74.76 History: 1925 c. 100; Stats. 1925 s. 74.76; 1933 c. 180; 1943 c. 203; 1963 c. 104; 1965 c. 186; 1967 c. 266.

Draftsman's notes, 1967: Subsection (1): In order to accommodate to commercial convenience so far as possible within the limitations of section 6323 of the internal revenue code, filing with the secretary of state is provided for the lien on tangible and intangible personal property of partnerships and corporations (as those terms are defined in section 7701 of the internal revenue code and the implementing regulations) thus including within "partnerships" such entities as joint ventures and within "corporations" such entities as joint stock corporations and business trusts.

Since most purchases and secured transactions involving personal property of natural persons would relate to consumer goods or farm personal property, searches for liens against such persons are more likely to be made at the local level. Thus, with few exceptions a search for corporation federal tax liens with the secretary of state and for natural persons with an officer in the county of residence will normally be in the same office as searches for security interests under the uniform commercial code.

Section 6323 of the internal revenue code "locates" all tangible and intangible personal property at the residence of the taxpayer even though it is physically located elsewhere in the same or in another state. State law cannot vary this requirement. State law does affect the result, however, in that state law determines the "residence" of a taxpayer. See IRC section 6323 (f) (2). Filing at the physical location of personal property of a taxpayer who is not a resident of the state of location of the property cannot be required.

Subsection (3): It is the practice of the internal revenue service to regard a "certificate of discharge" as primarily referable to specific pieces of property so that a certificate of discharge corresponds to a release under 409.406 of the uniform commercial code. A "certificate of release" in tax practice is equivalent to a "termination statement" in 409.404 of the commercial code in the sense that it is a general statement applicable to all property or types of property referred to in the termination statement.

Subsection (4): This requires the United States to pay for filing notices of liens and provides for monthly billing. The fee of $1 for filing the various instruments is the same as for filing financing statements, termination statements and releases of collateral under 409.403 to 409.406. [Bill 258-S]

Editor's Note: For foreign decisions construing the "Uniform Liens of Internal Revenue Taxes Act" consult Uniform Laws, Annotated.

There is an apparent conflict between the provision for a 75-cent fee in 74.76 (4), Stats. 1957, and the filing fee provision in 59.57 (1) (b) and (c), and the latter provisions will control. 46 Atty. Gen. 295.

74.77 History: 1919 c. 234; Stats. 1919 s. 937c; 1921 c. 396 s. 90; Stats. 1921 s. 49.015; Stats. 1925 s. 74.77.

74.78 History: 1925 c. 303; Stats. 1925 s. 40.22; 1927 c. 425 s. 103; Stats. 1927 s. 74.78.

One school district may recover from another school district taxes on property which have been erroneously assessed, levied and paid. There is no limitation as to the number of years for which such recovery may be had. 20 Atty. Gen. 1177.

74.79 History: 1941 c. 287; Stats. 1941 s. 74.79; 1965 c. 135.

CHAPTER 75.

Land Sold for Taxes.

75.01 History: 1859 c. 22 s. 18, 19; R. S. 1878 s. 1165; 1883 c. 296; 1889 c. 415; Ann. Stats. 1889 s. 1034a, 1165; 1891 c. 182; 1893 c. 218 s. 3; Stats. 1898 s. 1165; 1913 c. 266; 1915 c. 66, 614; 1921 c. 18 s. 2; Stats. 1921 s. 75.01; 1933 c. 73, 87, 146; 1933 c. 244 s. 1, 2; 1933 c. 334; 1935 c. 24; 1935 c. 477; 1937 c. 294; 1945 c. 100, 107, 567; 1955 c. 10; 1957 c. 316.

On impairment of contracts see notes to sec. 12, art. I; on legislative power generally see notes to sec. 1, art. IV; and on escheats see note to sec. 3, art. IX.

The owner must redeem or offer to do so before he has any right to the land conveyed so that he can bring an action against the tax claimant, though still entitled to redeem. Wright v. Wing, 18 W 45.

A redemption is not the payment of the tax. There is really no tax to be paid when land is thus redeemed. That has been canceled by the sale. It is the discharge of an incumbrance. Lindsay v. Fay, 28 W 177.

The offer to redeem must be unconditional. Where a tenant in common offered the requisite sum but requested the officer not to receive it, so that such tenant's right to redeem the whole might be tested in an action, there was no valid redemption. Woodbury v. Shackleford, 19 W 55.

When a tax deed is properly indexed it is "recorded," the same rule applying to a tax deed as to other deeds. Oconto Co. v. Jerrard, 46 W 317, 50 NW 591.

The tax deed must be so recorded as to be constructive notice. The grantee "must record it in the same way to set the statute of limitations running in his favor and against the plaintiff as he would be required to do in the case of a deed or mortgage. * * *" Lombard v. Culbertson, 59 W 433, 18 NW 399.

One who has been many years in possession and to whom the taxes have been assessed may redeem. Campbell v. Packard, 61 W 88, 20 NW 672.

The words "other person" in sec. 1165, R. S. 1878, do not mean one who has no interest in the land sold for taxes. Rutledge v. Price County, 66 W 35, 27 NW 819.

Where a tax deed void on its face is executed to the county a quitclaim deed by the county to a third person may perhaps be evidence of a payment or redemption of the tax, since the right of redemption still exists. Semple v. Whorton, 68 W 626, 32 NW 690.

A city charter which gives the right to redeem within 3 years from the day of the sale and at any time before a deed is executed is not inconsistent with nor repugnant to sec. 1165, R. S. 1878, since redemption is not prohibited

after the deed is executed. The owner has the right to redeem at any time before the record in the register's office shows a deed valid on its face. A deed which recites that it was issued pursuant to a sale at a city other than that at which the sale was made is void; and the record of a deed which incorrectly designates the place of sale is void on its face. Lander v. Bromley, 79 W 372, 48 NW 594.

A deed is not recorded until the name of the grantor is entered in the general index. Hiles v. Atlee, 80 W 219, 49 NW 816.

If the register's record of a tax deed does not contain anything to represent the seal of the county such deed is not recorded so as to bar the landowner's right of redemption. Hiles v. Atlee, 90 W 72, 62 NW 940.

An assessment for a local improvement is a tax within the meaning of the statutes providing for the sale and conveyance of lands for the nonpayment of taxes. Yates v. Milwaukee, 92 W 352, 66 NW 248.

A request to the clerk for the amount of unpaid taxes on certain lands, without specifying the years for which they were sold, followed by a statement by the clerk not containing a certain sale, did not amount to a constructive redemption. Menasha W. W. Co. v. Harmon, 128 W 177, 107 NW 299.

Payment of the amount required for redemption by a check that was admittedly good, which was accepted and retained by the county clerk without objection to the form of payment, was a valid redemption. Field v. Pier, 150 W 83, 135 NW 496.

There is a constructive redemption that will avoid a tax deed if, before its issue, the owner's agent by due authority and supplied with necessary funds applies to the county clerk to give him the amount of the unpaid taxes in order that he may pay them and is thereupon informed that there are no unpaid taxes against the land and in consequence of such information the taxes upon which the deed was issued are not redeemed. Menasha W. W. Co. v. Thayer, 150 W 611, 137 NW 750.

Ch. 294, Laws 1937, abolishing the 2 per cent penalty and changing the interest rate on delinquent taxes to eight-tenths of one per cent per month was not to have retrospective operation. Munkwitz Realty & Inv. Co. v. Diedrich Schaefer Co. 231 W 504, 286 NW 30.

The essence of the partial-redemption plan is that on the payment of a just proportion of the tax lien the part of the property thereby redeemed will revert to the owner free of the tax lien, and the amount of lien remaining must be collected out of the remaining property. State ex rel. Dorst v. Sommers, 234 W 302, 291 NW 523.

The distinction between general property taxes and special assessments ceases after the tax sale, at least so far as redemption from the tax sale is concerned, and 75.01 (1), although mentioning only land sold for "taxes," applies to partial redemption of land sold for special assessments as well as that sold for general taxes. A determination by the county treasurer, without giving due notice of the application therefor and affording an opportunity to be heard to all who, as owners of any part or interest in the land, would be directly affected by such determination, would be invalid as a denial of due process of law. State ex rel. Anderton v. Sommers, 242 W 484, 8 NW (2d) 263.

Redemption statutes are to be liberally construed in favor of the landowner who seeks to redeem lands sold for delinquent taxes. Swanke v. Oneida County, 265 W 92, 60 NW (2d) 756, 62 NW (2d) 7.

Money received by a county treasurer in redemption of tax certificates held by a bank must be paid in full to the banking department in charge of a liquidating bank, notwithstanding county funds are on deposit in the defunct bank. 20 Atty. Gen. 837.

A county board may waive most of the redemption interest on any tax certificates held by it but the county cannot accept less than the face value of a tax certificate. Some redemption interest must be charged, but the rate thereof may be fixed very low. 23 Atty. Gen. 529; 24 Atty. Gen. 32.

As to the rights of a landowner and a holder of a tax certificate in a case where a county has waived penalty and interest on certificate, see 24 Atty. Gen. 86.

When an owner redeems land sold for taxes a holder of certificates is entitled to taxes paid plus interest and sums allowed by 75.12 (2), Stats. 1935, for notices served. A certificate holder cannot recover attorney's fees. 24 Atty. Gen. 527.

Under 75.01 (4), Stats. 1935, a county treasurer may accept part payments on delinquent taxes from owners of land after sale and issuance of tax certificates to the county. If land is not redeemed by the owner, tax certificates may be sold to a person other than the owner who has made some partial payments. 24 Atty. Gen. 566.

Redemption moneys subsequently paid into the general fund pursuant to 75.05, Stats. 1935, do not belong to the county but are held by the county for the use of the certificate holder. 25 Atty. Gen. 19.

A single tax certificate containing several lots should be divided to permit redemption of individual lots. 25 Atty. Gen. 546.

A county treasurer has no duty to notify the holder of a tax certificate that such certificate has been redeemed except as such notice is conveyed in a tax redemption notice. Neither the county nor the county treasurer is liable to the holder of a tax certificate for interest on redemption money from the time of redemption. 27 Atty. Gen. 691.

A property owner seeking to redeem a tax certificate is not required by 75.01 (1), Stats. 1939, to pay subsequent certificates of sale held by the owner of the certificate. 30 Atty. Gen. 184.

A resolution of a county board fixing the interest rate payable upon delinquent taxes and certificates of sale of the tax year 1940 is invalid as beyond the power of the county. 30 Atty. Gen. 259.

Under 75.01 (1), Stats. 1941, interest is computed to the end of the calendar month in which payment is made, even though payment is made during the month and before the end thereof. 30 Atty. Gen. 316.

Where real estate taxes become delinquent on land mortgaged to the Farm Security Administration in 1937 and years subsequent, and said land is sold on tax sale of 1938 and years subsequent, and tax certificates are duly

issued to the county, and subsequent thereto the mortgagor executes and delivers a quitclaim deed to the United States of America on July 21, 1941, the United States acquires by such quitclaim deed only such right, title and interest in the land as the mortgagor had at the time of execution and delivery of said deed, and the amount which the United States must tender to the county treasurer to redeem said land from said tax sales must include interest on said tax certificates to be computed to the date of redemption and not to date of execution and delivery of said quitclaim deed to the United States. 33 Atty. Gen. 143.

Settlement of delinquent taxes against a particular piece of property for the years 1937 through 1944 by waiver of all interest thereon and acceptance of merely the face amount of the unpaid taxes is invalid as there is no provision in the statutes authorizing the same. 35 Atty. Gen. 103.

75.03 History: 1859 c. 22 s. 20; 1868 c. 89; R. S. 1878 s. 1166; 1893 c. 21; Stats. 1898 s. 1166; 1921 c. 18 s. 4; Stats. 1921 s. 75.03; 1939 c. 453; 1945 c. 66; 1955 c. 10.

Equitable interests owned by minors may be redeemed under a statute providing that "whenever the lands of minors shall be sold for taxes, the same shall be redeemed . . . .". Jones v. Collins, 16 W 595.

The redemption money does not include the fee paid for recording the tax deed. Eaton v. Tallmadge, 24 W 217.

The right of redemption to minors, etc., does not affect the right to take and record a tax deed after the 3 years. Wright v. Wing, 18 W 45; Dayton v. Rolf, 34 W 86.

Sec. 1166, R. S. 1878, gives the right of redemption to a minor whose interest rests upon a moral obligation, if that obligation be executed and title becomes vested in him after redemption but before expiration of the period of redemption. Karr v. Washburn, 56 W 303, 14 NW 189.

A minor may maintain an action for partition and to quiet the title to land sold for taxes where he asks for relief on condition of paying into court the amount necessary to redeem and actually pays such sum to the county clerk. Tucker v. Whittlesey, 74 W 74, 41 NW 535, 42 NW 101.

Without actual redemption heirs may bring suit for redemption against their lessee whom they seek to charge with rents. Pulford v. Whicher, 75 W 555, 45 NW 418.

A minor who has the equitable title to land has the legal right to redeem it although the trust under which he holds it is void by the statute of frauds. Begole v. Hazzard, 81 W 274, 51 NW 325.

As to such minor, etc., the deed has simply the effect of a tax certificate, and a conveyance by the person having the redemption right amounts to a redemption. If such person has a life estate his conveyance gives the grantee (being the tax-title claimant) an estate per autre vie only. Little v. Edwards, 84 W 649, 55 NW 43.

Lands sold for taxes may be redeemed under sec. 1166, Stats. 1898, after a tax deed has issued. Hoffman v. Peterson, 123 W 632, 102 NW 47. See also: McConnell v. Hughes, 83 W 25, 53 NW 149; Gates v. Parmly, 93 W 294, 66 NW 253, 67 NW 739.

A minor may redeem within one year after reaching majority in favor of a grantee to whom he has conveyed. Field v. Pier, 150 W 83, 135 NW 496.

The rule that the statute of limitations having begun to run against an ancestor continues to run against his heir does not apply to redemptions by minors from tax sales under sec. 1166, Stats. 1917. Hahn v. Keith, 170 W 524, 174 NW 551.

The right of a minor owner to redeem at any time during his minority and within one year thereafter, was governed by 75.03 and 75.28 (1), as construed, and was not barred by ch. 453, Laws 1939. Swanke v. Oneida County, 265 W 92, 60 NW (2d) 756, 62 NW (2d) 7.

Purchase of their land from a county which had tax title and receipt of a quitclaim deed was in effect a redemption by minors. United States v. Ashland County, 75 F Supp. 979.

The right of minors to redeem land sold for nonpayment of taxes is limited by 75.03 (1), Stats. 1953, to the interest of said minors in such land. 44 Atty. Gen. 93.

75.04 History: 1859 c. 22 s. 21; 1860 c. 53 s. 3; 1863 c. 292; 1864 c. 120; R. S. 1878 s. 1167; Stats. 1898 s. 1167; 1913 c. 266; 1921 c. 18 s. 5; Stats. 1921 s. 75.04; 1935 c. 167; 1937 c. 294.

75.05 History: 1859 c. 22 s. 22; R. S. 1878 s. 1168; 1880 c. 220 s. 1, 2; 1881 c. 80; Ann. Stats. 1889 s. 1168, 1168a, 1168b; Stats. 1898 s. 1168; 1913 c. 266; 1921 c. 18 s. 6; Stats. 1921 s. 75.05; 1935 c. 167.

75.06 History: 1859 c. 22 s. 24; 1860 c. 53 s. 4; R. S. 1878 s. 1169; Stats. 1898 s. 1169; 1913 c. 266; 1921 c. 18 s. 7; Stats. 1921 s. 75.06; 1933 c. 244 s. 2; 1935 c. 167.

A county treasurer is authorized to pay out of the general fund the amount of money paid in redemption of land from a tax sale to the owner of a lost certificate of tax sale who complies with 75.06, Stats. 1927, although more than 6 years have elapsed since the sale. 17 Atty. Gen. 501.

75.07 History: 1859 c. 22 s. 16; 1864 c. 460; 1871 c. 130; 1872 c. 162, 167; 1873 c. 40, 240; 1874 c. 47; 1876 c. 55; R. S. 1878 s. 1170, 1173; 1879 c. 95 s. 3; 1885 c. 306; 1887 c. 186, 446; Ann. Stats. 1889 s. 1170; 1895 c. 367; Stats. 1898 s. 1170; 1907 c. 502; 1913 c. 266; 1921 c. 18 s. 8; Stats. 1921 s. 75.07; 1927 c. 473 s. 22; 1933 c. 306; 1957 c. 699; 1965 c. 252.

