Wheeler Vs. Jackson

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Appeal No. : 137 U.S. 245

Appellant : Wheeler

Respondent : Jackson

Judgement :

Wheeler v. Jackson - 137 U.S. 245 (1890)
U.S. Supreme Court Wheeler v. Jackson, 137 U.S. 245 (1890)

Wheeler v. Jackson

No. 66

Argued November 11, 1890

Decided November 24, 1890

137 U.S. 245

ERROR TO THE SUPREME COURT

OF THE STATE OF NEW YORK

SYLLABUS

The 15th section of the Act of the Legislature of New York approved June 6, 1885, provides that no action or special proceeding shall thereafter be maintained against the City of Brooklyn, or the Registrar of Arrears of that city, to compel the execution or delivery of a lease upon any sale for taxes, assessments, or water rates made more than eight years prior to the above date unless commenced within six months after that date, and notice thereof filed in the office of the Registrar of Arrears; also that that officer shall, upon the expiration of such six months, cancel in his office all sales made more than eight years before the passage of the act upon which no lease had been given and no action commenced and

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notice thereof filed within the period limited as aforesaid, and that thereupon the lien of all such certificates of purchase should cease and determine.

HELD

(1) That this section is not repugnant to the clause of the Constitution of the United States forbidding a state to pass any law impairing the obligation of contracts or to the clause declaring that no state shall deprive any person of property without due process of law.

(2) That, consistently with those clauses, the legislature may prescribe a limitation for the bringing of suits where none previously existed, as well as shorten the time within which suits to enforce existing causes of action may be commenced, provided in each case a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of suit before the bar takes effect.

This action was brought in the supreme court of the State of New York by the plaintiff in error, plaintiff below, against the defendant in error, Registrar of Arrears of the City of Brooklyn, to restrain him from canceling in his office a number of

sales of lots of land for nonpayment of taxes, which lots had been purchased by the plaintiff.

One part of the sales was alleged to have been made for nonpayment of taxes, assessments and water rates, pursuant to the provisions of c. 384 of the laws of New York of 1854, and the acts amendatory thereof. These statutes are stated in full in the opinion, *infra.*

Another part was alleged to have been made for unpaid taxes, assessments, and water rates pursuant to the provisions of c. 863 of the laws of New York of 1873 and the acts amendatory thereof. These also will be found in the opinion.

By c. 405, 15 of the laws of New York of 1885, which will also be found in the opinion, provision was made for the cancellation of such sales made more than eight years prior to the passage of that act, upon which no leases should have been given and no action commenced. The plaintiff alleged that this statute, so far as it affected his rights under the several purchases, was "wholly unconstitutional and void."

The defendant demurred to the complaint. The demurrer was sustained and the complaint dismissed. This judgment was affirmed by the supreme court in general term, and by the Court of Appeals, 105 N.Y. 681. The plaintiff sued out this writ of error.

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MR. JUSTICE HARLAN, after stating the facts in the foregoing language, delivered the opinion of the Court.

The question upon this writ of error is, whether certain provisions of a statute of New York passed in 1885, and relating to sales of land in the City of Brooklyn for taxes, assessments, and water rates, are repugnant to the Constitution of the United States. It arose upon a demurrer to the complaint filed by Wheeler against Jackson, as registrar of arrears of that city. The demurrer was sustained by the supreme court of the state, and the complaint dismissed. That judgment was

affirmed in general term, and the latter judgment was affirmed by the Court of Appeals of New York. 105 N.Y. 681.

Upon examining the legislation of New York prior to passage of the act of 1885, we find that the charter of Brooklyn, passed in 1854, provided that if any tax or assessment remained unpaid on the day specified in the published notice given by the collector of taxes, that officer should sell at public auction the property on which the tax or assessment was imposed "for the lowest term of years for which any person will take the same, and pay the amount of such tax or assessment with the interest and expenses," the purchaser to receive a certificate of sale, which should be noted on the original tax or assessment rolls, as well as on the abstracts kept in the collector's office. The statute directed this certificate to be recorded in the collector's office, and declared that it should constitute "a lien upon the lands and premises therein described after the same shall have been so recorded," and that no assignment of a certificate should have any effect until the notice of the same, with the name and residence of the assignee, was filed in the office of the collector of the district in which the lands were situated. The owner, mortgagee, occupant, or other person interested in the land, was given the right to redeem "at any time within two years after the sale for either tax or assessment" by paying to the collector for the use of the purchaser

"the said purchase money, together with any other tax or assessment which the said purchaser may have paid, chargeable on said land, and which he is hereby

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authorized to do, provided a notice thereof has been filed in the office of such collector, with fifteen percent per annum in addition thereto, and the certificate of such collector, stating the payment, and showing what land such payment is intended to redeem, shall be evidence of such redemption."

