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gestion of hardship, surprise, or accident can avail in the least in defeating or suspending this limitation. If the party does not give the bond within the two years, whether he be in default two months or two days, the result must be the same. There is no hardship in this, for the appellant has two whole years in which to make his application. After delaying it one year and eleven months, he has no just cause to complain of want of time or to attribute to surprise or accident that which is due to his own negligence." *Otterback v. Alex. & Fred. R. Co.*, 26 Gratt. 940; *Yarbrough v. Deshazo*, 7 Gratt. 374.

Since the bond required was not executed within the time prescribed by the statute, it follows as a necessary consequence that the motion to dismiss must be sustained and the writ be dismissed. *Dismissed.*

BROWN V. CHRISTIAN, CLERK.

Supreme Court of Appeals: At Wytheville.

July 7, 1898

DELINQUENT LANDS—*Act approved February 11, 1898—Penalty.* Under the Act approved February 11, 1898, the applicant who files an application to purchase delinquent lands becomes entitled to the \$5 penalty as soon as his application is filed, whether the notice prescribed by the act has been served on the owner or not.

HARRISON, J., delivered the opinion of the court.

This petition for a *mandamus* involves a construction of an act of the legislature approved February 11, 1898, in relation to delinquent lands purchased in the name of the Auditor.

After setting forth the mode of procedure; what the application to purchase delinquent land must contain; how, when, and upon whom copies of the application must be served, the act proceeds as follows:

"If no person who has a right to redeem at the time of the service of the copies, or of the completion of the order of publication as aforesaid, appear within four months after such copies have been served as aforesaid, or within four months after the completion of the order of publication, when there is a publication, and redeem said real estate by paying to the clerk of the County or Corporation Court all of the taxes, penalties and costs therewith connected, as well as all fees and costs attending the proceeding under this section, including a penalty of five dollars which shall be paid to the applicant, then the person who made the application shall have a right to purchase the real estate within five days from the expiration of the four months as aforesaid, by paying to the clerk all taxes, penalties, fees and costs."

The controverted question is as to the time when the right of the applicant to the \$5 penalty attaches.

The petitioners insist that the right to this \$5 penalty does not arise until a copy of the application has been served upon the persons named therein. On the other hand, the defendant contends that the right attaches immediately upon the filing of the application to purchase; that when the application has been filed, although no copy thereof has been issued or served upon any of the persons mentioned therein, it becomes the duty of those interested, in order to redeem, to pay him the costs of the proceeding, together with the penalty of \$5 for the applicant.

The court is of the opinion that the act is susceptible of no other reasonable construction than that placed upon it by the defendant.

It must be borne in mind that the tax in question has been due and unpaid for more than two years; that the land against which it was assessed has been forfeited and belongs to the Commonwealth, and that it is only by her favor that it can be redeemed. It is manifest that the object of the statute was twofold: first to induce those interested to reclaim the land by promptly paying the delinquent taxes, and second to encourage others to come forward and buy the property from the State for the taxes due thereon.

After the application has been filed another opportunity is given those interested to reclaim the land, upon condition, however, that the costs incident to filing the application and a penalty of \$5 to the applicant is paid. The penalty of \$5 was doubtless intended to reimburse the applicant for his trouble, in offering, at the invitation of the State, to become the purchaser. This final opportunity to redeem is at any time within four months from the date of the service of the copies of the application, or the completion of the order of publication, if there be one, and the language of the statute, "*if no person who has a right to redeem at the time of the service of the copies, or the completion of the order of publication as aforesaid, appear within four months after such copies have been served, &c.,*" was intended to fix the date of the service of the copies, &c., as the time from which the redemption period of four months should begin to run, and had no reference to the conditions imposed upon the privilege of redeeming. Those penalties attached as soon as the application to purchase was filed.

The construction contended for by petitioners would defeat the object of the law and make it worthless, for no one would take the trouble to prepare his application and pay officers' fees if the delinquent taxpayer could come forward and reclaim the land by paying to the clerk the tax and interest.

For these reasons the writ prayed for must be *Denied*.