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requires. Congressional revision in a more precise manner appears necessary, and if Congress acts, perhaps a greater certainty will be brought to the estate planning field and much of the litigation now necessary to ascertain the meaning of section 2036 will be avoided.

JOHN GIBBONS

FLORIDA'S CURATIVE STATUTE OF LIMITATIONS AND THE VOID TAX DEED: KILL OR CURE?

Wernle v. Bellemead Development Corp., 308 So. 2d 97 (Fla. 1975)

Twenty-nine years after Rose Wernle acquired a tax deed[1] to land in Volusia County, Florida, her heirs, appellants in the instant case, brought a quiet title action.[2] Appellee, Bellemead Development Corporation, asserted that its predecessor in title had satisfied its tax debt by conveying other lands to the state under two statutes relating to Volusia County,[3] thus rendering the tax deed void.[4] The circuit court ruled in favor of appellee, even though all taxes assessed on the land had been paid by grantees under the tax deed. On direct appeal,[5] the Supreme Court of Florida affirmed and HELD, the tax deed was void, Florida's 20-year statute of limitations[6] would

1. The deed was acquired under the so-called Murphy Act, Fla. Laws 1937, ch. 18296, at 1092, *codified as* FLA. STAT. §§197.386-.441 (1973). See text accompanying notes 9-14 *infra*. Unless otherwise noted, all references to tax deeds will refer to deeds issued pursuant to this Act.

2. The deed was issued on February 7, 1941, and the suit commenced on November 14, 1969.

3. Fla. Laws 1937, ch. 18965, §1, at 1870, providing in part: "That the Board of County Commissioners of Volusia County, Florida are authorized and empowered to adjust or cancel all taxes upon any land in Volusia County, Florida, except those levied for State purposes, in consideration of the owner of any such lands upon which such taxes are to be adjusted or cancelled, conveying or causing to be conveyed to the Florida Board of Forestry other lands of at least the value of the amount of the taxes so remitted or cancelled . . ."; Fla. Laws 1939, ch. 19211, §1, at 423, providing in part: "The Comptroller of the State of Florida is hereby authorized, enabled and directed to cancel all State of Florida Taxes provided in Tax Certificates in all previous years upon lands assessed in the name of PINES REALTY COMPANY, INC., [legal description] upon and from which all County and other than State taxes were heretofore cancelled by order of the Board of County Commissioners. . . ."

4. Tax deeds on lands whose owners have paid their taxes are nullities. Conant v. Buesing, 23 Fla. 559, 2 So. 882 (1887); Garner v. Larkin, 132 So. 2d 298 (2d D.C.A. Fla. 1961). See text accompanying notes 18-20 *infra*.

5. As the lower court had upheld the constitutionality of chapters 18965 and 19211, see note 3 *supra*, direct appeal was taken under FLA. CONST. art. V §3(b)(1).

6. Former Fla. Stat. §95.23 (1973). This statute was combined with former Fla. Stat. §95.26 (1973) by Fla. Laws 1974, ch. 382, §17, *to be codified as* FLA. STAT. §95.231. The pertinent part of §95.231 is subsection 2, which provides: "After twenty years from the recording of deed or the probate of a will purporting to convey real property no person

not bar a claim against grantees under a void deed, and neither laches nor the Marketable Record Title Act[7] would bar appellee's claim.[8]

The dramatic decline in land values following the great boom of the 1920's left the state with thousands of tax sales certificates for nonpayment of property taxes. Because many of these certificates were based on tax assessments made during the inflated-market years, they were priced far above the later market value of the real estate. In an effort to return such lands to the tax rolls, the legislature enacted what is commonly called the Murphy Act.[9] The Murphy Act accomplished its purpose in two ways. First, it provided that tax certificates held by the state for two years prior to the Act's effective date (June 9, 1937) could be sold for cash at public auction.[10] The highest bidder, unless he was the landowner, was required to hold the certificate for two years, during which time the owner could redeem the certificate by paying the bidder the cost of his bid plus three percent per annum interest.[11] If no redemption was made, the bidder was entitled to a tax deed from the state.[12]

