

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1945

ENROLLED

SENATE BILL No. 47

(By Mr. Bean)

PASSED March 10, 1945

In Effect from Passage

3-16



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AN ACT to amend and reenact article four, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the collection and enforcement of property taxes and to the sale of lands for the school fund.

Be it enacted by the Legislature of West Virginia:

That article four, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article 4. Sale of Lands for School Fund.

Section

1. Declaration of legislative purpose.
2. Forfeiture of lands for nonentry.

3. Lands subject to sale under this article.
4. State commissioner of forfeited and delinquent lands.
5. Deputy commissioners of forfeited and delinquent lands; compensation; bond.
6. Auditor's record of delinquent lands.
7. Operating fund for land department in auditor's office.
8. Officers to report lands subject to sale.
9. Auditor to certify list of lands to be sold.
10. Publication of general notice to redeem.
11. Redemption after certification and before sale.
12. Certificate of redemption issued by deputy commissioner; recordation.
13. Lien of person redeeming interest of another; record.
14. Revaluation and reclassification.
15. Preparation of list of persons entitled to notice of suit.
16. Suit for sale of lands.
17. Parties defendant; right to intervene.
18. Summons; service.
19. Averments and prayer of bill.
20. Procedure; extent to which defendant is bound by order or decree.
21. Certified list made exhibit and part of bill.
22. Separate order book to be kept by clerk; costs.
23. Decree by default.
24. Application for reduction of amount due.
25. Application for dismissal of suit.
26. Procedure upon application for reduction or dismissal; order of reference.
27. Execution of reference; report.
28. Orders when applicant's claim upheld.
29. Decree of sale.
30. Notice of sale.
31. Sale by deputy commissioner; receipt for purchase price; report to circuit court.
32. Return of purchase money.
33. Co-owner free to purchase at sale.

34. Purchase by former owner or by deputy commissioner and other officers prohibited.
35. Right of former owner to surplus proceeds.
36. Right of creditor of former owner of escheated land.
37. Redemption after sale and before confirmation.
38. Lien of person redeeming interest of another; record.
39. Payment of redemption money to clerk of circuit court.
40. Contest of redemption by payment to clerk.
41. Contest when claim is made that payment was insufficient.
42. Proceeding to set aside sale.
43. Confirmation of sale; right to redeem terminated.
44. Deed to purchaser; record.
45. Title acquired.
46. Effect of irregularity on title acquired.
47. Right to set aside sale or deed when land was not subject to sale.
48. Right to set aside deed improperly obtained.
49. Right to set aside sale or deed when one entitled to notice not notified.
50. On whose behalf suits instituted; decree when sale or deed set aside.
51. Redemption by persons under disability.
52. Redemption by members of armed services.
53. Annual report of deputy commissioner to auditor.
54. Sheriff to keep proceeds in separate accounts; disposition.
55. Disposition of pending suits; former sales confirmed.
56. Liability of officer failing to perform duty; penalty.
57. Release of taxes and interest.
58. Separability.

Section 1. *Declaration of Legislative Purpose.*—In furtherance of the policy declared in section one, article three of this chapter, it is the intent and purpose of the Legislature to establish a judicial proceeding for the sale of

5 land for the school fund, which will be as expeditious,
6 inexpensive and informal as possible without violating
7 any claim which may fairly and properly be made on be-
8 half of the former owner. The procedure provided for
9 in this article is designed to convey to the purchaser not
10 an original but merely a derivative title, transferring
11 only such interest in the land as may at the time of the
12 sale be vested in the state under its constitution and
13 laws, or otherwise.

Sec. 2. *Forfeiture of Lands for Nonentry.*—It is the
2 duty of each owner of land to have his land entered for
3 taxation on the land books of the appropriate county,
4 have himself charged with the taxes due thereon, and
5 pay the same. Land which for any five successive years
6 shall not have been so entered and charged, shall by
7 operation of law, without any proceedings therefor, be
8 forfeited to the state as provided in section six, article
9 thirteen of the constitution.

Sec. 3. *Lands Subject to Sale Under This Article.*—All
2 lands purchased by the state for nonpayment of taxes,
3 or forfeited for nonentry, or escheated, or waste and un-

4 appropriated, are subject to sale as provided in this
5 article.

Sec. 4. *State Commissioner of Forfeited and Delinquent*
2 *Lands.*—The state auditor shall, ex officio, be state com-
3 missioner of forfeited and delinquent lands. The term
4 “auditor”, whenever used in this chapter in connection
5 with the subject of forfeited, delinquent, escheated, or
6 waste and unappropriated lands, shall be construed to
7 refer to the auditor in his capacity as state commissioner
8 of forfeited and delinquent lands.

9 The auditor is empowered, and it shall be his duty,
10 through the land department in his office, to administer
11 and carry into execution the laws with reference to
12 such lands. The auditor, on behalf of the state, shall have
13 power to hold and manage such lands, and to exercise
14 all other powers incident to the general ownership of
15 land.

Sec. 5. *Deputy Commissioners of Forfeited and Delin-*
2 *quent Lands; Compensation; Bond.*—There shall be for
3 each county in the state a deputy commissioner of for-
4 feited and delinquent lands. The auditor shall appoint

5 such deputies as soon as may be after this act takes
6 effect, and shall make new appointments from time to
7 time thereafter whenever vacancies occur, or when in
8 his judgment it is deemed advisable. The auditor may
9 make rules respecting the tenure of deputy commis-
10 sioners. In the absence of such rules, the deputy for each
11 county shall, so long as he satisfies the requirements of
12 this section in respect to professional qualifications and
13 bonding, continue to act without reappointment until the
14 auditor designates his successor.

15 Appointments shall be limited to persons duly licensed
16 to practice law in the state, and so far as possible shall
17 be made for each county from among attorneys residing
18 and practicing law therein. If, however, there is in the
19 opinion of the auditor no suitable person in a county avail-
20 able for appointment, he shall designate a member of
21 the bar of another county in the same judicial circuit.
22 Whenever in respect to any land the deputy commis-
23 sioner, in his own judgment or in the opinion of the
24 auditor, is disqualified because of his personal interest,
25 or because of his representation of clients in matters

26 affecting such land, the auditor may appoint a special
27 deputy to deal with that land. All provisions of this
28 article in respect to the rights, duties, liabilities and
29 qualifications of the deputy commissioner, shall be ap-
30 plicable to the special deputy.

31 The deputy commissioner shall be subject to the orders
32 and control of the auditor, shall be accountable to him,
33 and shall serve as his local agent within the county. It
34 shall be his duty to do whatever is required of him by
35 the auditor or by the provisions of this article. As com-
36 pensation for his services he shall receive the sum of
37 one dollar for every tract certified to the circuit court
38 of the county of his appointment, and such additional
39 compensation and fees as are provided for in this article.

40 To insure the faithful performance of his duties and
41 the payment of any forfeitures incurred, the deputy com-
42 missioner before entering upon his duties shall give a
43 bond, with satisfactory corporate surety, in the penalty
44 of not less than two thousand dollars, nor more than ten
45 thousand dollars, as the auditor may direct. The premium
46 for such bond shall be paid by the auditor out of the

47 operating fund for the land department in his office.

Sec. 6. *Auditor's Record of Delinquent Lands.*—The
2 auditor shall prepare and keep in his office a permanent
3 record of all forfeited, delinquent, escheated, and waste
4 and unappropriated lands. The record shall, as to every
5 tract or lot listed, set forth the information available
6 as to quantity, local description, and, except in the case
7 of waste and unappropriated lands, the name of the
8 former owner and the respective dates of nonentry and
9 forfeiture, or delinquency and sale to the state, or escheat,
10 as the case may be. The record shall be prima facie
11 evidence of all matters required by this section to be
12 set forth therein, including the propriety of the descrip-
13 tion of lands as forfeited, delinquent, escheated, or waste
14 and unappropriated.

