TAX RECEIVERSHIPS

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The general problems and implications of property tax delinquency and the more usual methods of property tax enforcement have been treated sufficiently in other sections of this symposium to make further summary or comment at this point unnecessary. The discussion, therefore, may move directly to the consideration of an experiment of interest and importance in the field of delinquent tax collection. The experiment is the tax receivership, an extraordinary device which has been invoked from time to time recently to meet the utter breakdown of the more usual methods of tax enforcement.

Unlike the more common provisions for tax collection, the tax receivership is directed at the income from property. It permits some public officer to take over the property taxed, to manage it, and to collect and apply its income to the tax, penalties, interest, costs, and costs of the receivership until the obligation is satisfied. There is no indication how or when it arose, but it must have been suggested by the analogy of receivership proceedings in mortgage foreclosures, and by the fact that the statutes of most jurisdictions make a real property tax a lien against the property taxed. These analogies become more apparent when we recognize that a statutory tax sale is commonly spoken of as a tax foreclosure, although in many jurisdictions, as in Illinois, there is a wide difference between the ordinary tax sale by a court of law and the foreclosure of the tax lien in equity. Such similarities make it appropriate, therefore, to consider as the first question: Can a tax receivership be instituted in the absence of specific statutory authority? After that the discussion should consider the provisions of the receivership statutes which have been adopted in a few

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‡ Minnesota has invented a device, directed at rents and income of property, which stops short of the tax receivership. Where the county has bid in the property at a tax sale the amount of the tax, penalties, and costs may be satisfied by attachment of the rents or, under certain circumstances, the crops. There is no provision for management or operation of the property beyond a restricted authorization that the county auditor may make or renew leases. Minn. Stat. (Mason, 1936 Supp.) §2150.
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states and the administrative and legal experience involved in the application of those statutes.

Tax Receiverships in the Absence of Statute

It can be assumed with confidence that no tax receiver can be appointed by a court of law in the absence of specific statutory authority in the usual procedure for the sale of delinquent property. It is generally stated by the courts that proceedings for the enforcement of property taxes are statutory, that the statute must be followed accurately, and that it shall be construed strictly in favor of the property owner.2

In establishing this statutory procedure, the legislature may confer jurisdiction upon either a court of law or a court of equity unless there is some specific constitutional limitation. Illinois, for example, confers jurisdiction upon courts of law in the ordinary tax sale proceedings, but for fifty-five years Illinois has also provided by statute for the foreclosure of the tax lien in equity.3

The rule that tax collection proceedings are exclusively statutory and require strict construction of the statutes is ordinarily assumed by the courts to apply to proceedings in equity as well as at law.4 Nevertheless, in spite of judicial pronouncements to this effect, there is a possibility that courts of equity have some power to enforce tax liens in the absence of statutes conferring such power upon them. In any event, if a tax receiver is to be appointed without a specific provision for such a receivership, it is clear that it must be done under the inherent power of a court of equity, either in a foreclosure proceeding in which no part of the jurisdiction rests on statute or in a foreclosure proceeding based on a statute which fails to provide for such a receivership.

The language used by the courts to the effect that a court of equity has no jurisdiction to enforce a tax lien unless such jurisdiction is specifically conferred upon it seems to rest primarily upon two propositions:

(1) The assessment and collection of taxes are legislative affairs and no function of a court of equity.

Thompson v. Allen County5 is the case often cited in support of the first of these statements, and examination of the opinion and the cases cited there8 shows clearly

8 State ex rel. Tillman v. Dist. Ct., 53 P. (2d) 107 (Mont. 1936); People v. Illinois Women's Athletic Club, 360 Ill. 577, 196 N. E. 881 (1935); People v. Straus, 266 Ill. App. 95 (1932); Kansas City v. Field, 285 Mo. 293, 226 S. W. 27 (1920); Charland v. Trustees, 204 Mass. 563, 1 N. E. 146 (1910); Watts v. Hauk, 144 Tenn. 215, 231 S. W. 903 (1920); Board of Freeholders v. Inhabitants of Weymouth, 68 N. J. L. 652, 54 Atl. 458 (1903); McNally v. Field, 119 Fed. 445 (D. R. I. 1902); Thompson v. Allen County, 115 U. S. 550 (1885); People v. Biggins, 96 Ill. 481 (1886).

5 115 U. S. 550 (1885).
6 Walkley v. City of Muscatine, 6 Wall. (73 U. S.) 481 (1868); Rees v. Watertown, 19 Wall. (86 U. S.) 107 (1874); Heine v. Levee Commissioners, 19 Wall. (86 U. S.) 655 (1874); Barkley v. Levee Commissioners, 93 U. S. 258 (1876); Merriwether v. Garrett, 102 U. S. 472 (1880); Supervisors v. Rogers, 7 Wall. (74 U. S.) 175 (1869); McLean County Precinct v. Deposit Bank, 81 Ky. 254 (1883). See also Yost v. Dallas County, 236 U. S. 50 (1915).
that the situations involved in no way resemble a foreclosure of a tax lien such as that contemplated in this discussion. Those cases sought a remedy in equity when mandamus or other remedies at law had failed to protect the interests of security holders, and the aid of equity was asked to levy the taxes required to meet the bonds or to enforce a general collection of taxes over a whole community where the local administrative authorities had collapsed. This is a far greater demand on equity than a bill to foreclose a tax lien on a single piece of property, and a denial of equity relief in these cases does not justify an assumption that the foreclosure of a tax lien is a proceeding foreign to equity. 7

