if not directly, impliedly authorizes the landowner to act as the agent of the State in executing mineral leases thereon, and reserving to the State the free royalties described in section 4 thereof (Vernon's Ann.Civ.St. art. 5421c, § 4). If this act were not given this construction, all sulphur and other minerals, except oil and gas, would be controlled and subject to lease by the Commissioner of the General Land Office under article 5353 et seq., Revised Civil Statutes, and the provisions of this act. These articles of the statutes do not provide for the landowner to receive any part of the minerals. We do not think that it was the purpose of the Legislature to deprive those who acquire land under this act of all mineral rights thereunder.

[redacted] We think that the Legislature intended that the purchasers of land subject to sale under this act shall acquire such land and the minerals therein, but that there shall be reserved to the State one-sixteenth of all minerals as a free royalty to the State, except as to sulphur and other mineral substances from which sulphur may be derived or produced, and as to these a one-eighth thereof shall be reserved as a free royalty to the State.

[redacted] The royalties reserved by the State under the provisions of this law constitute a fee in the minerals in place, and will follow the land. For a very able and exhaustive discussion of this question we refer to the opinion of Justice Greenwood in the case of Sheffield v. Hogg, 124 Tex. 290, 77 S.W.(2d) 1021, 80 S.W.(2d) 741. The term "free royalty" introduced into this act must mean that the interest reserved to the State in the minerals produced on school land sold under the terms of the act must not bear any part of the expense of the production, sale, or delivery thereof. The owner of the land acts as the agent of the State in making the mineral leases. This calls for the exercise of a duty by the landowner to the State. The landowner owes to the State good faith in the performance of a duty which he has assumed, and he should discharge that duty with prudence and good faith, and with ordinary care and diligence.

Relator's application for writ of mandamus will be granted, and the Land Commissioner will issue an award and patent to relator for the land involved here, reserving to the State one-sixteenth of all minerals as a free royalty to the State, except as to sulphur and other mineral substances from which sulphur may be derived or produced, and as to these reserving a one-eighth thereof as a free royalty to the State.

[redacted]

CAPLES v. COLE.*

No. 7198.

Supreme Court of Texas.

Feb. 11, 1937.

[redacted]

*Rehearing denied 104 S.W.(2d) 3.

John T. Gano, of Houston, for plaintiff in error.

Bramlette & Levy and Richard B. Levy, all of Longview, for defendant in error.

SHARP, Justice.

This suit involves 39.5 acres of public free school land situated in Gregg county. M. T. Cole filed this suit in the district court in trespass to try title against W. J. Caples for this land. To this action Caples answered, and by cross-action claimed title to the land. Cole answered the cross-action by general demurrer, general denial, and a plea of not guilty, and took a nonsuit as to his cause of action for the land. The parties went to trial before the court without a jury upon the cross-action of Caples, and at the close of the evidence the court entered judgment against Caples on his cross-action. The Court of Civil Appeals at Texarkana affirmed the judgment of the trial court. 98 S.W.(2d) 447.

Both parties assert their interest in this land by virtue of the Act of 1931, chapter 271 of the General Laws of the Regular Session of the 42d Legislature, commonly known as House Bill 358, now article 5421c, Vernon's Annotated Texas Civil Statutes. The facts are brief. Cole on June 17, 1931, made application to the Land Office to purchase this land, and a patent was issued to him on August 19, 1931. Caples on September 10, 1931, filed with the county surveyor of Gregg county an application for a survey of the land for the purpose of purchase, or, in

the alternative, for leasing it for oil and gas purposes. This application was thereafter filed in the Land Office on June 7, 1932, and was rejected by the Land Commissioner on September 21, 1933, on the ground that the land had already been patented to Cole. It was agreed that in June, 1931, when the land in controversy became involved in these matters, "said land was within five miles of a producing oil well."

The first question raised is: When did this act take effect? Cole contends that, since the act was finally passed with an emergency clause, it went into effect immediately after its passage. Caples, on the other hand, contends that, since the original bill did not pass the House on its third reading by a two-thirds yea and nay vote, it failed to meet the constitutional requirement, and did not take effect until ninety days after the adjournment of the Legislature.

This act originated in the House, and passed that body by a viva voce vote. Thereafter it was sent to the Senate, where it was amended, and passed as amended by a vote of 31 yeas and no nays. The bill was then returned to the House, where the amendments adopted by the Senate were concurred in by the House by a vote of 103 yeas and no nays. The regular session of the Legislature adjourned on May 23, 1931, and the act was approved by the Governor on May 29, 1931. The act contained an emergency clause.

Article 3, section 39, of the Constitution provides: "No law passed by the Legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency, which emergency must be expressed in a preamble or in the body of the act, the Legislature shall, by a vote of two-thirds of all the members elected to each House, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journals."