Sec. 7. *Operating Fund for Land Department in Audi-*
2 *tor's Office.*—The auditor shall set up a special operating
3 fund for the land department in his office. He shall pay
4 into such fund all redemption fees, all publication or
5 other charges collected by him, if such charges were
6 paid by or were payable to him, and all payments made

7 to him by sheriffs under the provisions of section fifty-
8 four of this article except such part thereof as repre-
9 sents state taxes and interest and the proceeds of the
10 sale of any escheated or waste and unappropriated lands.
11 The fund shall be used by the auditor to pay any bal-
12 ances due to deputy commissioners for services rendered
13 under the provisions of this article, to pay for publi-
14 cation of the notice to redeem as provided in section ten
15 of this article, and to pay for the operation and mainte-
16 nance of the land department in his office. The surplus,
17 over and above the amount of twenty-five thousand dol-
18 lars, remaining in the fund at the end of any fiscal year,
19 shall be paid by the auditor into the general school fund.

Sec. 8. *Officers to Report Lands Subject to Sale.*—When-
2 ever an assessor, or clerk of the county court, or county
3 surveyor learns of the existence within the county of
4 any forfeited land, he shall promptly report that fact to
5 the auditor, together with his information relating thereto.
6 The county surveyor shall also report all waste and un-
7 appropriated lands within his county, except lands lying
8 under the bed of a navigable stream, and shall in his

9 report specify the quantity, the local description, and
10 any claims of title thereto. The assessor, as escheator,
11 shall likewise report all lands which escheat to the
12 state.

Sec. 9. *Auditor to Certify List of Lands to Be Sold.*—

2 On or before the first day of December, one thousand
3 nine hundred forty-six, and on or before the first day
4 of December of each year thereafter, the auditor shall
5 certify to the circuit court of each county a list of all
6 lands in the county subject to sale under this article
7 which have been under his control as state commissioner
8 of forfeited and delinquent lands for as much as a year
9 before certification, except that escheated or waste and
10 unappropriated lands need not be held a year but may
11 be certified by the auditor at any time after they are
12 brought to his attention. He shall note the fact of
13 certification on his record of delinquent lands. Upon
14 completion of a list for certification, a charge of one dol-
15 lar shall be added to the taxes, interest and charges
16 already due on each item listed, to cover the costs in-
17 curred by the auditor in the preparation of the list, and

18 in the event of any sale or redemption, the same shall be
19 paid into the operating fund provided for in this article.

20 Escheated lands and waste and unappropriated lands
21 shall be listed separately. The list shall be arranged by
22 districts and, except in the case of waste and unappro-
23 priated lands, alphabetically by name of the former owner.

24 The list shall state as to each item listed, the information
25 required by section six of this article to be set forth in
26 the auditor's record of delinquent lands, and shall specify
27 as to each tract listed as forfeited or delinquent, the
28 amount of taxes and interest due on the date of certifica-
29 tion, the publication and other charges due, with interest,
30 and the total currently due, which total shall, except for
31 the redemption fee, correspond to the sum required for
32 redemption from the auditor on the date of certification.

33 The specification of taxes due shall, as to delinquent land,
34 commence with those for nonpayment of which it was
35 sold, and as to forfeited land, with those properly charge-
36 able to it for the first year of nonentry.

37 All items certified to each circuit court shall be num-
38 bered consecutively, and all subsequent orders, entries,

39 applications or proceedings under this article in respect
40 to any item shall refer to its number and to the year of
41 certification. All tracts, lots, or parcels sold to the state
42 as a unit may be treated by the auditor as a single item
43 for purposes of certification. Subject to the provisions
44 of this section, the auditor shall prescribe a form for the
45 list and shall provide in such form adequate space to
46 show the subsequent history and final disposition of
47 each item certified.

48 The list shall be made in quadruplicate. The auditor
49 shall keep the original, and shall send one copy to the
50 clerk of the circuit court, one to the clerk of the county
51 court, and one to the deputy commissioner. The clerk of
52 the circuit court and the clerk of the county court shall
53 each bind his copy in a permanent book to be labeled
54 "Report of State Commissioner of Forfeited and Delin-
55 quent Lands," and the clerk of the county court shall note
56 the fact of the certification of each item on his record of
57 delinquent lands. Such copies shall become permanent
58 records, and shall be preserved as such in the offices of
59 the auditor, the county clerk and the circuit clerk.

Sec. 10. *Publication of Notice to Redeem.*—Within ten
2 days after receipt of the auditor's certified list of forfeited
3 and delinquent lands, the deputy commissioner shall pre-
4 pare and insert twice in two newspapers of opposite
5 politics, published in the county, a notice in form or effect
6 as follows:

7 Notice is hereby given to all interested parties that the
8 following described tracts or lots of land, or undivided in-
9 terests therein, forfeited or sold to the state for nonpay-
10 ment of taxes and not redeemed, ^{are} ~~and~~ in the hands of the ^{of} ~~M.S.H.~~
11 deputy commissioner of forfeited and delinquent lands, and
12 that suits will be instituted as soon as possible for the bene-
13 fit of the school fund, and furthermore, that any person
14 having the right to redeem any of the lands may do so be-
15 fore the sale by applying to the deputy commissioner whose
16 address shall be given. The form of such a descriptive
17 list shall be determined by the auditor and shall show the
18 certificate number, the name of the party, parties, firms
19 or corporations claiming title to such land at the time it
20 was forfeited or sold to the state, the number of lots or
21 acres, as the case may be; the town city, district, road,

22 street or water⁵ in or on which such real estate is located
23 and the aggregate of the tax, costs and interests necessary
24 to redeem at the time the list of forfeited or delinquent
25 lands is certified to the deputy commissioner of forfeited
26 and delinquent lands. The deputy commissioner shall also
27 post a copy of the notice and list at the front door of the
28 courthouse on the date of the first publication. There
29 shall be allowed and paid out of the operating fund of
30 the land department in the auditor's office the sum of
31 twenty-five cents per item for each insertion in each news-
32 paper.

Sec. 11. *Redemption After Certification and Before*
2 *Sale.*—In order to redeem after certification and before
3 sale, a person having a right of redemption under the
4 provisions of section eight, article three of this chapter,
5 must apply to the deputy commissioner. The deputy
6 commissioner shall thereupon compute the amount re-
7 quired for redemption by adding to the amount stated
8 in the auditor's list as the total due on the date of certifi-
9 cation, interest on such amount at the rate of twelve per
10 cent per annum from such date to the date of redemption,

11 and such of the following fees, charges and costs as may
12 be due: (1) Such fee for the certificate of redemption
13 as is provided by section nine, article three of this chap-
14 ter, for redemption from the auditor, together with an
15 additional fee of one dollar for the deputy commissioner
16 for execution of the certificate. (2) A charge of one
17 dollar for preparation and certification of the list. (3) A
18 fee of one dollar for compensation of the deputy com-
19 missioner, together with such compensation as he may
20 have earned for making an examination of the title, as
21 provided in section fifteen of this article. (4) A charge
22 of one dollar for costs of the proceedings in the circuit
23 court, if redemption is after institution of a suit for the
24 sale of the land. (5) Such costs as may have been in-
25 curred for service of summons by publication, as pro-
26 vided in section eighteen of this article, or for publi-
27 cation of the notice of sale as provided in section thirty
28 of this article.

29 The amount so found to be due shall be entered by
30 the deputy commissioner on a blank order, to be signed
31 by him, directing the sheriff to receive and give his

32 receipt for such amount. The order, thus filled in and
33 signed, shall be presented to the sheriff when payment
34 is made. The auditor shall prescribe the form of the
35 order, and shall furnish copies thereof to each deputy
36 commissioner.

37 Partial redemption, as provided for in sections eight
38 and thirteen, article three of this chapter, shall not be
39 allowed at any time after certification.

40 If redemption of any land is sought after institution
41 of a suit for its sale, and if the pleadings disclose that
42 there are two or more adverse parties claiming owner-
43 ship of such land, the deputy commissioner shall allow
44 redemption only upon order of the court.

