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Article 2

Before the Running of the Three-Year Statute

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9. How should its orders, judgments and mandates be enforced?

10. What shall be the personnel of the executive and police powers of this organization, and how should it be selected and maintained?

11. What shall be the procedure to get jurisdiction over the persons and the subject matter and of the nations in order to make its orders, mandates and judgments effective?

12. How should the jurisdiction be conferred in order to make it binding on nations and persons and subject matters, in order to obtain jurisdiction over a group of persons starting a revolution within the nation which may jeopardize the welfare of nations internationally?

The legal profession will find this a very broad, extensive field. There will be very many valuable suggestions that will be submitted. These suggestions properly compiled will be of great assistance in solving many questions and averting war, and in finally maintaining a permanent peace among nations and the people of the world in the future. The Magna Charta, the Declaration of Independence, Articles of Confederation and the Constitution of the United States and of the several states will aid the legal profession in making some of the suggestions.

TAX TITLES UPON WHICH THE THREE-YEAR STATUTE OF LIMITATIONS HAS NOT RUN

By K. K. Kennan, of the Milwaukee Bar.

Editor's Note: — This is the first of two articles by Mr. Kennan; the second, which deals with "Tax Titles Upon Which the Three-Year Statute of Limitations Has Run," will be published in the June number of the *Review*. These articles were delivered as lectures by Mr. Kennan in 1909, and in view of the fact that there have been few important changes in the law of Tax Titles since that time, it has been deemed advisable to publish them here in their original form, with notes by Mr. Kennan to indicate any changes which have been made.

The subject of Tax Titles is not one which lends itself readily to bright scintillations of wit, or bursts of eloquence, or flights of fancy. Indeed, it can hardly be said to be an agreeable subject to the average citizen who is reminded by it that he is in danger of losing his property if by any chance he fails to pay his taxes.

Death and taxes are placed in the same category as to inevitableness, and are among the things we are apt to think about as little as possible until they force themselves upon our attention.

And the feeling against taxes, due largely to the fact that they are an "enforced contribution," is often still stronger against tax titles, which are the final mute witnesses to the fact that the property is apparently — and perhaps irrevocably — lost to its former owner. So strong is the prejudice against this form of title that a man who deals in them is often spoken of contemptuously as a "tax title shark," and the market value of such titles is seriously impaired. In the aristocracy of titles the good, old-fashioned, ever-reliable warranty deed is *facile princeps* a very pillar of society — an emblem of respectability. The special warranty deed holds a somewhat precarious position on the fringe of good society. It has been known to try to pass itself off as a general warranty and is, therefore, viewed with suspicion. The quitclaim deed has at least the merit of being frankly and avowedly irresponsible. Its motto is *caveat emptor*. In an unpretentious way it has been known to accomplish quite laudable results, but its sphere of action is limited. The mortgage, the judgment, the will and the sheriff's deed are mere rabble, litigiously inclined, and can only convey property with the aid of a court of law. But aside from all these — at the very foot of the scale, as it were, we find another — the tax title — a veritable tramp, an outcast, a Pariah among deeds — ever an object of suspicion and contempt — to a man who has lost his title through it, the symbol of injustice and ruthless oppression; to the man who has profited by it, a sort of "Prince in disguise."

But tax titles have come to stay and, here in Wisconsin, at least with the aid of the courts, they have attained such a degree of dignity and respectability that they may no longer be lightly ignored or despised. Indeed, it is hardly safe to speak disparagingly of tax deeds, for "slander of title" is recognized as a serious offense under our laws, and even a tax title may have rights which lawyers, abstractors and people in general are bound to respect. The tax title is peculiarly an American institution. It is a device for making a tax out of the land, and is most frequently found where taxes are high and lands are cheap and unoccupied.

