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Article 17

Eminent Domain--Escheat--Municipal Corporations (In re Quinlan, 271 N.Y. 396 (1936))

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prior to the amendment, it was held that these proceedings were not of a criminal nature as they have been shifted to the civil side of the courts and that the acts involved were to be treated as civil offenses inasmuch as the Domestic Relations Court is not a criminal court.[12] However, the cases mentioned *supra* do not hold that the state legislature has not the *power* to confer criminal jurisdiction upon this court if it so desires. Besides Article 6, Section 18 of the New York Constitution [13] specifically empowers the legislature to confer such jurisdiction as may be necessary to punish offenses of adults who contribute to juvenile delinquency and thereby impliedly gives the legislature authority to confer criminal jurisdiction on the Domestic Relations Court.

H. R. K.

EMINENT DOMAIN—ESCHEAT—MUNICIPAL CORPORATIONS.—By a holographic will, deceased attempted to convey a life interest in property located in New York City to his illegitimate daughter and the fee to his daughter-in-law, petitioner herein. The will was invalid because it was not witnessed in accordance with the laws of New York. The daughter as sole heir was barred from taking by intestacy by reason of her illegitimacy, and as a result, the property escheated to the state. The illegitimate daughter died in 1912. In 1916 while title was in the state, the City of New York acquired title to part of the property by condemnation. In 1918, the legislature, acting upon a petition of the daughter-in-law, passed a special act which authorized the commissioners of the land office to release to her all the property of the intestate which had escheated to the state. In 1919, the city made an award for the property condemned and in the same decree levied an assessment for benefit against the portion which the city had not condemned. In 1924 the Supreme Court ruled that the legislature had released the interest held by the state by the passage of the special act. Petitioner did not make application pursuant to the special act until 1933, at which time the commissioners passed title to the land to her. Petitioner then made application for the award. Petitioner claims that at the time of the condemnation title was in the state; and since the city cannot condemn or assess state property without the permission of the state, and such permission was not given, the condemnation and assessment fall; but petitioner may ratify the condemnation proceedings and claim the award apart

[12] 269 N. Y. 13, 17, 198 N. E. 613, 615 (1935); 248 App. Div. 141, 288 N. Y. Supp. 900 (1st Dept. 1936).

[13] N. Y. CONST. art. VI, § 18: "The legislature may establish * * * courts of domestic relations * * * and may confer on them such jurisdiction as may be necessary * * * for the punishment of adults contributing to such delinquency, neglect or dependency."

from the assessment. From a judgment of the Appellate Division [1] reversing a judgment of the Special Term in favor of the city, the city appeals. Order of Appellate Division modified and as modified affirmed, *held,* the legislature by passing the special act vested title to the land in petitioner in 1918 and as the award and assessment were made concurrently and while petitioner had title, the assessment for benefit is deductible from the award. *In re Quinlan,* 271 N. Y. 396, 3 N. E. (2d) 569 (1936).

If a woman dies without lawful issue, leaving an illegitimate child, the inheritance descends to him as if he were legitimate. In any other case illegitimate children or relatives do not inherit.[2] All lands, title to which fails from a defect or heirs, revert or escheat to the people.[3] Title to land escheated to the state begins from the date of intestate's death.

A municipality being a creature of the state cannot exercise the power of eminent domain against land owned by the state without its express permission.[4] In the instant case, no permission was granted by the state to allow condemnation of the land to which it had title; therefore, the condemnation proceedings were ineffective as to the state. But when petitioner sued for the award, she thereby ratified the condemnation proceedings.[5]

Where the expense of making a public improvement is assessed against the property benefited by the improvement, the assessment is an exercise of the power of taxation, a power separate and distinct from the exercise of the power of eminent domain.[6] The power of assessment cannot be exercised against the state unless notice is given pursuant to Public Land Laws, Section 19. An assessment can be made only against property benefited by the improvement; [7] it cannot be in excess of the benefits received; [8] and must be paid in cash.[9] Early cases [10] in New York held that benefits to land, remaining after condemnation, held by the landowner, may be deducted from the compensation for the property actually taken. Later cases [11] have

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[1] 246 App. Div. 290, 285 N. Y. Supp. 419 (1st Dept. 1936).

[2] N. Y. DECEDENT ESTATE LAW § 583.

[3] N. Y. CONST. art. I, §§ 10, 11, 12; the state as the ultimate heir is the ultimate owner.

[4] *In re* Cruger, 84 N. Y. 619, 143 N. E. 799 (1881).

[5] A mortgagee by bringing an action against the city to recover damages for the taking of the mortgaged lands affirms the title acquired by the city. Merreman v. City of N. Y., 227 N. Y. 279, 125 N. E. 500 (1919); Catskills *etc.* Ass'n v. Greene, 155 Misc. 492, 280 N. Y. Supp. 598 (1935).

[6] *In re* Nunez, 226 N. Y. 246, 123 N. E. 492 (1919).

[7] Henderson Bridge Co. v. Henderson, 173 U. S. 592, 19 Sup. Ct. 553 (1898); 20 C. J. 528.

[8] Matter of Tuthill, 36 App. Div. 492, 55 N. Y. Supp. 657 (2d Dept. 1899).

[9] People *ex rel.* Post v. City of Brooklyn, 6 Barb. 209 (N. Y. 1849).

[10] People v. Brooklyn, 4 N. Y. 419 (1851); 20 C. J. 815.

[11] Sloane v. N. Y. El. R. Co., 137 N. Y. 595, 33 N. E. 335 (1893); N. Y. CONDEMNATION LAW § 14. The reasons given are: (a) compensation must be paid in money, not benefits; (b) landowner might be compelled to pay a double share of the cost of improvement, first by a deduction from his award and

reached a contrary conclusion and the rule is settled that land actually taken must be paid for in full without reference to benefits. The assessment against land remaining after condemnation may be set off against the claim for compensation for the land condemned.

