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the income tax laws. The tendency of the courts (starting with Corn Products) to give the word “property” a narrow construction should cause the prudent attorney to take a close look at the nature of the “property” being assigned to a charity before advising his client that the assignment will result in no realization of income to him.

Claude L. Eichel

THE INAPPLICABILITY OF A STATUTE OF LIMITATIONS TO A VOID CONVEYANCE OF HOMESTEAD

A sister sued her brother in equity in 1957 to obtain cancellation of two deeds executed in 1930. The first deed, which was executed jointly by the parents, conveyed homestead property held singularly by the father to the brother. The second deed was a reconveyance of the homestead by the brother to the parents to create an estate by the entirety. Both conveyances were without consideration. The brother contended that his sister’s action was barred by section 95.23 of the Florida Statutes, since the deed reconveying the homestead to the parents had been of record without adverse claim for more than twenty years. However, the trial court held the conveyance void as an ineffective attempt to alienate homestead property without consideration and allowed the sister’s action. On rehearing, the Florida Supreme Court held, affirmed: section 95.23 is not applicable to a void deed or to a deed transferring homestead property in violation of the constitutional provisions regul-
lating homestead conveyances. Reed v. Fain, 145 So.2d 858, 864 (Fla. 1962) (on rehearing).

Section 95.23 was enacted in 1925 to attain greater certainty in Florida land titles. The statute is peculiar to Florida and has no exact counterpart in any other state due to its consolidation of the substantive elements of a statute of limitations and a curative act. The first paragraph of section 95.23 is a statute of limitations, requiring that any adverse claim to the transactions specified in the statute be made within a stated time after their consummation. Paragraph two is a curative act, validating these transactions against all persons who have not asserted an adverse claim. Section 95.23 has been classified as a "curative act with a limitation provision" to distinguish it from other "curative" legislation in Florida.

Although the Florida Supreme Court has consistently construed section 95.23 to validate and render unimpeachable a deed of record for twenty years against all persons who have not asserted an adverse claim by competent record, it has clearly recognized that some title defects

5. Fla. Laws 1925, ch. 10171, §§ 1, 2.


7. A statute of limitations has been defined as "the restriction by statute of the right of action to certain periods of time, after the accruing of the cause of action, beyond which it will not be allowed." Philadelphia, B. & W.R.R. v. Quaker City Flour Mills Co., 282 Pa. 362, 127 Atl. 845 (1925). See also People v. Kings County Dev. Co., 48 Cal. App. 72, 191 Pac. 1004 (1920); Smith v. Toman, 368 Ill. 414, 14 N.E.2d 482 (1938).

8. A curative act has been defined as "one intended to give legal effect to some past act or transaction which is ineffective because of neglect to comply with some requirement of law." Carle v. Gehl, 193 Ark. 1061, 104 S.W.2d 445 (1937); Anderson v. Lehmkuhl, 119 Neb. 451, 229 N.W. 773 (1930). See also Boyer, Florida Real Estate Transactions § 14.13 (1961); Day, supra note 6.

9. The first paragraph of section 95.23 reads in its pertinent part: "After the lapse of twenty years from the record of any deed . . . no person shall assert any claim . . . under such deed . . ." For an excellent discussion of the act's scope, see Moyer v. Clark, 72 So.2d 905, 907, 908 (Fla. 1954).

10. The statute's second paragraph reads in its pertinent part: "After the lapse of twenty years all such deeds . . . shall be deemed valid and effectual . . . as against all persons who have not asserted by competent record title an adverse claim." See Moyer v. Clark, 72 So.2d 905, 907, 908 (Fla. 1954).

11. This highly descriptive term was coined by Professor Day, supra note 6, 9 U. FLA. L. REV. at 145 (1956).

12. See Boyer, Florida Real Estate Transactions § 14.13 (1961). Some typical examples of curative legislation in Florida include statutes that: validate tax deeds which have been of record for twenty years or more ($§ 196.09); cure deeds defective for want of witness or lack of seal after the lapse of seven years ($§ 694.08) or ten years ($§ 95.26) from recording; invalidate old executory contracts which have not been cleared of record ($§ 95.35 and § 695.20); minimize the effect of discrepancies in names of deeds after a period of ten years ($§ 689.19); and impose a statute of limitations on the enforcement of mechanics' liens ($§ 84.21) and mortgages ($§ 95.28, 95.30, 95.32 and 95.34).

CASES NOTED

are beyond the act’s remedial power. Thus, in *Wright v. Blocker*, the court held that the legislature intended section 95.23 to be inapplicable to forged (void) deeds. However, in *Barnott v. Proctor*, the court held that the statute validated a deed of homestead property unlawfully executed by a husband to his wife through a straw man, notwithstanding the fact that any conveyance of homestead which violates a constitutionally protected interest is void in Florida. Similarly, in *Thompson v. Thompson*, it was held that a deed unlawfully alienating homestead property which had been of record for more than twenty years was protected from attack by section 95.23.

It would appear from the decisions in *Barnott* and *Thompson* that deeds of record for more than twenty years are within the act’s remedial power even though made in violation of the homestead laws. However, in *Reed v. Fain*, the Florida Supreme Court reached a contrary result.

