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**TAX TITLES IN FLORIDA**

WILLIAM EARL THOMPSON

It is with considerable caution that one approaches a discussion of tax titles in Florida. This article is the result of a request for a simple and practical discussion of fundamentals that will aid in the day-to-day problems of the title examiner, and it is submitted with the hope that it may serve some useful purpose for those who must daily interpret the status of land titles based upon tax proceedings.

The subject is of interest throughout Florida because in every section there are many valuable improvements on lands that have passed through tax proceedings divesting the title of the former owners and other persons interested in the lands; in some sections of the state probably more than fifty percent of the titles to land are "tax titles." This is particularly true where the widespread use of in rem foreclosure proceedings by municipalities has occurred.

This article is primarily concerned with the ultimate title that passes and will not discuss the basic ad valorem tax assessment procedure except when necessary to interpret some question requiring an examination of the underlying tax procedure.

The whole field of tax titles may roughly be divided into three parts. The first is the statutory, or administrative, tax deed; the second is the title arising through equitable foreclosure proceedings; and the third is the title based upon statutory forfeiture. Each of these sources of tax titles involves different laws, different procedures, and different principles of law.

**CONSTITUTIONAL BACKGROUND\***

The oldest type of tax title is the statutory, or administrative, tax deed, the foundation of which is Chapter 3681 of Florida Laws 1887. This statute was one of the first passed by the Legislature under our current Constitution, adopted in 1885 and effective January 1, 1887.

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\*A table of headings and subheadings is appended at the end of this article.

Many of the provisions of our assessing and collecting laws are identical with those of this original act. The basis of our tax laws is found in Article IX of the Constitution. Section 1, as amended in 1944, provides:

“The Legislature shall provide for a uniform and equal rate of taxation, except that it may provide for special rate or rates on intangible property, but such special rate or rates shall not exceed two mills on the dollar of the assessed valuation of such intangible property . . . . The special rate or rates, or the taxes collected therefrom, may be apportioned by the Legislature, and shall be exclusive of all other State, County, District and municipal taxes; and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, education, literary, scientific, religious or charitable purposes.”

Section 2 forbids the state to levy any ad valorem tax on real or personal property other than intangibles after the close of 1940. Section 5 provides:

“The Legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes, and all property shall be taxed upon the principles established for State taxation. But the cities and incorporated towns shall make their own assessments for municipal purposes upon the property within their limits. The Legislature may also provide for levying a special capitation tax, and a tax on licenses. But the capitation tax shall not exceed one dollar a year and shall be applied exclusively to common school purposes.”

Pursuant to the command of the Constitution the Legislature enacted, in Chapter 3681, a comprehensive plan of procedure covering the entire field of assessing, levying, and collecting ad valorem taxes. This plan has been modified or changed from session to session, but most of the material changes have involved either the enforcement procedure or the period within which the owner or other persons interested in the land can redeem it after defaulting in the payment of taxes levied and assessed.

A comprehensive review of the ebb and flow of assessing and collecting procedures since the original act would unduly delay discussion of our principal objective, and we must therefore limit the consideration of historical background to a few essential comments. There have been few sessions of our Legislature at which some amendment, change, or repeal of the tax laws has not occurred. Examination of current statutes alone is not enough in this field; the specific provisions of each act become material when we realize that each tax title must be evaluated in the light of the statutory and judicial law existing at the date of the creation of that particular title, regardless of subsequent changes.<sup>1</sup>

#### HISTORICAL SUMMARY

A historical appraisal of the many changes in our tax laws furnishes the key, in some respects, to the economic ups and downs of the people. During the period from the effective date of the present Constitution to the early 'twenties our tax structure was relatively simple, as one would expect in a state largely rural and agricultural; but the tremendous economic upheaval commonly known as the "Florida Boom," which began its collapse in 1925, brought in its wake many severe tax problems. Through bond issues, special assessments, special taxing districts, and other governmental activities concerned with the industrial development, subdivision, and improvement of real estate, and with the growth of cities, our realty ad valorem tax structure was saddled with so many burdens that disastrous consequences resulted to owners, mortgagees, and others having interests in land. These consequences might have been less severe had they not struck in the depression years of the 'thirties, when thousands of landowners were financially unable to pay current ad valorem taxes, much less to pay off and discharge assessments and levies that in many instances actually exceeded the value of the land. Out of this unfortunate situation the widespread ownership of land under tax titles inevitably arose.

In past years there has been a reluctance on the part of investors, title assuring agencies, and lawyers to accept and approve titles to land based upon tax proceedings. This attitude has arisen out of

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<sup>1</sup>Clark v. Cochran, 79 Fla. 788, 85 So. 250 (1920) (rights under a tax certificate are determined by laws in force at time of its acquisition; deed issued thereupon confers only such rights upon vendee or holder as applicable statute in force at that time confers).

the complex structure of our tax laws and the consistent attitude of the Supreme Court of Florida requiring careful tracking of the law whenever the judiciary has to pass on the validity of a tax deed. Most of the cases holding a tax deed invalid involve some hardship on the former owner of the land, and the Court has been diligent in striking down the deed under such circumstances. A reasonably safe field of operation exists, however, in connection with all types of titles based on tax proceedings, as our discussion of each separate type or class of tax title demonstrates.

Since 1925 the Legislature has wrestled with the problem of collecting the delinquent revenue and has offered one inducement after another to owners and interested persons to redeem the land. It has reduced interest rates on delinquent taxes, authorized delinquent tax adjustment boards in each county, provided for the sale of state-held delinquent tax sale certificates at public outcry to the highest and best bidder for cash, and in numerous other ways offered inducements to the owner and other persons interested in the land to liquidate the delinquent taxes.<sup>2</sup>

None of these very tempting offers to delinquent taxpayers seemed to work completely; and finally the fundamental philosophy of the Murphy Act became operative on June 9, 1939, whereby the title to all lands upon which the state held tax sale certificates that were two years old on the effective date of the act was declared vested in the state. This wise measure liquidated the delinquent tax liens that had attached to lands through the year 1934 and, in a few instances, in 1935 if the tax sales had been made and certificates issued prior to June 9. The act created many problems, however, connected with liens of other taxing districts, special assessment districts, and individually owned state and county tax sale certificates. Several of these have been solved by the construction placed on this statute by the Supreme Court, but some we still have with us, as pointed out in our discussion of this type of title.

Chapter 22079 of Florida Laws 1943 finally created a stable, cer-

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<sup>2</sup>Starting with the earliest, the major statutes are: Fla. Laws 1919, c. 7806 (reduction of interest rates); Fla. Laws 1929, c. 14572 (sale of certificates at public outcry, whereat owner may purchase); Fla. Laws 1931, c. 15791 (Gomez Law—reduction of interest and installment payments); Fla. Laws 1933, c. 16252 (Futch Bill—extension of time to pay taxes, reduction in interest, and permission to use bonds at face value to pay taxes); Fla. Laws 1935, c. 17406 (delinquent tax adjustment boards); Fla. Laws 1937, c. 18296 (Murphy Act—sale of tax sale certificates to highest bidder, including owner; delinquent tax adjustment boards).

tain, and satisfactory solution of the delinquent tax problem as far as state and county taxes are concerned. This statute was designed to create a marketable title to lands against which tax proceedings were necessary because of nonpayment of taxes; the details of its operation are discussed later. At this point we need only state that the law has been well received by the people of this state; that it is fair and just to the delinquent taxpayer; and that it has eliminated a backlog of delinquent taxes, thereby producing an appreciation in the value of all lands subject to taxation.

Under the 1943 act, which is in effect today, all tax liens and assessments of every district having authority to tax the land in question, as well as all private interests, are cut off; and the taxing districts are restricted to the "one-pot" resulting from sale of the land by the county. This statute was the first to effect a complete liquidation of delinquent taxes and assessments of all taxing districts. When the land is bid off at the sale by the clerk, the high bidder is required to concern himself solely with taxes and assessments of the future. If in the future the Legislature of the State of Florida through a tender consideration for the delinquent taxpayer substantially modifies or repeals this law, such action will be a distinctly backward step that will not be for the economic good of the citizens.

#### PART I — STATUTORY, OR ADMINISTRATIVE, TAX DEEDS

Although the statutory, or administrative, tax deed is the oldest type of tax title, it is generally considered the most vulnerable to attack. The members of our bar have always been reluctant to approve, as merchantable, a title based upon a statutory tax deed; and only quite recently have title insurance companies agreed to insure such a title. Even then the companies in most instances require appropriate proof, in the form of affidavits from the owners and other responsible parties, that the land has been in the actual, adverse possession of the tax deed holder or those claiming under him for the statutory period of seven years. It would seem that such suspicions and doubts are without reasonable foundation if an examination of the records shows that the taxing authorities have complied with all of those requirements of the tax laws that are considered "jurisdictional." One must nevertheless exercise a great degree of caution in deciding what steps may safely be regarded as merely directory, for in a hard case the bench may well make a fine distinction and strike down the tax deed as a nullity.

*A Valid Assessment*

The foundation of every title based upon tax proceedings is a valid assessment. "A valid assessment of lands is an essential foundation to proceedings to subject them to sale for non-payment of taxes,"<sup>3</sup> and a sale without such assessment is a nullity. We must therefore determine at the very beginning of our consideration of statutory tax deeds the fundamental requirements of a valid assessment. The essentials of a valid assessment have changed through the years, and the Legislature has attempted from time to time to dispense with objections arising from mistakes of taxing officials.

The earliest of the broad statutory provisions designed to obviate the effects of mistakes by taxing officials was enacted in 1925:<sup>4</sup>

"All taxes imposed pursuant to the constitution and the laws of this state shall be a first lien superior to all other liens on any property against which such taxes have been assessed which shall continue in full force and effect until discharged by payment, and no act of omission or commission on the part of any tax assessor, or any assistant tax assessor, or any tax collector, or any board of county commissioners, or any clerk of the circuit court or any officer of this state, or any newspaper in which any advertisement of sale may be published, shall operate to defeat the payment of said taxes; but any such acts of omission or commission may be corrected at any time by the officer or party responsible for the same in like manner as is now or may hereafter be provided by law for performing such acts in the first place, and when so corrected they shall be construed as valid ab initio and shall in no way affect any process by law for the enforcement of the collection of any such tax."

The original act is limited to errors of omission or commission on the part of taxing officials in connection with the levying and enforcement of taxes on lands, but the current provision specifies:<sup>5</sup>

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<sup>3</sup>McKeown v. Collins, 38 Fla. 276, 284, 21 So. 103, 105 (1896).

<sup>4</sup>FLA. STAT. §192.21 (1951), enacted in substantially this form as Fla. Laws 1925, c. 10040; carried forward as FLA. COMP. GEN. LAWS §894 (Perm. Supp. 1936), as amended, Fla. Laws 1929, c. 14572, §1; Fla. Laws 1935, c. 17442; Fla. Laws 1941, c. 20722, §§57, 58; Fla. Laws 1943, c. 22079, §1.

<sup>5</sup>*Ibid.*

“. . . no sale or conveyance of real or personal property for non-payment of taxes shall be held invalid except upon proof that the property was not subject to taxation, or that the taxes had been paid prior to sale, or that the property had been redeemed prior to the execution and delivery of deed based upon certificate issued for nonpayment of taxes.”

The Supreme Court has construed the scope and effect of this statute in several cases, commencing with *State ex rel. Ranger Realty Co. v. Lummus*.<sup>6</sup> Through these decisions we are able to arrive at a conclusion as to how far a “voidable” tax assessment may be corrected by the taxing officials making such assessments.

The *Ranger Realty* opinion states:<sup>7</sup>

“The effect of the statutes of this State authorizing, and indeed requiring, tax officials to correct errors in procedure and errors in their records, with reference to matters leading up to the issuance of tax sale certificates, is in legal substance nothing more than the exercise of the same power that the Legislature frequently exercised in electing to reassess and resell taxable lands for a prior omitted tax, — a procedure which in this State is expressly authorized to be pursued when taxable property has been entirely omitted from any attempt to tax it all . . . . The Legislature has ample power to thus provide for the correction and validation of defective tax proceedings so as to give validity and effective operation to the system which the State has provided for the raising of revenue, as well as to carry out the constitutional mandate that none shall escape from his fair share of taxation through design nor neglect of tax officials.”

The key to the situation becomes, therefore: What could the Legislature have originally dispensed with in connection with the assessment and collection of taxes and have cured by validating legislation? In the *Ranger Realty* case the following acts were required to be done by the taxing officials:

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<sup>6</sup>11 Fla. 746, 149 So. 650 (1933). See also *Rio Vista Hotel & Improvement Co. v. Belle Mead Devel. Corp.*, 132 Fla. 88, 182 So. 417 (1937), *cert. denied*, 305 U.S. 655 (1938); *Tindel v. Griffin*, 157 Fla. 156, 25 So.2d 200 (1946); *Fort Myers v. Heitman*, 148 Fla. 432, 4 So.2d 871 (1941); *Overstreet v. Gordon*, 121 Fla. 180, 163 So. 477 (1935).

<sup>7</sup>11 Fla. 746, 752, 149 So. 650, 652 (1933).

- (1) that the aggregate amount of taxes assessed against the land be shown opposite its description;
- (2) that the word "unknown" be entered, opposite the description, where a blank appeared in the assessment roll;
- (3) that the plat book and page to which such description refers be entered;
- (4) that the tax collector sign the tax sale certificate in the appropriate place instead of using a rubber stamp;
- (5) that the clerk of the circuit court file in his office a copy of the newspaper containing publication of the notice of tax sale;
- (6) that the publisher of the newspaper file an affidavit showing due publication of the tax sale notice on certain specific dates.

The performance of these acts was required by writ of mandamus, which issues in only those instances in which there is a clear legal duty on the part of the official to perform the act directed. The writ in the *Ranger Realty* case was granted in order to perfect the assessment and collection procedure in connection with an application for the issuance of a tax deed, after the clerk of the circuit court had been enjoined from issuing such deed because of the defects that the relator wished to have corrected.

*Overstreet v. Gordon*<sup>8</sup> involved the designation of a newspaper in which the tax sales list was published. The county commissioners, at their first regular meeting in 1931, selected *two* newspapers for the publication of the delinquent tax sales list for that year. The plaintiff brought an action in ejectment based upon a tax deed issued to him, and the delinquent property owner defended on the ground that the deed was void. The lower court directed a verdict for the plaintiff in view of the statutory limitation of available defenses, and in affirming the Supreme Court observed:<sup>9</sup>

"The policy of Chapter 14572, particularly Section 1 thereof, was to abolish purely formal defenses against the validity of tax deeds, *whether issued pursuant to administrative proceedings or not*. The statute applies to all classes of tax deeds when judicially attacked in any case wherein it is made to appear that a valid tax deed could have been lawfully issued against the delinquent lands described in such tax deeds had

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<sup>8</sup>121 Fla. 180, 163 So. 477 (1935).

<sup>9</sup>*Id.* at 183, 163 So. at 478. Italics supplied.

the merely procedural misprisions of the tax officers (such as designating the official tax sale newspapers and the like) not occurred and where it is either affirmatively established or admitted that there was, at the time of the tax sale, an actual tax delinquency for which such tax sale was held."

The opinion pointed out that, although under prior law the failure to designate properly the newspaper for publication of delinquent tax sale notice was a fatal defect rendering a tax deed based thereon invalid as evidence of title, nevertheless the 1929 change in the law eliminated any such contention.

In several other cases question has arisen as to correction of various stages of the tax proceedings, but enumeration of each specific instance would add little to analysis of the principle. The cited cases disclose the extent to which the Court, in construing the 1925 act<sup>10</sup> and its amendments, has uniformly held that prior to the issuance of a tax deed all taxing officials and newspapers have a continuing duty to correct all errors of omission and commission.

There is, of course, a marked difference in the law since 1925 between an attempt to set aside an assessment because of irregularities and errors on the part of taxing officials prior to the issuance of the tax deed and an attempt to invalidate a tax deed because of irregularities and errors. If such errors occur prior to the issuance of a tax deed and the owner calls them to the attention of the court in an affirmative equitable proceeding or as a defense, he can as a rule obtain relief upon paying all legally assessed levies;<sup>11</sup> and either the taxing officials may correct such errors or the court will consider them corrected in entering a decree.

When, however, a tax deed has been issued a different situation arises unless the assessment itself is void; and if the deed post-dates the amendment limiting the defenses available to the owner or those in privity with him the deed is not void merely because of errors of omission or commission on the part of the taxing officials unless such errors are jurisdictional. The distinction between jurisdictional, or mandatory, steps and those that are merely directory appears later.

Although since 1925 the courts have permitted, and at times have

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<sup>10</sup>Fla. Laws 1925, c. 10040.

<sup>11</sup>FLA. STAT. §§196.01, 196.05 (1951), based on FLA. COMP. GEN. LAWS §§1008, 1038 (1927), Ft. Myers v. Heitman, 148 Fla. 432, 4 So.2d 871 (1941).

required, that taxing officials correct errors in tax proceedings, it is desirable to analyze in some detail those matters that must appear in order to sustain the validity of a statutory tax deed under the applicable laws, namely, those in effect at the date of its issuance.

It is axiomatic that there must be a legal tax, levied and assessed, before a valid tax deed can issue. A voidable assessment may be corrected by the taxing officials before the issuance of a tax deed, but a void assessment cannot be the basis of a valid tax deed. The essential difference lies in the power to levy a valid tax in the inception. At least since 1925 errors that arise through inadvertence, carelessness, or ignorance on the part of taxing officials may be corrected at any time; but if the power to levy the tax is lacking there can be no valid assessment, and no legislative action can cure the situation.<sup>12</sup> A valid tax title to lands cannot be acquired when predicated entirely upon an illegal assessment of an authorized ad valorem tax.<sup>13</sup> The fundamental provisions of the tax laws, designed for the protection of the owner, rather than mere administrative steps prescribed as a guide to taxing officials in the discharge of their duties, lead the judiciary to declare a tax deed valid or invalid.<sup>14</sup>

Although an earlier tax deed must be considered in the light of the laws in existence at the date of its issuance, such errors as failure of the county commissioners, the tax assessor, or the tax collector to perform purely administrative acts such as designating the newspaper in which to publish the list of lands to be sold for taxes, setting out the names of the owners on the tax assessment roll in the manner required by the statute, specifying properly the exact amounts of taxes levied against the lands, and filing in the clerk's office a copy of the newspaper containing the list do not invalidate the assessment because none of such acts deprives the owner of the right to challenge the validity of the tax levy. If a legal tax may be assessed and the owner has not paid it, a correction of the assessment does not deprive him of any right.

The jurisdictional requirements of a valid assessment, that is, one upon which a tax deed can be based, are:

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<sup>12</sup>*Winter Haven v. Lake Elbert Citrus Fruit Co.*, 122 Fla. 422, 165 So. 360 (1936); *Coombes v. Coral Gables*, 124 Fla. 374, 168 So. 524 (1936).

<sup>13</sup>*Van Valkenburg v. Rhodes*, 136 Fla. 406, 182 So. 846 (1938) (lands assessed as property of "Ella R. Cram, Est."); *cf. Ft. Myers v. Heitman*, 148 Fla. 432, 4 So.2d 871 (1941).

