

CHAPTER 280

REAL ESTATE TAX JUDGMENT SALES

280.01 MODE OF SALE.

NOTE: The subject of taxes is treated in Revised Statutes 1851, Chapter 12, Public Statutes 1858, Chapter 9, General Statutes 1866, Chapter 11, General Statutes 1878, Chapter 11, General Statutes 1894, Chapter 11. Our present tax law consists of Ex. Laws 1902, Chapter 2, as amended; is a complete tax code in itself; and it would be confusing rather than helpful to connect the sections of our present law with the sections prior to 1902.

HISTORY. Ex. 1902. c. 2 s. 23; R.L. 1905 s. 927; G.S. 1913 s. 2116; G.S. 1923 s. 2127; M.S. 1927 s. 2127.

1. Jurisdictional
2. Contents
3. Posting
4. Publication

1. Jurisdictional

Publishing one week, or posting ten days, prior to August first was essential to the validity of a sale; and unless the marshal commenced the sale on the day specified in the notice, he had no authority to sell afterwards. *Prindle v Campbell*, 9 M 212 (197).

The statutory requisites of notice must be strictly complied with, to render the confirmation valid. *Flint v Webb*, 25 M 93.

The publication of the notice for three weeks, or 21 days, must be fully completed before the day fixed for the hearing. *Curran v Sibley*, 47 M 313, 50 NW 237.

The notice is a jurisdictional prerequisite to the right to sell, and the statutory requirements must be observed with scrupulous exactness. *McCord v Sullivan*, 85 M 344, 88 NW 987.

If by reason of the auditor's failure to give the prescribed notice the purchaser fails to obtain a valid title, he can have no recovery against the former therefor. *Foster v Malberg*, 119 M 168, 137 NW 816.

Laws 1933, Chapter 414, Section 1, allowing a remission of taxes to certain delinquents, held unconstitutional. *State ex rel v Luecke*, 194 M 246, 260 NW 206.

Those dealing with a municipal corporation in the matter of public improvements are conclusively presumed to know the extent of the power and authority possessed by the municipal officers with whom they deal. *Judd v City of St. Cloud*, 198 M 590, 272 NW 577.

The proprietary rights of a state are as absolute and unqualified as those of an individual. It may, in the absence of any self-imposed restrictions in its constitution, sell and dispose of its property upon its own terms and conditions, for cash or upon credit; and it may also take, hold, and enforce notes and obligations received from the purchaser. *State ex rel v Hubbard*, 203 M 111, 280 NW 9.

A state assignment certificate which actually included the delinquent taxes for the years 1922 to 1932, but which recited it was issued "pursuant to real estate tax judgment to enforce the payment of taxes delinquent for the years 1926" and did not mention it also included taxes for 1922 to 1925, is fatally defective. *Bratrud v Security Bank*, 203 M 463, 281 NW 809.

Validity of tax bargain statutes. 18 MLR 849.

Law of misrepresentation. 22 MLR 993.

2. Contents

The place of sale in a city must be stated. *Prindle v Campbell*, 9 M 212 (197).

A tax deed that purports and is intended to convey other and different premises than those authorized to be sold by the tax judgment upon which it rests, and described in the certificate of sale in pursuance of, which it was given, was inoperative and void. *Flint v Webb*, 25 M 93; *Clary v O'Shea*, 72 M 105, 75 NW 115; *McCord v Sullivan*, 85 M 344, 88 NW 989.

Distinguished from earlier cases, it has been held that a notice is sufficiently certain if read in the light of a knowledge of the law. The year in which taxes became delinquent must be stated, but not necessarily the year of entry of judgment and sale, if the month and day are given, and the year may be inferred from the other dates. Where the auditor signed the notice adding "County Auditor" the notice was sufficient without stating of what county he was auditor. *Towle v St. Paul*, 84 M 105, 86 NW 281.

In the absence of a showing of prejudice, a notice that the sale will take place "at the court-house" is sufficient. *Whitney v Bailey*, 88 M 247, 92 NW 974.

3. Posting

Special Laws 1858, Chapter 5, incorporating the city of Wabasha, made the provisions relating to assessment and levying taxes directory only; but this does not apply to errors and informalities that go to the jurisdiction of the taxing officers. *Prindle v Campbell*, 9 M 212 (197).

A posting of a notice in strict compliance with the statute is a jurisdictional prerequisite to the right to sell. *Prindle v Campbell*, 9 M 212 (197); *Kipp v Dawson*, 31 M 373, 17 NW 961, 18 NW 96; *Olson v Phillips*, 80 M 339, 83 NW 189; *McCord v Sullivan*, 85 M 344, 88 NW 989.

There is no statutory provision for filing of proof of posting, but it is preferred practice for the auditor to file an affidavit in his office. *McNamara v Fink*, 71 M 66, 73 NW 649.

Evidence to overcome the presumption of the posting must be clear and strong. It is not enough merely to show there is no affidavit of posting on file. *McNamara v Fink*, 71 M 66, 73 NW 649; *Cook v Schroeder*, 85 M 374, 88 NW 971.

A certificate of sale or an assignment is prima facie evidence of posting. *McNamara v Fink*, 71 M 66, 73 NW 649; *Olson v Phillips*, 80 M 339, 83 NW 189.

A failure to post cannot be remedied by a curative act. *McCord v Sullivan*, 85 M 344, 88 NW 989.

4. Publication

A publication of the notice in strict compliance with the statute is a jurisdictional prerequisite to the right to sell. *Prindle v Campbell*, 9 M 212 (197); *Kipp v Dawson*, 31 M 373, 17 NW 961, 18 NW 96; *Olson v Phillips*, 80 M 339, 83 NW 189; *McCord v Sullivan*, 85 M 344, 88 NW 989.

Under Laws 1874, Chapter 122, the notice might be published within 20 days after the entry of judgment. *Everett v Boyington*, 29 M 264, 13 NW 45; *Stewart v Colter*, 31 M 385, 18 NW 98.

A certificate of sale or assignment is prima facie evidence of due publication. *McNamara v Fink*, 71 M 66, 73 NW 649; *Olson v Phillips*, 80 M 339, 83 NW 189.

Failure to publish cannot be remedied by a curative act. *McCord v Sullivan*, 85 M 344, 88 NW 989.

280.02 PUBLIC VENDUE.

HISTORY. Ex. 1902 c. 2 s. 24; R.L. 1905 s. 928; G.S. 1913 s. 2117; G.S. 1923 s. 2128; M.S. 1927 s. 2128.

1. Conduct of sale
2. Tracts sold separately; order of offering
3. Amount

4. Bidding in for state
5. Preventing competition
6. Caveat emptor
7. Judgment void, sale void
8. Certificate prima facie evidence of valid sale

1. Conduct of sale

Sale at the advertised time. *Prindle v Campbell*, 9 M 212 (197); *Sheehy v Hinds*, 27 M 259, 6 NW 781; *Burdick v Bingham*, 38 M 482, 38 NW 489.

The check was left with the auditor to use when the assignments were ready for delivery. Held that sales must be for cash, and the date of the sale was on the date the assignments were delivered and the check used. *Pigott v O'Halloran*, 37 M 415, 35 NW 4.

Outside of the necessary implication that the sale must be public rather than a private sale, the only statutory ground upon which a sale may be held invalid is irregularity resulting in a sale to one not the highest bidder. *Burdick v Bingham*, 38 M 482, 38 NW 489; *Cook v Schroeder*, 85 M 374, 89 NW 850.

The sale must be for the statutory amount. Distinguishing *London v Gibson*, 77 M 394. *Security Trust v von Heyderstaedt*, 64 M 409, 67 NW 217; *Hoyt v Chapin*, 85 M 524, 89 NW 850.

The authority of the auditor to make the sale is purely statutory. *Security Trust v von Heyderstaedt*, 64 M 409, 67 NW 219; *McCord v Sullivan*, 85 M 344, 88 NW 989; *Hoyt v Chapin*, 85 M 524, 89 NW 850.

The provisions of this section are directory. *Cook v Schroeder*, 85 M 374, 88 NW 971.

The auditor's office being too small to accommodate the crowd in attendance, the court-room used became for the time being the auditor's office for the purpose of the sale. *Whitney v Bailey*, 88 M 247, 92 NW 974.

Sale of separate tracts in gross has been held invalid. *Chadbourne v Hartz*, 93 M 233, 101 NW 68.

2. Tracts sold separately; order of offering

Under Laws 1862, Chapter 4, Section 7, lands could be sold for taxes only in parcels, as assessed, so that a block in a town assessed as one parcel could not be sold in lots, but must be sold in one parcel. *Moulton v Doran*, 10 M 67 (49).

Under Laws 1881, Chapter 135, the landowner was entitled to any surplus remaining after the amount charged against the land was satisfied, hence the requirement of the statute that each parcel be sold separately. *Farnham v Jones*, 32 M 7, 19 NW 83.

Under the tax laws of 1881 a sale upon judgment is not avoided by the fact that the premises sold as one parcel consisted of two blocks, the judgment being for one entire sum against such blocks. *Knight v Valentine*, 34 M 26, 24 NW 296.

Under Laws 1874, Chapter 1, Section 123, the auditor was required to offer each tract to the bidder who would pay the amount for which it was to be sold for the shortest term of years; but this provision was repealed by Laws 1875, Chapter 5, Section 28. *Vanderlinde v Canfield*, 40 M 541, 42 NW 538; *Cook v Schroeder*, 85 M 374, 89 NW 850.

A sale cannot be set aside merely because the statutory order of sale was not observed. *Cook v Schroeder*, 85 M 374, 89 NW 850.

If several tracts are assessed and treated as one tract, and judgment is entered against the land as one tract, the auditor must follow the judgment and sell the land as one tract. *National Bond v Board*, 91 M 63, 97 NW 413.

Generally the sale of several tracts in gross is void. *Chadbourne v Hartz*, 93 M 233, 101 NW 68.

In suit by the state to quiet title based upon tax sale, defendant could not collaterally attack the judgment and sale because land was assessed separately in 40-acre tracts, owned by one man, and delinquent tax list included whole section in

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a single description, and judgment and sale were based on single description. *State v Aitkin County Land Co.* 204 M 495, 284 NW 63.

Validity of tax judgments against one tract to enforce payment of taxes against several tracts. 1936 OAG 418, Sept. 23, 1936 (425b-3).

3. Amount

The amount for which the land is sold is the amount charged in the judgment, not including judgment thereon. *State v Baldwin*, 62 M 518, 65 NW 80.

A trifling error in the amount is not fatal. *London v Gibson*, 77 M 394, 80 NW 205, 777.

4. Bidding in for state

When no one makes a bid which the auditor is authorized to accept he is required to bid in the land for the state. Formerly he issued a certificate of sale to the state, but now he makes an entry in the copy judgment book to the effect that the land was bid in for the state. Unless this entry is made the state acquires no title which it can convey. *Gilfillan v Chatterton*, 38 M 335, 37 NW 583; *Mulvey v Tozer*, 40 M 384, 42 NW 387; *Pine County v Lambert*, 57 M 203, 58 NW 990; *State v Kipp*, 70 M 286, 73 NW 164; *State ex rel v Luecke*, 194 M 257, 260 NW 206.

