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Landlord and Tenant: Lessee entitled to quit, where lease of premises, including lessor's homestead, was not signed by wife

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defendant's witnesses are unworthy of credence, and giving the defendant himself a very black character. However, the jurors are quite independent and pay no attention to these admonitions of the court.

Perhaps the greatest difference between the British and American systems, however, has to do with the lawyers themselves. In England, barristers do nothing but appear before the courts. They are all trial men, and the more adept they become at trial work, the greater their reputation. The second division, or solicitors, bring the work to them. Barristers have been known to make as much as $5,000,000 in a lifetime of pleading cases. In this country the opposite condition exists. A trial lawyer is generally looked upon with less favor and, in the profession, the high honors and emoluments are reserved for him whose practice is largely advisory.

In the last analysis any comparison of the two systems is bound to be invidious. Our courts have their own peculiar system, reflecting the democratic spirit of our republican institutions, and while they may be lacking in color and atmosphere, they make it up in a sort of Spartan dignity and simplicity. It seems to this writer that the English system, colorful and awe compelling as it is, reflects too much the panoply of a dead age when individuality and initiative were suppressed by the iron-bound conventions of class consciousness.

JAMES MAXWELL MURPHY

Landlord and Tenant: Lessee entitled to quit, where lease of premises, including lessor's homestead, was not signed by wife.—The Wisconsin case of *Hovie v. Pleshek,* 203 N. W. 910, was an action brought upon a written lease, in the execution of which the wife did not join with the husband. The defendants demurred to the complaint, contending that the lease was void because a portion of the premises demised constituted the homestead of the plaintiff. The defendants placed reliance on the following statute: "No mortgage or other alienation by a married man of his homestead, exempt by law from execution, or any interest therein, legal or equitable, present or future, by deed or otherwise, without his wife's consent, evidenced by her act of joining in the deed, mortgage, or other conveyance, shall be valid or to any effect whatever, except a conveyance from husband to wife."[1]

The court reaffirmed its decision in prior cases by ruling that this statutory condemnation reached every feature of the contract, wherein the homestead was involved, and that there could be no valid obligation for its alienation, interest therein, or the incurring of any liability thereunder without the wife's consent.[2]

Prior to 1905, there was a statutory provision which stated that: "No mortgage or other alienation by a married man of his homestead, exempt by law from execution, shall be valid or of any effect as to such homestead without the signature of his wife to the same."[3] In passing

[1] Sec. 2203, Wis. Stats.

[2] *Rosenthal v. Park,* 166 Wis. 598, 166 N.W. 445, *Helander v. Wegensen,* 179 Wis. 520, 191 N. W. 964.

[3] Sec. 2203, Wis. Stats. (1905).

upon this statute, the court had held that it extended only to such alienation of the land as interfered with its use, and that a deed executed by the husband alone would convey an equitable interest, entitling the grantee to legal title when the homestead right ceased;[4] and if a husband executed a deed without the wife joining with him, an action might be maintained to compel specific performance so far as it could be performed, excepting, of course, the wife's inchoate right of dower. Apparently this rule had become a part of the property law of this state. The court, in *Jerdee v. Furbush*,[5] said: "The law has thus stood for nearly a quarter of a century, and whether the court's construction of the statute was right or wrong it must now be considered the law, the same as if the idea involved was literally expressed in the statute. It relates to property and has, by lapse of time, become a rule of property, which, by well settled principles, can only be changed by legislative enactment."

As the statute now stands, it declares every alienation by a married man of his homestead absolutely void without his wife's signature. And this holds true no matter in what form or what interest the husband may seek to alienate.[6] Regarding contracts for the sale of the homestead wherein the wife refuses to join, the courts will not enforce specific performance. Neither can liquidated damages be recovered, for such contract being void *in toto* cannot be made a basis for an action for damages.[7] No rights could be acquired thereunder even though the conveyance of personal property is included therein.[8]

In the present case, *Hovie v. Pleshek*, it was held that even though the lease was void, the entry and payment of rent under a void lease created the relationship of landlord and tenant, the relation arising out of the occupation irrespective of the lease, and that an action could be maintained, the tenant being liable for the reasonable value of the use of such premises. The court's decision is in harmony with the states of Alabama and Arkansas. In the former state, it was held that even though a verbal lease was consummated on a Sunday, the relation of landlord and tenant was created by the occupation of the premises and that there was a month to month tenancy.[9] In Arkansas, it was held that entry and occupation under a void lease constitutes the necessary relation of landlord and tenant implied by law.[10]

WILLARD A. BOWMAN

Property: Rights of the landlord upon abandonment of the leased premises.—When a tenant abandons possession intending to terminate his lease, the landlord may, by the weight of authority, providing there is no provision in the lease to the contrary, stand aside from the

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[4] *Conrad v. Schwamb*, 53 Wis. 372, 10 N.W. 395.
[5] 115 Wis. 277, 91 N.W. 661.
[6] *Rosenthal v. Park*, 166 Wis. 598, 166 N.W. 445.
[7] *Rosenthal v. Park, supra.*
[8] *Helander v. Wogensen, supra.*
[9] *Eddins v. Galloway Co.* (Ala) 87 So. 557.
[10] *State ex rel. School District v. Robinson*, (Ark) 220 S.W. 836.