

14236

No. _____

Supreme Court of Illinois

Winter, et al

vs.

People, ex. rel.

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State of Illinois:—In Supreme Court.

SOUTHERN GRAND DIVISION.

November Term, A. D. 1885.

The N. E. qr. of the N. E. qr., of
Sec. 32, in Town 7 north range 5,
east of the 3d P. M., in Effingham
County, State of Illinois,
and Samuel Winter.

ATS.
The People of the State of Illinois.
EX REL Bernard H. Wernsing,
County Treasurer and EX-OFFICIO
Collector of Effingham County,
State of Illinois,

Error to the County Court
of Effingham County.

BRIEF FOR DEFENDANT IN ERROR.

The objections filed by Samuel Winter, the defendant in error, to the rendition of judgment against the N. E. qr. of the N. E. qr., Section 32, in Town 7 north range 5 east of the 3d principal meridian, in Effingham county, Illinois, filed May 20, 1885, in the County Court is as follows:

FIRST. That the said taxes were dropped from the collec-

tor's book in the year 1879, by direction of the People by their attorney H. B. Kepley.

SECOND. That there has been personal judgment obtained against Samuel Winter for the said back taxes on said land, and that the same has been fully paid and satisfied.

THIRD. That said land has been sold on a personal judgment against said Samuel Winter and taxes paid to the County Treasurer and the money duly distributed.

See Record pages 5 and 6.

This effort to collect the taxes paid on the above tract of land is based on Section 276 and 277 of the Revenue law of Illinois, p. 859.

The record in this case shows that each one of the objections are true.

As to first objection, see Record Bill of Exceptions, p. 11. "That after the rendition of said judgment in said action of debt, against Samuel Winter as aforesaid, and on account of said proceedings thereunder, said taxes on said land was dropped from and left off of the tax collector's books of said county, to-wit: From the year 1879 to 1883, both inclusive."

As to the second and third objections, see Record pages 7, 8 and 9. Then the record shows that the said back taxes were dropped from said land from 1879 to 1883, the matter in dispute and that the personal judgment was fully satisfied by sale to Effingham county, Illinois, and certificate of purchase issued to Effingham county, and the same assigned to Ella Douthett, she paying amount of certificate to the County Treasurer and ex-officio Collector of said county, and distributing the proceeds thereof to the various municipalities entitled to the taxes for which said land had been sold at said sheriff's sale. Thus it will be seen that the back taxes has been fully paid and the same distributed among the several municipalities to which it belonged, but the plaintiff in error insists that Winter never paid these taxes—there is a personal judgment against him for these taxes, his land has been sold—and an effort made to take his homestead from him failing in this. Section 276 of the Revenue law—is called in aid—if Ella Douthett be so kind as to pay the taxes on this land—it has been paid and relieved from

the application of Sections 276 and 277, under which this proceeding has been had and they do not apply to the case at bar, for both of these Sections has reference to unpaid taxes. The Rule of CAVEAT EMPTOR fully applies in this case.

It is a general rule subject to few, if any exceptions, unless it be when fraud is practiced upon the purchaser, that the doctrine of CAVEAT EMPTOR applies in all judicial sales, for the reason that the officer selling has no power to warrant title or impose terms or conditions on the sale, beyond those required by law and because the purchaser is presumed to have examined the title and to know what he is acquiring by his purchase.

Bishop vs. O'Conner, 69 Ill. p. 431.

Conwell vs. Watkins, 71 Ill. p. 488.

Holmes vs. Shaver, 78 Ill. p. 578.

Wing vs. Dodge, 80 Ill. p. 564.

Roberts vs. Hughes, 81 Ill. p. 130.

Bond vs. Ramsey, 89 Ill. p. 29.

So the rule of CAVEAT EMPTOR applies with full force to the county of Effingham who purchased the land at sheriff's sale; also Ella Douthett who purchased the certificate of purchase as well to H. B. Kepley, the attorney for the county, and Ella Douthett, who in fact is the power behind the throne; these taxes now claimed as a lien on this land has been paid and distributed to the State, county, and the several municipalities to which it belonged, and there is no law or power known by which the same can be placed lawfully on the Collector's books and again collected, the plaintiff in error has through her attorney chosen her remedy. And that is the personal judgment against defendant in error for these taxes.

The case of the People vs. Stahl, 101 Ill. 346, cited by plaintiff in error has no application to case at bar, in that case there was a personal judgment for the taxes no satisfaction and the taxes were still kept on the Collector's books, the remedies are cumulative—there was no satisfaction, no payment of either the judgment or the taxes. In the case at bar the personal judgment was paid and satisfaction had—and certificate of purchase assigned to plaintiff in error, money paid to County Treasurer

and ex-officio Collector and he distributing the amount due the State, the county and several municipalities to which this tax belonged—then so far as this tax is concerned it has been paid—the other cases cited by plaintiff in error has no application to case at bar. What was the purpose of setting aside sale, deed, etc., at the April term, A. D. 1884, Circuit Court of Effingham county, Illinois, it was simply to revive the personal judgment against Samuel Winter, nothing more. See Record 9 and 10.

We take the position that the County Clerk had no power or authority to cause the notice to be served that said back taxes had been placed on the Collector's book against and added to the currant taxes for the year 1884. As there is no law or statute that authorizes this to be done in a case like this, where the taxes has been paid and distributed. It is a whim of the brain of Attorney for Plaintiff in error.

In the language of another: "The Tax Lien is not migratory in its nature. It did not follow the proceedings IN PERSONUM in their precarious course through the Justice's court; nor wander IN NUBIUS "seeking rest and finding none," until a transcript was filed in the Circuit Court. But it stood in its high place of power, holding firmly the homestead, whether hall or hut, and securing the taxes against it; capable of taking it, if need be, in the mode prescribed in the charter of its being; and cheerfully releasing it from that strong grasp, from which "human ingenuity has not yet devised any mode of escape" whenever a satisfaction has been obtained on the line of any of its cumulative remedies.

To the plaintiff in error, who seems to bow in abject superstition before "the all o'ercoming power" of his deified Tax Lien, is courteously commended for his imitation that graceful characteristic of his Goddess, which enables her to have satisfaction, and her humblest citizen a home.

B. F. KAGAY,

Attorney for Defendant in Error.

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State of Illinois--In Supreme Court.

SOUTHERN GRAND DIVISION.

NOVEMBER TERM, A. D. 1885.

SAMUEL WINTER ET AL } Error to Effing-
 ^{at} } ham County.
THE PEOPLE EX REL, }

BRIEF.

Filed.....1885

..... Clerk

B. F. KAGAY,
Attorney for Defendant in Error.

EFFINGHAM DEMOCRAT PRINT.

FILED

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