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Tax Deeds - When Order for Issuance of a Tax Deed Is Not Subject to a Collateral Attack

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DISCUSSION OF RECENT DECISIONS

TAX DEEDS—WHEN ORDER FOR ISSUANCE OF A TAX DEED IS NOT SUBJECT TO A COLLATERAL ATTACK—The recent case of *Urban v. Lois, Inc.*,[1] adds a new link to the chain of Illinois Supreme Court decisions which have been establishing the absolute stability of title derived through an annual sale tax deed.

The suit was commenced upon the Cook County Collector's application for judgment and order of sale for 1958 delinquent general real estate taxes. On July 7, 1960, pursuant to the judgment and order of sale of the County Court, the properties in question were sold at public auction to Interstate Bond Company, the respondent's predecessor in title, for the unpaid taxes, and a certificate of purchase issued therefor. Because the properties were registered in the Torrens system, sworn copies of the certificates of purchase were filed with the Registrar of Titles in June, 1961.[2]

In April, 1962, the owners of the properties went to S. Urban, Jr., the petitioner mortgagee, and borrowed $2000.00 to pay off debts, including the delinquent taxes on their property. Urban agreed to pay the tax debts.

Urban then ordered a tax search and received estimates of cost of redemption from the County Clerk indicating the tax sale to the Interstate Bond Co. Next, Urban gave the owners of the properties a closing statement which showed payouts including one for the "tax bills to date," which admittedly had never been paid.

Two months after Urban's mortgage was filed of record, Interstate Bond Co. filed petitions in the County Court for orders directing issuance of tax deeds to the properties.[3] Interstate, however, failed to give notice by personal service to Urban of the tax deed proceedings as required by the Revenue Act.[4] After several communications with Interstate Bond

1 29 Ill. 2d 542, 194 N.E.2d 294 (1963).

2 The fact that the properties were in Torrens is of no consequence to the outcome of this case. The court held that, ". . . failure to serve notice on an interested party pursuant to the provisions of the Torrens Act, [Ill. Rev. Stat. ch. 30, § 120 (1953)] deprived the court of jurisdiction to order this issuance of a new Torrens owner's certificate of title under the special provisions of that act . . . (but) did not affect the validity of the tax deed." *Id.* at 547, 194 N.E.2d at 297.

3 Pursuant to statute, the petitions were filed as supplemental proceedings within the County Collector's application for judgment and order of sale for delinquent 1958 taxes. Ill. Rev. Stat. ch. 120, § 747 (1963).

4 The notice referred to here is that required by Section 263 which states:

> In such notices the purchaser, or his assignee, shall state when he purchased the real estate, in whose name last taxed, the description of the real estate he has purchased; what taxes or special assessments were included in the judgment or decree for which the real estate was sold, and when the time of redemption will expire.

This notice must be served "not less than three months prior to the date when the time of redemption or extended redemption . . . shall expire." This service must be service made upon "parties interested in such real estate including trustees and mortgagees of

Co., Urban forwarded two checks to it covering the amount of the redemption price. Both checks were twice returned uncollected bearing the notation "non-sufficient funds." Although Interstate notified Urban of this fact, no further attempts at redemption were made. The two year period of redemption elapsed, and was even extended pursuant to Section 263 of the Revenue Act,[5] by Interstate.

After expiration of the extended period of redemption, Interstate sold and assigned its certificates of purchase to respondent, Lois, Inc., which received the tax deeds by orders of the County Court pursuant to Section 266 of the Revenue Act.[6]

Although the time for appeal from the tax deed orders had not expired, Urban filed his petition under Section 72 of the Civil Practice Act[7] to set them aside. He claimed that he was not personally served with notice of the tax deed proceedings,[8] and charged Lois, Inc. with fraud in the procurement of the tax deeds.

After a trial on the merits, the trial court expressly found that no fraud had been perpetrated by Lois, Inc.; however, it set aside the tax deeds on the grounds that Urban, the mortgagee, had not been personally served with notice. Upon direct appeal, the Supreme Court reversed and held that all irregularities in the tax deed proceedings subsequent to the issuance of the certificate of purchase were cured by the tax deed orders because the County Court had proper jurisdiction at the time of their entry, and, in the absence of fraud, the orders could not be contested under Section 72 of the Civil Practice Act.

Urban was the first case since the 1951 amendments to the Revenue Act[9] which provided the Supreme Court with a fact situation where there

record." Ill. Rev. Stat. ch. 120, § 744 (1963). This same notice is required by Ill. Rev. Stat. ch. 120, § 747 (1963), which is commonly known as Section 266. See note 9, *infra*.

