Act of February, 1823. The plaintiff's counsel objected to the introduction of the paper, and the court was divided in opinion as to its admissibility.

The act just mentioned requires the owners of lands to pay their taxes into the state treasury on or before 1 October. The seventh section declares, if they shall fail to do so,

"it shall be the duty of the auditor to make a transcript from the books of all such delinquents, charging the tax with an interest at the rate of six percentum until paid, and all costs which may accrue,"

and that the auditor shall

"cause the same to be advertised in the paper printed at the seat of government, or in some other paper printed in the state, for three weeks, giving notice of the day of sale, the last of which publications shall be at least two months before the day of sale, and the auditor shall proceed to sell, on the day fixed in such advertisement, the whole, or so much of each tract as will pay the tax, interest, and costs."

The second section of the act of limitation is as follows:

"Every real, possessory, ancestral, or mixed action, or writ of right, brought for the recovery of any lands, tenements, or hereditaments of which any person may be possessed by actual residence thereon, having a connected title in law or equity deducible of record from this state or the United States, or from any public officer or other person authorized by the laws of the state to sell such land for the

nonpayment of taxes, or from any sheriff, marshal, or other person authorized to sell such land upon execution, or any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as aforesaid."

Rev.Stat. 1845, 349.

Upon comparing this section with the acts of 1827 and 1829

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upon the same subject, we have concluded that the section of the act of 1835 was not meant to give protection to a person in possession under a deed void upon the face of it. The mode of determining that is to test the deed by making a reference to the authority recited in it for making the sale, in connection with the act giving the auditor the power to sell. When the sale is found not to be according to that power, the deed is void upon its face because the action of the auditor is illegal, and the law presumes it to be known to a purchaser. The latter can acquire no title under it. Being a void deed, possession taken under it cannot be said to be adverse and under color of title. What was the fact in this case? It is disclosed upon the face of the deed that the auditor sold the land short of the time prescribed by the act. It was not, then, a sale according to law. That must have been as well known by the purchaser as it was by the auditor. The law presumes it to have been. The act under which the sale was made was not meant to prescribe the authority of the auditor only to make sales, but also to give to purchasers full information of the terms upon which a title could be acquired to lands sold for the nonpayment of taxes. It was meant to put bidders at a tax sale upon the inquiry whether or not the land was offered for sale according to law. If they do not examine, and shall buy land exposed to sale for taxes against the law, they do so at their own risk, and it will be presumed against them that they know that the deeds given under such circumstances are made in violation of official duty and of the law.

I t cannot be made the foundation of an adverse possession under color of title against the true owner of the land, whose title to it, the law says, can only be divested in a certain way for a failure to pay taxes due upon the land. We do not put the conclusion upon the point exclusively upon the fact that it is a void deed, but that it is so, being a deed made in violation of law. It is such a deed that the defendant proposes to use to let in the proof of a possession which will be protected by the statute of 1835. Upon general principles, such paper would not be admissible as evidence for any purpose in ejectment, and we think it was not meant to be included us one of those titles of record provided for by the act of 1835. Before the limitation of the act can operate, it must be shown by one claiming its protection that he has been in actual possession of the land to which it is sought to be applied for seven years before the commencement of the suit, by a connected title in law or equity, deducible of record from the state or the United States, or from any public officer or other person authorized by law to sell such land for the nonpayment of taxes. Such language

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does not apply to the general authority given by law to an officer to sell lands for taxes, but to what his authority is to sell the particular land for taxes which he exposes for sale. The words of the act are, to sell "such land for the nonpayment of taxes" -- that is that land which a party claims under the deed, and from his actual residence of seven years upon it. Can it be said, then, when the auditor, as he did in this instance, sells land for nonpayment of taxes short of the time that the law authorizes him to sell, that he was on officer authorized to sell such land for the nonpayment of taxes? We think not. This interpretation is more in harmony with the title which the act requires before its protection can attach. A title and seven years' actual residence upon the land are necessary. The legislature must have meant by title something more than a void deed upon its face -- a title, at least, which would be sufficient to induce the possessor of the land to think, and the law to conclude, that there was a foundation for a possession under a right which had been acquired by a purchase. Not a mere naked possession, but one taken in good faith by a purchaser. The protection intended by the act cannot be

better expressed than it is in the able printed argument of the plaintiff's counsel.