An assessment is made against the land, not against the owner, and usually title is of little consequence.[12] An assessment becomes a lien on the land against which the assessment is made.[13] It is submitted that if title to the property remaining after condemnation was in the state at the time of the assessment, the assessment would fail, not because there was an intrinsic invalidity in the assessment itself, but because it was made against a party which was exempt from assessments, except under certain conditions which were not complied with here. When the state transferred its title to petitioner, the only obstacle (ownership by state) which had prevented the assessment from becoming a valid lien on the land and had rendered the assessment invalid was removed, and the land became burdened with a lien. Although the state could have accepted the award without paying the assessment,[14] the right is personal to the state and a transfer of its interest does not entitle the transferee to the same position occupied by the state. In the instant case, the assessment for benefit was made while title was in the petitioner, not in the state as she claims; the assessment is therefore valid.[15] The exercise of the powers of assessment and eminent domain are so interlinked that the recipient of the condemnation award cannot take it without subjecting herself to the obligation of paying the assessment.[16]

It is well settled that where an assessment is irregular (but not to an extent which will render it void) and a property owner has accepted an award [17] or the benefits [18] of the improvement for which

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second by an assessment on his adjoining property; (c) there is no duty upon the city to continue the public use, the benefits accruing are thus uncertain while the loss is definite and certain.

[12] Brooklyn *etc.* Co. v. Bird, 78 Misc. 683, 138 N. Y. Supp. 826 (1912).

[13] GREATER N. Y. CHARTER § 1017; N. Y. Laws 1916, c. 602, § 7; Lewis v. Utica, 67 Barb. 459 (N. Y. 1877).

[14] *In re* Melrose Ave., 234 N. Y. 48, 136 N. E. 235 (1922); N. Y. PERS. PROP. LAW § 19.

[15] The omission to award damages to the owner of property is an objection which cannot be raised after confirmation of the assessment. The omission to make such an award cannot be properly called a substantial error in making the assessment. Notwithstanding such omission the assessment itself may be entirely regular and accurate. The petitioner is not harmed by the assessment. It is by an omission back of that and which preceded it. *In re* Cruger, 84 N. Y. 619, 143 N. E. 799 (1881).

[16] Genet v. City of Brooklyn, 99 N. Y. 296, 1 N. E. 777 (1885) (Court upheld a legislative direction setting off, against an award made to an individual for lands taken for public use, an assessment for benefit against his other lands made in the same proceedings).

[17] Where a property owner has accepted an award for the condemnation of his land, he is estopped from denying the validity of an assessment for benefits conferred upon him by the improvement. Stockton v. Newark, 58 N. J. L. 116, 32 Atl. 67 (1895).

[18] Johnston v. Hartford, 96 Conn. 142, 113 Atl. 273 (1921).

his property is assessed he is estopped from denying the validity of the assessment for benefit. It is the general rule that when the assessment is void, the property owner is not estopped from denying its validity even though he has accepted the benefits of the improvement. Cases in New York are conflicting on this point, some cases holding that the doctrine of estoppel will apply even where the assessment is void,[20] and others adhering to the general rule.[21]

B. B.

EMINENT DOMAIN—WHAT CONSTITUTES PUBLIC USE.—The Commissioner of Parks, upon authorization of the Board of Estimate and Apportionment, instituted this action to condemn certain properties adjacent to the Flushing Meadow Park to be used temporarily as a parking space for the proposed New York World's Fair and to be used thereafter as a park and playground. The owners of this land oppose the action on the ground that it is a taking of private land for private rather than public use and furthermore that there is no need for this additional land. *Held,* application to vest title to the land in the city, granted. The legislature's determination that land is necessary for public use may not be questioned by the court. The court may question whether the use is public or private in nature. Temporarily setting aside a portion of a public park to be used as a parking space in connection with a fair and later to be used as a park and playground, is a public use. *Matter of Flushing Meadow Park* (Sup. Ct. Queens), New York Law Journal, October 19, 1936.

The city of New York has the power to condemn private property for a public purpose.[1] The determination of the legislature as to the necessity for such land is not reviewable by the court.[2] The

[19] Owners of property who were specially assessed for an authorized street improvement were estopped from raising the objection that the city had not condemned the land, had not made awards to the owners and had not acquired title to the land on which the improvement was made. The court held that the owners have and enjoy the improvement and cannot justly claim to be relieved from payment of the benefits assessed against such property. Boyton v. People, 159 Ill. 553, 42 N. E. 842 (1896); Holms v. Village *etc.,* 121 Ill. 128, 13 N. E. 540 (1887) (remedy would be to sue for the awards that would have resulted from a condemnation).

[20] People v. Many, 89 Hun 138, 35 N. Y. Supp. 78 (1895).

[21] *In re* Sharpe, 56 N. Y. 257 (1874).

[1] CHARTER OF THE CITY OF NEW YORK § 970 (L. 1901, c. 466, amd. by L. 1913, c. 329).

[2] Matter of Fowler, 53 N. Y. 60 (1873); Matter of Church Street, 49 Barb. 455 (N. Y. 1867); Harris v. Thompson, 9 Barb. 350 (N. Y. 1850); People v. Smith, 21 N. Y. 595 (1860); Matter of Cooper, 28 Hun 515 (N. Y. 1883); Matter of Peter Townsend, 39 N. Y. 171 (1868); Matter of Sacket Street, 74 N. Y. 95 (1878); Matter of Boston Road, 142 App. Div. 726,