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 or types of property referred to in sections 1965 c. 186; 1967 c. 266.

Such a search may be more satisfactory than a search of state or county records, the former of which is sometimes made for the purpose of recording liens in the county of residence.

Chapter 75.

Land Sold for Taxes.

74.79 History: 1925 c. 303; Stats. 1925 s. 49.28; 1927 c. 425 s. 105; 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. 137.

74.79 History: 1941 c. 287; Stats. 1941 s. 74.79; 1963 c. 150.

CHAPTER 75.

Land Sold for Taxes.

75.01 History: 1859 c. 32 s. 18, 19; R. S. 1878 c. 1165; 1883 c. 296; 1889 c. 415; Ann. Stats. 1899 c. 1049a; 1165; 1891 c. 182; 1893 c. 216 s. 2; Stats. 1898 c. 1165; 1913 c. 399; 1915 c. 66, 614; 1921 c. 18 s. 2; Stats. 1921 s. 75.61; 1933 c. 78, 97, 146; 1933 c. 244 s. 1, 2, 1833 c. 334; 1955 c. 26; 1933 c. 477; 1937 c. 298; 1945 c. 106, 107, 1077; 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 elections 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 the payment of the tax. There is no tax to be paid when land is thus redeemed. That has been cancelled by the sale. It is the discharge of an inconvenience. 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. Shackelford, 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, 40 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 manner 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. * * * " Loomis v. Balderston, 39 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 83, 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, 68 W 35, 27 NW 616.

Where a tax deed void on its face is executed to the county a quashal 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 526, 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 one 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 894.

A deed is not recorded until the name of the grantor is entered in the general index. Hiles v. Allen, 60 W 219, 49 NW 516.

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. Allen, 90 W 72, 62 NW 844.

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, 62 W 312, 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 269.

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. Piers, 150 W 81, 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. 284, 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., 251 W 504, 266 NW 36.

The essence of the partial-redemption plan is that the payment of a just proportion of the tax lien on 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, 224 W 398, 391 NW 525.

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) 203.

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, 266 W 93, 69 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. 24 Atty. Gen. 897.

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. 24 Atty. Gen. 399; 24 Atty. Gen. 51.

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. 68.

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 partial 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. 585.

Redemption money 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. 24 Atty. Gen. 18.

A single tax certificate containing several lots should be divided to permit redemption of individual lots. 24 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. 269.

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 mortgagee executes and delivers a quit-claim deed to the United States of America on July 21, 1941, the United States acquires by such quit-claim deed only such right, title and interest in the land as the mortgagee 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 quit-claim deed to the United States. 3d Atty. Gen. 145.

Settlement of delinquent taxes against a particular piece of property for the years 1307 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. 3d Atty. Gen. 193.

75.03 History: 1859 c. 22 s. 20; 1866 c. 89; R. S. 1878 s. 1166; 1893 c. 21; Stats. 1899 s. 1166; 1921 c. 18 s. 5; Stats. 1921 s. 75.03; 1939 c. 453; 1945 c. 66; 1955 c. 617.

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 996.

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 conveyance by the person having the redemption interest in the land as the mortgagor had at the time of execution and delivery of said conveyance to the United States of America on July 21, 1941. Boggs v. Hazzard, 28 W 374, 115 W 325.

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. Whittles, 74 W 74, 41 NW 535, 42 NW 101.

Without actual redemption heirs may bring suit for redemption against their lessees 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 233, 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. Fier, 158 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 651.

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 1929. 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. 970.

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. 53.

75.04 History: 1859 c. 22 s. 21; 1860 c. 53 s. 3; 1863 c. 292; 1894 c. 120; R. S. 1878 s. 1167; Stats. 1899 s. 1167; 1913 c. 209; 1921 c. 18 s. 5; Stats. 1921 s. 75.04; 1935 c. 167, 1937 c. 394.

