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Limitations and Defective Tax Deeds

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plus accrued taxes, penalties and interest at specified rates,⁵¹ which purchase price must be paid to the holder of the Certificate of Purchase (i.e. either to the county or to the county's assignee).

If, at the end of four years, the county has not assigned its Certificate of Purchase, it is the duty of the County Treasurer to make, execute and deliver to the county a tax deed for the property so sold, and it is the duty of the County Clerk to notify the original owner and any known mortgagee, by registered mail to the last known address, at least sixty days prior to the date of delivery of the Treasurer's Tax Deed.⁹¹

This section is ambiguous in that it provides that the County Clerk shall give notice by registered mail prior to the expiration of the four year period, but there is no provision by which the County Treasurer is required to notify the County Clerk of the impending expiration of the four year period. Effective liaison between the two offices should, however, obviate any difficulty.

If, at the end of the four-year period the county *has* assigned its Certificate of Purchase in accordance with the procedure in Sec. 32-1703, Wyo. Comp. Stat. 1945, then the holder of the Certificate of Purchase proceeds in accordance with Sec. 32-1704, Wyo. Comp. Stat. 1945, which procedure is identical with that outlined in Sec. 32-1622, Wyo. Comp. Stat. 1945, and discussed above.

ERNEST L. NEWTON.

LIMITATIONS AND DEFECTIVE TAX DEEDS

Tax deeds are of statutory development and therefore to be valid must conform to the particular statute which directs their execution. Numerous cases construing tax deeds have arisen in Wyoming and only in one instance has the Supreme Court held a tax deed to be valid.¹ Therefore, a purchaser at a tax sale should be greatly concerned with what rights he has derived from the purchase and his later tax deed, or title, and just how easily these rights may be upset by the former owner. A right of redemption exists in the former owner for a four year period after his land has been sold for the failure to pay taxes. If there is no application for redemption during this four year period then the tax sale purchaser is entitled to a tax deed from the county treasurer.² This article is concerned with the rights of the holder of a tax deed which is invalid, for if the tax deed is the rare one which is valid then no problem arises.

When the holder of the deed looks to the statutes for assistance he finds, "no action for the recovery of real property sold for the non-payment of taxes, shall be maintained unless the same be brought within six years after the date of sale for taxes aforesaid."³ The purchaser has waited at least four years to acquire his tax deed and a natural assumption, to one not acquainted with the problem, would be that only two more years are required until any action by the former owner

51. Sec. 32-1704, Wyo. Comp. Stat. 1945.

1. *Nowells v. Jones et al.*, 37 Wyo. 405, 263 Pac. 698 (1928).

2. Wyo. Comp. Stat. 1945, sec. 32-1621.

3. Wyo. Comp. Stat. 1945, sec. 32-1628.

will be barred by this statute; but, in the cases which have arisen in Wyoming this assumption by the purchaser has proven to be wholly incorrect due to judicial interpretation of the statute here under consideration.

One primary qualification imposed on the holder of the tax deed is that he be in possession during the statutory period in order to invoke the aid of the special statute of limitations.⁴ The possession must be such as would be adverse to the true owner.⁵ The statute reads, "actions for the recovery of real property" and has therefore been restricted to the common law action of ejectment or its statutory substitute.⁶ This of course eliminates the possibility of the former owner bringing a quiet title action to remove the tax deed as a cloud on his title. Because there is no actual notice given the owner at the time of the sale for delinquent taxes the reason given by the court for the above rule is: "that a party in actual possession cannot be ousted from such possession or his title divested by merely recording a tax deed of which he may not be aware and under which nothing is claimed, so it seems the statute does not commence to run until an action of ejectment could have been brought and this is the instant possession is taken by the purchaser."⁷ Under statutes similar to that of Wyoming the courts have generally imposed the requirement of possession. This qualification seems to be an equitable one, for the protection of the original owner, since without it a man could remain on his land, work it, and some day find he was no longer the owner or title holder of the land, there being no statutory requirement of actual notice at the time of the tax sale.

