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Tax Deeds Void on Their Face and Three Year Statute of Limitations

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Comments

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Introduction

Statutes of Limitations are often useful to the title examiner in allowing him to pass defects which are no longer subject to attack due to an applicable statute. With reference to tax titles, there has been considerable interest in the effective scope of the three year statute, Section 140.590 *Missouri Revised Statutes* (1949). The exceptions expressed in the statute, together with the judicially imposed exception of tax deeds void on their face, serve to reduce the effectiveness of the three year limitation statute. This comment will consider the cases and the grounds on which tax deeds in the past have been declared void on their face, together with the recent case of *Costello v. City of St. Louis*[1] which sets forth a new ground for so declaring a tax deed void on its face.

In the *Costello* case, plaintiffs, who had inherited the full interest to the land in question, brought suit to quiet title. No taxes had been paid on this land for the years 1930 through 1936, with the consequence that the unpaid taxes, with interest and penalties, amounted to $749.52, including the defendant-city's tax lien in the sum of $360.79. The land was twice advertised and offered for sale under the Jones-Munger Act,[2] but there were no bids; the third offer for sale was made in 1937, and the defendant bid $4.75 and sale was made to it. The defendant received a deed in August, 1941, which deed was recorded in September, 1941. Of the $4.75 paid, $3.75 went for costs and $1.00 was applied on taxes. The lower court quieted title in the plaintiffs, on the grounds that (1) the description of the real estate in the notice of sale, the certificate of purchase and the land delinquent list failed to describe the property with reasonable certainty, and therefor no title was conveyed to defendant and the attempted sale was void; and (2) the consideration of $4.75, appearing on the face of the deed, for property with an actual value of $3,000, rendered the deed void on its face, and therefor did not set into motion the special three year Statute of Limitations[3] The Missouri Supreme Court, in an opinion by the late Judge Conkling, affirmed the trial court's judgment.

The supreme court held that the description in the delinquent land list, the notice of sale and the certificate of purchase was inadequate. The description was "City Block 2314; E-27, W-28" in referring to the east twenty feet of lot 27 and the west ten feet of lot 28. The failure to use the word "lot," or assuming the word, the

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1. 262 S.W.2d 591 (Mo. 1953). Since the cases to be discussed will be dealing principally with land, most of them are supreme court decisions.
2. Mo. Rev. Stat. c. 140 (1949).
3. Mo. Rev. Stat. § 140.590 (1949).

non-existence of any lot such as "E-27" or "W-28", and the further lack of indication that the land contemplated was the east twenty feet of one lot and the west ten feet of another, would seem to support fully the court's decision on this point. If this were not enough, certainly the fact that the collector's deed described the land as in "Harney's" subdivision, whereas the land in fact was in "Graham's" subdivision, would invalidate the collector's deed, and for this further reason the deed was held void upon its face.[4]

It is the second principal ground of the decision to which this comment directs its attention. The court held that the $4.75 consideration, appearing on the face of the deed, was unconscionably inadequate, and for this additional reason made the collector's deed void upon its face. The special three year Statute of Limitations does not run in the case of a deed void on its face[5]

Three Year Limitation On Attack On Tax Deeds— Not Applicable to Deed Void On Face

The three year Statute of Limitations, set out in full in the margin,[6] originally was enacted as part of the Revenue Act of 1872,[7] which was an act dealing with administrative foreclosure of tax liens. In 1877, the administrative foreclosure provisions were replaced by a system of judicial foreclosure. Probably it was because of this change that the section was left out of the Revisions of 1879, 1889 and 1899. However, it has been held that the statute, while not applying to a judicial foreclosure, continued in effect even though it was dropped from the revisions, since it was not expressly repealed.[8]

As stated above, the courts grafted an exception upon the statute, so that actions

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4. It is not intended to suggest that a private deed using the same defective descriptions would be void, although title clearly would be unmarketable. Other defects noted below would not necessarily make a private deed void.

5. Mo. Rev. Stat. § 140.590 (1949) allegedly prevented the plaintiff's maintainance of this cause of action since the deed was recorded Sept. 2, 1941, and this suit was not instituted until June 8, 1951. The statute states that any suit or proceeding against the tax purchaser, for the recovery of lands sold for taxes, shall be commenced within three years from the time of recording the tax deed; but it has been held the statute does not apply where the deed is void on its face. The statute is set out in its entirety in note 6.

6. Mo. Rev. Stat. § 140.590 (1949): "Any suit or proceeding against the tax purchaser, his heirs or assigns, for the recovery of lands sold for taxes, or to defeat or avoid a sale or conveyance of lands for taxes, except in cases where the taxes have been paid or the land was not subject to taxation, or has been redeemed as provided by law, shall be commenced within three years from the time of recording the tax deed, and not thereafter; provided, that where the person claiming to own such land shall be an infant, or a person of unsound mind, then such suit may be brought at any time within two years after the removal of such disability."