"The legislature intended to extend its protection to persons who occupied land under a connected title *prima facie* good, against proof *aliunde* which would rebut or destroy such *prima facie* title."

This conclusion, too, is supported by the case of *Skyles' Heirs v. King's Heirs,* in 2 A.K.Marshall. The act of 1835 was copied from the Kentucky limitation act of February, 1809, and after the courts of Kentucky had decided that

"the true construction of the words of the statute 'connected title in law or equity deducible from the Commonwealth' does not must mean such a title when tested by its own face, and not tried by the title of others. If the defendant's title should be a connected title in law or equity, supposing no other to exist upon the ground, then if he proves seven years' possession holding under it, the statute shall aid him, although the plaintiff may be able to show, by the production of his own title or that of others, that the title did not in fact nor in law pass to the defendant."

Illinois having taken the act from Kentucky, it is certainly not unreasonable to suppose that her legislators knew the construction which had been put upon it and meant the act to give protection according to that construction.

We shall direct the point certified to this Court to be answered that the paper offered in evidence by the defendant is a void deed upon the face of it, and was not admissible as evidence for the purpose for which it was offered.

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MR. CHIEF JUSTICE TANEY, MR. JUSTICE CATRON, and MR. JUSTICE GRIER dissented.

MR. CHIEF JUSTICE TANEY.

Upon the statements and admissions contained in this record, the question certified for the decision of this Court is a very narrow one; but at the same time

one of much nicety and difficulty. It is admitted that the defendants had possessed the land in dispute by actual residence thereon for the term of seven years next preceding the commencement of this suit. And if they had paid the taxes during that time, it is very clear that they were protected by the act of limitations of 1839, and the deed would in that case have been admissible in evidence. For the suit appears to have been instituted in 1848, and more than seven years had then elapsed after the passage of that act. But the case as stated is silent as to the payment of taxes, and it does not appear whether they were or were not paid by the defendants, or by any other person. The rights of the parties, therefore, according to the statement as certified, must be governed by the act of limitations of 1835, and not of 1839.

The act of 1835 is loose and ambiguous in its language, and open to different interpretations. Expounded literally, it might seem to mean that a party who had a valid title on record should be protected in his possession after the lapse of seven years. This certainly was not the meaning of the legislature, because a good title of record needed no protection from a statute of limitations. It is obvious that one of the main objects of the law was to protect the possession of persons who purchased upon the faith of conveyances made by the public officers of the state, who were authorized to sell and convey, but whose deeds, from some mistake or error of judgment on their part, were sometimes not valid, and conveyed no title to the purchaser. The law was made for a new country, where the purchasers of small tracts of land were mostly immigrants, unacquainted with the laws regulating sales and conveyances of real property; and many of them unacquainted even with the language in which the laws were written. Skillful and experienced conveyancers were not to be found in every part of the country from whom they might take counsel. And they would naturally and fairly rely upon conveyances made by the officers of the state, purporting to be made in the execution of their official duty. It was manifestly the object of the law to protect the possessions of persons of this description, and by that means induce an agricultural population to settle in the state, and its loose and inaccurate language ought to be interpreted

in the same spirit. It gave to the original owner seven years to assert his title. And if he chose for that period of time to acquiesce in the sale and to suffer the purchaser and those claiming under him to possess and improve the land as their own, he was barred by his laches. And it undoubtedly also intended to prevent persons from prying into titles and searching for legal defects in older possessions for the purposes of speculation, where the party holding them had honestly bought and paid his money and the original owner had for seven years acquiesced in the sale.

It is true that the case before us admits that it appears by the recitals in the deed of the auditor that the notice of the sale was not as long as the law required. And it is said that every person is presumed to know the law, and that everyone who afterwards purchased under this title must therefore be presumed to have known that this deed was void.

