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TAXPAYERS' REMEDIES—WASHINGTON PROPERTY TAXES

BRECK P. McALLISTER*

It is an idle matter to write about taxpayers' remedies in the generalities that are required if a particular procedural device is lifted from its setting as a part of the taxing machinery of a particular state or taxing authority. Procedural devices are, after all, simply a way of getting a particular question before a court. In some states the legislature has set out the remedies that must be pursued, while in others this task has been left to the courts, and in most there is a combination of both. The legal armory of any court is full of a great variety of remedies that may be put to use when tax questions are involved. There are actions at law, bills in equity, actions to remove clouds on title and extraordinary writs, such as certiorari, prohibition, mandamus, habeas corpus and others, too. The use of any one of these methods will depend upon a variety of considerations, not the least of which will be the position of taxpayers in view of other available remedies. Then there is the question as to the effect of the use of a given remedy, such as injunction, for example, on the revenue collecting machinery of the state. Some of these devices come into court so enervated with common law traditions growing out of their use in alien fields that courts must be prepared to fashion them anew if they are to perform any useful function in the new field.

The purpose of the discussion that follows is to consider the great variety of procedural devices that were developed largely by the courts prior to the anti-injunction statute of 1931, and to consider them in their setting in the tax machinery of the state. That statute represented an important shift in policy but until it is considered against the background of earlier available remedies it is difficult to understand the part that it will play in the future. Some consideration will also be given to the scope of judicial review as developed by the courts and the relation of

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this to the action that must be taken by the administrative machinery engaged in the taxation of property in this state.

An Outline of the Machinery for the Assessment of Property, the Levy of a Tax and Its Collection: Administrative Remedies

In any scheme of ad valorem property taxation, the steps that must be taken may be classified under three headings: (1) the assessment of the property subject to the tax, (2) the levy of the tax, and (3) the collection of the tax. It is necessary to understand, at least in outline, the machinery by which the state accomplishes these steps in order to understand the mistakes that may be made by taxing officers and boards, the powers of different officers and boards to correct mistakes made by others or by themselves, and the remedies available to the taxpayer in the administrative hierarchy. It will then be possible to examine and evaluate the various procedural devices that have been developed by the courts with or without benefit of statute to afford remedies to the taxpayer other than those available in the administrative machinery.

(a) *The Assessment of Property.*

The statutes prescribe the rule by which property is to be taxed. In order to ascertain the amount due from each taxpayer the state must provide the machinery for applying the rule to the facts in each taxpayer's case. The rule, for present purposes, may be simply stated: Except as specifically exempted or otherwise taxed,¹ all real property shall be listed and assessed in every even numbered year at 50 per cent of its true and fair value in money on January 1 of that year, and all personal property shall be similarly listed and assessed every year. The tax is levied on this assessed value.²

The machinery for the listing and assessment of property, except the "operating property" of certain public utilities,³ and lands classified as "reforestation lands",⁴ starts with the county assessor in each county.⁵ All real and personal property is sub-

¹Lands classified by the State Forest Board as "reforestation lands" are assessed at values fixed by statute, REM. REV. STAT. §§ 11219-1-16; State ex rel Mason County Logging Co. v. Wiley, 177 Wash. 65, 31 P. (2d) 539 (1934).

²REM. REV. STAT. §§ 11111-11112-1, 11135.

³The assessment of what is defined by statute as "operating property" of certain public utilities is made by the State Tax Commission, while "non-operating property" is assessed by the county assessor, REM. REV. STAT. §§ 11156-1-20; 11172-1-15.

⁴*Supra* note 1.

⁵REM. REV. STAT. § 11140. Listing and assessment by township as-

ject to taxation unless specifically exempted.⁶ Real property must be listed and assessed in every even numbered year and personal property every year.⁷ Both kinds of property are defined⁸ and must be valued with reference to the value on January 1st.⁹ Even exempt property must be listed and assessed, and the owner claiming exemption must submit his proofs to the assessor.¹⁰ There are special provisions relating to certain types of property such as migratory cattle, horses, sheep and goats, to lumber and sawlogs, and to persons who move from county to county or who come into the state for the first time.¹¹ There are details as to the place where different kinds of personal property are to be listed and assessed.¹² All property must be assessed at "fifty per cent of its true and fair value in money", and the statute sets out a general standard to be followed in reaching this value.¹³ There are details as to the books and records that must be kept by the assessor¹⁴ and various requirements imposed on owners of property to furnish correct statements of property subject to taxation.¹⁵

The assessor is required to complete the performance of these manifold and important duties by May 31st of each even numbered year¹⁶ and on the first Monday of July of each year he must file his assessment books with the County Board of Equalization.¹⁷ Up to this point the contacts between the assessor and the taxpayer may have been many or few, or there may have been none at all. There are no requirements as to notice to the taxpayer and the assessor proceeds to do his work in his own way and at his own time. There may, however, be actual opportunities for informal discussions and conferences with the assessor or his deputies, but beyond this sort of thing the taxing machinery proceeds without any formalities as to notice or hearing to the taxpayer. As far as matters of valuation are concerned, the entire matter is out of the hands of the assessor when he has certified

sessors which prevailed only in Spokane and Whatcom Counties was abolished in 1937. REM. REV. STAT. §§ 11443-1.

⁶The exemptions are many, and will be found in REM. REV. STAT. §§ 11111-1-9.

⁷REM. REV. STAT. § 11112.

⁸REM. REV. STAT. §§ 11108-11109.

⁹REM. REV. STAT. § 11112-1.

¹⁰REM. REV. STAT. § 11113.

¹¹REM. REV. STAT. §§ 11116-11118.

¹²REM. REV. STAT. §§ 11120-11125.

¹³REM. REV. STAT. § 11135.

¹⁴REM. REV. STAT. §§ 11136-11137, 11127.

¹⁵REM. REV. STAT. §§ 11119, 11126, 11128-11132, 11141.

¹⁶REM. REV. STAT. § 11140; see also § 11141 which validates listings and assessments made after the fourth Monday of May.

¹⁷REM. REV. STAT. § 11148.

his assessment books to the County Board of Equalization. After that the values shown in the books are beyond his power to change.¹⁸

The next step is the equalization of the values fixed by the assessor. This is done by a County Board of Equalization in each county. The County Board meets on the first Monday in July, and may remain in session for two weeks only.¹⁹ Its task is to examine the lists submitted by the assessor and "equalize" the values "so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment-list at its true and fair value". To accomplish this, it may raise or lower the value of any piece of real property. It may lower a value without notice, but no raise may be made without five days written notice to the owner. As to personal property, the statute permits it to raise values of classes of property without notice, but notice must be given when it raises "the aggregate value" of property of an individual. At this point the taxpayer has statutory notice of the meeting of the County Board and of its powers. He knows that the Board cannot raise the value of his property without notice, and if he is served with such notice he may, of course, appear before the Board and be heard.²⁰ He may also appear before the Board on his own initiative and complain of any value fixed by the assessor, or of any action that the Board proposes to take. The Board is fully empowered to raise or lower the values fixed by the assessor and to grant full relief to the complaining taxpayer.²¹ The Board must complete its work within the two weeks' session fixed by statute. After adjournment it may take no further action with respect to matters of valuation.²² The

¹⁸See *Lewis v. Bishop*, 19 Wash. 312, 53 Pac. 165 (1898). However, there are certain errors that the assessor may submit to a special November meeting of the County Board, REM. REV. STAT. § 11241. This is discussed below.

¹⁹REM. REV. STAT. § 11220; the recent case of *State ex rel. Yakima Amusement Co. v. Yakima County*, 92 Wash. Dec. 167, 73 P. (2d) 759 (1937) supports the view that the closing date fixed by statute for meetings of the County Board is mandatory.

²⁰REM. REV. STAT. § 11220; see *Edison Elec. Illuminating Co. v. Spokane County*, 22 Wash. 168, 60 Pac. 132 (1900).

²¹REM. REV. STAT. § 11220; but see *Yakima Valley Bank and Trust Co. v. Yakima County*, 149 Wash. 552, 271 Pac. 320 (1923) in which it was said that the aggrieved taxpayer may resort directly to the courts without first exhausting his remedy before the County Board. The powers of the County Board were said to be inadequate to grant full relief. If the taxpayer does come before the County Board he will not be turned away on the ground that he has not first resorted to the county assessor, for at this point the matter is out of the assessor's hands, *Stimson Timber Co. v. Mason County*, 112 Wash. 603, 192 Pac. 994 (1920).

²²The Board meets again in November and April for certain special purposes, REM. REV. STAT. § 11241, 11268. These matters are discussed below.

record of its proceedings must be filed with the State Board of Equalization on the first Monday in August.²³

The State Board of Equalization (which is composed of the members of the State Tax Commission sitting as a Board of Equalization) is required to meet on the first Tuesday in September and may remain in session for not more than twenty days. Its task is to examine the returns from the County Boards and the returns of the Tax Commission showing its assessment of the operating properties of the public utilities under its jurisdiction.²⁴ It then proceeds to "equalize" them "so that each county . . . shall pay its due and just proportion of the taxes for state purposes . . . according to the ratio the valuation of the property in each county bears to the total valuation of all property in the state."²⁵ Its task is limited to the determination of a value to be used as a basis for the levy of taxes for state purposes only. In accomplishing this it may change the values of individual properties shown on the assessment roll submitted by the Tax Commission but only after giving five days written notice to the taxpayer.²⁶ In all other cases while under the terms of the statute it may change the values of classes of property in practice the Board determines a ratio that is to be applied to the values shown on the returns of the County Boards, and this ratio, when applied to these values, forms the basis of the levy for state purposes. It may do this work without notice to anybody. The State Board, then, may not change the values of individual pieces of property.²⁷ When this work has been completed the results are transmitted to the state auditor who in turn is required to transmit a record of the proceedings to each county assessor.²⁸ This completes the process of assessment.

It thus appears that apart from the operating properties of public utilities, the State Board has no power to deal with the value of any particular piece of property. Consequently, it is not in a position to give relief to any individual taxpayer. As far as a taxpayer is concerned, its powers are very different from those of a County Board.²⁹ Its meetings are, however, fixed by statute and any taxpayer may be heard as to any matter falling within the powers of the Board.

²³REM. REV. STAT. § 11220.

²⁴REM. REV. STAT. §§ 11222, 11156-7, 11156-14.

²⁵REM. REV. STAT. § 11222.

²⁶REM. REV. STAT. § 11156-14.

²⁷For a discussion of the powers of the State Board and of the manner in which it does its work, see *State ex rel Showalter v. Cook*, 175 Wash. 364, 379, 27 P. (2d) 1075 (1933).

²⁸REM. REV. STAT. § 11222-11223.

²⁹See *State ex rel Tax Commission v. Redd*, 166 Wash. 132, 6 P. (2d) 619 (1932).

At this point the taxpayer has had an opportunity to be heard before the County Board. If he is still aggrieved he may, within ten days after the County Board has acted, appeal to the State Tax Commission. The record of proceedings of the County Board must then be certified to the Tax Commission which in practice will grant a hearing to the taxpayer. It may receive new evidence and may make "such order as in its judgment is just and proper."³⁰ The statute is no more explicit than that but it seems to be broad enough to permit the Commission to give any relief that the matter seems to call for.³¹ Since the members of the Commission are the same as the members of the State Board of Equalization, the remedies available in the administrative machinery are just the same as though the statutes permitted the taxpayer to appeal from the County Board to the State Board and empowered the State Board to deal with matters involving the value of particular pieces of property.

There are two other points in the administrative process at which errors may be corrected. Between the time when the assessor has transmitted the assessment list to the County Board in July and the third Monday in November thereafter, the assessor may discover errors in the list. He is required to make a record of all "errors in description, double assessments, or manifest errors in assessment" at the time when he extends the various levies on his rolls. This is in October and this record of errors must be filed with the County Board on the third Monday in November, and the Board is then reconvened for the sole purpose of considering such errors and correcting them. This November meeting is limited to the performance of this function.³² It may not reopen questions of value, but it may correct values if they are affected by errors submitted by the assessor.

A similar meeting of the County Board is held in April. At this meeting the County Board is reconvened for the purpose of considering similar errors that may be reported to it by the county treasurer, and its powers are limited to the correction of such

³⁰REM. REV. STAT. § 11092; the constitutionality of this section was sustained in *State ex rel. King County v. State Tax Commission*, 174 Wash. 668, 26 P. (2d) 80 (1933); with this section must be read § 11091 par. Fifth, which requires the Commission to give notice before any property may be added to the assessment list or the value of any listed property may be increased.