As to the second point, we have found no cases in which equity's jurisdiction was denied and in which there was not some kind of statutory remedy. Kansas City v. Field presents a full discussion of this problem, and the language in which it states its conclusions on this point is of interest:8 "The courts are practically unanimous in holding that if a statutory method of collection is provided, especially if it is adequate and complete, equity is without jurisdiction." Following People v. Biggins,9 the opinion states that in the presence of an adequate statutory remedy for the enforcement of a tax lien, equity has no jurisdiction unless it is specifically conferred by statute. The court adds, however, that "perhaps" the following limitation applies:10 "If a statute gives a lien for taxes and provides no particular mode to enforce the lien, equity will provide a remedy." It seems probable that these cases in which equity's inherent power to foreclose tax liens has been denied can be rested on the ground that the statutory remedy was adequate.11 It is important to note that there are a few cases which indicate that inadequacy, as distinguished from absence, of a statutory remedy might be ground for foreclosure of the tax lien in equity although no statute confers such jurisdiction on the court of equity.12

7 On this point the texts on the subject of receivers usually cite the Thompson case, supra note 5, and assume uncritically that it covers the whole problem. An exception is Tardy's Smith on Receivers (2 ed., 1920), sec. 689 (vol. 2, p. 1878), which cites the Thompson case to the effect that a court of equity will not appoint a tax receiver and continues as follows: "This statement, however, applies rather to the proposition of appointing a receiver as a substitute for the ordinary tax collecting officers to collect taxes in the ordinary way. However, when taxes are to be collected by suit in equity from some particular person whose property is subject to a lien for their payment, circumstances may be sufficient to warrant the appointment of a receiver. As in any other kind of a case, there must be some ground for the appointment beyond the mere claim, or cause of action, for the taxes; something in the nature of danger of loss, or removal, or injury to the property."

8 285 Mo. 253, 271, 226 S. W. 27, 32 (1920) (italics ours).

9 Supra note 2.

10 285 Mo. 253, 271, 226 S. W. 27, 32 (1920).

11 Kansas City v. Field, supra note 10, cites the following cases on this point: Corbin v. Young, 24 Kan. 145 (1880); Louisville Trust Co. v. Muhlenberg County, 15 Ky. L. 593, 23 S. W. 674 (1893); Greene County v. Murphy, 107 N. C. 36, 12 S. E. 122 (1890); McHenry v. Kidder County, 8 N. D. 413, 79 N. W. 875 (1899); Pierce County v. Merrill, 19 Wash. 175, 52 Pac. 854 (1898); Board of Education v. Old Dominion Co., 18 W. Va. 441 (1881). See also Mosher v. Conway, 46 P. (2d) 110 (Ariz. 1935); Lemhi County v. Loan Co., 47 Idaho 712, 278 Pac. 214 (1929); Spellman Land and Securities Co. v. Standard Investment Co., 293 Mo. 120, 238 S. W. 418 (1922); Rochester v. Bloss, 185 N. Y. 42, 77 N. E. 794, 6 L. R. A. (N. S.) 694 (1906).

In spite of the general language which has been used in the opinions, the list of precedents is not sufficiently impressive to justify the conclusion that equity has no inherent jurisdiction whatever in tax enforcement. If the statute makes the tax a lien against the property and if a court of equity can be convinced that the existing statutory remedy is inadequate, it is likely to take jurisdiction of a proceeding to foreclose the lien. The variable in the situation is, of course, the term *inadequacy*.\(^3\)

The more important question to this discussion is this: If equity has jurisdiction of such a foreclosure, whether by statute or not, does it have power to appoint a receiver to manage the property and apply the income to delinquent taxes if there is no statutory provision for such a receiver?

In 1902, in an equity foreclosure of a tax lien under the Illinois statutes, which did not at that time provide for a tax receiver, the Circuit Court of Cook County appointed a receiver *pendente lite*, but in the Appellate Court the decree was reversed on the ground that the land was a sufficient security for the indebtedness and that under such circumstances, at least, the court had no power to appoint a receiver.\(^4\)

In October, 1931, in *People v. Straus*\(^5\) a receiver *pendente lite* was appointed in a similar foreclosure proceeding in the Superior Court of Cook County, but this decree was reversed by the Appellate Court, which reached the conclusion that specific statutory authority was necessary and lacking. Although the case was apparently disposed of on the ground that tax collection proceedings, whether in equity or not, are strictly statutory, the court left a door very slightly open for the appointment of a receiver if the property is not sufficient security for the taxes due. In *People v. Illinois Women's Athletic Club*\(^6\) a decree which, among other things, appointed a tax receiver in a suit in equity was reversed on the ground that the Illinois tax receivership statute was not in force at the time the appointment was made, but the problem was not given any reasoned consideration. Also, this was not a foreclosure proceeding.

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749, 37 S. E. 315 (1900); Grant v. Bartholomew, 57 Neb. 673, 78 N. W. 314 (1899); Greene County v. Murphy, *supra* note 11; State v. Duncan, 3 Lea (71 Tenn.) 679 (1879); Edgefield v. Brien, 3 Tenn. Ch. 673 (1878); Webb v. Miller, 8 Heisk. (55 Tenn.) 448 (1873); Mayor v. McKee, 2 Yerg. (10 Tenn.) 167 (1826); Mcinerney v. Reed, 23 Iowa 410 (1868).

