

An Amendment to the Multiple Dwelling Law in Reference to Alterations of Slum Dwellings

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"No such policy, however, heretofore or hereafter issued shall be deemed to insure against any liability of an insured for injuries to his or her spouse or for injury to *property* of his or her spouse *unless express provision* for such insurance is included in the policy." (Italics ours.)

It is submitted that this section, in part, contravenes Article I, Section 10 of the Constitution.¹⁸ Since, even prior to this enactment, husbands and wives could sue each other for injuries to *property*,¹⁹ an underwriter who has issued a policy insuring against liability for injury to property must be held to have contemplated liability for such injuries between spouses. Therefore a statute which declares that no policy heretofore issued shall be deemed to insure against such liability is clearly impairing the obligation of contracts and to that extent is unconstitutional.²⁰

Although the new amendment to the Domestic Relations Law may have the undesirable effect of bringing family disputes into the courts for settlement,²¹ it would seem that the benefits which will be derived from it will more than offset this defect and make the change, on the whole, a highly desirable one.

EDWARD J. CARRY.

AN AMENDMENT TO THE MULTIPLE DWELLING LAW IN REFERENCE TO ALTERATIONS OF SLUM DWELLINGS.—Many persons in the lower-income groups of our population¹ have been compelled, for many years, to live in buildings that have long been outmoded by both law and time. Faced by this problem, the New York Housing Authority was created in an attempt to eradicate these eyesores of the city.² Investigations were conducted by this body and the testi-

¹⁸ U. S. CONST. Art. I, § 10 (1) reads as follows:

"No State shall * * * pass any law impairing the obligation of contracts."

¹⁹ See cases cited *supra*, note 6.

²⁰ We are of the opinion that it was unnecessary for the legislature to refer at all to contracts *heretofore* made. Section 5 of the Act, *supra*, note 15, would render futile any attempt on the part of an insured's injured spouse to force liability on the insurer for personal injuries under Section 1.

²¹ See quotation from *Longendyke v. Longendyke*, 44 Barb. 366 (N. Y. 1863), cited *supra*, note 8.

¹ *New York City Housing Authority v. Muller*, 270 N. Y. 333, 1 N. E. (2d) 151 (1936).

² Karlin, *New York Slum Clearance and the Law* (1937) 52 POL. SCI. Q. 245 ("the purpose of the Municipal Housing Authorities Law [enacted by the Laws of 1934, c. 4, as an amendment to the Housing Law of 1926] is to enable cities in New York State to take necessary steps to clear slums and to provide housing accommodations for persons of low income * * *").

mony of the various experts showed clearly the unsatisfactory and, indeed, unhealthy, housing conditions prevailing among these groups. One of the results of the hearings was the condemnation of a portion of the slum areas and the erection in their stead of model low-cost apartments.³

Although the Housing Authority sought to remedy conditions through the construction of new developments, it would be practically impossible to continue the condemnation of all of the slum areas because of the tremendous sum of money necessarily involved. Consequently conversion of the so-called "Old Law" tenements to conform to the standards of the law appeared to be the only answer to the problem. The application of this solution, however, was not as easy as it seemed on the surface, and to fully understand the problem necessitated a complete study of the development of these tenements.

The old-law tenements were constructed prior to 1901⁴ and the desire on the part of the builder to make as large a profit as possible out of a small investment seemed to be his sole motive in constructing them. This profit was made possible by building the interiors of these houses entirely of wood. Water supply was unheard of in them and toilets were never installed within the buildings proper. The result was the production of a large group of tenements that were entirely devoid of all sanitary facilities and fire-proofing. By 1901, 82,000⁵ of these old-law tenements were in existence and if the legislature had not interfered,⁶ construction of such buildings would have gone on endlessly. After 1901, the passage of the Tenement House Law⁷ put a stop forever to the construction of these dwellings. Thereafter, new developments designed to house three families⁸ or more, living independently of each other, were required to have the maximum amount of fire-proofing and sanitation; but these new enactments did not apply to the existing old-law tenements. The increase of new construction, designed to include those improvements demanded by the law, catered only to that class of the population that was able to pay a higher rental, and the inhabitants of the old dwellings were forced to remain in the poorly equipped apartments whose rentals were still within their means. Although the construction of the latter type of dwelling was forbidden by law, over a quarter of a century later, in 1929, with the passage of the Multiple Dwelling Law,⁹ approximately 25% of the population of New York State was

