1940

Sale of Land for Taxes in Kentucky

Earl S. Wilson
Department of Revenue, Commonwealth of Kentucky

Follow this and additional works at: https://uknowledge.uky.edu/klj
Part of the Property Law and Real Estate Commons, and the State and Local Government Law Commons
Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation
Available at: https://uknowledge.uky.edu/klj/vol28/iss2/1

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.
SALE OF LAND FOR TAXES IN KENTUCKY

By EARL S. WILSON*

The laws of Kentucky as they apply to the sale of land for taxes have been for years the source of a number of interesting legal questions. In Kentucky, land on which taxes are delinquent is sold by the sheriff in satisfaction of state, county, school and special district tax claims.

The sale necessarily must have some effect upon the titular interests or rights of any person in the property which is the subject matter of the sale. It will also create certain new interests or rights in the property. However, it is not always easy to determine exactly what significance or effect the sale may have in this respect. For example, a sale conducted exactly in compliance with the law will not have the same effect on title or create the same rights as a sale not so made; also, the effect of changes or amendments in the law following the sale or events occurring subsequent thereto will vary in accordance with whether the sale was executed as required by law at the time it was made.

Sections 1682 and 4149, Kentucky Statutes, considered together set out the conditions which must exist before land can be sold for taxes and the manner in which the sale must be made. Literal compliance with the requirements of these sections is necessary to constitute a valid sale. If there is an absence of any statutory condition necessary to entitle the sheriff to make the sale or if he fails to take any statutory step required of him in making the sale, it is invalid.1 But if the sale is executed

---

*Delinquent Tax Attorney, Kentucky Department of Revenue; B.S. 1930, LL.B. 1936, University Kentucky.

strictly in compliance with the law, it is valid. An invalid sale does not convey any titular interest to the purchaser. However, the purchaser at an invalid sale, whether it be the state or another, has a lien on the property for the amount of taxes, penalties, interest and costs paid by him plus legal interest thereon. The purchaser may be the state, county and other taxing district. Such taxing districts become the purchaser only when no one else will bid the amount of taxes, penalty, interest, costs, and commissions for which the land is being sold. The theory has been frequently advanced that when the sale is valid, the purchaser, during the time allowed for redemption, has only a lien against the property for the amount paid by him at the time of sale plus taxes subsequently paid and interest thereon. Certain early cases seemed to support that view. However, in Southern Securities Corp. v. Commonwealth, the court clearly held that if the sale is regularly executed the original owner has left only the right to redeem the title. It would, therefore, seem that a titular interest was conveyed to the Commonwealth by virtue of the sale subject to defeasance. It is now specifically provided by statute that such sale conveys a defeasible title to the Commonwealth upon the filing of the sheriff’s report or certificate of sale.

This defeasible title may ripen into a fee simple title upon the fulfillment of certain statutory requirements by the purchaser and the expiration of the time allowed for redemption. It can only ripen into such title as was held by the original owner in whose name the land was assessed and sold. If he had a fee simple title, then the purchaser’s title will, of course, become a fee simple title.

Following the sale the sheriff must file with the county court clerk a certificate setting forth the time, place, and manner in which the sale was executed, the person to whom the land was sold, and the amount of the sale price. This certificate is a

---

5 Ky. Stat. (Carroll’s 1936), Sec. 4151-2.
7 Ky. Stat. (1938 Supplement), Sec. 4162.
8 See n. 2, supra
conveyance which serves as a deed if the purchaser is the Commonwealth, county, and other taxing districts.\textsuperscript{11} If the purchaser is one other than the Commonwealth and county, he is, upon taking possession of the property and on the expiration of the time allowed for redemption, entitled to a deed to the property to be issued by the sheriff.\textsuperscript{12} The sheriff's deed is prima facie valid.\textsuperscript{13} If the various taxing districts are the purchaser the Commissioner of Revenue, under authority of Section 4154 of the Kentucky Statutes, 1938 Supplement, may sell the land at public auction after possession is recovered. The Commissioner of Revenue may make a deed to property sold by him or his agent under authority of this section.

The statutes have since 1906 specified a time within which the purchaser could obtain possession of the property and a time within which the original owner could redeem it from the purchaser.\textsuperscript{14}

Briefly summarizing, property rights and interests most affected or created by the sale of land for taxes may be enumerated as follows: (1) The title of the original owner or his privities; (2) the interest of lien holders in the property which is the subject matter of the sale; (3) the defeasible title of the purchaser; (4) the right of the original owner or his privity to redeem; (5) the right of possession of the original owner or his privity; (6) the purchaser's lien in case of invalid sale; and (7) the right of the purchaser to possession of the land and perfection of the defeasible title in case the sale is valid.

