

In Rem Tax Foreclosure—Its Defects and Consequences

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exercise. Proper exercise of this jurisdiction should cause the punishment of parents to be seen in true perspective, as a necessary sanction to the courts' control of parental conduct respecting delinquent and neglected children. The clarity and fairness of such an enactment should help to remove from the children's courts the stigma which attaches to agencies for criminal prosecution. The judges, being more mindful of the efficacy and equity of the order enforceable through contempt, will, it is hoped, insist upon transferring all misdemeanor prosecutions to the competent criminal courts. Thus the criminal jurisdiction exercised under the "contributing offense" provisions of the children's court acts will be abandoned, effecting a de facto repeal of the troublesome statutory provisions. Meanwhile, the legislature should consider how best to revise the "contributing offense" clauses which have been used to impose upon a civil tribunal the incubus of an opprobrious and unwanted criminal jurisdiction.



IN REM TAX FORECLOSURE—ITS DEFECTS AND CONSEQUENCES

A discussion of the evolution of the present New York law on property tax enforcement illustrates a pendulous swing from a situation where the city was handicapped in protecting its tax assessment interests, to one where a property owner is at a great disadvantage in protecting his fundamental property rights. Where formerly the law afforded adequate notice and substantial rights to the surplus of the foreclosure sale and to redemption after judgment, under present circumstances the law permits a foreclosure of all rights upon inadequate notice. The latter extreme requires modification.

Lien-sale Method of Tax Foreclosure

Until 1948, New York City employed the lien-sale method of real property tax enforcement. Controlled by the city's Administrative Code,¹ this method empowers the city to make collection by selling its tax liens on delinquent property to private individuals for the full amount of the arrears,² including interest and penalties.³ If no bids are received, the tax collector may purchase the lien on behalf of the city.⁴ Transfer of the tax lien to the successful bidder operates as an

¹ N.Y.C. ADMIN. CODE §§ 415(1)-23.0 to 415(1)-53.3.

² *Id.* § 415(1)-23.0.

³ *Id.* § 415(1)-31.0. Such a sale is made by the city collector or any deputy.

Id. § 415(1)-27.0.

⁴ *Id.* § 415(1)-29.0.

assignment of the lien,⁵ which becomes due and payable within three years from the date of sale.⁶ The lien may then be foreclosed according to the law regulating foreclosure of mortgages on real property.⁷ A successful plaintiff is entitled to judgment establishing the validity of the lien and directing a sale of the property.⁸ Such a judgment is binding upon each defendant served with summons,⁹ and every conveyance thereunder transfers a derivative title, that is, only the right, title and interest of the defendants so served.¹⁰ Any surplus, after payment of the sale expenses, taxes, assessments and charges, must be paid into the court for the use of those entitled thereto.¹¹

This method of tax enforcement is complex and costly. The costs are originally borne by the vendee of the lien. He in turn may seek reimbursement out of the surplus obtained at the foreclosure sale. However, where the costs are greater than the excess of the property value over the amount of the lien,¹² no bids are received on that lien. The city is then permitted to reoffer the lien at successively lower minimum prices until it is eventually sold.¹³ Thus, in addition to its other disadvantages, this method is sometimes partly ineffective as a means of recovering the entire amount of tax delinquency.

The "In Rem" Method of Tax Enforcement

For the state to carry on its necessary functions, need is had for an efficient, expeditious and inexpensive method of tax collection. The summary *in rem* tax lien foreclosure procedure was adopted to satisfy that need.¹⁴ This procedure provides for foreclosure of property by an action against the delinquent property itself. Although this remedy is a comparatively recent innovation in New York City, it is a well-established mode, having been approved by the United States Supreme Court as early as 1895.¹⁵ The New York State Legislature afforded its taxing districts¹⁶ this procedure in 1939 by enacting Title 3 of

⁵ *Id.* § 415(1)-33.0.

⁶ *Id.* § 415(1)-36.0.

⁷ *Id.* § 415(1)-39.0. See *Weiss v. Stone*, 129 N.Y.S.2d 525 (Sup. Ct. 1954).

⁸ N.Y.C. ADMIN. CODE § 415(1)-42.0.

⁹ *Id.* § 415(1)-44.0.

¹⁰ *Id.* § 415(1)-44.0. As for private easements, however, the foreclosure of a tax lien and a sale of the property does not extinguish them, even if the owners thereof are parties to the foreclosure suit. See *Tax Lien Co. v. Schultze*, 213 N.Y. 9, 106 N.E. 751 (1914); *Jackson v. Smith*, 153 App. Div. 724, 138 N.Y. Supp. 654 (1st Dep't 1912), *aff'd mem.*, 213 N.Y. 630, 107 N.E. 1079 (1914).