The statute appears to set six years after the date of the sale as the time after which any action by the former owner will be barred, and if this was the intent of the legislature at the time of the enactment of the statute it has certainly been frustrated. The Wyoming Court in *Electrolytic Copper Co. v. Rambler Consolidated Mines Corporation*⁸ held the statute does not start to run until the purchaser had title or at least entitled hereto, and title doesn't pass out of the original owner until the time for redemption has expired. The court in reaching this conclusion stated that the Wyoming statute was similar to that of Iowa⁹ and based its reasoning largely on Iowa decisions. While the statutes of the two states are similar in kind there is a distinction in phraseology, that is, the Wyoming statute states the date of the sale shall commence the running of the six years while in Iowa the execution of the Treasurer's deed is the instant the period of limitation commences. The Wyoming court in following the reasoning of the Iowa court inevitably reached the same conclusion as that court in that the execution of the deed is the instant the special statute of limitations begins to operate. Therefore, the distinction between the two statutes is of no practical importance since through judicial construction our statute has been made to read the same as that of Iowa. The average purchaser at the tax sale, as pointed out earlier, would be completely

4. *Electrolytic Copper Co. v. Rambler Consolidated Mines Corporation*, 34 Wyo. 304, 243 Pac. 126 (1926).

5. *Baldwin v. Merriam*, 16 Neb. 199, 20 N.W. 250 (1884).

6. *Electrolytic Copper Co. v. Rambler Consolidated Mines Corporation*, 34 Wyo. 304, 243 Pac. 126 (1926).

7. See *infra* note 13; *Wain v. Sherman*, 8 S. & R. 357, 11 Am. Dec. 624 (1822).

8. 34 Wyo. 304, 243 Pac. 126 (1926).

9. Code of Iowa, 1946, sec. 418.12.

misled by merely reading the statute. Instead of six years after the date of the sale barring an action by the former owner, the minimum time after which the action will be barred is ten years. The tax sale purchaser must wait at least four years before he can obtain a tax deed or be entitled thereto and then must remain in possession during the six year limitation period. Therefore the holder of the tax deed, in absence of a quiet title action or foreclosure of his lien, must wait ten years before he can consider himself owner of the land and his title not subject to being defeated.

A further qualification the tax deed must meet to entitle the holder to the benefit of the six year statute, is that it be "fair on its face," as opposed to being "void on its face,"¹⁰ the former being valid without resorting to extraneous evidence, the latter meaning it is shown to be invalid either when read in light of existing laws or by reason of facts of which the court must take judicial notice.¹¹ A rule of primary importance is that the execution of a tax deed must conform strictly to the statute; that is, any directions which the law may give in regard to its signature, seal, witnesses or acknowledgment must be duly complied with or the conveyance will be invalidated.¹² Where the statute requires the deed of a public officer to be executed in a particular manner and to be witnessed or acknowledged before a particular officer, the performance of their duties in the manner prescribed by law is a part of the execution of the deed with the consequence that unless they are so performed the deed is "void on its face."¹³ A treasurer acts under a naked statutory power in executing a tax deed and unless he comply with the provisions of the statute the deed will be void.¹⁴ The Wyoming courts have held tax deeds to be void under the following circumstances: Where the Board of County Commissioners executed the tax deed,¹⁵ where the deed was issued within two years after the tax sale,¹⁶ and where the deed was acknowledged by the Treasurer before a Notary Public rather than the Clerk of Court.¹⁷ It is evident, therefore, a strict compliance with the statute is necessary in order to obtain a deed "fair on its face," since the courts when construing the tax deed will look at the statutes simultaneously and therefore the statutes will be read into the deed and thus appear on its face.

As previously stated the holder of a tax deed "void on its face" is not entitled to assistance from the special statute of limitations and in absence of another remedy must rely on adverse possession. The Wyoming Court in *Brunch v. Benedict*¹⁸ held a tax deed "void on its face" was sufficient "claim of title or claim of right" upon which to base a claim of adverse possession. The Wyoming court has also stated that when there is a claim only and no color of title the adverse

10. *Mathews v. Blake*, 16 Wyo. 116, 92 Pac. 242, 27 L.R.A. (N.S.) 339 (1907).

11. *North American Realty Co. v. Brady*, 177 Colo. 56, 234 Pac. 1054 (1925); *Words and Phrases*, Vol. 16, p. 86; *St. Louis Smelting Co. v. Kemp*, 104 U. S. 644, 26 L. Ed. 875 (1881).

12. *Black, Tax Titles*, sec. 392 (2nd Ed. 1893).