It was a second provision of the Murphy Act that resulted in the forfeiture of lands to the state and the granting of the so-called Murphy deeds. The Act provided that the sale of tax certificates would end on June 9, 1939, after which title to all remaining lands to which the state had held tax certificates for two years prior to June 9, 1937, vested absolutely in the state. The Trustees of the Internal Improvement Fund[13] were empowered to sell

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shall assert any claim to the property against the claimants under the deed or will or their successors in title." This is essentially the same as former Fla. Stat. §95.23(1). Section 95.23(2), which was deleted by the amendment, read: "After the lapse of twenty years all such deeds or wills shall be deemed valid and effectual for conveying the lands therein described, as against all persons who have not asserted by competent record title an adverse claim." To prevent possible confusion, this comment will refer to both former §95.23 and present §95.231 as §95.23.

7. FLA. STAT. §712.01 *et seq.* (1973). This act provides, in part, that a marketable title free and clear of all claims shall exist in any estate in land where the instrument creating the estate has been of record for over thirty years. The Act has been applied in cases where §95.23 was held incapable of barring claims against void deeds. Whaley v. Wotring, 225 So. 2d 177 (1st D.C.A. Fla. 1969); Marshall v. Hollywood, Inc. 224 So. 2d 743 (4th D.C.A.), *aff'd*, 236 So. 2d 114 (Fla. 1969), *cert. denied*, 400 U.S. 964 (1970).

8. Wernle v. Bellmead Development Corporation, 308 So. 2d 97 (Fla. 1975). The Marketable Record Title Act cannot be applied to validate the deed in the instant case because the instrument was not of record for the mandatory 30 years. Furthermore, the Act serves to extinguish only those interests arising prior to the effective date of the root of title, not those "defects inherent in the muniments of title on which said estate is based arising out of the root of title." FLA. STAT. §712.03(1) (1973). The defect for which the instant deed was declared void probably falls within this exception since it relates to the state's legal title. *See* 1 R. BOYER, FLORIDA REAL ESTATE TRANSACTIONS §14.14-4 (1973).

9. Fla. Laws 1937, ch. 18296, at 1092. For an excellent discussion of the Act, see Thompson, *Tax Titles in Florida*, 6 U. FLA. L. REV. 1, 56 (1953).

10. Fla. Laws 1937, ch. 18296, §2, at 1093.

11. Fla. Laws 1937, ch. 18296, §6, at 1095. In the case of homestead property, the period was increased to 10 years by §11, at 1097.

12. Tax deeds of this type are not properly called Murphy deeds.

13. The Trustees are seven state officials: the governor, the comptroller, the state

these lands to the highest bidder and to adopt procedures to govern such sales.[14]

The land involved in the instant case was acquired by appellee's grantor, Pines Realty Company. On Pines Realty's default in payment of taxes, a tax-sale certificate was issued and held by the state for over two years prior to June 9, 1937. Because the record showed the certificate unredeemed by June 9, 1939, title was believed vested in the state and, in 1941, the land was sold to appellants' predecessor in title.[15]

The court found, however, that in 1937 the legislature had authorized the Volusia County commissioners to cancel the county's equity in tax certificates owned by Pines Realty in exchange for the corporation's deeding of certain lands of equal value to the Florida Board of Forestry.[16] In 1938 the trustees of Pines Realty, a dissolved Florida corporation, deeded such a parcel of real estate to the Board, and then conveyed the land involved in the instant case to appellee Bellemead Development Corporation. The following year, the legislature directed the comptroller to cancel state taxes on all lands in which Volusia County had cancelled its interest under the 1937 Act.[17] The Volusia County clerk failed to cancel the tax-sale certificate issued for the land involved in the instant case, however, and the state, believing itself vested with title, sold the property to appellants.

The court in the instant case held that the redemption of the tax-sale certificate by appellee's predecessor rendered the subsequently-issued Murphy deed void. The reasoning behind this holding was similar to that in *Garner v. Larkin*,[18] in which a landowner's showing that he had paid his taxes voided a tax deed issued for his property. Thus the accepted rule is that a Murphy deed, in order to have legal effect, must be granted for land on which there is a valid tax sale certificate issued for nonpayment of a valid assessment.[19] If either the certificate or the assessment is defective, the state lacks jurisdiction to issue a tax deed.[20] Such "jurisdictional defects" may also arise when the

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treasurer, the attorney general, the commissioner of agriculture, and, since 1971, the secretary of state and the superintendent of public instruction.

