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COLLECTION OF "FORFEITED" REAL ESTATE TAXES IN ILLINOIS*

WILLIAM H. SPECK†

ABOUT 250,000 parcels of Cook County real estate, almost one-fourth the total number in the county, are "forfeited" to the State each year for nonpayment of property taxes.¹ The Revenue Act of 1939 provides that tax delinquent properties not sold at the annual tax sales are "forfeited to the State of Illinois."² Tax buyers at the annual sales purchase properties in order to collect the taxes with heavy penalties from the delinquent owners, and select only those delinquent properties on which the prospects of early payment are good. The properties remaining unsold—those "forfeited"—are, therefore, mostly the unwanted residue which continue delinquent year after year and which have frequently been abandoned by their owners. The term "forfeited" carries a connotation of change in ownership which the actualities deny, for the State makes no claims to title or possession and the properties remain on the tax rolls. The term means only that the properties become liable to the collection methods which are the subject of this article.

The importance of these 250,000 parcels does not lie in the loss of tax revenue. In recent years only 3 or 4 per cent of the real estate levy has remained uncollected.³ The importance lies in the removal from economic use of one-fourth the real estate parcels in the county. These parcels are chiefly lots in vacant subdivisions, dilapidated structures and lots in slum and blighted areas, and old and obsolete buildings elsewhere. The accumulated taxes constitute an obstacle to economic use. A prospective purchaser often finds that the delinquency amounts to more than the property is worth and that the settlement methods are too expensive and too dilatory. The owner clings to his title in the faint hope that he may some-

* This article is part of a larger study, *Tax Sales and Tax Titles in Illinois*, in preparation.

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¹ Report of Edmund J. Brennan, Direct Department of Central Services, Cook County, Illinois, to the Board of Commissioners (March 4, 1949).

² Ill. Rev. Stat. (1947) c. 120, § 727 (Illinois Revenue Act of 1939, § 246). All section references without further designation are to the Illinois Revenue Act of 1939, Ill. Rev. Stat. (1947) c. 120, §§ 482 ff.

³ Brennan, *op. cit.* supra note 1.

time be able to sell the property for more than the taxes. Meanwhile the properties become an economic desert.

The Illinois statutes afford four means of collecting or clearing off the delinquent taxes on forfeited properties. Two—the redemption of forfeitures and the civil action—permit no reduction of taxes legally due. The other two—the so-called “three-officer” plan and the forfeiture foreclosure—permit sale for what the properties will bring, regardless of whether all taxes legally due are paid. Unfortunately, no one of these is a collection method which a delinquent owner need fear or which affords a practical means of realizing the taxes from the property. The first merely affords an opportunity for the owner or a stranger to pay the taxes; the second has thus far proved unworkable; the last two permit owners to cancel taxes for a fraction of the amount due. By a curious twist, tax collection methods become tax cancellation methods. These collection methods will now be taken up in order.

a) Redemption and Purchase of Forfeited Properties

Section 272 of the Revenue Act of 1939 provides that “any person” may “redeem or purchase” forfeited properties. The inference that persons other than owners may purchase is made explicit by making property “purchased” expressly “subject to redemption, notice, etc., the same as if sold at regular public tax sale.” This section thus essentially provides two methods of handling forfeitures, one of redemption by owners and perhaps other persons with an interest in the land and the other of purchase by strangers.

The procedure to redeem or purchase is fully outlined in the statute. The redeemer or purchaser applies to the county clerk, the clerk orders the county collector to receive the amount due, the collector accepts the amount due and gives a receipt in duplicate; one receipt is countersigned by the clerk and is retained by the redeemer or purchaser, and the other is filed by the clerk. The amount due is the sum of the “total amount of all taxes, statutory costs, interest prior to forfeiture, printers’ fees due thereon” and forfeiture interest at varying rates for particular years, now 12 per cent per year or fraction.⁴

When special assessments are included in the forfeiture, the steps are slightly different. The amount of the specials must be paid to the municipal collector, or City Comptroller in Cook County, and the receipt filed with the clerk. The forfeiture interest on specials is 12 per cent the first

⁴ Section 272 (a) makes provision for partial redemptions in counties other than Cook upon payment of the amounts due for one or more prior years beginning with the earliest year.

year and 6 per cent thereafter, with provision that interest over 7 per cent may be waived in Cook County.

When the forfeited property is purchased by a stranger, the purchase is expressly "subject to redemption, notice, etc., the same as if sold at regular public tax sale" and the receipt is "in the form of a certificate of purchase." The statute makes no mention of redemption penalties except as they may be included in the "etc." and are implicit in "certificate of purchase." However, the only case interpreting this section indicates that the purchaser is entitled to redemption penalties, for the court said: "From this it follows that the purchaser of the property at such sale acquires the same rights and stands in exactly the same position with respect to the property he would had he become a purchaser of the property at the prior public tax sale. . . ."⁵ The court in this case granted mandamus to compel a collector to sell forfeited lands despite the collector's contention that this section was unconstitutional. It held that the rights of redemption specified in Section 5 of Article 9 of the Illinois Constitution were expressly preserved by the statute, that under Section 4 of that article once the property has been offered for sale but not sold at a regular public tax sale the legislature might provide means of subsequent disposition, and that the availability of foreclosure of the tax lien did not supersede purchase of forfeitures. Whether the legislature must still allow the two-year constitutional period of redemption in the disposition of forfeited properties when the owner has not redeemed for two or more years will not be decided as long as the statute itself allows redemption.

This section is, of course, used by owners to redeem, that is, pay up their taxes. It has also been used to some extent to purchase taxes. In Cook County for the years 1943-44, the treasurer's books show sales of forfeitures amounting to \$276,955.38 with some of the large tax buyers being among the purchasers, but for 1945 they show only \$27,934.82 sold. It is not altogether clear why tax buyers do not more often use this process rather than the tax sale to pick up properties to hold for redemption. Their rights, as the court stated above, would apparently be exactly the same as under purchase at a tax sale (except that taxes due would be increased by at least 12 per cent interest for a fraction of a year). They might find it more convenient to go over the forfeiture lists at their leisure instead of following the tax sales, and there would be no bidding even to threaten to reduce the amount of penalties. Some buyers say that after the sale all the properties likely to be redeemed have been taken, but the buyers control the tax sale market and could simply wait until after for-

⁵ *Zicarelli v. Stuckart*, 277 Ill. 26, 32, 115 N.E. 192, 194 (1917).

feiture to make their purchases. The more likely explanation is that a mass shift of tax buyers from the annual tax sale to the purchase of forfeitures would be such a brazen display of control over the market and would raise so many complaints from taxpayers who would thereby be subject to an extra 12 per cent interest that county collectors would refuse to cooperate.

As a means of collection, the purchase or redemption of forfeitures has no coercive force. The collector can do little but wait for owners or strangers to come forward. A stranger who purchases becomes a mere tax certificate and title holder, and has no means of compelling the owner to pay the taxes.

b) Civil Action for Taxes

Section 275 permits two types of actions for personal judgments for "taxes and special assessments on forfeited property." The first type is by "the county board" "in the name of the People of the State of Illinois" "for the whole amount due. . . ." The second is by "any county, city, town, school district or other municipal corporation to which any such tax or special assessment may be due . . . in its own name . . . for the amount . . . due any such corporation. . . ." The cases indicate that many local government bodies, apparently dissatisfied with the efforts of the county to collect their taxes, have attempted to bring their own actions with their own attorneys. Only the government bodies named, however, can bring these actions. Thus, the board of education⁶ or the trustees of schools⁷ cannot sue for the school district, and the People cannot sue for the use of any school district or the school trustees.⁸ The Illinois Supreme Court has further reduced the scope of these actions by holding that a personal judgment for delinquent special assessments violates Section 9 of Article 9 of the Constitution.⁹ Special taxation, the court reasoned, benefits owners only in proportion to the amount of their contiguous property and therefore can only be a charge on that property, not on the owner personally; further, special taxation is confined by the Constitution to "contiguous property," not to the owners thereof.

The prerequisites of suit are taxes due "on forfeited properties." This language might have been interpreted to require a technically valid assess-

⁶ Board of Education v. Home Real Estate Improvement Corp., 378 Ill. 298, 38 N.E. 2d 17 (1941).

⁷ School District No. 88 v. Kooper, 380 Ill. 68, 43 N.E. 2d 542 (1942).

⁸ Ibid.

⁹ City of East St. Louis v. Illinois State Trust Co., 372 Ill. 120, 22 N.E. 2d 944 (1939); Craw v. Village of Tolono, 96 Ill. 255 (1880).

ment, levy, and extension of the taxes together with a valid collection process to forfeiture. An early appellate court case seemed to go almost that far, saying that "to constitute a valid forfeiture, all of the steps provided by the statute must have been substantially complied with," naming particularly the notice, judgment, process of sale, offer of sale by a proper officer, and failure to sell for want of bidders.¹⁰ But the Supreme Court in a case holding that the failure of the record to show advertisement of delinquent lands did not defeat the action, stated a much more lenient rule:

It must be borne in mind the present suit was not instituted for the purpose of ascertaining whether the proceedings in the county court, culminating in the judgment against the lot charged with the taxes now sought to be recovered, strictly conforms to all the requirements of the statute, as in a case where the validity of a tax title is involved. On the contrary, this is simply a common law action of debt, to recover the town taxes due on the lot in question, for the years 1875, 1877, 1878, and 1879. In all cases where there has been a forfeiture of land for the taxes justly due upon it, this action will lie against the owner, notwithstanding omissions or irregularities have occurred in the tax proceedings which would be fatal to a tax title founded thereon. We have no doubt that one of the chief objects the legislature had in view in adopting this act, was to afford a safe and simple remedy for the collection of taxes, where, by reason of defects in the proceedings against the land itself, purchasers would be deterred from buying at tax sales. We hold, therefore, that it is sufficient to charge the owner, in any case of this character, where there has been a forfeiture, in fact, of delinquent land at a regular tax sale for the taxes legally due thereon.¹¹

This leniency is probably the result of the fact that this action is like the contested litigation usually handled by courts, with personal service on the taxpayer and full opportunity to raise all defenses, and is not a summary, almost administrative proceeding to collect taxes with only published notice.

The lenient rule on prerequisites for suit is offset by permitting the taxpayer to raise any objections he may have to the tax. The statute provides:

... the fact that real estate or personal property is assessed to a person, firm or corporation, shall be prima facie evidence that such person, firm or corporation was the owner thereof, and liable for the taxes for the year or years for which the assessment was made, and such fact may be proved by the introduction in evidence of the proper assessment book or roll, or other competent proof.

The People make a prima facie case by offering the tax judgment, sale, redemption, and forfeiture record and proving that the defendants were

¹⁰ *Smith v. People*, 3 Ill. App. 380, 384 (1879).