A certificate of assignment is prima facie evidence that such entry of the bid by the state was duly entered in the copy judgment book. *Mulvey v Tozer*, 40 M 384, 42 NW 387.

The effect of bidding in for the state is not to pay the taxes. The taxes remain delinquent until actually paid to the county treasurer either by the landowner, the purchaser at a tax sale, or an assignee of the state. *Jenswold v Minnesota Canal*, 93 M 382, 101 NW 603.

Notice of expiration of redemption must be served before state can own lands bid in for state for taxes for 1926 and subsequent years. 1934 OAG 835, June 8, 1934 (423c).

Effect of Laws 1931, Chapter 412, on section 280.10. 1942 OAG 346, June 29, 1942 (423-k).

5. Preventing competition

A combination to prevent competition is not to be inferred from the mere fact of a joint purchase. *Kerr v Kipp*, 37 M 25, 33 NW 116.

6. Caveat emptor

The rule of caveat emptor applies to a tax sale. A purchaser is not a bona fide purchaser without notice, but takes subject to all defects in the prior proceedings. *Coles v County of Washington*, 35 M 124, 27 NW 497; *Wellcome v County of Marshall*, 174 M 431, 219 NW 545.

7. Judgment void, sale void

The sale rests on the judgment; and the judgment being void the sale is void. *German-American v White*, 38 M 471, 38 NW 361; *Kern v Clarke*, 59 N 70, 60 NW 809; *Cool v Kelly*, 78 M 102, 80 NW 861.

8. Certificate prima facie evidence of valid sale

A certificate of sale or assignment regular on its face is prima facie evidence that all requirements of the law with respect to the sale were complied with. *Sanborn v Mueller*, 38 M 27, 35 NW 666; *McNamara v Fink*, 71 M 66, 73 NW 649; *Olson v Phillips*, 80 M 339, 83 NW 189.

A county treasurer, in failing to write or stamp the words "sold for taxes" on a tax receipt, is not guilty of a breach of a statutory duty unless the tax list furnished him by the county auditor shows that the land has been "sold for taxes". *Hawley v Scott*, 126 M 271, 148 NW 116.

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280.03 CERTIFICATE OF SALE.

HISTORY. Ex. 1902 c. 2 s. 25; R.L. 1905 s. 929; G.S. 1913 s. 2118; G.S. 1923 s. 2129; M.S. 1927 s. 2129.

CERTIFICATE OF SALE

1. An official deed
2. Contents
3. When issued
4. Sale to state
5. Extrinsic evidence
6. Secondary evidence of when lost
7. Second certificate, first being defective
8. Assignment

RIGHTS OF CERTIFICATE HOLDER

1. Before expiration of redemption period
2. After expiration of redemption period
3. Prior taxes
4. Change in procedure

CERTIFICATE OF SALE

1. An official deed

A certificate is an official deed within the occupying claimant's act, but does not furnish color of title on which to base a claim for payment for improvements made. *McLellan v Omodt*, 37 M 157, 33 NW 326.

2. Contents.

The middle name or initial of the purchaser need not be given. *Stewart v Colter*, 31 M 385, 18 NW 98.

The omission from a tax judgment, entered on default, of the recitals that no answer has been filed, and that more than 20 days have elapsed since the last publication of the list and notice, though those recitals are in form given by the statute, does not affect its validity. *Kipp v Collins*, 33 M 394, 23 NW 554.

The statute must be followed in substance. "May" in the statute is mandatory. *Gilfillan v Hobart*, 35 M 185, 28 NW 222; *Vanderlinde v Canfield*, 40 M 541, 42 NW 538.

All the facts of the sale required by the statutory form must be stated. *Gilfillan v Hobart*, 35 M 185, 28 NW 222; *Vanderlinde v Canfield*, 40 M 541, 42 NW 538.

The date of the sale must be stated. *Gilfillan v Hobart*, 35 M 185, 28 NW 222.

It is sufficient if the date is discoverable by a fair inference. *Sanborn v Mueller*, 38 M 27, 35 NW 666.

Under Laws 1874, Chapter 1, Section 123, the certificate had to recite that each tract was first offered to the bidder who would pay the amount for which it was sold for the shortest term of years, but this provision was repealed by Laws 1875, Chapter 5, Section 28. *Vanderlinde v Canfield*, 40 M 541, 42 NW 538; *Cook v Schroeder*, 85 M 374, 88 NW 971.

If there is a discrepancy as to date of sale between the certificate and the entry in the copy judgment book the certificate controls, at least when no question is involved as to when the right of redemption expires. *McQuade v Jeffray*, 47 M 326, 50 NW 233.

3. When issued

The certificate must be issued within a reasonable time after the sale. *Stewart v M. & St. L.*, 36 M 355, 31 NW 351; *Gilfillan v Chatterton*, 37 M 11, 33 NW 35; *Kipp v Hill*, 40 M 188, 41 NW 970; *Smith v Lambert*, 68 M 313, 71 NW 381.

4. Sale to state

Under Laws 1874, Chapter 1, Section 124, the certificate of sale was required and was essential muniment of title for subsequent purchaser from the state; but this provision was repealed by Laws 1878, Chapter 1, Section 120, and at present no certificate is issued when the land was bid in by the state, but the auditor makes an entry in the copy judgment book. *Stocking v St. Paul Trust*, 39 M 410, 40 NW 365; *Philbrook v Smith*, 40 M 410, 41 NW 545; *Vanderlinde v Canfield*, 40 M 541, 42 NW 538.

5. Extrinsic evidence

Extrinsic evidence of the date of execution is admissible. *Pigott v O'Halloran*, 37 M 415, 35 NW 4; *McQuade v Jaffray*, 47 M 326, 50 NW 233.

The omission of an essential fact cannot be supplied by oral evidence. *Vanderlinde v Canfield*, 40 M 541, 42 NW 538.

6. Secondary evidence of when lost

Secondary evidence of the contents of a lost certificate is admissible. *Philbrook v Smith*, 40 M 100, 41 NW 545.

To admit secondary evidence a proper foundation must be laid. 39 M 410, 40 NW 365.

A certificate of tax sale has prima facie effect given it by statute, even where, because of its loss or destruction, its contents are proved by parol. *Mitchell v McFarland*, 47 M 535, 50 NW 610.

7. Second certificate, the first being defective

If an original certificate is defective, the auditor conducting the sale may, within a reasonable time, execute a second certificate to obviate the defect. *Vanderlinde v Canfield*, 40 M 541, 42 NW 538; *Bennett v Blatz*, 44 M 56, 46 NW 319; *Smith v Lambert*, 68 M 313, 71 NW 381.

8. Assignment

The rights of a certificate holder may be transferred by a quit-claim deed. *Easton v Hayes*, 35 M 418, 29 NW 59.

The certificate is not commercial paper, and assignment in blank carries no authority to the holder to write a contract over it contrary to the agreement of the parties. *Beardsley v Day*, 52 M 451, 55 NW 46.

The objection that an executed purchase of property by a national bank was ultra vires can only be urged by the government of the United States. *Hennessy v City of St. Paul*, 54 M 219, 55 NW 1123.

A certificate may be assigned, although not expressly authorized by statute. The assignee succeeds to all the rights and burdens of his assignor. *State v Kipp*, 80 M 119, 82 NW 1114.

A state assignment certificate which actually included the delinquent taxes for the years 1922 to 1932, but which recited that it was issued "pursuant to the real estate tax judgment, to enforce payment of taxes delinquent for the years 1926", is fatally defective. *Bratrud v Security Bank*, 203 M 463, 281 NW 809.

RIGHTS OF CERTIFICATE HOLDER

1. Before expiration of redemption period

His interest is a lien within the meaning of the statute to determine adverse claims. *Bidwell v Webb*, 10 M 59 (41); *Brackett v Gilmore*, 15 M 245 (190).

The certificate holder has no estate in land. *Bidwell v Webb*, 10 M 59 (41); *Brackett v Gilmore*, 15 M 245 (190); *State v MacDonald*, 26 M 145, 1 NW 832; *McLellan v Omodt*, 37 M 157, 33 NW 326.

There is no technical term to define the interest of a certificate holder prior to the expiration of the redemption period. He has a statutory interest in the

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land covered by the certificate. He has certain statutory rights only. *Brackett v Gilmore*, 15 M 245 (190); *Barber v Evans*, 27 M 92, 6 NW 445; *State v Bruce*, 50 M 491, 52 NW 970.

In a sense the certificate holder succeeds to the rights of the state, but he lacks the state's power of enforcement. *Brackett v Gilmore*, 15 M 245 (190); *Taylor v Slingerland*, 39 M 470, 40 NW 575; *Berglund v Graves*, 72 M 148, 75 NW 118; *State v Camp*, 79 M 343, 82 NW 645; *State v Kipp*, 80 M 119, 82 NW 1114; *Lewis v Knowlton*, 84 M 53, 86 NW 875.

The certificate holder has a contract with the state, the terms being found in the law at the time of the sale, and which cannot be impaired by subsequent legislation. *State v MacDonald*, 26 M 145, 1 NW 832; *Barber v Evans*, 27 M 92, 6 NW 445; *State v Foley*, 30 M 350, 15 NW 375; *Merrill v Dearing*, 32 M 479, 21 NW 721; *State v Bruce*, 50 M 491, 52 NW 970.

The certificate holder's rights may be cut off by subsequent sale for taxes. *State v Foley*, 30 M 350, 15 NW 375; *State v Bruce*, 50 M 491, 52 NW 970.

He has no right to possession. *Merrill v Dearing*, 32 M 479, 21 NW 721; *McLellan v Omodt*, 37 M 157, 33 NW 326.

He takes subject to all defects. He is not a bona fide purchaser without notice. *Coles v County*, 35 M 124, 27 NW 497.

He may pay subsequent delinquent taxes and be reimbursed if his title fails; and he may redeem from a subsequent sale for taxes. *State v Bruce*, 50 M 491, 52 NW 970.

He has an assurance from the state that it will not impair his title by a sale of the land for taxes due prior to the sale to him. He has a right to assign his interest. *State v Camp*, 79 M 343, 82 NW 645; *State v Kipp*, 80 M 119, 82 NW 1114.

Because certain tax certificates had been included, as to amount, in a judgment for money and had thereby become merged, as to the debt, in the judgment, they were discharged by settlement and satisfaction of judgment. It was error to hold they evidenced a lien superior to plaintiff's mortgage. *Walton v Investment Holding Co.*, 200 M 337, 274 NW 239.

A purchaser at a tax sale acquires no right of income or possession until after the period of redemption has expired. OAG June 25, 1935 (425b-4).

2. After expiration of redemption period

If the owner is the holder of a certificate he may rely on his original title or on his tax title, or on both. *Branham v Bezanson*, 33 M 49, 21 NW 861; *Winston v Johnson*, 42 M 398, 45 NW 958; *Washington Loan v McKenzie*, 64 M 273, 66 NW 976.

