December 1951

Service of Process In Delinquent Lands Proceeding—A Suit That is Not A Suit

Clyde L. Colson
West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Civil Procedure Commons, Property Law and Real Estate Commons, and the Taxation-State and Local Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol54/iss1/5

This Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.
SERVICE OF PROCESS IN A DELINQUENT LANDS PROCEEDING—A SUIT THAT IS NOT A SUIT

Clyde L. Colson

The views expressed in the preceding paper are so generally and, it is believed, erroneously entertained by members of the legal profession that additional comments on the subject may be in order.

No one, of course, can disagree with the proposition that there is something abhorrent and repellent in the "idea that any person or his property can be proceeded against without notice". It might even be said that any attempt to do so would constitute a denial of due process and would therefore be unconstitutional. One may, however, disagree most emphatically with the assertion that these propositions have anything at all to do with the procedure established by the legislature in suits for the sale of forfeited and delinquent lands for the benefit of the school fund as required by the West Virginia Constitution. The difference of opinion on this subject, however, is not without logical basis in the recent decisions of our court. Some further observations concerning the history of the legislation leading to these decisions should indicate why it may be so confidently stated that under the present procedure in such suits no interested party is deprived of any rights, constitutional or otherwise.

During the depression the state had acquired title to a large accumulation of forfeited and delinquent lands. Not only were there more tax delinquencies, but the legislature repeatedly enacted moratory laws prohibiting the sale of these lands for the benefit of the school fund, granting to former owners the privilege of additional time for redemption. By 1939 this accumulation was so large that the problem of the state's disposition of this land had become acute.

A legislative interim committee was established to study the problem and to make recommendations for its solution. In the early stages of its study, the committee concluded that for the sake of economy radical changes would have to be made in the procedure for the circuit court sale of these lands. The former school

---

* Professor of law, West Virginia University.
land commissioner's sale as developed in the legislation prior to 1932 had become in effect an equitable quiet title proceeding at the state's expense, looking toward the transfer to the purchaser at the circuit court sale of a new and original title to the land involved. Prior to the institution of the suit, the school land commissioner was required to make an abstract of title for each piece of land, and to serve process on all interested parties personally if possible, or if this could not be done, to give them notice by publication. The cost of this procedure was not necessarily prohibitive when the state's share of property taxes was substantial, though it did leave very little of the proceeds of sale for payment into the general school fund, for the theoretical benefit of which the sale was conducted. When the state's share of property taxes became negligible, however, following adoption of the tax limitation amendment in 1932, the cost of such a proceeding would have been prohibitive, if used in the sale of the tens of thousands of delinquent tracts owned by the state in 1939.

The committee also soon discovered that the West Virginia constitutional provisions with respect to forfeited and delinquent lands were substantial copies of statutory provisions existing in Virginia at the time of the formation of this state, and furthermore that Virginia had long since discarded the method as being too cumbersome and unworkable. The committee also learned that historically the requirement that the proceeding in the circuit court for the sale of forfeited and delinquent lands must be a judicial proceeding was entirely statutory, and that the statutes in West Virginia prior to 1882 provided for the sale of forfeited and delinquent lands in a circuit court proceeding that was purely administrative in character. Since the magnitude of the delinquent land problem in West Virginia in 1940 was comparable to that faced by the state immediately after its formation, the interim committee decided, it would seem not unreasonably, to recommend to the legislature a return to the procedure originally established in this state. This recommendation of the committee was followed by the legislature in its revision of the delinquent land laws in 1941.

So far as constitutional requirements are concerned, the legislature probably felt itself fully justified in thus returning to the original practice in the state. The constitutionality of similar legislation enacted immediately after the adoption of the Consti-
tution of 1872 had been established by a decision of our supreme
court. In upholding the validity of the earlier procedure, over
the objection of a former owner of delinquent lands purchased
by the state and sold in a circuit court proceeding, of which he had
received no personal notice, the court held:

"The proceedings provided by chapter 134 of the Acts
of 1872-73 for the sale of lands for the benefit of the school fund
are not judicial proceedings in the sense that they involve
litigation between contesting parties; nor are they proceed-
ings technically either in rem against the land, or in personam
against the former owner of the land; but are in their char-
acter administrative, being simply a mode prescribed by the
State for the sale of lands, which are her absolute property,
and in the sale of which she alone is interested.