Sec. 12. *Certificate of Redemption Issued by Deputy*
2 *Commissioner; Recordation.*—Upon presentation to him
3 of the sheriff's receipt for the amount found to be due
4 under the preceding section, the deputy commissioner
5 shall issue a certificate of redemption in the same form
6 as the auditor's certificate required by section nine, article
7 three of this chapter. All certificates issued by the deputy
8 commissioner in each year shall be numbered consecu-

9 tively. The original certificate shall be sent to the auditor
10 for filing in his office, one copy shall be delivered to the
11 person redeeming, and the other copy shall be delivered
12 by the deputy commissioner to the clerk of the county
13 court who in respect to this certificate shall do every-
14 thing required of him by section nine, article three of
15 this chapter, in respect to the auditor's certificate, and
16 shall also note the fact of redemption on his certified
17 list. If redemption is after institution of a suit for sale
18 of the land, the deputy commissioner shall report the
19 redemption to the clerk of the circuit court who shall
20 note the fact on his certified list.

Sec. 13. *Lien of Person Redeeming Interest of Another;*

2 *Record.*—Any person redeeming an interest of another
3 shall be subrogated to the lien of the state on such
4 interest. He shall lose his right to the lien, however,
5 unless within thirty days after payment he shall file
6 with the clerk of the county court his claim in writing
7 against the owner of such interest, together with a refer-
8 ence by number to the certificate of redemption delivered
9 by the deputy commissioner to the clerk, as provided

10 in the preceding section. The clerk shall docket the
11 claim on the judgment lien docket in his office and proper-
12 ly index the same. Such lien may be enforced as other
13 judgment liens are enforced.

Sec. 14. *Revaluation and Reclassification.*—One re-
2 deeming from the deputy commissioner may request such
3 a revaluation or reclassification as is provided for in sec-
4 tion eleven, article three of this chapter. Any new
5 valuation or reclassification shall, however, be certi-
6 fied by the county court to the deputy commissioner
7 and shall be used by him in computing the taxes due.

Sec. 15. *Preparation of List of Persons Entitled to*
2 *Notice of Suit.*—Upon receipt of the certified list, the
3 deputy commissioners shall as speedily as possible pro-
4 ceed to make an examination of the title of each
5 tract or lot, in order to determine the persons entitled to
6 notice of the institution of suit for the sale of the land
7 and to acquire the information necessary for prepara-
8 tion of the bill as provided in section nineteen of this
9 article. If, however, the deputy commissioner knows or
10 later learns, from his examination of the title, or other-

11 wise, that any tract or lot is owned by a member of the
12 armed services who would be entitled to redeem the land
13 under the provisions of section fifty-two of this article, he
14 shall not proceed any further with the examination of the
15 title and shall not institute a suit for sale of the land. If
16 the fact of such ownership is not discovered until after
17 suit has been instituted, the deputy commissioner shall, as
18 soon as he learns the fact, request the court to enter an
19 order staying the proceedings as to such land until after
20 the expiration of the redemption period provided for in
21 that section.

22 He shall, in respect to each tract or lot, prepare a list
23 of the following persons entitled to notice of the insti-
24 tution of the suit: (1) The person in whose name the
25 real estate was forfeited or was returned delinquent and
26 sold, or, in case of his death, his heirs or devisees and his
27 personal representative, if such there be; (2) every sub-
28 sequent grantee of the land, or his heirs or devisees and
29 his personal representative, if such there be, if the con-
30 veyance under which he claims is recorded or filed for
31 record in the office of the clerk of the county court; (3)

32 every person having a lien upon such real estate dis-
33 closed by any paper recorded in the county clerk's of-
34 fice; and (4) every other person having such an interest
35 in the property as would entitle him to redeem, if the
36 existence of such interest appears of record.

37 He shall, as to each tract or lot, also obtain the in-
38 formation appearing on the record concerning the source
39 of title of the person in whose name the land was for-
40 feited or was returned delinquent and sold, and if it con-
41 tains a description of the land, by reference or otherwise,
42 he shall make a note of the date of the deed or other writ-
43 ing in which the description or reference appears, and of
44 the volume and page of the record on which it is found.

45 For his services in making the examination of the title
46 of each tract or lot, the deputy commissioner shall be en-
47 titled to a fee of ten dollars, plus such additional com-
48 pensation as the auditor may recommend and the court or
49 judge approve, to be paid as hereinafter provided.

Sec. 16. *Suit for Sale of Lands.*—As soon as possible
2 after receipt of the certified list, the deputy commissioner
3 shall, except as otherwise provided in the preceding sec-

4 tion, institute in the circuit court of his county a suit or
5 suits in chancery, in the name of the State of West Vir-
6 ginia, for the sale for benefit of the school fund of all the
7 lands included in the list, except such as may have been
8 redeemed after certification. Except as hereinafter pro-
9 vided, not more than twenty-five items as certified by the
10 auditor shall be included in one suit, and whenever the
11 deputy commissioner deems it advisable, a suit may be
12 instituted in respect to any number less than twenty-five.
13 In the case of forfeited or delinquent undivided interests
14 in a single tract or lot, one suit may be brought for the
15 sale of all such interests regardless of the number in-
16 volved. In a suit for the sale of any escheated lands or of
17 any waste and unappropriated lands, no lands of any
18 other sort shall be included.

Sec. 17. *Parties Defendant; Right to Intervene.*—In any
2 suit for the sale of lands for the benefit of the school fund,
3 the deputy commissioner shall name as parties defendant
4 all persons mentioned in section fifteen of this article as
5 ones entitled to notice of the institution of suit. He shall
6 also make defendants all other persons including the un-

7 known heirs of any deceased former owner, who, ac-
8 cording to his knowledge however acquired, have or
9 claim an interest in any of the land included in the suit.
10 Failure to make any such person a defendant, however,
11 shall in no wise affect the validity of the proceeding in
12 respect to any person who was made a defendant.

13 In the case of escheated or waste and unappropriated
14 lands, the deputy commissioner shall also make parties
15 defendant, in addition to those referred to in the preced-
16 ing paragraph, all unknown claimants of any interest in
17 such lands.

18 In the case of any land which the deputy commissioner
19 has found should not be sold, it shall be necessary for him
20 to name as a party defendant only the former owner, in
21 whose name the real estate was forfeited or was returned
22 delinquent and sold, or, if the land has since been trans-
23 ferred, only the present owner or owners.

24 Any person claiming an interest in any land included
25 in a suit instituted under the provisions of the preceding
26 section may intervene, at any stage of the proceeding, by
27 filing his petition in the suit stating what interest he

28 claims, and thereupon he shall become a party defendant
 29 with the same rights as if he had originally been named a
 30 defendant.

Sec. 18. *Summons; Service.*—In all suits for the sale of
 2 lands as provided in this article, the clerk of the circuit
 3 court shall append to the summons a memorandum con-
 4 taining a list of the lands included in the suit, setting forth
 5 as to each tract or lot its location, and local description, and
 6 the names of such defendants as may be interested therein.

7 The summons in such suits shall be in form and effect
 8 as follows.

9 SUMMONS IN CHANCERY

10 STATE OF WEST VIRGINIA:

11 To the Sheriff of _____ County, Greeting:

12 You are hereby commanded to notify.....

13

14 (Here list all defendants in the suit.)

15

16

17 that the State of West Virginia has instituted a suit for the
 18 sale, for benefit of the school fund, of the lands listed in the

19 appended memorandum, and you are further commanded
 20 to summon each of the persons named above, if he be found
 21 in your bailiwick, to appear before the judge of the circuit
 22 court for County, at rules to be held in the clerk's
 23 office of such court on the first Monday in.....next, to
 24 answer the bill in chancery of the state of West Virginia,
 25 exhibited therein against him, and show cause, if any there
 26 be, why a decree should not be entered for the sale of the
 27 land or lands in respect to which, in the appended memo-
 28 randum, he is named as an interested party, and have then
 29 and there this writ.