After the period of redemption has expired the certificate holder has the right of possession. *McLellan v Omodt*, 37 M 157, 33 NW 326.

See as to right of occupying claimant. *Taylor v Slingerland*, 39 M 470, 40 NW 575.

He gets an entirely new title; an independent grant from the state which bars all other titles or equities whether of record or otherwise. *Windom v Schuppel*, 39 M 35, 38 NW 757.

If a certificate holder goes into possession his rights are not like those of a mortgagee in possession. *Taylor v Slingerland*, 39 M 470, 40 NW 575.

If no redemption is made within the time allowed by law, the certificate holder has an absolute title in fee simple, free from all liens, public or private, attaching prior to the sale. *State v Bruce*, 50 M 491, 52 NW 970; *State v Kipp*, 79 M 343, 82 NW 645; *State v Murphy*, 81 M 254, 83 NW 991.

The title is perfect without a judgment confirming it and the holder is under no obligation at any time to bring an action to protect his title. *State v Murphy*, 81 M 254, 83 NW 991.

When the holder of a tax certificate, issued pursuant to section 281.31, fails to have it recorded in the office of the register of deeds within seven years from the date of the sale, as provided in said statute, he never acquires title in fee simple as contemplated by section 280.03. *Klasen v Thompson*, 189 M 254, 248 NW 817.

3. Prior taxes

Prior to the enactment of the tax code of 1902, where lands have been sold for taxes and bid in by the state, and the state subsequently assigns all rights and interests acquired by it under such sale to an individual, who thereafter perfects the title thereunder, the state cannot impeach or impair such title by a re-sale of the lands for taxes due and unpaid for prior years (not a refundment case). *State v Camp*, 79 M 343, 82 NW 645; *Gates v Keigher*, 99 M 141, 108 NW 860.

Distinguishing *State v Camp*, 79 M 343, 82 NW 645, this being a refundment case, a purchaser at a tax sale, as well as a person who procures an assignment, takes a certificate of purchase or assignment subject to the statutory right of the state to enforce the collection of a prior tax, when refundment has been made on account of a void sale. *State v Kipp*, 80 M 119, 82 NW 1114.

A tax title based on a later tax sale on an earlier tax lien may prevail over a tax title based on an earlier sale under a later lien. *Oakland v County of Ramsey*, 98 M 404, 108 NW 857, 109 NW 237.

General Statutes 1894, Section 1610, to the effect that taxes refunded upon a void tax judgment shall be included in the next delinquent tax sale, is directory, and such delinquent taxes may be enforced by the state at any time within six years from the time of refundment. *Allen v County of Ramsey*, 98 M 341, 108 NW 301.

Distinguishing *Oakland v County of Ramsey*, 98 M 404, 109 NW 237, a sale pursuant to Laws 1899, Chapter 322, does not change the date of the lien of the state for prior delinquent taxes, where they and the judgments therefor are valid. *Brodie v State*, 102 M 202, 113 NW 2.

Where the state undertakes to tack taxes anterior to plaintiff's tax title to a subsequent forfeited tax sale, the objection of the excessive amount should be interposed by answer. Where no such objection is raised, the mere excess in amount of the judgment does not necessarily avoid it. *Minnesota Debenture Co. v Scott*, 106 M 32, 119 NW 391.

Lands bid in by the state, and not assigned by it or redeemed, are not to be placed on the delinquent tax list for subsequent taxes, and certificates obtained at later sale are invalid. *Wellcome v County of Marshall*, 174 M 431, 219 NW 545.

State assignment certificate; notice of expiration; amount required to redeem. 1942 OAG 346, June 29, 1942 (423-K).

4. Change in procedure

The rule that the rights of parties in tax proceedings are to be determined by the law in force at the time of the tax sale and issuance of the certificate does not prevent the legislature from making changes in the manner of enforcing the lien which do not substantially impair obligations of the contract. *State v Krahrmer*, 105 M 422, 117 NW 780.

Where property is described by its government description, but the mineral interest therein is separate by deed on record, such mineral estate is not embraced within the tax certificate, unless specifically set forth. *Washburn v Gregory*, 125 M 491, 147 NW 706.

Validity of a tax certificate and rights of holder are to be determined by laws in force at time certificate is acquired. *Klasen v Thompson*, 189 M 254, 248 NW 817.

280.04 WHO MAY PURCHASE.

HISTORY. Ex. 1902 c. 2 s. 26; R.L. 1905 s. 930; G.S. 1913 s. 2119; G.S. 1923 s. 2130; M.S. 1927 s. 2130.

The courts have held the following regarding purchase at a tax sale:

Where one cotenant recovers of the other for receiving more than his just proportion of the rents, the latter is entitled to be allowed as an offset taxes paid on former's share. *Kean v Connolly*, 25 M 222.

Plaintiff is entitled to judgment of conveyance of the 800 acres, upon her paying her proportion of the taxes paid by defendant prior to her demand upon de-

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fendant. Defendant has no claim for taxes paid after his refusal to convey. *Goodwin v Rice*, 26 M 20, 1 NW 257.

A life tenant may purchase as against a reversioner. *Wilson v Proctor*, 28 M 13, 8 NW 830; *Smally v Isaacson*, 40 M 450, 42 NW 352; *St. Paul Trust v Mintzer*, 65 M 124, 67 NW 657.

Whenever a party holds such a relation to the land or its owner, whether by express contract or implication of law arising on such relation that it is his duty to pay the taxes, he cannot allow the land to be sold for taxes, become the purchaser, and thus build up a title on his own neglect of duty. *Allison v Armstrong*, 28 M 276, 9 NW 806; *Winston v Johnson*, 42 M 398, 45 NW 958.

A mortgagor cannot acquire a tax title as against the mortgagee. *Allison v Armstrong*, 28 M 276, 9 NW 806; *Washington Loan v McKenzie*, 64 M 273, 66 NW 976.

An owner may purchase. *Branham v Bezanson*, 33 M 49, 21 NW 861; *Winston v Johnson*, 42 M 398, 45 NW 958; *Washington Loan v McKenzie*, 64 M 273, 66 NW 976.

One who has assumed a mortgage as against the mortgagee must not purchase. *Connor v Howe*, 35 M 518, 29 NW 314; *Probstfield v Czizek*, 37 M 420, 34 NW 896.

One tenant in common cannot purchase as against the other. *Holterhoff v Mead*, 36 M 42, 29 NW 675; *Schoonover v Galarnault*, 45 M 174, 14 NW 654; *Easton v Schofield*, 66 M 425, 69 NW 326; *Norton v Metropolitan Life*, 74 M 484, 77 NW 539.

A creditor of a mortgagor may purchase. *Wilson v Jamison*, 36 M 59, 29 NW 887.

A grantee cannot purchase as against a grantor. *Matthews v Mulvey*, 38 M 342, 37 NW 794.

A mortgagee may acquire a tax title as against the mortgagor if he is under no obligation to pay the taxes. *Reimer v Newel*, 47 M 237, 49 NW 865.

A national bank may purchase unless prevented by the federal government. *Hennessy v City of St. Paul*, 54 M 219, 55 NW 1123.

A grantee of a mortgagor cannot purchase as against the mortgagee. *MacEwen v Beard*, 58 M 176, 59 NW 942; *Washington Loan v McKenzie*, 64 M 273, 66 NW 976; *American v Hastings*, 67 M 303, 69 NW 1078.

A second mortgagee may acquire a tax title. *American v Hastings*, 72 M 484, 75 NW 713, 77 NW 36; but see 74 M 484, 77 NW 539.

One mortgagee cannot purchase a tax title as against another. *Norton v Metropolitan Life*, 74 M 484, 77 NW 539; but see 72 M 484, 77 NW 36; *Darelius v Davis*, 74 M 345, 77 NW 214.

A mortgagor is not prohibited from acquiring a tax title if it does not affect interests or rights arising or accruing under the mortgage. *Ross v Cole*, 94 M 513, 103 NW 561.

A wife may acquire a tax title to property held by her husband under lease from a third party. *Kampfer v East Side Syndicate*, 95 M 309, 104 NW 290.

A property owner, under terms of contract with adjoining owner, agreed to pay taxes on joint alley. Later he sold his property. His later purchase of a tax certificate held merely the payment of the taxes, and the certificate was canceled. *Endicott v Davidson*, 122 M 411, 142 NW 805.

An owner of property cannot cut out a city assessment on his property by buying a subsequent tax title. *Midway Realty v City of St. Paul*, 124 M 296, 145 NW 24.

Mortgagor cannot by fraud and through a third person defeat the lien of the mortgage. *Tappan v Joslyn*, 180 M 480, 231 NW 224; *Turner v Edwards*, 207 M 455, 292 NW 257.

280.05 WHO MAY NOT PURCHASE OR TAKE AN ASSIGNMENT.

HISTORY. Ex. 1902 c. 2 ss. 26, 29; R.L. 1905 s. 931; G.S. 1913 s. 2120; G.S. 1923 s. 2131; M.S. 1927 s. 2131.

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280.06 REAL ESTATE TAX JUDGMENT SALES

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The register of deeds may purchase forfeited lands, provided he pays fair value. OAG Aug. 21, 1939.

280.06 WRONG NAME OF OWNER.

HISTORY. Ex. 1902 c. 2 s. 32; R.L. 1905 s. 932; G.S. 1913 s. 2121; G.S. 1923 s. 2132; M.S. 1927 s. 2132.

In proceedings to enforce real estate taxes, the fact that the ownership is erroneously stated in the published list will not invalidate the judgment. The proceedings are in rem. *McQuade v Jaffray*, 47 M 326, 50 NW 233; *Wray v Litchfield*, 64 M 309, 67 NW 72; *Minneapolis Ry. v Minnesota Debenture*, 81 M 66, 83 NW 485; *State v Houston*, 96 M 174, 104 NW 835.

A tax certificate based upon tax proceedings in which the property is described by its government description, without mentioning a mineral interest owned separately from the surface, does not cover such mineral interest. *Washburn v Gregory*, 125 M 491, 147 NW 706.

280.07 ENTRIES IN JUDGMENT BOOKS AFTER SALE.

HISTORY. Ex. 1902 c. 2 s. 27; R.L. 1905 s. 933; G.S. 1913 s. 2122; G.S. 1923 s. 2133; M.S. 1927 s. 2133.

A tax assignment certificate is invalid if the record of the tax sale contains no entry showing that the land had been bid in by the state. *Donaldson v Sache*, 121 M 367, 141 NW 493.

The requirement that the county auditor, upon making a tax sale, set out in the copy judgment book what disposition was made at such sale of each parcel of land, does not require an entry in that book of the date of the sale. *Gabro v Michaud*, 139 M 22, 165 NW 480.

280.08 RECORD OF ASSIGNMENT.

HISTORY. 1909 c. 340 s. 1; G.S. 1913 s. 2123; G.S. 1923 s. 2134; M.S. 1927 s. 2134.