³¹See *In Re Jefferson County*, 153 Wash. 133, 279 Pac. 392 (1929), where the Commission reexamined and changed values fixed by a County Board of Equalization; see also *Re Metropolitan Building Co.*, 144 Wash. 469, 258 Pac. 473 (1927).

³²REM. REV. STAT. § 11241; *Stimson Timber Co. v. Mason County*, 112 Wash. 603, 192 Pac. 994 (1920); *Ballard v. Wooster*, 182 Wash. 408, 45 P. (2d) 511 (1935).

errors.³³ The Board is required to make findings of fact as to all matters that come before it at this meeting though that requirement does not seem to exist for the November meeting. Through these two meetings the taxpayer is able to call to the attention of the assessor or the county treasurer certain errors that apply to his assessment and they may be corrected within the taxing machinery.

The April Board also has certain powers with respect to the discovery and correction of false statements of personal property made by taxpayers or the failure of the assessor to make return of any property, or an erroneous return made by the assessor. In such cases the Board must serve notice on the taxpayer affected and he may be heard. The Board must make a finding.³⁴

All of the above relates to the original assessment of property. If it should turn out that any tax or any portion of any tax cannot be collected because of some error in the original taxing process, or is recovered back by the taxpayer after payment for some such error, then there is a provision for the reassessment and re-levy of the tax in the year following entry of judgment adjudging the tax to have been void. The original taxing process is simply repeated.³⁵

(b) *The Levy of the Tax.*

As applied to the property tax, a levy simply means the determination by some properly authorized public body of the amount of money required to be raised for public purposes and the translation of that into a millage figure which, when applied to the values shown on the current assessment list of all property, will produce the amount required. A great number and variety of public bodies may levy taxes. No useful purpose would be served by going through the details of the statutes as applied to these different bodies. It will suffice to give the barest outline of a typical procedure. The first matter is the determination of the amount of money to be raised. This involves the preparation of

³³REM. REV. STAT. § 11268.

³⁴REM. REV. STAT. § 11268; see *State ex rel. Lewis v. Hogg*, 22 Wash. 646, 62 Pac. 143 (1900).

³⁵REM. REV. STAT. § 11269; see *Northern Pacific Ry. Co. v. Spokane County*, 148 Wash. 699, 270 Pac. 107 (1928); a 1931 statute sought to vest in the State Tax Commission power to reassess any taxable property whenever it should appear to the Commission from any protest that had been filed at the time of payment or from any court proceeding that challenged any tax that an error had occurred, and if the Commission found that any assessment appeared to be excessive or void it might proceed to reassess the property; this statute was declared unconstitutional in so far as applied to the reassessment of local or intra-county property for purposes of local taxation, *State ex rel. Tax Commission v. Redd*, 166 Wash. 132, 6 P. (2d) 619 (1932) but it is still applicable for the reassessment of the inter-county properties of public utilities.

estimates, a tentative budget, hearings on the budget and a final figure. This must be completed at about the time the current assessment roll has gone through the mill and the final equalized values are available. The final budget figure must then be translated into a certain number of mills to be collected on each dollar of the assessed values shown on the assessment rolls. There are different millage limits that apply to different taxing bodies and these may not be exceeded.³⁶ When this has been done the results are transmitted to the county assessor on or before the second Monday in October. He extends the amount of taxes on the tax rolls and transmits them to the county auditor, before the fifteenth of December. At this point and within ten days after the levy has been made and entered, any taxpayer may challenge the validity of the levy by appealing to the State Tax Commission and the Commission is empowered, after hearing, to affirm or decrease the levy and the statute authorizing this procedure makes the action of the Commission final and conclusive.³⁷ On the first Monday in January, the tax rolls are transmitted to the county treasurer and from that point on the process is one of collection.³⁸

(c) *The Collection of the Tax.*

The county treasurer is the collector of all property taxes. The procedure that he must follow is, of course, fixed by statute and the statutes are many and their details unimportant for present purposes. In the outline that follows, particular attention will be given to the points at which the taxpayer becomes involved in the machinery. Various legislative bounties of recent years to encourage the payment of delinquent and current taxes will not be considered. We will assume that our taxpayer is obdurate and that the machinery for the collection of a tax must run its full course against him or his property. The procedure for the collection of taxes on personal property is very different from that for the collection of taxes on real property so the two must be considered separately.

As far as personal property taxes are concerned, the procedure begins on the fifteenth day of February following the levy of the tax³⁹ by the mailing of notice to the taxpayer. If the taxes are not paid when due they become delinquent,⁴⁰ the county treasurer

³⁶REM. REV. STAT. § 11238, 11238-1b.

³⁷REM. REV. STAT. §§ 11239-11240; see § 11098 governing appeals to the State Tax Commission.

³⁸REM. REV. STAT. §§ 11243-11245.

³⁹REM. REV. STAT. § 11247.

⁴⁰REM. REV. STAT. § 11244 provides that personal property taxes may be paid in two installments on May 31st and November 30th, but failure to pay the first installment renders the whole amount delinquent.

may at once and without demand or notice distrain enough of the taxpayer's personal property to pay the tax.⁴¹ He must then post public notice of sale of the distrained property but at least ten days must elapse between the seizure and the sale. The taxpayer may get his property back by paying the tax, but if he does not pay the sale takes place. The county treasurer collects the tax out of the proceeds and pays any balance to the owner. In all this the taxpayer has had personal notice that a tax in a certain amount is due, but beyond that he has had no personal notice. The notice of sale is merely published.⁴²

It will be noticed that if the taxpayer has any grievance to assert against the validity of the tax he must take the initiative to assert it either by paying the tax under protest and asserting his grievances in a suit to recover this amount or by attempting to secure an injunction against the sale.⁴³ If the property has been sold and delivered to the purchaser at the sale or if the property has been sold but is still in the possession of the owner, the owner might bring replevin against the purchaser or refuse to deliver the property to the purchaser and wait until the purchaser seeks to replevy it from him.⁴⁴ The point to be noticed is that this machinery operates without any reference to the taxpayer. He is not a necessary party at any point.

In the case of real property taxes the procedure is quite different. The amount of the tax is a lien on the real property and this lien attaches on the first day of March of the year in which

"REM. REV. STAT. § 11247.

"This is the barest outline of the procedure. See REM. REV. STAT. §§ 11265, 11244-11245, 11247, 11247-1, 11248-11253, 11255-11257, 11265-11266, 11273 for the statutory provisions dealing with the collection of personal property taxes. In *Wilberg v. Yakima County*, 132 Wash. 219, 231 Pac. 931 (1925), and *Mogan v. Larson*, 183 Wash. 287, 48 P. (2d) 621 (1935), the court was at pains to lay down certain rules that must be observed. Thus, the amount of the tax is a personal obligation of the owner of the property; the tax is to be collected by distraint of the property taxed if he still owns it at the time of collection; if he no longer owns that property the tax may be collected as a lien upon the other personal or real property owned and there are problems considered in those cases relating to the collection of the tax out of the personal property assessed when it has passed into other ownership. See also B. J. WHEELON, *The Lien of Personal Property Taxes in Washington*, 2 WASH. L. REV. 186 (1925).

"*Johnston v. Whatcom County*, 27 Wash. 95, 67 Pac. 569 (1902), was a case of payment under protest to avoid seizure and sale of property, while *Wilberg v. Yakima County*, 132 Wash. 219, 231 Pac. 931 (1925) was a case of an injunction against the sale. No doubt the 1931 anti-injunction statute, to be considered later, would prohibit this remedy today.

"*Mogan v. Larson*, 183 Wash. 287, 48 P. (2d) 621 (1935) was an action of replevin against the owner who had refused to deliver possession to the purchaser at the sale. Doubtless the same questions that were raised in that case could be raised in an action of replevin brought by the owner against the purchaser. In this type of action the attack on the tax collection proceedings is, of course, collateral.

the taxes are levied.⁴⁵ The process of collection begins on February fifteenth and the usual practice is to mail a statement to the taxpayer showing the amount due.⁴⁶ The tax may be paid in two installments on May 31st and November 30th, and if not paid it becomes delinquent. Eleven months after any tax has become delinquent the Board of County Commissioners may decide to issue a certificate of delinquency to any person who pays the amount of the delinquent tax, but this is rarely done.⁴⁷ The purchaser of the certificate may do nothing until the expiration of three years from the original date of delinquency of the tax covered by his certificate. After that he may proceed to foreclose the lien of the tax. This must be done in the Superior Court of the county in which the land is located and the owner of the land must be served with notice.⁴⁸ If any property remains on the tax rolls with taxes charged against it which have been delinquent for five years and against which certificates of delinquency have not been issued and sold, then the county treasurer issues certificates of delinquency to the county and the county may at once proceed to foreclose them in the same manner as the private holder of a certificate proceeds, except that the county need only publish notice of the foreclosure.⁴⁹ From this it is evident that the procedure for the collection of real property taxes involves the issuance of a certificate of delinquency, either by sale to a private person or by issuance to the county, and the foreclosure of the lien of the tax by the certificate holder. The proceedings in the Superior Court proceed to judgment for the amount of the taxes due, interest and costs, together with an order of sale of the property. The county treasurer must publish notice of the tax judgment sale and after the sale he issues a tax deed to the successful bidder.⁵⁰ If the sale is of property covered by a certificate of delinquency held by a county and if no bids are received, then the county automatically takes title⁵¹ and the county may then sell the property that it has acquired in this way.⁵² The property may be redeemed at any time before the issuance of the tax deed or by minors and insane persons within three years thereafter.⁵³

⁴⁵REM. REV. STAT. §§ 11260, 11265; query, while the statutes are specific it may be that the recent change in the date as of which the assessed value is to be determined from March 1 to January 1, see Laws 1937, ch. 122, REM. REV. STAT. § 11112-1 may carry with it a change in the date of the attachment of the lien. As between grantor and grantee the lien does not attach until the first Monday of February of the succeeding year.

⁴⁶REM. REV. STAT. § 11245.

⁴⁷REM. REV. STAT. § 11274.

⁴⁸REM. REV. STAT. § 11276.

⁴⁹REM. REV. STAT. § 11278.

⁵⁰REM. REV. STAT. § 11281.

⁵¹REM. REV. STAT. § 11290.

⁵²REM. REV. STAT. § 11294.

⁵³REM. REV. STAT. § 11280.

Unlike the machinery for the collection of the personal property tax, this machinery gives the taxpayer an opportunity to present his grievances to the court before there can be any sale of the land. The statute directs the court to proceed in a summary manner in these cases but still the taxpayer may present any defense he may have. The statute does, however, weigh the proceedings pretty heavily against the taxpayer for it is specifically provided that certain possible defenses will be without avail. Most of these relate to informalities or irregularities in the original proceedings that resulted in the tax, and since these took place more than three years before the foreclosure proceedings, it is only right that time should iron out what might be termed technical defenses.⁵⁴ From the judgment of the trial court there may be an appeal to the Supreme Court.⁵⁵ The defenses that the taxpayer may raise in these proceedings will be considered more fully below.

*Judicial Remedies After Payment of a Tax: Prior to the 1931
Anti-Injunction Statute*

It is well settled that if a taxpayer voluntarily pays any tax he may not later sue to recover the amount paid and it matters not whether he claims that the tax so paid was utterly void⁵⁶ or merely that it was excessive in amount,⁵⁷ or that payment was made under a misapprehension of a matter of law⁵⁸ or of fact⁵⁹ that was not corrected or discovered until after payment had been made.

This is a doctrine of repose. The public revenues must not be disturbed by taxpayers whose grievances are after-thoughts. If taxpayers have any grievances let them assert them before payment or at least at the time of payment so that there will be notice to the public treasury that claims may be asserted against it. There can be no quarrel with this policy when it is applied to a taxpayer who should know his grievance at the time of payment but when it is applied in cases where payment is made in good faith but

⁵⁴REM. REV. STAT. § 11281 details the irregularities that will be overlooked or corrected by the court.

⁵⁵REM. REV. STAT. § 11282.

⁵⁶Phelps v. Tacoma, 15 Wash. 367, 46 Pac. 400 (1896) recovery denied because of voluntary payment of taxes though they were not a legal charge against the property taxed; Pacific Finance Co. v. Spokane County, 170 Wash. 101, 15 P. (2d) 652 (1932) recovery denied where taxes were paid pursuant to a statute later found to be unconstitutional.

⁵⁷Pittock & Leadbetter Lumber Co. v. Skamania County, 98 Wash. 145, 167 Pac. 108 (1917) recovery denied where taxpayer claimed that taxes were based on excessive valuation.