¹¹ *Sanderson v. Town of LaSalle*, 117 Ill. 171, 174, 7 N.E. 114, 115 (1886); cf. *People for the use of Christian County v. Davis*, 112 Ill. 272, 282 (1884); see *Greenwood v. Town of LaSalle*, 137 Ill. 225, 26 N.E. 1089 (1891); *Carrington v. People*, 195 Ill. 484, 63 N.E. 163 (1902).

owners.¹² The suit must be brought against the person assessed for the property.¹³ The case thus made, however, is only *prima facie*, and the court has said: "Such actions are subject to all such defenses as are allowable and proper in an application by the collector for judgment for delinquent taxes in the county court."¹⁴ The court went on to name specifically the defenses of lack of authority to tax, assessment of property not subject to taxation, and fraudulent over-assessment of property. The court has denied judgments where the property was tax exempt¹⁵ and where the tax was invalid.¹⁶ This language does not, however, mean that after appearing and contesting the tax in the county court on the application for tax judgment, a taxpayer may contest the tax again in the civil action.¹⁷ The judgment preceding the forfeiture thus is given finality as a prerequisite for bringing the action of debt but no more finality as to the liability for the tax than it is given in collateral attacks upon tax titles. An unsatisfied judgment in the annual judgment and sale process or in any other method of collecting taxes does not bar this action, and vice versa.¹⁸

The statute describes the suit as "a civil action" brought "in any court of competent jurisdiction." Before the adoption of the Illinois Civil Practice Act in 1933 the action was in debt and was not based on a contract.¹⁹ It may be brought in a justice of the peace court.²⁰ The suit is not in rem for taxes but is a personal, civil action upon a tax liability,²¹ so that the

¹² *Carrington v. People*, 195 Ill. 484, 63 N.E. 163 (1902); *Harding v. People*, 202 Ill. 122, 66 N.E. 962 (1903).

¹³ *Com'rs of Big Lake Special Drainage District v. Com'rs of Highways of Sand Ridge*, 199 Ill. 132, 64 N.E. 1094 (1902); *Coombs v. People*, 198 Ill. 586, 64 N.E. 1056 (1902); *Carrington v. People*, 195 Ill. 484, 63 N.E. 163 (1902); *Biggins v. People*, 96 Ill. 381 (1880). The language in some of the cases is not clear as to whether the owner at the time of the assessment or at the time of the levy or the lien is liable, e.g., *Bowman v. People*, 114 Ill. 474, 477, 2 N.E. 484, 485 (1885) where the court said the defendant must be "such owner at the date such taxes become a charge against the real estate."

¹⁴ *Com'rs of Big Lake Special Drainage District v. Com'rs of Highways of Sand Ridge*, 199 Ill. 132, 134, 64 N.E. 1094, 1094 (1902); see *Neal Institute Co. v. Stuckart*, 281 Ill. 526, 117 N.E. 1012 (1917).

¹⁵ *Elmwood Cemetery Co. v. People*, 204 Ill. 468, 68 N.E. 500 (1903).

¹⁶ *Ohio & M. R. Co. v. Com'rs of Highways*, 117 Ill. 279, 7 N.E. 663 (1886); cf. *Belleville Nail Co. v. People*, 98 Ill. 399 (1881).

¹⁷ *Harding v. People*, 202 Ill. 122, 66 N.E. 962 (1903).

¹⁸ *People for use of Christian County v. Davis*, 112 Ill. 272 (1884); *People v. Stahl*, 101 Ill. 346 (1882); see *People ex rel. Wernsing v. Winter*, 116 Ill. 211, 5 N.E. 536 (1886); cf. *Byrne v. Town of LaSalle*, 123 Ill. 581, 14 N.E. 679 (1888).

¹⁹ *People v. The Old Second National Bank of Aurora*, 347 Ill. 640, 180 N.E. 408 (1932); *People v. Dummer*, 274 Ill. 637, 113 N.E. 934 (1916).

²⁰ For example, *People v. Stahl*, 101 Ill. 346 (1882); *Kepley v. Jansen*, 107 Ill. 79 (1883).

²¹ *Douthett v. Kettle*, 104 Ill. 356 (1882); *Langlois v. People*, 212 Ill. 75, 72 N.E. 28 (1904).

procedure is that of civil actions rather than that of actions for taxes. The sale on execution is made by the sheriff as in judgment sales instead of by the county collector as in tax sales,²² and the tracts must be offered separately, en masse, and in every combination instead of in consecutive order.²³ The period allowed for redemption is the fifteen months prescribed for judgment sales and not the two years fixed in the Constitution for tax sales.²⁴ The judgment has only the priority of a civil judgment and not that of the lien for taxes, so that it is subject to homestead,²⁵ prior mortgages,²⁶ and probably dower,²⁷ at least when the judgment is for taxes upon other lands. The interest on the judgment is the legal rate and not the much heavier forfeiture interest on taxes.²⁸ The statute expressly allows any of the government bodies which may sue for taxes to become purchasers at the sale.²⁹

The collecting officers have seldom resorted to the civil action to collect real property taxes. One officer in Cook County estimated that not more than one or two suits are brought each year. The principal reason offered for the lack of use is that expensive, individual actions must be brought against each taxpayer who usually is difficult to find and who can raise innumerable objections to the taxes. This method of collection is not adapted to large scale use, and the costs of suing would probably in many instances exceed the taxes collected. Further, even after judgment has been obtained, prior claims will in many instances preclude execution. Finally, most taxpayers do not realize they are personally liable for real estate taxes, and resort to this remedy on a large scale would be very unpopular.

An indication of the results probable from the use of civil actions to collect real property taxes is perhaps given by its results in collecting per-

²² *Langlois v. People*, 212 Ill. 75, 72 N.E. 28 (1904).

²³ *Douthett v. Kettle*, 104 Ill. 356 (1882); cf. *Clark v. Zaleski*, 253 Ill. 63, 69, 97 N.E. 272, 275 (1912).

²⁴ *Douthett v. Kettle*, 104 Ill. 356 (1882).

²⁵ *Douthett v. Winter*, 108 Ill. 330 (1884).

²⁶ *Kepley v. Jansen*, 107 Ill. 79 (1883).

²⁷ The personal judgment for taxes may be collected in the same manner as an ordinary judgment. See *Greenwood v. Town of LaSalle*, 137 Ill. 225, 230, 26 N.E. 1089, 1090 (1891); *Byrne v. Town of LaSalle*, 123 Ill. 581, 584, 14 N.E. 679, 680 (1888). Ordinary judgments are subordinate to dower. See *Sisk v. Smith*, 6 Ill. 503, 508 (1844). Consult Herbert, *The Liquidation of the Lien of Taxes on Real Estate in Illinois*, 1 John Marshall L. Q. 26, 47 (1935).

²⁸ *Greenwood v. Town of LaSalle*, 137 Ill. 225, 26 N.E. 1089 (1891). But judgment may include penalties, interest, and costs prior to forfeiture. *Carrington v. People*, 195 Ill. 484, 63 N.E. 163 (1902).

²⁹ *Douthett v. Kettle*, 104 Ill. 356 (1882).

sonal property taxes. During the thirties civil actions for personal property taxes were disappointing: a large proportion of summonses (as high as 84 per cent in one period) returned not found; substantial reductions in the taxes by court order; a very small proportion of satisfied judgments (as low as 6 or 7 per cent).³⁰

This action is probably now only of practical use against large, conspicuous taxpayers with assets easily subject to execution. But given an adequate clerical and legal staff, complete tax and title records, and a real desire to collect, civil actions might bring good results against taxpayers who neglect to pay taxes although owning other resources. That the costs and inconvenience of the individual actions might exceed the collections from the individual defendants would not necessarily make actions uneconomical, for the wholesome effect upon payments by other taxpayers or by the same defendant in later years might more than offset any initial loss.

c) *The "Three-Officer" Plan*

The two preceding methods necessitate payment of taxes in full. In the civil action for taxes the amount due can be reduced for illegal levies or assessments and only part of the judgment may be collectible, but the full amount of unpaid legal taxes remains a lien on the land. Often these taxes amount to such a large proportion of the value of the land that owners will not redeem and no buyer can afford to purchase and pay up the taxes. The first method by which land may be cleared of taxes legally due is the special sale or "three-officer" plan.³¹ The key sentence of Section 246 provides that "whenever the county judge, county clerk and county treasurer shall certify that the taxes and special assessments not withdrawn from collection on forfeited lands equal or exceed the actual value of such lands, the officer directed by law to expose for sale lands for delinquent taxes shall . . . offer for sale to the highest bidder the tract or lands. . . ."

The three cases and the few Attorney General opinions on this section leave many unanswered questions. The statute mentions only "taxes and special assessments" as the sum against which the value of the land is to be measured so that interest, costs, and penalties probably cannot be included. It refers only to "forfeited lands" so that if there has been one forfeiture, all taxes due even though not forfeited may probably be in-

³⁰ Research Department, Illinois Legislative Council, *Tax Delinquency in Illinois with Particular Reference to Cook County* 66-67 (April 1939); Report of the Chicago City Council Committee on Consolidation, Reorganization, and Taxation 2 (Oct. 17, 1939); *ibid.*, at 4 (Feb. 7, 1940).

³¹ Consult Woods, *Three Officer Plan for Quick Liquidation of Tax Judgment Liens in Illinois*, 7 *John Marshall L. Q.* 341 (1942).

cluded. The cases give no hint whether the courts will adopt the interpretation of "forfeiture in fact" as in the civil action for taxes or will require a technically valid forfeiture; but the fact that the sale here is made by the collector upon the certificate of the officers without further judicial approval of the taxes or further opportunity to raise objections may influence the courts to insist upon a technically valid forfeiture. No cases illuminate the phrase "the actual value of such lands," although one Attorney General opinion uses the phrase "the fair market value of the property" as the equivalent.³² Mention of this method of collection in several cases may indicate court approval of its constitutionality,³³ but that issue has never been determined.

The first step in the procedure is to obtain the certificate of the three officers. An appellate court holds that a taxpayer cannot on proof that the taxes due on his property exceed its value compel them to make out a certificate, for this method is only one of several for collecting taxes which these officers may in their discretion pursue.³⁴ Then there must be given "ten days' notice of the time and place of sale together with a description of the tract or lands so to be offered." The statute says nothing of how the notice must be given. One Attorney General opinion determined that the notice should be mailed to the owners or persons assessed just as notice is mailed to these persons after judgment for taxes and at least five days before the sale.³⁵ Such notice would only prompt owners to pay up their taxes to avoid the sale and bring the owners to bid at the sale. But if the taxes exceed the value of the property, it is unlikely that the owners will pay up, and the doctrine that no person liable for taxes can buy at a tax sale (his purchase operates only as a payment of taxes) would probably preclude owners from buying at this sale.³⁶ A year earlier another Attorney General opinion determined that notice by publication was contemplated.³⁷ Such notice would attract outside bidders and seems more nearly in accord with the purpose of the section. Perhaps, to be safe, both the owners and outsiders should be given notice. The county collector sells the land to the highest bidder. In the event no bid is received, the property remains on the forfeiture books.³⁸ The buyer receives a "certificate of pur-

³² Ops. Ill. Att'y Gen. (1925), at 259.

³³ Particularly see *Ziccarelli v. Stuckart*, 277 Ill. 26, 30, 115 N.E. 192, 194 (1917).

