the trial court did not regard as evidence of title, but were admitted as evidence of assertion of claim of title and the exercise of acts of ownership. This court said in that case: "While the fact that a party asserted that land belonged to her would be no evidence of title, yet it would be the best possible evidence that she claimed it. And when, as in this case, the grantee of the land has a name which is borne by two persons, the fact that one of them has claimed the land continuously from the date of the grant, and exercised acts of ownership over it for a long series of years, and the other has done nothing of the sort during the whole of the time, affords strong evidence that the former was the person intended to be named in the grant." If it be conceded that the administration was void, then it does not render the testimony inadmissible. No right was claimed under the administration, and, whether valid or void, it was equally effective to prove the fact that it was procured in the interest of Celinda C. Wallace, as a step towards securing the certificate in question, and that the person claiming to be such administrator did, in that right, assert claim of right to the certificate. The evidence should have been admitted. The judgments of the district court and the court of civil appeals are reversed, and this cause is remanded to the district court for further proceedings in accordance with this opinion.

(87 Tex. 374)

SNYDER v. COMPTON.

(Supreme Court of Texas. Dec. 10, 1894.)

TITLE OF ACT — AMENDMENT — SALE OF STATE LANDS—UNIVERSITY ENDOWMENT FUND.

1. That part of Act July 14, 1879, entitled "An act to provide for the sale of a portion of the unappropriated public lands of the state of Texas and the investment of the proceeds of such sale" (Sayles' Civ. St. art. 3976a), which reserves certain land to be sold in a certain manner, is not repugnant to Const. art. 3, § 35, directing that a statute shall have but one subject, which shall be expressed in its title.

2. That part of Act Jan. 22, 1883, entitled "An act to withdraw the public lands of the state of Texas from sale" (Sayles' Civ. St. art. 3976b), which continues the reservation of certain lands to be sold in a certain manner made by Sayles' Civ. St. art. 3976a, is not repugnant to Const. art. 3, § 35, directing that a statute shall have but one subject, which shall be expressed in its title.

3. Act Jan. 22, 1883 (Sayles' Civ. St. art. 3976b), which withdraws from sale all the public lands "authorized to be sold under the act entitled 'An act to provide for the sale of the unappropriated public land of the state of Texas and the investment of the proceeds of such sale,'" is not an amendment of the latter act, within the meaning of Const. art. 3, § 36, which provides that no law shall be revised or amended by reference to its title merely.

4. Const. art. 3, § 36, providing that, when an act is revised or amended, the act revised or sections amended shall be re-enacted and published at length, does not prohibit the passage of a law which fully declares its provisions without direct reference to any other act, although the law's effect is to enlarge or restrict the operation of some other statute.

5. The legislature may declare in the body of an act the construction to be placed thereon.

6. The legislative intent in passing a law, howsoever expressed, is binding upon the courts.

7. Under Act April 10, 1883 (Sayles' Civ. St. § 4023a), providing that, after certain state debts have been paid out of land theretofore reserved for sale, the remainder, "not to exceed 2,000,000 of acres," or "the proceeds thereof," shall "one-half thereof constitute a permanent endowment fund for the university," that institution is endowed with one-half of the net proceeds of the sale of 2,000,000 acres, providing that quantity remains, and, if not, then with one-half of the proceeds of so much as does remain.

Certified questions from court of civil appeals of Third supreme judicial district.

Appeal by D. H. Snyder from a judgment in favor of W. Y. Compton.

A. S. Fisher and Fisher & Townes, for appellant. U. S. Hearrell, for appellee.

GAINES, C. J. The following questions are certified for our determination by the court of civil appeals of the Third supreme judicial district: "(1) Is so much of the act of July 14, 1879 (Sayles' Civ. St. art. 3976a), entitled 'An act to provide for the sale of a portion of the unappropriated public lands of the state of Texas and the investment of the proceeds of such sale' (Laws Called Sess. 16th Leg. p. 48), and the act of March 11, 1881 (Laws 17th Leg. p. 24; Sayles' Civ. St. art. 3976a), amendatory of the aforesaid act, as attempts to create a reservation, obnoxious to section 35, of article 3 of the constitution of the state of Texas, and therefore null and void? (2) Is so much of the act of January 22, 1883, entitled 'An act to withdraw the public lands of the state of Texas from sale' (Laws 18th Leg. p. 2), as undertakes to continue the supposed reservation therein referred to, in contravention of section 35 or 36 of article 3 of our state constitution? (3) If the last-named act is not obnoxious to said sections of the constitution, had the legislature the power to declare the legal effect of a repeal of the acts of July 14, 1879, and March 11, 1881, and to bind the courts by a declaration that the repeal of said acts should not be construed to return the land reserved by said acts to the mass of the public domain? (4) If it be held that the acts of July 14, 1879, March 11, 1881, and January 22, 1883, are free from constitutional objections and valid, then must they, and the act of April 10, 1883, entitled 'An act to provide for the permanent endowment of the University of Texas,' etc. (Laws 18th Leg. p. 71), be construed in pari materia, and should the last act be given the effect of a proviso ingrafted upon the previous acts, and as limiting the quantity of land reserved to two million acres?"