In the supreme court’s original adjudication of the *Reed* case, the majority strictly construed the limitation provision of section 95.23. It held that the twenty-year period prescribed by the act, during which any adverse claims must be asserted against the questioned deed, begins to run from the date of record. The supreme court then analyzed the construction of section 95.23 as expressed in the dissent of the district court. In that dissenting opinion the twenty year provision of the act was viewed as not beginning to run until the party asserting the adverse claim against the recorded instrument had a cause of action. In the instant case, the sister did not have a cause of action until her “inchoate” interest in her father’s homestead became vested at the time of his death. Consequently, to hold “that the twenty year [limitation] period could run before the accrual of a right of action adverse to the recorded instrument . . .” would make the act unconstitutional. However, the majority of the supreme court in its initial decision concluded that the views contained in the district court’s dissent were not applicable in the instant case, and stated that the sister could have sued in equity to protect her interest in the father’s homestead during the twenty years following the recordation of the 1930 deed. It therefore held that its

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14. 144 Fla. 428, 198 So. 88 (1940).
15. 128 Fla. 63, 174 So. 404 (1937).
18. 70 So.2d 555 (Fla. 1954).
19. 145 So.2d 858 (Fla. 1962) (on rehearing).
20. Id. at 861. See also note 7, supra and accompanying text.
21. See note 2 supra.
22. Note 18 supra. This construction is based on the views expressed by Professor Day, supra note 6.
23. FLA. STAT. § 731.27 (1961).
24. Reed v. Fain, 145 So.2d 858, 861 (Fla. 1962) (on rehearing).
25. Ibid.
decisions in Barnott and Thompson were controlling and denied the plaintiff's action.\textsuperscript{26}

In a vigorous dissent to the original majority opinion in Reed, Justice Drew essentially agreed with the construction of section 95.23 advocated in the district court's dissent. He said that, under Florida law, the sister had no interest which would entitle her to maintain an action against the questioned deed of the father's homestead during his lifetime.\textsuperscript{27} He recognized "that the deed involved in this litigation was void,"\textsuperscript{28} and concluded that the construction of section 95.23 in this fact situation "is an involved and highly important question. Some of the cases confuse rather than clarify the issues."\textsuperscript{29}

On rehearing, the court held that the legislature did not intend section 95.23 to apply to a "void deed"\textsuperscript{30} or to a conveyance of homestead property.\textsuperscript{31} It recognized that the deed executed in 1930 by the parents, wrongfully attempting to convert homestead property into an estate by the entirety, was void.\textsuperscript{32} The court clearly said, "The entire transaction between the parents and their son was a nullity because it was violative of the constitutional inhibitions regarding the alienation of homestead property."\textsuperscript{33}

Noteworthy is the court's unequivocal recognition that the interest of the "heir" (the sister) in her father's homestead property was guaranteed and protected from a void conveyance by the Florida Constitution. This was an explicit reversal of the court's decision in Thompson,\textsuperscript{34} and evinced a clear acceptance by the court of the constitutional limitations of section 95.23: The statute is not applicable to conveyances which seek to avoid the normal rules relative to the descent of a homestead.\textsuperscript{35}

The judicial somersault performed by the court to achieve the final

\textsuperscript{26} Id. at 862.
\textsuperscript{27} Id. at 863.
\textsuperscript{28} Ibid.
\textsuperscript{29} Id. at 864.
\textsuperscript{30} Ibid. The court reasoned that since its holding in Wright v. Blocker, 144 Fla. 428, 198 So. 88 (1940) (i.e., that it was not the intent of the Legislature for section 95.23 to apply to a void deed) has not caused the statute to be amended by the Legislature to include void deeds, "[T]his Court was correct in its expressed thought with reference to the legislative intent."
\textsuperscript{31} Id. at 864-65. "The Legislature originally would have normally and specifically included homestead property had it intended such type of property to be embraced by Section F.S. 95.23, F.S.A."
\textsuperscript{32} Id. at 865.
\textsuperscript{33} Ibid.
\textsuperscript{34} See note 18 supra and accompanying text. The court stated in Reed v. Fain, 145 So.2d 858, 869 (Fla. 1962) (on rehearing): "In our opinion, the simple, correct and direct method of clarifying our conflicting decisions upon the vital and controlling question posed in this case is to, and we do . . . repudiate our opinion . . . in Thompson . . . ."
\textsuperscript{35} Id. at 871. "Florida Statute section 95.23 is unconstitutional if it be construed in such a manner as to breathe life into an instrument made and executed in contravention of constitutional inhibitions."
determination of Reed illustrates a basic confusion regarding the proper interpretation and construction of section 95.23. A careful reading of the entire opinion indicates that the majority agree with the ultimate conclusions of Justice Drew and essentially accept his rationale, but are reluctant to admit it in view of their original holding.

It would appear antithetical to the legislative intent that a curative act with a limitation provision would serve to validate a transaction explicitly proscribed by constitutional provision. It is submitted that the court was correct in precluding the application of section 95.23 to a conveyance of homestead made in violation of the heir's constitutionally protected interest. In the opinion of this writer, the Florida courts must continue to confer deferential treatment upon homestead property in view of its constitutionally protected status.

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