<sup>14</sup>*Ozark Corp. v. Pattishall*, 135 Fla. 610, 185 So. 333 (1938).

- (1) levy of the tax by the county commissioners;
- (2) a warrant to the assessment roll, giving the tax collector authority to collect;
- (3) an assessment roll containing at least a sufficient legal description of the land, the assessed valuation placed thereon, the millage levy, and the amount of taxes accordingly assessed;
- (4) a notice of sale of the land, published in a newspaper as required by statutory provisions;
- (5) a tax sale certificate issued by the tax collector;
- (6) a report of the sale of the land by the tax collector;
- (7) an unredeemed tax sale certificate;
- (8) an application for a tax deed, accompanied by publication thereof in a newspaper and mailing thereof to the landowner;
- (9) the tax deed itself.

We now take up these jurisdictional requirements seriatim, including the necessity for their existence.

*Levy of Tax by County Commissioners.* The laws of Florida require the county commissioners to determine the amount to be raised for all county purposes each year, to enter upon their minutes each year the rates to be levied for each fund respectively, to ascertain the aggregate rate necessary to cover all such taxes and to certify these data to the county assessor of taxes, who enters the full amount of taxes for all county purposes under one heading in the assessment roll provided for that purpose.<sup>15</sup>

On only a few occasions has the action of the county commissioners been assailed for failure to observe accurately the command of the statute. The law has been substantially the same since 1901: the action of the county commissioners is sufficient if their minutes show that they have determined the amount to be raised for all county purposes, either through the adoption of a budget or otherwise, and that they have entered the rates for each fund, even though the aggregate rate is not stated. Of course, to add the rates for each fund in order to determine the aggregate is merely a mathematical computation; and substantial compliance with the statutory mandate is all that is necessary.<sup>16</sup>

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<sup>15</sup>FLA. STAT. §193.31 (1951).

<sup>16</sup>Pooler v. DeVane, 113 Fla. 53, 151 So. 313 (1933).

*Warrant to the Assessment Roll.* A warrant to the assessment roll, giving the tax collector authority to collect, is often essential and always desirable. Admittedly our Supreme Court has held that the assessment roll of a municipality is validly prepared without a warrant thereto unless the statute requires such a warrant,<sup>17</sup> and that under the statutes allowing taxing officials to correct errors of omission and commission the assessor has authority to affix a warrant to the roll when its validity is questioned by reason of such omission. Conversely, however, the judiciary has quite uniformly enforced the statutory requisite of an assessor's warrant to his roll, as our tax laws require,<sup>18</sup> and has declared the roll void when he fails to annex the warrant. After a tax deed has issued it certainly is susceptible to challenge for absence of a warrant to the assessment roll, notwithstanding the statute allowing correction of errors, because the tax deed holder is then claiming the assessment as a muniment of title. The safer course is to require the warrant.

*Adequate Assessment Roll.* An assessment roll should contain at least a sufficient legal description of the land, the assessed valuation placed on the land, the millage levy, and the amount of taxes. A review of every specific case involving the sufficiency of the description of land in tax proceedings could well be the subject of a complete article, but the Supreme Court has uniformly set forth the basic considerations substantially as follows:<sup>19</sup>

“. . . the description of land in a deed must be such that a surveyor could locate it without difficulty. As to tax deeds, we have consistently held that the description of the land must be certain in itself or capable of being made certain by matters relating to the description that are referred to in the tax deed. Evidence aliunde, not referred to in the deed, cannot be employed to point out the land intended to be conveyed.”

Nevertheless, in 1943, in *Mitchell v. Moore*,<sup>20</sup> the Court abrogated the rule long prevalent in Florida requiring greater strictness of de-

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<sup>17</sup>*Rio Vista Hotel & Improvement Co. v. Belle Mead Devel. Corp.*, 132 Fla. 88, 182 So. 417 (1937).

<sup>18</sup>FLA. STAT. §193.35 (1951).

<sup>19</sup>*Kester v. Bostwick*, 153 Fla. 437, 441, 15 So.2d 201, 203 (1943).

<sup>20</sup>152 Fla. 843, 13 So.2d 314 (1943).

scription in a tax deed than in one inter partes. The result is that each description must be read in the light of the facts existing as to the particular instance involved; in other words, there is no fixed rule by which a given description can automatically be classed as good or bad. Furthermore, in view of the long line of decisions restricting the description to the four corners of the deed, it is of interest to note that a description of land in a tax deed as "Tract 30, Section 9, Township 48 South, Range 41 East, 20 acres in the County of Broward, State of Florida" was recently held legally sufficient in *Hawkins v. East Coast Land & Cattle Co.*<sup>21</sup> even though resort to facts outside the tax deed was necessary.

The Supreme Court, therefore, has departed from those strict rules of construction applied to a description of land in a tax deed that were adopted in earlier years; and apparently the rules of construction applied to a deed inter partes will now govern tax deed descriptions as well.

No basis for determining the amount of taxes to be levied exists unless the roll contains an assessed valuation of the land. The dollar sign may be omitted, but the assessed valuation must appear in figures or writing.

The millage levy must likewise appear, because this amount, applied to the assessed valuation, gives each specific tax in dollars and cents; and this latter figure must be entered in the appropriate column on the roll. The total amount of these taxes in dollars and cents should also be set out in the appropriate column.

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<sup>21</sup>52 So.2d 800 (Fla. 1951). The county engineer, an abstractor in Broward County, the clerk of the circuit court, an employee of the tax collector's office, two attorneys with many years of experience in examining title to land in Broward County, and a real estate broker all testified that they could locate the land from the description; that there was only one subdivision of this area in Broward County and the description could apply to no other tract of land; that no one in Broward County could be misled; that this description was clear and would be generally understood by lawyers, abstractors, engineers, real estate operators, and others dealing with land titles in Broward County, and that this system of designation had been approved and followed by them for more than 30 years; that 5% of the land in the area had been conveyed by similar description; that in tax certificates, tax receipts, tax deeds and tax rolls the lands were described in the same manner; that conveyances by the Trustees of the Internal Improvement Fund and the Board of Commissioners of Everglades Drainage District were made by the same description; that all odd-numbered sections in the area were divided into 32 equal tracts by uniform plan, and that all maps used by lawyers, abstractors, and

*Notice of Sale.* A notice of sale of the lands must be published in a designated newspaper if the taxes are unpaid.

The statutes prescribe a definite date by which the taxes levied and assessed against lands shall be paid by the owner or by other persons interested in the land. If these are not paid by such date the tax collector is directed to prepare a list of the lands concerned, to publish it in the newspaper designated by the county commissioners at their first regular meeting in February of that year, or at the time otherwise designated in the statute, for the statutorily required length of time, and, after he receives due publication of the list and proof of such publication, to hold a sale at the time stated in the notice and to sell at public outcry the land advertised or such part thereof as may be necessary to realize the amount of taxes legally due, together with the costs of sale and advertising.<sup>22</sup>

The publication of notice of sale is one of those steps in the tax procedure regarded by the Supreme Court as administrative, or, in other words, not of vital effect upon the rights of the taxpayer or owner, inasmuch as he has two years in which to redeem the tax sale certificate after issuance. In *Ozark Corp. v. Pattishall*<sup>23</sup> the Court carefully reviewed the pertinent statutes and pointed to its consistent recognition of the distinction between publication of notice of tax sale and publication of notice of application for a tax deed. The legal publication of a notice of tax sale may on occasion be corrected, but if the clerk of the circuit court does not give notice of application for a tax deed in substantial compliance with the statute the deed is void. This position and its underlying reason are of particular interest in connection with the Murphy Act<sup>24</sup> and the decisions of the Supreme Court of Florida construing it, in that the tax collector's published notice of sale is the "due process of law" by which the owner and other persons interested in the land are cut off from any right, title, or interest therein and such title becomes vested in the state.<sup>25</sup>

The early Florida cases held a tax sale void unless the notice of sale had been duly published in accordance with the statutory requirements.<sup>26</sup> Now, however, the provisions relating to notice are

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real estate men in the county followed the same pattern. *But cf. Schouten v. Hunt*, 146 Fla. 360, 200 So. 923 (1941).

<sup>22</sup>FLA. STAT. §§193.51-193.54, 193.56, 193.59 (1951).

<sup>23</sup>135 Fla. 610, 185 So. 333 (1938).

<sup>24</sup>Fla. Laws 1937, c. 18296.

<sup>25</sup>*Id.*, §9.

<sup>26</sup>*Daniel v. Taylor*, 33 Fla. 636, 15 So. 313 (1894).

regarded as designed to produce buyers for the benefit of the state revenue rather than to protect the rights of delinquent taxpayers, since they lose nothing of a conclusive nature through the mere issuance of a tax sale certificate.<sup>27</sup> This construction is entirely consistent with the broad, liberal authority given to correct errors in tax proceedings.

The minimum requirements for notice of tax sale are a legal description of the land, the name of its owner as shown by the assessment roll, the amount of taxes due plus the costs and expenses of sale, and the date of the sale. The notice should be signed by the tax collector.

*Tax Sale Certificate.* At least one tax sale certificate is essential to issuance of a valid deed. Since 1893 the statutes have provided for the issuance of such a certificate by the tax collector, upon the sale of land for nonpayment of taxes in any year, to the purchaser at the sale, the state, or the county in which the land lies, as the statutes in force at the time of the sale may direct. The certificate must comply substantially with the form set forth in the statutes. It should be dated, should specify the name of the purchaser, and should contain the other information required by the statutory form, including both a legal description of the land as this appears on the assessment roll and the tax collector's notice of sale. The certificate should be signed by the tax collector, although, as previously pointed out, a collector who signed with a rubber stamp has been permitted to correct the error by signing later in his handwriting.

*Tax Collector's Report of Sale.* The statutes provide that a tax collector, after selling land, shall prepare a report of the sale. This report must be prepared in triplicate, one copy to be filed with the clerk of the circuit court, one to be sent to the state comptroller, and one to be retained by the collector. The form of this is also set forth in the statutes. It must show the date of the sale, the number of the certificates issued, the name of the owner as shown on the assessment roll, a description of the land sold, the name of the purchaser, and the amount for which the sale was made; and the tax collector must append to each list a certificate that the sale was made in accordance with law.

Although an early case held that failure of the collector to file in

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<sup>27</sup>*Ozark Corp. v. Pattishall*, 135 Fla. 610, 185 So. 333 (1938).

the clerk's office a list of lands sold for taxes would render a tax deed void,<sup>28</sup> the applicability of this principle since 1925 is doubtful. Probably he would be allowed or required to file such list when the question arose in a proper case.

*Unredeemed Tax Sale Certificate.* Prior to 1941 Florida allowed the holder of a tax sale certificate issued at any tax collector's sale for nonpayment of taxes on any land to apply, after two years from the date of its issuance, to the clerk of the circuit court in the manner provided by statute for the issuance of a tax deed based thereon. During this two-year period the owner or any other person interested in the land had the right to redeem the tax sale certificate. Chapter 20722 of Florida Laws 1941, however, provides that on and after April 1, 1943, any certificate holder other than the county may at any time after the lapse of two years from April 1 of the year of delinquency file the tax certificate and request the circuit court clerk to sell the lands.

The clerk must bear in mind certain precautions when the tax certificate is presented and application for a tax deed is made. In the first place he must determine that the applicant is the owner and holder of the certificate. Florida has long provided that a tax certificate is transferable by endorsement.<sup>29</sup> If issued to the state, a county, or an individual other than the applicant, some written evidence that it has been assigned to the applicant must appear on it or be attached to it.<sup>30</sup> The language of transfer is material; for example, an instrument written upon the back of a tax certificate, purporting to transfer and assign all the right, title and interest of the certificate holder "to the land described in this certificate" and attested by two witnesses, has been held to constitute a conveyance of the property described therein rather than an assignment of the certificate.<sup>31</sup> It is submitted that a simple endorsement on the reverse side of the tax certificate, or language such as "For a valuable consideration I do hereby transfer and assign to John Doe the tax certificate to which this transfer and assignment is attached," accompanied by the signature of the person to whom the certificate was issued, is sufficient. The

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<sup>28</sup>Ellis v. Clark, 39 Fla. 714, 23 So. 410 (1897).

<sup>29</sup>FLA. STAT. §193.60 (1951); Fla. Laws 1941, c. 20722, §18; FLA. COMP. GEN. LAWS §982 (1927); FLA. REV. GEN. STAT. §767 (1920); FLA. GEN. STAT. §568 (1906); Fla. Laws 1901, c. 4888, §2.

<sup>30</sup>Johnson v. Benbow, 93 Fla. 124, 111 So. 504 (1927).

<sup>31</sup>Sanders v. Ransom, 37 Fla. 457, 20 So. 530 (1896).

clerk of the circuit court must sign the endorsement of a tax certificate issued to the state or the county in which the land lies whenever the certificate is sold and assigned. Not only must the certificate itself be assigned but a recital of such assignment should also be made in the deed.<sup>32</sup>

Furthermore, the clerk must make sure that the certificate has not been redeemed, because a tax deed is void if based upon a tax certificate that has been redeemed or upon a void or a double assessment, or if issued upon lands exempt from taxation. He has always experienced considerable difficulty in determining from the records who owns a particular tax certificate, inasmuch as it is transferable by endorsement and he cannot be certain of the identity of its owner until it is presented to him in connection with redemption or with an application for a tax deed. There has never been any cogent reason why the laws should not require the assignee to register the assignment with the clerk; and accordingly, in order to remedy this situation, the Legislature provided in 1949 that no transfer or assignment of any state or county tax sale certificate is valid and binding against the state, county, clerk, or board of county commissioners unless recorded with the clerk of the county in which the land described in the certificate is situated.<sup>33</sup> This law has not as yet been construed by the Supreme Court, but there is no apparent reason for holding it unconstitutional. It provides record evidence of the ownership of tax certificates from time to time, aids in the administration of tax law, and enables those attempting to establish the validity or invalidity of assessments to name the proper parties as defendants.

Finally, the clerk must carefully observe the provisions of law existing at the date of the application for a tax deed and comply with all of the requirements. In this connection the Supreme Court has held that the application to the clerk for the issuance of a tax deed need not be in writing;<sup>34</sup> the holder of the certificate need merely file it with the clerk, redeem the subsequent and omitted tax certificates, pay the other taxes due and the clerk's fees, and request orally the issuance of a tax deed.

*Notice of Application for Tax Deed.* The notice of application for a tax deed must be published in a newspaper and a copy of it

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<sup>32</sup>Johnson v. Benbow, 93 Fla. 124, 111 So. 504 (1927).

<sup>33</sup>Fla. Laws 1949, c. 25276, §§1, 2.

<sup>34</sup>Platt Cattle Co. v. Stott, 157 Fla. 286, 25 So.2d 655 (1946).

must be mailed to the owner of the land. Florida has for decades permitted the owner and holder of a tax sale certificate of requisite age to apply to the clerk of the circuit court for the issuance of a tax deed in the manner provided by statute, but several changes have been made in the applicable law since the 1885 adoption of the Constitution. The original law<sup>35</sup> did not require publication of notice but simply provided that at the expiration of two years from the issuance of a tax sale certificate its owner and holder was entitled to have the clerk issue a tax deed. A later enactment<sup>36</sup> required publication of the notice of application in a newspaper and notification to the landowner, after which steps the tax deed could issue.

Since 1935 the clerk, after giving the requisite notice, has been directed to sell to the highest bidder, in front of the county courthouse, the land upon which the tax sale certificate is a lien.<sup>37</sup> This provision was a radical departure from previous law; formerly sale at public outcry was not required, although the owner or any other person interested in the land had the right to redeem the tax sale certificate before the tax deed issued. As a result the owner and holder of the tax sale certificate assumed the same position as any other bidder at the sale; and if he wished to acquire the land he had to outbid all others. The land went to the highest bidder, and the owner of the tax sale certificate received its cost plus interest out of the proceeds if he was not the highest bidder.

Inasmuch as today the clerk's publication of the notice of application for a tax deed and the mailing of copies of the notice to the owner of the land are the vital notices required by law to divest with finality the owner and other persons interested in the land of their interests, the title examiner must make sure that every provision of the statute has been complied with literally. He must make his examination with full realization that the statutes relating to form of notice of application and to the clerk's procedure have varied from time to time, and that the particular law in force at the time of issuance of the tax deed prescribes the steps required. The Supreme Court has declared more tax deeds invalid for defects in the notice of application for them than for any other single reason. This notice has, of course, been uniformly held jurisdictional.

We have previously discussed to some extent the important step

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<sup>35</sup>Fla. Laws 1887, c. 3681.

<sup>36</sup>FLA. REV. GEN. STAT. §1893 (1920).

<sup>37</sup>Fla. Laws 1935, c. 17457, §2.

of mailing a copy of the notice of application for a tax deed to the owner of the property and to any mortgage holder, but this matter merits more detailed consideration because of its crucial effect on the validity of the tax deed. All of the early Florida cases held that failure of the clerk to mail the notice of application renders the deed void.<sup>38</sup> The form of notice is prescribed by the statutes.

If the clerk's records do not show that he has discharged the duty of mailing the requisite notice to the owner and each mortgage holder a very serious question arises. In the absence of any proof that he failed to mail it in the manner and form required by statute the presumption is that he discharged his duty properly; the tax deed holder has the burden of proving that the notice was not mailed.<sup>39</sup>

After the 1935 enactment,<sup>40</sup> characterizing the mailing of notice by the clerk and its receipt by the landowner as directory instead of mandatory, the ascertainment of these factors diminished in importance; but the 1943 amendment changed the pertinent language,<sup>41</sup> and once more the question became highly material.<sup>42</sup> Since the effective date of the 1943 law tax deeds have in several cases been held invalid because of the clerk's failure to mail the notice in accordance with the provisions of the statute.

In summary, he must mail the notice to the owner and each mortgage holder if their names and addresses appear on the tax roll for the year in which taxes were last extended on the property in question; and if their names and addresses do not appear the notice must be mailed to the person last paying taxes upon the lands as shown by the tax collector's receipt book. The clerk must also send a copy of the notice by registered mail to the municipality and other taxing districts in which the property is situate and must enclose with each copy a statement in the language of the statute. He must in addition attach to the affidavit of the publisher a certificate bearing his signature and official seal and specifying dates of mailing and names and addresses used. This certificate constitutes prima facie evidence that such notice was mailed. If the tax roll fails to show the addresses of the owner

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<sup>38</sup>Hecht v. Cardinal, 103 Fla. 930, 140 So. 648 (1931); Tax Securities Corp. v. Borland, 103 Fla. 63, 137 So. 151 (1931); McLeod v. Williams, 73 Fla. 338, 74 So. 408 (1917); Johnson v. DuPont, 63 Fla. 200, 57 So. 670 (1912); Clark-Ray-Johnson Co. v. Williford, 62 Fla. 453, 56 So. 938 (1911).

<sup>39</sup>Clark v. Groves, 154 Fla. 13, 16 So.2d 340 (1944).

<sup>40</sup>Fla. Laws 1935, c. 17457, followed in Fla. Laws 1941, c. 20722, §40.

