TAYLOR v. FISK et al.

(Circuit Court, N. D. Illinois, S. D. May 12, 1899.)

1. SUIT TO QUIET TITLE—EQUITY JURISDICTION—INSTRUMENT VOID ON ITS FACE.
Under the general chancery practice, and in the absence of a statute enlarging the remedy, a court of equity cannot entertain a bill to quiet title where the instrument sought to be relieved against is void on its face.
2. SAME—PARTIES—SUIT TO CONSTRUE DEED.
A suit to determine the validity of a limitation over in a deed after the death of one grantee cannot be maintained by such grantee during his lifetime, for want of necessary parties to render such determination effective, where the persons who will be the beneficiaries under the limitation cannot be ascertained until it takes effect.

On Demurrers to Bill.

Fred Spotter and R. M. Barnes, for complainant.
Page, Wead & Ross and Charles H. Fisk, for defendants.

KOHLSAAT, District Judge. This is a bill in the nature of a bill to quiet title, but the basis of the relief sought is in reality the construction of the deed set forth in the bill of complaint. The bill of complaint is founded upon a deed from one Fisk and wife to one Sarah M. Johnson, which deed is in the nature of a trust instrument and attempts to accomplish the ends usually obtained by will. A life estate is by the deed granted to said Sarah M. Johnson, with certain powers of alienation. At her death the real estate remaining was to "go to and belong to" the children of Joseph H. Johnson (husband of Sarah M.) living at the decease of Sarah M. Johnson, or to the children living at such time of deceased children of Joseph H. Johnson. If at the death of Sarah M. Johnson there should be living no children or grandchildren of Joseph H. Johnson, the real estate unconveyed at her death should "descend, go, and belong to" the wife of Fisk, if living, and, if not living, then to her then living children or grandchildren per stirpes. If at the death of Sarah M. Johnson there should be living any children of Joseph H. Johnson "upon whom the estate hereinbefore mentioned shall have been cast," and such children should die leaving no descendants, in that event the said real estate should "descend, go, and belong" to the wife of Fisk, if living, and, if not living, then to her then living children or grandchildren per stirpes. After stating the foregoing deed, the bill alleges that both Joseph H. and Sarah M. Johnson are dead; that complainant is the only descendant of said Joseph H. Johnson, and is in peaceable possession of all the said real estate remaining at the death of said Sarah M. Johnson unconveyed; that said wife of Fisk and certain named children and grandchildren are claiming a vested remainder in said real estate; that complainant is unable to sell the same upon the market because of the claims of said Mrs. Fisk, her children, and grandchildren; that all limitations, remainders, and reversions after the death of complainant provided for in said deed are void, as being in violation of the rule against perpetuities; that all such provisions contained in said deed are clouds upon the

title of complainant to said real estate; and that complainant, by virtue of said deed, is the owner in fee simple absolute of said real estate. The prayer of the bill asks that all provisions of said deed relating to the title after the same shall have been cast upon the children or grandchildren of Joseph H. Johnson be declared null and void, that the cloud upon complainant's title "caused by the provisions and terms of said deed" be removed, and that the defendants (including the wife of Fisk, her children, and grandchildren) be forever barred from claiming any title or interest in said real estate, under or by virtue of the said deed, or otherwise. To this bill a general and special demurrer is filed, and this decision comes up on argument of said demurrer.

Complainant's counsel argue that complainant took a fee-simple title to the real estate in question, by virtue of the granting words in the deed, which could not be limited by subsequent provisions in the same instrument, and that, even if she did not take this absolute fee-simple title, yet the title she took was a fee limited only by a condition subsequent, which is void as being in violation of the rule against perpetuities, and therefore the fee becomes absolute under the rule of law that, "if future interests in any instrument are avoided by the rule against perpetuities, the prior interests become what they would have been had the limitation of future estates been omitted from the instrument." Gray, Perp. 247. While the authorities seem to justify this contention of complainant, yet she has shown no ground upon which jurisdiction can be taken to enter the decree asked for. Under the general chancery practice a bill would not lie to quiet title where the instrument sought to be relieved against was void on its face. The decisions cited by complainant's counsel are based on state statutes extending this equitable right, and the question remains: Does the Illinois statute grant this right? If it does, this court will take jurisdiction; otherwise not. No authority has been cited to the effect that the general chancery rule has been extended in this state beyond the additional right to bring a bill to quiet title where the lands in controversy "are improved or occupied, or unimproved or unoccupied." As stated at the outset, the essence of the relief asked is that the court will by decree construe the deed in question as to the legal effect of its provisions. If the provisions thereof sought to be avoided are void, they are so as a legal proposition, and therefore the instrument is void upon its face. Under general chancery practice, a court of equity will not take jurisdiction for the purpose of construing a deed or other instrument, except, upon proper cause shown, at the instance of executors or trustees. Cross v. De Valle, 1 Wall. 7.