Upon receipt of the moneys, it became the duty of the collector to cause them to be refunded to the purchaser, his legal representatives, or assigns, and all proceedings in relation to the sale were to cease. If the moneys were not paid

according to the exigency of the notice, the collector was required to execute a conveyance of the property so sold. The statute contained this further provision:

" 33. The collector of the district where the land sold for any tax or assessment shall not have been redeemed, as by this act provided, shall execute to the purchaser or his assigns, pursuant to the terms of sale, a proper conveyance of the lands so sold by him, which shall contain a brief statement of the proceedings had for the sale of said lands and shall be evidence that such sale and other proceedings were regularly made and had according to the provisions of this act. He shall also forthwith note the same on the assessment rolls and abstract kept in his office. The grantee shall be entitled as against all persons whomsoever to the possession of said premises, and to the rents, issues, and profits thereof, pursuant to the terms of his conveyance, and shall be entitled to obtain possession of his lands by summary proceedings, in the same manner as is provided by law for the removal of persons who hold over or continue in possession of real estate sold by virtue of an execution against them."

Laws of N.Y. 1854, pp. 874, 878-881, c. 384, 24, 26, 29, 30, 33, Title V, Of the Collection of Taxes and Assessments.

An amended charter of Brooklyn, passed June 28, 1873, repealed all former acts inconsistent with its provisions, and created for that city the department of arrears, with a chief officer, named the registrar of arrears, upon whom were imposed all the duties theretofore required to be performed by any city officer of department in relation to advertising, selling, and leasing property for assessments, taxes, and water rates, and for the redemption of property sold therefor. Laws

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of New York, 1873, pp. 1318, c. 863, Title VIII, 1. Sections 24, 26, 29, 30, and 33 of the act of 1854 were substantially reenacted in sections 1, 3, 5, 6, 8, and 10 of that of 1873. The differences between the two acts do not affect the present controversy.

An Act of June 6, 1885, amended that of 1873. The constitutionality of the fifteenth section of the former act is questioned in this case. That section is as follows:

" 15. None of the provisions of this act hereinbefore contained shall affect any sale for taxes, assessments, or water rates heretofore made in said city, or the rights of the parties or the proceedings thereunder, but the same shall remain the same as though this act had not been passed, provided, however, that no action or special proceeding shall hereafter be brought or maintained against the City of Brooklyn or the registrar of arrears of said city to compel the execution or delivery of a lease upon any sale for taxes, assessments, or water rates made more than eight years prior to the passage of this act unless such action or special proceeding is commenced within six months after the passage of this act and notice thereof filed in the office of registrar of arrears, but this provision shall not operate to extend any statute of limitations now applicable in such cases. And after the expiration of six months from the passage of this act, it shall be the duty of the registrar of arrears to cancel in his office all such sales made more than eight years prior to the passage of this act upon which no lease shall have been given and no action commenced and notice thereof filed as aforesaid within the period hereinbefore limited therefor, and thereupon the lien of all such certificates of sale shall cease and determine."

Laws of New York, 1885, c. 405, 15, p. 702.

The complaint shows that at divers times between September 22, 1856, and May 25, 1873, inclusive, at public auction held by the proper officer of Brooklyn pursuant to the above act of 1854 and the acts amendatory thereof, the plaintiff Wheeler purchased, each for a term of years 1,253 different lots that were sold for the nonpayment of taxes, assessments, and water rates, and paid for each the amount set opposite its

number, as specified in a schedule filed with the complaint, receiving from the collector a certificate of sale of each lot. Each certificate declared that he was

entitled, after the expiration of two years from its date, to a lease of the lot mentioned for a named term of years unless the premises were sooner redeemed. The total amount of those purchases was $28,516.69.