75.05 History: 1859 c. 22 s. 22; R. S. 1878 s. 1166; 1899 c. 229 s. 1, 2; 1981 c. 80; Ann. Stats. 1869 s. 1168, 1166, 1168b; Stats. 1968 s. 1168; 1872 c. 167; 1898 s. 1167; 1913 c. 209; 1921 c. 18 s. 6; Stats. 1921 s. 75.05; 1935 c. 167.

75.06 History: 1859 c. 22 s. 24; 1890 c. 53 s. 9; R. S. 1878 s. 1167; Stats. 1899 s. 1169; 1913 c. 266; 1921 c. 16 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. 56 Atty. Gen. 601.

75.07 History: 1859 c. 22 s. 16; 1864 c. 460; 1871 c. 120; 1872 c. 162, 167; 1973 c. 40, 240; 1874 c. 47; 1876 c. 55; R. S. 1878 s. 1170, 1173; 1879 c. 95 s. 3; 1885 c. 308; 1907 c. 100, 446; Ann. Stats. 1869 s. 1170; 1896 s. 367; Stats. 1899 s. 1170; 1907 c. 522; 1913 c. 266; 1921 c. 18 s. 5; 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 381, and 23 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, 84 W 433, 25 NW 417.

A county clerk has no authority to let a contract for the publication of the list of undelivered deeds to the lowest bidder unless the number of descriptions therein exceeds 3,500. 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 1003.

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, 63 W 23, 53 NW 149.

A newspaper mailed and distributed from a place of business within a county is printed within the county within the meaning of 74.53 and 75.07, Stats. 1921, though the actual printing may be done elsewhere. 29 Atty. Gen. 138, 157.

57.09 History: 1859 c. 22 s. 17; R. S. 1878 s. 1171; Stats. 1898 s. 1171; 1913 c. 266; 1921 c. 18 s. 16; Stats. 1921 s. 75.09.

57.10 History: 1863 c. 50 s. 1; R. S. 1878 s. 1172; 1872 c. 225; Stats. 1898 s. 1172; 1913 c. 266; 1919 c. 634; 1919 c. 671 s. 21; 1921 c. 18 s. 11; Stats. 1931 c. 244 s. 2; 1933 c. 306; 1945 c. 105, 567.

57.11 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; Sup. 1905 s. 1174; 1907 c. 562; 1909 c. 34; 1911 c. 275; 1921 c. 16 s. 12; Stats. 1921 c. 1051; 1933 c. 366; 1937 c. 294; 1947 c. 455; 1985 c. 252.

57.12 History: 1867 c. 113 s. 1, 2; 1869 c. 157; 1870 c. 44; 1872 c. 161; 1877 c. 255; R. S. 1878 s. 1175; Stats. 1898 s. 1175; 1913 c. 266; 1915 c. 715 s. 177; 1917 c. 49; 1919 c. 649; 1921 c. 16 s. 10; Stats. 1921 c. 701; 1931 c. 446; 1935 c. 197; 1939 c. 244, 485; 1945 c. 250; 1948 c. 523 s. 174; 1949 c. 574; 1949 c. 107, 507; 1949 c. 259; 1965 c. 255; 1969 c. 264.

Ch. 113, Laws 1867, applies to deeds issued by cities as well as counties. State ex rel. Knox v. Hinthner, 23 W 408; Kearns v. McCarville, 24 W 437.

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. 1876, mean 30 consecutive days. The affidavit of nonpossession need not be made by the holder of the certificate nor state that he is such holder. Howe v. Genin, 57 W 266, 15 NW 161. See also: McDonald v. Daniels, 58 W 420, 17 NW 11; Sherry v. Gilmore, 58 W 324, 17 NW 232.

Failure to give notice invalidates the deed if action is brought before the statute of limitations has run. Towne v. Salentine, 59 W 404, 86 NW 385.

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. Kenan v. Smith, 115 W 465, 91 NW 866.

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. Bost, 185 W 223, 301 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., 277 W 190, 276 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. Sodner, 228 W 248, 269 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, 236 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, compiled with requirements as to statement of description and amount. Steeber v. Cappon, 247 W 443, 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 (3) a deed could not be ap-
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 one year after 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. Bibbmitre, 24 W (2d) 162, 126 NW (2d) 625, 129 NW (2d) 329.