5 Presently cited as Ill. Rev. Stat. ch. 120, § 744 (1963). It should be noted that this same type of notice statute applies to all four types of tax sales which are: Foreclosure, Ill. Rev. Stat. ch. 120, § 697 (1963); Annual, Ill. Rev. Stat. ch. 120, § 716 (1963); Scavenger, Ill. Rev. Stat. ch. 120, § 716a (1963); and Forfeiture, Ill. Rev. Stat. ch. 120, § 753 (1963). See Ill. Rev. Stat. ch. 120, § 744 (1963).

6 Presently cited as Ill. Rev. Stat. ch. 120, § 747 (1963). It should be noted that an order similar to that of Section 266 must be entered before tax deeds can issue at all four types of tax sales, the Foreclosure, Annual, Scavenger, and Forfeiture. See note 5, *supra*.

7 Ill. Rev. Stat. ch. 110, § 72 (1963).

8 As stated in the text at note 4 *supra*, this contention is valid.

9 The 1951 Amendments occurred in Ill. Rev. Stat. ch. 120, § 734, 735, 744, 746, 747, 749, 750, and 751 (1963). The *amicus curiae* brief of George E. Drach in Remer v. Interstate Bond Co., 21 Ill. 2d 504, 173 N.E.2d 425 (1961), provides an excellent summation of the 1951 Amendments. For an explanation of the 1951 Amendments, the following quotation from this brief is appropriate:

> The language added by the 1951 Amendments provides in substance that the purchaser at a tax sale, or his assignee, may petition the county court for an order directing the county clerk to issue a tax deed. The county court is then authorized (upon certain notice to be given as prescribed in the section) and in

was no fraud in issue upon appeal[10] and where there was no attempt made to personally serve a party entitled to notice pursuant to Section 263 and 266 of the Revenue Act.[11]

Prior to the 1951 Amendments,[12] annual sale tax deeds were issued solely on the affidavit of the purchaser filed with the County Clerk who determined if there had been compliance with the Revenue Act entitling the tax purchaser to a tax deed.[13] This procedure was subject to judicial review at anytime in the future in order to give the previous record parties in interest their "day in court." As a result, a large number of suits were filed contesting the pre-1951 tax deeds. The courts, in their efforts to protect the taxpayer, held tax deeds to be quite vulnerable to almost any type of attack; consequently, real estate purchasers refused to bid or buy at annual tax sales because tax deed titles were neither final nor conclusive.

As delinquent taxes mounted because of the county's failure to induce purchasing at the tax sale, more and more land dropped out of commerce. In addition, the county lost an important source of revenue.[14]

For these reasons, in 1951 a new procedure was adopted by the legislature similar to that used in tax foreclosures, whereby the same court

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the event:

(1) The time of redemption has expired without the real estate having been redeemed;

(2) All taxes and special assessments which became due and payable subsequent to sale have been paid and all subsequent forfeitures and sales have been redeemed [as required by Section 247];

(3) The notices required by law have been given [as required by Section 263]; and

(4) The petitioner has complied with all the provisions of law entitling him to a deed;

to enter an order so finding and directing the county clerk to issue a tax deed. [*This is a Section 266 order.*] If the order is refused 'because of the failure of the purchaser to fulfill any of the above provisions,' the purchase price is to be ordered returned as in the case of sales in error if 'the purchaser or his assignee has made a bona fide attempt to comply with the statutory requirements' for issuance of a tax deed. The county court is given jurisdiction to issue a writ of assistance to put the grantee in possession. Brief of George E. Drach, Attorney, as *Amicus Curiae*, pp. 4 & 5, Remer v. Interstate Bond Co., 21 Ill. 2d 504, 173 N.E.2d 425 (1961).

10 The trial court specifically found that no fraud had been committed by respondent in the procurement of the tax deeds or at any other time in the tax deed proceeding. Therefore, since no fraud was evident from the record and the petitioner did not contend fraud upon appeal, the Illinois Supreme Court held that no fraud existed. But see text at note 41, *infra* for *dicta* regarding fraud.

11 See text at note 4 *supra.*

12 See note 9 *supra.*

13 Pre-1951 tax deeds were issued at the discretion of the County Clerk—it was a purely ministerial function and not judicial in nature. Therefore, the court required strict compliance with annual sale tax deed where even the slightest defect or omission appeared in the affidavit filed with the County Clerk. Cherin v. The R. & C. Company, 11 Ill. 2d 447, 143 N.E.2d 235 (1957).

