25/8

JAN 1844 # 1256

JAMES CAMPBELL

VS

JOHN HEARD

ST. CHARLES COUNTY

To the Register of Lands City of Jefferson Missouri

I apply to enter Six hundred and forty acres of Land on Dardenne assessed in the name of John Rourke for the State and County tax due thereon for the years 1837 & 1838. County of Saint Charles returned delinquent for those years - offered for sale on the first monday of September 1843 by the Sheriff of Saint Charles and returned "not sold for want of bidders"

James Campbell

City of Jefferson
January 1844

City of Jefferson Register's Office
January 30. 1844

I do not think the land alluded to in the within application is subject to entry at this time for the taxes: I do not think that any land is subject to be entered for the taxes unless such land shall have been offered to be sold as forfeited land for the taxes, and reported back to this office as unsold

The application is therefore refused.

John Heard Regr.

To the Supreme Court of the State of Missouri

James Campbell of the county of St Charles in said state respectfully represents that on the 29th day of January in the present year made on application in writing to John Heard Esq.r Register of the Land office of said State to enter a tract of land situated in St Charles County aforesaid containing six hundred and forty acres, which application was made to said Register by William M Campbell the agent and attorney of said James Campbell and who was then and there ready and willing to pay all the money that might be required to enter said land & all costs and expenses attending such entry. The written application filed by said James Campbell is in the following words.

"To the Register of Lands City of Jefferson Missouri"
"I apply to enter sixhundred and forty acres of land"
"on Dardenne assessed in the name of John Rourke"
"for the state and county tax due thereon for the years"
"1837. & 1838. county of Saint Charles, returned delin"-
"-quent for those years - offered for sale on the first"
"monday of September 1843 by the Sheriff of Saint"
"Charles and returned "not sold for want of bidders."
"City of Jefferson January 1844. } James Campbell"

The said James Campbell states that he has been informed that the land described in his said application was assessed to John Rourke for the years 1837. & 1838. that the taxes were not paid, that the said was returned as delinquent and was struck off to the state in conformity to law, and that in conformity to the provisions of a law passed during the last session of the general assembly, entitled "An act to provide for the sale of lands for the taxes" approved Feb. 27. 1843. the said land was duly advertized for sale by said Register of Lands to be sold on the first monday in September last, and in conformity to

said advertisement, the s[illegible]ff of St Charles County did offer said tract of land for sale ~~to the highest~~ at the court house door in the Town & county of St Charles on the first monday in September last and no bid was made for the same and the same was duly returned by said Sheriff to the office of the Clerk of St Charles County Court ~~said Register of lands~~ ~~[illegible]~~ as not sold for want of bidders, & by the said Clerk certified to the said Register of lands and the application of said James Campbell to enter said land was made in conformity to the provisions of said act; but the said Register of ~~public~~ Lands under his construction of the law refused to permit him to purchase or enter said land, & on the 30th day of January AD 1844. endorsed his written refusal to permit said entry on the back of the written application of said James Campbell. Said written application and the written endorsement made by said Register thereon are herewith produced to this Court. The said Register contends that said land is not subject to entry, but said Campbell charges that the same is subject to entry under the act above mentioned, and that said Register ought under the law to permit him to enter the same.

The said James Campbell therefore asks that a writ of mandamus may be issued from this court directed to said John Heard Register of lands for the State of Missouri requiring him to permit said James Campbell to enter said land in conformity to his application, and to ~~[illegible]~~ make him a deed for the same in conformity to the statute above ~~named~~ mentioned, upon the payment of the money; or to show good cause to this court why he does not, and will not permit said

entry to be made by said Campbell, according to said application and make him a deed for the same, and he further asks upon the return and hearing of this application that the rule upon said John Heard Register of lands as aforesaid requiring him to permit said entry of said tract of land and to make a deed therefor to said James Campbell may be made final and absolute.

James Campbell by
Wm M Campbell his atto

State of Missouri
County of St Charles } I William M Campbell do swear that I acted as the agent of James Campbell in making the foregoing application for the entry of the tract of land therein described & that the statements made in the foregoing petition are true to the best of my knowledge & belief.

William M Campbell

Sworn to in open Court
Feby 1st 1844
H. L. Boon clk

~~13~~ 11. ~~1447~~

James Campbell Petitioner 34

1256

vs. } Petition for Mandamus.

1256

John Heard Register of Lands.