Notice of intention to apply for a tax deed required by 75.12, Stats. 1935, 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. 384.

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. 490.

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. 484.

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. 1929, 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. 594.

Where land is owned of record by 2 persons as tenants in common, reserved timber and pasture rights therein 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. 1961, 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.

**75.14**

**History:** 1917 c. 50; Stats. 1917 s. 1177; 1921 c. 16 s. 14; Stats. 1921 s. 75.13.

**75.14**

**History:** 1859 c. 23 s. 25; 1894 c. 460; R. S. 1876 s. 1176; Stats. 1898 s. 1176; 1913 c. 200; 1915 c. 775 s. 117; 1917 c. 49; 1921 c. 18 s. 15; Stats. 1921 s. 75.14; 1939 c. 20, 368; 1943 c. 539; 1945 c. 99; 1951 c. 522; 1957 c. 699.

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 423.

A tenant in common holding adversely may cut off the title of a cotenant by taking a tax deed. Wright v. Sprick, 31 W 531, 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 213.

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 79.

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 591.
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, 35 W 459, 18 NW 466.

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 89.

A tax deed prematurely issued is void. Safford v. Conoly, 88 W 324, 60 NW 429.

A married woman who has a separate estate may have 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 498, 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. Farmly, 83 W 94, 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 runs 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 L. & L. Co. v. Flambeau L. Co., 120 W 549, 94 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 430, 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. Perezco 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 655.

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. Banfers Farm M. Co. v. Christofferson, 221 W 148, 269 NW 520.

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 mortgagor 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 duty to redeem the mortgages in order 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 coteneatees, 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. Rubina 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 acquired 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 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 86, 68 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 (3), 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." Osterwyk v. Milwaukee County, 31 W 75, 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. 25 Atty. Gen. 469.

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. 198.

The county board has power to include reservations of minerals, oil and gas in convey...
The payment of the fees accruing since the issue of the certificate is a condition precedent to the issue of the deed. 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. 317.

A statement in a tax deed that the grantee is assignee of one who was assignee of the county is conclusive on the fact. In re L. 1778; 1921 c. 18 s. 16; Stats. 1921 s. 75.16.

Where a certificate is lost or cannot be presented, a tax deed may issue to the person who purchased the lands for a tax sale, without the certificate, in accordance with the practice established by the law. Doherty v. Rice, 340 W 389, 3 NW (2d) 734.

A tax deed issues to the county, and may pass the title of the county to the county and to others. Wood v. Roberts, 239 W 325, 282 NW 21.

The county clerk of the county whose treasurer sold lands for unpaid taxes is the proper officer to issue the tax deed thereto if the lands remain unredeemed, in the absence of any contrary provision of law, even though the lands after sale and before deed was transferred to another county. Field v. Pier, 130 W 63, 135 NW 490.

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.

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-
deed recited that the seal of the county had been valid. McMichael v. Carlyle, 53 W 504, 10 NW 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."

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 Fitch, 56 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, 90 W 153, 18 NW 639.

Where a deed was executed February 5, 1891, but purported to have been acknowledged February 5, 1890, 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 187.

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 544.

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 715.

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, 38 W 306; Sample v. Whorton, 66 W 629, 23 NW 693.

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. Hoppencyan, 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 1094.

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. Landor 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. Noaman, 25 W 672; Hoton 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 259, 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. Ry. Co. 124 W 305, 102 NW 245.

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 680.

The term "purchaser" under sec. 1178, Stats. 1878, 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 116.

A tax deed reciting that "J. L. Gates, and assignees 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 "assignees" should be reected as surplusage or as written by the clerk through mistake for the word "as." Maxon v. Gates, 136 W 270, 116 NW 795.

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. Hober v. Riedel, 105 W 152, 101 NW 351.

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. Pierce 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. 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 490.

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. Wolf v. Sheboygan County, 29 W 79, overruled.) Baker v. Columbia County, 39 W 444; Eaton v. Manitowoc County, 40 W 698.

