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Property—Eminent Domain—Contractual Exemption

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time."[58] Absent special circumstances, it does not seem from either the Federal or State definitions that the mere taking of title is such a limitation on the free use and enjoyment of property as to constitute a taking which requires compensation.[59] The holding of this case, that the unsuspected loss of legal title to land without loss of possession does not require compensation in the form of the interest on the principal obligation except to the extent permitted by statute, is consistent with this conclusion. If the claimant has knowledge, he may file a claim and interest runs from the time of such filing. Section 19 seems to go a step further than is constitutionally required, and gives interest on a claim for six months where title is transferred to the State under the Highway Law, even if claimant has no knowledge of the appropriation.

EMINENT DOMAIN—CONTRACTUAL EXEMPTION

In *Society of the New York Hospital v. Johnson*,[60] a bill for injunctive relief was against the State Superintendent of Public Works. The Society of the New York Hospital argued that it had a contractual exemption from the exercise of eminent domain upon its hospital lands, as manifested by special statute of 1927, which had neither been expressly nor impliedly repealed.[61] The Superintendent, while conceding the exemption rested upon contract and there had been no express repeal, contended that the simultaneous enactment of an amendment to the charter of the City of White Plains, prohibiting the taking of the Society's hospital lands,[62] indicated that the statute upon which

58. 331 U.S. 745, 748 (1957). U.S. CONST. amend. V; "No person shall be . . . deprived of . . . property without due process of law; nor shall private property be taken for public use, without just compensation." The provision for just compensation is applicable to the states through the 14th Amendment; Chicago B. & Q.R. Co. v. Chicago, 166 U.S. 226 (1897).

59. "May we say that . . . what he does not know does not hurt him?" from dissenting opinion, *supra* note 51 at 746. The dissent suggests that a condemnee may be hurt: (1) he may unknowingly improve the land, (2) he may be a paying tenant of the State whether he likes it or not, (3) he may be deprived of time to seek new premises. Also, the condemnee may be subject to damages if he unknowingly makes a contract to sell land the title to which is in the State.

60. 5 N.Y.2d 102, 180 N.Y.S.2d 287 (1958).

61. N.Y. SESS. LAWS 1927, c. 659, § 1 provides;

> . . . No street or avenue or road shall hereafter be laid out or opened through or upon any of the lands and premises in the City of White Plains, lying between Mamaroneck Avenue, Bloomingdale Road, Westchester Avenue, North Street, The St. Agnes Home, Land of Daniel Maloney and the Burke Foundation, and none of said land shall be taken for any use whenever and so long as the same shall be owned or occupied for hospital purposes by the Society of the New York Hospital, provided however, that the said The Society of The New York Hospital shall dedicate, without claim or award for damages, for street purposes, the following parcels of land, and shall, in addition thereto, provide one hundred and fifty thousand dollars for the paving and regulating of the street described in said parcels one and two. . . .

62. N.Y. SESS. LAWS 1927, c. 653, provided an amendment to the Charter of White Plains in the following substance:

> It shall be unlawful to open any streets through the grounds belonging to The Society of The New York Hospital, now occupied by Bloomingdale Hospital as long as the same is owned or occupied for hospital purposes.

the Society relied was to operate as a bar against the City only. In the alternative, the Superintendent argued, any applicability of the 1927 statute to the exercise of State power was ended by subsequent amendments to the New York State Highway Law, particularly Sections 30 and 340-b, which empower him to acquire property, ". . . notwithstanding any inconsistent provision of . . . any other law, general or special. . . ."[63]

The Court of Appeals applied the established principle of strict construction of statutes delegating the exercise of the power of eminent domain,[64] and construed the language relied upon by the Superintendent as directing the manner in which the Superintendent's power was to be exercised.[65] Although, the Court agreed that the power of eminent domain is an attribute of sovereignty,[66] which cannot be surrendered or permanently alienated,[67] it held that the 1927 Legislature's contract prohibiting the exercise of eminent domain with respect to the hospital's lands was applicable, as a matter of construction, to State authorities, and though the contract could be abrogated at the will of the legislature, such abrogation is effected only by clear language.[68] Thus, the Court read Section 340-b to mean that notwithstanding any inconsistent present or prior law, general or special, such lands as the Superintendent is empowered to acquire by the exercise of eminent domain, shall be acquired pursuant to the present procedural provisions of the Highway Law.