14 The historical conclusions made in this and the previous paragraph were drawn from the court's discussion of pre-1951 tax deeds in Cherin v. The R. & C. Company, *supra* note 13. For a table indicating the financial importance of annual tax sales in Cook County, see text at note 59, *infra.*

which enters the judgment ordering sale makes findings of compliance with the law in its order directing the County Clerk to issue a tax deed.[15] The intent of the legislature was to make the order directing the issuance of a tax deed final. This purpose is manifested by that part of the 1951 Amendments which states:

> Tax deeds issued pursuant to this section shall be incontestable except by appeal from the order of the county court directing the county clerk to issue the tax deed. This section shall be liberally construed so that tax deeds herein provided for shall convey merchantable title.[16]

The 1951 Amendments were construed by the court in *Urban* in such a manner as to give full effect to this evident legislative intent. It would be well at this time to review the cases pertinent to the subject of collateral attack involving annual tax sale deeds which have reached the Supreme Court since 1951.[17]

The landmark case in this area is *Cherin v. The R. & C. Company*,[18] where the property owners collaterally attacked a Section 266 tax deed order finding that all notices required by law had been given. The court summed up the question presented as follows: "Therefore, the question before us is whether, after more than 30 days from the entry of the order of the county court, petitioner may attack its finding that 'all notices required by law have been given. . . .' "[19] It was held that the attack on the order some eight months after its entry was collateral; that the county court had jurisdiction to determine whether the appropriate statutory notices had been given;[20] and that such determination was not open to collateral attack.

The facts in the *Cherin* case are closely analogous to *Urban*. However, in *Cherin* diligent inquiry was made to serve the owners with notice, and service was made upon all of the tenants on the premises. The court stated that such service after diligent inquiry to locate the owners complied with Section 263 of the Revenue Act[21] and was deemed the equivalent to service on the owners. In *Urban*, there was no service made or attempted upon a mortgagee of record.

15 See note 9 *supra*.

16 Ill. Rev. Stat. ch. 120, § 447 (1963).

17 The fact that there has been such a dirth of litigation in this field as compared with the number of properties sold at annual tax sales (see text at note 59 *infra*) shows that this law is not being misused and is inherently fair.

18 11 Ill. 2d 447, 143 N.E.2d 235 (1957).

19 *Id.* at 453, 143 N.E.2d at 238.

20 The court said that the jurisdiction over the subject matter and the land in question was acquired by publication shown in the County Collector's application for the sale of the delinquent land. This jurisdiction was held to have been retained until the Section 266 tax deed was issued. Cherin v. The R. & C. Company, *Id.* at 454, 143 N.E.2d at 239.

21 Ill. Rev. Stat. ch. 120, § 744 (1963). See note 4 *supra*.

The next year, *Southmoor Bank and Trust Co. v. Willis*[22] was decided. The Section 266 tax deed in that case was issued approximately eleven months before the owner's petition under Section 72 of the Civil Practice Act. The petitioner validly contended that the tax purchaser had not completed his sale in accordance with Section 247[23] of the Revenue Act, and therefore, the trial court set aside its previous order which found compliance with the Revenue Act and ordered a tax deed to issue. In reversing the trial court, the court held Section 72 of the Civil Practice Act and Section 266 of the Revenue Act to be *in pari materia* in that the former also applies to tax deed proceedings. However, it held that the relief permitted by Section 72 is the same relief formerly available by bill of review or writ of error *corum nobis;* that no ground for relief available by bill or review was alleged; and that no relief would have been available under the former writ of error *coram nobis* because that remedy could not be used to contradict findings which appeared on the face of the judgment and the Section 266 order in question expressly found that the subsequent taxes had been paid. Therefore, relief was denied.

In *Cheţin* and *Southmoor,* the Supreme Court declared the underlying philosophy used in its trend to make annual tax sale deeds final. This underlying philosophy was expressed in *Southmoor* as follows:

> It is apparent that section 266 of the Revenue Act and section 72 of the Civil Practice Act relate to the same thing, subject or object—the contestability and validity of an order providing for the issuance of a tax deed. Such statutes are *in pari materia* although they were enacted at different times . . . [and] "should be construed together. . . ." In the light of the legislative purpose as manifested in these statutes, considered with reference to the reason for the enactments, we conclude that the legislature desired to render tax titles incontestable except by direct appeal, subject to the provisions of section 72 of the Civil Practice Act, whereby a uniform procedure was established for obtaining relief from all final orders, judgments and decrees within its purview.[24]

In the case of *Remer v. Interstate Bond Co.,*[25] a noteholder secured by a trust deed conveying the property to a trustee, filed an attack on the tax deed order six months after it's entry. Although this noteholder was not personally served, the trustee was. The noteholder alleged that the notice requirement of Section 263 was not complied with, that she was denied due process of law, and that the tax deed proceedings were subject to Sections 50(2) and 50(8) of the Civil Practice Act.[26] The court summarily denied the

22 15 Ill. 2d 388, 155 N.E.2d 308 (1958).