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. 3099. 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 therefore 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
If the county sells certificates, they are taken out of the exception in the statute, and a reassessment to the county would not re-store the certificates to their original status. Hill 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 538, 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 Sec. 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 Sec. 20, Stats. 1945, 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 365, 14 NW (2d) 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 365, followed.) Sommers v. Wauwatosa, 249 W 165, 25 NW (2d) 485.

See note to 75.12, citing Lingott v. Bihnliire, 34 W (2d) 163, 128 NW (2d) 255, 129 NW (2d) 329.

See note to 75.61, citing Lingott v. Bihnliire, 36 W (2d) 114, 106 NW (2d) 439.

75.21 History: 1867 c. 112 s. 2; R. S. 1876 s. 1183; Stats. 1883 s. 1183; 1921 c. 18 s. 22; Stats. 1921 s. 75.21; 1933 c. 86; 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. Paa, 64 W 273, 25 NW 49.

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. 169 W 609, 152 NW 458.

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.

75.25 History: R. S. 1849 s. 15 s. 110; 111; R. S. 1858 c. 10 s. 154; 1859 c. 22 s. 28, 27; R. S. 1876 s. 1184; 1877 c. 216; Stats. 1896 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 assumption 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 payment 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 161.

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, 39 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 the land in his name and interest does not prevent his bringing the action provided for in ch. 22, Laws 1859. Barden v. Columbia County, 31 W 446.

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 land 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 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 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, 82 W 455, 61 NW 328.

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 4906. 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 335.

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. Lameroux v. Bayfield County, 139 W 394, 121 NW 285.

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. 1189, 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. Epperson v. Langlade County, 185 W 442, 192 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 215, 221 NW 769.

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. 16 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. 10 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 moneys paid on void tax certificates which are not surrendered for cancellation. 30 Atty. Gen. 348.

A county having a void tax deed and qui-tclaiming 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; 34 Atty. Gen. 19.

A county may not sell to a town tax certificates which are invalid because of improper descriptions. 27 Atty. Gen. 596.

75.25 History: 1901 c. 44 s. 1; Supl. 1906 s. 1184; 1912 c. 18 s. 24; Stats. 1921 s. 75.23.

75.24 History: 1874 c. 144; R. S. 1878 c. 1185; Stats. 1886 s. 1185; 1921 c. 18 s. 25; Stats. 1921 s. 75.34; 1947 c. 314.

75.25 History: 1901 c. 138 s. 3; 4; 1862 c. 276 s. 2; 1903 c. 284 s. 1; 1870 c. 67 s. 1; R. S. 1878 s. 1186; Stats. 1886 s. 1186; 1921 c. 18 s. 25; Stats. 1921 s. 75.25; 1933 c. 344 s. 2; 1943 c. 230; 1945 s. 81; 1947 s. 514.

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, 13 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. 1896, if the description was sufficient to enable the board to ascertain what land was actually attempted to be assessed. Roberts v. Waushesa 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 reality at tax sale based on 1930 reassessment of 1923 taxes. Nicollet Securities Co. v. Outagamie County, 217 W 438, 269 NW 921.

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 relived with interest. 19 Atty. Gen. 216.

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. 28 Atty. Gen. 57.

A county may employ a surveyor to determine the correct description of assessable property. 29 Atty. Gen. 6.

The amount charged back and reassessed under 75.25, Stats. 1897, is the tax plus interest specified in the statute. 26 Atty. Gen. 593; 28 Atty. Gen. 281.

Tax certificates issued in 1931 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. 1917, 27 Atty. Gen. 499. See also 28 Atty. Gen. 261.

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 therefore in such a case. 33 Atty. Gen. 251.

75.26 History: 1859 c. 23 s. 32; R. S. 1876 s. 1187; 1880 c. 369 s. 11; Stats. 1895 s. 1187; Stats. 1896 s. 1187; 1897 c. 607; 1921 c. 18 s. 37; 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 483.

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. Miller v. Coleman, 47 W 194, 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 ass within the 3 years. If the grantee in a tax deed of 60 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 402.