The complaint also shows that at divers times from September 29, 1874, to February 23, 1875, inclusive, at public auction held by the registrar of arrears of Brooklyn for like purposes pursuant to the act of 1873 and the acts amendatory thereof, the plaintiff purchased, each for a term of years, 61 different lots sold for the nonpayment of taxes, assessments, and water rates, paying for each the sum specified in a schedule filed with the complaint, and receiving from the registrar similar certificates of sale. Each certificate was recorded in the defendant's office. The total amount of the purchases named in that schedule was $3,611.17.

None of the lots purchased by Wheeler was redeemed from sale. He is still the legal owner and holder of the certificates. Nevertheless the defendant was about to cancel the sales pursuant to the fifteenth section of the act of 1885, whereby, the complaint alleges, "all public notice of the rights and lien of the plaintiff will be wholly destroyed," and he will sustain irreparable injury and damage. Alleging that such section is unconstitutional and void, the plaintiff prays that the defendant, his successors, agents, clerks, and servants, be perpetually enjoined from canceling the sales or the record thereof. Such is the case made by the complaint.

Is the above section of the act of 1885 repugnant to the clause of the Constitution protecting the obligation of contracts against impairment by state legislation? On behalf of the plaintiff, it is insisted that under the statutes of 1854 and 1873, the purchaser, in consideration of his advancing the amount of the unpaid taxes and interest, together with the expenses of sale, became entitled to something more than a conveyance or lease for a stated number of years, with the right to maintain ejectment or summary proceedings to obtain

possession of the land purchased. He acquired, it is contended, the further right

"to bide his time, not to take out a lease and engage in litigation to secure the land itself, but, as the easier course, to wait and rely on securing, through the operation of the record of sale in the office of the registrar, the very profitable return on his money provided by the percentage of fifteen percent, which, along with the amount of the purchase money, the owner of the land is, by the statutes, compelled to pay, on redeeming the property, in order to clear his title."

The latter right, we are informed by the plaintiff, is the one usually exercised by purchasers at tax sales in Brooklyn. Any interference with it, he contends, impairs the obligation of his contract with the city.

We cannot assent to this view. The plaintiff was entitled by the contract to a return of the amount paid by him, together with any other tax or assessment chargeable on the land and paid by him, with fifteen percent per annum in addition thereto, and if such amounts were not paid to the collector for him within two years after the sale, he could demand a conveyance according to the terms of his purchase, and obtain possession by summary proceedings. As none of the lots purchased was redeemed, the plaintiff became entitled, when the time for redemption passed, to a lease of each lot for the term of years specified in the respective certificates of sale. Now the right to such leases was not taken away by the act of 1885. Nothing in that act prevented the plaintiff from obtaining them on the day after its passage. But, as we have seen, it did provide that no action or special proceeding should be brought or maintained to compel the execution of conveyances or leases in respect to any sale for taxes, assessments, or water rates made more than eight years prior to June 6, 1885, unless instituted within six months after that date, and notice thereof filed in the office of the registrar of arrears.

Whatever was the period prescribed by the laws of New York prior to June 6, 1885, for such actions or special proceedings -- and it is not disputed that there was a limitation under the local law for suits of that character -- the time was reduced by the act of that date. Can this enactment be

assailed simply upon the ground that it prescribes a shorter time for the bringing of actions to compel the execution of such conveyances than was given when the contracts therefor was made? Clearly not. It is the settled doctrine of this Court that the legislature may prescribe a limitation for the bringing of suits where none previously existed, as well as shorten the time within which suits to enforce existing causes of action may be commenced, provided in each case a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of suit before the bar takes effect. *Terry v. Anderson,* 95 U. S. 628 , 95 U. S. 632 ; *Koshkonong v. Burton,* 104 U. S. 668 , 104 U. S. 675 ; *Mitchell v. Clark,* 110 U. S. 633 , 110 U. S. 643 . The latest case upon the subject in this Court is *McGahey v. Virginia (In re Brown),* 135 U. S. 662 , 135 U. S. 701 , 135 U. S. 705 -706, in which the above principle is affirmed, the court saying:

"No one rule as to the length of time which will be deemed reasonable can be laid down for the government of all cases alike. Different circumstances will often require a different rule. What would be reasonable in one class of cases would be entirely unreasonable in another."