The statutes of limitations applying to these different interests and rights and the procedure for enforcing them have been changed by law from time to time in such a manner as to create apparent inconsistencies which have led to much confusion and diversity of opinion.

From 1906 to 1932 a purchaser other than the taxing districts could obtain possession from the original owner in six months after giving notice required by section 4153, Kentucky Statutes, 1930, and the taxing districts as purchaser could obtain possession 30 days after giving such notice. If the purchaser,

\textsuperscript{11} Ibid.
\textsuperscript{12} Ky. Stat. (Carroll's 1936), Sec. 4159.
\textsuperscript{13} Ky. Stat. (Carroll's 1936), Sec. 4030.
\textsuperscript{14} Commonwealth v. Union Labor Temple Corp. et al., decided June 23, 1939.
whether the taxing districts or another, gave proper notice and took possession as soon as permissible by statute, the original owner could redeem the property at any time within two years from the date of sale.  

In cases where the taxing districts are the purchaser, it was held in *Brown, Exrel. v. Greene, Auditor*, 184 Ky. 300, 211 S. W. 860, that the original owner could redeem the land after the title has vested in the taxing districts, if he did so before the auditor or the revenue agent sells the land under authority of section 4154. However, the Court, without considering the *Brown* case, held directly contra to this in *Southern Securities Corp. v. Commonwealth*, supra, wherein it was stated in substance that if at the end of the two-year period the title had matured in the taxing districts, the original owner could not redeem it, and that the only way he could regain the title was to purchase it from the auditor in the manner provided in section 4154. This investigation has not discovered a latter decision reversing the *Southern Securities* case. However, it should be remembered that this opinion deals only with the two-year redemption period provided in section 4151-2 before any of its several amendments.

The purchaser could not prior to 1932 bring proceedings to recover possession after five years from the time the taxes for which the property was sold became in arrears.  

Section 4151-2 of the 1930 Statutes was amended in 1932 so as to guarantee possession to the owner of the equity of redemption for five years. The amendment further provided that "at any time after the expiration" of this five-year period the purchaser could recover possession by giving notice as required by law. This section was again amended in 1938 so as to reduce the period during which the owner was guaranteed possession from five years to three, but nothing new was added regarding the time for filing suits to recover possession.

These amendments of 1932 and 1938 did not fix on the owner of the equity of redemption a five- or three-year time limit for redeeming the land but simply fixed a time within which he could not be dispossessed.

---

23*Ky. Stat. (Carroll's 1930), Sec. 4151-2.*
24*Ky. Stat. (Carroll's 1930), Sec. 4021a-1.*
25See n. 14, supra.
26*Ky. Stat. (Carroll's 1936), Sec. 4151-2.*
28See n. 14, supra.
In fact, after these amendments such owner could and can redeem at any time before recovery of possession by any purchaser, and if the purchaser were the taxing districts, he could and can redeem any time before the Commissioner of Revenue offers the property for sale under authority of section 4154 following recovery of possession by the county attorney as provided in section 4153.\textsuperscript{11}

The court in construing these sections as they relate to actions for possession held in the case of Commonwealth v. Randolph, 277 Ky. 724, 127 S.W. (2d) 398 (1939), that that part of section 4021a-1 of the 1936 Statutes which provides:

"No action or other proceeding . . . for recovery of possession of any property which has been sold for taxes shall be maintained unless such action or proceeding is commenced within five years from the date on which the taxes become in arrears; . . . ."

was inconsistent with that part of section 4151-2 as amended in Kentucky Statutes, 1938 Supplement, which provided in substance that the purchaser could have possession at any time after the expiration of the five years allowed for redemption by giving proper notice, and had been impliedly repealed by the amendment. It further held that under section 2515 of the Statutes the county attorney had five years succeeding the expiration of the five-year period during which the original owner was given possession in which to file suit for possession. It is significant that the Court did not hold that the five-year limitation on suits for possession provided in section 4021a-1 applied beginning with the expiration of the said five-year period or any other time.