23 Presently cited as Ill. Rev. Stat. ch. 120, § 728 (1963). See note 9 *supra.*

24 Southmoor Bank & Trust Co. v. Willis, *supra* note 22, at 394-5, 155 N.E.2d at 311.

25 21 Ill. 2d 504, 173 N.E.2d 425 (1961).

26 Section 50(2) provides that where multiple parties or claims are involved in an action, the judgment or decree thereof is final only upon an express finding that there is no just reason for delaying enforcement or appeal.

Section 50(8) provides *inter alia* that where a final judgment or decree is entered

latter two points[27] and further held that since the noteholder was not a party of record, she was adequately served by publication under "Unknown Owners" in the local newspaper. Then the court reiterated its holdings in the *Cherin* and *Southmoor* cases. The court also summarily dismissed the noteholder's contention that she was denied due process by saying that there is no requirement in the statute that personal notice be given to a noteholder, and that such a provision would be wholly unpractical.[28] This latter reasoning was apparently followed by the court in *In re Estate of English*.[29]

The noteholder in *Remer* also contended fraud by certain respondents

against any defendant served by publication, and where a sale has been made pursuant to the judgment or decree, said defendant, his heirs, devisees or personal representatives, can file a petition for redemption within 90 days after notice in writing is given him of the judgment or decree, or within one year after the judgment or decree if no notice has been given. Ill. Rev. Stat. ch. 110, §§ 50(2) & 50(8) (1963).

27 The court said in regard to Section 50(2):

> This theory is without substantial merit. The order for issuance of deed disposed of all issues therein presented and, when entered, became a final, appealable order without regard to the fact that writs of assistance might later be issued pursuant thereto.

The court continued:

> Neither do we believe that section 50(8) of the Civil Practice Act [Ill. Rev. Stat. ch. 110, par. 50(8) (1957)] may be successfully asserted in the present case. That provision applies only to judgments or decrees entered against "any defedant who has been served by publication with notice of the commencement of the action" and is not applicable to the notice requirements for tax deed contained in the Revenue Act. Remer v. Interstate Bond Co., 21 Ill. 2d at 509 & 510, 173 N.E.2d at 428.

28 The respondent's brief has a noteworthy answer to the noteholder's contention that she was denied due process. It states:

> Article IX, section 5, of the Illinois Constitution which provides for notices in tax deed proceedings, specifically provides that except for occupants, all other parties may be served with notice of the tax deed proceedings by publication. [The Illinois Supreme Court affirmed this position in Farlow v. Oliver, 29 Ill. 2d 493, 194 N.E.2d 262 (1963).] Only the occupants of the property must be served personally.
>
> The United States Supreme Court has upheld a similar statute. In Leigh v. Green, 193 U.S. 79, it was contended that a Nebraska statute which omitted to make provision for service of notice of the pendency of tax deed proceedings upon lien holders violated the due process clause of the Federal Constitution. In rejecting the claim that the statute deprived him of his property without due process of law, the court stated in part as follows (page 89):
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> > "The process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain. It involves no violation of due process when it is executed according to customary forms and established usages, or in subordination to the principles which underlie them." Bell's Gap R.R. v. Pennsylvania, 134 U.S. 232, 239.
>
> (and at page 92)
>
> > "Where the State seeks directly or by authorization of others to sell land for taxes upon proceedings to enforce a lien for the payment thereof, it may proceed directly against the land within jurisdiction of the court, and a notice which permits all interested, who are 'so minded' to ascertain that it is to be subjected to sale to answer for taxes, and to appear and be heard, whether to be found within the jurisdiction or not, is due process of law without the 14th Amendment to the Constitution." Brief for Appellee, p. 40, Remer v. Interstate Bond Co., *supra* note 25.

It should be noted that the Illinois Supreme Court cited Leigh v. Green, 193 U.S. 79 (1904), in *Cherin* with approval.

29 24 Ill. 2d 357, 181 N.E.2d 111 (1962).

who allegedly acted in conspiracy to conceal the tax deed proceedings from her. The court held this matter had neither been in issue nor passed upon by the trial court, and if true, would clearly be sufficient to warrant relief under Section 72 of the Civil Practice Act; therefore, the case was remanded for proceedings on the issue of fraud.

Shuck v. Guarantee Bank & Trust Co.[30] was a suit to attack a Section 266 order for a tax deed under the Reconveyance Act of 1909.[31] This Act gave property owners the right to obtain reconveyance of property sold for taxes where the tax deed holder did not take possession of the property or institute suit therefor within one year after the issuance of his tax deed, or where the tax purchaser allowed subsequent forfeitures or tax sales.

