

PULASKI MINING COMPANY *v.* VANCE.

Opinion delivered April 25, 1932.

1. STATE—OWNERSHIP OF CONFEDERATE HOME.—The deed conveying to the State the lands upon which the Ex-Confederate Home had already been constructed conveyed the whole title without any trust being imposed upon the State to maintain the home that could be enforced to prevent the disposition of the lands by the State.
2. MINES AND MINERALS—LANDS OWNED BY STATE.—Crawford & Moses' Digest, § 6789, as amended by Acts 1929, No. 212, § 1, authorizing contracts for mineral rights in "lands owned by the State" is not applicable to State-owned land occupied by the Ex-Confederate Home.
3. MINES AND MINERALS—MINING RIGHTS IN STATE LANDS.—A lease of mining rights in State-owned property, not authorized by statute, could not be validated by approval of the Governor and Attorney General.
4. STATE—LEASE OF EX-CONFEDERATE HOME—PARTIES.—Ex-Confederate soldiers and taxpayers *held* proper parties plaintiff in a suit to cancel a lease of mining rights in land occupied by the Ex-Confederate Home.
5. STATES—CANCELLATION OF LEASE.—It was not necessary that taxpayers, suing to cancel a lease of mineral rights under lands occupied to sue the Ex-Confederate Home, should request the Attorney General to sue to cancel the lease which he had previously approved by signing it.
6. MINES AND MINERALS—AUTHORITY TO EXECUTE LEASE.—Where there was no authority for the Commissioner of Revenues to execute a mining lease covering the lands on which the Ex-Confederate Home was situated, it was immaterial that the lease was not inprovidently made nor without due regard for the improvements.

Appeal from Pulaski Chancery Court; *Frank H. Dodge*, Chancellor; affirmed.

STATEMENT BY THE COURT.

Suit was brought by M. D. Vance, past commander, and B. F. Red, brigadier general, of the United Confederate Veterans, against the Pulaski Mining Company, an Arkansas corporation, for the purpose of canceling a certain contract of lease of date of January 16, 1932, executed by the Commissioner of Revenues on behalf of the State of Arkansas and the said mining company.

The lease provides for the underground mining of bauxite under the lands of the Ex-Confederate Home in Pulaski County, requiring the mining to be done without interfering with the use of such home, and minutely providing how such work should be done for the protection of the property.

An injunction was also asked to prevent the company from entering upon the premises and from carrying on the mining operations, or in any way disturbing said property.

The lease was executed under the authority of act 212 of 1929, amending the statute, § 6789, Crawford & Moses' Digest. The plaintiffs alleged the lease was void as being beyond the authority of the Commissioner of Revenues to make, and that it violated a trust imposed upon the State in acquiring the property. All of the material allegations of the complaint were denied, and testimony was introduced as to the facts relative to the trust, and upon trial, upon oral testimony, on March 27, 1932, a decree was rendered canceling the lease and perpetually enjoining the appellant company from entering the lands for prospecting or mining.

A preliminary motion was also presented by the mining company to the court to dismiss the suit on the ground that plaintiffs were not proper parties, and under the law had no authority to maintain it. This motion was also overruled and exceptions were saved to the finding and decree of the court, from which this appeal comes.

Robinson, House & Moses and *Frank Bird*, for appellant.

Carmichael & Hendricks, for appellee.

KIRBY, J., (after stating the facts). It is insisted by appellant that the court erred in holding the lease invalid as being executed by the Commissioner without authority of law, and also in declaring the suit could be maintained by the appellees.

The conveyance of the lands upon which the Ex-Confederate Home was already constructed was made by

individuals, trustees for the establishment of the home, for the use of soldiers of the Confederate Army. It will suffice to say that the deed conveying the lands to the State conveyed the whole title without any trust being imposed upon the State, the grantee, for the maintenance of the home thereafter that could be enforced to prevent the disposition of the lands by the State.