In early colonial days in this country, the state claimed a lien on the land for the amount of the unpaid tax, and the enforcement of that lien resulted in a forfeiture. It was found more practicable, however, to permit private individuals to acquire and enforce the lien with the assistance of the state. The principle underlying the tax deed is that the owner of real estate who is unable or unwilling to pay an amount of tax proportioned to the value of the land, shall forfeit the property to the person who *will* pay the tax. As was said by Justice Dodge in *Town of Iron River vs. Bayfield County,* 106 Wis., 587: "The whole general purpose" (of tax proceedings) "is the collection of revenue for the several subdivisions of government, state, county, municipal and school district. The formal acquisition of any lien or title in accordance with those provisions, whether by any municipal corporation or county or by any public officer, is primarily to continue or enforce the original right of the government against property to the end that it may secure therefrom ultimately the money which such property or its owner ought to contribute towards governmental expenses, for with nothing but *money* can those expenses be paid." * * * "In the enforcement of such liens it may be unavoidable — it is always undesirable — that actual title to property should be taken. The purpose of the law, * * * is collection of money and not acquisition of property."

It would lead us too far to attempt to trace the history of tax titles from early colonial days, and we must content ourselves with a mere glance at the development of that form of title in our own State. It will be remembered that the territory now comprised in this State, after having been under the dominion of Spain, France and England successively, became in 1787 a part of the so-called Northwestern Territory. From May 7, 1800, to February 3, 1809, it belonged to Indiana; from February 3, 1809, to April 18, 1818, to Illinois, and from April 18, 1818, to April 20, 1836, to Michigan. It will thus be seen that for eighteen years previous to its becoming a territory in 1836, it was a part of Michigan, and it might naturally have been expected to adopt Michigan laws. Nevertheless our tax laws would seem to have been modeled more closely after those of New York than any other state, and our system of collection of taxes has developed along quite different lines from those of our sister state of Michigan. In the Wisconsin Territorial Statutes of 1839, it was provided that tax certificates should draw 30 per cent interest, and

the landowner should have two years within which to redeem, after which a tax deed should be issued. By the Statutes of 1849 the period of redemption was fixed at three years and the rate of interest at 25 per cent. Chapter 66 of the Laws of 1854 provides the form of tax deed now used, and the Statutes of 1858 set forth the beginnings of the famous three-years' statute of limitations which tends to put tax titles on a par with other titles after they have been recorded for that period.

This statute of limitations constitutes, perhaps, the most notable and distinct advantage which our system has over that of Michigan, Illinois and many of our surrounding states. The theory of it, briefly stated, is as follows:

The recording of a tax deed upon vacant and unoccupied land is deemed to be such a public assertion of ownership as to draw with it the constructive possession of the property, and if this constructive possession is uninterrupted by the original owner for the period of three years from the date of the recording and indexing of the tax deed, the statute of limitations cures all technical defects in the deed and it cannot be attacked by the original owner except for certain jurisdictional defects which will be more fully explained hereafter. If, however, during the three years, the original owner enters into open, notorious possession of the property, the running of the three years' statute is interrupted and it then runs in favor of the original owner, so that at the end of the three years the tax deed would be void by reason of his adverse possession, even though such possession had occurred for only a short period. The statute has, therefore, been very aptly likened to a two-edged sword, cutting both ways. In a case in the Supreme Court, in which the writer was interested a few years ago, the court remarked that the three years' statute of limitations "runs in all cases, except where it can be shown that the lands were not taxable, that the taxes have been paid or properly redeemed, or that the taxing officers had no jurisdiction under any circumstances to levy a tax." This statement was rather too broad, as there appear to be several other important exceptions which should have been mentioned.

It is impossible, of course, in the space here available, to cover the whole field of tax-title litigation, or even any considerable portion of it; the scope of this article must be limited to a succinct explanation of the proceedings which are preliminary to the

issuance of a tax deed, with allusions to a few of the more important defects which may be relied upon to set aside a tax deed after it has been issued. It is, of course, very much easier to set aside a tax deed before the three years' statute has run upon it, and we will now consider a few of the more important defects which will suffice to set aside a tax deed upon which the statute has *not* run.