Section 2505 provides in substance that a suit to recover possession of land must be brought within fifteen years, whereas section 2515 only provides a five-year limitation on actions for which no other limitation is provided. In view of this fact one may well wonder how the Court reached the conclusion that 2515 fixed the limitation on actions to recover possession of land for taxes instead of section 2505. Be that as it may, it is clear that under this opinion the county attorney can recover possession for the Commonwealth, county, and other taxing districts at any time within five years after expiration of the time during which the original owner is by statute given possession, whereas there has been a common belief that the right to possession was barred five years after the sale. Although the case does not con-

\textsuperscript{11} Ky. Stat. (1938 Supplement).
sider the limitation on such suits by a purchaser other than the state and county, it seems reasonable to presume that the limitation on such actions is the same for both classes of purchasers except for a slight difference caused by variances in the time specified for notice incidental to possession from the two classes of purchasers. This case, therefore, seems to establish clearly the limitation for suits by purchasers to recover possession.

Almost all sheriffs' sales have in the past been invalid for one reason or another. This, therefore, lends prominence to the question of how and when the purchaser's lien under section 4036 of the Statutes may be enforced.

In the *Union Labor Temple* case, *supra*, the commonwealth proceeded under authority of section 4154-1 to have the sheriff's sales of land to the Commonwealth for taxes assessed for the years 1929, 1930, and 1931 against the Union Labor Temple Corporation declared invalid, and the lien under section 4036 established and foreclosed. The Corporation offered no defense, but two lien holders filed answer alleging that the lien was barred in five years after the sale. The Commonwealth demurred to the answer. The Jefferson Circuit Court overruled the demurrer, holding that the lien was barred under section 4021a-1 five years from the date of the sale. The Commonwealth declined to plead further and appealed.

The significant provisions of section 4154-1 and 4036 as amended from time to time are set forth in the following excerpt from the *Union Labor Temple* case, *supra*:

"Section 4036, Kentucky Statutes, originally enacted in 1906, provided that whenever any person should purchase property sold for delinquent taxes and the sale was set aside, the purchaser should have a lien on the property for the amount of taxes and costs paid by him with interest, which could be recovered from the owner of the property. This section was amended by act of 1934 by adding thereto the following language:

"'Such lien may be enforced against such property by action as are other liens, at any time after the invalid sale but prior to the expiration of the lien by reason of limitation, whether the purchaser be the Commonwealth of Kentucky and other taxing districts or any other person, firm or Corporation.'"

"The 1938 Special Session of the General Assembly enacted House Bill A-42, section 6 of which is now section 4154-1, Kentucky Statutes, which provided in substance that when the Commonwealth had reason to believe any sale made by the sheriff or collector under section 4149 of the Statutes was, for any reason, invalid, such invalidity might be alleged in a proceeding to establish the lien provided for in section

\[\text{See n. 14, *supra*.}\]
4036, Kentucky Statutes, above mentioned. The concluding paragraph of this section 4154-1, Kentucky Statutes, is as follows:

"'No proceeding should be instituted on behalf of the Commonwealth to establish the lien provided for in section 4036, Carroll's Kentucky Statutes, 1936 Edition, until after the expiration of the time which must expire before proceedings to recover possession can be instituted.'"

The trial court, considering the amendment of 1934 to section 4036 in connection with section 4021a-1, thought that the legislative purpose of this amendment was to bar the lien under section 4036 within five years after the invalid sale, and that the purpose of the Legislature in enacting section 4154-1 was to remove such limitation.23

The Court of Appeals, after discussing at length the legislative intent behind these amendments, reversed the decision of the trial court, holding that the Legislature had not seen fit to provide any limitation as to the time for invalidating a tax sale, and that the purchaser's lien provided in section 4036 did not accrue until there was a judicial determination of invalidity. However, it did hold that the lien would have to be foreclosed within five years from the date of the judgment of invalidity or be barred by section 2515.

In reaching this conclusion the Court made, among others, the following significant observations: (1) That the lien under 4036 was not a tax lien, but a purchaser's lien for costs, commission, penalty, interest, as well as taxes which equity would have given the purchaser even in the absence of statutory authority; (2) that section 4021a-1 could only apply to tax liens and therefore did not apply to purchaser's liens. Incidentally, section 4021a-1 was amended in 1938 so as to provide specifically that it apply only to the tax lien under section 4021, Kentucky Statutes.24

Since the lien under section 4036 is not a tax lien, this opinion does no violence to previous opinions to the effect that a tax lien is barred five years after the taxes become in arrears. However, it is definitely a rebuff to the theory that if taxes were paid for five years back there could be no enforceable lien of any sort against the property which would include taxes delinquent more than five years. Clearly under this opinion there is an exception to this view in the case where land has been sold for

21 See n. 14, supra.


taxes, as the Commonwealth (and presumably a purchaser other than the Commonwealth) will be entitled to be made whole on the investment which includes taxes regardless of the amount of time that may elapse before the sale is judiciously declared invalid.

