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acceptance and use of the law, or would result in its repeal.

Most Denver attorneys know we have such a law. Few know much more than that about it. In this county, there have been only thirteen proceedings in the twenty-three years the law has been on our statute books.

Query: Does this meager use of the law in this county mean: (a) That registration of title under the law is not practicable from the viewpoint of both the profession and the layman; (b) or that failure to make use of it is the result of the constitutional conservatism of the profession; (c) or may it be attributed to mental inertia? Perhaps the lack of use may be attributed to all three reasons, and may it not be sometimes difficult to place the line of distinction between the latter two.

Tax Sales and Tax Titles in Colorado

By JOHN F. MAIL, Esq.
of the Denver Bar

In the construction of the revenue laws of Colorado, the Supreme Court early in its history adopted two rules of construction.

The first is that revenue laws or enactments for the levy, assessment and collection of taxes shall be construed liberally in favor of the State and against the tax-payer and his property to the end that the State may acquire a revenue with the least possible trouble and expense. That is to say, all doubtful questions of taxation so far as the levy and assessment are concerned are resolved in favor of the taxing power.

On the other hand, when we come to the sale of lands (I am not here considering the sale of personalty at all) for delinquent taxes, the rule which the Supreme Court adopted early in its history is the rule in every State in the Union and is the rule enforced by the Supreme Court of the United States. That is, the power to divest one of title to his property by a sale thereof for taxes is a power that will be construed with the utmost strictness against the taxing power and against the person purchasing at a tax sale. This is to the end that while the State will exercise relentlessly its power to procure a revenue sufficient for the needs of the State, it will bear upon the taxpayer as lightly as possible and take advantage of every technicality to the end that he may not lose his property and be divested of his title for a grossly inadequate consideration. But even here the legislature and the courts, while they give him almost every opportunity to pay the tax without losing his property, always insist that before his property is entirely free of the lien, he must pay the tax with a rate of interest sufficient to induce persons to pay it for him by tax sale purchase in the first instance to the end that the State may have its revenue.

Originally in the history of modern taxation there was no limit upon the power of the State to tax; and out of this principle grew the maxim that the power to tax is the power to destroy. But that power to destroy is withheld by the people of Colorado in their constitution from the legislative body, and while the power to tax in this State is exceedingly great, it has its constitutional limitations, which it is not necessary here to discuss.

The power to tax in Colorado lies in the legislature, subject to constitutional restrictions. The power to sell the property of the tax-payer for nonpayment of the tax rests in the legislature, subject to constitutional restrictions. But, while the courts have never to any appreciable extent interfered with the legislature in either the levy, assessment, the collection of the tax or the sale of property therefor, they have by certain rules of statutory construction as hereinabove suggested put forth a restraining hand to the end that the power of the State to divest one of his property for nonpayment of tax shall be exercised in the most humane manner possible consistent with the ultimate collection of the tax; and while the legislature has provided that when the tax is levied and assessed and remains unpaid for a definite time the land against which the assessment and levy is made may be sold, and while the legislature has provided that within a very reasonable time after the sale, no redemption being made, the title of the owner may be entirely divested by a tax deed, yet the courts have ruled that every step leading up to the deed itself must be in extremely strict accordance with the very letter of the statute or the divestiture of the title by the deed will not take place. In fact, it has been said by one great writer on this subject that a number of the conditions precedent to a tax sale and deed announced by the legislature are apparently for the sole purpose of making it more difficult to acquire a valid tax deed.

The result, therefore, is, in this State, that it has become almost a maxim that a tax deed unaided by any statute of limitation is not a good or marketable title to real property. In this connection I am constrained to quote from an eminent Judge of the late Court of Appeals of Colorado, wherein he said,—

> "The collector of rare specimens of legal documents searching in this jurisdiction for a valid tax deed will need to make diligent inquiry."

But the holder of any tax deed can rely with confidence upon the assurance that his deed, the same as the certificate of purchase preceding it, affords ample security for the return to him of his investment with an inviting rate of interest, and this must be paid to him before the lien of the tax can be discharged to satisfy prospective purchasers or encumbrancers.

Assuming, therefore, that a tax deed standing alone in Colorado is not a valid or marketable title to real property, it follows that we should next inquire if there be any statutory enactment or procedure whereby it could be made a good or marketable title.

If the deed be fair on its face—that is, in substantial conformity with the form of deed prescribed by the legislature, signed by the treasurer, acknowledged before a proper officer and recorded, it prima facie divests the title of the former owner; but at any time within five years from the recording of the deed the former owner may show a slight variance from the strict procedure somewhere along the line between the assessment and the deed and still invalidate the deed; but if the grantee in the tax deed or his grantee should take actual possession of the property so that in order to recover it the former owner must bring an action for possession or ejectment under the old practice, the defendant in possession under the tax deed may plead that the deed has been of record for more than five years and defeat recovery, whether he hath paid any tax subsequent to the recording of the deed or not; but if the deed be void on its face, which it is in almost all instances, the plea of this statute

may not be interposed, because our courts say there is nothing upon which to base the plea, the deed showing on its face that it is a mere nullity. Nor can this so-called five year statute of limitations be interposed in any action except one brought by the former owner to recover the property against one in possession under the tax deed. That is to say, it cannot be interposed in actions to remove cloud, to quiet title, injunction or any other possible action than one to recover possession of the property. So that this five year limitation act, which is found in the revenue laws, is exceedingly restricted in its availability.