<sup>41</sup>Fla. Laws 1943, c. 22079, carried forward as FLA. STAT. §194.51 (1951).

<sup>42</sup>Lucian v. Duvane Corp., 158 Fla. 634, 29 So.2d 627 (1947).

and any mortgagee, and if the collector's receipt book does not contain the address of the person last paying taxes upon the land, the clerk need not, of course, mail any notice; but he must thereupon execute and attach to the proof of publication the prescribed certificate, sealed with his official seal, explaining his failure to mail the notice.

The 1943 statute contains this important language: "The failure of the owner, mortgagee, or municipal or other taxing district to receive such notice shall not affect the validity of the tax deed issued pursuant to such notice."

When the construction of this amended section arose in a proper case the Supreme Court held that mailing of notice by the clerk in accordance with the provisions of the statute must appear, as well as his execution of the certificate required by the section.<sup>43</sup> The necessity of determining that the clerk has fully complied with the law is apparent, with reference not only to publishing the notice of application but also to mailing it to the landowner and each mortgage holder in the manner provided by the statute in force and effect when the application was made.

*Tax Deed.* After a tax deed has been applied for, the owner or other persons interested in the land may redeem before the clerk sells the land to the highest bidder at the public sale. If there is no redemption a tax deed issues, and a new phase in the history of the title to the land occurs. The form of the deed, to which it must substantially conform, is prescribed by statute.<sup>44</sup>

The description of the land in the deed, in the assessment roll, in the tax collector's notice of sale, in the tax certificate, in the report of sale, in the application for the deed, and in the copy published in a newspaper and mailed to the owner must all be the same.<sup>45</sup> The deed must be signed by the clerk in the presence of two witnesses, must bear the official seal of the circuit court, and must be duly acknowledged. The witnesses may be deputy clerks, who in witnessing the deed are regarded as individuals rather than as officials.<sup>46</sup>

Delivery of the tax deed is the final act of its execution and marks

<sup>43</sup>Heinberg v. Andress, 45 So.2d 488 (Fla. 1950) (proof showed failure to mail).

<sup>44</sup>Smith v. Philips, 51 Fla. 327, 41 So. 527 (1906).

<sup>45</sup>McKeown v. Collins, 38 Fla. 276, 21 So. 103 (1896); Carncross v. Lykes, 22 Fla. 587 (1886); Grissom v. Furman, 22 Fla. 581 (1886).

<sup>46</sup>Platt Cattle Co. v. Stott, 157 Fla. 286, 25 So.2d 655 (1946).

the date when title passes from the state to the applicant.<sup>47</sup> Once issued it becomes a new and paramount title to the land, unencumbered by any previous lien subordinate to the tax lien and freed and divested of any interest of the former owner or those claiming under him.<sup>48</sup>

What are the incidents of the title received by the tax deed holder? Our tax laws have rather uniformly provided that the deed when issued shall be *prima facie* evidence of the regularity of all proceedings from the valuation of the land by the assessor to the issuance of the deed, inclusive.

We have previously discussed in some detail the situation that is presented when, in an action of ejectment, a bill to quiet title, or some other equitable proceeding, an error in the procedure leading up to the issuance of the deed is alleged;<sup>49</sup> and we have seen that those errors of omission and commission on the part of taxing officials in regard to the orderly arrangement of records and official procedure in enforcing the revenue laws of the state can now be corrected at any time by the taxing official. We have further found that since 1929 a sale or conveyance of real property for nonpayment of taxes cannot be invalidated without proof that the property was not subject to taxation, or that the taxes were paid prior to sale, or that the property was redeemed before execution and delivery of the tax deed.

The later laws eliminate most of the old bases of successful attacks on a tax deed, and since 1925 fundamental jurisdictional errors are the only available grounds for setting it aside. We still encounter instances of faulty and insufficient descriptions of the land, of course, as well as of disregard of fundamental rights of the owner and mortgage holders by the taxing officials and of errors related to the notice of application that are serious enough to render the deed void. In view of the statutes of limitations and curative acts, however, the person seeking to invalidate a statutory tax deed has a rocky road to travel; and accordingly we can approve titles based upon tax deeds with comparative security provided we bear in mind the "jurisdictional" traps.

The tax deed holder should not delay in taking possession of the land, and if someone is already in actual possession of it this fact is

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<sup>47</sup>Lance v. Smith, 123 Fla. 461, 167 So. 366 (1936).

<sup>48</sup>Hecht v. Wilson, 107 Fla. 421, 144 So. 886 (1932).

<sup>49</sup>See pp. 6 *et seq. supra*.

a red flag of warning. Every statute requires the tax deed holder to bring suit within a short period of time in such event, and failure to do so bars him. The possibility of neglect on his part to move on the matter should evoke diligence on the part of the examiner of a title to land based on a tax deed in determining the possessor of the land, the time of entry into possession, the nature and character of the possession, and the characteristics of the title claimed by the possessor. It is quite possible that a tax deed holder may have title to the land described in the tax deed, supported by a flawless record of tax proceedings, and yet have slept on his rights and thereby barred himself from bringing any proceeding either to recover possession or to defend successfully a quiet title suit brought by the possessor of the land at the date of issuance of the tax deed.

### *Statutes of Limitation*

No discussion of the status of tax deeds would be complete without consideration of the effect of the various Florida statutes of limitation and curative acts. Inasmuch, however, as an authoritative treatment of these provisions will appear in a succeeding issue,<sup>50</sup> a chronological summary from the standpoint of tax titles will suffice here. Since 1895 Florida has by statute recognized and delineated the scope of the right to recover possession of tax deeded land.

The earliest act is Florida Laws 1895, Chapter 4322, Section 64 of which bars suit for recovery of possession of such land by its former owner or claimant, his heirs or assigns, or his or their legal representatives, after the purchaser at the tax sale goes into actual possession unless the suit is brought within four years from such entry into possession. That section also bars the purchaser at the tax sale from recovering land in the adverse actual possession of any person unless he sues within one year from the date of acquiring his right to the tax title. The act allowed suit, within one year from its effective date, for recovery of possession by a tax deed holder who had not yet sued. A 1907 amendment provides for refund of all amounts paid in connection with the application for the tax deed, including interest thereon, and reimbursement for permanent improvements made on the land in good faith, to a tax deed holder whose deed is held in-

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<sup>50</sup>*Florida Curative and Limitation Acts Designed to Remedy Defects of Title to Realty*, by James W. Day.

valid and who loses possession of the land at law or in equity.<sup>51</sup>

The next change in the law, in 1927, extended to four years the period within which a tax deed purchaser can sue to recover the land and also authorized the owner of a tax certificate or tax deed to foreclose his lien in equity.<sup>52</sup> This act was carried forward as Section 1020 of the Compiled General Laws 1927; but the Supreme Court held unconstitutional, as not within the purview of the title to the act, the provision: "Any holder of a tax deed or of a tax certificate shall have a lien thereunder for the amount paid therefor upon the land described therein and such lien may be enforced and foreclosed in suit in equity as provided by law for the enforcement of statutory liens."<sup>53</sup> Serious question appears at first glance to exist as regards any tax certificate or deed foreclosed as a lien in equity under the authority of this statutory provision. The finality of a decree in equity whenever the court has jurisdiction of the parties and subject matter, however, the rule of property established by equitable proceedings instituted under this provision, and the lengthy period elapsing between its effective date and the decision holding it unconstitutional render improbable any success in attacking a title based on foreclosure of lien prior to the 1939 case just cited.<sup>54</sup>

The current law governing recovery of land in the foregoing situation is Section 196.06 of Florida Statutes 1951, which sets the period within which a former owner or other adverse claimant may bring suit at four years, with a like period for the holder of a tax deed.

#### *Payment of Taxes for Twenty Successive Years*

If the grantee in the tax deed or his heirs, devisees or assigns pay the taxes assessed against the land described in the deed for any period of twenty successive years after its issuance, no action can be brought by the former owner of the land or any person claiming by, through or under him, against such grantee, his heirs, devisees or assigns. The latter can file a bill in equity to quiet title to the land described in the tax deed; and the only available defense to the suit or basis of attack upon the deed is payment by the former owner,

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<sup>51</sup>Fla. Laws 1907, c. 5596, §61.

<sup>52</sup>Fla. Laws 1927, c. 12409, §2.

<sup>53</sup>Townsend v. Beck, 140 Fla. 553, 556, 192 So. 390, 391 (1939).

<sup>54</sup>Cf. Fla. Laws 1929, c. 14572, repealed by Fla. Laws 1935, c. 17442, approved by Governor May 21.

before execution and issuance of the deed, of those taxes for non-payment of which it issued.<sup>55</sup> This provision does not apply, however, if the legal owner of the land or his heirs, devisees or assigns are in possession of it when the tax deed issues and continue in possession for a period of one year thereafter.<sup>56</sup>

*Lands Held under Tax Proceedings in General*

Under the statute currently in force,<sup>57</sup> which originally applied only to Murphy titles, the former owner of land described in a tax deed, or others claiming under him, has one year, reckoned from the date of recordation of the deed in the county where the land is situate, to bring suit to recover the land or enforce any right therein or to set aside the sale. Upon failure to assert such right within this period they are forever barred from making claims to the land and from questioning the title otherwise than upon the grounds that the taxes for which the deed was issued were not assessed, were not due, or have been paid.<sup>58</sup> The same provisions apply to land titles that have passed or purportedly passed by virtue of any deed executed by the State of Florida within a period of five years prior to the effective date of the statute pursuant to any tax foreclosure or procedure or tax forfeiture to satisfy a tax lien. The former owner of the land and any other persons claiming an interest in it were allowed one year from the time this section became law to sue for recovery of the land or for enforcement of any right, claim, or interest therein. Failure to assert these within this period precluded all claimants from contesting the title except upon the grounds mentioned above.

The current statute further provides that, when land conveyed by any such deed is in the actual and open possession of anyone other than the named grantee, the grantee or anyone claiming through or under him has, upon the payment of all subsequent taxes, three years from the deed date to bring suit for possession of the land; but even then possession is conditioned upon subsequent taxes levied against the land. Land upon which those taxes constituting the basis

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<sup>55</sup>FLA. STAT. §196.09 (1951), based on FLA. COMP. GEN. LAWS §1021 (1927).

<sup>56</sup>FLA. STAT. §196.11 (1951), based on Fla. Laws 1927, c. 12407, §§3-5; FLA. COMP. GEN. LAWS §§1023-1025 (1927). Note also the provision giving those under disability at issuance one year from removal of disability.

<sup>57</sup>Fla. Laws 1937, c. 18296.

<sup>58</sup>FLA. STAT. §192.48 (1951), embodying Fla. Laws 1947, c. 23827, §1, amending Fla. Laws 1943, c. 21685, §2.

for issuance of the tax deed had been paid and tax-exempt land, as well as land not subject to any portion of the taxes for other reasons, are expressly excluded from the operation of the statute.

Section 192.48 seemingly effects a far-reaching short statute of limitations. Undoubtedly the Legislature has constitutional power and authority to provide that after a short period of time the former owner, his heirs, devisees or assigns or other persons claiming an interest in land, may be barred from asserting any right, title or interest in it. Such an enactment, however, can include only matters with which the Legislature is empowered to deal. Our Supreme Court is not deprived of authority to pass on any jurisdictional question that can be raised in tax proceedings. It has held, for example, that the short time-limitation of the statute cannot be invoked to protect a tax title based on an "insufficient description."<sup>59</sup> Similarly, the limitation period of the statute did not prevent attack upon a tax deed as void when the clerk failed to mail a copy of the notice of application for the tax deed to the owner and mortgage holders as required by statute.<sup>60</sup> The mailing of the notice in the latter case was expressly stated to be a jurisdictional matter. Such decisions bolster the conclusion that the statutory limitations are inapplicable to any tax deed based upon a procedural defect that the judiciary considers jurisdictional.

### *Soldiers' and Sailors' Relief Acts*

Although the rights of landowners under the various soldiers' and sailors' civil relief acts have seldom been considered judicially, such provisions amend the tax laws of Florida and partake of the nature of a delayed-action bomb that may explode beneath any tax deed.

A case from Broward County decided in 1950 offers a classic example.<sup>61</sup> An owner of land, having been in the armed forces from March 11, 1941, to March 15, 1946, brought suit to redeem the land from a tax sale and to have the consequent tax deed canceled as a cloud upon his title. The tax deed holder had purchased a tax cer-

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<sup>59</sup>Susman v. Pockrus, 40 So.2d 223 (Fla. 1949).

<sup>60</sup>Heinberg v. Andress, 45 So.2d 488 (Fla. 1950). The short limitation period was in effect when this case was decided. The Court apparently did not consider the provisions of §192.48 applicable to a jurisdictional matter; they were not even mentioned.

<sup>61</sup>Burke v. O'Brien, 47 So.2d 777 (Fla. 1950). See also Le Maistre v. Leffers, 333 U.S. 1 (1948), 1 U. OF FLA. L. REV. 314 (1948).

tificate dated July 17, 1941, and the clerk had issued a deed on the basis of this certificate after the two-year lapse of time required by statute.<sup>62</sup> The Soldiers' and Sailors' Civil Relief Act, however, provides:<sup>63</sup>

“. . . nor shall any part of such period [of military service] which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, [October 6, 1942] [*sic*] be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.”

The tax deed was declared void as a result of this provision, and the landowner was allowed to redeem because he had been in military service from October 6, 1942, to March 15, 1946, and this period should not have been included in computing the time elapsing between issuance of the tax certificate and issuance of the tax deed. The certificate, as a matter of law, was not two years old at the issuance of the deed. The lower court had considered the tax deed voidable because prematurely issued, but the Supreme Court cited and followed three Florida cases wherein prematurely issued tax deeds had been held void rather than merely voidable.

This decision, of course, seriously affects statutory tax deeds; large numbers of men and women who were in the armed forces during World War II, as well as those who have served during the Korean “police action,”<sup>64</sup> may invoke the time-tolling effect of the relief acts. Each tax title should be carefully investigated, therefore, as to the owner of the land at the issuance dates both of a tax certificate and of a tax deed. Whether the landowner was in the military service during the two-year period that must elapse cannot safely be left unresolved. Despite its validity in other respects the deed is void if issued without tolling periods of military service.

#### *General Validating and Curative Statutes*

Many validating and curative acts strengthen tax assessments. A

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<sup>62</sup>FLA. STAT. §194.15 (1951).

<sup>63</sup>54 STAT. 118 (1940), as amended, 50 U.S.C. App. §525 (Supp. 1952).

<sup>64</sup>Legislation has extended the benefits and protection of the relief acts to those in the armed forces since the Korean hostilities commenced.

discussion of them, however, requires the detailed consideration that will appear in a later issue of this volume. As we have already noted, curative acts cannot remedy ailments that the courts characterize as jurisdictional. But such acts can cure errors of administrative procedure, with which our Legislature is empowered to deal, as the following provision illustrates:<sup>65</sup>

“All tax sale certificates and deeds now held and owned by the State of Florida, or any person, firm or corporation which are invalid on account of any matter or thing not affecting the authority of the state or any county thereof to levy and collect the taxes evidenced by such certificates are hereby validated and made legal to the extent of any lien evidenced thereby, insofar as is competent for the Legislature of the State of Florida so to do; provided, however, that this action shall not apply to certificates and/or deeds involved in litigation now pending.”

This section has been repealed, but its repeal did not destroy its validating effect upon certificates in the hands of purchasers or assignees at the time of its enactment.<sup>66</sup>

Similar acts have attempted to validate tax certificates and tax deeds throughout all the years that we may be concerned with in investigating titles based upon statutory tax deeds. Only an irregularity that the courts may consider “jurisdictional” requires a great degree of care and caution. The broad aspects of such irregularities have been outlined, and many such instances have been noted for attention by the examiner. Admittedly the courts will probably in still further instances declare tax deeds void because of some fundamental error in their issuance; the law in this field is fluid, and any issue of the advance sheets may contain a decision giving some new reason for questioning the validity of our latest conclusions. Nevertheless the examiner of today has a distinct advantage over his early predecessors in that the development of our tax laws and the numerous decisions on the subject furnish the basis for a considerable degree of certainty, provided the examiner takes full cognizance of the statutes and interpretative cases already available.

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<sup>65</sup>Fla. Laws 1929, c. 14572, §16.

<sup>66</sup>*Coult v. McIntosh Inv. Co.*, 133 Fla. 141, 182 So. 594 (1938).

## PART II — TITLES ARISING THROUGH EQUITABLE FORECLOSURE

Various methods of foreclosing tax liens have been provided by the Legislature over the years.<sup>67</sup> The earliest act providing for the foreclosure of tax certificates owned by the State of Florida was Chapter 7406, Florida Laws 1917. As in the latest act, Chapter 22079, Florida Laws 1943, the proceedings are described as in the nature of a bill to quiet title, though actually the suit in equity is a lien foreclosure proceeding. This apparent inconsistency arises out of the fact that after two years from the date of the tax certificate the title to the land becomes vested in the State of Florida, and the certificate is evidence of the title of the state. The 1917 law applied only to tax certificates owned by the state and apparently was not used by the state comptroller to liquidate delinquent tax obligations. Its discussion, therefore, would be of little value, and we will proceed immediately to discuss later acts upon which many Florida land titles are based.

There are two types of foreclosure proceedings in equity, in personam and in rem. Chapter 14572, Florida Laws 1929, is typical of the first class; Chapter 15038, Florida Laws 1931, and Chapter 22079, Florida Laws 1943, of the second class. A discussion of these three acts will develop the pertinent questions that arise in connection with tax titles based upon equitable foreclosure.

*In Personam Proceedings*

Chapter 14572, Florida Laws 1929, commonly known as the General Foreclosure Act of 1929, is a rather comprehensive revision of the tax laws relating to the collection of delinquent revenue; it presents a complete plan for enforcing the lien of tax certificates, whether owned by the state or an individual. A novel feature of the law is the provision for foreclosing tax deeds.

On November 20, 1930, the Supreme Court of Florida upheld the sufficiency of the title of the act and held that the section authorizing foreclosure of tax sale certificates was properly connected with the subject of the title.<sup>68</sup> In commenting on the new foreclosure provision the Court said:<sup>69</sup>

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<sup>67</sup>See *Bradenton v. Lee*, 120 Fla. 100, 102, 162 So. 139, 140 (1935).

<sup>68</sup>*Ridgeway v. Reese*, 100 Fla. 1304, 131 So. 136 (1930).

<sup>69</sup>*Id.* at 1307, 131 So. at 138.

“The remedy by foreclosure after the time for redemption has expired, given by Chapter 14572, is expressly made ‘cumulative and in addition to any and all other remedies provided by law.’ It is within the province of the legislative department to provide any and all adequate means to enforce the payment of taxes and to enforce the liens evidenced by tax sale certificates, after the period of redemption has expired; and the property owner is not injured by and cannot justly or legally resist statutory methods of enforcing such liens by foreclosure proceedings when due process is afforded and a reasonable opportunity is given to redeem before or during the enforcement suits.”

