courts of justice to afford any protection, where action has not been taken by the political authority. Such questions can be determined when distinctly presented for review and decision." Trimble v. Smithers' Adm'r, 1 Tex. 809.

The court was confronted with the question in Haynes v. State, 100 Tex. 426, 100 S. W. 912, and determined it as we think it ought to be determined here. There citizens of this same Mexican state had, prior to December 19, 1836, done all that was necessary to acquire the right to have the legal title issued to them, but it had not been issued at that date, as is here the case. The legal title was issued in 1848, when Tamaulipas had lost actual sovereignty over the lands, whereas here it was issued while the actual jurisdiction of Tamaulipas endured. The same element of long possession under the claim of right was presented. In the suit by the state for the land it was held: "If, therefore, the evidence introduced upon the trial shows that Antonio Zapata was, on the 19th day of December, 1836, entitled to have a grant issued, the state ought not to recover the land in controversy, because such title would be protected by the treaty of Guadalupe Hidalgo. It is true that the Attorney General insists that the facts do not establish such a title as would be embraced in the terms and protection of that treaty, but we are of opinion that the position is not well taken. * * * The facts of this case established that Zapata, under whom the plaintiff in error claims, had, on the 19th day of December, 1836, done all that the law required of him, and was entitled under the laws of Tamaulipas to receive from the governor of that state a grant for the five leagues of land. It follows from this conclusion that we must reverse the judgments of the district court and of the Court of Civil Appeals."

There is no substantial difference between the two cases. The title there considered, resting upon a right acquired before the date of the assertion of Texas sovereignty over the territory, had received no confirmation from the political authority of the state, and, under such application as the state here contends should be made of the doctrine we have above referred to, could have had no better standing in the courts than the title involved in this case. This is in one respect the stronger title, as here the payment of the purchase money for the land was clearly established, whereas in that case such payment was not shown but it was held should be presumed. That title was less than a full legal title on December 19, 1836, as is true in respect to this title on that date, though resting, as does this title, upon a perfected right to the legal title. Upon the same considerations that are present in this case, the considerations of good conscience, right and simple justice, and a faithful observance of the obligations proceeding from a solemn treaty, this court held plainly and directly that such a title should not be destroyed by the courts but should be given effect. The ruling there announced cannot be regarded as other than conclusive of the vital question in this case.

We have given the case the careful consideration that we have felt it deserved. We are convinced that the judgment of the Court of Civil Appeals should be affirmed; and it is so ordered.

Affirmed.

HAWKINS, J., did not participate in this decision.

GLASS et al. v. POOL et al. (No. 2617.)

(Supreme Court of Texas. Feb. 18, 1914.)

1. CONSTITUTIONAL LAW (§ 48*)—STATUTES—CONSTRUCTION FAVORING VALIDITY.

If a statute is not manifestly in conflict with some provision of the Constitution, it must be sustained by the courts.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 46; Dec. Dig. § 48.*]

2. CONSTITUTIONAL LAW (§ 48*)—CONSTRUCTION IN FAVOR OF CONSTITUTIONALITY.

In testing the constitutionality of a statute, the language must receive such construction as will conform it to any constitutional limitation or requirement, if it be susceptible of such interpretation.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 46; Dec. Dig. § 48.*]

3. CONSTITUTIONAL LAW (§ 70*)—JUDICIAL POWERS—VALIDITY OF STATUTES.

Statutes cannot be declared invalid on the ground that they are unwise, unjust, unreasonable, immoral, or because opposed to public policy or the spirit of the Constitution, and hence, as Acts 33d Leg. c. 35, § 7, creating the Clifton independent school district does not conflict with any specific provision of the Constitution, it is not invalid, though its passage was procured by fraud, and it is unfair.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 129–132, 137; Dec. Dig. § 70.*]

4. STATUTES (§ 96*)—PUBLIC SCHOOLS—STATUTE.

Acts 33d Leg. c. 35, § 7, creating the Clifton independent school district, and providing for the management of the affairs of the district by trustees, is not in violation of Const. art. 3, § 56, prohibiting local or special laws creating offices in school districts; school trustees being provided for by general statutes.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. § 107; Dec. Dig. § 96.*]

5. SCHOOLS AND SCHOOL DISTRICTS (§ 99*)—PUBLIC SCHOOLS—POWERS OF DISTRICTS—PURCHASE OF SITES.

Under the constitutional provision authorizing an additional tax within the school districts for the erection and equipment of buildings, Rev. St. 1911, art. 2857, authorizing the purchase of sites and the issuance of bonds for that purpose, is valid; the right to build schoolhouses carrying with it the authority to purchase sites.