The charges for advertising must be paid before a deed is issued. State ex rel. White v. Strahl, 17 W 146.

This means, in ordinary cases, the usual period of redemption, and not the periods allowed to minors, etc., by ch. 22, Laws 1859. Wright v. Wing, 18 W 45.

The statute is merely directory, and a failure to comply with it is a mere irregularity, as a deed is not prohibited in case of failure to publish. Wright v. Sperry, 21 W 331, and 25 W 617. See also Allen v. Allen, 114 W 615, 91 NW 218.

In the published list at the head of the column there was a dollar mark, and throughout

this and each succeeding column denoting amounts of such taxes the 2 last figures of each item were separated from the others by a broad space, but there was no decimal mark or perpendicular line. It was sufficiently indicated that such last figures meant cents and those preceding them dollars. State v. Schwartz, 64 W 432, 25 NW 417.

A county clerk has no authority to let a contract for the publication of the list of unredeemed lands to the lowest bidder unless the number of descriptions therein exceeds 3,000. Such a contract does not bar the printer who published the list from recovering the compensation fixed by sec. 1174, R. S. 1878. Hoffman v. Chippewa County, 77 W 214, 45 NW 1083.

The failure to publish the notice of redemption for the length of time required is not such an error or defect as goes to the groundwork of the tax so as to bring persons claiming under the original owner of the land within the one-year statute of limitations. McConnell v. Hughes, 83 W 25, 53 NW 149.

A county treasurer is required to publish a notice of expiration of the redemption period of special assessments, pursuant to 75.07 (1), Stats. 1939, notwithstanding the county has title to land under a previous tax deed. 29 Atty. Gen. 146.

A newspaper mailed and distributed from a place of business within a county is printed within the county within the meaning of 74.33 and 75.07, Stats. 1939, though the actual printing may be done elsewhere. 29 Atty. Gen. 138, 225.

75.09 History: 1859 c. 22 s. 17; R. S. 1878 s. 1171; Stats. 1898 s. 1171; 1913 c. 266; 1921 c. 18 s. 10; Stats. 1921 s. 75.09.

75.10 History: 1863 c. 50 s. 1; R. S. 1878 s. 1172; 1891 c. 225; Stats. 1898 s. 1172; 1913 c. 266; 1919 c. 634; 1919 c. 671 s. 21; 1921 c. 18 s. 11; Stats. 1921 s. 75.10; 1933 c. 244 s. 2; 1933 c. 306; 1933 c. 450 s. 6; 1945 c. 100, 567.

75.11 History: 1859 c. 22 s. 55; 1864 c. 209 s. 1; R. S. 1878 s. 1174; Stats. 1898 s. 1174; 1905 c. 513 s. 1; Supl. 1906 s. 1174; 1907 c. 502; 1909 c. 34; 1911 c. 278; 1921 c. 18 s. 12; Stats. 1921 s. 75.11; 1933 c. 306; 1937 c. 294; 1947 c. 458; 1965 c. 252.

75.12 History: 1867 c. 113 s. 1, 2; 1868 c. 157; 1870 c. 44; 1872 c. 181; 1877 c. 235; R. S. 1878 s. 1175; Stats. 1898 s. 1175; 1913 c. 266; 1913 c. 773 s. 117; 1917 c. 49; 1919 c. 624; 1921 c. 18 s. 13; Stats. 1921 s. 75.12; 1931 c. 449; 1935 c. 167; 1939 c. 284, 485; 1943 c. 250; 1943 c. 552 s. 17a; 1943 c. 574; 1945 c. 107, 567; 1949 c. 209; 1965 c. 252; 1969 c. 284.

Ch. 113, Laws 1867, applies to deeds issued by cities as well as counties. State ex rel. Knox v. Hundhausen, 23 W 508; Kearns v. McCarville, 24 W 457.

A deed given without notice to one in the actual adverse possession of the land is void. Curtis v. Morrow, 24 W 664.

The 30 days referred to in sec. 1175, R. S. 1878, mean 30 consecutive days. The affidavit of nonoccupancy need not be made by the holder of the certificate nor state that he is such holder. Howe v. Genin, 57 W 268, 15 NW 161. See also: McDonald v. Daniels, 58 W 426, 17 NW 11; Sherry v. Gilmore, 58 W 324, 17 NW 252.

Notice of the application is necessary where the land is occupied. Elofrson v. Lindsay, 90 W 203, 63 NW 89.

Failure to give notice invalidates the deed if action is brought before the statute of limitations has run. Towne v. Salentine, 92 W 404, 66 NW 395.

Although no notice of intention to sell is given, such defect will be cured by the statute of limitations running upon a tax deed issued upon such a certificate. Kennan v. Smith, 115 W 463, 91 NW 986.

Want of notice of intention to apply for a tax deed invalidates the deed, if the allegation of nonpossession or nonoccupancy of the premises is untrue. The words "possession or occupancy" should not be construed as requiring an actual and continual residence on the premises of some one on whom notice of intention to apply for a deed could be served at the premises at all hours. Rosenberg v. Borst, 185 W 223, 201 NW 233.

Where the defendants after conveying lands with a reservation of flowage rights maintained a dam across a river so that a portion of the lands so conveyed and also described in a tax deed were flooded and other portions were affected by seepage, the occupancy of the defendants was of such a character as to require the service of a notice of application for a tax deed. Shemick v. Menominee River Boom Co. 227 W 190, 278 NW 465.

The use for which land is adaptable is the only use that need be made by the owner to entitle him to the statutory notice before issuance of a tax deed. Klug v. Soldner, 228 W 348, 280 NW 350.

The purpose, in requiring notice to be served on the occupant or person in possession of land before the taking of a tax deed thereon, is to make it possible for the owner or the occupant to redeem the premises from the tax lien. The words "actual occupancy" are used in opposition to the term "constructive occupancy" or possession. Clouse v. Ruplinger, 233 W 626, 290 NW 133.

Notices of application for a tax deed, containing a description of the land involved such that it could be adequately identified and a statement of the amount for which it was originally sold on tax sale, complied with requirements as to statement of description and amount. Stoelker v. Cappon, 247 W 453, 19 NW (2d) 896.

Under the provisions of 75.12 (1), no tax deed could be issued unless notice of application for tax deed had been served on the owner of the land, and the service of notice on the occupant, as provided for in the statute under certain conditions, did not relieve from the requirement of giving notice to the owner, since the statute of 1945 did not provide for notice to the owner or the occupant in the alternative. Diligent search for the owner of the land should be made before publication of notice of application for tax deed. The provisions of 75.12 (3) require that the affidavit be filed prior to the publication of the notice. A tax deed issued on the same date as the date of filing of the affidavit was a nullity, as involving an irregularity going to the merits, since under 75.12 (2) a deed could not be ap-

plied for until 3 months from the date of service of the notice. Welsh v. Mulligan, 251 W 412, 29 NW (2d) 736.

Where the owner of land sold for taxes died leaving several heirs but no probate proceedings or proceedings for certificate of heirship were had, so that there was no living owner of record on whom notice of application for a tax deed could be served either personally or by registered mail, 75.12, Stats. 1949, required that notice of application for a tax deed be given by publication in a newspaper, and merely personal service of such notice on an heir-occupant of the land would be insufficient as against the other heirs. Carroll v. Richland County, 264 W 96, 58 NW (2d) 434.

The provision in 75.12 (6), that no tax deed shall be taken upon any notice of application therefor after one year from the last date of service of such notice, does not assume to limit the time in which a tax deed may be taken upon a certificate, but only limits the time during which the notice is to remain valid; thus the limitation therein set forth is not upon the validity of the certificates, but the time after notice in which a tax deed must be taken, and if the year runs out without taking the deed, notice may be given again. The time limitation upon the validity of tax certificates is contained in 75.20 (2). Lingott v. Bihlmire, 24 W (2d) 182, 128 NW (2d) 625, 129 NW (2d) 329.

Notice of intention to apply for a tax deed required by 75.12, Stats. 1923, may be given prior to expiration of the redemption period. 13 Atty. Gen. 121.

When the county board determines to have tax deeds issued to the county on all tax certificates held by the county on which deeds are due, it is the duty of the county clerk to issue such deeds and to do all things necessary to enable him to issue a valid deed, including service of necessary notices on occupants and mortgagees and obtaining necessary information to enable him to do so. 13 Atty. Gen. 646.

A county clerk has no authority to issue to the county a tax deed under 75.14, Stats. 1935, after having been instructed to do so by the county board, unless the notice required by 75.12 to be given to the parties interested in the land was in fact given in accordance with the statutes. 24 Atty. Gen. 398.

Whether premises are occupied so as to require serving of notice under 75.12 (1), Stats. 1935, is a question of fact in each case. 24 Atty. Gen. 499.

Under 75.12 (2), Stats. 1935, no tax deed should be issued except upon proof of service as shown by affidavit filed with the officer who issues the tax deed and duplicate of affidavit filed with the county clerk. 24 Atty. Gen. 543.

Service on an owner of land whose address is unknown may be by publication; an affidavit should be filed. 25 Atty. Gen. 32.

Notice of application for tax deed given by a county during its ownership of certificate subsequently sold is substantial compliance with 75.12, Stats. 1939, so a purchaser of a certificate may be issued a tax deed. 28 Atty. Gen. 443.

Where 2 or more persons own a parcel of land as a partnership, as tenants in common, or in joint tenancy, notice of application for a tax deed need be served only on one of them. 39 Atty. Gen. 584.

Where land is owned of record by 2 persons as tenants in common, reserved timber and pasture rights thereon are owned of record in joint tenancy, and the land is subject to a recorded easement, service of notice of application for a tax deed on one of the owners of the fee is sufficient compliance with the requirement that it be served "upon the owner, or one of the owners of record." 39 Atty. Gen. 595.

Recording of a mortgage subsequent to the service of notice of application for a tax deed given in full accordance with 75.12, Stats. 1951, does not invalidate a tax deed taken thereon. 41 Atty. Gen. 258.

Where the owner of record title to tax delinquent lands holds title subject to the right of re-entry for a condition which has been broken, the holder of the right of re-entry is not the owner of record for the purpose of service of notice of application for a tax deed. 44 Atty. Gen. 244.

75.13 History: 1917 c. 50; Stats. 1917 s. 1175m; 1921 c. 18 s. 14; Stats. 1921 s. 75.13.

75.14 History: 1859 c. 22 s. 25; 1864 c. 460; R. S. 1878 s. 1176; Stats. 1898 s. 1176; 1913 c. 266; 1913 c. 773 s. 117; 1917 c. 49; 1921 c. 18 s. 15; Stats. 1921 s. 75.14; 1939 c. 20, 388; 1943 c. 539; 1945 c. 99; 1951 c. 522; 1957 c. 699.

1. Nature of tax deed title.
2. Execution.
3. Restrictions and covenants.
4. Purchase by municipality.

1. Nature of Tax Deed Title.

A deed regular on its face does not give title to the grantee in possession to timber cut by him and removed if it is shown to be invalid. Paine v. Libby, 21 W 425.

A tenant in common holding adversely may cut off the title of a cotenant by taking a tax deed. Wright v. Sperry, 21 W 331, 25 W 617.

A valid sale and deed on a junior assessment cuts off all former titles and liens, and is superior to a subsequent deed issued on a prior assessment. Truesdell v. Rhodes, 26 W 215.

One entering upon land under a contract for its purchase, though the contract should be afterwards released, cannot take title under a tax deed or turn his possession into such an adverse one as will enable him to take a tax deed against his vendor. Quinn v. Quinn, 27 W 168.

One who takes a tax deed, but who does not take possession under it, is under no duty to pay the taxes, and may abandon the deed and all claim under it and acquire a subsequent tax deed. Eaton v. North, 29 W 75.

A tax deed valid on its face carries with it the constructive possession of the land because the statute declares that it shall vest an absolute estate in fee-simple, thus making all presumptions in its favor, and because the recording of the deed is an assertion of title by the grantee. Lawrence v. Kenney, 32 W 281.

A possessor or usurper, without claim of title, is not bound to pay taxes and may take a tax title. Link v. Doerfer, 42 W 391.

A tax deed issued to one not a legal assignee, whose assignment is not indorsed or attached to the certificate, when so required, is void. Smith v. Todd, 55 W 459, 13 NW 488.

The grantee cannot maintain an action for waste or in the nature of waste for a trespass committed before the deed was issued by a stranger to the title. There must be a privity of estate or tenancy between the plaintiff and defendant. Lander v. Hall, 69 W 326, 34 NW 80.

A tax deed prematurely issued is void. Safford v. Conan, 88 W 354, 60 NW 429.

A married woman who has a separate estate may with that estate, acting in good faith, acquire a tax title to land of which her husband is in possession and which was assessed to him. Wood v. Armour, 88 W 488, 60 NW 791.

A tax title extinguishes the old title and all equities and liens depending upon it. But it is easily impeached in many cases, and subject to strict construction. If the statute has been complied with, a tax title is as good as any other. A tax title upon which the statute of limitations had not run, apparently not defective, was "marketable" under an agreement to furnish a marketable title. Gates v. Parmly, 93 W 294, 66 NW 253, 67 NW 739.

A tax deed taken by one not disqualified has priority over a foreclosure of a prior tax certificate, even though the deed, fair on its face, and recorded, was invalid for irregularity not going to the groundwork of the tax. Blackman v. Arnold, 113 W 487, 89 NW 513.

While a tax deed in regular form is presumptive evidence of the regularity of the proceedings, such presumption may be overcome by proof of defects until the statute of limitations has run in its favor. Pinkerton v. J. L. Gates L. Co. 118 W 514, 95 NW 1089.

Where in an action to quiet title the complaint alleges that the defendants have certain tax deeds but nothing is alleged as to their invalidity, the presumption will be that such tax deeds are valid and the complaint will be demurrable. Mitchell I. & L. Co. v. Flambeau L. Co. 120 W 545, 98 NW 530.

A second tax deed based on a tax levied subsequent to the one upon which a first tax deed was obtained cuts off all title and interest conveyed by the first tax deed, if the second conveyance is to another grantee, but does not if the grantee under the second deed is the same as the first. Patterson v. Cappon, 129 W 439, 109 NW 103.

A person obligated by law or contract or otherwise to pay a tax on land or redeem it from a tax sale cannot obtain a valid tax title based on such sale. The taking of a tax deed by him is a redemption. Olson v. McDonald, 156 W 438, 145 NW 1078.

The redemption of land sold for taxes is not a payment of the tax, even if the land is acquired by the state or a municipality on such sale, the tax having been canceled by the sale. Pereles v. Milwaukee, 213 W 232, 251 NW 255.

Under statutory provisions relating thereto, a tax deed (including tax deeds executed in 1872 and 1873) fair upon its face is at least prima facie a marketable title unless some irregularity, rendering it unmarketable, is shown. Haumersen v. Sladky, 220 W 91, 264 NW 653.

The husband of an owner or co-owner who purchases at a tax sale is deemed to have acted for his wife, and a tax deed issued to him on the sale does not cut off the lien of a prior mortgage. Purchase of a tax certificate or the taking of a tax deed by one who owes a legal duty to pay taxes on the land or to redeem it from a tax sale operates as a redemption. He cannot obtain a valid tax title. Bankers Farm M. Co. v. Christofferson, 221 W 148, 266 NW 220.

A tenant of a mortgagor, by purchasing tax certificates outstanding against the mortgaged premises and taking a tax deed thereon, acquired a tax title as against the mortgagor landlord, and as against the mortgagee who bid in the premises on foreclosure of the mortgage, there being no duty on the part of the tenant to pay the taxes and no facts tending to establish fraud or any breach of duty on his part. Keller v. Friedrichs, 241 W 8, 4 NW (2d) 169.

A judgment setting aside a tax deed to a cotenant, on the ground that a cotenant cannot by taking a tax deed affect the legal title of his cotenants, although res adjudicata as to the title, had no effect or bearing on the rights of a good-faith grantee of the tax-deed grantee by virtue of improvements made on the land, where such rights were not determined nor in issue in the action to set aside the tax deed. Kubina v. Nichols, 241 W 644, 6 NW (2d) 657.

