decision failed to except the defendant therein (whose obligations had arisen after the previous decision) was properly interpreted by the Wisconsin court to make the defendant liable here.

But the court was not so obliged to add interest since interest was not assessed in the *Fox Co.* case. Two possible bases for the decision are offered by the court: (1) that the interest was a penalty under the Wisconsin Statute (Wis. Stats. 71.06 § 3(a) (1933)); (2) that by the application of retroactivity in the *Fox Co.* case, the tax was due all the time and this is merely interest on money past due. As a penalty, the charge is unjustifiable since in no real sense can the tax be considered delinquent. (3 Cooley, Taxation § 1274 (4th ed. 1924); *cf.* dissenting opinion in principal case, 261 N.W. 404, 408 (Wisconsin 1935)). As ordinary interest on money due, policy would seem to dictate that money is not due until payable and since the tax was not payable in the past, it was not then due.

Evidence—Admissibility of Opinions of Medical Experts—Testimony that Involves Legal Conclusions—[United States].—A war veteran sued on a war risk insurance policy. It was necessary that he prove his total and permanent disability in order to recover under the provisions of the War Risk Insurance Act (40 Stat. 409 (1917), 38 U.S.C.A. § 511 (1928)). The trial court permitted the plaintiff's physicians to testify that in their opinions the plaintiff was not capable of continuously carrying on a substantially gainful employment without injury to his health, that if he did do work he would die sooner and that he was totally and permanently disabled. The jury found for the plaintiff and the court entered judgment for him. This was affirmed in 68 F. (2d) 656 (1934). On appeal, *held*, judgment reversed. The weight of the evidence required a directed verdict for the defendant. The medical opinions that the plaintiff had become "totally and permanently disabled" should not have been admitted in evidence because that was the question for the jury to decide on all the evidence and in obedience to the court's instructions as to the meaning of the words. *U.S. v. Spaulding*, 293 U.S. 498 (1935).

American courts have been inclined to exclude the opinion evidence of expert witnesses on matters which include the issue that ultimately goes to the jury, on the theory that the admission of such testimony usurps the function of the jury. *Keefe v. Armour & Co.*, 258 Ill. 28, 101 N.E. 252 (1913); *Yost v. Conroy*, 92 Ind. 464 (1883); *U.S. v. Steadman*, 73 F. (2d) 706 (C.C.A. 10th 1934). Some courts indicate that the objection is avoided if the opinion is presented as an answer to a hypothetical question which raises the same problem as the ultimate issue. *Western Coal and Mining Co. v. Berberich*, 94 Fed. 329 (C.C.A. 8th 1899). Other courts have thrown off these self-imposed restrictions and admit the opinion testimony even though it involves the same issue that is to go to the jury. *Transportation Line v. Hope*, 95 U.S. 297 (1877); *Cropper v. Titanium Pigment Co.*, 47 F. (2d) 1038 (C.C.A. 8th 1931); *Poole v. Dean*, 152 Mass. 589, 26 N.E. 406 (1891); *Snow v. Boston & Maine R.R.*, 65 Me. 231 (1875). Courts adhering to this view deny that the function of the jury is being usurped because the opinion testimony will be weighed by the jury in the same manner as any other testimony. *Dayton Power Co. v. Utility Commission*, 292 U.S. 290 (1934); *Kennedy v. Upshaw*, 66 Tex. 442, 1 S.W. 308 (1886); *Dodge v. Sawyer*, 193 N.E. 15 (Mass. 1934).

A recognized limitation in all jurisdictions is that opinion evidence is to be excluded when the facts from which the inference is to be drawn can be set before the jury in

understandable detail, and no special skill or knowledge is required to make a reasonable deduction. *Fireman Ins. Co. of Baltimore v. J. H. Mohlman Co.*, 91 Fed. 85 (C.C.A. 2d 1898); *Mullins Lbr. Co. v. Williamson & Brown Lbr. Co.*, 255 Fed. 645 (C.C.A. 4th 1918); *Miller v. U.S.*, 71 F. (2d) 361 (C.C.A. 5th 1934). In jurisdictions which do admit opinion evidence should a further limitation be recognized when the ultimate issue involved is a mixed question of law and fact? Total disability, the problem the jury must decide in the principal case, depends both (1) upon the legal meaning attached to the phrase, as set forth in the instruction by the court, and (2) a determination of whether the physical condition of the plaintiff, as deduced from all the evidence, satisfies the requirements of that legal definition. When the witness uses the phrase "total disability" he is not only making inferences from his own observations or from the hypothetical facts stated to him, but he is also stating that the inference he has drawn satisfies the requirements of the law implicit in the phrase. This determination exceeds the function of a witness. *Hamilton v. U.S.*, 73 F. (2d) 357 (C.C.A. 5th 1934). See *U.S. v. Sauls*, 65 F. (2d) 886 (C.C.A. 4th 1933) (there is no certainty that the witness is applying the correct legal meaning to the phrase he used). The witness should not be permitted the use of words connoting the application of a legal standard unless the words are so qualified as to show clearly to the jury that they are being used in their ordinary sense and without reference to the legal meaning. In that case the opinion of the witness is merely one additional fact the jury will weigh in reaching their own conclusion. See opinion of McDermott, J. in *U.S. v. Steadman*, 73 F. (2d) 706, 711 (C.C.A. 10th 1934). What words used by the witness are of the type which may be said to embody a legal conclusion presents a problem for which no arbitrary solution exists. See 4 Wigmore, Evidence §§ 1958–60 (2d ed. 1923).

Tax Titles—Sale for Delinquent Taxes—Liability of Purchaser for Reassessed Tax—[Wisconsin].—In 1930, a Wisconsin county board declared void the 1923 tax assessment against certain real estate, cancelled the certficate that had been issued upon a sale of the *tax* in 1924, and made a reassessment. Upon non-payment of the reassessed tax, it was sold to the defendant county. The plaintiff company, holding title to the same land by virtue of certificates of sale issued in 1925, 1926 and 1927, for delinquent taxes of 1924, 1925 and 1926, sued to restrain enforcement of the lien based on the reassessment and to cancel the tax sale certificate held by the county. *Held*, the plaintiff is entitled to the relief sought because the reassessment for a year antedating the delinquent taxes sold to the plaintiff created no lien upon its title. *Nicolet Securities Co. v. Outagamie County*, 259 N.W. 621 (Wis. 1935).

The general rule is that a tax purchase is the foundation of a new and unencumbered title in fee simple. *Henrylyn Irrigation District v. Patterson*, 65 Colo. 385, 176 Pac. 493 (1918); *Davis v. Allen*, 224 Mass. 551, 113 N.E. 364 (1916); *City of Bayonne v. Kramer*, 13 N.J.M. 22, 176 Atl. 107 (1934); *State v. Liles*, 212 S.W. 517 (Tex. Civ. App. 1919); *Pereles v. City of Milwaukee*, 213 Wis. 232, 251 N.W. 255 (1933). A junior tax claim, therefore, "cuts off" claims based upon sales of earlier taxes. To hold that the plaintiff's lien was junior, when actually the county's lien was later in time, the Wisconsin Supreme Court resorted to the fiction of relation back of the lien of the reassessment to the year for which the original assessment had been made. This fiction has been used by the Wisconsin courts in cases involving the liability of a grantor, on his covenant against encumbrances, for a reassessed tax for a year antedating the sale of the land.