

1. The mineral rights obtained by George L. Harris are intervening rights.
2. Said intervening rights still exist.
3. Such rights now prevent the original purchaser from reinstating said lands or any part thereof.

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Austin, T e x a s.
April 10th, 1919.

Honorable J. T. Robison,
Land Commissioner,
AUSTIN, T E X A S.

Dear Sir:

On March 21st, 1919, you addressed the following inquiry to this Department.

"On Sept. 22, 1905 this Department sold to W T Freeland section 12, H T & B certificate 427, in Brazoria county as dry grazing land. On Dec. 30, 1915, the owner let this tract be forfeited for non payment of interest, and the land was placed on the market and given a mineral classification.

"On April 28, 1916, Geo. L. Harris filed with the county clerk a mineral application on the land, and permit was issued thereon, on June 6, 1916. On April 18, 1917 the owner of the purchase under Freeland paid the back interest and reinstated the former purchase.

"The permit will expire by its own limitation June 9th next, and I desire to know what is the legal status of the land and mineral rights.

"The questions involved would be somewhat as follows:

"1st - Were the mineral rights of Geo. L. Harris an intervening right, that would prevent the owner from reinstating the original purchase.

"2nd - Did the owner have the right to reinstate the land without the minerals.

"3rd - When the Harris permit expires, will the owner of the land become reinvested with title to the minerals, or will the State continue to own the minerals, and the owner of the land have good title to the soil.

"4th - Was the reinstatement valid for the soil."

Said purchaser W. T. Freeland had the legal right to purchase said section of land September 22nd, 1905, and become the owner thereof by complying with the terms and conditions of Revised Civil Statutes of the State of Texas, Chapter 99, and particularly Articles 5409 et seq. The award by the Land Commissioner to said person and his payment of the one-fortieth cash required, and the execution of his obligation to the State for the remaining unpaid purchase money, established an interest in said land under the statute which W. T. Freeland could transfer by deed. However, such interest was nothing but a right to acquire a title by compliance with the terms of the contract, and performance of the conditions precedent, which were the payment of the interest and the principal according to the terms expressed in the law and the agreement.

Therefore, it is held in *Fristoe vs. Blum*, 45 S.W. 998, as follows:

"We conclude that the eleventh section of the Act of 1887 was intended by the legislature to, and properly construed, did, empower the commissioner of the General Land Office to rescind the sales made of the free school lands in case the purchasers failed to comply with the terms of the purchase, whether the sale was made before or after the enactment of the law, and that the eleventh section of the Act is not subject to the objection that it violates the Constitution in any particular."

This holding is also upheld in the case of *Waggoner vs. Flack*, 51 S.W. 330 and *Lawless vs. Wright*, 86 S. W. 1039. The said W. T. Freeland, according to the statement of the Commissioner's letter, failed to carry out the terms of his contract but not paying the interest on the indebtedness that he owed for said land as required by law, and it was the legal duty of the commissioner to forfeit said land and place the same on the market under the laws existing at said time of forfeiture, or any future law governing said lands.

Revised Statutes, Article 5425, reads, in part, as follows:

"If upon the first day of November of any year any portion of the interest due on any obligation remains unpaid, the commissioner of the general land office shall endorse on such obligation, 'Land Forfeited,' and shall cause an entry to that effect to be made on the account kept with the purchaser; and thereupon said land shall thereby be forfeited to the state without the necessity of re-entry or judicial ascertainment, and shall revert to the particular fund to which it originally belonged, and be resold under the provisions of this chapter, or any future law; provided, the purchaser of land prior to August 20, 1897, shall have the right, at any time within six months after such endorsement of 'Land Forfeited' to institute a suit in district court of Travis county, Texas, against the commissioner of the general land office, for the purpose of contesting such forfeiture and setting aside the same, upon the ground that the facts did not exist authorizing such forfeiture, but, if no such suit has been instituted as above provided, such forfeiture of the commissioner of the general land office shall then become fixed and conclusive. In any cases where lands have been forfeited to the state for the non-payment of interest, the purchasers, or their vendees, may have their claims reinstated on their written request, by paying into the treasury the full amount of interest due on such claim up to the date of reinstatement, provided that no rights of their persons may have intervened."

There have been several mineral acts passed by the legislature of the State of Texas, and I refer to Revised Statutes 1895, Article 3481, and succeeding articles in the chapter therein contained, also to Revised Statutes 1911, Article 5904, and succeeding articles in the chapter in which the same is contained. However, the forfeiture of the lands in question was not until December 30, 1915, at which time such of the articles of the Revised Statutes referred to above then in force, and Chapter 173, of the Acts of the 33rd Legislature, beginning at page 409, were in force.

Section 1 of said Act reads as follows:

"All public school, University, Asylum and the other public lands, fresh water lakes, islands, bays, marshes, reefs, and salt water lakes; belonging to the State of Texas, and all lands which may hereafter be so owned and all lands which have been heretofore sold or disposed of by the State of Texas, with a reservation of minerals or mineral rights therein, as well as all lands which may hereafter be sold with reservation of minerals or mineral rights therein, and lands purchased with relinquishment of the minerals therein, shall be included within the provisions of this Act and shall be open to mineral prospecting, mineral development and the lease of mineral rights therein in the manner herein provided. Only citizens of the United States and such other persons as have

heretofore declared or shall hereafter declare their intention of becoming such shall be entitled to acquire any rights under this Act. It is declared to be the policy of the State to open all such lands to mineral prospecting and development on a system providing for the payment into the State Treasury to the credit of the permanent free school, University, Asylum or other funds, of certain rents and royalties upon the gross output of any minerals or mineral product thereon."

