

Early Vs. Doe

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Court : US Supreme Court

Decided On : 1853

Appeal No. : 57 U.S. 610

Appellant : Early

Respondent : Doe

Judgement :

Early v. Doe - 57 U.S. 610 (1853)

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Early v. Doe

57 U.S. (16 How.) 610

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

Where the language of the statute was

"That public notice of the time and place of the sale of real property for taxes due to the Corporation of the City of Washington shall be given by advertisement inserted in some newspaper published in said city once in each week for at least twelve successive weeks,"

it must be advertised for twelve full weeks, or eighty-four days.

Therefore, where property was sold after being advertised for only eighty-two days, the sale was illegal, and conveyed no title.

This was an ejectment brought by Rhoda E. Homans to recover that part of lot number four, in square number seven hundred and thirty, in the City of Washington, beginning for the same at a point on the line of A Street South at the distance of thirty-two feet from the northeast corner of said square; and running thence due west with the line of said street, fifty feet and five inches; thence due south, fifty feet; thence due east, fifty feet and five inches; thence fifty feet to the place of beginning, and also into three messuages or tenements with the appurtenances situated thereon in the county above named.

Upon the trial, the plaintiff showed title in herself, and the defendant made title under a tax sale, when the jury, under the instructions of the court, found a verdict for the plaintiff. The following bill of exceptions explains the case.

" *Defendant's bill of exceptions* "

"At the trial of the above cause, after the plaintiff's lessor had shown a legal title in herself, a devisee of D. Homans, who died in August, 1850, to the fifty feet five inches of ground fronting on A Street by fifty feet deep, a part of lot 4, in square No. 730, in Washington City, with the houses thereon, being the premises described in the declaration; entitling her, as admitted *prima facie*, to recover the same as such devisee, and that the defendant held possession thereof at the commencement of this action. The defendant thereupon, to maintain the issue on his part, offered evidence of a tax title from the Corporation of the City of Washington, to sustain which, and to show that the requirements of the Act of 26th May, 1824, had been complied with, proved the notice of the time and place of the

tax sale to

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have been given by the city collector, by advertisement in the national Intelligencer, in the following words:"

"COLLECTOR'S OFFICE, CITY HALL"

"August 25, 1848"

"On Wednesday, the 15th day of November next, the annexed list of property will be sold by public auction, at the City *Hall in the city Hall in the City* of Washington, to satisfy the corporation of said city for taxes due thereon as stated, unless the said taxes be previously paid to the collector, with such expenses and fees as may have accrued at the time of payment."

And amongst other property so advertised was the following:

bwm:

No. of No. of Lot Assessed to Taxes Total

Sq.

730 Pt. 4, fronting 50 ft. Daniel Houmans 1845 1846 1847 \$29.82

5 in., and improvement 9.94, 9.94, 9.94

on A Street, and 50 ft.

deep, lying next to

the eastern 32 ft. of

said lot

ewm:

"And the insertion of said advertisement was on the following days:"

"Saturday, 26th Aug., 1848."

"Saturday, 2d Sept., 1848."

"Saturday, 9th Sept., 1848."

"Thursday, 14th Sept., 1848."

"Thursday, 21st Sept., 1848."

"Saturday, 30th Sept., 1848."

"Saturday, 7th Oct., 1848."

"Saturday, 14th Oct., 1848."

"Saturday, 21st Oct., 1848."

"Saturday, 28th Oct., 1848."

"Saturday, 4th Nov. 1848."

"Saturday, 11th Nov. 1848."

"Wednesday 15th Nov. 1848."

"And that on such last day above mentioned, the said sale took place and the defendant became the purchaser of said premises for \$55. Whereupon the plaintiff prayed the opinion and instruction of the court to the jury"

"that the said sale was invalid and of no effect, and passed no title to the defendant in the premises in question because a period of twelve full and complete weeks had not intervened between the 26th August, the time of the first advertised notice of said sale, and the 15th November, 1848, the day or time of said sale, but a period of eleven weeks and four days only,"

"which opinion and direction the court gave as prayed for by the plaintiff, to which opinion and direction of the court to the jury, the defendant by his counsel, prayed leave to except, and that the court would sign and seal these his bill of exceptions, according to the form

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of the statute in such cases made and provided, which is accordingly done this 17th day of May, 1853."