\(^3\) The Supreme Court of Illinois, in *People v. Illinois Women's Athletic Club*, *supra* note 2, passed over a real opportunity to deal with this problem. It dismissed the whole issue of inadequacy of remedy very summarily without any recognition of the importance of the question presented. The Cook County Board of Commissioners filed several hundred bills in equity to enforce the payment of taxes when the ordinary machinery broke down completely in 1931 and 1932. The decree of the lower court fixed the amount of the taxes due, ordered payment, and appointed a receiver to collect. On appeal the court in a disappointing opinion ignored the fact that the remedies at law were inadequate as a matter of practical administration and reversed on the ground that courts of equity have no power to fix the amount of taxes due. In specifically considering the appointment of the receiver the court stated that the appointment was improper because such tax proceedings are statutory and no statute existed at the time to authorize such an appointment. There is no reference in the opinion to any of the cases cited in note 12 which suggests that inadequacy of the remedy at law is ground for equity jurisdiction in tax lien enforcement.

\(^4\) Chicago Real Estate Loan and Trust Co. v. People, 104 Ill. App. 290 (1902).

\(^5\) 266 Ill. App. 95 (1932). This opinion is a very important discussion of this problem.

\(^6\) *Supra* notes 2 and 13.
In the case of State v. Collier, although the Tennessee statutes authorized the appointment of a tax receiver, the court said:

"A court of chancery would doubtless have had the right to make such an appointment in a proper case regardless of the statutes, since the state is a lien holder."

This case is of interest, however, not so much because of this dictum as for its interpretation of the statute under which the receiver was appointed. In reviewing the appointment of a receiver under the statute, the court made this statement:

"There is no allegation in the petition that the property is being misused, wasted, or neglected so that the value of the security is being endangered. There is no allegation that the land is not adequate security for the taxes due. None of the grounds that are ordinarily set out upon the application of a lien holder for a receiver appear in the petition."

The cases and comments which deny the power of equity to appoint a tax receiver in the absence of statute clearly rest on the ground that all tax proceedings are statutory—a proposition upon which the preceding discussion throws some doubt. This, together with the usual assumption that equity has inherent power to appoint a receiver in a case within its jurisdiction if such appointment is necessary, indicates that it is entirely possible that a court of equity has inherent power to appoint a tax receiver in a proceeding to foreclose a tax lien, whether or not the jurisdiction in the foreclosure suit rests on statute. This seems reasonable even in face of the fact that we have found no cases in which such an appointment has been permitted in the absence of specific statutory authorization.

The statement from State v. Collier, the comments of the Illinois courts, and the grounds required generally for the appointment of receivers indicate that any

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165 Tenn. 163, 166, 53 S. W. (2d) 982 (1932). See, for a comment on this case, Note (1933) 11 Tenn. Law Rev. 232, which concludes that the court did not imply any inherent power in equity to appoint a receiver but that it really rested this dictum on the fact that Tennessee statutes provide that equity proceedings for collection of taxes shall conform to other chancery suits. Relying on Thompson v. Allen County, supra note 5, it is suggested in the comment that equity has no inherent power to enforce taxes. The analysis is not persuasive nor critical, however, and makes no reference whatsoever to the Tennessee cases, especially State v. Duncan, supra note 12, which indicate that Tennessee might go as far as any state in permitting the exercise by courts of equity of inherent power in the enforcement of tax liens.

"And in all cases, the courts in which such bills may be filed are authorized to appoint receivers to take charge of the property which is the subject-matter of the litigation and collect the rents and profits thereon, to the end that the net amount of such rents and profits after paying the receiver reasonable compensation, shall be applied to the taxes, costs, penalties, and interest involved in such suits and incident thereto." Tenn. Code (Shannon, 1932) §1602.

165 Tenn. 163, 166, 53 S. W. (2d) 982, 983 (1932).

See especially, Chicago Title and Trust Co. v. Mack, 347 Ill. 480, 180 N. E. 412 (1932). Also, Grand Rapids Trust Co. v. Carpenter, 229 Mich. 491, 201 N. W. 448 (1924); Cobe v. Guyer, 237 Ill. 516, 86 N. E. 1071 (1909); Clark, Receivers (2 ed., 1929) §283; Smith, Receivers (Tardy, 2 ed. 1920) §693.

Chicago Real Estate Loan and Trust Co. v. People, supra note 14; People v. Straus, supra note 15.

The appointment of a receiver being a remedy of such a harsh nature, the power of appointment is exercised by the courts only in cases where failure to do so would place the petitioning party in danger of suffering an irreparable loss or injury. This generally means that, in order to show cause for the appointment of a receiver, the petitioner must show either a clear legal right in himself to the property in controversy, that he has some lien upon it, or that it constitutes a special fund out of which he is
inherent power of a court of equity to appoint a tax receiver could operate only in cases much more serious than those against which the tax receivership legislation of recent years has been invoked. It is probable that such a receiver could be appointed only if the property is inadequate security for the lien or if it is being wasted, misused, neglected, or destroyed. Even then, of course, the statutory remedy must be inadequate. Even if equity does have such power, however, it may not mean much. It seems probable that the grounds are so restricted that such an appointment could accomplish little as a matter of practical tax administration, for in most of the cases in which receivership proceedings have been initiated in Cook County it would be very difficult to prove waste, misuse, neglect, or destruction to the degree required in receivership proceedings in courts of equity.

