

Elder Vs. Wood

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Court : US Supreme Court

Decided On : Jan-27-1908

Appeal No. : 208 U.S. 226

Appellant : Elder

Respondent : Wood

Judgement :

Elder v. Wood - 208 U.S. 226 (1908)

U.S. Supreme Court Elder v. Wood, 208 U.S. 226 (1908)

Elder v. Wood

No. 85

Argued January 9, 1908

Decided January 27, 1908

208 U.S. 226

ERROR TO THE SUPREME COURT

OF THE STATE OF COLORADO

SYLLABUS

A valid subsisting mining location, such as the Comstock lode, or an interest therein, is property distinct from the land itself, vendible, inheritable, and taxable as such by the state, notwithstanding the land may be unpatented by the United States.

When the collection of a tax on such an interest is enforced by sale, the tax deed conveys merely the right of possession, and does not affect any interest of the United States, and the construction of the state statutes, and the conformity thereto of the tax levy and sale, are matters exclusively for the state court to determine, and this Court is without jurisdiction to review its decision.

Sections 340, 341 of the laws of Colorado of 1881, taxing interests in unpatented mining claims and making the right of possession the subject of levy and sale, are not in conflict with 4 of the Colorado Enabling Act of March 3, 1870, 18 Stat. 474, providing that no tax shall be imposed on lands or property of the United States.

Where the federal question below was whether a tax sale deprived the owner of his property without due process of law because the notice, being published on Sunday, was insufficient, and the state court did not pass on that question, but sustained the tax title under the state statutes making tax deeds *prima facie* evidence and of limitations, the nonfederal grounds are adequate to support the judgment, and this Court is without jurisdiction to review it on writ of error under 709, Rev.Stat.

37 Colo. 174 affirmed.

The facts, which involve the right of a state to tax the possessory right in unpatented mining claims, are stated in the opinion.

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MR. JUSTICE MOODY delivered the opinion of the Court.

The plaintiffs in error brought this action in a district court of the State of Colorado to recover from the defendants in error the possession of an undivided interest in the Comstock Lode mining claim, situated in that state. Both parties claimed title under Wilhelmina Gude, who was agreed to have been the owner of the interest in dispute, the defendants under a sale for taxes assessed upon her interest, made August 5, 1889, and a deed in pursuance of the sale, made August 8, 1892, and recorded August 11, 1892, the plaintiffs under a quitclaim deed of her interest made April 5, 1894, and duly recorded. The tax title was the earlier, and possession of the interest in dispute was held by those claiming under that title for more than five years, which is the period of the statute of limitations of Colorado applicable to such a case. The plaintiffs, however, insisted that the tax title was void, and the judge of the trial court so found, and entered judgment for the plaintiffs, which was reversed by the supreme court of the state and judgment for the defendants ordered. The case is here upon writ of error to the latter court.

The plaintiffs' contention is that the tax title was void for two reasons: first, because the property was not subject to

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state taxation, as the title to the land was in the United States, and therefore the levy of the tax was a nullity; second, because the notice of the sale for taxes was published only in a Sunday newspaper, and therefore the sale was a nullity. The further contention is then made that the tax deed, for these reasons, was void, and did not afford color of title sufficient for the purpose of the statute of limitations.

The judgment under review, however, determined that the interest of Wilhelmina Gude was liable to taxation under the laws of the state, although the land on which it was located had not been patented to her or entered for patent by her; that the possession was the subject of the assessment, and that the right of possession passed by the tax sale; that a tax deed was, by a state statute, *prima facie* evidence *inter alia* "that the property was duly and lawfully advertised for sale;" that the tax deed was not void upon its face, and that it constituted a sufficient color of title to satisfy the statute of limitations; and, finally, that, as this action was

not brought within five years after the delivery of the tax deed, it was barred by that statute, which provided that

"no action for the recovery of land sold for taxes shall lie unless the same be brought within five years after the execution and delivery of the deed therefor by the treasurer."