Undoubtedly as a general principle everyone is chargeable with a knowledge of the law in civil as well as criminal cases. This, however, is a legal presumption which everyone knows has no real foundation in fact, and has been adopted because it is necessary as a general rule for the purposes of justice. And laws are therefore often passed to protect persons who have acted in good faith in matters of property from the consequences of their ignorance of law. Thus, laws confirming defective and void deeds for real property have frequently been passed in some of the states, and their validity has been recognized by this Court. Limitation laws in regard to suits for real estates are founded upon the same principle. For if the title papers of the party in possession are all legally executed, and made by persons who had the right to convey, he does not need the protection of an act of limitations. The act before us was evidently and especially intended to protect purchasers from the consequences of their ignorance of the law. And with this object in view, it could make no difference whether the legal defect was shown by the recitals in the deed, or appeared in any other way. The buyer would be as easily and naturally misled by his want of legal information in either case. And the law itself certainly draws no distinction between ignorance of the law in one respect and ignorance in another. And if every legal defect in the title papers of a

purchaser in possession, as they appear on the record, may be used against him after the lapse of seven years, the law itself is a nullity, and protects nobody.

To a person not well skilled in all the details of the tax laws of the state, this deed upon the face of it appears to be good. It was made by a public officer authorized to sell for taxes.

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From his official station and duties, he would be presumed to be familiar with the tax laws in all their minute details. And he recites what he had done, states the notice given, as if it was the notice the law required, and professes to convey to the purchaser a valid title in due form. Almost everyone not perfectly acquainted with the different tax laws which had been passed would rely upon it. And I think it is one of those defective conveyances by a public officer which the law of 1835 intended to protect after a possession of seven years.

It is said in the argument, and a judicial decision is quoted to support it, that the limitation is confined to cases where the title upon the record appears to be a valid legal title until a better one is produced. If that be the construction of the law, it protects the purchaser where, by the mistake of the officer, land has been sold upon which no taxes were due, provided the deed upon the face of it appears to be valid, and refuses to protect him where the taxes were actually due and the land liable, provided an error in the proceedings appears in the recitals in the deed. In other words, it bars the recovery of the innocent owner whose land has been wrongfully sold, and protects the defaulter. Such could hardly have been the intention of the legislature. And in my opinion the language of the law does not justify this construction. Indeed, if it be as contended for in the argument, then a mere oversight in reciting the date of the notice or date of the sale deprives the purchaser and those claiming under him of the protection of this law, although the taxes were due and the sale regularly and fairly made. For the error will appear in the recorded instrument, and consequently it is not a good and valid title on record. And this may have been the case in the deed before us.

The consideration paid at the tax sale is indeed so small as to create doubts of the fairness of the transaction. But that question is not open in this Court upon the point certified. The statement in the record does not impute bad faith to either of the parties to this sale, and moreover the present defendants were not the original purchasers. For aught that appears in the statement, they purchased for a full consideration, and without any actual knowledge or suspicion of a defect in the title, and have therefore strong equitable considerations to support them in claiming the protection of this statute of limitations.

I am sensible, however, as I have already said, that the construction of this statute is by no means free from difficulty. But as I do not concur in the interpretation given to it by a majority of my brethren, and the decision of the question certified may affect wider interests than those immediately

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involved in this suit, I have felt in my duty to state the grounds on which I dissent.

MR. JUSTICE CATRON.

My objections to hearing this case are so strong that I deem it proper to state them. This Court stands exposed to impositions by fictitious cases more than other courts do, for several reasons. We have adopted it as a rule of practice that third persons cannot be heard to prove before us that a case pending on our docket is feigned and a decision sought at our hands intended alone to affect other men's rights by combination of the parties of record.

In the case of *Patterson v. Gaines,* the attempt was made, but refused because the persons applying to dismiss the case were no parties of record, and had no right to be heard.

This of necessity throws us on the case itself, as here presented by the record, to ascertain whether it is fictitious. It is a case made on a certificate of division, and as those divisions of opinion are usually granted of course on facts agreed by the parties, and as they have been ordinarily granted without examination on part of

the court, by way of concession, if requested by both sides, as is the case here, we are very liable to be imposed on -- certainly more so than other judicial tribunals where certified cases are not allowed, and as the consequences here involved are uncommonly great, it is proper to observe unusual care to guard against imposition.