7. Mo Laws 1872, p. 130, § 222; Wagner's Stats. p. 1207, § 221 (1872). The conflict between these section numbers is noted in Pettus v. City of St. Louis, 242 S.W.2d 723 (Mo. 1951).

8. Pettus v. City of St. Louis, 242 S.W.2d 723 (Mo. 1951); Williams v. Sands, 158 S.W. 47 (Mo. 1913); Bird v. Sellers, 122 Mo. 23, 26 S.W. 668 (1894); 17 Mo. L. Rev. 410 (1952).

could be instituted against the tax purchaser beyond the three year limit where a collector's tax deed was void on its face. There are a large number of cases involving the general problem of deeds void on their face, and these cases are discussed here in order to indicate the situations in which the statute is inapplicable.

Recitals as to Advertisement and Notice

Apparently the earliest Missouri case on the problem of a deed void on its face was *Morton v. Reeds* in 1839.[9] In that case the auditor's certificate (a certificate of sale at the tax sale, but not the deed) stated that the auditor had advertised "according to law." The court felt that there should have been recited detailed facts about the advertisement to show compliance with statutory requirements for a valid sale, "and for the want of that and other reasons the certificate proved nothing." The case did not hold that the deed was void on its face, but rather reversed and remanded. The case is significant in that it set down the general doctrine which is the basis of many later cases that in ex parte and summary proceedings, the law must be strictly followed. This point of view is reaffirmed in a recent case in 1942,[10] which states: "Tax sales have always been carefully scrutinized by this court. . . . Otherwise a man may be deprived of his property contrary to the constitution." In the case of *Hopkins v. Scott*,[11] the court cautioned that "When a statute prescribes the form of the tax deed, that such form becomes substance and must be strictly followed. . . . While it is not necessary, in such cases, to make the recital in the words employed in the prescribed form, it is necessary that the recitals, required in such form, be substantially made and, if not so made, such omission is fatal to the deed."

Recitals as to Time, Place, and Manner of Sale

The recital criticized in *Morton v. Reeds*, advertisement "according to law," appeared in the same words or in substance in a line of later cases.[12] It was commonly stated in these deeds that the land had been advertised "according to law," which rendered the deeds void because this was held to be a mere conclusion; the specific method of advertisement should have been spelled out. However, in *Burris v. Bowers*,[13] these decisions were held not to apply to deeds under the Jones-Munger

9. 6 Mo. 64 (1839). Same case, 9 Mo. 878 (1846) [decided on other grounds].
10. Bussen Realty Co. v Benson, 349 Mo. 58, 159 S.W.2d 813 (1942).
11. 86 Mo. 140 (1885).
12. Deal v. Lee, 235 S.W. 1053 (Mo. 1921) [notice of sale advertised "according to law"]; Workman v. Moore, 177 S.W. 862 (Mo. 1915) [notice of sale "according to law"]; Brown v. Hartford, 173 Mo. 183, 73 S.W. 140 (1903) [advertised "according to law"]; Western v. Flanagan, 120 Mo. 61, 25 S.W. 531 (1893) [deed failed to recite a compliance with the law in either levy or sale]; Moore v. Harris, 91 Mo. 616, 4 S.W. 439 (1887) [notice of delinquency and sale done "according to law" and "in manner and form as directed by law"]; Pearce v. Tittsworth, 87 Mo. 635 (1885) [sale made "according to law"]; Hubbard v. Gilpin, 57 Mo. 441 (1874) [advertisement for sale made "according to law"]; Smith v. Funk, 57 Mo. 239 (1874) [due notice of sale was given]; Yankee v. Thompson, 51 Mo. 234 (1873) [notice given "according to law"]; Large v. Fisher, 49 Mo. 307 (1872) [notice of sale given "in the manner and form as directed by law"]; Spurlock v. Allen, 49 Mo. 178 (1872) [notice of sale given according to law].
13. 352 Mo. 1152, 181 S.W.2d 520 (1944).

law. The plaintiffs in the *Burris* case contended that the tax deed failed to show that the essential statutory steps had been taken, in that it failed to show affirmatively by express statements that a notice of sale had been printed in a newspaper of the kind and for the time required in the statute, but rather substituted a conclusion "after having been duly advertised." Plaintiffs urged that this was a mere conclusion and was in effect nothing, citing the *Lagroue, Abbott, Spurlock, Bender, Burden,* and *Moore*[14] cases discussed in the footnote. But the court rejected this argument, saying that those cases were prior to the Jones-Munger law.[15] Under the Jones-Munger law, Section 140.460 (*Mo. Rev. Stat.* 1939, § 11150) sets out the form for a tax deed, and the statutory form contains such conclusions as "and legal publication made," "the aforesaid lands were legally liable for taxation," and "have been duly assessed and properly charged on the tax book." These conclusions, then, are authorized by statute, although they at one time made the deed void on its face.