The strength of a tax deed depends on whether all the requirements of law governing a sale of real property for taxes have been fully complied with, and a tax deed is not valid if any act required by law, such as a proper notice of application for tax deed, is omitted. Where an heir to land sold for taxes acquiesced in the tax sale and was in possession of the land under a lease from the county wherein he stated that the land was owned by the county, which had taken a tax deed, and thereafter certain third parties purchased the premises from the county without any opposition of record from him, such heir-occupant, who had acquired the interests of the other heirs in the meantime, was estopped to assert that the tax sale was contrary to statute and that the tax deed was void. Carroll v. Richland County, 264 W 96, 58 NW (2d) 434.

Ch. 75, Stats. 1963, contains the several legislative pronouncements concerning the question of title to land in relation to unpaid taxes. By virtue of 75.14 (1) and 75.36 (2), a county is given an "absolute estate in fee simple in such land subject, however, to all unpaid taxes and charges which are a lien thereon." Oosterwyk v. Milwaukee County, 31 W (2d) 513, 143 NW (2d) 497.

A person holding a tax certificate on land for taxes of 1926 is entitled to a tax deed on such certificate, although a tax deed has already been issued on a tax certificate for taxes of 1927. 20 Atty. Gen. 409.

A county board has no power to prescribe that tax deeds shall contain provisions restricting cutting of timber on property thereby conveyed. 27 Atty. Gen. 106.

The county board has power to include reservations of minerals, oil and gas in convey-

ances of county lands acquired by tax deed. 38 Atty. Gen. 639.

Under 75.14 (1) and (4), Stats. 1959, a tax deed cuts off a reservation of mineral rights reserved by a former owner of the tax deeded lands. 49 Atty. Gen. 77.

2. Execution.

The payment of the fees accruing since the issue of the certificate is a condition precedent to the issue of the deed, if demanded. State ex rel. White v. Strahl, 17 W 146.

The clerk cannot raise objections to the assignment of the certificate and may be compelled by mandamus to issue the deed. State ex rel. White v. Winn, 19 W 323.

A deed is allowed such effect as evidence as was declared by the law in force at the time of the sale; when issued on the sale of 1857 a deed was conclusive evidence of the regularity of prior proceedings. Lindsay v. Fay, 28 W 177.

The deed must be executed in the name of the state and the municipality in order to be valid. Wilson v. Henry, 40 W 594.

A deed is conclusive evidence of the regularity of the proceedings after the statute of limitations has run only where the lands were taxable in and by the town in which the taxes were levied. Where a county board undertook to attach certain territory to another town by an unpublished order, the town to which it was attempted to be attached acquired no jurisdiction over such territory. Smith v. Sherry, 54 W 114, 11 NW 465.

Where certain territory was detached from Oconto county and made New county, and it was provided that it should be temporarily attached to Shawano county for all county and judicial purposes, tax deeds of land in N. county were properly executed by O. county until the complete organization of N. county. Haseltine v. Simpson, 58 W 579, 17 NW 332.

There is no statute that makes the recording of a tax deed essential to a complete and valid conveyance, though important advantages may result from its registration, as is the case in respect to other conveyances. Hotson v. Wetherby, 88 W 324, 60 NW 423.

A statement in a tax deed that the county clerk acknowledged the deed so executed is sufficient as it is by implication acknowledged by him. Mere irregularity in describing the seal attached to a tax deed as the seal of the county board of supervisors instead of the seal of the county is immaterial. Where the seal itself was named the seal of the county, it was a good seal of the county having been adopted as such by the county board. Laughlin v. Kieper, 125 W 161, 103 NW 264.

The county clerk of the county whose treasurer sold lands for unpaid taxes is the proper officer to issue the tax deeds thereon if the lands remain unredeemed, in the absence of any contrary provision of law, even though the lands, after sale and before deeding, were transferred to another county. Field v. Pier, 150 W 83, 135 NW 496.

In executing tax deeds the official seal of the county should be affixed in those cases where such seal has been provided. 18 Atty. Gen. 713.

3. Restrictions and Covenants.

Under the definition of "real property" or "land" for the purposes of taxation in 70.03 flowage rights of the owner of a developed water power in lands of another "appertained" to, and were to be valued and assessed under 70.12, 70.17 and 70.32 (1), with the dominant estate or the lands on which the dam was constructed, not the servient estate or the lands overflowed, and a tax deed of the lands overflowed did not operate to extinguish the easement, which was duly recorded. The tax deed grantee took subject thereto, although the lands overflowed had been assessed and the tax deed issued without referring to the flowage rights. Union Falls P. Co. v. Marinette County, 238 W 134, 298 NW 598.

A tax deed is an independent source of title, and whatever may be the effect of a restriction in deeds of private persons against sale, to anyone not a member of the Caucasian race, on a grantee holding under a title stemming from the original grantor who imposed the restriction, such restriction can have no effect to defeat the title of one to whom the state may sell for failure to pay taxes, since the state may sell at tax sale to anyone who bids. Doherty v. Rice, 240 W 389, 3 NW (2d) 734.

A tax deed passes the title of the deeded land subject to all easements to which the land is subjected. A tax deed cuts off only interests that were taxed against the land. The value of an easement is in the dominant estate and assessable therewith and not as a part of the servient estate; so a tax sale of the servient estate cannot cut off the interest of the owner of the dominant estate. Doherty v. Rice, 240 W 389, 3 NW (2d) 734.

4. Purchase by Municipality.

The deed must be issued to the holder of the certificate by a proper assignment. An assignment to a town being void, its assignee obtains no title to the certificate, and a deed issued thereon is void. Irvin v. Smith, 60 W 175, 18 NW 724.

Where the city took a deed on a tax certificate and the county claimed a lien against the land as owner of a county tax certificate for unpaid county and state taxes levied for the same year as those for which the city taxes were levied but which were purchased by the county prior to the date of the city tax certificate, the county's interest in the realty was cut off by the tax deed issued to the city. Milwaukee v. Roberts, 229 W 325, 282 NW 21.

See note to 75.36, citing Remington v. Wood County, 238 W 172, 298 NW 591.

75.145 History: 1937 c. 237; Stats. 1937 s. 75.145; 1949 c. 40.

75.15 History: 1859 c. 22 s. 23; R. S. 1878 s. 1177; 1882 c. 48; Ann. Stats. 1889 s. 1177; Stats. 1898 s. 1177; 1921 c. 18 s. 16; Stats. 1921 s. 75.15.

75.16 History: 1859 c. 22 s. 50; R. S. 1878 s. 1178; Stats. 1898 s. 1178; 1921 c. 18 s. 17; Stats. 1921 s. 75.16.

The subject of irregularities in tax deeds is discussed in Smith v. Cleveland, 17 W 556.

The form prescribed is for deeds to the county as well as to individuals. A recital that the grantee is assignee of one who was assignee of the county is conclusive on the county, and the person attacking the deed can-

not avail himself of the objection. Woodman v. Clapp, 21 W 355.

A revenue stamp was never essential to the validity of a tax deed. Delorme v. Ferk, 24 W 201.

The recital of time of sale is presumed to be the date of the certificate. Lindsay v. Fay, 28 W 177.

A recital that the grantee is assignee of the county treasurer does not avoid the deed, it being presumed that the treasurer bid off the lands for the county. A deed which recites that the land was sold by the treasurer of the county "at public auction, at O., in the county of W.," need not also recite that it was made at some public place, as at the courthouse in the city of O., or if not there that it should show that it was at some public place, designating it. Frentz v. Klotsch, 28 W 312.

A tax deed must have the seal of the county affixed and does not require the private seal of the clerk. A recital that the holder has deposited the certificate "in the office of the clerk of the board of supervisors in the county," etc., is sufficient, the statute only requiring the deed to be in substantially the form given. Lybrand v. Haney, 31 W 230.

"The proper officer" means an officer authorized to execute tax deeds, and not one authorized to execute the particular deed under which the grantee claims, since no officer is authorized to execute a defective or invalid deed. Oberich v. Gilman, 31 W 495.

The tax deed must give the name of the purchaser at the sale or it will be void. Eaton v. Lyman, 33 W 34.

A deed in the statutory form to a city for land sold to it is valid; and such recital imports that the city has bid in the land. Cramer v. Stone, 38 W 259.

The deed being required to be executed in the name of the state and county should be acknowledged by the clerk for the state and county; but an acknowledgment of his own execution "for the grantors" is sufficient. Wilson v. Henry, 40 W 594.

A certificate that the clerk acknowledged that the deed was executed freely, etc., without expressly stating by whom, shows sufficiently that it was executed by him. A recital of the amount paid the county for an assignment of the certificate and that such sum was the amount of taxes assessed, due and unpaid, together with costs, etc., is sufficient. Milledge v. Coleman, 47 W 184, 2 NW 77.

Recital of the time of assessment is unnecessary. Marshall v. Benson, 48 W 558, 4 NW 385 and 762.

A deed signed "A. B., clerk, etc., by C. D., deputy," was acknowledged by C. D., deputy, the acknowledgment stating that "C. D., deputy, etc., acknowledged," etc. This was sufficient, under Huey v. Van Wie, 23 W 613, holding that a deputy may acknowledge in the name of the clerk. Scheiber v. Kaehler, 49 W 291, 5 NW 817.

A deed need not be dated; if the acknowledgment be fully dated it is prima facie valid. McMichael v. Carlyle, 53 W 504, 10 NW 556.

A scroll with the word "seal" within it is a sufficient record of the seal where the deed recited that the seal of the county had been affixed. Putney v. Cutler, 54 W 66, 11 NW 437.

Where the seal affixed was the one formerly used by the county board it will be presumed to be the only seal the county had until proof to the contrary. Dreutzer v. Smith, 56 W 292, 14 NW 465.

The acknowledgment did not state that the clerk was known to the acknowledging officer to be the person who executed the deed; but such officer was an attesting witness, his name appearing under the words "done in presence of", and the defect was cured. Hiles v. La Flesh, 59 W 465, 18 NW 435.

In the absence or disability of the clerk his deputy may execute the deed either by signing his own name as deputy or by signing the clerk's name and adding his own as deputy. Gilkey v. Cook, 60 W 133, 18 NW 639.

Where a deed was executed February 5, 1881, but purported to have been acknowledged February 5, 1880, the mistake did not avoid the deed or make the acknowledgment so defective as to prevent the deed being recorded. Yorty v. Paine, 62 W 154, 22 NW 137.

An acknowledgment by the deputy clerk reciting that he acknowledged the deed "as such county clerk" is valid, as the words obviously mean "as such deputy county clerk." Ward v. Walters, 63 W 39, 22 NW 844.

A deed is not invalidated by the clerk describing himself as the clerk of the county board of supervisors. Bulger v. Moore, 67 W 430, 30 NW 713.

A tax deed must have 2 witnesses; if it have but one it is void on its face and not entitled to record. Wood v. Meyer, 36 W 308; Semple v. Whorton, 68 W 626, 32 NW 690.

Though a deed have 2 witnesses, if the record shows but one, it is void upon its face and the statute of limitations will not run upon it. Whittlesey v. Hoppenyan, 72 W 140, 39 NW 355.

The omission of "is" by the register of deeds in recording is immaterial. The omission of the word "is" from the sentence "as the fact is," where these words occur in the clause respecting the non-redemption of the lands by the register of deeds in recording a tax deed, is a mere clerical error. St. Croix L. & L. Co. v. Ritchie, 73 W 409, 41 NW 345 and 1064.

A deed which incorrectly states the city, town or village where the sale was made is void on its face, and the record of it, if it falsely states such place, whether it follows the deed or not, does not carry the constructive possession, nor operate as a constructive eviction, nor set the tax-title statutes of limitation in operation. Lander v. Bromley, 79 W 372, 48 NW 594.

The separate amounts for which separate tracts sold need not be stated. The aggregate amount need only be set forth. Orton v. Noonan, 25 W 672; Hotson v. Wetherby, 88 W 324, 60 NW 423.

A deed reciting in one place that the sale was made to the grantee, and in another that he was assignee, is void on its face. Dunbar v. Lindsay, 119 W 239, 96 NW 557.

Substantial adherence to the form prescribed is all that is necessary. But the omission of a material requirement, not supplied by necessary inference from other parts of

the deed, is a fatal defect. A deed which recites that the tax sale was made at the office of the county treasurer of the county but does not say it was made at the county seat of such county is valid. Washburn L. Co. v. Chicago, St. P., M. & O. R. Co. 124 W 305, 102 NW 546.

A recital in a tax deed that the grantee was assignee of certain tax certificates stated is a sufficient compliance with the statute. A statement in the deed following certain names that they were buyers at certificate tax sale is a sufficient statement of the purchasers at such sale. Doolittle v. J. L. Gates L. Co. 131 W 24, 110 NW 890.

The term "purchaser" under sec. 1178, Stats. 1898, means one who has made a completed purchase and not a mere bidder who has forfeited his bid by failing to pay the tax certificate and who never obtained delivery of it. Herbst v. Land & L. Co. 134 W 502, 115 NW 119.

A tax deed reciting that "J. L. Gates, and assignee of Ashland county has deposited" certain tax certificates, sufficiently shows that said Gates, the applicant for the deed, presented himself as assignee of the county. The word "and" before "assignee" should be rejected as surplusage or as written by the clerk through mistake for the word "an." Maxon v. Gates, 136 W 270, 116 NW 758.

A tax deed will be sustained so far as affected by the sufficiency of the description of the land conveyed if it purports to convey an undivided half of a specified tract and the tax proceedings, which may be resorted to in order to ascertain which particular individual half was sold, showed that the grantee in the deed paid the tax on an undivided half of the tract. In such a case it was held that the other undivided half was the one sold. One tenant in common of unoccupied lands may acquire the title of his cotenant by tax deed, where they derived their interests from separate instruments and there are no relationships between them other than that of mere tenancy in common. Hobe v. Rudd, 165 W 152, 161 NW 551.

75.17 History: 1859 c. 22 s. 52; R. S. 1878 s. 1179; Stats. 1898 s. 1179; 1921 c. 18 s. 18; Stats. 1921 s. 75.17; 1945 c. 33.

75.18 History: 1866 c. 32 s. 1; 1867 c. 99 s. 1; R. S. 1878 s. 1180; Stats. 1898 s. 1180; 1921 c. 18 s. 19; Stats. 1921 s. 75.18; 1965 c. 252.

The owner of the tax certificate on which he has taken out a defective deed has a right to a new deed although he has quitclaimed the land. The grantee of a grantee under a void tax deed takes only an equitable right. Lain v. Shepardson, 23 W 224.

The 3 years' limitation of ch. 32, Laws 1866, did not apply to cases where the deed had been recorded more than 3 years before it took effect. The new deed should be executed to the grantee in the old one. In this case the new deed was executed 27 years after the sale. Eaton v. North, 32 W 303.

Sec. 1180, R. S. 1878, does not apply to a deed on foreclosure of the tax certificate. Potts v. Cooley, 56 W 45, 13 NW 682.

75.19 History: 1872 c. 181; R. S. 1878 s. 1181; 1879 c. 194; Ann. Stats. 1889 s. 1181; Stats. 1898 s. 1181; 1899 c. 337 s. 1; Supl. 1906 s. 1181; 1921 c. 18 s. 20; Stats. 1921 s. 75.19; 1933 c. 244 s. 2; 1945 c. 100, 567.

A judgment on foreclosure of a certificate does not estop parties from claiming under a subsequent title. Whitney v. Nelson, 33 W 365.

Under ch. 181, Laws 1872, the proceedings prior to the certificate need not be pleaded, nor need the fact that no proceedings at law for the same purpose have been had. Durbin v. Platto, 47 W 484, 3 NW 30; Manseau v. Edwards, 53 W 457, 10 NW 554.

After a deed is set aside the certificate may still be foreclosed. Potts v. Cooley, 56 W 45, 13 NW 682.

In an action to foreclose a tax deed failure to serve process on one defendant does not invalidate the judgment as to defendants served. Stuntz v. Tanner, 61 W 248, 20 NW 928.

If the owner of the land is not made a party defendant he may redeem, if the plaintiff has actual or constructive notice of his title. After redemption such owner may bring an action to restrain the sale on foreclosure. Coe v. Manseau, 62 W 81, 22 NW 155.

In a foreclosure action the defendant could not raise any question of irregularities not going to the groundwork of the tax without having first offered to pay the tax and interest. Pier v. Prouty, 67 W 218, 30 NW 232.

