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SUPREME COURT, U. S.
WASHINGTON, D. C. 20543

In the

Supreme Court of the United States

Cecile G. Pearson,

Appellant,

v.

W. P. Dodd, Ernsestine Dodd, his wife;
and Columbia Gas Transmission Corporation,

Appellees.

No. 75-1318

Washington, D. C.
December 1, 1976

Pages 1 thru 50

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No. 75-1318

W.P. DODD; ERNESTINE DODD, his wife;
and COLUMBIA GAS TRANSMISSION CORPORATION,

Appellees.

Washington, D. C.,

Monday, December 1, 1976

The above-entitled matter came on for argument at
11:47 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, Jr., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

PHILIP G. TERRIE, ESQ., 1009 Security Building,
Charleston, West Virginia 25301;
on behalf of the Appellant.

WM. ROY RICE, ESQ., Post Office Box 1273,
Charleston, West Virginia 25325;
on behalf of the Appellee.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 1318, Pearson against Dodd and others.

Mr. Terrie, I think you may proceed when you're ready.

ORAL ARGUMENT OF PHILIP G. TERRIE, ESQ.,
ON BEHALF OF THE APPELLANT.

MR. TERRIE: Thank you.

Mr. Chief Justice, and may it please the Court:

This case comes to be heard on appeal from the Supreme Court of Appeals of West Virginia. It arose in the first instance in 1968 in the Circuit Court of Kanawha County, West Virginia as a suit to remove a cloud on a title.

Briefly, the facts. In 1937 our story will start. At that time, one W.H. Odell acquired one-half -- an undivided one-half interest in the oil and gas underlying a tract of 68 acres in Union District of Kanawha County, West Virginia.

I think we can agree that at that time his title to the one-half undivided interest was a good title.

In February of that same year, Mr. Odell sold one-half of what he owned, or -- a one-fourth undivided interest in the oil and gas to one, H.C. Pearson, Jr. He delivered the deed, and the deed was duly placed of record.

In the same month, H.C. Pearson, Jr., conveyed his interest, the same one-fourth undivided interest, to his

mother, Cecle G. Pearson. And Mrs. Pearson was the plaintiff below and is the appellant in this case.

The deed from son to mother was duly delivered and duly placed of record. This all took place in February of 1937.

In 1939 the assessment came on the land books in the name of H.C. Pearson, Jr. It was never transferred over to his mother. It stayed, unfortunately, in the name of H.C. Pearson, Jr., as sometimes happens when assessors fail to pick up the second deed.

QUESTION: Who failed to pick it up?

MR. TERRIE: The assessor, the county assessor, your honor.

It stayed on in the name of H.C. Pearson, Jr., until 1967, when it was transferred to one, W.P. Dodd, who is one of the defendants in this case, one of the appellees in this Court.

From the time Mrs. Pearson acquired this interest, from 1938 -- '37 it came on -- through 1960, the taxes were properly paid, the real estate taxes. In 1961 the taxes were not paid, for reasons which we do not have. It was very likely oversight.

In 1962 it was sold to the state by the sheriff of the county following the procedures in West Virginia. In 1964 it was certified by the State Auditor to the Circuit

Court. And in 1966 a suit was brought by the deputy commissioner of delinquent and forfeited lands for Kanawha County, West Virginia, pursuant to statute, to sell delinquent lands. This parcel was one of the parcels in that suit. It was sold to W.P. Dodd, and a deed was delivered and recorded. And that deed, of course, is the cloud that was sought to be removed when this suit was instituted in the first instance.

Thereafter, Mr. Dodd ratified a former lease to which Mrs. Pearson was never a party. A well was drilled on the property, started and completed in March of 1968. And this suit was started in October of 1968 to remove the cloud on the title.

And to go back just a little bit more. Starting in 1967 and continuing upto the time the well was completed, agents of Columbia Gas Transmission Corporation, which is one of the appellees here, and was the lessee in the former lease I mentioned, agents of Columbia talked with Mrs. Pearson, talked with her husband and with her attorney, Mr. Cullen G. Hall of Charleston, West Virginia.

Obviously, in making the complete abstract of the title, as they always do before drilling a well, they ran across the full story of the tax deed and the possible outstanding interest in Mrs. Pearson. They asked Mrs. Pearson if she and her husband would enter into a lease with Columbia, the idea being, of course, that the Pearsons

and the Dodds would both be lessors, and Columbia would be protected. And then if any trouble developed, any title problems arose, the Pearsons and the Dodds could fight it out, and Columbia would simply be a stakeholder.

Mrs. Pearson refused, told Columbia before it started drilling that her interest was not released, and that Columbia, if it drilled a well, would proceed at its peril.

QUESTION: All that is in the record, I take it.

MR. TERRIE: Yes, your honor.

Now, I think I should say a word about the general tax proceedings for real estate property taxes in West Virginia.

QUESTION: Up to this time Mrs. Pearson had not asserted any claim, had she, with respect to Dodd?

MR. TERRIE: Yes, your honor, as a matter of fact. I think it's not particularly important here, but it's true, she did. Her attorney took the position that the -- because -- and the lower court ruled against this -- that it had been forfeited because it was on in the wrong name. So he did go to the auditor and presumed to redeem the land for forfeiture for non entry.

QUESTION: Well, at what stage in this whole process was that asserted?

MR. TERRIE: About 1967, just about the time --

QUESTION: '67, but not in '61, '62, '63?

MR. TERRIE: Oh, no your honor. No, your honor. She is an older person and didn't honestly know that her taxes had not been paid.

QUESTION: Her husband had been paying them, I think the record shows, then, didn't he?

MR. TERRIE: Yes, your honor. They're an older couple. He's now deceased, but at that time, he paid all the taxes.

QUESTION: Does the record show why he stopped paying them?

MR. TERRIE: No, your honor, the record does not show. There's no way of telling. Oversight, very likely.

QUESTION: He didn't die at that time, did he?

MR. TERRIE: Oh, no. He was living at the time the well was drilled. But that was much later that he died.