⁵⁸Childs v. Spokane County, 100 Wash. 64, 170 Pac. 145 (1918); Robinson v. Kittitas County, 101 Wash. 422, 172 Pac. 553 (1918) in both cases the mistake was as to the ownership by the taxpayer of the property taxed.

⁵⁹Peterson v. Jefferson County, 167 Wash. 269, 9 P. (2d) 73 (1932)

under a mistake that is not discoverable until after payment there is little to be said in its favor.

The statement of the foregoing doctrine has always been tempered with the proposition that if the payment had been made under protest the case would be different. Prior to the 1931 statute, words of protest at the time of payment were enough to permit a suit to recover the amount paid⁶⁰ and no special form of words was required nor did the taxpayer have to specify the grounds of his protest.⁶¹ The changes in all this that were made by the 1931 statute will be considered later. The protest, of course, must be made to the officer to whom payment is made.⁶² Even if

where taxes had been paid based on a county cruise of timber lands that was later found to have been excessive to the extent of 1,300,000 feet of timber; it is hard to reconcile this with the earlier case of Puget Realty Co. v. King County, 50 Wash. 349, 97 Pac. 226 (1908), in which the taxpayer owned 12 acres of land but through a mistake of the assessor he was assessed for 22 acres. The taxpayer did not discover the mistake until after payment. The court allowed recovery even though the mistake was an honest one on the part of the assessor. The court was impressed with the fact that the mistake resulted in practically a double assessment and that this was not a mere inadvertence, but materially affected the rights of the taxpayer. The over-assessment was even greater in Peterson v. Jefferson County, but the cases might be reconciled if importance is attached to the fact that in the Peterson case the taxpayer himself might have cruised his own land and ascertained how much timber there was on it and he had not done so. The mistake there was a mutual one whereas in the Puget Realty Company case the only mistake was that of the assessor, and the taxpayer under the facts in that case had no way of knowing about it until after he had paid the tax.

⁶⁰In an early case, *Montgomery v. Cowlitz County*, 14 Wash. 230, 44 Pac. 259 (1896) it was held that words of protest were not enough. Such a payment was said to be voluntary unless it was made at a time when the tax collection machinery was in full operation and the taxpayer's land was about to be sold. A payment at that time would be involuntary and need not be accompanied by words of protest. Changes in the tax collection machinery made it impossible for any steps to be taken to enforce collection for at least three years after delinquency so if this decision stood it would drive the taxpayer to other remedies before payment to adjudicate the validity of the lien of the tax. He would have a long time to wait before he could pay the tax under circumstances that would permit him to assert his grievances in a suit to recover the amount paid. This case was overruled in *Tozer v. Skagit County*, 34 Wash. 147, 75 Pac. 638 (1904); see also *Wyckoff v. King County*, 18 Wash. 256, 51 Pac. 379 (1897) in which the doctrine of the *Montgomery* case was not applied when the taxpayer paid under protest before the tax collection machinery had started operation in order to gain the advantage of a legislative remission of penalty and interest on taxes paid before a certain date. *Tozer v. Skagit* was followed in *Owings v. Olympia*, 88 Wash. 289, 152 Pac. 1019 (1915) and *Stimson Timber Co. v. Mason County*, 97 Wash. 205, 166 Pac. 251 (1917).

⁶¹*Byram v. Thurston County*, 141 Wash. 28, 41, 251 Pac. 103, 252 Pac. 943 (1926); *Corwin Investment Co. v. White*, 166 Wash. 195, 6 P. (2d) 607 (1932); *Northwestern etc. Hypotheekbank v. Adams County*, 174 Wash. 447, 24 P. (2d) 1086 (1933); but the failure to use formal words of protest at the time of payment will bar recovery, *Pacific Finance Co. v. Spokane County*, 170 Wash. 101, 15 P. (2d) 652 (1932).

⁶²See *Byram v. Thurston County*, 151 Wash. 28, 251 Pac. 103, 252 Pac. 943 (1926) in which a payment was made under protest to the county treasurer but the county officers were without any power to correct the

a payment has been made without protest the courts have allowed recovery in some cases where it could be said that the payment was under duress or compulsion,⁶³ but these are not likely to have any application to property taxes.

*Judicial Remedies Before Payment of a Tax: Prior to the 1931
Anti-Injunction Statute*

A taxpayer may wish to secure a judicial determination of the validity or proper amount of a tax before he pays it. Unless the taxing machinery makes this possible by making available a statutory appeal to the courts the taxpayer must resort to other procedural devices to get his grievances before a court. The courts must then determine the availability of different types of actions in tax cases for unless the legislature has spoken on the subject the courts are free to do so. The Legislature did provide a statutory appeal to the courts in 1925 but withdrew it in 1931,⁶⁴ so this is mentioned only to be put aside. We will be concerned with other procedural devices that were developed by the courts in tax cases prior to the 1931 statute.

(a) *Injunction and Other Equitable Remedies.*

The use of the bill in equity to enjoin the collection of a tax

grievance that provoked the protest because it related to an excessive valuation of property assessed by the state and not by the county assessor, i. e., the operating property of a railroad. The court held the protest to be sufficient.

⁶³*Olympia Brewing Co. v. State*, 102 Wash. 494, 173 Pac. 430 (1918), where annual license fees to operate a brewery and to sell liquor were paid without protest even though the continuance of the business would become illegal before the year was up. Recovery was allowed on the ground that the payments were made under compulsion to prevent the sacrifice of large capital investments. In *Union Bag & Paper Corp. v. State*, 160 Wash. 538, 295 Pac. 748 (1931), a corporation paid license fees and filing fees without protest. The court found coercion or duress in the "threats of the statutes" (at p. 542) that imposed certain penalties and disabilities on corporations that did not pay these fees. These were a serious threat to the business rights of the corporation. There is no comparable compulsion in the property tax machinery and the court has always required some words of protest to take the payment out of the class of a voluntary payment. See also *Bart v. Pierce County*, 60 Wash. 507, 111 Pac. 582 (1910), in which recovery was allowed of a portion of an annual county liquor license that became inoperative during the year for which it was issued. The court simply said that "the great principles of natural justice and common honesty" required the allowance of recovery. This stands as an isolated case.

⁶⁴REM. REV. STAT. § 11097 permitted an aggrieved taxpayer to appeal from an order of the State Tax Commission to a Superior Court, see *Re Metropolitan Building Co.*, 144 Wash. 469, 258 Pac. 473 (1927), but this was repealed in 1931, Laws of 1931, p. 204, see *Re Yakima Amusement Co.*, 92 Wash. Dec. 163, 73 P. (2d) 519 (1937). Prior to the 1925 statute the court had held at an early date than an appeal from a taxing body to a Superior Court would not lie under any general appeal statute and therefore was not available unless specifically granted by statute, *Olympia Water Works v. Thurston County*, 14 Wash. 268, 44 Pac. 267 (1896); *Knapp v. King County*, 15 Wash. 541, 46 Pac. 1047 (1896).

alleged to be illegal in whole or in part goes back to early days and was in part governed by statute. A territorial act of 1888 prohibited the use of the injunction in tax cases unless the taxpayer first paid or tendered all taxes "justly due and unpaid" on the property involved, and the statute also had something to say about the contents of the complaint in such actions. It will be noticed that under the language of the statute there was no requirement of tender if the taxpayer sought his injunction against the assessment of his property or at any time before "the collection" began.⁶⁵ It almost goes without saying that until the adoption of the Anti-Injunction statute of 1931 this was the most popular procedural device whereby taxpayers brought tax matters before the courts. It would serve no useful purpose to collect and consider the large number of cases in which this procedural device has been employed.⁶⁶ The injunction was available in personal property tax cases. In these cases where, as we have seen, collection proceeds at once following delinquency the bill was directed against the seizure and sale of the property. Here the claim of the inadequacy of the remedy at law, except, of course, payment under protest, had more force than in the real property cases.⁶⁷ And the injunction seems to have been available at any stage of the process of collection. It has been used to prevent the commence-

⁶⁵REM. REV. STAT. §§ 955-957; see *Pacific Tel. & Tel. Co. v. Wooster*, 178 Wash. 180, 34 P. (2d) 451 (1934) for an example of a case in which an injunction was sought at a time when no tender was required under the statute.

⁶⁶Some typical cases are *Andrews v. King County*, 1 Wash. 46, 23 Pac. 409 (1890); *Benn v. Chehalis County*, 11 Wash. 134, 39 Pac. 365 (1895), in which the argument that there was an adequate remedy at law in proceedings to collect the tax was met with the statement that it was a hardship on the taxpayer to have to wait for several years before he could take any steps, short of payment under protest, to remove the cloud of the tax; *Knapp v. King County*, 17 Wash. 567, 50 Pac. 480 (1897) in which the foregoing argument as to the inadequacy of the legal remedy was apparently forgotten for here the taxpayer was permitted to direct his bill against the commencement of proceedings to collect the tax by foreclosure and, of course, he was entitled to assert his grievances in those proceedings; see also *Eureka District Gold Mining Co. v. Ferry County*, 28 Wash. 250, 68 Pac. 727 (1902); *Northern Pacific R. R. Co. v. Pierce County*, 55 Wash. 108, 104 Pac. 178 (1909); *Doty Lumber & Shingle Co. v. Lewis County*, 60 Wash. 428, 111 Pac. 562 (1910); *Spokane & Eastern Trust Co. v. Spokane County*, 70 Wash. 48, 126 Pac. 54 (1912); *Samish Gun Club v. Skagit County*, 118 Wash. 578, 204 Pac. 181 (1922); *Finch v. Grays Harbor County*, 121 Wash. 486, 209 Pac. 833 (1922); *Woodburn v. Skagit County*, 120 Wash. 58, 206 Pac. 834 (1922); *Willapa Electric Co. v. Pacific County*, 160 Wash. 412, 295 Pac. 152 (1931).

⁶⁷Typical cases in which the injunction has been employed in personal property tax cases are *Phelan v. Smith*, 22 Wash. 397, 61 Pac. 31 (1900); *Northwestern Lumber Co. v. Chehalis County*, 24 Wash. 626, 64 Pac. 787 (1901); *Scandinavian-American Bank v. Pierce County*, 20 Wash. 155, 55 Pac. 40 (1898); *Pullman State Bank v. Manring*, 18 Wash. 250, 51 Pac. 464 (1897); *Mills v. Thurston County*, 16 Wash. 378, 47 Pac. 759 (1897); *Wilberg v. Yakima County*, 132 Wash. 219, 231 Pac. 931 (1925).

ment of foreclosure of the tax lien and the public sale that would follow,⁶⁸ and it has even been employed after sale to attempt to have the sale set aside and prevent the issuance of a tax deed to the purchaser.⁶⁹ It has also been used to test the power of a public body to make a particular levy.⁷⁰

Another form of action that was frequently employed was an action to reduce the assessed value of a piece of property.⁷¹ In this action the taxpayer prayed for an order of the court fixing the value of the property. The proceeding was likened to an action to remove a cloud on title and has been said to be of equitable cognizance.⁷² It has been further assimilated with the injunction cases in requiring the taxpayer to make a tender of the amount justly due, but only, of course, if the action was brought at a time when a tender was required under the statute.⁷³

A bill to remove a cloud on title to property is very much like the actions discussed above. Such an action has been brought by one claiming ownership against anyone claiming an adverse interest in the property and the tax claim was treated as such an adverse interest.⁷⁴ While this action has been employed against taxing authorities, it seems to have had its greatest utility in actions between private parties in which one party asserted his title against one claiming under a tax deed or the holder of a tax deed sought to maintain its validity against the claim of another. In these cases the regularity of the proceedings which resulted in the assessment and levy of the tax and of the foreclosure

⁶⁸See *Knapp v. King County*, 17 Wash. 567, 50 Pac. 480 (1897).

⁶⁹*Heath v. McCrear*, 20 Wash. 342, 55 Pac. 432 (1898).

⁷⁰*Wingate v. Ketner*, 8 Wash. 94, 35 Pac. 591 (1894).

⁷¹Typical cases in which this remedy has been employed are *Landes Estate Co. v. Clallam County*, 19 Wash. 569, 53 Pac. 670 (1898); *Templeton v. Pierce County*, 25 Wash. 377, 65 Pac. 553 (1901); *Stimson Timber Co. v. Mason County*, 112 Wash. 603, 192 Pac. 994 (1902); *Henderson v. Pierce County*, 37 Wash. 201, 79 Pac. 617 (1905); *Dickson v. Kittitas County*, 42 Wash. 429, 84 Pac. 855 (1906); *Savage v. Pierce County*, 68 Wash. 623, 123 Pac. 1088 (1912); *Norpia Realty Co. v. Thurston County*, 131 Wash. 675, 231 Pac. 13 (1924); *Inland Empire Land Co. v. Grant County*, 138 Wash. 439, 245 Pac. 14 (1926); *Inland Empire Land Co. v. Douglas County*, 149 Wash. 253, 270 Pac. 812 (1928).