The *Shuck* case was instituted in 1961—five years after the tax deed was issued. The court held that the 1959 amendments to the Reconveyance Act making it applicable only to tax deeds issued pursuant to tax sales "held on or prior to September 1, 1951,"[32] was valid and proper. The history of the 1951 amendments to the Revenue Act was reviewed by the court including a long quote from the *Cherin* case. The court then made the following conclusions which provide strong indication of a present trend to uphold annual sale tax deeds.

> In recognition of the desirability of merchantability, the Reconveyance Act provided an appropriate method of removing forfeited land from limbo and returned it to commerce. The efficacy of the amended Revenue Act in providing merchantable tax titles eliminated the need of a Reconveyance Act applicable to tax sales subsequent to the 1951 Amendments. . . . We are therefore of the opinion . . . that the legislature in 1959 clearly intended that a petition under the Reconveyance Act should not be applicable to tax sales subsequent to September 1, 1951.[33]

People ex rel. Wright v. Doe[34] reiterated the holdings of all of the previous annual sale tax deed cases after 1951, and especially the *Remer* case since fraud was alleged. In addition, the court held that although a *bona fide* purchaser is protected from his seller's fraud in the tax deed proceedings, the party who has committed the fraud is liable to the former owner. The case, which was brought under Section 72 of the Civil Practice Act, was remanded for proceedings on the question of fraud similar to the *Remer* case.

Shapiro v. Hruby,[35] *Stanley v. The Bank of Marion*,[36] and *Freisinger v.*

30 26 Ill. 2d 123, 186 N.E.2d 41 (1962).
31 Ill. Rev. Stat. ch. 120, § 736 (1963).
32 *Ibid.*
33 Shuck v. Guarantee Bank & Trust Co., *supra* note 30, at 127-8, 186 N.E.2d at 44.
34 26 Ill. 2d 446, 187 N.E.2d 222 (1962).
35 21 Ill. 2d 353, 172 N.E.2d 768 (1961).
36 23 Ill. 2d 414, 178 N.E.2d 367 (1961).

Interstate Bond Co.[37] merely reaffirm the court's holdings in *Cherin* and *Southmoor.*

The *Urban* case not only added a new phase to the decisions discussed hereinbefore, because of its new fact situation, but it served to clarify the holdings in *Cherin* and *Southmoor* in a way which had not previously been done.

The court began by establishing the jurisdiction of the county court to issue the Section 266 order for a tax deed. It stated that, "the entire tax-sale proceeding is one *in rem* rather than *in personam.*" The court then said that, "this *in rem* jurisdiction was established as in *Cherin,* by the publication shown in the County Collector's application for the original sale of the delinquent land."[38]

Although the court did not raise the point, it is implied by the facts in *Urban,* and was specially held by the court in *People v. O'Keefe,*[39] that the doctrine of *lis pendens* notice of pending litigation applies to all parties who acquire an interest from a party to the record, after the commencement of a suit involving the property. This means that such parties are placed under the jurisdiction of the court even though they are not formally given notice. The respondent's brief in *Urban* strongly urged this point.[40] It is submitted that the court could have adopted this doctrine in *Urban,* and that this doctrine can be utilized in the future, in a similar factual situation, when the petitioner has no actual knowledge of the tax deed proceedings.

In regard to allegations of fraud in *Urban,* which the court summarily disposed of,[41] the court made the following interesting comment via *dicta*:

> Because of the informal nature of the application for a tax deed, the existence of an opportunity for fraud must be conceded. This is especially true when the testimony relating to service is based upon an *ex parte* affidavit. This opportunity can, however, be remedied by diligent cross-examination by the State's Attorney, and the clear availability of relief under Section 72.[42]

The court, in *Urban,* did mention the fact in its *holding* that the petitioner had full knowledge of the tax sale proceedings. From this, it must be assumed that the court applied the estoppel doctrine which was

37 24 Ill. 2d 37, 179 N.E.2d 608 (1962).

38 Urban v. Lois, Inc., 29 Ill. 2d at 546, 194 N.E.2d at 296. Even the appearance of the taxpayer cannot make the proceeding a *personam* action. People v. Dragstran, 100 Ill. 286 (1881). The Section 263 notice given to the taxpayer is not jurisdictional and in no way operates as a summons. See People v. O'Keefe, 18 Ill. 2d 386, 164 N.E.2d 5 (1960). The United States Supreme Court has stated: "In regard to taxes it is the land and not the owner that owes the debt and an action *in rem* is proper." Leigh v. Green, 193 U.S. 79, at 83 (1903).