Section 1 of the act erects safeguards applying to all tax sale certificates and tax deeds. It provides that no sale or conveyance of land for nonpayment of taxes shall be held invalid “except upon proof that the property was not subject to taxation, or that the taxes had been paid previous to sale, or that the property had been redeemed prior to the execution and delivery of deed based upon certificate issued for non-payment of taxes.” Section 16 validates all tax sale certificates and deeds “in so far as is competent for the Legislature of the State of Florida so to do . . . .”

The declaration of Section 1 allows one to approach the question of foreclosure of tax liens in equity with knowledge of the limited defenses that may be interposed. In anticipation of the defense, the bill of complaint must set forth that the tax certificate or deed has issued, that complainant has paid all omitted and subsequent taxes with interest, and that he has redeemed all subsequent tax sale certificates affecting the land. Furthermore, there must be attached as an exhibit the tax sale certificate or deed, or a copy thereof, as well as a statement of searches prepared by the clerk of the circuit court. The statement discloses that the complainant has redeemed the other tax liens on the property; the tax sale certificate shows that it is more than two years old, a necessary condition because no certificate can be foreclosed unless it is two years old.

The privilege is given by the act of foreclosing as many tax sale certificates and tax deeds in one suit as may be desired. In fact, Section 18, permitting recovery of attorneys’ fees, requires that the court shall not allow for separate causes of action a greater amount than would have been allowed if the actions had been combined.

With the exception of the State of Florida, any owner or claimant of an interest in the lands involved, including an interest in the liens,

tax sale certificates, and tax deeds of other taxing districts, may be made party to the suit. Service is required in a like manner to service in mortgage foreclosures on realty unless otherwise provided by law. The state cannot be brought into the suit involuntarily because it cannot be sued in the absence of special enabling legislation.<sup>70</sup> Payment of all subsequent and omitted taxes is required before suit, however, and thus there could be no unpaid state taxes creating an encumbrance except those coming due for the year in which the suit is filed. Only such taxes as were not due at the time of suit would remain to burden the land.

Tax sale certificates signed by the county tax collector are admissible in evidence and prima facie valid. Thus the Legislature again places the burden of proof on the person seeking to attack the validity of tax sale certificates.

The act also provides for the foreclosure of tax sale certificates owned by the State of Florida and outlines the method and manner of the procedure. This measure was formerly widely used in some counties, but the number of titles based upon these proceedings are limited because of the drastic provisions relating to a foreclosure decree in a suit by the state. It is required that if no one bids the full amount due the master must declare the land sold to the Trustees of the Internal Improvement Fund and, after confirmation of the sale, execute a deed to the Trustees. The accumulation of taxes and assessments in most instances was far in excess of the value of the land, so, although many suits were filed that resulted in redemptions, it became the policy to discourage sales to the Trustees under the decree.

The act further provides that tax certificates may be redeemed before sale under final decree, in which event the action is to be dismissed and the certificates canceled. The full amount due on the tax liens, with interest, fees, and costs, must be paid in order to redeem.

Even though the court determines that any tax, tax sale certificate, or tax deed is illegal, a decree for such taxes, or portion thereof, as are valid, due, and unpaid is requisite. The final decree is similar to that of a mortgage foreclosure on real estate and has the same force and effect.

The purchaser at any sale is entitled to a deed and to the same processes and remedies to obtain possession of the premises as in suits for the foreclosure of mortgages. Section 28 provides that "the title

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<sup>70</sup>Allison Realty Co. v. Graves Inv. Co., 115 Fla. 48, 155 So. 745 (1934).

to the land conveyed by such deed shall be indefeasible as to all parties defendant in the action.”

All of the provisions relating to foreclosure of tax sale certificates and tax deeds are expressly made cumulative and are in addition to any other remedies provided by law for the collection of taxes and tax sale certificates. Finally, as also expressly provided, no construction of the act should result in prohibiting the issuance of tax deeds or tax sale certificates in any manner already provided by law on its effective date.

The purpose of the act was to bring in as defendants all persons having an interest in or a lien on the land, adjudicating their interests and the priority of their liens, and, if the tax lien had not been redeemed, to sell the land to satisfy the amount found to be due. This is recognized in an early case resulting from the act, *City of Sanford v. Dial*,<sup>71</sup> wherein the relative priority of state, county, and municipal tax liens and assessments was in issue. There the Court held that a bill of complaint under the act may properly set out all municipal liens against the land; that all valid state, county, and municipal taxes, as distinguished from special assessments, are placed upon an equal footing; and that, if the land is sold under a foreclosure decree and the proceeds are insufficient to discharge all general tax liens in full, the several liens are required to be paid ratably upon a basis of equality. It was further held that certain special assessment liens of the city are subject and inferior to the lien of the tax certificates for state and county taxes.

When the tax liens and assessments of a municipality are adjudicated in a suit to which the municipality is not made a party, they are not discharged by a sale to satisfy the decree; and the land remains subject to them. When the municipality is made a party, however, all

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<sup>71</sup>104 Fla. 1, 142 So. 233 (1932). In discussing the purposes of the act the Court, speaking through Justice Whitfield, said at p. 12, 142 So. at 238: "In order that a more comprehensive title may be acquired predicated upon tax sale certificates, certain sections of Chapter 14572, Acts of 1929 [Ex. Sess.], were enacted authorizing the foreclosure in equity of the liens of State and county tax sale certificates, and providing for making parties to the foreclosure suit, those having other liens upon the land, and for issuing deeds upon judicial sales which would convey a title to the lands covered by tax certificates that would be 'indefeasible as to all parties defendant in the action.' Sections 15 and 28. See *Lee v. Walter-Keogh, Inc.* [105 Fla. 199, 141 So. 131], decided at this term. The above and other provisions of Chapter 14572 contemplate that all lien claimants may be made parties in suits to foreclose State tax liens so as to pass the indefeasible title provided for."

its liens, along with state and county tax liens, may be finally adjudicated in the suit and extinguished or transferred to the proceeds of the foreclosure sale.

The purchaser at a tax lien foreclosure sale under the act takes subject to liens for state and county taxes and municipal taxes and special assessments that are not due when the foreclosure decree is rendered. If such liens become due and are unpaid before suit is brought or while a final decree is pending, they should be adjudicated by original or supplemental proceedings in order that the obligations may be extinguished and an indefeasible title passed to the purchaser.

Since the act applies only to state and county taxes, the provision for correction of errors does not apply to municipal tax assessments.<sup>72</sup> It has been held, however, that tax certificates of a municipality can be foreclosed under the act if the municipal charter contains a provision that the general law of the State of Florida upon the subject of taxation shall apply to and govern the assessment, levy, and collection of taxes.<sup>73</sup>

In general, proceedings under this act are little different from the ordinary foreclosure of a mortgage lien. If the pleadings disclose that the suit is based upon a tax sale certificate that is more than two years old or upon a tax deed, that all subsequent and omitted tax certificates and taxes together with interest thereon were paid prior to filing the suit, and that all persons interested in the land are made parties defendant and duly served by summons or constructive service through publication, the pleadings are regular and the final decree duly adjudicates the rights of all the parties to the suit, including the amounts due on the liens involved. If it further appears that the land was duly sold to satisfy the amounts adjudicated to be due and that a master's deed has been executed and delivered to the purchaser at the sale, there is a good, merchantable title in the purchaser. Of course, if a question existed as to the validity of the tax assessment, the tax sale certificate, or the tax deed, the defendants entitled to raise such question would be required to plead their defense at the time required by the rules of procedure. Failure to do so would forever bar them from asserting such a defense after rendition of the final decree and expiration of the time for appeal, except in cases of fraud or mistake, as in other equitable foreclosure proceedings.

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<sup>72</sup>State *ex rel.* Dofnos Corp. v. Lehman, 100 Fla. 1401, 131 So. 333 (1950).

<sup>73</sup>Southwest Enterprises, Inc. v. Frasse, 113 Fla. 770, 152 So. 175 (1934).

*In Rem Proceedings**a. Municipal Taxes*

Chapter 15038, Florida Laws 1931, is the municipal in rem foreclosure act. Its widespread use is apparent from the many decisions of the Supreme Court interpreting its various provisions. The act, which was the first Florida law to provide a summary method of enforcing the collection of delinquent taxes and assessments, relates only to taxes and assessments of municipalities. In order to lay a foundation for the discussion which follows, a rather full recitation of its provisions seems desirable at this point. The provisions are:

- (1) All taxes, tax certificates, and special assessments imposed upon real estate by any incorporated city or town in Florida may be foreclosed by suit in chancery, the practice, pleading, and procedure to be in substantial accordance with that for the foreclosure of mortgages of real estate unless otherwise provided.
- (2) Suits for foreclosure shall be in the nature of proceedings in rem against the lands, and it shall not be material that the ownership of the lands be correctly alleged or that parties having an interest in or claim upon the lands be made parties or be served with process except as provided. As many parcels of land, regardless of ownership, and as many tax certificates and liens as complainant may desire may be included in one suit. Any judgment or decree that may be rendered shall be enforceable only against such lands.
- (3) Suit may be brought after any one or more of the following events:
  - (a) The expiration of two years from the date of any tax certificate held by a city or town whose charter provides for the issuance of tax certificates for delinquent taxes;
  - (b) the expiration of two years from the date of any tax imposed by a city or town whose charter does not provide for the issuance of tax certificates becomes delinquent; or
  - (c) the expiration of one year from the date any special assessment or installment thereof becomes due.
- (4) At least 30 days before filing of the bill of complaint written notice shall be sent by registered mail to the holder of the record title and of each lien, except judgment liens, on the lands involved. The notice shall briefly describe the land,

set out the amount of the tax certificate and liens, and warn the owners and holders that suit will be filed unless the delinquencies are paid by that date. The attorney is required to attach a certificate to the bill to the effect that written notice was given, as prima facie evidence that the notice provisions have been complied with.

Jurisdiction of the lands and interested parties shall be obtained by publication of notice issued by the clerk of circuit court once each week for at least four consecutive weeks, and proof of publication shall be had by affidavit of the publisher or his agent. The form of the notice is set out in the act.

- (5) Every person interested in or having a lien upon the land is deemed a party to the cause and may appear and defend. Any person not appearing and defending within the time specified shall be deemed to have confessed the allegations of the bill, but the court may in its discretion enlarge the time for appearance.
- (6) A departure is made in the manner of proving the allegations of the bill of complaint in the provision that an affidavit of the tax collector or other officer shall be received as prima facie proof of the existence of delinquent taxes, tax certificates, or assessments, the amount due, the date they became due, and the validity of all proceedings in connection therewith. As was provided in Chapter 14572, Florida Laws 1929, tax certificates are made admissible in evidence and prima facie valid; it is also provided that no tax certificate shall be held invalid except upon proof that the property was not subject to taxation or that the tax had been paid before the tax sale or institution of the suit.
- (7) If any person shall contest a tax, tax certificate, or assessment as illegal, he shall tender to the court at the time of filing his answer the amount he claims is properly assessable.
- (8) If the cause is decided for the complainant, the judgment shall include principal, interest, penalties, costs of suit, and a reasonable attorney's fee; all costs and attorneys' fees are to be apportioned among the various parcels of land in proportion to the amounts adjudicated against them. Again it is provided that in case of unnecessary separation of actions the attorney's fee shall not be greater than if they had been joined.

- (9) The special master is to sell the several parcels of land separately to the highest bidder for cash or bonds issued by complainant at public outcry after advertisement of the sale once each week for two weeks in a newspaper published in the city or town. All lands not sold on the date named in the notice can be sold later and the sale continued until all are sold. Such sales are subject to confirmation by the court, after which the special master is to deliver a deed to the purchaser. In case any lands are not bid for, however, the complainant municipality may bid the amount due and receive a deed.
- (10) In any judgment or decree the court may in its discretion direct the payment out of the proceeds of the sale of all unpaid state, county, and city taxes, as well as any special assessments becoming due since the institution of the suit; or it may direct the sale to be made subject to such obligations.
- (11) Any surplus arising from the sale above the amount found due under the final decree is directed to be deposited with the clerk of the court and disbursed under the order of the court.
- (12) Any person interested in the lands may redeem them at any time prior to sale by paying into the registry of the court all amounts due, and thereupon such lands shall be dismissed from the cause.
- (13) The act shall not repeal any other statute relating to the same subject matter but rather provide a supplemental and alternative method of enforcement of tax liens and special assessments for the benefit of all incorporated cities or towns of the State of Florida.

The theory and principles of this act are sound, and it is consistent with similar statutes held constitutional in other states and by the Supreme Court of the United States. Originally, weaknesses of the Florida act were that no provision was made for bringing in as parties defendant the owners of tax liens of equal dignity with the lien of municipal general taxes and that the State of Florida could not be brought into the suit.<sup>74</sup> So far as tax sale certificates issued for the nonpayment of state and county taxes and subsequent or omitted state and county taxes or tax certificates on the same land are concerned, the State of Florida, by statute in 1937,<sup>75</sup> gave its permission

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<sup>74</sup>Miami v. Certain Lands, 126 Fla. 781, 171 So. 798 (1937).

<sup>75</sup>Fla. Laws 1937, c. 18315, §§1-3.

to be made a party defendant to any foreclosure proceeding brought by a municipality. Since that time the lien of all state and county taxes can be adjudicated in the suit, merged in the final decree, and terminated and discharged upon sale by the master.

Although the theory and provisions of the act were generally sound, such a complete departure from any previously established system of enforcing delinquent taxes gave rise, as was to be expected, to a bitter fight over its constitutionality. Especially the provisions for service of process were challenged. The constitutional issue was first raised in *City of Coral Gables v. Certain Lands*.<sup>76</sup> The city was foreclosing on 10,000 or more parcels of land estimated to be owned by some 3,000 or more separate and unrelated individuals and corporations, none of whom was made parties defendant by name. The constitutionality of the statute was attacked on the ground that the mode of procedure and service violated the due process provisions of the Fourteenth Amendment of the Federal Constitution<sup>77</sup> and Section 12 of the Declaration of Rights of Florida. In an excellent opinion by Justice Buford, however, the Court held the act constitutional and declared the service of process not violative of the requirements of due process. Justices Ellis and Brown dissented<sup>78</sup> in opinions ably presenting the other side of the question.

*Priority of Liens.* The act also gave rise to the question of the relative priority of liens between a municipality on the one hand and the state and county on the other. This matter was considered in *Smith v. City of Arcadia*.<sup>79</sup> In 1939 the city acquired title to the land through foreclosure proceedings<sup>80</sup> based upon unpaid municipal taxes. State and county taxes were also due and unpaid at the time, but neither the state nor county was made a party to the proceeding. Tax certificates representing the state and county liens were issued, and ultimately a tax deed was executed to the purchaser of the certificates. The city then filed a partition proceeding, claiming that it and the deed holder were tenants in common. The Court refused this proposition, holding that when the city became the purchaser at the fore-

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<sup>76</sup>110 Fla. 189, 149 So. 36 (1933).

<sup>77</sup>*Id.* at 193, 149 So. at 47.

<sup>78</sup>*Id.* at 206, 214, 149 So. at 41, 44.

<sup>79</sup>147 Fla. 375, 2 So.2d 725 (1941).

<sup>80</sup>It appears that the foreclosure suit was not brought by the city under the authority of the municipal in rem foreclosure act but rather under some other act authorizing the city to foreclose its tax liens in equity.

closure sale it was seized of a new and independent title, subject to outstanding state and county tax liens, which it had the right to redeem.

While not specifically referring to the 1937 law permitting the state and county to be made parties to foreclosure proceedings by the city, the Court stated that if the city omits tax liens of equal dignity from foreclosure proceedings and thus allows the owner of state and county tax sale certificates to obtain a tax deed, the deed holder takes a new title, subject to liens existing and not adjudicated which are of equal dignity with those that were adjudicated. The title which was vested in the city was not absolute but subject to defeasance by the enforcement of the then existing liens for taxes. To redeem state and county tax liens was a duty of the purchaser at a municipal foreclosure sale.

Despite this decision the authority to bring in individual owners of state and county tax liens or other liens of equal dignity with those of municipalities was still doubtful. Hence in 1943 an act was passed by the Legislature specifically providing:<sup>81</sup>

“. . . the owner, holder or assignee of any tax lien, however evidenced, of equal or inferior dignity with those of the complainant on or against the lands being proceeded against, or any portion thereof, may be included as and made a party defendant in such proceeding by the service of process on such party defendant in the manner provided by law for service of process on defendants in chancery.”

After the enactment of this statute all tax liens in municipal in rem foreclosure proceedings could be adjudicated and an indefeasible title conveyed by the master at the foreclosure sale in the same manner as provided in Chapter 14572, Florida Laws 1929. The beneficial effects of the two subsequent acts can readily be appreciated when it is understood that prior to their passage tax liens of equal dignity with those of municipalities had to be discharged. Since such liens might exceed the value of the land, often the foreclosure by a municipality of its tax liens was a useless gesture. The Legislature, however, at last realized that their provisions were unrealistic and corrected them in the 1943 act. Thereafter no owner or holder of a general tax lien could realize more out of the lien than the proportionate part that he would receive from the sale of the land to satisfy the amount due

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<sup>81</sup>Fla. Laws 1943, c. 22021, §1, now FLA. STAT. §173.15 (1951).

on all of the liens, based upon the value of the land. If the tax liens and interests of all of the parties could not be adjudicated and the land sold for a reasonable price, every governmental agency and every person holding liens on the land had a frozen asset. The land was sterile and nonproductive of future taxes.

*Requisite Service of Process.* Of the many questions arising in connection with municipal in rem foreclosure proceedings that have been pursued to the Supreme Court, perhaps the most litigated has been that of service of process.

In *Fleming v. Fleming*,<sup>82</sup> on an original bill in the nature of a bill of review the complainant sought to cancel a final decree of foreclosure of municipal tax liens by the City of Lakeland. The suit was grounded upon an averred insufficiency of service, the complainant alleging that she did not receive the notice required to be sent to her by registered mail and that she did not see the notice published in a newspaper. In upholding the service the Court referred to its decision in *City of Coral Gables v. Certain Lands*,<sup>83</sup> which established that the notice provided by the act constituted due process of law. To the specific question whether the notice of institution of suit was directory or mandatory the Court answered:<sup>84</sup>

“The notice required to be mailed thirty days before the institution of the suit, we think, could not be held to be jurisdictional. The giving of that notice is directory so that the landowner may have an opportunity to pay off and discharge the tax lien before the institution of suit.”

The next case that had vital bearing on the due process question was *McCann v. City of St. Petersburg*,<sup>85</sup> wherein again a bill in the nature of a bill of review was filed to vacate and annul a final foreclosure decree entered pursuant to proceedings filed under Chapter 15038, Florida Laws 1931. Three grounds of error were assigned: (1) There was not attached to the bill of complaint a certificate of the attorney that written notice had been given as required by Section 4 of the act; (2) the clerk of circuit court failed to send notice by

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<sup>82</sup>130 Fla. 264, 177 So. 607 (1937).

<sup>83</sup>110 Fla. 189, 148 So. 36 (1933).

<sup>84</sup>130 Fla. 264, 177 So. 607, 608 (1937).