³⁴ *People ex rel. Rossiter v. Wagemann*, 293 Ill. App. 37, 12 N.E. 2d 40 (1937).

³⁵ Ops. Ill. Att'y Gen. (1925), at 259.

³⁶ See, for example, *Peabody v. Burri*, 255 Ill. 592, 99 N.E. 690 (1912); *Hanna v. Palmer*, 194 Ill. 41, 61 N.E. 1051 (1901).

³⁷ Ops. Ill. Att'y Gen. (1923-24), at 430.

³⁸ *Ibid.*

chase . . . as in other cases in this Act provided," which the Attorney General interprets to be the same as that in the ordinary tax judgment and sale process.³⁹ The collector distributes the proceeds pro rata to the taxing bodies and can subtract only the printer's fee as costs.⁴⁰

The statute makes no mention of redemption. Attorney General opinions, however, decide and assume that the constitutional two-year redemption period for tax sales applies.⁴¹ Since the property is sold to the highest bidder and not by bidding on redemption penalties, there are no penalty bids. Redemption is made upon payment of the amount for which the property was sold,⁴² subsequent taxes paid by the purchaser, interest on subsequent taxes (in one opinion "legal interest"⁴³ and in another the 7 per cent specified in the Revenue Act⁴⁴), and fees for registering title. Subsequent taxes must be paid,⁴⁵ notice of the expiration of the redemption period given,⁴⁶ and probably affidavits of notice filed as in purchases at annual tax sales. The statute makes no mention of the issuance of a tax deed. Since there are no redemption penalties and since the buyer must put up some substantial bid instead of merely the fractional part of the value represented by current taxes due, the only purpose in bidding would be to obtain the property itself. Attorney General opinions indicate that the form of the deed is the same as in the annual tax judgment and sale process⁴⁷ and that the same title is acquired as at the annual tax sale.⁴⁸

Any procedure involving the compromise of taxes offers an opportunity for owners to clear up their tax liabilities at substantial savings, and the cases indicate that taxpayers have attempted to seize the opportunity afforded by the "three-officer" plan. The recent appellate court case holding that the three officers cannot be compelled to certify when taxes exceed value prevents large-scale resort to this procedure on taxpayer initiative. In an 1888 case after a judgment in debt had been obtained against him, the taxpayer secured the certificate of the three officers and had the property sold for less than the taxes due.⁴⁹ The court held that the sale did not discharge the liability for taxes on the previous judgment except to the extent the taxes were collected, but indicated that the result might have been different had the county initiated the three-officer proceeding. The court said: ". . . we see nothing in the statute from which it may be in-

³⁹ *Ibid.* (1925), at 259.

⁴⁰ *Ibid.* (1932), at 653.

⁴¹ *Ibid.* (1925), at 259; *ibid.* (1917-18), at 1098.

⁴² *Ibid.* (1917-18), at 1098; *ibid.* (1932), at 653.

⁴³ *Ibid.* (1917-18), at 1098.

⁴⁹ *Byrne v. Town of LaSalle*, 123 Ill. 581, 14 N.E. 679 (1888).

⁴⁴ *Ibid.* (1929), at 15.

⁴⁵ *Ibid.* (1925), at 259.

⁴⁶ *Ibid.* (1943), at 242.

⁴⁷ *Ibid.* and (1925), at 259.

⁴⁸ *Ibid.* (1915), at 191.

ferred that the legislature ever intended, by its enactment to aid any person in escaping the payment of his share of the public burden.”

Despite the court's admonition, this method has been rarely used and then only to cancel taxes spectacularly. In Cook County the only use that observers recall occurred back in 1908.⁵⁰ Downstate in Williamson County this method was used in 1934 to wipe out much delinquency.⁵¹ A building and loan association filed a petition accompanied by sixteen typewritten pages listing delinquent properties. The three county officers granted certificates upon the oaths of the owner and two others that the property was not worth the taxes. Over 5,000 properties were offered. But the returns were reported as less than one-half cent on the dollar: \$10,000 was recovered out of \$2,157,000 in forfeitures. This experiment thus merely resulted in the wholesale cancellation of taxes.

The fear that the section will be a means of avoiding payment of taxes, confirmed by the Williamson County experience, has probably been the principal reason for its lack of use. Other reasons have been a hesitancy on the part of the officers to find that taxes exceed value, the reluctance to deprive an owner of his property by an administrative sale, the inability to pass any better title than at the ordinary tax sale, the incompleteness and uncertainty of the statute, and the availability of a much better method of selling to the highest bidder in the forfeiture foreclosure.

d) *Forfeiture Foreclosures*

Since 1819 the revenue statutes have provided that real property taxes are a lien upon the land,⁵² but for sixty years no method was available to enforce the lien. In 1880 the collecting officers of Madison County brought a bill in equity to foreclose a tax lien. In *People v. Biggins*⁵³ the Illinois Supreme Court concluded that equity had no jurisdiction of such a bill. It reasoned that the lien was neither equitable nor contractual but was created by statute, that statutory liens “are enforced in the manner prescribed by the law which gave them existence,” and that the annual judgment and sale for delinquent taxes is an adequate and complete “manner prescribed by the law” for enforcement. Justice Scott, dissenting, pointed out that the statutory means of enforcement is not necessarily exclusive and that unless the lien can be enforced it is useless. The next session of the legislature in 1881 amended the law to provide that the “lien may be foreclosed in equity, in any court of competent jurisdiction in the name of the People of Illinois, whenever the taxes for two or more years . . . have

⁵⁰ Woods, *op. cit.* supra note 31, at 341.

⁵¹ Research Department, *op. cit.* supra note 30, at 52.

⁵² Ill. L. (1819), p. 313.

⁵³ 96 Ill. 481 (1880).

been forfeited to the state. . . ."⁵⁴ This language has been retained ever since and sets forth the most popular and indeed the only practical means of collecting or clearing up the taxes on heavily delinquent properties.

The principle of the *Biggins* case, that the foreclosure of tax liens can proceed only as prescribed by law, has continued to be the guiding rule of equitable tax foreclosures. Thus, in 1932 the authority of an equity court in aid of its jurisdiction to foreclose taxes to appoint a receiver to take charge of the property and apply the proceeds from operations to the payment of taxes was denied,⁵⁵ and that power had also to be supplied by statute.⁵⁶ The Attorney General has ruled that in the foreclosure of a tax lien no deficiency judgment can be entered against the owner.⁵⁷ And recently the Supreme Court held that a private individual cannot seek an equitable accounting for taxes.⁵⁸ This principle could not, however, be applied without qualification, for the statute does not completely describe the procedure. The court has allowed a supplemental confirmation of the tax deed not provided by statute. Moreover, it is often not clear whether the statutes applicable to revenue govern exclusively or whether those applicable to foreclosures apply, so that cautious attorneys must attempt to comply with both.

Briefly, the proceedings under Section 216 (formerly Section 253) are as follows: Whenever real property has been forfeited to the State for the nonpayment of taxes for two or more years, the county board may request the state's attorney to foreclose the lien of delinquent taxes in a court of equity. The court determines the amount of taxes due, orders payment of that amount, and upon nonpayment orders the sale of the property by the county collector to the highest bidder. The owner and other persons interested in the property then have the two year constitutional period in which to redeem from the sale upon the payment of the bid price plus interest. The purchaser must pay taxes on the property during this two year period, must give notice of the expiration of the period of redemption, and is then entitled to the tax deed. The proceedings will now be discussed in detail.⁵⁹

The language of the statute is permissive: the "lien may be foreclosed" Nevertheless, an early appellate case translated these words into the strong language of duty:

⁵⁴ Ill. L. (1881), p. 130.

⁵⁶ Ill. L. (1933), p. 874.

⁵⁵ *People v. Straus*, 266 Ill. App. 95 (1932).

⁵⁷ *Ops. Ill. Att'y Gen.* (1938), at 169.

⁵⁸ *People ex rel. Morse v. Chambliss*, 399 Ill. 151, 77 N.E. 2d 191 (1948).

⁵⁹ See also Pollak, *The Foreclosure of Tax Liens in Illinois*, 18 *Taxes* 91 (1940); Daniels, *Handbook for Illinois Tax Foreclosures* (c. 1943); 7 Nichols, *Illinois Civil Practice* §§ 7479-7507 (Supp., 1948).

Under this provision of the statute the State's Attorney is the proper officer to file the bill to foreclose the tax lien under Sec. 253, and undoubtedly it is his duty to do so, when it shall be known to him that the taxes upon any tract of land in his county have not been paid and the land has been forfeited for such nonpayment for two or more years.⁶⁰

This court may have been referring to the duty of the state's attorney to act upon the request of the county board, for it went on to say that if the state's attorney neglected his duty, the board might order him to act and even appoint another attorney. Regardless of this case, the foreclosure has been treated as an optional, discretionary remedy which the board need not apply automatically to every tract of forfeited land two years delinquent.

The statute prescribes that the foreclosure action be instituted "in the name of the People of the State of Illinois," and actions not instituted in the name of the People are dismissed. Thus, where actions to foreclose drainage district special assessments were brought in the name of the district instead of the People, the suits were dismissed.⁶¹ No relator is necessary.⁶² Section 56a of the Local Improvement Act now authorizes foreclosure of special assessments in the name of the municipality.

The powers and practices of the state's attorneys in relation to these suits are unclear and various. The state's attorney is the proper person to institute suit,⁶³ and usually he acts at the request of the county board. State's attorneys outside Cook County are now allowed a fee of 10 per cent of the foreclosure sales, and the State's Attorney of Cook County is allowed a similar fee of 2 per cent.⁶⁴ Yet in some instances private attorneys have conducted the cases in the lower courts, and in two opinions the Supreme Court rejected the contention that their appearance for the People was fatal error. In one the court said that the collection of revenue is so important that the bill will not be dismissed because the attorney bringing suit is not the state's attorney,⁶⁵ and in another it said that the appearance of another attorney did not affect the rights of the parties and had in any event been authorized by the Board of County Commissioners and ratified by the state's attorney and Attorney General.⁶⁶ Whether the

⁶⁰ Ward v. City of Alton, 23 Ill. App. 475, 478 (1887).

⁶¹ Gauen v. Drainage District, 131 Ill. 446, 23 N.E. 633 (1890); Sennott v. Moredock and Ivy Landing Drainage District No. 1, 155 Ill. 96, 39 N.E. 567 (1895); cf. Ward v. City of Alton, 23 Ill. App. 475 (1887).

⁶² People v. Weber, 164 Ill. 412, 45 N.E. 723 (1897); Ops. Ill. Att'y Gen. (1931), at 147.

⁶³ People v. Sandvoss, 320 Ill. App. 239, 50 N.E. 2d 770 (1943).

⁶⁴ Ill. Rev. Stat. (1947), c. 53, § 8.

⁶⁵ Mix v. People, 116 Ill. 265, 4 N.E. 783 (1886).