⁷²*Inland Empire Land Co. v. Douglas County*, 149 Wash. 253, 270 Pac. 812 (1928).

⁷³*Mountain Timber Co. v. Cowlitz County*, 163 Wash. 543, 2 P. (2d) 69 (1931).

⁷⁴REM. REV. STAT. § 785; *Kinsman v. Spokane*, 20 Wash. 118, 54 Pac. 934 (1898); *Miller v. Pierce County*, 28 Wash. 110, 68 Pac. 358 (1902); this action could be maintained even though the tax lien was, for some reason, unenforceable and the taxing authority did even assert the validity of the lien. *Cushing v. Spokane*, 45 Wash. 193, 87 Pac. 1121 (1906); but it was intimated in one case that if the invalidity of the tax lien was apparent on the tax record there would be no cloud on title but if the defect depended on some showing dehors the tax record, then there was enough of a cloud to support an action to remove it. See *Montgomery v. Cowlitz County*, 14 Wash. 230, 44 Pac. 259 (1896).

proceedings and the purchase of the tax deed at public sale were subjected to collateral attack.⁷⁵ This type of action, too, was subject to the same requirements of the statute as to tender.⁷⁶

The statutory requirement of a tender was broadly construed to apply to "all actions or proceedings attacking the legality of any tax",⁷⁷ and in that way the last two forms of action in which an injunction, as such, was not asked for were brought within the statute. After all, the relief asked for was substantially the same, that is, a judicial determination of the amount of the tax that was properly collectible, and it mattered not whether the final order of the court enjoined the taxing authorities from collecting more than a certain amount or whether it fixed the proper amount and in that way prevented the collection of any more, or whether it directed that the cloud of the lien be removed entirely or in part. The final effect was the same, no matter how the taxpayer pleaded his case or the court fashioned its order.

In the cases in which a tender was required the court was not strict as to the tender itself. The taxpayer was required to tender the amount "justly due", but it rested with him to determine that amount. Of course, if the taxpayer contended that the whole tax was void, then no tender was required, for it was the taxpayer's position that nothing was "justly due".⁷⁸ If he tendered less than what was finally found by the court to be due the difference was simply charged to him in the final bill of costs.⁷⁹ But there had to be a tender of some sort and it was not excused on the ground that in advance of making it the tax collector had said that he would not accept any tender.⁸⁰ If the tax collector made that statement the taxpayer was still required to make his tender and if it was refused the taxpayer had only to show the refusal and he had complied with the requirement.⁸¹

⁷⁵See *Vestal v. Morris*, 11 Wash. 451, 39 Pac. 960 (1895); *McManus v. Morgan*, 38 Wash. 528, 80 Pac. 786 (1905); there are many more cases of such collateral attacks, and in some instances, as in *Washington Timber Co. v. Smith*, 34 Wash. 625, 76 Pac. 267 (1904), the action was described as one to cancel a tax deed for certain irregularities.

⁷⁶*Miller v. Pierce County*, 28 Wash. 110, 68 Pac. 358 (1902).

⁷⁷*Mountain Timber Co. v. Cowlitz County*, 163 Wash. 543, 2 P. (2d) 69 (1931).

⁷⁸*Howell v. Tacoma*, 3 Wash. 711, 29 Pac. 447 (1892); *Kinsman v. Spokane*, 20 Wash. 118, 54 Pac. 934 (1898); *Lewiston Water & Power Co. v. Asotin County*, 24 Wash. 371, 64 Pac. 544 (1901).

⁷⁹*Landes Estate Co. v. Clallam County*, 19 Wash. 569, 53 Pac. 670 (1898); see also *Norpia Realty Corp. v. Thurston County*, 131 Wash. 675, 231 Pac. 13 (1924) where the tender was substantially less than the amount found by the court to be due.

⁸⁰*Old Republic Mining Co. v. Ferry County*, 69 Wash. 600, 125 Pac. 1018 (1912).

⁸¹*Inland Empire Land Co. v. Grant County*, 138 Wash. 439, 245 Pac. 14 (1926).

(b) *Extraordinary Writ.*1. *Certiorari or Review.*

There was a time when it looked as though this writ might become an important procedural device for invoking judicial review of at least some of the actions of taxing officers and boards, but it was not long before its limitations were recognized and even before the 1931 statute it was of little importance. This story may be briefly told. The statutory writ⁸² may be issued by any court when any inferior tribunal, board or officer "exercising judicial functions" has exceeded its jurisdiction or acted illegally or "to correct any erroneous or void proceeding" and no appeal is otherwise provided and there is no adequate remedy at law. Once the writ has been properly issued the scope of judicial review is fixed by statute and it is broad enough to cover most any error in the taxing process.⁸³

The court had little difficulty in deciding that this writ might issue from the Superior Court to a Board of Equalization. It was satisfied that such a board exercised a "judicial function" within the meaning of the statute and a cursory review of a few other remedies convinced the judges that the taxpayer had no adequate remedy at law.⁸⁴ In two cases in 1911 and 1913, both involving the valuation of the Metropolitan Building Company lease, the court passed on the question "whether the lease has been properly valued", that is, what basis should be used in determining value for tax purposes,⁸⁵ but it was not long before the court faced squarely the limitations of this writ and dashed whatever hopes taxpayers may have derived from the Metropolitan Building Company cases. In 1913 the court made it plain that the function of the writ was to bring before the reviewing court only the record made before the taxing officer or board and that it did not involve any new evidence being taken in court. This limitation had important consequences, for the court in reviewing such a record would only be in a position to decide whether the record was sufficient to sustain

⁸²LAWs OF 1895, p. 114; REM. REV. STAT. §§ 999-1012.

⁸³REM. REV. STAT. § 1010.

⁸⁴*Lewis v. Bishop*, 19 Wash. 312, 53 Pac. 165 (1898), in this early decision the court invalidated action by a Board of Equalization in raising the assessed value of land without the necessary statutory written notice to the taxpayer and also invalidated the action of an assessor in changing an assessment after the assessment roll had been filed with the Board of Equalization; see also *Ladd v. Gilson*, 26 Wash. 79, 66 Pac. 126 (1901) and *Everett Water Co. v. Fleming*, 26 Wash. 364, 67 Pac. 82 (1901) in which the sufficiency of notice given by a Board of Equalization to taxpayers was reviewed by writ of certiorari. Query as to the standing of these cases today, see particularly *Weyerhaeuser Timber Co. v. Pierce County*, 133 Wash. 355, 233 Pac. 922 (1925).

⁸⁵*Metropolitan Building Co. v. King County*, 64 Wash. 615, 117 Pac. 495 (1911); *id.* 72 Wash. 47, 129 Pac. 883 (1913).

the particular tax. If it was not, the court could not receive new evidence and fix a proper valuation for tax purposes unless perchance there was evidence in the record that would support some finding by the court. If there was no such evidence in the record the court could not remand the matter to the Board of Equalization because such boards sit only for a definite statutory period and then adjourn. In short, there would be no properly constituted board to which the question could be remanded. There would be no way in which the court could compel a board to reassemble. Faced with this situation, the court simply decided that the writ of certiorari would not lie to review a determination of value by a Board of Equalization or other taxing officer.⁸⁶

This disposition of the writ of certiorari was tempered by the court when it pointed out at some length that an original action on the equity side of the court would not be met by these difficulties. A bill in equity, the court said, was the only practical remedy available to a taxpayer, for in such a proceeding the court could pass on the alleged arbitrary and unlawful action of a taxing officer or Board of Equalization and could hear evidence bearing on the question of the proper valuation of the taxpayer's property.⁸⁷ This was reiterated in a case decided a few years later when the court made it clear that it made no difference whether the record contained no evidence or whether it was merely incomplete. In either case the writ of certiorari would not lie.⁸⁸ This position was reaffirmed in 1926 and the court said that even though the record before the court was such as to make possible the determination of a proper value, it would not act because it had no way of making its judgment effective.⁸⁹ The matter would have

⁸⁶State ex rel. S. & I. E. R. R. Co. v. State Board of Equalization, 75 Wash. 90, 134 Pac. 695 (1913). The court distinguished *Lewis v. Bishop*, *supra*, on the ground that there the court simply set aside the action taken by the Board of Equalization because of lack of notice and with this set aside, it simply left the value fixed by the county assessor in effect and in this way the court was in a position to render an effective judgment on the record before it; the Metropolitan Building Co. cases, *supra*, note 85, and two other cases were disposed of on the ground that the procedural question had not been raised and it was also said that the record was such that an effective judgment could be rendered though this last point is none too clear.

⁸⁷State ex rel. S. & I. E. R. R. Co. v. State Board of Equalization, *supra*, note 86.

⁸⁸State ex rel. Oregon-Washington R. R. & N. Co. v. Clausen, 82 Wash. 1, 143 Pac. 312 (1914).

⁸⁹State ex rel. N. P. R. R. Co. v. State Board of Equalization, 140 Wash. 243, 248 Pac. 793 (1926); the difficulty seems to have been that in a certiorari case the court was dealing only with the record made before the Board of Equalization, and when the court had acted on that record it had to go back to the Board, for it was the Board's record, and the corrected record simply took the place of the original one in the tax collection process; since the Board had adjourned there was no way of

passed beyond the jurisdiction of the Board of Equalization before the writ issued. It followed that there was no way by which the judgment of the court as to a proper valuation could be made effective in the machinery of tax collection. The court's views would be simply advisory since the issue had become moot by reason of the Board of Equalization having adjourned.⁹⁰

This writ may be issued by the Supreme Court originally⁹¹ and one attempt to secure such an original writ is worthy of note. A county taxpayer applied for a writ directed to the State Board of Equalization to call up the record of certain proceedings by which the Board had raised the total valuation of the taxable property of the state. The taxpayer contended that the State Board had no authority to do this and sought by this writ to have its proceedings declared to have been null and void. The court denied the application for the writ but did so after passing on the merits of the question raised and concluding that the State Board did have authority to do what it had done. No question was raised as to the propriety of this writ.⁹² In this kind of a case if the court had determined that the State Board had no authority to act, its order would have declared the proceedings of the State Board to have been null and void and there would be no difficulty in making this order effective. It is true that the Board would have adjourned, but the effect of the court order would be to make the tax collection machinery operate as though the Board had never acted on the matter, that is, collection would go ahead on the basis of values fixed by county assessors and County Boards of Equalization.

2. *Mandamus or Mandate.*

Like the writ or review of certiorari, the writ of mandamus or substituting the corrected one for the original one; in the equity cases, on the other hand, the court was dealing with the record made in court and its final order would be addressed to the officers engaged in the collection process and would enjoin them from collecting more than was shown to be due under the court's order.

⁹⁰What of *Lewis v. Bishop* and other early cases involving this writ? Their authority is severely shaken by these later cases though they have never been overruled. They simply have not been followed. In a recent case that presented a set of facts very similar to the facts in *Lewis v. Bishop* the right of a taxpayer to maintain a bill in equity was resisted on the ground that the remedy at law was adequate, *i. e.*, by writ of certiorari as in *Lewis v. Bishop*. The court rejected this defense saying that the relief sought was based in part upon facts not shown on the face of the record made by the Board of Equalization, and in this state of affairs the writ of certiorari would not be available and a bill in equity would be the only practical remedy to the taxpayer (*Weyerhaeuser Timber Co. v. Pierce County*, 133 Wash. 355, 233 Pac. 922 (1925)). This does not involve overruling *Lewis v. Bishop* on the procedural point, but there is little, if anything, left of it. Presumably a taxpayer, proceeding by writ of certiorari, would be told the same thing. He should be.

⁹¹CONSTITUTION OF WASHINGTON, Art. IV, § 4.

⁹²State ex rel. *Thompson v. Nichols*, 29 Wash. 159, 69 Pac. 771 (1902).

mandate is both statutory⁹³ and constitutional.⁹⁴ The constitutional writ may be issued only on original application to the Supreme Court and may be directed only to "state officers", while the statutory writ may be issued by any court except a justice's or a police court "to any inferior tribunal, corporation or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station . . ."⁹⁵

This writ is of limited utility in tax matters, but it does have certain uses. Like other extraordinary remedies, it may be issued only if there is no other plain, speedy and adequate remedy at law,⁹⁶ but this requirement has been honored in the breach as much as in the observance. In one case the county assessor was required to spread certain values fixed by statute on the assessment rolls as applied to lands that were certified to him as reforestation lands. He refused to do this and claimed that the statute was unconstitutional. Since the statutory values were lower than those fixed by the county assessor a taxpayer sought by writ of mandamus to compel the assessor to spread the statutory values on the assessment rolls. The court entertained jurisdiction and passed on the constitutional question even though there were other remedies available to the taxpayer.⁹⁷ The court did not even consider the point, yet in an earlier case the use of this extraordinary writ was denied on that very ground.⁹⁸ Of course, there may be in-

⁹³REM. REV. STAT. §§ 1013-1026.

