

FOREHAND *v.* HIGBEE.

Opinion delivered March 18, 1918.

1. REDEMPTION—DUTY OF PARTY SEEKING TO REDEEM LAND SOLD FOR TAXES—ACTS OF PUBLIC OFFICERS.—The right to redeem is given by the statute and the owner must apply for the redemption, but it is the duty of the officer in such cases to give the information necessary as to the amount to be paid for the redemption. Under the statutes the county clerk is the legal custodian of the books containing the entries of taxes and costs. All applications for redemption must first be made to him and he must issue a certificate of redemption showing the amount of taxes, penalties and costs due. Upon presentation of such certificate of the county clerk to the county treasurer, and upon the payment of the money to the treasurer, the latter is required to give duplicate receipts therefor.
2. REDEMPTION—ISSUANCE OF CERTIFICATE—DUTY OF LAND OWNER.—Where a deputy county clerk in the discharge of his official duties issues a certificate of redemption, the land owner has a right to rely upon it as containing the correct amount of taxes, penalty and costs due by him. The owner is not negligent in failing to examine the certificate and ascertain if it is correct.
3. REDEMPTION—RIGHT OF OWNER TO RELY UPON CERTIFICATE ISSUED TO HIM BY COUNTY CLERK.—A land owner may rely, and in good faith act, upon the certificate of redemption, issued to him by the county clerk, and the payment of the sum contained in it is effectual as a statutory redemption.
4. TAXES—BONA FIDE ATTEMPT TO PAY—MISTAKE OF OFFICIAL.—Where a taxpayer makes an attempt in good faith to pay his taxes, and is prevented by the mistake, negligence or other fault of the collector, the sale of his land for the nonpayment of taxes is void.

5. REDEMPTION—NEGLECT OF DUTY BY OFFICIAL.—A taxpayer can not be deprived of his right of redemption by the neglect of duty on the part of the officers of the State.
6. REDEMPTION—FILING TREASURER'S RECEIPT.—A paper is filed when delivered to the proper officer and by him received to be kept on file. The treasurer's receipt, when deposited with the county clerk to be filed, constitutes the filing of it.

Appeal from Poinsett Chancery Court; *Archer Wheatley*, Chancellor; affirmed.

*John W. Scobey, pro se.*

1. The redemption was not valid because the receipt from the treasury was never filed with the clerk. 80 Ark. 43-48; 73 *Id.* 27; Kirby's Digest, § § 7099, 7100-2.
2. Appellee failed to pay enough money to redeem. Blackwell on Tax Titles, pages 506-7.

*Gordon Frierson and Hawthorne & Hawthorne*, for appellee.

1. The treasurer's receipt was filed within the meaning of the law. Appellee did all that was required of him and the officer's failure of duty does not affect his right. 21 Ark. 578; 28 *Id.* 244; 82 *Id.* 164; 15 N. E. 712; 3 So. 471; 73 Pac. 1018.
2. The question of the sufficiency of the amount paid the treasurer is raised here for the first time. 71 Ark. 241; 110 *Id.* 49; 46 *Id.* 96; 64 *Id.* 253; 95 *Id.* 593. But the statute was complied with. If the clerk failed to add the penalty it was an error that should not prejudice the owner. The presumption is that the certificate correctly stated the amount due. 25 Ark. 311; 30 *Id.* 69; 96 *Id.* 477; 124 *Id.* 405; 35 *Id.* 505; 70 *Id.* 500; 92 *Id.* 630; 99 *Id.* 137. As to mistake in the failure to pay the penalty see 124 Ark. 405; also, 65 N. W. 494; 24 Pa. St. 452.

#### STATEMENT OF FACTS.

This is a suit in equity by H. H. Higbee against J. W. Forehand and John W. Scobey to cancel a deed to one hundred and sixty acres of land executed to them

by the State Land Commissioner in 1916. Higbee purchased the land in question in January, 1909, and has been in possession of it through his tenants ever since. The land was returned delinquent for the State and county taxes for the year 1912, and on the second Monday in June, 1913, was forfeited to the State for the non-payment of taxes. It was duly certified to the State in 1915, after the two years' period of redemption had expired. A deed was made by the State Land Commissioner to the lands to J. W. Forehand and John W. Scobey and the consideration paid the State was \$200.00. On August 5, 1913, Higbee mailed a check for \$73.49 to J. Brinkerhoff, his agent at Harrisburg, Arkansas, and directed him to redeem the land for him. On the 8th day of August, 1913, Brinkerhoff went to the county clerk's office and applied to redeem the land for the taxes for the year 1912. A deputy in the county clerk's office, of long experience, prepared for Brinkerhoff a redemption certificate for said land in which the amount of taxes, penalty and costs due was recited to be \$52.50. The clerk prepared a redemption certificate signed in triplicate and Brinkerhoff then went to the office of the county treasurer and paid him the amount recited in the redemption certificate. The treasurer gave him a duplicate receipt therefor. Brinkerhoff then delivered the redemption certificate with the receipt of the treasurer to the county clerk in his office and asked that it be filed there as required by the statute. After this suit was brought it was ascertained that the clerk had failed to file the certificate and receipt as required by the statute. A search was made for it and it was found in the county clerk's office with other certificates of redemption that had been issued during the year 1913. Brinkerhoff then obtained permission from the county clerk to take out the certificate and receipt and keep it until it should be needed as evidence in this case. The clerk in making out his certificate of redemption did not embrace in it the full amount of the penalty required by the statute, so that Higbee lacked \$6.00 of pay-