⁶⁶ People v. Straus, 355 Ill. 640, 189 N.E. 877 (1934).

state's attorneys must foreclose upon the request of the county board is uncertain. State's Attorney Courtney in Cook County once temporarily discontinued forfeiture foreclosures contrary to the wishes of the county board.⁶⁷ Whether state's attorneys may institute foreclosures without the consent of the county board is also uncertain. The language of the appellate court already quoted would indicate that it is the duty of the state's attorney to prosecute forfeiture foreclosures even without the consent of the county board. Some state's attorneys urge that they have the power and even the duty to foreclose special assessments with general taxes without the consent of the municipalities involved and that they may bring foreclosure actions without express authority from county boards.⁶⁸ This confusion and division of responsibility necessarily prevents effective collection and illustrates the need for constitutional revision of the structure of Illinois local government.

In practice the initiative for instituting tax foreclosures has come to lie neither with the county board nor with the state's attorney but with the owner or some other person who promises a bid large enough to make foreclosure worth while. Experience has proved that foreclosure without some assurance of an adequate bid only results in sales for nominal amounts, sometimes as low as \$1.00 per lot, to speculators, encourages delinquency by offering owners the prospect of clearing off back taxes at a fraction of their face amount, and neither brings in revenue nor transfers the title to persons likely to put the land to economic use and keep taxes paid up. The example usually given of an unsuccessful tax foreclosure without assurance of bids is one during the thirties against lands in Park Ridge subject to \$325,000 in taxes.⁶⁹ The first sale brought bids of only \$15,000 to \$16,000, which the court disapproved, and a second sale brought still lower bids of only \$12,000, which the court approved despite objections of inadequacy. Counties have therefore resorted to various devices to make sure that foreclosures are not used to wipe out taxes at a few cents on the dollar. The most popular has been the refusal to initiate foreclosures unless some one will guarantee a satisfactory bid. An alternative is to have the county bid in all properties which do not sell for more than a minimum fair valuation.

In Cook County the steps by which a private person induces the county board to institute a tax foreclosure are outlined on a sheet of "Instructions

⁶⁷ Chicago Sun, p. 4, col. 2 (March 28, 1942); *ibid.* p. 12, col. 7 (March 29, 1942); *ibid.* p. 24, col. 5 (March 30, 1942).

⁶⁸ Daniels, *Handbook of Illinois Tax Foreclosures* 17, 19 (c. 1943).

⁶⁹ Research Department, *op. cit. supra* note 30, at 51; Chicago Sun, p. 14, col. 6 (April 14, 1942). In *People v. Anderson*, 380 Ill. 158, 43 N.E. 2d 997 (1942), the Village of Lansing vacated sales where the bids were only \$1.00 per lot.

for Attorneys for Filing Tax Foreclosure Cases.” He must fill out a printed “Information Sheet,” submit a photograph of the premises, write a letter containing certain specified information and promising a minimum guaranteed bid and the payment of subsequent taxes, and furnish on the printed forms available several copies of complaints, summonses, and affidavits for instituting the action. Until recently the county board would foreclose only on delinquent taxes for 1940 and earlier years, and taxes for 1941 and subsequent years had to be paid in full. On April 21, 1949, however, the board resolved to foreclose taxes through 1946 on vacant property. The former limitation remains in effect for improved property. From the photograph of the property, the description of the premises, and the information on taxes and assessments, the Delinquent Tax Committee of the board determines whether foreclosure for the guaranteed bid is to the advantage of the county. If the board gives its approval, the file is transferred to the state’s attorney. He checks the file and prosecutes the action. Approval by the court is usually a matter of course, since there is no opposition.

The statutory prerequisite for tax foreclosure is that “the taxes for two or more years, upon the same description of property, shall have been forfeited to the State.” It is settled that this requirement means forfeiture for the nonpayment of the taxes for two or more years and not two or more forfeitures,⁷⁰ and that all taxes may be included in the foreclosure whether or not included in the forfeiture.⁷¹ The statute further provides that the amount shown upon the collector’s books “shall be prima facie evidence of the amount of taxes against the said real property.” The serious problem raised by these provisions is the extent to which the right to institute foreclosure depends upon the validity of the forfeiture and thus upon the validity of the tax judgment, the sale, and the taxes themselves. If this requirement means that these steps must all be technically valid judged by the standards of collateral attack upon the ordinary tax title, the foreclosure offers no chance of a better title than does the annual tax sale, for errors which invalidate the latter would also invalidate the former. Perhaps the foreclosure process would offer less chance of passing good title because the foreclosure itself affords additional opportunities for error.

The courts have not, however, held that every error in the process leading to the forfeiture renders the forfeiture invalid and prevents the foreclosure. In 1934 the court described its approach as follows:

⁷⁰ *People v. Weber*, 164 Ill. 412, 45 N.E. 723 (1896).

⁷¹ *Mix v. People*, 122 Ill. 641, 14 N.E. 209 (1887).

In considering the record in this respect [detailed and technical attacks upon the forfeitures] it is necessary to bear in mind that it is the purpose of the statute to permit an adjustment, accounting and collection of back taxes, regardless of omissions or irregularities which might be of such character as to be fatal to a tax title and therefore such as might effectually prevent bidding at a tax sale. The complexity of our tax-assessing and tax-collecting laws is such as to cast many difficulties in the path to a valid tax title, and it was obviously the legislative intent in passing section 253 [now section 216] to provide a remedy which would prove beneficial both to the people and the tax-payer. In equity, with all parties in court, it is at once possible for the tax-payer to secure for himself all just credits and adjustments and for the people to correct and overcome all technical objections. . . . The section under consideration, being remedial, must be liberally construed to effectuate its purpose, and any other construction would not only fail that purpose but render it entirely nugatory.⁷²

It had earlier based liberal treatment on the powers of a court of equity. In a foreclosure suit where some of the taxes were claimed to be illegal and thus to preclude foreclosure, the Supreme Court indicated that equity could take an account to determine what taxes were legally due and that the taxpayer could not set aside a forfeiture without paying what was due in equity and good conscience.⁷³ Therefore, the inclusion of any illegal taxes which voids an annual tax judgment, sale, and title does not void the forfeiture for purposes of a tax foreclosure.

This attitude of the court is implemented by using the various saving provisions that have proved of little help in protecting tax titles to better effect in protecting tax foreclosures. Thus, in 1930 the court relied on the fact that the judgment of the county court is conclusive except where the tax has been paid or the land is not liable for the tax.⁷⁴ It held that the insufficiency of the certificate of publication of the delinquent list could not be raised because the county court had found that due notice had been given, that the filing of the delinquent list with one "Mike Godfrey, Clerk" who was both county clerk and clerk of the county court was a satisfaction of the requirement that it be filed with the clerk of the county court, and that errors and omissions in the dates on the certificates of levy were informalities not affecting substantial justice. Earlier the court held that the confirmation of special assessment bonds could not be attacked collaterally and that objectors were estopped because as commissioners of the drainage district they had agreed to an order compromising certain differences with the bondholders.⁷⁵ Still earlier the court held that

⁷² *People v. Straus*, 355 Ill. 640, 643, 189 N.E. 877, 879 (1934).

⁷³ *Hammond v. People*, 169 Ill. 545, 48 N.E. 573 (1897).

⁷⁴ *People v. Miller*, 339 Ill. 573, 171 N.E. 672 (1930); cf. *People v. Conleur*, 294 Ill. 139, 128 N.E. 339 (1920) on the treatment of imperfections.

⁷⁵ *People v. Weber*, 164 Ill. 412, 45 N.E. 723 (1896).

fraudulent overassessment and reassessment did not prevent foreclosure, that assessment in the wrong name was no defense for the owner, and that objections to taxes for various bonds should have been raised when the objectors appeared at the county court's confirmation of the bonds.⁷⁶ These cases merely follow the pattern set by the first case applying the tax foreclosure process which held that, even though the tax judgments for previous years were erroneous, the back taxes themselves and the penalties could be added to the current taxes and that the remedy for erroneous judgments was to appeal them.⁷⁷

One case only, *People v. Henckler*,⁷⁸ disturbs the finality of the tax judgment and forfeiture in a foreclosure proceeding. There the bill to foreclose was dismissed because the clerk's certificate of the tax judgment contained a scrawl only and thus was not "attested by the clerk, under seal of the court. . . ." as required by statute. The court reasoned that the statute authorized foreclosure only when the taxes for two or more years had been forfeited to the state, that the tax collector had no authority to sell for taxes except in compliance with the law upon a certificate under seal of a judgment for taxes, that the clerk's scrawl was not the seal of the court, and that since there was no valid sale there was no valid forfeiture.

The conclusion seems to be that once there has been a valid forfeiture for the nonpayment of some valid taxes for at least two years the prerequisites for tax foreclosure have been satisfied. That several judgments and forfeitures are invalid is irrelevant provided one is good. Even with respect to the forfeiture relied upon, the fact that part of the taxes are invalid is irrelevant because the court of equity will inquire into the objections and foreclose only for taxes actually due. Moreover, the court has more effectively used the statutory finality of the tax judgment and the various saving provisions in tax foreclosures than in annual tax judgments and sales. Greater finality is given the previous tax collecting procedure in foreclosure than is given it in the civil action for personal judgment; for in the civil action the court has expressly stated that all objections may be raised which might have been raised on application for judgment, including fraudulent overassessment, whereas in the foreclosure the court has indicated no such liberal ground for objections and has expressly excluded fraudulent overassessment.⁷⁹ In both the civil action and the foreclosure one of the reasons for the finality is that the taxpayer is afforded another opportunity after personal notice to contest any illegal taxes so that tech-

⁷⁶ *Mix v. People*, 116 Ill. 265, 4 N.E. 783 (1886).

⁷⁷ *Biggins v. People*, 106 Ill. 270 (1883).

⁷⁸ 137 Ill. 580, 27 N.E. 602 (1891).

⁷⁹ *Mix v. People*, 116 Ill. 265, 4 N.E. 783 (1886).

nicalities are not necessary to protect him. It should be noted that these cases have arisen on objections to foreclosure for taxes and not later in collateral attack upon the title obtained from the sale so that a stricter rule could still be adopted in the latter situation. But all parties to the foreclosure would be bound by the decree and precluded from collateral attack.

All persons should be named as defendants whose interests are to be foreclosed. On the surface the statements of the Supreme Court on parties seem inconsistent. Thus, in *People v. Weber*,⁸⁰ the taxpayer testified that he was married and resided on the property with his wife and that there were two mortgages on the property. He insisted that the wife and mortgagees were necessary parties. The court said:

The homestead is not exempt from the lien for taxes, and that lien is superior to all the others. The interest of the wife or the mortgagees could not, under any circumstances or by any proof, be made superior to the lien for taxes, and as that question could not be made the subject of litigation, we see no reason for making any person defendant except the owner in possession of the land who is liable for the taxes, any more than in any other form of proceeding for the collection of such taxes. Every person interested in the premises must, at his peril, see that the lien for taxes is discharged.