³ The completion of the Harlem Houses, Williamsburg Housing Developments and The First Houses at Avenue A and Third Street, Manhattan, are results of these investigations.

⁴ MULT. D. L. § 4, subd. 9.

⁵ Report to Mayor of the City of New York by New York City Housing Authority, p. 5 (Jan. 25, 1937).

⁶ Laws of 1901, c. 334.

⁷ Laws of 1909, c. 99.

⁸ TEN. HOUSE LAW § 2, subd. 1.

⁹ Laws of 1929, c. 713.

still housed in them.¹⁰ It was under this law that the Tenement House Department was given its first real power to curtail inhabitation of slum dwellings. Section 309 of the law as it then read, gave the Department power to enter the premises of old-law tenements and order the owners thereof to repair them in compliance with its provisions. If the owners failed to comply with these orders, the law provided that “* * * such order may be executed by said department through its officers, agents, or employees or contractors * * *.”¹¹ Thus to all outward appearances, it seemed that a remedy designed to improve the condition as it had existed, had finally been found.

There was, however, one vital point, insofar as the administration of the law was concerned, that was entirely forgotten by the legislature. It neglected to provide sufficient funds to allow the Department to undertake so great a task as the reconditioning of so many thousands of old-law tenements. The only reference the law made to funds, besides the general provisions creating a reserve to be collected from penalties provided by law for non-compliance with the orders of the Department,¹² was the right to maintain an action against the owner or lessee to recover the amount expended for the alterations.¹³ The consequence of this omission was the creation of a condition in which the Department, after issuing an alteration order to a landlord, could not carry out said order itself if the owner failed to comply, because they never had enough money to make the necessary repairs. This situation left the Department only one alternative, that of issuing eviction notices to the landlords and the condemnation of the buildings as unfit for use.

Subsequent amendments to the Multiple Dwelling Law made it mandatory for the landlords to install at least one toilet¹⁴ for each family and to so fireproof¹⁵ the buildings as to make them healthier and safer places to live in. In compliance with these new provisions of the law, the Tenement House Department was forced to issue a great many alteration notices to the owners of the old-law tenements. The owners, being unable to obey the orders of the Department, mainly because of their poor financial condition, and wishing to avoid the penalties provided by the law for non-compliance,¹⁶ immediately ordered their tenants to vacate. These mass evictions, occurring at the same time that an entire slum area was being condemned by the Tri-Borough Bridge Authority, created a housing shortage within the low-income groups which was threatening to become acute. To

¹⁰ See note 5, *supra*.

¹¹ MULT. D. L. § 309, unamended.

¹² MULT. D. L. § 304.

¹³ MULT. D. L. § 309, subd. 2.

¹⁴ MULT. D. L. § 250.

¹⁵ MULT. D. L. §§ 186, 187, 188.

¹⁶ See Report to Mayor, *supra* note 5, at p. 32. “The sudden realization of savings banks trustees that they might be personally subject to these penalties, and possibly to other liability, in the event of fatalities, was said to be responsible for their decision to commence the eviction of some 4,000 families.”

stem this tide of mass evictions the legislature passed an act¹⁷ granting immunity from prosecution for six months to those landlords who signed agreements to repair their dwellings within that period of time. The owners of 1,818¹⁸ old-law tenements immediately took advantage of this law and entered into agreements with the Department. In the majority of cases, though, this breathing spell did not solve the problem either for the owner or the tenant. If an owner did not agree to carry out the new regulations within the required time, he was forced to evict his tenants or incur the prescribed penalties. To alleviate this condition, Section 309 of the Multiple Dwelling Law was amended by the legislature early this year.¹⁹