13. *Mathews v. Blake*, 16 Wyo. 116, 92 Pac. 242, 27 L.R.A. (N.S.) 339 (1907).

14. *Reed v. Merriam*, 15 Neb. 323, 18 N.W. 137 (1884).

15. *Denny v. Stevens*, 52 Wyo. 253, 73 P.(2d) 308, 75 P.(2d) 378 (1937).

16. *Barrett v. Barrett*, 46 Wyo. 84, 25 P.(2d) 857 (1933).

17. *Mathews v. Blake*, 16 Wyo. 116, 92 Pac. 242, 27 L.R.A. (N.S.) 339 (1907).

18. 62 Wyo. 213, 165 P.(2d) 561-567 (1946); *McVannel v. Pure Oil Co.*, 262 Mich. 518, 247 N. W. 735 (1933).

possession is restricted to the land which the claimant enters and takes possession, with the intention to hold the same as his, to the exclusion of all others.¹⁹ In the *Brunch* case the land in question had been occupied and worked in part during the ten year period of adverse possession so the question of constructive possession did not arise. The test which seems to be supported by the weight of authority is: color of title must be a document purporting to convey title to real estate, but for some reason does not do it. It must designate a grantor and a grantee, must contain apt words of conveyance and a description of the land intended to be conveyed.²⁰ Thompson says the only thing which will prevent a conveyance from being color of title is when the writing is so plainly and obviously defective that no man of ordinary capacity would be misled by it.²¹ The court in the *Brunch* case was unfortunate in its choice of words when it described a "tax deed void on its face" as sufficient "claim of title or claim of right" upon which adverse possession could be based. If the occasion arose in Wyoming and the court was confronted with the question of constructive possession under such a deed in all probability the court would consider the deed color of title sufficient to maintain constructive possession. This assumption is based on the tests given above under which most deeds could qualify, because the Wyoming Court has rejected a Montana case holding a void tax deed ineffective to sustain a claim of adverse possession,²² and on decisions of other states in this region accepting a tax deed "void on its face" as color of title.²³

The special statute of limitations considered herein gives protection to the holder of the tax deed only after ten years have elapsed from the time of the sale, assuming the holder has remained in possession during the statutory period and has been the possessor of a tax deed "fair on its face." The adverse possession statute can give protection only after fourteen years have passed from the time of the tax sale. This is because the adverse holder must claim the land as his and this he cannot do until the four year period of redemption in the former holder has expired since during this time title to the land remains in the former owner,²⁴ and the certificate of purchase is not color of title because it is held subject to the owner's right of redemption.²⁵

It is therefore advisable for the holder of the tax deed to resort to another remedy, such as a quiet title action to remove all interest of the former owner, and avoid the possibility of having his tax deed defeated during the ten years subsequent to the tax sale until one of the two limitations discussed in this article will end all rights which theretofore existed in the former owner.

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19. *City of Rock Springs v. Sturm*, 39 Wyo. 494, 273 Pac. 908, 74 A.L.R. 1; Thompson, *Real Property*, sec. 2644 (1940).
 20. *Philbin v. Carr*, 76 Ind. App. 560, 129 N.E. 19 (1920).
 21. Thompson, *Real Property*, sec. 2650 (1940).
 22. *Brunch v. Benedict*, 62 Wyo. 221, 165 P.(2d) 568 (1946).
 23. *Wright v. Yust*, 118 Colo. 449, 195 P.(2d) 951 (1948); *Heron v. Garcia*, 52 N.M. 389, 199 P.(2d) 1003 (1948); *Bonebrake v. Flourney*, 133 Okla. 101, 271 Pac. 658 (1928); *Wilson v. Atkinson*, 68 Cal. 590, 10 Pac. 203 (1886); *Fleming v. Howell*, 22 Colo. App. 382, 125 Pac. 551 (1912); *Calvat v. Juhan*, 119 Colo. 561, 206 P.(2d) 600 (1949); *Baker v. Goodman*, 57 Utah 349, 194 Pac. 117 (1920).
 24. *Williams v. Heath*, 22 Iowa 519 (1867).
 25. *Bruschi v. Cooper*, 30 Cal. App. 682, 159 Pac. 728 (1916); *Scott v. Ramseir*, 61 Colo. 250, 156 Pac. 1094 (1916).