This opinion appears to obtain the right result because there should be no duty on the purchaser to invalidate his own claim of title and right to possession. The Legislature only gave such right to the Commonwealth as a practical means of clearing thousands of invalid sales by the sheriff of land to which the taxing districts had no real desire to take the title or possession. This eliminated the unnecessary and awkward procedure of having to file thousands of suits to recover possession which were certain to be defeated before filing a suit to foreclose the lien under section 4036. Under the new procedure only one action is necessary.

However, it should be observed that a purchaser other than the Commonwealth has not been given the statutory authority to attack his own claim of title or right of possession. It is difficult to assign a reason for requiring him so to do, as he is in all probability more interested in perfecting his title than establishing the lien; whereas, the primary concern of the Commonwealth is to collect the taxes due on the property and thereby require it to bear its just share of the burdens of the government. The Commonwealth and its taxing subdivisions should not be interested in taking the title away from the taxpayer if it can be avoided.

The manner in which the purchaser, especially the Commonwealth, may in the future be expected to enforce these rights will now be considered.

The procedure required of the sheriff in making the sale has been considerably simplified by the 1938 Act. For example, he is no longer required to distrain and sell personal property before selling real estate. He may sell either or both without making a preference. The manner of advertising the sale has also been improved. The Department of Revenue has assisted sheriffs in the drafting of handbills and newspaper advertising of the sale, and has prepared forms to be used by the sheriff in making the certificate required by sections 4158 and 4162 of the

See n. 14, supra.


Ibid.
1938 Supplement. Furthermore, the law now requires a registered letter, instead of a post card as formerly required, to be mailed the taxpayer if his address is known. The present procedure is to attach the return receipt for the registered letter and the notice of the sale to the sheriff's certificate so that they will be recorded by the clerk along with the certificate. These will materially aid the county attorney in proving the validity of the sale.

In view of these facts it may reasonably be expected that most sheriff's sales will be valid in the future. This being true, the county attorney can in the future institute proceedings to take possession of the land as provided in section 4153 with reasonable assurance that he will be able to maintain the action. Of course, if he has reason to believe that he cannot successfully maintain such action, he may elect to have the sale declared invalid and the lien under section 4036 established and foreclosed. If he does elect to file a suit to recover possession and is defeated by the original owner's plea that the sheriff's sale was invalid, on the basis of such decision he would be entitled to foreclose the lien resulting under section 4036. If, on the other hand, the original owner does not appear and allege invalidity of the sheriff's sale, it seems that the Commonwealth would be entitled to a default judgment and that the original owner would be barred from thereafter attacking the Commonwealth's right to possession or the title of any purchaser later buying the property from the Commonwealth following a sale thereof by the Commissioner of Revenue under authority of section 4154. It would also seem that if all parties having an interest in the property are made defendants in such suits to recover possession, they would likewise be barred from later attacking the Commonwealth's right to possession if they permit default judgment by failure to appear.

A purchaser other than the Commonwealth should stand on "all fours" with the Commonwealth in all these respects except that he does not have the statutory authority to attack the validity of the sale at which he is the purchaser.

If a purchaser other than the taxing districts does not institute proceedings to recover possession of the land within the time allowed, there is probably no method whereby he can initiate proceedings to foreclose his lien under section 4036
unless equity will permit him so to do. Equity probably would not extend such a remedy in view of the fact that he had a remedy at law (possession suit) which he did not timely pursue. As already pointed out, his natural interest in this respect is materially different to that of the Commonwealth and county when they are the purchaser. However, there is no reason to believe that he could not assert this lien if the original owner of the property should in any way on his (the original owner's) own initiative have the sale set aside, for in that instance the lien would accrue and the purchaser would have five years from the date of the judgment of invalidity in which to foreclose it. Therefore, it seems likely that if a purchaser other than the taxing districts is not vigilant he may under the present law lose his entire investment in eight years after the date of the sale, unless the original owner makes the mistake of having the sale declared invalid after that time.

