No. 14785

Supreme Court of Illinois

Conway

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vs.

Cable, et al

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 27

J. W. Middleton & Co., Stationers, 130 Lake

63

IN THE

Supreme Court, State of Illinois,

THIRD GRAND DIVISION,

APRIL TERM, A. D., 1864.

MILES W. CONWAY vs. PHILANDER L. CABLE and C. LYNDE, Jr.

Argument for Complainant.

The Court is informed that we represent persons only collaterally interested in the decision of this cause, and that they are only interested in two points in the case, viz:

1st. As to the construction to be put upon the act of the Legislature entitled "An Act to amend the Revenue Law," approved February 21, 1861.

2nd. As to the effect of the act of the Legislature entitled "An Act to legalize certain proceedings of the Board of Supervisors of Rock Island County," approved February 22, 1861.

To the first of these points we propose to confine this argument.

The act of February 21, 1861, is in these words:

"SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That all deeds hereafter made in pursuance of sales of real estate for the non-payment of taxes, shall be held to be null and void, if it be shown that said taxes had been paid before the sale, or that said real estate was not subject to taxation, or that it had been redeemed from said sale, or if the notice required by the constitution was not given, or that the description of said land was not sufficiently definite; and the validity of all such deeds, hereafter made by the proper officers, for real estate sold for the non-payment of taxes, shall not be questioned in any suit or controversy in this state, for any other cause, unless the party wishing to contest the same shall tender to the claimant under said tax deed, or deposit in the court in which such suit is pending, for his use, the amount of the redemption money now provided for by law, with ten per cent. per annum interest thereon from the date of said deed to the time of said tender or deposit, and after said tender or deposit is

Filed May 7. 1864
J. Lynde Jr

"made, the validity of said deed may be questioned in the same man-
"ner, and to the same extent, as now provided by law.
Approved February 21, 1861.

It will be perceived from the abstract that the sale under which the defendants claim title was made in 1860, long before this act was passed.

It is now attempted to give this act a retrospective effect, so that the owners of land sold at this sale shall be deprived of the privilege of showing it void, unless they shall tender the amount for which the land was sold with the penalty for allowing it to be sold and the amount of subsequent taxes paid by the purchaser and interest on the amount from the date of the deed until the suit is brought. If this is done then, the rightful owner may, if he can, show that the sale was void; if he succeeds, he looses the money paid, if he fails, he looses the money paid and the land.

This may be a salutary provision for future sales, but as to past transactions, if the legislature intended that the law should be applicable to such, they have failed to make it appear, and if they had done so, the law would have been unconstitutional.

The tax sale determined the rights and liabilities of all parties; the deed is but the evidence of the contract then made.

The tax sale either conveyed the title to the land or it conveyed nothing. The purchaser took no lien on the land for the amount he paid. If the sale was good he took the land, and he took the risk of loosing what he paid for the sake of a very large gain if he succeeded. The law gave no claim against the owner of the land, the judgment being in REM and not in PERSONAM.

It would hardly be contended that the legislature, after the sale was made, had power to say that the purchaser might sue the owner of the land for the amount of the redemption, and that the sale should be conclusive evidence that the owner had promised to pay him that amount of money, for this would be creating a debt. This statute is still more objectionable than such a one would be, for the sale paid the taxes on the land so far as the owner is concerned, and after this is done, the legislature creates this debt, from the owner to the purchaser,—makes the deed conclusive evidence of it, and provides that he shall pay it and run the risk of loosing his land beside.

This is not merely affecting the remedy,—it affects the property of the owner, the money that he has in his pocket. It cannot be said that this is transfering a right from the government to to individuals to secure this money, for first, the government had no right to collect it

For convenient reference we append a resume of some of the decisions above referred to.

CHAS. M. OSBORN, Attorney.

Supreme Court say in relation to the latter law: "Its language and objects are prospective."

"The Auditor's sale constituted a contract between the state and the "purchaser, which in connection with the then existing law, determin- "ed the rights and obligations of the parties."

"The certificate of purchase in the one instance, and the deed in the "other, are but the evidence of the contract, and that must be constru- "ed with reference to the law in force at the time it was entered into. "A different rule would substitute the varying will of after legislatures "for the intention and stipulations of contracting parties."

The court then discuss the statute of 1827, which provides that the tax shall be paid by the 1st day of August, annually, and the Auditor is required, as soon thereafter as practicable, to make out and publish a descriptive list of all lands upon which taxes are due, after which he is required at the time and place specified, to sell all the lands advertised as aforesaid on which the taxes and costs shall remain unpaid. The purchaser is entitled, at his option, to a certificate or a deed.

"Which deed (the law says) shall vest in the purchaser a perfect ti- "tle unless the land shall be redeemed according to law, or the former "owner shall show that the taxes for which it was sold had been paid as "required by law, or that the land was not legally subject to taxation."

"This act will not, by any fair construction, warrant the opinion that "the Auditor selling land without authority could by his conveyance "transfer the title of the rightful owner."

"The Auditor's authority to sell is limited by the express words of "the law to 'THE LAND ADVERTISED AS AFORESAID.' Therefore this "must be shown to support the deed."

Robinson vs. Rowan, 2 Scammon, 502.

In this case, Rowan purchased land of Bays, Dec. 11th, 1832. The

deed was recorded 11th Dec. 1833. On the 10th of Sept., 1833, a judgment was entered against Bays, and the land was sold to Robinson. The act of 1833, provides "that from and after the 1st day of Aug. next, (1833) all deeds and other title papers which are required to be recorded shall take effect from and after filing, &c., and not before, as to all creditors and subsequent purchasers without notice, and shall as to them be held and adjudged void, &c."

The court held that the law of 1827 was in force as to this deed and not that of 1833. The court say, "the recording law of 1833 is not necessarily retrospective in its terms; and a court will never give to a law such an operation unless compelled to do so by language so clear and explicit as to admit of no other interpretation."

Bruce vs. Schuyler et al., 4 Gilman, 221.

This was an ejectment from the Adam's Circuit Court.

On the trial the plaintiff's offered a deed from the Auditor founded on a sale for taxes made 12th January, 1833. Deed dated November 8th, 1833. The 4th and 25th sections of the act of 1827, provided for deeds to issue to the purchaser at the Auditor's sale. The act of 1829 declared the effect of the deed, and the act of 1833 provided for a sale by county officers, and repealed the 4th section of the act of 1827, "and all other sections of that act and all other acts and parts of acts coming within said act of 1833.

"The question then arises, has the act of 1833 by a repeal of the 4th section of the act of 1827 or by the repealing clause, taken from the Auditor the authority to make a deed after the repealing act went into operation as to delinquent lands sold by him prior to that time."

"Many rights to deeds had been acquired under the acts of 1827 and 1829 which would have been defeated by abolishing the power of the Auditor with reference to them. It would also have violated a well settled rule of construction, that the provisions of any statute ought to receive such an interpretation if the words and subject matter will admit of it as that the existing rights of the public or individuals be not impaired.

6 Bac. Abr. 391.

The court say that it is not necessarily repealed, and further go on to other reasoning, as follows: "The act of 1827 conferred power to sell land, and though a summary proceeding, the rule will apply, "That every grant of power necessarily carries with it all the usual and ordinary means for the exercise of that power," and therefore, authority to sell, implies authority to deed, otherwise it would be nugatory and a

mockery on the part of the state to delude and cheat those who should confide in her good faith. On page 276 the court say that the constitutional ground is conclusive, viz: That it was not competent for the legislature thus to impair the rights of purchasers, any act impairing the rights of the parties is void. 3 Story on Const. §§ 13-5. 3 Peters Cond. R. 395. 2 Peters Cond. R. 308. 5 Id. 369. 3 do. 295. It extends to contract executing and executed, by a state as well as by individuals. A legislative grant is within this provision and a subsequent act repealing it is null and void for that reason. 2 Peters Cond. R. 308-20. Story's Const. §§ 13, 79, 13, 85. This is not changing the remedy but is changing the nature of the contract.