<sup>85</sup>145 Fla. 158, 199 So. 264 (1940).

registered mail, as provided by Section 4; (3) the sale price of the land, \$3,400, was grossly inadequate, since the reasonable cash value was \$10,000. A motion to dismiss the bill was granted by the chancellor, who held that publication of notice in the newspaper gave the court jurisdiction of the land and all parties interested therein or having any lien thereon. On review, the Supreme Court endorsed the chancellor's views, indicating that the notice of intention to file suit was directory rather than mandatory, and that the required notice by registered mail was likewise directory. The latter point was reiterated when rehearing was denied.<sup>86</sup>

The *McCann* decision led members of the bar to believe that at last the essential markers of due process of law under the act had been fixed; and municipal attorneys followed the route traced by the Court's decision. The matter, however, was not finally settled, and in 1947 the troublesome due process problem was again set at large in the celebrated case of *Reina v. Hope*.<sup>87</sup>

Factually this was an unfortunate case to raise the question of requisite service of process under Chapter 15038, Florida Laws 1931. The City of Arcadia filed in rem foreclosure proceedings against the land, a final decree being entered on May 18, 1932. Elsie B. Hope bid in the land at the special master's sale and claimed title under the deed executed and delivered to her. After she acquired title some question was raised regarding the service of process in the city's foreclosure suit, and she filed suit in circuit court against the children of Franklin Taylor, deceased. The bill of complaint alleged that some of the children were minors at the date the suit was instituted, that the notice required by statute was mailed to their guardian and not to them individually, and that if this was not in conformity with jurisdictional requirements of the act the foreclosure proceeding was defective. The case started, therefore, with an admission on the part of the purchaser that perhaps the service of process on the minor defendants was defective. It is clear that a notice was mailed to the guardian, if this was material; but there apparently was no allegation that the publication of notice in the newspaper was the only one required to constitute due process of law as far as the minor defendants were concerned.

An answer and counterclaim was filed by the minors, in which

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<sup>86</sup>*Id.* at 169, 199 So. at 269.

<sup>87</sup>28 So.2d 904 (withdrawn by Court order and appearing only in Advance Sheet March 6, 1947), reconsidered *ex mero motu*, 158 Fla. 771, 30 So.2d 172 (1947).

they admitted the common source of title alleged in the bill and the filing and result of the tax foreclosure suit. They denied, however, any knowledge, either actual or constructive, of the institution or pendency of the suit, and alleged that due process was denied them at all stages of the proceedings. A motion to dismiss the counterclaim was granted, and the case went to the Supreme Court on application for a writ of certiorari to review the order.

While the case was before the Court, Justice Terrell wrote three opinions: the original opinion filed November 15, 1946, an opinion on rehearing of January 28, 1947, and an opinion on re-examination of the case *ex mero motu* of April 25, 1947. The Court, probably because the property rights of minors were involved, first entertained the view that the mailing of a copy of the prescribed notice was a jurisdictional requirement, failure to comply with it being a denial of due process of law. An attempt was made to liken mailing of such notice to the procedure required when constructive service is used in equitable in personam proceedings. This view was taken notwithstanding the clear-cut decision in the *McCann* case that mailing of the notice by the clerk was merely directory. As a matter of fact, the Court did not even mention the *McCann* case in its original opinion, and on rehearing that decision was distinguished on the ground that *McCann v. City of St. Petersburg* concerned the thirty-day notice before filing suit, while the instant case regarded notice pending the suit to foreclose.

Seemingly the Court became confused as to the specific question that was presented in the *McCann* case. There the only material question was whether the notice required to be mailed by the clerk was directory or mandatory, and the opinion on rehearing conclusively settled this matter by holding mailing of the notice to be merely directory.

The original opinion in *Reina v. Hope*, as one might expect, created consternation among the Florida lawyers who represented municipalities, counties, and persons who had purchased and improved lands sold under final decrees in municipal in rem foreclosure proceedings and under the provisions of Chapter 22079, Florida Laws 1943. Thousands of land parcels in the state had been conveyed in reliance on the *Fleming* and *McCann* cases, the municipal attorneys proceeding on the theory that notice by news publication was sufficient to constitute due process.

A petition for rehearing was considered, wherein the original

opinion was reaffirmed.<sup>88</sup> The Court, however, recognizing the grave importance of the matter involved, reopened the case *ex mero motu* after application to file an extraordinary petition for rehearing. Finally the previous decisions were withdrawn and the decision reached that due process was afforded and jurisdiction acquired by publication of the statutory notice in a newspaper.

Although *Reina v. Hope* ultimately reaffirms the view that service by publication is sufficient under the act to constitute due process, it does not eliminate the necessity of a bona fide attempt to give notice by mail. This point was emphasized by the decision of *City of Lakeland v. Chase National Co.*<sup>89</sup> In that case suit was filed January 28, 1943, to foreclose thousands of tax and special improvement liens, and the property was sold under the decree on March 9, 1944. A bill of review was filed to vacate the final decree. The Supreme Court noted the city's failure even to attempt to send notice by registered mail as directed by the act, and held that proceedings under such circumstances, in plain disregard of the statutory direction, were a fraud on the rights of the parties even though such notice was not an indispensable jurisdictional requirement. The Court, it should be noted, expressly referred to the *Reina* decision and reaffirmed the rule of jurisdictional notice established therein.

There have been many other decisions considering questions arising under Chapter 15038, Florida Laws 1931. It seems, however, of little value to explore the specific instances wherein administrative errors have been before the Court. Uniformly such errors have been held to be cured by the equitable decree when the protesting owner or lien holder has been required to pay a valid revenue obligation or have the land sold to satisfy the amount decreed due. The municipal in rem proceedings have had a marked effect on the liquidation of delinquent revenues and have contributed to a large extent to a solution of the municipal delinquent tax problem.

#### *b. County Ad Valorem Taxes*

Chapter 22079, Florida Laws 1943, commonly known as the Holland Tax Law, is an amendment of certain sections of Chapter 20722, Florida Laws 1941. Chapter 20722 was a complete revision of Florida tax laws relating to ad valorem realty taxes. The purpose of the original law was to equalize ad valorem taxes in the counties of the

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<sup>88</sup>28 So.2d 904, 906 (1947).

<sup>89</sup>159 Fla. 783, 32 So.2d 833 (1947).

state and to produce an assessment roll in each county that would reflect the full cash value. The act also attempted to provide a simple and expeditious method of enforcing the payment of delinquent taxes through issuance of a statutory or administrative tax deed to the county rather than to the state, the latter withdrawing from the field of ad valorem taxation on lands.

The 1943 amendment was primarily designed to produce a marketable title to lands to which the county was required to take title by reason of nonpayment of taxes; and, although some features of the administrative procedure leading up to sale of the lands by the tax collector and the issuance of a tax sale certificate were amended, the main purpose was directed toward creating the judicial procedure by which the county took title to the land. The previous procedure was considered unsatisfactory.

The fundamental basis of the amendment was the theory that after two years from the date of issuance of the tax sale certificate to the county the title to the land became vested in the county. A similar provision as to vesture of title in the state had been in the tax law for many years.<sup>90</sup> Chapter 20722, Florida Laws 1941, provided that two years after a tax sale certificate had issued to a county the clerk of the circuit court should issue a tax deed to the county, but there was no provision vesting title in the county as provided for the state. Neither do the provisions of the 1943 amendment expressly vest title in the county at the expiration of the two-year period. Nevertheless, this result seems to have been anticipated by those who drafted the amendment, since its title describes the prescribed proceeding as being in the nature of a bill to quiet title. Despite this denomination the procedure actually is more closely akin to a strict equitable foreclosure. The only importance that may be attached to the discrepancy, however, regards the question of when the title to the land becomes finally vested in the county.

The key section of the 1943 amendment is Section 13, which amends Section 36, Florida Laws 1941. This provision in substance is as follows:

- (1) Within 90 days after the expiration of a two-year period dating from the issuance of tax certificates bid off for the county, the clerk of circuit court shall prepare a complete schedule

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<sup>90</sup>Fla. Laws 1895, c. 4322, §65; FLA. GEN. STAT. §593 (1906); Fla. Laws 1907, c. 5596, §62; FLA. GEN. STAT. §796 (1920); FLA. COMP. GEN. LAWS ANN. §1027 (1927); FLA. STAT. §193.64 (1951).

in triplicate of all lands involved, retaining one copy in his files and delivering a duly certified copy to the county commissioners, the receipt of which shall be recited in their minutes.

- (2) Within 90 days after receipt the Commissioners shall cause a bill of complaint to be filed in the county's name, listing all lands described in the schedule as party defendant. No person having an interest in the lands need be named, although the clerk must give notice to interested parties as provided in Section 40.<sup>91</sup>
- (3) The complaint shall briefly describe the levies and recite nonpayment of the delinquent taxes. A certified copy of the schedule furnished by the clerk of court must be attached, as well as the clerk's certificate to the effect that required notice has been mailed. Parties to whom notice was given, however, need not be named.
- (4) Jurisdiction of the lands and parties concerned is obtained by a single publication of notice in a newspaper of general circulation not later than 30 days after filing the bill of complaint. This notice issues from the clerk of the circuit court upon request of the plaintiff. Again it is not necessary to list the names of the parties. The notice, however, must describe the lands involved and require all interested parties to appear before the circuit court on a specified day not less than 15 or more than 30 days after publication of the notice and show cause why title should not be absolutely vested in the county and be quieted against all claims. Decrees *pro confesso* may be entered as in other chancery causes.
- (5) Provision is made for the purchase before the return day by any person, firm, or corporation of all tax liens, tax sale certificates, and subsequent and omitted county taxes. A prerequisite in the exercise of this privilege is a receipt of the

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<sup>91</sup>The provisions are: In addition to publication of notice the clerk of circuit court shall mail a copy of the newspaper notice to the owner of the property, the holder of each mortgage, and by registered mail to the municipality and taxing districts in which the property lies, enclosing with each copy a statement calling attention to the notice; and he shall attach to the publisher's affidavit a certificate attesting the mailing of the notice. The failure of the clerk to mail or of any person concerned to receive the notice shall not affect the validity of the tax deed. Copy of the notice may be sent at any time within 20 days after the issuance of the tax deed.

municipality showing purchase of any unpaid municipal tax liens.

- (6) On the day following the return day the clerk must file a certificate describing each parcel of land upon which taxes and tax liens have been purchased, and such lands shall by final decree be excluded from the suit.
- (7) If sufficient cause is not shown that the property was exempt from taxation, or that the taxes had been paid prior to sale, or that the property had been redeemed before expiration of the two-year period, the circuit judge enters a final decree reciting briefly the filing of the bill of complaint, publication of the notice, and his order vesting in the county a fee simple title free of all encumbrances. The decree precludes any claim of redemption based on an interest in the land held prior to the expiration of the two-year period.
- (8) The decree is to be recorded in the chancery order book of the court and in the book marked "County Lands Acquired for Delinquent Taxes."
- (9) The clerk may at any time compile a supplementary schedule of land which he by error failed to include in the original, and new proceedings may be taken to foreclose the liens on such land.
- (10) After the expiration of the two-year period the right of individual holders of county tax sale certificates is restricted to participation in the proceeds of the sale to the extent that the amount of the tax lien represented bears to the amount of tax liens held by the county or other taxing units. No individual certificate holder, however, can receive a larger amount than would have been required to redeem his certificate at the expiration date of the two-year period.
- (11) The act finally deals with the method of treating lands the title to which was vested in a municipality as of May 1, 1943, through foreclosure proceedings. Further, the manner of prorating the proceeds arising from sale of the lands by the municipality is described.

Perhaps the most litigated provision of Section 13 of the amendment is that pertaining to the notice of proceedings which is required. Reference should also be made, however, to the provisions relating to the bill of complaint, the decree, and the interests affected by the decree.

*Bill of Complaint.* Regarding the requisite allegations in the bill of complaint, the pertinent provision states that the complaint must briefly describe the levies and the nonpayment of delinquent taxes and that a certified copy of the schedule of lands must be attached. Persons having an interest in the land, however, need not be named as defendants.

The sufficiency of a bill of complaint filed by Clay County was considered in *Smith v. Green*.<sup>92</sup> Suit was brought to cancel a deed executed by the county to Green, the county having acquired the land through proceedings under Chapter 22079. The Court held that the description of the land in the proceedings was not sufficient to satisfy the requirements of due process and that in rem proceedings must strictly follow the law — especially as to notice. In so holding the Court said:<sup>93</sup>

“If the bill of complaint had shown by apt words and figures the year in which each certificate was issued, the number of the certificate and an accurate description of each parcel of land to which the so numbered certificate applied, and that such certificates were then in the Clerk’s Office, the above stated requirements would have been met and due process afforded. This is true because under the statute every person has notice that taxes are due and payable and when not paid become delinquent, and the publication of the notice showing these facts would have been sufficient to advise the land-owner of all material facts to enable him to redeem his land.”

The Court also stated that these facts could be shown by specific allegations in the bill regarding each levy, or they could be shown by being placed on the schedule required to be made by the clerk.

Another matter of interest is the Court’s observation that the provisions of Chapter 15038, Florida Laws 1931, and Chapter 22079, Florida Laws 1943, while not identical, are substantially the same. What would constitute notice sufficient to satisfy the requirement of due process under one statute would, according to the Court, also be sufficient under the other.

*Notice.* Section 13 provides that jurisdiction of the lands and of

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<sup>92</sup>159 Fla. 319, 31 So.2d 925 (1947).

<sup>93</sup>*Id.* at 322, 31 So.2d at 927.

parties interested therein is obtained by publication of a general notice, it not being necessary to set forth the names of the parties. The notice must describe the lands involved and require all interested parties to appear. It is to be published only once in a newspaper of general circulation published in the county in which the lands are situated, publication to be made not later than thirty days after the filing of the bill of complaint.

Sufficient notice is, of course, a prerequisite to the validity of any judicial proceeding, because foreclosure without proper notice is a denial of due process of law. Because the form of notice is not prescribed by the act, it is incumbent on the county's attorney to prepare notices containing the necessary elements. Justice Buford in *Smith v. Green* stated that the following must appear in the notice: (1) the year in which each certificate was issued, (2) the number of the certificates, and (3) an accurate description of each parcel of land. Of course the return date must also be stated, and the notice should be under the hand and official seal of the circuit court.

Section 17 of the amendment also requires the clerk to mail notice to the landowner and to mortgagees of record at the time of filing the complaint. The provision indicates that this mailing is merely directory rather than mandatory. Probably the Court would consider publication in a newspaper sufficient to meet the requirements of due process, following the principles and reasoning of *Reina v. Hope*,<sup>94</sup> which concerned the requirement of notice by mail under the municipal in rem foreclosure act. *Smith v. Green* indicates this conclusion. Section 194.51, Florida Statutes 1951, which is Section 17 as amended, states, however, that "The failure of the former mortgagee, owner, municipality or other taxing district, to receive such notice shall not affect the sufficiency or validity of this requirement." This provision is similar to Section 194.18. In construing this provision in *Thacker v. Biggers*<sup>95</sup> and *Swigert v. Parker*,<sup>96</sup> the Supreme Court held that mailing of the notice is mandatory and indispensable to the transfer of title by tax deed.

It is unlikely that the Supreme Court of Florida will hold the mailing of notice as provided in Chapter 22079 jurisdictional, since the proceeding is in rem. Here again, however, caution should be exercised in examining titles based upon these proceedings.

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<sup>94</sup>*Supra* note 87.

<sup>95</sup>48 So.2d 750 (Fla. 1950).

<sup>96</sup>46 So.2d 16 (Fla. 1950).

*Decree and Sale.* Under the act's provisions the court is to decree that title to the lands described in the bill of complaint is absolutely vested in the county and is forever quieted against all claims by the defendants. As previously pointed out, the proceeding is in the nature of a strict equitable foreclosure; the right is given to the owner or any other interested person to purchase the tax liens on or before the return date and thus exclude his land from the final decree.

A complete procedure is set up to provide for sale of the lands by the county. It is worthy of note that in each instance the acts of the county commissioners and clerks must be in accord with the statutory requirements in making any sale. All such acts, however, were attempted to be validated up to June 13, 1949, in so far as the Legislature might do so, by Chapter 25437, Florida Laws 1951.<sup>97</sup> An exception was made for any conveyance the validity of which was in litigation on June 13, 1949, or was attacked in judicial proceedings at any time within six months after June 13, 1949.

One point is perhaps worth noting. It was often found that the minimum bid price placed on the land by the county, which may not be less than fifty percent of the amount of the last assessed valuation appearing upon the county tax roll,<sup>98</sup> was more than the land actually was worth and the county could not interest a purchaser. In order to remedy this situation the Legislature in 1947 provided that, as to any lands acquired by the county under the act title to which had remained in the county for two years from the date of the decree, a majority of the county commissioners might order sale at public outcry to the highest cash bidder. Provision was made for the manner of this sale, the issuance of deeds of conveyance, and the distribution of the proceeds. The county commissioners were given the right to fix a minimum bid.<sup>99</sup>

*Individually Owned Tax Liens.* In considering the interests affected by the foreclosure decree, reference must be made to subsection 10 of Section 13, as set forth herein.<sup>100</sup> The only tax liens mentioned there are "county tax sale certificates" owned by individuals. What position, then, did the liens of state and county tax sale certificates occupy prior to 1941, when some such certificates were owned by individuals? Were these certificates affected by the act? Did they remain outstanding

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<sup>97</sup>FLA. STAT. §194.551 (1951).

<sup>98</sup>FLA. STAT. §194.55 (1951).

<sup>99</sup>FLA. STAT. §194.60 (1951).

<sup>100</sup>See p. 44 *supra*.

liens of dignity equal to the county's tax liens, enforceable after title to the lands became vested in the county?

Answers to these questions were not long delayed. In *Pinellas County v. Banks*<sup>101</sup> the plaintiffs, Banks and wife, purchased state and county tax sale certificates pursuant to the provisions of the Murphy Act.<sup>102</sup> These certificates included subsequently omitted taxes up to and including the year 1939. Tax sale certificates were issued to Pinellas County at the tax collector's sales of August 1941 and June 1942, and taxes for the years 1942 and 1943 were unpaid. In January 1944 the plaintiffs filed a suit to foreclose the tax liens held by them, making Pinellas County, the City of St. Petersburg, and fee simple owners parties defendant. In February 1944 Pinellas County instituted suit to perfect its title to all tax delinquent lands, as was provided under Chapter 22079, Florida Laws 1943. Pinellas County answered the Banks suit, asserting that the plaintiffs were barred from foreclosing their tax liens because<sup>103</sup>

“(1) They failed to perfect their tax titles and redeem all tax sale certificates more than two years old in the hands of the clerk of the circuit court on the 4th day of August, 1943, (the date on which the tax sale certificates held by the County became two years old), and (2) They failed to purchase the tax sale certificates held by the clerk of the circuit court on or before the return date of the suit by Pinellas County to perfect its title to all tax delinquent lands, March 1, 1944.”

The plaintiffs filed a replication challenging the constitutionality of Chapter 22079, and the chancellor held that Banks' certificates were not affected by the amendment. If construed as barring his right of recovery as of August 4, 1943, or March 1, 1944, the act was unconstitutional. Pinellas County appealed.