This precise question has never been before this court for decision. A conflict has arisen by reason of an opinion rendered by the Court of Civil Appeals at Fort Worth, in the case of Wilson v. Young County Hardware & Furniture Co., 262 S.W. 873, and an opinion rendered by the Court of Criminal Appeals in the case of Ex parte May, 118 Tex. Cr.R. 165, 40 S.W.(2d) 811. In the Wilson Case the Court of Civil Appeals held, in effect, that the passage of a bill required to be taken by ayes and nays is the vote by which each house adopts it after final reading, and not that vote by which the house in which it originated may subsequently concur in amendments made by the other house. This case did not reach the Supreme Court, so far as our records show, and the holding therein has never been approved or disapproved by this court. In the May Case the Court of Criminal Appeals held, in substance, that a substitute bill, different from the original bill, and not passed by a record vote showing concurrence of two-thirds of the Legislature, was ineffective as an emergency measure; and that the power to make an emergency measure must be exercised when the Legislature becomes aware of the terms contained in the bill as finally agreed upon and passed. The Court of Civil Appeals followed the rule announced by the Court of Criminal Appeals in the May Case, and held that the vote upon the amendments, and not the vote upon the original bill, would control. The authorities bearing upon this question are reviewed in the two opinions above cited, and we shall not review them here.

It is highly important that the spirit of comity should at all times exist between the Court of Criminal Appeals and the Supreme Court; and, if possible, a conflict of opinions on the matters over which they have co-ordinate jurisdiction should be avoided. Uniformity of opinion by the two courts upon all questions is important and greatly desired. An opinion by the Court of Criminal Appeals on any subject that comes within its jurisdiction always carries great weight with this court.

Furthermore, we agree with the holding of the Court of Criminal Appeals in the May Case, and hold that this bill became effective immediately after its passage. It is clear that the object of the provision of the Constitution above quoted is that if a bill is to take effect immediately on its passage, it must contain an emergency clause and such bill must be passed by a vote of two-thirds of all the members elected to each house, and such vote to be taken by yeas and nays and

entered upon the journals. We think the rule prescribed by the Constitution also applies to amendments and reports of conference committees. If this were not true, it is quite obvious how the rule could be abused. A harmless bill might be passed in its inception by the requisite vote, and then be radically amended and such amendments be put into immediate effect without the vote required by the Constitution. If such were the rule, the vote on the original bill would control as to whether it became a law immediately after its final passage, and not the final vote subsequently taken on the amendments placed thereon by the other branch of the Legislature, and the plain provision of the Constitution requiring that it be adopted by a vote of two-thirds of all the members of each house, in order to declare an emergency, could be evaded.

The main question presented here is: Did the Act of 1931 authorize the issuance of a patent to Cole, as was done, for land situated within five miles of a producing oil or gas well? The Act of 1931 contains many sections, and in the opinion in Wintermann v. McDonald (Tex.Sup.) 102 S.W.(2d) 167, this day announced, certain sections of the act are discussed in detail, and we refer to that opinion for such discussion. However, we shall refer to certain provisions of this act in this opinion, in order to reveal the intention of the Legislature with reference to the question presented here. Section 2 of House Bill 358 (Vernon's Ann.Civ.St. art. 5421c, § 2) describes how surveyed public free school land may be sold, but specifically contains the following provision: "Provided that all such land within five miles of a well producing oil or gas in commercial quantities shall be subject to lease only, and the surface rights shall not be sold." Section 6 of the act (Vernon's Ann.Civ.St. art. 5421c, § 6) also provides in what manner unsurveyed school land may be sold, but particularly excepts from sale "land * * * situated within five miles of a producing oil or gas well."

Section 5 (Vernon's Ann.Civ.St. art. 5421c, § 5) provides how any party who has held and claimed certain lands in good faith for a period of ten years may obtain a patent therefor. It further provides "that in all cases where a tract of school land has been occupied by mistake as a part of another tract, such occupant shall have a preference right for a period of six months after the discovery of the mistake, or after the passage of this Act, to purchase the land at the same price paid or contracted to be paid for the land actually conveyed to him." Section 6 (Vernon's Ann.Civ.St. art. 5421c, § 6) provides that "any one desiring to buy any of the unsurveyed land included in this Act not situated within five miles of a producing oil or gas well" may take certain steps to purchase said land. Section 8 (Vernon's Ann.Civ.St. art. 5421c, § 8) provides for the lease of both surveyed and unsurveyed school land, and fixes the terms of the lease thereof.