There are two other statutes of limitation not found in the revenue laws but in the general limitation laws of the State, one being to the effect that any person claiming land under color of title made in good faith, who shall during seven years remain in actual possession of the land and pay all taxes legally assessed thereon, shall be adjudged the owner. Another statute is virtually the same as the one above referred to, except during the seven years the land shall remain vacant and unoccupied.

We have a number of cases in this State where the plea under the above statutes has been held to be good and a great many where it was held not sustained by the proof and the construction of these statutes is the same as the strict construction under the revenue law. That is, as said in an early case in the Court of Appeals,—"One who desires to avail himself of these statutes must bring himself strictly within their terms." What does or does not bring one strictly within the terms of these statutes is a matter of many decisions of the Supreme Court and Court of Appeals of Colorado and space would not allow me to discuss them here.

Many other statutes of limitation found in our general laws have been invoked from time to time in support of tax titles, but our court has consistently held that none apply except the three above referred to.

There is one remaining procedure to validate a tax title in this State which is practiced with some success. That is, at any time after the recording of the tax deed an action may be brought against the former owner in the nature of a suit to quiet title. If he does not appear a judgment by default is usually entered quieting and confirming the title in the tax title holder against the former owner and all those interested. If the law relative to service has been strictly and literally complied with (which I find seldom happens) the judgment of the court gives a title which is indefeasible at the future suit of the former owner. If the former owner should appear in the action and ask to have his title quieted and the tax deed canceled, he is then compelled to do equity and the tax title holder receives back his purchase money with a good rate of interest, and the ends of the law are humanely served—the former owner has back his property and has paid his taxes and the tax purchaser is fully reimbursed.

There is another method which is quaint, but I have often thought, all things considered, that it is about the best I know. I was trying a suit to set aside a tax deed in Washington County some years ago against a very able and eloquent old lawyer who lived out there. He went on the stand to prove some item of his case and I asked him on cross-examination if he were a lawyer, if he had not been present there at numerous terms of court and had seen many tax titles invalidated by the judgment of the court. He admitted that this was true. I then asked him how he expected to ever make a title out of the instrument

under which he was claiming. He hesitated a moment and finally said that he thought it could be done by limitation, procrastination, litigation and negotiation. After some years of experience and investigation of the subject I am persuaded that the old man had evolved an idea that had in it greater merit than appeared to a casual observer.

In closing permit me to suggest that after nearly thirty years of practice and study of the law of tax titles, I have concluded that inasmuch as practically every tax deed means uncertainty and protracted litigation, and inasmuch as a tax deed is not a title worth considering in this State, the entire law of tax sales, redemptions and tax deeds ought to be re-written to the end that somewhere in the procedure the rights of a stubborn, careless and negligent tax-payer should be cut off, extinguished and barred in a sane, just and sensible way. Does it not strike the Bar of this City and State that a system, the only result of which is litigation and doubt, should be replaced by a just system of certainty and security?

Verbal Leases

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Under our Statute of Frauds, every contract for the sale of real estate must be in writing, yet a verbal lease for the period of one year is valid and enforceable. Not only is a verbal lease for one year valid, but a lease for one year to begin in future is also valid. 3 Colo. 287. 49 L.R.A. N.S. 820. It is possible to make a verbal lease for one year and then tack upon such lease another verbal lease for another year to begin at the expiration of the first year. This virtually permits a verbal agreement to cover a two year period, and no one knows how many times this process could be repeated.

The purpose of a written contract is to perpetuate the agreement of the parties in such permanent form that it cannot be disputed. The wisdom of requiring contracts for the sale of real estate to be in writing is so apparent that no one would have this law changed, but the wisdom of permitting leases to rest in parol is not so apparent, even though the term is limited. If there ever was any justification for a verbal lease, conditions have now changed so that the law should be abolished.

Recognizing the uncertainty of verbal contracts, the law wisely refuses to enforce a verbal contract for the sale of real estate, and the law makes no distinction in the value of the real estate involved. It requires all such contracts to be in writing, and all verbal contracts for the sale of real estate are condemned, whether the property is worth $1,000.00 or only $100.00. All opportunity for disagreement is removed by requiring written agreements in every case.

There is just as great an opportunity for a misunderstanding over a lease for one year as there is over a lease for ten years, yet the law requires a ten year lease to be in writing and it places its stamp of approval upon the one year verbal lease. Instead of requiring the same certainty in respect to a short time lease which it requires of a long time lease, the law invites the parties to enter into a verbal lease for one year with all its uncertainties and then offers the good