## HAYWARD *v.* ROWLAND.

Opinion delivered November 23, 1931.

1. TAXATION—APPEAL FROM ASSESSMENT.—A landowner attacking an assessment must show that the valuation of his land was inequitable when compared with the valuation of other lands of the same character similarly situated.

2. TAXATION—UNFAIR ASSESSMENT—EVIDENCE.—Evidence *held* not to show that the valuation of plaintiff's land was inequitable as compared with the valuation of other lands similarly situated.
3. APPEAL AND ERROR—CONCLUSIVENESS OF COURT'S FINDING.—A finding of fact of the circuit court supported by substantial testimony will not be disturbed on appeal.
4. TAXATION—UNFAIR ASSESSMENT—EVIDENCE.—Evidence as to income derived from land claimed to have been inequitably assessed *held* admissible to show the market value of the land.

Appeal from Bradley Circuit Court; *P. Henry,* Judge; affirmed.

STATEMENT BY THE COURT.

This appeal is prosecuted from a judgment denying appellant any relief on his petition for a reduction in assessment of the valuation upon his lands by the assessor and the board of equalization.

It appears from the testimony that appellant purchased 7196.75 acres of land in Bradley County from the Saline Development Company on October 18, 1927, for the consideration of $1 per acre, subject to certain mineral rights and timber rights already conveyed to other parties. He acquired under the purchase timber rights on about 25 per cent. of the land, and mineral rights in about 50 per cent. There has not been any timber or mineral rights sold since he purchased the lands. He sold certain of the lands, 526 acres on which the grantee already owned the timber rights, in 1929. A large part of the land was said to be inaccessible with little second growth timber thereon, it being claimed that on January 1, 1930, the land was practically denuded of all merchantable timber, virgin and second growth. Only three or four hundred acres of the land is suitable for agricultural purposes, and none is in cultivation, and there are no improvements on any of it. A good part of it is overflowed from the Saline River, and it is all claimed by appellant to be undesirable from all standpoints, having no advantages, natural or otherwise.

Appellant, prior to January 1, 1930, had disposed of 780 acres of the original tract, leaving him the owner of 6408.28, which he was required to assess at that time.

He stated he was thoroughly familiar with all his land, having cruised each separate 40-acre tract thereof, and made and delivered to H. L. Rowland, assessor of Bradley County an itemized report of his lands, tract by tract, showing its description, its full value and the amount at which he proposed to assess it, fifty per cent. of the value of the land, in accordance with the rule adopted in that county. The assessment placed upon the land by the assessor in each instance in dollars being actually 2½ times the acreage of the tract.

A summary of the market value shown by the appellant to each separate tract gave 4031.28 acres at $1 per acre, 160 acres at $1.25, 826.46 at $2, 575.13 at $2.50, 736.41 at $5, and 80 acres at $10 per acre. The lands were assessed at $2.50 per acre by the assessor, and appellant appealed to the board of equalization to reduce the assessment, and, being denied any relief by the board, which approved the assessment, he appealed to the county court, which likewise refused to lower the assessment, and he then appealed to the circuit court where, on trial by the court, the same judgment was entered, from which this appeal comes.

On the hearing, it appeared from the testimony of several witnesses that most of the Hayward lands are low and wet, with no good roads to or through it, cut-over lands practically denuded of timber and not well adapted to the production of second growth of timber. They stated that the lands were not worth more than $1 or $1.25 per acre, except one 80-acre tract; that most of the tract was not available for farming, and would never be.

It was also shown that the lands were sold originally for $1 per acre "because the seller needed the money, rather than because of that price being regarded the market value." Also that appellant had realized by the sale of some of the lands and the leasing of others about $13,000 since his purchase of the tract. That some of the leases for oil development were paying more rental than the taxes on the entire tract of land at the time of this assessment. That there were 245,000 acres of cut-over

lands in Bradley County owned by the two big mill companies and about 30,000 of it being wet and subject to overflow somewhat like appellants', all of which was assessed at $2.50 per acre which was testified to by four witnesses to be a fair valuation for assessment of the lands of appellant.