The consequences of our decision will be apparent from the following facts.

Military bounty lands were located and granted in Illinois for services rendered in the war of 1812 with Great Britain in the name of each soldier as it stood on the muster roll. This grant enures to the benefit of his heir by act of Congress. The United States caused the lands to be located and patented in a body exceeding three millions of acres, in what is known as the military tract in that state, which fronts on the Mississippi River and is unsurpassed in fertility by any equal body of land on this continent.

The land in controversy is situated in this district, and is designated as the south half of section thirty-five in township twelve north of range one west of the fourth principal meridian.

Most of these grants remained without ostensible owners for many years, and have furnished and continue to furnish a great source of speculation. On them the tax laws of Illinois operated, and a great portion of them have been sold for taxes. This is a prominent part of the history of Illinois. It was

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stated in discussion of the case of *Bruce v. Schuyler,* 4 Gilman 249, that eight millions of dollars worth had been thus sold, up to 1847. And, taking the state throughout, a much greater quantity than this no doubt is held under tax sales and auditor's deeds like the one before us. It conforms to the act of 1826, which prescribes a form and applies to deeds founded on previous and subsequent tax sales. Auditor's deeds, in the military tract, are the most usual title. Under this state of things, that section of country has been settled and highly improved by a large population, cultivators confidently relying on these deeds as valid titles.

The Supreme Court of Illinois held, in the case of *Garrett v. Wiggins,* 1 Scammon 335, that the act of 1829, declaring auditor's deeds, standing alone, as evidence of a good title, did not apply to sales made previous to the passing of that act. And the deed of Wiggins, not having been supported by extraneous proof that the land had been legally advertised for sale, was declared to have been made without authority and was rejected. It follows that all deeds founded on tax sales made before 1829 are void "on their face" when standing alone. They must be supported by the act of limitations or fall to the ground, and this support we are asked to withdraw by our decision, proceeding on a case made up under the following circumstances.

On the cause's being taken up for trial in the circuit court, plaintiff introduced his title, regularly derived from the United States. He admitted, by special agreement that the defendants were in possession when the suit was brought. They then offered to prove that they had been seven years in possession, holding under a connected title derived from a public officer, authorized by law to sell the land for nonpayment of taxes, and, as the first link in their chain of title, offered a deed made by the auditor, which is set out. To its introduction the plaintiff objected on the ground that by reference to the face of the deed "and the law as it stood" when the sale was made, to-wit, "An Act entitled An act for levying and collecting a tax on land, and other property," approved February 18, 1823, it appeared that the sale for nonpayment of taxes had been made by the auditor

"at an earlier day than he could, according to law, possibly do, and so it occurred as a question whether said deed was admissible in evidence for the purpose, and in the connection for and in which the defendants offered it, the objection aforesaid notwithstanding, on which question the opinions of the judges were opposed."

This is the case certified for our opinion. The parties agreed to the facts, made the case, and conjointly moved for a

certificate of division. It was especially the act of the defendants as on their right to make defense we are asked to pass judgment.

It is agreed that they held under a void deed; that it was not made according to law, and void on its face. They admit that the auditor did an act which he could not possibly do as auditor. Thus the defendants by this agreement made the worst case for themselves that they could make, and the best case for their adversary that could be made up, for the purpose of having a decision against the defendants on the act of limitations. This is manifest, and not open to dispute. No power is left to this Court to inquire whether the auditor had or had not authority to sell for taxes due in the years 1821 and 1822 by advertising in advance of October 1, 1823, for three weeks, and selling afterwards, in December, when the eighty-two days required by the act of 1823 had expired from the first advertisement.

The 26th section of the act declares that the first sale of lands made by the auditor shall take place in December, 1823, at what time in December the act does not provide. It depends on a true construction of the law. But the agreement cuts off all power of inquiring as to what the true construction of the law is; it concludes the question, and forces us to hold that the auditor sold without authority, and that his deed is void on its face, whereas the deed recites that the land had been sold "in conformity with all the regulations of the several acts in such cases made and provided." It refers to no one particular law, and is fair on its face; nor could any man not learned in the law suppose to the contrary. Certainly not Illinois farmers, many of whom do not even read or speak our language.