The *Burris* case did not exhaustively treat all the cases dealing with the matter of form decided prior to the Jones-Munger Act. It would seem that the case of *Tanner v. Stine*[16] decided in 1853 would be good law today. That case, while involving a sheriff's deed, held that the failure to include in the deed the time, place and manner of sale as required by law, made the deed void. The maker of the deed had failed to fill in the blanks provided for these purposes. "It was contemplated that the deed, upon the face of it, should show that the sale had been made at such a time as

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14. Several of the cases cited by the Burris case were not exactly like those enumerated in footnote 12, but along with the cases cited in footnote 12 were held to be inapplicable to deeds under the Jones-Munger law; Abbott v. Doling, 49 Mo. 302 (1872) [deed contained no recital that notice had been given of the sale]; Lagroue v. Rains, 48 Mo. 536 (1871) [statute provided notice of sale by posting printed handbills, but the recitation in the deed was that notice was by written handbills]; Bender v. Dungan, 99 Mo. 126, 12 S.W. 795 (1889) [omitted to include several items: that purchaser applied to the county clerk to purchase the lands; that the county clerk issued his order to the county collector directing him to receive from the purchaser the amounts due on the land; that said order particularly described the land, and set forth the amount due; that the order was presented to the county collector; that the collector gave the duplicate receipts setting forth the amount received and a proper description of the property]; Burden v. Taylor, 124 Mo. 12, 27 S.W. 349 (1894) [deed a "mere skeleton", since it lacked date of judgment, date of issuance of the precept from the office of the clerk, date when precept delivered to collector, and date when collector offered the land for public sale, in addition to the fact that the sale was of two tracts in one lump sum (a matter to be discussed later)]; and Loring v. Groomer, 142 Mo. 1, 43 S.W. 647 (1897) [deed "almost a literal copy of the tax deed which was held to be void upon its face in Burden v. Taylor"].

15. Note, however, the case of Schlafly v. Bauman, 341 Mo. 755, 108 S.W.2d 363 (1937). Notice of sale had not been given within the required period previous to the sale on the first Monday in November. Said the court: "In the instant case we need only rule that the notice and proposed sale are null and void because not in substantial compliance with the Jones-Munger Act—a ruling well within the foregoing observations and the cases relied upon by respondents." The court then proceeds to cite the pre-Jones-Munger cases of Meriwether v. Overly, 228 Mo. 218, 129 S.W. 1 (1910); Lagroue v. Rains, *supra* note 14, a case specifically mentioned in the Burris case; Large v. Fisher, *supra* note 12; and Sullivan v. Donnell, 90 Mo. 278, 2 S.W. 264 (1886).

16. 18 Mo. 580 (1853).

the law supposed would produce the most beneficial result." It will be noted that in the form prescribed for deeds under the Jones-Munger Act, a recitation of the date, place and manner of the sale along with other foregoing facts is required to be included.[17]

RECITALS AS TO ADJUSTED SALES

Gregg v. Jesberg[18] is another case in which a tax deed was declared void on its face. The statute required that the sale of lands for delinquent taxes begin on the first Monday of November, but when any lands remained unsold, the sale could be adjourned to some day not more than two weeks from the time of adjournment. The deed recited that the sale was an adjourned sale on the twentieth of January and that the regular sale was on the preceding first Monday of November. It was held that the omission of a showing that the adjournment did not exceed the two weeks was fatal, the sale having been made nearly three months after the sales commenced. Similarly in *Meriwether v. Overly*,[19] the void deed recited that the land was sold "at an adjourned sale," but failed to state the facts which would make the adjournment come within the provisions of the law; it omitted to give the date of adjournment, whether notice of the adjournment was made at the time of the adjournment, and whether notice of such adjournment was kept posted.

