

DUCLOS et al. v. HARRIS COUNTY.
(No. 4005.)

(Supreme Court of Texas. June 28, 1924.)

1. Statutes ~~102~~(4)—Provision of statute creating district court affecting compensation of clerk of county held invalid as special legislation.

Section 5, c. 19, Acts 34th Leg., 1st Called Sess. (1915), being Vernon's Ann. Civ. St. Supp. 1918, art. 30, subd. 80, organizing Eightieth judicial district, declaring that clerk of Harris county shall be clerk of that judicial district, and shall receive \$1,200 per year as additional compensation, is invalid under Const. art. 3, § 56, as special legislation for regulating affairs of Harris county.

2. Evidence ~~41~~—Courts take judicial knowledge of system, construction, and regulation of courts.

Courts take judicial knowledge of forms and systems of courts, of their construction, and laws relating to their officers and operation.

3. Statutes ~~64~~(3)—Invalidity of particular section of act creating judicial district held not to invalidate whole.

Validity as a whole of Acts 34th Leg., 1st Called Sess. (1915), c. 19, organizing Eightieth judicial district, held not affected by invalidity of section 5 (Vernon's Ann. Civ. St. Supp. 1918, art. 30, subd. 80), relative to clerk's compensation.

Error to Court of Civil Appeals, of First Supreme Judicial District.

Suit by Harris County against O. M. Duclos and others. Judgment for plaintiff was affirmed by the Court of Civil Appeals (251 S. W. 569), and defendants bring error. Affirmed.

Fulbright, Crooker & Freeman, of Houston, for plaintiffs in error.

Louis, Campbell & Nicholson, of Houston, for defendant in error.

PIERSON, J. As a statement of the case we take the following from the original opinion of the honorable Court of Civil Appeals:

"In 1915 by a statute appearing as chapter 19, Acts of the First Called Session of the Thirty-Fourth Legislature (Vernon's Ann. Civ. St. Supp. 1918, art. 30, subds. 23, 80), the Twenty-Third judicial district of Texas was re-organized, and the Eightieth judicial district created. Section 5 of that act is as follows: 'Sec. 5. That the clerk of the district court of Harris county, as that office is now constituted, and his successor in office, shall be the clerk of the district court of the Eightieth judicial district of Texas in Harris county, and shall perform all the duties pertaining to the clerkship of said court, as well as the duties imposed upon him as the clerk of other district courts of Harris county, and for such additional service, shall receive twelve hundred dol-

lars per year, as additional compensation to be collected out of the fees allowed by law.'

"The cause now at bar involves the validity of only so much of the concluding provisions of this quoted section as recites that the clerk of the district court of Harris county for his services as clerk of the new or Eightieth district court in that county 'shall receive twelve hundred dollars per year, as additional compensation to be collected out of the fees allowed by law.'

"Appellant was the district clerk of Harris county, and as such, for the period covered by this suit, in addition to the maximum amount allowed him under the general fee bill, had collected and retained the sum of \$223.37, which he claimed the right to withhold under the quoted provision of the act creating the Eightieth district court. At the suit of Harris county to recover this excess, the trial court gave it judgment, and the clerk and his official bondsmen appeal.

"We think the court below did not err, and affirm the judgment."

In its opinion it says:

"The portion of the quoted section here involved, undertaking as it does to fix the amount of fees or compensation which may be retained by the district clerk of Harris county, in addition to that allowed him under the general fee bill, applies only to that particular officer and county, and is therefore a local and special law."

It holds also that the provision complained of constitutes a regulation of the affairs of Harris county within the meaning of article 3, § 56, of the Constitution of Texas, and for both reasons said provision is invalid as being obnoxious to said section 56, article 3, of the Constitution.

Article 3, § 56, of the Constitution, provides:

"The Legislature shall not, except as otherwise, provided in this Constitution, pass any local or special law * * * regulating the affairs of counties, cities, towns," etc. "And in all other cases where a general law can be made applicable, no local or special law shall be enacted."

[1] After a thorough study of the question, we have no doubt of the correctness of the holding of the Court of Civil Appeals.