The running of the statute is interrupted and the bar avoided wholly, in case of vacant land, by any re-entry and actual peaceful 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 tax officers and the payment or redemption of the tax. Miller v. Coleman, 47 W 194, 2 NW 77; Smith v. Sherry, 54 W 114, 11 NW 485; Wadleigh v. Marathon County Bank, 53 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 86.

An action of ejectment was commenced
within one year after recording the deed against the grantee therein; his pendente 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 his pendente 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. Duchae, 73 W 646, 41 NW 902.

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 stopped 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. & R. Co. v. Ritchie, 78 W 402, 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 220.

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, 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 permissible 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 permissible, cannot claim under sec. 2097 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
Where a county board sells tax certificates for less than their face without giving notice of their intention so to do or the irregularity is cured by the statute of limitations and deed cannot be attacked. Kennan v. Smith, 115 W 469, 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 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. 1188. Stats. 1898. Hamar v. Leilby, 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 707.

The omission of the county treasurer to report land for sale after the bidder at a tax sale has defaulted on his bid, the irregularity 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.

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, 118 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. Puescher, 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. Grindsey, 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, 205 W 423, 38 NW (2d) 468.

See note to 75.29, citing Swanke v. Oneida County, 205 W 82, 60 NW (2d) 756, 62 NW (2d) 7.

75.27 History: 1891 c. 139 s. 6; R. S. 1878 s. 1188; Stats. 1896 s. 1190; 1913 c. 446; 1919 c. 165; 1921 c. 18 s. 29; Stats. 1921 c. 75.28; 1890 c. 455; 1914 c. 93; 1921 c. 375 s. 12; 1930 c. 391 s. 2; 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. Riedl, 168 W 102, 111 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. That section is construed, and was not barred by 75.27. Swanke v. Oneida County, 205 W 82, 60 NW (2d) 756, 62 NW (2d) 7.

75.28 History: 1901 c. 139 s. 6; R. S. 1878 s. 1188; Stats. 1896 s. 1190; 1913 c. 446; 1919 c. 165; 1921 c. 18 s. 29; Stats. 1921 c. 75.28; 1890 c. 455; 1914 c. 93; 1921 c. 375 s. 12; 1930 c. 391 s. 2; 1965 c. 252.

The limitation prescribed on tax deeds void the title of the former owner to the land in question. Dunbar v. Lindsay, 119 W 259, 96 NW 537.

Sec. 1190a, Stats. 1890, applies only to actions attacking tax deeds void on their face. Cole v. Van Ostrand, 131 W 454, 110 NW 894.

75.30 History: Stats. 1896 s. 1188b; 1921 c. 18 s. 11; Stats. 1921 c. 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 former owner. The word "grantee" applies to a purchaser from the tax-title grantee. Brunette v. Norber, 130 W 632, 119 NW 765.

75.31 History: 1899 c. 22 s. 44; R. S. 1878 s. 1190; Stats. 1898 s. 1190; 1921 c. 18 s. 29; Stats. 1921 c. 75.31.

The reason that a county may 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 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 767.

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.

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: 1901 c. 138 s. 1; R. S. 1878 s. 1192; 1891 c. 152; Stats. 1898 s. 1192; Stats. 1913 c. 664; 1917 c. 569 s. 13; 1921 c. 18 s. 33; Stats. 1921 c. 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 665, 52 NW 446.
the date of his purchase. 28 Atty. Gen. 314.

private purchaser. 27 Atty. Gen. 342.

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 un-
modified or unrevoked by subsequent resolu-
tion or action of the board, continues to gov-
ern such assignments where offers to purchase
certificates come within the terms of the res-
olution; 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 commit-
tee are reasonable, less than face value of said
certificates, is void. 16 Atty. Gen. 425.

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 re-
quired by 75.34 (3), the board may sell such
certificates for varying percentages of the face
value thereof. 13 Atty. Gen. 361.

When 75.34 (3) has been fully complied
with, a county treasurer directed by the coun-
ty board to make transfer of tax certificates
should comply with the direction in the ab-
sence 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. 630.