39 18 Ill. 2d 386, 164 N.E.2d 5 (1960).

40 Brief for Appellant, pp. 21 & 22, Urban v. Lois, Inc., *supra* note 38.

41 See note 10 *supra.*

42 Urban v. Lois, Inc., *supra* note 38, at 550, 194 N.E.2d at 298.

urged in respondent's brief and reply brief.[43] The doctrine as applied in tax deed cases is that an interested party's knowledge of the proceedings estops him from attacking the tax deed collaterally. This age old doctrine was clearly applied in *People v. Cottine*,[44] and was impliedly used in *People v. Orth*[45] and *People v. O'Keefe*.[46] Moreover, it appears evident from all recent Supreme Court decisions in the area that a tax deed may be collaterally attacked only in the case of fraud, and it would be impossible for a petitioner to claim fraud if he had had knowledge of the proceedings.[47] Therefore, it follows that if an interested party has had actual knowledge of the tax proceedings, there is absolutely no basis upon which he can collaterally attack the tax deed issuing therefrom.

However, the finality of a Section 266 tax deed order has not been completely determined. On their own facts, the cases discussed herein, including *Cherin*, *Southmoor*, and *Urban*, have not involved an attack on an annual tax deed by reason of antecedent defects in the annual tax sale proceedings. Such an attack frequently caused the invalidation of tax deeds prior to 1951 because of defects in the original publication, judgment, precept, or other steps antedating the tax sale. It is questionable therefore, whether the cases since 1951 have been broad enough in scope to constitute an adjudication that defects prior to the tax sale are cured by a Section 266 order. From the consistent trend of the decisions establishing the incontestability of tax titles, it would seem that such defects will be held to be cured by a Section 266 order.

What could be a landmark case, *Nix v. Smith*,[48] will be decided by the Supreme Court in the very near future. This case will squarely put the question of defects in the tax sale proceedings before the court. There was no fraud alleged, and all of the requirements subsequent to the tax sale

43 Brief for Appellant, *supra* note 40, at pp. 18-20; Reply Brief for Appellant, pp. 8-10, Urban v. Lois, Inc., *supra* note 38.

44 20 Ill. App. 2d 562, 156 N.E.2d 774 (1959).

45 21 Ill. 2d 205, 171 N.E.2d 626 (1961). This case is especially interesting because it is the only case before the Supreme Court involving a direct rather than a collateral attack on a tax deed order. The court said as follows: "The record in this case clearly demonstrates that the defendants had actual notice of the entire proceeding and to require the assignee of the certificate of purchase to give them a written notice under the circumstances of this case would be an idle gesture. The defendants could not have been materially prejudiced by any failure to give such notice under the facts and circumstances of the present proceeding." People v. Orth, 21 Ill. 2d at 210-11, 171 N.E.2d at 628-29.

46 *Supra* note 39. In this case the court used *lis pendens*, but also implied estoppel. See Farlow v. Oliver, 29 Ill. 2d 493, 194 N.E.2d 262 (1963), in which the court implied estoppel.

47 A person acting with full knowledge of the facts cannot claim that he was deceived. See 19 Ill. Law and Practice, Fraud § 13 (1956); Prosser, Torts 550 (2d ed. 1955).

48 Nix v. Smith, Doc. No. 38313, Sup. Ct. of Ill., Jan. Term, 1964. This case comes up on a direct appeal from the Circuit Court of Lake County. The jurisdiction of the Supreme Court is invoked because a freehold and the constitutionality of Section 266 of the Revenue Act are involved.

were admittedly fulfilled.[49] The irregularities alleged by the appellant include the following facts: The descriptions of the lots in the notice by publication were vague and uncertain; the amounts due as shown in the notices were only numbers and not identified by words or signs to indicate their character; the years for which the taxes were due were not set forth in the notice as prescribed by Section 225 of the Revenue Act;[50] no affidavit was entered at the end of the delinquent list by the County Collector stating that it was a true and correct list of the delinquent lands as prescribed by Section 234 of the Revenue Act;[51] no judgment order of sale was entered in the Tax Judgment Sale, Redemption and Forfeiture Record as required by Section 235 of the Revenue Act;[52] the amount of the judgment against the lots in the delinquent list was not stated in the column of the list headed "Amount of Judgment" as required by Section 232 of the Revenue Act;[53] and no precept of certificate as required by Section 239 of the Revenue Act[54] was made and entered by the County Clerk in the delinquent list. Yet, a Section 266 order was entered in this case as a result of delinquent 1958 taxes, and a collateral attack has been made by the appellant via a suit to quiet title to his real estate and remove the tax deeds as clouds upon his title. These are all pre-sale defects, and the court must decide whether or not they are jurisdictional.