The question for decision here is only whether this judgment denied to the plaintiffs any federal rights duly claimed by them in the state court, and we have no right to inquire further.

1. The title to the land on which this mining claim was located was in the United States. It was a part of the public lands, and although proceedings had been begun by the owners of the claim for the acquisition of the title to the land by patent, they were not concluded at the time of the assessment of the tax, and apparently no patent has ever been issued. Obviously the land was not taxable as the property of Wilhelmina Gude. The act by which the people of the Territory of Colorado were enabled to form a state (4 of Act approved March 3, 1875, 18 Stat. 474, c. 139) provided that no taxes

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should ever be imposed upon lands or property of the United States. The claim of federal right was based upon this statute. But, assuming that under this statute a federal question is raised, there was no taxation of the land in the case at bar. A statute of Colorado authorized the taxation of mining claims, whether patented or entered for patent or not, in these words:

"In case the mine or mining claim shall not be patented, or entered for a patent, but shall be assessable and taxable under this act on account of producing gross proceeds, then and in that case the possession shall be the subject of the assessment, and if said mining property be sold for taxes levied, the sale for such taxes shall pass the title and right of possession to the purchaser, under the laws of Colorado."

Laws 1887, pp. 340, 341, Mills' Anno.Stat. 3222-3225. The construction of this statute and the conformity to it of the proceedings of the taxing officials were questions exclusively for the supreme court of the state, and we have no authority to review its determination of them. That court held that what was assessed was not the land on which the mining claim was located, but the claim itself -- that is to say, the right of possession of the land for mining purposes. It is agreed that the Comstock Lode was a "valid subsisting mining location," and, at the time of the assessment of the tax, Wilhelmina Gude was the owner of the undivided interest in it which is in controversy here. Such an interest from early times has been held to be property, distinct from the land itself, vendible, inheritable, and taxable. *Forbes v. Gracey*, [94 U. S. 762](#) ; *Belk v. Meagher*, [104 U. S. 279](#) , [104 U. S. 283](#) ; *Manuel v. Wulff*, [152 U. S. 505](#) , [152 U. S. 510](#) ; *St. Louis Mining Co. v. Montana Mining Co.*, [171 U. S. 650](#) , [171 U. S. 655](#) ; 1 Lindley on Mines, 535 to 542, inclusive. The state therefore had the power to tax this interest in the mining claim and enforce the collection of the tax by sale. The tax deed conveyed merely the right of possession, and affected no interest of the United States.

2. The tax deed under which the defendant in error Wood claims title was executed in pursuance of a sale made upon

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a notice published only in a Sunday newspaper. This fact does not appear from the deed itself, as an analogous infirmity appeared in the tax deed before the court in *Redfield v. Parks*, [132 U. S. 239](#) . The deed upon its face was a valid instrument, and could be impeached only by evidence *aliunde*. The state court did not deem it necessary to consider whether such a notice was sufficient, because it held that a state statute made such a deed *prima facie* evidence of the sufficiency of the notice, and that possession under such a deed for the prescribed period met the requirements of the state statute of limitations. The decision therefore did not reach the only federal question which can be imagined with respect to this part of the case -- namely, that a sale upon such a notice was wanting in due process of law -- but rested upon entirely adequate grounds of a nonfederal nature. Whether the decision of the question of state law was right or

wrong, we may not consider. It is enough that the judgment proceeded solely upon the state law, and that the state the court below, or whether a sale upon without reaching any federal question. *Leathe v. Thomas*, [207 U. S. 93](#) . We need not therefore consider whether this federal question was properly raised in the court below, or whether a sale upon such a notice would be a denial of due process of law in violation of the Fourteenth Amendment of the Constitution.

The plaintiffs in error have shown no violation of federal right, and the judgment of the Supreme Court of Colorado is

Affirmed.

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