Before doing this, however, it may be well to review very briefly the proceedings antecedent to the issue of a tax deed. The general law of the state requires that property shall be assessed for taxation between the first day of May and the meeting of the Board of Review, which is required to be held on the last Monday of June. It often happens, however, that the assessment is not completed at the time of the meeting of the Board of Review, and as the board can act only upon a completed assessment roll it then becomes necessary for the board to adjourn to some later date. Such adjournment should not extend beyond the first Monday of August, as the assessor is required to deliver the completed assessment roll to the town clerk on that date. This requirement, however, is only directory and, if necessary, the greater part of the month of August can be utilized in completing and equalizing the assessment; but in any case, the work should be completed before the 4th Monday of August, as the town clerk is required to furnish the statement called for by Section 1066, at that time, which statement can only be made from a completed roll. It is a common mistake to suppose that if land was not entered so as to become taxable until after the first of May, it cannot be taxed that year. The statute provides that if it becomes taxable at any time prior to the meeting of the Board of Review, it may be assessed.

The assessment roll contains simply the description of the property, the valuation fixed by the assessor, and the valuation determined upon by the Board of Review. From this assessment roll the city, village or town clerk prepares what is called the tax roll, filling out in columns prepared for the purpose the different taxes which have been levied and apportioned upon the lands. In the front of this tax roll are blanks in which the amounts of the various taxes to be raised are filled in and also a blank warrant which should be filled out and signed by the clerk. The warrant is a command to the treasurer to collect the taxes therein set forth and to pay over the moneys thus collected in a

certain way and, if in proper form, it will protect the officer in making levies for delinquent property tax, etc. The tax roll, with the warrant annexed, should be delivered to the treasurer (under the general law of the state and not of the city of Milwaukee), on or before the 3rd Monday in December. The treasurer then proceeds to the collection of the taxes until the 15th day of March, at which time he is required to turn over what is called the delinquent roll, to the county treasurer. This delinquent roll consists of a list of lands upon which the taxes have not been paid, showing the amounts of unpaid taxes, and in a separate column the five per cent collector's fee.[1] Attached to it should be an affidavit in substantially the following form:

"State of Wisconsin, }
..... County, } ss.

....., being duly sworn, says that he is the treasurer of the ..... in said county of ..... and makes the annexed and foregoing statement as such treasurer. That the facts set forth in said statement are correct; that the sums therein returned as unpaid taxes have not been paid and that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to the persons charged with such unpaid taxes whereon he could levy the same."

The county treasurer is authorized to continue the collection of the taxes, but any person paying after the delinquent roll has come into his hands, is required to pay not only the amount of the tax and the five per cent collector's fee,[1] but also the sum of one per cent a month from January 1st upon the amount of the tax, plus the five per cent collector's fee.[1] The county treasurer is required, on the first Monday of April,[2] to make out a statement of all lands upon which the taxes have been returned as delinquent and which then remain unpaid, with an accompanying notice stating that so much of each tract or parcel of land described in said statement as may be necessary therefor, will, on the third Tuesday of May[3] next thereafter, and the next succeeding days, be sold by him at public auction at some public place

