

Report 107-7537-  
Adams vs Terrell

2/12/1908

See Memorandum 111-76-1056  
Williams vs Heith  
Add 112-76-948

MEMORANDUM CONCERNING IPSO FACTO FORFEITURES OF SALES OF  
PUBLIC SCHOOL LAND AND RE-SALE OF SUCH FOR-  
FEITED LANDS.

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September 12, 1908.

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The following observations are suggested by Section 6e of the Land Law enacted by the Thirtieth Legislature, Chapter 20, Section 6e:

Two questions are presented, namely:

1st. When and how are lands forfeited under the Act of 1907? Does this statute of 1907 provide for ipso facto forfeitures, or is it necessary for the Commissioner of the General Land Office to endorse the forfeiture upon the obligations of the purchaser, thereby consummating a forfeiture which was before incomplete?

2nd. Are such forfeited lands subject to sale under the provisions of Section 6e without reference to the provisions of relief of the General Land Law of 1905?

IPSO FACTO FORFEITURES.

It seems that the Act of 1905, Chapter 103, providing for sale and lease of public free school and asylum lands contain no provision concerning forfeiture, save and except forfeitures for failure to settle upon land purchased within the time prescribed by law, and failure to file affidavit of settlement within the time prescribed by law, and transferring the land prior to the filing of affidavit of settlement.

In other words, it seems that the Act of 1905 contains no express provision for forfeiture for failure to reside upon or improve lands as by law required, leaving in force former statutes applicable in such cases.

It further appears that we must look to the Act of April 19, 1901, for provisions applicable to forfeitures for non-occupancy and non-payment of interest.

Said Act of 1901, Chapter 125, Section 3, provides:

"If any purchaser shall fail to reside upon and improve in good faith the land purchased by him, as required by law, he shall forfeit said land and all payments made thereon to the State to the same extent as for the non-payment of interest, and such land shall be again upon the market as if no such sale and forfeiture had occurred, and all forfeitures for non-occupancy shall have the effect of placing the land upon the market without any action on the part of the Commissioner of the General Land Office".

The provisions of the Act of April 14, 1895, Chapter 47, Section 11, upon the subject of forfeitures, it will be noted, is very similar to the above quoted provisions of said Act of 1901, the provisions of said Act of 1895 being:

"If any purchaser shall fail to reside upon and improve in good faith the land purchased by him, he shall forfeit said land and all payments made thereon to the State, in the same manner as for non-payment of interest, and such lands shall be again for sale as if no such sale and forfeiture had occurred".

In the foregoing quotations from the statutes of 1901 and 1895, the portions of said statutes, respectively, which differ from each other in any respect are underscored.

It will be noted that the Act of 1895 declares that forfeitures therein specified shall be "in the same manner", while the statute of 1901 provides that such forfeitures shall be "to the same extent" as for non-payment of interest. It will also be noted that the Act of 1901 contains some added provisions at the close of the above quotation which are not found

in the Act of 1895, said additional clause referring to the placing of the land upon the market without action by the Commissioner of the General Land Office.

This statute of 1901, so far as the above quoted provisions are concerned, seems to take the place of the corresponding provisions in the statute of 1895. Said statute of 1901 is not an ipso facto forfeiture statute.

This was decided by the Supreme Court in Adams vs. Terrell, 107 S.W.R., 538.

In that case Judge Gains reviews the aforesaid forfeiture provisions of said Acts of 1895 and 1901. He treats the two statutes as substantially to the same effect, so far as such forfeitures are concerned. In substance, he treats the clause "to the same extent" in the Act of 1901 as equivalent to the clause of "in the same manner" in said Act of 1895.