30 WITNESS:, Clerk of the circuit court for
 31 County, at the courthouse thereof, on this the.....
 32 day of....., 19...., and in the year of the state.
 33, Clerk
 34 By....., Deputy.

MEMORANDUM

36 Lands Included in Suit	Parties Interested in
37 Location and Local Description	Each Tract or Lot
38 1.
39 2.

40 (etc.)

41 The summons and memorandum shall be personally
42 served on those defendants who are found or reside in the
43 state, and shall be served on all other defendants, by pub-
44 lication once a week for three successive weeks, as in
45 other suits in chancery. In such published summons,
46 however, only those defendants not served personally
47 shall be named, and in the published memorandum shall
48 be listed only those tracts or lots in which such defendants
49 are interested. The published summons shall, however,
50 refer to the style of the case, as, State of West Virginia v.
51 A. B., *et al.*

52 The cost of such publication shall not, for each in-
53 sertion, exceed the total of the following amounts: (1)
54 Five cents for each defendant served by publication; (2),
55 twenty-five cents for each tract or lot listed in the pub-
56 lished memorandum; and (3) five cents for each defend-
57 ant named as a party interested in the listed tracts or lots.
58 Such publication charges in respect to each tract or lot
59 shall be taxed to the state as part of its costs in the suit
60 and shall be paid as hereinafter provided.

Sec. 19. *Averments and Prayer of Bill.*—In all suits for
2 the sale of lands as provided in this article, the bill shall,
3 except as hereinafter provided, contain an averment that
4 each tract or lot included in the suit is, as certified to the
5 court by the auditor, subject to sale for the benefit of the
6 school fund. The bill shall also contain a list of the lands
7 included in the suit, setting forth as to each piece of land
8 the total amount due including all fees or compensation
9 earned by the deputy commissioner, and indicating
10 whether the land is forfeited, delinquent, escheated or
11 waste and unappropriated, its certification number, loca-
12 tion and general description, the name of the former
13 owner, if any, and in the case of forfeited or delinquent
14 land, the year of forfeiture or sale to the state. Whenever
15 possible the bill shall as to each item, by reference to
16 the former owner's source of title, state that the particular
17 tract or lot is the same land described, by reference or
18 otherwise, in the deed or other writing dated,
19 and recorded on page, volume, of the records
20 in the county clerk's office.
21 If the deputy commissioner has found that any land

22 included in the suit is not subject to sale, the bill shall
23 state the fact and the reasons for the deputy commis-
24 sioner's conclusion. In such case, the prayer of the bill
25 shall be that the court enter an order dismissing the suit
26 in respect to such land. In respect to all other tracts or
27 lots mentioned in the bill, the prayer shall be that the
28 court enter a decree ordering the sale of each such tract
29 or lot.

Sec. 20. *Procedure; Extent to Which Defendant Is*
2 *Bound by Order or Decree.*—Except as otherwise speci-
3 fically provided, all suits instituted under the provisions
4 of this article shall in all respects be commenced, pro-
5 ceeded in, heard and determined in like manner as other
6 suits in chancery.

7 A defendant in a suit brought under the provisions of
8 this article shall be bound by the orders or decrees en-
9 tered therein only in so far as they concern the particular
10 land in respect to which he was named in the bill as an
11 interested party.

Sec. 21. *Certified List Made Exhibit and Part of Bill.*—
2 The list of lands certified to the circuit court by the

3 auditor shall be considered to be an exhibit, and a part
4 of the bill, in every suit for the sale of any lands included
5 therein. Such list shall be prima facie evidence of every-
6 thing required by section nine of this article to be stated
7 concerning each item, including the propriety of the
8 description of any land as forfeited, delinquent, escheated
9 or waste and unappropriated.

Sec. 22. *Separate Order Book to Be Kept by Clerk;*

2 *Costs.*—All orders or decrees made by the court in respect
3 to proceedings for the sale of lands under this article
4 shall be entered by the clerk of the court in a separate
5 chancery order books, to be labeled “Chancery Order Book
6 for Sales of Lands for School Fund.” Every order shall
7 specify the certification number of each item to which
8 the order is applicable. The clerk of the court shall index
9 the order book by certification number and name of
10 former owner of each tract.

11 The court costs shall be one dollar for each tract or lot
12 included in the suit, which amount shall be taxed to the
13 state as part of its costs and shall be paid as hereinafter

14 provided. Unless otherwise expressly provided by this
15 article, no additional court costs shall be taxed.

Sec. 23. *Decree by Default.*—Under any of the circum-
2 stances mentioned in section forty-nine, article four,
3 chapter fifty-six of this code, a decree by default may be
4 entered, in a suit for the sale of land under the provisions
5 of this article, against any defendant who was properly
6 served with process, either personally or by publication.

Sec. 24. *Application for Reduction of Amount Due.*—
2 Any person substantially interested, who claims that the
3 amount rightfully due on any item is less than the amount
4 charged against it on the certified list, may, unless the
5 decree for sale has become final as to him, apply to the
6 circuit court at any time before the sale for an order
7 reducing such amount. The deputy commissioner may
8 also apply for such an order whenever, because of a re-
9 valuation under section fourteen of this article, or for any
10 other reason, he is satisfied that the amount should be
11 reduced.

Sec. 25. *Application for Dismissal of Suit.*—Any person
2 substantially interested may, unless the decree for sale

3 has become final as to him, apply to the circuit court at
4 any time before the sale for an order dismissing the suit
5 for the sale of any land as to which he makes one or more
6 of the following claims: (1) That all taxes due thereon
7 were paid before sale to the state. (2) That the land was
8 redeemed after sale to the state. (3) That the land has
9 not escheated. (4) That the land has not been forfeited
10 for nonentry. (5) That the land was sold to him at a former
11 circuit court sale for the benefit of the school fund and
12 has not thereafter been sold to the state for nonpayment
13 of taxes nor forfeited for nonentry. (6) That he has ac-
14 quired title to the land by transfer under the provisions
15 of section three, article thirteen of the constitution. The
16 application shall state briefly the facts on which the claim
17 is based. The deputy commissioner may also apply for
18 such an order whenever on any of these grounds he is
19 satisfied that the land should not be sold.

Sec. 26. *Procedure upon Application for Reduction or*
2 *Dismissal; Order of Reference.*—Whenever application
3 under either of the two preceding sections is made by the
4 deputy commissioner, he shall state briefly the reasons

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5 his application, and the court, if satisfied therewith, shall
6 enter the order applied for, together with such other
7 orders mentioned in section twenty-eight of this article
8 as may in the opinion of the court be appropriate. No costs
9 shall be taxed in connection with applications by the
10 deputy commissioner.

11 Whenever such an application is made by a person
12 substantially interested, the court shall make a decree of
13 reference as to the land involved, directing a commis-
14 sioner in chancery to ascertain the facts and report to the
15 court concerning the matter in dispute, unless the court,
16 by reason of the fact that the right claimed by the appli-
17 cant is clearly established, or for any other reason, is of
18 the opinion that a decree of reference need not be
19 made as to such land. The costs in connection with an
20 application by an interested party and those in connection
21 with the reference to a commissioner in chancery, if a
22 reference was made, shall be taxed to the applicant.

Sec. 27. *Execution of Reference; Report.*—Before pro-
2 ceeding to discharge his duties under the decree of refer-
3 ence, the commissioner in chancery shall give at least

4 ten days' notice in writing to all interested parties of
5 record, who have appeared in the suit and who are named
6 as defendants in respect to any of the lands included in
7 the reference, of the time and place at which he will so
8 proceed. Like notice shall be given to the deputy com-
9 missioner who shall attend as representative of the state.

10 As soon after the hearing as may be practicable, the
11 commissioner in chancery shall prepare and file his report
13 with the court, and may do so as to one or more of the
14 tracts or lots mentioned in the decree of reference, with-
15 out waiting to complete his report as to all of them.

