STEADMAN *vs.* PLANTERS' BANK.

A deed duly executed by the Auditor of the State for lands forfeited for non-payment of taxes is valid to pass title.

The power of the legislature to pass laws subjecting the estate of the owner to sale for non-payment of taxes, is essential to the power of sovereignty.

The law is a public general law, and property holders are bound to conform to its requisitions.

Appeal from the Circuit Court.

THE Planters' Bank of Mississippi attached certain lands as the property of John Snodgrass. Steadman interpleaded, claiming a portion of the lands. To support his claim he produced a deed from the Auditor of Public Accounts of this State, which recited that by virtue of the act providing for the levy and collection of the revenue of this State, and the act changing the time of the Auditor's sales of lands forfeited for taxes, the first approved 5th March 1838, and the other 15th December 1838, he had sold the lands in question to Steadman at public auction, and conveyed all the right, title and estate of the former owner and all interest of the State therein. The court, Sutton judge, held that the deed was insufficient, and Steadman excepted, and brought the case here by appeal.

RINGO & TRAPNALL, for appellant. The only error complained of in this case is the exclusion by the court of the Auditor's deed. It is made in conformity with the statute, *sec.* 13 of 128th *chapter of Rev. St.* The 135th section provides "that it shall vest in the grantee a good and valid title and shall be evidence in all courts of this State of a good and valid title, and that all things required by law to be done to make a good and valid sale, were done both by the collector and auditor."

In *Williams & Co. vs. Peyton's Lessee,* 4 *Wheat.* 77. *McCluney vs. Ross,* 5 *id.* 116, and in *Thatcher and others vs. Powell,* 6 *id.* 119, the supreme court of the United States asserts the principle that a naked power to sell lands, not coupled with any interest, such as that of a collector or auditor, every pre-requisite to the exercise of the power should precede it—and a party claiming under the sale, must show that the law has been complied with, and that the deed of the officer is not prima facie evidence of them. But the principle of law as laid down in these cases is repealed by our statute and the deed is expressly made evidence that every thing which was necessary by law to give the grantee a good title, was performed

by the officer; and the proof to the contrary, although that is a negative and an exception from an almost universal rule is thrown on the opposite party. And it is under our statute that the decision is to be made.

In a sheriff's deed, See *Rev. Stat.* 382, *sec.* 54, a recital of the steps required by law previous to the sale is necessary and is made evidence of the facts stated, but in the auditor's deed, probably from their length and the extreme inconvenience of making them, they are entirely dispensed with; and the deed is made evidence without them.

These principles of law belong to the public policy of the country and are within the control of the legislature to be amended, modified and abolished as they shall think proper, and in this particular for a very manifest reason existing in this State, they have thought proper to make a radical change.

PIKE & BALDWIN, contra. The auditor's deed is made by law evidence that all the requisites of the law in regard to a tax sale have been complied with, yet it can only be evidence of the facts stated in it: and to make the deed good it must recite on its face all the facts which would constitute a valid sale.

Prior to the Revised Statutes, no presumption could be raised in behalf of an officer selling land for taxes, to cover any defect in his proceedings; and the proof of regularity in the procedure devolved upon the persons claiming under the sale. *Stead's Ex. vs. Cause,* 4 *Cranch* 403. *Parker vs. Rule's Lessee, id.* 64. *Williams vs. Peyton's Lessee,* 4 *Wheat.* 77. *McCluney vs. Ross,* 5 *Wheat.* 116. *Thatcher vs. Powell,* 6 *ib.* 119. *Rankendorf vs. Taylor's Lessee,* 4 *Peters* 349. *Gaines et al. vs. Stiles,* 14 *ib.* 322. *James vs. Gordon,* 1 *Wash. C. C. R.* 333. *Young vs. Martin,* 2 *Yeates* 312. *Birch vs. Fisher,* 13 *Serg. & R.* 208. *Jackson vs. Shepard,* 7 *Cowen* 88.

An auditor's deed for land sold for taxes could not be permitted to go in evidence to the jury without proof that the requisites of the law, which subjected the land to taxation and sale had been complied with. *Gaines et al. vs. Stiles,* 14 *Peters* 322. 2 *Ohio* 233. *Lefree &c. vs. Hemphill's Heirs,* 3 *Ohio* 232. And the same doc-

trine was held in Illinois. The law in fact when the deed was made governed and determined the effect of it as evidence. A subsequent act giving such deed greater effect as evidence had no effect upon it. *Garret vs. Wiggins,* 1 *Scam.* 335.

The statutes have made the auditor's deed *prima facie* evidence that the requisites of the law have been complied with; but they have no further or any other respect changed the law. The deed is not evidence of facts which it does not recite. The State, by virtue of her sovereignty, may lay taxes upon land and sell them upon non-payment. She invests her officers with the power to sell in such case; and the law requires that every pre-requisite to the exercise of that power must precede its exercise. 4 *Wheat.* 77. The deed in this case shows no authority whatever.

The auditor's deed is evidence that the requisites of the law have been complied with when it states the facts and recites the performance. It is evidence of what it states. The rule is well settled that every deed made under a power by a public officer must show on its face facts enough, taking them to be true, to pass the title. *Jackson vs. Robert's Ex.* 11 *Wend.* 426. *Wattles vs. Hyde,* 9 *Conn.* 10, 14. 8 *Conn.* 480. *Lockwood vs. Stendevant,* 6 *Conn.* 386.

OLDHAM, J. The appellant by interplea claimed title to certain lands attached at the suit of the appellees as the property of John Snodgrass and upon the issue formed to sustain his title, offered in evidence a deed duly executed by the Auditor of the State of Arkansas to him for the land in controversy. The deed is in strict conformity with the law. The deed was excluded by the court and the claimant excepted and appealed to this court.

Our statutes have changed the rule of law, that it is incumbent upon the purchaser of lands sold for taxes to show that the sale was regular and that the pre-requisites to the sale existed and were strictly complied with. The auditor's deed executed in accordance with the provisions of the statute vests in the purchaser "all the right, title, interest and estate of the former owner in and to such lands and also all the right, title, interest and claim of the State thereto," and is declared to be "evidence in all courts of this State

of a good and valid title in such grantee, his heirs or assigns and that all things required by law to make a good and valid sale were done both by the collector and auditor." *Rev. Stat. chapter* 128, *section* 133-4.

The power of the legislature to pass such a law cannot be questoned. It is essential to the power of sovereignty. Without it the State would cease to be soverign and, from inability to pass laws for the raising of revenue, would be wholly impotent. The law for the raising of revenue to carry on the government of the State is a part of the general and public law of the land and is obligatory upon every person owning taxable property within the limits of the State and they are bound to conform to its requisitions.

The decision of the circuit court is in direct opposition to the statute, for which reason the judgment must be reversed.