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ing, the court decided the case of *Crowe* v. *Bixby*,[19] which case is the basis of this discussion. Every other case cited in *Crowe* v. *Bixby* held the landlord liable; every one involved a common stairway or an elevator retained in the control of the landlord; every one was out of point.[20] Nowhere did the court see the distinction between premises in the control of the landlord and those in the control of the tenant, while occupied with making a distinction which hardly exists elsewhere.

In Missouri,[21] it was recognized in a case in which the point was not involved, but when the question did arise on two subsequent occasions the court failed to apply this distinction.[22]

An Illinois case has cited *Miles* v. *Janvrin,* and recognized the exception of the covenant to keep safe, but in that case there was no such covenant.[23]

The trend of the law seems to be to find some way to hold the landlord liable, but as yet no well reasoned case has found a way to this end. The Massachusetts cases are not the sort to lure other courts from settled principles of law, for none of them attempts to reason or to review authorities. They simply cut the Gordian Knot and decide in favor of the tenant.

B. C.

BUILDING LINES UNDER THE POLICE POWER.—Recent legislation in many States in regard to zones, building restrictions and building lines has made more important the proper interpretation to be given to such statutes. A building line is a restriction under the authority of a statute or ordinance whereby an owner of property fronting on a street is prohibited from building on a certain portion of that property adjacent to the street.[1] The usual type of statute granting the power to establish building lines provides for compensation to the land owner, and classifies the restriction under the power of eminent domain,[2] and this is the interpretation customarily given. More recently, however, statutes have been enacted with similar provisions, but making no mention as to the right of the property owner to compensation.[3] It is to this class of statutes that this note is directed.

The authorities are practically uniform in declaring that the

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[19] *Supra.*

[20] The cases cited were: Looney *v.* McLean, *supra;* Wilcox *v.* Zane, *supra;* Nash *v.* Webber, *supra;* Shea *v.* McElvoy, *supra;* Crudo *v.* Milton, *supra;* Miles *v.* Janvrin, *supra;* Fiorntino *v.* Mason, *supra.*

[21] Dailey *v.* Vogl, 187 Mo. App. 261, 173 S. W. 707.

[22] Murphy *v.* Dee, 190 Mo. App. 261, 175 S. W. 287; McBride *v.* Gurney (Mo.), 185 S. W. 735.

[23] Cromwell *v.* Allen, 151 Ill. App. 404.

[1] City of St. Louis *v.* Hill, 116 Mo. 527, 22 S. W. 861, 21 L. R. A. 226.

[2] State *v.* Houghton (Minn.), 176 N. W. 159.

[3] Town of Windsor *v.* Whitney (Conn.), 111 Atl. 354; City of St. Louis *v.* Hill, *supra;* Eubank *v.* City of Richmond, 226 U. S. 137.

establishment of a building line is a "taking of property" in order to bring it within the interpretation of the eminent domain rule.[4] Discussing this proposition, it has been said:

> "On the question what constitutes a 'taking of property' within the meaning of a constitutional provision as to compensation, it may be said that modern decisions strongly tend to the doctrine that a destruction of property rights is a taking of property although there may be no dispossession of any physical object of either real or personal property." [5]

According to the definition of eminent domain, as laid down by Mr. Lewis, the taking is "for the purpose of promoting the general welfare".[6] Therefore, the question arises, is the establishment of a building line for the public use and does it promote the general welfare? This has been answered in the affirmative in New York, where it was held that these building lines were for a public use, entitling the public to the easement of light and air within the building lines,[7] and this appears to be a reasonable view. Aside from this actual public user, the statutes prescribing building restrictions for purposes purely aesthetic have been sustained under the power of eminent domain.[8] Of course an essential to the proper exercise of the power of eminent domain is the right of the land owner to compensation.[9] Where no compensation has been granted or provided for in the establishment of building lines, the statutes have been held unconstitutional where they have been interrupted as an exercise of the power of eminent domain.[10] But where compensation has been awarded, the power to establish building restrictions has generally been held to be constitutional as under eminent domain.[11]

The police power has been a favorite mode of attempting to justify the constitutionality of building line statutes where no compensation was provided for. Police power has been generally extended to include the protection of the health, morals, safety, and general welfare of the public.[12] Under the exercise of this power, zoning laws have been upheld,[13] though all of the