One in adverse possession may acquire a tax certificate on sale of land for taxes, and may assign the same without breaking the continuity of his possession. *Rupley v Fraser*, 132 M 311, 156 NW 350.

Certificate issued at annual May sale may be assigned after notice of expiration of redemption. OAG Oct. 31, 1935 (425b-7).

280.09 FAILURE TO RECORD.

HISTORY. 1909 c. 340 s. 1; G.S. 1913 s. 2124; G.S. 1923 s. 2135; M.S. 1927 s. 2135.

280.10 PAYMENT OF SUBSEQUENT TAXES.

HISTORY. Ex. 1902 c. 2 s. 28; R.L. 1905 s. 934; G.S. 1913 s. 2125; G.S. 1923 s. 2136; 1925 c. 63; M.S. 1927 s. 2136; 1931 c. 412.

Laws 1891, Chapter 6, which requires under certain circumstances moneys paid by purchasers at tax sales to be refunded by the counties in which the lands are situated, is unconstitutional and void in so far as it relates to "school lands". *State v Bruce*, 50 M 491, 52 NW 970.

A judgment in a proceeding to enforce delinquent taxes on real estate is void where it is made to appear that, after the tax became delinquent and before the delinquent list was published, it was paid. *State ex rel v Erickson*, 147 M 453, 180 NW 544.

Discussion of the conditions relating to payment without interest under Laws 1929, Chapter 415, Section 4. *State ex rel v Erskine*, 178 M 404, 227 NW 209.

A purchaser of a state assignment certificate who pays taxes which are due but not delinquent at the time he acquires the certificate, is entitled to a lien for the amount expended. *Bratrud v Security Bank*, 203 M 463, 281 NW 809.

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REAL ESTATE TAX JUDGMENT SALES 280.11

Amount required to redeem from a state assignment certificate. 1942 OAG 346, June 29, 1942 (423-k).

Compromise of taxes, interest, and penalties after the period of redemption has elapsed. 18 MLR 850.

280.11 LANDS BID IN FOR STATE.

HISTORY. Ex. 1902 c. 2 s. 29; R.L. 1905 s. 935; G.S. 1923 s. 2126; G.S. 1923 s. 2137; M.S. 1927 s. 2137.

Certificate of assignment

1. An official deed
2. Contents
3. Who may take
4. Purchaser must pay subsequent delinquent taxes
5. Authority of auditor limited by statute
6. Extrinsic evidence
7. Judgment void; certificate void
8. Several parcels
9. Time of assignment

1. An official deed

The certificate of assignment is an official deed within the occupying claimant's act and should be executed by the auditor in his official capacity and sealed with his official seal. *Everett v Boyington*, 29 M 264, 13 NW 45; *Pfefferle v Wieland*, 55 M 202, 56 NW 824; *Oakland Cemetery v County of Ramsey*, 98 M 404, 108 NW 857, 109 NW 237; *Peterson v St. Paul Real Estate*, 115 M 333, 132 NW 273.

The city of Moorhead, under its home rule charter, has the power to buy the interest of the state in land bid in for it, and the county auditor has authority to issue the assignment. *Adams v Atkinson*, 212 M 131, 2 NW(2d) 818.

An Indian allotment was taxed by a county for a succession of years, in part before and in part after the expiration of the 25-year period during which the land was immune from taxation. The Indian then, being emancipated, voluntarily made a compromise with the county, paying less than the amount of the tax which had been laid after the 25-year period had elapsed. No money was recoverable by the government in a suit on behalf of the Indian. *County of Mahnomen v United States*, 319 US 474, 63 SC 1257.

Interest rate and time of commencement when computing the amount necessary to redeem. 1940 OAG 338, March 6, 1939 (412a-9).

Amount required to redeem from a state assignment certificate. 1942 OAG 346, June 29, 1942 (423-k).

Compromise of taxes, interest, and penalties after the period of redemption has elapsed. 18 MLR 850.

2. Contents

It need not recite that the purchaser has paid all subsequent delinquent taxes, penalties, costs and interest. *Pfefferle v Wieland*, 55 M 202, 56 NW 824.

Tax title held void for failure to include in the state assignment and notice the correct amount of delinquent taxes subsequent to those covered by the certificate. *Warroad v Hoyez*, 182 M 73, 233 NW 824.

3. Who may take

It is immaterial to the state who pays the amount so that it comes into the treasury. *State ex rel v McDonald*, 26 M 145, 1 NW 832.

No one but the federal government can question the right of a national bank to take an assignment. *Hennessy v City of St. Paul*, 54 M 219, 55 NW 1123.

Where delinquent taxes are paid and a receipt issued, one paying the tax cannot later have a receipt canceled and a state assignment certificate issued in place of it. OAG April 30, 1937 (407).

4. Purchaser must pay subsequent delinquent taxes

It is not necessary that the certificate state that the purchaser has paid said subsequent taxes. *Pfefferle v Wieland*, 55 M 202, 56 NW 824.

The purchaser must pay all taxes which have become delinquent since the land was bid in by the state and the penalties and costs with interest thereon at 12 per cent. *Berglund v Graves*, 72 M 148, 75 NW 118; *McLachlan v Carpenter*, 75 M 17, 77 NW 436; *Doherty v Real Estate Title*, 85 M 518, 89 NW 853; *Kimball v Marine Nat'l*, 112 M 450, 128 NW 678.

A person subsequently redeeming must pay interest on the interest paid by the assignee. *Berglund v Graves*, 72 M 148, 75 NW 118; *McLachlan v Carpenter*, 75 M 17, 77 NW 436.

The purchaser is not required to pay taxes due and unpaid unless they are delinquent. *Nat'l Bond v Board*, 91 M 63, 97 NW 413.

Discussion of the conditions relating to the payment without interest under Laws 1929, Chapter 415, Section 4. *State ex rel v Erskine*, 178 M 404, 227 NW 209.

5. Authority of auditor limited by statute

The authority of the auditor is strictly limited by the statute. He has no authority to make contracts for future purchases or to sell on credit for the whole or any part of the purchase price. *Pigott v O'Halloran*, 37 M 415, 35 NW 4; *Arnold v Co. of Cook*, 134 M 373, 159 NW 825.

Where the purchaser on Saturday gave his check to the county treasurer covering a state assignment certificate, and on Tuesday when the check was presented the bank was closed, the county auditor could cancel the assignment upon petition to the tax commissioner. OAG May 22, 1931.

6. Extrinsic evidence

Extrinsic evidence is admissible to prove when the certificate was delivered to the purchaser and when he paid the purchase money into the county treasury. *Pigott v O'Halloran*, 37 M 415, 35 NW 4.

The identity of the assignee under a state assignment certificate may be shown by extrinsic proof and same is valid. *Glaze v Stryker*, 135 M 186, 160 NW 490.

7. Judgment void; certificate void.

Where no certificate of sale has been issued to the state as was provided by Laws 1874, Chapter 1, Section 124 (now repealed), assignments do not raise a cloud on the title, there being no valid judgment. *Gilman v Van Brunt*, 29 M 271, 13 NW 125; *Blakeley v Mann*, 153 M 415, 190 NW 797.

8. Several parcels

Several parcels were bid in separately by the state. Held, under General Statutes 1894, Section 1601, that assignment certificates delivered by the state to a purchaser might include several parcels in one certificate. *McLeod v Matteson*, 99 M 46, 108 NW 290.

9. Time of assignment

An auditor can execute a certificate for lands sold at regular delinquent tax sale, and before proceedings to sell under sections 280.12 and 280.13 have been initiated in any one year. *State ex rel v Scott*, 105 M 69, 117 NW 417; *Swanson v Campbell*, 129 M 72, 151 NW 534; *Northern Counties v Excelsior Land*, 146 M 207, 178 NW 497.

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REAL ESTATE TAX JUDGMENT SALES 280.12

280.12 UNREDEEMED LANDS.

HISTORY. Ex. 1902 c. 2 ss. 52, 53; R.L. 1905 s. 936; 1907 c. 450; 1913 c. 74 s. 1; G.S. 1913 s. 2127; G.S. 1923 s. 2138; 1927 c. 363; M.S. 1927 s. 2138; 1929 c. 415 s. 1; 1931 c. 129 s. 3; 1935 c. 387 s. 1.

1. What law governs
2. Notice of sale
3. Redemption
4. Deed under prior laws

1. What law governs

Lands were sold for the delinquent taxes 1896 to 1905, inclusive, in November, 1906, at forfeited tax sale for an amount less than authorized by law and not authorized by the state auditor. After the right of redemption had been eliminated by notice, a governor's deed was executed. The sale and subsequent proceedings were governed by Revised Laws 1905, Sections 936 to 940 (now 280.12, 280.13, 280.25; 280.29, 280.33), and not by Ex. Laws 1902, Chapter 2. The tax deed was valid. *Hage v St. Paul Land & Mortgage Co.*, 107 M 350, 120 NW 298.

The legislature intended to make the lien under city of St. Paul assessments and state taxes equal, and abolish any priority between them, and sufficiently expressed that intention in the enactment. *Gould v City of St. Paul*, 110 M 324, 125 NW 273.

There is no real forfeiture for taxes in this state, and what is called forfeiture upon the expiration of three years from date of sale does not interrupt adverse possession. *Rupley v Fraser*, 132 M 311, 156 NW 350.

Failure of the county auditor to send to the state auditor a list of unredeemed lands in June of each year, as required by this section, does not prevent or defeat a sale. *In re Delinquent Taxes*, 145 M 117, 176 NW 183.

Laws 1929, Chapter 258, and Laws 1929, Chapter 415, do not contravene the provisions of the state constitution. The enactment of a subsequent statute which does not purport to amend or modify a prior one cannot render the prior statute unconstitutional if it was not so when it was enacted. *Lyman v Chase*, 178 M 244, 226 NW 633, 842.

Laws 1933, Chapter 414, Section 1, allowing a remission or discount to certain delinquent tax payers violates the provisions of Minnesota Constitution, Article 9, Section 1. *State ex rel v Luecke*, 194 M 246, 260 NW 206.

Laws 1931, Chapter 129, Section 3, is in force to the extent that it requires published notice of tax sale as provided. 1934 OAG 785, June 28, 1933 (425b).

Laws 1933, Chapter 414, Section 2, has no direct relation to the balance of the chapter, and does not change the basic laws. 1934 OAG 842, June 16, 1933 (425e-5).

Laws 1935, Chapter 387, are not invalid, and are intended to provide for an annual sale. 1936 OAG 361, June 18, 1935 (412a-27).

Laws 1935, Chapter 387, including application of credits are mandatory on the county auditor. 1936 OAG 362, Sept. 25, 1935 (21j).

A sawdust pile upon the land at the time of delinquency is personal property and is such on the date of the forfeiture. OAG July 7, 1939 (412a-24).

2. Notice of sale

This section is a revision and restatement of Ex. Laws 1902, Chapter 2, Section 52, and reference to "lands forfeited hereunder" in the notice for a forfeiture sale is in legal effect a reference to lands forfeited under Ex. Laws 1902, Chapter 2, Section 52. *Minn. Debenture v Scott*, 106 M 32, 119 NW 391.