¹¹ N.Y.C. ADMIN. CODE § 415(1)-45.0.

¹² For a cataloguing of such costs, see Fairchild, *Tax Titles In New York State*, 8 BROOKLYN L. REV. 61, 72 (1938). See also Note, 26 ST. JOHN'S L. REV. 283, 287 (1952).

¹³ N.Y.C. ADMIN. CODE § 415(1)-33.0.

¹⁴ See *City of New York v. Ernst*, 202 Misc. 911, 108 N.Y.S.2d 202 (Sup. Ct. 1951).

¹⁵ *Winona and St. Peter Land Co. v. Minnesota*, 159 U.S. 526 (1895).

¹⁶ A tax district includes any county, city, town, village, or school district.

Article VII-A of the Tax Law.¹⁷ New York City, however, did not choose to employ this method until 1948. In that year, the Legislature enacted Section D-17 of the Administrative Code of the City of New York.¹⁸ Although the provisions of these two enactments are basically the same, the latter satisfies certain needs peculiar to New York City.¹⁹

The procedure of the city statute provides for a summary foreclosure of tax liens²⁰ which are unpaid for a period of at least four years.²¹ The action is instituted by filing a verified list, containing a description of all the delinquent properties, in the office of the clerk of the county in which the property subject to the tax lien is situated.²² Such a filing has the same force and effect as the filing of an individual summons and complaint against the property in the Supreme Court,²³ which has jurisdiction of the proceeding.²⁴ The city treasurer is also required to file a copy of each such list in his main office, in his branch office in the borough in which the affected property is located, and in the office of the corporation counsel.²⁵

The statute affords further constructive notice of foreclosure by: (1) publication of the list of delinquent taxes in the City Record and two newspapers²⁶ once a week for six weeks; (2) mailing notice to the last known address of the owner as it appears on the records of the city treasurer; or (3) conspicuous posting in the event that the

having the power to enforce collection of taxes on real property by a tax sale. N.Y. TAX LAW § 161(2)a.

¹⁷ Laws of N.Y. 1939, c. 692.

¹⁸ The provisions of this enactment do not supersede, but rather, supplement those which provide for the tax-lien sale method of enforcement. N.Y.C. ADMIN. CODE § D17-24.0.

¹⁹ These reasons are stated to be: (1) the magnitude of liquidating tax delinquencies in New York City as compared with smaller cities; and (2) the inflexibility of the Tax Law which made foreclosure mandatory regardless of the ability of the taxpayer to make installment payments of arrears. STATEMENT OF THE CORPORATION COUNSEL REGARDING TAX LIEN FORECLOSURE BY ACTION IN REM IN THE CITY OF NEW YORK 3 (1953).

²⁰ Under Section D17-1.0 of the New York City Administrative Code, a tax lien is defined to include "any unpaid tax, assessment, sewer rent or water rent and interest or penalty thereon."

²¹ N.Y.C. ADMIN. CODE § D17-4.0.

²² Exception is made whereby certain parcels are excluded from such lists where: (1) a meritorious question as to the validity of the tax lien is raised by a person with an interest in the property; (2) an agreement has been made with the city treasurer before July 1, 1948, in relation to payment of arrears; (3) an agreement is made with the city treasurer for the payment of arrears in installments; (4) within two years before the filing of the lists, a tax lien owned by the city was sold to a person who has not taken all the action necessary to enforce that lien. *Id.* § D17-5.0.

²³ *Ibid.*

²⁴ *Id.* § D17-3.0.

²⁵ *Id.* § D17-5.0(3).

²⁶ An exception is made in New York and Bronx counties where the newspapers which are to be designated for the publication of this notice shall be the daily law journal and another newspaper. *Id.* § D17-6.0.

name and address of the owner do not appear on the records of the city treasurer.²⁷ A minimum of seven weeks after the first publication is allowed any interested party within which to redeem, and an answer may be interposed at any time up to twenty days after the last day for redemption.²⁸ If no answer or redemption is made, a judgment is had as by default,²⁹ and title to the property is ordered vested in the city by the Supreme Court. That title is a new and original title, free of all incumbrances. Unlike a title derived under the lien-sale method, it forever bars ". . . all persons, including . . . infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, or lien or equity of redemption in or upon such lands. . . ." ³⁰ Again, unlike the lien-sale method, upon the resale of the property the city may retain the entire proceeds. Thus, this form of foreclosure amounts to forfeiture for tax delinquency.³¹