⁹⁴CONSTITUTION OF WASHINGTON, Art. IV, § 4.

⁹⁵REM. REV. STAT. § 1014.

⁹⁶REM. REV. STAT. § 1015.

⁹⁷State ex rel. Mason County Logging Co. v. Wiley, 177 Wash. 65, 31 P. (2d) 539 (1934); taxes levied on the values fixed by the assessor might have been paid under protest or the taxpayer might have sought to enjoin the assessments as resulting in a void tax and in both types of action the validity of the statutory values would have been necessarily involved; State ex rel. State Tax Commission v. Redd, 166 Wash. 132, 6 P. (2d) 619 (1932) is much the same type of case; here the commission had reassessed certain local property under REM. REV. STAT. §§ 11301-11307 and the value fixed by it was lower than the value fixed by the county assessor; the assessor refused to enter it on his assessment roll, claiming that the statute under which the Commission had reassessed the property was unconstitutional; the commission sought to compel the assessor to make the entry by writ of mandamus but it did not issue since the court held the statute to be invalid; note that there, too, the taxpayer would have his remedy when the tax based on the higher value of the assessor was sought to be collected; see also State ex rel. Ross v. Headlee, 22 Wash. 126, 60 Pac. 126 (1900), where county commissioners made a second and lower levy than had been originally certified to the county assessor and by writ of mandamus they sought to require the assessor to extend the lower levy on the tax rolls. The writ issued even though there were other remedies available to taxpayers yet mandamus was a useful device because the question affected all taxpayers in the county and it was desirable that it be settled.

⁹⁸State ex rel. Godfrey v. Turner, 113 Wash. 214, 193 Pac. 715 (1920). The constitutional writ was denied where a taxpayer sought to compel a

stances in which the writ of mandamus is really the only effective remedy for a private litigant. If the statute requires the performance of a particular act and the officer charged with its performance simply refuses to perform and the litigant has no other remedy, then the writ of mandamus has its greatest utility. There is then the question as to whether the act, the performance of which is sought to be compelled by the writ, is ministerial, in which case the writ may issue, or whether it is discretionary, in which case the writ may not issue.⁹⁹ In tax cases the writ has issued to compel tax officers to perform certain specific duties imposed by statute¹⁰⁰ and the tax officer may put in issue the validity of the statute which imposes the duty.¹⁰¹

This writ is useful in one other type of case. If a statute requires tax officers to act in a way that imposes heavier burdens on taxpayers and the tax officers, for any reason, refuse to act under the statute, the chances are that taxpayers will not object. If the duty imposed by the statute is plain the court has issued the writ to the obdurate tax officers at the instance of the attorney general of the state.¹⁰²

In a recent case the court seemed to feel that the writ might issue to a tax body to require it to expunge from its records certain proceedings that it had taken on the ground that the proceeding county treasurer to accept a tender of taxes and issue a receipt, the taxpayer claiming that the amount tendered was in full payment of all taxes justly due, whereas the amount levied was illegal and in excess of the statutory millage limit. The court pointed to the other remedies available to the taxpayer, such as payment under protest, injunction, action to quiet title due to an over-assessment or to cancel excessive and fraudulent taxes. With these roads open to him there was no need for a writ of mandamus.

⁹⁹Cases in which consideration is given to the use of the writ to compel the levy of a tax or to collect a special assessment or to pay warrants and the like are not considered. See, for example, *Portland Savings Bank v. Montesano*, 14 Wash. 570, 45 Pac. 158 (1896); *State ex rel. Olmstead v. Mudgett*, 21 Wash. 99, 57 Pac. 351 (1899); *Bacon v. Tacoma*, 19 Wash. 674, 54 Pac. 609 (1898); *State Savings Bank v. Davis*, 22 Wash. 406, 61 Pac. 43 (1900); *State v. Asotin County*, 79 Wash. 634, 140 Pac. 914 (1914).

¹⁰⁰*State ex rel. McClaine v. Reed*, 29 Wash. 383, 69 Pac. 1096 (1902), to compel county treasurer to furnish a taxpayer with a statement of the amount of taxes due so that he might pay them and redeem his property; *State ex rel. Race v. Cranney*, 30 Wash. 594, 71 Pac. 50 (1902), to compel county treasurer to issue a tax deed, writ denied on the merits; see also *Ballard v. Wooster*, 182 Wash. 408, 45 P. (2d) 511 (1935) for a recent discussion of certain duties of an assessor as being ministerial.

¹⁰¹*State ex rel. American Savings Union v. Whittlesey*, 17 Wash. 447, 50 Pac. 119 (1897), here a county treasurer refused to issue a delinquent tax certificate pursuant to a statute requiring him to issue a certificate on tender of the amount of the delinquent taxes; the amount was tendered and by writ of mandamus the validity of the statute was passed on; note that here this writ was the only remedy open to the litigant.

¹⁰²*State ex rel. Dunbar v. State Board*, 140 Wash. 433, 249 Pac. 996 (1926) to compel the State Board of Equalization to levy a tax pursuant to statute; *State ex rel. Atwood v. Wooster*, 163 Wash. 659, 2 P. (2d) 653 (1931) is much the same type of case.

ings were unconstitutional.¹⁰³ The writ did not issue because the court sustained the validity of the questioned proceedings, but if the writ had issued, and the court went so far as to say that it had the power to issue it, there would have been an utter distortion of the basis on which the writ issues. Perhaps the court would say that it is a plain duty on public officers to expunge unconstitutional proceedings from their records. It will be up to the court to point to the source of such a duty. It can point to no statute. If the tax officer is refusing to perform a duty imposed on him by statute and contends that the statute is unconstitutional the situation is quite different. The writ, if it issues, simply compels him to perform his statutory duties. In the case under discussion the writ directs the tax officer to expunge certain proceedings from his records. Injunction or the writ of prohibition are appropriate for this purpose.¹⁰⁴

3. *Prohibition.*

The writ of prohibition is defined by statute as the counterpart of the writ of mandamus. It is designed to arrest the proceedings of any "tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person."¹⁰⁵ Like other extraordinary remedies it is not available if some other plain, speedy and adequate remedy at law is open. When the constitutional question is raised it is easy enough to bring the proceeding within the language of the statute for the claim then is that the board or officer is acting without jurisdiction. In one case in which a constitutional issue was raised the position of this writ as the counterpart of the writ of mandamus is well illustrated. The writ was directed to a county assessor to prohibit him from allowing certain exemptions fixed by statute, the claim being that the statute was unconstitutional. The

¹⁰³State ex rel. King County v. State Tax Commission, 174 Wash. 336, 24 P. (2d) 1094 (1933), here King County sought a constitutional writ of mandamus to compel the State Tax Commission to expunge from its records proceedings already taken which had resulted in a reassessment of the inter-county operating property of a railroad. The reassessment was at a lower value than had been originally fixed. The writ did not issue because the court concluded that the statute under which the commission had reassessed this property was constitutional. Note that the taxpayer here did not object to the reassessment because it was at a lower figure but King County was seeking to reinstate the earlier higher figure.

¹⁰⁴*Cf.* State ex rel. Chamberlin v. Daniel, 17 Wash. 111, 49 Pac. 243 (1897) where the writ of prohibition was issued to prevent a county assessor from allowing certain exemptions fixed by statute. The statute was found to be unconstitutional. Here the assessor had acted affirmatively in allowing exemptions under the statute. Under the theory of State ex rel. King County v. State Tax Commission, *supra*, the writ of mandamus would have directed the assessor to expunge the unconstitutional exemptions from his tax rolls.

¹⁰⁵REM. REV. STAT. §§ 1027-1033.

assessor was plainly performing the duty imposed on him by the statute, yet the performance of that duty eased the burden on the taxpayers so that they were not likely to complain. The writ proved to be a useful device for bringing this constitutional issue into court.¹⁰⁶ There is always the question as to the availability and adequacy of remedies at law and when a tax officer or board is acting in a way that will impose some burden on taxpayers there are available remedies and resort to this writ should not be necessary.

The writ is plainly designed to be used to determine whether a given person or body is acting within or in excess of its jurisdiction and in tax matters this gives it a very limited utility. Thus, it has been used to determine whether a board of equalization is properly constituted,¹⁰⁷ but if a tax officer is acting within his powers the writ is not available.¹⁰⁸

(c) *Defenses Available in Proceedings to Collect Taxes.*

We have seen that the collection of the real property tax involves judicial proceedings for the foreclosure of the tax lien in a suit brought by a holder of a certificate of delinquency. In those proceedings anyone interested in the land subject to the lien may present matters of defense and the statute then declares that the court "shall hear and determine the matter in a summary manner".¹⁰⁹ It will be recalled that foreclosure proceedings may not be started until at least three years after delinquency and it may be five years if it is a county certificate of delinquency, rather than one held by a private person. In order to prevent a taxpayer from raising more or less technical defenses so long after the assessment and levy of the tax, the statute directs the court in the foreclosure proceedings to disregard or correct a great variety of irregularities that may have occurred. This part of the statute reads as follows:

¹⁰⁶State ex rel. Chamberlin v. Daniel, 17 Wash. 111, 49 Pac. 243 (1897); cf. State ex rel. Dunbar v. State Board, 140 Wash. 433, 249 Pac. 996 (1926) for the use of the writ of mandamus to compel tax officers to act in a way that imposes added burdens on taxpayers.

¹⁰⁷Pierce County ex rel. Maloney v. Spike, 19 Wash. 652, 54 Pac. 41 (1898).

¹⁰⁸State ex rel. Lewis v. Hogg, 22 Wash. 646, 62 Pac. 143 (1900), here the county treasurer was proceeding to correct an assessment roll for a clerical error certified to him by the assessor. The court pointed out that the county treasurer was proceeding within the jurisdiction conferred on him by statute. The taxpayer claimed that there was no statutory appeal from the action of the county treasurer and there was none. To this the court answered that the writ of review was open to him and cited Lewis v. Bishop, 19 Wash. 312, 53 Pac. 165 (1898), but this was in 1900 and it was not until 1913 that the limitations of the writ of review were first announced, see State ex rel. S. & I. E. R. R. Co. v. State Board of Equalization, 75 Wash. 90, 134 Pac. 695 (1913). Doubtless the same result would be reached today. The court would simply point to other available remedies.

¹⁰⁹REM. REV. STAT. § 11281.

“ . . . no assessments of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularity or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to the law by the court.”¹¹⁰

At an early date the court said rather broadly that a defense would prevail only when the error complained of “operated to the injury of the complaining party, and is incurable by any judgment that can be entered in the foreclosure proceedings.”¹¹¹ In that case the county treasurer had divided a lot of land in half and had issued a certificate of delinquency as to one half and he had done this without notice to the owners. This, the court said, had not injured the owners. It did not, of course, affect the amount of the tax. In another case the taxpayer had attacked the sufficiency of a book of certificates of delinquency issued by the county treasurer to the county, but the court was satisfied that it could correct any defect.¹¹²

There are certain defenses, however, that will prevail. Payment, of course, is a good defense.¹¹³ Also, the taxpayer may assert that the property is exempt from taxation,¹¹⁴ that it is sought to be taxed to meet a municipal obligation incurred before the land was included within the municipality,¹¹⁵ that different lots of land were not separately valued as required by statute¹¹⁶ and last, but by no

¹¹⁰REM. REV. STAT. § 11281.

¹¹¹Smith v. Newell, 32 Wash. 369, 73 Pac. 369 (1903).

¹¹²Jefferson County v. Trumbull, 34 Wash. 276, 75 Pac. 876 (1904).

¹¹³Woodham v. Anderson, 32 Wash. 500, 73 Pac. 536 (1903); Callison v. Smith, 44 Wash. 202, 87 Pac. 120 (1906); Solberg v. Baldwin, 46 Wash. 196, 89 Pac. 561 (1907).

¹¹⁴Thurston County v. Sisters of Charity, 14 Wash. 264, 44 Pac. 252 (1896).

