

Real Property--Right of State to Tax Property Which is to Revert to It (People ex rel. Hudson River Day Line v. Franck, et al., Assessors, 257 N.Y. 69 (1931))

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has governed in determining the rights and liabilities of an assignee of a mortgagee and mortgagor. Its application is necessarily predicated upon the existence of a mortgage evidencing an enforceable debt.² In the principal case, the mortgagees were without power to enforce the mortgage for they had made no advances under the bond. It was not a binding obligation. A mortgage has its inception when first it is delivered to somebody with the intention of having it become a binding obligation upon which the one to whom it is delivered could sue in case the conditions of the mortgage were not performed.³ Upon delivery to the plaintiff it became binding; it had its legal inception in his hands and he, therefore, was to be regarded as the original mortgagee.⁴ Plaintiff is not then bound by the knowledge which his assignors may have had of the existence of the conditional sale contract. The failure of the conditional vendor to comply with the filing requirements rendered the reservation of title void as to the plaintiff mortgagee and the lien of his mortgage attached to the fixtures.⁵ The decision fairly adjudicates the rights of the parties and effectuates the provisions of the Personal Property Law which were enacted to protect innocent purchasers and incumbrancers against secret claims of third parties.

R. L.

REAL PROPERTY—RIGHT OF STATE TO TAX PROPERTY WHICH IS TO REVERT TO IT.—Plaintiff claims freedom from tax imposed on a covered dock which it erected on state property in the Hudson River. Said dock was built pursuant to an agreement whereby the plaintiff provided that at the expiration of twenty years “the dock shall revert to and become the property of the state.” Defendant seeks to hold the plaintiff liable for the tax during the twenty years before said property reverts to the state, claiming that the plaintiff as owner till that time is liable. On appeal from a judgment of the Special Term affirming a judgment for the defendant at the Trial Term, *held*, the court refused to attach undue significance to the words “shall revert to and become the property of” and decided that “such language does not warrant an intermediate ownership.” Re-

² *Kommel v. Herb-Gner Construction Co.*, 256 N. Y. 333, 337, 176 N. E. 413, 415 (1931).

³ *Payne v. Burnham*, 62 N. Y. 69 (1875); *Eastman v. Shaw*, 65 N. Y. 522 (1875); *Claffin v. Boorum*, 122 N. Y. 385, 25 N. E. 360 (1890); *Spicer v. First National Bank*, 55 App. Div. 172, 66 N. Y. Supp. 902 (3d Dept. 1900), *aff'd*, 170 N. Y. 562, 62 N. E. 1100 (1902); *Verity v. Sternberger*, 62 App. Div. 112, 70 N. Y. Supp. 894 (1st Dept. 1901), *aff'd*, 172 N. Y. 633, 65 N. E. 1123 (1902).

⁴ *Eastman v. Shaw*, *supra* note 3 at 528.

⁵ *Cohen v. 1165 Fulton Ave. Corp.*, 251 N. Y. 24, 166 N. E. 792 (1929); N. Y. REAL PROPERTY LAW, L. 1922, §§65, 67.

versed. *People ex rel. Hudson River Day Line v. Franck, et al., Assessors*, 257 N. Y. 69, 177 N. E. 312 (1931).

In cases involving tax assessments, the building is real estate, the owner of which is liable to a realty tax, although as to the owner of the land on which the building is located it may be personal.¹

Such property must be deemed to partake of the nature of realty² and the question of ownership must be decided by an interpretation of the contract.

From the final decision in this case it is evident that the general rule was applied.³ The contrary view, taken by the Appellate Division and the Trial Term, is probably based on a previous case⁴ in which Judge Bartlett criticized the generally applied rule. But both courts failed to sustain their finding on adjudications directly in point.

In refusing literally to construe the meaning of the words in the agreement, the court is consistent with the position adopted in cases of similar circumstances. The formidable doctrine of *stare decisis* was once more relied upon to stabilize the administration of justice.

W. B. S.

VENDOR AND PURCHASER—LIABILITY OF AUCTIONEER FOR FALSE REPRESENTATIONS.—Plaintiff, purchaser of a house and lot at an auction sale, rejected the conveyance on the ground of misrepresentation and defect of title, in that there was a discrepancy between

¹ *Smith and Brittan v. Benson and Peck*, 1 Hill 176 (N. Y. 1840); *Smith v. City of New York*, 68 N. Y. 552 (1877); *People ex rel. Van Nest v. Comm. of Taxes*, 80 N. Y. 573 (1880); *People ex rel. Muller v. Board of Assessors of the City of Brooklyn*, 93 N. Y. 308 (1883).

² TAX LAW (N. Y.) §2, subd. 6.

³ "It is a familiar rule that, when structures are erected by persons not the owners of the land, they become part of the realty and as such the property of the landowner. It requires an agreement to be expressed in order to prevent the operation of this rule. If the right of removal is reserved to the lessee in a lease, then, in such a case, he will be regarded as an owner of real estate for the purpose of taxation. When the lease in question provides that the sheds are to become the property of the state at its expiration, the language does not warrant the inference of an intermediate ownership." *People ex rel. International Nav. Co. v. Barker*, 153 N. Y. 98, 101, 47 N. E. 46, 47 (1897); *People ex rel. Van Nest v. Comm. of Taxes*, *supra* note 1; *People ex rel. N. Y. Elevated R. R. Co. v. Comm. of Taxes*, 82 N. Y. 459 (1880); *People ex rel. Muller v. Board of Assessors*, *supra* note 1.

⁴ In a dissenting opinion Judge Bartlett says, "It seems to me clear that it was the intention of the parties that the shed should remain the property of the relator until the term specified expired. * * * It is well-settled law in this state that it is competent for parties by contract to regulate their respective interest so that one may be the owner of the building and the other of the land. * * * It is difficult to see what legal obstacle in the case at bar prevented the contracting parties from entering into covenant. This is nothing more than a contract for the future transfer of title." *People ex rel. International Nav. Co. v. Barker*, *supra* note 3.