QUESTION: Well, are you suggesting that there's something about being an older person that makes you less likely to know that your taxes ought to be paid?

MR. TERRIE: Well, not necessarily, your honor, but perhaps it could be. These are -- I won't say senile, but older, and perhaps forgetful.

QUESTION: It could be argued the other way: you're used to it --

QUESTION: Had a lot of experience.

MR. TERRIE: Well, yes, your honor, of course it could be argued both ways. I'm not taking a firm stand on that.

QUESTION: Anyway, the record doesn't tell us why it wasn't?

MR. TERRIE: No, sir, no, sir, it does not, your honor.

QUESTION: And you represent her?

MR. TERRIE: Yes. Yes, your honor. I represent her in this Court. I did not represent her in the Circuit Court proceedings.

QUESTION: But in any event, there's no question of the fact that the taxes were not paid in the year 1961.

MR. TERRIE: No, no doubt about that at all, your honor.

QUESTION: Incidentally, did she live in the area in which the published notice was made?

MR. TERRIE: She lived in Kanawha County, West Virginia, and it was published in a newspaper -- we'll get to that later -- but the two newspapers in Charleston, West Virginia, not far away.

QUESTION: So we don't have a situation where one lives out in California, and there's a published notice in West Virginia?

MR. TERRIE: No, sir, we have no non-resident

problem here.

QUESTION: Did the son live with Mr. and Mrs. Pearson, the appellant, do you know?

MR. TERRIE: Your honor, I really don't know. I don't think he lived with them, he lived close by them.

QUESTION: But tax notices continued to be issued in the name of the son?

MR. TERRIE: Yes, your honor.

QUESTION: But the father paid the taxes from 1937 until 1960?

MR. TERRIE: Yes, sir.

QUESTION: So the son must have brought the tax notice to the attention of his father?

MR. TERRIE: Or else he went down to the courthouse and paid what was --

QUESTION: Recorded against the property?

MR. TERRIE: Yes, sir.

QUESTION: The record does not show?

MR. TERRIE: I don't think it does, your honor.

QUESTION: I thought the record did show that the father and the husband was the actual person that paid the taxes.

MR. TERRIE: Well, the husband paid the taxes, there's no doubt about that.

QUESTION: The father of the son?

MR. TERRIE: Yes, sir.

QUESTION: The father of the record owner?

MR. TERRIE: Yes, your honor.

QUESTION: I was asking how the father happened to know?

MR. TERRIE: I really don't know whether he lived with his parents or not. I just don't know, sir.

In the West Virginia Code, Chapter 11 A has to do with enforcement of tax procedures, and collection of taxes. Article 3 -- forgive me -- Article 3 has to do with sale of land for taxes. And that is the -- pertains to the sheriff of the county. Article 4 has to do with a suit that is brought in the Circuit Court for the sale of the lands by the Deputy Commissioner of Delinquent and Forfeited land.

Now, on the year after taxes become delinquent, a sheriff publishes notice in the newspaper, delinquency notice. Then later on in about October or November, the sheriff publishes notice again and has a sale. And it can be purchased by an individual at the sheriff's sale. That was not the case here. If it is not purchased by an individual, the sheriff declares the property sold to the state.

At that time, the statute -- this is the sheriff's statute -- provides for a period of 18 months from the sale to the state for redemption.

QUESTION: Is there at that time a transfer of

title of record recorded?

MR. TERRIE: No, sir. No record or deed or anything like that. Just the sheriff declares it sold to the state.

QUESTION: Does Mrs. Pearson's name appear anywhere on the record?

MR. TERRIE: Her deeds of record --

QUESTION: Her deed does, of course. But I'm thinking now about the tax records or any other records?

MR. TERRIE: No, your honor.

QUESTION: One of your positions is that she should have received notice. Unless one examined the deed book, would there have been any way for the state to have known to whom the deed should be sent?

MR. TERRIE: Well, that leads me into one of my most important points, your honor.

QUESTION: Well, it may be a little too near the lunch hour to get into that.

MR. TERRIE: Whatever you say, sir.

QUESTION: It's up to the Chief Justice.

MR. TERRIE: Shall I continue?

QUESTION: Yes, you can continue for another minute and a half.

MR. TERRIE: All right, sir.

I was speaking of the period of 18 months from

the sale to the state for redemption. And then it was transferred to the state, certified to the Circuit Court, and the Deputy Commissioner of Delinquent and Forfeited Lands then brings a suit in the circuit court.

Now, my case in chief rests on two main points. I'll touch that.

MR. CHIEF JUSTICE BURGER: I think we'll begin there at 1:00 o'clock.

MR. TERRIE: Thank you, sir.

[Whereupon, the Court was recessed until 1:00 o'clock p.m., on Monday, December 1, 1976.]

MR. CHIEF JUSTICE BURGER: Mr. Terrie, you may resume.

MR. TERRIE: Mr. Chief Justice, and may it please the Court:

Just before we broke for the recess, I was talking about Chapter 11 A of the Code of West Virginia. Article 4 of that chapter provides for the sale of lands by the Deputy Commissioner.

Section 12 of Article 4 is where I find my first major point. Section 12 provides that in the suit that is brought, notice to former owners, interested parties, is given by publication only. It makes it clear, makes it explicit, that it is the intent and the will of the legislature that publication is all that is required and all

that is necessary.

I feel strongly that that is a denial of due process under the Fourteenth Amendment to the Constitution of the United States.

My second point is in Article 3, which is the Article where the sheriff sells. And if you'll recall, after the sheriff sells to the state, there is a period of 18 months to redeem. I say that if that 18 month period for redemption is used as a statute of limitations to bar the owner from asserting rights that were denied him by point 1, then that also is a violation of due process of law.

If I can look at --

QUESTION: You say there's nothing to trigger the 18 months?

MR. TERRIE: Exactly, your honor. The statute runs before the right has accrued.

QUESTION: Of course on that theory, then, no notice by publication is without infirmity, is that true?

MR. TERRIE: No notice -- beg your pardon, sir?