It is well to consider, of course, that the powers of the courts are susceptible to tremendous expansion in the interest of effective operation of government, and the power of equity to appoint a tax receiver may be one point at which such expansion might be accomplished. Even under the restricted grounds which usually govern the appointment of receivers, the fact that property is producing income and the fact that taxes are delinquent might alone be evidence of waste sufficient to justify the appointment of a tax receiver if the statutes make the tax a lien against the rents and income and not merely against the property alone.

Tax Receivership Legislation

Whatever may be the possibilities of the inherent powers of a court of equity in the development of the tax receivership, the statutes are probably the basis of any present or immediately potential use of the device. It is a matter of interest, therefor, to undertake a brief comparison of the tax receivership legislation which has been enacted recently.

The statutes of Tennessee and Minnesota, to which some reference has already

entitled to satisfaction of his demands, and it must appear that possession of the property was obtained by defendant through fraud, or that the property or income from it is in danger of loss from the neglect, waste, or misconduct of defendant, and applicant must have a present, existing interest in the property over which he seeks to have the receiver appointed.” Smith, op. cit. supra note 20, §. To the same effect: Reeves, Illinois Law of Mortgages and Foreclosures (1932) §236; High, Receivers (4th ed., 1910) §§647, 643. But see Cashmore v. Hanna, 276 Ill. App. 339 (1934).

It may be necessary also to prove insolvency. One remedy at law is the action of debt against the property owner which might be regarded as adequate if the owner is solvent.

Lack of space prevents any discussion of those statutes which provide for foreclosure of a tax lien in the same manner as provided for foreclosure of mortgages. See, e.g., Wis. Stat. (1935) §75.19. The procedure established for general mortgage foreclosures generally includes the power to appoint a receiver for the property involved, and it is possible that the application of such procedure to tax foreclosures may carry with it, therefore, the power to appoint a tax receiver. This possibility may be worthy of investigation by tax officials who have not been armed with a specific tax receivership statute. People ex rel. McDonough v. Cesar, 349 Ill. 372, 182 N. E. 448 (1933), is a conspicuous example of a decision in which the Illinois Supreme Court stretched the revenue provisions of the state constitution to the breaking point in an effort to expedite the collection of taxes.

For a discussion of the question of waste with respect to taxable property see State ex rel. Tillman v. District Court, 53 P. (2d) 107 (Mont. 1936).
been made, can be dismissed quite summarily.\textsuperscript{26} The Tennessee legislation was rather badly emasculated by the court in the \textit{Collier} case,\textsuperscript{27} and the Minnesota statute was not intended to be a receivership provision, although it moves rather far in that direction. The Minnesota Supreme Court has been very liberal in its interpretation of the act,\textsuperscript{28} but it remains far short of the provisions of law which have been passed in Illinois, New Jersey, and Ohio, all of which demand the special interest of this inquiry.\textsuperscript{29}

Illinois began the real history of tax receivership legislation in 1933 when the legislature passed the famous Skarda Act in an effort to meet an extremely critical situation.\textsuperscript{30} Tax collections in Cook County were approximately two years behind, the various municipalities were months behind in the payment of their teachers, police, and other public servants, and local government generally was on the verge of collapse for lack of revenue. The essential features of the legislation were as follows:

The county treasurer was authorized to apply to any court of competent jurisdiction to be appointed receiver of the rents, issues, and income of any property on which the taxes were more than six months delinquent and remained due and unpaid. No bond was required from the treasurer other than his official bond. The bill or petition was required to set forth "(a) that such taxes remain due and unpaid at the date of filing such bill or petition; (b) that the county collector\textsuperscript{31} has exercised due diligence to collect said taxes; and (c) that he verily believes that such collection thereof can be made through a receivership of the rents, issues, and income of such property."

\textsuperscript{26} \textit{Supra} notes 18 and 1, respectively.
\textsuperscript{27} \textit{Supra} note 17. In the discussion which follows, the Tennessee statute is ignored. It has not been possible to get any specific information on the extent of application of this statute, but two recent articles, \textit{White, Tax Delinquency in Tennessee—Legislative Aspects} (1934) 12 \textit{Tenn. L. Rev.} 71, and \textit{Howard, Tax Delinquency in Tennessee—Administrative Aspects} (1936) 14 \textit{id.} 219, discuss tax remedies in Tennessee and do not mention the receivership. It seems justifiable, therefore, to assume that it has little or no practical importance in that state.

\textsuperscript{28} See \textit{In re Taxes Delinquent} (Johnson v. Richardson), 266 N. W. 867 (Minn. 1936).
\textsuperscript{29} It is of some interest in passing to note that North Carolina has a statute providing that a receiver shall be appointed to wind up the affairs of any corporation which becomes delinquent in the payment of taxes against it or its property. The statute further provides for garnishment by the state against a corporate agent, officer, or debtor to satisfy the obligation of the tax. N. C. CODE (Michie, 1935) §8005.

In this connection attention should be called to statutes such as the Wisconsin statute, \textit{supra} note 23, which adopt the ordinary mortgage foreclosure procedure for foreclosure of tax liens. In Iowa the county treasurer, in addition to all other remedies for the collection of taxes on personal property, may bring an ordinary suit at law, which is equivalent to an action of debt, and it is provided that the attachment and garnishment acts shall apply in any such proceeding. \textit{Iowa Code} (1931) c. 346, §§7186, 7187. In the attachment act it is further provided that if deemed necessary the court may appoint a receiver under the circumstances and conditions provided in the receivership act. \textit{Id.}, c. 510, §12115. In appointing a receiver \textit{pendente lite} in a civil action or proceeding the property or its rents and profits must be in danger of loss, material injury, or impairment. \textit{Id.}, c. 549, §12713.