Thompson vs. Alexander, 11 Illinois, 54.

This was an action of debt on a note. The note was dated May 11th 1837. The statute of 1849 provides that all actions on notes, &c. shall be commenced within five years after the cause of action accrued. This action was held not applicable. Quotes 2 Gallison 204. 10 Mass. 437. 10 Smedes & Marshall 599. 12 Mass. 343.

The rule is inflexible that no statute will be construed as to give it a resrospective operation unless an intention is manifested by clear and unequivical expressions.

Marsh vs. Chesunt, 14 Illinois, 223.

Was an action of ejectment; the plaintiff relied on a tax deed together with a regular judgment and precept. Defendant then showed that the assessment was not returned at the time required by law. The plaintiff insisted that the act of 8th February, 1849, covered the defect. It is in these words: "All assessments of property for taxes made in the year A. D., 1848, and prior years, and which were not completed within the time required by law, be, and the same are hereby declared to be as good and valid and effectual as if they had been made and returned in strict conformity to law; and the Auditor shall have power to remit the interest when it shall appear that the collector did not receive the books within the time required by law."

And also that it was covered by the act of February 15, 1851, which provides "That when any county or township assessor has heretofore failed or shall hereafter fail to complete or finish his assessments in the time required by law, such failure shall not vitiate such assessment, and the same shall be as legal and valid as if the same had been completed in the time required by law. Provided, &c."

It was held by the court that these statutes only operated in futuro, and not on sales made before the laws were passed. The court also

doubt the constitutional power of the legislature to pass any act affecting the titles so derived.

It is fully discussed, and directly in point, it cites the Thomas Manufacturing Co., vs Lathrop, 7 Connct. 550, where, after a compulsoary payment of taxes, the legislature passed an act providing that when assessors had heretofore failed to make their returns within the time prescribed, the assessments should not be adjudged void, but the taxes thereon might be levied and collected. The court held that the act had no application to the case before it, but was limited in its operation to cases in which neither a levy nor sale had been made. And the selectmen who issued the warrant for the collection of the taxes were held liable in tresspass for the acts of the collector under the process.

Billings vs Detten, 15 Illinois, 218.

Ejectment. Defendants showed a regular judgment precept and deed for taxes. Plaintiff to rebut, proved that the assessor's book were not returned to county commissioner's court until 30th Oct. The 21st section, act of March 3, 1845, required the assessors to return by first Monday of August, and the 26th section authorized owners to apply at Sept. term, but not afterwards for a reduction. It was insisted that the acts of 8th February, 1849 and 15th February 1851, legalize this assessment. The court held, quoting Marsh vs. Chesunt, that they did not. Second, the proceedings on the rssessment were entirely concluded long before the passage of either of these acts.

The only other statute relied on to support the assessment is that of 5th February, 1849. It reads thus: "that the assessment of property for taxation in the county of Madison, state of Illinois, for the years 1845, 1846 and 1847, be, and the same are hereby legalized. Any neglect or inability on the part of the assessor or assessors of said county to make and return the assessment for either or all of said years within the time required by law, to the contrary notwithstauding."

"This act must receive the same construction that was put upon those acts, (in Marsh vs. Chesunt.) The reasoning in Marsh vs. Chesunt in reference to those acts is strictly applicable to this act, and need not here be aepeated."

"The act was not passed to protect the titles of purchasers at tax sales, but for the purpose of facilitating the collection of the revenue."

Cowgill vs. Long, 15 Illinois, 202.

The legislature has power to remedy the defects in an assessment by law, while the tax remains uncollected, but if the property had been sold prior to the passage of the amending act, it might be contended

with degree of plausibility, at least, that their property had been taken from them by legislative enactment and transferred to another.

McDaniel et al., vs. Correll et al., 19 Illinois, 226.

In this case where no process was issued as to part of the defendants. The act of February 12, 1827, to amend Revised Stat. chapter 21, provides that no omissions of issuing summons shall avoid decree (in certain cases) whether before or after the statute. Held that the proceeding was void and the legislature could not make it valid.

Kinney vs. Sherman et al., 29 Illinois, 521.

The legislature cannot continue a lien for work done by a statute passed after the contract was made, this would be making a new contract for the parties.

Hinman vs. Pope, 1 Gilman, 131.

Was an ejectment. Plaintiff offered a tax deed and was excluded because no precept and judgment were offered. Plaintiff relied on the 43d section of the act, that that section made the Sheriff' deed prima facia evidence of the judgment and precept at least. It says, Deeds executed by the Sheriff, as aforesaid, shall be prima facia evidence in all conditions in respect to the rights of the purchaser, his heirs or assigns, to the land thereby conveyed, of the following facts:

1st. That land was subject to taxation and was listed as required by law, &c.

2nd. That taxes were not paid.

3d. That land was not redeemed.

And conclusive as to the following:

1st. That it was advertised correctly.

2nd. That it was sold for taxes as stated in the deed.

3d. That the grantee in the deed was the purchaser.

4th. That the sale was conducted according to law.

And in all controversies and suits involving the title to lands claimed and held under and by virtue of a deed executed as aforesaid, the person claiming title adverse to the title conveyed by such deed, shall be required to prove, in order to defeat the said title, either that the said land was not subject to taxation at the date of the sale; that the taxes had been paid; that the land had never been listed and assessed for taxation or that the same had been redeemed according to the provisions of this act, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of this state, but no person shall be permitted to question the title acquired by a Sheriff's deed, without first showing that he or she or the person un-

der whom he or she claims title, had title to the land at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all taxes due upon the land have been paid by such person or the person under whom he or she claims title as aforesaid.

The law requires a judgment and provides for a precept; the sheriff sells under the judgment and precept and has no authority without them. "It is evident that in this act there is no express provision dispensing with the production of a judgment and execution." "Whenever the Sheriff's deed is permitted to be read as evidence of the plaintiff's title, he may rest his case, and the defendant is not permitted to show that no judgment has been rendered against the land, unless he can first prove the existence of certain facts, which, if they exist, will defeat the plaintiff's right to recover and thus render it unnecessary to prove the non-existence of a judgment."

"Surely it can hardly be supposed for a moment that the legislature intended to invest a Sheriff's deed with such tremendous efficacy, unless supported by the preliminary proof as required by the common law of a regular judgment and execution, and certainly no court wiihout the most explicit declaration of the legislature, will sanction a construction that will produce such a result."

Supreme Court of Illinois,

April Term, 1864.

MILES W. CONWAY, *Pl'ff in Error,*
vs.
PHILANDER L. CABLE, & CORNELIUS LYNDE, Jr., *Def'ts in Er'r.*
} *Error to Rock Island.*

Brief for Plaintiff in Error.

The main question to be decided, as I conceive, is the construction to be placed on the act of the legislature of 1861, entitled "An Act to amend the Revenue Law." *General Laws*, 1861, p. 170.

The language of the Statute is this:
"That all deeds hereafter made in pursuance of sales of real estate," etc.,

It is contended by the Defendants in error that the Statute is to operate upon all deeds made after its passage, whether the sale was made before or after that time.