QUESTION: Notices without -- by publication are then constitutionally doubtful, aren't they?

MR. TERRIE: I agree.

QUESTION: In all cases, in all settings.

MR. TERRIE: Yes, sir, yes, sir, absolutely.

The opinion in the Supreme Court of Appeals of

West Virginia, I think shows clearly what I'm driving at.

First of all, he takes up my point one, and talks about denial of due process because of no personal service of notice, by publication only. He cites State against Simmons, an old West Virginia case -- not so old, 1951, which laid down the law at that time that in West Virginia personal notice was not required, that publication was sufficient.

And on that reasoning he quotes Syllabus I of State against Simmons and says that is the law at that time.

Then he goes into the famous case of Mullane against Central Hanover Bank & Trust Company, cases that followed it, and he talks about them. And he says, he begins to say, this is the developing of a new approach to due process. And he quotes, with approval, from the Mullane case, to the extent, notice reasonably calculated to apprise interested parties.

At that point, it looks like I'm going to get somewhere with this opinion. And then, it deviates. He cites Fuentes versus Shevin, decided by this case -- this Court, pardon me -- in 1972. Actually, as you'll recall, that case really held that the Florida and Pennsylvania replevin statutes were invalid because they provided for seizure of personal property without notice.

But in the language in that opinion, the Court stated that not only does due process protect absolute

ownership, but it protects -- and here's the key word -- significant property interests and statutory entitlement.

And then -- then, the opinion seizes on 11 A-3-8, which is the 18 month period, and says that since the property was not redeemed in 18 months, the owner, the former owner, no longer had a significant property interest, therefore was not entitled to due process, or personal notice.

He calls this 18 month period a statutory entitlement, which he says is lost from the time it expires. And in my humble opinion, the Court's opinion goes full cycle. He uses 11 A-3-8 as a statute of limitations to bar what he was about to admit was an unconstitutional denial of due process.

QUESTION: You think the State has a right to put any limitation on it?

MR. TERRIE: Of course, your honor. The 18 month period was a period of redemption. And that's all. It was just a waiting period, in my opinion.

QUESTION: But do you think that you could come in 50 years later and claim it?

MR. TERRIE: Well, it depends, your honor, on --

QUESTION: Do you? In this case, do you think so?

MR. TERRIE: No, sir. Yes, yes. If there was a denial of due process, and it was not cured by some other means, I would say yes.

QUESTION: Well, then -- you just said that you can't publish, right?

MR. TERRIE: I said that publication is not good service.

QUESTION: Under any circumstance?

MR. TERRIE: Yes.

QUESTION: Well, why do you worry about the 11 months or anything else?

MR. TERRIE: I don't worry about it, but the Supreme Court of Appeals of West Virginia, your honor, used that to bar the right to a sale -- the lack of due process.

QUESTION: Well, I don't understand what your complaint is. Your complaint is that under no circumstances can you take anybody's property without personal service.

MR. TERRIE: Yes, sir.

QUESTION: And you propose -- if the owner happens to be in Russia, you would serve him how?

MR. TERRIE: Oh, no, no your honor. I think process should issue -- I didn't make myself clear. A suit should be started like any lawsuit. Process should issue. It should be served on all parties who can be found. If they cannot be found, then I say publication is fine.

QUESTION: And how could this person be found?

The owner was whom?

MR. TERRIE: Mrs. Cecle G. Pearson. She was the owner.

QUESTION: And who was the owner of record?

MR. TERRIE: She was the owner of record, your honor. Her name was not on the assessment role. It was in the name of a former owner in the assessor's office. But she was the owner, she was of record.

QUESTION: Well, suppose you go to the assessment record, and send a notice to that person. Would that be all right? And it so happens that it belongs to the man in Russia.

MR. TERRIE: Your honor, I don't say that due process is an absolute guarantee of notice. I say that a suit should be started and process issued reasonably calculated to reach the interested parties. If they cannot be found, then they have had due process. That's my point.

QUESTION: Well, isn't that this case?

MR. TERRIE: No, sir, because no process was ever issued. It was publication only. There was no summons issued.

QUESTION: What should the state have done?

MR. TERRIE: The state should have started a suit the way any other suit is started. By filing a complaint and having the clerk issue process, deliver it to a deputy sheriff and have him go out and serve the party.

QUESTION: Who would the defendants have been in this suit?

MR. TERRIE: The defendants in the suit as it is now, are the former property owners.

QUESTION: Well, if they had no record of Mrs. Pearson's ownership other than in the deed book.

MR. TERRIE: Your honor, my answer to that would be that if process had issued, and if the sheriff had gone out looking for H.C. Pearson, JR., he might have found out that he was deceived. He might have found Mrs. Pearson. But whether he found her or not, the fact that he tried, she would have had due process. That is my feeling.

QUESTION: You don't argue that all the state had to do was look in the deed records of the county?

MR. TERRIE: Yes, sir, I think that's a valid point. I'm not saying they have to do that. But I think if they'd looked they could have found it.

QUESTION: Well, most purchasers will certainly look at the --

MR. TERRIE: Certainly.

QUESTION: -- the title of the property.

MR. TERRIE: Yes, your honor. Yes, your honor. I can't say what the standard must be. Under Mullane, it says reasonable notice.

QUESTION: All the cases you rely on, though, so far as what kind of notice you get, involve unexpected potential for deprivation. That is, condemnation, something

like that. They don't involve the annual recurring payment of taxes that everybody expects to have to pay on their property.

MR. TERRIE: That is true, your honor. But I maintain that due process goes to protect the little man whose property is lost because he fails to pay his taxes.

QUESTION: Well, would it be any different if this were a local bank title? Are your principles any different if the local bank were in the posture of your client?

MR. TERRIE: No, sir. Same principle.

QUESTION: Well, you said, the little people, and you were talking about --

MR. TERRIE: Because the local bank is probably going to pay its taxes.

QUESTION: Well, but probably -- in the same posture they didn't pay their taxes because of the oversight of the clerk.