The holder of a certificate cannot foreclose the same after he is unable to obtain a deed. If the land is occupied he must commence the foreclosure more than 3 months prior to the expiration of the limitation period, since he must be in a position to give the notice required by sec. 1181, R. S. 1878. Goffe v. Bond, 69 W 366, 34 NW 236.

It is not misjoinder to include several counts in the same complaint, each on a distinct certificate affecting the same land. Corry v. Scudder, 151 W 104, 138 NW 68.

75.20 History: 1867 c. 112 s. 1; 1868 c. 56 s. 1; 1877 c. 87; R. S. 1878 s. 1182; Stats. 1898 s. 1182; 1921 c. 18 s. 21; Stats. 1921 s. 75.20; 1939 c. 302; 1943 c. 151; 1945 c. 132, 586; 1947 c. 515; 1949 c. 288.

Under the general statute of limitations of 6 years the limitation does not commence to run until the grantee in the tax deed has clear and positive information or knowledge of the existence of proof that the sale was invalid. Hutchinson v. Sheboygan County, 26 W 402.

Ch. 112, Laws 1867, barred an action on illegal certificates issued May 10, 1864, since a reasonable time to sue was given thereby. (State ex rel. Wolff v. Sheboygan County, 29 W 79, overruled.) Baker v. Columbia County, 39 W 444; Eaton v. Manitowoc County, 40 W 668.

Sec. 1182, R. S. 1878, does not relieve the original owner from payment of the taxes upon which the certificates were issued, if they are owned and held by the claimant under a tax deed or by a person under whom he claims, before he can have execution upon a recovery in ejectment under sec. 3096. Lombard v. Antioch College, 60 W 459, 19 NW 367.

Ch. 144, Laws 1874, extended the limitation to 6 years from the time when a deed became due upon the certificate and applied to certificates theretofore as well as thereafter issued. The county board may reassess the amount refunded on a void certificate and a sale for such reassessed tax will be governed by the

one-year statute. Oberreich v. Fond du Lac County, 63 W 216, 23 NW 421.

If the county sells certificates, they are taken out of the exception in the statute, and a reassignment to the county would not restore the certificates to their original status. Hiles v. Cate, 75 W 91, 43 NW 802.

Certificates of sale by a county treasurer to enforce special assessments, where the land was bid in by the county, are not the property of the county, but are held by it as the trustee of the owners of the special assessment certificates, and actions to foreclose them are barred in 6 years. The 15 years' limitation does not apply. United States Nat. Bank v. Lake Superior T. & T. R. Co. 170 W 539, 174 NW 923.

Where special assessments have been levied against lots for public improvements, and special assessment bonds, payable only out of such assessments and controlled by 62.20 (3) (c), Stats. 1931, have been issued by the city to the contractor, and the lots are bid in by the county treasurer on the sale thereof for unpaid assessments, the county holds the tax certificates, issued to it thereon, in trust to collect the assessments for the owner of the bonds, and the county is not the "owner" of such certificates so as to render applicable the provision in 75.20, Stats. 1943, excepting from the 6-year limitation actions on tax sale certificates issued to and "owned" by a county. (Gross v. Sommers, 225 W 266, applied; Remington v. Wood County, 238 W 172, explained.) Agnew v. Milwaukee County, 245 W 385, 14 NW (2d) 144.

Under this section (prior to the enactment of ch. 132, Laws 1945) the person having the beneficial interest in the certificate was the owner; the exception from the 6-year limitation applied only to a county or municipality to whom a certificate was originally issued; and if the certificate was issued to the county and beneficial ownership was in another, whether a city or a private person, the 6-year limitation applied. (Agnew v. Milwaukee County, 245 W 385, followed.) Sommers v. Wauwatosa, 249 W 165, 23 NW (2d) 485.

See note to 75.12, citing Lingott v. Bihlmire, 24 W (2d) 182, 128 NW (2d) 625, 129 NW (2d) 329.

See note to 75.61, citing Lingott v. Bihlmire, 38 W (2d) 114, 156 NW (2d) 439.

75.21 History: 1867 c. 112 s. 2; R. S. 1878 s. 1183; Stats. 1898 s. 1183; 1921 c. 18 s. 22; Stats. 1921 s. 75.21; 1933 c. 68; 1943 c. 151.

When land was sold by the city treasurer for certificates of the board of public works and bid in by the city the certificate is held in trust for the holders of such certificates. Hoyt v. Fass, 64 W 273, 25 NW 45.

An action brought by the owner of special assessment certificates to recover the amount of special assessments is an action on the certificates within the meaning of sec. 1183, Stats. 1913, and must be brought within 6 years. United States Nat. Bank v. Lake Superior T. & T. R. Co. 160 W 669, 152 NW 459.

75.22 History: R. S. 1849 c. 15 s. 110, 111; R. S. 1858 c. 18 s. 154; 1859 c. 22 s. 26, 27; R. S. 1878 s. 1184; 1897 c. 215; Stats. 1898 s. 1184; 1909 c. 71; 1921 c. 18 s. 23; Stats. 1921 s. 75.22.

The remedy given by sec. 110, ch. 15, R. S. 1849, is cumulative and does not bar assumpsit against the county for money received, the consideration for which has failed. Norton v. Rock County, 13 W 611.

If the owner does not pay the tax he cannot purchase the certificate and recover of the county the sum paid on the ground that the description of the lands was void for uncertainty. Whiton v. Rock County, 16 W 44.

It is too late on appeal to object for the first time that the certificate was not tendered on the trial. If the county would avoid repayment of moneys paid on a void sale and deed on the ground that the grantee has since conveyed the land it must show the fact of alienation. Warner v. Outagamie County, 19 W 611.

If the holder of the void certificate (by reason of a misdescription of lands) has, since the sale, and before the claim has been presented, purchased the lands he cannot recover on such certificate. Curtis v. Brown County, 22 W 167.

Under sec. 26, ch. 22, Laws 1859, the county treasurer might refund moneys paid on illegal certificates, and if the county board refused to allow him therefor he might appeal from their action. State ex rel. Wolff v. Sheboygan County, 29 W 79.

The fact that the holder of the certificate may take a deed and bring an action to bar the former owner and recover either the land or his money and interest does not prevent his bringing the action provided for in ch. 22, Laws 1859. Barden v. Columbia County, 33 W 445.

The claim should state the grounds upon which the certificate is claimed to be illegal, and the board may lawfully require such a statement before acting, but failure to do so does not affect its jurisdiction. Eaton v. Manitowoc County, 40 W 668.

The assignee of the county can recover only the money he actually pays with interest. Owners of lands may purchase outstanding tax certificates thereof and maintain such action. This is not a voluntary redemption. Marsh v. St. Croix County, 42 W 355.

Where a claim was presented in January, and the only action taken thereon was to refer it to a committee with instructions to report at the next meeting in November, there was a disallowance. Hyde v. Kenosha County, 43 W 129.

An assignee may recover. One who has taken a tax deed cannot maintain an action to recover for void certificates on the same lands when he has not been disturbed in the possession. Capron v. Adams County, 43 W 613.

The plaintiff must be a legal assignee of the void certificate if the county was the purchaser. Kruger v. Wood County, 44 W 605.

As to what amounts to a trial of an appeal from the disallowance of a claim, see Webster v. Oconto County, 47 W 225, 2 NW 335.

Where one took deeds and then redeemed subsequent certificates, and the deeds were held void for errors occurring prior to the sale but not affecting the validity of the taxes, the board might refund the amount of such redemptions as well as the money paid for

the deeds. Kaehler v. Dobberpuhl, 56 W 480, 14 NW 644.

The power to refund is confined to certificates that are invalid; where the statute of limitations has run in favor of a certificate there is no power to refund, and such payment does not affect the rights of the payee who returns the money but does nothing to affect the rights of the original owner. Edwards v. Upham, 93 W 455, 67 NW 728.

A claim under sec. 1184, R. S. 1878, must be presented to the county board, and if disallowed an appeal must be taken. Pier v. Oneida County, 93 W 463, 67 NW 702.

Sec. 1184, R. S. 1878, relates only to lands sold for the nonpayment of general taxes and has no reference to the sale for nonpayment of assessments for local improvements; and is not made applicable to these by secs. 1186 and 4986. Heller v. Milwaukee, 96 W 134, 70 NW 1111.

The action of the county board in compromising or canceling unpaid delinquent taxes, or ordering that outstanding certificates be transferred at less than face value, is without authority of sec. 1184, Stats. 1898. Spooner v. Washburn County, 124 W 24, 102 NW 325.

Where a tax has been adjudged void the purchase of tax certificates is not a voluntary payment of the tax, as the certificate is merely the evidence of indebtedness of the county. Lamoreux v. Bayfield County, 139 W 394, 121 NW 255.

An erroneous description of land in the assessment and tax rolls and in the tax certificate of sale is a mistake affecting the groundwork of the tax, and the county board in such case is authorized to refund to the purchaser at the sale the amount paid and reassess the tax as directed in sec. 1186, Stats. 1915. The refusal of the county board to make such refund until ordered to do so by the circuit court does not affect its authority or duty to make the refund. Borgman v. Langlade County, 165 W 442, 162 NW 431.

Ch. 215, Laws 1897, amending sec. 1184, R. S. 1878, which provided that no tax certificate shall be deemed invalid, nor any county required to refund any moneys, because of any mistake or irregularity in tax proceedings not affecting the groundwork of the tax, is inapplicable where the tax certificate is invalid by reason of a sale thereof by the county treasurer, when the county holds prior certificates, the law as it stood before the amendment not being repealed. Foster v. Sawyer County, 197 W 218, 221 NW 768.

Fees for issuing a tax deed are "subsequent charges" which must be returned upon cancellation of the deed; but recording fees stand upon a different footing. 4 Atty. Gen. 1110.

Tax certificates cannot be canceled by the county board for defects that do not go to the groundwork of the tax. 4 Atty. Gen. 1007; 5 Atty. Gen. 715.

A sale to X when the county holds a tax sale certificate is not a mistake which goes to the groundwork of the tax, and therefore X is not entitled to repayment. 10 Atty. Gen. 354.

A county is not obliged to refund to purchasers of drainage tax certificates amounts paid therefor merely because the county holds prior certificates in trust; but it is obliged to refund to holders of drainage tax certificates which are illegal, amounts paid, with interest. Where refunds are made because of illegal certificates the county treasurer should charge the drainage district with the amount thereof, including interest, and deduct it from any amount in his hands due commissioners of the district; if payment to commissioners has been made without deducting such refunds, the county may recover the amount thereof from the district. 13 Atty. Gen. 637.

A county board has power to annul and set aside the cancellation of tax certificates on the ground that such cancellation was without authority of law, particularly on application and with the consent of the holder of the certificates. 15 Atty. Gen. 312.

Erroneous descriptions of land delinquent in taxes in a published redemption notice does not affect the groundwork of the tax within the meaning of 75.22, Stats. 1927; the county is under no legal liability to refund payments made for tax certificates and for a tax deed containing the same description as in redemption notices. 17 Atty. Gen. 246.

Money refunded for a void tax can be paid only upon surrender of a certificate. The county treasurer and bondsmen are liable for money paid on void tax certificates which are not surrendered for cancellation. 20 Atty. Gen. 348.

A county having a void tax deed and quitclaiming to a purchaser is not liable for timber cut by a grantee. 21 Atty. Gen. 616.

Refunds made by a county to purchasers of invalid drainage assessment certificates of amounts paid therefor should be with interest at 6%. 21 Atty. Gen. 973.

The statutes do not prescribe any limitation upon the time within which the county board may charge back illegal real estate taxes to a municipality, except as necessarily implied from operation of the express limitation in 75.24, Stats. 1931, that the county board may not grant a refund on invalid tax certificates after 6 years from the date of the certificates. 22 Atty. Gen. 16.

A county board has no right to cancel tax certificates, reimburse a purchaser of certificates, and charge the present value of certificates back as a special tax, except in cases where there is invalidity in sale of certificates. 23 Atty. Gen. 763; 24 Atty. Gen. 19.

A county may not sell to a town tax certificates which are invalid because of improper descriptions. 27 Atty. Gen. 696.

75.23 History: 1901 c. 44 s. 1; Supl. 1906 s. 1184a; 1921 c. 18 s. 24; Stats. 1921 s. 75.23.

75.24 History: 1874 c. 144; R. S. 1878 s. 1185; Stats. 1898 s. 1185; 1921 c. 18 s. 25; Stats. 1921 s. 75.24; 1947 c. 314.

75.25 History: 1861 c. 138 s. 3, 4; 1862 c. 278 s. 2; 1863 c. 234 s. 1; 1870 c. 67 s. 1; R. S. 1878 s. 1186; Stats. 1898 s. 1186; 1921 c. 18 s. 26; Stats. 1921 s. 75.25; 1933 c. 244 s. 2; 1943 c. 277; 1945 c. 81; 1947 c. 314.

Under sec. 1186, R. S. 1878, the board may reassess a tax without a relisting or a revaluation although the assessment roll was not verified. Bass v. Fond du Lac County, 60 W 516, 19 NW 526.

The power of the county board to direct a

reassessment when the original assessments were invalid because of irregularities in the tax proceedings embraced all cases under sec. 1184, Stats. 1898, if the description was sufficient to enable the board to ascertain what land was actually attempted to be assessed. Roberts v. Waukesha County, 140 W 593, 123 NW 135.

A reassessed tax constitutes a lien as of the time when the tax was originally assessed. A holder of a tax title based on 1924, 1925 and 1926 taxes has priority over a county purchasing realty at tax sale based on 1930 reassessment of 1923 taxes. Nicolet Securities Co. v. Outagamie County, 217 W 439, 259 NW 621.

Invalid tax certificates issued on tax sales to a county may be canceled and a reassessment directed by the county board to the same extent and in the same manner as is provided by law in the case of tax sales to private persons. 16 Atty. Gen. 33.

Where a county levies upon logs for taxes due on lands and such levy is held to be unwarranted and the tax payment made as a result thereof to be under duress, and the court orders a refund thereof, a tax may be relevied with interest. 19 Atty. Gen. 515.

A county may collect in the next assessment of county taxes the amount of taxes illegally assessed plus interest since the date when such taxes were due and payable, where it appears that the assessment was illegal by reason of the fact that the lands sought to be taxed were erroneously described. 25 Atty. Gen. 57.

A county may employ a surveyor to determine the correct description of assessable property. 26 Atty. Gen. 6.

The amount charged back and reassessed under 75.25, Stats. 1937, is the tax plus interest specified in the statute. 26 Atty. Gen. 593; 28 Atty. Gen. 281.

Tax certificates issued in 1921 owned by a county and void because of insufficient description may be canceled by the county board 12 years after tax certificates were issued. Taxes for such years may be subsequently assessed by the county board, charged back to a municipality, placed upon the assessment roll; and tax certificates subsequently issued for failure to pay such subsequently assessed taxes are valid, there being no statute of limitations with reference to this section and such procedure being authorized by 75.25, Stats. 1937. 27 Atty. Gen. 499. See also 28 Atty. Gen. 281.

Delinquent real estate taxes returned to the county and bid in by it at tax sale, but not collected because of bankruptcy of the owner thereafter, cannot be charged back by the county to the town. A county may not charge back taxes except in the instances specifically authorized by statute and there is no statute providing therefor in such a case. 33 Atty. Gen. 251.

75.26 History: 1859 c. 22 s. 32; R. S. 1878 s. 1187; 1880 c. 309 s. 1; Ann. Stats. 1889 s. 1187; Stats. 1898 s. 1187; 1907 c. 607; 1921 c. 18 s. 27; Stats. 1921 s. 75.26.

If the land is in possession of the former owner from the date of the deed the tax claimant must bring his action within 3 years. Jones v. Collins, 16 W 594.

Where the tax-title claimant commenced ejectment against one then in possession more than 3 years after the recording of the deed it was presumed that plaintiff had the actual or constructive possession for 3 years next after such recording. Gunnison v. Hoehne, 18 W 268.

The statute, like a 2-edged sword, cuts both ways, and operates in favor of the possessor to bar the title of whichever party—the original owner or the tax-title claimant—was, during the 3 years next after the recording of the tax deed, out of actual possession, and thus under necessity of resorting to legal proceedings to obtain such possession. Swain v. Comstock, 18 W 463.

When the statute has begun to run against an ancestor it will continue to run against his minor heir upon his death. Swearingen v. Robertson, 39 W 462.

A deed regular on its face conveys an absolute title to vacant land after the 3 years, though it was sold for an illegal excess. Milledge v. Coleman, 47 W 184, 2 NW 77.