But ten years earlier the court had noted:

It is said others have an interest in these lands and lots who should be made parties to the suit. If there are any such persons, they, not being made parties, will not be bound by the decree in this case, nor will their interest in the property be affected thereby. But that ought not, so far as we can see, prevent foreclosure as to the interest of the defendants.⁸¹

And fifteen years later the court struck down a bill to review a tax foreclosure proceeding on the ground that the petitioner, Emma Glos, who claimed a one-third interest by quit claim deed from her husband, could not have been affected by the foreclosure since she was not named a party:

As Emma Glos was not a party or privy to the original foreclosure proceedings the alleged notice as to said supplemental proceedings could not in any way preclude her from questioning the finding either in said original or supplemental proceedings. . . . The foreclosure proceedings being invalid on their face so far as they attempted to affect the rights of Emma J. Glos, the decree in title is no cloud on her title and there is no occasion for equitable interference.⁸²

The holdings in these cases are not inconsistent: In the *Weber* case the

⁸⁰ 164 Ill. 412, 416, 45 N.E. 723, 724 (1896).

⁸¹ *Mix v. People*, 116 Ill. 265, 278, 4 N.E. 783, 788 (1886).

⁸² *Glos v. People*, 259 Ill. 332, 341, 344, 102 N.E. 763, 766, 768 (1913); cf. *People v. Evans*, 262 Ill. 235, 104 N.E. 646 (1914).

court merely held that the absence of the wife and the mortgagees did not preclude foreclosure as to the owners, and in the others it held that the interests of persons who were not made parties were not affected. But the fact that the interests of persons not made parties are not cut off is a very good reason for making them parties despite the contrary statement in the *Weber* case. The rule here seems to be the same as that in mortgage foreclosures: a senior mortgagee foreclosing need not name as defendants junior lien holders, but the rights of redemption of such holders not made defendants are not foreclosed.⁸³ The issue of the effect of a tax foreclosure on interests not made defendants is not likely to arise often because prudent attorneys try to name as defendants all known interests. If all claimants are named defendants their interests can be cut off by foreclosing the superior tax lien and the proceedings can serve an auxiliary purpose of quieting title. One state's attorney recommends that the county, county clerk, county treasurer, and any municipality levying special assessments with its clerk, collector, and treasurer also be made defendants because the decree will contain directions to them.⁸⁴

The printed bill of complaint furnished by the Cook County State's Attorney provides for naming as "Unknown Owners" the holders of notes and interest coupons secured by a deed of trust and the beneficiaries under a trust and the "unknown heirs and devisees of —— deceased." The inclusion of beneficiaries as unknown owners is made possible by a decision that special assessment bond and voucher holders need not be made parties to a suit by a municipality to foreclose special assessments.⁸⁵ The Supreme Court noted "that very often the bondholders are so numerous that to require them to be made parties in every suit to foreclose the lien of special assessments would be to impose an unreasonable and oppressive burden on the municipality." It pointed out that the beneficiaries of a trust are not necessary parties to an action to foreclose their interest where they are adequately represented by others, here by the municipality. To the bondholders' contention that the municipality was adversely interested because foreclosure of the special assessments would leave its own lien for general taxes paramount, the court replied that the municipality would be presumed to do its duty and would desire to assure payment of bondholders to facilitate the financing of local improvements in the future.

⁸³ Reeve, *The Law of Mortgages and Foreclosures in Illinois* §§ 478, 493 (1932); Jones, *A Treatise on the Law of Mortgages of Real Property* §§ 1780, 1781 (8th ed., 1928).

⁸⁴ Daniels, *Handbook of Illinois Tax Foreclosures* 18 (c. 1943).

⁸⁵ *Village of Lansing v. Sundstrom*, 379 Ill. 121, 39 N.E. 2d 987 (1942); *People v. Sandvoss*, 320 Ill. App. 239, 50 N.E. 2d 770 (1943).

The result of these cases on parties is that all persons interested in the property must be made parties if their interests are to be affected, except that the beneficiaries of a trust need not be made parties when their interest is represented by a party. Defendants should include all owners of the fee including contingent and reversionary interests, all tenants for life or years, the executors or administrators of an estate, the person last taxed or assessed, all lienholders, trustees, judgment creditors, persons in possession, the county and municipal officers mentioned, and all other persons denominated "Unknown Owners." Attorneys planning to complete a foreclosure by redemption (as discussed below), however, sometimes deliberately omit parties in order to discourage bidding by outsiders.

Service upon all parties is facilitated by a recent amendment providing that whenever the taxes for five or more years have been forfeited, notice may be given to owners and parties interested by publication.⁸⁶ The notice must be in the form and contain the information specified and must be published for three successive weeks in a newspaper in the county. Occupants must still be served by summons or publication as required by law for equitable foreclosures. This provision was adopted in 1943 to facilitate foreclosures by state's attorneys without the staffs necessary for title searches to find owners for personal service, but doubt as to its constitutionality has limited its use.

This 1943 amendment to Section 216 also provides in a separate paragraph: "An action to foreclose the lien for delinquent taxes under the provisions of this Act is hereby declared to be an action in rem."⁸⁷ If "this Act" refers to the whole of Section 216, this language might make it unnecessary to name as defendants the numerous parties just mentioned and might permit foreclosure of their interests by action in rem. More probably, "this Act" refers to the amending act of 1943 which added this sentence and which contained in the next paragraph the provisions for foreclosure by publication when taxes for five years had been forfeited. Thus, forfeiture foreclosures, although usually in personam, may be in rem when taxes for five years have been forfeited and when notice is given by publication.

The procedure is as in equity foreclosures except as modified by the special requirements of the tax statutes.⁸⁸ Hundreds of tracts can be joined in

⁸⁶ The Attorney General says that the owner need not be made a party defendant under this provision but for safety should be made a defendant where known. Ops. Ill. Att'y Gen. (1943), at 218.

⁸⁷ Ill. L. (1943), p. 1119.

⁸⁸ *Clark v. Zaleski*, 253 Ill. 63, 97 N.E. 272 (1911); Ops. Ill. Att'y Gen. (1931), at 147; see *People v. Cant*, 260 Ill. 497, 501, 103 N.E. 232, 233 (1913).

one foreclosure.⁸⁹ The judge decides the issues raised by the answer, if any, determines the correct amount of taxes, penalties, and interest due against each parcel, and orders payment of that sum within a "short day," and on nonpayment orders the sale of the property.⁹⁰ He usually requires advertisement of the sale for three successive weeks.⁹¹ Since the law is not clear whether the sale is governed by the Revenue Act as in tax sales or by the decree as in equity foreclosures, one state's attorney recommends that the decree require the sale to be carried out according to the terms of the Revenue Act.⁹²

The sale is by the county collector to the person offering to pay the most for the property regardless of whether the highest offer is more or less than the taxes due. If the bid is less than the accumulated taxes, as is almost always the case, probably no deficiency judgment can be rendered against the owner since the statute makes no provision for such judgment.⁹³ In almost every instance the property is bid off by the person making the guaranteed bid.

The power of the county to bid in the property at a tax foreclosure sale is in doubt. The Supreme Court has held in one case that "there was no error" in the county purchasing and that "in any event" this is "a question in which the plaintiffs in error are not interested."⁹⁴ Nonetheless, the Attorney General says that a purchase by the county would be *ultra vires* and distinguishes this case on the ground that only an owner was objecting.⁹⁵ Municipalities have been denied the power to purchase at annual tax sales in the absence of an enabling statute,⁹⁶ and the Scavenger Act expressly gives taxing bodies power to bid. If the county could bid, it could foreclose to acquire properties for public purposes, could foreclose properties even without guaranteed bids, and by its bidding prevent them from going for a song. Opponents of county bidding fear that it would put the county into the real estate business with properties so acquired. When

⁸⁹ For example, *People v. Anderson*, 380 Ill. 158, 43 N.E. 2d 997 (1942); *Village of Downer's Grove v. Glos*, 307 Ill. 293, 138 N.E. 594 (1923).

⁹⁰ *Mix v. People*, 116 Ill. 265, 4 N.E. 783 (1886).

⁹¹ *Daniels, Handbook for Illinois Tax Foreclosures* 25 (c. 1943); *Clark v. Zaleski*, 253 Ill. 63, 68, 97 N.E. 272, 275 (1911) (four weeks' publication).

⁹² *Daniels, Handbook for Illinois Tax Foreclosures* 24, 28 (c. 1943).

⁹³ *Ops. Ill. Att'y Gen.* (1938), at 169.

⁹⁴ *People v. Straus*, 355 Ill. 640, 189 N.E. 877 (1934); cf. *Douthett v. Kettle*, 104 Ill. 356, 360 (1882) (county authorized to purchase on sale on personal judgment for taxes).

⁹⁵ *Ops. Ill. Att'y Gen.* (1937), at 283.

⁹⁶ *City of Champaign v. Harmon*, 98 Ill. 491 (1881); see *O'Connell v. Sanford*, 256 Ill. 62, 99 N.E. 885 (1912).

it had purchased, moreover, the county would probably be obliged to account to the other taxing bodies for their proportional share of the bid and to pay taxes on the property until it was devoted to a tax exempt public purpose.⁹⁷

The proceeds of the sale are distributed pro rata among the taxing bodies according to the proportion of their tax claims. The county can only deduct the costs of foreclosure. In one case the county attempted to deduct from a sale price of \$3,553 costs of foreclosure amounting to \$228.38 and costs and redemption fees on the tax sales of previous years amounting to \$2,275.40, leaving a balance of only \$1,049.22 to be distributed pro rata; but the court held that taxes, penalties, interest, and costs on tax sales of previous years are equal items and must share pro rata.⁹⁸

The fact that the county receives a pro rata share of the proceeds for penalties has in Cook County been a focal point for criticism. The county has been accused of waiving all penalties and a portion of the principal of taxes due in accepting guaranteed bids on foreclosure and then receiving a pro rata share of the proceeds on the basis of its right to the penalties.⁹⁹ The county's reply has been that its taxing power is limited by the constitution to \$.75 per \$100, that its share of the proceeds has been spent for the public welfare, and that if this revenue source be taken away another must replace it.¹⁰⁰ In this connection it should be noted that the county loses by foreclosing only on taxes through 1940 (now 1946 on vacant property) and insisting on the payment of taxes and penalties for 1941 and subsequent years in full. The bidder in fixing the amount he can bid at the foreclosure will deduct the subsequent taxes and penalties which he must pay in full from what he is willing to pay for the property, so that the larger the subsequent taxes and penalties the smaller the foreclosure bid. This decline in the bids as subsequent taxes and penalties increase is illustrated in the figures for 1942-48.¹⁰¹ Smaller bids mean that a smaller part of the recovery (foreclosure bid plus taxes and penalties 1941 to date) is apportioned to the earlier years when the county's share for penalties is large and more to the later years when its share for penalties is less.

The sale clears the land of the lien for delinquent taxes.¹⁰² The lien is not revived by redemption or by the failure to take out the tax deed.¹⁰³

⁹⁷ Cf. *Ops. Ill. Att'y Gen.* (1944), at 194.

⁹⁸ *People v. Anderson*, 380 Ill. 158, 43 N.E. 2d 997 (1942); see *Ops. Ill. Att'y Gen.* (1942), at 285.

⁹⁹ *Chicago Sun*, p. 24, col. 5 (March 30, 1942).

¹⁰⁰ *Chicago Sun*, p. 24, col. 5 (March 30, 1942); *ibid.*, p. 12, col. 7 (March 29, 1942).