Act of Mo. Legislature 1843
Pages 137-8-9-40-41
S. I. 2. 4. 5. 6. 22 29.

filed Feby 1. 1844
H. L. Poon clk

Supreme Court of Missouri
January Term 1844

James Campbell
vs
John Heard - Register of Lands

Petition for Mandamus.

Now at this day comes the said petitioner by his attorney, and the Court here having seen and fully considered the petition filed herein, do order and direct that a writ of Mandamus issue from this Court directed to the said John Heard, Register of Lands as aforesaid for the State of Missouri, requiring him to permit said James Campbell to enter six hundred and forty acres of land on Dardenne in St. Charles County, assessed in the name of John Rourke for the taxes due thereon for the years 1837 and 1838, in conformity to his application, and to make him a deed therefor in conformity to the statute as mentioned in said petition, upon the payment of the purchase money of said land, or that he show cause to this Court to morrow, why he does not and will not permit said entry to be made by said Campbell, according to his application aforesaid.

I Hampton L Boon Clerk of the Supreme Court of the State of Missouri, Certify that the above is a true copy of an order made by said Court and entered of record this day, in the case of James Campbell against John Heard, Register of Lands, on an application made by said Campbell for a writ of Mandamus.

Given under my hand and official seal at Jefferson City the 2nd day of February 1844.

H. L. Boon

John Heard
Alls } Defendants ans
} ans to order of
} court.
James Campbell

Authorities refd to
by Defendant
Acts of 1836 & 1837. page 132
Section 4
Acts of 1842 & 1843. page
137 Sections 1 & 29

filed Feby 5th 1844.
H. L. Boon clk

James Campbell vs John Heard Register &c } In the Supreme Court Petition for a Mandamus to the Register of the land office

The petitioner states that he applied to the register to enter six hundred and forty acres of land assessed in the name of John Rourke for the State and county taxes due thereon for the years 1837 & 1838 and returned delinquent for these years and which had been offered for sale on the ~~first~~ Monday in September 1843 by the Sheriff of St Charles County and was returned not sold for want of bidders

This application is made under the 29th section of an act approved 27th February 1843 entitled an act to provide for the sale of lands for taxes. The section is in these words, to wit

§ 29. "Whenever any lot or tract of land, that has been sold to the State for taxes, or has been forfeited for taxes, shall have been offered for sale under this act, and shall have been returned by the sheriff unsold, such tract shall be liable to ~~be sold for taxes~~ entry at the Registers office, by any person who will pay therefor all the taxes, interest, penalties and costs of every kind due thereon, and upon such payment the Register shall execute, to the person making such payment, a deed for such lot or land similar to the deed required by this act to be executed to purchasers at public sale" p 142 of Lipins act.

In order to learn what lot, or tract of land ~~had been~~ sold to the State for taxes, or ~~had been~~ forfeited for taxes under this 29th section we must refer to the first section of the same act which is as follows, to wit.

§ 1. "All lands and town lots which have been sold to the State for taxes, and lands and town lots which have been forfeited to the State for taxes, and upon which lands or lots taxes have been due and unpaid for six years, shall, by the sheriffs of the counties in which such lands or town lots lie, be sold for cash in hand, at such time and place, as is hereinafter provided; and so much of each and every tract of land, and so much of each and every town lot, as will pay the taxes, interest, and costs due upon the same which have been returned to the proper office, as non-resident delinquent lands and lots, and upon which the taxes for the year 1841, (or any prior year not embraced in the first ~~clause~~ clause of this section), shall be sold by the sheriffs of the counties in which such lands and lots lie at such time as is provided in this act."

In the first ~~member~~ clause of this section ~~law~~ we find that lands and town lots sold to the State for taxes, and also lands and town lots forfeited to the State ~~for~~ taxes, and on which lands and lots taxes have been due and unpaid for six years whether those lands and town lots have been sold or forfeited ~~are to be sold~~ are to be sold for cash in hand, at such time and place as hereafter to be provided.

In the second ~~member~~ clause of the same section we find that so much of each and every tract of land and so much of each and every lot, as will pay the taxes, interest, and costs due upon the same, and which have been returned to the proper office as non resident delinquent lands and lots, and upon which the taxes for the year 1841 (or any prior year not embraced in the first clause of this section) shall at the

time of said sale be due and owing, shall be sold by the sheriffs of the counties in which such lands and lots lie &c.