1. We think that the creation of a reservation in the act of July 14, 1879, is within the purview of the title of that act, and that, therefore, it is not repugnant to section 35

of article 3 of our constitution. The purpose of the law, as expressed in the title, is "to provide for the sale of a portion of the unappropriated public lands of the state of Texas," etc. To provide for a sale of a part of the public domain implies reasonably, if not necessarily, a provision that it shall not be subject to appropriation in any other manner. If the act had merely declared that the public lands in certain counties should be sold, and the proceeds applied, one-half to the public debt and the other to the school fund, we apprehend that a reservation would have been as effectually created as if the intention to make it had been conveyed in express words. The legislature might have provided that the lands, although set apart for sale, should be subject to location by virtue of any valid certificates at any time before sales were actually made. In fact, the act does expressly declare that the lands set apart for sale under its provisions shall be subject to appropriation under the existing pre-emption laws of the state. But without such express provision no such right would have existed. The subject of the act, as expressed in the title, is broad enough to warrant the legislature in providing that the lands should be sold, and, such provision implying that they should not be disposed of or appropriated in any other manner, it also warranted it in so declaring. In Davey v. Galveston Co., 45 Tex. 291, this court, in construing section 35 of article 3 of the constitution, which directs that a statute shall have but one subject, which shall be expressed in the title, say: "The number of cases in which the court has been called upon to consider similar objections to other laws renders it unnecessary to say little more than that this objection cannot be maintained. The act embraces, as we think, but one leading object. All its provisions are subsidiary to and legitimately connected with, and tend to effect and enforce, this main object, which is sufficiently clearly and definitely expressed in the title." Here, although the subsidiary provision is not express, it is legitimately connected with the main subject, and tends to effect and enforce the main object of the law. "Any provision calculated to carry the declared object into effect is unobjectionable, although not specially indicated in its title." 1 Dill. Mun. Corp. 28, quoted with approval in Johnson v. Martin, 75 Tex. 33, 12 S. W. 321.

2. We are also of the opinion that so much of the act of January 22, 1883, entitled "An act to withdraw the public lands of the state of Texas from sale," as undertakes to continue the reservation of the former laws upon the same subject, is repugnant neither to section 35 nor to section 36 of article 8 of the constitution. Considered in the light of legislation upon the same subject-matter, enacted at the same session of the legislature, it is evident that the purpose was not to annul the reservation, but to suspend the sale of the lands until such time as the legislature might see fit to subject them to a similar disposition. Although the reservation was originally an incident of the provision for the sale of the lands, the repeal of the reservation was not necessarily an incident of their withdrawal. The withdrawal might be provided for without affecting the reservation from location by certificates. Hence, in our opinion, the legislature had power, under the title quoted, to enact a law to limit the effect of the withdrawal, and to provide that it should not be construed to restore the lands so withdrawn to the general mass of the public domain. For these reasons we think the entire purpose of the act was sufficiently expressed in its title. Section 36 of article 3 of our constitution reads as follows: "No law shall be revised or amended by reference to its title, but in such case the act revised or the section or sections amended shall be re-enacted and published at length." It is not meant by this provision that every act which amends the statutory law shall set out at length the entire law as amended. Under such a rule, legislation would in many instances be impracticable. This is especially the case in this state, where the existence of the common law is due to statutory enactment. The practice, which it was the purpose of the provision in question to prohibit, was that of amending a statute by reference to its title, and by providing that it should be amended by adding to or striking out certain words, or by omitting certain language, and inserting in lieu thereof certain other words. It was not intended to prohibit the passage of a law which declared fully its provisions, without direct reference to any other act, although its effect should be to enlarge or restrict the operation of some other statutes. Similar provisions in other constitutions have been construed not to apply to implied amendments. People v. Mahaney, 13 Mich. 481; Swartwout v. Railroad Co., 24 Mich. 389; Lehman v. McBride, 15 Ohio St. 573; Preston v. Bennett, 8 W. Va. 74; Home Ins. Co. v. Taxing Dist., 4 Lea, 644; Baum v. Raphael, 57 Cal. 361. The statute in question restricts the operation of the former statutes upon the same subject, but we think cannot be deemed as an amendment of such acts, within the meaning of the section quoted.