The Jones-Munger Act states that lands on which taxes are delinquent shall be subject to sale on the fourth Monday in August of each year,[20] and that the sale shall commence on this date and continue "from day to day."[21] Since no specific provision is made for adjourning the sale, it would seem then that the above two cases would not be controlling under present law. Rather, *Hill v. Atterbury*,[22] a case holding that the deed was not void on its face, would seem more in point. It was contended in that case that the tax deed was void since it recited that the land was offered for sale on the eighth of October, which could not have been the first Monday in October, the time for which the sale was required to be advertised. But the court disagreed, saying that although the statute says that the sale shall begin on the first Monday in October, it provides for the sale to continue from day to day until the land is sold. The statute was held only to require that the date when the property was offered for sale be stated, and need not mention the fact that the sale had been adjourned to another day.[23]

RECITALS AS TO CERTIFICATE OF PURCHASE

Pearce v. Tittsworth,[24] an 1885 case, would seem to be good authority under the

17. MO. REV. STAT. § 140.460 (2) (1949).
18. 113 Mo. 34, 20 S.W. 652 (1892).
19. 228 Mo. 218, 129 S.W. 1 (1910), *supra* note 15.
20. MO. REV. STAT. § 140.150 (1) (1949).
21. MO. REV. STAT. § 140.190 (1949).
22. 88 Mo. 114 (1885).
23. The fact that the Jones-Munger Act, § 140.240 provides for a second and third offering of lands for sale on the fourth Monday of August of successive years, when at previous sales the bids have not equaled the taxes and penalties due thereon, would seem to be of no import in this connection.
24. 87 Mo. 635 (1885), *supra* note 12.

Jones-Munger Act. There the deed was held to be void on its face because the conclusion that the sale had been made "according to law" was insufficient, and specific facts, all of which are required by statute to be included in the deed, should have been set out as to, inter alia: date of receipt of the certificate of purchase; whether the certificate of purchase was signed by the collector and clerk;[25] who issued the certificate; and the contents of the certificate.[26]

Recitals as to Assignment of Certificate of Purchase

There is the problem of indicating on the face of the deed the fact that the certificate of purchase has been assigned. In *Pitkin v. Reibel*,[27] the statute allowed certificates of purchase of property at a tax sale to be assigned and authorized the collector to make a deed to the assignee. It also prescribed that these certificates should be assigned "by endorsement thereon under the hand of the purchaser", and required the deed by the collector to the assignee to include a recital that the indorsement was under the hand of the purchaser written on the back of the deed. The deed omitted this recital but stated simply that the purchaser "has duly assigned" to plaintiffs all his interest in the land. The deed was held void and inoperative. The Jones-Munger Act, Section 140.290 (4) provides that "such certificate shall be assignable, but no assignment thereof shall be valid unless endorsed on such certificate and acknowledged before some officer authorized to take acknowledgment of deeds. . . ."

Recitals as to Judgment Date and Term of Court

Those cases wherein failure to recite the date when judgment was rendered is held to make a deed void on its face[28] would have no application to a Jones-Munger tax deed because there is no court judgment in the procedure leading up to a Jones-Munger tax deed. So, too, that line of cases is inapplicable which holds deeds void on

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25. Mo. Rev. Stat. § 140.460(2) provides that the deed must show that the collector signed the certificate.

26. *Ibid.* Certificate in the deed must show who purchased what, when, where, for how much, etc.

27. 104 Mo. 505, 16 S.W. 244 (1891). See also Pitkin v. Shacklett, 106 Mo. 571, 17 S.W. 641 (1891) [dealing with a tax deed exactly the same as the one in Pitkin v. Reibel] and Atkinson v. Butler Imp. Co., 125 Mo. 565, 28 S.W. 861 (1894) [statute required assignment of the certificate of purchase to read "and whereas the said [purchaser] did by his indorsement under his hand, written on the back . . .", while the assignment of the certificate of purchase in question read "and whereas the said purchaser indorsed said certificate of purchase . . .", assignment held void.]

28. Williams v. McLanahan, 67 Mo. 499 (1878) [deed did not recite the date of the order or execution which issued thereon as required by law]; Duff v. Neilson, 90 Mo. 93, 2 S.W. 222 (1886) [deed when first recorded failed to contain the date of issuance of the special execution under which the property was sold, as required by statute, nor was this omission corrected by the later inclusion of the date and a re-recording, without a re-acknowledgment]; Dameron v. Jamison, 143 Mo. 483, 45 S.W. 255 (1897) [deed did not state the year in which the judgment was rendered, although required by the statutory form; and it was of no help that from other recitals in the deed it could be inferred that the judgment was entered at a certain time].

their face because complete facts were not set out in the deed concerning the term of court during which the judgment was obtained.[29]