¹⁰¹ *Brennan*, *op. cit. supra* note 1. ¹⁰² *Clark v. Zaleski*, 253 Ill. 63, 97 N.E. 272 (1911).

¹⁰³ *French v. Toman*, 375 Ill. 389, 31 N.E. 2d 801 (1940).

The statute makes no provision for certificates of purchase at foreclosure sales so that it would seem that the certificate should be the same as that at the regular tax sale, that is made out by the clerk and countersigned by the collector. But on the basis of two cases reaching the Illinois Supreme Court where the certificates involved had been made out by the collector and attested by the clerk, the Attorney General has given the opinion that the provisions of the revenue act for tax sales do not apply and that the certificate should be made out by the collector and attested by the clerk.¹⁰⁴ Cautious attorneys try to satisfy both requirements by having the certificates signed by both officers.¹⁰⁵

After the sale the proceeding comes back to the judge for confirmation of the sale where the most important issue usually is the adequacy of the bid. The courts have repeatedly applied the rule that "Mere inadequacy of price is no reason for upsetting a judicial sale unless there are other irregularities."¹⁰⁶ This rule has been applied even where the party attempting to set aside the confirmation introduced evidence tending to show that the bidder would have been willing to pay twice his bid.¹⁰⁷ But in *People v. Schwartz*¹⁰⁸ the Supreme Court pointed out that this rule applies where parties are seeking on appeal to set aside the confirmation of a sale and does not govern the chancellor himself on the issue of confirming the sale. The chancellor has broad discretion in approving or disapproving the sale and may consider the adequacy of the price in making his decision. In this case the bid was \$1,500 for property assessed at \$5,414 (the court does not mention an increase to \$19,485 in 1943), with back taxes through 1940 of \$4,040.99, a total delinquency including interest and penalties of \$10,414.63, and a gross monthly income of \$200. The court emphasized the amount of the assessment and the fact that the bid could be repaid from gross income in less than eight months to justify the chancellor's disapproval of the bid as inadequate. It did not, apparently, consider the taxes and penalties for 1941-44, amounting to \$2,650, but here these had apparently already been paid. Subsequently a bid of \$3,000 was accepted.

The amount of the bids deemed acceptable is crucially important in determining how much the tax foreclosure process will be used. Approval

¹⁰⁴ Ops. Ill. Att'y Gen. (1943), at 244; see *Clark v. Zaleski*, 253 Ill. 63, 68, 97 N.E. 272, 275 (1911).

¹⁰⁵ Daniels, *Handbook of Illinois Tax Foreclosures* 28 (c. 1943).

¹⁰⁶ *People v. Anderson*, 380 Ill. 158, 162, 43 N.E. 2d 997, 1000 (1942); *People v. Sandvoss*, 320 Ill. App. 239, 50 N.E. 2d 770 (1943); *People v. Home Real Estate Improvement Corp.*, 316 Ill. App. 437, 45 N.E. 2d 289 (1942).

¹⁰⁷ *People v. Cutler*, 323 Ill. App. 466, 56 N.E. 2d 50 (1944).

¹⁰⁸ 397 Ill. 279, 73 N.E. 2d 279 (1947).

of low bids encourages use of the forfeiture foreclosure process in clearing up back taxes and releases land for development but also deprives the taxing bodies of revenues and discourages the payment of taxes currently by the prospect of foreclosures at less than face value after delinquency. Requiring high bids may halt the use of the forfeiture foreclosure process altogether because the purchaser acquires a title subject to many of the infirmities of a tax title, must pay full taxes, penalties, and interest 1941 to date, and must wait out a two-year period of redemption. The Chicago Bar Association has recommended that forfeiture foreclosures be permitted on taxes through 1945, but the county believes that such a shift would apprise taxpayers that they need not pay taxes but may settle them by foreclosure after a few years delinquency. On April 21, 1949, the Board of Commissioners of Cook County relaxed its opposition by resolving to permit foreclosures of taxes through 1946 on vacant property. Actually it makes absolutely no difference how many recent years' taxes are required to be paid in full as long as these taxes and penalties do not exceed what purchasers are willing to pay for the property. The purchaser determines the total amount he is willing to pay and then divides that sum between the bid on taxes of 1940 and earlier and the payment in full of subsequent taxes: the larger the amount required to pay subsequent taxes, the smaller the amount he will bid. The requirement that taxes after 1940 be paid in full thus amounts merely to fixing a minimum amount, increasing year by year, that a purchaser must pay to foreclose. Since this minimum amount is now approaching the value of the poorer forfeited properties remaining, the use of forfeiture foreclosures is declining and, unless some revision is made, in a few years may cease altogether.

The figure of 40 to 50 per cent of the full assessed valuation has been suggested as a minimum bid.¹⁰⁹ The Special Committee on Delinquent Taxes of the Chicago Association of Commerce recommended a minimum bid of 40 per cent full value, estimated that other costs of acquisition would increase purchase costs to 60 or 70 per cent of full value, and would leave 30 to 40 per cent as an incentive to purchase and compensation for the delay of two or three years in obtaining title.¹¹⁰ It is not clear whether these minimums are intended to apply to the bid only or to the bid plus subsequent taxes required to be paid in full; they should take into consideration the subsequent taxes. This discount of at least 50 per cent is the

¹⁰⁹ Rees, *A Study of Real Estate Tax Delinquency in Chicago and Cook County* 28 (Committee on Public Expenditures, Feb. 1938) (40 per cent); Daniels, *Handbook of Illinois Tax Foreclosures* 7 (c. 1943) (50 per cent).

¹¹⁰ Special Committee on Tax Delinquency of the Chicago Ass'n of Commerce, *Tax Delinquency in Chicago and Cook County Illinois* 30 (Feb. 10, 1941).

collection loss suffered from being obliged to dispose at an involuntary public sale, to allow at least two years for redemption, and to offer only an uncertain title.

The statute expressly provides that the sale is with "the same notice to interested parties and right of redemption from said sale, as is now provided by law and in conformity with Section four (4) and five (5) of Article IX of the Constitution of this State." In *Clark v. Zaleski*¹¹¹ the Supreme Court decided that the right of redemption ran for two years as required by the Constitution and the Revenue Act and not for the fifteen months of the Chancery Act, that the notice required was that now contained in Section 263 of the Revenue Act, but that the affidavit of notice in Section 265 was not required. The court reasoned that the affidavit of notice is necessary in an annual tax sale to preserve matter not anywhere of record but is not necessary in a tax foreclosure because the court's confirmation puts compliance with the notice in the record. The technical requirements for the notice of expiration of redemption are the same as those in the annual tax sales.

Whether the period of redemption is subject to the extensions provided in the Revenue Act when subsequent taxes are not paid for two years, a deed is not taken out within one year, or one of the owners is a minor or insane and whether the Reconveyance Act applies to permit the owner to demand reconveyance when possession is not taken within one year or when taxes are not paid for seven successive years, is uncertain.¹¹² The reference to the Constitution might be taken to limit the redemption to the two years there provided, but the reference to the Revenue Act might bring in all the extensions. The cases indicate that the period of redemption is extended if the purchaser permits the property to be again sold for taxes before the last day of the second annual tax sale.¹¹³ These cases suggest that the other extensions of redemption are applicable, but they leave open the question whether the Reconveyance Act applies.

Since there is no penalty bid, redemption is made upon payment of the interest rate prescribed by the statute, now 1 per cent per month for the first six months and 6 per cent per year thereafter. If the owner redeems his tax foreclosed property shortly after the sale, this interest would be insufficient to compensate the purchaser for his expenses in attending and bidding in the property at the sale. To compensate purchasers more ade-

¹¹¹ 253 Ill. 63, 97 N.E. 272 (1911). The court cannot regulate the right of redemption. *People v. Thain*, 392 Ill. 592, 65 N.E. 2d 344 (1946).

¹¹² §§ 253, 254.

¹¹³ *People v. Banks*, 294 Ill. 464, 128 N.E. 576 (1920); *People v. Thain*, 392 Ill. 592, 65 N.E. 2d 344 (1946).

quately in the event of early redemptions, a bill in the 1947 legislature would have increased the interest to 10 per cent for the first six months or fraction thereof.¹¹⁴ The mechanics of redemption—whether governed by the Judgments and Decrees Act or the Revenue Act—are also uncertain. One state's attorney recommends compliance with the former statute by endorsing a certificate of redemption on the certificate of purchase and recording the same, followed by compliance with the latter by surrendering the certificate to the county clerk and obtaining a certificate of redemption.¹¹⁵

Upon the expiration of the period of redemption and upon compliance with the requirements of notice the purchaser may petition the court to order the issuance of a tax deed. The jurisdiction of the court in which the foreclosure was conducted to approve the notice of the expiration of redemption and order the issuance of the deed was upheld in *Clark v. Zaleski*¹¹⁶ and is the outstanding instance where the courts have not limited foreclosure proceedings to the precise steps outlined in the statute. Recourse to the court for confirmation is optional, for the purchaser may simply get the deed from the county clerk as in the case of ordinary tax deeds. Since, however, a petition to the court and approval of issuance is judicial confirmation of the validity of the notice of redemption and all prior steps and is binding upon all parties, confirmation greatly improves the purchaser's title. The court requires the same particularity in the allegations of the notice of expiration of redemption in the petition for confirmation that it requires in the affidavits submitted in the tax judgment and sale process.¹¹⁷

The title thus obtained by the process of forfeiture foreclosure is superior to that obtained by the tax judgment and sale process largely because of two circumstances: First, all persons interested in the property have been served and brought before the court in the forfeiture foreclosure, and after an opportunity to contest illegal taxes, their interests have been cut off by judicial sale. Second, the court has ordered the issuance of the tax deed and thus confirmed the legality of prior proceedings including the notice of the expiration of redemption, and its order is binding upon all parties unless reversed on appeal. The proceedings thus avoid the *ex parte* character which has probably been responsible for most of the uncertainties of title in the annual tax judgment and sale. Moreover, the sale is

¹¹⁴ Ill. H. B. 712, 65th Gen. Assemb., Reg. Sess. (May 14, 1947).

¹¹⁵ Daniels, *Handbook of Illinois Tax Foreclosures* 30 (c. 1943).

¹¹⁶ 253 Ill. 63, 97 N.E. 272 (1911); see also *Hammond v. People*, 178 Ill. 503, 52 N.E. 1030 (1899).

¹¹⁷ *People v. Banks*, 272 Ill. 502, 112 N.E. 269 (1916).

made to the highest bidder, so that the owner can less readily gain the sympathy of the courts on the ground that he is losing his property for a fraction of its value.

