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## Real Property—Wrongful Dispossession of Statutory Sub-Tenant—No Damages

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authorities can do nothing which amounts in effect to the alienation of a substantial right of the public.<sup>47</sup>

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 Statutory Sub-Tenant — No Damages

In *Drinkhouse v. Parka Corporation*<sup>1</sup> 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<sup>2</sup> 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.<sup>3</sup> 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

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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).

which certain statutes may prescribe.<sup>4</sup> Under circumstances similar to those presented above, the Emergency Housing Rent Control Law provides injunctive relief but does not make provision for damages.<sup>5</sup> Thus, the Court held that plaintiff did not have a legal basis for his first cause of action. Section 535 of the Real Property Law provides relief of treble damages for forcible entry or detainer. "Forcible" has been defined as meaning with violence or a threat giving rise to fear of imminent personal injury.<sup>6</sup> No such forcible entry or detainer was correctly alleged in this case. The Court did not decide whether a statutory tenant would come within the protection of section 535, but held that even if one would, plaintiff did not state a cause of action within it.

It appears that the Court has correctly applied the law. Nonetheless, plaintiff would be justified in complaining of the result for he obviously suffered some damage. However, since his only remedy is a statutory one, his complaint would be correctly addressed to the Legislature.<sup>7</sup>

### Breach Of Covenant Of Quiet Enjoyment

The covenant of quiet enjoyment has as its primary purpose the protection of the lessee from lawful claims of third persons. It also is a promise by the lessor that he himself will not interfere with the lessee's enjoyment of the property.<sup>8</sup> However, interference with the lessee's possession under the power of eminent domain does not constitute a breach of the lessor's covenant of quiet enjoyment for the reason that parties in making the covenant were contemplating interference by virtue of existing rights.<sup>9</sup> A covenant against eminent domain would be a covenant not against an existing right but against a naked possibility.<sup>10</sup> On the other hand if the lessor's act brought about the interference by the public police power, it has been held that this is a breach of a covenant of quiet enjoyment since this is interference by the lessor himself.<sup>11</sup>

In *Dolman v. United States Trust Company of New York*,<sup>12</sup> the lessor-defendant, upon the initiative of the city agreed to give the city an option at a certain price on any award to which defendant became entitled upon condemna-

4. *Rosner v. Textile Binding and Trimming Co.*, 300 N.Y. 319, 90 N.E.2d 481 (1950); *David v. Fayman*, 298 N.Y. 669, 82 N.E.2d 404 (1948).

5. N.Y. EMERGENCY HOUSING RENT CONTROL LAW §8591.

6. *Fults v. Munro*, 202 N.Y. 34, 95 N.E. 23 (1911).

7. *Marony v. Applegate*, 266 App. Div. 412, 42 N.Y.S.2d 768 (1st Dep't 1943).

8. *Mayor of New York v. Mabie*, 3 Kern. 151 (N.Y. 1885); *Sears Roebuck & Co. v. 9th-31 Street Corporation*, 274 N.Y. 388, 9 N.E.2d 20 (1937), *motion for reargument denied*, 274 N.Y. 636, 10 N.E.2d 589 (1937).

9. *Kip v. New York & H.R.Co.*, 22 Sickels 227 (N.Y. 1876); *Corrigan v. Chicago*, 144 Ill. 537, 33 N.E. 746 (1893); *Weeks v. Grace*, 194 Mass. 296, 80 N.E. 220 (1907).

10. *Ellis v. Welch*, 6 Mass. 246 (1810).

11. *Lindman v. May*, 111 App. Div. 457, 97 N.Y. Supp. 821 (2d Dep't 1906).

12. 2 N.Y.2d 110, 157 N.Y.S.2d 537 (1956).