Tenancy in Common: Remedy of Cotenant Against Cotenant

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Tenancy In Common — Remedy of Cotenant Against Cotenant —
The decedent and the defendant were co-owners of a tractor. There 
was no agreement inter sese which defined their rights to possession. 
The plaintiff, decedent’s administratrix, brought an action of claim and 
delivery for possession of the tractor and for damages for wrongful 
detention. Held: A co-owner of jointly owned indivisible personal 
property may not recover damages in a claim and delivery action for 
the detention of the chattel by another co-owner having possession 

It is fundamental that in order to support replevin the party bring-
ing the action must have a right of immediate and exclusive possession.\(^1\) The textwriters with unanimity pronounce the rule that a contenant of 
chattels who is not entitled to exclusive possession cannot maintain 
replevin against his cotenant unless the other has repudiated the coten-
ancy and converted the chattel to his own use.\(^2\) The mere fact that the 
chattel was taken from him by force will not be sufficient to sustain the 
action.\(^3\) And unless there is some agreement to the contrary, one co-
tenant has as much right to the possession of the property as the other.\(^4\) When a cotenant assumes such exclusive possession as to deprive his 
cotenant of any interest, then trover will lie for the conversion.\(^5\) Wis-
consin has held that cutting and taking all the timber of a cotenancy 
will constitute a conversion. The court in that case indicated that trover 
will lie for the conversion where it would lie in the absence of a coten-
ancy.\(^6\) But it would seem that statement should be applied only to a 
situation involving divisible personalty, as the timber was in that case.

Where the cotenants have made some agreement which describes 
each party’s right to possession, the law is more liberal to the wronged 
cotenant when the agreement is breached. In such a situation, the Wis-
consin Court has allowed an injunction enjoining the defendant from 
denying the use of the chattel to the plaintiff and awarded damages 
for withholding the use of the chattel from the plaintiff.\(^7\) And where 
there is an agreement as to disposition of profits from the use of the 
chattel, a cotenant may be required to account in equity.\(^8\) Where there 
is no agreement inter sese, trespass or trover may lie against a cotenant

\(^1\) Gillett and another v. Treganza, 6 Wis. 343 (1858).
\(^3\) Ibid.
\(^4\) Wells On Replevin, Sec. 152 p. 86 (1880).
\(^5\) 12 L.R.A. 262.
\(^6\) Sullivan v. Sherry et al. 111 Wis. 476, 87 N.W. 471 (1901).
\(^7\) Kuenzi v. Leisten, 227 Wis. 506, 279 N.W. 68 (1938).
who has old or destroyed the chattel. Trespass on the case may lie when a cotenant's negligence has caused the destruction of the chattel.

In conclusion there remains the question as to the remedies available to a cotenant of indivisible personalty where there is no agreement on possession and profits, and where there is no sale, destruction, or conversion to meet the requirements of the cases previously discussed. His most effective remedy is to take peaceable possession of the property if possible. But his cotenant may prevent this, since one who has actual possession may retain it to the exclusion of his cotenants. If the property were divisible, he could recover his share or the value thereof. But Wisconsin provides no comparable statutory remedy in the case of indivisible personal property. Thus it appears that the only remedy is the statutory action for partition, where the property can be divided, or sold upon court order where the property is not susceptible of division and the proceeds divided according to the interests of the parties.

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Conflicts of Laws—Foreign Statute of Limitations Applied in Wrongful Death Action — The death of Lewis was allegedly due to the negligence of Defense Plant Corporation, which by Congressional authority had been succeeded by the Reconstruction Finance Corporation, the defendant in this case. The fatal injury occurred in Nebraska, where a wrongful death act with a two-year statute of limitations was in effect. The suit for wrongful death was brought in the District of Columbia, where a one-year limitation existed in wrongful death actions. Plaintiff, administratrix of the estate of the deceased, brought suit twenty-two months after the fatal accident. She brought the action under the Nebraska statute, and the defendant invoked as a bar the District of Columbia one-year limitation. Held: The District of Columbia wrongful death statute establishing the one-year limitation was not applicable. The time prescribed for filing suit operated as a limitation upon the liability created by Nebraska statute, and was a condition attached to the right to sue. The limitation of the state where the injuries occurred governed and the public policy of the District of Columbia was not in conflict. Lewis v. Reconstruction Finance Corporation, 177 F (2d) 654 (C.C.A. D.C. 1949).

9 Ibid, p. 139.
10 Ibid p. 144.
11 Ibid p. 95.
12 Wis. Stat. (1947) Sec. 331.06.
13 Wis. State. (1947) Ch. 277.