The first question presented on appeal was whether Chapter 22079 was to be construed as invalidating the tax sale certificates held by Banks and his wife that were more than two years old. The Court stated that the verbiage of *Leon County v. Crawford*,<sup>104</sup> where in Chapter 22079 was held constitutional, did not apply to the question in issue and that to hold the Banks' certificates invalid would be an

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<sup>101</sup>154 Fla. 582, 19 So.2d 1 (1944).

<sup>102</sup>Fla. Laws 1937, c. 18296.

<sup>103</sup>154 Fla. 582, 584, 19 So.2d 1, 2 (1944).

<sup>104</sup>153 Fla. 604, 15 So.2d 321 (1943).

unconstitutional impairment of the obligation of contract. The decree of the lower court was affirmed.

In denying petition for rehearing<sup>105</sup> the Court held that an individual holder of state and county tax sale certificates may foreclose at any time before the expiration of the two-year period, or he may acquire the certificates on which the county predicates its foreclosure suit and further delay his own foreclosure. If he does not elect to foreclose or acquire the certificates of the county, he then becomes a party to the county's suit. The Court said:<sup>106</sup>

"In such event, they will be relegated to their right under the law to participate ratably with other lien holders in the proceeds of any sale by the board of county commissioners as provided by Section 13, Chapter 22079 unless prior to entry of the final decree in the suit by the County to foreclose he applies for and is granted a tax deed in the manner provided by law."

Simplification of the tax structure and stabilization of tax titles were accomplished by this decision.

*Other Interests Affected by the Decree.* One purpose of the amended act, stated in the first case wherein its construction was involved,<sup>107</sup> is to free lands from all state, county, and municipal encumbrances resulting from nonpayment of taxes. The question is raised, what other interests are affected by entry of a final decree vesting title in the county?

The 1943 amendment to Section 42 establishes that the decree extinguishes all interests save "liens for general taxes, other than county tax liens, and municipal liens of equal dignity" with county liens. There is no specific reference in the amendment to liens of drainage districts. The general law providing for creation of drainage districts<sup>108</sup> states, however, that drainage taxes constitute a lien of dignity equal to that of the lien of state and county taxes, and drainage liens have always been protected by other governmental agencies in connection with the enforcement of general tax liens.

That it was not the intention of the Legislature in amending Section 42 to extinguish any drainage taxes due is clearly shown by the amended provisions of Section 44 relating to the sale of lands by the

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<sup>105</sup>154 Fla. 582, 589, 19 So.2d 1, 4 (1944).

<sup>106</sup>*Id.* at 588, 19 So.2d at 4.

<sup>107</sup>Leon County v. Crawford, 153 Fla. 604, 15 So.2d 321 (1943).

<sup>108</sup>FLA. STAT. §298.41 (1951).

county after entry of the final decree. The amendment of that section directed that all lands offered for sale and all county deeds issued as a result thereof are to be free of existing county and municipal liens "but subject to drainage liens or liens for general taxes of any other taxing districts which by general law are of equal dignity with county and municipal liens for general taxes . . . ." With accumulated interest and costs, the amount owing on drainage liens often seriously hampered the sale of the land to private purchasers after the county perfected its title. It is not surprising, therefore, that the Legislature, in order to liquidate all tax liens of equal dignity, ultimately provided by another amendment in 1947 that drainage liens also were extinguished by the decree.<sup>109</sup> Since that year, drainage obligations have been relegated to participation in the proceeds of the sale.

One knotty problem remains to be solved. Section 44 as amended provided that the lands sold were free of all liens save "drainage liens or liens for general taxes of other taxing districts which by general law are of equal dignity with county and municipal liens for general taxes . . . ." Drainage taxes were eliminated by the 1947 act, but what are "liens for general taxes of other taxing districts which by general law are of equal dignity with county and municipal liens for general taxes"? Are there other taxing districts whose liens are unimpaired by the proceedings and sale of the land by the county? This is the question we must resolve.

General tax liens and assessments of special taxing districts, as has been mentioned,<sup>110</sup> are to be distinguished. Clearly state, county municipal, and drainage district liens are extinguished, whether owned by the governmental agency or an individual. That is expressly provided.<sup>111</sup> So too there would seem to be no question that paving, sewer, sidewalk, and similar improvement liens are likewise extinguished, these being recognized concomitants of the general county and municipal taxing power. Whether special assessment district liens for services, such as sanitary, fire control, or hospital districts, survive presents a problem. Quite often the legislation expressly purports to make the liens of special assessment districts of dignity equal to that

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<sup>109</sup>Fla. Laws 1947, c. 24334, as amended, Fla. Laws 1949, c. 25035, §11, and c. 25432, §1; FLA. STAT. §194.61 (1951).

<sup>110</sup>See page 31 *supra*.

<sup>111</sup>See Fla. Laws 1943, c. 22079, §42, *Leon County v. Crawford*, 153 Fla. 604, 15 So.2d 321 (1948), re state, county, and municipal liens; Fla. Laws 1947, c. 24206, §1, FLA. STAT. §194.53 (1951) re drainage liens.

of state and county liens, but the Supreme Court has repeatedly held that the statutory language does not serve to equate special assessment liens to the dignity of a general tax lien.<sup>112</sup>

Millage levies for hospital, fire control, sanitary, and other special districts are made to provide for operating costs and bonded indebtedness, and perhaps the tax levy by such districts is independent of the general county levy. There is a faint possibility, therefore, that special district liens might be held to be of dignity equal to county liens. Because such a lien apparently is not anticipated either by Section 44 or by the 1947 amendment, there is a possibility also that the lien would survive a county foreclosure proceeding. Since it would be contrary to the spirit of Chapter 22079 to preserve the lien, it is submitted that the Supreme Court would, if the question came before it, hold a special assessment district lien of this nature to be extinguished, as is a general tax lien. The Supreme Court, however, has not had occasion to construe Section 44 and to spell out the other taxing districts that have liens of equal dignity with those of counties, municipalities, and drainage districts. The cautious course, therefore, in approving title to land encumbered by liens of a special taxing district is to require payment and discharge of such liens.

### *c. Miscellaneous Provisions*

*Church Lands.* Although pursuant to the provisions of the Constitution of the State of Florida the Legislature exempted lands owned and used for church purposes from taxation,<sup>113</sup> it sometimes occurs that such lands are erroneously assessed and certificates are issued for nonpayment of such taxes, resulting in title ultimately becoming vested in the county in which the land lies. Any such title would be void. In order to clarify the situation, however, the Legislature in 1947 enacted a law<sup>114</sup> designed to restore title to the land to the church when apparently the title had become vested in the county by reason of nonpayment of the void assessment.

The act relates to two situations. Subsection (a) deals with cases in which the title to the property was vested in the church or in

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<sup>112</sup>*E.g.*, *Tampa v. Lee*, 112 Fla. 668, 151 So. 315 (1933); *Clermont-Minneola Country Club, Inc. v. Coupland*, 106 Fla. 111, 143 So. 133 (1932); *City of Sanford v. Dial*, 104 Fla. 1, 142 So. 233 (1932).

<sup>113</sup>FLA. STAT. §192.06 (1951).

<sup>114</sup>Fla. Laws 1947, c. 24334, §1, as amended, Fla. Laws 1949, c. 25432, §1; FLA. STAT. §194.61 (1951).

trustees for the church, and the property was being used for church purposes on January 1 of the year for which were assessed taxes the nonpayment of which was the predicate on which was based the acquisition of title by the county. Upon request to the county or any other person holding title, the county or person shall convey the land to the church or its trustees without cost. If the county has sold the land to a third person, then the county and not the church must refund to him the amount of money paid to the county. But whether, upon refusal to reconvey the land after proper request and consequent litigation to set aside the deed from the county, third persons could force the county to refund their money is questionable.

Subsection (b) deals with cases where the title was acquired by the church or was used for church purposes subsequent to January 1 of the year for which such taxes were imposed but prior to the entry of the final decree as provided for in Chapter 22079. In such cases upon "payment to the county of the amounts required in subsection (a) of Section 1 of this Act, plus an amount equal to the sum that at the time of acquisition and beginning of the use thereof for church purposes, or, if the two did not occur simultaneously, then at the time of the occurrence of the later, it would have been necessary to pay to redeem such property from outstanding tax sales certificates and subsequent taxes," the county could deed the property to the church.

At this point the provisions of the law are ambiguous, but perhaps the intention of the Legislature can be determined. Subsection (a) has no provision for the church or its trustees to pay any amount of money to recover the title to the property. What does subsection (b) mean when it states "then upon payment to the county of the amounts required in subsection (a) of Section 1 of this Act"? It would appear that the only reasonable construction that could be placed on this provision is that the church or its trustees would be required to pay to the county the amount due the county on its tax sale certificates and tax liens at the date of the entry of the final decree quieting title in the county. If this construction is not correct then there is no basis for computing what is to be paid. The additional amount to be paid is reasonably clear and consists of the amount of taxes that have accrued to the date that the property is actually *used* for church purposes, regardless of when the deed of conveyance to the church was executed and delivered.

In 1949 the Legislature passed another statute authorizing the county commissioners to reconvey to churches any land which, at the

time title vested in the county through foreclosure proceedings, was owned by a church and used for church purposes.<sup>115</sup> The commissioners are empowered to reconvey without advertising and upon such terms as they see fit. Repeal of all conflicting laws is expressly provided. This legislation apparently was passed to clarify the payment of monies mentioned in subsection (b) of the 1947 act and to overcome procedural difficulties in the act that might have raised constitutional problems.

It will be noted that both acts relate to land that is actually used for church purposes and not to lands that the church owns and has not devoted to use for church purposes. The latter lands are subject to taxation, and the forfeiture of the title to the county for nonpayment of taxes would vest a valid title in the county and the purchaser of the land from the county. This distinction is quite important, because the mere fact that the assessment roll and tax proceedings show that the title to the land is vested in a church or its trustees does not indicate that the land is exempt. There is a widespread fallacy that all property owned by a church is exempt from taxation under the laws of the State of Florida.

It is only on rare occasions that property owned and used by a church for church purposes would be erroneously assessed for taxes, so perhaps the discussion of these acts is unwarranted. Both acts, however, may become the basis of a reconveyance to a church of valuable property used for church purposes, and proper construction of the acts is another problem for the title examiner to solve.

*School Lands.* Regarding school lands, a case of considerable interest arose in Hillsborough County.<sup>116</sup> The Board of Public Instruction, by condemnation proceedings in March 1946, acquired title to the land involved for school purposes. The clerk of the circuit court drafted a proper certificate showing payment of the condemnation award, which was duly recorded, and a transcript of the judgment was filed and recorded. At the time of acquisition of the land, taxes for the current year had not been levied and assessed and could not be paid out of the condemnation award. When the taxes became due they were not paid, and a tax sale certificate was issued to Hillsborough County. After the certificate became two years

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<sup>115</sup>FLA. STAT. §192.06 (4) (1951).

<sup>116</sup>Board of Public Instr'n v. Hillsborough County, unreported (13th Cir. Fla., July 17, 1951, per Tillman, J.)

old the county filed proceedings and quieted its title to the lot, which was thereafter sold at public outcry and a deed issued to the purchaser. The purchaser then resold the lot to another person at a profit, duly executing and delivering a deed which was recorded. Some time later the school board discovered that the lot, which was an integral part of a proposed school site, had been sold for taxes. Suit was filed in the circuit court, the board contending that the assessment and sale of the lot were void and praying that a decree be entered canceling the deeds and the assessment. The question presented to the court was, when did the land become exempt from taxation by reason of the title being vested in the school board for school purposes?

It appeared at the trial that the land was assessed in the name of the original owner and that the school board had received no notice of the assessment or the subsequent proceedings. The court held that the land was exempt from taxation as of the date the title vested in the school board; that the lien of an assessment for taxes attaches to the land and relates back to January 1 of the year in which the assessment was made; that under the laws of Florida there can be no split assessment for taxes in any one year; and that therefore the assessment, perfected after the title to the land had vested in the school board and the land became exempt, was void. A decree canceling the assessment and the deeds was entered.

The problem involved in this case may have been the cause of legislation in 1951 providing:<sup>117</sup>

“Whenever any county of this state has heretofore acquired or shall hereafter acquire, title to any real property, the taxes of all political subdivisions, as defined in §1.01, Florida Statutes, upon such property for the year in which title to such property was acquired, or shall hereafter be acquired, shall be that portion of the taxes levied or accrued against such property for such year which the portion of such year which has expired at the date of such acquisition bears to the entire year, and the remainder of such taxes for such year shall stand cancelled.”

This act does not specifically refer to a county board of public instruction, but perhaps it might be so construed by the courts. Such

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<sup>117</sup>FLA. STAT. §192.60 (1951). Sec. 1.01(10) defines “political subdivision” as follows: “The words ‘public body,’ ‘body politic’ or ‘political sub-division’ include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts and all other districts in this state.”

a construction would not prevent the incident that occurred in the last cited case, but it might furnish a means by which the courts of Florida could reach a different result.

*Hardship Cases.* There has always been a tendency on the part of the Legislature and the courts to alleviate the effect of tax laws when it would appear that the owner has some reasonable excuse for allowing his lands to be sold for taxes. Hardship cases have arisen under every law relating to the assessment and collection of taxes, and if the Legislature did not provide a way to avoid an inequity the courts would do so.

Many hardship cases developed under Chapter 22079, Florida Laws 1943, and the Legislature in 1945 enacted a law permitting the county to deed land back to the former owner when a verified petition is presented which shows injustice.<sup>118</sup> The owner is required to include a brief statement of the facts and circumstances upon which the request for restitution is based and to pay all taxes due, including municipal taxes.

This act is construed and interpreted quite liberally by public officials and the courts, as appears from *Coughlin v. Broward County*.<sup>119</sup> In that case the Court, although refusing to vacate a decree quieting title to the former owner's land, held that a hardship case had been proved entitling the former owner to restitution of the land as provided in the act. A very flimsy excuse was given by the owner for non-payment of the taxes. She acquired title on July 26, 1938, and apparently it was understood that her grantor was to pay the taxes for the current year. It was true that she paid all taxes due in subsequent years, but she relied merely on the understanding that the grantor would pay the taxes and made no effort to determine whether they had been paid. Such a decision is somewhat disturbing to title examiners because of the precedent it may establish for future cases in which a more difficult problem may be presented.

With this discussion of several miscellaneous provisions relating to titles acquired by counties under Chapter 22079, Florida Laws 1943, consideration of tax titles based on equitable foreclosure proceedings is completed. Toward the close of this article, however, a discussion appears of other Florida laws applicable to all tax titles. These laws should also be consulted in evaluating a tax title based upon equitable foreclosure proceedings.

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<sup>118</sup>Fla. Laws 1945, c. 22870, §1; FLA. STAT. §194.471 (1) (1951).

<sup>119</sup>156 Fla. 298, 22 So.2d 814 (1945).

## PART III — THE MURPHY ACT

Perhaps the most interesting Florida tax title is a title based upon Section 9, Chapter 18296, Florida Laws 1937, which became effective June 9, 1937.<sup>120</sup> This legislation was fostered by the Honorable H. G. Murphy, a senator in the 1937 session of the Florida Legislature, and is commonly known as the Murphy Act. Because of the widespread use of this short title, Chapter 18296 is herein referred to as the Murphy Act.

This act was the culmination of efforts of the Florida Legislature to restore to the tax rolls thousands of parcels of land that were sold to the State of Florida for nonpayment of taxes in consequence of the so-called Florida boom and the economic recession which followed in the early 'thirties.<sup>121</sup> Various laws had been passed to solve the delinquent tax problem,<sup>122</sup> and their failure to accomplish this purpose led to the Murphy legislation. Section 1 of the act consisted of legislative findings of fact which required its drastic action. The courts have been hesitant to admit the fact, but Section 9 of the act had the effect of providing for statutory forfeiture of lands for nonpayment of taxes. Although it is the only instance of such legislation in Florida, the measure seems to have been justified, for the people of Florida have generally benefited from its operation.

The plan or scheme of the Murphy Act is very simple. The Legislature, after determining that tax sale certificates which were two years old on the effective date of the act constituted depreciated assets which were probably uncollectible, provided for the sale of such certificates at public outcry. The sale by the clerk of the circuit court to the highest bidder was to be for cash, and the owner or any other person interested in the land was permitted to become a bidder. The tax sale certificates were assigned to the successful bidder. If the bidder was a person other than the owner, it was provided that for a period of two years from the date of the sale the certificates might be redeemed by the owner or lienholder by paying to the assignee the

<sup>120</sup>FLA. STAT. §192.38. Carried forward from Fla. Laws 1937 as FLA. COMP. GEN. LAWS §992.20 (Perm. Supp. 1940), as amended, Fla. Laws 1943, c. 21684, §1.

<sup>121</sup>Contrary to a common belief that the Florida boom was unique, there have been similar events in other states. At approximately the same time a boom occurred in Michigan. There too a revision of the tax structure was consequently necessitated, and there too a "Murphy Act" resulted. See *Keefe v. Clark*, 322 U.S. 393, n.3 (1944), for a history of the Michigan conditions and developments.

<sup>122</sup>See note 2 *supra*.

amount of the bid together with interest at three per cent per annum and costs. In the event the certificates were not redeemed within the two-year period, the bidder or his assignee was then entitled to have a tax deed issue as provided by law. If the tax sale certificate was issued for nonpayment of taxes on a homestead, however, the purchaser had no right to a tax deed until ten years after the sale.

This right to purchase tax sale certificates was to exist for the period of two years from the effective date of the act, June 9, 1937. As to all tax sale certificates that were owned by the State of Florida and were two years old on the act's effective date, the title to the land became absolutely vested in the state on June 9, 1939. Section 9 of the Murphy Act, the provision by which the title to the lands was declared vested in the State of Florida, reads as follows:<sup>123</sup>

"This act shall remain in full force and effect for two years from the date same shall become a law and at expiration of such four year period, then the fee simple title to all lands, against which there remains outstanding tax certificates which on the date this Act becomes a law, are more than two years old, shall become absolutely vested in State of Florida, and every right, title or interest of every nature or kind whatsoever of former owner of said property or anyone claiming by, through or under him, or anyone holding lien thereon shall cease, terminate and be at an end, and the State of Florida thereafter, through the Trustees of Internal Improvement Fund shall be authorized and empowered to sell the said lands to the highest and best bidder for cash at such time and after giving such notice and according to such rules and regulations as may be fixed and adopted from time to time by the said Trustees of the Internal Improvement Fund."

On June 9, 1939, the title to many thousands of parcels of land throughout the state became absolutely vested in the State of Florida. It was necessary for this reason to determine as soon as possible whether the Murphy legislation was constitutional and, if so, to further determine the type, class, and character of title that the Trustees were authorized and empowered to sell and convey.