3. We say, in answer to the third question, that in passing a law the legislature has the power to declare in the body of the act the construction which shall be put upon it. It is but a mode of expressing its intent, and that intent, however expressed, is binding upon the courts. A legislature may not construe a former law so as to give such construction a retroactive operation. Such is an evasion of the province of the courts. Not so, however, when the act itself contains a provision declaring the mode in which it shall be construed. A notable instance of

this is found in our Revised Statutes, which contain a chapter in which rules are laid down for the construction of all civil statutory enactments. These rules have frequently been applied in this court in construing the provisions of the Revised Statutes, and have ever been regarded as binding upon the court. In Gammage v. Powell, 61 Tex. 629, the three acts under consideration were passed upon by this court, and were treated as valid laws, and it was held that a location made upon a part of the lands in 1881 was void. The first two acts have been acted upon and recognized as constitutional by every department of the government.

4. The act of April 10, 1883, should be construed in the light of the previous laws upon the same subject, and especially of those passed at the same session of the legislature; but we are of the opinion that this act does not limit the reservation to 2,000,000 of acres. Section 10 of the act of July 14, 1879, provided that one-half of the net proceeds of the land to be sold under its provisions should be set apart for the benefit of the permanent school fund, and that the other half should be applied to the payment of the bonded debt of the state, as the same should become due. The disposition of the state's half of those proceeds was changed by the act of February 23, 1883 (Laws 1883, p. 15). By that act it was still provided that one-half should go to the school fund, but it was also provided that from the other half there should be first paid a bonded indebtedness due from the state to the university, and two debts due to the common-school fund, also evidenced by the bonds of the state. The act in question (that of April 10, 1883) provides merely that, after the debts provided for in the act of February 23, 1883, had been paid from the state's half of the proceeds of the sales of the lands theretofore made, or thereafter to be made, the proceeds of one-half of the remainder, not to exceed 2,000,000 of acres, should be set apart for the permanent endowment of the university, the other half of such remainder to go to the support of the common schools, as provided in all the previous acts. We think the sole purpose of this act was to endow the university with one-half of the net proceeds of the sale of 2,000,000 of acres of land in the reservation, provided that quantity should remain after the payment of the debts provided for in the former act passed at the same session, and, if not, then one-half of the proceeds of so much as should remain, and that it should not be construed to have any other effect. We may say, in conclusion, that reviewing the legislation passed at the same session, in 1883, all together, it becomes apparent, we think, that the purpose of the act of the 22d of January was merely to suspend the sales, and was not to change radically the policy of the state in reference to the lands in question. Both the act of February 23d and that of April 10th clearly indicate that the legislature contemplated future sales, although there was no law in force at that time which provided for such sales.

(87 Tex. 396)

MATHONICAN v. SCOTT et al.

(Supreme Court of Texas. Dec. 17, 1894.)

VENUE OF ACTION — EMBEZZLEMENT BY AGENT — SUIT AGAINST PRINCIPAL AND AGENT — JOINDER OF PARTIES.

1. An agent who receives a sum of money from his principal, to be paid to a third person, is individually liable to such person for the sum received.

2. Where an agent negotiated the sale of a note to his principal, and the amount was paid to the agent, to be delivered to the seller, who had delivered the note to the agent, an action by the seller against the principal and agent for the purchase price or the return of the note cannot be brought in the county where the note was so delivered, under Sayles' Rev. Civ. St. art. 1198, § 8, which provides that a suit founded on a crime may be brought in the county where the crime was committed, since if any crime was committed it was against the principal.

3. Where an agent negotiates the sale of a note to his principal, and the note is delivered to the agent, who receives from his principal the purchase price, and appropriates the same, one action by the seller for the purchase price or the return of the note will lie against both the principal and agent.

4. An agent to negotiate loans, who, at the time a loan was negotiated, had sufficient money in his hands belonging to his principal to pay the loan, and who is directed by the principal to pay the same, becomes personally liable to the borrower, where the latter has delivered to him the security.

Certified questions from court of civil appeals of Fifth supreme judicial district.

Action by A. J. Mathonican against Scott & Baldwin for the amount of a negotiated loan. From a judgment for defendants, plaintiff appeals. Certain questions raised were by the court of civil appeals certified to the supreme court.

B. F. Looney, for appellant. Perkins, Gilbert & Perkins, for appellees.

BROWN, J. The court of civil appeals for the Fifth supreme judicial district has certified to this court the following statement and questions in the above cause:

"Scott & Baldwin, a firm composed of D. H. Scott and B. J. Baldwin, Jr., were engaged in business at Paris, Texas (Lamar county), and each of the members resided in that county. The firm did a real-estate, abstract, and loan business. They bought and sold notes and other securities and negotiated loans. While their business was in Paris, Lamar county, Texas, they had agents in other counties; among them an agent in Hunt county, who was authorized to solicit and secure business for them in the way of applications for loans, the negotiation and sale of notes and other securities, and to collect and pay over money for them. G. E. Scott was such agent of Scott & Baldwin in Hunt county, and resided there. He had authority to solicit and ob-