The statute, which it is claimed authorized the lease made by the Commissioner of Revenues, is § 6789, Crawford & Moses' Digest, as amended by act 212 of 1929, and reads as follows:

“Section 6789. Hereafter it shall be unlawful for any person, firm, company, corporation or association to take sand and gravel, oil and coal, or other minerals from the beds or bars of navigable rivers and lakes, or from any and all other lands held in the name of the State of Arkansas, without first procuring the consent of the Commissioner of Revenues. Such consent may be withheld unless such person, firm, company, corporation or association shall agree in writing to keep an accurate record and account of all sand and gravel, oil, coal and other minerals taken by him or them from said rivers and lakes, and from any other lands owned by the State of Arkansas, and render to the said Commissioner of Revenues at the end of each month an itemized, verified statement of all the number of cubic yards of sand and gravel, and gallons of oil and tons of coal and other minerals taken out each day during the month. At the time of making such statement the person, firm, company, corporation, or association shall pay into the State Treasury two and one-half cents for each cubic yard of sand and five cents per cubic yard of gravel so taken, and one-half cent for each gallon of oil and six cents per ton of coal, and, if any other valuable minerals be found in such rivers, lakes or under other lands owned by the State of Arkansas, any firm, company, corporation or association taking the same out shall make a contract with the Commissioner of Revenues stating the amount due the State of Arkansas under said contract.”

This section makes it unlawful to take sand and gravel, oil and coal, and other minerals from the bed and bars of navigable rivers and lakes, "and from any and all other lands owned by the State of Arkansas," or "held in the name of the State of Arkansas," or "under other lands owned by the State of Arkansas." It provides also the procedure for obtaining the consent of the Commissioner of Revenues therefor and for payment for such minerals taken from the said lands owned by or held in the name of the State of Arkansas, or under lands owned by the State of Arkansas.

Appellant insists that these phrases necessarily include any lands owned by the State or held in the name of the State, and authorized the Commissioner of Revenues to dispose of the minerals thereon or thereunder; while appellees insist that the "lands of the State" under the provisions of this statute would be such as are included within the chapter 107, Crawford & Moses' Digest, which it has authority to sell.

It was the evident purpose of this statute to allow the sale and disposition of these minerals from the bed and bars of navigable rivers and lakes and any other lands owned by or held in the name of the State of Arkansas—"lands of the State" being such as are included within the said chapter 107 of the digest of the statutes—and the meaning could not be extended to lands that were in fact owned by the State already dedicated to other uses with improvements thereon. The lands here constituted one of the State's charitable institutions, and there was no intention of the Legislature, under a proper construction of any of the language used in said act, to authorize the disposition of minerals under the foundations or grounds of the buildings constituting its charitable institutions, or its Capitol, for instance. These lands, while owned by the State, are a part of such institutions, and no fair construction of such statute gives authority for the disposition of minerals that might be found under the buildings or within the grounds of such institutions.

The parties to the lease evidently doubted that authority was granted by the statute for the disposition of the minerals made in the execution of the lease therefor, since the Governor and the Attorney General were required to approve the lease and did do so, although the statute does not require it done. Such approval could give the lease no greater validity than it had already as executed by the Commissioner under the authority of the statute, which does not require the execution and approval of the lease by them. Neither could the Commissioner execute a valid lease of the minerals, as was attempted to be done in this case, since the statute, neither by express words or necessary implication, granted him the authority to make such disposition of minerals under a part of the grounds and foundations of the buildings of one of the State's charitable institutions. The Legislature could have done so, of course, the State having the title to the property, but it did not, and, if there was any such intention, it is not fairly deducible from the language of the statute, which should use such language as shows an unmistakable intention to authorize it done—too plain to admit of construction.

Neither did the court err in refusing to dismiss the suit as one that could not be prosecuted by the appellees as taxpayers and eligible to be inmates of the charitable institution and beneficiaries of the use of it. It was not necessary for the appellees to first request the Attorney General to bring the suit and then allege his refusal to do so in order to proceed, since the law does not require a vain thing done, and the Attorney General was a party to the lease, having given his approval thereto as shown by the lease exhibited with the complaint. *Griffin v. Rhoton*, 85 Ark. 89, 107 S. W. 380.

It makes no difference that the lease does not appear to have been improvidently made, or without due regard for the protection of the improvements in the mining of the minerals, nor whether the purpose was good in attempting to dispose of the minerals for the better maintenance of the home, and in providing increased comforts

for the inmates thereof, since the statute did not authorize its execution.

~~The lease having been executed without authority,~~ it was necessarily void, and the court did not err in so holding. The decree is accordingly affirmed.