One of these witnesses, H. L. Rowland, the assessor of the county, serving his fourth term and familiar with the value of the lands, refused to take the valuations offered by appellant and assessed appellant's entire tract of land at $2.50 per acre, stated that he was governed "in two ways in making assessments, on values and on the way other lands of like kind were assessed." Knowing that the Mansfield lands were assessed at $2.50 per acre, that fifty or sixty thousand acres of the Bradley Lumber Company's "cut-over" lands were assessed at not less than $2.50 per acre, and that most of the Southern Lumber Company's lands were assessed at a like figure, he therefore assessed none of the cut-over lands of any of the lumber companies or of Mr. Hayward at less than $2.50 per acre; stated he had been on the Hayward tract two or three times, but could not say what the actual market value was on January 1, 1930.

Henley S. Turner, county clerk, stated that he had been in the office 20 years, was familiar with land values, knew the lands in question by location and description, and considered it similar to the 245,000 acres of "cut-over" lands in the county; was familiar with land values from deed records, sales and transfers. He also knew that the sale price to appellant of $1 per acre did not represent the market value. Said the land was worth $5 per acre at the time of the assessment, and that, although he was the secretary of the company that sold the land to appellant, he regarded it then worth $5 per acre.

G. B. Colvin, serving his fourth year as county judge, who had also been sheriff and collector eight years and clerk eight years, before which time he had been in the timber business for the Bradley Lumber Company estimating and buying timber, said he was familiar with

virtually all the lands in the county, and had been over all the lands of appellant, observing the character of the soil and timber thereon; said the lands were well situated as to accessibility to roads, one county road running through the lands, and that none of said lands were more than two miles from a public road. That they were never overflowed more than a week or 10 days at a time and the overflows came in the fall and spring and not a great deal of it was overflowed; thought $2.50 per acre was a fair assessment; that at the time there was no market value for lands, but in normal times the lands would be worth from $4 to $5 per acre. He had sold some lands adjoining the Hayward lands on three sides at $8 and $10 per acre.

Two other witnesses testified to like effect, one of them being L. B. Johnson, the clerk and recorder of the county, who had served eight years as tax assessor.

*Duval L. Purkins* and *Shields M. Goodwin,* for appellant.

*D. A. Bradham,* for appellee.

KIRBY, J., (after stating the facts). Section 5 of article 16 of the Constitution provides: "All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value."

In *Bank of Jonesboro* v. *Hampton,* 92 Ark. 496, 123 S. W. 753, the court, in interpreting this provision, said: "It is true the Constitution provides that all property subject to taxation shall be taxed according to its value, but this is done when the valuation is equalized with other property of the same kind in the county."

In *Doniphan Lbr. Co.* v. *Cleburne County,* 138 Ark. 449, 212 S. W. 308, the court said, in deciding a case of like kind: "Unless the undisputed facts in the case establish that the findings and judgment of the circuit court are erroneous, this court cannot reverse on appeal. The case falls within the general rule that the findings of the

trial court will not be disturbed by this court on appeal where the findings are sustained by sufficient legal evidence. * * * Under the rule thus announced, it is only necessary in the instant case for us to examine the record sufficiently to ascertain whether the findings and judgment of the trial court are sustained by sufficient legal evidence. It goes without saying that it was incumbent upon appellant, in attacking the assessments of the several boards, to show by proof that the valuations placed by them upon the several tracts of land were unfair and inequitable when compared with the valuations placed upon other lands of the same kind and character similarly situated."

It was incumbent upon the appellant in attacking the assessment to show that the valuations placed upon the several tracts of land were unfair and inequitable when compared with the valuations of other lands of the same kind and character similarly situated; and he failed to do this. Certainly it cannot be said that the circuit court's finding and judgment in favor of the fairness and reasonableness of the assessment and denial of relief to appellant was contrary to the undisputed testimony in the case; and, conceding that it is contrary to the preponderance of the testimony, which we by no means decide, still it is only necessary that its judgment be supported by substantial testimony, and the record discloses that it is amply sustained by sufficient legal evidence.

The testimony introduced showing the income realized from ownership of the lands and the amount for which the lands were purchased was not intended to establish a different rule for assessment than that prescribed by the Constitution and laws according to its market value, but only as it might tend to show the correct market value at the time. In other words, that the purchase price paid by appellant was not conclusive of the market value of the lands.

We find no prejudicial error in the record, and the judgment must be affirmed. It is so ordered.