The Illinois Supreme Court by *Greenwald v. McCarthy*,¹¹⁸ decided in 1949, has given substantial protection to titles based on forfeiture foreclosures. Here the plaintiff sought to set aside the tax deed obtained on foreclosure in 1941 on the grounds that the affidavit of nonresidence erroneously stated her residence was unknown despite the fact that the 1932 tax records and certain special assessment records showed her then New York address, that the sale price was grossly inadequate, that the published notice of expiration of redemption gave the wrong date, that the purchaser at the tax sale and his assignee were in collusion with the attorney causing the foreclosure action to be filed and were therefore chargeable with notice of defects in the proceedings, and that the foreclosure deprived her of property without due process of law. The Supreme Court affirmed the dismissal of the complaint on the ground that the court had jurisdiction of the plaintiff in the tax foreclosure action so that collateral attack on the title failed. It pointed out that the plaintiff did not allege that her 1941 New York address was available or that notice to the other addresses would have reached her. It held that, so far as the record showed, the present owners were innocent third parties whose titles could not be attacked by proof of a false affidavit. It also held that the confirmation of the issuance of the deed by the court precluded collateral attack on the ground that the date of expiration of redemption was erroneously stated. This decision is in striking contrast with the technical strictness with which the court has treated titles acquired through annual tax sales, and should improve the marketability of tax titles.

Nevertheless, the forfeiture foreclosure has not afforded a desirable means for buyers to pick up real estate. The title is still somewhat uncertain, the proceedings are expensive, and the purchaser must wait at least two years and perhaps more for the period of redemption to expire. The *McCarthy* case increases the security of the titles but does nothing about the two year delay for redemption.

The result is that most tax foreclosures are carried out in cooperation with the owner of the right of redemption. The tax purchaser is usually a dummy, and the person for whose benefit the sale is being conducted redeems from the dummy. This person, who may be either the original owner or his grantee, then has a good title clear of the taxes. Finally, he sues to enjoin the collector from collecting that portion of the delinquent taxes

¹¹⁸ 402 Ill. 135, 83 N.E. 2d 491 (1949).

that was not satisfied by the sale.¹¹⁹ This type of foreclosure is usually denominated a "voluntary forfeiture foreclosure" to indicate that it is carried out in cooperation with the owner, as contrasted with an "involuntary forfeiture foreclosure" (perhaps more accurately described as an "adverse foreclosure") carried out on behalf of a stranger. Although there are no statistics on the respective use of the voluntary as compared with the involuntary method, observers estimate that in Cook County 90 per cent of the foreclosures have been voluntary.

The legality of voluntary foreclosures was upheld in *French v. Toman*.¹²⁰ Lola M. French had obtained title to a piece of property on which the taxes of 1927 to 1937 were delinquent. Her title was acquired after the 1937 taxes became a lien. A forfeiture foreclosure decree found \$7,466.47 due, and the collector sold for \$2,200 to one Snyder who assigned to Murphy. Lola French redeemed from Murphy and brought this suit to enjoin collection of the balance of taxes due. The court held that the phrase the taxes remain a lien "until the same are paid" referred not exclusively to full payment but also to payment of the amount of the foreclosure sale, that the sale extinguished the tax claim, and that the redemption did not revive the tax lien. On the latter point the court used the analogy of a junior encumbrancer who on redemption takes free of any lien for unpaid portions of the debt not realized at the sale, and emphasized that the statute did not provide for reviving the extinguished lien. However, it carefully left open two situations: First, it pointed out that here there was no claim of collusion between the owner and the tax purchaser. Second, it said:

The argument that to allow a taxpayer to default and later redeem for a smaller amount is unfair to the State and other taxpayers does not apply to this case. Appellee was not the taxpayer when the taxes were assessed. The significant fact is that the legislature has not provided that the tax lien be revived where one who owns the property when the taxes were assessed conveys to another, and the grantee redeems from a tax foreclosure sale.

The first exception for collusion between the owner and the purchaser would cover most tax sales conducted in this manner, for in almost every instance the tax purchaser is a dummy for the owner or for a prospective grantee of the owner. The second exception where the redeemer was the owner at the time the taxes fell due can usually be avoided because the occasion for the elimination of delinquent taxes usually is a transfer of the ownership. The new owner would not be liable for the taxes, and an ar-

¹¹⁹ The Chicago Title & Trust Co. requires an injunction whenever the taxes and penalties not satisfied by the foreclosure sale bid exceed \$7500.

¹²⁰ 375 Ill. 389, 396, 31 N.E. 2d 801, 804 (1940).

rangement can usually be made so that the new owner redeems. A 1943 amendment that taxes are a lien only "until the real property is sold pursuant to any provisions of this Act" may have cured both exceptions.

The result of the use of redemption is that the forfeiture foreclosure ceases to be a means of collecting taxes and becomes a means of totally extinguishing tax liens for a fraction of their face amount. What the method can accomplish in extinguishing tax claims while leaving the owner most of the value is illustrated by the situation revealed in *People ex rel. Schreiner v. Courtney*.¹²¹ In 1937 Mildred F. Lindop acquired title to a tract of land as trustee for John C. Lindop. The property was assessed at \$13,974, and the taxes were delinquent from 1931. In 1939 she contracted to sell the property to the Chicago Rivet & Machine Co. for \$30,000, subject to 1940 taxes. Instead of paying the delinquent taxes with interest, a total of \$16,245.09, the parties instituted a tax foreclosure suit, the property was sold to George Ott for \$5,500, the amount of the guaranteed bid, and the rivet company redeemed from the sale and enjoined collection of the deficiency. In a taxpayer's suit against the former owners, the present owners, the purchaser, the state's attorney and his assistants and bondsmen, and the Board of County Commissioners, to declare the property still liable for the deficiency or to hold the defendants personally liable, the court denied relief. Another illustration is the county board's recent approval of a guaranteed bid of \$277,698 on \$1,300,000 back taxes of the Auditorium Hotel Building after Roosevelt College had paid the owners \$500,000 for the building.¹²² The college probably regarded the building as worth approximately \$777,000, the sum of the amount it paid for the building and for the back tax settlement. Even though the back taxes, a prior lien, were almost twice this sum, ineffective tax collection methods enabled the owners whose interest was subordinate to the taxes to retain two-thirds the proceeds.

At its best, voluntary foreclosure is a sale by the owner of his period of redemption and ability to convey good title, that is, of his willingness to cooperate by redeeming and conveying the property. Without his cooperation the person interested in purchasing at the foreclosure sale would have to wait out the period of redemption and take his chances on the title. He is willing to pay substantial sums to avoid the inefficiency of the foreclosure process. The proposals for minimum guaranteed bids of 40 to 50 per cent of assessed value indicate that the owner's cooperation is worth

¹²¹ 380 Ill. 171, 43 N.E. 2d 982 (1942).

¹²² Chicago Sun-Times, p. 27, col. 1 (June 29, 1948); cf. Chicago Sun, p. 12, col. 5 (March 2, 1942).

about half the value of the property. But at their worst, voluntary foreclosures have enabled owners to retain much more than even liberal payment for their redemption. The bids actually accepted in the few cases that have reached the courts, the figures on percentages of taxes recovered,¹²³ together with the fact that critics find it necessary to suggest minimum bids of 40 to 50 per cent, all indicate that often much less than half is realized from properties foreclosed. The lack of vigilance of the collector, the Board of County Commissioners, and the state's attorney in many instances has enabled owners to avoid payment of taxes and to obtain sums for their ownership which according to priority belong to the taxing bodies.

The problems of the foreclosure of special assessments require separate discussion. The liens of special assessments and general taxes are on a parity,¹²⁴ and the two may be foreclosed together in the same suit.¹²⁵ Section 56 of the Local Improvement Act also authorizes the municipalities to sell the assessment lien, and either the municipality or its assignee may bring an action to foreclose the lien in its own name without any forfeiture as a prerequisite.¹²⁶ The chief importance of special assessments lies in their effect upon the foreclosure process. If there are delinquent special assessments in addition to delinquent general taxes, the purchaser at a foreclosure sale will take the former into account by reducing the amount he will bid for the property. Further, once the delinquent general taxes have been cleared away by foreclosure, the specials remain unchallenged as a prior lien. Where the taxes have been paid off for only a fraction of their face amount, the specials now stand a good chance of being paid in full.¹²⁷ In order to prevent the presence of special assessments from depressing or eliminating altogether the bidding and to prevent special as-

¹²³ There is no information on the relation of foreclosure bids to assessed values, but the relation of bids to principal of delinquent taxes (not including penalties) has ranged on improved properties from an average of 67 per cent in 1942 to 31 per cent in 1948 and on vacant properties from 50 per cent to 23 per cent. See Brennan, *op. cit.* supra note 1. Assuming the high tax rate of 4 per cent, taxes would have to be delinquent for 25 years before delinquent taxes equaled assessed values. More likely, most properties were delinquent only half that long or less (1928-40) so that percentages of recoveries to assessed value would be only half as large as the percentages of recoveries to principal taxes, that is 33 to 25 per cent and 25 to 12 per cent. The higher percentage in each instance is probably more nearly correct, for in the later years to which the lower percentages relate purchasers had in addition to spend large sums to pay taxes after 1940 in full.

¹²⁴ *People v. Taylorville Sanitary District*, 371 Ill. 280, 20 N.E. 2d 576 (1939).

¹²⁵ *People v. Sandvoss*, 320 Ill. App. 239, 50 N.E. 2d 770 (1943).

¹²⁶ Ill. Rev. Stat. (1947), c. 24, § 84-56.

¹²⁷ Cf. *Village of Westchester v. Holmes*, 390 Ill. 436, 62 N.E. 2d 410 (1945) (special assessment bondholders not entitled of right to a refunding which would extend their lien in full after foreclosure of general taxes for a fraction).

assessment bondholders from obtaining more favorable treatment than the taxing bodies, specials and generals should be foreclosed together. Some attorneys foreclose specials first, while general taxes are still liens to discourage bidding by outsiders, and then foreclose the general taxes. In either case attorneys instituting foreclosure proceedings must persuade the municipal authorities to permit the foreclosure of specials or to join the foreclosure of general taxes. Municipalities formerly were reluctant to foreclose special assessments for fear they would be liable to the bondholders should the sale, as is likely, fail to yield enough to pay claims in full.¹²⁸ Now, most municipalities will permit foreclosure of specials, and a few have a definite policy of permitting foreclosure for 40 per cent of the specials on vacant land and 60 per cent on improved land. Some state's attorneys contend that special assessments must be foreclosed when general taxes are foreclosed in order to assure equal treatment of the two liens and have suggested that state's attorneys have power to include special assessments in foreclosures without the consent of the municipalities.¹²⁹ On April 21, 1949, the Board of Commissioners of Cook County resolved to include special assessments in foreclosure settlements, but the procedure has not yet been determined.

In Chicago the procedure to obtain City Council approval to foreclose special assessments is set forth in a resolution and is similar to that prescribed to induce the county to foreclose general taxes.¹³⁰ Since a program of foreclosing on delinquent special assessments was instituted in 1946, about 200 cases involving 3,500 lots have been submitted to the council and settlements have been made on 1,200 lots for two and a quarter million dollars of assessments.¹³¹

The administrative use to which Cook County has put the forfeiture foreclosure has already been discussed in connection with the process itself, but the results obtained remain to be given. Up to the end of 1948, 9,707 petitions to foreclose had been approved by the county board, 117,966 parcels of property had been foreclosed, and \$31,595,808.28 of guaranteed bids had been accepted on delinquent taxes of 1878-1940 totaling \$67,610,222.05.¹³² The total of taxes does not include penalties, which might have almost doubled the total due. In addition, taxes for

¹²⁸ Report of the Taxation Committee, City Club of Chicago, Real Estate Tax Delinquency and Tax Foreclosure Suits 6 (1941); Chicago Sun, p. 34, col. 6 (April 5, 1942).