"JAS. S. MORSELL [SEAL]"

"JAS. DUNLOP [SEAL]"

"Test: JNO. A. SMITH, Clerk. "

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MR. JUSTICE WAYNE delivered the opinion of the Court.

This is an ejectment suit for part of lot No. 4, in square, No. 730, in the City of Washington.

The only question raised by counsel in the argument of the case here is whether, where property has been assessed for taxes, it can be considered as having been regularly advertised

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and regularly sold if it shall be sold before twelve full weeks or eighty-four days have passed from the date of the first advertisement. Eighty-four days

advertisement were not given when the property in dispute in this case was sold. Upon the trial in the circuit court, the plaintiff in that court prayed its instruction to the jury in these words:

"That the said sale was invalid and of no effect, and passed no title to the defendant in the premises in question, because a period of twelve full weeks had not intervened between the 26th of August, the time of the first advertised notice of sale, and the 15th of November, 1848, the day or time of sale, but a period of eleven weeks and four days only."

The court gave the instruction accordingly. The defendant's counsel excepted to the same. The court, upon his prayer, allowed it, and the case is regularly here by writ of error.

It appears that the notice for sale of the property in dispute was inserted in the National Intelligencer twelve times in successive weeks, the first insertion being on Saturday, the 26th of August, and the last on the 15th of November, the day of sale. Including the 26th of August as one of the days of the notice, and the 15th of November necessarily as another, we find that the notice was given only for eighty-two days. The language of the statute regulating the notice to be given is in these words:

"That public notice of the time and place of the sale of all real property for taxes due the Corporation of the City of Washington shall be given hereafter by advertisement, inserted in some newspaper published in said city once in each week for at least twelve successive weeks."

Now the first week following the date of the advertisement expired with the next Friday, the tenth of November, and, if the computation is carried out, it will be found that the twelfth week expired on the 17th of November. But the sale was made two days before, on the 15th of November, the last insertion of the notice being on the day of sale.

So there were eleven insertions of the notice in the newspaper in different weeks making, with the first, twelve after the expiration of the week from the first

insertion, and the point to be settled is whether the statute means that twelve insertions in successive weeks is sufficient notice without respect to the number of days in twelve weeks. We do not doubt if the statute had been "once in each week for twelve successive weeks," a previous notice of the particular day of sale having been given to the owner of the property, that it might very well be concluded that twelve notices in different successive weeks, though the last insertion of the notice for sale was on the day of sale, was sufficient. But when the legislator has used the words "for at least twelve successive weeks," we cannot doubt that the

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words, at least as they would do in common parlance, mean a duration of the time that there is in twelve successive weeks or eighty-four days. Every statute must be construed from the words in it, and that construction is to be preferred which gives to all of them an operative meaning. Our construction of the statute under review gives to every word its meaning. The other leaves out of consideration the words "for at least," which mean a space of time comprehended within twelve successive weeks or eighty-four days. The preposition "for" means, of itself, duration when it is put in connection with time, and as all of us use it in that way in our everyday conversation, it cannot be presumed that the legislator, in making this statute, did not mean to use it in the same way. Twelve successive weeks is as definite a designation of time, according to our division of it, as can be made. When we say that anything may be done in twelve weeks, or that it shall not be done for twelve weeks, after the happening of a fact which is to precede it, we mean that it may be done in twelve weeks or eighty-four days, or, as the case may be, that it shall not be done before. The notice for sale, in this instance, was the fact which was to precede the time for sale, and that is neither qualified nor in any way lessened by the words "once a week," which precede in this statute those which follow them, "for at least twelve successive weeks." We think that the court did not err in refusing to give to the jury the instruction which was asked by the defendant upon the trial of this case.