Sec. 28. Orders When Applicant's Claim Upheld.—

2 Whenever, on the basis of the report of the commissioner
3 in chancery, or otherwise, the court shall find that the
4 applicant has established the claim made by him, it shall,
5 in the case of an application under section twenty-four
6 of this article, determine the amount properly due, and
7 enter an order that upon payment of this amount the
8 applicant shall be entitled to a certificate of redemption;
9 and in the case of an application under section twenty-
10 five of this article, the court shall enter an order dis-

11 missing the suit as to the land or interest claimed.

Sec. 29. *Decree of Sale.*—Whenever, in respect to any
2 tract or lot included in a suit for the sale of lands for
3 the school fund, the court, either because none of the
4 defendants interested in the tract or lot has appeared in
5 the suit or because such of them as did appear failed to
6 overcome the burden of proof resting on the state to
7 prove by a preponderance of the evidence that the land
8 is subject to sale, shall find as alleged in the bill that the
9 tract or lot is subject to sale for the benefit of the school
10 fund, it may enter a decree ordering that such tract or lot
11 be sold by the deputy commissioner at public auction to
12 the highest bidder. In every such decree the court shall fix
13 the time and place of the sale.

14 The court may order the sale of any one or more of the
15 tracts or lots mentioned in the bill, without waiting for
16 the termination of the suit as to other lands included
17 therein. It may also order that lands included in several
18 suits be sold at the same sale.

Sec. 30. *Notice of Sale.*—In order to encourage attend-
2 ance and bidding at the sale, the deputy commissioner

3 shall, beginning at least fifteen days before the day on
4 which the court has ordered that any lands be sold, pub-
5 lish once a week for two successive weeks a list of all
6 such lands in two newspapers of opposite politics, if
7 such there be in the county. At the head of the list there
8 shall be a notice of the sale in form or effect as follows:

9 Notice is hereby given that, pursuant to the order of
10 the Circuit Court of _____ County, the following
11 described tracts or lots of land, or undivided interests
12 therein, will unless sooner redeemed be sold for cash to
13 the highest bidder at public auction at (*insert place of*
14 *sale fixed by court*), beginning at ten o'clock in the morn-
15 ing on the ____ day of _____, 19.....

16 The list shall set forth as to each tract or lot its quan-
17 tity, local description and, except in the case of waste and
18 unappropriated lands, the name of the former owner,
19 and shall also specify the total amount of taxes, interest,
20 charges and costs due.

21 The cost of such publication, not to exceed twenty-five
22 cents per item for each insertion in each newspaper, shall

23 be taxed to the state as part of its costs in the suit and
24 shall be paid as hereinafter provided.

Sec. 31. *Sale by Deputy Commissioner; Receipt for
2 Purchase Price; Report to Circuit Court.*—On the day fixed
3 by order of the court the deputy commissioner shall sell,
4 in the manner specified in the notice of sale, each un-
5 redeemed item included in the published list of lands to
6 be sold. If the sale is not completed on that day, it shall
7 be continued from day to day until all the land has been
8 offered for sale. If in respect to any land no bid is made,
9 the deputy commissioner shall report that fact to the court,
10 and the court may order that such land be sold at a
11 subsequent sale.

12 For the purpose of receiving the proceeds of the sale,
13 it shall be the duty of the sheriff or one of his deputies to
14 attend all such sales conducted by the deputy commis-
15 sioner in his county. The sheriff or deputy shall issue to
16 the purchaser of each tract or lot a receipt for the pur-
17 chase money. The auditor may prescribe the form of
18 the receipt.

19 The deputy commissioner shall prepare a report for the

20 circuit court which shall show what was done with respect
21 to all lands ordered to be sold. The report shall state as
22 to each item whether it was redeemed before sale or was
23 sold, and if sold, the name of the purchaser and the
24 amount of his bid. The report shall, within ten days after
25 the sale, be filed with the clerk of the circuit court, who
26 shall note on his certified list the information given with
27 respect to each tract.

Sec. 32. *Return of Purchase Money.*—Whenever, after
2 sale and before confirmation thereof, it is discovered that
3 the land sold was nonexistent or that it had been the
4 subject of a duplicate or improper assessment or was
5 transferred to others under the provisions of article thir-
6 teen of the constitution of the State of West Virginia, the
7 purchaser shall be entitled to a return of the purchase
8 money. Upon request of a purchaser so entitled, it shall
9 be the duty of the deputy commissioner to apply to the
10 circuit court for an order directing the sheriff to return
11 the purchase money. If satisfied that the application is
12 proper, the court shall enter the order applied for, but
13 no costs shall be taxed in connection with such an appli-

14 cation. Upon entry of such an order, the clerk of the
15 court shall notify the assessor, who shall make the neces-
16 sary corrections in the land books in his office.

Sec. 33. *Co-owner Free to Purchase at Sale.*—Any co-
2 owner, except a coparcener, in the absence of satisfactory
3 proof of a fiduciary relationship, shall be entitled to pur-
4 chase at the sale for his own account the interest of any,
5 or all, of his co-owners in any real estate, without being
6 required to hold such interest or interests under a con-
7 structive trust. There shall be a prima facie presumption
8 against the existence of any such constructive trust.

Sec. 34. *Purchase by Former Owner or by Deputy*
2 *Commissioner and Other Officers Prohibited.*—It shall be
3 illegal for a former owner, in whose name any real estate
4 was forfeited or was sold to the state, his heirs or assigns,
5 to purchase such real estate at the sale, or to be indirectly
6 interested in its purchase. No deputy commissioner,
7 sheriff, clerk of the county or circuit court, assessor, nor
8 deputy of either shall directly or indirectly become the
9 purchaser, or be interested in the purchase of any real
10 estate at the sale. Any such person or officer so purchas-

11 ing shall for each offense forfeit one hundred dollars, to
12 be collected as other forfeitures are collected. The sale
13 of any real estate to one of the persons or officers named
14 in this section shall be voidable, at the instance of any
15 person having the right to redeem, until such real estate
16 reaches the hands of a bona fide purchaser.

Sec. 35. *Right of Former Owner to Surplus Proceeds.*—

2 If upon the sale of any forfeited or delinquent lands a
3 surplus is realized over and above the total amount due
4 on such land, the sheriff shall pay such surplus to the
5 general receiver of the circuit court. The former owner
6 of such land, his heirs or assigns, shall be entitled to the
7 surplus upon application to the circuit court, if appli-
8 cation is made within two years after the sale. If no
9 application is made within two years the general receiver
10 shall pay such surplus into the operating fund for the
11 land department in the auditor's office.

Sec. 36. *Right of Creditor of Former Owner of Es-*

2 *cheated Land.* Upon application to the court within a
3 year after the sale, any surplus proceeds arising from
4 the sale of escheated land, after all publication and other

5 charges or costs in respect thereto have been paid, may
6 be applied to the satisfaction of the claims of creditors of
7 the decedent who had a lien on the land at the time of his
8 death, or who, being general creditors, have properly
9 proved their claims against his estate and have been
10 unable to obtain payment out of the personalty. In the
11 disposition of any such surplus, due preference shall be
12 given to lien creditors over general creditors.

Sec. 37. *Redemption After Sale and Before Confirmation.*—
2 *tion.*—After the sale of any forfeited or delinquent land,
3 any person having a right of redemption under the pro-
4 visions of section eight, article three of this chapter, may
5 redeem such land at any time before confirmation of the
6 sale by complying with the provisions of this section.
7 He must first pay to the purchaser, his heirs or assigns,
8 the amount of purchase money, with interest at the rate
9 of twelve per cent per annum from the date of sale. The
10 person redeeming shall be given an itemized receipt for
11 the payment. If the purchaser, his heirs or assigns, shall
12 refuse or fail to sign and give such a receipt when law-
13 fully required to do so, he or they shall pay to the person

14 redeeming twice the amount of such payment, which may
15 be recovered by action on the case in any court of compe-
16 tent jurisdiction.

