COMMONWEALTH FARM LOAN COMPANY *v.* LESTER.

Opinion delivered April 1, 1929.

1. TAXATION—CERTIFICATION OF RESULT OF SCHOOL ELECTION.—Where the county board of education certified the result of a school election as to the school tax to the county clerk, filed the certificate and noted the result of the election upon the taxbooks, this was a substantial compliance with Crawford & Moses' Dig., § 8970, and it was unnecessary to spread upon the records of the county court the certificate of the result of the election.
2. CLERKS OF COURTS—LOSS OF RECORD.—The fact that a certificate of the county board of education as to the result of the election in a school district was lost after it had been filed with the county clerk did not impair its force as a part of the records of the county court.
3. EVIDENCE—PROOF OF LOST RECORD.—After satisfactory proof of the loss or destruction of a court record, its contents may be proved, like any other document, by secondary evidence.
4. EVIDENCE—PROOF OF LOST RECORD.—Proof that the certificate of the county board of education of the election returns with reference to a district school tax had been filed, by direct testimony of the superintendent of the board and the county clerk, and proof of the loss of the certificate by the testimony of the clerk, *held* sufficient to permit the introduction of parol proof of the contents of such certificate based on a carbon copy in the office of the county superintendent and a notation made by the county clerk.
5. EVIDENCE—VALIDITY OF TAX FORFEITURE.—In suit involving the question of title acquired under a donation certificate under a forfeiture for delinquent taxes, the forfeiture *held* valid, notwithstanding the loss of the original certificate of the county board of education as to the results of the election on school tax, where the loss and contents of such certificate was established by secondary evidence.

Appeal from St. Francis Chancery Court; *A. L. Hutchins,* Chancellor; affirmed.

STATEMENT OF FACTS.

The Commonwealth Farm Loan Company brought this suit in equity against J. D. Lester and others to foreclose a deed of trust on a tract of land containing 417.58 acres, and for judgment for the amount of the debt secured by the said deed of trust. James A. Latham and

James A. Latham, Jr., and Pearl Latham were made defendants to the action, and a donation certificate issued to them to said lands was asked to be canceled, and the plaintiff prayed that its lien be declared to be a superior lien upon said lands.

The court found upon proof made that there had been a default made in the payment of said indebtedness, and a decree of foreclosure was entered of record. Inasmuch as no appeal has been taken from this part of the decree, it will not be necessary to further abstract this branch of the case.

The court found that the donation certificate issued to James A. Latham, Jr., to a part of the lands for the delinquent taxes for the year 1923, was void because of indefinite description, and the sale to him was set aside. No appeal has been taken from this part of the decree, and no further abstract is necessary.

James A. Latham acquired by virtue of a donation certificate title to a part of said lands which the court held was superior to the lien of the plaintiff's deed of trust, and it was decreed that the said James A. Latham's title to said land should be quieted against any interest which the plaintiff, appellant here, might have had therein. This being the branch of the case from which the appeal was taken, we will abstract in brief form the facts material to a decision of the issue raised.

The donation certificate recites that said land was delinquent for the nonpayment of taxes for the year 1923, and that it was sold to the State for such nonpayment of taxes and duly certified as forfeited by the county clerk. Said donation certificate was filed for record and duly recorded in St. Francis County, in which the land was situated. James A. Latham and James A. Latham, Jr., are now in possession of said land under said donation certificate, and have been in possession of the same since the date of the execution of the certificate. They have placed improvements on the land by reason of their title.

The record shows that on the 24th day of October, 1923, being the date fixed by law for holding quorum court of St. Francis County, for the purpose of making appropriations for levying State, county, road district, school and municipal taxes, a majority of the justices of the peace of the county were present, with the county judge presiding, and that said quorum court proceeded with its duty of levying taxes as required by law. On the levying of school taxes we copy the following:

"District school tax. On motion of Justice S. L. Hodges, and seconded by Justice Sam D. Hall, it is ordered that the district school taxes for the current year be and the same are hereby levied as voted in the several school districts of the county on the 19th day of May, 1923, as shown by the return of the meeting held that day and duly certified to the court by the county board of education, as hereinafter set forth. School District No. 7, 12 mills. And upon a call of the roll thereon, the vote being unanimously affirmative, said motion was declared carried, and all of said taxes levied."

It was agreed that Linn Turley was the county clerk of St. Francis County, and, when sworn as a witness, would testify that he had searched the records of his office, and had not been able to locate the certificate from the county board of education showing the result of the school elections held in the various townships at the regular election in May, 1923, at which time the school taxes were voted. Said clerk is sure that this certificate was filed by the county board of education, and the rate of tax voted by each district was noted on the taxbooks of the county. The certificate has been lost, and there is now no record thereof in the office of the county clerk. When such certificates are filed in his office, it has always been his custom to look at the certificate and see that it was properly executed, and then put the rate of the levy in the back of the taxbooks and file the certificate away. There is no record in his office showing the result of the school election of May, 1923, except as in-

dicated by him in the back of the taxbooks, the same having been lost.