The controlling idea in said Adams Case appears to be that the clause "to the same extent" as for non-payment of interest restricts the meaning and scope of the provision that the purchaser shall forfeit his lands and all payments made thereon, just as the clause "in the same manner" restricted the effect and scope of the forfeiture provision of the Act of 1895; the idea being that inasmuch as the forfeiture provided for by the Act of 1901 was to be only "to the same extent" as forfeitures for non-payment of interest and forfeitures for non-payment of interest ~~and~~ do not become effective or operative until the endorsement of such forfeiture by the Commissioner of the General Land Office upon the purchaser's obligations for balance of purchase money, it must be held that the purpose of the Act of 1901 was to require the endorsement of forfeiture by the Commissioner upon such obligations of the purchaser, as a conditioned precedent to the forfeiture and as, in fact, being that each constitutes the actual forfeiture for non-occupancy.

Inasmuch as the law looks with disfavor upon forfeitures, this conclusion of the court in the Adams Case appears to be correct.

But when we turn to a consideration of corresponding forfeiture provisions in the Act of 1907, we find that they are very different from those set forth in either the Act of 1895 or the Act of 1901, above quoted.

Section 8e, of Chapter 20, of the General Laws of 1907, likewise specifies various grounds for forfeiture, same being as follows:

1. Failure to settle upon the land purchased within the required time;
2. Failure to file in the Land Office the affidavit of settlement within the required time;
3. Failure to comply with the law as to residence on the land; and,
4. An execution of a transfer contrary to the provisions of said Act of 1907.

The Act of 1907 declares that for any of these things a purchaser "shall forfeit the land and all payments made thereon to the fund to which the land belongs, and when the Commissioner shall be sufficiently informed of the facts which operate as a forfeiture, he shall cancel the award or sale by noting the fact of forfeiture on the obligation and mail notice of that fact to the proper county clerk. Such land shall not be subject to sale again at a less price than the former sale price, unless the Commissioner shall have reappraised the land at a less price, after noting the fact of forfeiture".

In each instance, the clause "fact of forfeiture" reads "act of forfeiture; but it is obvious that by the word "act" the word "fact" was really meant. Note the declaration that the Commissioner shall cancel the award of sale by noting

the fact of forfeiture on the obligation and that he shall mail notice of that fact to the proper county clerk. It appears that the words "that fact" and "the fact" are correlative terms and that the words "that fact" refer back to the words "the fact of forfeiture".

It will be observed that the Commissioner is directed to cancel the award of sale when he is sufficiently informed of "the facts which operate as a forfeiture". This provision plainly contemplates that some one or more of the grounds of forfeiture specified in this Act of 1907, and above enumerated, shall in and of themselves operate as a forfeiture and the duty of the Commissioner to make a record of such pre-existing and already accomplished forfeitures arises upon his being sufficiently informed of the fact that such forfeiture has occurred by reason of the existence of one or more of the grounds specified in this Act of 1907, and hereinabove enumerated.

The subsequent portions of the above quoted provisions of the Act of 1907 pertain only to the matter of subsequent sales of such forfeited lands, and have nothing to do with the manner or time of such forfeitures, and follow merely as consequences of such forfeiture. Whatever difficulties there may be in determining the effect and meaning of such subsequent provisions--whether they be construed as providing independently for sale of such forfeited lands at or subsequent to some certain time, or the happening of some contingency, or whether such subsequent provisions are to be construed as mere restrictions concerning price, in connection with pre-existing provisions of earlier laws concerning resale of forfeited lands, cannot, in any wise, effect the foregoing question as to whether or not this Act of 1907 does or does not provide for ipso facto forfeitures.

RESALE OF FORFEITED LANDS.

We have seen that Section 6e of the Act of 1907 contains the following provisions concerning the re-sale of lands which have been forfeited under that Section:

"Such lands shall not be subject to sale again at a less price than the former sale price, unless the Commissioner shall have reappraised the land at a less price, after noting the fact of forfeiture".

The first inquiry which here suggests itself is, were these provisions intended to put the land back on the market independently of the provision of pre-existing laws, or were they intended to merely fix the minimum price at which such forfeited lands may be sold by the Commissioner when again placed upon the market under the provisions of previous laws.

In other words, was it the purpose of the last quoted provisions in this Act of 1907 to put such forfeited lands back on the market or to fix a minimum price upon such lands.