A proposed county ordinance which pur-
ports to authorize the sale of general tax cer-
tificates at 10% of face value upon condition
that certain drainage district bonds be surren-
dered, would be invalid. 20 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 1889 by a county
treasurer of county-owned 1931 tax certifi-
cates of sale of 1931 was valid under the gen-
eral authority of unrevoked or modified reso-
 lution 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 coun-
ty to convey to such town a tax deed or tax
certificate held by the county on lands located
in such town. 31 Atty. Gen. 114.

75.35 History: R. S. 1858 s. 134; 1869 c. 22
s. 12; 1861 c. 138 s. 1; 1866 c. 132 s. 2; 1867
c. 145; 1868 c. 75 s. 1; R. 1878 c. 1193; Stats.
1896 s. 1123; 1921 c. 18 s. 36; Stats. 1921 s.
75.35; 1939 c. 274; 1941 c. 5; 1945 c. 160, 167;
1947 c. 99, 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. Com-
stock, 58 W 565, 17 NW 401.

A signature of the county clerk to a deed is
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 59.09 (19) and 59.67 (2), Stats. 1933,
a contract whereby a county agreed with a
private person that he should conduct an ad-
vertising 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 in-
valid, 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, 216 W 357, 280 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 536.

Under 75.32, 75.34 and 75.35, Stats. 1878, a
county board may authorize the county treas-
urer to sell separately the earliest tax certifi-
cates 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. 420.

The assignee of one who purchases land on
 execution sale after homestead exemption had
been selected may redeem lands so purchased
from the lien of a tax certificate in the manner
provided by 75.01 (1), Stats. 1889, but cannot
secure an assignment of part of the tax certifi-
cate held by the county. 20 Atty. Gen. 90.

A county ordinance which repeals an ordi-
nance 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 pay-
ment of principal and interest from time of
issuance of the certificate. 26 Atty. Gen. 115.

A person who wilfully, maliciously or want-
tonly removes buildings from lands which
have been sold for nonpayment of taxes is
criminally liable under 348.426. A county in-
ducement of principal and interest from time of
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issuance of the certificate. 26 Atty. Gen. 115.
A county 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. 1946, 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 ss. 37; Stats. 1921 s. 75.36; 1929 c. 401; 1942 c. 64, 567, 586; 1947 c. 143, 514, 515; 1961 c. 356; 1965 c. 10; 1968 c. 757.

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 855.

A tax deed issued to the county is prima facie evidence that the clerk was authorized by resolution to execute the same. Benis v. Weepo, 67 W 425, 30 NW 298; 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 1928, 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.

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When a county forecloses a tax lien by an action in rem, under §25.52i, and later sells such land, distribution of the proceeds is governed by §25.36 and does not cut off drainage assessments under §88.14 (1) and §83.37 (5). Stats. 1905, 52 Atty. Gen. 371.

1. The title holder shows that the remedy existing during 3 years of actual possession, though that legal title de­

2. In an action against a city which was the

3. The deposit must not only be alleged but proved and found to sustain a judgment for

4. 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, 29 W 592.

5. 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, 66 W 527; Marsh v. Clark County, 49 W 292; Powell v. St. Croix County, 48 W 210, 59 NW 1019; Diersey v. Union L. Co. 47 W 249, 2 NW 390; Riffen v. Marinette County, 63 W 532, 23 NW 705; Lombard v. Antioch College, 69 W 499, 19 NW 367. See also Dayton v. Holt, 34 W 92.

6. Where a tax-title claimant commenced an action against the original owner, and the latter offered to show that for more than 2 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, 39 W 241.

7. Where the deposit is accepted the plaintiff

8. 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 497.

9. When the deposit is accepted the plaintiff can recover no more than taxable costs. A deposit amount to a waiver of defenses pleaded which might be set up without a de­

10. Such defenses will not be considered even on the question of costs. Speck v. Jarvis, 59 W 355, 18 NW 476. 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 35, 28 NW 760.