Section 2 of said Act reads as follows:

"Any person or association of persons, corporate or otherwise, desiring to obtain the right to prospect for and develop petroleum oil or natural gas that may be in any of the surveyed public free school land, University or Asylum or other public lands of the State, which may be unsold at the time such desire is made known as herein provided, or in any of said land which has heretofore been sold with the reservation of minerals therein to the public free school fund or other fund and such of said land as has heretofore been purchased with the relinquishment of the minerals therein by the purchaser, or in any of said land that may hereafter be sold with the reservation of minerals therein, also in any of the fresh water lakes owned by the State or public free school fund or other fund, and also in any of the islands, bays, marshes, reefs and salt water lakes, may do so under the regulations, terms and conditions of this Act, together with such rules and regulations as may be adopted relative thereto and necessary for the execution of the purpose of this Act by the Commissioner of the General Land Office."

We have seen that the lands were forfeited and of course were returned to the fund to which they originally belonged, which I presume was public free school land. It will be seen in the latter part of Section 1 that it is declared to be the policy of the State to open all such lands to mineral prospecting and development on a system providing for the payment into the State Treasury to the credit of the permanent school fund, University, Asylum and other funds, of said royalties, rents, etc.

The first and last part of Section 2 in substance, provides:

"Any person desiring to obtain the right to prospect for, develop petroleum oil or natural gas that may be in any public free school lands, etc. may do so under the regulations, terms and conditions of this Act, together with the such rules and regulations as may be adopted relative thereto and necessary for the execution of the purpose of this Act by the Commissioner of the General Land Office."

The Commissioner, upon the date of the forfeiture of said land, in the beginning reclassified said lands and placed the same on the market as mineral lands and grazing lands, which he had a right to do under the law and the rulings of said office. This segregated the mineral right from the surface right and of itself was a change from the original status of the land when purchased by W. T. Freeland, as the same at that time had no mineral classification.

George L. Harris had the right to file a mineral prospect application on said land on April 28, 1916, under the mineral laws then in force above referred to. Such a filing constituted an interest in land as is seen by the above citations and decisions and the statutes, and carried with it a right enforceable in law and said person was a third party as contemplated by Article 5423. The above statute says:

"Any case where lands have been forfeited to the State for nonpayment of interest the purchasers, or their vendees, may have their claims reinstated on their written request by paying into the treasury the full amount of interest due on said claim up to the date of reinstatement, provided that no rights of third persons may have intervened."

The rights of said third persons are still existing, as I understand it, and said W. T. Freeland has no right to reinstate all or any part of said land on his original contract. To support said statement we quote from Lawless vs. Wright 86 S.W., bottom section, column, p. 1040.

"It is provided in Revised Statutes, Article 4218L that when a forfeiture takes place the land shall revert to the particular fund to which it originally belonged, and be sold under the provisions of this chapter, or any future law." And further, "in any case where lands have been forfeited to the State for the nonpayment of interest the purchasers, or their vendees, may have their claims reinstated on their written requests, by paying into the treasury the full amount of interest due on such claim up to the date of reinstatement; provided that no rights of third persons may have intervened."

The Court says further:

"That that provision in no way weakens or affects the proposition that a forfeiture restores the land to the public domain and reinvests the title in the State. In this case after the forfeiture the State exercises its right to sell the land.....The forfeiture destroyed his claim to the land

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completely, and the privilege given to him to have it restored depended on certain payments, and on the rights of others not intervening. * * * In other words, the provision as to reinstatement did not have the effect of continuing the title, whether legal or equitable in the purchaser after the forfeiture; and, although he may have fully intended to have his claim reinstated at some future time, he could not, until that reinstatement was made, have maintained a suit for possession. He did not have any possession of right of possession to be invaded by appellee after the forfeiture."

Following the above holding the case of Jones vs. Robison, 133 S.W. page 879, holds substantially, an application for reinstatement made after a sub-purchaser had completed his proofs, came to late. Therefore, we will hold that the mineral rights obtained by George L. Harris now existing, are intervening rights, and that the same are such as would prevent the owner from reinstating the original purchase. We see no reason why the original purchaser would be permitted to reinstate the land with the mineral rights, as there is no statute authorizing a reinstatement of any part of said land, without reinstating all provided in said original contract. He might have a right to repurchase, however, that would depend possibly on construction of some other statute.

We will not answer as to what might be the effect provided Harris' were to permit his mineral rights to expire, as that condition has not arisen and may never arise, and this question would require a great deal of research at this time that this Department is not now in position to undertake, unless said question has already arisen.

Yours very truly,

Assistant Attorney General.

WFS-vs.

This opinion has been considered in conference, approved and is ordered recorded.

Attorney General.

24 File No. 23
Approved Geo. J. Davis
Robison
Comptroller
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