June 1952

Taxation--Liability of Purchaser at Tax Sale for Assessments on Property

S. F. B.
West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Property Law and Real Estate Commons, and the Tax Law Commons

Recommended Citation

This Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.
Taxation—Liability of Purchaser at Tax Sale for Assessments on Property.—Lots in Beckley were sold to the State for taxes due to the State. Beckley then levied paving assessments against the lots, which were invalid because they were levied in the name of the former owners. Later the lots were sold to the defendant, under a suit, brought for that purpose, by the deputy commissioner of forfeited and delinquent lands. Beckley then cancelled the original assessment and reassessed the property in the name of the defendant, the present owner. Held, on certification by the circuit court of Raleigh county, that the power conferred on Beckley to reassess the lots was not extinguished by the sale, to the defendant, made in the suits brought by the deputy commissioner of forfeited and delinquent lands. City of Beckley v. Hatcher, 67 S.E.2d 20 (W. Va. 1951) (3-2 decision).

By taking only a cursory view of the question here presented it may be thought that the decision of the principal case is wrong. W. VA. CODE c. 11A, art. 3, § 8 and c. 11A, art. 4, § 33 (Michie, 1949) provide that where lots are sold to the State for taxes due to the State, and the deputy commissioner of forfeited and delinquent lands of the county institutes suits to sell the lots for the benefit of the school fund, and the deputy commissioner, in accordance with the decree of sale sells the lots, and such sales are confirmed, the privilege, of any person entitled to redeem, of redeeming the lots is ended upon confirmation of the sales. An early construction of these provisions decided that if, at the time of such sale, the land sold was under a mortgage or deed of trust, or if there was any other lien or incumbrance thereon, and such mortgagee, trustee, cestui que trust, lienor or incumbrancer should fail to redeem the same within the time prescribed by law, then all the right, title, and interest of such mortgagee, trustee, cestui que trust, lienor or incumbrancer, should pass to and be vested in the purchaser at such tax sale, and his title to the premises should in no way be affected or impaired by such mortgage, deed of trust, lien or incumbrance. Summers v. Kanawha County, 26 W. Va. 159 (1885). So it would seem that a paving assessment, which is a lien upon the property, would be destroyed by a tax sale made in a suit brought for that purpose by the deputy commissioner of forfeited and delinquent lands.

The reassessment statute, W. VA. CODE c. 8, art. 8, § 13 (Michie, 1949), provides that where there is an invalid paving assessment
there may be a reassessment, but such reassessment is allowed only if it "would have been lawful under proper proceedings at the time said [paving] improvement was completed." From this, Judge Given, dissenting in the principal case, argued forcibly that "any assessment against the defendant would not have been 'lawful under proper proceedings at the time said improvement was completed,' * * *, for the plain reason that a valid assessment can not be made against a person who owns no interest in the property." At 27.

By beginning with this negative approach to the majority opinion in the principal case we are now in a better position to see the correctness of the holding.

In the first place, Beckley was not a "person" within the meaning of the statutory provisions requiring redemption before confirmation. Charleston v. Southeastern Const. Co., 64 S.E.2d 676 (W. Va. 1950); W. Va. Code c. 2, art. 2, § 10 (Michie, 1949).

Special assessments are specific charges imposed by law on land to defray the expenses in whole or in part of a local improvement made by a municipal corporation, on the theory that the owner of the property has received special benefits from the improvement in excess of the benefits accruing to the general public. Charlotte v. Kavanaugh, 221 N.C. 259, 20 S.E.2d 97 1942).

The power to impose reassessments has been upheld on the theory that the value of the property reassessed has been increased by the improvement and that those benefited are under an economic and moral obligation to contribute their just proportion to the expense incurred in making the improvement and should not be relieved of this obligation by reason of the errors or neglect of the city authorities. Cowart v. Union Paving Co., 216 Cal. 375, 14 P.2d 764 (1932).

The value of the property here in controversy has been enhanced, to the benefit of the owner when the improvement was made, which benefit was passed on to the defendant, by the tax sale, who still enjoys it. Both the old and new owners knew the improvements were made, and that the value of the property was thereby enhanced, and also knew or should have known that the work was done under the sanction of law and that any irregularity in the original assessment could and would be remedied by subsequent corrective proceedings specifically authorized by law for just such cases. Booth v. Uvalde Rock Asphalt Co., 296 S.W. 345
It is for the one purchasing lands after a public improvement has been completed to inquire whether it has been paid for, and the same rules as to the enforcement of the assessment applicable to the former owner are applicable to such purchaser. A man cannot get rid of his liability to an assessment by buying without notice. He is charged with notice. City of Seattle v. Kellher, 195 U.S. 351 (1904); Booth v. Uvalde Rock Asphalt Co., supra.

Now taking into consideration that the defendant was charged with knowledge of the existence of the improvement and the unpaid claim of Beckley, and that the lots he purchased had actually derived special benefit from the paving of the streets on which they were situated, no injustice is done him. The defendant is only being required to pay for the improvements which presumably benefited and added value to the lots he purchased.

S. F. B.

**Taxation of Interstate Commerce.**—P, a foreign corporation engaged in interstate commerce, sought a declaratory judgment against the imposition of an annual privilege tax under W. Va. Code c. 11, art. 12A, § 3 (Michie, 1949), on the gross income of its transportation business. The tax was apportioned on a basis determined by a ton-mile ratio and was to take the place of all other taxes. The lower court sustained a demurrer to the petition and certified questions to the appellate court. Held, that the statute is valid in so far as it applies to transportation between points wholly within the state but that is contravenes the commerce clause as applied to receipts from traffic having either or both extrastate origin or designation. American Barge Lines v. Koontz, 68 S.E. 2d 56 (W. Va. 1951).

The decision appears to conform to the current position of the United States Supreme Court, but it again raises the vexed question of the relative importance of substance or form in connection with state taxation of interstate commerce. Unconstitutionality now rests on the choice of words used to describe the tax. Taxes on gross receipts are upheld when they substitute for property taxes. Most cases upholding such taxes have dealt with taxes on interstate transportation where the activity taxed can be readily apportioned so as to avoid the danger of multiple taxation. See Powell, More Ado about Gross Receipt Taxes, 60 HARV. L. REV.