MR. TERRIE: In that case, no, I don't find any difference.

QUESTION: Or whether they're senile, makes no difference. Or whether they're 21 years old, or 31 and very alert, does it really?

MR. TERRIE: No, sir, no, sir, not that I --

QUESTION: Is it possible that your client didn't get interested in this whole business until the '55 drilling

began?

MR. TERRIE: Certainly, your honor. But the stakes have got to be high to enable a little person to come up to this Court. It's no use trying to hide that fact. She came to her attorney, and headvised her what to do, that's true. If the land were of no value, she wouldn't be here. That's why it hasn't come up for ten years.

QUESTION: How many years without any taxes being paid?

MR. TERRIE: Those taxes that failed to be paid in 1961.

QUESTION: Until when? Have they been paid, yet?

MR. TERRIE: In '67, I believe it was, it was sold to W.P. Dodd.

QUESTION: So six years that there was no interest.

MR. TERRIE: That's right.

QUESTION: Well, there probably wouldn't have been any tax bills after the real estate became the property of the state, would there?

MR. TERRIE: In West Virginia, the assessor actually is not required to send out bills. That he does in Kanawha County, and I expect he was doing it then. But it's purely a matter of convenience of the property owner.

QUESTION: But after the real estate became the property of the state --

MR. TERRIE: No, that's quite right. Yes, your honor.

QUESTION: -- there was nobody to send the bill to. There was no private owner. Is that right?

MR. TERRIE: Yes, sir.

QUESTION: While I've interrupted you, let me ask you this: it's far from clear to me. There were two -- at least two separate proceedings here. One was, after the taxes were not paid in 1961, then, at the sheriff's sale, there being no bidder, the real estate became the property of the state.

MR. TERRIE: Yes, sir.

QUESTION: And there was no notice of that?

MR. TERRIE: Oh, no.

QUESTION: To anybody?

MR. TERRIE: No, sir.

QUESTION: Now is that the -- and then later -- and then later, the state conveyed the property to somebody else, correct?

MR. TERRIE: Yes, sir.

QUESTION: Now which of those two transactions, of neither of which was notice given, personal notice given, are you complaining of?

MR. TERRIE: The second one. The second one, your honor.

QUESTION: Not the first one at all?

MR. TERRIE: No, sir. Not really.

QUESTION: Why not?

MR. TERRIE: Well, because the Dodd title is not derived from the sheriff's sale.

QUESTION: That's where your title was taken away, was by the sale to the state. Then you no longer owned it, the state did.

MR. TERRIE: We had a right to redeem, your honor.

QUESTION: Yes, but you were given no notice of that transfer to the state. You were given no notice of your 18 month period to redeem, and you're not complaining about that, is that right?

MR. TERRIE: I'm complaining about it being used as a statute of limitations.

QUESTION: Well, why aren't you complaining about that substantively, per se?

MR. TERRIE: Because I don't think it's an issue in this case.

QUESTION: Well, it's a very big part of the proceedings that ended up with the real estate belonging to somebody else, didn't it? It went first to the state, didn't it?

MR. TERRIE: Yes, your honor.

QUESTION: Without any notice?

MR. TERRIE: Right.

QUESTION: And you're not complaining of that?

MR. TERRIE: Well, I could complain about that --

QUESTION: Well, I know you could, but are you?

MR. TERRIE: No, sir.

QUESTION: Well, doesn't your 18 months run from that event?

MR. TERRIE: Yes, sir.

QUESTION: Not the later one?

MR. TERRIE: Yes, sir.

QUESTION: Well, I don't know how you upset the statute of limitations ruling without getting to the first sale as an invalid sale.

MR. TERRIE: Your honor, the first sale simply starts the statute --

QUESTION: Well, you challenged it in your complaint. Or whatever filing you -- as I read this, you certainly challenge -- the initial sale, you've challenged.

MR. TERRIE: It wasn't good notice, but the Dodd title depends on the second sale. And that's why I'm challenging --

QUESTION: The second sale by somebody else, by the state who had acquired it as a result of this sheriff's transfer to the state. That's what deprived your client of his property.

MR. TERRIE: Well --

QUESTION: If the State got good title to the property out of the first sale, there's nothing wrong with the second sale.

MR. TERRIE: No, sir, I don't see it that way, I'm sorry. The due process issue, I think, arises out of the Deputy Commissioner's sale. The sheriff's sale simply started the running of the 18 month period. Which is used --

QUESTION: Well, that's what the Supreme Court of West Virginia seized upon, that put the nail in your coffin.

MR. TERRIE: Yes, sir, the 18 months, they called it a statute of limitations. Which had run before the right had occurred --

QUESTION: Excuse me.

MR. TERRIE: Go ahead, sir.

QUESTION: No, you go ahead.

MR. TERRIE: Well, I finished it. The 18 month period had expired before the right to challenge due process in the Deputy Commissioner's sale had even accrued. That is my position.

QUESTION: Well, then, is your position, at least in part, that the privilege of redemption that's given to you in the second sale is the kind of entitlement of which the state has to give you notice if it's going to take it away from you?

MR. TERRIE: Your honor, I don't follow that.

In the second sale, the only redemption possibility -- there's no redemption after that second sale.

QUESTION: Well, I mean, at the second sale -- isn't that the one where the West Virginia Supreme Court talks about the privilege of redemption?

MR. TERRIE: It has run out by then. Therefore, you have no significant property interest. And therefore, you're not entitled to due process in the Deputy Commissioner's suit.

QUESTION: In other words, you extinguished your client's title -- first was the sheriff's process.

MR. TERRIE: Yes, sir.

QUESTION: And that triggered the commencement of the 18 month redemption period. And then the final nail in the coffin, to borrow that phrase, was the expiration of the redemption phase, is that not so?

MR. TERRIE: Yes, your honor.

QUESTION: But they were both involved, were they not?

MR. TERRIE: They were both involved. And the first one wasn't good, granted. I'll be willing to attack it. But I don't think that's an issue in this case.

