The Law Sees Some Light

By Lloyd Buchman

"The report of the (New York City housing) authority shows that there are 64,829 old-law tenements in the city, which house at least 2,000,000 people. On that date (1936) 50,441 buildings of that type had violations pending against them. In 1936 there were 513,047 old-law tenement apartments and 907,554 new-law."

This quotation is not from a Georgist analysis of the under-developed status of metropolitan realty, nor from the report of a welfare agency. It is an extract from the opinion of Mr. Justice Glennon of the Appellate Division of the New York State Supreme Court in the case of Central Savings Bank, et al., against the City of New York, et al., decided in June 1938. The Court in that case was asked to pass upon the constitutionality of a 1937 amendment to the Multiple Dwelling Law known as the "Murray Prior Lien Law," which authorizes the city to make certain repairs upon old-law tenements and assess the cost as a lien prior to existing mortgages and other encumbrances upon the properties improved.

The social significance of such a situation may well be pondered. In the greatest city in the world, in the midst of material marvels and cultural benefits of all sorts, and with a variety of social services made possible only by the cooperative efforts of seven million people, land speculation is so rampant that in 1936 more than 35% of the total number of tenement apartments were old-law, and of these old-law tenements over 77% had violations pending against them; and citizens of this greatest city live in these tenements.

In the case cited, plaintiff mortgagees and owners of the tenements involved raised the familiar cry that, to quote the Court, "the act is unconstitutional upon the theory that it impairs the obligation of mortgage contracts." In meeting this objection the Court quoted from the opinion of Mr. Justice Lehman in the case of Adamec against Post, 273 N. Y. 250, as follows:

> "The imposition of the cost of the required alterations as a condition of the continued use of antiquated buildings for multiple dwellings may cause hardship to the plaintiff and other owners of 'old law tenements' but, in proper case, the Legislature has the power to enact provisions reasonably calculated to promote the common good even though the result be hardship to the individual. 'It is not the hardship of the individual case that determines the question, but rather the general scope and effect of the legislation as an exercise of the police power in protecting health and promoting the welfare of the community at large.' "

Another authority cited was the United States Supreme Court case of Lawton against Steele, 152 U. S. 133, from which the following is an extract:

> "It is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance."

As noted in the opinion, the Prior Lien Law was enacted when "it appeared that many owners, forced to comply with the recent (previous) requirements of the Multiple Dwelling Law (concerning sanitary and safety regulations), decided to vacate their buildings instead. Tenants in the so-called low income class found difficulty in locating other apartments."

Georgists may well be encouraged not by the effect of this decision, but by its spirit and manifest intent. Adverting once more to the language of the case, "while the provisions of the act, as amended, may work a hardship on some property owners and mortgagees, still we **must look to the best interests of the citizenry of the State rather than the individual.**"

Who knows but what ere long our courts, recognizing the truth of the situation described in New York Housing Authority against Muller, 270 N. Y. 333:

> "The menace of the slums in New York city has been long recognized as serious enough to warrant public action. The Session Laws for nearly seventy years past are sprinkled with acts applying the **taxing power** and the police power in attempts to cure or check it. The slums still stand. The menace still exists,"

may face the opportunity to uphold action taken to abolish slums completely and to declare constitutional and within the sovereign rights of the people, steps to take for the benefit of all, that which belongs to all, the full rental value of natural resources! Then will we not need laws to remedy slum conditions: there will be no slums.