

FEDERAL LAND BANK OF ST. LOUIS *v.* FLOYD.

4-3130

Opinion delivered June 19, 1933

1. JUDICIAL SALES—TITLE OF PURCHASER.—A purchaser at a commissioner's sale takes a vested interest by his purchase, and confirmation follows as a matter of right unless fraud entered into the transaction or the price bid was so grossly inadequate as to shock one's sense of justice.
2. MORTGAGES—CONFIRMATION OF FORECLOSURE SALE.—Acts 1933, No. 21, § 4, authorizing chancery courts, under certain circumstances, to refuse to confirm commissioners' sales and to direct a resale, regardless of fraud or inequitable conduct, could not be construed to be retroactive, so as to impair the vested rights of a purchaser.
3. MORTGAGES—CONFIRMATION OF FORECLOSURE SALE.—The chancery court's power to refuse to confirm a report of a foreclosure sale and to order a resale must be measured by the law in force at the date of the sale.
4. JUDICIAL SALES—INADEQUACY OF CONSIDERATION.—Mere inadequacy of consideration, however gross, unaccompanied by fraud, unfairness or other inequitable conduct, is insufficient to justify setting aside and refusing confirmation of a judicial sale.

Appeal from Marion Chancery Court; *Sam Williams*, Chancellor; reversed.

STATEMENT BY THE COURT.

This suit was instituted in the Marion Chancery Court by appellant against the appellee to foreclose a mortgage on certain real estate in Marion County given to secure an indebtedness of \$5,000. Personal service was had upon the appellee, and on October 24, 1932, a default decree was rendered in favor of appellant for the sum of \$6,239.56, and the property conveyed in the mortgage was condemned and ordered sold by a commissioner. On December 22, 1932, the commissioner offered the property described in the mortgage for sale at public vendue and appellant became the purchaser thereof for the sum

of \$5,000. After crediting appellant's bid on the judgment it left a deficiency in the sum of \$1,239.50. Subsequent to the sale appellee filed exceptions to the commissioner's report in which he alleged that the property was sold by the commissioner for a grossly inadequate price and prayed that the court direct a resale of the property.

Thereafter the chancery court heard testimony on the value of the lands to the following effect:

One Lee Reynolds testified that he was appraiser for the Federal Farm Loan Board and that the property was worth from \$3,800 to \$4,000. Walter C. Maxey, deputy bank commissioner, testified that in his opinion the lands were worth \$5,250. Levi Johnson testified that he was secretary-treasurer of the Marion County National Farm Loan Association, and that, in his opinion, the market value of the property at the time of the sale was from \$4,000 to \$5,000. O. R. Shaddox testified that the lands were worth around \$4,000. T. J. Horner testified that the lands, in his opinion, were not worth in excess of \$4,000 or \$5,000. Appellee testified that the lands were worth \$10,000 and was corroborated in his testimony by R. L. Berry who testified that the lands, in his opinion, were worth \$10,000.

After hearing the above testimony, the court sustained appellee's exceptions to the report and directed a resale of the property.

J. R. Crocker, J. Sam Rowland and J. B. Ready, for appellant.

JOHNSON, C. J., (after stating the facts). It is first sought to uphold the order of the chancellor directing a resale of the property because of act 21 of 1933. This act in effect authorizes the respective chancery courts of the State to refuse to confirm commissioner's sales, irrespective of fraud or inequitable conduct in effecting the sale.

Section 4 of act 21 of 1933, cited and relied upon by appellee, reads as follows: "Section 4. Before confirming a sale, the court shall ascertain whether or not, on account of economic conditions, or the circumstances attending the sale, a fair price with reference to the in-

trinsic value of the property was obtained. If it is made to appear to the court that a better price could be obtained at a resale, or if any one agrees to bid a substantially higher amount at a resale, the court shall order a resale on such terms as the court may require." This act was approved February 9, 1933.

On December 22, 1932, the date on which this sale was effected, act 21 of 1933, had not been passed, therefore, if it has application to this sale, it must be construed as retroactive in scope.

This court held in *Smith v. Spillman*, 135 Ark. 279, 205 S. W. 107: "A purchaser at a drainage tax sale, even before confirmation, acquires a vested right to the land purchased which cannot be affected by a statute passed before confirmation extending the power of redemption." Therefore, it seems that this court is committed to the doctrine that a purchaser at a commissioner's sale takes a vested interest by reason of the purchase, and confirmation follows as a matter of right, unless it be found that fraud entered into the transaction or else the price bid and offered was so grossly inadequate as to shock one's sense of justice.

Since appellant took a vested interest in the property by reason of its bid and purchase on December 22, 1932, the Legislature was and is without authority to pass a statute impairing its vested right. Therefore, the provisions of act 21 of 1933 cannot be given a retroactive effect so as to impair appellant's vested interest in the property.

Since the provisions of act 21 of 1933 have no application to the facts in this case, the chancery court's power to refuse to confirm the report of sale and to order a resale, as was here done, must be measured by the rules of law in force and effect in this State on December 22, 1932.

Up to the passage and approval of act 21 of 1933 the rule in reference to the confirmation or rejection of reports of sale for inadequacy of price was as follows: "Mere inadequacy of consideration, however gross, unaccompanied by fraud, unfairness or other inequitable

conduct in connection with a judicial sale, is, of itself, insufficient to justify the court in setting aside the sale and refusing confirmation thereof." *Southern Grocery Co. v. Merchants' & Planters' Title & Investment Co.* 186 Ark. 615, 54 S. W. (2d) 980.

A great preponderance of the testimony introduced on the exceptions to the report of sale establishes the fact that \$5,000 was the fair market value of the mortgaged lands on December 22, 1932, and the chancellor's findings otherwise is against the preponderance of the testimony.

The order of the Marion County Chancery Court refusing to confirm the sale of the mortgaged land to appellant is reversed, and the cause remanded with directions to approve and confirm the sale.