"The effect of section 5 of article XIII of the Constitu-
tion of this State, giving to the former owner the surplus pro-
ceeds of the land over the taxes, &c., does not confer upon him
any interest in the land or right to participate in, or be a
party to, the proceedings for the sale of it. The grant to
him of such surplus proceeds is wholly gratuitous, and his
claim thereto is confined to the proceeds as such and he can
obtain them only in the manner prescribed by law."2

With this reasonable assurance that the former owner would
be deprived of no constitutional right with respect to the land, for
the simple reason that he has none, by a circuit court proceeding
of which he is given notice only by publication, and this merely
as a matter of grace on the part of the legislature for the purpose
of affording him one last opportunity to redeem, the legislature
proceeded to enact the 1941 law, modeled on the earlier law passed
in 1872-73. Not because the constitution required it, but because
it was thought to be the fair and equitable thing to do, the legis-
lature provided that before a deed would be issued to the pur-
chaser at the circuit court sale, he should at his own expense make
an examination of the title for the purpose of discovering the
identity of the former owner and the former holders of all liens
and other interests of record. Having done this, he was also re-
quired at his own expense to serve upon all such persons a final
notice to redeem, such notice to be served personally upon all those
who could be found. It is submitted that the 1941 law contained
as equitable a solution of the vexatious problem of delinquent
lands as could reasonably have been devised. From the state's

point of view it did not involve too burdensome an expense with respect to a matter in which the state had little financial stake, and thus improved the chances that something might be left for payment into the school fund. On the other hand, as a matter of legislative grace it was eminently fair to all former owners of any interest of record.

Another significant change in the 1941 law was the express provision that the title derived by the purchaser at the circuit court sale was not to be a new and original title from the state, but was to be only such title as was vested in the state because of a former owner's tax delinquency or the forfeiture of his title for nonentry. By thus substituting a merely derivative title for the new and original title vested in the purchaser under the former quiet title procedure, the legislature made certain that there would be no prejudice to the rights of any person owning a title or any other interest with respect to which no tax delinquency or forfeiture had occurred, or in other words that no person would be adversely affected except the delinquent former owner or one claiming under him. Unless this important change is kept in mind, a fact which it is feared our court may have overlooked, no just appraisal can possibly be made of the basic fairness of the procedure the legislature attempted to establish in 1941. It is confidently believed that the 1941 act would have been sustained had not the legislature been guilty of the indiscretion of labeling the circuit court proceeding an administrative one. The logic and the reason of the court's most recent decisions with respect to this problem lead inevitably to this conclusion, as should become apparent upon a further review of those decisions.

When the 1941 act was brought before the court in the case of *Sims v. Fisher*, it was declared unconstitutional upon two main grounds: (1) That the attempt to confer upon the courts the duty to perform administrative and nonjudicial functions was in violation of our constitutional doctrine of separation of powers. (2) That the former owner was denied due process of law in that the act did not require before sale a finding by the court in a judicial proceeding that the land was subject to sale, of which proceeding the former owner must have been given notice and opportunity to be heard.