The primary purpose of this act was to give the Tenement House Department the power to enforce the repair orders which the law had previously allowed them to issue. Whereas formerly the statute neglected to provide the money necessary for these repairs, the new amendment stated that: "* * * the board of estimate and apportionment, or other governing body charged with the duty of appropriating the funds of any city, may create, establish and maintain a revolving fund, to be known and designated by the term 'Old Law Tenement Assessment Fund' * * *." ²⁰ When and if such a fund is created, and the owner of an old-law tenement fails to alter in response to the order of the Department, the latter now has the right to enter the premises,²¹ and make the necessary repairs, and draw upon the fund to pay the cost of the alteration. The power thus conferred upon the Department was equivalent to the power vested in a municipality to make improvements²² and have the owner of the property benefited pay through the form of a special assessment.²³ Although

¹⁷ MULT. D. L. § 304, as amended by Laws of 1937, c. 1.

¹⁸ N. Y. Post, June 28, 1937.

¹⁹ Laws of 1937, c. 353.

²⁰ MULT. D. L. § 309, subd. 6:

"(b) Such 'old-law tenement assessment funds', shall consist of

(1) All moneys hereafter collected by such city or on account of the principal or interest of assessments made pursuant to this subdivision six.

(2) All moneys received from the sale of old-law tenement assessment bonds issued and sold under the authority of this section, including accrued interest and premiums thereon.

(3) Such sums as may be appropriated in the budget to such fund or as may be raised by taxation in such city to meet the expenses specified in paragraph (f) of this subdivision.

(4) Such other sums as may by law be required to be paid into such fund."

²¹ MULT. D. L. § 309, subd. 6:

"(f) Upon the establishment of such fund, the moneys therein may be used to defray the expenses incurred in the execution of orders issued under this section affecting old-law tenements under the provisions of titles one, two, and three of article seven of this chapter. Such expenses shall be deemed to mean the cost and expense of making improvements pursuant to such orders."

²² Crane v. Silvam Springs, 67 Ark. 30, 55 S. W. 955 (1899).

²³ Chicago, R. I. & P. R. R. v. City of Ottumwa, 112 Iowa 300, 83 N. W.

the new law itself does not in so many words indicate the manner in which the payment is to be made, a glance²⁴ at the report of the committee which recommended the change in the law will clear up this problem. In their recommendations, they advised the legislature to allow the landlord to pay the cost of the improvement over a ten-year period at a yearly interest rate of 5%. Installation of new sewer lines,²⁵ and the laying of sidewalks²⁶ are generally financed by the levying of an assessment in this manner and it has proven quite successful. By the inclusion of subdivision 6g of Section 309²⁷ the legislature has termed this improvement to be an assessment on the property and the method of deriving the cost of the improvement is outlined therein. Not only does the legislature term the improvement an assessment, but in order to safeguard the investment of the city doing the work, a provision to the effect that "Every such assessment * * * shall be a lien or charge upon the property * * * *which lien shall have priority over all other liens and incumbrances, including mortgages, whether or not recorded previously to levying of such assessment*, except that the lien of such assessment shall not have priority over taxes and assessments * * *" ²⁸ was inserted. (Italics ours.)

When passing the above provision, it appears that the legislature took the position that the improvement contemplated by the statute was a public benefit. Therefore, the provision giving the lien priority over all other liens would seem to be within its constitutional powers,²⁹ for statutes involving the priority of liens for public benefits have been upheld in various jurisdictions.³⁰ They are based upon the so-

1074 (1900) (The whole theory behind a special assessment is based on the doctrine that the property against which it is levied derives some special benefits from the improvements).

