

FRANK A. JUDKINS, Relator, : In the Supreme Court
-vs- : of the
J. T. ROBISON, Commissioner, : State of T e x a s.
Respondent. :

BRIEF AND ARGUMENT FOR RELATOR.

FIRST PROPOSITION.

If school land be forfeited for failure to pay the interest when due, the owner, at the time of forfeiture, has the right to have the forfeiture set aside and to have the sale re-instated on the records of the General Land Office, at any time provided the rights of no third persons have intervened.

STATEMENT.

It is alleged in the petition:

1. That the land described in Relator's petition was forfeited by the Commissioner of the General Land Office on the 12th day of July, 1913, because of relator's failure to pay the interest on his obligations due November 1st, 1912.
2. That at the date of forfeiture the Relator was the owner of the land described in said petition.
3. That on the 3rd day of October, 1913, the Relator filed his written request in the General Land Office in which he requested the Commissioner to set aside the forfeiture and to re-instate the sales to him of said land upon payment of all interest accrued under his obligations and that he then and there tendered to Respondent all interest accrued upon his said obligations to that date and also the interest thereon due to November first, 1913, and that the Commissioner of the General Land Office declined to accept the payment and refused to set aside the forfeiture and to re-instate the sales of said lands and that at the time such written request was made, and at the time he tendered payment of the interest to the

Commissioner, the rights of no third person had intervened since the date of forfeiture.

AUTHORITIES.

Art. 5423, Revised Statutes of Texas, 1911.
Anderson vs. Neighbors, 94 Texas 236;
Mound Oil Co. vs. Terrell, 99 Texas 625;
Lee vs. Green, 58 S.W. 196;
Pardue vs. White, 50 S.W. 591.

SECOND PROPOSITION.

The act passed by the 33rd Legislature known as Senate Bill Number 129, entitled, "An Act to provide that owners of Public Free School land purchased from the State of Texas after January first, 1907, and prior to January first, 1913, on condition of settlement and residence, which land may hereafter be forfeited for non-payment of interest, as now provided by law" and so on, does not in any wise repeal Article 5423 of the Revised Statutes of 1911, but the same is cumulative of the laws granting relief to purchasers of school land and intended for their benefit.

AUTHORITIES.

Article 5423, R.S. of Texas, 1911;
Act 33rd Legislature, Chapt. 160, P. 369;
General Laws of Texas.

ARGUMENT.

Article 5423 of the Revised Statutes of 1911 provides:

"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 in 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 ~~without~~ revert to the particular fund to which it belonged and shall be re-sold under the provisions of this chapter or any future law In any cases where lands have been forfeited to the State for non-payment of interest, the purchaser or their vendees may have their claims re-instated on their written request, by paying into the treasury the full amount of interest due on such claims up to the date of re-instatement, provided that no rights of third persons may have intervened. In all such cases the original obligations and penalties shall thereby become as binding as if no forfeiture had ever occurred."

The act of the 33rd Legislature provides that the owner of any school land shall have the right for a period of

ninety days after notice of classification and appraisement of said land to re-purchase the same if purchased since January 1, 1907, and prior to January 1, 1913, and if the sales were forfeited for non-payment of interest prior to the passage of the act. Section 2 of that act provides that when any of said lands have been forfeited for non-payment of the interest, the Commissioner shall forward a list thereof to the County Clerk and within 30 days after the receipt of said list by the Clerk, the owner who may wish to re-purchase any or all of the land that he has permitted to forfeit shall advise the Commissioner of the General Land Office to that effect and after such re-appraisement he shall have a period of 90 days within which to re-purchase same.

Section 4 of that act provides if the owner at the date of forfeiture shall not exercise his right to re-purchase, the Commissioner of the General Land Office shall again place the land on the market for sale.

It is plain, therefore, that the purpose of the act of 1913 was to confer upon owners of school land privileges that they did not already possess. In other words, the law is cumulative in conferring upon purchasers of school land additional privileges. Article 5423, R. S., 1911, already conferred upon the owner the right to have his sales re-instated after forfeiture upon payment of all accrued interest provided there are no intervening rights. It did not give to him a preference right to re-purchase the land after forfeiture although there was no law that prohibited him from re-purchasing the land after forfeiture. Therefore the act of 1913 merely conferred an additional right or power upon him that he had not theretofore possessed. There is no repealing clause to the act of 1913 and the act itself does not in any wise conflict with Article 5423 of the Revised Statutes which permits the owner at the date of forfeiture to get the

forfeiture set aside upon payment of all interest accrued.

THIRD PROPOSITION.

The act of the 33rd Legislature is no obstacle to Relator's right to repay the interest and get the sales to him re-instated on the books of the General Land Office for the reason that it is void as being in conflict with Section 4, Article 7 of the Constitution of the State of Texas which provides that the Legislature shall not have power to grant any relief to purchasers of school land.