In the next place, a written argument is furnished to us by the plaintiff, coming from Illinois, presenting his case in the most cogent manner, on which it is submitted, whereas the defendants make no appearance here by counsel, set up no defense, but give the plaintiff every advantage he may desire, or can possibly have. As I have never known a real contest thus conducted, my mind is led to the conclusion that this is a fictitious proceeding, intended to open a door for speculation, and to affect the rights of others, and that it ought not to be acted on by this Court. But as a majority of my brethren are unwilling to dismiss the case and have proceeded to decide the question whether a deed purporting to be founded on a tax sale, and

which is void on its face when compared with that law, furnishes color of title, I of course acquiesce, and will briefly examine that question.

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For the purpose of arriving at a proper construction of the act of limitations of Illinois, the previous legislation of that state must be taken into consideration, so far as it can be done, from the meager information we have been enabled to collect. From this legislation, so far as it is ascertained, it appears that the auditor was bound by law to make deeds to purchasers at tax sales according to the prescribed form given by the act of 1826. These deeds were ordered to be recorded. The one before us is in the prescribed form, and stood duly recorded when the act of limitations was passed.

The act requires actual residence on the land for seven years, under a connected title deducible of record from the state, or from the United States, or from any public officer authorized by the laws of the state to sell lands for the nonpayment of taxes.

This act is peculiar in its terms and was made under peculiar circumstances. It was unquestionably made, as it seems to me, to protect actual settlers and cultivators whose titles were liable to exception against speculators and others having better titles, but who should neglect to avail themselves of their legal advantage within the time limited. In order to make a successful defense, it was necessary for these defendants to prove a seven years' residence on the land under a connected title deducible of record from the State of Illinois or from some public officer acting for the state authorized to sell for nonpayment of taxes. The auditor was such officer. He acted for the state, and a title in all respects emanating directly from the state is exhibited in support of a seven years' possession. A connection with a patent from the United States is equally clear. The land was assumed to be sold by force of lien for taxes due; such sale carried the true owner's title throughout, including the patent, regardless of the fact in whose name the land was advertised and sold. So the laws of Illinois expressly

provide. No further connection of title can exist, nor does the act of limitations require more. But to avoid its force, an attempt is made to introduce an exception not found in the act, which of necessity comes to this -- that if the deed is void for legal defect or for a defect which depends on evidence, a link in the chain of title is wanting.

If it be true that the purchaser under a tax sale and deed is bound to ascertain the law, and if the deed is found to be void when tested by the law, and the acts done under it, no connection can be established, nor protection had, under the act of limitations; then the statute is a mere delusion, as it can only be resorted to where there is a good title.

The act was not thus idly made. It has no reference to

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titles good in themselves, but was intended to protect apparent titles, void in law, and to supply a defense where none existed without its aid. Its object was repose. It operates inflexibly and on principle, regardless of particular cases of hardship. The condition of society, and protection of ignorance as to what the law was, required the adoption of this rule. This is plainly so. It was not to be expected that immigrants into a new country like Illinois, who came there seeking lands for homes, were capable of judging what complicated revenue laws required to be done to make a valid tax sale. If they found a title of record from a public officer, such as the auditor was, having general power to sell for nonpayment of taxes, they were authorized to believe such title a good one, and to purchase under it. And it would be bad policy, and unjust, after the land had been improved by their labor and increased in value perhaps twenty-fold during a long possession, to turn them off, even by a meritorious owner, if he did not come in time. And still worse policy would it be to leave them open to speculating purchasers, buying up doubtful titles over their heads under the act of 1845, which allows of such purchases in Illinois. Harassment and ruin inflicted on the unsuspecting many, by the well informed and unscrupulous few, must be, as it ever has been, the consequence of stripping cultivators of the soil of their titles by unfavorable and

strained constructions, and therefore acts of limitation have at all times been liberally construed to protect cultivators in homes where their families were, and had usually grown up. And as the act of Illinois applies to actual residents, and to no others, it is entitled to a liberal construction. The one contended for is that he who takes title by deed of record, or under one claiming by deed of record, made by a public officer with general power to sell for nonpayment of taxes, is bound to know the law authorizing the officer to sell and convey, and if he fails to ascertain the law by negligence, he is held to knowledge that power was wanting, if such be the fact; that, purchasing with presumed knowledge, his title is taken in bad faith; his deed is tainted with fraud, and is no deed, but is as blank paper; and being so, a link in the chain of title is wanting, and the statute cannot apply, for want of connection of title.