²⁴ See Report to Mayor, *supra* note 5, at p. 73.

²⁵ *Fisher v. Chicago*, 213 Ill. 268, 72 N. E. 680 (1904); *Allan County v. Silvers*, 22 Ind. 491 (1864).

²⁶ *People v. Yancy*, 167 Ill. 255, 47 N. E. 521 (1897); *Copland v. Springfield*, 166 Mass. 498, 44 N. E. 605 (1896).

²⁷ MULT. D. L. § 309, subd. 6g: "The board of assessors, or other body of such city charged with the making of assessments * * * shall * * * assess the amount of such expenses against the property upon and with respect to which the work was performed, which property shall be deemed benefited to the extent of such expenses * * *"

²⁸ MULT. D. L. § 309, subd. 6g.

²⁹ *Provident Inst. v. Jersey City*, 113 U. S. 506 (1885) (prior lien for water rents); *Shibley v. Ft. Smith & V. B. Dist.*, 96 Ark. 410, 132 S. W. 444 (1910) (statute authorizing prior lien for construction of bridge); *Lybass v. Ft. Meyers*, 56 Fla. 817, 47 So. 346 (1908) (prior lien for sidewalk assessments); *Vreeland v. O'Neil*, 36 N. J. Eq. 399 (1883), *aff'd*, 37 N. J. Eq. 574 (1883) (lien for water rents). These cases hold that the constitutionality of such statutes or other provisions is sustained not only in cases where the contractual lien, though preceding the improvement, succeeded the statute creating the lien, but also in cases where it preceded both the improvement and the statute.

³⁰ *Morey v. Duluth*, 75 Minn. 221, 77 N. W. 829 (1899) (opening of new streets); *Burke v. Lukens*, 12 Ind. App. 648, 40 N. E. 641 (1895) (street improvements); *Dressman v. Farmers & T. Nat. Bank*, 100 Ky. 571, 38 S. W. 1052 (1897) (grading of streets).

called police powers which are vested in the several states to regulate the lives, health and property of their citizens.³¹ As a result of the exercise of the police power, states have passed laws whereby landlords were forced to install appliances to receive and distribute water to all parts of a building,³² and municipalities have condemned large areas of slum dwellings³³ to make room for new developments to house the poorer population. By giving the lien for the assessment priority, there is no impairment of any contractual right since the assessment is in the same category as a tax on real property.³⁴ A tax always takes precedence over all other liens on the property; hence we see that there is no extraordinary stretching of the power of the state by the enactment of the above law.

Since the amendment of Section 309, New York City has set in motion its administrative machinery to carry out its provisions. The Board of Estimate has created the "Old Law Tenement Assessment Fund" to which \$500,000 has been allocated.³⁵ In the enabling act creating this fund, the Board of Estimate has passed certain regulations which bind the Department rigidly in the expenditure of this money.³⁶ By the terms of Section 309 the Department was only limited in its use of the money to the repairing of sanitary defects and to the fireproofing of these old buildings.³⁷ These limitations were

³¹ *Carthage v. Rhoads*, 101 Mo. 175, 14 S. W. 181 (1890) (Taxation may be for the purpose of raising revenue or for the purpose of regulation when for the purpose of regulation it is an exercise of police power of the state).

³² *Health Dept. of City of N. Y. v. Trinity Church*, 145 N. Y. 32, 39 N. E. 833 (1895).

³³ *N. Y. City Housing Authority v. Muller*, 270 N. Y. 333, 1 N. E. (2d) 151 (1936) (Case arose out of a condemnation proceeding wherein the Housing Authority condemned defendant's house, in line with the Slum Clearance Project. Defendant contends that he was being deprived of his property without due process of law. *Held*, the law was a proper use of the police power of the state and declared that the use of the land in a slum clearance project was a public use and was within the state power of eminent domain).