17 After obtaining the itemized receipt, the person re-
18 deeming shall present it to the deputy commissioner who
19 shall then calculate the additional amount required for
20 redemption. If the land was sold for as much or more
21 than the total amount of taxes, interest, charges and costs
22 due thereon, the additional amount required for re-
23 demption shall be only the fee for the certificate of
24 redemption, together with the fee of one dollar for exe-
25 cution of the certificate. If the land was sold for less than
26 the amount due, the additional amount required for
27 redemption shall be the difference between the purchase
28 price at the sale and the amount then due, with interest
29 at the rate of twelve per cent per annum from the date
30 of sale, plus the fees mentioned above.

31 After the deputy commissioner has determined the
32 amount required for redemption he shall prepare such
33 an order as is provided for in section eleven of this article,
34 directing the sheriff to receive and give his receipt for the

35 payment. Upon presentation to him of the sheriff's re-
36 ceipt for the amount due, the deputy commissioner shall
37 issue a certificate of redemption as required by section
38 twelve of this article, and shall comply with all other
39 provisions of that section in respect to such certificate.

Sec. 38. *Lien of Person Redeeming Interest of Another;*

2 *Record.*—Any person who, by reason of the fact that no
3 provision is made for partial redemption from the circuit
4 court sale, is compelled in order to protect himself to
5 redeem all of any real estate which belonged in whole or
6 in part to some other person, shall have a lien on the in-
7 terest of such other person for the amount paid to redeem
8 such interest. He shall lose his right to the lien, how-
9 ever, unless within thirty days after payment he shall file
10 with the clerk of the county court his claim in writing
11 against the owner of such interest, together with the re-
12 ceipt provided for in the following section, or with a
13 reference by number to the certificate of redemption.
14 The clerk shall docket the claim on the judgment lien
15 docket in his office and properly index the same. Such
16 lien may be enforced as other judgment liens are enforced.

Sec. 39. *Payment of Redemption Money to Clerk of*
2 *Circuit Court.*—Whenever the deputy commissioner or
3 the purchaser, his heirs or assigns, shall refuse to allow
4 redemption, or cannot be found, payment of the amount
5 required for redemption may be made to the clerk of the
6 circuit court at any time before confirmation of the sale.
7 The clerk shall issue duplicate receipts, note the fact of
8 redemption on his certified list, and report the redemption
9 to the deputy commissioner. One of the receipts shall be
10 given to the person redeeming and the other shall be sent
11 by the clerk to the clerk of the county court, who, after
12 noting the fact of redemption on his record of delinquent
13 lands, shall file and preserve the receipt in his office.

Sec. 40. *Contest of Redemption by Payment to Clerk.*—If
2 the deputy commissioner or the purchaser, his heirs or
3 assigns, dispute the right to redeem of the person making
4 payment to the clerk as provided in the preceding section,
5 he or they may, within one year after payment to the
6 clerk, give to such person, or to his heirs, or personal rep-
7 resentative, notice in writing of such dispute, requiring
8 him or them to appear before the circuit court of the

9 county, on a day to be named in the notice, and prove that
10 the person who made the payment had a right to redeem.
11 Such notice shall be served at least ten days before the
12 day on which it is returnable, and if the party served
13 fails to appear, or if he appears and fails to prove the
14 right to redeem, the court shall enter an order canceling
15 the redemption. The court shall also order the clerk of
16 the court to return the redemption money to the person
17 who made the payment, or to his personal representative.
18 If, however, the decision of the court be that such person
19 had the right to redeem, the clerk shall be ordered to pay
20 the money to the purchaser, his heirs or assigns, or to the
21 sheriff, as the case may be, and shall order the deputy
22 commissioner to execute a certificate of redemption as re-
23 quired by section thirty-seven of this article.

Sec. 41. *Contest When Claim Is Made That Payment*
2 *Was Insufficient.*—If the deputy commissioner or the pur-
3 chaser, his heirs or assigns, admit the right to redeem but
4 claim that the sum paid the clerk was insufficient, he or
5 they may, upon such notice as is required by the preced-
6 ing section, have the sufficiency of the payment deter-

7 mined by the court. If the person served fails to appear,
8 or if the decision is that the sum paid was insufficient, the
9 court shall, unless such additional amount as may be
10 found to be due is paid within thirty days, enter an order
11 canceling the redemption, and shall also enter such fur-
12 ther appropriate orders as are authorized to be entered
13 under the preceding section. If the sum is found to have
14 been sufficient, the court shall make such orders as are
15 appropriate when the right to redeem is sustained under
16 the preceding section.

Sec. 42. *Proceeding to Set Aside Sale.*—Any person en-
2 titled under the provisions of section twenty-five of this
3 article to apply for an order dismissing the suit for the
4 sale of any land, but who did not learn of the suit in time
5 to protect himself by making such application, may, at
6 any time after the sale and before confirmation thereof,
7 institute a proceeding under this section to set aside the
8 sale. Notice in writing of the institution of such proceed-
9 ing shall be given to the purchaser, his heirs or assigns.
10 The notice shall state the facts which are the basis of the
11 claimed right to have the sale set aside, shall require the

12 person served to appear before the circuit court, on a day
13 to be named in the notice, and protect whatever rights
14 were acquired at the sale, and shall be served at least
15 ten days before the day on which it is returnable.

16 If the decision be in favor of the claimant, the court
17 shall enter an order setting aside the sale, and directing
18 the sheriff to return the purchase money to the purchaser,
19 his heirs or assigns. Until a decision has been made, the
20 sale may not be confirmed.

Sec. 43. *Confirmation of Sale; Right to Redeem Terminated.*—As soon as possible after the report of the sale
2 has been filed with the clerk of the circuit court as pro-
3 vided in section thirty-one of this article, the deputy com-
4 missioner shall apply to the court for an order confirming
5 the sale of each tract or lot sold. If satisfied that the pur-
6 chase price was as high as might reasonably be expected,
7 the court shall enter an order confirming the sale and
8 directing the deputy commissioner to execute and deliver
9 to the purchaser, or to his heirs or assigns, a deed as pro-
10 vided in the following section. If, however, the court
11 shall be of the opinion that the purchase price was too
12

13 low, it shall refuse to confirm the sale and shall enter
14 an order directing the deputy commissioner to sell the
15 land again at his next sale and directing the sheriff to
16 return the purchase money to the purchaser, his heirs or
17 assigns. If in any case the court shall be in doubt as to
18 the sufficiency of the purchase price, it may direct the
19 deputy commissioner to confer with the county court, as
20 the board of review and equalization, or with the as-
21 sessor, or both, concerning the present true and actual
22 value of the land, and to report their estimate of such
23 value to the court.

24 Upon confirmation of the sale all right of redemption
25 in respect to the land shall be terminated, except such as
26 is expressly saved by the provisions of section fifty-one of
27 this article for persons under disability, or by the pro-
28 visions of section fifty-two of this article for persons in the
29 armed services.

