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# Landlord and Tenant--Termination of a Year to Year Tenancy

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in an instrument in the form of a deed, the instrument is properly held to be testamentary and invalid as not executed as a will.[16]

Since looking at all the facts, there were irrevocable delivery, recordation, and lack of witnesses, it seems that the instrument in the present case was properly held to be a deed. The case is analogous to the quasi-escrow transaction wherein the grantor delivers the deed to a third person with the instruction to give it to the grantee on the grantor's death.[17] This is deemed to pass the fee to the grantee at once subject to a life estate reserved by implication in the grantor.[18]

The case is close and appears to be sound. On the other hand, if there had been any evidence of the intent of the grantor to reserve a power of revocation over this alleged conveyance, the result should have been otherwise, as the instrument would have been testamentary.

W. J. C.

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LANDLORD AND TENANT — TERMINATION OF A YEAR TO YEAR TENANCY. — *D* (county court) leased a farm from *P* for a pauper family. The family held over after the expiration of the one-year term, and *D* continued to pay rent for a year and a half, at which time *D* entered a general order that it would no longer be responsible for the support of paupers. The clerk of the court called this order to *P's* attention, but no other notice was given as to the termination of the tenancy. *Held*, that a tenancy from year to year may be terminated only in the way prescribed by the statute.[1] *Deitz v. County Court of Nicholas County.*[2]

At common law to terminate a year to year tenancy a six-calendar-months parol notice, expiring always with the same year as the tenancy, was adequate.[3] By agreement of the parties the

[16] Roberts v. Coleman, 37 W. Va. 143, 16 S. E. 482 (1892); Spangler v. Vermillion, 80 W. Va. 75, 92 S. E. 457 (1917).

[17] Thurston v. Tubbs, 257 Ill. 465, 100 N. E. 947 (1913); Noah v. Noah, 246 Mich. 324, 224 N. W. 611 (1929).

[18] Wilson v. Jones, 280 Mass. 488, 182 S. E. 917 (1932); Noah v. Noah, 246 Mich. 324, 224 N. W. 611 (1929).

[1] W. VA. CODE (Michie, 1937) c. 37, art. 6, § 5: "A tenancy from year to year may be terminated by either party giving notice in writing to the other, at least three months prior to the end of any year, of his intention to terminate the same." The remainder of the section deals with the termination of periodic tenancies of less than a year, service of the notice, and manner of contracting out of the statute.

[2] 8 S. E. (2d) 884 (1940).

[3] 2 MINOR'S INSTITUTES (4th ed. 1892) 201.

notice might be required to be in writing.[4] Statutes enacted in most states have modified this rule as to the length and form of notice.[5] When the length of the notice is involved, courts have held them mandatory and that the provisions of the statutes must be strictly followed.[6]

Our West Virginia statute was taken from the laws of Virginia. The early Virginia statute provided that the tenancy *shall* be terminated by a notice of three months in writing and not otherwise.[7] This statute was construed to be mandatory in an early case.[8] The later Virginia statute[9] in existence at the time the West Virginia law was adopted did not contain such emphatic and commanding language. The word *may* displaced *shall* in the later statute and made it read as though it might be directory and not mandatory, but this does not seem to be the attitude of the courts and the commentators on the law. Minor, in discussing the policy of the Virginia law, said that the period of the notice was three months and *must* be in writing.[10] The Virginia court held that a year to year tenancy could *only* be terminated by a notice in writing.[11]

Our court has not recently stated that compliance with the statute was the exclusive mode of terminating a year to year tenancy; however, concerning this question, the court in earlier cases has made statements similar to those in the principal case.[12] The New Hampshire court in construing a similar statute which also used the word *may* held that the notice prescribed by the

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4 2 TAYLOR, LANDLORD & TENANT (8th ed. 1887) § 482.

5 Note (1844) 42 Am. Dec. 125.

6 Barbee v. Evans, 200 Ill. App. 54 (1920); Van Vlaanderen Mach. Co. v. Fox, 95 N. J. L. 40, 111 Atl. 687 (1920).

7 Va. Acts 1839-1841, 76. This act was passed by the legislature in 1840 and was the first time Virginia had any method, other than the common law notice, to terminate a year to year tenancy.

8 Crawford v. Morris, 5 Gratt. 90 (Va. 1848).

9 VA. CODE (1860) c. 138, tit. 41, § 5.

10 2 MINOR'S INSTITUTES 201.

11 Baltimore Dental Ass'n v. Fuller, 101 Va. 627, 44 S. E. 771 (1903).

12 Arbenz v. Exley, Watkins & Co., 57 W. Va. 580, 582, 50 S. E. 813, 814 (1905). In this case Judge Brannon said, "That provision recognizes as still continuing the common law estate of tenancy from year to year and the process of terminating it by notice to quit, and changed it only in requiring written notice and fixing a shorter time of notice." In Rees v. Emmons Coal Mining Co., 88 W. Va. 4, 15, 106 S. E. 247 (1921), Judge Poffenbarger stated: "Neither the verbal notice . . . nor the written notice later mailed, was sufficient to terminate it, since the statute requires notice in writing to be given three months prior to the end of the tenancy year." See Coffman v. Sammons, 76 W. Va. 13, 17, 84 S. E. 1061 (1915); Wilson v. Riffle, 87 W. Va. 160, 165, 104 S. E. 285 (1920).

statute is intended to take the place of that required at common law.[13]

From this discussion it is submitted that our court, in speaking of the West Virginia statute as being mandatory in respect to the changes made in the common law notice for terminating a year to year tenancy, is consistent with the dicta of prior West Virginia cases and in accord with the courts in other jurisdictions which have passed on the point.

B. D. T.

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WILLS AND ADMINISTRATION — ABATEMENT OF LEGACIES — INTENT OF TESTATOR. — By the sixth paragraph of her will, executed in 1928, *T* bequeathed the sum of $10,000 to *A*, as part of a carefully worked out testamentary scheme disposing of an estate appraised at approximately $250,000. In the seventh, eighth and ninth paragraphs[1] immediately following, she made gifts of realty and specific personalty to other beneficiaries — the last of these provisions being the bequest of the contents of a safety-deposit box. The tenth paragraph of the will specifically provided that all such devises and legacies should be "free of all inheritance, estate and other death taxes". Ten years later, *T* executed an instrument in due form, purporting to "make, publish and redeclare" a codicil to this will, and by the terms of the later instrument bequeathed the sum of $5,000 to *B*. Apart from necessary modification as to the executorship, this later publication made no other alteration in the elaborate testamentary dispositions of 1928. On the death of *T* in June, 1938, the appraisal of her estate indicated that its assets were inadequate to satisfy the sums of money bequeathed to *A* and *B*, the specific gifts contained in the seventh, eighth and ninth paragraphs, and the expenses of administration, including estate and inheritance taxes. *Held*, that to satisfy administration expenses, including taxes, there must be an abatement of all testamentary benefits, and that in such abatement, the sums of money given to *A* and *B*, as constituting general legacies must first abate in favor of the gifts under the seventh, eighth and ninth para-

[13] Leavitt v. Leavitt, 47 N. H. 329 (1867); Larkin v. Avery, 23 Conn. 304 (1854); Nelson v. Ware, 57 Kan. 670, 47 Pac. 540 (1897); Howard v. Merriam, 5 Cush. 563 (Mass. 1850).

[1] Paragraph seven devised the family home, and bequeathed household furniture, clothing, jewelry, *etc.* Paragraph eight created a trust in various types of securities, and the ninth paragraph bequeathed "all of the securities which at the time of my death shall be located in my safety deposit box. . . ."