---

The decision in this case is open to many of the same criticisms that were made concerning other recent decisions by our court on constitutional questions. In view of the fact that the court in the *Maitland* case was in effect making a contemporaneous construction of the provisions of the 1872 constitution and of legislation enacted immediately following the adoption of that constitution, it is certainly not unreasonable to suppose that the members of that court, having first-hand knowledge of the history and intent of these provisions, were in a better position to determine what was intended and permitted thereby than the members of a court sitting seventy-five years later. Note that the constitution then contained the same provision as the present constitution with respect to the separation of powers. Nevertheless, the court, construing the document as a whole with a view to reconciling inconsistencies, held that under another section provision was made for the sale of forfeited and delinquent lands in an administrative circuit court proceeding. Stated another way, this means that although as a general proposition there must under the constitution be separation of powers, the constitution itself expressly provides for one exception to that general rule. When it is recalled that our court's so-called "strict" doctrine of the separation of powers is of relatively recent origin, is purely a creature of judicial interpretation, and is not at all required by the language of the constitution itself, as witness the more liberal construction almost uniformly placed upon similar provisions in the constitutions of other states; and when it is further recalled that our court in the *Maitland* case had already upheld the validity of legislation providing for the sale of forfeited and delinquent lands in an administrative circuit court proceeding, it is surprising to say the least that in the *Fisher* case the court should have felt itself compelled to hold that the legislature had exceeded its constitutional powers by reenacting the original procedure established in this state. If the court had been duly impressed with the deference owing by one coordinate branch of the government to another and had approached the problem in an effort to find a plausible basis upon which to uphold the legislative action, it would have had no difficulty whatever in sustaining the constitutionality of the 1941 legislation.

However that may be, the legislature in an effort to meet the requirements of the Fisher case completely revised the statute in 1945, reverting substantially to the former cumbersome and expensive judicial quiet title proceeding, under which the state at its own expense was required to make an abstract of title and to serve notice as in other chancery suits upon the former owners and any others holding an interest of record. The 1945 act contained no language attempting to cure a failure to obtain personal service of process whenever such service was possible. It is believed that a careful reading will disclose that the 1945 act met every requirement suggested in the preceding paper as being necessary or desirable for the full protection of former owners.

Then came the decision in State v. Farmers Coal Company. Judge Fisher, who had apparently decided to do everything in his power to prevent the sale by the state of any forfeited and delinquent lands in his circuit, again refused to permit sales under the revised act. He had won his first case largely on the theory that the 1941 legislation did not adequately protect the interests of the former owner, denying him rights of which he could be deprived only in a judicial proceeding after notice and an opportunity to be heard. Paradoxically enough, in the Coal Company case Judge Fisher's position that the land could not constitutionally be sold was sustained by the supreme court on the wholly inconsistent premise that in the 1945 act the legislature had been too lenient in dealing with the former owner, generously permitting him to redeem at any time prior to confirmation of the circuit court sale. This the legislature was told it could not do, because before delinquent land can be sold under the constitution, it is necessary that the former owner should have lost all of his rights with respect thereto and absolute title must have vested irredeemably in the state. Apparently without intentional irony, the court cited McClure v. Maitland for this proposition.

It should be noted that in the Coal Company case the court again demonstrated its tendency, when considering the validity of legislative action, to go out of its way, by dictum, if necessary, to find some ground upon which to strike down legislation which it disapproves. The court held that the land involved in the suit could not under the terms of the constitution be sold because the

6 130 W. Va. 1, 43 S.E.2d 625 (1947).
land had not become irredeemable. This problem would have been properly before the court for decision had the land in question been sold to the state subsequent to the enactment of the 1941 legislation. This, however, was not the case. To quote from the court's statement of the facts,

"This is a suit . . . to sell twenty-four tracts of coal land situate in said county, duly entered upon the land books for the year 1926 in the name of defendant, The Farmers Coal Company, taxes assessed thereon, and returned delinquent for the nonpayment thereof, and on December 4, 1928, sold by the sheriff of said county, purchased by the State of West Virginia, and not redeemed within one year from the date of said sale, or at any other time."\(^7\)

