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Municipal Corporations--Right of Board of Aldermen to Change Street Numbers--When Equity Will Interfere (Martha W. Bacon, et al. v. Hon. Julius Miller, as President of the Borough of Manhattan, and One Park Avenue Corporation, N.Y.L.J., Nov. 11, 1927, at 693 (App. Div. 1st Dep't.)

St. John's Law Review

ent of the homicide and of the assault merged therein, as *e. g.*, robbery or larceny or burglary or rape."

In arriving at some conclusion it is best to divide the "felony" murders into two classes. The first, where the felony relied on is entirely different in nature from the homicide; the second, where the felony is some grade of assault and where, of necessity, the line of demarcation grows indistinct. In the first class are those cases where the inculpatory facts are susceptible of only one interpretation. Either the accused was engaged in an independent felony at the time of the killing or he did not murder at all. Here it is not required to give more than the single charge of first degree murder.[5] In the second class are those cases where the felony is some degree or grade of assault. Here the facts are susceptible of varying deductions and consequently there must be a charge of whatever form and grade of homicide comportable with the proof and indictment.[6]

The principal case falls within the second class. Here it was difficult to say where the first assault ended, and the second began, or that there were, in fact, two assaults. In such a situation it would save much trouble and expense for the state to give all six charges; for, most cases of this kind, proceeding on this theory, are reversed.[7]

MUNICIPAL CORPORATIONS—RIGHT OF BOARD OF ALDERMEN TO CHANGE STREET NUMBERS—WHEN EQUITY WILL INTERFERE.—An ordinance of the City of New York passed April 22nd, 1924, changed the name of two blocks on Fourth Avenue, Manhattan, between Thirty-second and Thirty-fourth Streets, to Park Avenue, and directed the borough president to renumber the buildings on the easterly added portion of Park Avenue. Until the ordinance directing the change was passed the street known as Park Avenue extended from Thirty-fourth Street, north, 140 feet wide and parked in the center. The number "One Park Avenue" had been allotted to the house of the plaintiff Martha W. Bacon, and had been used by her and previous owners for many years. The block front on the east side of Fourth Avenue between Thirty-second and Thirty-third Streets was acquired in 1923 for the defendant corporation, which erected thereon a large commercial structure which under the old numbering would be 461-477 Fourth Avenue. Prior to the adoption of the resolution to rename and renumber the two blocks, Fourth Avenue was a commercial street one hundred feet wide in its entire length, while Park Avenue was a residential street. Shortly after the purchase of the property by the defendant corporation, and at its instigation, a resolution was passed by the Board of Aldermen to widen the street on which its property fronted and it was subsequently physically widened so as to bring the east curb in line with the east curb of Park Avenue north of Thirty-fourth Street. This action was brought by the plaintiff to have the ordinance passed April 22, 1924, renam-

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[5] People *v.* Schleiman, 197 N. Y. 383, 90 N. E. 950 (1910).

[6] People *v.* Moran, *supra;* People *v.* Van Norman, 231 N. Y. 454, 132 N. E. 147 (1921); People *v.* Koerber, 244 N. Y. 147, 155 N. E. 79 (1927).

[7] People *v.* Huter, 184 N. Y. 237, 177 N. E. 6 (1906); People *v.* Spohr, *supra;* People *v.* Van Norman, *supra.*

ing and renumbering Fourth Avenue between Thirty-second and Thirty-fourth Streets declared invalid and the proceedings thereunder enjoined. After a decision for the defendant in the trial court and pending this appeal, the borough president assigned to the property of the defendant the number "One Park Avenue" and renumbered the houses on the east side of Park Avenue between Thirty-fourth and Thirty-fifth streets, assigning to the plaintiff's property the number five. On appeal the judgment was reversed. Martha W. Bacon, *et al., v.* Hon. Julius Miller, as President of the Borough of Manhattan, and One Park Avenue Corporation, N. Y. L. J., Nov. 11, 1927, at 693 (App. Div. 1st Dep't.).

It cannot be denied that the board of aldermen and the borough president acted under adequate statutory authority in the renaming and renumbering of the street.[1] But the authority to act for the public in such matters, conferred by the people upon public officials, who are the servants of the people, carries with it the duty of acting in good faith.[2] While a municipality under the police power has broad and comprehensive rights with reference to many matters, those rights are based on the theory that the act is a benefit to the public or is a public necessity. In the instant case no attempt was made to show either necessity or benefit to the community. The courts have been careful not to allow the authority of municipal corporations to be used to oppress the inhabitants within their jurisdictions, and for injurious abuses of power and invasions of the legal rights of persons subject to municipal control there is a remedy in equity.[3] This intervention of equity is demanded in the case of an arbitrary attempt to take away one man's property and give it to another where the community does not benefit from and does not need such action, and courts of equity will give relief in such a situation.[4]

NUISANCE—WHAT CONSTITUTES—RIGHTS OF INFANT TRESPASSER. —Defendant had been dumping its waste hemp and refuse on the property of a third party without permission. Its practise had been to set this waste afire but the refuse was of such nature that the fire smouldered underneath without the surface indicating it. The dump was about three hundred feet from the nearest street and not upon or so near a street that a pedestrian would be injured by coming in contact with it. A path which skirted the hole about five feet from its edge had been used by the public for many years. Plaintiff, an infant of four years, while walking over the dump, and not using the path, was burned by the hidden fire. He instituted an action against defendant on the theory that the dump was a nuisance. *Held,* plaintiff was a trespasser on the property and the dump being

[1] Greater New York Charter, § 50 (chapter 466 of the Laws of 1901), as amended by chapter 592 of the Laws of 1916; Greater New York Charter, § 40; Code of Ordinances of the City of New York, Ch. 23, art. X, § 111.

[2] Anderson *v.* The Lord Mayor and Corporation of Dublin, L. R., Ireland, vol. 15, 1885-1886, p. 410.

[3] Dillon, Municipal Corporations, 5th ed., vol. 4, § 1573, p. 2751.

[4] N. Y. L. J., Nov. 16, 1927, at p. 776.