[Ed. Note.—For other cases, see Schools and School Districts, Cent. Dig. §§ 233, 234; Dec. Dig. § 99.*]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key-No. Series & Rep'r Indexes

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Certified Questions from Court of Civil Appeals of Second Supreme Judicial District.

Suit by Tom M. Pool and others against J. T. Glass and others. From a judgment for plaintiffs, defendants appealed to the Court of Civil Appeals, which certified questions to the Supreme Court. Questions answered.

S. P. Sadler, of Gatesville, and James M. Robertson, of Meridian, for appellants. H. J. Cureton and B. J. Word, both of Meridian, and W. F. Ramsey and C. L. Black, both of Austin, for appellees.

BROWN, C. J. We copy the statement submitted by the Court of Civil Appeals to this court:

"Tom M. Pool and the other appellees in this case filed their petition before the Hon. O. L. Lockett, judge of the Eighteenth judicial district, complaining of J. T. Glass and the other appellants, seeking to prevent by the aid of a writ of injunction the issuance and sale of certain bonds by the Clifton independent school district, and, from a judgment granting such relief, the defendants have appealed.

"Briefly stated, the complainants' petition alleges that the defendants Glass, Clements, Nelson, Olsen, Butler, and Parks are the acting trustees of the Clifton independent school district; the defendant Thomas is tax assessor of Bosque county; the defendant Moorland tax collector of Bosque county; defendant Looney is Attorney General and the defendant W. P. Lane comptroller of the state of Texas, respectively; that during the regular session of the Thirty-Third Legislature of Texas a special or local law was passed without the constitutional notice in advance creating the Clifton independent school district in Bosque county, Tex., with field notes as set forth in that act; that the complainants are owners of real estate subject to taxation situated within the boundaries of said proposed school district; that, in gross disregard of plaintiffs' rights and of the rights of other citizens of Bosque county, Tex., similarly situated, the Legislature in creating said district formed a district in an irregular, oblong shape of an average width of 1 to 1½ miles, extending north of the town of Clifton, which is situated within such district, for a distance of approximately 4 miles and south approximately 5 miles; that the lines of the district are so run as to follow approximately the contour of the rich valley of the Bosque river, including therein the valuable farming lands of the complainants and others, and carefully excluding therefrom the rough cheaper uplands upon which the plaintiffs reside, thereby excluding them from the benefits of the Clifton public free school and of the taxes to be raised by assessment on their property. The complainants allege, further, that many of those whose residences are situated within the district are at a distance so remote from the Clifton public school building that it is impossible for them to patronize the same, and that, by reason of the narrow and irregular shape of said district, many other resident citizens of Bosque county who are just outside the territorial limits are yet so near to the Clifton school and so inconveniently and remotely situated from other school districts and schools as that it will be necessary for them to transfer annually to the Clifton independent school district, in which event such parents transferring their children will lose the benefits of such special taxes as may be levied upon their farm lands included in the district. They further allege that, by reason of the fact that the most valuable portions of their lands have been included in the Clifton independent school district, that it will be impossible for them to raise by taxation any reasonable sum for the maintenance of schools in any other independent or common school district which is in existence or may be created to include their residences. In short, upon this point the substance of the complaint is that a 'few citizens residing within the corporate limits of Clifton, conspiring to lay out a district solely for the benefit of the school children in the town of Clifton, and in high-handed and negligent disregard of any rights that scholastic populations within the local district had, willfully, and falsely, and knowingly represented to the Legislature, and willfully, falsely, and knowingly represented to the Governor, that the great majority of the people affected by said district were favorable to the same, and in so doing they caused the Legislature to perpetrate a legislative fraud, and have caused the same to attempt to create a district in violation of the rights of the school children of the farmers whose lands are taken into the district and attached to the town of Clifton for the selfish purpose of building up a school for the children of Clifton only.' The special act creating the Clifton independent school district is pleaded in hæc verba as it appears in the Local and Special Laws of Texas, Regular Session, Thirty-Third Legislature, p. 107.

