

## POPE ET AL. VS. MACON ET AL.

Where a party holds lands under a tax sale, the matter of the *sixth and seventh sections of chapter 106, Gould's Digest*, that is, the filing of an affidavit of the tender of the taxes and interest, etc., and of the value of the improvements made, is as good a defence to an action of ejectment as to a bill in chancery, (*Craig vs. Flanagin*, 21 Ark. 319,) and may be presented, either by motion or by plea in abatement.

*Writ of Error to Jefferson Circuit Court.*

HON. JOHN C. MURRAY, Circuit Judge.

BELL & CARLTON, for the plaintiffs.

GARLAND & RANDOLPH, for the defendants.

Mr. Justice FAIRCHILD delivered the opinion of the court.

The plaintiffs in error brought an action of ejectment for a lot of ground in Pine Bluff, and were met by a plea in abatement, that the land, including the lot, had been purchased at a sheriff's sale for the non-payment of taxes, by persons under whom the defendants, through sundry conveyances, claimed: that the lot had been held under the purchase, and taxes paid thereon, since its occurrence, in 1855; that improvements had been put upon it, and that the plaintiffs, before bringing their suit for the recovery of the lot, had not filed in the office of the clerk of the Circuit Court of Jefferson county, an affidavit setting forth that they had tendered to the purchasers of the land, their agents or legal representatives, the full amount of all taxes and costs paid on account thereof, with interest thereon at the rate of one hundred per centum upon the amount first

paid therefor, and twenty-five per centum per annum upon all costs and taxes paid on the land from the time said costs and taxes were paid, and the full value of all improvements, of whatever kind and description made on said lot, and that the same had been refused.

The plaintiffs demurred to the plea, their demurrer was overruled, and upon their refusing to answer over, final judgment was rendered against them, to which they sued out a writ of error.

The plea is in strict accordance with the sixth and seventh sections of *ch. 106, Gould's Digest*, and presents, as matter in abatement to an action of ejectment, the same defence that was interposed in *Craig vs. Flanagin*, 21 Ark. 319, to a bill in chancery, by way of motion to dismiss, made under the eighth section of the act.

The defence might have been made in this suit by motion, but if good on motion, it is good in a plea of abatement. Hence, the only enquiry is, if the matter of the plea present a proper defence to the suit; and that inquiry has been affirmatively answered by this court in the case mentioned. The defenses in that case, as in this, were that the law was unconstitutional, and that the sales at which the purchases were made were void for non-compliance with the revenue law. For answer to the arguments made in this case, we refer to the opinion in *Craig vs. Flanagin*, and affirm the judgment of the Circuit Court.