¹¹⁵Holcomb v. Johnson's Estate, 43 Wash. 362, 86 Pac. 409 (1906); see also Swanson v. Hoyle, 32 Wash. 169, 72 Pac. 1011 (1903) in which it appears that if this defense is not raised in the foreclosure proceedings it may not be raised by way of collateral attack on those proceedings.

¹¹⁶Lockwood v. Roys, 11 Wash. 697, 40 Pac. 346 (1895) the court said that this was not a mere irregularity, but rather involved a substantial right of the taxpayer.

means least, that the land has been excessively overvalued to the point of actual or constructive fraud.¹¹⁷ This last defense is no longer available, and how this came to be will be considered later.¹¹⁸

The foregoing discussion relates only to defenses that involve the validity of the tax itself. There are a number of points that may be raised that go to the regularity of the foreclosure proceedings, but these will not be considered. There are also cases involving disputes between private parties in which tax proceedings are attacked collaterally but these, too, will not be considered.

The Anti-Injunction Statute of 1931 and Its Effect on Taxpayers' Remedies

In 1931 the Legislature undertook to require taxpayers who had grievances that they wished to present before a court to pay first and argue about it in court later. At that time taxpayers had a wide choice of remedies that permitted them to withhold payment of any amount under dispute until after there had been a judicial determination of the disputed points. The Legislature sought to abolish these remedies, and in their place it said to taxpayers that they must first pay under protest the full amount of the tax and then bring suit to recover back the amount claimed to have been illegally exacted. In that suit they might present their grievances to a court. The fiscal advantages of this arrangement are clear enough. They are particularly striking when applied to large taxpayers.

The statute¹¹⁹ first prohibits the issuance of injunctions to restrain "the collection of any tax or any part thereof, or the sale of any property for non-payment of any tax or part thereof" except in two cases, first, when the law under which the tax is imposed is void, and second, when the property upon which the tax is imposed is exempt.¹²⁰ It is next provided that if any taxpayer deems any tax on his property to be "unlawful or excessive", he may pay it under protest and then maintain an action to recover back the amount so paid.¹²¹ There are various provisions for the setting up of a fund for the payment of judgments recov-

¹¹⁷Whatcom v. Fairhaven Land Co., 7 Wash. 101, 34 Pac. 563 (1893); Pacific County v. Ellis, 12 Wash. 108, 40 Pac. 632 (1895); Olympia v. Stevens, 15 Wash. 601, 47 Pac. 11 (1896); Holcomb v. Johnson's Estate, 43 Wash. 362, 86 Pac. 409 (1906); in these cases if the defense prevails the court will simply determine the proper assessed value and the tax may be collected on the corrected assessment.

¹¹⁸See Western Machinery Exchange v. Grays Harbor, *infra* note 156.

¹¹⁹REM. REV. STAT. § 11315-1-8.

¹²⁰REM. REV. STAT. § 11315-1.

¹²¹REM. REV. STAT. § 11315-2.

ered by taxpayers¹²² and the statute ends with a sweeping provision that the remedy provided is exclusive. "Except as permitted by this act," the statute reads, "no action shall ever be brought attacking the validity of any tax, or any portion of any tax."¹²³ The constitutionality of the statute has been sustained,¹²⁴ but there are important questions as to its meaning and application and particularly its effect on the many and diverse remedies that existed at the time of its passage.

The first question to be considered is this: At what point of time is an injunction foreclosed? The statute says that injunctions and restraining orders may not be issued to restrain "the collection" of any tax. The determination of the point of time at which "collection" begins is important because injunctive relief is not foreclosed if applied for prior to that time. It would seem clear that the collection process begins at least when the tax becomes due and payable and collectible. In the case of both the tax on real and personal property the process of collection begins on February 15th of each year for the taxes levied for the preceding year, though in the rare cases of the removal from the state or the dissipation of personal property the collection of the personal property tax may begin by jeopardy distraint at any time.¹²⁵ They may be paid at any time after that date and become delinquent on May 31st.¹²⁶ The statute would be emasculated if it should be said that "the collection" of a tax does not begin until steps are taken to foreclose the tax lien, either by judicial proceedings in the case of the real property tax, or by distraint in the case of the personal property tax. Surely collection begins when the county treasurer sends out notices that certain amounts are due and payable, and injunctive relief has been barred under the statute when sought after that date.¹²⁷ But does collection begin at any point of time before that, and, if so, at what point of time? The court has had some trouble with this question.

In *Denny v. Wooster*,¹²⁸ a taxpayer was permitted to secure in-

¹²²REM. REV. STAT. § 11315-3-4.

¹²³REM. REV. STAT. § 11315-7. There is a proviso to this section that will be considered later.

¹²⁴*Casco v. Thurston County*, 163 Wash. 666, 2 P. (2d) 677 (1931); noted in 7 WASH. L. REV. 230.

¹²⁵See notes 30 and 46 *supra*; see REM. REV. STAT. § 11250 for the statute governing jeopardy distraint.

¹²⁶This date applies only to one-half of the real property tax since it may be paid in installments. Delinquency as to the second half occurs on November 30th, see REM. REV. STAT. § 11244, though in the case of the personal property tax, failure to pay the first installment when due renders the entire amount delinquent.

¹²⁷*Church v. Benton County*, 186 Wash. 59, 56 P. (2d) 1010 (1936).

¹²⁸175 Wash. 272, 27 P. (2d) 328 (1933).

injunctive relief against an assessor to prevent him from extending on the tax rolls a levy alleged to be illegal as being in excess of the applicable millage limit. The amount of the levy must be certified to the assessor on or before the second Monday in October, and he must then extend the levy on his tax rolls before the fifteenth day of December and transmit the rolls to the county auditor.¹²⁹ Between those dates, then, the assessor is engaged in extending the levy against the values of particular pieces of property shown on his assessment roll and until this has been done, the definite amount payable by any taxpayer is not known. In this case, the aggrieved taxpayer acted promptly and filed his complaint a few days after the challenged levies had been certified to the assessor and before the assessor had extended the levy on his rolls.¹³⁰ The court had little difficulty in concluding that injunctive relief was proper, in spite of the 1931 statute.¹³¹ The court said that, "It ought not be held that, prior to the right to pay or collect taxes, a taxpayer should be deprived of the right to seek redress . . ."¹³² This language is ambiguous. It suggests that the 1931 statute would not foreclose resort to equity if the taxpayer acted at any time before February 15th, for not until then does the right to collect real property taxes exist,¹³³ though in a few rare cases the personal property tax may be collected before that date.¹³⁴ But what of the reference to the "right to pay"? The taxpayer *could* pay the tax at any time after the assessor has extended the levies against the values of the property shown on his assessment roll and thereby fixed the amount of the tax. Under this view, injunctive relief would be barred at some indeterminate time between the second Monday in October and

¹²⁹REM. REV. STAT. §§ 11239-11240.

¹³⁰*Id.*, Brief of Appellant, p. 6; Brief of Respondents-Cross Appellants, p. 2-3.

¹³¹See also to the same effect *Palmquist v. Taylor*, 177 Wash. 306, 31 P. (2d) 894 (1934), and *Walker v. Wiley*, 177 Wash. 483, 32 P. (2d) 1062 (1934).

¹³²*Id.* at p. 276; note the chronology of this case; the challenged levy was certified to the assessor on October 5, 1933; on October 10th the complaint was filed; on October 28th the Superior Court entered judgment and on December 1st the Supreme Court rendered its decision. If we take the date when the tax ordinarily becomes payable as decisive, that is, February 15th, it is evident that even at the time of the decision of the Supreme Court the County Treasurer could not have demanded payment. The Supreme Court, in its opinion, noted this and pointed out that the resort to equity was at a time when it would avoid the results at which the statute was directed. On the other hand, the taxpayer *could* have paid his tax at any time after the assessor had extended the levy on his rolls for at that time the specific amount payable was determined.

¹³³See *Church v. Benton County*, 186 Wash. 59, 56 P. (2d) 1010 (1936), note 127 *supra*.

¹³⁴See note 125 *supra*.

the fifteenth day of December, that is, at whatever time the assessor had actually extended the levy against the property of the taxpayer seeking the injunction. In *Pacific Tel. & Tel. Co. v. Wooster*,¹³⁵ it was not necessary to resolve this issue, for the taxpayer had sought injunctive relief at a point of time even earlier than in *Denny v. Wooster*. This taxpayer sought to enjoin the assessor from extending on the assessment rolls certain increased values of property ordered by a County Board of Equalization, contending that the County Board had acted without authority of law. There was no difficulty in permitting injunctive relief in this case.

In the construction of a statute of this kind, an important consideration should be that whatever date is fixed after which injunctive relief is foreclosed, that date should at least be definitely fixed. The later case of *Ballard v. Wooster*¹³⁶ has thrown the whole problem into the realm of speculation. There the taxpayer filed his complaint on December 13th, which was two days before the assessor was required to certify his completed assessment rolls to the county auditor but after the time when he had completed the extension of the levies on the assessment roll. This point of time, the court said, was too late, and injunctive relief was foreclosed by the statute. It is possible to reconcile this decision with that in *Denny v. Wooster*, for there the injunction was sought and allowed before the assessor had extended the levy on the assessment roll, while in *Ballard v. Wooster* it was sought and denied after he had completed that step. In one case, then, the definite amount of the tax payable by the taxpayer had not been calculated and entered on the rolls, while in the later case it had been. The muddle grows out of the opinions of the court in these two cases. In the *Ballard* case the court said plainly that "After the certification of equalization by the State Board of Equalization to the county assessor, the final act of fixing the tax levy is completed, and not until then"¹³⁷ and when that point of time has arrived it is too late, for then the attempt is to "enjoin levies already made".¹³⁸ In *Denny v. Wooster*, however, the injunction was permitted, even though it was sought after the certification of the equalization by the State Board to the assessor, but *Denny v. Wooster* was not overruled. It was distinguished as involving a challenge of a levy resulting in "a void tax". This suggests that perhaps the court meant that an injunction was proper in that

¹³⁵178 Wash. 180, 34 P. (2d) 451 (1934).

¹³⁶182 Wash. 408, 45 P. (2d) 511 (1935).

¹³⁷*Id.* at p. 412.

¹³⁸*Id.* at p. 413.

case because it fell within the exception permitting an injunction when the claim is that "the law under which the tax is imposed is void", and yet there was no claim that "the law" was void. The claim was that the levies made exceeded permissible millage limits. There was no attack on the validity of any statute. And this view of *Denny v. Wooster* necessarily involves a construction of the exception that brings within it a "void tax", as well as the case when the claim is that "the law under which the tax is imposed is void". Nor was there any mention of the exception in the opinion, and there was a careful discussion of the point of time at which "the collection" of a tax began, a discussion that would be quite irrelevant if the case fell within the exception.

Whatever may be the final resolution of the muddle created by these two opinions, the safest conclusion is that in view of the *Ballard* decision a taxpayer should seek his injunction at some point of time before the State Board of Equalization has completed its work and certified the equalized values together with the levy for state purposes to the county assessor. This certification must be made about the end of September.¹³⁹ In the *Ballard* case the taxpayer was seeking relief from an assessment alleged to be excessive, so perhaps if he challenges the legality of a levy the court may still follow *Denny v. Wooster* and permit injunctive relief if it is sought even after the assessor has started to extend the amount of the challenged levy on the tax rolls but before the job has been completed. After all, it is not until then that the taxpayer has any way of knowing what the levy will be and whether there is any ground for attacking it. If he seeks relief from an excessive assessment, on the other hand, he must do so before the State Board has completed its work, but in all these cases the taxpayer is really attacking values fixed by the assessor as equalized by the County Board of Equalization. We have already noted that the State Board does not change any locally fixed assessed values but confines itself to an equalization of county totals for the purpose of the state levy only.¹⁴⁰ The taxpayer may, then, attack these locally assessed values at any time prior to the

¹³⁹The State Board of Equalization meets on the first Tuesday in September, and may sit for not to exceed twenty days; within three days after completion of its work it must certify the results to the state auditor and he, in turn, must certify the record to each County Assessor within three days after that. Query whether injunctive proceedings must be commenced before the results of the Board's work are certified to the State Auditor or would there still be time to act before the State Auditor certified them to the County Assessor? Surely the safest procedure would be to act before the record has left the hands of the Board and that means taking action before the Board has adjourned.

¹⁴⁰See note 27 *supra*.

adjournment of the State Board in September. It may seem strange to derive this result from a statute prohibiting injunctions against the collection of a tax, but at least it is understandable, definite and workable. The foregoing description of the assessment process does not, of course, apply to the assessment of the inter-county properties of public utilities by the Tax Commission. In such cases the State Board may change particular values fixed by the Tax Commission so if the taxpayer is required to act before the State Board has completed its work, he is being compelled to act before the assessed value of his property has been finally determined.