Logging operations on certain 40-acre tracts of a section do not interrupt the running of the statute as to other 40's in the same section covered by the same deed. Nor does the giving of the minutes of such other 40's to loggers by the owner and instructing them to log thereon have such effect if they do not follow such instructions. Where the possession is disputed during the 3 years next after recording the deed the claimant loses all right unless he sues within the 3 years. If the grantee in a tax deed of 80 acres gets possession of one 40 of the tract within the 3 years and holds it until the period is complete he gains the title of that 40, although the original owner has possession of the other 40. Smith v. Ford, 48 W 115, 4 NW 462.

The running of the statute is interrupted and the bar avoided wholly, in case of vacant land, by any re-entry and actual peaceable occupation by the original owner. The constructive possession carried by the deed must be continuous from the recording of it to the full end of the 3 years. Dreutzer v. Baker, 60 W 179, 18 NW 776.

The statute having fully run sets at rest all questions of the validity of the proceedings, whether going to the groundwork of the tax or not, except only the taxable quality of the land, the jurisdiction of the taxing officers and the payment or redemption of the tax. Milledge v. Coleman, 47 W 184, 2 NW 77; Smith v. Sherry, 54 W 114, 11 NW 465; Wadleigh v. Marathon County Bank, 58 W 546, 17 NW 314; Ward v. Walters, 63 W 39, 22 NW 844.

Within 3 years after the recording of a deed of vacant land, fair on its face, the grantee therein quitclaimed to the original owner by an unrecorded deed having only one witness. After the 3 years the grantee conveyed the land by deed containing covenants against all acts by the grantor to a bona fide purchaser without notice of the quitclaim. The quitclaim deed operated as an abandonment and surrender of the constructive adverse possession under the tax deed, and interrupted the running of the statute even against the purchaser for value. Warren v. Putnam, 63 W 410, 24 NW 58.

An action of ejectment was commenced

within one year after recording the deed against the grantee therein; lis pendens was not filed. Afterwards the defendant and others formed a corporation, of which he became and continued to be president. The defendant conveyed the land to the corporation, which was made a party defendant more than 3 years after recording the deed. It pleaded several statutes of limitation. The object of lis pendens is to conclude subsequent bona fide purchasers or incumbrancers by constructive notice, and the company was not such a purchaser. It could rely on no statute of limitation not applicable to its grantor. Wisconsin C. R. Co. v. Wisconsin River L. Co. 71 W 94, 36 NW 837.

The entry in the general index and transcribing upon the records are presumed to have been simultaneous acts. If the description is not entered upon the general index but is fully transcribed on the record the recording is valid. Lane v. Duchac, 73 W 646, 41 NW 962.

The actual possession of the lands by the former owner for any considerable portion of the statutory period of limitation not only disengages the bar of the statute in favor of the tax deed, but creates a bar against it. A tax-title claimant agreed to accept possession of the land from one entitled to the possession, and by his words and acts induced her to believe that he held under her until the 3 years' limitation had expired. He was estopped to deny her title. Pulford v. Whicher, 76 W 555, 45 NW 418.

The tax title must be held by one who is not incapacitated to acquire it. The statute will not run in favor of a purchaser of the equity of redemption under a mortgage who had secured tax titles on the premises. He was presumed to have gone into possession subject to the mortgage as a purchaser. Fox v. Zimmermann, 77 W 414, 46 NW 533.

Acts which are fugitive and occasional and do not evince any claim of ownership to the different tracts involved are not sufficient to interrupt the running of the statute of limitations in favor of the holder of a recorded tax deed. St. Croix L. & L. Co. v. Ritchie, 78 W 492, 47 NW 657.

Going upon land several times a year to see that no trespass is being committed upon it, and to show it to persons proposing to become purchasers and paying the taxes upon it, do not constitute actual possession. The essential conditions of such possession are specified in secs. 4212 and 4214, R. S. 1878. Daggett v. Reas, 79 W 60, 48 NW 127.

An attempt bona fide to pay the tax will prevent the running of the statute. Gould v. Sullivan, 84 W 659, 54 NW 1013.

Sec. 1187, R. S. 1878, does not prescribe any limitation in favor of or against tax certificates of sale. Its entire operation is confined to deeds. "Statutes of limitation are intended to cure defects which could be taken advantage of by action brought within the time limited, and not to cure defects which did not then exist and which the limitation could not cure." Hotson v. Wetherby, 88 W 324, 60 NW 423.

The occupation of land for mining or logging, done mostly on the surface and so as to be plainly visible, interrupts the running of the statute in favor of the tax-title claimant not in possession. Midlothian I. Co. v. Belknap, 108 W 198, 84 NW 169.

Where a tax deed is recorded the 3-year limitation begins to run as against the original owner, and such running is not interrupted by the subsequent recording of another tax deed upon the same property within the 3 years. The holder of the first tax deed may maintain an action after the 3 years to remove the cloud upon his title of the second tax deed. Cezikolski v. Frydrychowicz, 120 W 369, 98 NW 211.

Ejectment may be maintained against a former owner claiming title to vacant and unoccupied land by the grantee in a tax deed to such land 3 years after the recording of the tax deed. Wisconsin River L. Co. v. Paine L. Co. 130 W 393, 110 NW 220.

Where a tax deed fair on its face and free from jurisdictional objections and those defined in sec. 1188, R. S. 1878, has been recorded for 3 years, a new legal title in fee simple is created in the grantee as against all the world. A grantee in a tax deed duly recorded is constructively in possession of the premises from the time of the recording. Title so acquired becomes absolute at the expiration of the 3 years. Van Ostrand v. Cole, 131 W 446, 110 NW 891.

Where a tax deed had not been recorded for 3 years prior to the commencement of the action, it was open to attack. Roach v. Sanborn L. Co. 135 W 354, 115 NW 1102.

Constructive possession under a recorded tax deed can be held only so long as the premises remain vacant and unoccupied; and the planting and harvesting of 2 crops upon a small clearing on a known farm of 120 acres, accompanied by the payment of taxes by the occupant, is sufficient to arrest the running of the statute. Land & L. Co. v. Kesler, 150 W 283, 136 NW 625.

If the original owner of land sold for taxes continues in the occupancy and possession thereof for 3 years after the recording of the tax deed, the deed is void; and such possession of a part of the premises is possession of the whole. Chicago, St. P., M. & O. R. Co. v. Bystrom, 165 W 125, 161 NW 358.

Sec. 1187, Stats. 1919, operates in favor of the possessor of land to bar the title of whichever party, the original owner or the tax-title claimant, was out of possession during the 3 years next following the recording of the tax deed and was thus compelled to resort to legal proceedings to obtain possession. Possession by one of 7 heirs of the original owner during said 3 years set the statute running against a tax-deed claimant and in favor of all the heirs. Possession under the tax deed must be actual, not constructive, and the possession contemplated by this section, if begun with permission continues to be permissive until the possessor brings notice to the owners that he claims adversely. The recording of the tax deed is not such notice. A defendant claiming under a tax deed but whose possession was permissive, cannot claim under sec. 3087 an offset against damages for taxes paid. Perkins v. Perkins, 173 W 421, 181 NW 812.

A tax deed to a tenant of the original owner conveys no title as against such owner or his

grantees. Textor v. Estabrook, 177 W 135, 187 NW 998.

75.26, Stats. 1949, operated to bar the grantee of a tax-deed grantee, neither of whom was ever in actual possession of the premises, from bringing an action, more than 3 years after such date, to recover the possession of a portion of the premises from parties in possession of such portion, who were not the former owners thereof within the meaning of this section but had occupied it adversely for more than 20 years as the inclosed boundary of their property and thereby satisfied the requirements for possession prescribed in 75.31 and 330.07. Johnson v. Pofahl, 264 W 215, 58 NW (2d) 648.

The construction of this section by the supreme court in regard to the effect of a tax deed of unoccupied land is binding upon the federal courts. Coleman v. Peshtigo L. Co. 30 F 317; Lewis v. Monson, 151 US 545, 549; Bardon v. Land & R. I. Co. 157 US 327, 334.

Where a county does not take possession of lands on which it holds a tax deed and does not bring any action to recover possession within the period prescribed in 75.26, Stats. 1941, the results are: (1) the county's tax title is extinguished if possession of lands was held during the prescribed period by the former owner or persons claiming under him; (2) the county's title becomes absolute if lands are unoccupied during the entire period of 3 years after execution and recording of deed and no action is brought during that period to test its validity. 31 Atty. Gen. 101.

75.27 History: 1861 c. 138 s. 5; R. S. 1878 s. 1188; 1880 c. 309 s. 2; Ann. Stats. 1889 s. 1188; Stats. 1898 s. 1188; 1921 c. 18 s. 28; Stats. 1921 s. 75.27; 1939 c. 453; 1949 c. 391 s. 1, 3.

The owner may bring ejectment for vacant land, the recording of a tax deed being a sufficient claim of possession. Knox v. Cleveland, 13 W 245.

The owner cannot recover the vacant land after 3 years from the record of the tax deed unless the defendant fails to plead the statute or for some reason prior defects are not cured. Whitney v. Marshall, 17 W 174.

Sec. 1188, R. S. 1878, is not so much a muniment of title as a privilege which may be waived or lost by failure to plead it or by an estoppel in pais. Cornell University v. Mead, 80 W 387, 49 NW 815.

Sec. 1188, R. S. 1878, has no application to an action based on the fraud of the tax-title claimant. Fox v. Zimmermann, 77 W 414, 46 NW 533; McConnell v. Hughes, 83 W 25, 53 NW 149.

If a deed fair on its face is properly recorded more than 3 years before action is brought it cannot be impeached by evidence showing defects and irregularities in the proceedings prior to its execution. Hotson v. Wetherby, 88 W 324, 60 NW 423.

If a landowner applies in good faith to the treasurer to pay his taxes, receives from him a statement as to their amount and pays accordingly, and the land is returned and sold for the taxes of a previous year which were unpaid when such statement was furnished and not included therein by the negligence, fault or mistake of the officer, sec. 1188, R. S. 1878, does not apply. A landowner who offers in good faith to pay taxes may rely upon information given him by the town treasurer to the effect that there were no taxes on the roll against his lands. A subsequent sale thereof for the nonpayment of taxes, payment of which was offered, does not divest the owner's title, and he may, in an action of ejectment, defeat the tax deed, or bring an action against the grantee to recover the possession of the lands after the expiration of the period fixed by this section. Gould v. Sullivan, 84 W 659, 54 NW 1013; Bray & Choate L. Co. v. Newman, 92 W 271, 65 NW 494.

Where lands are exempt from taxation the one-year limitation prescribed by sec. 1180, Stats. 1898, does not apply as there is no jurisdiction on the part of the taxing officers. Chicago & Northwestern R. Co. v. Arnold, 114 W 434, 90 NW 434.

Where a county board sells tax certificates for less than their face without giving notice of their intention so to do the irregularity is cured by the statute of limitations and deed cannot be attacked. Kennan v. Smith, 115 W 463, 91 NW 986.

The owner, after lawful redemption, may take possession of vacant land, or bring suit, within the period of general limitation, in case the tax-title owner is in actual possession. Hoffman v. Peterson, 123 W 632, 102 NW 47.

The fact that the city authorities had failed to establish a grade in street did not render the land exempt from taxation for the street improvement in such a way as to bring an action in regard to such taxation within this section, nor does the fact that the land was assessed for such street improvement, together with land belonging to another person, bring it within the operation of sec. 1189, Stats. 1898. Hamar v. Leihy, 124 W 265, 102 NW 568.

The time that an action under sec. 1197, Stats. 1898, was pending, brought by the tax-title holder, and which was discontinued, is to be deducted from the 3 years in deciding whether the bar of the statute is complete. Preston v. Thayer, 127 W 123, 106 NW 672.

The omission of the county treasurer to reoffer land for sale after the bidder at a tax sale has defaulted on his bid, the erasure of such defaulting bidder's name from the certificate of sale and the insertion of the name of the county as bidder do not constitute a fraud or irregularity and are covered by the limitation prescribed by sec. 1188, Stats. 1898. Herbst v. Land & L. Co. 134 W 502, 115 NW 119.

The limitation contained in sec. 1188, Stats. 1898, has no application to an action to set aside certain tax deeds alleged to have been procured by fraud of defendant. Boon v. Root, 137 W 451, 119 NW 121.

A tax deed to a parcel described by metes and bounds is not invalid because a part of it was included in another lot which had been assessed as a whole and on which taxes had been paid as a whole. Action by the former owner is barred by 75.27. Kidder v. Pueschner, 211 W 19, 247 NW 315.

Where the plaintiff's case for setting aside the defendant's tax deed and redeeming the premises depended on the contract between the parties, 75.27 was not applicable. Wiley v. Grindey, 252 W 495, 32 NW (2d) 331.

Tax deeds executed and recorded in 1940 were no longer subject to challenge in 1947

by the former owner of the land or any person claiming under him. Hunter v. Neuville, 255 W 423, 39 NW (2d) 468.

See note to 75.28, citing Swanke v. Oneida County, 265 W 92, 60 NW (2d) 756, 62 NW (2d) 7.

75.27, Stats. 1925, applies to tax deeds issued to counties as well as to tax deeds issued to individuals. 14 Atty. Gen. 357.

Where a tax deed based on only one year's taxes has been issued and the former owner before issuance thereof paid all taxes levied against the land for 3 years ensuing after the year for which the land was returned delinquent and sold, the limitation provided by 75.27, Stats. 1937, upon commencement of action by the former owner to recover land sold on tax deed applies only where such owner has been served with the notice mentioned in 75.28. 27 Atty. Gen. 67.

75.28 History: 1861 c. 138 s. 6; R. S. 1878 s. 1189; Stats. 1898 s. 1189; 1913 c. 440; 1919 c. 165; 1921 c. 18 s. 29; Stats. 1921 s. 75.28; 1939 c. 453; 1941 c. 93; 1943 c. 275 s. 32; 1949 c. 391 s. 2, 3; 1965 c. 252.

The provision for a notice to the original owner by the tax deed grantee does not apply to all tax deeds, but to those only where the original owner has paid all taxes for the 3 years next following the year of delinquency. Hobe v. Rudd, 165 W 152, 161 NW 551.

The right of a minor owner to redeem at any time during his minority and within one year thereafter, is governed by 75.03 and 75.28 (1) as construed, and was not barred by 75.27. Swanke v. Oneida County, 265 W 92, 60 NW (2d) 756, 62 NW (2d) 7.

75.285 History: 1921 c. 485; 1921 c. 590 s. 100; Stats. 1921 s. 75.285.

Editor's Note: In connection with this section see ch. 278, Laws 1883, and the opinions of the supreme court in Lombard v. Antioch College, 60 W 459, 19 NW 367, and Lombard v. McMillan, 95 W 627, 70 NW 673.

75.29 History: 1885 c. 133; Ann. Stats. 1889 s. 1189a; Stats. 1898 s. 1189a; 1899 c. 351 s. 21; Supl. 1906 s. 1189a; 1921 c. 18 s. 30; Stats. 1921 s. 75.29.

The evident intent of the original act was to confirm tax titles under deeds executed prior to its publication, March 28, 1885, which titles were liable to be defeated by the original owner, or perhaps by one standing in his place. It selected a class of tax-title claimants who were to be favored, and who had paid or redeemed the taxes on the land for 3 years after the recording of their deeds. Webster v. Schwears, 69 W 89, 33 NW 105.

The limitation prescribed on tax deeds void on their face does not apply where it appears that the original owner duly redeemed the lands in question. Dunbar v. Lindsay, 119 W 239, 96 NW 557.

Sec. 1189a, Stats. 1898, applies only to actions attacking tax deeds void on their face. Cole v. Van Ostrand, 131 W 454, 110 NW 884.

75.30 History: Stats. 1898 s. 1189b; 1921 c. 18 s. 31; Stats. 1921 s. 75.30.

The title of one claiming under a tax deed executed June 10, 1896, and recorded the following day, and a warranty deed from the grantee in such tax deed executed at the same time, and by actual possession under said deeds, for more than 5 years after the recording of the tax deed, could not be questioned by the original owner. The word "grantee" applies to a purchaser from the tax-title grantee. Brunette v. Norber, 130 W 632, 110 NW 785.