14. Fla. Laws 1937, ch. 18296, §9, at 1096.

15. Rose Wernle, the purchaser, married after the purchase and was named Rose Dunlap at the time of her death.

16. Fla. Laws 1937, ch. 18965, at 1869. See note 3 *supra*.

17. Fla. Laws 1939, ch. 19211, at 423. See note 3 *supra*.

18. 132 So. 2d 298 (2d D.C.A. Fla. 1961).

19. Thompson, *supra* note 9, at 69-70.

20. In this regard, a jurisdictional defect would probably be found if the land was improperly described in either the certificate or deed. Susman v. Pockrus, 40 So. 2d 223 (Fla. 1949); Allison v. Rogero, 112 So. 2d 578 (3d D.C.A.), *cert. denied*, 115 So. 2d 415 (Fla. 1959); H & H Inv. Co. v. Goldberg, 103 So. 2d 682 (3d D.C.A. Fla. 1958). *See also* LAWYER'S TITLE GUARANTY FUND TITLE NOTES TN 175-58(8) [hereinafter cited as TITLE NOTES]; 2 R. BOYER, FLORIDA REAL ESTATE TRANSACTIONS §31.06(8) (1975).

Where the assessment was made on lands that were tax exempt, the subsequent deed is void by statute. FLA. STAT. §197.406(5) (1973). *See also* 2 R. BOYER, *supra* §31.06(1). The same is true of lands never divested of state or federal ownership. FLA. STAT. §197.406(5) (1973); *see also* TITLE NOTES, *supra*, TN 175-58(1).

A jurisdictional defect would also be found if the certificate, although valid in form, taxpayer is deprived of notice of the issuance of the certificate,[21] or when the court clerk fails to provide proper notice of the sale.[22] Absent affirmative showing of such failure, however, it is presumed that the clerk fulfilled his duty.[23]

Even if it cannot be proved that a jurisdictional defect exists in a Murphy Act sale, Murphy deeds are still subject to attack on a variety of other grounds including noncompliance with the procedures set by the Trustees of the Internal Improvement Fund.[24] Successful attacks have been made where it was shown that the deed was improperly executed by the Trustees,[25] or that one cotenant was eliminated in favor of another.[26] In view of the varied attacks made against such deeds, the Lawyers Title Guaranty Fund has set strict tests which a Murphy deed must pass if the grantee's title is to be deemed insurable.[27] Even these tests, however, would have failed to uncover the title defects in the instant case.

It is important to determine the nature of the flaw that is found in a tax title since there is authority to the effect that jurisdictional defects cannot be remedied by the application of a curative act.[28] Normally a curative act retro-

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had not been held by the state for the requisite 2 years prior to June 9, 1937. TITLE NOTES, *supra*, TN 175-58(6); 2 R. BOYER, *supra*, §31.06(6).

21. Wells v. Thomas, 78 So. 2d 378 (Fla. 1955) (dictum, not involving a Murphy deed); TITLE NOTES, *supra* note 20, TN 175-58(5); 2 R. BOYER, *supra* note 20, §31.06(5).

22. Shuptrine v. Wohl Holding Corp., 147 Fla. 185, 3 So. 2d 524 (1941); *see also* TITLE NOTES, *supra* note 20, TN 175-58(7); 2 R. BOYER, *supra* note 20, §31.06(7).

23. TITLE NOTES, *supra* note 20, TN 175-58(7); 2 R. BOYER, *supra* note 20, §31.06(7).

24. See text accompanying note 14 *supra*.

25. Watson v. Caldwell, 158 Fla. 1, 27 So. 2d 524 (1946); Hicks v. State, 116 Fla. 603, 156 So. 603 (1934). Prior to 1967, three trustees were required to execute a tax deed. The number is presently five. *See* FLA. STAT. §253.02 (1973); TITLE NOTES, *supra* note 20, TN 175-58(9); 2 R. BOYER, *supra* note 20, §31.06(9).

