Mercer Law Review

Volume 3 | Number 1 Article 16

12-1951

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LANDLORD AND TENANT

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Despite the fact that during the year under consideration the courts have had to deal with run-of-the-mine cases, several interesting problems have been considered. It is the purpose of this article to discuss very briefly those cases which indicate the trend of the law in this field.

Where a vendor conveys land to a purchaser who intends to use the premises for a known purpose and, at the same time, orally agrees not to use adjoining retained land for the same purpose, he creates a restriction on the use of the retained land that equity will enforce against him or one holding under him with actual notice of the agreement. The principle has been applied in many cases where the retained land was later conveyed to one who had notice of the restrictive agreement. There is no good reason why the same doctrine should not be applied in the case where the relation of landlord and tenant is created between the vendor and one who takes as his tenant with notice of the restriction. While the doctrine does not give the purchaser of the land first sold protection against the act of a vendee or tenant who takes the retained land without notice of the agreement, it does make his position secure against the act of the vendor or his tenant who takes with notice. The case is a wholesome extension of the doctrine of equitable restriction and does not involve the doctrine of covenants running with the land at law. *Langenback v. Mays.*[1]

It is a familiar rule of law that a tenant, while he retains possession, cannot dispute his landlord's title; but like most general rules it is subject to exceptions. One of these is that where the tenant acquires title to the reversion through operation of law or legal process, he may set up the title thus acquired without first surrendering possession of the premises. Thus if a tenant acquires his landlord's title to the reversion through a tax sale from which the landlord does not redeem, he can assert the after acquired title without first surrendering possession of the premises. After the time for redemption has expired, the tenant who purchased at a tax sale would own both the reversion and the term and merger would take place unless there was some equitable reason to prevent it. *Salter v. Salter.*[2]

In *Farmers Fertilizer Company v. Carter,*[3] the court decided that a cropper occupied the status of a laborer who, upon his paying the landlord for supplies furnished, could assert a lien on the crop that was superior to a bill of sale to secure debt given to a third person by the landlord to enable him to secure the supplies furnished to the cropper. For many years it has been said that title to crops raised by a cropper is in the landlord until settlement and division when the title to the cropper's

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1. 207 Ga. 156, 60 S.E.2d 240 (1950).
2. 81 Ga. App. 864, 60 S.E.2d 424 (1950).
3. 83 Ga. App. 274, 63 S.E.2d 245 (1951).

share vests in him. This case cuts through the maze of theory that might be built around "title" and gives the cropper an effective means of securing what is left of his share of the crop, after he has paid his landlord for supplies, even though the landlord has conveyed the entire crop to another for security purposes. The idea of a lien on the entire crop that will protect the cropper to the extent of his net interest in the crop is one that can be grasped by the cropper and his landlord.

Trapnell v. Swainsboro Production Credit Assn.[4] brings to our attention the fact that the above case did not settle all the problems connected with the cropper system. In this case it was recognized that the title to the crop was in the landlord until the cropper had paid him for advances and a division of the crop had been made. Where the landlord is unable to finance the crop he may waive his rights as landlord and authorize the cropper to give a bill of sale to secure debt which will carry the entire title to the crop. This doctrine recognizes a kind of title in the cropper from the inception of the relation, unless the bill of sale is treated as an assignment of the cropper's lien on the crop and the landlord's waiver is thought of as a transfer of title. In any event the grantee in the bill of sale acquires a security title to the crop to the extent that when the crop is gathered and turned over to the landlord who converts it to his own use, equity will treat both landlord and tenant as trustees *maleficio*. The practical effect of the decision is to make the man who furnishes supplies to the cropper more secure and thereby promote the development of agriculture by making it easier for the financially insecure to procure the supplies needed to make a crop.

A tenant for years may be liable to one who is injured by a nuisance maintained on the leased premises. The fact that the nuisance is the result of faulty construction by the landlord before the tenant took possession cannot relieve him from liability because it is based on maintenance of the nuisance and not on its creation. *Robertson v. Liggett Drug Co.*[5]

The landlord who does not retain or assume control over the leased premises while in the possession of a tenant is not liable for faulty construction placed thereon by another unless he actually knew or by the exercise of ordinary care should have known of the improper construction. *Robertson v. Nat Kaiser Inv. Co.*[6]

A tenant who has notified his landlord of the defective condition of the leased premises has a right to use such portions as are apparently safe. Therefore, where a tenant is injured on a portion of the premises the questions of contributory negligence and proximate cause arise and, except in clear cases, are questions for the jury. It is error to sustain a general demurrer to plaintiff's petition unless it clearly appears that his injury was caused by his own conduct. *Grant v. Smart.*[7]

At the common law a tenant was liable to his landlord for positive waste committed during his term. The principle has been incorporated into our law so that a landlord may recover damages for injuries done

4. 208 Ga. 89, 65 S.E.2d 179 (1951).
5. 81 Ga. App. 850, 60 S.E.2d 268 (1950).
6. 82 Ga. App. 416, 61 S.E.2d 298 (1950).
7. 82 Ga. App. 80, 60 S.E.2d 379 (1950).

to the freehold by the tenant during his term. A conveyance of the reversion does not operate as an assignment of a chose in action in the nature of waste so as to enable the conveyee to maintain suit for damages accruing before he took title. This is particularly true when title to the reversion passes by operation of law. In *Martin v. Medlin,*[8] it was held that where conveyee's petition did not allege nor his proof show that the damages to the premises occurred after he became the owner of the reversion a nonsuit was proper.

Since there is no provision in our law requiring a tenant to be a party to the issuance of a distress warrant, the proceeding being *ex parte,* a warrant issued against a person who was sane at the time the rent contract was made but who has since become insane is not void. A distress warrant is a final process, unless arrested by a counter-affidavit, and the property of the defendant may be levied upon and sold as under other executions. *Miller v. West.*[9] Our law should make some provision to insure that the insane defendant's interest will be protected. This might be done by requiring the plaintiff to inform the court of defendant's mental condition so that a guardian *ad litem* might be appointed to look after his interest. An insane defendant who must rely on some one voluntarily coming to his aid is not fully protected.

Arnold v. Selman[10] and another case by the same name[11] deal with the familiar requirements for maintaining dispossessory and distress proceedings. The problem in each case is to find the facts.

In *Gulden v. Berman,*[12] the court applied the familiar rule for the construction of a statute,[13] that where a statute creates a new liability, giving an action to enforce it unknown to the common law, and fixes the time within which suit must be brought, it is a statute of creation and not of limitation.

8. 83 Ga. 589, 64 S.E.2d 73 (1951).
9. 83 Ga. App. 297, 63 S.E.2d 426 (1951).
10. 83 Ga. App. 145, 62 S.E.2d 915 (1951).
11. 83 Ga. App. 150, 62 S.E.2d 919 (1951).
12. 82 Ga. App. 580, 61 S.E.2d 692 (1950).
13. 61 STAT. 193 (1947), 50 U.S.C. § 1895 (Supp. 1951) (Housing and Rent Act of 1947).