75.31 History: 1859 c. 22 s. 34; R. S. 1878 s. 1190; Stats. 1898 s. 1190; 1921 c. 18 s. 32; Stats. 1921 s. 75.31.

The possession necessary need not have all the characteristics mentioned in sec. 4212, Stats. 1898, but there must be complete dominion over the property so as to give reasonable notice that the right of the other claimant to the land is denied. Laffitte v. Superior, 142 W 73, 125 NW 105.

A mere fugitive or temporary use does not satisfy the statute, and the temporary use of lots for storing material during the erection of a building on an adjacent lot is not sufficient. Grootemaat v. West Park R. Co. 191 W 394, 211 NW 149.

See note to 75.26, citing Johnson v. Pofahl, 264 W 215, 58 NW (2d) 648.

75.32 History: 1866 c. 132 s. 3; 1874 c. 84 s. 1; 1876 c. 100; R. S. 1878 s. 1191; 1879 c. 194 sub. 8; Ann. Stats. 1889 s. 1191; Stats. 1898 s. 1191; 1921 c. 18 s. 33; Stats. 1921 s. 75.32.

Sec. 1191, R. S. 1878, did not prevent the statute of limitations from running in favor of a tax deed on a sale to an individual, if the lands were not exempt from the tax for which the sale was made. Gilbert v. Pier, 102 W 334, 78 NW 566.

The requirement that a county be the exclusive purchaser at a tax sale of lands upon which it holds any certificate of prior sale is mandatory and a sale to another is void, entitling such other to a refund of the moneys paid. Foster v. Sawyer County, 197 W 218, 221 NW 768.

A lien for taxes for which no tax certificate had yet been issued merged with a county's title acquired by tax deed to land in a drainage district. In re Dancy D. Dist. 199 W 85, 225 NW 873.

A sale to X when the county holds a tax certificate, is invalid. A subsequent sale does not cut off the county, nor need the county buy in a subsequent certificate. 11 Atty. Gen. 780.

A certificate of tax sale to an individual of land upon which a county already holds any certificate of tax sale is invalid; the county clerk should refuse to issue a tax deed to an individual holder of such invalid certificate. 16 Atty. Gen. 819.

75.34 History: 1861 c. 138 s. 1; R. S. 1878 s. 1192; 1891 c. 182; Stats. 1898 s. 1192; Stats. 1915 s. 664; 1917 c. 566 s. 13; 1921 c. 18 s. 35; Stats. 1921 s. 75.34; 1933 c. 244 s. 2; 1937 c. 294; 1965 c. 252.

In an action by a taxpayer to restrain unlawful acts of the county board and to set aside fraudulent sales of certificates to one of the defendants no tender to the purchaser of the money paid for such certificates is necessary. Willard v. Comstock, 58 W 565, 52 NW 445.

The interest of the county in the certificates

is not that of absolute ownership. Iron River v. Bayfield County, 106 W 587, 82 NW 559.

An owner of special assessment bonds, coupons of which were unpaid and had been returned delinquent, could compel the county treasurer to transfer a tax sale certificate representing delinquent assessment, held by the county "in trust," in exchange for corresponding coupons without purchasing outstanding general tax sale certificates held by the county on the same real estate. Gross v. Sommers, 225 W 266, 271 NW 11.

A direction by the county board to the treasurer, to purchase lands at tax sale, is an implied order to him not to sell tax certificates held by the county. 7 Atty. Gen. 352.

A resolution of a county board adopted in 1888, by authority of secs. 1192 and 1193, R. S. 1878, constituting continuing direction for sale and assignment of tax certificates held by the county, at their face in county order, if unmodified or unrevoked by subsequent resolution or action of the board, continues to govern such assignments where offers to purchase certificates come within the terms of the resolution; otherwise, they may be sold at face and interest. 13 Atty. Gen. 274.

A resolution of a county board directing the county clerk to sell and assign tax certificates owned by the county for such amounts as in the judgment of the clerk and special committee are reasonable, less than face value of said certificates, is void. 16 Atty. Gen. 420.

Due notice of intention of a county board to sell tax certificates owned by the county at less than face value having been given as required by 75.34 (2), the board may sell such certificates for varying percentages of the face value thereof. 18 Atty. Gen. 361.

When 75.34 (2) has been fully complied with, a county treasurer directed by the county board to make transfer of tax certificates should comply with the direction in the absence of issuance of some order of a court of competent jurisdiction restraining compliance with the order of the county board. 18 Atty. Gen. 629.

A county board may, in the exercise of good business judgment, put up for sale at less than face value only a portion of the certificates held by it. 20 Atty. Gen. 1192.

A county may not limit the sale of its tax certificates to owners of real estate. 22 Atty. Gen. 635.

A proposed county ordinance which purports to authorize the sale of general tax certificates at 10% of face value upon condition that certain drainage district bonds be surrendered and canceled would be invalid. 25 Atty. Gen. 216.

A county board resolution directing that the county purchase all tax certificates at tax sales does not prevent the county board from directing the county treasurer subsequently to sell and assign part of such certificates to a private purchaser. 27 Atty. Gen. 342.

A sale for face value in 1939 by a county treasurer of county-owned 1931 tax certificates of sale of 1932 was valid under the general authority of unrevoked or modified resolution of the county board passed in 1931 and the purchaser is entitled to interest thereon from the date of certificate and not just from the date of his purchase. 28 Atty. Gen. 314.

A town may not, by payment of delinquent taxes, interest and penalties, compel the county to convey to such town a tax deed or tax certificate held by the county on lands located in such town. 31 Atty. Gen. 113.

75.35 History: R. S. 1858 s. 134; 1859 c. 22 s. 12; 1861 c. 138 s. 1; 1866 c. 132 s. 2; 1867 c. 145; 1868 c. 75 s. 1; R. S. 1878 s. 1193; Stats. 1898 s. 1193; 1921 c. 18 s. 36; Stats. 1921 s. 75.35; 1939 c. 274; 1941 c. 5; 1945 c. 166, 567; 1947 c. 86, 490.

Resident citizens and taxpayers may sue to enjoin a sale of tax certificates induced by collusion and fraud, made for less than the true value of the certificates. Willard v. Comstock, 58 W 565, 17 NW 401.

A signature of the county clerk to a deed is not even prima facie evidence of title but depends upon proof of the question by the county board. Pinkerton v. Fenelon, 131 W 440, 111 NW 220.

Under 59.08 (19) and 59.67 (2), Stats. 1933, a contract whereby a county agreed with a private person that he should conduct an advertising campaign for sale of realty held by the county under tax deeds and under which contract lands were to be sold at a sum equal to the amount of delinquent taxes, interest and charges, plus 50% of such amount, which was to cover compensation and expenses, was invalid, since the county had no authority to create a new agency to supersede agencies set up by the legislature. State ex rel. Buchanan v. Cole, 218 W 187, 260 NW 467.

Where a county board sold tax-title lands by an unauthorized method, the contract was void and the county continued to be the owner of the lands, so that, in view of 70.11 (2), the property was exempt from taxation. Oconto County v. Gillett, 248 W 486, 22 NW (2d) 528.

Under 75.32, 75.34 and 75.35, Stats. 1935, a county board may authorize the county treasurer to sell separately the earliest tax certificate held by the county on a particular parcel of land without at the same time and as part of the same sale selling also subsequent tax certificates held by the county on the same parcel. 22 Atty. Gen. 430.

The assignee of one who purchases land on execution sale after homestead exemption had been selected can redeem lands so purchased from the lien of a tax certificate in the manner provided by 75.01 (1), Stats. 1935, but cannot secure an assignment of part of the tax certificate held by the county. 26 Atty. Gen. 95.

A county ordinance which repeals an ordinance authorizing the sale of county-held tax certificates and tax deeds without payment of interest is valid. Sales made after passage of the new ordinance are to be made upon payment of principal and interest from time of issuance of the certificate. 26 Atty. Gen. 115.

A person who wilfully, maliciously or wantonly removes buildings from lands which have been sold for nonpayment of taxes is criminally liable under 348.426. A county injured by such removal of buildings is entitled to an injunction to prevent further removal and also to accounting for property already removed, so long as it does not exceed the amount of taxes, penalties and interest due less the value of remaining premises. 26 Atty. Gen. 506.

A county board may not by ordinance provide for the sale of tax-deeded lands to veterans under 75.35, Stats. 1945, at a price less than the amount for which such lands may be sold to others. 35 Atty. Gen. 40.

A county is expressly authorized by 75.35 (2), Stats. 1949, to convey tax deed lands by warranty deed. 39 Atty. Gen. 22.

75.36 History: 1859 c. 22 s. 11; 1863 c. 112; R. S. 1878 s. 1194; Stats. 1898 s. 1194; 1921 c. 18 s. 37; Stats. 1921 s. 75.36; 1929 c. 405; 1945 c. 64, 567, 586; 1947 c. 143, 154, 515; 1951 c. 356; 1955 c. 10; 1963 c. 572.

A resolution of the county board instructing the county clerk "to issue a tax deed to the county on all certificates remaining in the county treasurer's office 3 years from the date of their issue," created a continuing authority in the clerk to execute tax deeds from year to year thereafter, whenever the 3 years' redemption upon any certificate should expire. Mead v. Nelson, 52 W 402, 8 NW 895.

A tax deed issued to the county is prima facie evidence that the clerk was authorized by resolution to execute the same. Bemis v. Weege, 67 W 435, 30 NW 938; Semple v. Whorton, 68 W 626, 32 NW 690.

While the purchase of lands by the county is required where no bids are received, no statute requires the county to take a tax deed and become the owner. Spooner v. Washburn County, 124 W 24, 102 NW 325.

Ch. 405, Laws 1929, amending 75.36 by providing that counties taking tax deeds shall not be required to pay delinquent taxes on the land until it is sold, applies to tax deeds taken before the amendment. In the absence of demand for payment the claim of a town for the amount of tax certificates against land to which a county had taken tax deeds was not property within the protection of the Fourteenth Amendment so as to invalidate the amendment of this section. Bell v. Bayfield County, 206 W 297, 239 NW 503.

Where land located in a town is returned for delinquent taxes and the county purchases the land on the tax sale and takes a tax deed, the county takes an absolute title in fee simple and it does not hold as a trustee charged with a duty to sell the land, but its duty, under 75.36, is only to account to the town for the town's share of the delinquent taxes when a sale of the land is made, and the matter of when a sale shall be made is left to the discretion of the county, which discretion is a legislative discretion, and not a legal discretion which can be controlled by the courts. Remington v. Wood County, 238 W 172, 298 NW 591.

The requirement of 75.36 (2), Stats. 1959, that no tax deed shall be issued to the county until the county board shall by resolution order the same, affords protection to the county and not the taxpayer, and a subsequent ratification by the county board of the instant action of the county clerk in issuing 2 certain tax deeds to the county would be sufficient compliance with the statute. Hayes v. Adams County, 15 W (2d) 574, 113 NW (2d) 407.

The former owner has no claim to any excess of the sale price over the tax lien and expenses. Oosterwyk v. Milwaukee County, 31 W (2d) 513, 143 NW (2d) 497, cert. denied and rehearing denied Oosterwyk v. County of Milwaukee, 385 US 981 and 1021.

A county cannot cancel tax certificates to make land more saleable. A purchaser of land from a county against which there is a special assessment does not buy property discharged from the lien of the assessment. A purchaser of land acquired by the county on tax deed may purchase for less than the face of the tax and is not liable for the balance of the tax. 24 Atty. Gen. 19.

See note to 75.12, citing 24 Atty. Gen. 398.

A county board is not authorized to give land obtained by tax deed to the state or any agency thereof for military purposes without compensation. 26 Atty. Gen. 182.

Where a county sells land to which it has a tax deed for less than the total of outstanding tax certificates, all of which are owned by the county, the purchase price should be allocated to tax certificates upon the ratio which the purchase price bears to the total amount of the outstanding tax certificates and these amounts so allocated will belong to the county or city, depending upon the status of the county levy for the particular year. If a county has collected its entire levy for a particular year the amount allocated belongs to the town, city or village and vice versa. Where there are outstanding certificates subsequent to the certificate upon which the tax deed is issued owned other than by the county, the proceeds should be first allocated to payment of such certificates in full and the balance then prorated to other years upon the ratio that such balance bears to the total of outstanding taxes for such years. 28 Atty. Gen. 74.

A county secures fee simple title to lands acquired by tax deed where proper steps are followed in the taking of the tax deed. The county may refuse to sell such lands to private owners and may lease the same to the conservation commission under 59.01 and 23.09 (7) (d), Stats. 1937. 28 Atty. Gen. 398.

Issuance of a tax deed to a county in replacement of a void tax deed is governed by 75.18, Stats. 1937. 74.455 is applicable to certificates to a county and exclusive. A county may take a tax deed upon a valid subsequent certificate where a tax deed on prior certificate is void. 28 Atty. Gen. 408.

A county is not accountable to a municipality for the excess of proceeds of sale by the county of tax-deeded lands over the redemption value of outstanding tax liens against the land. (26 Atty. Gen. 572 overruled.) 30 Atty. Gen. 29.

A tax deed taken by a county under general tax certificate is subject to the lien of outstanding special assessment certificates owned by a village and issued subsequent to the certificate upon which the county's deed was taken. If the county desires to convey clear title to land on which it has taken a tax deed, it must pay the full amount due on certificates owned by the village and constituting a lien as above described. 30 Atty. Gen. 157.

A county is liable to a local municipality upon any excess rolls involved for proceeds realized from the sale of timber or stumpage from tax deed lands. 30 Atty. Gen. 435.

For purposes of distribution under 75.36,

Stats. 1945, of the proceeds of the sale of county tax-deeded lands, the amounts of the tax claims and old-age assistance claim are computed as of the date of the tax deed. 36 Atty. Gen. 120.

When a county forecloses a tax lien by an action in rem, under 75.521, and later sells such land, distribution of the proceeds is governed by 75.36 and does not cut off drainage assessments under 88.14 (1) and 89.37 (5), Stats. 1963. 52 Atty. Gen. 371.

75.365 History: 1943 c. 361, 574; Stats. 1943 s. 75.365; 1951 c. 313; 1965 c. 249.

75.37 History: 1868 c. 116 s. 1, 2; R. S. 1878 s. 1195; 1882 c. 254; Ann. Stats. 1889 s. 1195; 1897 c. 48; Stats. 1898 s. 1195; 1921 c. 18 s. 38; Stats. 1921 s. 75.37; 1941 c. 185.

75.375 History: 1931 c. 463; Stats. 1931 s. 348.426; 1955 c. 696 s. 270; Stats. 1955 s. 75.375.

348.426, Stats. 1935, requires proof that waste has been committed either wilfully or maliciously or wantonly. 24 Atty. Gen. 814.

75.38 History: 1859 c. 22 s. 55; R. S. 1878 s. 1196; 1881 c. 153; Ann. Stats. 1889 s. 1196; Stats. 1898 s. 1196; 1921 c. 18 s. 39; Stats. 1921 s. 75.38; 1935 c. 64; 1937 c. 294.

75.39 History: 1859 c. 22 s. 35; 1861 c. 138 s. 2; 1861 c. 277 s. 1; 1865 c. 523 s. 1; R. S. 1878 s. 1197; Stats. 1898 s. 1197; 1921 c. 18 s. 40; Stats. 1921 s. 75.39.

The grantee of the grantee in a tax deed may bring the action. Finney v. Ford, 22 W 173.

"Former owner" means the person owning the land at the time of the sale. Lybrand v. Haney, 31 W 30.

The action is in the nature of a suit to quiet title. It is founded upon the assumption that the title is divested by the tax proceedings. Warner v. Trow, 36 W 195.

There is nothing in sec. 1197, R. S. 1878, to show that the remedy existing during 3 years after the date of the tax deed was intended to exclude the general remedy given by sec. 3186 in favor of a person having the legal title and actual possession, though that legal title depended on a tax deed. Bardon v. Land & R. I. Co. 157 US 327.

The equitable action provided for in secs. 1197-1210, Stats. 1898, may be maintained in a federal court. Farr v. Hobe-Peters Co. 188 F 10.

Misjoinder of causes of action by a county in suits to quiet title to lands is waived if objection is not raised by demurrer or answer. 26 Atty. Gen. 18.

75.40 History: 1859 c. 22 s. 36; R. S. 1878 s. 1198; Stats. 1898 s. 1198; 1921 c. 18 s. 41; Stats. 1921 s. 75.40.

75.41 History: 1859 c. 22 s. 37; R. S. 1878 s. 1199; Stats. 1898 s. 1199; 1921 c. 18 s. 42; Stats. 1921 s. 75.41.

The plaintiff not only may but must join as many causes of action as he has deeds affecting the same tract of land. Corry v. Brown, 127 W 140, 106 NW 393.