\textsuperscript{30} \textit{Ill. Ann. Stat.} (Smith-Hurd, 1935), c. 120, §§238a, 238b, 238c (Ill. Laws 1933, p. 873). The concept of the tax receiver was first introduced into the Illinois statutes in an amendment to the Farm Drainage Act in 1931 (\textit{Ill. Ann. Stat.} c. 42, §33a) but as far as can be determined from the appellate court reports the statute has lain dormant. For a more detailed discussion of the Skarda Act, see De Long, \textit{The Illinois Tax Receivership Act} (1933) 28 \textit{Ill. L. Rev.} 379.

\textsuperscript{31} The county treasurer in Illinois is \textit{ex officio} county collector.
and income of such property, and the bill or petition shall be verified and shall be *prima facie* evidence of the facts therein stated.” The purpose of the receivership was defined as “collecting and satisfying the amount of taxes, penalties, interest and costs, and the costs and expenses of the receivership. . . .” It was further provided that the receiver might be authorized by the court to pay out of funds collected from the property “such expenses in connection with the maintenance and operation of the property as may be necessary to secure the greatest income from said property for the payment of taxes, penalties, interest and costs due thereon.” The remedy was stated to be in addition to all other remedies for the collection of taxes.

There were several other corollary provisions which provided for expedition of the proceedings, for procedure to be followed if a complaint or objection had been filed against the taxes involved, for appeal to the Supreme Court, for abatement of the suit when the obligations of the property had been satisfied, and for an annual report by the county collector upon his administration of the receiverships. Another section provided for intervention by the county collector in any mortgage foreclosure suit which might be pending against the delinquent property.

The New Jersey and Ohio statutes were patterned after the Skarda Act and in many respects show its influence. Both make the remedy cumulative, require six months delinquency, and define the purposes of the receivership in about the same language as the Illinois act. New Jersey has a provision somewhat different to cover taxes against which objections are pending. Ohio has nothing. Also, the Ohio provision has nothing on intervention in pending mortgage foreclosures while New Jersey has followed the Illinois section. The Illinois provisions on appeal and annual report are unique. All three statutes are similar in providing for the payment of the expenses of the receivership except that Ohio specifically authorizes the expenditure of the income for fire, windstorm, and public liability insurance premiums. Ohio and Illinois provide merely that the proceeding shall abate when the obligation is satisfied. New Jersey requires the collector to apply for a discharge.

The New Jersey statute differs from the Skarda Act in several particulars: It applies to property “in any municipality.” Farm property or other real estate occupied by the owner and from which he derives no rent is exempt. The bill or petition is filed in the court of chancery, on five days notice to the owner, by the collector or other officer charged with the collection of taxes in the municipality. The approval of the governing body of the municipality is required. The bill or petition is similar to that set out in Illinois but it requires a further statement whether the property carries a first mortgage or not, and if so the name and address of the mortgagee. It has an interesting agency provision that if there is a first mortgage the receiver, with the consent of the governing body of the municipality, shall appoint

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*N. J. Laws 1933, p. 1304.*


*New Jersey uses the term “rents and income” throughout, while Illinois and Ohio use “rents, issues, and income.”*
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the mortgagee to act as agent to collect rents and manage the property. In other cases the receiver, with the approval of the governing body, shall appoint the person in charge or some other competent person to act as agent. It is specified that the receiver must apply to the court for removal of an agent.

In Ohio the county treasurer may file the petition in the court of common pleas if the property is not used and occupied in good faith by the owner as a private residence and if no agreement to pay in instalments is in effect. He is required to allege a description of the property, the amount of taxes, the fact of delinquency, and his belief that collection can be made. The form of the prayer is set forth in somewhat more detail in the Ohio act but the difference is not substantial. Several lots may be joined in one action, but the prosecutor may move for severance. In any case the decree or order shall be severally rendered. As in New Jersey and Illinois the petition shall be verified and shall be prima facie evidence of all facts stated therein. The tax duplicate or delinquent land tax certificate shall be prima facie evidence of the amount and validity of the assessments and other charges.

The court in Ohio is required to enter a finding of the amount of taxes due and unpaid, penalties, interest, costs, and charges and of the probable amount of rents, issues, and income which can be collected together with probable costs and expenses of the receivership. The court order requires satisfaction and appoints the county treasurer receiver. If it is found that the probable aggregate annual income is under $2000, it is to be conclusively presumed that the taxes and other obligations cannot be satisfied and the proceeding shall be dismissed. Where the property is used by the owner for manufacturing, mercantile, commercial, or other business purposes, the receiver on order of court is to collect rent monthly in advance from the owner. If any instalment is not paid when due, the court order shall have the force and effect of a writ authorizing the receiver summarily to evict and exclude the owner from the use of the property.

