

Vendor and Purchaser--Liability of Auctioneer for False Representations (Millfield Realty Co. v. Catena, 256 N.Y. 435 (1931))

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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.

the actual dimensions and those stated in the terms of sale signed by the owner and that although the premises were described as containing "two-room apartments and bath," there were no facilities for cooking. Appeal by the defendant auctioneer from a judgment granting plaintiff the amount of the deposit, the expenses of the sale and for the services of counsel, and charging both owner and auctioneer alike with false and fraudulent representations. *Held*, auctioneer was only liable as a stakeholder for the amount of the deposit and should not be held a party to the false representations. *Millfield Realty Co. v. Catena*, 256 N. Y. 435, 176 N. E. 830 (1931).

A purchaser at an auction sale has a right of action either against the auctioneer or the vendor or both, for the recovery of his deposit, where the vendor cannot give a good title.¹ An auctioneer is a stakeholder and is liable to the buyer for the amount of the deposit or down payment, until the sale is completed, and unless the sale is actually completed the auctioneer must hold the deposit as a stakeholder until the law day, when he must return it to the buyer if seller cannot give good title, or until it is definitely determined to whom it belongs.² In an auction sale, as in other sales, a misrepresentation by a vendor which would work too severe a hardship on the vendee will be sufficient to relieve the vendee from performing his contract, since equity will interpret such misrepresentations most favorably to the vendee.³ In the instant case, the discrepancy in the dimensions was sufficient to relieve the vendee from the performance of his contract, but it is not determined whether the description of the property as given in the circular, "two-room apartments and bath," is such a misrepresentation as would relieve the vendor from performance of the contract of sale. There is an expression that "apartments without facilities for cooking are today familiar incidents of life in the metropolis."⁴ This seems to be a radical departure from the general rule that apartments, as understood by the layman, have facilities for cooking. It appears from this dicta that the exception is now to be considered the rule and the burden is cast upon the vendee to inquire whether or not the apartment is so constructed as to provide facilities for cooking. In the absence of such inquiry of the auctioneer by the vendee, the misrepresentation cannot be charged against the auctioneer, especially where he makes no further representations than those contained in the circular.

K. M. K.

¹ *Cockcroft v. Muller*, 71 N. Y. 367 (1877); *Mahon v. Liscomb*, 19 N. Y. Supp. 224 (C. P. N. Y. 1892).

² *Merritt v. Archer*, 163 App. Div. 648, 148 N. Y. Supp. 1008 (2d Dept. 1914); *Gelman v. Day*, 227 App. Div. 607, 235 N. Y. Supp. 211 (2d Dept. 1929); *МЕЧЕМ, AGENCY* (2d ed. 1914) §2348.

³ *Margraf v. Muir*, 57 N. Y. 155 (1874); *Hammer v. Michael*, 243 N. Y. 445, 154 N. E. 305 (1926).

⁴ Instant case, at 437, 176 N. E. at 831.