1. NOTE: The collector's fee has since been reduced to two per cent. — K. K. K.

2. NOTE: This has been changed to the fourth Monday in April. — K. K. K.

3. NOTE: This has been changed to the second Tuesday in June. — K. K. K.

(naming the same), at the seat of justice of the county, for the payment of taxes, interest and charges. He must cause this statement and notice to be published once in each week for four successive weeks prior to said third Tuesday of May[3] and he must also post up in at least four public places in the county copies of such statement and notice, one of which must be posted up in some conspicuous place in his office. Anyone attempting to pay his taxes after the giving of this notice can be required to pay the cost of the advertisement, which is usually twenty-five cents a description in addition to the amounts heretofore specified. Upon the day of the sale, it is customary to read the notice of sale and then to offer for sale each separate tract. The person offering to pay the taxes, interest and charges on any tract of land for the least quantity thereof, becomes the purchaser of such quantity, which shall be taken from the north side or end of such tract. If any tract of land cannot be sold for the amount of taxes, interest and charges, it will be passed over for the time being, but may be re-offered, and if not then sold, it will be bid in by the county. A person buying the certificate at the sale is usually spoken of as the purchaser, and any person buying from him or buying a certificate from the county after the sale is closed, is usually spoken of as the assignee of the tax certificate. The certificate should be endorsed by the purchaser before being transferred to other parties, but further assignments or endorsements are not necessary; that is to say, a certificate which has endorsed upon its back the name of the person who purchased it at the sale, or if it was sold to the county, the name and official designation of the county treasurer, is from that time transferable without further endorsements, and the owner and holder of the certificate is entitled to draw the redemption money if it should be redeemed, or to demand a deed at the expiration of three years from the day of sale if it has not been redeemed.

The steps necessary to be taken to secure a tax deed after the expiration of three years from the date of sale are briefly as follows:

If the land has been occupied for a period of thirty days at any time within the preceding six months, by any person other than the owner or holder of the certificate, a written notice must be served upon the owner of the land or upon such occupant by the holder of such certificate at least three months before the tax deed is issued. The usual form of the notice is as follows:

"Please take notice that on the.....day of May, A. D. 19.., the following described property was sold for the taxes of the year ....., to-wit: (describe the property) and that I am the owner and holder of the tax certificate number.....of such sale, dated May....., 19.., copy of which certificate is hereto annexed and I hereby give you notice that after three months from the date of service of this notice upon you, I shall apply to the county clerk of.....county for a tax deed of said premises."

Following this notice is a blank form of tax certificate for making the copy of the certificate, and beneath that a blank affidavit of service of notice. The original notice, with proof of service, must be filed with the county clerk, and thereafter, if the original owner redeems, he is required to pay one dollar additional for the notice.

If the land is vacant and unoccupied, a tax deed may be secured at once by filing an affidavit to that effect. A form of affidavit which the writer prepared some years ago and which is now being used in most of the northern counties of the state, is as follows:

"State of Wisconsin, } ss.
..... County, }

..... of ....., being duly sworn on oath, deposes and says that ..... of ....., is the owner and holder of the tax certificate hereto annexed and more particularly described in the following schedule marked Exhibit A, and affiant further says that he is authorized to and does make this affidavit for and in behalf of said ..... pursuant to the statute in such case made and provided for the purpose of obtaining tax deeds on the said several tracts, pieces or parcels of land, or village lots mentioned and described in said tax certificate and exhibit, all of which premises are situated in said county of.....and state of Wisconsin. And affiant further says that none of said several tracts, pieces or parcels of land, or village lots, in said certificates described are now in the actual occupancy or possession of any person or persons, and affiant further says that none of said several tracts, pieces or parcels of land in said tax certificates described have been in the actual occupancy or possession of any person or persons for a period of thirty days or more at any time within six months immediately preceding this application

for tax deed. The following is a schedule of the tax certificates upon which application for a tax deed to said.....is hereby made. Exhibit A....."