QUESTION: Well, if that's not an issue, and if that's constitutional, then this real estate in question

was the property of the state at the time it was conveyed to the other party, and you had no standing to complain about it.

MR. TERRIE: I think that -- I think I did, your honor.

QUESTION: And that's really, in effect, what the Supreme Court of your state held. But it didn't go back to any denial of notice at the time the real estate became the property of the state.

MR. TERRIE: Yes, sir.

QUESTION: But you're not attacking that here. You're assuming the constitutionality of that transfer.

MR. TERRIE: Well, I don't think -- it's not an issue in the lawsuit that was brought to sell the property. The only issue there is, the state is selling the property. And the former owner should have notice. And he didn't get it.

QUESTION: Well, I thought your claim was that the former owner should have had notice before the property vested in the state. And if you concede that that transfer of property to the state was wholly valid, then I fail to see why the state couldn't do with the property as it wished, without any notice to anybody. Any land owner can.

MR. TERRIE: Well --

QUESTION: Mr. Terrie, with regard to the first

sale, does the record tell us whether or not your client had notice of that sale?

MR. TERRIE: There was no notice of that sale.

QUESTION: Does the record show that?

MR. TERRIE: I don't know whether it does or not. But under the law, all the sheriff does is publish. So it would be no better than the second one.

QUESTION: But it would be consistent with the record that she might have read the newspaper, or been told by somebody, and said, well, I don't care because the land is worthless. That's possible, I suppose.

MR. TERRIE: Of course it's possible, your honor, yes, sir.

Your honor, I may have a few minutes left. May I reserve my time?

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Rice.

ORAL ARGUMENT OF WM. ROY RICE, ESQ.,

ON BEHALF OF THE APPELLEE.

MR. RICE: Mr. Chief Justice, and may it please the Court:

Basically, my profession as a lawyer is a title attorney. That's about all I do. And I am astounded that a title matter of this nature would bring me before this Court.

Nevertheless, perhaps I can shed some light on the subject, because I have been in it from the very beginning.

It is important for this Court to know who H.C. Pearson, Sr., was. That is the man, the husband of the appellant, now deceased -- that is, the husband is now deceased -- and his son was H.C. Pearson, JR. But in the discovery deposition of H.C. Pearson, Sr., we asked him to give us some of his previous job experience. That man was 84 years old at the time, which was 1968.

And he said, I spent almost 16 years with Ohio Fuel Gas Company, which was a predecessor company to my present employer. And the question was, in what capacity? And the answer was, as engineer and land department man. I had charge of both of those departments for at least 12 years.

He left Ohio Fuel in 1927, and we asked him what his experience in oil and gas work was from 1927 up until the present time. And he said, I own some property, oil and gas properties, in Kentucky and some in West Virginia. And I have helped drill several wells with your company.

And we asked him, did he own some tracts of land. And he said, well, a few years ago I expect I had 50 or 60 or 70 tracts. But I sold most of my tracts in Jackson County to Star Gas Company, et cetera.

The record in this case will show that the appellant.

and her husband, who handled the tax tickets for her, were knowledgeable people. They knew the tax deed procedure in West Virginia. They knew the taxing system for real property taxes in West Virginia.

It's helpful to keep the facts in proper chronological order.

QUESTION: Well, those elements would only relate to some equitable aspects rather than to due process, would they not?

MR. RICE: I think they may impinge on both of them. Certainly equitable, at least equitable, yes.

QUESTION: Would you give a different due process for knowledgeable people than you do to less knowledgeable people?

MR. RICE: No, but I think it's helpful to understand who the man was.

Now the tax ticket, after H.C. Pearson, Jr., had conveyed the tract of land, the undivided mineral interest, to his mother in 1937, stayed in the son's name. And the mother and father either picked up that tax ticket, or if it was mailed to them, they paid that tax ticket in the son's name.

QUESTION: In what year?

MR. RICE: In 1937. They paid the tax ticket that way for 24 years. From 1937, when they bought it --

QUESTION: To '61.

MR. RICE: -- when they bought it from W.H. Odell, up until 1961.

Then in 1961 that tax ticket did not get paid. And in 1962 there was a proceeding with two publications in two local newspapers that said that that tract of land would be sold to the State of West Virginia if it were not redeemed.

And then the sale occurred, and at this sale individual bidders can come in and bid at least the amount of the taxes. And if they do, then that tract of land will be -- or parcel or interest, will be sold to the individual purchaser.

And there is a notice provision in that statute, a personal notice provision. Before you can get a county clerk's tax deed pursuant to that sale, there is personal notice.

But if these tracts of land, because of a miniscule amount of interest and the time and expense that it takes to check the title to find out who the owners are and where they are and how to serve them, people won't get them in at the sheriff's sale. They won't bid on the tracts of land and own them and pay the taxes, and the former owner quite obviously won't pay the taxes.

So you come up to the sale in 1965.

QUESTION: Mr. Rice, before you get to '65, does the record tell us in fact whether the appellant got personal notice in '62?

You said a statute requires it, is that right?

MR. RICE: The statute would have required it had there been an individual purchaser who had bid the amount of the taxes.

QUESTION: Oh, I see.

MR. RICE: In this case, that did not happen, thus the land went to the state for the amount of the taxes.

QUESTION: With no personal notice.

MR. RICE: With no personal notice.

QUESTION: Either required or given? Is that true?

QUESTION: Or published?

MR. RICE: No, there was publication.

QUESTION: All right, all right. Now, do you defend -- if that transaction were here on its merits, would you defend that? I take it the Supreme Court of West Virginia did not say that that transaction would survive due process analysis.

MR. RICE: I would defend it, your honor.

QUESTION: But the Supreme Court of West Virginia didn't. It said that it was immune because of the statute of limitations.

MR. RICE: Well, you see you have to keep the sheriff's sale first in point of time. And that one has a

publication --

QUESTION: Yes.

MR. RICE: -- and I would defend that from a matter of due process.

QUESTION: What about the Supreme Court of West Virginia?

MR. RICE: Sir?

