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Fixtures: Portable garage not a part of realty and a tenant's failure to remove same on surrender of premises is not a forfeiture of right

E. J. B.

in its opinion cited a Washington case[1] where it was held that when a complaint for divorce by a husband alleged his residence within the state, the wife, who appeared and procured a decree in her favor, could not afterwards attack such decree on the ground that the husband was a nonresident. Neither could she attack the decree on the ground that the husband misrepresented the amount of his property when she had had ample means of ascertaining the correct amount.[2]

In general it may be said, that courts will not countenance an attack by either party upon a decree obtained by collusion. In the first place it is a direct fraud upon the sanctity of the court; and secondly, it is maliciously antagonistic to sound public policy. "Friendly Contests" in courts of justice, where ostensible suits are commenced and fraudulent decrees obtained are not looked upon favorably by the courts when the actual facts become known.

JOHN B. BENNETT.

Fixtures: Portable garage not a part of realty and a tenant's failure to remove same on surrender of premises is not a forfeiture of right.—Before the reign of Henry the VI, common law courts gave very little consideration to personal property and hence, the law in relation to such property has largely developed since that time. Along with that development, there arose questions as to what was and what was not personal property. From cases involving this question, the courts have built up the law of fixtures. Some of the greatest text writers have been at a loss to define the term "fixtures," but the following appears to be the most lucid definition: "Things associated with and more or less incidental to the occupation of lands or houses or either thereof and with regard to which the question most frequently arising is of their removeability by the persons claiming them.[1]

In the case of *Hanson v. Ryan,* 201 N. W. 749 (Wis.), the subject of fixtures was treated very ably. The plaintiff alleged that he was the owner of "one portable, moveable, and collapsible garage made of wood and valued at $200," the suit being for its immediate possession. The plaintiff had been in the habit of renting portable garages to tenants throughout the city. These garages contained no floor and merely rested upon the ground. The plaintiff rented a garage to one Dawson, who was a tenant of the defendant. Dawson moved from the premises and at the time of his removal, was in default in his rent. The defendant sued for the rent and recovered a judgment, levying on the garage, which the tenant had failed to remove. The plaintiff claimed that the garage was personal property and that the defendant landlord had lost his interest in it by his execution thereon.

The question therefore was whether this portable garage was a fixture

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[1] *Ferry v. Ferry,* 37 Pac. 431 (Wash.).

[2] Other citations upon that point are *Ellis v. White,* 17 N.W. 281 (Iowa); *Mohler v. Shank,* 61 N.W. 981 (Iowa); *Carren v. Carren,* 69 Pac. 465 (Utah); *Bankroft v. Bankroft,* 173 Pac. 579 (Cal.).

[1] Reeves on *Real Property,* Sec. 10, page 14.

or personal property. If it was a fixture, the plaintiff could not have obtained possession of it. If it was personal property, the plaintiff had complete title and it could not be subject to execution by the defendant.

In deciding this question in favor of the plaintiff, the court expounded the following propositions:

(1) The rule governing fixtures is not as strict in regard to landlord and tenant as between grantor and grantee, and mortgagor and mortgagee, where the removal of the article will not injure the land.

(2) The tenant's failure to remove the garage at the time of surrendering his lease did not preclude the owner from removing the structure since there was no intention to annex it permanently to the land.

(3) The landlord was not a purchaser for value, without notice so as to cause a forfeiture of the right to remove after the surrender of the demised premises.

Considering the first proposition, the older cases decided that of necessity, there would have to be some relaxation from the strictness of the rule governing fixtures. Thus, in the Poole case,[2] the court ruled that on the tenant's removal or surrender of a lease, he could take with him all his utensils of trade. From this case, the courts excepted trade fixtures. In *Baringer v. Evenson*,[3] the court by way of dictum, said that it is the aim of courts to encourage tenants to improve the property for their own convenience and their right to remove should not be taken from them. Coincident with the establishment of the doctrine of trade fixtures, a similar doctrine arose in regard to domestic fixtures with reference to stoves, chairs, etc., which a tenant could remove. Consequently, the relationship between landlord and tenant involving transmutation of possession deserves a relaxation from the rules when applied to grantor and grantee. The same rules could not be applied and still render justice to all the parties. In the light of the foregoing discussion, the lower court erred in finding that a portable garage, not attached to the land, could be considered as a part of the realty. It can readily be seen that a building of this nature could easily be removed without any permanent injury to the land itself.

The next consideration has long been a source of trouble to the courts of both this country and England: viz., does a tenant's failure to remove what he has added to the premises before his surrender of the lease forfeit his right to remove it afterwards? Generally, courts have based their findings on the intention of the annexer. What was the intention in the present case? In *Baringer v. Evenson, supra,* the court held that there must be a physical annexation to the realty, an adaption for the purpose to which the realty is used and an intention on the part of the annexer to make a permanent improvement. All these elements are lacking in the present case. The court therefore arrives at a very sensible conclusion in holding that the garage could be removed after a surrender by the tenant.

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[2] I Salk 268.

[3] 127 Wis. 36, 106 N.W. 801.

In regard to the third proposition, the landlord could not be considered a purchaser for value and without notice so that he could say that the plaintiff was estopped from asserting his right to the possession of the garage.[4]

E. J. B.

Injunction: Police officers not enjoined from searching premises for intoxicating liquors; remedy at law adequate.—In *Joyner v. Hammond,* 200 N. W. 571 (Iowa), the court ruled that an injunction would not issue to enjoin the chief of police and his officers from searching the plaintiff's place of business for illegal liquor kept for sale. The plaintiff's premises had previously been searched several times and the plaintiff had grounds to believe they would be searched again and his business and property injured. He alleged that the former search warrants were issued upon mere suspicion. The plaintiff had brought no action for damages because of the previous searches and the opinion fails to discuss the findings as to whether the warrants were issued upon mere suspicion or upon probable cause. The court based its decision on the ground: first, that the plaintiff had an adequate remedy at law and second, that "an injunction will not lie to hamper and thwart the power and discretion of the police touching the performance of duties enjoined upon them by law." In other words, the court decided that an injunction will never issue to enjoin the police from searching one's premises under the statutory form of warrant, regardless of whether the warrant was issued upon mere suspicion or probable cause as the statute requires.

The court based its decision that the plaintiff had an adequate remedy at law on a number of cases and citations. None of them are cases or discuss cases precisely on all fours with this one but all discuss the principles applicable when it is sought to enjoin police officers from making arrests, and from interfering with private business in the exercise of their duties. A discussion of these cases individually would require too much space. The following are the most important rules laid down in them. Police officers cannot be enjoined from performing their duties of keeping the peace and seeing that the laws are obeyed. Where the actions of the police are necessary in the suppression of an unlawful business they cannot be enjoined because of incidental injury to a private individual.[1] Equity will not enjoin police officials from stationing officers near a place where liquor is sold, to warn intending patrons that the place is disorderly and subject to raid, since, assuming that the acts are illegal, if the assumption of fact is erroneous, that fact must be established by law in an action for damages.[2] Corpus Juris states the rule as follows: "Police officers will not be enjoined from performing their proper duties in the exercise of the general police

[4] Accord: *Walker-v. Grand Rapids Flouring Mill Co.,* 70 Wis. 92, 35 N.W. 332; *Wolf v. Klutch,* 147 Wis. 209, 132 N.W. 981.

[1] *Mart v. Grinnell,* 194 Iowa 499, 187 N.W. 471, 2 L.R.A. (N.S.) 678.

[2] *Delaney v. Flood,* 183 N.Y. 323, 76 N.E. 209.