Sec. 44. *Deed to Purchaser; Record.*—Whenever or-
2 dered to do so as provided in the preceding section, the
3 deputy commissioner shall make and deliver to the person
4 entitled thereto a deed in form or effect as follows:

5 This deed made this day of, 19....,
6 by and between, deputy commis-
7 sioner of forfeited and delinquent lands for
8 County, West Virginia, acting for and on behalf of the
9 State of West Virginia, grantor, and,
10 purchaser, (or....., heir, devisee or as-
11 signee of, purchaser,) grantee, wit-
12 nesseseth that

13 Whereas, In pursuance of the statutes in such case made
14 and provided, the above named deputy commissioner did,
15 by order of the Circuit Court of County,
16 in the month of, in the year 19...., sell the
17 real estate, hereinafter mentioned and described, for the
18 benefit of the school fund, and,
19 (here insert name of purchaser) for the sum of \$.....,
20 that being the amount of purchase money paid, did be-
21 come the purchaser of such real estate (or of an un-
22 divided interest in such real estate) which was
23 sold to the state for nonpayment of taxes in the name
24 of; (or which was forfeited to
25 the state for nonentry in the name of.....;

26 or which escheated to the state in the name of _____;
27 or which was waste and unappropriated land belonging
28 to the state;) and

29 Whereas, The real estate so purchased has not been re-
30 deemed in the manner prescribed by law, and the time
31 for redemption has expired; and

32 Whereas, By an order entered on the _____ day of
33 _____, 19_____, in the case of State of West
34 Virginia v. (A. B., *et al.*), the Circuit Court of _____
35 County has confirmed the sale and has ordered that this
36 deed be executed;

37 Now, therefore, the grantor, for and in consideration of
38 the premises and in pursuance of the statute, doth grant
39 and convey unto _____, grantee, his
40 heirs and assigns forever, the real estate so purchased,
41 situate in the county of _____, bounded
42 and described as follows: _____
43 _____

44 Witness the following signature:

45 _____

46 Deputy Commissioner of Forfeited and
47 Delinquent Lands for _____ County

48 After execution and acknowledgment of the deed, the
49 deputy commissioner shall ascertain from the clerk of the
50 county court the total amount of the transfer fee, the fee
51 for recording the deed, and if the grantee was an assignee
52 of the purchaser, the fee for recording the assignment, and
53 shall notify the grantee to pay such amount to the clerk
54 of the county court. Upon such payment and upon pay-
55 ment by the grantee to the deputy commissioner of a fee
56 of five dollars as his compensation for preparing and
57 executing the deed, the deputy commissioner shall have
58 the deed and the assignment, if any, recorded by the
59 clerk of the county court before delivery of the deed
60 to the grantee. The purchaser shall have the right to
61 examine the deed before it is recorded.

62 The clerk of the county court shall index the deed in
63 the grantor's index under the name of the former owner
64 mentioned in the deed as well as under the name "State
65 of West Virginia."

Sec. 45. *Title Acquired.*—Whenever, under the pro-
2 visions of this article, a purchaser, his heirs or assigns,

3 shall have obtained a deed for any real estate from the
4 deputy commissioner, he or they shall thereby acquire
5 all such right, title and interest, in and to the real estate,
6 as was, at the time of the execution and delivery of the
7 deed, vested in or held by the state or by any person who
8 was entitled to redeem, unless such person is one who,
9 being required by law to have his interest separately as-
10 sessed and taxed, has done so and has paid all the taxes
11 due thereon, or unless the rights of such person are ex-
12 pressly saved by the provisions of sections thirty-four,
13 forty-seven, forty-eight, forty-nine, fifty-one or fifty-two
14 of this article. The deed shall be conclusive evidence of
15 the acquisition of such title. The title so acquired shall
16 relate back to the date of the sale.

Sec. 46. *Effect of Irregularity on Title Acquired.*—No
2 irregularity, error or mistake in respect to any step in the
3 procedure leading up to and including confirmation of
4 the sale or delivery of the deed shall invalidate the title
5 acquired unless such irregularity, error or mistake is, by
6 the provisions of sections thirty-four, forty-seven, forty-
7 eight or forty-nine of this article, expressly made ground

8 for instituting a suit to set aside the sale or the deed. This
9 and the preceding section are enacted in furtherance of
10 the purpose and policy set forth in section one, article
11 three of this chapter.

Sec. 47. *Right to Set Aside Sale or Deed When Land*
2 *Was Not Subject to Sale.*—Any person entitled under
3 provisions of section twenty-five of this article to apply
4 for an order dismissing the suit for the sale of any land,
5 and not named in section fifteen of this article as one
6 entitled to notice of the institution of the suit, who did
7 not have actual knowledge of the proposed sale in time
8 to protect himself under the provisions of section twenty-
9 five or of section forty-two of this article, may, on or
10 before the expiration of one year after confirmation of
11 the sale, institute a suit in equity to set aside the sale
12 or the deed. If such suit is instituted by or on behalf
13 of the owner of an undivided interest which was included
14 in a group assessment but which was separately redeemed
15 before certification, the sale or the deed shall be set
16 aside only in so far as it affects his interest.

Sec. 48. *Right to Set Aside Deed Improperly Obtained.*

2 —Whenever the deputy commissioner has delivered a
3 deed to a purchaser who was not entitled thereto because
4 the property conveyed had been redeemed, the former
5 owner of such property, his heirs or assigns, or the
6 person who redeemed the property may, on or before
7 the expiration of one year after confirmation of the sale,
8 institute a suit in equity to set aside the deed.

Sec. 49. *Right to Set Aside Sale or Deed When One*
2 *Entitled to Notice Not Notified.*—If any person entitled to
3 be notified under the provisions of section fifteen of this
4 article is not given notice of the institution of the suit
5 and does not have actual knowledge thereof in time to
6 protect his interests by redeeming the property or by
7 instituting proceedings under section forty-two of this
8 article to set aside the sale, he, his heirs or assigns, may,
9 on or before the expiration of one year after confirmation
10 of the sale, institute a suit in equity to set aside the sale
11 or the deed. No sale or deed shall be set aside under the
12 provisions of this section until payment has been made
13 or tendered to the purchaser, his heirs or assigns, and to

14 the deputy commissioner if necessary, of the amount
15 which would have been required for redemption, to-
16 gether with any taxes which have been paid or are
17 chargeable on the property since the sale, with interest
18 at the rate of twelve per cent per annum.

Sec. 50. *On Whose Behalf Suits Instituted; Decree When
2 Sale or Deed Set Aside.*—Any suit instituted under the
3 provisions of either of the three preceding sections by a
4 person other than the owner, or the former owner, his
5 heirs or assigns, must be brought on his or their behalf.
6 Whenever the sale or deed in such case is set aside the
7 decree shall be either that all the right, title and interest
8 held or claimed by the state prior to the sale to the extent
9 that title is proved to be in the person named as owner,
10 is vested in such person, or that all the right, title and
11 interest of the former owner, his heirs or assigns, is re-
12 vested in him or them.

Sec. 51. *Redemption by Persons Under Disability.*—In
2 addition to and notwithstanding any other provision of
3 this article, any infant or insane person, the former owner
4 of any forfeited or delinquent land which during such

5 disability was sold as provided in this article, may redeem
6 such land from the purchaser, his heirs or assigns, at any
7 time before the expiration of one year after removal of
8 the disability, but in no event more than twenty years
9 after the sale was confirmed, by paying such an amount
10 as is required for redemption under the provisions of
11 section thirty-five, article three of this chapter.

12 As an alternative to the right of redemption provided
13 by this section, such infant or insane person may elect
14 to redeem forfeited land as provided in section six, article
15 thirteen of the constitution.

Sec. 52. Redemption by Members of Armed Services.

2 —In addition to and notwithstanding any other provision
3 of this article, any member of any branch of the armed
4 services of the United States, who was the person in whose
5 name any land was forfeited, or was sold to the state for
6 nonpayment of taxes, or who is the heir or devisee of
7 such person, may redeem the land at any time before
8 the expiration of one year after his or her discharge from
9 the armed services, but in no event more than one year
10 after the termination of the present war or after his or her

11 final return to the territorial limits of the United States,
12 which ever is later. In order to redeem, such person must
13 pay to the purchaser, if any, the amount of the purchase
14 money or the taxes due, which ever is smaller, with
15 interest at the rate of six per cent per annum to the date
16 of redemption, and to the sheriff such additional amount,
17 if any, to be calculated by the deputy commissioner, as
18 would have been necessary to discharge the taxes, inter-
19 est and charges, if any, due on the land on the day he or
20 she became a member of the armed forces, with interest
21 at the rate of six per cent per annum to the date of re-
22 demption, together with any other taxes that have since
23 become due or chargeable thereon, with interest at the
24 rate of six per cent per annum to the date of redemption.
25 If redemption is sought by any such person before
26 certification of the land, he shall pay to the auditor only
27 such an amount as is required by this section, rather than
28 the amount required by section eight, article three of
29 this chapter.

