
Syllabus. Opinion of the Court.

execution of the will, this was proper, for, as with deeds, so with wills, — the parties making them cannot invalidate them by their own parol declarations made previously or subsequently. *Jackson ex dem.* v. *Kniffer*, 2 Johns. 31; *Stevens v. Vanclear*, 3 Wash. C. C. 465; *Provis v. Rowe*, 13 Sug. C. L. 490; *Comstock v. Hadlyne*, 8 Cowen, 263, cited by defendant in error, and to which others might be added. There being no error in the record, the judgment must be affirmed.

Judgment affirmed.

NICHOLAS HUNSAKER

v.

ALEXANDER COUNTY.

COUNTY TREASURERS — *their compensation.* Upon all assessments and collections by a county for the purpose of discharging any of its liabilities, the treasurers of those counties named in the act of 16th of Feb., 1865, are entitled to three per cent on the first \$5,000, and one per cent on all over that amount.

AGREED CASE from the Circuit Court of Alexander county; the Hon. WILLIAM H. GREEN, Judge, presiding.

The agreed state of facts upon which this case was submitted, appear in the opinion.

MESSRS. MULKEY, WALL & WHEELER, and MESSRS. O'MELVENY & HOUCK, for the plaintiff in error.

MESSRS. OLNEY & LANSDEN, for the defendant in error.

Mr. JUSTICE LAWRENCE delivered the opinion of the Court :

This case comes before us on the following agreed state of facts.

“It is hereby agreed to submit the case above entitled, to the Circuit Court of said county for decision upon the following agreed state of facts, with the privilege to either party to take

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the case to the Supreme Court on the same facts. It is admitted that the plaintiff is treasurer of said Alexander county; that the County Court of said county, on the 9th day of September, 1865, levied a tax of four-tenths per cent upon all property in said county, real and personal, to defray the current expenses of said county; also five-tenths of one per cent to redeem outstanding orders; also two-tenths of one per cent for the support of paupers; also four-tenths of one per cent for the payment of interest upon certain bonds issued by said county by virtue of an act to enable the county of Alexander to build a court house and jail, approved February 12, 1866.

It is also admitted and agreed, that all moneys, county orders and jury certificates, collected by virtue of any and all of the levies aforesaid, are received and disbursed by the plaintiff, as county treasurer of said county.

It is therefore submitted whether, or not, the provisions of section 4, of an act in relation to the fees of certain officers in certain counties therein named, approved February 16, 1865, are applicable to this case, and whether the said plaintiff is entitled to the benefit of its provisions, and to receive the additional compensation therein provided for, for receiving and disbursing the moneys, etc., collected by virtue of the levies aforesaid, and if not to all of said levies, to which of them."

The fourth section of the act of 1865, above referred to, provides that the county treasurers of certain counties therein named shall be allowed three per cent on the first five thousand dollars of county revenue assessed for county purposes, and one per centum on all over five thousand dollars, in addition to the compensation now allowed by law. The only question in the present case is, whether the various taxes above referred to are to be considered county revenue. We are of opinion they are to be so regarded, and that the treasurer is entitled to his *per centum* upon them as such revenue. They are taxes levied and collected by the county for the purpose of discharging county liabilities. They are as much to be considered county

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revenue as that portion of the taxes levied to defray current expenses. The judgment must be reversed and the cause remanded.

Judgment reversed.

MONTREVILLE FITTS *et al.*
v.
NANCY DAVIS *et al.*

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1. MORTGAGE—*lien—notice.* Where a party sells real estate, and takes a mortgage on the premises to secure the purchase money, and it is recorded, it becomes a lien and notice of the fact; and a third person recovering a judgment against the mortgagor, in the Circuit Court, acquires a lien on the premises, subject to the mortgage, which is entitled to priority in satisfaction.

2. SAME—*reconveyance by mortgagor.* Where a mortgagor, under such circumstances, reconveys the premises to the mortgagee and thus cancels the mortgage debt, the lien of the judgment creditor is not thereby destroyed, but he may, after selling under his judgment, and acquiring title to the equity of redemption, redeem the premises by paying the mortgage debt and interest. And when the judgment debtor has died, his administrator occupies the same relation to the premises.

3. SAME—*equity of redemption.* A mortgagee by receiving a conveyance of the premises from the mortgagor does not thereby lose his lien, nor is it postponed to a junior incumbrance by judgment. If the judgment creditor or his representatives, by a sale under the judgment, acquires the equity of redemption, it remains subject to the payment of the mortgage debt.

4. JUDGMENT—*lien—execution.* Where a plaintiff recovers a judgment and dies, and no execution is issued for more than a year, the lien is lost as against a mortgagor or other person purchasing the equity of redemption. The lien of a judgment is not lost by the death of a plaintiff, but, to continue it beyond a year from the last day of the term at which it was rendered, the administrator should file a copy of his letters in the clerk's office, and sue out execution, as authorized by the statute. A sale on an execution, first sued out after the expiration of the year, confers no title as against the mortgagee.

5. SHERIFF'S DEED—*cloud on title.* Such a sheriff's deed, although incompetent to convey title, is such a cloud upon the title of the owner, as will warrant a court of equity in entertaining a bill for its removal.

WRIT OF ERROR to the Circuit Court of the county of Williamson; the Hon. WILLIAM J. ALLEN, Judge, presiding.