If the taxpayer is challenging the authority of the assessing body to assess his property, then there is no difficulty if he seeks his injunction to restrain the body from taking any steps,¹⁴¹ but if he waits too long before asserting that ground for attacking the validity of the proceedings, he will be in the midst of the muddle created by the cases just discussed.

We have noted that the prohibition against injunctions does not apply when the claim is that "the law under which the tax is imposed is void", or that the property is exempt.¹⁴² Were it not for the language employed in *Denny v. Wooster*, already adverted to, it would seem clear enough that the first exception relates to cases where the contention is that the taxing statute is unconstitutional and it has been given this application in a decision of the Federal District Court.¹⁴³ But the opinion in *Denny v. Wooster* suggests, as we have seen, that perhaps the court feels that a tax that is void is the same thing as a law that is void. It is evident that any such construction of the statute would raise more questions than it would settle. The exception as to exempt property should cause little difficulty. In the past the court has often issued injunctions to restrain taxes when this claim has been raised,¹⁴⁴ and in one recent case the practice has been continued.¹⁴⁵

The magic words "paid under protest" that sufficed before this statute are no longer sufficient. The protest must accompany the payment, it must be in writing and must set forth "all the grounds upon which such tax is claimed to be unlawful or excessive."¹⁴⁶

¹⁴¹*Northwestern Imp. Co. v. Henneford*, 184 Wash. 502, 51 P. (2d) 1083 (1935) and *Weyerhaeuser Timber Co. v. Henneford*, 185 Wash. 46, 53 P. (2d) 308 (1936) are cases of this kind.

¹⁴²REM. REV. STAT. § 11315-1.

¹⁴³*Bank of California N. A. v. King County*, 16 F. Supp. 976 (1936).

¹⁴⁴See *Phillips v. Thurston County*, 35 Wash. 187, 76 Pac. 993 (1904); *Seattle & P. S. Packing Co. v. Seattle*, 51 Wash. 49, 97 Pac. 1093 (1908).

¹⁴⁵*Wesley Foundation v. King County*, 185 Wash. 12, 52 P. (2d) 1247 (1935).

¹⁴⁶REM. REV. STAT. § 11315-2; in *State ex rel. Yakima Amusement Co.*

The statute shortens the statute of limitations that had theretofore been applied to suits to recover taxes paid under protest.¹⁴⁷ The suit must be brought not later than the 30th day of January next succeeding the date when the tax was payable.¹⁴⁸

The statute also contains the important provision that "Except as permitted by this act, no action shall ever be brought attacking the validity of any tax, or any portion of any tax."¹⁴⁹ This language is all inclusive and is quite broad enough to cover the injunction which is dealt with specifically in the first section of the statute. Were it not for the two exceptions to the prohibitions of the first section, there is no reason why the purpose of the statute might not have been fully accomplished without the specific treatment of injunctions in the first section. The injunction, then, is specifically prohibited in the first section, and it is the only remedy that is prohibited by that section. The fate of the other remedies would seem to depend upon the extent to which the court gives effect to the section making payment under protest the exclusive remedy. There is little to be gained by attempting to stretch the words "injunctions and restraining orders" of the first section to include other forms of action. We have noted already that bills to quiet title and actions to reduce the assessed value of property have been said to be of equitable cognizance, and a plausible argument may be worked out to the effect that these forms of action are included in the words of the first section, but there is little to be gained by this. Other forms of action should meet the same fate under the language of the section making payment under protest the exclusive remedy. The action to reduce the assessed value of property has already met this fate.¹⁵⁰ There is no reason to suppose that the bill to remove a cloud on title will have any other fate.

v. Yakima County, 92 Wash. Dec. 167, 73 P. (2d) 759 (1937), the formal words "Paid Under Protest" were held to be insufficient under the statute; in *C. I. T. Corporation v. Spokane County*, 186 Wash. 165, 57 P. (2d) 322 (1936) it was pointed out that a written claim for refund is something else again and a self-serving statement in the claim that the tax had been paid under protest is not enough in the absence of some showing that the protest was made at the time of payment or at some other time and that it was in writing. Query as to whether a written protest before payment would suffice or must the protest accompany payment? Without doubt a protest after payment would not suffice, no matter how soon after.

¹⁴⁷See *Pacific Coal & Lumber Co. v. Pierce County*, 133 Wash. 278, 233 Pac. 953 (1925), in which it was held that the three-year statute of limitations applied to actions to recover taxes paid under protest.

¹⁴⁸REM. REV. STAT. § 11315-6.

¹⁴⁹REM. REV. STAT. § 11315-7.

¹⁵⁰*Church v. Benton County*, 186 Wash. 59, 56 P. (2d) 1010 (1936), though the court did not discuss this point, it is none the less implicit in the decision; perhaps the court felt that it was too obvious to require discussion.

As to the writ of certiorari or review, it has already been noted that it was of little importance at the time of the passage of the 1931 statute. If the exclusive remedy section is given full effect, it would seem that even the limited use to which the writ may be put in tax cases¹⁵¹ will meet the same fate. That is, it was used to review the power of a Board of Equalization to take certain action, and it may still be used for this purpose, but if it is not applied for in time, the prohibitions of the 1931 statute may compel a taxpayer to pay under protest if he wishes to present his argument to a court.¹⁵²

The assumption of this statement is that the court will declare that until the point of time has been reached at which injunctions are barred under the first section, other forms of action, as well as injunctions, may be used, but once the point has been reached when injunctions are barred, then other forms of action are barred as well under the exclusive remedy section. This construction, at least, would give a consistent application to the different sections of the statute and this, too, without taking undue liberties with the words used.¹⁵³

The writ of mandamus or mandate and its counterpart, the writ of prohibition, are not likely to be affected very much by the 1931 statute. This is evident from a review of the cases involving the use of these writs. In those cases in which constitutional issues have been raised, there is no reason why these writs may not still be used, for such issues are expressly excepted from the prohibitions of the 1931 statute. With all these extraordinary writs there is the requirement that other available remedies at law are inadequate, and it is not unlikely that the court may revive this here-

¹⁵¹See *State ex rel. Thompson v. Nichols*, *supra* note 922 and discussion.

¹⁵²*Cf. Northwestern Imp. Co. v. Henneford*, 184 Wash. 502, 51 P. (2d) 1083 (1935); *Weyerhaeuser Timber Co. v. Henneford*, 185 Wash. 46, 53 P. (2d) 308 (1936).

¹⁵³It may be suggested that the language of the exclusive remedy section prohibits any action "attacking the validity of any tax" while the first section prohibits injunctions against "the collection of any tax" and the differences in wording may suggest differences in application. Under the first section it is necessary to determine at what point of time "the collection of any tax" begins, while under the exclusive remedy section it is necessary to determine at what point of time there is "a tax" to be attacked and it might be decided that there are different points of time under the two sections. Little is gained by all this. If the point of time under the first section should be later than that under the exclusive remedy section, the taxpayer would simply use the injunction for the period not covered by both sections, for it would not be barred until the later point of time is reached. If the point of time is the same under both sections, then the taxpayer would simply have a greater choice of forms of action that he might use until the time is reached when any remedy other than payment under protest is too late.

tofore moribund point. Payment under protest has always been available, but at least the 1931 statute puts it in the foreground and makes provision whereby the remedy is made more effective by setting up a fund for payment of judgments that may be recovered.

The exclusive remedy section contains a proviso that reads as follows: "That this section shall not be construed as depriving the defendants in any tax foreclosure proceeding of any valid defense allowed by law to the tax sought to be foreclosed therein."¹⁵⁴ The legislature wrote this proviso without expressing any limitation as to particular defenses available to taxpayers in foreclosure proceedings. The legislature simply said "any valid defense". The court, however, has been quick to rewrite the proviso. We have already noted that from 1893 down to the present time, taxpayers have always been able to resist foreclosure by asserting the defense that the property has been excessively overvalued to the point of actual or constructive fraud.¹⁵⁵ In a recent decision, however, the court has said that "any valid defense" does not mean "any valid defense", but rather means any defense other than excessive overvaluation.¹⁵⁶ How this came to be is a little difficult to explain. In 1933 the court approached this statute with the idea that under "the great weight of authority" its provisions must not be extended beyond "the clear import of the language used",¹⁵⁷ but apparently this was forgotten in 1937, for in the opinion in this recent case the court speaks broadly of the general purposes of the statute "to facilitate and expedite the raising of public revenue"¹⁵⁸ and undertakes to construe the proviso, as if there was anything to construe, in such a way as to promote this general purpose. The power of a taxpayer to interpose this defense in a foreclosure proceeding, the court said, would largely defeat the proper purpose of the statute. The trouble with all this is that there is nothing to construe. The proviso is simple in its statement. There has been no question since 1893 that this defense was a proper one in a tax foreclosure proceeding. There is no reason to suppose that the legislature was unaware of this.

¹⁵⁴REM. REV. STAT. § 11315-7.

¹⁵⁵See cases cited note 117 *supra*.

¹⁵⁶Western Machinery Exchange v. Grays Harbor, 190 Wash. 447, 68 P. (2d) 613 (1937); in the case of Island County v. Calvin Philips & Co., No. 26951 in the Supreme Court, the authority of the Western Machinery Exchange case has been challenged in a case involving the assertion of the defense of excessive overvaluation in proceedings to foreclose a real property tax lien; as this issue of the LAW REVIEW goes to press there has been a reargument *en banc* but the decision of the court has not been handed down.

¹⁵⁷Denny v. Wooster, 175 Wash. 272, 275-276, 27 P. (2d) 328 (1933).

¹⁵⁸Western Machinery Exchange v. Grays Harbor, *supra* at p. 454.

Is any defense left after this decision, that is, any defense that goes to the validity of the tax itself? The court gives small comfort in suggesting that a plea of payment will still prevail.¹⁵⁹ Doubtless the plea that the property is exempt will still be heard for that is a matter excepted from the operation of the 1931 statute. But what of the other defenses that have been raised in these proceedings?¹⁶⁰ In the face of this decision there is no telling what may happen. It is possible that the court may distinguish this case for it was a personal property tax case and we have seen that that tax is collected by distraint rather than by foreclosure of the tax lien in judicial proceedings. The language of the proviso permits the assertion of defenses only in proceedings to foreclose the tax lien and that would seem to limit its application to the real property tax. The court held, however, that a taxpayer who was seeking to enjoin the sale of personal property after distraint would be treated as though he were a defendant in a foreclosure proceeding, at least for the purposes of the proviso. Unless the court had done this the proviso would have been inapplicable in personal property tax cases and the taxpayer would have been left without any means of asserting any defense for the statute of limitations had long since run against payment under protest. If this case is adhered to in a real property tax foreclosure case, the taxpayer whose grievance goes to the matter of excessive overvaluation of his property must, then, start his proceedings before payment, at a time when it is not too late under the statute, or pay under protest before the new and shortened statute of limitations has run against him, or be forever barred from raising that issue in a court. This forces the taxpayer "to move expeditiously", as the court put it.¹⁶¹ It is apparently the judgment of the court that unless this view is taken taxpayers will be tempted to sit back and do nothing until the time for foreclosure of the tax lien has arrived, and then assert their defense of excessive overvaluation.

May a taxpayer avoid the troubles under the state statute by resort to the federal courts? It is obvious that the state statute cannot operate to deprive a federal court of its equity jurisdiction but one old and one recent federal statute have, taken together, gone a long way to close the doors of the federal courts to cases involving state taxes. The old statute provides that suits in equity shall not lie in federal courts "in any case where plain, adequate and complete remedy may be had at law".¹⁶² The remedy at law

¹⁵⁹*Id.* at p. 453.

¹⁶⁰See the cases referred to *supra*, particularly notes 115 and 116.

¹⁶¹*Id.* at p. 454.

