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Landlord and Tenant -- Emblements and Apportionment of Rent When Life Tenant Lessor Dies before Expiration of Term

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It is believed that the foregoing analysis represents correctly the practice rights of the osteopathic physicians presently being licensed in the states mentioned. It should be noted, however, that there are in some of these states groups of older practitioners licensed under earlier laws whose rights are more limited than are the practice rights of the more recent licensees. Nevertheless, it can readily be perceived that in 38 states and the District of Columbia it is not the sole "prerogative" of physicians who hold the degree M.D. to prescribe and administer drugs and to practice surgery. It is not felt out of place to observe here that the educational training and background of osteopathic physicians practicing in states where their practice rights are limited by law is precisely the same as that of osteopathic physicians in the unlimited practice states; in other words, the only disability of the former group is one imposed by archaic laws and does not indicate inferior professional competence. It is not generally known, perhaps, that almost invariably any proposed modernization of these laws is vigorously, albeit sometimes hypocritically, opposed by organized old school medicine as a "menace" to the public health.

It has been the observation of the present writer, from contact and acquaintance with hundreds of members of the osteopathic profession from all over the United States, that on the average their profession is just as sincere, public-spirited, and disinterested, and just as concerned in extending the boundaries of medical knowledge as is the allopathic or "orthodox" medical profession. It is thought that the epithets applied to the osteopathic profession in the article *Legal Control of Medical Charlatanism* are perhaps an unconscious reflection of the attitude of certain members of the "orthodox" medical profession. It would seem that this attitude, in turn, has its roots in professional jealousy and sometimes in economic self-interest.

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Landlord and Tenant—Emblements and Apportionment of Rent When Life Tenant Lessor Dies before Expiration of Term

What are the rights and liabilities of the parties in interest when the holder of a life estate in real property leases his property for a term of years and dies before the end of the term? The question arises infrequently in our courts, presenting interesting and difficult problems. A study of the law on this point in eleven of our southern states[1] reveals an attempt by the courts and legislatures to determine equitably the rights of all parties in interest.

[1] Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, Virginia. For a more complete study see Note (1920) 6 A. L. R. 1056.

According to the common law, the estate of a life tenant terminates at the time of his death, subject to the tenant's right to emblements, which include the crops raised on the leased premises[2] as well as the privilege of ingress and egress so far as is necessary for due attention to the crops.[3] This right to crops includes all those planted or seeded before the termination of the life estate, but does not include those sowed after the particular estate came to an end.[4] Even though a tenant has plowed and fertilized the land, upon ouster he is not entitled to emblements and loses his labor and materials.[5]

Statutes have been enacted in eight[6] of the eleven states[7] studied in which some attempt is made to apportion the rent between the personal representative of the life tenant and the remainderman. The Georgia statute[8] seems merely to guarantee to the tenant the right to remain in possession of the land until the end of the year in which the life estate terminates, along with the right to emblements, there being no specific mention of an apportionment of rent. In its interpretation of the statute, however, the Georgia Court has seen fit to adopt the principle of apportionment. In *Butt* v. *Story*[9] the life tenant died without collecting the rent or doing any act to which the law could give the effect of a collection. The court declared that the lessee, who is entitled under the statute to possess the premises until the end of the year, is accountable to the remainderman for such a proportion of the rent as the period between the life tenant's death and the end of the year bears to the entire year. It was further held that if the life tenant took a negotiable promissory note for the year's rent and transferred it for value to a third party, this was equivalent to payment, and the lessee could claim the benefit of satisfaction of the indebtedness as against the remainderman. Furthermore, the taking of a non-negotiable note by the life tenant, though it be assigned, was held not to be equivalent necessarily to the collection of the note, since the assignee holds it subject to the existing equities between the two original parties. In an earlier hearing on this case[10] the court held that the lessee had a

[2] Price v. Pickett, 21 Ala. 741 (1852); Hays v. Wrenn, 167 N. C. 229, 83 S. E. 356 (1914); King v. Foscue, 91 N. C. 116 (1884); Thompson v. Thompson, 6 Munf. 514 (Va. 1820).

[3] Humphries v. Humphries, 25 N. C. 362 (1843).

[4] Price v. Pickett, 21 Ala. 741 (1852); Hays v. Wrenn, 167 N. C. 229, 83 S. E. 356 (1914); Thompson v. Thompson, 6 Munf. 514 (Va. 1820).

[5] Price v. Pickett, 21 Ala. 741 (1852).

[6] ALA. CODE ANN. (Michie, 1928) §8831; ARK. DIG. STAT. (Pope, 1937) §8579; KY. REV. STAT. (Cullen, 1943) §§395.350-395.360; MISS. CODE ANN. (1942) §901; N. C. GEN. STAT. (1943) §42-7; S. C. CODE (Michie, 1942) §§8797-99; TENN. CODE ANN. (Williams, 1934) §§8406-07; VA. CODE ANN. (Michie, Sublett, & Stedman, 1942) §5543.

[7] *Supra*, note 1.

[8] GA. CODE ANN. (Park, et al., 1938) tit. 85-606, 85-607.