26. In this situation, the deed has been held to inure to the benefit of both cotenants, creating a cloud on the title of the buyer-cotenant or his assignees. Andrews v. Andrews, 155 Fla. 654, 21 So. 2d 205 (1945). *See also* Albury v. Gordon, 164 So. 2d 549 (3d D.C.A. Fla. 1964); TITLE NOTES, *supra* note 20, TN 175-58(4); 2 R. BOYER, *supra* note 20, §31.06(4).

27. TITLE NOTES, *supra* note 20, TN 175-58. These tests include the following:

1. Is there a patent or grant out of the United States of record, and if the title passed from the United States to the State of Florida, is here a conveyance out of the State of record?

2. Was the grantee in the Murphy Deed or any of his successors in title a co-owner of record title to the property at the time it was forfeited to the State under the Murphy Act?

3. Did the tax collector properly advertise the property prior to the issuance of the tax sales certificate?

4. (a) Do the clerk's records show that the property was duly advertised for sale by the Trustees of the Internal Improvement Fund?

(b) Was a newspaper copy mailed to said Trustees?

(c) Was a newspaper copy posted at the usual place at the courthouse?

5. Was the property adequately described, free from material variances throughout the proceedings?

For the title to be insurable, all of these questions must be answered in the affirmative. *Id.*

28. *E.g.*, Reed v. Fain, 145 So. 2d 864 (Fla. 1962); Wells v. Thomas, 78 So. 2d 378, 382 (Fla. 1955) (dictum); Townsend v. Edwards, 25 Fla. 582, 6 So. 212 (1889) (land not properly assessed before issuance of tax deed); Sloan v. Sloan, 25 Fla. 53, 5 So. 603 (1889) (land assessed by tax collector instead of assessor); Carncross v. Lykes, 22 Fla. 587 (1886) (land improperly described on assessment roll). *See* Day, *Curative Acts and Limitation Acts*

actively validates deeds or other transactions previously rendered invalid by failure to comply with legal requirements. In regard to tax deeds, it has been said that curative acts are applicable only to "formal" defects and "cannot validate a tax deed when the irregularity is one that has deprived the taxpayer of notice of the assessment or tax sale . . . or that is otherwise so serious that the issuance of the deed was not within the jurisdiction of the taxing authorities."[29] Somewhat different considerations may apply to "curative acts with limitations provisions,"[30] however, such as former Florida Statute section 95.23, now incorporated in section 95.231.[31] Acts of this type are actually statutes of limitations, "curing" defective deeds by barring claims against them after a specified period of time.[32] In a leading article on the subject, Professor James W. Day asserts that such statutes may be "designed to rectify title defects that are beyond the remedial power of a pure curative act," indicating that even jurisdictional defects might be remedied by such a statute.[33] Nevertheless, in applying section 95.23, Florida courts have demonstrated considerable confusion as to whether a deed is "void" and, if so, whether its invalidity is affected by the statute.

In 1930 the forerunners of section 95.23[34] were held to cure a deed in which the acknowledgment was defective by law.[35] Twenty-five years later, in *Baldwin v. Blaisdell*,[36] it was held that this statute would bar a claim against a tax deed by the holders of a quit-claim deed to the same property.

Designed to Remedy Defects in Florida Land Titles I-III, 8 U. FLA. L. REV. 365 (1955) [hereinafter cited as Day I]; Day, *Curative Acts and Limitations Acts Designed to Remedy Defects in Florida Land Titles IV*, 9 U. FLA. L. REV. 145 (1956) [hereinafter cited as Day IV].

29. Day I, *supra* note 28, 388-89 (footnotes omitted). Professor Day asserts that this incorrect application of a curative act violates due process of law.