An analysis of the *in rem* procedure discloses certain basic inadequacies. First, although the treasurer is required to mail notice to the last known owner listed in the treasurer's office,³² failure to do so does not invalidate the proceedings.³³ This is constitutionally up-

²⁷ *Ibid.*

²⁸ *Id.* § D17-6.0. The mere interposition of an answer, however, would not prevent the city from getting a judgment as provided in Section D17-12.0(d) of the New York City Administrative Code. A pro forma answer, tested and found lacking in substance, is tantamount to a default. *In re* Foreclosure Of Tax Liens, Borough Of Brooklyn, 132 N.Y.S.2d 867 (Sup. Ct. 1954).

²⁹ N.Y.C. ADMIN. CODE § D17-6.0.

³⁰ *Id.* § D17-12.0.

³¹ This seems to raise the constitutional question of confiscation of private property for public use without just compensation. Respondents, in *City of New York v. Nelson*, summarily replied to this contention: "The simple answer to this specification is that this case was not in condemnation but one brought under the taxing power, where private property is always taken without making compensation. . . . [T]his action was strictly one brought to enforce tax collection and had no relation to any pending or proposed condemnation proceedings." Brief for Respondents, p. 8, *City of New York v. Nelson*, 309 N.Y. 801, 130 N.E.2d 602 (1955).

³² The treasurer is not required to go beyond that even if the name and address of the property owner is known by the city tax department. See *Hawley v. City of New York*, 283 App. Div. 882, 131 N.Y.S.2d 591 (2d Dep't) (mem. opinion), *motion for leave to appeal granted*, 283 App. Div. 1079, 131 N.Y.S.2d 912 (2d Dep't 1954). It has been suggested that this situation be alleviated by requiring the proper authorities to periodically check the records of land transfers, and by noting the sources of remittances for the taxes. See Allen, *Collection Of Delinquent Taxes By Recourse To The Taxed Property*, 3 LAW & CONTEMP. PROB. 397, 400 (1936).

³³ "The failure to receive such notice as herein provided shall not affect the validity of any action or proceeding brought pursuant to this title." N.Y.C. ADMIN. CODE § D17-17.0. See *Matter of City of New York*, 278 App. Div. 1008, 105 N.Y.S.2d 829 (2d Dep't 1951) (mem. opinion). The requirement is directory and not mandatory and an omission to comply therewith is not a jurisdictional defect invalidating the proceedings. However, where the city incorrectly lists such address, thus causing the owner's failure of receipt of such notice, the property owner may redeem. See *In re* Foreclosure Of Taxes Liens, 117 N.Y.S.2d 725 (Sup. Ct. 1952).

held³⁴ on the theory that every property owner is charged with notice that his real property is subject to taxation and that he may forfeit his title for the nonpayment of taxes levied upon the property.³⁵ Thus, only constructive notice is necessary.³⁶ But such constructive notice is unrealistic. Posting a notice of foreclosure in four municipal offices is clearly inadequate in this large city.³⁷ Here again, the proceedings are not invalidated if the treasurer changes the original designation of the property in the notice.³⁸ Secondly, although the statute requires notice to be published in three newspapers,³⁹ notice by publication is often no notice at all.⁴⁰ Stated simply, the procedure may result in the taking of an owner's property without actual notice and with inadequate constructive notice. Furthermore, the judgment severs the rights of all persons in the property, including mortgagees, lienors and other persons interested or having a claim thereon.⁴¹ Although provision is made whereby they may register their names and addresses with the treasurer⁴² and thereby receive personal notice of a pending foreclosure, if they fail to register through ignorance of such a procedure, or if the treasurer neglects to send notice, they, like the original owner, are remediless.⁴³ Infants and incompetents, the traditionally favored,⁴⁴ are also subject to the same stringent notice provisions.⁴⁵

³⁴ The rationale of the cases upholding the provisions of the similar State Tax Law is likewise applicable to the provisions of the New York City Administrative Code. *City of New York v. Feit*, 200 Misc. 998, 110 N.Y.S.2d 425 (Sup. Ct. 1951).