[9] 5 Ga. App. 540, 63 S. E. 658 (1909).

[10] Story v. Butt, 2 Ga. App. 119, 58 S. E. 388 (1907).

correlative duty to comply with his contract with the life tenant. Should the lessee perform his obligations in a satisfactory manner, he would not be accountable to the remainderman for any portion of the year's rent, though the life tenant died before the crop was sown.

In another Georgia case[11] a life tenant rented land for a year to a lessee who was also the remainderman, taking a negotiable promissory note for rent. He transferred the note to a third person for value and afterwards died during the term without collecting any of the rent. The note was transferred to secure the payment of an indebtedness which the life tenant owed the transferee. In this situation the court declared the transferee could recover the amount of his debt, accounting to the remainderman for the excess. Furthermore, in this controversy the lessee had a right to show these facts with the result that recovery should be limited to the actual amount of the indebtedness.

An Alabama case[12] of interest arose when the holder of a life estate leased her life interest to the remainderman for certain annual installments, payable during her lifetime. Upon the death of the life tenant, the remainderman was held liable for a just proportion of the annual rent for the year in which the life tenant died.

As late as 1900 the Tennessee court recognized the distinction between lands actually planted before the termination of the life estate and those which were only prepared for planting and cultivation. The fact that an interest may be retained by the lessee after the death of the life tenant because of the doctrine of emblements will give the lessee no right to retain other portions of the premises which are included in the lease, but are not planted before the tenant's death. In such instance the statute with respect to apportionment does not authorize a lease to extend beyond the life estate, and recovery for rents due upon the termination of the life interest is the only right possessed by the personal representative.[13] In *Turner* v. *Turner*[14] the court held the remainderman entitled either to disaffirm the lease contract or to ratify it and share the rent *pro tanto*. In this case the remainderman sought to recover possession of the land and also damages or compensation for the use and occupation. Since there was a ratification of the lease, the lessees were entitled to emblements, consisting of the yearly crop of grain which had required an outlay of labor and industry, without payment of any compensation for the use of the land in harvesting of crops. In a much earlier case[15] a husband had a life estate in his wife's lands during coverture and had rented the lands for a year. Upon his death the Tennessee court held that the wife at once became entitled to

[11] Mitchell v. Rutherford, 9 Ga. App. 722, 72 S. E. 302 (1911).
[12] Saint v. Britnell, 206 Ala. 533, 91 So. 310 (1921).
[13] Collins v. Crownover, 57 S. W. 357 (Tenn. Chan. App. 1900).
[14] 132 Tenn. 592, 179 S. W. 132 (1915).
[15] Arnold v. Hodges' Heirs, 29 Tenn. 38 (1849).

the rents; and, if the personal representative of the husband had collected the rents which accrued after his death, the representative would then be liable to the widow therefor. Something of the same sort has emanated from an opinion of the Kentucky court.[16] It was there declared that the lessee's right of possession secured by a lease from a life tenant terminated when the life tenant died. However, the Kentucky statute clearly authorizes an apportionment in such a situation and it is supposed that the law would be the same as that of Tennessee. The amount to which the personal representative is entitled is in proportion to the time the life tenant lived after the term began.[17]

On the other hand, the North Carolina court has said,[18] under the statute[18a] in effect in this jurisdiction, that the lease is continued to the end of the current year in order to enable the lessee to gather his crop, the remainderman being entitled to a part of the rent proportionate to that portion of the year elapsing after the life tenant's death. In one case from this jurisdiction a life tenant rented the land, and the tenant sub-let it at a much higher rent. Upon the life tenant's death during the year's term, the court ruled that the remainderman could only take a proportionate part of the rent reserved in the lease contract and was not entitled to the same proportionate part of the rent actually paid by the subtenant.[19] The lease in such case is continued to the end of the year in lieu of emblements.[20]

A South Carolina statute provides that upon the death of one holding a life interest in land after March 1 in any given year, the crops raised on the land in the occupation of the deceased would be assets in the hands of his administrators.[21] Under this statute it was held in an early case that the lessee's possession of land leased from a life tenant could not be disturbed if the latter died after March 1, the lessee being required to secure to the remainderman that proportion of the rent accruing after the life tenant's death.[22] Another South Carolina statute allows an apportionment of the rent to the respective persons interested where a life tenant dies before the rent is due, permitting a recovery of the amount due by the personal representative, and provides that the lessee, who cannot be dispossessed until the end of the crop year, shall secure the payment of the rent when it comes due.[23] In a case decided under both statutes a husband, in the right of his wife, rented out her

[16] Avey v. Hogancamp, 172 Ky. 675, 189 S. W. 917 (1916).
[17] Haynes v. Harris, 14 Ky. Law Rep. 303 (1893).
[18] King v. Foscue, 91 N. C. 116 (1884).
[18a] N. C. GEN. STAT. (1943) §42-7.
[19] Hays v. Wrenn, 167 N. C. 229, 83 S. E. 356 (1914).
[20] Hays v. Wrenn, 167 N. C. 229, 83 S. E. 356 (1914); King v. Foscue, 91 N. C. 116 (1884).
[21] S. C. CODE (Michie, 1942) §8996.
[22] Freeman v. Tompkins, 1 Strob. Eq. 53 (S. C. 1846).
[23] S. C. CODE (Michie, 1942) §§8797-99.