30. This term may be misleading. A pure curative act removes the effect of defects in recorded instruments; FLA. STAT. §95.23 (1973) serves to bar claims based on these defects. Although §95.23(2) does contain the language of a curative act, the statute has been interpreted as a statute of limitations by the Florida supreme court. Barnott v. Proctor, 128 Fla. 63, 64, 174 So. 404, 406 (1937). See note 7 *supra* and text accompanying note 44 *infra.*

31. See note 6 *supra*. Since 1927, all tax deeds had also been protected by a special limitation provision, Fla. Laws 1927, ch. 12407, at 1323, providing that tax deed grantees who had paid taxes on land conveyed under such deeds for 20 years would not be subject to claims brought by the original owners or their assignees. This act was codified and amended as former Fla. Stat. §197.610 (1969) and repealed by Fla. Laws 1972, ch. 72-268, at 926.

The statute was held constitutional in Buck v. Triplett, 159 Fla. 772, 32 So. 2d 753 (1947). It is doubtful that it would have furnished any relief for appellants in the instant case, however, since the same reasoning used to avoid §95.23 could probably have been applied to this statute. *See also* Baldwin v. Blaisdell, 82 So. 2d 587 (Fla. 1955).

32. Barnott v. Proctor, 128 Fla. 63, 69, 174 So. 404, 406-07 (1937); Foremost Properties v. Gladman, 100 So. 2d 669, 672 (1st D.C.A. Fla. 1958).

33. Day IV, *supra* note 28, at 159. In cases involving jurisdictional defects, Professor Day notes that a cause of action for ejectment is "by the generally accepted view" a prerequisite to the running of the limitations period. *Id.* at 165.

34. Fla. Laws 1925, ch. 10171, §§1, 2, at 330.

35. Montgomery v. Carlton, 99 Fla. 152, 126 So. 135 (1930). The acknowledgment was apparently signed by the transferor.

36. 82 So. 2d 587 (Fla. 1955).

In quieting title for the tax deed grantee, the court noted that the deed had been of record for the requisite 20 years and that grantee had paid all taxes on the land in question during that time.[37]

Greater difficulty is encountered where the deed is void because of forgery or noncompliance with constitutional requirements. In *Wright v. Blocker*,[38] the statute[39] was held inapplicable to forged deeds. The court's chief concern was that the limitations act should not be used to further the purposes of "unscrupulous" persons by validating forgeries.[40] A corollary holding was that the recordation of a void or forged deed was incapable of furnishing notice to those possessing adverse claims.[41] This result was contrary to that reached three years earlier in *Barnott v. Proctor*,[42] in which the deed in question was not forged, but had been made in contravention of the homestead provisions of the 1885 Constitution.[43] There, the court noted that section 95.23 did not "purport to validate" a void deed, *but acted to bar delayed claims against it*.[44]

The principle that section 95.23 will not bar attacks on a void deed received strong support from the supreme court in *Reed v. Fain*.[45] That decision involved an action by a daughter to cancel two deeds purporting to create an estate in the entirety in her parents' homestead by means of a "strawman" conveyance. Both deeds lacked consideration.[46] Over 20 years later, title passed to the plaintiff's brother, who claimed that the statute barred his sister's action.

Writing for a divided court,[47] Justice Hobson ruled in *Reed* that the statute did not apply to either deeds conveying homestead property or void deed.[48]

37. The tax deed involved in *Baldwin* was not a Murphy deed. The opinion relied heavily on the precedent set in Putzer v. Homeridge Properties, 57 So. 2d 848 (Fla. 1952). *Baldwin* has been cited as evidence that §95.23 will bar claims against tax deeds (including Murphy deeds) in which it is not shown that a jurisdictional defect exists. See TITLE NOTES, *supra* note 20, TN 38-57, 549-64. The fact that all taxes were paid by grantee for 20 years also barred the action under the forerunner of FLA. STAT. §197.610 (1969). See note 31 *supra*.

38. 144 Fla. 428, 198 So. 88 (1940).

39. See note 34 *supra*.

40. "The statutes here involved should not be interpreted by this Court to be the instrumentality or the vehicle by which designing or unscrupulous persons could obtain a forged deed, cause the same to be recorded, and after the expiration of the twenty years prescribed by statute, successfully assert claims thereunder in a court of chancery." 198 So. at 91.

41. *Id.* at 90.

42. 128 Fla. 63, 174 So. 404 (1937).