The Plaintiff insists that such is not the proper construction of the act, and that it was only intended to operate in cases where the *sale* as well the deed was made after it took effect.

It is a well settled rule of construction, that Statutes shall operate in *futuro* only, except in cases where the legislature have clearly manifested an intention, by the words used in the Statute, that it should operate

upon and affect past transactions.

Thompson v. *Alexander*, 11 Illinois, 54.
Marsh v. *Chesnut*, 14 Ills. 223.
Dash v. *Van Kleek*, 7 Johnson, 499.
Wood v. *Oakley*, 11th Paige (N. Y.,) 400.
Murray v. *Gibson*, 15 Howard, U. S., 425.
Plumb v. *Sawyer*, 21 Conn. 351.

If such be the true rule of construction then, the effect of the Statute is the same as though it read thus: "That all deeds hereafter made in pursance of sales hereafter made of real estate for the non-payment of taxes," etc.

Suppose that the word "hereafter" was left out of the Statute,—it would then read, "That all deeds made in pursuance of sales of real estate for the non-payment of taxes," etc.

By such reading the Statute would operate alike upon the deed and sale, so far as the making of either was concerned, as regards *time*, and yet the legal effect of the Statute is precisely the same as it would be if the word "hereafter" was left out, because the Statute in such case could only be construed to operate in *futuro*, and could only affect deeds made after its passage.

To give the Statute in question the construction contended for by the Defendants in error, would be most unjust and oppressive.

Prior to the passage of the Statute referred to, the Plaintiff in error owed no debt to the State, or otherwise, on account of taxes. The proceedings to subject the land to the burden of the tax having been wholly illegal and void. And by such a construction it is proposed by the mere operation of the *deed* to deprive the Plaintiff of his land, or compel him to pay the Defendants an indebtedness created wholly and solely thereby.

For it is the deed only that has the effect to produce such a result. It is not the sale, because the sale is admitted to have been insufficient for that purpose.

If, then, the sale did not pass the title, or in any way affect it, it was not competent for the legislatute to give to the deed that effect, or to make the void sale valid by legislation.

Marsh v. *Chesnut*, 14 Illinois, 223.
Cowgill v. *Long*, 15 Illinois, 202.
Billings v. *Dutton*, 15 Illinois, 218.
McDaniel et al., v. *Correll et al.*, 19 Ills., 226
Lane v. *Soulard, et al.*, 15 Ills., 123.

The Statute passed for the purpose of legalizing the contract between the county and the defendants can have no effect, for the reasons already stated. Such contract was without authority of law when made, and could not be made valid by legislation.

J. B. Hawley
Counsel for Plaintiff in Error

Order H. Conway

to

Lieut. Col. Carter

of the

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in Texas

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Galveston May 6. 1862

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SUPREME COURT OF ILLINOIS.

April Term. A. D. 1863.

MILES W. CONWAY, — Plaintiff in Error.
vs
PHILANDER L. CABLE, & CORNELIUS LYNDE, Jr. — Defendants in Error.

ERROR TO ROCK ISLAND.

Abstract of Record.

1 PLEAS, &c.

Complainant, Miles W. Conway, filed his bill in Chancery to the January Term, 1863, of the Rock Island Circuit Court, setting forth that he then was and for five years last past had been the owner in fee
2 simple of lots 1, 2, 7 and 8, in block 4, in an addition to the town of Moline, in said county, and that during the period last mentioned he had been in the actual possession and occupancy thereof.

That defendants confederating with others to injure and defraud complainant and to compel him to give up possession of said premises or to pay to them a large sum of money, claimed to have title in fee to said premises, and threatened to eject complainant therefrom, unless complainant would pay defendants $500.

That defendants claim title only by virtue of a sale of the lots for taxes, made by the collector of said county on the seventh of July, 1860, for the taxes and costs due thereon for 1858 and 1859, and by virtue of a deed from the Sheriff of said county, in pursuance of sale, executed December 20th, 1862.

3 Bill charges that the tax sale was fraudulent and wholly void, that there was no sufficient assessment for either of said years; that no sufficient notice was given by the collector of his intend application to the county court for judgment against said lots, or of the time when he would offer them for sale; that no valid or sufficient judgment was rendered against said lots by the county court; that no valid or sufficient precept was issued by the county clerk authorizing the collector to sell said lots.

4 That defendants, before the sale, entered into a fraudulent agreement with the collector and others unknown, by which it was agreed that defendants should purchase said lots at the tax sale, but should not be required at such sale or after to pay the collector any money except

the amount due the state; that if any sale was made defendants did not pay any but the state tax.

Bill prays that defendants may be compelled to answer, and that
5 upon the hearing, defendants may be required to surrender up the deed and that the same may be cancelled, and that the deed and sale may be set aside and for nought held so far as the same may affect complainant, for a perpetual injunction, and for general relief.

5-6 January 26th, 1863, defendants filed their joint and several answer.

Defendants admit that complainant for more than five years before the filing of bill, until the acquisition of title thereto by defendants as thereinafter set forth, was the owner in fee of said lots, and was during that period and still is in possession. That defendants claim title in fee to said lots, by virtue of a sale to them (as partners under the name of Cable & Co.,) by the tax collector of said county, made on the 2d day
7 of July, 1860, for taxes, interest and costs due thereon for the years 1858 and 1859, and of a deed executed and delivered to them by the Sheriff of said county, in pursuance of said sale, on the 20th day of August, 1862. That defendants intend by lawful means to obtain possession of said premises under said title, unless complainant will pay the amount of redemption money with ten per cent., interest from date of said deed.

Answer admits that in the assessment of said lots for the years 1858 and 1859, in the notice of the collector of his intention to apply for judgment, in the judgment rendered by the county court against said lots, in the precept issued by the clerk, and in the notice given by the collector of the time when and where he would sell, there were errors, omissions and irregularities, which would, in an action of ejectment against said complainant for the possession of said lots, founded upon said proceedings if duly proven by the defendant in such action, being in position to avail himself of them prior to the coming in force of the act of the General Assembly, approved February 21st, 1861, entitled "An act to amend the Revenue Law," have availed to avoid said sale and deed, but expressly avers that each and every of said proceedings was taken in good faith by the proper officers.

8 That complainant can not avail himself at law or in equity of said errors or irregularities unless he shall first pay or tender to defendants the amount of redemption money, due by law, on account of said sale and deed with ten per cent., interest from the date of the deed.

That said lots were subject to taxation for the years 1858 and 1859; the taxes due for said years had not been paid prior to the sale; that notice of the sale and time when redemption would expire was served on complainant, as required by law, copy attached and marked "Exhibit A," and that none of the lots have been redeemed from said sale.

9 Answer further states that for several years next prior to the sale of 1860, numerous and valuable tracts of land had been forfeited to the state, for taxes, for want of bidders; that prior to, and with special reference to said sale of 1860, a conspiracy was formed between complainant and others, owners of delinquent and forfeited lands, to defeat the sale of their lands so forfeited in the last named year, by preventing the attendance of bidders, through threats, persuasions and otherwise, and that if the design had succeeded, the previous forfeitures of said lands would, under the law, have been cancelled and the tax wholly lost,—in the aggregate more than $25,000.