It is thus apparent that this land had become irredeemable not once but many times. Under the terms of the law in effect at the time of the sale to the state in 1928, the land first became irredeemable one year after the date of that sale. Thereafter, despite repeated moratory laws under which the legislature granted the former owner additional opportunities to redeem, the land again became irredeemable at the expiration of each moratorium. It is therefore clear that the court sustained Judge Fisher's refusal to permit the sale by deciding a question not even presented by the record. Although of the opinion that the continuous right of redemption granted to the former owner with respect to land sold to the state after 1941 would render unconstitutional the sale of any such land because it would never have become irredeemable, the most that the court could properly have done in the Coal Company case would have been to overrule Judge Fisher's refusal to permit the sale of the lands involved in that suit, since they had in fact become irredeemable, and then to have pointed out by way of dictum that the statute would have to be modified before the court would permit the circuit court sale of lands purchased by the state under the 1941 law.

Following the decision in the Coal Company case, it became necessary for the legislature to try again in 1947. In the meantime, under the 1945 act the state had spent thousands of dollars to pay for the preparation of abstracts by the deputy commissioners of forfeited and delinquent lands, which fact was very much in the thinking of the legislature when it reconsidered the problem in light of the court's latest decision. The problem faced by the

\(^7\) Id. at 2, 43 S.E.2d at 626.
legislature with respect to the sale of state lands was substantially the same as that in the following hypothetical case: Suppose that you, owning the absolute and unencumbered title to a piece of land, were told by the court that under the constitution and laws of the state you could sell the land only after your right to do so had been established in a judicial court proceeding. Your dilemma is this—to institute a suit, you must sue somebody, but whom shall you name as defendant? The suggestion is made that maybe you ought to sue the person from whom you acquired title. Of course, there is no logical reason why you should do so because by hypothesis he no longer has any interest in the land. If you had money to waste, you could pay your lawyer for an abstract of title to your property to see whether there is somebody else who might conceivably be made a defendant. It would be just as logical, however, to reach up in the air, get the name of John Doe, and make him defendant. It is no answer to this dilemma to suggest that possibly the proceeding could be a judicial proceeding in rem. You are not interested in having a forfeiture of title to the land declared in your favor, nor are you interested in foreclosing anybody else’s interest, for by hypothesis no one other than you has any interest in the property.

Is it any wonder, then, that the legislature in its effort to resolve this dilemma came up with some inconsistent provisions in its 1947 attempt to enact a constitutional statute? If the decision of the court in the Coal Company case is taken at its face value, the legislature was obviously requiring the state to go through with an expensive and needless procedure, in the preparation of an abstract for the purpose of finding out the names of persons on whom process might be served. Consequently, the 1947 legislation dispensed with the requirement that the deputy commissioner make an examination of the title. Although by hypothesis the land which the state wanted to sell was its own property, in which no one including the former owner could have any interest, the legislature under the Fisher case was still faced with the necessity of instituting a judicial proceeding and had therefore to sue somebody. Not illogically the former owner was selected, because the legislature as an act of grace desired to afford him still another opportunity to redeem. It was therefore provided that summons should be served on the former owner “in the manner provided by law for the service of process in other chancery suits”,

which would presumably include personal service of process on any defendant resident within the state. This provision was deemed necessary to meet the court's requirement that the proceeding be a judicial one. The legislature, however, was well aware of the paradox involved in requiring suit against a person who under the constitution could have no interest in the subject matter of the suit, and no further rights with respect thereto, except such as the legislature as an act of grace might see fit to confer upon him.

Having made this requirement merely in an effort to satisfy the technical necessities of a judicial proceeding, the legislature was then faced with the prospect that preparation and personal service of the notice in thousands of suits would involve a substantial and needless expense.