If the court were disposed to entertain such a bill as that herein, the proper parties would have to be ascertained as of the time of the death of complainant. They could not now be determined. The court therefore holds that it has not jurisdiction to grant the relief asked, and the bill is dismissed for want of jurisdiction.

STATE OF MINNESOTA v. CENTRAL TRUST CO. OF NEW YORK.

(Circuit Court of Appeals, Eighth Circuit. April 10, 1899.)

No. 1,133.

TAXATION—LIEN OF TAXES ON PERSONAL PROPERTY—MINNESOTA STATUTE.

Under Gen. St. Minn. 1894, § 1623, which provides that "the taxes assessed upon personal property shall be a lien upon the personal property of the person assessed from and after the time the tax books are received by the county treasurer," the lien so created is paramount to any other lien upon the property, prior or subsequent, in favor of private parties.

Appeal from the Circuit Court of the United States for the District of Minnesota.

On July 13, 1897, the Central Trust Company, the appellee, which is a corporation of the state of New York, filed its bill in the circuit court of the United States for the district of Minnesota against the Duluth Gas & Water Company, a Minnesota corporation, hereafter termed the "Water Company," to foreclose a mortgage executed by the latter company on November 1, 1888, and recorded with the register of deeds for St. Louis county, Minn., on February 23, 1889, whereby the mortgagor company conveyed to said Central Trust Company all and singular the property, real, personal, and mixed, then owned and controlled by it, or that it might thereafter acquire, including its franchises, incomes, rents, works, contracts, buildings, machinery, mains, pipes, lines, poles, and property of every kind, in trust, to secure the payment of an issue of bonds to the amount of $5,000,000, of which sum bonds to the amount of $1,513,000 were subsequently issued. A decree of foreclosure was entered in said cause in the usual form on October 13, 1897, the amount found due under the mortgage being $1,586,059.19. The decree provided that the mortgaged property, in default of payment of said sum within five days, should be sold after six weeks' notice of the sale. On December 29, 1897, the circuit court was advised by affidavits duly filed therein by the complainant that three judgments had been obtained against the Water Company in the district court for St. Louis county, state of Minnesota, where the mortgaged property was located, amounting in the aggregate to $37,088.30, which judgments were for taxes upon personal property that had been assessed against the Water Company for the years 1894, 1895, and 1896; that executions had been issued on said judgments; and that a levy had been made thereunder by the sheriff of St. Louis county on December 18, 1897, upon all the gas and water mains of the Water Company in the city of Duluth, the same being property which was included in the aforesaid mortgage. On the presentation of such affidavits, the circuit court enjoined the sheriff of St. Louis county from proceeding with the levies, and required him to release the same. It gave the state of Minnesota, however, leave to present its demand for unpaid taxes to the master who had been appointed to make the foreclosure sale, and empowered the master to hear and report upon the merits of said claim before there should be any distribution of the proceeds of the sale of the mortgaged property. On February 5, 1898, the master publicly sold the mortgaged property, pursuant to the decree of foreclosure, for the sum of $700,000, the sale being made subject to a prior mortgage lien to the amount of $295,000. This sale was afterwards reported and confirmed. In pursuance of the order empowering the master to hear and decide concerning the merits of the state's claim for unpaid personal taxes, which were alleged to be due from the Water Company, a hearing was had before the master, who reported with respect to said claim that although the aforesaid judgments for personal taxes had been recovered by the state against the Water Company, for the years 1894, 1895, and 1896, to the amount before stated, and that although personal taxes had been assessed against the Water Company for the year 1897 to the amount of $23,569, yet "that the state of Minnesota has, under the laws of the state and the rules and practice of this court, no lien upon the personal property of the Duluth Gas & Water Company, covered by and included in the mortgage or deed of trust in