QUESTION: What about the Supreme Court of West Virginia would have to hold --

MR. RICE: Well, they said that 18 months then went by and cured any defects. Or, at least it shielded that transaction.

MR. RICE: Because that is a constitutional provision in West Virginia. The constitution of 1872 says that if the taxes are not paid, and they remain unredeemed for 18 months, the title vests in the State of West Virginia. We may as well face it, that's what the constitution says.

QUESTION: If there had been a sale to a private party at the auction, personal notice would have been given, would have been required, would it not, to the former owner?

MR. RICE: In order for the purchaser who bid it in, that would be required, yes.

QUESTION: Personal notice, and then a period for an opportunity to redeem, correct?

MR. RICE: Yes, yes.

QUESTION: But since there was no private purchaser and instead the title went to the State, no personal notice required or given?

MR. RICE: That's right.

QUESTION: So there wasn't any judicial proceeding, was there?

MR. RICE: There was not.

QUESTION: And the statute doesn't require one.

QUESTION: Simply a transfer of title.

QUESTION: It's a forfeiture.

QUESTION: It's a taking of property.

MR. RICE: Mr. Justice Stewart, that is right.

QUESTION: And after 18 months, it's final.

MR. RICE: That's what the statute said, and that's what the constitution of 1872 says.

QUESTION: Mr. Rice, is there any difference in the character of the title which a private purchaser in 1962 -- I'm still focussing on the first transaction -- would have received after getting personal notice, and the character of the title the state got without personal notice? Are both of them subject to an 18 month period of redemption by the former owner?

MR. RICE: No, no, once the individual -- the individual purchaser has to wait 18 months in order to get an abstract of title and a survey made, so that the periods

cover roughly the same time --

QUESTION: But before the 18 month statute runs, in the event a private person buys at the auction, then the former owner gets personal notice?

MR. RICE: that's right.

QUESTION: But when the sale is to the state, no such notice. Why the difference?

MR. RICE: Mr. Justice Stevens, the reason is the expense. The -- quite obviously, the tract of land is not valuable enough, or may not be valuable enough, for the owner to pay the taxes. And thus you come to a place whether you're going to spend \$50 an hour for a title examining attorney to determine who the owners are, who the true owners are, and where they are.

QUESTION: I see. And you presume it's worth the trouble if somebody's going to pay for the property. And if not, it's not worth the money, that's the thought.

MR. RICE: Yes.

QUESTION: Let me ask one other question before you go on. The State of West Virginia has filed an amicus brief in support of your position in which they say, on page 2 in the summary of the argument, that if the appellant had made any attempt to pay her taxes for a period of almost 4 and 1/2 years, she would have learned of the tax status of the property, and could have effected redemption. They

seem to assume that she had a four and a half year period in which to redeem. Do you agree with that? Rather than the 18 months.

MR. RICE: I do not agree with it. However, I did not write that amicus brief.

QUESTION: The State of West Virginia misunderstands its own statutes, I guess. I see.

QUESTION: Well, isn't it true that even after the 18 months, under Section 11 A-4-18, Mrs. Pearson had a right to apply to a state court for permission to redeem her property, and that could have been granted, is that correct?

MR. RICE: Mr. Justice Stewart, she was entitled by grace of the legislature to do so.

QUESTION: And by grace, in the discretion of a court, giving her permission. Correct?

MR. RICE: Yes.

QUESTION: So it wasn't an absolute foreclosure. I mean, she did have that possibility open to her.

MR. RICE: By the grace of the legislature.

QUESTION: And did she in fact make an unsuccessful attempt to redeem under that section in this case?

MR. RICE: OH, no, she never attempted to redeem the property until -- you see, once she discovered that the property had been sold to W.P. Dodd in late 1967, even then she didn't go try to pay her taxes. She waited until the gas

well came in and produced an open flow of 100 million cubic feet a day, and then went to the State of West Virginia and attempted to get a certificate --

QUESTION: Waited until the race was over and then went and bought a ticket on the winner.

MR. RICE: Yes.

QUESTION: One more question if I may, Mr. Rice. After the 18 month period runs, and prior to the sale pursuant to publication, as I understand the West Virginia Court, there is no right in the former owner to have the property redeemed. But there is a provision that the court in its discretion may allow it to be done. Is there any guideline whatsoever, or any tradition, that tells the court what to do if a former owner comes in and says, I'd like to get my property back, and the state says, well, I'd rather not, because we've got somebody willing to pay a million dollars for it? What is the court supposed to do?

MR. RICE: Mr. Justice Stevens, if the petition is made by the former owner to the deputy commissioner's office in each county, that deputy commissioner has forms printed up that he will supply to the land owner, and it doesn't even take a counsel. Usually, he will get counsel, because by then he has seen what difficult straits he is in.

But there is a form petition and a form order, and just as a pro forma proceeding, the former owner is allowed

to redeem. Under the control of the local circuit court.

QUESTION: Well, then, is this somewhat analogous to the situation where a discharged school teacher didn't have a contract, but had an expectancy that he'd always get relief if he went in and asked for it? There's no statutory right to recover, but the practice is so clear and definite that she would always win if she got notice. So why isn't there the same need for notice as if she had legal right to the property?

MR. RICE: Because the value, the apparent value of the assets at the time it is sold simply will not bear the expense of determining the names and the addresses of the parties that need the notice, if you determine that they need a notice.

The State of West Virginia faced up to this, and between -- during the Depression years, they had a chancery proceeding in West Virginia where you served in these suits personal service on the residents and publication against the non-residents. But the title searches by the deputy commissioners were costing so much money that it obsoleted the value of the sale.

QUESTION: Mr. Rice, may we go back to the original notice. The tax we are talking about was due for the year 1961. When did the property owner, or the owner of this interest, receive the tax bill for 1960?

MR. RICE: Your honor, that needs some clarification. Never.

QUESTION: Well, I understand that, but when are these bills sent out?

MR. RICE: They are not, in West Virginia, until 1976, there is a recent enactment in --

QUESTION: You referred to a tax ticket, I think.