Since it was obvious that the former owner, having no further interest in the land, could be deprived of no right constitutional or otherwise by the failure of the state to serve him with process, the legislature in an effort to save this unnecessary expense added at the end of the section on process the following provision, admittedly inconsistent with the requirement quoted above:

"In view of the fact that the state has absolute title to all forfeited land, to all land sold to the state for nonpayment of taxes and become irredeemable, to all escheated land, and to all waste and unappropriated land, and must under the constitution have such an absolute title before the land may be sold for the benefit of the school fund; and in view of the fact that the former owner of any such land, or any person claiming under him, has no further interest therein nor rights in respect thereto except such privilege of redemption as may be extended to him by the Legislature as an act of grace; and in view of the further fact that all parties known and unknown who may claim an interest in any of the lands included in the suit are given notice thereof by the order of publication provided for above; therefore, the Legislature deems it both expedient and necessary to provide that failure to name any such person as a defendant, or failure to serve the summons on any named defendant, shall in no wise affect the validity of any of the proceedings in the suit for the sale of the state's title to such land."  

The inconsistency involved in these conflicting provisions concerning service of process is inherent in the inconsistent positions taken by the court in the Fisher case and the Coal Company case, namely, that the proceeding must be a judicial one of which

---

9 Ibid.
the former owner has notice, but that the state may not proceed with the sale unless it is the absolute owner of the property.

Next in chronological order came the decision in *State v. Blevins*,¹⁰ which sustained the validity of the circuit court proceeding as established in the 1947 legislation, except for certain minor provisions. It is not at all surprising that the court, in its effort to characterize the hybrid judicial proceeding established by that legislation, made the following oracular statement:

"But we think that under the statute here considered the suit is a proceeding *inter partes*, and substantially one *in rem*."¹¹

It is obviously not a suit *inter partes* in the normal sense of the term because there is no necessary and interested party defendant. It is equally not a proceeding *in rem* to effectuate a forfeiture of title to the state, or to foreclose the interest or the rights of any interested parties, because there are none. Nor is it a suit *quasi in rem* which is a cross between the two. Probably the most that can accurately be said is that as a judicial proceeding this one is *sui generis*.

Despite the general approval accorded the 1947 act in *State v. Blevins*, Judge Fisher persisted in his refusal to permit in his circuit the sale of any forfeited or delinquent lands for the benefit of the school fund. His objections, some if not all of which were farfetched and frivolous, were overruled by the court in *State v. Gray*.¹² Our interest in this case lies not so much in that fact, however, as in the court's observations, again by way of dictum, with respect to the service of process on the former owner. In Judge Fox's opinion we find the following statement:

"The attack on this statute is, in our opinion, somewhat nebulous. Running through the several points of attack are insinuations, if not direct charges, of some unholy purpose or artful design to by-pass certain alleged rights of former owners, and others interested in land proposed to be sold, but as we read this Act, we think the interests of former owners are fully protected, unless it be the provision of Section 12 of the Act under which it may be claimed that lands formerly owned by an individual may be sold without notice to him, or the service of any process. Undoubtedly, if the former owner had any legal right or interest in the land proposed to be sold, after the same had become irredeemable, and absolute title thereto

---

¹¹ Id. at 362, 48 S.E.2d at 182.
¹² 52 S.E.2d 759 (W. Va. 1949).
had become vested in the State, something which, as we see it, is, logically, impossible, then the failure to give notice by legal process would make void any order or decree entered in the cause, so far as the same affected the interest of the person who was not served with process."\textsuperscript{13}

It is submitted that this statement is one hundred per cent correct both as a matter of law and of logic. In the concluding portion of the opinion appears this statement:

"We hold, therefore: (1) That when the real estate proceeded against in this cause became irredeemable on the 1st day of July, 1947, the former owner, and all persons having an interest in, or liens upon said land, lost all their right, title, and interest therein, and the said land became the absolute property of the State; (2) that under the Constitution of this State a judicial proceeding is necessary to sell said lands under the provisions of Section 4, Article XIII of our Constitution, and that in said proceeding the Legislature has the power to provide for such sale without making the former owner or other interested persons therein a party thereto. . . ."\textsuperscript{14}

Except for the logical dilemma involved in the proposition that the constitution requires a judicial proceeding in which there are no interested persons who are necessary parties defendant, this statement is also correct.

