

**Taxes, Delinquent, Actions to Recover—Statute of Limitations.**

Where taxes duly assessed have become delinquent, the statute of limitations begins to run thereon from the period on which they became delinquent, and actions for the recovery of such taxes are barred by the statute of limitations within two years thereafter, as provided in Sections 513 to 524, Code of Civil Procedure, as amended by the laws of 1903, and by Section 520 of the same Code. Actions in rem against the property are barred at the same time. The property having been assessed and entered upon the assessment book, Sections 3723, 3788 and 3789 do not apply, as they provide for property that has escaped assessment or where the assessment was false, incomplete, etc.

March 4, 1905.

Hon. T. J. Porter, County Attorney, Miles City, Montana:

Dear Sir:—Your letter of February 17, enclosing a letter from Mr. J. M. Calvin addressed to you, in which you ask for an opinion of this office, to hand.

It appears from these two letters that in the year 1899 the property of the Towner-Savage estate was assessed in the name of the estate; that thereafter, in the year 1899, and before the taxes became delinquent, the property upon which such taxes were assessed was sold to Alexander McMillan. It appears further that the taxes were not paid for that year

and became delinquent, and that no sale of the property in the manner provided by law was ever had for the payment of such delinquent taxes.

It has been held by our supreme court that suits to recover taxes are "actions upon a liability created by statute," and that they are subject to be barred by the statute of limitations. (Board of County Commissioners v. Story, 26 Mont. 517; see also, State of Nevada v. Y. J. S. M. Co. 14 Nev. 226; City and County of San Francisco v. Jones, 20 Fed. Rep. 188; City of San Diego v. Higgins, 46 Pac. 923.)

Sections 513 to 524, Code of Civil Procedure, as amended by the laws of 1903, and Section 520, of the same Code, provide that such actions are barred in two years from the date the right of actions accrues.

Sections 3860 and 3866, Political Code, as amended by the laws of 1899, p. 97, provide that taxes are delinquent on November 30 of each year at six p. m. Therefore, the statute of limitation began to run against an action for the taxes of 1899 on December 1, 1899.

Sections 3827 to 3829, Political Code provide that every tax has the effect of a judgment against the person, and that every tax due upon real property is a lien against the property assessed.

"This lien is but an incident to the tax; and when an action to recover the debt is barred the suit to enforce the lien is barred also." (Cooley on Taxation (3rd Ed.) p. 880.)

In the case of City and County of San Francisco v. Jones, supra, under statutes the same as ours, Judge Sawyer used the following language:

"The lien is but an incident to the tax—the money due—and like the case of a mortgage when an action to recover the debt is barred the suit to enforce the lien is also barred. This has long been the settled doctrine in this state in relation to a mortgage. Neither the debt nor the lien is extinguished in the case of a mortgage in any other sense than in the case of a tax, and the statutory line incident to it." (See also City of San Diego v. Higgins, supra.)

The supreme court of Minnesota says that "proceedings in rem against the land are subject to the statutes of limitations the same as a personal action against the owner", and cites with approval the above cases from Nevada and California. (40 Minn. 524-527.)

We must hold that the right of action against the owner of the property is barred by the statute of limitations, and that under the above authorities an action in rem against the property is also barred, and that the county has no remedy by which it can take possession of, and sell such property for the taxes assessed for the year 1899.

Such property having been assessed for 1899, the assessor cannot include such taxes on this year's assessment roll and collect it with this year's taxes, under Section 3723, Political Code, as this section only relates to property that has escaped assessment. (City of San Luis Obispo v. Pettit, 87 Cal. 500.)

Nor can the county commissioners require or direct the assessor to do so, under Sections 3788 and 3789, for the same reason, namely: that

these sections only apply where the property was not assessed or where the assessment was false, incomplete, etc.

It would therefore, appear from the facts stated in your letter of inquiry that the county has slept on its rights until the statute of limitation has barred all remedies that might have been instituted for collecting such tax on the property assessed for the year 1899.

Yours very truly,

ALBERT J. GALEN,

Attorney General.