

ROBERTS *v.* OWEN.

Opinion delivered January 26, 1931.

1. TAXATION—TIME FOR REDEMPTION FROM FORFEITURE FOR IMPROVEMENT TAX.—Under Acts 1925, No. 359, § 2, allowing the right to redeem from a sale for district improvement tax within two years from date of the sale, provided that the act should not apply to property delinquent or forfeited prior to its passage, *held* that the statute does not apply to property which had become delinquent for a sewer improvement tax or had been forfeited therefor prior to the passage of the act.
2. TAXATION—AMOUNT REQUIRED TO REDEEM.—Where land was sold for taxes delinquent for years prior to passage of Acts 1925, No. 359 and for years after its passage, and application was made within the time allowed for redemption from the former delinquent

taxes, the owner will be required, in order to redeem, to pay all the taxes for which the land was sold.

Appeal from Arkansas Chancery Court, Northern District; *H. R. Lucas*, Chancellor; affirmed with modification.

STATEMENT BY THE COURT.

Several years ago lots 2 and 41 were included in Sewer Improvement District No. 4 in Stuttgart, Arkansas. The improvement was made, benefits levied and extended. Lot 41 was returned delinquent for unpaid assessments from 1922 to 1926, inclusive, and lot 2 was delinquent from 1923 to 1926. The Board of Commissioners foreclosed the liens for all the delinquent taxes for said years by regular proceedings begun on May 6, 1927, and the lots were sold by the commissioner, the clerk of the court appointed as such, under the decree of foreclosure rendered on December 5, 1929. On February 29, 1928, the commissioner sold said lots to appellant Roberts, the sale being reported and confirmed on March 5, 1928, and the commissioner's deed issued on March 1, 1930, and duly recorded by Roberts, who has had possession of the lots since his purchase.

On April 14, 1930, more than two years after the sale of said lots, appellees brought this suit to redeem, alleging a right to redeem under the old statute within five years or until February 29, 1933, because the lots were delinquent for assessments for the years 1922 and 1923, before the passage of act 359 of 1925, approved April 1, 1925, and therefore exempt from its provisions.

The court found the assessments due on lot 41, block 12, for the years 1922 and 1923 were not paid at the time fixed for payment, were returned and said lot was delinquent property on April 1, 1925, within the meaning of act 359 of 1925, that for the years 1925 and 1926 the lot was delinquent after April 1, 1925. Further that the assessments on lot 2, block 38, were not paid for 1923 and same was returned delinquent prior to April 1, 1925,

and for the years 1924 and 1926 said lot became delinquent after April 1, 1925.

*Ingram & Moher*, for appellant.

*W. A. Leach*, for appellee.

KIRBY, J., (after stating the facts). Appellant urges that the court erred in allowing the redemption under the terms of the five-year statute of limitations, (§§ 5642-44, C. & M. Digest), and in not holding the right of redemption barred in two years under the new statute, § 2, act 359 of 1925, which reads as follows:

“Hereafter all persons shall have the right to redeem from the sale for taxes of road, drainage, levee or other improvement districts at any time within two years from the date when such lands are sold by the commissioner making the sale and not thereafter; provided, that the provisions of this section shall not apply to property which shall have become delinquent or have been forfeited prior to the passage of this act.” Although this act was in force when the foreclosure suit was brought on the 6th day of May, 1927, and conceding without deciding that it relates to sales of lands within special improvement districts in cities and towns, the majority is of opinion that it has no application here, since it is expressly declared in the act: “That the provisions of this section shall not apply to property which shall have become delinquent or have been forfeited prior to the passage of this act.” The terms “delinquent” and “forfeited” have a well-defined meaning in our taxation statutes, §§ 5673 and 6695, C. & M. Digest; and it was evidently the intention of the Legislature to except from the provisions of this act, which limits the time for redeeming such property to two years, both lands that had become delinquent or had forfeited prior to the passage thereof, leaving the time of redemption 5 years as fixed by the statute in force at the time the lands became delinquent or were forfeited. The disjunctive conjunction “or” is used in its ordinary meaning and acceptation (Webster’s New International Dic-

tionary, 1925 ed.; *Pappano Hirst Club v. Bryan*, 52 A. L. R. 51; 29 Cyc. 1502), and is not to be construed to mean "and" in arriving at the legislative intention. If it were not so, the Legislature would have excepted only forfeited lands from the provisions of the new statute.

The court therefore correctly held that the owners of the lots were entitled to redeem within five years from the time of the sale of the forfeited lands for the assessments due for the years before the passage of the new act; and, even if it be held that the new act repeals the old, so far as the time of redemption is concerned, since the sale was made for both taxes delinquent for the years before the passage of the last act and for the years that they were delinquent after the passage of the new act, if it be held to repeal the old act in redemption of the lands, the owners would still be required to pay the amount of all the taxes for which the lands were sold, because they were delinquent and subject to sale for the years both before and after the passage of the new act.

The decree is correct therefore if the owners are required to pay all the taxes for which the lands were sold in the redemption thereof; but it is not clear in that respect, and the cause is therefore remanded, with directions to modify the decree so as to clearly impose that requirement. It is so ordered.

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