Under General Statutes 1913, Section 2148 (281.13), when no one is in possession there must be a return of the sheriff to that effect as a prerequisite to the publication of the notice of expiration of the period of redemption from a tax sale; and under General Statutes 1913, Section 2168 (284.04), a tax claimant whose title is invalid because of a defective notice of expiration is not entitled to a lien for the costs incurred upon such notice. *Nichols v Crocker*, 133 M 153, 157 NW 1072.

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The statute does not require auditor to state date of notice. Error in date endorsed thereon not fatal. *Campbell v. Barry*, 152 M 13, 187 NW 967.

3. Redemption

Under Revised Laws 1905, Sections 936 to 940 (now, as amended, sections 280.12, 280.13, 280.25, 280.29, 280.33), lands bid in to the state and not assigned to purchasers within three years held subject to redemption, and on such redemption the person redeeming must pay the full consideration of the sale, but is entitled to a return from the state of the surplus above the amount due on it. *Minn. Debenture v Scott*, 106 M 32, 119 NW 391.

Notices of expiration of the time to redeem held void. *Laurier v Stilson*, 121 M 339, 141 NW 293; *Helmer v Shevlin-Mathieu*, 129 M 25, 151 NW 421.

The notice of expiration of the time for redemption from tax sales required to be given by Laws 1905, Chapter 270, must comply in substance with the form prescribed by Ex. Laws 1902, Chapter 2, Section 47; and to redeem from a tax sale made under Laws 1901, Chapter 339, the owner must pay the subsequent delinquent taxes paid by the purchaser, and a notice of expiration of the time for redemption which does not include such taxes so paid is fatally defective. *Burnside v Moore*, 124 M 321, 145 NW 27.

Where only reasonable inference that could be drawn from findings and conclusions of law was that failure to make service of notice of redemption from tax sale on all occupants of premises was fatal to the jurisdiction of the taxing authorities, and that rights of both the owner and mortgagee of the premises were prejudiced thereby, findings were sufficient to justify trial court in holding that title acquired by the state at tax forfeiture proceedings was invalid. *McHardy v State*, 215 M 132, 9 NW(2d) 427.

In an action by the United States on behalf of an emancipated Indian against a county to recover money paid as taxes on the Indian's non-taxable allotment, where the issue is whether the payment was voluntary, the burden of proving it involuntary is on the government. *Co. of Mahnomen v United States*, 319 US 479, 63 SC 1257.

Laws 1935, Chapter 387, Section 1, amending this section, provides that parcels bid in for the state for taxes prior to 1926, plus taxes for 1926 and subsequent years, may be disposed of at the August 1935 sale. 1936 OAG 397, July 11, 1935 (425c).

Applicability of discount rates to 1936 forfeited tax sale under provisions of Laws 1935, Chapter 387. 1936 OAG 406, June 15, 1936 (425c-2).

A person redeeming from a tax sale under Laws 1935, Chapter 387, must pay interest at ten per cent on four-fifths of the 1930 and 1931 taxes from June 30, 1936, and interest at eight per cent on four-fifths of the 1932, 1933, 1934 taxes from June 30, 1936. 1938 OAG 426, April 4, 1938 (425b-2).

4. Deed under prior laws

A tax title based on a later tax sale on an earlier tax lien may prevail over a title based on an earlier sale under a later lien. *Oakland Cemetery v Co. of Ramsey*, 98 M 404, 108 NW 857, 109 NW 237.

A tax deed for lands bid in for the state at a sale in 1901, which was executed in 1904 to a purchaser by the county auditor in accordance with General Statutes 1894, Sections 1616, 1617, is not void because it failed to conform with Ex. Laws 1902, Chapter 2, Sections 53, 54 (as amended, now sections 280.12, 280.13). *Stein v Hanson*, 99 M 387, 109 NW 821.

Where tax deed fails to show statutory requirements complied with, the deed is void. *Helmer v Shevlin-Mathieu*, 129 M 25, 151 NW 421.

The rule announced in *Bonham v Weymouth*, 39 M 92, 38 NW 805, applies to sales of lands forfeited to the state and governed by the provision "may be disposed of by the county auditor at public or private sale, as the auditor of state may direct, and subject to such rules and restrictions as he may prescribe." *Hasey v Dodge*, 131 M 468, 155 NW 640.

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REAL ESTATE TAX JUDGMENT SALES 280.13

280.13 UNREDEEMED LANDS.

HISTORY. Ex. 1902 c. 2 ss. 54, 57; R.L. 1905 s. 937; 1907 c. 430 s. 2; 1911 c. 30; 1913 c. 333 s. 1; G.S. 1913 s. 2128; 1917 c. 303; 1919 c. 337; 1921 c. 386 s. 1; 1923 s. 2139; 1925 c. 208 s. 1; 1927 c. 119 s. 1; M.S. 1927 s. 2139; 1929 c. 415 s. 2; 1931 c. 129 s. 1; 1933 c. 414 s. 1; 1935 c. 387 s. 2.

1. **Conduct of sale**
2. **Cash bids**
3. **Containing ditch liens or special assessments**
4. **Payment; certificates**

1. Conduct of sale

There is nothing in the transaction by which plaintiff acquired title to the land which prevents him from bringing this action to recover for timber cut and removed from the land. *Helmer v Shevlin-Mathieu*, 129 M 25, 151 NW 421.

The rule announced in *Bonham v Weymouth*, 39 M 92, 38 NW 805, applies to the conduct of sales under this section. *Hasey v Dodge*, 131 M 468, 155 NW 640.

The requirement that a list be transmitted by the county auditor hangs over from a time when the state auditor directed the sale, and gave notice of it, and might conduct it. Our present law requires the county auditor, in June each year to transmit to the state auditor a list of delinquent lands unredeemed. The fact that the list was not transmitted until July does not affect the validity of the sale. In *re Delinquent Taxes*. 145 M 117, 176 NW 183.

A wrong date in auditor's endorsement on tax sale certificate is immaterial. *Campbell v Barry*, 152 M 13, 187 NW 967.

Under General Statutes 1894, Section 1616, in forfeited tax proceedings, the state auditor was authorized to order and direct a sale of forfeited lands for less than the taxes, interest, and costs for which they were struck off to the state, including present due taxes, upon a showing that the land was of less value than the total taxes against the same. *Leach v Woodhill*, 156 M 73, 194 NW 104.

It is patent that the section allowing a discount or remission to a delinquent taxpayer differs radically from all previously enacted statutes of this general character. *State ex rel v Luecke*, 194 M 249, 260 NW 206.

A new theory, obviously intended to do away with the necessity of service of any notice of expiration of redemption by anyone, was adopted by Laws 1927, Chapter 119 (section 280.17). Under its provisions only taxes for the year 1926 and subsequent years were affected thereby, and all land thereafter sold at annual delinquent tax sales, whether to the state or a purchaser, upon expiration of five years from date of sale, was to become the absolute property of the purchaser, state or citizen. *State v Aitkin Co. Farm Land Co.* 204 M 503, 284 NW 63.

In recent years legislative enactments stand as a testimonial that after the tax burden exceeds the value and economic utility of the land, and demonstrate that state taxing divisions must be satisfied with less than full realization of tax delinquency. The manifest legislative policy is to accept a present loss in tax revenue to accomplish future betterment. *Fortman v City of Minneapolis*, 212 M 340, 4 NW(2d) 349.

Statutes relative to tax title proceedings which result in the owner's forfeiture of his property require a more strict construction than those relating to mortgage foreclosure proceedings, which involve merely a creditor's proceeding to recover a debt. *McHardy v State*, 215 M 132, 141, 146 (three cases), 9 NW(2d) 427, 432, 435.

There is no bidder within the meaning of Laws 1935, Chapter 387, if at any time after the sale opens a person appears who offers to purchase at the discount rates authorized by statute, unless there is then and there present another person who offers more. 1936 OAG 424, Aug. 5, 1935 (425c-2).

Resume of details regarding redemption and effect of Laws 1933, Chapter 414. 1934 OAG 842, June 16, 1933 (425e-5).

The county auditor should transmit to the state auditor and to the tax commissioner all lists required to be so transmitted by Laws 1931, Chapter 156, Section 6. 1936 OAG 403, Oct. 26, 1936 (412a-13).

Validity of tax bargain statutes. 18 MLR 851.

2. Cash bids

Purchaser of land held by state for taxes for years 1921 to 1925 may take an assignment for subsequent taxes including those for 1931 as to which there was no tax sale. 1934 OAG 785, June 28, 1933 (425b).

If there are no bidders under provisions of Laws 1933, Chapter 414, the property may be sold under the discount rates provided in subdivision 2 as amended. 1934 OAG 842, June 16, 1933 (425e-5).

"1930" appearing in Laws 1935, Chapter 387, Section 2, Subd. b, in the second paragraph, is intended to read "1926" and may be so construed. 1936 OAG 361, June 18, 1935 (412a-27).

Subject to the terms prescribed by Laws 1935, Chapter 387, Section 2, lands bid in for the state for taxes for 1926 and subsequent years can be disposed of and assigned separately. 1936 OAG 397, July 11, 1935 (425e).

The claim held by the state on account of costs incurred under Laws 1935, Chapter 278, is an interest in the parcel sold. That interest, as well as all other interests were disposed of under Laws 1933, Chapter 387. The state cannot require the purchaser on redemption to pay such costs. 1936 OAG 425, Aug. 3, 1935 (425e-3).

Laws 1935, Chapter 387, virtually authorizes two sales: first a sale of the state's interest in parcels of land on account of taxes for 1925 and prior years; secondly, a sale of the state's interest in parcels of land on account of taxes for 1926 and subsequent years. As to the first sale the minimum sale price is determined solely as to whether the oldest tax interest held by the state goes back to 1922 taxes, in which event the minimum rate for all taxes including 1925 is one-fifth; or goes only to 1923 or 1924, the minimum being one-third; or if 1925 tax only, minimum of one-half. When state's interest for prior taxes has been sold, the auditor may sell the parcel for 1926 tax plus subsequent charges attached. 1936 OAG 426, Sept. 25, 1935 (425e-2).

3. Containing ditch liens or special assessments

Under the provisions of Laws 1933, Chapter 407, in determining the 50 per cent of the taxes for the years 1926 and 1927 accrued against real estate at the date of the forfeiture to the state, the amount of the tax resulting from special assessments for local improvements is not to be excluded from the computation. *State ex rel v Monick*, 201 M 635, 277 NW 211.

Laws 1933, Chapter 414, makes no change in the manner of handling ditch liens and special assessments included in taxes for which parcels were sold in August 1933 at forfeited tax sale. 1934 OAG 842, June 16, 1933 (425e-5).

4. Payment; certificate

A state assignment certificate which actually included the delinquent taxes for the years 1922 to 1932, but which recited it was issued "for the years 1926" is fatally defective. *Bratrud v Security State*, 203 M 463, 281 NW 809.

