

1-1-1957

Taxation—Statute of Limitations—Tax Lien Foreclosures

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Recommended Citation

June A. Murray, *Taxation—Statute of Limitations—Tax Lien Foreclosures*, 6 Buff. L. Rev. 221 (1957).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol6/iss2/62>

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Thus, New York City property owners petitioning for review of tax assessments are not subject to the four year limitation within which to bring their proceeding to hearing, as are their brethren elsewhere in the state. It is the opinion of this writer that such a result is not to be desired. The statutory section in question is in the nature of a statute of limitations, providing as it does that proceedings thus deemed abandoned shall be dismissed and the order of dismissal shall constitute a final adjudication of all issues raised in the proceeding. Therefore, it appears to be inequitable to allow certain property owners to escape such effects solely because of their geographical location, and, furthermore, it appears that the statute would be most efficacious in the New York City area where a large amount of such litigation is likely to arise. Therefore, conceding the decision in the instant case to be legally sound, it is submitted that the legislature should further amend the statute to give it unquestionable state-wide effect.

Statute of Limitations—Tax Lien Foreclosures

The question of the best method for dealing with foreclosures of delinquent taxes is within the discretion of the legislature.²¹ The efficient administration of taxes may necessitate providing different periods of limitations for the duration of a tax lien for one area than may be suitable for another area.²² There is specific provision in the Civil Practice Act to encompass the problem of statutorily imposed limitations, for the Act provides that the general sections of the Act shall contrroll *unless* a different limitation is set up by law.²³ And when the legislative will is declared, as in the establishment of a statutory limitation, the courts, in judicially construing it, should give full meaning to the legislative enactment — neither limiting nor extending the plain language of the statute.²⁴

In *L. K. Land Corporation v. Gordon*,²⁵ the Court, in construing section 172 of the New York City Charter which provided that all taxes shall become liens on real estate and "shall remain such liens until paid" held that it meant exactly what it said — an action to foreclose a lien, may be brought at any time; the existence of the lien is perpetual. The general limitation periods

21. *Cf. Gauthier v. Ditman*, 204 N. Y. 20, 97 N. E. 464 (1912).

22. *Cahen v. Boyland*, 1 N. Y. 2d 8, 132 N. E. 2d 88 (1956).

23. N. Y. CIV. PRAC. ACT §10.

24. *Matter of Trustees of N. Y. & Brooklyn Bridges*, 72 N. Y. 527 (1878).

25. 1 N. Y. 2d 465, 136 N. E. 2d 500 (1956). Suit was instituted eight years after accrual of the cause of action to a plaintiff who purchased the liens from the city pursuant to section 415 (1)-23.0 of the ADMINISTRATION CODE OF THE CITY OF NEW YORK.

governing actions to foreclose mortgages or enforcing a liability created by statute cannot control in the presence of a specific declaration.²⁶

The Court overruled the Appellate Division's²⁷ determination that the above mentioned statutes of limitation affect only the remedy, not the right, and therefore, can be applied without conflicting with the declaration of a perpetual lien. The Court refused to go along with the somewhat artificial "right-persists-remedy-gone" analysis which is generally used to uphold revival legislation²⁸ feeling that this analysis has no place where there is an attempt to bar the primary means of enforcement, specifically made perpetual, relegating the lienor to inferior remedies.

It is obvious that it was intended to make these liens perpetual and an attempt to construe the section involved as giving merely a right, leaving the remedy controlled by general statutes of limitation, involves artificial reasoning which has no place in our modern tax structures.

TORTS

False Arrest

The offense of speeding in a vehicle is labeled by statute a "traffic violation" rather than a crime.¹ The purpose of legislating such designation was "to establish a new type crime," without the stigma of criminality attached.² Yet, such offense, by statute, is subject to similar jurisdiction accorded traditional misdemeanors.³

In the case of *Squadrito v. Griebisch*,⁴ plaintiff brought a false arrest action against defendant state trooper, who arrested him while speeding and took him to a justice of the peace without informing him as to why he was apprehended. (He was duly tried, found guilty and fined for speeding). The Court of Appeals held (4-3), his complaint should be dismissed. In so holding, the majority rea-

26. In *County of Erie vs Lowenstein*, 235 N. Y. 458, 139 N. E. 573 (1923), a statute similar to the one involved here was held to give the liens involved perpetual existence.

27. 1 A. D. 2d 976, 150 N. Y. S. 2d 914 (2d Dep't 1955).

28. *Campbell v. Holt*, 115 U. S. 620 (1885).

1. N. Y. VEHICLE AND TRAFFIC LAW §2 (29). Courts and judicial officers heretofore exercising jurisdiction over such acts and violations as misdemeanors or otherwise shall continue to exercise jurisdiction over traffic infractions as herein defined, and for such purpose such acts and violations shall be deemed misdemeanors and all provisions of law relating to misdemeanors . . . except as herein otherwise expressly provided shall apply to traffic infractions, except however, that no jury trial shall be allowed for traffic infractions.

2. PUBLIC PAPERS OF GOV. HERBERT LEHMAN, 345 (1934).

3. See note 1, *supra*.

4. 1 N. Y. 2d. 471, 136 N. E. 2d. 504 (1956).