RECITALS AS TO DELINQUENT TAXES

Hopkins v. Scott[30] dealt with a tax deed held void on its face in that, although it had every other recital in the form required by statute, it completely omitted and failed to have any language substantially equal to the requirement that there should be an affirmative recital to the effect that the property was sold "for the payment of taxes, interest and costs then due and unpaid upon said real property." Other recitals in the deed, "that the taxes remained due and unpaid at the date of the sale hereinafter mentioned," and "that at the place aforesaid W. E. Sheffield having offered to pay the sum of $965.15, being the amount of taxes, interest and costs then due and remaining unpaid on said property," were held not sufficient to substitute for the affirmative requirements omitted. It would seem that the omitted phrase could easily be inferred from the other recitals in the deed.[31] In this connection, consider the Jones-Munger statutory form, which has this recital following the description of the land: ". . . which said lands have been recorded, among other

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29. Spurlock v. Dougherty, 81 Mo. 171 (1883) is an early, typical case. The deed there recited that notice was given for judgment at the August term of court and that judgment was rendered then. The statute provided for judgment to be rendered at the July term unless for "good cause" it could not be rendered at that time. Because this good cause was not set out in the deed, and for other reasons, the deed was held void on its face. To the same effect see Kinney v. Forsythe, 96 Mo. 414, 9 S.W. 918 (1888), where no "good cause" was stated on the face of the deed; Seaman v. Hellman, 262 Mo. 658, 172 S.W. 3 (1914); and Newbrough v. Moore, 202 S.W. 547 (Mo. 1918).

A similar problem appeared in Russ v. Sims, 261 Mo. 27, 169 Mo. 69 (1914), where the statute required all sales to be made during a term of circuit court. The deed stated that the land was sold on Nov. 4, 1879 at the November term of court. The court upon review took judicial notice that the term of the trial court in question began on the second Monday of March and September and that there was no November term, which fact rendered deed void on its face.

30. 86 Mo. 140 (1885).

31. For example, in Skinner v. Williams, 85 Mo. 489 (1885), while the deed did not recite that the land had been sold at the collector's office as required by the Kansas City charter, yet because of other recitals this omission was not held to be fatal. The deed read that the land had been offered for sale at the office of the collector, and was sold "at the place aforesaid." The court reasoned that the requirement for sale at the collector's office applied only to individual buyers, and not when the city auditor bought the land, but even so, the language of the deed made it clear that the city auditor did bid off the property at the collector's office.

But in Sullivan v. Donnell, 90 Mo. 278, 2 S.W. 264 (1886), *supra* note 15, the form required that there should be a recital that when the property was sold it was exposed to public sale, as well as a recital that there was a "sale begun and publicly held." The word "publicly" was omitted from this phrase, which made the deed void on its face, even though the deed at another place recited that the collector did "expose to public sale" the property when sold. See also Bingham v. Birmingham, 103 Mo. 345, 15 S.W. 533 (1890) where "publicly" was omitted from the same phrase, and court held the tax deed void on its face.

So, in Jamison v. Galloway, 254 S.W. 101 (Mo. 1923) the deed omitted the recital, as required by statutory form, of the words "being the amount of taxes, interest, and costs assessed upon said tract of land for the year." While the court

tracts, in the office of said collector, as delinquent for the nonpayment of taxes, costs and charges due for the year last aforesaid. . . ."

SEVERAL TRACTS DESCRIBED

Another factor which has voided several tax deeds has been the inclusion in one deed of several tracts sold as a lump. A very early case (1860) is *Keene v. Barnes*,[32] which dealt with a sheriff's tax deed describing thirteen parcels of land. These parcels had been assessed in the names of different persons, but the deed did not show whether the tracts were owned by different persons. Further, only the aggregate amount of taxes due on all the tracts was stated. The court concluded that it was ". . . obvious that this deed can not be sustained," with their principal concern being how one owner could redeem part of his land when it was sold as a single sale. Another tax deed in a later case[33] showed on its face that it included six different tracts with the amount of tax and judgment rendered against each tract, but failed to show that these tracts were sold separately for the tax adjudged against it. The inference, thought the court, was that all the tracts were sold together for the aggregate amount of tax, which was contrary to the statutory provision that each tract was chargeable only with the tax assessed against it. Similar cases are cited in the footnote.[34] The significance of these cases with reference to tax deeds under the Jones-Munger Act is not known; indeed, in a recent 1951 case,[35] the contention was made that the three year Statute of Limitations did not apply because the deed was void on its face in that the deed did not show that the tracts had been sold separately,

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recognized that the sale was doubtless one made for non-payment of taxes, still the deed failed substantially to meet the requirements of a tax deed valid on its face. Other defects in the deed included the omission of a recital that the special execution issued out of the county court was "to the collector of said county directed." Neither does it anywhere use the word "taxes" or its equivalent.

32. 29 Mo. 377 (1860).