43. FLA. CONST. art. X, §§1, 2, 4 (1885), *as amended*, FLA. CONST. art. X, §4.

44. 174 So. at 406 (emphasis added).

45. 145 So. 2d 858, 864 (Fla. 1962).

46. The court found this contrary to constitutional inhibitions. *Id.* at 865. See note 43 *supra*.

47. Justice Hobson's 4-3 majority opinion, on rehearing, reversed the original 4-3 opinion written by Justice Thornal.

48. The court summarized four holdings as follows: "[W]e hold that F.S. Section 95.23 F.S.A. is not applicable in this case because, first, the critical deed is void; second, if not void ab initio, it was and is void as to Mrs. Fain's 'inchoate' interest in the homestead which became 'vested' upon the death of her father; third, the Legislature did not

In reaching this conclusion, the court first expressed doubt that any cause of action to recover the land had accrued to plaintiff 20 years earlier.[49] The court then cited *Wright*[50] as making it "crystal clear"[51] that section 95.23 would not apply to void deeds, and quoted with approval a statement in *Barnott*[52] that the statute does not purport to validate such deeds.[53] In distinguishing *Barnott*, the *Reed* court focused on the equitable nature of the action in *Barnott*, opining that the same conclusion would have been reached "had such a statute as FS §95.23 . . . never existed."[54] Thus a significant distinction lay in the fact that in *Barnott* the land had been conveyed to a mortgagee, whom the court held to be an innocent third party.[55] Justice Hobson found this principle to have been receded from in a later case,[56] however, and issued the caveat that it is difficult to be an innocent third party when dealing with homestead property in view of the widely-known constitutional restrictions on such conveyances.[57]

Since *Reed*, Florida courts seem to have accepted the doctrine that section 95.23 is inapplicable to void deeds.[58] On close examination, however, it appears that the majority of these decisions involved homesteads, thus falling under the unique constitutional homestead provisions and the *Reed* holding that section 95.23 will not bar actions against homestead conveyances.[59] In two, however, it was held that although section 95.23 did not apply, the Marketable Record Title Act rendered the deeds secure.[60]

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intend F.S. Section 95.23 F.S.A. to be applicable to deeds or wills conveying or devising 'homestead property'; fourth, F.S. Section 95.23 F.S.A. is unconstitutional if it be construed in such manner as to breathe life into an instrument made and executed in contravention of constitutional inhibitions." 145 So. 2d at 871. As will be seen, the first "holding" actually amounted to dicta. See text following note 60 *infra*.

49. Professor Day asserts that, as with statutes of limitations generally, the 20-year period does not run "until there accrues to complainant the right to recover his land." Day IV, *supra* note 28, at 159. The court explained that Mrs. Fain's right to bring suit was "inchoate" until the death of her father, less than 20 years earlier. 145 So. 2d at 868.

50. Wright v. Blocker, 144 Fla. 428, 198 So. 88 (1940).

51. 145 So. 2d at 864.

52. Barnott v. Proctor, 128 Fla. 63, 174 So. 404 (1937).

53. 145 So. 2d at 866.

54. *Id.*

55. *Id.*

56. Bigelow v. Dunphe, 143 Fla. 603, 197 So. 328 (1940).

57. 145 So. 2d at 867.

58. United States v. 329.22 Acres of Land, 307 F. Supp. 34 (M.D. Fla.), *aff'd*, 418 F.2d 551 (5th Cir. 1968); Reid v. Bradshaw, 302 So. 2d 180 (1st D.C.A. Fla. 1974); Miller v. Miller, 293 So. 2d 760 (3d D.C.A. Fla. 1974); Whaley v. Wotring, 225 So. 2d 177 (1st D.C.A. Fla. 1969); Marshall v. Hollywood, Inc., 224 So. 2d 743 (4th D.C.A.), *aff'd*, 236 So. 2d 114 (Fla. 1969), *cert. denied*, 400 U.S. 964 (1970); Chasteen v. Chasteen, 213 So. 2d 509 (1st D.C.A. Fla. 1968); Cahill v. Chesley, 189 So. 2d 818 (2d D.C.A. Fla. 1966).