Sec. 53. *Annual Report of Deputy Commissioner to*
2 *Auditor.*—In December of each year the deputy com-

3 missioner shall prepare a report, on forms to be furnished
4 by the auditor, showing the present status of, and all
5 steps which have been taken in the proceeding in respect
6 to, each item certified to the circuit court of his county
7 before the first day of the preceding July, unless the
8 final disposition of such item is shown in a former annual
9 report. Such report shall be prepared in quintuplet. On
10 or before the last day of December the original shall be
11 sent to the auditor, one copy to the clerk of the county
12 court, and one copy to the clerk of the circuit court, each
13 of whom shall make the necessary notations on his certi-
14 fied list. The fourth copy shall be sent to the assessor,
15 who shall make the necessary changes in his land books.
16 For failure to make the report required by this section,
17 the deputy commissioner shall forfeit one hundred dollars.

Sec. 54. Sheriff to Keep Proceeds in Separate Accounts;

2 *Disposition.*—The sheriff shall keep in a separate fund the
3 proceeds of all redemptions and sales paid to him under
4 the provisions of this article. He shall keep separate
5 accounts of the proceeds of redemptions before institu-

6 tion of suit and the proceeds of sales and redemptions
7 after institution of suit.

8 The proceeds of redemptions before institution of suit
9 shall in respect to each tract or lot be credited as follows,
10 for payment as hereinafter provided: (1) To the deputy
11 commissioner, such part as represents fees and other
12 compensation due him. (2) To the auditor, such part as
13 represents state taxes with interest, the redemption fee,
14 and all charges which were paid by or which are payable
15 to the auditor. (3) To the fund kept by the sheriff for each
16 local taxing unit, such part as represents taxes, interest
17 and charges payable to such unit.

18 In respect to the proceeds of sales and redemptions
19 after institution of suit, the sheriff shall keep a separate
20 account as to all tracts or lots included in each suit. Out
21 of the total proceeds of sales and redemptions of the lands
22 included in a particular suit, the sheriff shall first ear-
23 mark an amount sufficient to pay all court costs taxed to
24 the state and all charges or fees due in respect to any tract
25 or lot included in the suit. If the total is insufficient for
26 this purpose, the sheriff shall on a pro rata basis divide

27 the proceeds among the various charges and costs. The
28 amount so set aside for charges and costs shall be credited
29 as follows, for payment as hereinafter provided: (1) To
30 the clerk of the circuit court, such part as represents court
31 costs. (2) To the deputy commissioner, such part as
32 represents fees or compensation due him. (3) To the
33 auditor, such part as represents redemption fees, and
34 all charges which were paid by or which are payable to
35 him. (4) To the general county fund, such part as repre-
36 sents charges paid out of such fund or payable to it.

37 The balance, if any, of the proceeds of the lands in-
38 cluded in the suit shall be prorated among the various
39 taxing units on the basis of the total amount of taxes
40 due them in respect to the lands that were sold or re-
41 deemed, and shall be credited as follows, for payment as
42 hereinafter provided (1) To the auditor, such part as
43 represents state taxes and interest, and the surplus pro-
44 ceeds of the sale of any escheated or waste and unappro-
45 priated lands. (2) To the fund kept by the sheriff for
46 each local taxing unit, such part as represents taxes,
47 interest and charges payable to such unit.

48 The amounts so credited by the sheriff to the deputy
49 commissioner shall be paid to him quarterly; those
50 credited to the clerk of the circuit court shall be paid to
51 him quarterly; those credited to the auditor shall be
52 paid to him semi-annually; and those credited to the
53 various local taxing units shall, be transferred semi-
54 annually by the sheriff to the fund kept by him for each
55 such taxing unit.

56 The tax commissioner, in cooperation with the land
57 department in the auditor's office, shall prescribe the
58 form of the records to be kept by the sheriff for the pur-
59 poses of this section, and the method to be used by him
60 in making the necessary pro rata distributions.

Sec. 55. *Disposition of Pending Suits; Former Sales*

2 *Confirmed.*—All suits now pending in any circuit court
3 for the sale of lands for the benefit of the school fund
4 shall be and are hereby discontinued and dismissed. Any
5 circuit court in which such a suit is pending shall make all
6 necessary orders for such discontinuance and dismissal.

7 All sales and conveyances made in any former circuit
8 court suits for the sale of lands for the benefit of the

9 school fund are hereby confirmed. Whatever right, title
10 or interest the state had in any land so sold, shall be
11 deemed to have vested in the purchaser or grantee there-
12 of. Notwithstanding any irregularity, error or mistake
13 in such suit or in the tax enforcement proceedings prior
14 thereto, such title shall not hereafter be subject to at-
15 tack. This paragraph is enacted in furtherance of the
16 purpose and policy set forth in section one, article three
17 of this chapter.

Sec. 56. *Liability of Officer Failing to Perform Duty;*
2 *Penalty.*—If the deputy commissioner or any other of-
3 ficer mentioned in this article shall fail or refuse to per-
4 form any duty required of him, he and the sureties on his
5 official bond shall be liable in an action on the bond for
6 such damages as may be sustained by any person by
7 reason of such failure. In addition to this liability, he
8 shall forfeit not less than twenty-five nor more than one
9 hundred dollars for each such failure or refusal, unless a
10 different penalty is imposed by the provisions of this
11 article.

Sec. 57. *Release of Taxes and Interest.*—In view of the

2 great uncertainty and confusion existing in the auditor's
3 records of delinquent lands for the years prior to one
4 thousand nine hundred thirty-six, due to the insufficient
5 and inadequate reports by former school land commis-
6 sioners, and the unconstitutionality of the legal status of
7 delinquent or forfeited undivided interests, the Legis-
8 lature finds that it will be impossible to provide a speedy
9 method for disposing of delinquent and forfeited lands
10 and for conveying to the purchasers of such lands a secure
11 title, unless some action is taken to prevent the certifica-
12 tion and sale of lands which were formerly redeemed from
13 or were sold by such commissioners, but which appear on
14 the auditor's records, as unsold and unredeemed. Where-
15 fore it is the purpose and intent of the Legislature to release
16 all taxes, interest and charges that may be due on any real
17 estate in this state for the assessment year one thousand
18 nine hundred thirty-five and for all years prior thereto, and
19 all such taxes, interest and charges are hereby declared
20 to be fully paid. If all the taxes due on any land for the
21 assessment year one thousand nine hundred thirty-six
22 and for all years subsequent thereto have been paid, all

23 title to any such land theretofore acquired by the state
24 shall be and is hereby released.

25 The auditor, in computing the amount necessary for
26 redemption as provided in section eight, article three of
27 this chapter, and in preparing the list of lands for cer-
28 tification to the circuit court as provided in section nine
29 of this article, shall use the assessment year one thousand
30 nine hundred thirty-six as the initial year for which
31 taxes are charged. He shall specify the year in which
32 the state acquired title, but if such year was prior to one
33 thousand nine hundred thirty-six, shall charge no taxes
34 for any year prior thereto, nor shall he charge any inter-
35 est, fees, penalties or costs for any years prior to the year
36 one thousand nine hundred thirty-six, and all interest,
37 fees, penalties and costs provided by law shall be charged
38 for all years subsequent to the year one thousand nine
39 hundred thirty-five.

40 Nothing contained in this section shall be held or con-
41 strued to affect in any way the right of a person claiming
42 title to any land by transfer, as provided in section three,
43 article thirteen of the constitution of this state.

Sec. 58. *Provisions of Article Severable.*—If any part of
2 this article shall be declared unconstitutional, such decla-
3 ration shall not affect any other part thereof.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Charles C Morris
Chairman Senate Committee

J. A. McCreary
Chairman House Committee

Originated in the Senate

Takes effect from passage

Stonore Myers
Clerk of the Senate

W. R. Cluff
Clerk of the House of Delegates

Arnold W. Tickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 16
day of March, 1945.

Clarence Mason
Governor.

Filed in the office of the Secretary of State
of West Virginia **MAR 19 1945**

Wm. S. O'Brien
Secretary of State