The reason for the use of two certificates, one for the years prior to 1925 and the other for the years thereafter, may have resulted from the fact that the Minnesota statute applies different standards of value to compromises of taxes delinquent prior to 1925 and those delinquent thereafter. *Mahnomen County v United States*, 319 US 479, 63 SC 1257.

Notice of expiration of redemption must be served before state can own lands bid in for state taxes for 1926 and subsequent years. 1934 OAG 835, June 8, 1934 (423c).

Notice should be served so that the 12 months' redemption period would expire at the same time as the seven-year period allowed by Laws 1933, Chapter 414, for redemption or later. 1934 OAG 839, June 9, 1933 (419f-1).

Outline of the history and present practice of the requirements for the service of notices for expiration of redemption. 1938 OAG 401, May 6, 1938 (409a-1).

280.14 AMOUNT REQUIRED TO REDEEM IN CERTAIN CASES.

HISTORY. 1933 c. 414 s. 3; M. Supp. s. 2139-14.

The discounts prescribed and allowable under this section are not applicable to sales mentioned under section 280.13; but if there are no bidders for the amounts provided in this section the lands may be sold at discount rates provided in section 280.13, as amended by Laws 1933, Chapter 414, Section 1. This section does not allow the additional ten per cent in addition to allowance under Laws 1933, Chapter 414, Section 1. 1934 OAG 785, June 28, 1933 (425b).

Resume of sale of land for taxes. Effect of Laws 1933, Chapter 414. 1934 OAG 842, June 16, 1933 (425e-5).

Although Laws 1933, Chapter 414, is unconstitutional in part, yet all sales of land for taxes for 1925 and prior years, or proceedings for perfecting title based on the statute, are valid. OAG July 24, 1935 (425e-16).

Comparison of Laws 1931, Chapter 156, Laws 1933, Chapter 407, and Laws 1935, Chapter 386, and their effect on each other. 1936 OAG 403, Oct. 26, 1936 (412a-13).

280.15 UNREDEEMED LANDS.

HISTORY. 1931 c. 129 s. 2; 1933 c. 414 s. 1; M. Supp. s. 2139½.

Laws 1921, Chapter 129, and Laws 1933, Chapter 414, Section 1, are statutes allowing a remission or discount to a delinquent taxpayer and are so far invalid. These are not merely statutes permitting the state to satisfy at a discount and on a public sale a claim represented by a judgment which it holds or permitting the state to sell property which has been forfeited to it. *State ex rel v Luecke*, 194 M 246, 260 NW 206.

A state assignment certificate which actually included the delinquent taxes for the years 1922 to 1932, but which recited "for the years 1926", is fatally defective. *Bratrud v Security State*, 203 M 463, 287 NW 809.

Ordinances attempting to recoup losses of city on sewer and water improvements assessed against a parcel of land forfeited to the state, by imposing on the purchaser a connection fee equal to the unrealized portion of the assessment, are invalid. *Fortman v City of Minneapolis*, 212 M 340, 4 NW(2d) 349.

This section does not apply where 1925 taxes being delinquent are held by the state. OAG July 18, 1931.

Where land is not sold for delinquent taxes, owner cannot pay 1930 taxes at a discount rate. 1934 OAG 773 Dec. 29, 1934 (412a-28).

Where the state held land sold for the delinquent taxes for 1924, 1925, delinquent taxes for the years 1926 to 1931 may be included in the sale held the second Monday in August, 1933, even though no tax sale of the 1931. 1934 OAG 785, June 28, 1933 (425b).

Notice of expiration of redemption must be served before the state can own lands bid in for the state for taxes for 1926 and subsequent years. 1934 OAG 835, June 8, 1934 (423c).

The purchaser should serve notice of expiration of redemption so that the 12 months' redemption period will expire coincidentally with the seven-year period. 1934 OAG 839, June 9, 1933 (419f-1).

Conduct of sale and routine of redemption under Laws 1933, Chapter 414. 1934 OAG 842, June 16, 1933 (425e-5).

Laws 1935, Chapter 387, are mandatory as to the county auditor. 1936 OAG 362, Sept. 25, 1935 (21j).

To secure a discount all taxes must be paid. OAG June 15, 1934 (412a-5).

In construing Laws 1933, Chapter 414, the supreme court held the statute severable and only part of it was unconstitutional. 1936 OAG 411, July 24, 1935 (425e-16).

Tax sale; redemption; date of expiration; various years. 1936 OAG 419, July 6, 1935 (425b-5).

Validity of tax bargain statutes. 18 MLR 849, 855.

Constitutionality of "tax bargain" statutes. 19 MLR 715.

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280.16 REAL ESTATE TAX JUDGMENT SALES

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280.16 APPLICATION OF PART PAYMENTS.

HISTORY. 1935 c. 387 s. 4; M. Supp. s. 2139-29.

Moneys paid under Laws 1933, Chapter 414, may be used as credit to apply on state assessment certificates on the same land. 1936 OAG 361, June 18, 1935 (412a-27).

See as to the above. 1936 OAG 362, Sept. 25, 1935 (21j).

280.17 DELINQUENT TAXES FOR 1926.

HISTORY. 1927 c. 119 s. 2; M.S. 1927 s. 2139-1.

Laws 1933, Chapter 414, Section 1, differs in principle from this section based on Laws 1927, Section 2. The 1927 act concerns property owned by the state and is valid, while the 1933 enactment in effect allows a discount in the payment of taxes and is so far invalid. State ex rel v Luecke, 194 M 249, 260 NW 206.

The rights of a purchaser at a delinquent tax sale under Laws 1927, Chapter 119, were not extinguished by failure to record his certificate of tax sale within the statutory limit of time fixed under section 281.31, 281.32. Absetz v McClellan, 207 M 202, 290 NW 298.

280.19 TAX SALE FOR 1931 TAXES DEFERRED.

HISTORY. 1933 c. 98 s. 1; 1933 c. 337 s. 1; M. Supp. s. 2139-6.

Attachment cannot be made of rents until the premises are sold for delinquent taxes. OAG March 20, 1934.

Effect of Laws 1933, Chapter 337, on tax sales 1931, 1932. Form of notice suggested. 1938 OAG 415, July 15, 1938 (423c).

In notice of expiration of time for redemption from sale for 1932 taxes, unpaid 1931 taxes must be included. 1940 OAG 343, Aug. 4, 1939 (419f).

Laws 1935, Chapter 278, changed the time for redemption of land sold for 1931 taxes from 12 months to 60 days, and notices should read accordingly. OAG July 6, 1939 (419f-3).

280.20 MAY BE PAID IN INSTALMENTS.

HISTORY. 1933 c. 98 s. 2; 1933 c. 337 s. 2; M. Supp. s. 2139-7.

280.21 PENALTIES AND INTEREST.

HISTORY. 1933 c. 98 s. 3; 1933 c. 337 s. 3; M. Supp. s. 2139-8.

The amount needed to redeem the 1931 taxes unpaid to January 1, 1934, is the amount due on January 1, 1934, plus ten per cent penalty, plus ten per cent interest. OAG Aug. 29, 1934 (423c).

On 1931 delinquent taxes, sale being in 1935, interest at ten per cent applies to the included ditch assessment. OAG May 7, 1935 (412a-9).

See as to the amount necessary to redeem from the 1932 taxes. OAG July 15, 1938 (423c).

280.22 PERIOD OF REDEMPTION EXTENDED.

HISTORY. 1933 c. 414 s. 2; M. Supp. s. 2139-13.

In accepting payments of 1926 and subsequent taxes at a discount, the purchaser may include 1932 taxes though not delinquent. 1934 OAG 785, June 28, 1933 (425b).

Under Laws 1933, Chapter 366, in giving notice of time of expiration of redemption use form prescribed in section 281.13, but the period is one year in place of 60 days, and notice should not issue except to synchronize with the five or seven year period. 1934 OAG 833, March 1, 1934 (423c).

Notice of expiration of redemption must be served before state can own lands bid in for state for taxes for 1926 and subsequent years. 1934 OAG 835, June 8, 1934 (423c).

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A tract being held by the state for taxes of 1926 at the time of the enactment of Laws 1933, Chapter 414, and thereafter assigned to a purchaser, the notice should be served so that the 12 months' redemption period would expire at or after expiration of the seven-year period. 1934 OAG 839, June 9, 1933 (419f-1).

In order to terminate period of redemption in all cases, form provided in Laws 1933, Chapter 366, should be used. 1934 OAG 842, June 16, 1933 (425a-5).

Time when title passes to state; Laws 1933, Chapter 407. 1936 OAG 428, April 4, 1936 (425b).

280.23 PENALTIES AND INTEREST HERETOFORE PAID TO BE REFUNDED.

HISTORY. 1933 c. 98 s. 5; 1933 c. 337 s. 5; M. Supp. s. 2139-10.

Warrants refunding 1931 penalties are transferable. OAG Dec. 20, 1933.

Refund may be made of penalties on 1931 taxes but not on those of 1930. OAG Nov. 8, 1933.

280.24 "TAXES" INCLUDES ASSESSMENTS.

HISTORY. 1933 c. 98 s. 6; 1933 c. 337 s. 6; M. Supp. s. 2139-11.

280.25 PURCHASER TO RECEIVE DEED.

HISTORY. Ex. 1902 c. 2 s. 55; 1905 c. 211; R.L. 1905 s. 938; G.S. 1913 s. 2129; 1915 c. 332 s. 1; G.S. 1923 ss. 2140, 2142; M.S. 1927 ss. 2140, 2142.

A tax deed to lands forfeited to the state valid, though sale was for less than authorized by statute or by the state auditor. Hage v St. Paul Land Co. 107 M 350, 120 NW 298.

The governor's (now commissioner of taxation) deed and certificate of sale constitute evidence of title to lands forfeited to the state subject only to the defenses specified in section 280.25 to 280.33. Hage v St. Paul Land Co. 107 M 350, 120 NW 298; Johnson v Fraser, 112 M 126, 127 NW 474, 128 NW 676.

The legislature intended in enacting Laws 1905, Chapter 200, to make the lien for state taxes and the lien under special assessments originating in cities of the first class equal, abolishing any priority as between them. Gould v City of St. Paul, 110 M 324, 125 NW 273.

The governor's (now commissioner of taxation) deed to lands unredeemed and forfeited to the state, when valid upon its face, constitutes prima facie evidence of title in the grantee. Peterson v St. Paul Real Estate, 115 M 333, 132 NW 273.

Tax deed held void. Helmer v Shevlin, 129 M 25, 151 NW 421; Swanson v Campbell, 129 M 73, 151 NW 534; Arnold v County of Cook, 134 M 373, 159 NW 825.

Plaintiff wholly failed, in ejectment proceedings, his title being based upon tax proceedings, to show that the plat should be reformed so as to include lot 30. Rohm v Weiss, 190 M 508, 252 NW 432.

When state land sold under contract reverts to the state, the state has title free from taxes. The interest of the vendee having been extinguished, a tax title is likewise extinguished. 1934 OAG 845, Nov. 7, 1933 (414-3).