That such combination and conspiracy, owing to the number, wealth and influence of the parties to it, &c., seemed most likely to succeed unless some extraordinary means could be devised to induce purchasers to attend and bid at such sale; that to this end the tax collector, with the
10 approval of the board of supervisors and of the boards of school directors, mainly interested, of said county, entered into an agreement with the defendants whereby defendants undertook and agreed, at the said sale of 1860, to bid off such of said forfeited and delinquent lands as no other purchaser would take, upon the express condition that they should be required to advance on account of their purchases, and subsequent taxes, and other expenses as might be necessary to be incurred and paid in order to entitle them to deeds of lands purchased by them in case of failure to redeem, only such portion thereof respectively in the first instance, as should be due to the state of Illinois; that they might appropriate to their own use out of the first moneys received for redemptions a sum equal to the amount they should have advanced and paid to said state, with ten per cent., per annum, and the expenses by them necessarily incurred in the premises, if sufficient should be received, and the residue of such redemption money, if any, they should divide between themselves, (for their risk and services) and the board of Supervisors for the use of the county, and school directors, in proportions therein specified; that they should have full power to sell, assign, or compromise the claims obtained by means of such purchases, and should furnish to the board of supervisors, from time to time, full statements showing all the transactions of the defendants under said agreement.

That said agreement was ratified by the General Assembly by an
11 act entitled "An act to legalize certain proceedings of the board of supervisors of Rock Island county," approved February 22d, 1861.

That defendants in accordance with the terms of said agreement attended said sale, encouraged others to bid and buy, and themselves purchased such lands and lots as no other persons would buy, one thousand six hundred and five different lots and tracts, the taxes on which, including subsequent taxes paid by defendants, amounted in the aggregate to the sum of nineteen thousand one hundred and sixty dollars and eighty-four cents; that they believe that many of the owners of lands previously forfeited, and who intended to defeat the sale and avoid payment of their taxes due for the years 1855-6-7-8-9, were induced to pay before said sale, by the knowledge of said agreement, and that many have, and others will, redeem.

That defendants have in all things performed said agreement to the entire satisfaction of said collector, board of supervisors, and directors; that they have accounted for and paid to the board of supervisors out of the excess of redemption money received by them, and remaining after reimbursement to defendants for their advances, with interest
12 and expenses, a large sum of money for the use of said county and the school districts; that if the balance of defendants purchases should be redeemed, said county would realize the further sum of about fifteen thousand dollars; that defendants have paid subsequent taxes on said lots; that they did not purchase the said lots or any other lots or tracts for the purpose of oppressing or harrassing the owners, but solely under said agreement, and at the special request of the board of supervisors, the collector and school directors, at great risk of pecuniary loss, for the
13 purpose of securing the said state, county, and school directors, the amount of taxes justly due.

That defendants ever since their purchase have been anxious to have the lands and lots purchased redeemed, and since the execution of the Sheriffs deed, have been, and still are willing to reconvey to the owners of lots and tracts of land, upon the payment of the amount of redemption money provided by law, with ten per cent., per annum interest thereon from date of said deed, and offer to convey to complainant upon those conditions. That complainant refuses and neglects to pay or tender the redemption money and interest, or any sum whatever.

14 Notice referred to in answer and marked "Exhibit A."

Supreme Court of Illinois,

April Term, 1864.

MILES W. CONWAY,

vs.

PHILANDER L. CABLE, & CORNELIUS LYNDE, Jr.,

Argument for Pl'ff in Error.

Review of the Argument filed in this Cause by Hon. C. Beckwith.

In this review I propose to confine my attention to the same points made in my original argument.

On page 2, the learned gentleman, says, "In order to compel recreant owners of land to perform the duties which they owed to the State, the Legislature passed the Act of February 21st, 1861."

It may be true that this act will have the effect of inducing land owners to pay their taxes in future, but as to the sale of 1860, to which the learned gentleman seeks to apply it, the state has collected its revenue, and has no interest in the decision of the question. As to that sale it is merely an act for the benefit of private speculators. As to this particular instance it can make no difference, that the county is involved in the speculation by (what is in our view) an illegal contract; the effect of the decision of the court will be co-extensive with its jurisdiction, and will affect thousands who never knew that there had been a sale of lands in Rock Island county, and we do not think that the court will establish an injurious precedent for the sake of assisting a single person or a single county, out of a position in which they have placed themselves.

Again the gentleman says, "It will be noticed that the act imposes no condition upon the land owner's showing that he was not in justice required to pay the sum assessed to him as his share of the public burden. He is permitted without any condition, whatever, to show that he did not owe the duty which the government claimed of him or that he has discharged it." The act simply says to the land owner, "when you admit that your just share of the public burden was what the government claimed of you, and that you have never discharged it, the state will not divest you of any of your rights, nor in any manner affect them, but it does require before you shall use its power to assert them, that you shall discharge your admitted duties to it, &c,, &c," We respectfully submit that the gentleman has entirely misconcieved the statute. We will give a few instances of cases to illustrate its effect, drawn from cases which will probably be brought before you for review.

The Board of Supervisors of Rock Island county, in 1857, levied taxes for certain purposes, and the clerk in carrying them on to the tax

books added other taxes not levied by the Board to a large amount, on one particular tract which I have in mind, to the amount of about five hundred dollars. In that case the land was subject to taxation, the taxes had not been paid, notice had been given, and the land had not been redeemed. Before this law was passed the owner had a perfect remedy; after it, he can only keep his land by paying this five hundred dollars and five hundred dollars more,—and yet the gentleman says that the law only asks him to do his duty as a citizen, and that it is not a retrospective law.

Again, in 1858 and 1859, the Board of Supervisors of Rock Island county, assessed taxes amounting together to 35 cents on the one hundred dollars valuation to pay interest on county bonds. The Board have since that time judicially admitted, and now contend that they had no power to levy these taxes, and that they were void, and yet double this must be paid to speculators in titles or they will take the land. Is this a mere irregularity? I could instance other cases where one tract of land is assessed and another sold, but it seems to me that those mentioned are sufficient to show that the gentleman misconcieved the law; that it does not allow the person to show that he did not owe the debt to the government, but that it does provide that he shall pay the claim before he is privileged to show that he did not owe it.

The examples given by the gentleman to illustrate the effect of this law, so far as it relates to sales that have passed, seem scarcely worthy of notice. Surely it will not be seriously contended that the payment required is in the nature of a payment to officers of the court to carry out its writs. If it is, then there should be some way provided of suing *in forma pauperis.*

The act of 1839 cited, certainly does provide for the effect of the tax deeds to be issued under it, but our courts here as certainly always held that a tax deed was governed by the law in force at the time of the sale and not of one passed after that time.

Garrett vs. *Wiggins*, 1 Scammon, 355.

But the gentleman says that the law may operate retrospectively because the reason of the construction usually put upon laws, fails in this instance. That this law only asks the land owner to do his duty, it merely deprives him of the right to do wrong. What will be said of the instances I have cited? Or of the case where no meeting is held to equalize assessment? Or, indeed, of almost any of the many objections which avoid a tax title? Is the whole foundation of judicial action in these cases wrong? In the case of *The Society, &c.*, vs *Wheeler et al.*, 2 Gallis C. C. R., 139, the learned judge disposes of this line of argument. It was a case where a statute provided that in certain cases of the recovery of property in ejectment the occupying claimant should have the right to payment for his improvements. After saying that he did not perceive the moral or equitable obligation on the part of the plaintiff, he says:

"It is sufficient, however, that no such equitable right as is now contended for, is recognized by the law."

Perhaps it will be well for us to quote further from this decision, as we think it will dispose of the gentleman's proposition that this is not a retrospective law, and correct what we concieve to be his misapprehension of the nature of retrospective laws.