Young v. Madden[55] involved a tax deed issued under the Scavenger Act,[56] which provides for the deed to issue by way of an order almost identical to Section 266. In this case, the court made a negative inference which would seem to favor the appellant in the *Nix* case. The petitioner in *Young* alleged defects in the original tax sale proceedings. Although the court upheld the Section 266 order, it did so by stating that irregularities in presale proceedings do not fall within the purview of Section 266. This case held that Section 266 was enacted to ". . . provide for a judicial determination of what had previously been determined administratively—whether the conditions precedent to the issuance of a tax deed had been performed." And later the court stated: "Objections that would have been proper in the original proceedings for judgment and sale for taxes are not proper here. . . . The sole issue before the court in this proceeding is whether the statutory conditions subsequent to tax sale have been performed."[57] .

49 Brief for Appellant, p. 6, *Ibid.*
50 Ill. Rev. Stat. ch. 120, § 706 (1963).
51 Ill. Rev. Stat. ch. 120, § 715 (1963).
52 Ill. Rev. Stat. ch. 120, § 716 (1963).
53 Ill. Rev. Stat. ch. 120, § 713 (1963).
54 Ill. Rev. Stat. ch. 120, § 720 (1963).
55 20 Ill. 2d 506, 170 N.E.2d 551 (1960).
56 Ill. Rev. Stat. ch. 120, § 716a (1963).
57 Young v. Madden, *supra* note 55, at 510-11, 170 N.E.2d at 553-54. However, this rationale seems to be contrary to Section 270 of the Revenue Act which provides *inter alia* as follows:

> And any judgment for the sale of real estate for delinquent taxes, except as otherwise provided in this section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before

The question now arises as to whether the 1951 amendments to the Revenue Act and the subsequent decisions of the Supreme Court have proved to be effective in the collection of delinquent taxes. In the *Urban* case, the Taxpayers Federation of Illinois was admonished not to include matters not of record in the order granting it leave to file a brief as *Amicus Curiae*.[58] However, the author has obtained the following table which was prepared for the *amicus curiae* brief and later omitted therefrom. These statistics (which have been rounded out), may be used as a guide to indicate the effectiveness of the 1951 Amendments.[59]

Year	No. Items Sold At Annual Sale	Total Aggregate Sales in Dollars	No. of Items Sold On Over-the-Counter Forfeiture Purchases	Total Aggregate Over-the-Counter Forfeiture Purchases In Dollars
1949	2,900	$ 400,000	50	$ 2,000
1950	3,200	550,000	100	8,000
1959	9,000	2,500,000	2,000	2,400,000
1960	9,500	2,750,000	not available	not available

Despite the fact that the over-all number of tax delinquencies has been drastically reduced, not only has the volume of items sold at tax sales increased, but active bidding now takes place so that many items are sold at reduced penalty rates.

Another measure of the effectiveness of the 1951 Amendments in the collection of delinquent taxes is a comparison of the percentage of tax sales which went to tax deed prior to the 1951 Amendments with the percentage of tax sales which went to tax deed after their passage. As was pointed out in the *amicus curiae* brief of Robert S. Cushman in *Southmoor v. Willis,* since the passage of the 1951 Amendments the percentage of tax deeds issued on improved properties has dropped drastically from approximately 12% in 1949 to less than 4% in 1953 in Cook County with similar decreases in downstate counties.[60]

Also, as stated in the *amicus curiae* brief of the Taxpayers Federation of Illinois in *Urban*:

> It is axiomatic that the knowledge that a tax deed will result in

the rendition of such judgment or decree, and could have been presented as a defense to the application for such judgment in the court wherein the same was rendered, and as to all such questions, the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings. . . . Ill. Rev. Stat. ch. 120, § 751 (1963).

58 Brief for the Taxpayers Federation of Illinois as *Amicus Curiae*, p. 5, Urban v. Lois, Inc., 29 Ill. 2d 532, 194 N.E.2d 294 (1963).

59 These statistics were prepared by the office of the Clerk of Cook County for Taxpayers Federation of Illinois and appear herein by permission.

60 Brief for Robert S. Cushman as *Amicus Curiae*, pp. 15 & 16, Southmoor v. Willis, 15 Ill. 2d 388, 155 N.E.2d 308 (1958).

> a loss of property rather than a mere cloud on title will result in far greater incentive for redemptions. As a result, the assured validity of tax titles inevitably results in greater and prompter redemptions, thereby increasing tax collections, and subsequently lowering the tax rates.[61]

With the rash of tax sales which will be taking place in Cook County in the near future,[62] the 1951 Amendments will become particularly important to the residents of that County.

