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## Constitutional Law--Construction of Constitutional Provision for Sale of Land for School Fund--Right of Redemption Restricted

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CONSTITUTIONAL LAW — CONSTRUCTION OF CONSTITUTIONAL PROVISION FOR SALE OF LAND FOR SCHOOL FUND — RIGHT OF REDEMPTION RESTRICTED.—Land sold at sheriff's sale in 1928 for non-payment of 1926 taxes was purchased by the state. In 1946 the state filed a bill in equity to sell the land for the school fund. The 1941 statute provided: "The former owner of any real estate purchased by the state may redeem at any time until such real estate has been sold as provided in article four of this chapter." W. VA. CODE (Michie. 1943) c. 11-A. art. 3, § 8. Before 1941 the statutory period of redemption was one year after the sheriff's sale. W. VA. REV. CODE (1931) c. 11, art. 10. § 30. The court dismissed the state's bill. *Held*, affirmed. Under this 1941 change in the act, the land had not "become irredeemable" within the meaning of W. VA. CONST. Art XIII, § 4. *State v. Farmers Coal Co.*, 43 S. E. (2d) 625 (1947).

The constitutional section in question, which is the foundation of our tax delinquency laws, reads as follows: "All lands — for any cause forfeited . . . or escheated to Virginia or this State, or purchased by either and become irredeemable, not redeemed, released, transferred, or otherwise disposed of, shall by proceedings in the

circuit court of the county in which the lands, or a part thereof, are situated, be sold to the highest bidder." (Italics supplied.) This indefinite language has given rise to West Virginia's impractical and indigenuous double sale system of dealing with land delinquent for nonpayment of taxes. It is first sold by the sheriff, who must bid it in for the state if no other bid equals the amount of the taxes. If purchased by the state, the land must be sold again, this time by solemn court proceedings. W. VA. REV. CODE (1931) c. 11, art. 10, and c. 37, art. 3. The constitution is obscure about matter of redemption; it is not explicit that there must be a right of redemption, nor does it prescribe when such right may or may not occur. Yet, under the instant case it may be summarized as follows: There must be a right of redemption for a definite length of time after the first sale; if the state is the purchaser at that sale, there must intervene, between the expiration of the redemption period and the institution of proceedings for the second sale, a lapse of time during which there can be absolutely no redemption; then, during the proceedings in court, the legislature may, as a matter of grace, grant the privilege of redemption, which cannot extend beyond the confirmation of sale. In 1947, the legislature, by amending the statute has conformed to this judicial interpretation. W. VA. CODE (Michie, 1943) c. 11A, art. 3, § 8, and art. 4. It is fundamental that a statute should not be declared unconstitutional unless absolutely necessary. *State v. Condi*, 103 W. Va. 23, 136 S. E. 505 (1927). There are several ways the court might have saved the statute from abrogation. Firstly, who is there to complain of its operation? In *State ex rel. Dillon v. County Court*, 60 W. Va. 339, 353, 55 S. E. 382, 388 (1906), the court quotes from *Speer v. Commonwealth*, 23 Gratt. 935, 938 (Va. 1873): "It is well settled that a statute must be assumed to be constitutional and valid, until some one complains, whose rights it invades." In *Belhossier v. Jaeger*, 112 W. Va. 598, 600, 166 S. E. 10, 11 (1932), the court said: "Is the town in a position to question the constitutionality of the statute? It was the party benefited. . . The constitutionality of a statute may not be attacked by one whose rights are not affected by the operation of the statute." In the instant case, the former owner claimed no injury and apparently suffered none, the statute being lenient toward him in redemption favor. Secondly, in construing the pre-1941 statutory law, the court held the land becomes irredeemable within the meaning of the constitution after the expiration of one year allowed for redemption after the sheriff's

sale. *State v. Board*, 111 W. Va. 562, 163 S. E. 57 (1932). Though the land was characterized as irredeemable, the former owner had one later opportunity to redeem, redemption being allowed during the pendency of the suit for the second sale. W. VA. REV. CODE (1931) c. 37, art. 3, § 29. The court declared that this second period of redemption is a mere matter of grace on the part of the legislature without effect on the irredeemable status of the land. *Bank of Quinniwood v. Becker*, 119 W. Va. 534, 194 S. E. 894 (1937). Also, statutes extending the time allowed for redemption are constitutional, the extension being a legislative privilege that does not affect the irredeemable quality of the land. *Blooming Rose Coal Co. v. White*, 37 S. E. (2d) 455 (W. Va. 1946). The same line of reasoning would have sustained the statute in question. Thirdly, in point of fact, the lands in the main case could not have been redeemed from 1929 until 1932 nor from 1939 until 1941. W. VA. CODE (Barnes, 1923) c. 31, § 33; W. Va. Acts 1939, c. 61. This would seem sufficient to satisfy any technical requirement of irredeemability. Finally, the court might have employed the technique it recently used in *Lawhead v. County Court*, 38 S. E. (2d) 897 (W. Va. 1946). There the court went beyond the so-called plain meaning of the words to apply their practical and rational meaning. The instant case turns upon refinement of syntax rather than reason. Under it, had the statute allowed one week, or even a day, during which there could be no redemption, it would have been valid. Such reasoning is hypercritical. The constitution exhibits no purpose to restrict the legislature in the matter of redemption; instead, its silence in this respect indicates, and the court might have held, it was a matter whose details were for the legislature. The decision flies in the face of the principle of deciding constitutional doubts in favor of statutory validity.

R. G. S.

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CRIMINAL LAW—KEEPING PLACE OF PROSTITUTION—CIRCUMSTANTIAL EVIDENCE OF *Corpus Delicti*. — As X, an undercover man, walked by the house occupied by D and two other women, he was accosted by D and asked to come in for the purpose of prostitution with one of the women. He inquired as to the price and was told that it would be "all right". X then excused himself on a pretense and left. Approximately two weeks later the house was raided and the same two women, who were present when D solicited X, were arrested along with D. The evidence showed that D had a past record as