³⁵ *Ibid.* Cf. *New Rochelle v. Echo Bay Waterfront Corp.*, 268 App. Div. 182, 49 N.Y.S.2d 673 (2d Dep't 1944), *aff'd mem.*, 294 N.Y. 678, 60 N.E.2d 838, *cert. denied*, 326 U.S. 720 (1945); *Buffalo v. Hawks*, 226 App. Div. 480, 236 N.Y. Supp. 89 (4th Dep't), *aff'd mem.*, 251 N.Y. 588, 168 N.E. 438 (1929); *Utica v. Proite*, 178 Misc. 925, 929, 36 N.Y.S.2d 79, 82 (Sup. Ct. 1941), *aff'd mem.*, 288 N.Y. 477, 41 N.E.2d 174 (1942).

³⁶ *Ibid.*

³⁷ See Note, 26 ST. JOHN'S L. REV. 283, 295 (1952).

³⁸ See *City of New York v. Lynch*, 281 App. Div. 1038, 121 N.Y.S.2d 392 (2d Dep't 1953) (mem. opinion), *aff'd mem.*, 306 N.Y. 809, 118 N.E.2d 821 (1954).

³⁹ In (1) the City Record, which is of limited circulation; (2) two other newspapers; or (3) one other newspaper and the daily law journal. N.Y.C. ADMIN. CODE § D17-6.0.

⁴⁰ "Constructive service is often no service at all and the mechanism is the fictional product of the necessity that sometimes adjudications be made even though a party cannot be found and though he may in fact have no notice or knowledge of the process directed against him." PRASHEK, *NEW YORK PRACTICE* 157 n.20 (3d ed. 1954).

⁴¹ N.Y.C. ADMIN. CODE § D17-12.0; see *In re City of New Rochelle's Tax Liens*, 110 N.Y.S.2d 392 (County Ct. 1951), *aff'd mem.*, 279 App. Div. 933, 111 N.Y.S.2d 772 (2d Dep't), *appeal dismissed*, 304 N.Y. 757, 108 N.E.2d 617 (1952).

⁴² N.Y.C. ADMIN. CODE § D17-17.0.

⁴³ *Ibid.*

⁴⁴ Commonly, in other actions, the law makes special provision for these favored parties. See, e.g., N.Y. CIV. PRAC. ACT §§ 225, 226; Note, 2 BUFFALO L. REV. 133, 135 (1952).

⁴⁵ "The provisions of this title shall apply to and be valid and effective with

Such a procedure certainly fulfills its purpose. It eliminates extensive title searches, service of individual complaints and personal notice, thereby providing a method which is simple, inexpensive⁴⁶ and summary. However, it also seems that the city has, by resorting to the barest minimum of constitutional safeguards, gained a decided advantage in facilitating its collections; it would impose no great hardship on the city to require it to relinquish a part of this advantage by being more diligent in its effort to seek out the parties to such actions.

Right of Redemption—Defects in Procedure

In relation to the proceedings proper, if no redemption is made within the prescribed time limit⁴⁷ and the procedure is complete and regular, the opening of a default is denied and the rights of the parties become fixed and unalterable upon the expiration of the statutory period.⁴⁸ Thus, the only way in which relief may be afforded is through a defect in procedure. In such an instance the owner bears the burden of proving the defect, for it is presumed that the proceedings were complete and regular.⁴⁹ Notwithstanding the fact that the courts maintain that the statutory provisions for notice were designed to protect property owners and are subject to strict construction in favor of the owner,⁵⁰ they have, on occasion, loosely interpreted "complete and regular" procedure.⁵¹ Moreover, even the right to relief because of defective procedure is conclusively foreclosed after two years.⁵²

respect to all defendants even though one or more of them be infants, incompetents" N.Y.C. ADMIN. CODE § D17-11.0.

⁴⁶ The savings effected under the *in rem* method are clearly illustrated by a comparative cost survey under the New York *in rem* statute, whereby it is estimated that foreclosure by this method requires an expenditure of \$4.60 as against a cost of \$101.00 under the tax lien-sale method. Note, 26 ST. JOHN'S L. REV. 283, 293 n.73 (1952).

⁴⁷ N.Y.C. ADMIN. CODE § D17-6.0. See *In re* Foreclosure Of Tax Liens, Borough Of Brooklyn, 132 N.Y.S.2d 867 (Sup. Ct. 1954).

⁴⁸ *Ibid.* Cf. Peekskill v. Perry, 272 App. Div. 940, 72 N.Y.S.2d 351 (2d Dep't 1947).

⁴⁹ N.Y.C. ADMIN. CODE § D17-21.0.