Having thus touched lightly upon the proceedings antecedent to the issuance of a tax deed, before leaving the subject let us consider the somewhat different system which prevails in the city of Milwaukee. The assessors in Milwaukee are appointed instead of being elected; the board of review is composed of the mayor, city clerk, tax commissioner and ward assessors, and the tax roll may be found in several volumes instead of one. The city treasurer gives a brief notice that the tax roll will be in his hands from and after the second Monday of December and that all taxes must be paid on or before the 31st day of the following January. He does not, however, publish any list of the lands delinquent, as county treasurers are required to do. Upon the first of February he begins the sale of the real estate which is then delinquent, but in order to give taxpayers a little more time he only offers one piece in each ward and adjourns the sale from day to day until about the 20th day of February, when what is called the general sale takes place. In bidding at this sale, the purchasers do not take fractions from the north part as elsewhere in the state, but an undivided interest in each tract, and these interests are often bid down to very small amounts. The sale by the city treasurer is only for city taxes, and the delinquent real estate taxes for state and county purposes are returned to the county treasurer for collection in the ordinary way. At the expiration of three years from the date of sale, the owner and holder of the tax certificate may demand a deed of the county treasurer, but the treasurer will not issue such deed until proof has been filed with him that three months previous notice in writing of the application for such deed has been served by the sheriff of Milwaukee County upon the occupants of the property, if it be occupied, *and* upon the owner or owners thereof, if known. This requirement is very carefully observed, as the penalty upon the treasurer for issuing a tax deed without such proof, is a fine of not less than $500 nor more than $1,000, *and* imprisonment in the county jail for a term of not less than six months nor more than one year, *and* the vacation of his office. It is perhaps due somewhat to the terror inspired by this drastic penalty that tax deeds issued by the city treasurer of Milwaukee are remarkably free from defects.

A curious complication arises when property is sold for the city taxes in February and then sold by the county treasurer for the county and state taxes in the following May.[4] The law provides that in such case the holder of the certificate which was sold first in point of time may redeem the subsequent certificate and have it added to his lien, but if he does not do this the later tax deed is made paramount.

The writer had a case some time ago in which the same man bid in both the city and the county certificates and took tax deeds upon each, taking the county tax deed first. It thus appeared that two tax deeds were issued by separate municipalities for taxes of the same year upon the same property. The tax deed issued by the county was clearly invalid for technical defects, and the question arose whether, by taking the county tax deed first, the tax title claimant had elected to rely upon that title, or whether after that had been set aside, he could fall back upon the city deed as an independent and distinct title. The case did not come to trial and it would be difficult to prophesy as to what would have happened if it had.

The courts of this state are quite prompt to set aside tax deeds for technical defects if suit is brought within three years, and there is usually little difficulty in finding defects which will be accepted as sufficient for that purpose. In passing upon the validity of a tax deed which is not protected by the statute, it is well to search for the following defects:

First: Examine the affidavit to the delinquent roll to see whether it is in the form required by law. This affidavit is usually printed on the first page of the roll, but not infrequently by printers in other states who are careless in regard to the form.

It has been held that unless the delinquent roll is verified by the town treasurer as required by law, the county treasurer has no authority to sell the land.

Cotzhausen vs. Kaehler, et al, 42 Wis., 332.

Second: Examine the *notice of tax sale* which precedes what is called the general delinquent list. If this notice should fail to state that the sale would be at public auction or should be indefinite or incorrect as to the time or place, or should omit to state the year for which the taxes were delinquent, or should not be signed by the county treasurer, the sale would be invalid and the defects sufficient to set aside the tax deed.

4. NOTE: This has been changed to June. — K. K. K.

Third: Examine carefully the *printed delinquent* list and see whether the land in question is correctly described and look at the sales book to see whether the amount for which the land was sold was the correct amount. Ordinarily, outside of the city of Milwaukee, the formula for ascertaining the correct amount would be as follows: Ascertain from the tax roll the original amount of tax on the property, compute the treasurer's fees at five per cent[5] and add them to the amount of the original tax, add four and a half per cent of the sum thus obtained, then add twenty-five cents for each description if that was the amount paid to the printer and twenty-five cents certificate fee. The four and a half per cent above referred to is the interest at one per cent a month from January 1st to the middle of May,[6] which is usually assumed to be the date of the sale.

Fourth: Examine the *proof of posting of notices.* Failures in this proof have perhaps furnished the grounds for setting aside more tax deeds than any other one defect.