The case first quoted from, arose under the laws of New Hampshire; the bill of rights of that state, Art. 23, declares that "retrospective laws are highly injurious, oppressive and unjust. No such laws, therefore, should be made, either for the decision of civil causes or the punishment of offenses." The court say:

"What is a retrospective law within the true intent and meaning of this article? Is it confined to statutes which are enacted to take effect from a time anterior to their passage, or does it involve all statutes

which though operating only from their passage affect vested rights and past transactions?

It would be a construction utterly subversive of all the objects of the provision, to adhere to the former definition.

"Every Statute which takes away or impairs vested rights acquired "under existing laws or creates a new obligation, imposes a new duty, "or attaches a new disability in respect to transactions or considera- "tions already past, must be deemed retrospective, and this doctrine "seems fully sustained by authorities."

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There is a part of the argument we are reviewing, which we hardly know how to treat, coming as it does, from a gentleman of such eminent legal ability and position, but suppose that it should be treated as we would an attorney's of less note. We should certainly tell such an one that we thought he would have done well to wait until "the ears of the community are dinned with a jargon of nonsense, latin and law," before he condemns. We ask no favors of the court, we ask simple justice. We assert principles of law, which we believe have been invariably acted upon in this court since its organization. We seek not to avoid our duties to government, but we rely on the law to deliver us from the jaws of (what have properly been termed) *land sharks*. Let the counsel for defendants successfully gainsay our legal propositions, and perhaps we may be driven to follow the example of our learned opponent, and cover our weakness by decrying what we cannot disprove.

In closing, we wish to remind the court that we represent persons only collaterally interested in this cause; that we had no part in the conduct of the suit until it reached this court, and we claim to represent parties who never united in any combination to cause the state to lose its revenue. Our whole interest is to prevent the precedent to be established in this cause from injuriously affecting us. We can condemn the illegal combination (formally) admitted by the plaintiff, but in doing this we do ask the court not to allow a false precedent to be established for the sake of punishing one person who has done a wrong.

CHAS. M. OSBORN,
Attorney.

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Miles M Conroy
27 v
P L Condell et al

63

Add Brief & Affs &c.

Filed May 18. 1864
L Leland Clk

Supreme Court of Illinois,

April Term, 1864.

MILES W. CONWAY,

vs.

PHILANDER L. CABLE, & CORNELIUS LYNDE, Jr.,

} *Argument for Pl'ff in Error.*

Review of the Argument filed in this Cause by Hon. C. Beckwith.

In this review I propose to confine my attention to the same points made in my original argument.

On page 2, the learned gentleman, says, "In order to compel recreant owners of land to perform the duties which they owed to the State, the Legislature passed the Act of February 21st, 1861."

It may be true that this act will have the effect of inducing land owners to pay their taxes in future, but as to the sale of 1860, to which the learned gentleman seeks to apply it, the state has collected its revenue, and has no interest in the decision of the question. As to that sale it is merely an act for the benefit of private speculators. As to this particular instance it can make no difference, that the county is involved in the speculation by (what is in our view) an illegal contract; the effect of the decision of the court will be co-extensive with its jurisdiction, and will affect thousands who never knew that there had been a sale of lands in Rock Island county, and we do not think that the court will establish an injurious precedent for the sake of assisting a single person or a single county, out of a position in which they have placed themselves.

Again the gentleman says, "It will be noticed that the act imposes no condition upon the land owner's showing that he was not in justice required to pay the sum assessed to him as his share of the public burden. He is permitted without any condition, whatever, to show that he did not owe the duty which the government claimed of him or that he has discharged it." The act simply says to the land owner, "when you admit that your just share of the public burden was what the government claimed of you, and that you have never discharged it, the state will not divest you of any of your rights, nor in any manner affect them, but it does require before you shall use its power to assert them, that you shall discharge your admitted duties to it, &c,, &c," We respectfully submit that the gentleman has entirely misconcieved the statute. We will give a few instances of cases to illustrate its effect, drawn from cases which will probably be brought before you for review.

The Board of Supervisors of Rock Island county, in 1857, levied taxes for certain purposes, and the clerk in carrying them on to the tax

books added other taxes not levied by the Board to a large amount, on one particular tract which I have in mind, to the amount of about five hundred dollars. In that case the land was subject to taxation, the taxes had not been paid, notice had been given, and the land had not been redeemed. Before this law was passed the owner had a perfect remedy; after it, he can only keep his land by paying this five hundred dollars and five hundred dollars more,—and yet the gentleman says that the law only asks him to do his duty as a citizen, and that it is not a retrospective law.

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In closing, we wish to remind the court that we represent persons only collaterally interested in this cause; that we had no part in the conduct of the suit until it reached this court, and we claim to represent parties who never united in any combination to cause the state to lose its revenue. Our whole interest is to prevent the precedent to be established in this cause from injuriously affecting us. We can condemn the illegal combination (formally) admitted by the plaintiff, but in doing this we do ask the court not to allow a false precedent to be established for the sake of punishing one person who has done a wrong.

B. C Cook CHAS. M. OSBORN,

Attorney.

65 1421

Conway
v
Cable et al.

Review of Argument filed
by Counsel for Defendants.

Filed. May 18. 1864
L Leland Clk

State of Illinois }
Rock Island County } ss.

Miles D Cowing }
vs } In the Supreme court
Phlander L Cable } of the State of Illinois
and Cornelius Lynde } April Term A D 1864
} Third Grand Division.

Bailey Davenport being first duly sworn deposes and says. that he has now pending in the Circuit Court of Rock Island County, State of Illinois a cause in which he is Plaintiff and said Phlander L Cable and Cornelius Lynde are defendants. involving the same questions as those involved in the above entitled cause now on the Docket of said Supreme Court of the State of Illinois. he therefore prays that his Counsel. Messrs Beatty Gleason and Campbell of Attorneys Messrs Hurd & Drury and Gholson Osborn & Rock Island may be allowed to argue the said Cause. (which is numbered Sixty three on said Docket.) on the part of the the Plaintiff in Error.

Subscribed and Sworn
before me. at Rock Island
this third day of May A D 1864
with the Seal of said Court
hereto affixed.
J & Conkling Clk.

Bailey Davenport

27 Conway 166
Cable
Affidavit

Filed May 4, 1864.
L. Leland
Clk.

Miles S. Conway

vs

Philander S. Cabell

et al

Motion by Bailey Davenport for leave to be heard by counsel on the argument of this cause. Submitted upon the accompanying affidavit. We are informed that there is no objection & our being heard on the part of any one concerned in the cause

Thos Cook & Campbell

27 186.

Conway

Cable

Motions

Filed May 4, 1864.
L. Leland
Clk.

Supreme Court of Illinois

April Term A.D. 1863

Hills N. Conway, Plaintiff in Error

vs

Philander L. Cable and

Cornelius Lynde Jr. Defendants in Error

Error to Rock Island

Transcript of Record

Chancery- January Term 1863.

At a Circuit Court sitting as a Court of Chancery begun and held at the Court House in the City of Rock Island within and for the County of Rock Island in the State of Illinois, on the twelfth day, the second Monday of January Term A D 1863, Before The Honorable Ira O Wilkinson, Judge of the Sixth Judicial Circuit of the State of Illinois, and presiding Judge of said Court.

Present Honble Ira O Wilkinson Judge
Chas A McLaughlin Sheriff
Edward H Bowman Clerk

Be it Remembered that on the second day of January A D 1863 there was filed in the Office of the Clerk of said Court in the City, County and State aforesaid a Bill in Chancery, and which is in the words and figures following, to wit

"State of Illinois } ss
"Rock Island County }

Of the January Term of the Rock Island County Circuit Court, A D 1863
In Chancery

To The Honorable Ira O Wilkinson Judge of said Court in Chancery Sitting.