ing the full amount of the penalty due. The certificate showing the amount of taxes, penalty and costs due was prepared by the deputy county clerk and he was paid the full amount stated therein. The court found in favor of the plaintiff and a decree was accordingly entered, canceling the deed from the Commissioner of State Lands to J. W. Forehand and John W. Scobey. They have appealed.

HART, J., (after stating the facts). The decree of the chancellor was based on the ground that the redemption by Higbee was valid. The validity of the redemption is attacked on two grounds. First, it is claimed that appellee did not pay the amount required by law to redeem, and second, that the receipt from the treasurer was not filed in the office of the county clerk as required by the statute.

It appears from the record that in making out the redemption certificate the deputy county clerk by miscalculation as to the amount of penalty due made it a little over \$6.00 less than the true amount and that the county treasurer allowed the owner to redeem by paying this amount. It is insisted that the owner was bound to tender the full amount and that he can not be relieved from a mistake of fact made by the officer. The right to redeem is given by the statute and the owner must apply for the redemption, but it is the duty of the officer in such cases to give the information necessary as to the amount to be paid for the redemption. Under our statutes the county clerk is the legal custodian of the book containing the entries of taxes and costs. All applications for redemption must be made to him and he must issue a certificate of redemption showing the amount of taxes, penalties and costs due. Upon presentation of such certificate of the county clerk to the county treasurer and upon payment of the money to the treasurer the latter is required to give duplicate receipts therefor. Kirby's Digest, 7095-7102.

In the present case a certificate of redemption was issued to the land owner by the deputy county clerk

in the discharge of his official duties and the owner had a right to rely upon it as containing the correct amount of taxes, penalty and costs due by him. The owner was not negligent in failing to examine the certificate of redemption to see if it was correct. If the tax-payer was authorized to believe the certificate was correct at the time it was issued and that it covered all that was due to the State for the redemption of the land, he could rest under that belief and ordinary care and prudence would not require him to examine the certificate for mistakes thereafter. We are of the opinion that the owner might rely, and in good-faith act, upon the certificate of redemption and that the payment of the sum contained in it was effectual as a statutory redemption. 37 Cyc. 1419; Cooley on Taxation, Vol. 2, page 1048; *Forrest v. Henry* 23 N. W. (Minn.) 848; *Hintrager v. Mahoney et al.*, 43 N. W. (Iowa) 522; *The Corning Town Co. v. Davis*, 44 Iowa, 622; *Dietrick and Wilson v. Mason*, 57 Pa. St. Repts. 40; *O'Connor v. Gottschalk et al.*, (Mich.) 111 N. W. 1048; *Martin v. Barbour*, 140 U. S. 634; *Gage v. Scales*, 100 Ill. 218; *Nelson v. Churchill*, 93 N. W. (Wis.) 799; and *Reed v. Rankin*, 4 N. E. (Ill.) 504. This rule is in accord with the principles announced in our decisions holding that where a tax-payer makes an attempt in good faith to pay his taxes and is prevented by the mistake, negligence or other fault on the part of the collector, that the sale of his land for non-payment of taxes is void. *Robertson v. Johnson*, 124 Ark. 405; *Scroggin v. Ridling*, 92 Ark. 630, and *Kinsworthy et al. v. Austin*, 23 Ark. 375.

To sustain his contention that the redemption failed because the owner did not file the receipt from the county treasurer with the county clerk as required by the statute, counsel relies upon the case of *Cook v. Jones*, 80 Ark. 43. In that case there was no attempt to comply with the statute on the part of the land owner. There was no receipt of the treasurer filed or attempted to be filed with the county clerk showing that the amount necessary for redemption had been paid into the treas-

ury. Here the facts are to the contrary. The owner did all that was required of him. He deposited the treasurer's receipt in the county clerk's office to be filed as required by the statute and the fault of the clerk in failing to file it can not be imputed to him. As we have already seen the tax-payer can not be deprived of his right to redemption by the neglect of duty on the part of the officers of the State. Moreover, the treasurer's receipt was deposited with the county clerk to be filed and that act constituted the filing of it. A paper is filed when delivered to the proper officer and by him received to be kept on file." *Bettison v. Budd*, 21 Ark. 578; *Eureka Stone Co. v. Knight*, 82 Ark. 164, and *Case & Co. v. Hargadine*, 43 Ark. 144.

As was said in the last mentioned case it would be a harsh rule to punish an individual, who in the prosecution of a right has done therein all that the law required him to do, for the omission by a public officer to comply with the forms prescribed as his duty.

The decree will be affirmed.

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