Prior to the Murphy Act the Supreme Court of Florida had held that, when lands were bid off for the state at the sale by a tax col-

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<sup>123</sup>Fla. Laws 1937, c. 18296, as amended, Fla. Laws 1943, c. 21684, §1.

lector and a tax sale certificate was issued to the state, the state did not become the absolute owner of the property upon expiration of the period of redemption; a defeasible title to the land vested in the state and the land was subject to the right of redemption at any time before a tax deed was issued to a purchaser of the certificate from the state.<sup>124</sup>

Because the Murphy legislation cut off an owner's right of redemption without further notice to him, the constitutionality of Section 9 was soon questioned in *State ex rel. Hurner v. Culbreath*.<sup>125</sup> The Court had no difficulty, however, in holding Section 9 constitutional. The privilege of redemption within two years from the date of the tax sale certificate or until a tax deed issued by the state to a certificate purchaser was held a mere "gratuity" which the Legislature could terminate at any time without further notice to the owner and lien holders.

The Court also took the position that the forfeiture to the State of Florida destroyed the liens of county, municipal, drainage or other taxing districts for nonpayment of their taxes. In answer to the contention that Chapter 18296 was unconstitutional because it impaired the obligation of contract with bondholders and destroyed the power of operating the governments of other taxing districts, the Court replied:<sup>126</sup>

"This question must be answered in the negative. The power of taxation is a part of the sovereign power of the State. It inheres in the county, municipality, drainage, and other taxing districts, only to the extent conferred by the State. It is quite true that instances may be pointed out in which State, county, municipal, and other district taxes have been made of equal dignity by legislative fiat but this is true only so long as the taxes are payable. When the lands revert to the State for nonpayment of taxes, the lien of the State becomes paramount, and may be satisfied to the exclusion of all other liens."

The Court, apparently, did not intend to create the results which flowed from these strong words, because the *Culbreath* decision was soon modified in *Bice v. City of Haines City*,<sup>127</sup> wherein it was de-

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<sup>124</sup>*Hightower v. Hogan*, 69 Fla. 86, 68 So. 669 (1915).

<sup>125</sup>140 Fla. 634, 192 So. 814 (1939).

<sup>126</sup>*Id.* at 642, 192 So. at 818.

<sup>127</sup>142 Fla. 371, 195 So. 919 (1940).

terminated that municipal tax sale certificates and tax liens existing against land forfeited to the state are not affected by the act.

The *Bice* case arose when Haines City attempted to foreclose liens acquired for nonpayment of taxes and special assessments after the title to land became vested in the State of Florida pursuant to Section 9. Suit was brought to enjoin the city from foreclosing because of the reversion of the title to the land to the state, and a bondholder intervened. He contended in his answer that Section 9 of the Murphy Act violated the prohibitions against impairment of contractual obligations of Article I, Section 10, of the Federal Constitution and Section 17 of the Declaration of Rights of the Florida Constitution. A motion to dismiss the bill of complaint was granted and the answer of the intervenor was sustained. The appeal was from both decrees.

In its original opinion the Court accepted the bondholder's proposition but attempted to reconcile it with *State ex rel. Hurner v. Culbreath*. The *Culbreath* case was said to establish merely "that the State's lien for nonpayment of taxes *could* be made paramount to that of the County, Municipality, Drainage or other taxing district."<sup>128</sup> The Court continued:<sup>129</sup>

"We further held that the state's lien could be satisfied to the exclusion of the liens of all subordinate taxing districts. *We never have held, and do not hold here the liens of subordinate taxing districts can be peremptorily cancelled.* Some or all of them may vanish because of the paramount lien of the State."

This language is difficult to reconcile with that quoted from the *Culbreath* case. While upholding Section 9 of the Murphy Act as "constitutional and valid" in the *Culbreath* decision, the Court declared that all general taxes levied by the state or by a county or municipality were of equal dignity. Yet when again faced with the argument that Section 9 "impaired obligations of contract," the Court stated that some or all of the liens of subordinate taxing districts vanish because of the state's paramount lien.

The conclusion of the Court in its original opinion serves only to add to this perplexity:<sup>130</sup>

"Section 9 of Chapter 18296 applies to lands certified to

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<sup>128</sup>*Id.* at 376, 195 So. at 921. Italics supplied.

<sup>129</sup>*Ibid.* Italics supplied.

<sup>130</sup>*Ibid.*

the State for nonpayment of State and County taxes. It does not apply to special assessments such as drainage taxes imposed on an acreage basis. Liens for the nonpayment of such taxes accrue under different statutes; they do not vest in the State and are disposed of under different statutes by different agencies. We express no opinion as to when or under what circumstances such liens may give way to that of the State."

It should be noted that drainage taxes were not involved in this case; nevertheless the Court states *obiter dicta* that the liens of drainage taxes were not affected by Section 9. Moreover there is no indication of the nature of the "special assessments" to which the Court refers other than the fact that drainage taxes is an example of such assessments.

A rehearing was granted in *Bice v. Haines City*, and the atmosphere was cleared in so far as tax liens owned by a municipality were concerned. The Court held on rehearing that such liens were not affected by Section 9 because they were of equal dignity with tax liens of the state and county. It further held that the municipality should not assess the lands during the time the title to the lands was held by the state. But when the Trustees sold the lands under the Murphy Act they became subject both to unpaid valid municipal tax liens acquired before the lands became vested in the state on June 9, 1939, and to authorized taxation levied after conveyance by the Trustees to private parties under the act.

It seems that the Court especially desired to indicate that drainage taxes were not affected by Section 9 even though no drainage taxes were involved in the suit. At any rate, the Court again reverted to this matter and stated that *State ex rel. Hurner v. Culbreath* indicated that taxes due a drainage district are not affected by the Murphy Act. Since drainage taxes were not a part of the tax liens and tax sale certificates upon which title became vested in the state, the inference is that they were not terminated, discharged or affected by Section 9. The Court substantiates this inference with these words:<sup>131</sup>

" . . . [vesting title in the state] undoubtedly extinguished all private contract or statutory non-taxation liens, such as mortgages or mechanics or materialmen's liens, then existing against the lands, such liens being inferior to tax liens (Sec. 894, C. G. L.); but tax liens held by other taxing units which are by

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<sup>131</sup>*Id.* at 387, 195 So. at 925.

statute made of equal dignity with state tax liens, are not, unless otherwise duly provided, affected by such vesting of title in the State where the tax liens of such other taxing units are not by law included in the tax sale certificates defined in the Murphy Act."

Although it is difficult to appreciate the underlying reasons, the Court *obiter dicta* interpreted the act as changing established law. So-called drainage taxes are levied and assessed and become a lien on land in the drainage district because the lands are deemed to receive special benefits from the drainage structures. There is no distinction between such assessments and the assessments for special benefits of any other special taxing district, such as paving and sewer benefits. And, although many statutes have attempted to make assessments of such districts of equal dignity with the lien for general taxes, the courts had uniformly held the district lien to be secondary, inferior, and subordinate to the lien for general taxes.<sup>132</sup>

It was therefore a most unusual construction of the act to hold that special assessment liens, even though by statute made of equal dignity with general taxes, were not affected by the act when the title to lands were forfeited to the state under Section 9. It will be observed, however, that the reference was only to such liens as were owned and held by taxing units, not liens held by individuals, firms, or corporations. This distinction is quite important because, as hereinafter pointed out,<sup>133</sup> the courts have held that paving certificates and other evidences of liens for special assessments which are privately owned are extinguished and discharged by the forfeiture.

The opinion on rehearing in *Bice v. Haines City* was filed May 17, 1940. Shortly thereafter the per curiam opinion of *Carlile v. Melbourne-Tillman Drainage District*<sup>134</sup> was rendered, wherein it was settled on the authority of the *Bice* case that delinquent drainage taxes remained a lien against the property on which they were levied and survived the forfeiture of title to the State of Florida under Section 9 of the Murphy Act. Thus the *dicta* of *Bice v. Haines City* became law.

Another important development in the law relating to drainage taxes occurred in the case of *Hunt v. Board of Commissioners of Ever-*

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<sup>132</sup>*Robinson v. Hanson*, 75 Utah 30, 282 Pac. 782 (1929); see *Ingraham v. Hanson*, 297 U.S. 378, 379 (1936).

<sup>133</sup>See p. 63 *infra*.

<sup>134</sup>143 Fla. 355, 196 So. 687 (1940).

*glades Drainage District*.<sup>135</sup> The drainage district acquired the title to lands under a "Murphy-like" statute<sup>136</sup> which relates to the collection and enforcement of its delinquent drainage taxes. At the date the drainage district acquired its title through statutory forfeiture, title to the lands was vested in the State of Florida under the provisions of Section 9 of the Murphy Act. The plaintiff in the suit acquired the title of the State of Florida through a deed from the Trustees of the Internal Improvement Fund. To the question whether the title of the State of Florida was divested by the acquisition of title by the drainage district, the Supreme Court replied in the negative. The drainage district could mandamus the Trustees to pay the drainage taxes required under existing laws, but it could not acquire title by statutory forfeiture. Concluding its opinion, the Court said:<sup>137</sup>

" . . . since the Legislature has directed that the Trustees of the Internal Improvement Fund should pay the taxes due the Everglades Drainage District, *it was not the legislative intent that the state's lands would be subject to forfeiture under Section 1530 (113) (i) of Chapter 298, supra.*"

Throughout the State of Florida many special taxing districts exist which are authorized by law to levy special assessments based upon special benefits that lands in the various districts are presumed to receive. Such districts are hospital districts, fire control districts, sanitary districts, and similar special taxing districts. The question arises whether assessments of these districts which were delinquent and unpaid on June 9, 1939, were canceled and discharged by operation of Section 9 or whether such assessments survived the forfeiture to the State of Florida and constitute liens against the lands. Whether assessments made by these special taxing districts during the time that the title to the lands remained vested in the State of Florida are valid and enforceable liens *after* the Trustees of the Internal Improvement Fund sell and convey the lands to private persons is also to be determined.

We have no decisions of the Supreme Court of Florida determining these questions. In view of *Bice v. Haines City* and *Carlile v. Melbourne-Tillman Drainage District*, however, it is reasonable to assume

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<sup>135</sup>160 Fla. 955, 37 So.2d 534 (1948).

<sup>136</sup>Fla. Laws 1941, c. 20658, §9.

<sup>137</sup>160 Fla. 956, 958, 37 So.2d 534, 535 (1948). Italics supplied.

that the special assessments legally levied and assessed against the lands by these special taxing districts are liens which can be enforced after the state's title to the lands has been sold by the Trustees of the Internal Improvement Fund.

As already indicated in reference to the *Bice* case, cancellation of individually owned liens is distinguished from cancellation of liens owned by taxing districts. *Ivey v. State ex rel. Watson*<sup>138</sup> is an extreme example of how far the Supreme Court is prepared to go in holding that private, individually owned liens are cut off and terminated by Section 9 of the Murphy Act.

In that case tax sale certificates had been issued for the nonpayment of taxes levied and assessed against the land for the years 1931 and 1932. These certificates, issued on August 1, 1932, and August 7, 1933, were purchased and held by an individual. They constituted outstanding liens against the land on the date that Section 9 of the Murphy Act became effective. Title to the land became vested in the State of Florida, however, under other tax sale certificates dated July 2, 1934. These were issued for the nonpayment of taxes levied against the land in the year 1933. The private lien holder, seeking to protect his interest in the certificates first issued, took his case to the Supreme Court.

After stating in accordance with its previous decisions that the rights of the holder of a tax certificate are controlled by the statutes in force when a tax sale certificate was purchased, the Court pointed out that according to the statutory provisions applicable to the certificates involved the holder could apply for a tax deed at any time two years subsequent to the issuance date of the certificates. The statute imposed no other time limitations. The right to apply for a tax deed, said the Court, involved contractual incidents but these might be changed as long as some remedy was afforded. Despite statutory time provisions, the Murphy Act required the owner and holder of tax certificates to apply for a deed within the period of time between June 9, 1937, and June 9, 1939.<sup>139</sup> Failure to apply for a deed within the designated period terminated individual liens. This result was held to be no unconstitutional impairment of contractual obligations, and the owner's lien therefore was cut off when title to the land vested

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<sup>138</sup>147 Fla. 635, 3 So.2d 345 (1941).

<sup>139</sup>Presumably, the certificate holder might alternatively buy in the subsequent certificates when offered for sale and thereby protect his interest.

in the state under Section 9. Judge Whitfield stated the Court's conclusion as follows:<sup>140</sup>

"The effect of the Murphy Act of 1937 was to require the owners of all State and county tax sale certificates that were more than two years old when the Murphy Act became effective June 9, 1937, to apply for tax deeds on such certificates before the lands covered by the certificates became absolutely vested in the State under the Murphy Act on June 9, 1939."

Several cases arose in Hillsborough County after *Ivey v. State* wherein paving certificates based upon the special assessment plan were involved. These certificates of indebtedness were liens against the lands on June 9, 1939, and were privately owned. The suits were filed to cancel the certificates as clouds upon the title of owners who purchased the lands from the Trustees of the Internal Improvement Fund, the owners contending that the certificates constituted individually owned liens on the vesting date of Section 9 which were discharged by the forfeiture of title to the lands to the State of Florida. The *Bice* and *Ivey* cases were relied on as authority for this contention.

In each case the Circuit Court of Hillsborough County held that the certificates, being individually owned on the vesting date of the Murphy Act, were canceled and the debt discharged by reason of the forfeiture. Accordingly, cancellation of the certificates of record was ordered, and it was directed that appropriate entries be made on the records of Hillsborough County showing cancellation and discharge.

There has been no decision of the Supreme Court of Florida on this question, but upon the basis of the Supreme Court's Murphy decisions the Circuit Court reached the proper conclusion in regard to the validity of the liens.

#### *Conditions Precedent to Vesting a Valid Title*

Certain conditions must exist before a valid title is vested in the State of Florida under Section 9 of the Murphy Act. These conditions are presented below in a chronological order which might be adopted by one investigating the validity of a Murphy Act title.

1. An examination of the record must reveal that the land was

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<sup>140</sup>147 Fla. 635, 646, 3 So.2d 345, 349 (1941).

not exempt from taxation, for of course no valid assessment can be levied against land so exempted. The record, therefore, should show both that title was not vested in the United States or the State of Florida and that the land was not otherwise exempt from taxation under Florida laws at the time of the original assessment.<sup>141</sup>

2. The general rule of law in the United States is that a tax sale does not extinguish an easement, servitude, or restrictive covenant.<sup>142</sup> By legislative acts in Florida, such restrictive covenants and easements survive the sale of land for nonpayment of taxes.<sup>143</sup> At least this is true since the effective date of the statutes which expressly preserve restrictions, covenants, and easements. Apparently no decision of the Supreme Court of Florida expressly decides that restrictions and easements on land either survive or are terminated by a tax sale; but, in view of the general law and the intent of the Legislature as indicated by the statutes referred to, it would seem that the Court would hold that, prior to the statutes, restrictions and easements survived the tax sale and remained in full force and effect. The statutes do not preserve a forfeiture, right of re-entry, or reverter.<sup>144</sup>

3. Any outstanding tax liens and assessments levied, assessed, and owned either by governmental agencies having taxing powers or by taxing districts must be satisfactorily discharged; otherwise they continue in effect.<sup>145</sup> The title information furnished to the examiner of the title ought to disclose such taxes and assessments, and the certificate of the abstract or title company should certify to this fact.

4. The tax records of the county in which the land is situated should disclose that there was a valid assessment of taxes in the years for which the tax sale certificates were issued to the Treasurer of the State of Florida. A valid tax deed cannot be issued when based on an invalid assessment. The previously mentioned rules determinable of a valid assessment in issuing a tax deed<sup>146</sup> apply to the assessment underlying the tax sale certificates upon which title was vested in the

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<sup>141</sup>FLA. STAT. §192.06 (1951).

<sup>142</sup>Northwestern Improv. Co. v. Lowry, 104 Mont. 289, 66 P.2d 792; Tax Lien Co. v. Schultze, 213 N.Y. 9, 106 N.E. 751 (1914).

<sup>143</sup>FLA. STAT. §§192.33, 192.58 (1951).

<sup>144</sup>Fla. Laws 1935, c. 17402, §§1-3; FLA. COMP. GEN. LAWS §§5663 (1)-5663 (3) (Supp. 1936); Fla. Laws 1943, c. 21805; FLA. STAT. §192.33 (1951).

<sup>145</sup>FLA. STAT. §§192.04, 192.21 (1951).

<sup>146</sup>See pp. 10, 11 *supra*.

State of Florida under Section 9 of the Murphy Act. The curative acts mentioned hereafter in this section<sup>147</sup> are intended to be far-reaching, and they terminate many questions that might be raised in regard to the validity of the assessment. They cannot, however, correct an assessment which is void because the description of the land is too indefinite and uncertain or any matter that is considered jurisdictional and affects an assessment.<sup>148</sup>

5. A valid sale of the land for nonpayment of taxes that were legally assessed should appear in the record. The procedure which must be followed each year by the tax collector has been discussed already.<sup>149</sup> Briefly, it is as follows. The taxes are required to be paid prior to a date fixed by law. If the person liable for the payment of the taxes fails to pay within the time allowed, the tax collector is required to prepare a list of all realty upon which taxes are owing. The list describes the lands in chronological order of assessment, and it must specify the amount due on each parcel, with interest as well as the cost of advertising and the expense of sale.

The tax collector is then required to publish the list in the year in which the sale occurs for the designated period of time in a newspaper selected by the Board of County Commissioners or in one selected in the manner required by law.<sup>150</sup> After due publication of the list, sale of tax certificates issued upon those lands on which taxes remain unpaid must be commenced and continued until every listed parcel has been offered for sale.<sup>151</sup> If there were no bidders on a particular parcel it was formerly bid off by the collector for the state.

<sup>147</sup>See p. 68 *infra*.

<sup>148</sup>In regard to the rights that may accrue through actual possession of land for a statutory period and which bar the owner or any other interested person from questioning the legality of the proceedings by which title was divested for the nonpayment of taxes and in regard to the rights of occupants that arise under statutes relating to adverse possession of land, see p. 73 *infra*.

<sup>149</sup>See pp. 14, 15 *supra*.

<sup>150</sup>FLA. STAT. §193.51 (1951).

<sup>151</sup>FLA. STAT. §193.54 (1951). The owner of realty upon which taxes are delinquent can, of course, prevent sale of the tax certificate or deed by payment of tax obligations plus interest and costs. Sec. 193.51 states that "lands upon which taxes have become delinquent may be redeemed" at any time between the due date of the tax and "the date of the sale of the tax sale certificate." This verbiage is somewhat inaccurate. Though the owner is said to "redeem" the lands, more precisely he discharges the delinquent tax obligation.

Since 1941, however, the bidding off has been in the name of the county.<sup>152</sup>

The collector's list also constitutes notice of sale of the certificate. The form of advertisement of notice is prescribed by statute,<sup>153</sup> and this form must be substantially fulfilled.<sup>154</sup> It is of paramount importance in connection with Murphy titles, since this notice alone furnishes "due process of law" in so far as the owner of the land is concerned.

The pertinent statute<sup>155</sup> requires publication of the notice for a designated length of time, and the publisher of the newspaper is required to forward by mail a copy of each issue containing such notice to the tax collector, the clerk of the circuit court, and the state comptroller. When publication is duly completed the publisher must render an affidavit of the fact in the form prescribed by the comptroller. This affidavit is attached to the collector's report of the tax sale or list of lands sold.