The court then went on to say, however, that although the legislature was under no constitutional requirement to serve personal notice of the suit on the former owner, or for that matter even to make him a party to the proceeding, the legislature having elected to do so, the court would enforce the statutory provision for service of process as in other chancery suits as a mandatory requirement, in spite of the contradictory language in the same section wherein the legislature had stated that failure to serve personal notice should not affect the validity of the proceeding. Two of the judges failed to agree with this interpretation of the statute.

The interpretation made by the majority was immediately a matter of grave concern to the legislature. It was general knowledge that thousands of tracts had been sold in circuit court proceedings in which, acting in reliance upon the legislative declaration that failure to obtain personal service should not affect the validity of the proceedings, the deputy commissioners had failed to obtain

\textsuperscript{13} \textit{Id.} at 773.
\textsuperscript{14} \textit{Id.} at 779.
personal service on former owners. Consequently, in 1949 the legislature again amended the statute so as to dispense entirely with the requirement that notice be personally served on the former owner, a requirement which the court had said was not necessary. Desiring, insofar as it was possible to do so, to validate former sales which were defective under the court's interpretation, the legislature enacted the following curative provision, labeled "mumbo-jumbo" in the preceding paper:

"... and in view of the fact that the supreme court of appeals in a decision just rendered has held that there is no constitutional requirement that the former owner or any other interested person be personally served with process in a suit for the sale for the benefit of the school fund of lands that are and must be the absolute property of the state; and in view of the further fact that in its last previous enactment of this section the Legislature had no intention of requiring that personal service of process on named defendants in such a suit should be a mandatory condition precedent to the validity of any step or proceeding in such suit, but on the contrary expressly stated that failure to serve the summons on any named defendant should in no wise affect the validity thereof; now therefore, the Legislature also deems it both expedient and necessary to provide that the failure to obtain such personal service on any named defendant in any suit instituted under the provisions of this article prior to the effective date hereof shall in no way affect the validity of any step or proceeding in any such suit or the validity of the title acquired by the purchaser of land sold under any decree made or to be made in any such suit."\(^{15}\)

Despite the caustic criticism in the preceding article that this type of statutory provision is poor legislation if it is legislation at all, it is submitted that the legislature was forced to make this or some similar effort to render secure the titles of the purchasers of many tracts of land in the state which had been rendered questionable under what the legislature deemed to be an incorrect interpretation of the former statute.

The validity of this curative provision will not come before the court for decision, however, because the question was rendered moot by the court's decision in *State v. Simmons*.\(^{16}\) That case squarely presented the question as to the validity of a sale of land in a circuit court proceeding, instituted under the 1947 act, in


\(^{16}\) 64 S.E.2d 503 (W. Va. 1951).
which the former owner had not been personally served with process. In the decision the court rejected its former interpretation that the requirement of personal service was mandatory, and held that the intention of the legislature was to make this requirement directory only, so that the failure to serve personal notice on the former owner did not make the sale defective. This view was reaffirmed in the case of *Davis v. Hilton.*

As an abstract proposition no one can question the soundness of Judge Fox's statement in his dissenting opinion in the *Simmons* case, quoted with approval in the preceding paper, that:

"To me there is something repellent in the idea of depriving people of rights and property through the processes of the courts of the land without personal service of process where it can be had, or the best notice that can be given where, on account of the limits of jurisdictions, all interested parties cannot be reached."\[^{18}\]

The fallacy lies in assuming that this statement has any bearing whatever upon the point in issue. Perhaps the best answer to the view expressed by Judge Fox may be found in a portion of his own statement in *State v. Gray,* quoted above, which is well worthy of repetition:

"Undoubtedly, if the former owner had any legal right or interest in the land proposed to be sold, after the same had become irredeemable, and absolute title thereto had become vested in the State, *something which, as we see it, is, logically, impossible,* then the failure to give notice by legal process would make void any order or decree entered in the cause, so far as the same affected the interest of the person who was not served with process."\[^{19}\]