MR. RICE: There is a tax ticket, but the owner or the interested person has to go ultimately and pick up the tax ticket.

QUESTION: There was no tax bill.

MR. RICE: No, there's a tax bill, but it's not sent.

QUESTION: Not sent.

MR. RICE: It's not sent to anybody. You have to go get it.

QUESTION: So Mr. Pearson, deceased, went to the courthouse and picked up the tax ticket every year?

MR. RICE: For 24 years he did.

QUESTION: And then nobody went? They could have gone in '61, they could have gone in '62, they could have gone in '63 --

QUESTION: No, the property belonged to the state after '62.

QUESTION: Except they still could have -- they had

the 18 months.

MR. RICE: The 18 months didn't run until 1964, the middle of 1964.

QUESTION: Well, I think that even if the -- if when the tax records, the name of the true owner had appeared, the same thing would have happened here, there would have been no notice.

MR. RICE: There would have been publication.

QUESTION: Well, then, publication, but there would have been no personal notice.

MR. RICE: No personal notice.

QUESTION: The state's brief tell us that she could have redeemed up to May 27, 1966. Do you agree with that date?

MR. RICE: No, I do not agree with that date.

QUESTION: What date would -- they've taken the four years and added 18 months to it.

MR. RICE: May of 1966, did you say?

QUESTION: Yes.

MR. RICE: Your honor, that date would be accurate then, because by then the circuit court suit had started in, which was the State of West Virginia versus all of these unknown owners, and there was a new statutory entitlement that we had denominated, where she could redeem it again.

QUESTION: And that was the second transaction?

MR. RICE: That was the second transaction.

QUESTION: Mr. Rice, let me give you one more question that troubles me. I'm learning a great deal about this now. In 1962, you say that personal notice is justified if there's a private purchaser but not if the state is doing it, because the existence of a private purchaser kind of indicates there's value there and it's worth spending the money to get the evidence.

MR. RICE: And that purchaser will pursue it.

QUESTION: But why isn't the same rationale applicable when the sale is made after the 18 months goes by, because at that time you did have a private purchaser, and you had a proceeding started. Why wouldn't there be the same reason then to believe there's enough money in the property to support that kind of investment in giving a fair notice to the former owner?

MR. RICE: After the -- your honor, after the 18 month period had gone by, that would take you up to roughly 1964 --

QUESTION: Which would mean there were more back taxes to pay to acquire title, isn't it?

MR. RICE: Yes, with interest.

QUESTION: Right.

MR. RICE: And then it's only in 1966 that you have this second suit by the State of West Virginia against the --

what I say is an interim proceeding.

QUESTION: By that time, it's your submission, I suppose, that the State of West Virginia has been the owner of the fee title for several years?

MR. RICE: That's what the holding below was.

QUESTION: That's what the Supreme Court held.

QUESTION: But at that time they're willing to spend the money to have a judicial proceeding, but you're not willing to spend that little more amount to get service on the former owner. I don't understand.

MR. RICE: Mr. Justice Stevens, part of the problem is, there's a case in West Virginia which says that this second sale of delinquent land must be a judicial proceeding. That is referred to in the cases as Sims against Fisher --

QUESTION: But isn't that completely anomalous? Because at that time, under your theory, nobody has any interest at all except the state? Why should they then make it a judicial proceeding?

MR. RICE: Your honor, that anomaly has been recognized in West Virginia by a -- there's a reference in the briefs to the law review article in 54 West Virginia Law Review on the side of the appellant. Unfortunately -- or perhaps here is my opportunity to mention to you that Professor Clyde Colson at West Virginia followed that article with facing up, in the same law review article, to the thing that has

concerned you, and it is a lengthy article, but I believe it satisfactorily answers that question.

QUESTION: The Sims case was decided under the state constitution under a matter of the division of powers.

MR. RICE: That's right, it was.

QUESTION: And that's what made this -- cast this in the form of a judicial proceeding.

MR. RICE: -- an administrative function off on the courts.

QUESTION: Right.

MR. RICE: Which just shouldn't happen.

QUESTION: Right.

MR. RICE: I have strayed.

QUESTION: You've been led.

QUESTION: Yes, we've taken you astray.

MR. RICE: Approximately how much time do I have?

QUESTION: You have until 1:50. That means another ten minutes.

MR. RICE: If I may, let me say this. There were two delinquent publications -- and by the way, there is a land book as big as this lectern for each year in Kanawha County. And there is another book that is the delinquency book. And each book will have H.C. Pearson's name in it. The delinquency book will have his name in it, and it will have the property marked delinquent.

QUESTION: Are those open to public inspection?

MR. RICE: Oh, yes. In your counsel --

QUESTION: That's how a great many speculators go out and find out what property is available on tax sales, isn't it?

MR. RICE: That's right. But of course the published list gives a more complete compilation.

QUESTION: Or engage one of the clerks in the courthouse to do a little moonlighting and keep them posted.

MR. RICE: There's a law against that.

QUESTION: There is now? In Minnesota, that is the common practice.

MR. RICE: Yes.

Your honor, I will, a little later on in my argument, face up to the speculation problem. What we're saying is -- and I believe you need to consider the second issue first, that is, whether the independent state determination that the title is in the State of West Virginia forecloses the constitutional issue.

If you will face up to the decision in Paschall versus Christie-Stewart, that was a tax deed case that came out of Oklahoma, and there was a question of whether the statute of limitations or the constitutional due process question barred the tax sale. And the intervening -- there are three courts in Oklahoma, and the middle court held that

due process was violated. The highest court in Oklahoma held that due process was not violated.

When that due process question came to this Court, it was sent back to Oklahoma to determine whether there was an independent state ground, that is, the statute of limitations, that would, under Murdock versus the City of Memphis, substantiate the decision in the court below. And when the case went back to the Oklahoma Supreme Court, they held that the statute of limitations, that is, adverse possession under the tax deed, barred the title of the plaintiff and the appellant on the basis of an independent state ground.

And I say to this Court that Pearson versus Dodd is an independent state determination; that the title was in the State of West Virginia; and that the appellant had no title.