In conclusion, it is submitted that the statement by George E. Drach in his *amicus curiae* brief in the *Remer* case[63] is indeed noteworthy. He stated:

> There are, on the other hand, strong considerations of public policy in favor of 'putting teeth' in the tax collecting machinery.
>
> The question is considered to be an important one. If the rules are to be materially changed which govern annual tax sale deeds in Illinois—rules which have been evolved over many years,—that change should be pointed out by the opinion of this Court, and its extent clearly shown, so that members of the Bar and the public can govern themselves accordingly.[64]

The court in *Remer* honored Mr. Drach's request and clearly pointed out the incontestability of Section 266 orders except in the case of fraud. In fact, the court has announced its position consistently in every case, except *Young*, involving a collateral attack on an order for the issuance of a tax deed since 1951, including the recent *Urban* case. Therefore, the members of the Bar and public have been apprised of the incontestability of tax deeds.

It would not be surprising to this author if the Supreme Court should declare in the near future that the payment of taxes is a *fundamental* responsibility of a property owner in Illinois. The law is in the statutes, and it is well known that delinquent tax properties are sold annually (in October) for the collection of taxes. Therefore, all persons are charged with standing notice of the consequences of delinquent property taxes; and absolutely *all* defects or omissions in annual sale tax proceedings

61 Brief of the Taxpayers Federation of Illinois, *supra* note 58, at 6.

62 A recent edition of a Chicago newspaper reported the following in a front page story:

> An auction of 34,000 parcels of land and buildings in Cook County on which taxes have not been paid for 10 years or more is expected to be held sometime this year.
>
> State's Attorney Daniel P. Ward, who proposed the auction, said it would be the first such "scavenger sale" in the county under provisions of the 1939 State Revenue Act.
>
> Back taxes on the parcels total more than $18,000,000 and penalties and interest total an additional $30,000,000 he said. Chicago Daily News, Jan. 16, 1964, p. 1, col. 8 (final market ed.).

63 Brief of George E. Drach, Attorney as *Amicus Curiae*, Remer v. Interstate Bond Company, 21 Ill. 2d 504, 173 N.E.2d 425 (1961).

64 Brief of George E. Drach, Attorney, *Id.* at pp. 20-21.

should be cured by a Section 266 order except where fraud is perpetrated by the purchaser or his assignee. In other words, *ignorantia legis neminem excusat*—ignorance of the law is no defense.

If the foregoing viewpoint was adopted by the Supreme Court, it would be in compliance with the basic legislative intent manifested in Section 266 that tax deeds shall be "incontestable."

L. S. DOTSON

CONSTITUTIONAL LAW—WHETHER STATE ACTION REQUIRING PUBLIC SCHOOLS TO BEGIN EACH DAY WITH READINGS FROM THE BIBLE VIOLATES THE FIRST AMENDMENT—The two companion cases herein considered, *School District of Abington Township v. Schempp* and *Murray v. Curlett*,[1] presented issues to the United States Supreme Court in the context of state enactments compelling public schools to begin each day with readings from the Bible.

In the *Schempp* case, a Pennsylvania statute required that:

> At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian.[2]

The children, who were Unitarians, attended a high school at which exercises were conducted pursuant to the statute. Selected students, supervised by teachers, read the passages. The statute as amended imposed no penalty upon a teacher refusing to obey its mandate. However, the possibility definitely existed that such a teacher would have his contract of employment terminated for violating the school laws. During the exercises, various different versions of the Bible were used. This was apparently done so as to show no favoritism toward any one particular religion. No comments or explanations were given and students and parents were notified that participation was not mandatory.[3]

The parents of the children brought an action in equity to enjoin the practice created by the statute. At the trial, Edward Schempp, father of the students, testified that he decided against withdrawing his children from attending the exercises because he felt that the children's relationships with

1 374 U.S. 203, 83 Sup. Ct. 1560, 10 L. Ed. 2d 844 (1963).

2 *Id.* at 1562 (24 Pa. Stat. sec. 15-1516, as amended, Pub. Law 1928 (Supp. 1960) Dec. 17, 1959).

3 The action was brought in 1958 before the amendment authorizing a child's non-attendance at the exercises upon parental request. The District Court held the statute unconstitutional under both the Establishment Clause and the Free Exercise Clause. 177 F. Supp. 398. The statute was then amended and the judgment vacated and remanded for further proceedings. 364 U.S. 298, 81 Sup. Ct. 268, 5 L. Ed. 2d 89.