

EDLAND *v.* STATE.

Opinion delivered June 28, 1909.

1. STATUTES—EFFECT OF AMENDMENT.—The effect of an amendment to an act is to so change the former act as to make it read in the same manner it would have read and to give it the same effect it would have had if it had been originally enacted as amended. (Page 245.)
2. FISH AND GAME—EFFECT OF AMENDING STATUTE.—Under Acts 1903, c. 162, § 11, the county of Mississippi was exempted from the operation of the act prohibiting nonresidents from hunting and fishing in this State. By Acts 1905, c. 185, this exemption was repealed. *Held*, that the effect of the amendment was to put Acts 1903, c. 162, in operation in Mississippi County. (Page 245.)

Appeal from Mississippi Circuit Court, Chickasawba District; *Frank Smith*, Judge; affirmed.

*R. P. Taylor*, for appellants.

Act No. 185 of the Acts 1905 is invalid because it is ambiguous, and its construction is meaningless. 36 Ark. 331; 47 Ark. 404; 59 Ark. 237. Invalid also because it is violative of art. 5, § 22, Const. Under this constitutional provision the act of

1905 neither amends the section nor repeals the proviso. Section 1 of the act is to be looked to to see if it does either. What follows it is entirely disconnected from it, separately paragraphed and numbered as a separate section. It cannot, therefore, be viewed as a re-enactment of sec. 11, act No. 162, Acts 1903, 122 Pa. 627, 1 L. R. A. 361; 126 Cal. 291; 87 Ala. 240, 4 L. R. A. 742; 82 Ala. 209.

*Hal L. Norwood*, Attorney General, and *C. A. Cunningham*, Assistant, for appellee.

Where a provision which excepts a class or specific locality from the operation of an act is repealed, the law operates generally over the excepted class or locality. 14 Col. 228; 68 Vt. 338; 12 Wheaton 419, 147 U. S. 494; 1 Lewis' Sutherland Stat. Int. 573; 2 *Id.* 672.

The intention of the Legislature will control the construction of the act, and a mere typographical error in numbering the sections will not defeat the operation of the act. Endlich, Int. Stat. § § 295, 35, 8, 16, 40, 319, 329; 3 Ark. 285; 11 Ark. 44; 22 Ark. 369; 24 Ark. 165; 25 Ark. 101; 29 Ark. 354; 37 Ark. 495; 48 Ark. 307; 75 Ark. 126; 63 Ark. 576; 67 Ark. 566; 69 Ark. 376.

BATTLE, J. On the 6th day of November, 1908, appellants, J. E. Edland and J. B. Ullathorne, were arrested and tried before a justice of the peace of Big Lake Township, in Mississippi County, Arkansas, for having hunted within the Chickasawba District of that county, in violation of section 3599 of Kirby's Digest, they being non-residents. They appealed to the circuit court of Chickasawba District, and were again convicted; and they then appealed to this court.

They concede that, if section 3599 of Kirby's Digest is in force in Mississippi County, they were properly convicted.

Section 3599 of Kirby's Digest is as follows: "It shall be unlawful for any person who is a non-resident of the State of Arkansas to shoot, hunt, fish or trap at any season of the year."

The question is, is this statute in force in Mississippi County?

Section 3599 of Kirby's Digest is section four of an act entitled "An act to protect the game and fish of the State and provide for the appointment of game wardens," approved April 24, 1903. Section eleven of that act was as follows: "That all

laws or parts of laws in conflict herewith are hereby repealed, and this act shall take effect and be in force from and after its passage; provided, that the provisions of this act shall not apply to the county of Mississippi."

Appellants contend that this provision is still in force in Mississippi County. But it was repealed by an act entitled "An act to amend section 11 of Act No. 162, approved April 24, 1903, entitled 'An act to protect the game and fish of the State, and to provide for the appointment of game wardens;'" approved April 19, 1905, which is as follows:

"Be it enacted by the General Assembly of the State of Arkansas: Section 1. That Section eleven of Act No. 162, approved April 24, 1903, entitled 'An act to protect the game and fish of the State, and to provide for the appointment of game wardens,' be amended so that the provisions in said section exempting Mississippi County be, and the same is hereby repealed, and that section be amended so as to read as follows:

"Section 2. That all laws and parts of laws in conflict herewith are hereby repealed, and this act shall take effect and be in force from and after its passage.

"Section 3. That all laws and parts of laws in conflict with this act be, and the same are hereby repealed, and this act shall take effect and be in force from and after its passage."

The figure 2 in the last clause of section one is evidently a mistake. It should be 11. It (last clause) was not an independent section, but a part of section 1.

The effect of the amendment of section 11 of the act of April 24, 1903, by the act of April 19, 1905, was to so change the former act as to make it read in the same manner it would have read and to give it the same effect it would have had if it had been originally enacted as amended, that is, as it would have read with the proviso to section eleven stricken out. *Henderson v. Dearing*, 89 Ark. 598; *Mondschein v. State*, 55 Ark. 389; *Hempstead County v. Harkness*, 73 Ark. 600.

Section 3599 of Kirby's Digest is in force in Mississippi County.

Judgment affirmed.