"The complainants allege that the defendants named as trustees are making an effort to issue coupon bonds of said district in the sum of $25,000, payable 40 years after date, with 5 per cent. interest, for the purpose of purchasing a site and erecting a school building in the town of Clifton; that an election for such purpose has been held and the result declared favorable; and that, unless a writ of injunction is issued restraining them and the Attorney General and the state comptroller, such bonds will be approved and registered and sold, and a lien thereby created for the full period of 40 years against complainants' land. The complainants attack the validity of the act of the Legislature creating the Clifton independent school district upon the ground that the same violates the following provisions of the state

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Constitution, to wit: Section 1 of article 7, section 56 of article 3, section 3 of article 7, as well, also, as those provisions of the federal and state Constitutions against depriving any citizen of property, privileges, or immunities except by due course of law of the land. Const. U. S. amend. art. 5; State Const. § 19, art. 1. The complainants allege that, in the event the said special act creating the Clifton independent school district is not invalid, yet the attempt of the defendant trustees to issue bonds and thus create a lien upon complainants' property for the purpose for which such bonds are proposed to be issued, to wit, the purchase of a site for a public school building in said town of Clifton, is without authority in law and void, and they therefore are entitled to the relief sought. For a fuller statement of the issues and of the facts bearing upon them, your honors are referred to the pleadings and the agreed statement of the facts contained in the transcript which will accompany this certificate.

"The case was tried before the honorable district court upon appellants' demurrers and motion to dissolve upon an agreed statement of the facts, and, as already stated, judgment was entered perpetually enjoining the defendants from proceeding further in their efforts to procure and cause said bond issue. The agreed facts found in the record abundantly support the allegations of complainants' petition. The case is regularly before this court on appeal, and, in view of the importance of the questions involved affecting, as they do, not only the validity of the Clifton independent school district, but probably many others as well, we deem it proper to certify to your honors the following questions:

"First. Is the special act of the Thirty-Third Legislature creating the Clifton independent school district (Local and Special Laws of Texas, Thirty-Third Legislature, p. 107) invalid under the facts alleged and proved in this case? And,

"Second. If not, did the trial court err in perpetually enjoining the appellants from the issuance of the proposed bonds of the Clifton independent school district for the purposes named?"

[1] We answer that the act referred to in the first question was and is valid. And we further answer the trial court erred in granting and in perpetuating the injunction, thereby preventing the officers of the Clifton school district from issuing the bonds of the district, as authorized by the votes of qualified voters of that district.

We will discuss the two questions together, as both depend upon the validity of the statute incorporating the district which authorized the bond issue.

[2] If the statute is not manifestly in conflict with some provision of the Constitution, then we must sustain and construe it as we find it expressed. In testing the constitutionality of the statute in question, the language must receive such construction as will conform it to any constitutional limitation or requirement, if it be susceptible of such interpretation, and the law here brought into question must be sustained, unless it be clearly in conflict with some provision of the Constitution.

In the form of counter propositions counsel for appellee present these grounds of invalidity of the law creating the Clifton independent school district: (1) The form of the district which excludes appellees from its benefits. (2) That the act does not provide an efficient system of free schools, and is void. (3) The Legislature has no power to create a school district in such form as to destroy adjacent districts, etc. Many decisions of other states are cited; but none of them is more pertinent than the case of Junction City School Incorporation v. Trustees of School District No. 6, 81 Tex. 148, 16 S. W. 742. That district was created by the county court, which had no authority except what the law granted; but in the present case the Legislature had all power not denied to it by the Constitution. The case of Parks v. West, 102 Tex. 11, 111 S. W. 726, is not in point, for there the Legislature formed a district embracing territory in more than one county, which this court held to be forbidden by the Constitution. Neither of the cases cited are in conflict with the validity of the act involved in this proceeding.

[3] Before discussing the provisions of the act creating the district which are assailed as rendering the act void, we will consider the charge of unfairness to plaintiffs and others in the creation of the district. The following statement of the law answers the plaintiff's attack fully, and needs no argument to show its conclusiveness: "Statutes cannot be declared invalid on the ground that they are unwise, unjust, unreasonable or immoral, or because opposed to public policy, or the spirit of the Constitution. Unless a statute violates some express provision of the Constitution, it must be held to be valid." 1 Lewis' Sutherland, Statutory Construction, § 85.

The law in this respect has not been shown to be in conflict with the Constitution in any particular; therefore no court in this state has power to right that wrong, if it be such. This conclusion embraces all of the objections which relate to the unfairness, injustice, and wrong to the complainants, whether they occurred through fraud, inadvertence, or want of information; all of these matters were settled by enacting the law. We will not discuss them in detail.

[4] Article 3, § 56, of the Constitution provides: "The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, * * * creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts."