~~The lands or lots in the first clause or member of this 29th section mentioned consisted~~

The lands and lots, which are liable to entry under the 29th section of the said act "To provide for the sale of lands for taxes", are evidently the lands and lots mentioned in the first clause of the first section of this act, on which lands and lots taxes had been due and unpaid at the time of the sale (1st Monday in September 1843) for six years. Some of these lands had been sold to the State by the Auditor previously to the year 1835: and the remaining part of them had been forfeited under the fourth section of the act of 6 February 1837 amendatory of an act to provide for levying & collecting the revenue. The Registers return shows that the land sought to be entered by the petitioner was not returned by the collector of the proper county till the thirteenth day of December 1837; and consequently it would not become forfeited to the state under the provisions of the fourth section of the last mentioned act till the lapse of six years. For the land does not become forfeited to the state when it is struck off to the state; ~~but the~~ because the same 4th section gives the right of redeeming at any time within two years, page 132 of the acts of 1837. This land then here sought to be entered was not of that description of lands directed to be sold for cash in hand by the first clause of the first section of the act of 1843. See p. 138 of the pamphlet act. But it is of that description of lands set out in the second clause of the said first section returned as nonresident delinquent lands, of

which so much was directed to be sold as would pay the taxes, interest and costs due thereon. At the time the petitioner sought to enter this land the six years had elapsed. But the 25th section of the act directs a different disposition to be made of it. By this section the Register of the lands is directed to make out a list of all lands and town lots which have been returned by the several collectors of the State to the proper office for the nonpayment of taxes for the year 1841 or any year prior, including all such as have been sold to the state for taxes, and all such as have been forfeited to the state for taxes, and all such as have been returned for the nonpayment of the taxes of the year 1841 or any year prior, but not yet forfeited. By the 26th section the Register is required on or before the 10th day of August 1843 and by the 28th section he is further required annually after the ~~the~~ year 1843, on or before the 10th day of August in each year to certify to the several sheriffs all the lands and town lots which shall be subject to sale for taxes that year; and also all such lands and town lots as shall have been returned unsold by the sheriffs under the provisions of this act, and shall not have been redeemed.

These lists mentioned in the 26 & 28th sections are made by the 27th section the sheriffs authority to sell; and throughout this law ~~the~~ the distinction is kept up betwixt land sold or forfeited to the state and land struck off to the state, or, as it is expressed in this act of 1843 in the fourth section, land returned as unsold which it is declared shall continue the absolute property of the state. This absolute prop-

ty of the state cannot be diverted until the taxes having remained six years unpaid it has been offered for sale ~~and becomes~~ for cash in hand and becomes liable to entry under the 29th section of the act of 1843 above referred to

The motion for a peremptory Mandamus is overruled

Tompkins

Concur

W Scott

WB Napton

Campbell
vs. Opinion

Heard register of the Land
Office

Jany term 1844

Tompkins

filed Feby 16. 1844
H. L. Boon Clk

John Beard
ads } In the Supreme Court Jany Term 1844
James Campbell

In obedience to an order of the Hon. Supreme Court, made on the 2nd day of February 1844, directing a writ of Mandamus to issue against me, requiring me to permit James Campbell to enter at the Office of Register of Lands a certain tract of land named in said writ for the taxes of 1837 and 1838 or that I show cause to the Court why I do not and will not permit said entry to be made, I submit to the Court my reasons, for refusing as the Register of Lands to allow the petitioner to make said entry. — After a careful examination of the laws authorizing the entry of lands for the taxes I am convinced the land in question does not fall within the provision, In support of this opinion I refer the Court to the following Statutary provisions — Acts of 1836 and 1837 page 132 Sect 4 — Acts of 1842 and 1843 page 137 Sections 1 and 29. — The 29th Section of the Acts of 1842 and 1843 above referred to is the only law (of which I have any Knowledge) that authorizes the entry of any lands for the taxes, and that section does not provide for the entry of any land for the taxes unless such land "has been sold to the State for the taxes or forfeited ~~for the~~ to the State for taxes" and shall have been offered for sale under the Act of 1842 and 1843 above referred to, — A sale of the land (subjected to entry for the taxes by this section) or a forfeiture for the taxes must precede the offering ~~the offering~~ it for sale under the Act of 1842 and 1843. But one question, then, remains to be considered and that is this. Was the land sought to be entered by the petitioner, sold to the State for the taxes or forfeited to the State for taxes, prior to its being offered for sale under the Act of 1842 and 1843 above referred? It certainly had not been sold to the State for the taxes, for no law