33. Allen v. Buckley, 94 Mo. 158, 7 S.W. 10 (1887).

34. Guffey v. O'Reiley, 88 Mo. 418 (1885) [court ruled that the deed should show on its face the amount of taxes, interest and costs on each tract, and when the deed showed the taxes and interest on one of four tracts only, and did not show them on the tract in question, deed void]; Smith v. H. D. Williams Cooperage Co., 100 Mo. App. 153, 73 S.W. 315 (1903) [a deed which showed on its face that two tracts of land were sold at one time and for a gross sum, contrary to the statute which requires that the collector shall offer tracts for sale separately was held to be void on its face]; Voights v. Hart, 285 Mo. 182, 226 S.W. 248 (1920) [deed declared void on its face when it showed that two lots were sold as one tract for a lump sum, and not separately for the taxes delinquent on each as required by charter; and the inclusion of the phrase in the deed that the sale was made "in conformity with all the requirements of the law in such cases" did not remedy the defect apparent on the face]. But see Allen v. White, 98 Mo. 55, 10 S.W. 881 (1881) [held that where ten different tracts of land, in ten different sections, were all set out in tabulated form in one deed, that deed was good, since it substantially followed the statute]; Francis v. Grote, 14 Mo. App. 324 (1883) [land consisted of three lots, assessed to two persons, but sold in a lump, contrary to the express statutory provision that the lots should be sold severally; held that this sale was illegal but not absolutely void]. The weight of the case last cited is uncertain, since neither the Guffey, Smith or Voights cases, *supra*, all later cases, discussed or cited the Francis case.

35. Granger v. Barber, 361 Mo. 716, 236 S.W.2d 293 (1951).

but the court could not consider the contention, since the deed was not before the court.[36]

DESCRIPTIONS, DEFECTIVE AND INADEQUATE

The matter of insufficient description has always been a major pitfall of tax deeds. We have already seen how the court in the principal case under discussion found the description so inadequate as to render the deed void on its face. Other descriptions held to be too indefinite and uncertain include the following: "two acres in the Northwest quarter of Section six, Township forty-nine, range thirty-three, the property of . . . ;"[37] and "north 46 2/3 feet off of lots one to five."[38] In a 1939 case under the Jones-Munger Act,[39] the court was faced with a bad description of land in the notice of sale and on the tax books. The court said that the Jones-Munger Act did not change the effect of a bad description, citing Mo. Laws 1933, p. 441, Section 9958b; Mo. Rev. Stat. Section 11156 (1939) (now Mo. Rev. Stat. § 140.530 (1949)) which provides (emphasis added): "No sale or *conveyance* of land for taxes shall be valid . . . if the description is so imperfect as to fail to describe the land or lot with reasonable certainty. . . ."

Officer's Title

In *Callahan v. Davis*,[40] a county treasurer executed a tax deed as "collector." The statute made the county treasurer ex officio county collector, with power to sell lands for nonpayment of taxes. It was held that the signature of "collector" rather than "treasurer and ex officio collector" rendered the deed void on its face, and therefore did not set the three year Statute of Limitations into operation.

Acknowledgment, Missing or Defective

The lack of an acknowledgment, or acknowledgment defective on its face, would seem to be good grounds for rendering a tax deed void. So, in *Stierlin v. Daley*, an early case in 1866,[41] tax deeds issued by the Register of Lands were held not operative to pass title because they were neither acknowledged nor proved. The statute provided that if they were not recorded, they were to have no effect against the rights of any one not having notice; since these deeds were neither acknowledged

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36. See Mo. REV. STAT. § 140.200 (1949), which states in part: "When more than one tract or lot belonging to the same person shall be for sale at the same time . . . a part of one of said tracts or lots shall be offered, first for the payment of the whole sum due from such owner on all such delinquent lands or lots . . . and if no one bids upon a part or all of said tracts or lots separately, enough to pay the amount due, then the whole of said tracts and lots shall be offered together and sold to pay the taxes, penalty, interest and costs thereon. . . ." This section does not specifically authorize a deed conveying lands in a lump group for a lump sum, but this would seem to be permissible by inference from the fact that the whole of tracts can be sold together.

37. Western v. Flanagan, 120 Mo. 61, 25 S.W. 531 (1893), *supra* note 12.

38. Roth v. Gabbert, 123 Mo. 21, 27 S.W. 528 (1894).

39. State *ex rel.* Martin v. Childress, 345 Mo. 495, 134 S.W.2d 136 (1939).

40. 125 Mo. 27, 28 S.W. 162 (1894). See also Spurlock v. Dougherty, 81 Mo. 171 (1883), *supra* note 29, where the deed showed that the land was sold by the collector but the deed was made by the treasurer and ex-officio collector.