The construction of the statute will be recognized to be in harmony with that policy of the law which experience has established to protect the ownerships of property

from divestiture by statutory sales where there has not been a substantial compliance with the law by which a public officer is empowered to sell it.

Property is liable to be sold on account of an undischarged obligation of the owner of it to the public or to his creditors. But it can only be done in either case where there has been a substantial compliance with the prerequisites of the sale, as those are fixed by law. Any assumption by the officer appointed to make the sale or disregard of them the law discountenances. He may not do anything of himself, and must do all as he is directed by the law under which he acts. He may not, by any misconstruction of it, anticipate the time for sale within which the owner of the property may prevent a sale of it by paying the demand against him, and the expenses which may have been incurred from his not having done so before. This the law always presumes that the owner may do until a sale has been made. He may arrest the uplifted hammer of

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the auctioneer when the cry for sale is made if it be done before a *bona fide* bid has been made. The authority of the officer to sell is, as it was in this case, "unless the taxes be previously paid to the collector, with such expenses as may have accrued at the time of payment." There is a difference, it is true, in the strictness required in a tax sale and that of a sale made under judgment and execution, but in both, the same rule applies as to the full notice of time which the law requires to be given for the sale.

"In deciding upon tax land titles great strictness has always been observed. The collector's proceedings are closely scanned. The purchaser is bound to inquire whether he has done so or not. He buys at his peril, and cannot sustain his title without showing the authority of the collector and the regularity of his proceedings."

This Court said in [*Williams v. Peyton*](#), 4 Wheat. 77, that the authority given to a collector to sell land for the nonpayment of the direct tax, "is a naked power not coupled with an interest." 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. Again, in [Ronkendorff's Case](#), 4 Pet. 349, this Court repeated that in an *ex parte* proceeding, as a sale of lands for taxes, under a special authority, great strictness is required. An individual cannot be divested of his property against his consent, until every substantial requisite of the law has been complied with. The proof of the regularity of the collector's proceedings devolves upon the person who claims under the collector's sale. At an earlier day, the Court decided, in [Stead's Executors v. Course](#), 4 Cranch 403: a collector selling lands for taxes, must act in conformity with the law from which his power is derived; and the purchaser is bound to inquire whether he has so acted. It is incumbent upon the vendee to prove the authority to sell. See also [McClung v. Ross](#), 5 Wheat. 116; [Thatcher v. Powell](#), 6 Wheat. 119. The decisions made by this Court are full as to the circumstances under which tax titles may be set aside. We recommend also the perusal of the case of *Lyon v. Burt*, in 11 Ala, cited by the counsel for the defendant in error; and to all of the cases cited in the opinion of Chief Justice Collier. It is not necessary for us to extend this opinion farther in citing cases upon tax sales. So far as we know, the law upon the subject is the same throughout the United States, and where difference exist they have occurred from a different phraseology in statutes, and not from any discordance in the views of judges in respect to the common law to be applied in tax sales.

See [8 U. S. 4](#) Cranch 403; [13 U. S. 9](#) Cranch 64; 1 Scam. 335; 1 Bibb, 295;

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5 Mass. 403; 4 Dec. & Bal. 363; 3 Ohio 232; 2 Ohio 378; 3 Yeates 284; 2 Yeates 100; 13 Sergeant & Rawle 208; 4 Dec. & Bal. 386; [18 U. S. 5](#) Wheat. 116; [19 U. S. 6](#) Wheat. 119; 1 Yeates 300; 3 Monroe 271; 1 Tyler 295; 14 Mass. 177; [21 U. S. 8](#) Wheat. 681; 15 Mass. 144; Greenleaf 339; Taylor's North Carolina 480; 3 Hawks 283; 1 Gilm. 26; 10 Wend. 346; 18 Johns. 441; 5 Ala. 433. I have not the reports of the Supreme Court of Georgia at hand to cite from them any cases of tax sales, if any have been decided by it, but I know that the decisions of the courts in that state are the same as those stated in this opinion and in the cases

cited.

We affirm the judgment of the circuit court.

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 Columbia, holden in and for the County of Washington, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be, and the same is hereby affirmed, with costs.

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