It will not suffice to make an affidavit that the statement and notice were posted according to the statute, nor can the want of an affidavit be supplied by parol even though the posting was actually done according to law. The county treasurer's affidavit must clearly state that he caused to be posted up copies of the statement and notice in at least four public places in the county, one of which copies was posted in a conspicuous place in his office. As an indication of the strictness with which the courts scrutinize this proof we will cite the case of *Hilgers vs. Quinney,* 51 Wis., 62, in which the court held that an affidavit that one of the notices was posted "at" the county treasurer's office instead of "in" was insufficient and the sale was void. But the Supreme Court has intimated in *Allen vs. Allen,* 114 Wis., 615, that this decision went about to the limit, and they sustained an affidavit which set forth that one notice was posted "at the inside door of the treasurer's office." It will sometimes be found that the affidavit does not show that the notices were posted at least twenty-eight days before the sale. The four public places must be specified in the affidavit in order that the court may judge whether or

5. NOTE: This fee has been reduced to two per cent. — K. K. K.
6. NOTE: This has been changed to June. — K. K. K.

not they were in fact public.[7] An affidavit that the notices were posted in four public places in the village of Neillsville (which was the county seat of Clark County) describing the places of posting, was held to be insufficient proof that the notices were posted in four public places in the *county*.

See *Ramsay vs. Hommel,* 68 Wis., 12.
and *Hilgers vs. Quinney,* 51 Wis., 62.

Fifth: Examine the printer's *affidavit of publication* which should be attached to the roll. This affidavit (down to the sale of 1905), was required to be made within six days of the last publication. It must show affirmatively that the statement and notice were published *once in each week for four successive weeks* prior to the third Tuesday of May. This statute has been held to be mandatory and must be strictly observed. For example, an affidavit that the notice was published in said newspaper for the period of five weeks commencing on the 9th of April, 1880, and ending on the 7th day of May, was held insufficient.

Ramsay vs. Hommel, 68 Wis., 12.

Sixth: Ascertain the *date when the proof of publication was transmitted* to the county treasurer. This point is a somewhat intricate and technical one, but it is extremely important because it will apply to almost every tax deed in the state not protected by the three-years' statute and based upon the sales prior to 1905. If you find this defect you can rely upon it absolutely to set aside any tax deed against which suit is brought within three years of the date of recording and indexing. Section 1132 of our statutes required the printer who published the delinquent list, immediately after the last publication thereof, to transmit to the county treasurer the affidavit of publication; and further provided that no printer should be paid for publishing any such statement and notice who should fail to transmit such affidavit, *within six days after the last publication.*

7. In a recent case in Circuit Court it appeared that the notices had been posted in saloons and there was an allegation that these were public places. The decisions as to whether a saloon is a public place within the meaning of the statute are quite conflicting in other states and it remains to be seen what view the Wisconsin Supreme Court will take of this question. In the case of *Bouchier vs. Hammer,* 140 Wis. 648, Judge Dodge has reviewed the decisions on this point and intimates that a mere allegation of posting in four public places is not sufficient unless the places are specified. — K. K. K.

This may seem simple enough and the provisions would seem to be clearly directory. But it must be remembered that the publications are usually in *weekly* newspapers; that a publication for a week must be for the week following the actual printing and distribution and that the fourth publication must take place at least a week before the tax sale in order to be complete.

Many years ago the custom arose of printing the delinquent tax list *five* times and this custom has been almost universal throughout the state. It may have arisen from an early New York decision to the effect that *five* publications were necessary in order to constitute a complete advertisement for four weeks or possibly from some decisions of our courts to the effect that nothing less than twenty-eight days of publication would suffice.