Humbly complaining Showeth unto Your Honor, Your Orator Miles W. Conway, now and for more than fifteen Years last past a Resident of the County of Rock Island aforesaid, That he now is, and for more than five years last past has been the Owner in fee simple of the

following described Real Estate situate in the County of Rock Island and State of Illinois to wit: Lots Number one (1) two (2) seven (7) and eight (8) in Block four (4) in "Greenwoods Molina on the Bluff" an Addition to the town of Molina, and that your Orator now is and during the period last aforesaid has been in the actual possession and occupancy of the said premises. And your Orator charges the fact to be that Philander B Cable and Cornelius Lynde Jr of said County (Defendants hereinafter named) confederating with others to your Orator unknown, and designing and intending to wrong injure and defraud your Orator in that behalf, and to compel your Orator to give up the possession of said premises, or to compel your Orator to pay to the said Cable and Lynde a large sum of money, now claim to have Title in fee Simple in and to said Premises, and now threaten to harrass and disturb your Orator in the possession and enjoyment of the said premises, by commencing & prosecuting an action or actions at law to eject your Orator from said premises, unless your Orator will pay to the said Cable and Lynde the sum of Five hundred Dollars. And your Orator is informed believes and therefore charges the fact to be, that the said Cable and Lynde claim Title to said premises solely and only by virtue of a Sale thereof to them by the Tax Collector of said County made on the twenty sixth day of July AD 1860 for the taxes interest & costs due severally thereon for the years AD 1858 and AD 1859, and by virtue of a deed of said premises executed to them by the Sheriff of said County on the twenty sixth day of December AD 1862 in pursuance of such Sale as aforesaid.

And Your Orator is informed and believes, and therefore charges the fact to be that said Sale by said Collector to said Cable & Lynde, if any such Sale was made was fraudulent, without lawful authority & wholly void, because as Your Orator is informed and believes, and charges the fact to be no good or sufficient Assessment of said premises was had or made for the Years AD 1858 or AD 1859 or either of said Years, as was required by law, that in the Assessment thereof for the Years last aforesaid and each of them there occurred divers errors, omissions and irregularities. - And Your Orator is informed and believes and charges the fact to be that no such Notice as was required by law was given by the said Collector of his intention to apply to the County Court of said County in the Year AD 1860 for Judgment against said lots for taxes interest and Costs due upon said lots or any of them nor did the said Collector give any sufficient or valid Notice, as was required by law of the time or place when he would expose or offer the said lots or any of them for Sale. - And Your Orator is informed and believes, and therefore charges the fact to be that no valid or sufficient Judgment was rendered against said lots, or any or either of them by the County Court of said County in the Year AD 1860 for the taxes, interest & Costs due upon the said lots or any or either of them for the Year AD 1858 and AD 1859, or either of said last named Years. And that no valid or sufficient precept was issued by the Clerk of said County Court to the said Collector Authorizing or empowering him to sell said lots, or any or either of them in the Year AD 1860, for the taxes due upon said lots or any or either of them for

the year A D 1858 (4) and A D 1859, or either of said years.

And your Orator is informed and believes and therefore charges the fact to be, that if any such sale was had or made by the said Collector, it was fraudulent and void, and without authority of law, That the said Cable and Lynde prior to said Sale had entered into a fraudulent unlawful & corrupt agreement and combination with the said Collector, and other persons to your Orator unknown, by which it was agreed that the said Cable and Lynde should purchase the said lots, at the said tax Sale, but should not be required at such Sale or thereafter to pay to said Collector any money except the amount of Tax due on said lots to the State of Illinois. That if any such Sale was made by the said Collector to the said Cable and Lynde, the said Cable and Lynde did not at the time of such Sale, or at any time thereafter pay or cause to be paid to the said Collector, any Tax due upon said lots, or any or either of them, except the Amount of taxes appearing to be due annually thereon to the State of Illinois.

In tender consideration whereof, and in as much as your orator is wholly remediless in a court of Law, and can only have adequate relief in this your Honors Court of Equity where matters of this nature are properly cognizable & relievable, Your orator prays that the said Cornelius Lynde Jr. and Philander L Cable may be made parties defendant to this your Orators Bill of complaint, and may be required to make full true and complete Answer thereto, and to all and singular the matters and things herein contained, but not under oath, the oath of

the said Defendants and each of them being hereby expressly waived, and that upon the hearing hereof, the said Defts may be required to give up and surrender the said deed, and that the same may be cancelled, and that the said deed and the said sale may be set aside, and for naught held so far as the same may affect or concern the rights of your Orator, in or to the said lots or either of them, and that the said defendants may be forever enjoined from selling up, or claiming title to said lots or any or either of them under or by virtue of said sale or said deed or deeds to be hereafter executed under or in pursuance of said sale, and that your Orator may have such other or such further relief as to your honor may seem meet.

Finally may it please your Honor to grant unto your Orator the writ of Summons in Chancery issuing out of, and under the Seal of this Honorable Court, directed &c commanding &c returnable &c, and as in duty bound your Orator will ever pray

J. B Dawley
Sol: for Compl't

Miles W. Conway

And Be it further Remembered that afterwards to wit on the 26th day of January A.D. 1863 there was filed in the office of the said Clerk, in the City, County and State aforesaid, the answer of the said Defendants Philander L. Cable & Cornelius Lynde Jr and which is in the words and figures following, to wit

(6)

State of Illinois }
Rock Island County } ss In the Circuit Court for said County. of January Term 1863.

Philander L Cable &
Cornelius Lynde Jr
vs
Miles W Conway

The joint and several Answer of Philander L Cable and Cornelius Lynde Jr. defendants to the Bill of Complaint of Miles W Conway, Complainant.

These defendants now and at all times hereafter saving and reserving unto themselves all & all manner of benefit and advantage of exception which can or may be had or taken to the said Bill of Complaint for the many errors, uncertainties and other imperfections therein contained. for answer thereunto or unto so much and such parts thereof as they are advised is or are material or necessary for them to make answer unto, jointly and severally answering say. That they admit that the said Complainant for more than five years next before the filing of his said Bill until the acquisition of title thereto by these defendants as hereinafter set forth, was the owner in fee simple of said several lots. One (1) Two (2) Seven (7) and Eight (8) in Block four (4) of "Greenwoods, Moline on the Bluff" an Addition to the Town of Moline in said County of Rock-Island & State of Illinois, and during all the said period was and still is in the actual possession and occupancy of the same. that these defendants now claim title in fee simple to said several lots, and only by virtue of a sale thereof to them (as partners under the name and style of Cable & Co) by the Tax Collector of said County, made on the second day of

July A.D. 1860. for the taxes, interest and cost due thereon to said State and County, respectively for the years A.D. 1858 and 1859, under the Revenue Laws of said state and of a Deed therefor executed and delivered to them in pursuance of said sale by the Sheriff of said County on the twentieth day of August A.D. 1862, and that they intend by lawful means to obtain possession thereof under said title in case the said Complainant shall persist in refusing to pay them the amount of redemption money due by law thereon as hereinafter set forth, with ten per centum per annum interest thereon from the date of said deed, as of right they may.