⁵⁰ See, e.g., City of New York v. Stolpensky, 286 App. Div. 1027, 145 N.Y.S.2d 97 (2d Dep't 1955) (mem. opinion); List Of Delinquent Taxes, Section 17, Richmond County, 136 N.Y.S.2d 6 (Sup. Ct. 1954); cf. Long Island R.R. v. City of New York, 64 N.Y.S.2d 391 (Sup. Ct. 1946).

⁵¹ City of New York v. Lynch, 281 App. Div. 1038, 121 N.Y.S.2d 392 (2d Dep't 1953) (mem. opinion), *aff'd mem.*, 306 N.Y. 809, 118 N.E.2d 821 (1954) (city changed the designation of the property in its list of delinquent taxes and did not mail notice of foreclosure to the owner—held to constitute complete and regular procedure).

⁵² N.Y.C. ADMIN. CODE § D17-21.0. On the theory that this section is a statute of limitation, relief on the ground of non-delinquency also seems to be barred after two years. Cf. Notes, 8 BROOKLYN L. REV. 61, 66 (1938), 2 BUFFALO L. REV. 133, 139 (1952).

Attempts have been made to open a default on the ground of hardship, but that alone is not a sufficient basis for relief.⁵³ For example, in *City of New York v. Nelson*,⁵⁴ the city acquired two parcels of property assessed at \$52,000, through an *in rem* tax foreclosure for the nonpayment of water charges amounting to \$887. The delinquencies had resulted from a default of the owners' bookkeeper who, allegedly to cover up peculations,⁵⁵ had concealed from the owners the fact of nonpayment and the notice of foreclosure. This, of course, deprived them of the opportunity to redeem their properties or to file answers in the foreclosure actions. One of the properties, assessed by the city at \$6,000 and foreclosed for water arrears of \$72.50, was resold for \$7,000. The city retained the entire proceeds. The court stated that this was indeed a hard case but, unfortunately, it was powerless to afford relief in such a situation. It did, however, suggest a legislative change to liberalize the right of redemption.

Legislative Proposals

Although the *in rem* procedure has been available to New York City since 1948, it was not put into practical operation until 1950.⁵⁶ Soon thereafter, as a result of widespread application,⁵⁷ its deficiencies became apparent and evoked widespread criticism.⁵⁸ Accordingly,

⁵³ Several instances of extreme hardship have resulted from the failure to give actual notice to the interested parties under the procedure. In many of those cases, the amount of arrears was very small compared with the value of the property. Interestingly, the lower courts have attempted to aid the owner in hardship cases through technical defects in the proceeding, but every such decision has been since reversed by the Appellate Division. N.Y.C. BAR ASS'N LEGIS. BULL. 397 (1955).

⁵⁴ 309 N.Y. 94, 127 N.E.2d 827 (per curiam), *motion for leave to amend the remittitur granted*, 309 N.Y. 801, 130 N.E.2d 602 (1955).

⁵⁵ Brief for Appellants, p. 7, *City of New York v. Nelson*, 309 N.Y. 94, 127 N.E.2d 827 (1955).

⁵⁶ STATEMENT OF THE CORPORATION COUNSEL REGARDING TAX LIEN FORECLOSURE BY ACTION IN REM IN THE CITY OF NEW YORK 3 (1955).

⁵⁷ In 1951, the first year in which it was generally utilized, the city, through the use of the *in rem* method, acquired 6,896 properties which were delinquent in tax payments. BOARD OF ESTIMATE, BUREAU OF REAL ESTATE, 1955 REPORT 1. It acquired 8,950 parcels in 1952 [1952 REPORT, at 1]; 8,281 parcels in 1953 [1953 REPORT, at 7]; 16,870 in 1954 [1954 REPORT, at 9]. The city has been so successful in this regard that, in order to facilitate the resale of these parcels and to return the property to the tax rolls, it has employed a system of "group" or "mass" sales. Typical of this new sales technique was the sale conducted at the Brooklyn Academy of Music in 1954. At that widely-advertised sale, 725 parcels were offered; of that number, 389 were sold for a total sum of \$1,305,552. The parcels offered were all lying in a circumscribed area, thus enabling disposal of properties which, due to physical limitations, are otherwise unattractive to bidding. The stimulated competitive bidding at such sales has caused the sales price to substantially exceed the "upset" or minimum price set by the city. *Id.* at 12-13.