A few years ago in the case of *Allen vs. Allen,* 114 Wis., 615, the point was raised that a tax sale was rendered void by the failure of the printer to transmit the affidavit to the county treasurer within six days. In that case the affidavit was not transmitted until ten days after the fifth publication and four days after the sale; but the Supreme Court held that this was a matter between the printer and the county; that this provision of the statute was directory only and a tax deed would not be invalidated because of the failure on the part of the printer to conform to it. Shortly afterward, however, a very ingenious lawyer undertook to set aside a tax deed and one of his contentions was that the sale of land for delinquent taxes was rendered invalid by the fact that the tax certificate was sold for an excess of twenty-five cents, this excess being the amount paid by the county treasurer to the printer for advertising the land. In this case it appeared that there had been five publications and there was no evidence that the affidavit of publication had been transmitted to the county treasurer, but the affidavits of posting and publication had been filed with the county clerk within six days of the fifth publication. It was argued that the law required but four publications and that the fifth was, therefore, merely surplusage; that inasmuch as a full week did not elapse between the fifth publication and the sale, the first four publications must be deemed to be the only legal publications and therefore, the affidavit having been filed after the fifth publication and, of course, more than six days after the fourth publication, the county was under no obligation to pay the printer and consequently had no authority to collect a fee

which it was not legally bound to pay. This contention was sustained by the court and the tax deed in question was held void.

Chippewa River Land Company vs. James L. Gates Land Co., 118 Wis., 345.

The printer did not receive any extra pay for the fifth publication, and the habit of publishing five times probably arose from a desire to fully comply with the law. Naturally the affidavit of publication was never transmitted in any instance known to the writer until after the fifth publication, and in almost every instance the fifth publication occurred within less than seven days of the tax sale. Hence, the affidavit was not transmitted within six days of the fourth publication, which, under this construction of the law, was usually the last, complete publication. As may be imagined, this somewhat technical decision, which has since been affirmed in a number of cases, took the legal fraternity by surprise, and it has operated to render void the great majority of the tax deeds of the state upon which the three-years' statute has not run.

The decision above referred to was rendered in June, 1903, and at the next session of the legislature the law was amended by Chapter 35, Laws of 1905, so as to merely require the affidavit of publication to be transmitted to the county treasurer on or before the date fixed for the *tax sale*. If the affidavit is not transmitted within the time prescribed, the printer is not entitled to his fees.

Section 2 of the act was as follows: "Whenever any printer shall have in good faith heretofore published the statement and notice required by Section 1132 of the Statutes of 1898, and has been paid by the county for such services and has neglected to transmit the affidavit of such publication to the county treasurer within the time required by said Section 1132, such payment to said printer by said county is hereby declared valid and no part of the same can be recovered from said printer by said county."

It was thought by some that the effect of this law might be to validate the sales made prior to 1905. But in *Cole vs. Van Ostrand*, 131 Wis., 454-462, the Supreme Court quotes the section in question and then says: "We find nothing in this statute which even attempts to change the relative rights of landowners and tax-title claimants as they existed before its enactment. So far as any retroactive effect is declared, it applies only to the relations between the printer and the county."

In this connection the writer ventures to suggest that it would be well to keep this point in mind even as to sales subsequent to the 1905 law, as not all county officers will have their attention called to this law and there is much carelessness in such matters.

Seventh: The *tax certificate* upon which the tax deed was obtained should be carefully examined to see whether it is in the form prescribed by law and whether it is properly assigned. The certificate will be found on file in the county clerk's office attached to the affidavit of non-occupancy or filed with the notice of taking deed.

Eighth: Section 1170 of the Statutes requires that *a notice of the expiration of the time for redemption* should be published at least six and not more than ten months before the expiration of the time limited for redeeming the land — in other words, before the expiration of the three years from the date of sale. Attorneys have been known to take much trouble to find defects in this notice, but it would seem that even an entire omission to publish the notice would not in any way invalidate the tax deed.

In *Wright vs. Sperry,* 21 Wis., 336, the court decided, that "the statute requiring the notice is merely directory, and if not complied with, inasmuch as it is an act required by law to be done, after the certificate of sale has been issued to the purchaser, and over which he can have no control, the omission of it ought not to be held in any way to affect him, unless the statute expressly prohibits a deed or makes it void in case the notice of redemption is not duly published."