¹⁶²REV. STAT. § 723; U. S. C. TITLE 28, § 384; JUDICIAL CODE, § 267.

that is there referred to must be one that is available to the taxpayer either in the state court or in the federal court if the essential elements of federal jurisdiction are present.¹⁶³ This statutory command has been said to have "peculiar force in cases where the suit . . . is brought to enjoin the collection of a state tax in courts of a different, though paramount sovereignty".¹⁶⁴ If this is not enough to bar actions in the federal courts the Congress has recently deprived them of jurisdiction of any suits to enjoin the "assessment, levy, or collection" of any state tax "where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such state".¹⁶⁵ In so far as this refers to an adequate remedy at law in the state courts, it remains to be seen whether it has added anything to what had already been derived from the older statute. But the reference to an adequate remedy in equity in the state courts will doubtless have some bearing in tax cases, for the 1931 statute permits relief in equity in the state courts in cases covered by the two exceptions and also, as we have seen, if it is sought soon enough. The availability of this remedy may bar a like remedy in the federal courts under the new statute. The 1931 statute will be important in the federal courts in its bearing on the adequacy of the remedy at law under both federal statutes. By recent amendment to the state statute it has been specifically provided that suits to recover taxes paid under protest may be maintained "in any federal court of competent jurisdiction" as well as in a superior court of the state.¹⁶⁶ The taxpayer must then be prepared to show that for some reason this remedy at law is of no avail. The federal courts have indicated that "special circumstances" will relax the rule against injunctions and it was relaxed in the case of a large taxpayer with property located in some twenty-three

¹⁶³*Matthews v. Rodgers*, 284 U. S. 521 (1932); *The Henrietta Mills v. Rutherford County*, 281 U. S. 121 (1930); see also *City Bank Farmers Trust Co. v. Schnader*, 291 U. S. 24 (1934).

¹⁶⁴*Matthews v. Rodgers*, *supra* at p. 525 (1932). Mr. Justice Stone added that "The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief be denied in every case where the assorted federal right may be preserved without it", at page 525.

¹⁶⁵Act of Aug. 21, 1937 amending 26 U. S. C. A. § 41-1; see U. S. C. A. CURRENT SERVICE, 1937, p. 701; 1937 Supplement, p. 15.

¹⁶⁶REM. REV. STAT. § 11315-2; as amended by Laws of 1937, ch. 11, § 1; *cf. Henneford v. Northern Pacific Ry. Co.*, 58 Sup. Ct. 415, decided Jan. 31, 1938, in which an injunction was sought in the United States District Court against enforcement of the Washington "compensating tax"; it appeared that there was no available remedy at law in the federal court because the taxing statute set up a special procedure that must be followed, see Laws of 1935, ch. 180, § 199, and this required that suit be brought only in the Superior Court of Thurston County.

counties of the state.¹⁶⁷ The court pointed to the multiplicity of suits at law that would be required, but stressed particularly the fact that the assessment had been by the State Tax Commission, and there would be insuperable difficulty in reaching a proper assessment value against the total amount of property and securing a proper apportionment of that value among the twenty-three counties if those matters had to be determined in twenty-three suits at law in as many counties.¹⁶⁸ If this same type of case should come up after the recent federal statute, the jurisdiction of the federal court would not be barred unless the state courts should permit a suit in equity under like circumstances. If they did, then there would be an adequate remedy in equity in the state courts. Before the federal court is deprived of equity jurisdiction it must decide first, whether there is an adequate remedy at law in either the federal or state courts, and second, if it concludes that under the circumstances of the case there is not, then it must decide whether there is an adequate remedy in equity in the state courts. It is difficult to determine just what kind of a showing will move a federal court to act.¹⁶⁹

A Word as to Administrative Finality and the Scope of Judicial Review

The 1931 statute does not attempt to define in any way the scope of judicial review when tax matters come before a court, so presumably the judges will continue to deal with tax questions in the same manner as they have in the past. It matters not whether the taxpayer has come into court after payment under protest or by bill in equity to enjoin collection of a tax, or by any other procedural device,¹⁷⁰ the scope of judicial review is bounded by the

¹⁶⁷Skagit County v. Northern Pacific R. R. Co., 61 F. (2d) 638, C. C. A. 9th, 1932.

¹⁶⁸With this decision, *cf.* Matthews v. Rodgers, 284 U. S. 521 (1932), in which a multiplicity of suits would have been avoided by resort to equity, but each suit raised some special issues of fact and of law, and the court was satisfied to let the complaining taxpayers present those issues in separate suits at law.

¹⁶⁹The history of the federal statute prohibiting federal courts from issuing injunctions to restrain "the assessment or collection of any tax" indicates that this legislative command has been circumscribed by judicial exceptions. This statute applies only to federal taxes and it may be that in view of the recent words of the Supreme Court, Matthews v. Rodgers, *supra* note 162, federal courts will not display the same freedom of action when it comes to injunctions directed against state taxes. For accounts of the history of the federal statute, see Miller, "Restraining the Collection of Federal Taxes and Penalties," 71 U. OF P. LAW REV. 318 (1923); Lewinson, "Restraining the Assessment or Collection of a Federal Tax," 14 CAL. L. REV. 461 (1926); Note, 49 HARV. L. REV. 109 (1936).

¹⁷⁰Some payment under protest cases are: Carlisle v. Chehalis County, 32 Wash. 284, 73 Pac. 349 (1903); Tacoma Mill Co. v. Pierce County, 130 Wash. 358, 227 Pac. 500 (1924); Yakima Valley Bank & Trust Co. v. Yakima County, 149 Wash. 552, 271 Pac. 820 (1928); Northwestern Bank

same formula of words. There may be variations in the statement of the formula, but they resolve themselves into the question as to whether the conduct of the taxing officers has resulted in such a "grossly inequitable and palpably excessive over-valuation of real property" as will amount to actual or constructive fraud on the taxpayer, and this even though it appear that the assessing officers have acted in entire good faith and honesty.¹⁷¹ It goes without saying that this form of words does little more than express a judicial attitude of mind towards the acts of taxing officers. The typical grievance of a taxpayer relates to a question of the valuation of his property. Valuation is not a matter of an exact formula applied to simple fact situations. It is very much in the realm of judgment and opinion, and judgments and opinions do have a way of differing and sometimes differing in striking fashion. The formula that the judges have worked out permits them to say in concrete cases whether the valuations fixed by tax officers differ too much from values that may be more acceptable to the judges. If the figures differ too much the acts of the taxing officers are tagged as "constructively fraudulent", and the court will proceed to assess the property itself. The cases in which this formula and some subsidiary formulas and presumptions that go with it have been applied have been reviewed recently.¹⁷² It is enough to note here that when the court does grant relief to a taxpayer, it goes all the way and the final order of the court involves what is in effect a judicial reassessment of the property. In this way the judges have become a part of the tax machinery of the state.

This raises an important question as to the propriety of the courts occupying this position. The state has created an hierarchy of administrative machinery for the assessment of property, the levy of a tax and its collection. We have reviewed the position of the taxpayer when this machinery is in operation and the various stages in the process at which he may present his grievances and be heard. It might be expected that in an orderly system of taxation the taxpayer would be required to exhaust his available administrative remedies before coming into court with his troubles.¹⁷³ In this way the taxing machinery would be able to operate in the

v. Adams County, 174 Wash. 447, 24 P. (2d) 1086 (1933). For cases involving other procedural devices, see the cases cited in connection with the discussion of available remedies prior to the 1931 statute.

¹⁷¹See *First Thought Gold Mines, Ltd., v. Stevens County*, 91 Wash. 437, 157 Pac. 1080 (1916).

¹⁷²See the excellent comment by John N. Rupp, "*The Doctrine of Constructive Fraud in the Washington Law of Taxation*," 12 WASH. L. REV. 205 (1937).

¹⁷³The question that is raised here is discussed in Stason, "*Judicial Review of Tax Errors—Effect of Failure to Resort to Administrative Remedies*," 28 MICH. L. REV. 637 (1930).

way it was designed to operate and the taxpayer might still come into court with his grievances but not until the taxing machinery had had an opportunity to correct the error that is the subject of complaint.

In all of this the primary concern of the state is in the integrity of the process of collecting revenue and if this is to operate with a minimum of friction all around, it is important to consider the proper functions of administrative officers and judges. For example, if a taxpayer claims that a statute under which he is sought to be taxed is unconstitutional, there is no reason why he should not be heard in court at any stage of the taxing process. The answer to this question must come from the judges. It is beyond the province of tax officers to give this answer. If the taxpayer complains that the taxing officers have misconstrued a statute or have not obeyed its command as to procedure, notice and hearing and the like then, too, there is little reason to require a taxpayer to pursue his way through the administrative machinery. Judicial review is a means of compelling tax officers to obey the commands of the statutes under which they must act and the judges may act as well before as after the taxing process has been completed. If we turn to cases where the complaint involves some minor irregularity in the taxing process, such as some irregularity in the tax roll—a lack of signature or verification, an assessment in gross or in the wrong county or to the wrong person or on the wrong tax roll—then the administrative machinery has full authority to remedy the wrong, and there is no reason why a taxpayer should be free to run to court with such troubles, at least, not until he has sought relief from the taxing machinery without avail.¹⁷⁴

The trouble comes with cases that fall somewhere between the types of cases already mentioned. In this category comes the multitude of cases involving some question of valuation. In these cases it has long been the position of the court that judicial relief under the guise of the verbal formula already mentioned will not be denied because the taxpayer has not pursued the remedies that the state has provided in the administrative hierarchy.¹⁷⁵ The taxpayer who sits by while the taxing machinery of the state is in

¹⁷⁴In *Coolidge v. Pierce County*, 28 Wash. 95, 68 Pac. 391 (1902), the taxpayer brought a bill, in equity, to enjoin collection of a tax, and, among other matters, complained of certain irregularities in the tax rolls, but the court undertook to correct them and found support in *REM. REV. STAT.* § 11281, which is the section that empowers the superior court in which foreclosure of the tax lien is sought to correct certain irregularities; the court said that this section was ample "to invalidate all irregularities not affecting the substantial justice of the tax"—at p. 100.

¹⁷⁵*Whatcom County v. Fairhaven Land Co.*, 7 Wash. 101, 34 Pac. 563 (1893), where a taxpayer was permitted to raise the defense of excessive overvaluation in foreclosure proceedings to collect the tax, though he

operation secures the same consideration before the court as if he had been diligent in seeking to have his grievances corrected in the administrative machinery. In taking this position the court is making the assumption that those higher up in the administrative hierarchy will be quite as "constructively fraudulent" as those whose acts form the basis for allegation of fraud, that is, that it is idle to require a taxpayer to seek relief from a body that probably or perhaps even certainly will not give it. If we take this expression literally, it is not exactly complimentary but perhaps it should be put down as one of those forms of words by which something that is not so is treated as being so for reasons discoverable only by those versed in the use of such words of art. A new form of words would serve the same purpose without carrying with it any suggestion that the judiciary is moved to act only when it entertains an unfavorable judgment as to the integrity of the taxing machinery of the state. Differences of honest and fair minded opinion as to value do, after all, typify ad valorem taxation.

Little is gained by attempting to draw verbal distinctions between questions of law and questions of fact. It is all too easy for a court to treat a given disparity between an assessed value and the claimed true value as amounting to "constructive fraud" and so treat it as a question of law and remove it from the administrative machinery into the court room where questions of law are supposed to find a more congenial atmosphere.¹⁷⁶ After all, it is a problem of valuation no matter where it is found. It would seem to be more pertinent to ask, who is best equipped to solve the problem, the tax officers of the state or the judges of the state? When judgment has been exercised in answering this question it will be time enough to couch the answer in words that will mark out the position of the courts in the taxing processes of the state. In formulating this position it must not be overlooked that while there may be tyranny, both petty and gross, dishonesty, bad faith and actual fraud on the part of taxing officers, taxpayers, too,

had not raised this grievance before the Board of Equalization; *Templeton v. Pierce County*, 25 Wash. 377, 65 Pac. 553 (1901), where the taxpayer sought judicial relief from a value fixed by the assessor without having appeared before the Board of Equalization; *Miller v. Pierce County*, 28 Wash. 110, 68 Pac. 358 (1902), to the same effect; *Yakima Valley Bank & Trust Co. v. Yakima County*, 149 Wash. 552, 271 Pac. 820 (1928), a personal property tax case in which the taxpayer went directly into court after payment under protest without resort to either the County or State Boards of Equalization; *Pacific Tel. & Tel. Co. v. Wooster*, 178 Wash. 180, 34 P. (2d) 451 (1934), accord; the 1931 statute will have no effect on the position taken in these cases; the last two cases both involved payment under protest, and in the *Yakima Bank* case, the court reviewed the whole matter and adhered to the position taken in the *Whatcom County* case in 1893.

¹⁷⁶See, for example, *Bellingham Development Co. v. Whatcom County*, 187 Wash. 15, 59 P. (2d) 920 (1936).

manifest these same and other human qualities. Should the courts confine themselves to the function of punishing the taxpayer for his tax waywardness and of protecting the revenue collecting processes of the state from the dishonesties of its tax officers? Should it go beyond that and take some part in the process of valuation of property for tax purposes when honest minds have differed? At the present time the court is committed to an affirmative answer to this last question.