¹²⁹ Daniels, Handbook of Illinois Tax Foreclosures 17, 19 (c. 1943).

¹³⁰ Resolution adopted by the Chicago City Council April 16, 1945.

¹³¹ Chicago Tribune, p. 8, col. 1 (July 7, 1948).

¹³² Brennan, *op. cit.* supra note 1.

1941-46 amounting to about \$40,000,000 were paid in full.¹³³ The guaranteed bids on vacant properties ranged from an average of 50 per cent of the principal tax indebtedness in 1942 to 23.2 per cent in 1948 and on improved properties from 67 per cent in 1942 to 31 per cent in 1948.¹³⁴ The decline in percentage of taxes recovered is attributed to the lesser desirability of the properties remaining as each year passes and the higher amount that the purchaser must allow to pay taxes 1941 to date in full.

A variation in the Cook County use was the activity of the West Central Association in the thirties in searching out foreclosure purchasers.¹³⁵ The association selected a number of abandoned properties near the central business district, made a preliminary tax and title search, and filed a foreclosure suit. It then sought purchasers to make guaranteed bids and advance the cost of a full title search. When such a purchaser was found, a full title opinion was obtained, the complaint was amended, the sale was completed, and the purchaser obtained title after two years.

Downstate, Cumberland County in 1936 undertook an interesting and successful program of foreclosing delinquent properties.¹³⁶ The county contracted with an attorney to carry out the foreclosures at a fee equal to the 1936 taxes. A preliminary written notice to all interested parties that foreclosure would be undertaken brought payments of taxes on two-thirds of the properties. One hundred three individual tax foreclosures were instituted against the remaining tracts. Two were never prosecuted further because interested parties could not be located. Thirty were redeemed before the court had taken action at a time when average costs (filing fees, summonses, and first notices, not including the attorney's fee) were \$11.76. Thirteen more were redeemed before actual sale when average costs were \$31.47. At the sale the county made a protective bid based upon an appraisal by its finance committee. Seven more tracts were redeemed during the two year redemption period when costs averaged \$40.55. Of the 51 tracts eligible for deed, 23 certificates were held privately and 28 were held by the county. Up to July 1939, 23 deeds had been issued, 7 to individuals and 16 to the county, with average costs of \$48.88. All except one tract were sold for as much or more than taxes and costs. The costs to obtain a deed would have exceeded the amount received at the sale in one-third the cases, but in fact on only 4 of the 23 properties conveyed did

¹³³ J. of Proceedings of the Board of County Com'rs of Cook County 949 (March 19, 1948).

¹³⁴ Brennan, *op. cit. supra* note 1.

¹³⁵ Report of the Taxation Committee, City Club of Chicago, *op. cit. supra* note 128, at 5-6.

¹³⁶ Walter, *Use of the Illinois Tax Foreclosure Procedure for Collection of Delinquent Taxes* (Bureau of Agricultural Economics, hectographed, Feb. 1940).

costs exceed the amount received at the sale. Most of the costs (50-75 per cent) were for publishing legal notices, and the remaining costs in filing and other fees (\$12.00 per case) were paid back to the county through the recorder's office. On the 101 properties with taxes due of \$14,477.80, \$7,765.05 were collected. The county in addition bid in for \$3,197.69 twenty-eight properties with taxes of \$4,850.15 and costs of \$1,369.65. Recoveries from the sale of the properties purchased by the county were not expected to exceed \$3,300. In addition to these costs, the attorney by contract was paid over \$2,000. The results of this foreclosure program, though costly, were regarded as very satisfactory, both because the recoveries of delinquent taxes were substantial and because 90 per cent of the delinquent properties passed into the hands of persons likely to pay subsequent taxes.

State's Attorney Lee E. Daniels of DuPage County, faced with 66,000 delinquent lots, one-fourth the real estate in the county, has used the foreclosure process to clear off delinquencies on 30,000 lots.¹³⁷ Foreclosures were begun against all properties on which someone would bid 50 per cent of the actual value and in some instances against others without a guaranteed bid.¹³⁸ The staff expenses of foreclosure were paid from the 10 per cent of bids which State's Attorneys outside Cook County are allowed as a fee.

Several recommendations for improving the forfeiture foreclosure process have already been mentioned. These have included the clarification of the county's power to bid in properties and to hold them without obligation to pay taxes, the foreclosure of special assessments with general taxes, and a higher interest rate applicable to redemptions. Most of the criticisms and recommendations, however, have centered around the problem of fixing standard minimum bids to the end that all taxpayers will be treated alike and that no taxpayer will be allowed to settle for too small a part of the value of his property. Some suggested minimum bids would be based on a percentage of the taxes and penalties, in one suggestion 110 per cent of the taxes and in another 88 per cent of the taxes and penalties.¹³⁹ Others would be based on a percentage of the value of the property, usually 40 to 50 per cent of the full assessed value.¹⁴⁰ On another tack it has been urged that settlements take account of the financial circumstances of the taxpayer.¹⁴¹ The Taxation Committee of the City Club in 1941 recommended

¹³⁷ Chicago Tribune, p. 8, col. 1 (July 8, 1948).

¹³⁸ Daniels, Handbook for Illinois Tax Foreclosures 7 (c. 1943).

¹³⁹ Chicago Sun, p. 28, col. 4 (April 6, 1942).

¹⁴⁰ See note 109 supra.

¹⁴¹ Chicago Sun, p. 28, col. 2 (April 2, 1942); *ibid.*, p. 10, col. 2 (April 8, 1942).

that voluntary foreclosures be made available to all taxpayers willing to pay the principal of taxes prior to 1938 with 6 per cent interest plus subsequent taxes and penalties in full or 55 per cent of the full assessed valuation, whichever was lower, and that involuntary foreclosures for 10 per cent more with the county bidding be brought against taxpayers failing to take advantage of the voluntary plan.¹⁴² Some attorneys have suggested that foreclosures be farmed out to private attorneys as was done in Cumberland County.¹⁴³

Two recent sets of proposals contain the current recommendations for change in forfeiture foreclosures. House Bill 712 in the 65th General Assembly would have increased the redemption interest to 10 per cent for the first six months, required that tax districts with special assessments be named defendants, expressly permitted the foreclosure notices to list more than one lot or tract, eliminated the requirement that sales be conducted under the supervision of the court, and added a provision to foreclose properties with taxes forfeited for five years on deposit of 25 per cent of the current assessed valuation or the total of the tax liens, whichever was less. The Chicago Bar Association in 1948 recommended that the state's attorney include delinquent taxes down to 1945 in the foreclosure, that the county board authorize the state's attorney to foreclose when a bid of 40 per cent of the current assessed value is received, that the certificate of the county clerk as to the amount of unpaid taxes on a parcel be accepted in lieu of proof, that the state's attorney make use of the *in rem* foreclosure for taxes forfeited for five years, testing its constitutionality if necessary, and that the City of Chicago be named defendant and be required to counterclaim for foreclosure on all parcels with delinquent special assessments. The association in April 1949 modified these recommendations by proposing that foreclosure actions for special assessments and general taxes be consolidated and that bids be accepted for all delinquent taxes to date on a graduated scale ranging from 40 per cent of all taxes, special assessments, interest, and penalties due on lots assessed at \$3,000 to \$10,000 down to 25 per cent on lots assessed at less than \$1,000. The substitution of the total of taxes, etc., for the current assessed valuation as the base against which bids are to be measured seems unfortunate, for this total bears no necessary relation, as the current assessed valuation should, to the market value of the property which the county should be able to realize on sale.

The Illinois Revenue Laws Commission has just recommended provision for a fifth method of handling forfeitures, namely "that the State's

¹⁴² Taxation Committee, City Club of Chicago, *op. cit. supra* note 128, at 8.

¹⁴³ Chicago Sun, p. 30, col. 5 (April 3, 1942).

Attorney be permitted to file a suit in equity to terminate the right of taxpayers to redeem from forfeitures where a parcel of real estate has been forfeited for non-payment of taxes of ten or more years and to vest clear title in the State.”¹⁴⁴ The county boards would then sell the properties and distribute the proceeds. Senate Bill 344 contains this proposal. If adopted, this procedure might prove to be inexpensive and expeditious and might supersede the Scavenger Act as a means of collecting on properties ten years delinquent. However, the title of the State may prove unmarketable, for the courts have inclined toward strict construction of tax sale measures that do not give owners personal notice and an opportunity to raise objections.

This article has discussed the four methods available to collect taxes upon the over 250,000 pieces of property that continue year after year to be forfeited to the State for nonpayment of taxes. The variety of methods is illusory, for none has proved successful in collecting taxes. The redemption of purchase of forfeitures depends upon owners or strangers coming forward to pay the taxes; it affords the collecting authorities no opportunity to take the initiative. The civil action for taxes requires painstaking individual legal actions against particular delinquents and presupposes a vigor and vigilance in the collection program that thus far has been unobtainable. The “three-officer” plan passes the same unmarketable title as the ordinary tax sale. Both the “three-officer” plan and the forfeiture foreclosures were designed to realize upon properties bearing delinquent taxes exceeding their value; instead, they have become means by which owners wipe off their taxes at a fraction of face value.

It is essential that legal methods of dealing with forfeited properties be *collection* methods. That is, they must be methods which permit the county authorities to take the initiative in effective measures to collect the taxes. They must not depend upon any action by the taxpayer (contrast the redemption and purchase of forfeitures and the forfeiture foreclosure on guaranteed bid) and must not be so impractical that the collecting authorities cannot take action (contrast the civil action). They must permit the county to realize the full priority of its tax liens (contrast the fractional recoveries under the “three-officer” plan and the forfeiture foreclosures). Only the civil action and the forfeiture foreclosure seem capable of being made *collection* methods.

This article can suggest no panacea or magic formula by which forfeited taxes can be collected without expense or effort. Rather, the experiences

¹⁴⁴ Report of the Revenue Laws Commission of the State of Illinois, submitted to the sixty-sixth General Assembly, p. 25 (March 1949).

in Cumberland County and elsewhere suggest that forfeiture collection will require hard, expensive, painstaking work. The first prerequisite of vigorous tax collection administration is the close, whole-hearted cooperation of all county officers: the county board which has general supervisory and budget making powers; the county collector (the County Treasurer) who has prime collection responsibility; the state's attorney who must bring all legal actions; the county clerk who maintains the official collection records; the county assessor whose property ownership and valuation records will be essential material in proceeding against the large number of delinquents; and the County Housing Authority, forest preserve districts, etc., which may take charge of properties bid in by the county. The second prerequisite is the determination of these officers to use the methods now available to best advantage to collect taxes and their willingness to pay the price in allocations of personnel and funds. The third is the technical correction of defects and uncertainties in the collection methods themselves. These corrections have been touched upon in the foregoing discussion but are probably less important than determined administration.