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Recent Cases

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RECENT CASES

MECHANICS' LIENS—PROPERTY AND RIGHTS SUBJECT TO LIENS—LEASEHOLD—BUILDINGS CONSTRUCTED BY TENANT. The plaintiffs furnished materials to the defendant's tenants, which were used in the construction of a building on the leased premises. The lease gave the tenants the right to erect buildings on the land, the same to become the property of the lessor when built and revert to him on termination of the lease. The lease having been terminated by the defendant lessor for nonpayment of rent, the plaintiffs sought to enforce a mechanic's lien on the building by a sale and removal as provided by Rem. Comp. Stat., § 1146, in cases where the land on which the building is situated is not subject to the lien. Plaintiffs admit the latter fact here, since they did not give the notice required by statute to bind the owner of the property. *Held*: that the plaintiffs could not enforce a lien on the building, since by the terms of the lease it became a part of the realty. The tenants had nothing more than a leasehold interest, and lien rights against it were lost by the forfeiture. Likewise, the lessor's interest was exempt, regardless of notice, since a tenant who has only the option of making permanent improvements is not a statutory agent empowered to subject his landlord's interest to a mechanic's lien as provided by Rem. Comp. Stat. § 1129. *Colby & Dickinson v. Baker*, 145 Wash. 584, 261 Pac. 101 (1927).

The case is interesting in that it shows that one who furnishes materials to a tenant engaged in erecting improvements, which are optional under the lease, but which are to become a part of the realty, may, by a forfeiture, be cut off from security for the payment of his claim. The plaintiffs could have asserted a lien against the tenant's leasehold interest, during its existence, but a forfeiture ends this right. 40 C.J. 339. The plaintiffs' rights were subjected to the lease, and they are bound by the ownership of the property as therein declared. *Owen v. Casey*, 48 Wash. 673, 94 Pac. 473 (1908) 40 C.J. 63. As to the landlord's interest, it was early decided in Washington that a tenant under such a lease as existed here was not an agent, within the meaning of the statute, capable of charging his lessor's property with a lien for materials furnished. *Stetson & Post Mill Co. v. Brown*, 21 Wash. 619, 59 Pac. 507, 75 Am. St. Rep. 862 (1899). The rule is otherwise, however, where the lease requires the tenant to build. *Kremer v. Walton*, 16 Wash. 139, 47 Pac. 238 (1896) *Hays v. Montesano Mill Co.*, 85 Wash. 604, 148 Pac. 881 (1915). Also the lessor may, under certain facts, be estopped to deny the existence of the lien. *Shaw v. Spencer* 57 Wash. 587, 107 Pac. 383 (1910). But on the facts of the principal case, the estate of the landlord could not be held, and the plaintiffs are remitted to the personal liability of the tenants for the satisfaction of their claim. J. G. G.

WILLS—CONSTRUCTION OF BEQUESTS—LEGACY AS PAYMENT OF DEBT—PRESUMPTIONS. Plaintiff filed a claim with the executors of an estate for services rendered at the request of the testator for five years previous to her death. For an affirmative defense defendant pleaded a paragraph of the will which gave the plaintiff $500 "for her kindness to and care for me for five years last past." *Held*: there was no clear intention shown to put the plaintiff to an election. As the legacy was much less than the amount claimed there could be no presumption that it was intended as payment of the debt. *Doty v. Spokane & Eastern Trust Co.*, 46 Wash. Dec. 83, 261 Pac. 788 (1927).

The legatee, by accepting a legacy offered in a will, may be held to have elected to have surrendered some right of his which the will undertakes to dispose of, or he may elect to retain such right and reject the legacy. *Moore v. Baker*, 4 Ind. App. 115, 30 N. E. 651, 51 Am. St. Rep. 203

(1892). The election may consist of the retention of money where its payment can only be referred to provisions of the will. *Sherman v. Flack*, 283 Ill. 457, 119 N. E. 293, 5 A.L.R. 496 (1918) *Martien v. Norris*, 91 Mo. 465, 3 S. W 849 (1887). Where the payment of money can be referred to some other obligation it will not constitute an election under the will. *In re Beck's Estate*, 265 Pa. 51, 108 Atl. 261 (1919). If payment can be referred to a gift it will not constitute an election. *May v. Jones*, 87 Iowa, 188, 54 N. W 231 (1893). It is a general rule that if the legacy is equal to or greater than the debt it will be deemed to be in satisfaction of the debt. *Fetrow v. Krause*, 61 Ill. App. 238 (1895) *Buckner v. Martin*, 158 Ky. 522, 105 S. W. 665, L.R.A. 1915B, 1156 (1914). The general rule will not be applied where the language of the will excludes the inference that the testator intended the legacy to go in satisfaction of the debt. *Reynolds v. Robinson*, 82 N. Y. 103 (1880). Where the legacy is smaller than the amount of the indebtedness there will be no presumption that the legacy was in payment of the debt. *Fetrow v. Krause, supra, Rusling v. Rusling*, 42 N. J. Eq. 594, 8 Atl. 534 (1887) *Matter of Sherman*, 53 N.Y.S. 376 (1898). The view adopted by the Washington court in the principal case is, therefore, in accord with the authorities. G. F. A.

BOOK REVIEWS

THE INSURANCE COMMISSIONER IN THE UNITED STATES. By Edwin Wilhite Patterson. Cambridge: Harvard University Press, 1927. pp. xviii, 589.

This book is the first of a series of Harvard Studies in Administrative Law.

In the introduction, Professor Frankfurter ably establishes a concept of Administrative Law. He concludes that, "administrative law deals with the field of legal control exercised by law-administrating agencies other than courts, and the field of control exercised by courts over such agencies."

The development of this field, Professor Patterson points out, is perhaps the most conspicuous contemporary trend in the legal world. As the concepts established in most fields depend upon the problem of the time and place of the thinkers, it is probable that the development of administrative law is the result of our machine processes, technical specialization, scientific prevention, and social responsibility. In the dynamic world of today, judicial procedure was found to be too rigid and ritualistic, and so we have the development of such administrative agencies as the Interstate Commerce Commission, the state public service commissions, the state insurance commissions, and the Federal Trade Commission.

In this volume Professor Patterson presents a scientific analysis of the complicated system of administrative control of the business of insurance, through the office of the insurance commissioner. The way in which the author tells the story of the insurance commissioner is through an exhaustive analysis and summary of the activities of the insurance departments of the forty-eight states. He obtained his data from three sources: statutes and constitutions, judicial decisions, questionnaires and interviews with the officials of the insurance departments.

The results of his studies are grouped into six parts with a chapter devoted to each.

In Chapter I Professor Patterson gives a summary of his conclusions. He intends this summary to indicate what is on the menu, and also to give cafeteria service to those who have not the time or digestion for the larger meal. In this chapter is also an able criticism of some of the activities of the insurance commissioner.

Chapter II deals with the organization and personnel of insurance departments. In organization, most of the insurance departments resemble a cabinet department of the Federal Government. A single official is at the head of the department, who in theory makes all decisions and controls all official actions of the department. Beneath him are corps of examiners,