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LIMITATION OF ACTIONS - LANDLORD AND TENANT - INSTALLMENT RENT PAYMENTS

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LIMITATION OF ACTIONS — LANDLORD AND TENANT — INSTALLMENT RENT PAYMENTS — Defendant rented a farm from plaintiff under a written lease for five years and then held over under the same terms by an oral agreement. Plaintiff brought an action for arrearages in rent payments, claiming that the four-year statute of limitations on open book accounts [1] was applicable, but defendant alleged that the two-year statute on oral contracts [2] barred the action. *Held*, the two-year statute was applicable and barred the action. When rent is payable in specified monthly sums, the statute runs from the respective date when each installment falls due. *Tillson v. Peters*, 41 Cal. App. (2d) 671, 107 P. (2d) 434 (1940).

Although there are very few cases on the point, it has uniformly been held that the statute of limitations commences to run against rent claims from the time when each payment becomes due.[3] Thus the rent cases follow the general rule of other fields of law that the statute begins to run against a cause of action from the time it accrues, which is when the holder thereof has the right to apply to the court for relief and to commence proceedings to enforce his rights.[4] In an action based on contract there is a right to sue as soon as there is a material breach.[5] Therefore, if the landlord neglects to sue on the nonpayment of each installment of rent, he will be barred from any action after the passage of the statutory period computed from the date when that payment falls due. The principal case is a good example of the general rule as it is applied to obligations payable by installments.[6] The few decisions apparently to the contrary [7] support the proposition advanced by some courts that if the contract is

[1] Cal. Code Civ. Proc. (Deering, 1937), § 337.

[2] Cal. Code Civ. Proc. (Deering, 1937), § 339.

[3] Minor v. Kilgore, (Tex. Civ. App., 1896) 38 S. W. 539; Trainor v. Koskey, 243 Ill. App. 24 (1926); Lee v. De Forest, 22 Cal. App. (2d) 351, 71 P. (2d) 285 (1937). But see Read v. Ferguson, Barnes & Ferguson, 228 Iowa 1191, 293 N. W. 474 (1940), which holds that the statute of limitations does not run until the end of the tenancy. However, that case involved a continuing account with no stated times of payment, apparently.

[4] 1 WOOD, LIMITATIONS, 4th ed., § 122a (1916) and cases cited.

[5] 6 WILLISTON, CONTRACTS, rev. ed., § 2004 (1936).

[6] Cases are gathered in 82 A. L. R. 316 (1933).

[7] Shorick v. Bruce, 21 Iowa 305 (1866); Iron Mountain & H. R. R. v. Stansell, 43 Ark. 275 (1884); O'Brien v. Sexton, 140 Ill. 517, 30 N. E. 461 (1892); Sibley v. Stetson & Post Lumber Co., 110 Wash. 204, 188 P. 389 (1920); St. Louis S. W. Ry. of Texas v. Davy Burnt Clay Ballast Co., (Tex. Civ. App. 1926) 288 S. W. 855; City of Albany v. Leftwich, (C. C. A. 5th, 1928) 24 F. (2d) 297; Rich v. Arancio, 277 Mass. 310, 178 N. E. 743 (1931); Potts v. Village of Haverstraw, (C. C. A. 2d, 1937) 93 F. (2d) 506; Burns v. Mitchell, 55 Ga. App. 862, 191 S. E. 870 (1937).

for an entire performance for a lump sum, such as the building of a house [8] or the straightening of a child's teeth,[9] the payments promised during the progress of the work will ordinarily be considered as advances on account rather than definite installments of a divisible amount, and the statute of limitations will be construed as running from the time when the whole job is completed. It would seem that the lease contract is quite unlike the type of case falling within this exception to the general rule. The lease cannot be classified clearly as an entire contract, although it is certainly not a divisible [10] one. Payment of rent has long been considered an independent covenant and enforceable even though the buildings burn or the lessee be put out of possession by an act of God or the alien enemy.[11] Yet the lessee's covenant to pay rent is so far dependent that, if he is evicted by the landlord, the common-law view is that the obligation to pay rent is suspended for the period of such ouster.[12] But whatever the legal theory may be, it is certainly true as a practical matter that each periodic payment of rent is generally contemplated by the parties as the agreed exchange for the possession of the premises for that period. In this sense, the lease seems somewhat analogous to a divisible contract, and it is clear that the statute of limitations runs from the performance date of each installment if the contract is a divisible one.[13] Moreover, if it be assumed that a lease is not to be treated like a divisible contract, nevertheless its regular periodic payments make it in that respect so similar to entire contracts of the installment type that probably any court would follow the general rule in determining the applicability of the statute of limitations to rent installments. Furthermore, since the purpose of the statute is to prevent fraudulent and stale actions from springing up after a lapse of time, when witnesses are unavailable and the merits of the claim uncertain of proof, it would seem that the decisions are sound in holding that the statute should run from the date when each installment of rent is payable.[14]

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[8] Rich v. Arancio, 277 Mass. 310, 178 N. E. 743 (1931).

[9] Burns v. Mitchell, 55 Ga. App. 862, 191 S. E. 870 (1937).

[10] "A contract under which the whole performance is divided into two sets of partial performances, each part of each set being the agreed exchange for a corresponding part of the set of performances to be rendered by the other promisor, is called a divisible contract." 3 WILLISTON, CONTRACTS, rev. ed., § 860A (1936).

[11] 1 TIFFANY, LANDLORD AND TENANT, § 182m (1912).

[12] 1 TIFFANY, LANDLORD AND TENANT, § 182e (1912).

[13] 6 WILLISTON, CONTRACTS, rev. ed., § 2024 (1936).

[14] 1 WOOD, LIMITATIONS, 4th ed., 8-9 (1916).