In this connection, it will be noted that the above quoted Act of 1901 provides that "all forfeitures ~~shall~~ for non-occupancy shall have the effect of placing the land upon the market without any action whatever on the part of the Commissioner of the General Land Office", and that the above quoted Act of 1895 provides that "such lands shall be again for sale as if no such sale and forfeiture had occurred"; while this Act of 1905 utterly fails to declare that such forfeited lands shall be again subject to sale or that such forfeiture shall have the effect of placing the land upon the market without acting by the Commissioner of the General Land Office, or that said Commissioner shall again place the land upon the market.

By what, if any, statute are lands which are forfeited for non-occupancy, under the Act of 1907, again placed upon the market?

Parenthetically we may inquire whether or not the above quoted forfeiture provisions of the Act of 1907 apply to any sale made prior to the taking effect of that Act.

The provision in the Act of 1907 declaring that lands shall not be subject to sale for less than the minimum price therein prescribed indicates, inferentially at least, that they may be sold for not less than that minimum price; but must not the Commissioner have more substantial authority for again placing the lands on the market?

If not, what if any was the necessity for incorporating along with the above forfeiture provisions of said Acts of 1895 and 1901, respectively, express authority for again placing the forfeited lands upon the market?

If it had been the purpose of the Legislature in this Section 6e of this Act of 1907, to expressly place such forfeited lands upon the market, independently of any other provision of law, that could have been accomplished by the use of a few additional words in the same sentence, which fixes

the minimum price upon such lands when again placed upon the market. It is true that these provision of said Section 6e evidently contemplate that the lands shall again be placed upon the market after such forfeiture--else there would be no sense in fixing the minimum price upon such lands.

But the question reverts: What statute places such lands upon the market after such forfeiture? Section 4 of the Act of 1905 provides that in case of forfeiture for failure of an applicant to make and file affidavit and proof of settlement as therein provided, and within the time specified, the Commissioners "shall endorse that fact upon his application, cancelling the same, and immediately place the same upon the market by notice to the clerk, fixing the date not less than thirty days thereafter when applications may be filed for the purchase thereof".

Here again we find in connection with statutory provisions for forfeiture express authority for again placing the land on the market for sale. Indeed, it seems to have been the policy of the law in all instances wherein provision is made for forfeiture to provide in that connection for again placing the forfeited land upon the market; but as we have seen no such provision is found in the Section of the Act of 1907 providing for forfeiture for non-occupancy.

It may be that the proper solution of this difficulty may be reached thus:

- 1st. The Constitutional mandate is that the public school lands shall be sold.
- 2nd. The General Law makes provision for sale in the first instance of lands belonging to the public school fund.
- 3rd. The Act of 1907 provides for forfeiture of such lands for non-occupancy.
- 4th. When such forfeiture for non-occupancy occurs, such forfeited lands revert to their original status, precisely



as though no sale thereof had been made and are, consequently, subject to sale as in the first instance under said general provisions of law and said constitutional provisions. The only restriction or limitation upon such resale being that they shall not be sold for less than the former sale price thereof, unless the Commissioner shall have reappraised the land at a less price after noting the fact of forfeiture. This line of reasoning involves the idea that when a forfeiture for non-occupancy occurs under the Act of 1907 said forfeited lands are eo instanti upon the market for sale after any overt act upon the part of the Commissioner to place such lands upon the market again.

This seems to be the proper solution of the matter.

However, these additional questions remain for consideration:

Where lands are forfeited under the Act of 1907 for non-occupancy, are they, in fact, subject to sale before the Commissioner notes the forfeiture upon his records as by law required, or must such endorsement of forfeiture by the Commissioner upon his records aforesaid precede the filing of an application to purchase such forfeited lands.

