April 1927

Landlord and Tenant--Tenancy at Will of the Lessee

J. V. S.
West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Property Law and Real Estate Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol33/iss3/8

This Student Notes and Recent Cases is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.
stantiate the fact that he had made the entry. If, therefore, the records are produced and verified by a supervising officer who knew them to be entries kept in the establishment, there would seem to be a sufficient amount of trustworthiness.

In State v. Martin, the court stated that such entries were admissible if the whereabouts of the entrants be unknown. Though the court did not state so, it would seem that affirmative proof must be made by the one offering the evidence to the effect that he has used reasonable diligence to discover the whereabouts of the declarant, and his production as a witness. Chamberlayne, Modern Law of Evidence §2879. The West Virginia Court has reached a justifiable conclusion. Diest had made out the work card, showing that the car had been brought in; he initialed the mechanic's cards after the work had been done. The president of the company was willing to testify that the cards were kept as part of the permanent records of the company. Unless, therefore, the cards which are substantially trustworthy are admitted, probably injustice is a consequence. To admit them, we are introducing no new doctrine; we are but giving a desirable interpretation of the test of unavailability laid down by Chief Justice Shaw many years ago when he said "the ground [for admitting the entries] is the impossibility of obtaining the testimony, and the cause of impossibility seems immaterial." North Bank v. Abbott, 13 Pick. (Mass.) 471.

——M. E. B.

Landlord and Tenant—Tenancy at Will of the Lessee.
—Defendant's grantor leased land to plaintiff, who was to plant fruit trees, and care for the premises, and was to be allowed to occupy the premises as long as he pleased. The lease provided that surviving representatives of either's immediate family should have the benefit of the lease so long as they should comply with the terms thereof. Defendant entered on the land, and plaintiff brings this suit to oust him of possession. Held, Where a present valuable consideration had been paid, the tenancy being at the lessee's will, the lessee had a freehold interest "approximating a life

“Every lease at will must in law be at the will of both parties, and therefore when the lease is made to have and to hold at the will of the lessor, the law implieth it to be at the will of the lessee also, and so it is when the lease is made to have and to hold at the will of the lessee, this must also be at the will of the lessor.” Coke, Littleton 55a. If the above should be accepted as the law without qualification then clearly the plaintiff in the principal case would have no estate in the premises. But the courts, though generally accepting the proposition that the tenancy at the will of the lessor is also at the will of the lessee, have not been so willing to accept the converse as being good law at the present time. Among the cases which have adopted the old common law view as above stated are the following: Whoon v. Drizzle, 14 N. C. 414; Cowan v. Radford, 83 Va. 547, 3 S. E. 120; Knight v. Indiana Coal Co., 47 Ind. 105. Other jurisdictions have not accepted this view, but have held that a lease under seal, determinable at the will of the lessee gives to the lessee a life estate, determinable at his option, since by its express terms the earliest possible moment at which it must terminate is at the death of the lessee. Thompson v. Baxter, 107 Minn. 122, 119 N. W. 797; Lindlay v. Raydure, 238 Fed. 928; Warner v. Tanner, 38 Oh. St. 118. The West Virginia court has several times quoted the common law rule and applied it in State v. South Penn Oil Co., 42 W. Va. 80, 102, 24 S. E. 688; Eclipse Oil Co. v. South Penn Oil Co., 47 W. Va. 84, 34 S. E. 923; Hinton Foundry Co. v. Lilly Lumber Co., 75 W. Va. 477, 80 S. E. 733. But a survey of these cases reveals that the leases have been executory, or based on a mere nominal consideration, and if the rule had not been followed it would have worked a hardship on the lessor. However it seems that the principal case is the first West Virginia case to repudiate the common law view of tenancies at will. In so doing, the court, it is submitted, obtains a just and equitable result. By allowing the lessee to occupy “as long as he pleased,” the parties had in effect expressly agreed that only the lessee’s will should terminate the lease, and since it is based on a present valuable consideration there seems to be no good reason why the lessor should not be bound by his
own lease. The rather unusual language of the court in giving the lessee a freehold "approximating a life estate" is probably due to the language of the lease providing that "the surviving representatives of the immediate family of either party shall have the benefit of this contract." It is not necessary for the purpose of this suit, the court does not decide exactly what estate the plaintiff has, nor the effect of the provision for survivorship.

—J. V. S.