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Landlord and Tenant - Continued Possession After Termination of Lease

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LANDLORD AND TENANT—CONTINUED POSSESSION AFTER TERMINATION OF LEASE—After trying to have the defendant vacate the property following cancellation of the lease, the plaintiff seeks to enforce a lessor's privilege[1] on the theory that the defendant's continued possession for three months after termination of the lease[2] constituted a tacit reconduction. *Held,* that the plaintiff was not entitled to a lessor's privilege since there was no relation of landlord and tenant, no reconduction having taken place; however, judgment was granted in favor of plaintiff on *quantum meruit. Monticello v. Delavisio,* 191 So. 162 (La. App. 1939).

Reconduction[3] of the lease in the instant case was impossible since Article 2689[4] provides that reconduction of an urban lease takes place only in the event the lessee "continue in possession for a week after his lease has expired, without any opposition being made thereto by the lessor." Neither could a new lease have been formed by implied consent, for to constitute such a contract the requisites specified in Article 2670[5] must be found,[6] namely: the thing, the price, and the consent.[7] While the price must be certain and determinate,[8] here there is neither a price fixed by the parties, nor one left to the award of a named third person.[9] Hence, there was missing an essential element to constitute a contract of lease.[10] Also, the mere occupancy of the property does

1. Art. 2705, La. Civil Code of 1870.

2. The court assumed a contract of lease between defendant and plaintiff's vendor, and did not consider the alleged insanity of the defendant as vitiating the supposed lease. However, it was pointed out that whether or not a lease had existed, the result would be the same, since reconduction did not take place.

3. For a complete discussion of tacit reconduction of lease, see Comment (1939) 1 LOUISIANA LAW REVIEW. 439.

4. La. Civil Code of 1870. See also Art. 1817, La. Civil Code of 1870.

5. La. Civil Code of 1870.

6. "In all contracts there must be a union of two wills on the same understanding and for the same purpose, and especially is this so with regard to a lease, in which the thing leased and the price must be definitely agreed on." Duckworth v. Harrison, Gunby's Dec. 58 (La. App. 1885).

7. Bonvillain v. Pelegrin, 1 La. App. 516 (1925); Jordan v. Mead, 19 La. Ann. 101 (1867); Knapp v. Guerin, 144 La. 754, 81 So. 302 (1919); Weaks Supply Co. v. Werdin, 147 So. 838 (La. App. 1933).

8. Art. 2671, La. Civil Code of 1870.

9. Art. 2672, La. Civil Code of 1870.

10. Paige & Wells v. Scott's Heirs, 12 La. 490 (1838); Fisk v. Moores, 11 Rob. 279 (1845); Haughery v. Lee, 17 La. Ann. 22 (1865); Gleason & McManus v. The Sheriff, 20 La. Ann. 266 (1868); University Publishing Co. v. Piffet, 34 La. Ann. 602 (1882); McCain v. McCain Bros., 165 La. 884, 116 So. 221 (1928). In Haughery v. Lee, supra, the occupant went into possession of the premises with the understanding he would pay a *reasonable rent.* The court refused to allow a provisional seizure of the movables because there was no lease, the necessary element of a definite and determinate price being absent.

not necessarily imply the relation of lessor and lessee,[11] nor can the plaintiff's actions in attempting to have the defendant vacate the premises show an implied consent. Consequently, since there was neither reconduction of the old lease nor the creation of a new one by implied tenancy, the court was correct in refusing to enforce a lessor's privilege.

Allowing the plaintiff to recover rent based on *quantum meruit* was not without precedent, although the court cited no authority. In *Rodriguez v. Combes*,[12] rent was recovered at the rate specified in the lease which had terminated, but the recovery was not based on a lessor-lessee relationship, no lease being in existence at that time. Similarly, in *Adams v. Jefferson Saw Mill Co., Ltd.*,[13] recovery was allowed at the rental rate of the lease which had been terminated, though no new lease had been created. Also, in neither case was the lessor's privilege allowed. But in *McCain v. McCain Bros.*,[14] Chief Justice O'Niell, on failing to find a contract of lease, said there could be no reconduction and that in the absence of a lease there could be no seizure of the movables under a lessor's lien. Although the defendants in the *McCain* case had occupied the property for five years, the court did not allow any rent or damages. From the viewpoint of equity and justice, the more desirable result is reached in the decisions which allow, in the absence of a lease, a *quantum meruit* recovery of rent.