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. 1260, Stats. 1909. When the deposit mentioned would, if made in time, have made them upon it is purpose of hauling 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.

In an action by the landowners in possession against the tax deed grantees, 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 latter 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, 165 W 607, distinguished.) Schrader v. Otto, 238 W 469, 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. 75.52(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. 41.

Payment may be made after commencement of in rem proceedings under this section. It is not 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. 45 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. 271.

and offer to pay the valid part, since that can be done by reason of a levy, partially invalid, and a roll. In such a case the groundwork of the tax. Kingsley v. Marathon County, 49 W 699, 6 NW 311. See also: Single v. Stetlin, 49 W 94, 6 NW 213. Flinders v. Merrimack, 46 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 660, 12 NW 10.

Such a judgment is not void for want of jurisdiction. The failure to suspend proceedings is error, but the court has jurisdiction. Monroe v. F. L. Howard, 50 W 228, 6 NW 663.

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 in 269.45. Woodruff v. Depere, 69 W 128, 16 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 372; Fifield v. Marinette County, 62 W 588, 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 the final judgment. Spear v. Door County, 95 W 288, 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 26, 48 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. Gilson 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 396.

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, 96 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.


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. Peace, 263 W 444, 56 NW (2d) 536.

75.55 History: 1970 c. 334 s. 13; R. S. 1878 s. 1210; 1879 c. 255 s. 6; Ann. Stats. 1889 s. 1210; Stats. 1896 s. 1210; 1921 c. 18 s. 84; Stats. 1921 s. 75.55.

75.61 History: 1880 c. 309 s. 3 to 7; Ann. Stats. 1889 s. 1210; Stats. 1896 s. 1210; 1903 c. 367 s. 1; Suppl. 1906 s. 1210; 1921 c. 18 s. 62; Stats. 1921 s. 75.61; 1929 c. 148; 1935 c. 24; 1939 c. 596; 1957 c. 659.

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 395, 25 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. Urrhaut v. Wescott, 63 W 135, 26 NW 552.

Selling 50 or more 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. Frouzow, 67 W 218, 38 NW 232.

Sec. 1, ch. 305, Laws 1889, 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, pay-
ment 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 68, 36 NW 943.
A preliminary injunction to restrain the sale
of land for taxes shall 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.
Onida 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 906.
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 pay-
ment 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, 62 W 515, 52 NW 445.
Void special assessment proceedings which
are in progress and which will result in creat-
ing a prima facie lien and cloud on the title
will be enjoined. Beaser v. Ashland, 89 W
20, 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 re-
strained because the certificate covered sev-
eral 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 spe-
cial 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, 62 W 650, 68 NW 232.
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, 85 W
80, 70 NW 97.
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 1108.
Where the plaintiff brought an action to re-
move 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 de-
fendant 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 judg-
ment. Blackman v. Arnold, 113 W 497, 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 officer.
Chicago & Northwestern R. Co. v. Arnold, 114
W 434, 60 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 there-
of are defects which affect the groundwork of
the tax and are within sec. 1210h, Stats. 1898.
Beaser v. Southwick, 120 W 184, 97
NW 903.
Sec. 1210h, Stats. 1898, applies to tax sales
and certificates issued thereon for street im-
provements. Levy v. Wilcox, 96 W 127, 70
NW 1109; Hamar v. Leihy, 124 W 265, 102
NW 596.
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 cer-
tificates 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. Simonsen, 139 W 659, 110 NW 803.
A tax-title claimant is under no obligation
to pay taxes. A redemptioner from such a tax
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 sta-
tutory interest. Roach v. Sanborn L. Co. 135
W 354, 115 NW 1102.
A suit by the original owner to quiet the
title to lands purchased by the defendant from
a county, under tax titles, is not a prerequisite
to an action to set aside a tax deed. Pedro v.
Grootemaat, 174 W 412, 163 NW 153.
The provision in 75.61 (1), requiring that
any 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. S. Boyington Co. v. Southwick,
174 W 412, 183 NW 153.
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 there-
of are defects which affect the groundwork of
the tax and are within sec. 1210h, Stats. 1898.
Beaser v. Southwick, 120 W 184, 97
NW 903.
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 amount 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 75.30 (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. Atty. Gen. 253.