We cannot say that the limitation prescribed by the act of 1885 is unreasonable when applied to those who neglected, for eight years prior to its passage, to demand the conveyances or leases to which they were entitled. On the contrary, considerations of public policy required that the records of the sale of real property in Brooklyn for taxes, assessments, and water rates, should no longer remain in the condition to which they had been brought in 1885 by reason of purchasers' having forborne, for an unreasonably long period, to obtain leases that they might realize interest upon their investments in tax titles at the rate of fifteen percent per annum. By not taking a lease, when entitled to it, the purchaser put the taxpayer in a position where the latter would be compelled, if he desired to sell or mortgage the property to another, to pay not only the amount advanced by the former, but interest at the above rate for the whole time subsequent to the sale. The legislature did not intend, by the acts of 1854 and 1873, to establish any such relations between the taxpayer and the purchaser, or to put

the former at the mercy of the latter for an indefinite period, for both acts contemplated the execution by the collector of a lease immediately upon the expiration of the time for redemption -- giving the purchaser, in that way, precisely what he brought. But whatever may have been the reasons that induced the enactment of the statute of 1885, the period within which actions must be brought was a matter resting primarily with the legislative department of the state government, and as statutes of limitation have for their object, and are deemed necessary to, the repose and security of society, the determination of that department should not be interfered with by the courts, unless the time allowed to bring suits upon existing causes of action is, in view of all the circumstances, so short as not to give parties affected by it a reasonable opportunity to protect their rights under the new law.

It is further contended that even if the statute is sufficient to bar an action to compel the execution of a conveyance to the purchaser unless brought within the time prescribed, it is unconstitutional in that it requires the registrar -- after the expiration of six months from its passage, without any such action being commenced, and notice thereof given within that period -- to cancel in his office all sales made more than eight years prior to June 6, 1885, and provides that "thereupon the lien of all such certificates of sale shall cease and determine." That provision, it is said, destroys the security upon which the purchaser relied when he advanced his money, namely, the lien of the record after sale. This position is untenable. The substantial rights acquired by the purchaser was a return of his money, with interest, *or,* after a certain time, a lease of the premises for the term named in the certificate of sale. The lien created by the certificate of sale protected him during the period within which the owner of the property was permitted to redeem, and if the latter redeemed, he could only do so, of strict right, within a given time, and then only by reimbursing the purchaser all he had paid, with the addition of fifteen percent per annum. If there was no redemption, the purchaser was entitled to a lease that would give him all for which he bargained. The lien consequently would cease

upon the execution and delivery to the purchaser of a lease. If the lien was of such character that the purchaser, not having received a conveyance, could enforce it by suit or special proceeding commenced for that specific purpose, the power of the legislature to prescribe a period within which such a suit or proceeding must be commenced, or the lien be lost, is as clear as its power to fix the time within which the purchaser must sue to compel the execution of a conveyance or lease. If, on the other hand, the lien was given only to protect the purchaser in respect to his outlay, with interest, until he was entitled to demand a conveyance or until a conveyance was actually made, the power of the legislature to require the record of sale to be cancelled and the lien to cease when the purchaser, by not suing within the prescribed time, had lost his right to a conveyance or lease cannot be questioned. The limitation prescribed by the statute applies equally to a suit to compel a conveyance and to a proceeding (if a separate suit for the purpose could be maintained) to enforce the alleged lien. It declares in effect that the right to the lien and the right to a conveyance shall, in the cases specified, depend upon a suit being brought within a certain time to compel the execution of a conveyance in accordance with the terms of sale. In other words, that the record of a sale, including the certificate of sale, shall not remain a cloud upon the title after the purchaser has failed, for six months after the passage of the act, to obtain or to demand by suit -- the time for redemption having passed -- what, in view of the statute, must be regarded as the principal object of his purchase, namely a conveyance or lease, with the right, by means of summary proceedings, to obtain possession of the premises sold to him for a term of years. We are of opinion that such legislation did not impair the obligation of the plaintiff's contract.

What has been said is sufficient to dispose of the additional suggestion to the effect that the cancellation of the record of sales at which the plaintiff purchased deprived him of his property without due process of law, in violation of the Fourteenth Amendment. He asserts a proprietary right in such record for what it was worth. But if the observations made

by us in respect to the first point be sound, he had no such right after permitting the period to elapse within which he could bring suit to compel the execution of a conveyance or lease. A statute of limitation cannot be said to impair the obligation of a contract or to deprive one of property without due process of law unless, in its application to an existing right of action, it unreasonably limits the opportunity to enforce that right by suit.

Judgment affirmed.