In an action against a city which was the holder of a tax deed to remove the cloud on the title created by such deed where it appeared that the plaintiff was entitled to the land by adverse possession, it was not necessary that the back taxes on the land should be paid before relief could be had. Laffitte v. Superior, 142 W 73, 125 NW 105.

75.42 History: 1859 c. 22 s. 38; 1860 c. 13 s. 1; 1866 c. 82 s. 1; 1873 c. 149; R. S. 1878 s. 1200; Stats. 1898 s. 1200; 1921 c. 18 s. 43; Stats. 1921 s. 75.42; 1935 c. 24; 1945 c. 52.

All technical defenses are cut off unless the deposit is made. Wakeley v. Nicholas, 16 W 588.

An answer merely denying the validity of the taxes, or that anything was due therefor and denying plaintiff's title, is insufficient. Wakeley v. Nicholas, 16 W 588.

If a defendant sets up a valid counterclaim and there be no reply he is entitled to judgment. Jarvis v. Peck, 19 W 74.

The provision in relation to deposit is valid. The deposit must not only be alleged but proved and found to sustain a judgment for defendant. Smith v. Smith, 19 W 615.

A deposit of part only of the amount due is no more a compliance with the statute than though no deposit had been made; no merely technical defense can be made without such deposit in full. Knight v. Barnes, 25 W 352.

Where the original owner has still a right to redeem he must plead in abatement, and he cannot enjoin the tax claimant from bringing a suit to bar him. No deposit is necessary if the defense, whether enumerated or not, goes to the groundwork of the tax. Philleo v. Hiles, 42 W 527; Marsh v. Clark County, 42 W 502; Powell v. St. Croix County, 46 W 210, 50 NW 1013; Tierney v. Union L. Co. 47 W 248, 2 NW 289; Fifield v. Marinette County, 62 W 532, 22 NW 705; Lombard v. Antioch College, 60 W 459, 19 NW 367. See also Dayton v. Rolf, 34 W 86.

Where a tax-title claimant commenced an action against the original owner, and the latter offered to show that for more than 3 years after the recording of the deed he had from 2 to 10 miners or tenants at work during the winters mining on the land, and that the work was done mostly near the surface and in open cuts plainly visible, but the miners had wrongfully attorned to the plaintiff, and defendant had paid all taxes during his ownership except that upon which plaintiff's deed was issued, a claim of adverse constructive possession is to be strictly construed against the claimant, and may be avoided by showing any actual occupation and use of the premises for any portion of the period, in this case 3 years. Wilson v. Henry, 35 W 241.

A deposit is not required in an action against a county to set aside tax sales where the record discloses no means of determining what part of the taxes levied on plaintiff's land is valid. Hebard v. Ashland County, 55 W 145, 12 NW 437.

When the deposit is accepted the plaintiff can recover no more than taxable costs. A deposit amounts to a waiver of defenses pleaded which might be set up without a deposit. Such defenses will not be considered even on the question of costs. Speck v. Jarvis, 59 W 585, 18 NW 478.

Where defendants having no interest and supposing themselves merely formal parties

were charged with the whole costs, although alleged to own but a small part of the land, and 4 years after judgment, but within one year after notice thereof, they applied to open the judgment, it was an abuse of discretion to refuse to do so. Pier v. Millard, 63 W 33, 22 NW 759.

Open and obvious occupancy of a track under an oral license from the owner for the purpose of hauling logs over and banking them upon it is "actual occupancy or possession" by such owner within the meaning of sec. 1200, Stats. 1909. When the deposit mentioned would, if made in time, have made available to the defendant an absolute defense, an order, extending such time after it had elapsed without any deposit being made, should require the defendant to pay all the costs up to that time so that the plaintiff can dismiss the action without loss. Vicker v. Byrne, 155 W 281, 143 NW 186.

75.43 History: 1859 c. 22 s. 39; 1872 c. 14; R. S. 1878 s. 1201; Stats. 1898 s. 1201; 1921 c. 18 s. 44; Stats. 1921 s. 75.43.

75.44 History: 1859 c. 22 s. 40; R. S. 1878 s. 1202; Stats. 1898 s. 1202; 1921 c. 18 s. 45; Stats. 1921 s. 75.44.

75.45 History: 1859 c. 22 s. 41; R. S. 1878 s. 1203; Stats. 1898 s. 1203; 1921 c. 18 s. 46; Stats. 1921 s. 75.45.

75.46 History: 1859 c. 22 s. 42; R. S. 1878 s. 1204; Stats. 1898 s. 1204; 1921 c. 18 s. 47; Stats. 1921 s. 75.46.

75.47 History: 1859 c. 22 s. 43; R. S. 1878 s. 1205; Stats. 1898 s. 1205; 1921 c. 18 s. 48; Stats. 1921 s. 75.47.

75.48 History: 1859 c. 22 s. 44; R. S. 1878 s. 1206; Stats. 1898 s. 1206; 1921 c. 18 s. 49; Stats. 1921 s. 75.48.

After a tax deed was recorded the original owner sold the timber upon the lands and the purchasers cut and removed it. The tax claimant brought trespass against them and offered the record in a suit to bar the original owner, brought after the trespass suit, but it was rejected. This was error, although defendants were not parties to the suit against the original owner. Warner v. Trow, 36 W 195.

The judgment in a tax foreclosure suit to which a mortgagee was made a party concludes an assignee of the mortgage although his assignment antedated the suit, where it was not recorded before the plaintiff filed notice of lis pendens, at least where the plaintiff had no notice of the assignment. Farr v. Hobe-Peters L. Co. 188 F 10.

75.49 History: 1859 c. 22 s. 45; R. S. 1878 s. 1207; Stats. 1898 s. 1207; 1921 c. 18 s. 50; Stats. 1921 s. 75.49.

75.50 History: 1859 c. 22 s. 46; R. S. 1878 s. 1208; 1879 c. 194 sub. 9; Ann. Stats. 1889 s. 1208; Stats. 1898 s. 1208; 1921 c. 18 s. 51; Stats. 1921 s. 75.50; 1951 c. 342.

Heirs of the original owner, unknown to the plaintiff, may be made defendants as "the unknown heirs of A. B., deceased, and the unknown owners" of the land. Truesdell v. Rhodes, 26 W 215.

Unknown owners properly served by publication only may, upon good cause shown, have the judgment opened. Gray v. Gates, 37 W 614.

75.52 History: 1859 c. 22 s. 48; R. S. 1878 s. 1210; Stats. 1898 s. 1210; 1921 c. 18 s. 53; Stats. 1921 s. 75.52.

In an action by the landowners in possession against the tax deed grantee, a judgment declaring tax deeds invalid was not res adjudicata of the invalidity of later tax certificates held by the defendant in a subsequent action to foreclose a mortgage on the premises where the validity of the later tax certificates was not in issue or litigated or adjudicated in the prior action; nor was the bar of judgment prescribed by 75.52 applicable, since that section relates back to 75.39 and applies to actions brought thereunder by a grantee under a tax deed within 3 years from its date for the purpose of barring former owners. (Bell v. Peterson, 105 W 607, distinguished.) Schrader v. Otto, 238 W 469, 300 NW 255.

75.521 History: 1947 c. 340, 614; Stats. 1947 s. 75.521; 1949 c. 177; 1951 c. 342 s. 3 to 7; 1955 c. 10; 1957 c. 203; 1961 c. 622; 1965 c. 252.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing Devitt v. Milwaukee, 261 W 276, 52 NW (2d) 872.

A list of tax liens should set forth as to each parcel all those tax certificates then held by the county and then eligible for tax deeds. 75.521 (5) requires only payment of the amount due on certificates eligible for tax deeds. The year to be inserted in the caption is the calendar year in which the list is filed. The description of a platted parcel must include the section number as well as the lot and block number. The separate index of lists of tax liens to be kept by the clerk of circuit court is to contain the names of owners and mortgagees, alphabetically. 39 Atty. Gen. 522.

It is not the duty of the register of deeds to furnish free abstracting service for the county in connection with foreclosure of tax liens by action in rem. 42 Atty. Gen. 21.

Payment may be made after commencement of in rem proceedings under this section of less than the amount necessary to redeem all of the tax liens listed therein against a parcel of land. Unless the amount paid before the expiration of the redemption period is sufficient to pay all of the listed tax liens in full, judgment may be entered based on any listed tax lien remaining unredeemed, and the county is under no obligation to refund the payment made. 43 Atty. Gen. 277.

A judgment in a foreclosure in rem proceeding cuts off the reservation of mineral rights by a former owner of the lands involved. 49 Atty. Gen. 130.

When a county forecloses a tax lien by an action in rem and later sells such land, distribution of proceeds is governed by 75.36 and does not cut off drainage assessments. 52 Atty. Gen. 371.

Analysis of in rem tax foreclosure proceedings. Maruszewski, 32 MLR 264.

In rem notice by publication. Klos, 1949 WLR 367.

75.54 History: 1878 c. 334 s. 3; R. S. 1878 s. 1210b; 1879 c. 255 s. 5; 1881 c. 128; 1883 c. 283; 1885 c. 219; Ann. Stats. 1889 s. 1210b; Stats. 1898 s. 1210b; 1905 c. 292 s. 1; Supl. 1906 s. 1210b; 1917 c. 659 s. 1, 2, 4; 1921 c. 18 s. 55; Stats. 1921 s. 75.54; 1925 c. 175; 1935 c. 414; 1949 c. 262.

Errors and irregularities which affect all the taxable property in the district affect the groundwork of the tax. Kingsley v. Marathon County, 49 W 649, 6 NW 317. See also: Single v. Stettin, 49 W 645, 6 NW 312; Flanders v. Merrimack, 48 W 567, 4 NW 741.

A judgment rendered in place of making such stay will be reversed on appeal. Clarke v. Lincoln County, 54 W 580, 12 NW 20.

Such a judgment is not void for want of jurisdiction. The failure to suspend proceedings is error, but the court has jurisdiction. Monroe v. Ft. Howard, 50 W 228, 6 NW 803.

The court or a judge may by ex parte order allow such objections to be filed after the expiration of 20 days from the completion of the reassessment. Filing and serving such objections is a "proceeding in an action" within 269.45. Woodruff v. Depere, 60 W 128, 18 NW 761.

It was intended to provide a just criterion of the sum which a taxpayer seeking in equity to set aside an illegal tax ought to pay as a condition of relief. Bradley v. Lincoln County, 60 W 71, 18 NW 732; Fifield v. Marinette County, 62 W 532, 22 NW 705.

Where the court found certain highway and school taxes illegal and ordered a reassessment in which they were to be omitted an appeal from such order was held to bring up only the validity of the reassessment, and the decision as to the highway and school taxes was subject to review only on appeal from the final judgment. Spear v. Door County, 65 W 298, 27 NW 60.

When the assessment is void the court should continue the action for a sufficient time to permit a reassessment. Johnston v. Oshkosh, 65 W 473, 27 NW 320.

A town cannot have an assessment made against it by drainage commissioners set aside unless it proceeds for that purpose before it has levied the amount as a tax upon the owners of the taxable property in it. Muskego v. Drainage Comm. 78 W 40, 47 NW 11.

Proceedings will not be stayed where a county is seeking to enforce a double assessment on land until an action between the parties who claim title to it is determined. Gilman v. Sheboygan County, 79 W 26, 48 NW 111.

When it affirmatively appears that the assessors' roll is just and equitable, and the board of review has made illegal changes therein, such changes should be treated in an action brought by a taxpayer who is injured thereby as nullities which are to be disregarded, and the amount of tax which he should pay should be ascertained by the original roll. In such a case the groundwork of the whole tax is not affected and a reassessment is not necessary. Hixon v. Eagle River, 91 W 649, 65 NW 366.

In an action to restrain the issuing of a tax deed by reason of a levy, partially invalid, and for a reassessment, it is not necessary to offer to pay the valid part, since that can be adjusted in a reassessment. Anderson v. Douglas County, 98 W 393, 74 NW 109.

An unlawful raising of certain taxes by the board of review does not affect the groundwork of the taxes of the district, nor require a reassessment. Brown v. Oneida County, 103 W 149, 79 NW 216.

An order for reassessment is not appealable. Maynard v. Greenfield, 103 W 670, 79 NW 407.

It is the settled law in Wisconsin that statutory rights of appeal from determinations of benefits or damages in special-assessment proceedings, even when expressly labeled as the exclusive remedy, only relate to the determination of the amount of benefits, damages or special assessments, and do not preclude resort to actions in equity for injunction, or other appropriate relief, if either the validity of the proceedings, or the statute under which the proceedings were had, is attacked. Special-assessment statutes and proceedings constitute a special field of law, and the settled principles there established in respect to appropriate forms of actions to raise the question of the invalidity of the proceedings do not establish precedent which must be followed in other fields of law. Perkins v. Peacock, 263 W 644, 58 NW (2d) 536.

75.55 History: 1878 c. 334 s. 13; R. S. 1878 s. 1210c; 1879 c. 255 s. 6; Ann. Stats. 1889 s. 1210c; Stats. 1898 s. 1210c; 1921 c. 18 s. 56; Stats. 1921 s. 75.55.

75.61 History: 1880 c. 309 s. 3 to 7; Ann. Stats. 1889 s. 1210h; Stats. 1898 s. 1210h; 1903 c. 357 s. 1; Supl. 1906 s. 1210h; 1921 c. 18 s. 62; Stats. 1921 s. 75.61; 1929 c. 148; 1935 c. 24; 1939 c. 503; 1957 c. 699.

It has always been the policy of this state to compel landowners who neglect to pay taxes to proceed with promptness if they desire to contest the validity of tax sales. The 9-months statute was passed in 1878 and the one-year limitation act in 1880. No particular form of pleading the statute is necessary; if the facts stated show that the action is barred that is enough. The one-year statute cures all errors and irregularities in the proceedings, whether going to the groundwork of the tax or otherwise—all except the power of the taxing officers and the actual payment of the tax. Ruggles v. Fond du Lac County, 63 W 205, 23 NW 416.

The statute cures only defects going to the validity of the assessment and affecting groundwork, not defects in the sale. Want of power to make the particular assessment as well as irregularity is cured unless such want of power amounts to a want of jurisdiction in the taxing officers, or the tax was paid or offered to be paid so as to amount to payment. Urquhart v. Wescott, 65 W 135, 26 NW 552.

Selling 5 forties in one body which were assessed in 2 separate parcels is not a defect going to the groundwork of the tax. In an action brought to foreclose tax certificates to which no statute of limitation was applicable the defense was the above-mentioned defect. Pier v. Prouty, 67 W 218, 30 NW 232.

Sec. 1, ch. 305, Laws 1880, requires that when the plaintiff in ejectment is entitled to recover by reason of a defect or insufficiency

in a tax deed or prior proceedings, except where there was a want of jurisdiction, payment or redemption, the court shall order the amount of the sale, less the cost of the deed, and the amount paid by defendant for the taxes subsequently assessed, with interest. Wisconsin C. R. Co. v. Comstock, 71 W 88, 36 NW 843.

A preliminary injunction to restrain the sale of land for taxes should not be granted or continued except where it is clear that it is necessary to protect the plaintiff's rights and secure to him the benefit of the litigation if finally successful. It should be granted only in a very clear case. T. B. Scott L. Co. v. Oneida County, 72 W 158, 39 NW 343.

The assessment and sale of property for the nonpayment of taxes will be enjoined at the suit of one who is required to pay more than his share of the taxes because of intentional violations of the law by unfair and unequal valuations and arbitrary omissions of taxable property. Sample v. Langlade County, 75 W 354, 44 NW 749.

The limitation prescribed does not apply to an action to set aside a tax deed because there is no proof that notice of sale was posted in the county treasurer's office. Morrow v. Lander, 77 W 77, 45 NW 956.

Equity will not interfere to declare a tax invalid and restrain its collection unless the objections to the proceedings go to the very groundwork of the tax and show that it must necessarily be unjust and unequal. The payment of the valid part of a tax as a condition of relief is not a waiver of an appeal brought to question the validity of the taxes paid. Hixon v. Oneida County, 82 W 515, 52 NW 445.

Void special assessment proceedings which are in progress and which will result in creating a prima facie lien and cloud on the title will be enjoined. Beaser v. Ashland, 89 W 28, 61 NW 77.

