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Real Property--Rights of the Remainderman After Sale for Nonpayment of Life Tenant's Taxes

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It is submitted that, even though the court in the principal case may have reached the most just and equitable decision, W. VA. CONST. art. XI, § 10, is applicable to the facts of the case and should have been dealt with since the legislature has obviously left open the way for the Public Service Commission and the supreme court to apply a subjective test in determining when service may be required or discontinued by a railroad.

J. E. J.

REAL PROPERTY—RIGHTS OF REMAINDERMEN AFTER SALE FOR NONPAYMENT OF LIFE TENANT'S TAXES.—*W* devised real estate to *A* for life, remainder to *P*, the heirs of *A*'s body. *A* was named administrator, CTA, and registered the land for tax purposes as "Estate of *W*" for the years 1929 through 1936. The land was sold to *C* in 1936 under a tax sale, and, by successive conveyances, *D* obtained title. *P*, the remaindermen, brought this suit for partition, and alleged that any sale during the continuance of the life estate was ineffective as to their interests, that the duty to pay the taxes was on the life tenant, and that the interests of the remaindermen were not affected by reason of the failure of the life tenant to pay the taxes. *Held*, where the decedent's will devised land to certain persons for life with a remainder to the respective heirs of their bodies, it was the duty of the life tenants to have the premises listed and assessed in their names and it was also the duty of the life tenants to pay the taxes assessed and levied against the premises, and upon their failure to do so, only the interests of the life tenants could be levied upon and sold to satisfy the delinquent taxes. *Taylor v. Jennings*, 106 S.E.2d 391 (S.C. 1958).

To the West Virginia lawyer, this case is most interesting when compared with the law prevailing in this state. Considering each of the many problems presented by this case, the first is whether or not the land was properly registered. In West Virginia, the registration statute provides that ". . . when the owner has devised the lands or a freehold estate therein absolutely, such land shall be charged to the devisee. . . ." W. VA. CODE ch. 11, art. 4, § 12 (Michie 1955).

It is the duty of the owner of the land to have the premises charged to himself and pay taxes thereon. Failure of the owner to register the land and pay the taxes renders the land liable to be

returned delinquent and sold. *Backus v. Abbot*, 136 W. Va. 891, 69 S.E.2d 48 (1952); *Bailey v. McClaugherty*, 48 W. Va. 546, 37 S.E. 701 (1900).

The last cases above cited bring us to the second problem to be considered, namely, for purposes of taxation, what person or persons are deemed the owners of land? In West Virginia for purposes of taxation, the person who, by himself or his tenants, has the freehold in his possession, whether in fee or for life, is deemed the owner. W. VA. CODE ch. 11, art. 3, § 8 (Michie 1955). Under this provision, the life tenant is the owner and has the duty established by *Bailey v. McClaugherty*, *supra*.

The final and most important problem presented by this case concerns the nature of the estate acquired by the purchaser at a tax sale for nonpayment of taxes by a life tenant. It should first be established that the state has the authority to sell land for nonpayment of taxes. In *Building & Loan Ass'n v. Sohn*, 54 W. Va. 101, 46 S.E. 222 (1903), the court held that the power to sell real estate for nonpayment of taxes must be expressly conferred by law. The power to sell real estate for taxes assessed thereon in West Virginia is set forth by W. VA. CODE ch. 11A, art. 2, § 10 (Michie 1955), thus in this state land can be sold for nonpayment of taxes.

There are no cases in West Virginia under the present statutory provision determining whether or not the remainder can be sold at the tax sale. However, in *Henry v. Musgrave*, 113 W. Va. 448, 168 S.E. 474 (1933), the court decided that the statute applicable at that time did not recognize any of the different estates which may attach to real property, thus the entire fee is liable to be sold at the tax sale. That decision was a construction of the words "... lien on all real estate for the taxes assessed thereon . . ." under W. VA. CODE ch. 31, § 1 (Barnes 1923). The wording of the present statutory provision is "... lien on all real property for the taxes assessed thereon. . . ." W. VA. CODE ch. 11A, art. 1, § 2 (Michie 1955). It may be noted that the only difference in the wording of the statutes is the present use of the words "real property" replacing the wording "real estate", and these words are used interchangeably and mean the same thing. *Munson v. Wade*, 174 Ark. 880, 298 S.W. 25 (1927). No stretch of logic is required to

reach the conclusion that in West Virginia the entire fee is liable to sale for nonpayment of taxes by the life tenant.

Since the past and present statutory provisions, under which a lien attaches to real property for the taxes assessed thereon, are similar in wording and have the same effect, several cases construing the earlier provision can be cited to support the conclusion that the entire fee will be sold for nonpayment of taxes. In *State v. Mathews*, 68 W. Va. 89, 69 S.E. 644 (1910), the court held that the failure of the holder of the freehold estate to pay the taxes, or to keep the land on the assessor's books, will render the entire estate in the land liable to be sold, or to become forfeited. In the same case, the court announced that the full value of the land in fee is assessed for taxation against such freeholder, and the payment of taxes by him protects from sale and forfeiture the estate in reversion or in remainder. *Taylor v. Taylor*, 76 W. Va. 469, 85 S.E. 652 (1915), is in accord with the proposition that payment by the life tenant enures to the benefit of the remainderman.

In conclusion, from a review of the authority, it would appear that a different and, it is submitted, better result would be reached in West Virginia. The state is empowered with a more efficient method of enforcement of taxation, the responsibility of registration is fixed and the buyer at the tax sale is protected.

J. F. W., Jr.

TORTS—WRONGFUL DEATH—LIQUOR VENDOR NOT LIABLE THROUGH SALE OF “NONINTOXICATING” BEER FOR TORTS OF INTOXICATED VENDEE.—P’s testator was killed in an automobile accident caused by the negligent driving of V, who allegedly had become intoxicated as a result of drinking beer furnished by defendant tavern operator. By statute, the beer, being of four per cent alcoholic content, was a “nonintoxicating” beverage. P’s action at law was instituted under the Iowa Dram Shop Act and on the basis of the common law liability of tavern operators. *Held*, that the Dram Shop Act is inapplicable to vendors of beer of less than four per cent alcoholic content by weight, and the common law does not regard an intoxicated tavern customer’s torts as the natural consequence of the tavern operator’s sale of liquor. *Cowman v. Hansen*, 92 N.W.2d 682 (Iowa 1958).