~~for~~ has authorized the sale of any land for the taxes since the year 1834, until the law of 1842 and 1843. was passed and the taxes which remain due upon the land sought to be entered, accrued in the years 1837 and 1838 nor do I think it had been forfeited to the State, when it was offered for sale under the Act of 1842 and 1843.
The 4th Section of the Act of 1836 and 1837. above referred to, provides substantially, that if the taxes remain unpaid upon delinquent lands four years after their return to the proper office, they shall be, "struck off to the State" the same section provides "that the owner of any land so stricken off to the State shall have the right of redeeming the same any time within two years, the same Act. requires the Collectors to return their delinquent lists of land on or before the first Monday of December in each year.
The land sought to be entered by the Petitioner was returned by the Collector of St. Charles County on the thirteenth day of December 1837. and six years thereafter it would become forfeited to the State under the provisions of the 4th Section of the said act of 1836 and 1837. I presume it will not be contended that the "striking off" of lands to the State under the 4th Section of the said Act of 1836 and 1837. effects a forfeiture of their title until the expiration of the whole time allowed for paying the taxes. At any rate it seems clear, from the distinction made by the 1st Section of the Act of 1842 and 1843. above referred to, between lands upon which taxes had been due for six years and other delinquent lands, that the Legislature considered no lands forfeited to the State for taxes unless they had been delinquent for six years; The taxes on this land not having been due for six years before it was offered for sale in 1843. and no previous sale having been made of it for the taxes, I think it does not fall

within the provisions of the ~~A~~ 29th Section of the act of 1842 and 1843. above referred to. and is not therefore subject to entry for the taxes

J. Chas Heard

James Campbell Petitioner.
vs
John Heard Register of lands } Application for writ of mandamus

In this case James Campbell filed a written application to enter a tract of land in St Charles County containing six hundred and forty acres, situated on Gardenne and which was assessed in the name of John Rourke for the years 1837. & 1838. and returned delinquent for the non payment of taxes for those years, and struck off to the state for non payment of taxes, and which tract was ~~[illegible]~~ certified out for sale by the Register & advertized to be sold on the first monday of September last past, & which was offered for sale by the Sheriff of said County on the said first monday of September & by him duly returned not sold for want of bidders.

There is no dispute or controversy as to the facts in this case and the object of this petition is to determine a point of law that arises under the statute.

This tract of land was assessed in the name of John Rourke in St Charles county for the years 1837 & 1838, the taxes for those years were not paid, and the land was by the collector duly returned to the Auditor as delinquent for non payment of taxes, and in conformity to the terms of an act, entitled "An act amendatory to an act, entitled "An act to provide for levying assessing and collecting the revenue" approved Feb. 6 1837. it was struck off to the state.

See session acts 1837. Pages 131—132 Sections 1—2—3 & 4.

In conformity to the subsequent act entitled "An act to provide for the sale of lands for the Taxes" approved Feby 27. 1843, this tract of land was by the Register of lands certified out to the Sheriff of St Charles county for sale & duly advertized in conformity to the statute and by said Sheriff it was offered for sale at the Court house in St Charles on the first monday in

September AD 1843, and no bid was made for the same, and the same was returned by the Sheriff "not sold for want of bidders" & so certified to the Register of lands by the clerk of the St Charles County court in conformity to the statute; & on the 29th of Jany AD 1844. James Campbell made his application in writing, to enter said land in conformity to the 29th section of the last mentioned act. See acts of Mo. of 1843. Pages 137-8-9-40-41-42. Sections 1-2-3-4-5-6-8-11-15-22-25-27-& 29 =