³⁴ *Wabash Eastern R. R. v. East Lake Fork Special Drainage Dist.*, 134 Ill. 384, 25 N. E. 781 (1890); *Baldwin v. Moroney*, 173 Ind. 574, 91 N. E. 3 (1910); *Murphy v. Beard*, 138 Ind. 560, 38 N. E. 33 (1894); 78 A. L. R. 515: "Assessments for public improvements though they are not, like general taxes, for carrying on the general purpose of government, but for the benefit conferred upon the property assessed, nevertheless are in the nature of taxes and for the general good of the community, and as every owner of property or his privies entitle or interest hold or acquire it in view of and subject to the inherent power of the state to tax, such a provision is not inconsistent with, nor does it impair contractual rights, though they precede the statute in point of time and *a fortiori* where they precede only the improvement and not the statute".

³⁵ Rules and Regulations for the Administration of § 309 of the MULT. D. L., as amended by Laws of 1937, c. 353, City Record, Aug. 11, 1937, p. 5770.

³⁶ See note 35, *op. cit. supra*, at § 1: " * * * to be selected in the following order of preference:

Subd. 1. Upon application of the owners with the consent of the mortgagee.

Subd. 2. On recommendation of interested groups. * * *

³⁷ These orders were mostly concerned with titles I, II, and III of Article 7 of the Multiple Dwelling Law which refers to sanitation and fire-proofing.

put upon the Department in order to give them a working start in their gigantic task of altering the old-law tenements. However, the regulations placed upon the Department by the Board of Estimate further limited the scope of the law, weakening it to some extent. This was done by ordering the Department to obtain the written consent of the landlords and mortgagees³⁸ before commencing the necessary alterations. As the law stood prior to the passage of the Board of Estimate ruling, no consent whatsoever was necessary. The Department was to inspect the premises, and if they saw that the old-law tenements did not meet with the requirements of the present law, they were empowered to order the repairs to be made by the landlord. In those cases where the landlord refused to obey, the Department was given the power to cause the alterations to be made in the same way as an improvement for which an assessment is levied,³⁹ without waiting to receive the consent of the owner of the property. Mere notice to both the landlord and the mortgagee, to the effect " * * * that unless said order is complied with within twenty-one days after the mailing thereof, such Department may exercise the powers conferred on it * * * ",⁴⁰ was sufficient under the new amendment. Now, under the enabling act, by being forced to receive consent of the mortgagee as well as the landlord, the efficacy of the new amendment may be lost since either of the parties may for reasons of their own refuse to allow the Department to make the necessary alterations. Where this situation arises the latter will again be forced to order the building vacated.

In spite of the fact that the effect of Section 309 has been weakened to this extent, its passage must be hailed as another stepping stone in the program of vital social legislation. Since the landlord is permitted to pay the assessment on an installment basis,⁴¹ no need will exist for him to raise the rental of the remodeled apartments so as to place them beyond the reach of their present occupants. Although the threat of the slums has not been entirely stamped out, if the provisions of the new amendment are carried out diligently through the strict cooperation of both mortgagees and landlords with the Tenement House Department, the living conditions of the low-income groups will be improved immensely.

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³⁸ See note 35, *op. cit. supra* at § 5:

"Where the owner and mortgagee consent that the Tenement House Department do the work entailed in the removing of the violations an agreement to this effect shall be executed."

³⁹ MULT. D. L. § 309, subd. 6g.

⁴⁰ MULT. D. L. § 309, subd. 1, as amended.

⁴¹ *Andrews v. People*, 164 Ill. 581, 45 N. E. 965 (1897); *Latham v. Wilmette*, 168 Ill. 153, 48 N. E. 311 (1897); *Gage v. Chicago*, 195 Ill. 490, 63 N. E. 184 (1902); *Lightner v. Peoria*, 150 Ill. 80, 37 N. E. 69 (1894); *Ladd v. Gambell*, 35 Ore. 393, 59 Pac. 113 (1899) (statutory provisions for the payment of assessment in installments have been sustained).