280.26 HOW AND WHEN PURCHASER TO GET DEED.

HISTORY. Ex. 1902 c. 2 s. 55; 1905 c. 211 s. 1; G.S. 1913 s. 2130; G.S. 1923 s. 2141; M.S. 1927 s. 2141.

Not having followed the statute, the tax deeds are void on their face. Helmer v Shevlin, 129 M 27, 151 NW 421; Swanson v Campbell, 129 M 73, 151 NW 534; Lovine v Goodridge, 130 M 202, 153 NW 517; Spear v Noonan, 131 M 332, 155 NW 107; Luck v Dixon, 132 M 144, 155 NW 1038.

A tax deed from the state does not require the great seal. OAG Sept. 1, 1939 (410).

280.27 APPLICATIONS FOR STATE TAX DEEDS.

HISTORY. 1915 c. 332 s. 2; G.S. 1923 s. 2143; 1927 c. 399; M.S. 1927 s. 2143.

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280.28 COUNTY AUDITOR TO COLLECT FEE.

HISTORY. 1915 c. 332 s. 3; G.S. 1923 s. 2144; M.S. 1927 s. 2144.

Fees of the county auditor under sections 272.46, 280.28, are controlled, in those counties affected by the act by Laws 1937, Chapter 491, Section 14. OAG July 20, 1939 (23d).

280.29 PROCEEDS OF SALE, HOW DISTRIBUTED.

HISTORY. Ex. 1902 c. 2 ss. 56, 57; R.L. 1905 s. 939; G.S. 1913 s. 2131; G.S. 1923 s. 2145; M.S. 1927 s. 2145.

280.33 CERTIFICATES AND DEEDS AS EVIDENCE; GROUNDS FOR SETTING ASIDE.

HISTORY. Ex. 1902 c. 2 s. 30; R.L. 1905 s. 940; 1911 c. 245 s. 1; G.S. 1913 s. 2132; G.S. 1923 s. 2146; M.S. 1927 s. 2146.

Certificate as evidence

1. Certificate of sale and assignment of same effect
2. Must be regular on face
3. Of title; preliminary proof necessary
4. Of regularity
5. Lost certificate
6. When more than one issued

Setting aside sales

1. For what may sales be set aside
2. What sales cannot be set aside

1. Certificate of sale and assignment of same effect

A form of certificate prescribed by the attorney general is held to be valid. *Minn. Debenture v Scott*, 106 M 32, 119 NW 391.

Proceedings affecting title to real estate in which the state may be joined as defendant listed and described. 1942 OAG 282, Nov. 12, 1942 (374g).

2. Must be regular on face

The certificate on its face disclosed an invalid sale, and was not prima facie evidence of title. *Farnham v Jones*, 32 M 7, 19 NW 83; *Brown v Setzer*, 39 M 317, 40 NW 70.

To have any force as evidence either of title or regularity the certificate must be regular on its face; that is, it must conform to the statute and disclose no invalidity in the proceedings. *Gilfillan v Hobart*, 35 M 185, 28 NW 222; *Sanborn v Mueller*, 38 M 27, 35 NW 666; *Vanderlinde v Canfield*, 40 M 541, 42 NW 538.

Resort to extrinsic evidence cannot be had for the purpose of determining whether the certificate is regular on its face. *Pfefferle v Wieland*, 55 M 202, 56 NW 824.

3. Of title; preliminary proof necessary

It is not necessary to prove that there has been no redemption. *Stewart v Colter*, 31 M 385, 18 NW 98.

Formerly it was necessary to prove a prior valid judgment authorizing the sale; and this is still necessary in proving title under sales prior to the present law. *Sanborn v Cooper*, 31 M 307, 17 NW 856; *Russell v Gilson*, 36 M 366, 31 NW 692.

To make a certificate prima facie evidence of title it is necessary to make preliminary proof that the period of redemption has expired. *Gaston v Merriam*, 33 M 271, 22 NW 614; *Nelson v Central Land*, 35 M 408, 29 NW 121; *State ex rel v Smith*, 36 M 452, 32 NW 174; *McLellan v Omodt*, 37 M 157, 33 NW 326; *Pigott v*

O'Halloran, 37 M 415, 35 NW 4; Jewell v Truhn, 38 M 433, 38 NW 106; Mueller v Jackson, 39 M 431, 40 NW 565; Gehr v Knight, 77 M 88, 79 NW 652.

It is not necessary to prove that the judgment remains unsatisfied. Kipp v Collins, 33 M 394, 23 NW 554.

Preliminary proof that the period of redemption has expired may be done by introducing in evidence the notice of expiration of redemption, the assessment roll for the proper year to show that the notice was addressed to and served upon the person in whose name the land was assessed at the time of the service, the officer's return or affidavit of service and the affidavit of publication, if any. Nelson v Central Land, 35 M 408, 29 NW 121; Mueller v Jackson, 39 M 431, 40 NW 565.

The auditor's certificate of no redemption is insufficient for the purpose. Jewell v Truhn, 38 M 433, 38 NW 106.

Strict proof must be made that the notice was served on the person in whose name the land was assessed at the time of the service. There is no presumption that the land continues to be assessed in the name of the same person and the court will take judicial notice that the land is assessed every even-numbered year. There is no presumption that the auditor inserted the right name in the notice. Hoyt v Chapin, 85 M 524, 89 NW 850; Sterling v Urquahart, 88 M 495, 93 NW 898.

4. Of regularity

Prior to Ex. Laws 1902, Chapter 2, Section 30, the certificate was evidence of regularity only as to the sale and not as to the proceedings prior to the sale. See General Statutes 1894, Section 1594. Sanborn v Cooper, 31 M 307, 17 NW 856; McNamara v Fink, 71 M 66, 73 NW 649.

Oral evidence is always admissible to rebut the presumption. Olson v Phillips, 80 M 339, 83 NW 189.

5. Lost certificate

The fact that a certificate is lost and its contents are proved by secondary evidence does not affect its force as prima facie evidence of title or regularity. Mitchell v McFarland, 47 M 535, 50 NW 610.

6. When more than one is issued

That two certificates are issued on the same sale does not affect their force as evidence. Bennett v Blatz, 44 M 56, 46 NW 319.

Setting aside sales

1. For what may sales be set aside

The sale may be set aside on any of the following grounds: that the judgment was void for want of jurisdiction in the court, or because of any other defect; and because separate tracts were sold in gross. German-American v White, 38 M 471, 38 NW 361; Kern v Clarke, 59 M 70, 60 NW 809; Cool v Kelly, 78 M 102, 80 NW 861; Chadbourne v Hartz, 93 M 233, 101 NW 68.

2. What sales cannot be set aside

In an early case it was held that where land was sold for taxes, any portion of the proceedings being illegal rendered the sale void. St. Anthony Falls v Greely, 11 M 321 (225).

The holding in St. Anthony Falls v Greely has been modified and at present the legality of the tax is determined by the judgment. A sale cannot be set aside for misrecitals in the certificate of sale, or for error in the name of the owner, or for any irregularity in the conduct of the sale, except that the land was not sold to the person making the best offer in accordance with the statute. Cook v Schroeder, 85 M 374, 88 NW 971.

A valid tax assignment certificate must show land was bid in for the state. Donaldson v Sache, 121 M 367, 141 NW 493; Arnold v Cook, 134 M 373, 159 NW 825.

Tax certificate prima facie evidence as to assessment, judgment sale and "of title in the grantee therein after the time for redemption has expired". *Deaver v Napier*, 139 M 219, 166 NW 187.

Actions against the State. 1942 OAG 282, Nov. 12, 1942 (374g).

280.34 ACTION TO SET ASIDE.

HISTORY. Ex. 1902 c. 2 s. 30; R.L. 1905 s. 941; G.S. 1913 s. 2133; G.S. 1923 s. 2147; M.S. 1927 s. 2147.

1. **History of legislation**
2. **Actions to set aside sales; three-year limitation**
3. **What law governs**
4. **Owner in possession never forced to bring action**

1. History of legislation

Laws 1874, Chapter 1, Section 125, provided "no sale shall be set aside or held invalid unless the action in which the validity of the sale shall be called in question be brought, or the defense alleging its invalidity be interposed within three years from the date of the sale." Laws 1875, Chapter 5, Section 30, changed the limitation to five years. Laws 1878, Chapter 1, Section 85, changed the limitation back to three years. Laws 1887, Chapters 60, 127, repealed all limitations to set aside a sale or "to test the validity of the tax sale or judgment". Laws 1897, Chapter 266, revived the three-year limitation as to defenses, and the law so remained until the adoption of the tax code, and under the provisions of Ex. Laws 1902, Chapter 2, Section 30, the old three-year limitation was adopted reviving the old 1874 limitation. These enactments were not retroactive. *O'Mulcahy v Florer*, 27 M 449, 8 NW 166; *Bowes v O'Donnall*, 29 M 135, 12 NW 352; *Security v Buckler*, 72 M 251, 75 NW 107; *London v Gibson*, 77 M 394, 80 NW 205, 777; *Henningsen v City of Stillwater*, 81 M 215, 83 NW 983.

2. Actions to set aside sales; three-year limitation

The statute does not run if the certificate is void on its face. *Sherry v Hinds*, 27 M 259, 6 NW 781; *Farnham v Jones*, 32 M 7, 19 NW 83; *Vanderlinde v Canfield*, 40 M 541, 42 NW 538; *Wilkins v City of St. Paul*, 82 M 273, 84 NW 1009; *Babcock v Johnson*, 108 M 217, 121 NW 909.

The statute does not run if the judgment is void. *Sanborn v Cooper*, 31 M 307, 17 NW 856; *Feller v Clark*, 36 M 338, 31 NW 175; *Russell v Gilson*, 36 M 366, 31 NW 692; *Kipp v Fernhold*, 37 M 132, 33 NW 697; *Knight v Alexander*, 38 M 384, 37 NW 799; *Smith v Kipp*, 49 M 119, 51 NW 656; *Whitney v Wegler*, 54 M 235, 55 NW 927; *Holmes v Laughren*, 97 M 83, 105 NW 558.

The statute is of little value as a protection to tax titles (see dissenting opinion). *Sanborn v Cooper*, 31 M 307, 17 NW 856.

There must be such a sale as the statute contemplates. *Burdick v Bingham*, 38 M 482, 38 NW 489.

To set the statute running there must be a sale in fact. *Whitney v Wegler*, 54 M 235, 55 NW 927.

The statute applies to a particular remedy. *London v Gibson*, 77 M 394, 80 NW 205, 777; *Henningsen v City of Stillwater*, 81 M 215, 83 NW 983.

If a complaint in an action to set aside a sale shows on its face that the statute has run, it is demurrable even if the judgment is in fact void. *London v Gibson*, 77 M 394, 80 NW 205, 777; *Henningsen v City of Stillwater*, 81 M 215, 83 NW 983.

3. What law governs

While it is the general rule that the statute in force at the date of the sale governs, *O'Mulcahy v Florer*, 27 M 449, 8 NW 166; *Bowes v O'Donnall*, 29 M 135, 12 NW 352; *London v Gibson*, 77 M 394, 80 NW 205, 777; the legislature may repeal the statute before the limitation has run, *Lambert v Slingerland*, 25 M 457;

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and the legislature may revive a cause of action barred by the statute, *Kipp v Johnson*, 31 M 360, 17 NW 957; *O'Connor v Finnegan*, 60 M 455, 62 NW 618.