It makes no difference how the language of the act may be worked in order to evade this mandate of the Constitution and it makes no difference what reason might be assigned by the Legislature. If the effect of the act be to grant relief to purchasers of school land, the law is void because it is specially prohibited by the Constitution.

By the act of 1905, the Legislature provided that all lands should be sold to the highest bidders. This has proved to be one of the wisest provisions the Legislature has ever enacted in the interest of the public school fund of the State of Texas. Previous Legislatures had provided that public school lands should be sold to the first person filing an application to purchase the same at the classification and valuation placed thereon by the Commission of the General Land Office. Most of the lands had been previously classified and valued by surveyors and commissioners courts at the lowest valuation of \$1.00 to \$2.00 per acre with some few exceptions at which price all lands coming on the market were sold until the Act of 1905 became a law. Under the act of 1905, the highest bidder was awarded the land and instead of school land selling from \$1.50 to \$3.00 per acre, a great deal of it sold from \$3.00 to \$15.00 per acre.

Because of alleged droughts during the years 1910 and 1911 in that portion of the State where most of the school lands are situated, a great number of purchasers who had purchased school lands by competitive bids over their opponents were in arrears in the payment of the interest due upon their obligations for the years ending November first, 1911, and November 1, 1912. They applied to the Legislature for relief. They claimed that they had purchased the land at prices which were more than they were really worth. They desired to let their lands forfeit for non-payment of interest, to get them re-valued at a lower price and then get the Legislature to give them a preference right over all other persons to re-purchase the lands at the reduced valuations upon their agreeing to execute their obligations to the State for the interest due upon their former obligations up to the date of forfeiture.

Section 7, page 338 of the Acts of 1913 which is the emergency clause, recites: "The fact that on account of several consecutive years of drought in that portion of the State in which most of the public school lands are located, a great number of purchasers of said lands have been financially unable to pay the interest due on said lands for the years 1911 and 1912, and that said lands are therefore now subject to forfeiture for the non-payment of interest, and said forfeiture would work a great loss to the available school fund, , creates an emergency and an imperative public necessity" and so on.

It is submitted that a great loss to the available school fund could have been averted by the Legislature by extending the time of payment of the interest due to some more favorable time when the purchasers would be better able to pay the same. But that is not the kind of relief the purchasers wanted. Nor it was not the kind of relief that the Legislature granted or that it intended to grant to the purchasers.

The purchasers having claimed they bid too much for the land when it was originally sold to them, they wanted the land re-valued by the Commissioner or by some other agency, and then be permitted to re-purchase said lands at such re-valuation without meeting with competitive bids.

Doubtless thousands of school land purchasers under competitive bidding had paid their interest to the available school fund and whose lands were not subject to forfeiture when this act was passed by the 33rd Legislature and this act was unconstitutional as being class legislation, and discriminatory in that when said lands were originally sold under competitive bids the applications of the next highest bidders for such lands were rejected and the land awarded to the forfeiting purchasers as being the highest bidders. Doubtless if the lands could have been sold to the next highest bidder, many of the forfeitures that were made after this act took effect would not have been made. So the present law contemplated that the land shall be re-valued so as to give the forfeiting purchaser a prior and exclusive right for ninety days to re-purchase the land after it has been re-valued and without giving the opportunity to the former competitors and to other competitors the right to bid on the land.

It is also class legislation, discriminatory and unconstitutional in that it does not give all purchasers of school land since January 1, 1907, the right to also have their land re-valued so that they may re-purchase the same at reduced valuation. The law is class legislation and discriminatory and unconstitutional in that it has granted the favor to re-purchase to those who have failed to comply with their obligations to the State in paying the interest upon their land as it matured.

The present act does not attempt to repeal any existing law but it becomes dormant and of no further force or

effect as soon as those purchasers who have failed to live up to their obligation to the State shall have been favored with the privilege of re-purchasing the lands formerly sold to them. As to all other people who desire to purchase public school land, they must take their chances of buying school land under competitive bids and run the chance of being the highest bidder as provided by the act of 1905 and for that reason the act of 1913 is class legislation, discriminatory and unconstitutional.

It is respectfully submitted, therefore, that the act of 1913 is no barrier to the right of Relator to pay all the interest accrued and to have the forfeiture set aside and the sales to him re-instated.

Wherefore Relator prays that the Commissioner be required by writ of mandamus to accept from him the interest due upon said land; that the forfeiture be set aside and the sales thereof re-instated to Relator upon the accounts, files and records of the General Land Office.

(Sgd.) CHARLES ROGAN
Attorney for the Relator.

File No. 21

Old Miscellaneous County
Brief & Argument

Filed Dec 13 1984

GARRY MAURO, Com'r

By lk

Brief and Argument
for Relator.

Counter # 75590