It became the practice under the Skarda Act in Cook County to file tax receivership petitions in the county court which has a very broad jurisdiction in tax matters. The Supreme Court, however, held that the statute did not give the county court jurisdiction in receivership cases. Instead of amending the act to confer such jurisdiction, the Skarda Act was repealed on July 8, 1935 and a much simpler provision substituted. Section 253 of the Revenue Act of 1872 is the section which for many years has provided that taxes shall be a lien against the property taxed and that such a lien may be foreclosed in equity after two years' forfeiture. It was amended to imply that the tax shall also be a lien against rents and profits and that the lien shall be enforceable after six months' delinquency by intervening petition in any pending suit, including ordinary tax sale procedure, having jurisdiction of the

25 McDonough v. Gage, 357 Ill. 466, 192 N. E. 417 (1934); People ex rel. Englewood Bond and Mortgage Co. v. Jarecki, 357 Ill. 475, 192 N. E. 419 (1934).
The court in such petition shall have power to appoint the "County Collector only receiver to take possession of the real estate for the purpose of collecting the rents, issues and profits therefrom, and to apply the same in satisfaction of the tax lien." As reference to the passage in the note will show, this language is much more restricted than the provisions of the Skarda Act, except as to courts having jurisdiction, and there is some ambiguity as in the use of the word "only" in the preceding sentence. It has been assumed in administration that the new statute is as broad as the Skarda Act. Whether the courts will agree remains to be seen, for this language is capable of interpretation as restricted as that involved in the Collier case in Tennessee.

This summary of statutory provisions would not be complete without some mention of the receivership provisions of the model Real Property Tax Collection Law drafted and published by a committee of the National Municipal League. It is very similar to the Illinois, New Jersey, and Ohio provisions which have been discussed. It includes the New Jersey provision permitting appointment of the first mortgagee to act as receiver's agent on the ground that his interest in preventing subordination of his lien will insure good management. Its provisions on title and powers of the receiver especially should be copied in other receivership statutes. It permits the receiver to resign at any time and provides for abatement of the action when the obligation is satisfied. Upon such abatement or resignation, excess funds remaining shall be paid into the court. While the Illinois and New Jersey acts provide for intervention in pending mortgage foreclosures where receivers are already in possession of the property, the model act provides for appointment of the tax receiver anyhow and requires the other receiver to pay over rents and income.

"Such lien may also be enforced at any time after six months from the day the tax becomes delinquent out of the rents and profits of the land . . . by petition in any pending suit having jurisdiction of the land, or in any application for judgment and order of sale of lands for delinquent taxes, in which the land is included, in the name of the People of the State of Illinois, on the direction of the County Board of the County or on the direction of the Corporate authorities of any taxing body entitled to receive any part of such delinquent tax. The process, practice and procedure under this act shall be the same as provided in . . . [general practice act] except that receivers may be appointed on not less than three days' written notice to owners of record or persons in possession. In all such petitions the court shall have the power to appoint the County Collector only receiver to take possession of the real estate for the purpose of collecting the rents, issues, and profits therefrom, and to apply the same in satisfaction of the tax lien. When the taxes set forth in the petition are paid in full, the receiver shall be discharged. . . ." The remaining provisions provide for refund of excess collected, provide that the amount on the collector's books shall be prima facie evidence of amount due, and require distribution of proceeds to sharing governmental agencies. Ibid.

See the text above at note 19.

collected. As in New Jersey, this model law exempts residence or farm property occupied by the owner and yielding no rent.

Extensive comparative comment and analysis of this legislation is impossible within the space of the present discussion. One impression is clear, however—that this legislation could have been better and less hurriedly drafted. The provisions of the model act are considerably the best in this respect. It is of interest to note, also, that all of this legislation, including the model act, provides that the remedy shall be permissive and not mandatory. These provisions are also unanimous in their failure to provide specifically that taxes shall be a lien against the rents and income of property taxed as well as against the property itself. This may not be an important matter but such a provision is at least a safeguard well worth including.

CONSTITUTIONALITY OF TAX RECEIVERSHIP LEGISLATION

It is inevitable that constitutional objections, both state and federal, should be raised against a procedure so drastic as that involved in tax receivership legislation. Some of these questions deserve mention here although none can be given extensive analysis.\footnote{Strictly local problems such as that of the jurisdiction of county courts in Illinois, considered in the Gage case, supra note 35, are purposely ignored in this discussion. Similarly, there are many other questions of law which are of interest in the discussion of tax receivers: What about a receiver's liability in tort for negligence? Is he liable in his personal capacity? In his official capacity? Or is he an officer of a state which has not consented to be sued? See Erwin v. Davenport, 9 Heisk. (56 Tenn.) 44 (1871).}

One state constitutional issue of rather general interest is the suggestion that tax receivership legislation violates constitutional provisions respecting the period of redemption from tax sale. This attack would seem to be somewhat farfetched in view of the fact that the appointment of a receiver is not a sale, although such constitutional provisions might possibly be construed to mean that a property owner is to have at least two years in which to pay his tax and during which he cannot be deprived of the possession of his property. While this issue needs further analysis, it is reasonable to conclude that such an interpretation is unlikely.\footnote{The following Illinois cases discuss this problem as it applies in execution on judgment in an action of debt. Even if the property taxed is the property sold, a one year redemption period is permitted in spite of the constitutional requirement of two years in a tax sale. Smith v. People, 3 Ill. App. 380 (1879); Douthett v. Kettle, 104 Ill. 356 (1882); Langlois v. People, 212 Ill. 75, 72 N. E. 28 (1904); Clark v. Zaleski, 253 Ill. 63, 97 N. E. 272 (1912); Zicarelli v. Stuckhart, 277 Ill. 26, 115 N. E. 192 (1917).}