Ninth: If the lands upon which the tax deed was taken were unoccupied, the *affidavit of non-occupancy* should be carefully scrutinized. It must show that the person applying for the tax deed is the owner and holder of the tax certificate, though it need not be made by such owner and holder. If not in proper form, or not filed, the county clerk has no jurisdiction to issue the tax deed.

Some time ago the writer noticed in a county where many tax deeds are taken, an affidavit of non-occupancy which seemed to be upon their usual printed form, and which reads as follows:

"State of Wisconsin, }
..... County, } ss.

....., being first duly sworn, deposes and says that the lots and parcels of land enumerated and described

below are not now, and have not been within the last six months, in the actual possession or occupancy of any person for a period of thirty days and that he makes this affidavit for the purpose of .....obtaining tax deeds on said lots or lands or certificates of sale for taxes according to the provisions of law in such cases."

The affidavit contained a list of lands for the sales of three separate years and was not signed by the person making it. The form was defective in that it did not clearly refer to each tract. All the lands, except one forty, may have been occupied and the affidavit could still have been true. It did not show that any person had applied for a tax deed, nor that such person was the owner and holder of the tax certificate. In addition to all these defects there was no evidence that the affidavit had ever been filed.

It is also well to find what fees were paid to the county clerk for issuing the tax deed, as he would have no jurisdiction to issue it unless the full amount required by law was paid. The amount of fees paid will usually be found endorsed on the back of the affidavit. The amount which should have been paid can be readily computed by consulting the provisions of Section 1196, R. S.

Tenth: If the land was occupied, the *notice of taking tax deed* and the proof of service of same should be very carefully examined. The notice must specify that the party giving it is the holder of the tax certificate, and it must be served upon the owner or occupant of the property at least three months prior to the issuance of the tax deed. A somewhat puzzling question arises when the piece of land has a fence around it, but there are no other visible signs of occupancy and the property is perhaps owned by a large number of people residing in other states. As a general rule, the fencing in of property is considered to be an occupancy, but Section 1175 does not throw any light upon the question of whether a notice by publication would be sufficient in such a case as I have mentioned. Another question upon which as yet, there is no decision, is whether the notice could be given before the expiration of the three years allowed for redemption.

Eleventh: Instead of applying directly for a deed and filing an affidavit of non-occupancy in the case of unoccupied land or giving a notice of taking tax deed, if the land is occupied, a suit in foreclosure may be brought with the tax certificates as a basis. This is a somewhat cumbersome and expensive procedure and it

is likely that most suits to foreclose tax certificates which have been brought in the past were instituted with a view to obtaining the costs, attorney fees, etc. But the statute was amended in 1899, so as to limit the costs which could be recovered in such a case to the amount of the face of the certificate or certificates embraced in such action. A somewhat novel question has frequently arisen as to whether the defendant in such a case could make an effective redemption of the tax certificates without paying the costs incurred up to the time of such redempion. I have not been able to find any decision which squarely settles this point.

CONTROL OF PUBLIC UTILITIES BY THE STATE

It is the layman's opinion that corporations have the controlling hand over the people of the community. This conclusion of the people is very easily corrected when we study public utility service from the legal standpoint.

It is not necessary for a public utility to be a corporation,[1] but for the better control and regulation by the state, it would be more advantageous if persons engaged in a public service performed such service under the form of corporations.

In the famous Dartmouth College case,[2] the Supreme Court of the United States laid down the hard and fast rule that a charter given by the state to incorporators is a contract and that the state could not change the same for it would then be breaching the terms of the contract made with the incorporators.

Wisconsin, in order to have control of corporations, realized that it could not follow the rule laid down by Chief Justice Marshall in the Dartmouth College case, and in order to avoid the effect of this decision, adopted in its Constitution the reserve power clause, which gives the state the right to amend, alter, or revoke the charter of any corporation granted by the state after the adoption of the Constitution.[3]

1. Wisconsin Statutes, Sec. 1797 M-1.
2. 4 Wheaton 518.
3. Wis. Const., Art. XI, Sec. 1.