41. 37 Mo. 483 (1866).

nor proved, they could not be recorded and therefor had no effect. *Dunlap v. Henry*[42] involved a deed which was held void and not sufficient to convey title because there was no compliance with the statute requiring a tax deed to be acknowledged before the county clerk.[43]

Non-Compliance Affirmatively Appearing on Face

A rather obvious inconsistency appeared on the face of the tax deed in *Mason v. Crowder.*[44] There, the land, after a judgment duly rendered, was put up for sale on October 6, 1873, and for want of bidders it was forfeited to the state and was recorded in the forfeited list book. On the same date, all land on the forfeited list was duly put up for sale and at this sale defendant bought the land. The statute provided that such a sale of lands forfeited to the state could not be made until after a two-year redemption period and only after four week's notice of sale had been given. The deed was held void on its face where it recited that after the *October 6, 1873,* sale at which there were no bidders, the land was forfeited to the state, and that after a two-year period of redemption following the date of forteiture and after four week's notice of sale, the land was sold on *October 6, 1873.*

Another obvious inconsistency was dealt with in *Atkinson v. Butler Implement Company.*[45] The pertinent statutory provision was to the effect that one seeking to buy land forfeited to the state because of delinquent taxes should pay the amount due on the land, plus ten per cent penalty. The deed shows that judgment was rendered against the land in July 1873 for *$15.94,* which was the amount of taxes, interest and costs due; that two years and four months later, the purchaser paid *$15.94.* The court held that it was "apparent at a glance" that purchaser had paid neither the interest accruing between 1873 and 1876, nor the ten per cent penalty, stating: ". . . the infirmity appearing on the face thereof, it is void. . . ."

Miscellaneous Defects

Another ground for holding the deed in *Voights v. Hart*[46] void was the failure to state that the delinquent taxes were park and boulevard assessments as distinguished from general taxes. In addition, the recitals in the deed as to the kind of taxes for which the property was sold were in the style required by a general tax form, and this, thought the court, would indicate that the property was sold because of non-payment of the general taxes, which taxes had been paid.

A deed was held inoperative to transfer title from the former owner, and void on its face, when it purported to convey "all the right, title and estate" of the State of Missouri, since the State of Missouri had no title, but only a tax lien.[47]

INADEQUACY OF CONSIDERATION

Turning back to the principal case under discussion, the court cited no cases in

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42. 76 Mo. 106 (1882).
43. The headnote states that the acknowledgment was made before a notary.
44. 85 Mo. 526 (1885).
45. 125 Mo. 565, 28 S.W. 861 (1894).
46. 285 Mo. 182, 226 S.W. 248 (1920), *supra* note 34.
47. Einstein v. Gay, 45 Mo. 62 (1869). To like effect is Ketchem v. Mullinix, 92 Mo. 118, 4 S.W. 447 (1897).

support of its holding that consideration shown on the face of the deed can be so inadequate as to render the deed void. The court relied on several cases,[48] but it is submitted that in those cases the question was not whether the deed was void on its face because of the inadequacy of consideration shown thereon, but rather there was a direct attack upon the sale on the theory that the inadequacy of the consideration amounted to fraud. The court took a different view of this problem in *Granger v. Barber*[49] where an attempt was made to set aside a tax deed more than three years after the recording of the deed: "The allegations of the petition respecting the infirmities of the tax sale do not allege matters shown upon the face of the deed. . . . The other defect alleged is that the consideration paid for the conveyance was so grossly inadequate that it constituted a fraud. Obviously, the gross inadequacy of consideration would not be apparent from the face of the deed alone and the decisions of this court holding that a tax deed will be set aside when the evidence shows a gross inadequacy of consideration are of no assistance to appellants." The distinction is important, since the three year statute bars many attacks upon the sale after the three year period, but the three year bar does not apply when a deed is declared to be void on its face.

It may be questioned whether the mere recital of the purchase price on the face of a tax deed can in and of itself show such inadequacy as to render the deed void. It is not the recited price which should be considered, but rather an amount approximately five times the price. That is, before a tax deed is set aside on direct attack on grounds of inadequacy of consideration shocking the conscience of the court, the court considers the price paid in relation to the fair market price. While the court has not set down a required ratio between market price and purchase price, the usual instances of where the deed is set aside is where the recited price is less than ten per cent of the market price, and it would seem to be safe to assume that if the recited price is twenty per cent of the fair market price, it will not be set aside because of inadequacy.[50] If, before a deed can be set aside on direct attack, the sum paid must be less than twenty per cent of the fair market value, this would equally be true in declaring the deed void on its face. Hence, the amount paid would be less than twenty per cent of the fair market price, or, in other words, the fair market price would be at least five times the purchase price.