On 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 delinquent prior thereto.

The last sentence of 75.61 (2), as added by ch. 503, Laws 1899, 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. 383.

75.62 History: 1909 c. 295; Stats. 1911 s. 1210h-1 to 1210h-4; 1915 c. 18 s. 63 to 66; Stats. 1921 s. 75.62; 1929 c. 500.

On the payment of valid taxes as a condition of relief against invalid taxes, see the following:

Hervey v. Milwaukee County, 16 W 163; Myrick v. La Crosse, 17 W 442; Mills v. Johnson, 17 W 598; Crane v. Janesville, 29 W 305; Dean v. Charleston, 22 W 600; Dean v. Rochelle, 30 W 236; Whitaker v. Janesville, 33 W 76; Maxine v. Ames, 36 W 409; Hart v. Smith, 44 W 231; Plumer v. Marathon County, 46 W 163, 50 NW 416; Thomas v. West, 59 W 103, 107 NW 684; Bradley v. Lincoln County, 60 W 71, 18 NW 725; and Fife v. Marinette County, 62 W 532, 22 NW 705.

As to what is sufficient evidence of payment of a tax see Lewis v. Disher, 39 W 441, and Merton v. Dolphin, 33 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. 255, Laws 1899, relates to cases where, but for the error 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 E. E. Co. v. Milwaukee, 151 W 198, 138 NW 642; Kenman v. Ashland County, 152 W 560, 140 NW 536.

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 129, distinguished.) Schmidt v. Milwaukee, 158 W 44, 143 NW 1066.

See note to 75.61, citing Pedro v. Groote, 174 W 412, 158 NW 152.

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 30 days after commencement of an action. Trustees of Clinton Lodge v. Rock County, 234 W 169, 273 NW 9.

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 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 (1), is not required to pay the levied tax as a condition to maintaining such action. Service Inv. Co. v. Dorst, 283 W 674, 285 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 115, 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 E. E. Co. v. Milwaukee, 275 W 436, 82 NW (2d) 344.

75.63 History: 1899 c. 278; Ann. Stats. 1899 s. 1210j; Stats. 1899 s. 1210j; 1921 s. 18 s. 97; Stats. 1921 s. 75.63; 1935 c. 24. See note to sec. 9, art. I, citing Lombard v. Antioch College, 60 W 469, 19 NW 397, and Lombard v. McMillan, 65 W 627, 70 NW 873.

75.64 History: 1899 c. 132; Stats. 1899 s. 1210j; 1921 s. 18 s. 97; Stats. 1921 s. 75.64; 1935 c. 24; 1937 c. 294.

75.67 History: 1939 c. 422; Stats. 1899 s.
76.02

CHAPTER 76.

Taxation of Public Utilities and Insurance Companies.

76.01 History: 1860 c. 174 s. 1; 1862 c. 2 s. 1, 4; R. S. 1873 s. 1212; 1882 c. 320; Ann. Stats. 1889 s. 1212, 1216; Stats. 1898 s. 1212, 1218; 1899 c. 309 s. 4; 1903 c. 315 s. 1, 2; 1905 c. 380 s. 5, 11, 12; 1905 c. 405 s. 1; 1905 c. 493 s. 1; 1906 c. 494 s. 1; Supl. 1906 s. 1, 3, 6, 9; 1909 c. 356; 1913 c. 492 s. 4; 1914 c. 274 s. 1; 1937 c. 520 s. 1; 1943 c. 190 s. 4; 1949 c. 274 s. 1; 1955 c. 356; 1963 c. 733 s. 1, 2, 3, 4, 5; 1970 c. 504 s. 1, 2, 3, 4; 1973 c. 492 s. 5; 1975 c. 492 s. 5; 1977 c. 492 s. 6; 1979 c. 492 s. 7.

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 utility shall be determined in each case by the court.