lands for a year, reserving six acres which he cultivated himself. The wife died March 9, thus terminating her life estate. Under the statutes it was held that the rent owing by the tenant immediately became the property of the remainderman to whom the land had passed and that both the personal representative of the life tenant and the remainderman would have to look to the lessee for remuneration, and not to the husband, who had no control of the crops or responsibility for the rent. In respect to the six acres which were not leased but cultivated by the husband in the right of the wife, the crops raised thereon would then be assets in the hands of the life tenant's executors or administrators, they being entitled to both lands and crops for the year in preference to the remainderman. The court declared that a planting by March 1 was not essential to the exercise of this right by the personal representatives.[24] It was also held that the statute,[25] providing for double rent where a party in possession refused to surrender to the remainderman at the conclusion of the life estate, would not apply to agricultural lands in the above mentioned situation.

A somewhat similar situation arises under the Kentucky statutes.[26] An apportionment is decreed, and the lessee is permitted to remain on the land until the end of the year provided that the life tenant dies after March 1. The emblements of the lands of a person dying after that date shall be assets in the hands of his personal representative; but, if the death occurs before March 1, the emblements growing on the lands shall pass to the remainderman.

The South Carolina court has clarified the meaning of the apportionment statute[27] of that state, holding that the lessee could not be ousted until the end of the year. Under this decision the remainderman would be entitled to compel the lessee to secure the rent for the unexpired portion of the year.[28]

In an Alabama case, possession of previously leased property was taken by a grantee of the life tenant, who—prior to such conveyance—had assigned a rent note taken from the lessee to a third person, to whom the lessee had actually paid the rent. Upon the death of the life tenant during the year for which the note was given, the remainderman sued the grantee for the rent of the land. It was held that the remainderman was not entitled to recover. The issue as to whether he could recover from the lessee was not presented by the record.[29] The statute gives the personal representative the right to recover whatever rent is

[24] Newton v. Odom, 67 S. C. 1, 45 S. E. 105 (1903).
[25] S. C. CODE (Michie, 1942) §8800.
[26] KY. REV. STAT. (Cullen, 1943) §§383.190, 395.340, 395.350, 395.360.
[27] *Supra*, note 23.
[28] May v. Thomas, 94 S. C. 158, 78 S. E. 85 (1913) (The constitutionality of the statute was upheld in this decision.).
[29] Terrell v. Reeves, 103 Ala. 264, 16 So. 54 (1893).

due at the time of the life tenant's death; but, where the life estate terminates before the rent is due, an apportionment is in order.[30]

The Virginia statute allows the lessee to remain on the land until the end of the year and apportions the rent to the representative of the life tenant and the remainderman. If the rent is payable in kind, however, it is to be paid to the personal representative; and he, in turn, is required to pay a reasonable money rent to the remainderman for the period between the death of the life tenant and the end of the current year. This sum is a preferred charge on the rent in kind received from the lessee by the personal representative.[31] The provision concerning the payment of a reasonable rent to the remainderman affirms the holding of the Virginia court in an early case, decided under the common law, that such a sum could be recovered by the remainderman.[32]

Generally, it may be said that these statutes effectively take care of the situation here presented. The injustices of the common law have been eradicated, and the rights of the parties marked out and clarified. Perhaps the term "emblements," when used in these laws, should be given a more definite and positive definition. Nothing so important as the principle of apportionment should be left to judicial interpretation, as was done by the Georgia legislators. All states which do not have such statutes should be urged to adopt laws similar to those discussed herein and draft them with a view to clarity and effectiveness.

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Federal Rules of Civil Procedure—Commencement of an Action for Purposes of the Statute of Limitations—Amendment of Complaints

In a recent case[1] before the Circuit Court of Appeals the executor of a deceased partner sued the surviving members of the partnership for an accounting of the deceased's interest in proceeds from the sale of certain jointly owned cattle, the alleged conversion occurring April 1, 1938. The original petition was filed March 8, 1940, but both summons and alias summons were returned unserved because plaintiff's counsel failed to advance the marshal's fees. Upon issue of another alias summons defendant was served more than sixty days after the four-year statute of limitations had run out. On August 3 and December 11, 1942, amended petitions were filed centering around the same transaction alleged in the original petition, but differing from the original in that plaintiff sought accounting of a single defendant. The court

[30] ALA. CODE (1940) tit. 31 §14. The Arkansas and Mississippi statutes resemble the Alabama law closely. See ARK. DIG. STAT. (Pope, 1937) §8579 and MISS. CODE ANN. (1942) §§2179-80.

[31] VA. CODE ANN. (Michie, Sublett, & Stedman, 1942) §5543.

[32] Thompson v. Thompson, 6 Munf. 514 (Va. 1820).

[1] Isaacks v. Jeffers, 144 F. (2d) 26 (C. C. A. 10th, 1944).