It would seem that inasmuch as the forfeiture for non-occupancy is, by the terms of the statute of 1907, ipso facto as we have seen above, it must be held that the lands so forfeited are immediately upon the market for sale without waiting for the Commissioner to note the fact of forfeiture upon his records. This seems to have been in contemplation by the Legislature in enacting that portion of said Section 6e of the Act of 1907 which fixes the minimum price of such forfeited lands at not less than the price at which such lands were formerly sold, unless the Commissioner shall have reappraised the land at a less price after noting the fact of forfeiture. This provision fixing such minimum price safe-guards the public

free school fund until the Commissioner shall have had opportunity for noting the fact of forfeiture to revalue such lands and also deters would be purchasers of such lands who seek to buy them in the first instance and before forfeiture for non-occupancy from buying such lands at a high price and above the appraised value thereof and then failing to settle thereon or to make affidavit and proof of settlement in the manner and within the time required by law, paying only the first payment for said lands, suffering a forfeiture of the sales to them in consequence of such default upon their own part and then buying the same lands at the former appraised price thereof, when they had, in competition from other bidders, and thereby obtaining such lands at a very low price without competition, thus practically nullifying and defeating the competitive bid provision of the law.

To hold that the Act of 1907 provides for ipso facto forfeitures for non-occupancy and that the lands so forfeited are eo instanti and without waiting for any action whatever by the Commissioner of the General Land Office apparently harmonizes all the provisions of Section 6e of said Act of 1907, and gives full effect to the intention of the Legislature which enacted that statute, carrying into effect the constitutional mandate that the lands shall be sold and at the same time preserving the beneficial provisions of ~~land~~ law relating to competitive bids.

These further questions are also suggested:

Where lands are sold under the Act of 1907 and forfeiture occurs for failure to settle within the time prescribed by law, or for failure to file the affidavit and proof of settlement within the time required, or for securing a transfer within less than one year after date of award, are such forfeitures ipso facto, or do such forfeitures occur only when the Commissioner endorses such forfeiture upon his records

and when are such forfeited lands again upon the market for sale.

It would seem that the provisions of Section 6e of this Act of 1907 concerning forfeiture applies alike and should be construed alike to each and all of the various grounds of forfeiture therein specified and that whatever may be the ground<sup>of</sup> forfeiture as specified in said Section 6e, it should be held that the forfeiture is ipso facto and that where forfeitures occur for failure to make settlement in due time, or for failure to file affidavit of settlement within the time prescribed by law, or for making a transfer contrary to the provisions of said statute, the lands are again immediately upon the market for sale, just as in the case of forfeiture for non-occupancy.

In other words, it seems reasonably clear that all forfeitures provided for in said Section 6e of the Act of 1907 are ipso facto forfeitures and that all lands so forfeited are immediately upon the market again for sale, just as though they had never been sold and such sales thereof forfeited.

The conclusions above indicated are in accordance with the existing practice and custom of the General Land Office.

These notes are not intended as any final expression but are made merely as a memorandum to serve as a basis for further consideration of the questions above mentioned.

File No. 17  
 Miscellaneos  
 Appx Genl Opinion  
 Dec 13  
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*[Handwritten signatures and notes in the left margin]*

File No. 17  
Old Miscellaneous County  
Attny. Genl. Opinion

Filed Dec 13 19 84

GARRY MAURO, Com'r

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and when are such forfeited lands again upon the market for sale.

of this act of 1907 concerning forfeiture applies alike and

should be construed alike to each and all of the various

grounds of forfeiture therein specified and that whatever

may be the ground of forfeiture as specified in said section 80,

it should be held that the forfeiture is ipso facto and that

forfeitures occur for failure to make settlement in due

time, or for failure to file affidavit of settlement within the

time prescribed by law, or for making a transfer contrary to

the provisions of said statute, the lands are again immediately

upon the market for sale, just as in the case of forfeiture

for non-occupancy.

In other words, it seems reasonably clear that all

forfeitures provided for in said section 80 of the Act of

1907 are alike and that the lands so forfeited are again

upon the market for sale and such sales thereof

should be held to be in accordance with the custom of the

General Land Office and that the provisions of the Act of 1907

Opinion of  
Atty. General  
upon  
Forfeiture under  
Acts 1901, 1905-7

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