Although the holding in the instant case is sound, its refusal to recognize the existence of a lessor-lessee relationship may lead to certain anomalous results. The occupant, while being liable for rent based on *quantum meruit*, would be subject to none of the obligations and enjoy none of the rights enumerated in Articles 2710-2726.[15] On the other hand, the owner of the premises would bear none of the obligations of a lessor and have the enjoyment of none of the rights set forth in Articles 2692-2709.[16] In addition, the owner would be forced to evict the occupant as he

11. Jordan v. Mead, 19 La. Ann. 101 (1867); Terzia v. The Grand Leader, 176 La. 151, 145 So. 363 (1932); Weaks Supply Co. v. Werdin, 147 So. 838, 840 (La. App. 1933), wherein the court said, "It is too well settled to require citation that occupancy alone will not imply the relation of lessor and lessee."

12. 6 Mart. (O.S.) 275 (1819).

13. 1 Orl. App. 289 (1904).

14. 165 La. 884, 116 So. 221 (1928).

15. La. Civil Code of 1870.

16. La. Civil Code of 1870.

would a trespasser, Act 200 of 1936[17] being applicable only to lessees.[18]

Furthermore, it could hardly be said that the liability of the owner for injuries to the occupant arising out of the owner's failure to keep the premises in repair[19] would be the same as that owed to trespassers, who are liable only for damages but not for rent. Although guests of such an occupant would not be in the same position and would not be owed the same duty as is owed a visitor of a lessee,[20] would they be treated as being lawfully upon the premises,[21] or would they be trespassers? Recovery for injuries sustained by those rightfully on property is predicated primarily on Articles 670[22] and 2322[23] which deal only with the proprietor's duty to the public in general; it therefore appears that such guests of "trespassing" occupants could recover in the same measure, if they be held to be lawfully on the property. Inasmuch as the occupant is liable for rent, justice dictates that his enjoyment of the property should extend to the recognition of his visitors as being rightfully upon the property.

In order not to overemphasize the dangers in future litigation in consequence of this decision, it might be pointed out that there is little likelihood of their occurrence since the period during which such a situation might exist will ordinarily be very short. But the problem is not entirely speculative, as evidenced by the *McCain* case, where the occupancy existed for five years without a lessor-lessee relationship being created. It is not in alarm that the possibilities of difficulty have been alluded to. It is only an attempt to point out that the decision, though sound, may necessitate setting forth the rights and obligations of the parties in such situations, since they do not properly fall into any category of existing legal relationships.

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17. Dart's Stats. (1939) § 6597.

18. For a complete discussion of notice to vacate leased premises, see Comment (1939) 2 LOUISIANA LAW REVIEW 161.

19. For cases involving the duty of the lessor to the lessee to keep the premises safe, see: Allain v. Frigola, 140 La. 982, 74 So. 404 (1917); Thomson v. Cooke, 147 La. 922, 86 So. 332 (1920); Richard v. Tarantino, 15 La. App. 311, 131 So. 701 (1931); Herbert v. Herrlitz, 146 So. 65 (La. App. 1933).

20. As to the liability of lessor for injuries sustained by visitors and guests of a lessee, see: Badie v. Columbia Brewing Co., 142 La. 853, 77 So. 768 (1918); Thomson v. Cooke, 147 La. 922, 86 So. 332 (1920); Tablin v. Gwin, 146 So. 184 (La. App. 1933).

21. For the duty owed by owner to those lawfully on the property see Hero v. Hankins, 247 Fed. 664 (C.C.A. 5th, 1917); Klein v. Young, 163 La. 59, 111 So. 495 (1926); Potter v. Soady Bldg. Co., Inc., 144 So. 183 (La. App. 1932).

22. La. Civil Code of 1870.

23. La. Civil Code of 1870.