

Opinion No. 229**Sheriff's Sale—Real Property—Title
—Taxation—County Assessors.**

HELD: Title to real property passes to the purchaser upon sheriff's sale and hence such property should thereafter be assessed in the name of the purchaser.

June 2, 1933.

You have submitted the question whether real property sold at sheriff's sale on August 20, 1932, should be assessed for the year 1933 in the name of the purchaser holding the sheriff's certificate of sale, or whether it should be assessed in the name of the judgment debtor.

You have submitted a copy of your opinion given to your county assessor in which you hold that the sheriff's sale did not pass title to the purchaser but merely gave him a lien upon the property; that the title will stand in the name of the judgment debtor, and that therefore the property should be assessed in the name of said judgment debtor unless under the provisions of Chapter 98, Laws of 1931, it is exempt.

I am unable to agree with your opinion. Your premise that the title to the real property did not pass by the sheriff's sale, is not true and therefore your conclusion is erroneous. Section 9441, R. C. M. 1921, provides: "Upon a sale of real property, the purchaser is substituted to and acquires the right, title, interest, and claim of the judgment debtor thereto * * *."

There have been a number of decisions of our Supreme Court interpreting this section. In *Citizens National Bank v. Western L. & B. Co.*, 64 Mont. 40, 208 Pac. 893, the late Justice Holloway cited a number of cases bearing on this question, and on page 46 said: "Under section 9441, Revised Codes of 1921, the purchaser at an execution or foreclosure sale is substituted to and acquires the right, title and interest of the judgment debtor in the property sold (*Hamilton v. Hamilton*, 51 Mont. 509, 154 Pac. 717; *Banking Corporation v. Hein*, 52 Mont. 238, 156 Pac. 1085; *Power Mercantile Co. v. Moore Mercantile Co.*, 55 Mont. 401, 177 Pac. 406), leaving in the judgment debtor only the bare right to redeem (*McQueeney v. Toomey*, 36 Mont. 282, 122 Am. St. Rep. 358, 13 Ann. Cas. 316, 92 Pac. 561), and the certificate of sale issued by the sheriff is a conveyance within the meaning of the Recording Act (*Duff v. Randall*, 116 Cal. 226, 58 Am. St. Rep. 158, 48 Pac. 66). These principles are now settled beyond controversy."

In *Banking Corporation of Montana v. Hein*, 52 Mont. 238, 156 Pac. 1085, the Supreme Court had occasion to distinguish between the equity of redemption and the statutory right of redemption, and on page 241, the court said: "On the other hand, the right of redemption arises only upon a sale, and exists for the period fixed by law. It is not property in any sense of the term, but a bare personal privilege."

There have been a number of later decisions in this state. See *Willard et al. v. Campbell*, 91 Mont. 493, page 500 of the Montana Report; *Lepper v. Home Ranch Co., et al.*, 90 Mont. 558, 4 Pac. (2d) 722, and the cases cited by the court on page 565; *Swanberg v. Schaefer, et al.*, 88 Mont. 16, 289 Pac. 561, and other Montana cases; see also 42 C. J. 352, Section 2080, and 61 C. J. 212.

Since the purchaser at sheriff's sale acquired the title (being a defeasible title subject to the right of redemption), it follows that the real property purchased by him should be assessed in his name. It is therefore unnecessary to consider the question whether the property would be exempt from taxation if title remained in the judgment debtor.