

Taxation — Property Assessed to the Owner of the Equity of Redemption—Personal Liability of Mortgagor.

The fact that property was assessed in the name of one not the true owner would not invalidate the assessment.

A tax upon property creates a personal liability against the owner of the property.

Upon the facts appearing in the opinion, the purchaser of property upon foreclosure sale is liable for the payment of the taxes thereon.

W. J. Shannon, Esq.,
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My dear Mr. Shannon:

You have submitted to this office certain questions based upon the following statement of facts:

It appears that the Cut Bank Milling Company was the owner of lots 1 and 4 in Cut Bank, Montana, and that there was situated on these lots a flour mill of the valuation of \$26,000. The Cascade Bank of Great Falls held a mortgage upon this property, and in October, 1919, foreclosed their mortgage and received a Sheriff's certificate of sale, upon which later a deed to the property was issued by the Sheriff.

During the year 1920 the property was assessed to the Milling Company, but the taxes for that year were not paid, and subsequently the county sold the property for delinquent taxes. Subsequently to the foreclosure sale, the building was destroyed by fire and the lots, with the property remaining thereon, were not of sufficient value to pay the tax.

Your questions based upon the foregoing facts are as follows:

1. Is there a personal obligation resting upon the Cascade Bank to pay the taxes upon this property for the years 1920 and 1921, the property having been assessed to the Cut Bank Milling Company, the owner of the equity of redemption?

2. In case there be a personal liability on the part of the Cascade Bank as the owner of this property during the equity of redemption, does the fact that a sale has been had and the property bid in by the purchaser estop the county from proceeding against the bank personally for the amount due?

3. May a personal action be instituted against the Cascade Bank, under the laws of this State, to recover delinquent taxes for the years 1920 and 1921? And, if so, what section of the statute designates such procedure?

The Cascade Bank having foreclosed the mortgage of the Cut Bank Milling Company in October, 1919, the equitable title passed to them and the bare legal title remained in the Cut Bank Milling Company.

(Sec. 6836, Rev. Codes of 1907.) The Milling Company had the right to redeem the property within one year from the date of the sale under the provisions of this section. But the right to redeem is a mere personal privilege and not a property right, subject to assessment or to levy, attachment or execution.

Hamilton v. Hamilton, 51 Mont. 509;

Banking Corp. of Montana v. Hein, 52 Mont. 238.

The fact that the property was assessed to the Milling Company did not invalidate the assessment, nor would a transfer of the property defeat the lien of the taxes. In such case, the purchaser of the property would become liable therefor.

Askew v. Scottish Amer. Mtg. Co., 114 Ga. 300, 40 S. E. 256;

City Safe Deposit Co. v. Omaha, 76 Neb. 446, 21 L. R. A. (N. S.) 72;

Cobban v. Hinds, 23 Mont. 338;

Cullen v. Western Mtg. & Warranty Title Co., 47 Mont. 513.

Section 2672, Revised Codes of 1907, provides as follows:

"When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof, affects the sale, or renders it void or voidable."

Section 2600, Revised Codes of 1907, provides:

"Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof."

It has been held that no action is necessary in order to collect a valid tax under a similar provision making the tax a judgment.

City of San Francisco v. Jones, 20 Fed. 189;

City of San Diego v. Higgins, 46 Pac. 925.

In the case of Board of County Commissioners v. Story, 26 Mont. 517, 523, the court said:

"The power to sue for delinquent taxes existed at the adoption of the constitution, authority therefor being found in Section 9 of the Act of the Sixteenth legislative assembly of the territory, approved March 14, 1889, p. 225."

This section referred to was brought forward into the Codes of 1895 and is now Section 2673 of the Revised Codes of 1907, and reads as follows:

"If any person removes from one county to another after being assessed on personal property, the treasurer of the county in which he was assessed may sue for and collect the same in the name of the county where the assessment was made."

This provision, however, appears to be applicable only in case of personal property.

Section 2738 of the Revised Codes of 1907 provides:

"The state auditor may, at any time after a delinquent list has been delivered to a county treasurer, direct such treasurer not to proceed in the collection of any tax on said list, amounting to three hundred dollars, further than to offer for sale but once any property upon which such tax is a lien. Upon such direction, the county treasurer, after offering the property for sale once, and there being no purchaser in good faith, must make out and deliver to the state auditor a certified copy of the entries upon the delinquent list relative to such tax; and the treasurer or state auditor, in case the treasurer refuses or neglects for fifteen days after being directed to bring suit for collection by the state auditor, may proceed by civil action in the proper court, and in the name of the state of Montana, to collect such tax and costs."

