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Fixtures - Effect of a New Lease on Agreement Between Landlord and Tenant to Consider a Fixture as Personal Property of the Tenant

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Millan, supra. A refusal to let the true owner remove his property from the custodian's land was held to be a conversion by the North Carolina court, *Nichols* v. *Newsom,* 6 N.C. 302 (1813), and not a conversion by the Indiana court. *Chicago I. & L. Ry. Co.* v. *Pope,* 99 Ind. App. 280, 188 N.E. 594 (1934). In both cases the goods were on the land through no fault of their owner.

An absolute refusal to deliver property known to be the property of the claimant was not a conversion, according to a New Hampshire decision, when the claimant could reasonably infer from the circumstances and from the acts of the defendant that refusal, though absolute in form, was in fact meant to be qualified. *Stahl* v. *Boston & M. R. R.,* 71 N.H. 57, 51 Atl. 176 (1901).

The rightful custodian of property may refuse to deliver it until he has had a reasonable time to determine its ownership. Twenty-four hours was held to be a reasonable time in a Michigan case. *Fletcher* v. *McMillan, supra.* Twelve days was held reasonable in a Rhode Island case, *Buffington* v. *Clarke, supra,* twenty-two days, in a Missouri decision, *St. Louis Fixture & Show Case Co.* v. *F. W. Woolworth Co.,* 232 Mo. App. 10, 88 S.W. (2d) 254 (1935), and thirty days was a reasonable time in a Nebraska controversy. *Farming Corporation et al.* v. *Bridgeport Bank,* 113 Neb. 323, 202 N.W. 911 (1925). If the refusal is unreasonably prolonged, it is a conversion, *Buffington* v. *Clarke, supra,* but in such cases where defendant's conduct has been held a conversion, the decisions have frequently been based on grounds other than the length of time during which the defendant held the property after the demand. *Flannery* v. *Brewer, supra; Obodov* v. *Foster, supra.* WILLIAM J. SLOAN.

Fixtures—Effect of a New Lease on Agreement Between Landlord and Tenant to Consider a Fixture as Personal Property of the Tenant.—Under an agreement in a lease, a warehouse erected on the property of the landlord by the tenant was to remain the personal property of the tenant. After this original lease expired the tenant was given a new lease which did not by its terms reserve this right of removal to the tenant, who wished to move and take his warehouse with him. The landlord sought an injunction restraining the tenant from removing the warehouse, contending that title to the warehouse vested in him upon the expiration of the first lease. *Held,* that this occupancy of the premises by the tenant constituted one continuous tenancy and the new lease was intended merely to provide for further occupancy of the premises. The mere execution of a new lease should not change the ownership of property under a continuous tenancy. *Scriven* v. *Bailey,* 290 N.W. 486 (S.D. 1940).

The holding in this case is contrary to what is known as the majority or forfeiture rule, but it is indicative of the modern trend to depart from the older and more artificial rule.

A resident of Illinois, a state which still adheres to the forfeiture rule, built a barn and stables on land held by him under a lease. When this lease expired a new one was entered into which contained no provision for the removal of these barns and stables at the termination of the tenancy. The question arose as to who was entitled to recover the value of these structures on a condemnation proceeding. It was held that the acceptance of the new lease without the reservation of the right to remove in effect acknowledged the right of the landlord to the fixtures and that the tenant was estopped from denying this right. *Sanitary District of Chicago* v. *Cook,* 169 Ill. 184, 48 N.E. 461 (1897).

Under a set of facts similar to those in the principal case, a court in a jurisdiction applying the forfeiture rule held that the acceptance of the new lease on different terms was the creation of a new tenancy, which was to be

governed by the covenants, conditions, and reservations contained in the new lease, and since the new lease did not contain the reservation of the right of removal the tenant was treated as having abandoned his right to remove. *Hedderick* v. *Smith,* 103 Ind. 203, 2 N.E. 315 (1885).

Where a tenant under a year to year tenancy had the right to remove trade fixtures installed by him later accepted a written lease which did not mention this right, the court held that at the acceptance of the lease the title to the fixtures vested in the landlord as part of the realty since the right to remove is a privilege and not an absolute right. *Carlin* v. *Ritter,* 68 Md. 478, 13 Atl. 370 (1888).

Maryland has, however, changed the effect of this decision by statute. According to the statute "the right of a tenant to remove fixtures erected by him under one demise or term shall not be lost or in any manner impaired by reason of his acceptance of the same premises without any intermediate surrender of possession." Code (1898) Art. 53, sec. 27. This statute amounts to a statement of the rule in those states which apply the non-forfeiture theory. *Second National Bank of Beloit* v. *Merrill Co.,* 69 Wis. 501, 34 N.W. 514 (1887); *Springs et al.* v. *Atlantic Refining Co.,* 205 N.C. 444, 171 S.E. 635 (1933); *Blake-McFall Co.* v. *Wilson et al.,* 98 Ore. 626, 193 Pac. 202 (1920); *Curran et al.* v. *Curran et al.,* 289 N.W. 418 (S.D. 1939); *Sassen* v. *Haegle,* 125 Minn. 441, 147 N.W. 445 (1914).

When Cooley, J. was asked to apply the majority rule in an early Michigan case he said, "There is no reason of public policy to sustain such doctrine. What could possibly be more absurd than a rule of law which would in effect say to a tenant who is about to obtain a renewal: 'If you will be at the expense and trouble, and incur the loss, of removing your erections during the term, and of afterwards bringing them back again, they will be yours; otherwise you will be deemed to abandon them to your landlord.'" *Kerr* v. *Kingsbury,* 39 Mich. 150, 33 Am. Rep. 362 (1878). The foregoing quotation from Cooley, J. is cited with approval and followed in the following cases: *Second National Bank of Beloit* v. *O. E. Merrill Co.,* 69 Wis. 501, 34 N.W. 514 (1887); *Sassen* v. *Haegle,* 125 Minn. 441, 147 N.W. 445 (1914); and *Blake-McFall Co.* v. *Wilson* et al., 98 Ore. 626, 193 Pac. 902 (1920).

The original lease with the holder of a life estate in property gave to the tenant the right of removal of those fixtures placed on the property by the tenant. When the life estate ended and the lease expired the tenant remained on the property with the consent of the remainderman. Later when the tenant desired to move and to take the fixtures with him the remainderman refused, saying that the tenant's lease with the holder of the life estate ended at the death of this holder and that the tenant held under an oral contract, and that the terms of the original lease were not binding on him. The court held that there was a new oral lease but that as long as the tenant continued in possession with the consent of the new landlord his right of removal remained, in the absence of any special provision to the contrary. *Ray* v. *Young,* 160 Iowa 613, 142 N.W. 393 (1913).

In a Wisconsin case where the tenant first held under an oral lease which reserved to him the title to such fixtures as he should put on the property but where the subsequent lease was written and did not contain this reservation, the court held that the intention of the parties at the time of attaching the fixures is controlling, and that the acceptance of a new lease omitting to provide for the fixtures does not constitute an abandonment of the reservation. *Shields* v. *Hansen,* 201 Wis. 349, 230 N.W. 51 (1930).

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