And these defendants further answering admit that in the assessment of said several Lots for said years 1858 and 1859, in the notice given by said Collector of his intention to apply to the County Court of said County in said year 1860 for judgement against said lots for the taxes, interest & cost so due thereon – in the judgement therefor rendered by said County Court against said lots in said year 1860.– in the precept issued by the County Clerk of said County to said Collector upon said judgement and in the notice given by said Collector of the time and place when & where he would expose and offer said lots for sale under and by virtue of said precept respectively, there were errors, omissions, and irregularities which would in an action of ejectment against said Complainants for the possession of said lots, founded upon said judgement, precept and deed, if duly proven by the defendants in such action, being in position to avail themselves of them, prior to the coming in force of the act of the General Assembly of said State approved February 21. 1861. entitled "An act to amend the Revenue laws" have availed to avoid said sale and deed, but they expressly aver that each and every of said proceedings was actually and in good faith had and taken or attempted so to be by the proper officers and authorities respectively and humbly insist

that said Complainant cannot avail himself either at law or in equity of any of said errors, missions or irregularities in said proceedings or either of them until and until he shall first pay a tender to these defendants the amount of redemption money due by law on account of said sale and deed of said lots, with interest thereon from the date of said deed as aforesaid.

These defendants further answering expressly aver and show unto your that such sale and deed were actually so made & executed to them as aforesaid - that said lots and every of them were lawfully subject to taxation for State and County purposes, for each of said years 1858 and 1859, that the taxes assessed and due thereon for said years had not been paid nor had any part thereof, prior to the sale to these defendants and on the twenty first day of August A.D. 1860, the said defendant Cornelius Lynde Jr personally served on the said Complainant in whose name said several lots were so assessed and taxed for said years 1858 and 1859 and who at the time of such service was resident in said County of Rock Island, a notice, partly written and partly printed of said purchase by these defendants, of said several lots for said taxes interest & Cost, so due thereon respectively, as aforesaid in which notice was fully and truly stated the time when they so purchased said lots, the correct description of said lots respectively and the time when the right to redeem said lots from said sale as limited by law, would expire, as by the said notice, which these defendants hereby call upon said Complainant to produce on the hearing of this Cause and a copy of which is herewith filed marked "Exhibit A" and prayed to be taken as part hereof will more fully appear - and that said lots have not nor have any or either of them been yet redeemed from said sale.

And these defendants further answering aver & show unto your Honor that for several years next prior to the said year 1860. numerous and valuable tracts of land and town lots in said County had been, and at the time of said sale to these defendants in said last mentioned year were forfeited to said State for the taxes due thereon respectively, for want of bidders therefor at the tax sales for said years respectively, and that prior and with special reference to said tax sale for said year 1860. a conspiracy was formed and entered into by and between the said Complainants and others of the respective owners of said delinquent and forfeited lands, and town Lots, to hinder and defeat the sale of their respective lands and lots so forfeited in the said last mentioned year, for the taxes interest & cost then due thereon respectively, by preventing the attendance and bidding of purchasers at said sale through threats, persuasion & otherwise, by means whereof if the same had succeeded in its object the previous forfeitures of said lands & lots must & would under the law have been cancelled, and the said State & County and the several School Districts of said County would have wholly and forever lost in the aggregate, more than twenty five thousand dollars of taxes, fairly and justly due on said lands and lots - that said combination and conspiracy through the number, wealth, position and personal example and influence of the parties to it, the said threats & persuasions, and the risk of loss by purchase at tax sale from irregularities incident & common to proceedings to that end, and the disinclination of the law and the Courts, was and appeared to be most likely to succeed, unless some extraordinary measure could be devised to induce purchasers to attend and bid at said sales - that to this end & under the circumstances above set forth the said Tax Collector, with the knowledge and approval of the Board of Supervisors, and of the Boards of Directors of School Districts

mainly interested of said County, made and entered into an agreement with these defendants whereby in substance they, these defendants understood and agreed at said sale of said year 1860 to bid off and purchase such of said forfeited and delinquent lands and lots as no other person or persons would take for the taxes interest & cost. so due thereon respectively as aforesaid, upon the express conditions, to wit: that they should be required to advance & pay on account of their bids and purchases so to be made, and on account of such subsequent taxes & other costs and expenses as might be necessary to be incurred & paid in order to entitle them to deeds of the lands & lots so purchased by them in case of failure to redeem, only such portion thereof respectively, in the first instance, as should be coming and due to the said State of Illinois, that they might and should appropriate to their own use, out of the first moneys received for redemption of said lots and lands or any of them from said sale a sum equal to the amount they should so have advanced and paid to said State with interest thereon at ten per cent per annum and the expenses by them necessarily incurred to the premises if sufficient therefor should be so received, and the residue of such redemption money if any they should divide between themselves (for their use and services) and the said Board of Supervisors for the use of said County and School Districts in proportions therein specified and agreed on. - that they should have full power and discretion to sell, assign or compromise the claims obtained by means of such purchases and should furnish to said Board of Supervisors from time to time and whenever by said Board so required, full statements showing in detail all or any of the transactions of these defendants under or by virtue of or in connection with said agreement. which said agreement was also approved and ratified by the General Assembly of said State by an

(11)

" act entitled "An Act to legalize certain proceedings of
" the Board of Supervisors of Rock Island County" approved
February 22. 1861

These defendants further answering aver and show that under and in accordance with the terms of said agreement they attended said sale, encouraged others to bid and buy thereat, and then & there at said sale themselves bid off and purchased of such delinquent & forfeited lands & lots as no other person or persons would buy & take for the taxes, interest & cost due thereon respectively One thousand Six Hundred and five (1605) different lots and tracts of land, the taxes on which including subsequent taxes paid by them amounted in the aggregate to the sum of Nineteen thousand one Hundred and Sixty dollars and Eighty four cents ($19,160.84) that they believe & aver that many of the owners of lands so previously forfeited, who threatened and intended to defeat the sale of their respective lands & lots in said year for taxes and avoid payment of their taxes justly due thereon for the years 1855. 1856. 1857. 1858 & 1859 were induced to pay the same on and before the day of said sale by the knowledge that these defendants had entered into said agreement and many others have been & still others will be induced to redeem their respective lands and lots from said sale thereof to these defendants.— that these defendants have thus far in all things fully & faithfully kept and performed said agreement on their part, and to the entire satisfaction of said Collector of said Board of Supervisors and of said Directors of School Districts— that they have already accounted for & paid over to said Board of Supervisors, out of the excess of said redemption money received by them & remaining after reimbursement to these defendants for their advances with interest and expenses as aforesaid, a large sum of money for the use of said County

& said School Districts in their just proportions, and that if the owners of that portion of said lands & lots so purchased by these defendants that yet remain unredeemed shall in like manner redeem their respective lands & lots from said sale as in duty they ought, the said County will yet realize on that account for the uses in that behalf aforesaid the further sum of about fifteen thousand ($15.000.00) dollars.