Reference to one of the forwarded copies is requisite in a title examination because the tax sale notice must be properly published. Copies of the newspaper can usually be located in the office of the clerk of the circuit court, but if not the search should be extended to the office of the tax collector and, if necessary, to the comptroller's office in Tallahassee. In the event a copy cannot be found in any office the examiner should resort to the files of the publishing news-

<sup>152</sup>FLA. STAT. §193.54 (1951). As to forfeitures to the state see Fla. Laws 1895, c. 4322, §51.

<sup>153</sup>FLA. STAT. §193.52 (1951) requires use of this form: "Notice is hereby given that the following described lands will be sold at public auction on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, the county of \_\_\_\_\_, State of Florida, to pay the amount due for taxes herein set opposite to the same, together with all costs of such sale and advertising.

Description of land	Sec.	Twp.	Rge.	Acr.	Owner	Amount of Taxes and Costs
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To be signed:  
 Tax Collector \_\_\_\_\_  
 \_\_\_\_\_  
 County"

<sup>154</sup>Daniel v. Taylor, 33 Fla. 636, 15 So. 313 (1894); see also FLA. STAT. §192.21 (1951).

<sup>155</sup>FLA. STAT. §193.53 (1951).

paper. The affidavit of the publisher should also be examined to determine that the notice was published for the required period of time prior to the tax certificate sale.

A properly published notice should contain a legal description of the land; should recite the number of acres in the parcel, the names of the owners as assessed, and the amount of taxes and costs; should be properly signed by the tax collector of the county in which the land lies; and should be published for the required length of time. If copies of the newspaper and the affidavit of the publisher are not found in the offices of the designated taxing officials, this omission is not fatal to the validity of the notice. Taxing officials are permitted by statute to correct such errors and omissions in tax proceedings at any time,<sup>156</sup> and proof of proper notice can be had by reference to the newspaper files.

6. After the tax collector has completed the sale of the certificates for lands upon which taxes remain unpaid, he is required to prepare triplicate lists of lands sold, showing the date of sale, the number of each certificate, the name of the owner as returned, a description of the land sold, the name of the purchaser, and the amount for which sale was made. He must append to each list a certificate certifying that each sale was made in accordance with law. Of the lists, one must be forwarded to the comptroller, one retained by the tax collector, and the third filed in the office of the clerk of the circuit court. The statute directs the clerk to enter the list in a book to be provided for this purpose.

An examiner of a Murphy title must check the entries in the clerk's book for the years in which tax sale certificates were issued to the State of Florida and ascertain that the entries are proper in all respects. As previously mentioned, an early case indicates with reference to a statutory tax deed that the tax collector's failure to file in the clerk's office the list of lands sold for taxes vitiates the deed.<sup>157</sup> Because statutes have now been enacted which not only authorize our tax officials to correct errors and omissions but also validate such proceedings, this result is not again expected.

7. The tax collector issues a tax certificate upon completion of the sale. If there was a purchaser the certificate is issued to that party;

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<sup>156</sup>FLA. STAT. §192.21 (1951).

<sup>157</sup>*Ellis v. Clark*, 39 Fla. 714, 23 So. 410 (1897).

if there was no bidder the certificate issues to the State of Florida. The form of the certificate of sale is prescribed by statute.<sup>158</sup> This certificate, which describes the lands purchased and the amount paid therefor, evinces assignment of the tax lien on the realty.<sup>159</sup>

Those certificates issued to the State of Florida which were two years old on June 9, 1939, the vesting date of the Murphy Act, are of paramount importance in considering the validity of the title that became vested in the state under Section 9. These tax sale certificates are the evidence of the title in the state, having an effect similar to that of an ordinary deed of conveyance.<sup>160</sup>

As may be recalled, the Supreme Court in *Hightower v. Hogan*<sup>161</sup> held that after a tax sale certificate issued to the state became two years old a defeasible title became vested in the state—the owner or those interested in the land could redeem at any time up to the issuance of a tax deed to a person who had purchased the certificate from the state. The Murphy Act terminated this right of redemption and declared that an indefeasible title to the land was vested in the state after June 9, 1939. The lien created by the tax sale certificate was converted into a title to the land.<sup>162</sup> The act only affected lands upon which there was an unredeemed tax sale certificate issued to the State of Florida at least two years prior to its vesting date. Thus even though there were “subsequent and omitted” taxes on a parcel of land which were two years old on the vesting date of the act, such taxes could not be the basis of a title in the state.

In summation, the validity of the state's title depends upon the

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<sup>158</sup>Fla. Laws 1901, c. 4888, §1; FLA. GEN. STAT. §567 (1906); Fla. Laws 1907, c. 5596, §57; FLA. REV. GEN. STAT. §766 (1920); FLA. COMP. GEN. LAWS §981 (1927); Fla. Laws 1929, Ex. Sess., c. 14572, §8; FLA. STAT. §193.59.

<sup>159</sup>Gautier v. Crescent City, 138 Fla. 573, 189 So. 842 (1939).

<sup>160</sup>Fla. Laws 1895, c. 4322, §65; FLA. GEN. STAT. §593 (1906); Fla. Laws 1907, c. 5596, §62; FLA. REV. GEN. STAT. §796 (1920); FLA. COMP. GEN. LAWS §1027 (1927); FLA. STAT. §193.64 (1951).

<sup>161</sup>69 Fla. 86, 68 So. 669 (1915).

<sup>162</sup>The period of redemption for homestead property, however, had been ten years reckoned from the date of sale of the certificate. Probably this ten-year redemption period does not apply to tax deeds to homestead realty obtained from the Trustees of the Internal Improvement Fund under the Murphy Act. The act also operated to vest title to homestead realty in the state, provided that the outstanding certificate was two years old on the effective date of the act, June 9, 1937. This point is not free from doubt, however. See Crosby and Miller, *Our Legal Chameleon, The Florida Homestead Exemption: V*, 2 U. OF FLA. L. REV. 346, 387-388 (1949).

existence both of a valid certificate and a valid assessment. Not only must the certificate have been two years old on the vesting date of the act but also it must fulfill those requisites of a certificate discussed in Part I.<sup>163</sup> Additionally the fundamental jurisdictional requirements pertaining to statutory tax deeds must exist in connection with the certificate upon which the state bases its Murphy title.

Because the certificate is evidence of the title of the state, it is unfortunate that some provision has not been made for recording tax sale certificates in the office of the clerk of the circuit court and for obtaining a certified copy of this record when required. Under the present practice the clerk segregates the certificates and, when the land is sold by the Trustees of the Internal Improvement Fund, stamps on the reverse side of the certificate the form required by the Trustees, supplies dates, numbers, and other pertinent information and returns the certificates to the segregated file. These certificates are withdrawn for examination from time to time and are in constant danger of being mutilated, lost, or destroyed. If a certificate is misplaced an examination of every tax certificate in the office may be necessitated in order to locate the missing document.

The possibility of a lost certificate renders precarious the position of a person claiming title to lands under a deed of conveyance from the Trustees, and he must prove his title in an ejectment proceeding. Of course the tax sale record and, probably, other evidence will be available, but can the party prove the existence of a valid tax sale certificate upon which the title is based? The ordinary rules of law and evidence pertaining to proof of written instruments that have been lost or destroyed presumably would apply in such cases. The problem of proof would be greatly facilitated, however, if the instrument were recorded and a certified copy admissible in evidence as in the case of deeds. Some readers may question this suggestion because of the cost of recording the certificates, but, considering the value of the land and improvements as well as the questionable situation that arises when a certificate is misplaced, lost, or destroyed, the investment seems well justified. To say that there is no necessity for incurring the expense of recording a deed of conveyance or a mortgage is no less sensible than to say that these certificates should not be recorded.

8. Determination that valid title to the land vested in the state does not conclude the examiner's task, of course. There must also be a deed of conveyance executed by the Trustees of the Internal Im-

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<sup>163</sup>See p. 15 *supra*.

provement Fund on behalf of the state to some person, firm, or corporation. This deed must be in the form required by the rules and regulations of the Trustees.<sup>164</sup>

Section 9 of the Murphy Act provides:

“. . . and the State of Florida thereafter, through the Trustees of Internal Improvement Fund shall be authorized and empowered to sell the said lands to the highest and best bidder for cash at such time and after giving such notice and according to such rules and regulations as may be fixed and adopted from time to time by said Trustees of the Internal Improvement Fund.”

The Trustees adopted and promulgated a comprehensive set of rules and regulations governing the sale of lands acquired by the state under the Murphy Act, which from time to time have been amended. Copies of these are kept in the office of the clerk of the circuit court and are available for examination. A copy may also be obtained from the office of the Trustees at Tallahassee for a nominal charge. To discuss these rules and regulations here is not necessary. The proceedings relating to a sale of land and the execution of a deed by the Trustees should be carefully examined, however, for it must be determined that the Trustees complied with their rules and regulations in making the sale.

In *Shuptrine v. Wohl Holding Corporation* the Court set aside a sale of land by the Trustees because “if, as is alleged, the sale was made by the Trustees of the Internal Improvement Fund without notice of such sale being sent to the last known owner or the last known taxpayer, as required by the rule adopted by the Trustees pursuant to the provisions of Section 9 of the Act,”<sup>165</sup> the owner must be allowed to redeem.

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<sup>164</sup>The form of deed executed by the Trustees should contain the following information: (a) the number of the deed and the county, (b) grantee's full name and address, (c) total amount of price bid, exclusive of costs, (d) legal description of land, (e) description of tax sale certificates and years issued, (f) all parcels bid in by same bidder to be included in one deed, (g) reservations, and (h) signatures of the Trustees of the Internal Improvement Fund and official seal. The deed is not required to be witnessed or acknowledged to entitle it to record, provided it is under the seal of “Department of Agriculture of the State of Florida.” FLA. STAT. §19.22 (1951). The complete form of the deed can be obtained from the office of the Trustees.

<sup>165</sup>147 Fla. 185, 187, 3 So.2d 524, 525 (1941).

The rationale of this decision perhaps lies in the "equities" of the taxpayer's case, for he had sought to pay the taxes on the land and was not advised by the tax collector that an unpaid tax certificate was held by the state. The Court apparently assumed that the collector's assessment roll indicated opposite the tract of land, "State Tax Certificate." Otherwise the tax collector would not have known that the tax certificate was unredeemed. The taxpayer, it may be noted parenthetically, should normally be able to determine in the office of the clerk of the circuit court whether a tax certificate has issued for delinquent taxes.

After the *Shuptrine* decision the Trustees amended the rule regarding notice to the last known owner or taxpayer and provided instead that their instruction to the clerk of the circuit court to mail such notices was merely directory and not jurisdictional in any sense. Failure to mail the notice, it was stated, would not invalidate the sale.

In consideration of the Trustee's deed of conveyance, the examiner should also determine whether the deed contains any reservation of mineral rights. The statute relating to the sale of public lands requires that certain interests in phosphate, minerals, metals, and petroleum be reserved.<sup>166</sup>

*State ex rel. Crescent City v. Holland*<sup>167</sup> established that lands acquired by the state under the Murphy Act for failure to pay taxes or to redeem from tax sale are not "public lands" within the provisions of the Florida Constitution and are not subject to the provisions of the Constitution and various statutory laws relating to public lands. Whether mineral reservations were required in deeds executed by the Trustees conveying Murphy Act lands, however, remained somewhat doubtful until 1947. The question was squarely presented to the Supreme Court in *Caldwell v. Kemper*.<sup>168</sup> It was held that the statute applied only to public lands; therefore, unless expressly stated by the Trustees, no mineral interests were reserved for the state.

The Trustees have uniformly reserved in their deeds a 100-foot easement, measured 50 feet on either side of the center line of any existing state road. This reservation has been troublesome to examiners and grantees of Murphy titles because many roads in Florida counties have been designated "state roads." Whether any part of the land in question lies within 50 feet of the center line of a desig-

<sup>166</sup>FLA. STAT. §270.11 (1951).

<sup>167</sup>151 Fla. 806, 10 So.2d 577 (1942).

<sup>168</sup>159 Fla. 231, 31 So.2d 555 (1947).

nated state road must be ascertained before the property can be judged free of restriction. Legislation designating certain roads as state roads are often somewhat ambiguous as to the specific route. In some instances a beginning point will be indicated and the road described by general compass directions as running to another point. Unless the State Road Department has actually laid out the route or constructed the road, there is no way to determine what land adjoins the road.

Careful study of the rules and regulations of the Trustees will disclose the extent of their requirements as to right-of-way reservations. Reservations in the original tax deed may be released by quit-claim deed upon proof that the reservations do not apply to existing state roads, that the land is the usual sub-division lots and not needed in connection with any state road, or that the reservations are not of vital importance to the road system of the state. The Trustee's action in this regard is based upon the report and recommendation of the State Road Department.

When the above matters have been checked and found regular in all respects, the only remaining questions of importance are (1) possession of the land and (2) the extent to which statutes of repose or curative statutes may terminate questions that may be raised in regard to the legality and validity of the title.

### *Possession*

As already mentioned, every statute enacted for the purpose of limiting the time in which the owner or persons interested in the land are allowed to contest the divestment of their interest for non-payment of taxes makes a special exception in cases in which the land is actually occupied. The tax deed holder is required to assert his rights diligently and bring proceedings to obtain possession of the land.<sup>109</sup> Titles based upon Murphy Act deeds are no exception in this regard. If, therefore, the owner or any other person is in possession of the land in a manner that may constitute adverse possession in Florida, the title examiner must proceed with caution. Title insurance companies will not insure a title based upon a tax deed to land occupied by one other than the grantee, regardless of the status of the occupant.

Furthermore, even though the examiner determines that a Murphy

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<sup>109</sup>FLA. STAT. §196.06 (1951).

deed meets the basic requirements for a valid title under the act and is not adversely occupied, he cannot feel completely secure. Often the examiner, faced with a business matter that cannot be deferred, must make a practical decision and be satisfied with a relative sense of security not unlike that which must suffice when approving the title to land which has been created through accretion or dredging in tidewater. *Royal Insurance Co. v. Smith*,<sup>170</sup> in some respects a remarkable case when considering the principles of law that support land titles under the Murphy Act, well illustrates the examiner's position.

That case involved an action on a fire insurance policy, but the Court's reasoning in regard to rights under the Murphy Act led to a decision against the insurance company. Title to the land involved was forfeited to the State of Florida under the Murphy Act. The appellee was in possession and improvements were made under a warranty deed executed on September 25, 1940, by other heirs of his father. This deed was executed after the title had been absolutely vested in the state under Section 9. The insurance policy was issued February 26, 1941, and the loss occurred on June 22, 1941. Subsequent to the loss the appellee obtained title from the Trustees of the Internal Improvement Fund. The insurance company defended on the ground that the appellee was not the sole and unconditional owner of the property within the meaning of the insurance policy.

The Court held that the conveyance by warranty deed to the appellee was defective because title had previously vested in the Trustees of the Internal Improvement Fund under the provisions of the Murphy Act and no right of redemption remained in the warranty deed grantors or their intestate ancestor, the father. Confusion was created, however, by the Court's implication that the property owner has some "remaining right" when his land is forfeited to the state under the Murphy Act. Holding the policy effective, the Court stated:<sup>171</sup>

"Our conclusion is that in the light of all the facts and circumstances, and in the light of the practical construction and operation of the Murphy Act, and its application by the Trustees of the Internal Improvement Fund, by their rules and regulations and their known practice to give ample oppor-

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<sup>170</sup>158 Fla. 472, 29 So.2d 244 (1947).

<sup>171</sup>*Id.* at 475, 29 So.2d at 245.

tunity to the owner to re-purchase his property, there was no violation of the 'sole and unconstitutional [unconditional] ownership' clause, within the spirit and purpose of the policy, and the chancellor did not err in so finding."

Obviously the Court had to find some "remaining right" of the landowner to reach this conclusion. In doing so it added another doubt as to titles based on Murphy procedure and emphasized the inherent dangers of dealing with a title to land the previous owner of which is in possession.

#### MISCELLANEOUS LIMITATION PROVISIONS

There are several statutes which place a limitation on the time within which the owner or other interested persons may bring proceedings to set aside a Murphy title. These statutes also relate to other classes of tax titles referred to elsewhere in this article.<sup>172</sup> Since these statutes will be discussed in an article concerning curative acts to be published in a later issue of this volume,<sup>173</sup> explanation of their operation will not be attempted here.

#### CONCLUSION

It should be apparent that the subject of tax titles in Florida is voluminous and complex. Adequate treatment is difficult even in an article of this length; summation is impossible. Despite the most studied effort to be accurate, there may be errors and omissions in this work; if so, consideration of the time limitations of a busy practitioner is requested. It is hoped that regardless of any defects which may appear, however, some practical value to the legal profession of Florida will emerge from the labor here expended and that, failing to give the final answer, the article will at least furnish a base upon which the title examiner can construct a strong legal position.

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<sup>172</sup>See pp. 26, 27 *supra*.

<sup>173</sup>See note 50 *supra*.

## TABLE OF HEADINGS AND SUBHEADINGS

Constitutional Background . . . . .	1
Historical Summary . . . . .	3
Part I—Statutory, or Administrative, Tax Deeds . . . . .	5
A Valid Assessment . . . . .	6
Levy on Tax by County Commissioners . . . . .	11
Warrant to Assessment Roll . . . . .	12
Adequate Assessment Roll . . . . .	12
Notice of Sale . . . . .	14
Tax Sale Certificate . . . . .	15
Tax Collector's Report of Sale . . . . .	15
Unredeemed Tax Sale Certificate . . . . .	16
Notice of Application for Tax Deed . . . . .	17
Tax Deed . . . . .	20
Statutes of Limitation . . . . .	22
Payment of Taxes for Twenty Successive Years . . . . .	23
Lands Held under Tax Proceedings in General . . . . .	24
Soldiers' and Sailors' Relief Acts . . . . .	25
General Validating and Curative Statutes . . . . .	26
Part II—Titles Arising through Equitable Foreclosure . . . . .	28
In Personam Proceedings (Ch. 14572, Fla. Laws 1929) . . . . .	28
In Rem Proceedings . . . . .	33
Municipal Taxes (Ch. 15038, Fla. Laws 1931) . . . . .	33
Priority of Liens . . . . .	36
Requisite Service of Process . . . . .	38
County Ad Valorem Taxes (Ch. 22079, Fla. Laws 1943) . . . . .	41
Bill of Complaint . . . . .	45
Notice . . . . .	45
Decree and Sale . . . . .	47
Individually Owned Tax Liens . . . . .	47
Other Interests Affected by the Decree . . . . .	49
Miscellaneous Provisions . . . . .	51
Church Lands . . . . .	51
School Lands . . . . .	53
Hardship Cases . . . . .	55
Part III—The Murphy Act . . . . .	56
Conditions Precedent to Vesting a Valid Title . . . . .	64
Possession . . . . .	73
Miscellaneous Limitation Provisions . . . . .	75
Conclusion . . . . .	75