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[4] 1 LEWIS, EMINENT DOMAIN, 2nd. ed., § 144a.
[5] Note, 18 L. R. A. 166.
[6] 1 LEWIS, EMINENT DOMAIN, 2nd. ed., § 144a.
[7] *In re* City of New York, 68 N. Y. Supp. 196; and likewise in Minnesota, see State *v.* Houghton, *supra*, where a restricted residential district was sustained.
[8] Attorney General *v.* Williams, 174 Mass. 476, 55 N. E. 77; Parker *v.* Commonwealth, 178 Mass. 199, 59 N. E. 634.
[9] Fruth *v.* Board of Affairs, 75 W. Va. 456, 84 S. E. 105; ELLIOTT, ROADS AND STREETS, 2nd. ed., p. 247.
[10] People *v.* Calder, 85 N. Y. Supp. 1015; Fruth *v.* Board of Affairs, *supra.*
[11] Attorney General *v.* Williams, *supra;* State *v.* Houghton, *supra.*
[12] People *v.* City of Chicago, 261 Ill. 16, 103 N. E. 609.
[13] Ex parte Quong Wo, 161 Cal. 220, 118 Pac. 714; Hadacheck *v.* Sebastian, 239 U. S. 394.

decisions on this point have been based on the particular facts in the cases, where the operation of the statutes acted as a protection to the health, morals, or safety of the public. But in no instance has a court upheld the exercise of the police power for aesthetic purposes alone,[14] and the same doctrine has been applied to building lines.[15] The police power can be properly used only in a reasonable manner, without improper discriminations, and without denying due process of law.[16]

In *Town of Windsor* v. *Whitney*,[17] the Connecticut court recently held that such a statute, granting power to the town to create a town plan commission and to establish building lines, which made no provision for compensation, was valid as an exercise of the police power. The importance of this decision is apparent when it is appreciated that this is the first case to come directly out with the ruling that a building line comes under the police power—and in view of its moment, it is well to look at the soundness of the reasoning of the case, and at the facts surrounding the particular statute. The basis for the decision was that the existence of a building line directly affected the health, safety, and morals of the community; and there is a suggestion in the opinion that the aesthetic feature was an additional ground for the holding. In a brilliant dissenting opinion, Mr. Justice Gager denied the propriety of establishing a building line under the police power, and insisted that such restrictions could come only under the power of eminent domain; and that in the absence of compensation being provided for, the statute was unconstitutional. In this position, he is directly supported by the Supreme Court of the United States,[18] where a similar statute was held unconstitutional for the same reasons, the court stating: "It is hard to understand how public comfort or convenience, much less public health, can be promoted" by a building line. In this case, the holding of the Virginia Court of Appeals was reversed, the State court having decided that a building line affected the public health, morals, and safety.[19]

In *Town of Windsor* v. *Whitney*,[20] the court apparently overlooked an important fact in relation to the interpretation of the particular statute, which again is brought out in the dissenting opinion. The General Assembly, during one session, passed the following statutes: first, the Special Law affecting the Town of Windsor, providing for the establishment of building lines, but

[14] 2 DILLON, MUNICIPAL CORPORATIONS, 5th. ed., § 695; Fruth *v.* Board of Affairs, *supra;* People *v.* City of Chicago, *supra.*

[15] City of St. Louis *v.* Hill, *supra;* City of Buffalo *v.* Kellner, 153 N. Y. Supp. 472; Farist Steel Co. *v.* Bridgeport, 60 Conn. 278, 22 Atl. 561, 13 L. R. A. 590.

[16] *In re* City of New York, *supra.*

[17] *Supra.*

[18] Eubank *v.* City of Richmond, *supra.*

[19] Eubank *v.* City of Richmond, 110 Va. 749, 67 S. E. 376.