The necessity for limitations on actions to invalidate sheriff's sales so as to enable abstractors of title to have a definite stopping place in checking for delinquent taxes may be of enough public significance to warrant legislation to that effect. This matter will not be considered herein further than to point out that the mere fact that a purchaser may elect to attack his own claim of title or right of possession should not impose upon him any duty so to do and any legislation should consider this factor. The law already imposes on the purchaser the duty of perfecting his defeasible title within a certain time; otherwise he is barred from the privilege.

Early cases held that the original owner of the property could attack the validity of the sale as an incident to recovery of possession from the purchaser any time before such owner's right to recover possession was barred by adverse possession under section 2505, Kentucky Statutes. Also, numerous cases held that if a sheriff's deed to the purchaser was invalid; there was no limitation as to the time within which it could be attacked by the owner. In Miller v. Powers, 184 Ky. 417, 212 S.W. 453, appears the following statement:

"(1) A deed void ab initio confers no title whatever upon the grantee and in a suit where one relies upon it, may be used for the

28 See n. 14, supra.
purpose only of showing extent of possession, if adverse possession is relied upon.

"A tax deed does not confer title on the grantee if the proceedings by the sheriff, clerk of the county court, and purchaser which lead up to the deed were irregular, and essential steps were omitted. Such deed may be attacked at any time because it is void. This may be done by the owner affirmatively pleading the essential steps omitted, and if such allegation is sustained by the evidence, judgment should go awarding the land to the original owner subject to a lien of the grantee in the tax deed for the amount of the taxes, interest, penalties and cost, paid by him."

The opinion in the Miller case, supra, was rendered in May, 1919.

In 1930, section 2512a of Carroll's Kentucky Statutes, 1936 Edition, was enacted. That section provided in part as follows:

"When the owner of any real property shall fail to pay the State and County taxes due thereon for a period of five consecutive years, and said property has been sold for taxes, after the expiration of said period by the Sheriff or Auditor of Public Accounts and deeds executed to the purchaser at any such tax sale, no action in law or in equity shall be commenced by said owner, his heirs or assigns to set aside any such tax deed or to recover the title or possession of said property after five years, from the time such deed is executed, delivered and lodged for record in the County Clerk's office, in the County where said property is situated and this limitation shall apply to all such tax deeds now on record, . . . ."

In view of the quotation from the Miller case, supra, it seems that that part of section 2512a which prohibits an action to set aside a void tax deed after five years from the time it was executed and recorded can be of no avail. But if the purchaser has proceeded to take possession according to statute under claim of title and obtained a deed from the sheriff, it may be that if he also continues in possession for five years thereafter he will by virtue of this section be entitled to remain in possession forever. On the other hand, it is conceivable that this section may fail in its entirety. This investigation has failed to discover a case in which this section has been construed. Whether this means that it has been generally considered of no avail is conjectural.

It is probably appropriate in conclusion to point out that since the enactment of House Bill A-42 of the First Extraordinary Session of the General Assembly of 193820 and the more careful administration of sheriff's sales by the Department of Revenue, statistics in that Department indicate that there has been approximately a 17 per cent reduction in the number of

---

20 Ky. Stat. (1938 Supplement), Secs. 4073, 4074, 4130, 4149, et seq.
sales of land for delinquent taxes during the year 1939 as compared to 1938, and that people are now paying taxes on property which has not been bearing its share of the burden of taxation. Investigation has also revealed that an extremely high percentage of tax delinquencies as shown by the sheriff's sales are fictitious. For example, a person may sell his land and the county tax commissioner may thereafter list it in the name of both the vendor and the vendee. The vendee may pay the taxes and the sheriff may sell the same parcel of land in the name of the vendor so that in effect the tax bill against the vendor is nothing more than a duplication of the tax bill which the vendee has paid.

A similar situation frequently arises when the heirs of land list it in their names and the county tax commissioner also assesses it in the name of the decedent.

It should be observed that article 3 of chapter 22 of the Acts of the General Assembly of 1906, which provided for forfeiture of land for failure to list it for taxes or pay the taxes thereon for five consecutive years, was repealed by House Bill A-42, First Extraordinary Session of the General Assembly, in 1938. This bill also provides that once land has been sold for taxes to the Commonwealth, it cannot be later assessed for taxes until after it has been redeemed.