QUESTION: The question was, how did the title get in the State of West Virginia? It got transferred from the taxpayer to the State of West Virginia without any notice to the taxpayer.

MR. RICE: But Mr. Justice Stewart, if you will harken back to Paschall versus Christie-Stewart, the statute of limitations was running against the plaintiff and the appellant in that case, and there was no notice except the red flag of adverse possession to tell the former owner that

the statute was running against him.

QUESTION: Well, here there's no red flag of adverse possession.

MR. RICE: That's right.

QUESTION: The state doesn't have arms and legs and can't walk around the property or build a house there.

MR. RICE: No.

QUESTION: And live in it.

MR. RICE: But I believe you can equate the two independent state grounds.

QUESTION: Well, in any event, as I understand it, your brother is not attacking the transaction by which title was transferred from his client to the state.

MR. RICE: I understand that.

All of the cases seem to harken back to the Bell's Gap case, and I take the position before this Court that from a matter of taxation -- and I don't mean to espouse the common man test of due process, because quite obviously that is not what determines due process. But it seems to me that there is a built in notice on a recurring tax situation where the tax recurs once every year, that the landowner knows that if he hasn't paid his tax ticket within a year, he'd better look out for what is going to happen.

That is the presume-to-know-the-law argument.

QUESTION: Well, in that case you wouldn't need

to give notice by publication or personal notice or anything else?

QUESTION: Any kind.

MR. RICE: I believe I would have to go that far, yes.

QUESTION: Yes.

MR. RICE: When we get to -- turning to what is stated as the first issue, we come to the Mullane case, and I'll have to quickly say, I think the Mullane case is the best case that Columbia Gas Transmission could cite to this Court.

In that case, it said accordingly, we overrule appellant's constitutional objections to published notices insofar as they are urged on behalf of beneficiaries whose interests or addresses are unknown to the trustees.

And there is no indication that the Deputy Commissioner or the State of West Virginia in this proceeding knew of Cecile Pearson, or even had they known of her, known her address. There was just nothing to indicate that.

I would like to mention to this Court, as I have in the brief, that the minerals in West Virginia have been severed going back to 1850. Four generations have produced such a proliferation of names and interests and addresses and single girls owning property and getting married and living somewhere else that there's just no way to assess the

individual -- the statute provides for it, if the taxpayer will come in, he can get a separate assessment. But you can't look at the assessment and tell who the owner is.

When we -- that reservation, it's referred to as Freudenberger versus Simmons in our brief, when that reservation was made by Squire Jarret just outside of Charleston in 1850, four generations -- in 1950, when we tried to condemn the underground storage horizon to store gas -- took 900 defendants, and still had unknown parties defendants.

Legally, I think the best -- the second best case aside from the Mullane case is Standard Oil Company versus New Jersey which is a simple escheat case in 1951 which said, after 14 years, Standard Oil simply publishes a notice which says, this stock certificate and dividend in this name with no address are escheated. And that was upheld by this Court.

I would ask this Court -- you know we have touched on -- if there is anything wrong with due process, if you find anything wrong with due process, under the case of Cipriano versus Houma and Phoenix versus Kolodziejewski, that you treat the existing tax deeds in the State of West Virginia as securities issued under a circuit court order, and in the hands of parties like my client with valuable investments on top of that.

Once again, the appellant in this case did not

try to redeem until July of 1968. And that 100 million cubic feet of gas well came in in March of 1968.

QUESTION: On the other hand, he said that you or your client was fully aware of Pearson's existence and claim.

MR. RICE: Mr. Justice Blackmun, we were aware. You see we had a valid oil and gas lease from the other three-fourths interest. This was a -- newberg gas which is rapidly depleting. That well will produce gas so fast in the first year, it will produce more gas in the first year than it has produced from the first year until the present.

That well had to be drilled not just to protect the one-fourth interest. It had to be produced to protect the other three-fourths interest. The well simply had to be drilled.

QUESTION: Well, granted that, aren't you still in the position of having paid the Dodds at your peril?

MR. RICE: Your honor -- Mr. Justice Blackmun, with that approach you see -- you are going to take the -- any tax lands out of commerce and out of circulation. Because quite obviously, my client has learned -- you know, this case right here is -- disparages every existing tax title in the State of West Virginia. You know, it tells an investor to be on guard. And the conservative investor is simply not going to make that kind of capital investment unless he has to as we had to because of the rapidly depleting

asset.

QUESTION: Of course I suppose you could say that Mrs. Pearson had nothing to lose by cooperating. It might have to be paid into an escrow fund, or something, and battle afterwards.

MR. RICE: We attempted that. And of course, she could have enjoined the operation and did not.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Rice.

MR. RICE: Thank you.

MR. CHIEF JUSTICE BURGER: You have just one minute left, Mr. Terrie; do you have anything you want to tell us in that time?

REBUTTAL ARGUMENT OF PHILIP G. TERRIE, ESQ.,

ON BEHALF OF THE APPELLANT

MR. TERRIE: Mr. Chief Justice, and may it please the Court:

Just a couple of points. I think we've proved one thing, that the West Virginia tax law is difficult.

Christie-Stewart -- that case --

QUESTION: Just like every other state, they're all the same.

MR. TERRIE: Yes, sir.

I don't think the Christie-Stewart case is applicable to this situation. There it was sent back to see if it was barred by a valid statute of limitations. Our statute --

the statute of limitations that was mentioned by the Chief Justice of the West Virginia Supreme Court is before us, it was an 18 month period. If it's valid or invalid -- and I say it's invalid -- it's clearly before this Court.

He mentioned Dean Colson's article, which supported the existing situation. I ask you to read the last paragraph. Dead Colson was a learned scholar. After marching bravely up the hill, he turned around and marched back, in my opinion by saying, maybe the legislature ought to require a tax sale purchaser to give notice to the former owner before he's entitled to his deed. And I think that's practically saying, he must have notice.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 1:51 o'clock, p.m., the case in the above-entitled matter was submitted.]