

1-1-1956

Real Property—Tax Deeds

Alan H. Levine

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Property Law and Real Estate Commons](#)

Recommended Citation

Alan H. Levine, *Real Property—Tax Deeds*, 5 Buff. L. Rev. 231 (1956).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol5/iss2/63>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

timely notice to redeem.⁴⁷ Therefore, the mortgage continued as a lien, and the County acted illegally in selling the land.

However, the Court held that the illegality of the sale was not enough; the taxpayer was authorized to bring the action,⁴⁸ but must adduce proof of waste and injury to the public interest.⁴⁹ Since the record did not show the amount of taxes involved or the value of the land, the burden of proof of waste was not met.

Tax Deeds

The Suffolk County Tax Act⁵⁰ makes the recording of a tax deed conclusive evidence of the validity of a conveyance under a tax sale after six years from such recording. This poses no problem where a defect in the tax sale was only *procedural*; e.g., not advertising in proper newspapers.⁵¹ However, a different problem arises when there is a jurisdictional defect, such as actual payment of the allegedly "unpaid" taxes.

A statute of limitations may also bar claims based on *jurisdictional* defects, provided a reasonable time is given for the assertion of the right which may be foreclosed before the statute becomes operative.⁵² In *Cameron Estates v. Deering*,⁵³ the Court chose not to apply this rule and held, that where the original owner actually has paid the assessed taxes he may attack a tax deed even after the six year period of limitation has run. In this case, the plaintiff admittedly paid all taxes. Through error, part of the land was also assessed to others. The erroneously assessed taxes were sold to Suffolk County, which took and recorded tax deeds more than six years before this suit. The Court distinguished between a tax deed voidable for failure to comply with mandatory procedural requirements and a tax deed wholly void because the right to hold the sale never existed; i.e., there was no "non-payment" of taxes.

47. *Barzler v. Fischer*, 272 App. Div. 665, 75 N. Y. S. 2d 97 (3d Dep't 1947).

48. N. Y. GENERAL MUNICIPAL LAW §51.

49. *Western N. Y. Water Co. v. City of Buffalo*, 242 N. Y. 202, 151 N. E. 207 (1926).

50. "Every such conveyance shall be attested by the county treasurer and the seal of the county treasurer attached thereto, and when so executed shall be presumptive evidence that the sale was regular, and also presumptive evidence that all proceedings prior to the sale, . . . were regular and according to law. After six years from the date of record of any such conveyance in the Suffolk County clerk's office, such presumption shall be conclusive." SUFFOLK COUNTY TAX ACT § 53, as added by L. 1929, c. 152.

51. See *Matter of Kantor*, 280 App. Div. 605, 117 N. Y. S. 2d 110 (2d Dep't 1952).

52. *Saranac Land and Timber Co. v. Comptroller of New York*, 117 U. S. 318 (1899); see *Dunkum v. Macek Bldg. Corp.*, 256 N. Y. 275, 285, 176 N. E. 392, 396 (1931).

53. 308 N. Y. 24, 123 N. E. 2d 621 (1954).

The dissent maintained the statute clearly makes a tax deed conclusive evidence of the regularity of all proceedings. Also, it raised the policy consideration of the desirability of immunity of tax deeds from attack.

In most jurisdictions, if a tax sale is void because the taxes were in fact paid, the original owner can attack the deed after the period of the statute of limitations.⁵⁴ Due and reasonable notice of the sale of property for a delinquent tax is necessary for the validity of such a sale.⁵⁵ Without actual notice, there should be such provisions for constructive notice as to meet requirements of due process.⁵⁶ Since the original owner paid all his taxes and so had no reason to suspect a threat to his title, a mere recording of a tax deed would not appear to be sufficient notice to start the statute of limitations running. Therefore, the distinction drawn by the Court between jurisdictional and procedural defects seems to be a valid one.

SALES

Breach of Warranty

Under Personal Property Law § 130, notice of a breach of a warranty must be given within a reasonable time after discovery of the breach by the buyer.¹ It is, of course, axiomatic that if a seller accepts the return of goods, even after the lapse of a reasonable period of time, it constitutes a rescission at least to the extent of the merchandise which has been taken back.² If only a part of the goods are returned, it amounts to a kind of novation; part of the goods are received back, whether early or late, by consent of both parties, and by mutual agreement the sale is cancelled *pro tanto* and confirmed regarding the rest.³ If the goods are all received back, then by mutual consent the sale is cancelled *in toto*.⁴

*Keller Tailors Trim. Co. v. Burke Rugby, Inc.*⁵ was an action by the buyer for breach of warranty of quality in the sale of linen cloth. The court below found⁶ that timely notice had not been given to the seller and therefore the seller

54. See Annot., 26 A. L. R. 640 (1923).

55. *Mara v. Hawthorn*, 148 U. S. 172 (1893).

56. *Matter of City of N. Y.*, 212 N. Y. 538, 106 N. E. 631 (1914).

1. N. Y. PERSONAL PROPERTY LAW § 130: ". . . if after acceptance of goods, buyer fails to give notice to seller of a breach of any promise or warranty within a reasonable time after the buyer knows or ought to know of such a breach, the seller shall not be liable therefore."

2. *Portfolio v. Rubin*, 196 App. Div. 316, 187 N. Y. Supp. 302 (1st Dep't 1921), *aff'd* 233 N. Y. 439, 135 N. E. 843 (1922).

3. *Ibid.*

4. *Ibid.*

5. 308 N. Y. 441, 126 N. E. 2d 551 (1955).

6. 283 App. Div. 930, 130 N. Y. S. 2d 789 (1st Dep't 1954).