59. Reid v. Bradshaw, 302 So. 2d 180 (1st D.C.A. Fla. 1974); Chasteen v. Chasteen, 213 So. 2d 509 (1st D.C.A. Fla. 1968). In the *Reid* case, Judge Spector expressed an opinion that *Reed v. Fain* had been receded from insofar as it held that "a void deed is of no effect." 302 So. 2d at 185 (dissenting opinion). *See also* Miller v. Miller, 293 So. 2d 760 (3d D.C.A. Fla. 1974); Cahill v. Chesley, 189 So. 2d 818 (2d D.C.A. Fla. 1966).

60. Whaley v. Wotring, 225 So. 2d 177 (1st D.C.A. Fla. 1969); Marshall v. Hollywood, Inc., 224 So. 2d 743 (4th D.C.A.), *aff'd*, 236 So. 2d 114, (Fla. 1969), *cert. denied*, 400 U.S. 964 (1970). In *Marshall*, the Florida supreme court avoided considering the Act's constitutionality.

In the instant case, the dicta in *Reed* removing all void deeds from the protection of section 95.23 receives strong support and, perhaps, extension. First, the decision in *Reed* was backed by a reasonable application of the policy considerations surrounding the constitutional protection of interests in homesteads. The instant tax deed was not a conveyance of homestead property made in contravention of clear, well-known constitutional restrictions; it was held void because of two obscure acts of the legislature.[61] Second, the tax deed was not a forgery created as part of a scheme by "designing or unscrupulous persons"[62] to take land and wait for the statute to bar the rightful owner's claim. As the opinion does not indicate that the court clerk failed to advertise the sale, it must be assumed that this duty was fulfilled, so that reliance was not placed on the recordation of the deed itself to furnish notice to adverse claimants. The policy considerations essential to the *Wright* holding are thus absent in the instant case. Finally, the limitations suggested to protect helpless landowners from the effects of curative acts are inapplicable.[63] Unlike the "inchoate" rights that precluded a cause of action in *Reed*,[64] appellee in the instant case had an immediate right to clear title on the sale of the land in question, a right it neglected to exercise for 29 years.

Section 95.23 serves to bar delayed claims against deeds[65] and, in so doing, provides security for those who have purchased deeds that might otherwise be subject to attack for latent defects.[66] That this security is deserved is evidenced by the purpose of the Murphy Act: to return to the tax rolls the "enormous amount of real estate" whose absence was seriously handicapping the state and local governments in carrying on their necessary functions.[67] The instant case destroys much of this security by leaving tax deeds open to virtually any claim that seeks to establish a jurisdictional defect in the sale, regardless of how long that claim has been delayed. Appellants' deed was pronounced void because of the operation of two acts few title examiners would likely discover.[68] There was no affirmative showing of a failure to conform to the procedural requirements of the Murphy Act and no explanation for appellee's delay in claiming the land.[69] In allowing the claim to stand against an "initially void tax title claim,"[70] the court considered only the form of *Reed* and other authorities, not their substance. Although there may be valid policy considerations in favor of upholding claims against

61. See Justice Boyd's dissent, 308 So. 2d at 102, for a discussion of the questionable constitutionality of these "special" acts.

62. 198 So. at 91. Wright v. Blocker, 144 Fla. 428, 436, 198 So. 88, 91 (1940).

63. See note 49 *supra*.

64. See text accompanying note 49 *supra*.

65. Barnott v. Proctor, 128 Fla. 63, 69, 174 So. 404, 406-07 (1937); Foremost Properties v. Gladman, 100 So. 2d 669, 672 (1st D.C.A. Fla. 1958).

66. See text accompanying notes 19-26 *supra*.

67. Fla. Laws 1937, ch. 18293, at 1092.

68. As Justice Boyd has queried: "Are there any similar laws relating to Volusia County property known only to God and the keepers of ancient records?" 308 So. 2d at 105.

69. *Id.* at 104. While questioning the reason for claimants delay seems more a matter of equity than strict statutory application, it is similar to the logic behind the holding in Barnott v. Proctor, 128 Fla. 63, 174 So. 404 (1937). See text accompanying note 54 *supra*.

70. 308 So. 2d at 102.