This is the sum and substance of the reasoning employed on behalf of plaintiff to reject the application of the statute. Now is this a liberal construction? Is it not in effect a repeal of the statute, and the most harsh construction that can be given to it? As, if this assumption be true, no possible conveyance made by a public officer which is void because the

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requisite forms of law have not been complied with, can be maintained. All must equally fall if not good in themselves when compared with the law and the acts required by law to be done before the sale is made.

We have been referred to various decisions which are supposed to support this doctrine, and especially to that made by the Court of Appeals in Kentucky in 1820 in the case of *Skyles v. King,* 2 A.K.Marsh 385. This case has had controlling influence in our investigations, by far more than all others. It was this. The elder patent was made to King. Skyles claimed and held under a younger patent, and seven years' adverse possession. He was defendant. The statute of Kentucky declares that to form the bar there shall be "a connected title in law or equity, deducible of record from the Commonwealth." On a trial before a jury, it was insisted that by the terms of the act, it applied to the elder patent set up by plaintiff;

that with his patent there must be connection to form a bar. And so the circuit court held the true meaning of the act to be, and so instructed the jury. But the Court of Appeals thought otherwise and reversed the judgment, holding that the act meant a title tested by its own face -- that is, commencing with the younger patent and connecting with that regardless of the elder and adversary title; that the act had no reference to the elder patent. There, the first link the younger patent was void, and this plainly appeared of record, as all patents in Kentucky are recorded; it follows that if that decision is adopted as a true construction of the Illinois statute, the case before us must be decided for the defendants, as here the first title paper offered by them is in the same condition as the younger Kentucky patent.

The cases in this Court of *Patton's Lessee v. Easton,* 1 Wheat. 476, and of *Walker v. Turner,* 9 Wheat. 541, are also relied on as in point. The latter one is clearly so. It held that a void sheriff's deed was no deed, and could not be given in evidence as a link in the chain of title, nor be upheld by seven years' adverse possession under the act of limitations of Tennessee which required a title by grant, or deed of conveyance founded on a grant, to form a bar. and which was construed to require connection of title. This Court followed the supposed settled construction of the courts of Tennessee on their own statute. But this was a mistake, there not being any such settled construction.

In 1832, the case of *Green v. Neal,* 6 Pet. 291, again brought before this Court the same question on the Tennessee act. At that time, all controversy was settled by a decision of the Supreme Court of Tennessee in the case of *Gray and*

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Reeder v. Darby's Lessee, Martin & Yerger 396, which held that a sheriff's sale and deed, made pursuant to a void judgment, in a case where no jurisdiction existed in the court entering such judgment, was a sufficient connection of title; that to hold otherwise would be requiring a good connected title, and a virtual repeal of the statute. This decision was followed in the case of *Green v. Neal,* and all the former cases decided by this Court on the Tennessee act, holding that a void deed broke the connection, were overruled, and are of no authority

anywhere. They merely followed a supposed settled construction in the first two cases, and a settled one in the last case of *Green v. Neal.* And so we would now be bound to follow the settled construction of the courts of Illinois, if any such existed, on the statute before us.

My opinion, therefore, is that it ought to be certified to the circuit court that the auditor's deed should be admitted in evidence and that it furnishes color of title on which the act of limitations could operate.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Illinois and on the point and question on which the judges of the said circuit court were opposed in opinion and which was certified to this Court for its opinion agreeable to the act of Congress in such case made and provided, and was argued by counsel. On consideration whereof, it is the opinion of this Court that the paper offered in evidence by the defendant is a void deed on the face of it, and was not admissible as evidence for the purpose for which it was offered. Whereupon it is now here ordered and adjudged that it be so certified to the said circuit court.