4. Owner in possession never forced to bring action

The legislature has no power to pass a law compelling an owner in full enjoyment of his rights, in possession actively or constructively, to bring an action within a certain time to contest an outstanding tax title, or be forever barred from contesting it in any form of action. *Baker v Kelley*, 11 M 480 (358); *Sanborn v Petter*, 35 M 449, 29 NW 64; *Feller v Clark*, 36 M 338, 31 NW 175; *Burk v Western Land*, 40 M 506, 42 NW 479; *Taylor v Winona & St. Peter*, 45 M 66, 47 NW 453; *Russell v Akeley*, 45 M 376, 48 NW 3; *Hayes v Carroll*, 74 M 134, 76 NW 1017.

The legislature may enact a law depriving the owner of a particular remedy as against a tax title unless he takes affirmative action within a certain time. *Hill v Lund*, 13 M 451 (419); *Kipp v Johnson*, 31 M 360, 17 NW 957; *Whitney v Wegler*, 54 M 235, 55 NW 927; *London v Gibson*, 77 M 394, 80 NW 205, 777; *Henningesen v City of Stillwater*, 81 M 215, 83 NW 983; *State ex rel v Westfall*, 85 M 437, 89 NW 175.

The limitation prescribed in this section does not begin to run until 60 days after a valid notice of the expiration of the time of redemption has been served. *Glazé v Stryker*, 135 M 186, 160 NW 490.

In tax title cases the limitation statute is held not to begin to run unless there is a valid judgment upon which a title may be based. *Lindquist v Agre*, 155 M 20, 191 NW 1011.

280.35 INVALID CERTIFICATE.

HISTORY. Ex. 1902 c. 2 s. 31; R.L. 1905^{s.} 942; G.S. 1913 s. 2134; G.S. 1923 s. 2148; M.S. 1927 s. 2148.

Our present statute was borrowed from Indiana.

Report of tax commission, 1902, p. 31.

A similar lien was provided by Laws 1860, Chapter 1, Section 99. *O'Mulcahy v Florer*, 27 M 449, 8 NW 166.

By laws 1862, Chapter 4, Section 8. *Webb v Bidwell*, 15 M 479 (394).

By General Statutes 1866, Chapter 11, Section 142. *Howes v Gillett*, 23 M 231; *Barber v Evans*, 27 M 92, 6 NW 445.

By Laws 1874, Chapter 1, Section 138. *Brown v Corbin*, 40 M 508, 42 NW 481.

By Laws 1874, Chapter 2, Section 28. *Pfefferle v Wieland*, 55 M 202, 56 NW 824.

Except as expressly authorized by statute, the purchaser at the annual delinquent sale or of a state assignment, has no lien on the land for the purchase money or for subsequent taxes paid by him which he may enforce, in case his title fails. *Barber v Evans*, 27 M 92, 6 NW 445; *Burdick v Bingham*, 38 M 482, 38 NW 489; *Pfefferle v Wieland*, 55 M 202, 56 NW 824; *Lewis v Knowlton*, 84 M 53, 86 NW 875.

The holder of the state's lien for taxes, acquired by purchase of the real estate at a void sale, cannot, independent of the "occupying claimant law" defend his possession of the real estate upon the lien, even though he enter with acquiescence of the owner. His rights are not like those of a mortgagee in possession. *Taylor v Slingerland*, 39 M 470, 40 NW 575.

This statute has no application to a certificate under a judgment rendered prior to the passage of the act; nor to a case where such certificate has not been declared invalid. *Byers v Minn. Commercial*, 118 M 266, 136 NW 880.

The perpetual lien created by Revised Laws 1905, Section 975; (section 272.31), where for any cause the title held by a purchaser at the tax sale proves invalid, is by force of Revised Laws 1905, Section 942 (280.35), transferred to the tax title holder, and he may enforce the same, notwithstanding his failure to perfect title under Laws 1905, Chapter 271. Distinguishing *Byers v Minnesota Commercial*, 118 M 266, 136 NW 880. *Downing v Lucy*, 121 M 301, 141 NW 183.

Laws 1902, Chapter 2, made radical changes in our tax laws, and among those changes, gave the certificate holder two remedies to protect his rights:

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(1) to perfect title by service of notice to redeem; and (2) when the title for any reason fails, to enforce the tax lien. *Culligan v Cosmopolitan*, 126 M 218, 148 NW 273.

Purchaser succeeds to the lien of the state and his contract may not be destroyed by subsequent legislation. *Blakely v Mann*, 153 M 415, 190 NW 797.

Failure to give notice and to file, within the time provided, operates to extinguish the lien for taxes included in the certificate, and for subsequent taxes paid by the holder of the tax title. The statutes are statutes of limitation, provide a reasonable time for giving notice, and recording the certificate, and are not unconstitutional as impairing vested rights. *Hutchinson v Child*, 164 M 195, 204 NW 648.

The doctrine of caveat emptor applies to a purchaser at a tax sale, and to recover money paid he must rely on section 283.01. *Wellcome v County of Marshall*, 174 M 431, 219 NW 545.

Holder of invalid tax title is entitled to lien for all subsequent taxes, penalties, interest, and costs paid by him, even though a part thereof was covered by an assignment certificate which he had surrendered for cancelation, assuming that he had acquired title under his prior certificate. *Warroad v Hoyez*, 182 M 73, 233 NW 824.

Following *State ex rel v Moeller*, 189 M 412, 249 NW 330, and *Blaisdell v Home*, 189 M 422, 249 NW 334, 893, affirmed 290 US 398. Laws 1933, Chapter 366, is held constitutional. *State ex rel v Erickson*, 191 M 188, 253 NW 529.

280.36 REIMBURSEMENT TO TAX SALE PURCHASER WHERE NOTICE OF SALE INVALID; LIMITATION; REASSESSMENT.

HISTORY. Ex. 1937 c. 61; M. Supp. s. 2148-1.

280.37 ENDORSEMENT BEFORE RECORD.

HISTORY. Ex. 1902 c. 2 s. 33; R.L. 1905 s. 943; G.S. 1913 s. 2135; G.S. 1923 s. 2149; M.S. 1927 s. 2149.

Endorsement is not necessary to make the certificate prima facie evidence. *Stewart v Colter*, 31 M 385, 18 NW 98; *Campbell v Barry*, 152 M 16, 187 NW 967; *State ex rel v Erickson*, 191 M 188, 253 NW 529.

It is insufficient in itself to prove that notice of expiration of redemption has been served. *Jewell v Truhn*, 38 M 433, 38 NW 106; *Deaver v Napier*, 139 M 219, 166 NW 187; *Northern Counties v Excelsior*, 146 M 207, 178 NW 497.

Moratory legislation for the relief of delinquent taxpayers. 18 MLR 595.

280.38 LANDS BID IN FOR THE STATE; ATTACHMENTS.

HISTORY. R.S. 1851 c. 9; P.S. 1858 c. 7; 1860 c. 1; 1861 c. 1; G.S. 1866 c. 11; 1874 c. 1; 1877 c. 79; 1878 c. 1 ss. 94, 95; G.S. 1878 c. 11 ss. 94, 95; 1885 c. 2 s. 19; G.S. 1894 ss. 1606, 1608; R.L. 1905 s. 944; G.S. 1913 s. 2136; G.S. 1923 s. 2150; M.S. 1927 s. 2150; 1929 c. 266 s. 1; 1935 c. 246 s. 1.

A tax title based on a later tax sale or an earlier tax lien may prevail over a tax title based on an earlier sale under a later lien. *Oakland Cemetery v Co. of Ramsey*, 98 M 404, 108 NW 857, 109 NW 237.

A county auditor has authority under section 280.11 to execute a state assignment certificate for lands sold at regular delinquent tax sale after more than three years have elapsed from the date of the tax sale, and before proceedings to sell under sections 280.12 and 280.13, have been initiated in any one year. *State ex rel v Scott*, 105 M 69, 117 NW 417.

Where tax title held void for failure to comply with statute requiring inclusion in notice of amount required to redeem or correct amount of delinquent taxes subsequent to those covered by the certificate, the holder is entitled to lien for all subsequent taxes, penalties, and similar. *Warroad v Hoyez*, 182 M 73, 233 NW 824.

Laws 1933, Chapter 414, Section 1, differ from previously enacted statutes except Laws 1931, Chapter 129, Section 2. *State ex rel v Luecke*, 194 M 249, 256, 260 NW 206.

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This section does not contravene the provisions of Minnesota Constitution, Article 3, Section 1, nor is the statute impracticable of enforcement. In re Delinquent Taxes, 197 M 266, 266 NW 867.

County auditor may lease land bid in by state where state is about to acquire title thereto. 1934 OAG 776, Feb. 28, 1933 (21f).

The county cannot take possession and sell the rights of user in tax delinquent lands where time to redeem has not expired and lands have not been rented. 1934 OAG 778, July 29, 1933 (474b-4).

The fact that taxes are delinquent does not, except in certain cases, give to any state official authority to rent the lands. 1934 OAG 781, July 5, 1934 (412a-11).

"Rent" as used in this section includes owner's share of crops. 1934 OAG 840, Aug. 8, 1933 (412a-25).

Resume of laws relating to authority to sell or lease state lands acquired for taxes. 1934 OAG 843, Aug. 12, 1933 (425g).

Where default having been made by a purchaser, the state reoffered the trust fund land without obtaining a purchaser, the fact that the defaulting purchaser failed to pay the current taxes gave the county officials no authority to rent. 1936 OAG 332, July 23, 1936 (700d-18).

County auditor cannot legally rent tax delinquent land under jurisdiction of the federal bankruptcy court unless authority is granted by the federal court. 1936 OAG 336, Aug. 1, 1935 (21j).

Crops attached are to be sold under court order. 1936 OAG 359, Aug. 18, 1936 (412a-24).

Expiration of time for redemption before removal of crops will not deprive the state of its rights where owner's share has been attached under the provisions of this section. 1936 OAG 360, May 7, 1936 (474b-3).

The authority of a court commissioner under Laws 1935, Chapter 246, is limited, and he has no authority to approve leasing of tax-delinquent lands. 1938 OAG 170, Aug. 2, 1937 (128b).

The validity of a lease is questionable until approved by the court. Procedure in case of a new lease to a new tenant. 1940 OAG 337, Nov. 8, 1939 (412a-25).

280.385 ACQUISITION OF IMPROVED LANDS BEFORE FORFEITURE.

HISTORY. 1943 c. 327 ss. 1, 2, 3.

280.39 DELINQUENT TAXES MAY BE PAID IN INVERSE ORDER.

HISTORY. 1941 c. 97 s. 1.

280.40 TAXES COLLECTED BY SHERIFF APPLIED IN INVERSE ORDER.

HISTORY. 1941 c. 97 s. 2.