⁵⁸ The Justices of the Kings County Supreme Court, in their report to the Temporary Commission on the Courts, recommended that the law be amended

amendments to the tax law were passed by the Legislature in 1953 and 1955. However, they were vetoed by the Governor on each occasion.⁵⁹ Essentially, each bill provided for redemption in case of hardship. With regard to the redemption features, the Governors felt that insufficient provision had been made to protect the rights of the tax districts where they had: (1) improved the property,⁶⁰ or (2) devoted it to public use.⁶¹ In addition, because the districts' title would have been defeasible up to the very moment of sale, the properties would have been less attractive to prospective purchasers.

Two other measures were introduced into the Legislature during the current year. One of the proposals,⁶² while similar to the vetoed bills, was designed to meet the specific objections of the Governors to the latter. It would provide that the Supreme Court is authorized to reopen a default in cases where *in rem* foreclosure has caused hardship. Reopening of the default, however, would be conditioned on the payment of the taxes, penalties and interest up to the time of redemption, together with the expenses of foreclosure and the cost of improvements made at the expense of the municipality. Application to make such a redemption could be made within six months from the date of the recording of the deed to the tax district. If the property should be resold by the tax district, the power of the court would then be limited to a disposition of the proceeds received by the tax district on the sale of the property. This bill passed the Assembly but was buried in the Senate's Taxation Committee.

The second bill,⁶³ introduced into the Legislature at the instance of the City of New York, provides for amendment of the Administrative Code. It authorizes the Board of Estimate, in its discretion and upon application within four months after the city acquires title, to reconvey property to the former owner upon payment of certain expenses. The city would then convey to such person the same title he formerly held, subject to the same liens, encumbrances and defects. This amendment passed both houses of the Legislature and was signed by the Governor.⁶⁴

This amendment, though laudable, will not completely cure the defects in *in rem* proceedings. It, of course, applies only to the City of New York, while the problem itself is state-wide in scope. If

to prevent the injustices resulting from foreclosure of tax liens by an action *in rem*. N.Y.C. BAR ASS'N LEGIS. BULL. 399 (1955).

⁵⁹ Leg. Rep., MCKINNEY'S SESSION LAWS OF NEW YORK 2176 (1953); Leg. Rep., MCKINNEY'S SESSION LAWS OF NEW YORK 1671 (1955). The latter bill was approved by the New York City Bar Association. N.Y.C. BAR ASS'N LEGIS. BULL. 397 (1955).

⁶⁰ Leg. Rep., MCKINNEY'S SESSION LAWS OF NEW YORK 2176 (1953).

⁶¹ Leg. Rep., MCKINNEY'S SESSION LAWS OF NEW YORK 1671 (1955). It was felt that such redemption would "set at naught the manifold processes involved and the expenses incurred in preparing foreclosed parcels for sale." *Ibid.*

⁶² A. No. 1766, Int. 25.

⁶³ A. No. 1908, Int. 1849.

⁶⁴ Laws of N.Y. 1956, c. 481.

the deficiency is general, the remedy should not be localized. Also wide discretion, for which no standard is set forth, is left to a city board. Those who would profit most from a negative decision should not be left to decide the question. Moreover, the amendment makes no mention of a more liberal provision for notice—without which the property owner would be, in many instances, in as precarious a position as he was before the amendment. For, clearly, it is not unlikely that the owner may be just as ignorant of the city's acquisition of his property during the four months "grace period," as he was of the pendency of the action against the property.

The amendment buried in committee would seem to be the more complete and more equitable of the two proposals. It would place the power of decision in the court, with a proper standard as a guide, *viz.*, the court may allow redemption in hardship cases where the owner acted in good faith. Moreover, in cases where the property has been resold, it provided for the application of the proceeds to those entitled thereto. While this amendment contained no provision which would directly remedy the notice problem, it did provide a more reasonable period for redemption, during which time actual notice might come to the property owner in the natural course of events.

Conclusion

The object of *in rem* foreclosure should be to provide for quick and inexpensive tax collection; it should not be forfeiture—a penalty which is unconscionable in hardship cases. Confiscation, if it is submitted, is not in consonance with proper principles of tax enforcement, incidentally or otherwise. That a tax procedure is properly designed to stimulate tax payment should not overshadow the need for adequate notice, the lack of which is the very cause of hardships recently sought to be relieved. If notice were adequately provided for, it is difficult to conceive of a situation in which a person could plead for relief from foreclosure on the basis of hardship. In cost comparison the tax district would not be greatly imposed upon, in view of the *in rem* summary advantage, if it were made to accept its share of responsibility for the non-intentional delinquencies by providing for a more effective notice.