The opinion of Mr. Justice Graves, is convincing, and we feel that it is unnecessary for us to elaborate upon it to any great extent. For further analysis and discussion, see *Duclos v. Harris County*, 251 S. W. 569.

We granted the writ of error because we questioned whether this provision granting additional compensation to this officer was special or local, in view of the fact it is a part of a law creating a district court, which is a general law. An act creating a district court is a general law, and as a matter of course the Legislature has the authority in the creating act to legislate as to all necessary provisions and essential

elements of the court; but that does not justify the inclusion of local or special laws or provisions which are in themselves subject to general legislation, and which in fact are provided for and controlled by general laws. Such provisions, even though included in a general law, are nevertheless special and local.

If the Legislature had, by enactment other than in the bill creating the court, attempted to increase the salary of the clerk of Harris county alone, such enactment would clearly be a special and local law, and violative of section 56, article 3. Can the fact that it is included in the provisions of a general law creating a new court in a county in which a clerk for all district courts was already provided and his compensation fixed under a general law, the same as for all other clerks in like counties, change its nature and effect from that of a special and local law? We think not. To so hold would be to look to the form and not the spirit and purpose of the law.

The provision under consideration certainly does single out the district clerk of Harris county and provide for him a salary or compensation as district clerk different from that of any or all like district clerks in the state. If the Legislature had, by such a measure, decreased the compensation of the district clerk of Harris county by \$1,200 per annum below that of such clerks in the other like counties having a large population and a number of courts, the legal proposition would be the same—an attempt under the form of a general law to pass a special or local one which could affect only the one officer in the one county, and for which a general law was not only applicable, but had already been provided.

The act creating the court was essentially a general act or law. The provision providing for extra compensation of the clerk different from all other like clerks, as already provided for by the law in the Maximum Fee Bill, was essentially special and local. Under these conditions we are of the opinion that the fact that it was included within the body of the general law does not change its character, nor make it immune from the constitutional prohibition.

[2] The Legislature in its creative power has the authority in the creating act to provide all essentials of the thing created, but this rule cannot change the condition that exists here. The courts will take judicial knowledge of our form and system of courts, of their construction, and the laws relating to their officers and their operation. A clerk is an essential to a district court, and also each county is by law provided with one, and his compensation provided for in a general fee bill or law.

Plaintiff in error makes the argument that,

even if this is a special or local law, the record does not negative the making of proper publication of notice, and therefore it is valid as a special or local law. It would not seem that this could be so. If the subject is one that the Constitution inhibits from being enacted as a special or local law, such special or local law would be invalid with or without publication of notice.

[3] Since, as held by the Court of Civil Appeals, this provision is not an essential or necessary part of the law creating the Eightieth district court, and it is clear that the Legislature would not have declined to pass the law with this provision omitted, the validity of the rest of the act is unaffected by the invalidity of this provision.

The judgments of the Court of Civil Appeals and district court are affirmed.

WYLIE v. HAYS et al. (No. 458-3980.)

(Commission of Appeals of Texas, Section B.
June 6, 1924.)

1. Constitutional law \S 277(1)—Power of sale held valuable contract right within constitutional guaranties, but subject to regulation under police power.

Power of sale created by deed of trust or other contract lien is valuable contractual right, full exercise of which is maintained by Const. U. S. amend. 14, and Const. art. 1, § 19, but such right may be regulated or denied by Legislature in proper use of police power.

2. Constitutional law \S 276—When law regulating contracts to be executed is superior to liberty to contract stated.

If law regulating contracts to be executed in future has as its object that which is considered by Legislature to be public welfare and prescribes means necessary to accomplish that object and operates in reasonable and not arbitrary or oppressive manner, it is within police power, constitutes due process, and is superior to liberty to contract.

3. Constitutional law \S 276—Mortgages \S 330—Statute providing sale of land under power in deed of trust shall be in county where land lies held not invalid.

Rev. St. art. 3759, providing that sale of land under power in deed of trust shall be made in county where land is situated, has reasonably for its object the welfare of the public and does not operate in arbitrary, capricious, or oppressive manner, is valid exercise of police power, constitutes due process, and is superior to liberty to contract.

4. Mortgages \S 1—Have not effect of conveyances.

Mortgages have not the effect of conveyances.