In the case of *People v. Ballerino*, 34 Pac. 330, the court held that an action under a provision of the California Code, from which Section 2738, *supra*, apparently was adopted with slight modification, could not be maintained when it failed to allege the property had been offered for sale at least once prior to the commencement of the action.

It would, therefore, seem that in an ordinary case, you might treat the tax as a judgment, or bring an action under Sections 2738 and 2739 of the Revised Codes of 1907. However, as the property was not assessed to the Cascade Bank, it would seem necessary to bring the action under Sections 2738 and 2739 in order to show that the bank was, in fact, the real owner, and therefore liable for the taxes, and to show the amount still owing after crediting the value of the lots.

Property purchased by the county must be assessed the following year in the same manner as if it had not been so purchased. (Sec. 2678, Rev. Codes of 1907). The same should not, however, be exposed for sale until the expiration of the time for redemption. (Sec. 2678, Rev. Codes of 1907).

While there are decisions to the contrary, I believe the weight of authority supports the view that a tax upon property creates a personal liability against the owner of the property. In the case of *People v. Seymour*, 16 Cal. 332, the court had this question under consideration, where a tax upon real and personal property was involved. The statute of California, like ours provides that:

"Every tax levied under the provisions or authority of this act, is made a judgment against the person, and a lien against the property assessed."

The court, in holding that this imposed a personal obligation upon the part of the property owner, said:

"These provisions seem to be in accordance with the constitutional injunctions, which were designed to secure uniformity and equality in taxation. It is thus seen, that the tax upon property is as well a personal charge as a charge upon the property. The statute, it is true, requires an assessment but it may be well doubted if this be the foundation of the duty, or anything more than a means of enforcing or collecting the tax. This, or some other proceeding may be necessary to fix the amount of the tax; but the property having been declared subject to the tax, and the owners liable to pay it, it is not seen why the Legislature may not prescribe the mode of correcting an informal assessment, as well as prescribe the form of it in the first instance. The exercise of the taxing power is a sovereign attribute. The mode of ascertainment and collection of the tax is a matter of legislative discretion. What the Legislature may do, as a general thing, it may do in its own way, and at its own time. There is a general power to tax; there is no restriction of mode, nor is there any limitation of time by the organic law. Unless restrained by the Constitution, the Legislature have plenary power over the subject. Upon what principle, then, can it be contended that the Legislature cannot as well make a man pay his taxes, when, from accident or oversight, or his own remissness, the time for payment has passed, or the mere mode of charging him has not been followed, as they could in the first instance direct the tax? Why should he be discharged, or the power of the Government over him or his property be remitted from accident or mistake? Justice does not require his release, and we see nothing in technical law which authorizes it."

The same court, in the case of *City of Oakland v. Whipple*, 39 Cal. 112, said:

"If a tax has been duly assessed, the owner of the property becomes personally liable for it, and the remedy is not confined to a seizure and sale of it, nor to the enforcement of a lien upon it by action."

The same conclusion was reached in the case of *Succession of Mercier v. City of New Orleans*, 42 La. Ann. 1135, 11 L. R. A. 817.

Our Supreme Court has expressed a doubt as to whether the taxation of the property in the name of of someone other than the true owner of the property will impose a personal liability upon the true owner.

In the case of *Cobban v. Hinds*, 23 Mont. 338, 349, the court said

"The name of the owner of the real property is, for all purposes of taxation except perhaps the imposition of a personal liability, comparatively unimportant."

In the case of *Haight v. Mayor, etc. of the City of New York*, 1 N. E. 883, the court held that a tax upon land was valid though assessed in the name of someone not the true owner, but held that the tax did not impose a personal liability upon the true owner. This case, however, is based upon a statute peculiar to the State of New York, which provides as follows:

"No tax or assessment shall be void in consequence of the name of the rightful owner or owners of any real estate in said city not being inserted in the assessment rolls or lists. But in such case no tax shall be collected except from the real estate so assessed."

In the face of such a statute, no other conclusion could possibly have been reached.

While I am not wholly free from doubt upon the proposition, I am of the opinion that there is a direct obligation on the Cascade Bank to pay the assessments, and that the purchase of the property by the county does not prevent a recovery of the balance due for taxes levied for subsequent years, and that an action may be maintained against the bank to recover the taxes for the year 1921 and the balance, if any, due on the 1920 taxes.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.