48. The court first states that the sum of $4.75 paid "was a fraud upon the State, as well as upon these infant plaintiffs," citing Bussen Realty Co. v. Benson, 349 Mo. 58, 159 S.W.2d 813 (1942) *supra* note 10; Kennen v. McFarling, 350 Mo. 180, 165 S.W.2d 681 (1942); Liese v. Sackbauer, 222 S.W.2d 84 (Mo. 1949); Johnson v. McAboy, 350 Mo. 1086, 169 S.W.2d 932 (1943); and Moore v. Brigman, 355 Mo. 889, 198 S.W.2d 857 (1947). The opinion continues: "Inasmuch as the deed itself shows upon its face that the Collector sold this improved city property for the unconscionably inadequate price of less than 16 cents per front foot, and inasmuch as such price is sufficient of itself to render the sale inherently void, the Collector's instant deed is void upon its face for this additional reason."

49. 361 Mo. 716, 236 S.W.2d 293 (1951), *supra* note 35.

50. It is beyond the scope of this comment to discuss the cases where a tax deed has been set aside on direct attack on grounds of inadequacy of consideration. In Eastin, *Work of the Missouri Supreme Court for 1953—Taxation,* 19 Mo. L. REV. 344, 348 (1954), reference is made to Weiser v. Linhardt, 257 S.W.2d 689 (Mo. 1953) "for an analysis of certain recent cases in which tax sales have been set aside by reason of inadequacy of consideration amounting to fraud. The court shows that in these cases bids running from 2.08% to 8.5% of the actual value of the property

Applying this to the *Costello* case under consideration, the fair market value then would be at least five times $4.75, or a minimum of $23.75. It is difficult to say that from the face of the deed, the land appears to be worth more than $23.75. The deed in the *Costello* case stated only that this was a tract of property on Mullanphy Street, 30' by 130'. It does not set forth the address, nor does it state that there are any improvements on the land. Where the face of the deed does not recite that the land is improved, it is fair to assume that unimproved land is involved. The sale might have involved a tract of land, requiring a large expenditure to render the land usable. Even if it were to be assumed that the land is improved, it may be in an undesirable section of the city, with an uninhabitable house thereon necessitating extensive repairs before it can be used as a dwelling, or even a condemned building very costly to remove. It may be a tract which has a house thereon, but because of street improvements, the house has to be removed to another lot; the cost of moving the house could reduce its actual value to nothing at the tax sale, or the house could be a liability. In these cases, a very small amount of consideration would be adequate. On the other hand, the sale might be of a valuable tract of downtown business property on which is located a large office building. In this last case, the consideration to be adequate would have to be a relatively large amount. Whereas a fair price for the swamp land might be less than ten dollars, the fair price for the business property would be many thousands of dollars In most cases the adequacy or the amount paid cannot be determined from the recitals in a tax deed.

Conclusion

In conclusion, it can only be reasserted that one cannot establish a tax title simply because the three year statute has run. A similar opinion is expressed in the Comment to Missouri Title Examination Standard No. 26 "Deeds, tax titles,"[51] where it is stated that a collector's tax deed of record for three years cannot be passed by a title examiner on that showing alone. The Comment notes that recent cases[52] have ruled that the statute in question is applicable to a collector's tax deed under the Jones-Munger Act, but that that statute cannot be deemed conclusive in light of the express exception noted in the same statute, the fact that the Missouri Constitution[53] requires the naming of the owners in the notice of sale, as well as the judicially-imposed exception of deeds void on their fact. It is submitted that the *Costello* case further lessens the effective scope of the statute in that it excepts a whole new field of cases, namely, tax deeds void on their face because of inadequacy of consideration.

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were deemed to be so inadequate as to justify a finding of fraud." Compare Moore v. Brigman, 355 Mo. 889, 198 S.W.2d 857 (1947), *supra* note 48, where it was held that a purchase price which was 19% of the value of the land ($155 purchase price for land worth $800) was not so inadequate as to be fraudulent and void. See also Gill, Missouri Tax Titles (1938) for a collection of cases involving tax titles.

51. Title Examination Standards of The Missouri Bar, 9 J. Mo. Bar 179, 187 (Sept. 1953); 23 V.A.M.S., 1954 Pocket Part, p. 20.

See also, Eckhardt, *Tax Titles—Three Year Limitations on Attack*, 17 Mo. L. Rev. 401-402 (1952).

52. Granger v. Barber, 361 Mo. 716, 236 S.W.2d 293 (1951) *supra* notes 35 and 49; Pettus v. City of St. Louis, 242 S.W.2d 723 (Mo. 1951) *supra* notes 7 and 8; Byrnes v. Scaggs, 247 S.W.2d 826 (Mo. 1952).

53. Mo. Const. Art. X, § 13; Mo. Rev. Stat. § 140.150(2) (1949).