Counsel for appellees insist that the act

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creating the district violates that provision in that it creates offices and names officers. The school trustee was not a new office within the meaning of the clause of the Constitution copied above. The act simply adopted the name and provided for the management of the affairs of the district by trustees, which office existed, being named in the general law and in many special acts. Neither did the Legislature appoint any officer, but within the authority to create the district continued the existing trustees in office until those provided for in the bill should be elected.

[5] With much earnestness counsel urge the proposition that the proposed bond issue is void, because the act provides: "That the Clifton independent school district shall have and exercise, and is hereby invested with all the rights, powers, privileges and duties granted under and by the General Laws of this state, to independent school districts for free school purposes only, and the board of trustees of said Clifton independent school district shall have and exercise, and are hereby invested and charged with all the rights, powers, privileges and duties conferred and imposed by the general Laws of this state upon the trustees of independent school districts." Special Laws, Regular Session, 1913, § 7, p. 109.

The general law regulating free schools contains this provision: "Art. 2857. Local Taxes; Bonds.—Trustees of a district that has been, or may hereafter be, incorporated under general or special laws, for school purposes only, shall have power to levy and collect an annual ad valorem tax not to exceed fifty cents on the one hundred dollars valuation of taxable property of the district, for the maintenance of schools therein, and a tax not to exceed twenty-five cents on the one hundred dollars for the purchase of sites and the purchasing, construction, repairing or equipping public free school buildings within the limits of such incorporated districts; provided that the amount of maintenance tax, together with the amount of bond tax of the district, shall never exceed fifty cents on the one hundred dollars valuation of taxable property. Said trustees shall have power to issue coupon bonds of the district for building purposes, to be made payable not exceeding forty years from date, in such sums as they shall deem expedient, to bear interest not to exceed five per cent. per annum; provided, that when such buildings are to be wooden the bonds herein provided for shall not run for a longer period than twenty years; provided, that the aggregate amount of bonds issued for the above named purpose shall never reach such an amount that the tax of twenty-five cents on the hundred dollars valuation of property in the district will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity; and provided, further, that no such tax shall be levied and no such bonds issued until after an election shall have been held, wherein a majority of the taxpaying voters voting at said election shall have voted in favor of the levying of said tax, of the issuance of said bonds, or both, as the case may be; provided, that the specific rate of tax need not be determined in the election."

Counsel assert that the law which authorizes the trustees of school districts, general and independent, to purchase "sites" for school buildings is void, because it is not authorized by this provision of the Constitution: "And the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts, heretofore formed or hereafter formed, for the further maintenance of public free schools, and the erection and equipment of school buildings therein."

The literal construction of the Constitution insisted upon would destroy the bonds heretofore issued by school districts and create confusion in the management of the public free schools. But we have no hesitancy in holding the granting of the authority to build schoolhouses implies the authority to purchase the land on which it is to be erected. 2 Lewis' Sutherland, Statutory Construction, §§ 502, 503, and 504.

There can be no controversy as to the power under that provision to purchase "sites," the land on which to erect the buildings. The plain words quoted answer the objection so earnestly pressed upon the court. Argument would be superfluous.

BOTSFORD, DEATHERAGE, YOUNG & CREASON v. HAMNER. (No. 7868.)

(Court of Civil Appeals of Texas. Ft. Worth. March 7, 1914. Rehearing Denied April 18, 1914.)

1. ATTORNEY AND CLIENT (§ 145*)—BREACH—FORFEITURE.

A judgment debtor pledged notes of third persons with defendant, the attorney of the judgment creditor, to secure the judgment, and thereafter transferred his equity to secure a debt which he owed plaintiffs, and subsequently transferred the notes to the judgment creditor, under an agreement between plaintiffs and the attorney that the latter should collect the notes and, after retaining his compensation, divide the balance between the judgment creditor and plaintiffs. The attorney sued in the name of the judgment creditor on the notes, and judgment was obtained on the original pleadings. *Held*, that the failure of plaintiffs to serve process in the action on request of the attorney did not justify the attorney in claiming a forfeiture of plaintiffs' rights under the contract, especially where proper service was procured in due time.

[Ed. Note.—For other cases, see Attorney and Client, Cent. Dig. §§ 334, 335; Dec. Dig. § 145.*]

2. ATTORNEY AND CLIENT (§ 129*)—CONTRACT OF EMPLOYMENT—BREACH—FORFEITURE.

Where an attorney contracted to collect notes transferred to his client to secure a judgment in her favor, and divide the proceeds be-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key-No. Series & Rep'r Indexes

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