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PROPERTY

INTERESTS CONVEYED BY TAX SALE DEED

Real estate was devised to the father of appellants for life and at his death to his surviving children. On life tenant's failure to pay taxes, land was sold at a tax sale to appellee. At expiration of statutory time of two years,¹ the county auditor issued a tax deed to appellee which was recorded and described said real estate. Held: Tax deed issued pursuant to sale for delinquent taxes conveyed fee simple and cut off interest of contingent remainderman. *Schofield et al. v. Green*, — Ind. App. —, 56 N.E. (2d) 506 (1944).

There are two theories for real property taxes; one, that they are taxes upon the land;² the other, that they are taxes upon the owner of the land.³ In the instant case, the court held that although taxes constitute a personal liability against the owner or occupant of the property,⁴ the tax is an in rem obligation on the land. If this were not true, the tax sale in the instant case would only be a sale of the life tenant's interest. The court held that the contingent remaindermen were cut off by the tax sale, the tax deed carrying with it the interest of both the life tenant and the remaindermen.

The sale and redemption of lands sold for taxes is governed by statute and must be exercised in strict compliance with such statute.⁵ The Indiana statutes provide that a tax sale deed shall vest in the grantee an absolute estate in fee simple⁶ and that a lien for unpaid taxes shall attach on all real estate.⁷ A lien on the real estate imports that the land itself can be sold to pay delinquent taxes.⁸ The statute accepts the theory that taxes are a lien on the land as well as a personal liability.⁹ The result in the instant case is in accord with the statutory theory when it allows a tax sale deed to convey the interest of the remaindermen.¹⁰

1. Ind. Stat. Ann. (Burns, 1943 Replacement) Sec. 64-2401.
2. "The purpose of designating the person in whose name the property is addressed is merely, secondary, being inserted only for the purposes of identification. The burden of the tax is upon the real property itself, and not upon the owner thereof." *Eisenhut v. Marion De Vires Inc.*, 150 Misc. 804, 806, 269 N.Y.S. 483, 485 (1934); *McIlroy v. Fugitt*, 182 Ark. 1017, 335 S.W. (2d) 719 (1931); *McPike v. Heaton*, 131 Cal. 109, 63 Pac. 179 (1900); Jones, "Cyclopedia of Real Property Law" (1939) Sec. 495.
3. *Mercier's Succession*, 42 La. Ann. 1135, 8 So. 732 (1890); *Green v. Craft*, 28 Miss. 70, 73 (1854).
4. *Prudential Casualty Co. v. State*, 194 Ind. 542, 550, 143 N.E. 631, 634 (1923).
5. *Milwaukee County v. M. E. White Co.*, 296 U.S. 268, 271 (1935); *Brasch v. Mumey*, 99 Ark. 324, 326, 138 S.W. 458, 459 (1911); 4 Cooley, "Taxation" (4th ed., 1924) Sec. 1559.
6. Ind. Stat. Ann. (Burns, 1943 Replacement) § 64-2401.
7. Ind. Stat. Ann. (Burns, 1943 Replacement) § 64-2825.
8. Ind. Stat. Ann. (Burns, 1943 Replacement) § 64-1518.
9. Ind. Stat. Ann. (Burns, 1943 Replacement) § 64-1519 specifies how the proceeds of the real estate sold for tax liens shall be applied.
10. *Figgins v. Figgins*, 53 Ind. App. 43, 101 N.E. 110 (1913); *Clark et al. v. Middleworth et al.*, 82 Ind. 240 (1882).