Senate Concurrent Resolution No. 4 was adopted at the First Called Session of the 42d Legislature (page 101 [Vernon's Ann.Civ.St. art. 5421c note]) for the purpose of changing some of the provisions of this act. Its purpose was to permit those who sought to acquire school land under section 5 to be freed of the limitations that lands situated within five miles of a producing oil or gas well should not be sold. The resolution reads as follows: "* * * that it was the intention of the Legislature, and is now the intention of the Legislature that public school land occupied by mistake as provided in said Section 5 be sold to the occupant at the same price which such occupant paid or contracted to pay for his adjoining tract and of which he in good faith thought such public school land a part, and it is further declared that it was not and is not intended that said privilege of purchasing such land shall be abridged, limited, subject to or burdened with any other provision of said Act or pre-existing law, except as to the reservations of said Section 4."

It will be noted that the original act was passed at the Regular Session of the 42d Legislature, and Senate Concurrent Resolution No. 4 was passed at the First Called Session of the 42d Legislature. It is plain that the resolution not only undertakes to interpret or construe what the original act contained, but also to read into said law words and intentions not expressed in the original act. Statutes cannot be amended in that manner. Resolutions play their part in our legislative history, and are often resorted to for the purpose of expressing the will of the Legislature, but statutes cannot be amended by resolutions. Statutes may be

interpreted or construed by the same or succeeding legislatures in the manner prescribed by the Constitution; and while such procedure is not controlling, it is persuasive with the courts in construing statutes. The Constitution has clearly prescribed the method to be pursued in the enactment of laws and their amendments. This resolution does not meet the requirements prescribed by the Constitution, and therefore cannot be considered as amending the 1931 Act. We must interpret the original act as written. Article 3, sections 29, 30, and 36, of the Constitution of Texas.

The Legislature prescribes the method by which a purchaser may acquire lands belonging to the State. All sales of public lands must be authorized by law. Thus we see that the Legislature has used substantially the same language in prohibiting the sale of surveyed and unsurveyed school lands situated within five miles of a producing oil or gas well. Therefore, for the purposes of this opinion, it is immaterial whether the land involved here is classed as surveyed or unsurveyed school land.

It is well known that the Land Commissioner is frequently called upon to exercise his judgment and discretion in performing the duties placed upon him by law, and the courts are slow to disturb him or his action in the exercise of his judgment and discretion. De Poyster v. Baker, 89 Tex. 155, 156, 34 S.W. 106. If the facts raised a reasonable dispute as to whether the land is "within five miles of a well producing oil or gas in commercial quantities," and the issue of fact was presented for determination, the finding by the Land Commissioner upon such issue would be conclusive, unless such finding is clearly illegal, unreasonable, or arbitrary.

As stated above, it was agreed "that said land was within five miles of a producing oil well." If this fact is undisputed, this leaves no authority for the sale of this land, and there is no provision of this law upon which the validity of the patent may rest. This act clearly forbids the sale of such land. The mere fact that the patent was issued does not make it valid. The sale was null and void. Wyerts v. Terrell, 100 Tex. 409, 100 S. W. 133; Pohle v. Robertson, 102 Tex. 274, 115 S.W. 1166; Weaver v. Robison, 114 Tex. 272, 268 S.W. 133; Rainer v. Durrill (Tex.Civ.App.) 156 S.W. 589 (writ refused). Therefore the sale could have been questioned by suit filed within one year after the date of sale by any one against whom it was sought to be used.

The record shows that a patent was issued to Cole on August 19, 1931, and that within one year thereafter Caples filed his application to purchase, or, in the alternative, to lease the land for oil and gas purposes. This gave him an interest in the land in controversy under the terms of this law, and he or the Attorney General had the authority to question the validity of the patent issued to Cole in a court of competent jurisdiction, if suit be filed within the time required by law. In this case no suit was filed in the district court questioning the validity of this patent within a year after the issuance thereof. The Legislature has said that "no sale made without condition of settlement shall be questioned by the State or any person after one year from the date of such sale." Article 5329, subdivision 4, Vernon's Annotated Texas Civil Statutes. The Legislature meant by the adoption of this language that if an award or sale was to be questioned within one year, it had to be done by the institution of proper legal proceedings in a court of competent jurisdiction. The rule announced in the foregoing provision of the statute has been sustained in many decisions. Herndon v. Robison, 114 Tex. 446, 270 S.W. 159; Erp v. Robison, 106 Tex. 143, 155 S.W. 180, 157 S.W. 1160; Lovett v. Simmons (Tex.Com.App.) 29 S.W.(2d) 1021; Skaggs et al. v. Grisham-Hunter Corporation et al. (Tex.Civ.App.) 53 S.W.(2d) 687 (writ refused). Since the sale of this land was not questioned within one year "after the date of such sale," it has become final, and Cole has acquired, by virtue of such sale, the land in controversy.

For the reasons herein stated, the judgment of the Court of Civil Appeals is affirmed.