A second state constitutional issue arises from the fact that the collecting officer is merely authorized to invoke this procedure. Is this an unconstitutional delegation of legislative power or a grant of arbitrary discretion? The Minnesota case on the attachment of rents is the latest to deal with this problem extensively and sustains a similar discretion in that statute.\footnote{In re Taxes Delinquent, supra note 28: "Under such a law as the one here involved, there are many reasons for the Legislature not establishing a hard and fast rule. This court necessarily must presume that public officials will do their duty and apply this statute wherever the necessity therefor arises." It goes on to hold very definitely that no unconstitutional delegation of legislative power is found.} Choice and discretion in the use of remedies seem to be characteristic of our tax collection statutes and this discretion is probably not fatal.
A third issue of general importance under state constitutions is this: Is it necessary that the tax be a lien against rents and income of the property before the tax receivership may be invoked? This issue is rather vital under present statutes and no conclusive answer can be given here. To be entirely safe, tax receivership legislation should extend the lien to the income, although there is authority to the effect that a provision for the appointment of a receiver operates to extend the lien to rents and income even when such lien on rents and income is not specifically created.\(^4\) Further, it has been held that a court has the power to appoint a receiver in a mortgage foreclosure although the trust deed or mortgage gives no lien against income.\(^4\)

General issues of due process and questions of uniformity and classification (the latter especially where the statute is restricted to income producing property) can be raised under both state and federal constitutions. The courts are liberal, however, in permitting changes in tax enforcement procedures and since the receivership stops short of depriving the owner of title, it probably has nothing to fear from general due process provisions.\(^4\) As to the problem of classification and uniformity, here again constitutional obstacle seems unlikely in this legislation and this discussion will let it suffice to cite the Minnesota Supreme Court on this issue.\(^4\)

A federal constitutional question of some importance is the impairment of the obligation of contract. This issue might be raised if (1) it is held that the tax must be a lien against rents and income before the receivership can be imposed, (2) the lien on rents and income is created by the receivership act itself or at the time of its enactment, and (3) a receivership proceeding is then initiated against property on which a mortgage pledging rents and income has been given or an assignment of rents has been made prior to the statute creating the lien on income. No case has been found on the specific problem but the paramount character of the tax obligation is generally admitted by the courts,\(^4\) and the states have been permitted wide power to change tax remedies as long as the rights of the parties to the contracts affected are not substantially reduced.\(^4\) As far as the rights of mortgagees

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\(^4\) In re Taxes Delinquent, supra note 28, deals very fully with this problem and indicates that it offers very little restriction in establishing collection procedures.

\(^4\) Many of the cases involve contracts of bondholders who own securities of the taxing district. Ingraham v. Hanson, 297 U. S. 378 (1936); Robinson v. Hanson, 75 Utah 30, 282 Pac. 782 (1929); Hanson v. Burriss, 46 P. (2d) 400 (Utah, 1935); People ex rel. Odell v. Eichison, 347 Ill. 320 (1932); Moore v. Gas Securities Co. 278 Fed. 111 (C. C. A., 1907); Wabash Eastern Ry. Co. v. Commissioners, 134 Ill. 384, 25 N. E. 781 (1890); Union Trust Co. v. Weber, 96 Ill. 346 (1880).

\(^4\) Ingraham v. Hanson, supra note 48; Hanson v. Burriss, supra note 48; Hosmer v. People, 96 Ill. 58 (1880); State ex rel. Nat. Bond and Securities Co. v. Krahmer, 105 Minn. 422, 117 N. W. 780. But see Fisher v. Green, 142 Ill. 30; Moore v. Gas Securities Co., supra note 48; Jensen v. Wilcox Lumber Co.,
may be concerned, the tax receivership would seem to be less drastic than the tax sale for which it is a substitute.

The statutes which have been examined also raise a large number of procedural questions which undoubtedly could be presented as constitutional issues in any particular proceeding—matters of notice, provisions respecting *prima facie* evidence, and the like. These problems have not been sufficiently contemplated in drafting receivership legislation now in force. Although they are important, this discussion will pass over them in view of the fact that they can be remedied in practically all cases by amendment of the statutes involved. These issues as well as most of those mentioned in the preceding paragraphs of this section are details which do not have much bearing on the general issue of constitutionality of the receivership principle. It would be most astonishing if the principle itself should be held unconstitutional under either federal or state provisions.

**Experience Under Tax Receivership Legislation**

The tax receivership legislation in Illinois, New Jersey, and Ohio was the result of the breakdown of the revenue machinery during the depression. In Cook County the depression had the able assistance of a two year delay in the assessment and collection of taxes for the years following 1928—a delay arising from the fact that fraud and favoritism in the 1927 quadrennial assessment necessitated a complete re-assessment of the property of the county. In January, 1933, approximately $171,000,000 in taxes for the years 1928, 1929, and 1930 were due and unpaid. Of this amount about $15,000,000 represented chronic annual forfeitures. $132,000,000, approximately, were due from large income bearing properties in trouble from the depression. Tax buyers refused to take more than a very small part of the offerings. Since equity foreclosure of the lien required two forfeitures, it was a simple matter to delay one of such forfeitures by injunction or objection for several years. The result of this situation in Illinois was the Skarda Act and similar, though less critical, conditions led to the Ohio and New Jersey acts.