And these defendants further answering show unto your Honor that at the said sale they bid off and purchased said lots One (1) and Two (2) in said Bill of Complaint mentioned for the sum of three dollars & Sixty nine cents, being the amount of taxes interest & cost due thereon, and said Lots Seven (7) and Eight (8) in said Bill mentioned for the sum of three dollars and Sixty eight cents, being the amount of taxes, interest & cost due on said last mentioned two lots, as aforesaid - that they have since paid for taxes and costs for the year 1860 on each of said four several lots the sum of two dollars and twenty eight cents being the full amount of taxes costs due thereon for said last mentioned years & for taxes & costs for the year 1861 on each of said lots the sum of Sixty three cents, being the full amount due for taxes thereon & costs for said last mentioned year, that they did not so purchase said lots or any or either of them or any other lots or tracts of land at said sale for the purpose of oppressing or in any wise harassing the owner or owners thereof respectively, but solely under the inducement of said agreement and at the special instance & request of said Collector & Board of Supervisors & of Directors of Schools Districts against threats & at great risk of pecuniary loss as aforesaid, for the purpose of securing to said State, County & School

Districts respectively, the amount of taxes justly due them from persons well able & bound by every consideration of honor & equity to pay the same, but who persisted in neglecting & refusing so to do - that ever since the said purchase by them so made, they have been willing & desirous to have the said lands & lots so purchased redeemed thereof, by the owners or others entitled so to redeem, and since the expiration of the time allowed by law for redemption from said sale & since the execution of the said deed to these defendants by the said Sheriff in pursuance of said sale, they have always been willing and desirous and are still willing & desirous to reconvey with suitable & proper covenants to the owners of said lots & lands respectively, & to every of them, their respective lands & lots so purchased by & conveyed to these defendants upon the payment by such owner or owners or others respectively, to these defendants, of the amount of redemption money therefor provided by law, with ten per cent per annum interest thereon from date of said deed, and have been ready and willing at all times and still hereby offer to reconvey to said Complainant with proper covenants against their own acts, the said several lots in said Bill of Complaint mentioned, or any or either of them upon the payment by him to them of the amount of redemption provided by law to be paid thereon respectively, with ten per cent per annum interest thereon from the said date of said Sheriffs Deed to them, but the said Complainant hath hitherto wholly neglected and refused & still neglects & refuses to pay or tender to these defendants the amount of redemption money due as aforesaid for said lots or any or either of them or any part thereof, or any sum whatever for or on account thereof.

And these defendants deny all & all manner of fraud

and unlawful conspiracy wherewith they are in & by said Bill charged — without this, that any other matter or thing in the said Complainants Bill contained material or necessary for these defendants or for either of them to make answer unto & not herein & hereby well & sufficiently answered unto, confessed or avoided traversed or denied is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready & willing to aver, maintain and prove as this Honorable Court may direct, and humbly pray to be hence dismissed with their reasonable costs & charges in this behalf most wrongfully sustained

Philander L Cable
Cornelius Lynde Jr

Gen W Pleasants
Sol for Defts

Rock Island Aug 21. 1860.

To W N Conway

Sir — You are hereby notified that on the 2d day of July 1860. we purchased at the Collectors sale for Taxes. Lots 1 & 2 in Block 4. and Lots 7 & 8 in Block 4. all in Greenwoods. Moline on the Bluff. an addition to the Town of Moline. for Taxes and Costs due the State of Illinois and County of Rock Island for the year 1858 & 1859 and that at the time of Redemption will expire on the 2d day of July 1862.

Cable & Co

"Exhibit A" filed with Answer.

And Afterwards to wit, on the 27th day of January 1863. the following proceedings was had, before the said Judge sitting as a Court of Chancery, and being the thirteenth sitting day of said Term.

Miles W. Conway
vs
Philander L Cable
& Cornelius Lynde Jr

27th January 1863
This day came the parties, Plaintiff and Defendants by their respective Solicitors and By Agreement, It is Ordered by the Court that this cause be heard in Vacation, and decree entered as of this term.

And Be it further Remembered that on the 10th day of April A.D. 1863. a decree to be entered as of January Term 1863 pursuant to the above Order, was filed in the Office of the said Clerk in the City, County & State aforesaid, and which is in the words and figures following, to wit:

State of Illinois
Rock Island County } ss

Rock Island County Circuit Court of January Term 1863.

Miles W. Conway
vs
Philander L Cable and Cornelius Lynde Jr

Complainant
In Chancery
Defendants.

On this twenty fourth day of January in the January Term A.D. 1863 of said Court came the said Complainant by Hawley his Solicitor, and the Defendants by

Pleasants their Solicitor, and the Defendants having filed their Answer to Complainants Bill of complaint herein, It is by and with the Agreement of said parties Complainant and Defendants Ordered and decreed by the Court that this Cause be set down for hearing and decision upon the Bill of Complaint of said Complainant, and the Answer of said defendants, and that the same be heard and determined by the Judge of this Court in Vacation, on the tenth day of April next ensuing this term, and that the decree then to be made therein, be made and entered of Record, as of the present term of this Court and with like effect in all respects as if determined and entered by the Court at its present term, and that either party may appeal or prosecute a writ of error from such decree in like manner as if entered this Term.

And Now afterwards on the tenth day of April A D 1863 before Isa C Wilkinson Judge of the said Circuit Court at his Chambers in the City of Rock Island, come the said Complainant by Hawley his Solicitor, and the Defendants by Pleasants their Solicitor, and this Cause coming on now to be finally heard and determined upon the Bill of Complaint of said Complainant, and the Answer thereto by the said defendants, and in pursuance of the Order for that purpose made and entered herein at the last January Term of said Circuit Court, and the said Bill and Answer having been duly disputed and read, and the Arguments of Counsel for the Complainant and defendants respectively duly heard and considered, and the said Court and the Judge thereof, being

now sufficiently advised in the premises doth find and adjudge in respect to the several questions presented for decision by the said Bill and Answer and the Arguments thereon made (1) That the deed made by the Sheriff of Rock Island County Illinois to the said defendants on the twentieth day of August ad 1862 for the several lots set forth and described in complainants bill made and by virtue of a Sale thereof to them by the Tax Collector of said County made on the second day of July A.D 1860 for the taxes interest and costs due on said lots to the said State and County, being subsequent to, is within the terms of, and subject to the law of the State of Illinois, approved February 21st 1861 entitled "an act to amend the Revenue law", and (2) That the said entitled act is Constitutional and Valid.- And that the matters as presented by the said Bill and Answer do not make such a case for the said Complainant as to entitle him to Relief in this Court. Whereupon It is considered, adjudged and decreed by the Court that the Complainants said Bill of complaint be dismissed, and that he pay the costs herein; And that this Decree be entered of Record as of the January Term A.D 1863 of this Court.

J.C. Wilkinson

State of Illinois } ss
Rock Island County }

I, Edward S Bowman Clerk of the Circuit Court within and for said County and State aforesaid, hereby certify that the foregoing is a true full and Complete Transcript of the Record of Proceedings had in said Cause in said Circuit Court, as also a full Complete and true Copy of the several original papers on file therein, as entire as the same now remain of Record, or on file in my office.

In testimony whereof I have hereunto set my hand, and affixed the Seal of said Circuit Court at Rock Island this 14th day of April AD 1862. –

Edward S Bowman
Clerk

Supreme Court of Illinois
April Term A.D. 1865

Miles W. Conway, Plaintiff in error
vs
Philander L. Cable and
Cornelius Lynde, Defendants
in error

And now comes the said Plaintiff in Error by J. B. Wanley his Attorney, and says, that in the record, proceedings and decree aforesaid, of the said Circuit Court there is manifest error in this to wit

1st- The said Circuit Court erred in rendering said decree against the said Plaintiff in error, and in dismissing his bill

2. The said Circuit Court erred in not rendering a decree in favor of the said Plaintiff in error in said Cause—

And for the errors aforesaid, and for the manifest other errors, in the proceedings aforesaid, the said Plaintiff in

error prays that the decree aforesaid may be reversed, annulled, and for nought held &c

J. B. Hanley
for Plff in error

And now come the said defendants in Error by Geo W. Pleasants their Attorney, and say that in the record, proceedings, and decree aforesaid that is not any error. and pray that the same may in all things be affirmed

Geo. W. Pleasants
for deft in Error

27 106

Miles W. Conways

vs

Thilander L Cable &
Cornelius Lynde jr

Transcript

Error to Rock Island

Filed Apl. 20. 1863
Leland
Clk.