The only question to be decided is one which arises upon the construction of the statutes alone named. The Petitioner contends that he has a right to enter this land in conformity to 29th section of the act last above mentioned. The Register contends that this land cannot be entered under that statute, because at the time it was certified out the two years of redemption provided for by the 4th section of the act of Feby 6th 1837 had not fully expired. This tract was struck off to the state for the non payment of the taxes of the year 1837, in the fall of the year 1841: & again in the fall of the year 1842 it was struck off to the state for the non payment of taxes of the year 1838, and according to the 4th section of the statute of 1837. the state thereby acquired a bona fide title to the same. subject to a right of redemption mentioned in said section. So that this land had been twice struck off to the state before the passage of the act of 1843. & before the same was certified out for sale by the Register ~~for sale~~ & the title thereof was thereby forfeited to the state & vested in the state. I contend that when the land has been returned as delinquent by the collector & the four years have elapsed after such return, and the same has been struck off to the state, that that act of striking off to the state is what constitutes the forfeiture of the land

and is what is meant by the statute when it speaks of a forfeiture. It is true that this forfeiture is subject to a right of redemption but still it is a forfeiture, & takes date from the time when the land is struck off to the state and no other act is required in any event to be done by the state or any officer of the state to render the title of the state complete and absolute. The right of redemption is a favor which the State by the law extends to individuals for a limited time, in relation to lands the title of which has already vested in the state. The first proviso to the said 4th section of the act of 1837 says that the owner may redeem within two years and the second proviso says that femme coverts & persons of unsound mind shall have a right to redeem for a like time after their disabilities shall be ~~redeemed~~ removed, but this right of redemption cannot in any manner affect the title of the land until the contingency provided for shall occur. If the Register cannot sell because some owner may by possibility apply to redeem within two years for the same reason he will never be able to sell because by possibility some married woman or person of unsound mind may twenty years after this time apply to redeem under the second proviso to said 4th section. If the ~~the first proviso limited~~ right to redeem in the first proviso had the effect to prevent the forfeiture from taking effect for two years, the right to redeem in the second proviso must have the same effect perpetually or for an indefinite time. The law however provides that the title shall vest in the state from the time the land is struck off to the state and that is the time of the forfeiture. If an owner apply within two years, or a restored lunatic within twenty

years, and shall claim the the benefit of these provisoes, he may claim his rights under the statutes; but the possibility of the happening of either of those events, does not alter the time of the forfeiture, nor prevent the forfeiture from taking effect at the time the land is struck off to the state at the end of four years. The land thus forfeited to the state is subject to be redeemed upon the occurrence of the contingencies provided for in the first & second provisoes of said 4th section, but the title of the state vested by said forfeiture is not otherwise affected thereby.

It was because this land had been thus forfeited to the State, that the Register advertized it for sale in september last, & did certify it to the Sheriff of St Charles County for sale. I contend that in so doing the Register acted properly, and that if any person had at that sale bid the amount of the taxes, penalties & costs, therefor that the Sheriff would have been bound to sell it to him & to have made him a deed therefor, and for the very same reason I contend that the register now is bound under the law to permit an entry thereof on the same terms, and to make a deed therefor similar to the one which the Sheriff would have been bound to make, if a bid had been made therefor at the public sale in September last. I contend that the plain, fair ~~& rational~~ meaning of the 29th section of the act of July 27th 1843, is that all lands of every kind which were authorized by said act to be sold by the sheriff, should be subject to entry with the Register if returned unsold, The deed now to be made by the Register will not be either better nor worse than would have been the sheriffs deed if this land had been sold by the Sheriff in september last.

In this case the full 1050 years had expired from the time the said tract of land was first returned delinquent for non payment of the taxes of the year 1837, before the date of the application of James Campbell to enter the same, and so far as ~~the year in~~ relates to the taxes of that year there was no outstanding right of redemption in the owners, unless they were femme Coverts, or married women. There being no person entitled to redeem this land for the non payment of the taxes of the year 1837, no person could be injured by permitting the petitioner to enter the same upon his paying the taxes of that year.

I cannot conceive how it could be lawful under the statute to sell & convey this land in September last by the act of the sheriff, if it be unlawful to enter the same in the office of the Register of lands, in conformity to the 29th of section of the act passed at the last session of the general assembly. This land comes clearly within the description of property which was authorized to be entered by the terms of said 29th section and the Petitioner offers to comply with the requisition of the statute, and claims as a matter of right that he be permitted to make the entry of said ~~entry of said~~ land conformably to his written application to the Register of lands for that purpose

James Campbell Petitioner

vs. } Petitioners Brief

John H. Heard Register of lands.

Acts of Mo. Legislature of 1837
Pages 131-132, Secs. 1-2-3-4
acts " Mo. of 1843.
Pages 137-8-9-140-1-2.
Sections 1-2-3-4-5-6-8. 15-
11-22-25.-29-

Wm M Campbell