Although no impairment of contract is occasioned by an exercise of eminent domain, with compensation, upon lands previously exempted by legislative contract,[69] some stability and integrity of such contracts is afforded through requiring a clear showing of present legislative design to avoid the contract of an earlier legislature. This principle seems especially appropriate in the instant situation since the legislative direction to the Superintendent is for a route passing ". . . through *or northerly of*. . . ."[70], the City of White

63. N.Y. HIGHWAY LAW § 30(15a), provides that notwithstanding any other provision of the section, the Superintendant of Public Works shall have the power to acquire by grant or purchase, in the name of the People of the State of New York, any property he deems necessary for the purposes provided for in the section. The section then outlines a map-filing procedure for the exercise of the Superintendant's power. N.Y. HIGHWAY LAW § 340-b(3), provides:

> Notwithstanding any inconsistent provisions of this chapter or any other law, general or special, any and all property which the Superintendant of Public Works deems necessary for the construction, reconstruction, and maintenance of interstate highways and bridges thereon shall be acquired pursuant to any section or sections of this chapter applicable to the acquisition of land or interests there in, and for the settlement of claims for damage resulting from the work of constructing, reconstructing and maintaining such interstate highways.

64. Ontario Knitting Co. v. New York, 205 N.Y. 409, 98 N.E. 909 (1912).
65. *Supra* note 60 at 108, 180 N.Y.S.2d 287, 291 (1958).
66. Kahlen v. State of New York, 223 N.Y. 383, 119 N.E. 883 (1918).
67. People v. Adirondack Ry. Co., 160 N.Y. 225, 54 N.E. 689, *aff'd* 176 U.S. 335 (1900); Pennsylvania Hospital v. Philadelphia, 245 U.S. 20.
68. People v. Adirondack Ry. Co., *supra* note 67.
69. State of Georgia v. City of Chattanooga, 264 U.S. 472 (1923).
70. Italics supplied.

Plains.[71] There is no indication that a route which would not require the narrow strip of hospital lands, here in question, would be less practical, or unreasonably inexpedient from the State's point of view. Again since a "short cut" procedure for exercising the Superintendent's power, through map-filing condemnation, is authorized by the amended highway statute,[72] the Court's construction of the "notwithstanding" language of section 340-b,[73] seems not only grammatically correct, but also in harmony with a logical construction in context. Similarly, such a construction attributes to the legislature the virtue of reasonableness, an attribution often neglected through the use of rigid rules of statutory construction.

IMPLIED EASEMENT

The plaintiff conveyed land to the defendant, describing the westerly boundary as running "along the east boundary" of plaintiff's private road. An injunction to prevent the defendant's use of the road was granted. Affirming the Appellate Division and upholding the injunction, the Court of Appeals,[74] in a unanimous decision, found in *Tarolli v. Westvale Genesee, Inc.*, that as a matter of law no easement was to be implied from the description and other relevant circumstances.

An easement is an interest in land which entitles the owner to a limited use of the land of another. The law favors formality in the conveyance of an easement although express words are not necessary so long as the intention to give an easement is manifest.[75] Where the intention is not manifest by the language of the conveyance it may be possible—although the law does not favor it—to imply an easement where there has been an original unity of ownership in a common grantor of the parcels retained and conveyed,[76] and circumstances justify the inference that there was an intent to grant an easement in the portion retained in connection with a conveyance of a parcel of the whole.[77] To determine intent the court will take into consideration the terms of the conveyance itself and the circumstances attending the transaction.[78] Where the deed describes the land as bounded by a road, the fee of which is vested in the grantor, frequently the grantee by inference of an intent

71. N.Y. HIGHWAY LAW, § 34-a.
72. N.Y. HIGHWAY LAW, § 30.
73. *Supra* note 63.
74. Tarolli v. Westvale Genesee, Inc., 6 A.D.2d 848, 175 N.Y.S.2d 521 (4th Dep't 1958), *affirming* Sup. Ct., Onondaga County, in a 3-2 decision. The dissenting opinion contains a summary of the proof. *Aff'd* 6 N.Y.2d 32, 187 N.Y.S.2d 762 (1959).
75. Rubel Bros. v. Dumont Coal & Ice Co., 111 Misc. 658, 182 N.Y. Supp. 204, (Sup. Ct. 1920), *rev'd on other grounds* 200 App. Div. 135, 192 N.Y.S. 705 (2d Dep't 1922), *dismissal of appeal denied* 233 N.Y. 618, 135 N.E. 942 (1922).
76. Holtz Amusement Co. v. Schorr, 122 Misc. 712, 204 N.Y. Supp. 733 (Sup. Ct. 1924).
77. Miller v. Edmore Homes Corp., 285 App. Div. 837, 137 N.Y.S.2d 324 (2d Dep't 1955), 308 N.Y. 911, 127 N.E.2d 74 (1955).
78. Sabatino v. Vacarelli, 264 App. Div. 742, 35 N.Y.S.2d 725 (2d Dep't 1942); Wilkinson v. Nassau Shores, 1 Misc. 2d 917, 86 N.Y.S.2d 603 (Sup. Ct. 1949), *aff'd* 278 App. Div. 970, 105 N.Y.S.2d 984, *reargued and appeal denied* 279 App. Div. 591, 107 N.Y.S.2d 559 (2d Dep't 1951), *aff'd* 304 N.Y. 614, 107 N.E.2d 93 (1952).