It has been impossible to get full information on the administrative experience in New Jersey and Ohio but the reports of Newark and Cincinnati are of interest. The Department of Revenue and Finance in Newark has not taken physical possession of any properties under this act, although it credits the threat of receivership for collection of nearly $1,000,000 in tax arrears since the act went into effect. In Hamilton County, Ohio, only one receivership has operated under the act—from October 23, 1934 to June 4, 1935. Taxes amounting to $7,212.97 on this property were paid in full. A report to the county treasurer indicates that from April 4, 1934 to November 19, 1935 some action was taken by his office in 374 cases of delinquency involving $1,578,374.22. Of this all but $205,608.58 was paid by the end of the period. Here

295 Ill. 294, 129 N. E. 133 (1920); Thurber Art Galleries v. Rienzi Garage, 297 Ill. 272, 130 N. E. 747 (1921).
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as in Newark it is clear that the threat of the act and not the actual operation constituted its value. The experience of Cuyahoga County has been similar.\textsuperscript{80}

The experience of Cook County, Illinois, is quite different. From April 28, 1933 to November 15, 1933 approximately 11,988 petitions were filed in the county court. In 2,904 of these the county treasurer was appointed as receiver, although on November 15, 1933 only 820 properties were actually being managed in receivership. From April 28, 1933 to June 1, 1936, under both the Skarda Act and its successor, approximately 16,241 petitions have been filed in the circuit and county courts of Cook County. No figures are available to show how many of these properties were actually managed. Since July 8, 1935, when the present act went into effect, petitions have been filed in the county court in 608 cases, involving $4,221,630.24 of which $1,219,622.06 has been collected. Of these 608 cases, 125 were dismissed on full payment without receivership; 142 at least are in complete abeyance pending disposition of some other action in state or federal courts; 47 cases were filed but never placed on the call because of promises to pay, pending reorganizations, or other reasons; 174 cases are on the regular call but no receiver has been appointed because the owner is paying in instalments; in only 18 of these cases is the county treasurer acting as receiver and managing the property.

After the county court was denied jurisdiction of tax receivership cases, all pending actions were transferred to or refiled in the circuit court, a total of 9,379 from June 25, 1934 to August 1, 1935. Approximately half of these were dismissed on payment in full. 1,500 are still pending in the circuit court where average monthly payments of $150 to $200 per property are being made.

At the present time 360 properties in all are being managed under the direction of the county treasurer as receiver. These are mainly large hotel and apartment properties, although six residences are now in such receivership. No petitions have been filed against farm property and action is taken against vacant lots only if there is income from billboards. Small flat buildings are not put into receivership. There is no information available to show how much has actually been collected through the management of the property. For the first three months' operation of the act, April 28 to August 10, 1933, the county treasurer applied only $105,042 as net income from property managed as contrasted with $17,000,000 paid by property owners to escape receivership.

That the act has stimulated tax payments can not be questioned, but how much is due to the threat and how much to the operation can hardly be determined. In May, 1934 the state's attorney's office estimated that $100,000,000 had been collected through the Skarda Act and that if it should be declared unconstititual a $40,000,000 annual slump in tax collections might be expected. From December 8, 1932 to April 27, 1933—141 days—collections on delinquent taxes for 1928, 1929, and 1930 were

\textsuperscript{80} This information has been obtained by correspondence with the collecting officers involved. The material in the following paragraphs concerning Cook County has been supplied by members of the staff of the County Treasurer of Cook County.
$16,868,014.83. From April 28, 1933, when the Skarda Act became effective, to September 15, 1933—141 days—collections of the same taxes amounted to $23,786,789.20.

Other figures for different comparative periods could be cited to show further that the act has been effective. Whether or not it has been popular is another issue. There has been much criticism of the administration of these receiverships—whether this is informed or not is difficult to determine. It is the practice of the receivership division of the treasurer’s office to get the approval of the equity owner before purchases of equipment or permanent improvements are made. Further, court order must be obtained before expenditures are made except in cases of emergency or apartment decoration involving less than one and one-half times the monthly rental, and even in those cases the court must ratify afterward. The receiver's agents, of whom there are now 81 for 360 properties, must be registered real estate brokers. Their sole compensation is six per cent of the aggregate collections.

It is clear that in Cook County, as elsewhere, the most effective aspect of tax receivership legislation has been the threat of its use, and in its application thus far it has been assumed that it is merely an emergency device. However, it has been used in Cook County in some measure as a convenient instrument by which to acquire jurisdiction of the property while some arrangement, whether receivership or not, is worked out for payment. This suggests that the receivership might be developed as a permanent procedure to provide a more flexible instrument of tax enforcement to take the place of our older tax remedies. The following statement in the 1933 Report of the Illinois Tax Commission is an interesting suggestion for such a development:

"The possibility of further developing tax receivership legislation should be considered as a means of overcoming tax delinquency. Illinois pioneered with this device in 1933 and it has been used as a pattern in New Jersey and Ohio. A device of this character fits admirably the objective of foremost consideration to the state; namely, the securing of revenue. Since the state is not interested in disturbing titular relationships forced sale should be resorted to only in event all other devices fail. The provision of the law restricting the act to income producing properties is a feature which should be modified before the measure can be adapted for general use. It should include the properties owned by the resident as well as those producing pecuniary income through rental arrangements. Persons living in owned homes should have an opportunity to make an application for receivership on a voluntary basis. Under this arrangement an individual owning his own home would not subject himself to loss of title so long as the terms of receivership were complied with. Payments would be made monthly in essentially the same manner as a tenant meets his lease requirements. In the event voluntary receivership were not asked for, steps should be made to transfer the title to some one able and willing to assume the accrued obligations."

51 Pp. 331-2.