In all probability the concern evidenced by Judge Fox and by the author of the preceding paper was enhanced by the shocking loss suffered by an assignee of the former owner of the land involved in the *Simmons* case. A lot sold in that suit formerly belonged to Cottrill who failed to pay the taxes assessed thereon for the year 1945. His title was sold to the state at the sheriff's sale in December 1946, and the land thereafter became irredeemable because of his failure to redeem within the period allowed by law. In June 1947 Cottrill conveyed the lot to Drake by general warranty deed. Drake purchased only after he had been advised by his attorney

---

\[^{17}\] 65 S.E.2d 287 (W. Va. 1951).
\[^{18}\] State v. Simmons, 64 S.E.2d 503, 522 (W. Va. 1951).
that the taxes had been paid and that Cottrill's title was marketable. After his purchase Drake spent some $3,500.00 on the lot in the construction of a home. One cannot help sympathizing with Drake for the loss he suffered when the state's absolute title to the property was sold to a purchaser at the circuit court sale. It is submitted, however, that this loss is attributable not to any inequity in the statutory procedure for the sale of delinquent lands, but is wholly due to the negligence and incompetence of his attorney who failed to discover the tax delinquency which was a matter of public record. Furthermore, even if the statute of limitations would bar his right to recover from the attorney on account of this negligence, he would still have the right to recover from his grantor for breach of the covenant of general warranty. It would thus appear that much of the concern engendered by this unfortunate loss may have been misdirected. The fact that an identical loss might have occurred had the lawyer failed to discover a prior recorded conveyance of the land by the grantor would not constitute a just indictment of our whole recording system.

Unless the views and reasoning expressed above are wholly in error, it should by now begin to be apparent that the difficulties, logical and otherwise, involved in this bit of legislative and judicial history all stem from the court's decision in *Sims v. Fisher* that the circuit court proceeding for the sale of forfeited and delinquent lands must be a judicial proceeding. That proposition cannot in reason or logic be reconciled with the court's holding in *State v. Farmers Coal Company* that before the state may institute such a proceeding it must be the absolute owner of the property, and that the former owner may not have any title or interest therein. The truth of the matter is that whatever label may be attached to the proceeding by the legislature or by the court, it remains in essence an administrative *ex parte* proceeding, as was held in the *Maitland* case, in which no one other than the state has any interest, except such new and additional rights as the legislature may see fit to grant purely as a matter of grace. The logic of these propositions would seem to be inescapable. In fact, most of the court's statements and all of its holdings since the *Fisher* case are fundamentally inconsistent with its position in that case, and are wholly consistent only with the decision in the *Maitland* case. Except for the fact that the court still insists that the proceeding is a judicial one, it is submitted that in its reasoning it has made
the full circle, and that its present reasoning would have sustained in toto the 1941 legislation, if we could have avoided the confusion and strong feelings that seem to be connected with the use of the apparently objectionable term "administrative".

It may well be, however, that in its effort to frame a statute that would satisfy the inconsistent requirements imposed by the court in the Fisher and the Coal Company cases, and in doing so to protect the legitimate interests of the state so that it would not be put to large and needless expense, the legislature may in the shuffle have lost sight of its original intent, evident in the 1941 legislation, to provide the former owner every opportunity to redeem the property. Since the mechanics of the circuit court proceeding as now established by the legislature have been validated by the court, it is certainly arguable that the legislature should again consider the advisability of requiring, as a condition precedent to confirmation of the circuit court sale, that the purchaser at his own expense prepare and serve personally on the former owner and the former holder of any interest of record a final notice to redeem, as was required in the 1941 act. In subsequent legislation the requirement of a title search and the service of personal notice was first curtailed and finally omitted only in an effort to save unnecessary expense to the state. Now that it is settled that the state itself is under no constitutional requirement to do so, the legislature might well again impose this responsibility on the purchaser at the circuit court sale. Certainly such an act of legislative grace would go far toward meeting the objections voiced in the preceding paper.