**Buffalo Law Review**

Volume 7 | Number 1 Article 87

10-1-1957

# Municipal Corporations—Covenants Running with the Land—Town Law

Richard O. Robinson

clear that the only basis shown for the classification was that of locality,[37] in view of which the constitution must be said to have been directly violated.[38]

### Covenants Running With The Land—Town Law

An action involving the Town of Hempstead concerned the right of the town to accept land for park purposes subject to a covenant running with the land that the park should be for the exclusive use of the surrounding landowners. The action arose upon an attempt by the landowners to restrain the town from extending the park district into another area in violation of the restrictive covenant running with the land. The lower court[39] granted the injunction, interpreting section 64, subdivision 8, of the Town Law, which allows towns to accept grants of property "for any public use upon such terms and conditions as may be prescribed by the grantor . . .," to allow any restrictions to be placed on a gift which were not violative of law or public policy. This reading, which was rejected by the Court of Appeals,[40] would be to view the phrase beginning with the word "upon" as being in the alternative to the words "public use" rather than complementary to them, a result which has been implicitly rejected in the cases.[41]

The Court of Appeals[42] rested its decision on a broader ground, in dismissing the complaint, since the covenant would in effect abrogate the statutory power of the town to enlarge its park districts[43] or to sell the property and apply the proceeds toward the purchase of other park property.[44] Such an agreement is itself beyond the power of the town to ratify.

In this, the Court is following the majority view that a municipality may not contract away, or make contracts which will embarrass or hinder those powers granted to it by the state, unless the legislature has so provided.[45] Generally the reason for the rule is stated simply that such an act is ultra vires,[46] while the United States Supreme Court has laid it to the general proposition that municipal

37. 3 N.Y.2d at 338, 165 N.Y.S.2d at 451.
38. See Stapleton v. Pickney, 393 N.Y. 330, 57 N.E.2d (1944).
39. Atlantic Beach Property Owners' Association v. Town of Hempstead, 142 N.Y.S.2d 496 (Sup. Ct. 1955).
40. Atlantic Beach Property Owners' Association v. Town of Hempstead, 3 N.Y.2d 434, 165 N.Y.S.2d 737 (1957).
41. Parfitt v. Furguson, 159 N.Y. 111, 53 N.E. 707 (1899); Belden v. City of Niagara Falls, 230 App. Div. 601, 259 N.Y.Supp. 510 (4th Dep't 1930).
42. See note 40 *supra*.
43. N.Y. TOWN LAW §§190-194.
44. *Id.* §198.
45. Gardner v. City of Dallas, 81 F.2d 425 (5th Cir. 1936); Wills v. Los Angeles, 209 Cal. 448, 287 Pac. 962 (1930).
46. Belden v. City of Niagara Falls, *supra* note 44.

authorities can do nothing which amounts in effect to the alienation of a substantial right of the public.[47]

While in the instant case it appeared that the assessments on the property of those for whose exclusive use the property was to be maintained were well equal to the maintenance of the property, the rule advanced by the landowners could by a very slight variation in the situation result in a palpable injustice to the general taxpaying population of the town.

## REAL PROPERTY

### Wrongful Dispossession Of Stautory Sub-Tenant — No Damages

In *Drinkhouse v. Parka Corporation*[1] the Court held that a statutory tenant did not have a cause of action for damages against a landlord who locked him out of his apartment but, after a court injunction, offered to allow him to return if he stipulated to abide by the ultimate decision on appeal of such injunction.

In 1951 plaintiff was a subtenant of the original tenant of defendant. When the original tenant terminated his tenancy with defendant in June, 1951, defendant locked plaintiff out of the apartment. In January, 1952, a declaratory judgment with injunctive relief was granted[2] declaring plaintiff to be a statutory tenant and entitled to the protection of the Emergency Housing Rent Control Law. Defendant offered to allow plaintiff to return if he stipulated to abide by the ultimate decision on appeal of such injunction. Plaintiff refused and in a subsequent action the Court held that defendant did not violate injunction and was not in contempt.[3] Plaintiff then brought this action for damages arising during the period of time from the original lockout in June, 1951, to the final repossession by plaintiff in July, 1953. The complaint stated two causes of action, one for damages arising out of the violation of the Emergency Housing Rent Control Law and the other for treble damages in accordance with section 535 of the Real Property Law. The Court held that since plaintiff did not state any valid causes of action defendant's motion to dismiss under rules 112 and 113 of the Rules of Civil Practice should have been granted.

Plaintiff is a statutory tenant and, therefore, is entitled only to that relief

47. Wabash Ry. Co. v. Defiance, 167 U.S. 88 (1896).

1. 3 N.Y.2d 82, 164 N.Y.S.2d 1 (1957).
2. Parka Corp. v. Drinkhouse, 281 App. Div. 858, 119 N.Y.S.2d 479 (1st Dep't 1953), *aff'd*, 305 N.Y. 885, 114 N.E.2d 430 (1953).
3. Parka Corp. v. Drinkhouse, 282 App. Div. 676, 122 N.Y.S.2d 814 (1st Dep't 1953).