It was further agreed that James M. Wilson, county superintendent of St. Francis County, has custody of the records of the county board of education of St. Francis County, and that he has in his possession in his office a carbon copy of the certificate of the board of education, duly certified by the president and secretary, showing the result of the school election held on the third Saturday in May, 1923, which shows that Forrest City School District No. 7 voted a twelve-mill tax at the regular election of said district, and that he has also in his custody the original returns of said school election, including the tally sheets and poll books, which are in the vault in the county clerk's office, from which the county board of education made its finding as to the result of said school district election. Said J. M. Wilson delivered to the county clerk of St. Francis County, to be filed by him, the original certificate made by the county board of education, certifying the result of said school election held on the third Saturday in May, 1923, in which it was shown that a tax of twelve mills was voted.

The land in question was situated within the boundaries of said school district, and was sold for the nonpayment of taxes for the year in question.

Mann & McCulloch, for appellant.

Mann & Harrelson, for appellee.

HART, C. J., (after stating the facts). It is conceded by counsel that the only question raised by this appeal is the validity of the sale of the lands in question for the taxes levied by the county court in October, 1923. It is claimed that the record does not show that the school taxes were voted and levied in accordance with the provisions of the statute. In making this contention, reliance is placed upon the fact that the county clerk did not spread upon the records of the county court the certificate of the result of the school elections filed in his

office by the superintendent of the board of education of St. Francis County.

Section 8878 of Crawford & Moses' Digest provides that the county board of education shall promptly canvass the returns of all school elections and certify the result to the county court for proper record. Section 8955 provides that the returns of the school elections, together with the ballots, shall be sealed up and delivered by one of the election judges to the county board of education within twenty days after the election. Section 8956 provides that the county court, at its meeting for levying taxes, shall take the records of the county board of education and ascertain whether the majority of the votes be for tax and the amount of taxes voted in the particular district. Section 8970 provides that the county board of education, in school elections in cities and towns, shall also declare the result of the vote for and against the tax, and certify the same to the county court on the day of the term fixed by law for levying taxes, and that the rate of taxes so certified shall be levied by the court as are other school taxes.

It is contended by counsel for appellant that in making the levy of the school taxes the county court can only be governed by the record made in its office as to the result of the school election, and that, inasmuch as the result of the school election was not spread upon the records of the county court, no valid levy could be made. We do not agree with counsel in this contention. We think there was a substantial compliance with the provisions of the statute. The undisputed proof shows that the result of the election, as shown by the order of the county court levying the school taxes in question in this case, was certified by the county board of education, after canvassing the returns of said school election. A carbon copy of the certificate was kept on file by the superintendent of the board, and what was called the original was filed by him in the office of the county clerk. The county clerk made a notation upon the taxbooks

of the result of the school election in question, and filed the certificate of the result of the election in his office. This was a substantial compliance with the statute. The statute did not require that the certificate of the result of the school election should be spread at large upon the records of the county court. It was sufficient if the clerk filed it and it thereby became a part of the permanent records of the county court. The fact that it was lost or destroyed did not impair its force as a part of the records of the county court. It only became necessary to prove the fact that it was lost to admit secondary proof of the contents of the certificate.

The settled rule in such cases in this State is that, after proof of the loss or destruction of a record satisfactory to the court is made, its contents may be proved, like any other document, by secondary evidence, when the case does not, from its nature, disclose the existence of other and better evidence. *Davies* v. *Pettit*, 11 Ark. 349; *Brasch* v. *Western Tie & Timber Co.*, 80 Ark. 425, 97 S. W. 445; and *Woodruff* v. *State*, 61 Ark. 157, 32 S. W. 102.

Proof that the certificate had been filed was established by the testimony of the superintendent of the board, whose duty it was to deliver the certificate of the school election to the county clerk, and also by the testimony of the county clerk, whose duty it was to file the same. The loss of the certificate was established by the testimony of the county clerk, who was its custodian as a part of the records of the county court. This testimony was sufficient to let in parol proof of the contents of the certificate, and this was established by the testimony of the county superintendent to the effect that he had kept a carbon copy of the certificate in his office, and the result of the election as shown by his testimony was taken from that copy. The county clerk also testified that, when the certificate was filed by him, he made a notation therefrom upon the taxbooks of the amount of the levy and the result of the vote. The notation made

by him corresponded with the amount of tax voted and the result of the vote as shown by the carbon copy of the result of the election as certified and filed with the county board of education. Hence we are of the opinion that there was a valid record of the school taxes established, which could be acted upon by the county court, and that the sale of the land for the nonpayment of school taxes was in all respects a legal and valid sale and that appellees Latham acquired a valid title under their donation certificate.

It follows that the decree of the chancery court quieting title in them in the lands in question was correct, and must be affirmed. It is so ordered.