[20] *Supra.*

making no mention of compensation;[21] second, a similar Special Law in relation to the Town of Bloomfield;[22] third, a similar statute in relation to the Town of Seymour, but here providing for compensation;[23] fourth, and but shortly after, a general act authorizing any town to establish a town plan commission, with power to adopt building lines, and providing for a method of ascertaining the benefits and damages by way of compensation.[24] These various statutes are obviously *in pari materia,* which has been defined by Hosmer, C. J., as follows:

> "Statutes are *in pari materia,* which relate to the same person or thing, or to the same class of persons or things. * * * It is a phrase applicable to public statutes or general laws, made at different times, and in reference to the same subject." [25]

When there is thus a subsequent general statute including the class covered by a prior statute, and the subsequent statute grants the same powers as included in the prior statute, the subsequent statute impliedly repeals the inconsistent portions of the prior statute, and will not be held to except the class embraced in the former act from the operation of the latter.[26] This rule applies with peculiar force to statutes passed at the same session of the legislature, and it is presumed that such acts are to be imbued with the same spirit and actuated by the same policy, and they are to be construed together as parts of the same act.[27] Consequently, on the basis of this interpretation of the enabling statute, the General Assembly intended to provide for the payment of compensation to the owner of land whose rights were affected by the adoption of a building line. And by thus establishing the right to compensation, the obvious intent of the legislature was to include the necessary taking of land under the power of eminent domain. Therefore, by the passage of the general act, with its provision for compensation, the Town of Windsor was given power validly to establish building lines; but until the general act rectified the faulty Special Law, the town had no such power. It is respectfully submitted that this seemingly important authority for the proposition that the establishment of building lines comes under the police power is based on a statute the important part of which (that is, compensation) was not in effect at the time the decision was rendered.

The tendency of the time has been to class doubtful legisla-

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[21] Connecticut, Special Laws 1917, p. 827.
[22] Connecticut, Special Laws 1917, p. 831.
[23] Connecticut, Special Laws 1917, p. 879.
[24] Connecticut, Public Acts 1917, chapter 349.
[25] United Society *v.* Eagle Bank, 7 Conn. 456.
[26] U. S. *v.* Tynen, 11 Wall. 88; Henderson's Tobacco, 11 Wall. 652; Frost *v.* Wenie, 157 U. S. 46; Chase *v.* U. S., 238 Fed. 887; 36 Cyc. 1147ff.
[27] Curry *v.* Lehman, 55 Fla. 847, 47 So. 18; Stuart *v.* Chapman, 104 Me. 17, 70 Atl. 1069.

tion under the police power, to such an extent that the rights of the property owner are seriously affected. Building lines are an advantage to the community at large and to the nearby property owners in particular, but it is an unwarranted extension of the doctrine to establish them under the police power. All such legislation, while it may assist to materialize the dreams of those whose highest ambition is to make other people conform to their ideas of beauty and order, is clearly in derogation of common right and personal liberty. In the matter of justice, neither the property owner nor the public will be harmed if the regulation be made under the power of eminent domain. Yet if it is enforced under the police power, the owner is compelled to contribute as a private individual and not as a member of the public at large. R. B.

MARITIME LIENS UNDER THE PRESENT LAW.—The Act of Congress of June 23, 1910[1] has done much to wipe out some of the distinctions that existed in the law on maritime liens on vessels for supplies and repairs. In fact, as was said in a recent case, *The Lord Baltimore,* 269 Fed. 824, "The act of Congress was intended to furnish a complete system in itself." It enunciated a new policy in the admiralty law of this country, clarifying the law and purging it from the many distinctions that had no real basis in the law.

Early in the history of this country there grew up a distinction between supplies furnished a vessel while in her home port and those furnished in a foreign port. In the latter case, under proper conditions, it gave rise to a lien on the vessel; in the former no lien was presumed save in the case where the statute of that State made provisions for such lien.[2] This distinction first found utterance in *The General Smith,*[3] in which Mr. Justice Story said:

> "Where repairs have been made, or necessaries have been furnished to a foreign ship, or to a ship in a port of the State to which she does not belong, the general maritime law, following the civil law, gives the party a lien on the ship itself for his security; and he may well maintain a suit *in rem* in the Admiralty to enforce his right. But in respect to repairs and necessaries in the port or State to which the ship belongs, the case is governed altogether by the municipal law of that State; and no lien is implied, unless it is recognized by that law."

Though this departure from the general admiralty law as it

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[1] Comp. St. § 7783-7787.

[2] The General Smith, 4 Wheat. 438; The Belfast, 7 Wall. 624; The Mary McCabe, 22 Fed. 750; The Roanoke, 189 U. S. 185.

[3] *Supra;* The Lottawanna, 21 Wall. 558.