The execution of a deed upon a certificate of sale for the nonpayment of an assessment for a street improvement will not be restrained because the certificate covered several assessments, one of which is valid, except upon a tender of the amount due on the valid one. Yates v. Milwaukee, 92 W 352, 66 NW 248.

Equity will not grant relief because the treasurer did not demand payment of a special assessment or give notice of the place where it might be paid before the sale of the land, or because the certificate was issued for a sum slightly less than was due. Pratt v. Milwaukee, 93 W 658, 68 NW 392.

The failure of a resolution adopted at a town meeting to specify the purposes for which the money voted to be raised was to be devoted is a mere irregularity. Chicago & Northwestern R. Co. v. Forest County, 95 W 80, 70 NW 77.

In an action to set aside a tax certificate, the defense of statute of limitations is good even though part of the tax is illegal, since the plaintiff did not offer to pay what was due. Levy v. Wilcox, 96 W 127, 70 NW 1109.

Where the plaintiff brought an action to remove a cloud on title claiming land under a tax deed issued upon a certificate, and the defendant counterclaimed, setting up title by sale on foreclosure of a tax certificate issued prior to the one under which the plaintiff claimed, the plaintiff thereby became the defendant within sec. 1210h, Stats. 1898, and the original defendant should pay the amount paid for subsequent taxes, with interest, and in default the plaintiff was entitled to judgment. Blackman v. Arnold, 113 W 487, 89 NW 513.

This limitation does not apply where lands were exempt from taxation as there was no jurisdiction on the part of the taxing officers. Chicago & Northwestern R. Co. v. Arnold, 114 W 434, 90 NW 434.

A description of city lots under the wrong name of the plat and the assessment of a lot to one person who owned only a portion thereof are defects which affect the groundwork of the tax and are within sec. 1210h, Stats. 1898. N. Boyington Co. v. Southwick, 120 W 184, 97 NW 903.

Sec. 1210h, Stats. 1898, applies to tax sales and certificates issued thereon for street improvements. Levy v. Wilcox, 96 W 127, 70 NW 1109; Hamar v. Leihy, 124 W 265, 102 NW 568.

In a suit by the original owner to quiet the title to lands purchased by the defendant from a county, under tax titles, the owner must as a condition of relief pay the face value of certificates and interest, although the sale by the county was at a discount. A judgment for costs to defendant was void in the absence of a showing that the owner did not, in due time, pay into court the amount due on certificates. Maxey v. Simonson, 130 W 650, 110 NW 803.

A tax-title claimant is under no obligation to pay taxes. A redemptioner from such tax title should pay into court under sec. 1210h, Stats. 1898, the amount for which the land was sold as well as the taxes subsequently paid by the tax-title claimant, together with the statutory interest. Roach v. Sanborn L. Co. 135 W 354, 115 NW 1102.

The deposit required by sec. 1210h, Stats. 1919, as a prerequisite to the prosecution of an action to set aside a tax sale, or to cancel a tax certificate, or to restrain the issuing of a tax deed, is not a prerequisite to an action of ejectment against one claiming under a tax deed. Pedro v. Grootemaat, 174 W 412, 183 NW 153.

The provision in 75.61 (1), requiring that any action to set aside a tax sale, or to restrain the issuing of a tax deed, for any error going to the validity of the assessment, shall be commenced within one year from the date of such tax sale and not thereafter, is inapplicable to an action grounded solely on the claim that the property is exempt from tax. Hahn v. Walworth County, 14 W (2d) 147, 109 NW (2d) 653.

75.61 (1) contemplates that when a tax sale is voided the amount to be paid into court is the amount of all taxes accumulated to the date of the sale plus any sums actually paid by the purchaser for taxes levied upon the premises subsequent to such sale. The phrase "person or persons claiming under such tax sale or tax certificate" is construed as not being limited to the taxing authority which took the tax deed, but as including the first purchaser of the property from the taxing authority. Lingott v. Bihlmire, 28 W (2d) 345, 137 NW (2d) 125.

The trial court correctly ruled that in computing the amount the plaintiff was required to pay into court under 75.61, as a condition for avoidance of the tax deed, the amounts due under 3 additional tax certificates should be included, where the limitation imposed on the life of the tax certificates was tolled by an injunction order during the period that it was in force in accordance with 75.20 (10). Lingott v. Bihlmire, 38 W (2d) 114, 156 NW (2d) 439.

An owner of real estate seeking relief under 75.61 (2) must pay such proportion of total taxes, interest and charges as found value of property bears to the original assessment. 25 Atty. Gen. 65.

Upon reduction in valuation under 75.61 (2), the amount to be paid is the aggregate of tax recomputed upon value found plus delinquent interest thereon and all penalties, fees and charges which are payable on redemption. The amount the county may charge back is the difference between tax returned and recomputed tax, exclusive of interest, penalties and other charges collected by the county. 29 Atty. Gen. 476.

The last sentence of 75.61 (2), as added by ch. 503, Laws 1939, is applicable and valid as applied to the reduction in valuation under said subsection taken after it went into effect, even though in reference to taxes assessed and returned delinquent prior thereto. 30 Atty. Gen. 253.

A county may not accept 50% in full settlement and compromise of any and all delinquent tax certificates held by it. 32 Atty. Gen. 263.

75.62 History: 1909 c. 295; Stats. 1911 s. 1210h—1 to 1210h—4; 1921 c. 18 s. 63 to 66; Stats. 1921 s. 75.62; 1939 c. 503.

On the payment of valid taxes as a condition of relief against invalid taxes, see the following: Hersey v. Milwaukee County, 16 W 185; Myrick v. La Crosse, 17 W 442; Mills v. Johnson, 17 W 598; Crane v. Janesville, 20 W 305; Dean v. Charlton, 23 W 590; Dean v. Borchsenius, 30 W 236; Whittaker v. Janesville, 33 W 76; Massing v. Ames, 36 W 409; Hart v. Smith, 44 W 213; Plumer v. Marathon County, 46 W 163, 50 NW 416; Thomas v. West, 59 W 103, 17 NW 684; Bradley v. Lincoln County, 60 W 71, 18 NW 732; and Fifield v. Marinette County, 62 W 532, 22 NW 705.

As to what is sufficient evidence of payment of a tax see Lewis v. Disher, 25 W 441, and Merton v. Dolphin, 28 W 456.

The term "groundwork of the tax" refers to some serious jurisdictional defect, not to the mere irregularities in the details of the proceedings after jurisdiction is properly acquired. The term does not apply to a premature extension of an assessment upon the tax roll. Parkes v. Milwaukee, 148 W 84, 134 NW 152.

The requirement that the plaintiff shall first pay the disputed tax as a condition of maintaining his action is general in its nature and applies to contested special assessments as well as to general taxes. Ch. 295, Laws 1909, relates to cases where, but for the errors or defects going to the validity of the assessment and affecting the groundwork of the tax, a valid tax or assessment could be laid, and not to cases where there is an absolute want of power. A city council having jurisdiction to lay drains failed to order drains laid before passing a resolution for paving streets and failed to give notice to lot owners to construct the drains. Such omissions were errors of procedure affecting the groundwork of the tax and brought the case within the statute. Wisconsin R. E. Co. v. Milwaukee, 151 W 198, 138 NW 642; Kennan v. Ashland County, 152 W 560, 140 NW 336.

The fact that a property holder contemplating an action to test the validity of an assessment has paid the same to the city treasurer and such officer has turned the money over to the certificate holder constitutes no defense to the action. (Marine Co. v. Milwaukee, 151 W 239, distinguished.) Schmidt v. Milwaukee, 155 W 44, 143 NW 1066.

See note to 75.61, citing Pedro v. Grootemaat, 174 W 412, 183 NW 153.

A party suing to set aside tax certificates on the sole ground that the property described therein was exempt from taxation need not pay or cause payment of taxes, interest and charges within 20 days after commencement of an action. Trustees of Clinton Lodge v. Rock County, 224 W 168, 272 NW 5.

In 75.62 (1), providing that, in any action "to set aside any sale of lands for the nonpayment of taxes, or to cancel any tax certificate, or to restrain the issuing of any tax certificate or tax deed, or to set aside any tax, for any error or defect going to the validity of the assessment and affecting the groundwork of such tax," the plaintiff as a condition to maintaining the action shall pay the amount of taxes levied against the lands involved, the modifying clause refers back to an action "to restrain the issuing of any tax deed" as well as to an action "to set aside any tax," and hence the plaintiff in an action to restrain the issuing of a tax deed, not on the ground of any error or defect going to the validity of the assessment and affecting the groundwork of the tax, but solely on the ground that the issuance of a tax deed has become barred by the statute of limitations, 75.20, is not required to pay the levied tax as a condition to maintaining such action. Service Inv. Co. v. Dorst, 232 W 574, 288 NW 169.

Under 75.62 (1), payment of the tax within 20 days after commencement of the action is not a condition precedent, and nonpayment does not destroy the plaintiff's right of action but is merely matter in abatement. Boden v. Lake, 244 W 215, 12 NW (2d) 140.

The provisions of 75.62 (1) in regard to prepayment do not apply to delinquent special assessments made under the Milwaukee city charter, even though tax certificates have been issued on them. Wisconsin Elec. P. Co. v. Milwaukee, 275 W 436, 82 NW (2d) 344.

75.63 History: 1883 c. 278; Ann. Stats. 1889 s. 1210i; Stats. 1898 s. 1210i; 1921 c. 18 s. 67; Stats. 1921 s. 75.63; 1935 c. 24.

See note to sec. 9, art. I, citing Lombard v. Antioch College, 60 W 459, 19 NW 367, and Lombard v. McMillan, 95 W 627, 70 NW 673.

75.64 History: 1895 c. 152; Stats. 1898 s. 1210j; 1921 c. 18 s. 68; Stats. 1921 s. 75.64; 1935 c. 24; 1937 c. 294.

75.67 History: 1939 c. 422; Stats. 1939 s.

75.67; 1941 c. 13; 1943 c. 115; 1945 c. 353; 1963 c. 506.

75.68 History: 1939 c. 386; Stats. 1939 s. 75.68; 1945 c. 353; 1947 c. 490.

Where the city, for the purpose of showing that the property owner, whose property had been assessed for benefits, was still interested in owning property on the widened street, introduced evidence relating to a sale of certain property by the city, but did not offer evidence as to the sale price, the admission of evidence offered by the property owner as to the price was not error. Nakina Realty Co. v. Milwaukee, 249 W 355, 24 NW (2d) 610, 25 NW (2d) 257.

75.69 History: 1947 c. 490; Stats. 1947 s. 75.69; 1953 c. 61; 1955 c. 47; 1959 c. 95; 1965 c. 252; 1967 c. 77 s. 4; 1969 c. 55.

Persons to make the appraisal to be published under 75.69, Stats. 1947, should be appointed by the county board. Unless the appraisal is made the duty of a committee as provided in 59.06, the county board may not appoint any of its members as appraisers. 36 Atty. Gen. 454.

When a county takes a tax deed to land and conveys the same to a town in exchange for real estate tax credit, such land continues to be "tax delinquent real estate." Where the town board attempted to sell such land without complying with the provisions of 75.69 (1), Stats. 1951, which require that the land be appraised and advertised, the sale was invalid. 42 Atty. Gen. 73.

75.70 History: 1933 c. 292; Stats. 1933 s. 59.07 (21); 1935 c. 279; 1937 c. 147; Stats. 1937 s. 59.07 (21), 59.08 (27); 1939 c. 513 s. 13; 1955 c. 651 s. 21; Stats. 1955 s. 75.70.

A county board has no power to authorize or direct the county treasurer to satisfy a village's equity in delinquent taxes returned from said village by assigning tax certificates upon such delinquent taxes to the village in return for payment by the village to the county of the amount of the county's claim for unpaid state special taxes and county school tax liability which the village disputes. 22 Atty. Gen. 950.

59.07 (21), Stats. 1933, does not authorize the transfer by the county of one year's tax certificates in exchange for a town's credit on delinquent real estate taxes. 22 Atty. Gen. 984.

A county and city may, in compromising excess of delinquent real estate taxes under 59.07 (21), Stats. 1935, include the value of tax deeds for years other than those years from which the excess is computed. 25 Atty. Gen. 584.

CHAPTER 76.

Taxation of Public Utilities and Insurance Companies.

76.01 History: 1860 c. 174 s. 1; 1862 c. 22 s. 1, 4; R. S. 1878 s. 1212; 1882 c. 320; Ann. Stats. 1889 s. 1212, 1216a; Stats. 1898 s. 1212, 1216; 1899 c. 308 s. 4; 1903 c. 315 s. 1, 2; 1905 c. 380 s. 1, 11, 12; 1905 c. 427 s. 1; 1905 c. 493 s. 1; 1905 c. 494 s. 1; Supl. 1906 s. 1212, 1216, 1222—1; 1911 c. 540; 1911 c. 664 s. 114; 1913 c. 768 s. 1a; Stats. 1913 s. 51.01; 1915 c. 526 s. 3; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—1; 1921 c. 59 s. 2; Stats. 1921 s. 76.01; 1929 c. 529 s. 11; 1931 c. 483 s. 4; 1933 c. 349 s. 4; 1943 c. 20; 1945 c. 512; 1947 c. 488; 1969 c. 55; 1969 c. 276 s. 590 (1).

On equality and exercises of taxing power see notes to sec. 1, art. I; on legislative power generally and delegation of power see notes to sec. 1, art. IV; on judicial power generally see notes to sec. 2, art. VII; and on the rule of taxation (property taxes) see notes to sec. 1, art. VIII.

The purpose of ch. 315, Laws 1903, is to tax the property of public service corporations at the same rate as the property of individuals is taxed for state, county, city, towns, village, school, and road district purposes. Chicago & Northwestern R. Co. v. State, 128 W 553, 108 NW 557.

The principles and methods that ought to guide the assessment of public utilities are not prescribed by statute and courts will not suggest them. Those guides must be discovered and applied by the railroad commission. The result only will be reviewed by the courts, and for a confiscatory assessment they will afford relief as violative of the Fourteenth Amendment, U. S. constitution. Wisconsin-Minnesota L. & P. Co. v. Railroad Comm. 183 W 96, 197 NW 359.

Where one railroad company is operating the property of another for the benefit of both companies, ch. 76, Stats. 1933, requires that a separate assessment of, and levy of taxes upon, the property so operated be made; and especially should such separate assessment and levy be made where the nonoperating company is in receivership, so as to apprise the receiver of the amount that he should pay. Minneapolis, St. P. & S. S. M. R. Co. v. Henry, 215 W 668, 255 NW 896.

76.02 History: R. S. 1858 c. 77 s. 4; 1860 c. 174 s. 1; 1862 c. 22 s. 1, 4; R. S. 1878 s. 1212, 1217; Stats. 1898 s. 1212, 1217; 1899 c. 308 s. 4; 1903 c. 315 s. 1, 2; 1905 c. 380 s. 1, 11, 12; 1905 c. 427 s. 1; 1905 c. 493 s. 2; 1905 c. 494; Supl. 1906 s. 1212, 1217, 1222—2; 1911 c. 540, 612; 1911 c. 664 s. 114, 144; 1913 c. 768 s. 2; Stats. 1913 s. 76.02; 1915 c. 526 s. 2; 1919 c. 110 s. 2; 1919 c. 353 s. 5; Stats. 1919 s. 1211—2; 1921 c. 59 s. 3; Stats. 1921 s. 76.02; 1927 c. 379; 1929 c. 448 s. 1, 4; 1931 c. 483 s. 1, 2, 3, 5; 1933 c. 285; 1933 c. 349 s. 3, 4; 1943 c. 20; 1945 c. 512; 1947 c. 362, 488; 1955 c. 77, 660; 1963 c. 11; 1967 c. 17; 1969 c. 55, 206; 1969 c. 276 s. 590 (1).

Legislative Council Note, 1967: Substituting "property" for "real estate" in sub. (11) allows local assessment of personal property not directly related to operating the utility. For example, the inventory of appliances held for sale at retail by a utility. Presently this is done by administrative interpretation. [Bill No. 3-A]

1. Light, heat and power companies.
2. Local assessment and taxation.

1. Light, Heat and Power Companies.

That part of ch. 76, relating to taxation of public utilities does not apply to every company engaged in the business of furnishing light, heat or power, but only to public utilities. Whether a corporation is a public