# LANDLORD AND TENANT

*By* HENRY S. BARNES*

During the year under review the law of landlord and tenant developed slowly. It is the purpose of this paper to discuss briefly the progress made by legislative amendment and by judicial decision.

For many years the Code provided that "Where no time is specified for the termination of the tenancy, the law construes it for the calendar year; but if it is expressly a tenancy at will, either party may terminate it at will."[1] This law created an irrebuttable presumption that was, in many instances, contrary to the real intention of the parties. The shift in population from rural to urban areas and the consequent increase in the number of persons who worked for a weekly or monthly wage produced a demand for a change in the length of the term to one approximately that of the pay period. Lawyers realized that to fasten on such a tenant an irrebuttable presumption that he rented the premises for the remainder of the calendar year, unless he was sufficiently experienced to provide specifically for a tenancy at will, worked a considerable hardship on him. In fact, it fastened on him a term that he never had any conscious intention to create.

The legislature remedied the evil by striking the entire Code section and substituting therefor a new section, to wit: "Where no time is specified for the termination of the tenancy, the law construes it to be a tenancy at will."[2] If construed literally the amendment is unsuited to the needs of the agricultural tenant. Presumably the legislature had in mind the industrial rather than the agricultural worker and left the problems of farm tenancy to be solved at a later date. If this be true it is suggested that, since the economic problem of farm tenancy is so different, a new system better fitted to the needs of agriculture be worked out as soon as possible. It is further suggested that the fundamentals of the new system be derived from the common law rather than from the civil law. In short, we need two laws instead of one.

A perusal of decisions handed down during the year indicates that cases involving the liability of the landlord for injuries to tenants and invitees are frequently before the courts. Whether the landlord had notice of the defect in the premises from which the injury arose was often the issue.

In *Rothberg v. Bradley*[3] it was held that a landlord who retains qualified possession and supervisory control over leased premises may be liable

*Professor of Law, Walter F. George School of Law, Mercer University; B.B.S., 1920, North Georgia Agricultural College; A.B., 1928, LL.B., 1928, A.M., 1933, Mercer University; LL.M., 1938, Duke University; Member Georgia Bar Association.

1. GA. CODE § 61-104 (1933).
2. Ga. Laws 1952, p. 201.
3. 85 Ga. App. 477, 69 S.E.2d 293 (1952).

for injuries to an invitee arising from his failure to keep the premises in a reasonably safe condition. His liability is not dependent upon his having actual knowledge of the existence of the defect but may be based on notice derived from the fact that he would have discovered the defect from which the injury arose had he used ordinary care to keep the premises in proper repair. Or to put it another way, the person who undertakes the duty of keeping premises in a safe condition is presumed to know of the existence of all defects that a reasonably careful and skilled workman would discover while performing that duty. The practical effect of this principle is to give added protection to the injured person by relieving him of the burden of proving that the landlord had notice of the existence of the defect that caused his injury.

*Kimpson v. Wingo*[4] applied the principle that where a landlord has actual knowledge of a defect in the leased premises, which he is under a duty to remove but fails to do so, he will be charged with constructive notice of any hidden defect that he would have discovered had he done his duty. The principle enables the tenant who has been injured by a hidden defect in the premises to carry the burden of proving notice of the defect to the landlord by showing that if he had properly performed his duty to repair the known defect he would necessarily have discovered the unknown. The principle is sound.

Where the landlord and his tenant used the same steps to reach their respective apartments, the use of the steps by the landlord was held to be sufficient notice to him of the defective condition of the steps, and his failure to repair them rendered him liable to a guest of the tenant who was injured by their collapse.[5]

A municipal corporation engaged in operating an amusement park for profit is performing a ministerial and not a governmental function. If a municipal corporation operates such a business, it puts itself in the same category as a private landlord and is under the same duties and subject to the same liabilities. The landlord can not shift these duties and liabilities to another by leasing the premises and at the same time retaining control over the premises, the lessees, or the concessionaire of the lessee.[6] Under the foregoing principles a city may be liable to a customer of a concessionaire of its lessee who is injured in the operation of a defective amusement device.

In *Alexander v. Holmes*[7] the court held that no demand for payment of rent was necessary to entitle the landlord to a distress warrant. The only requirement is that the rent be due and unpaid.

At common law past due rent, being a chose in action, was personal property while rent not due, so long as it was not separated from the reversion, passed with the reversion as real property. Upon the trans-

4. 84 Ga. App. 189, 65 S.E.2d 837 (1951).
5. Smith v. Stovall, 84 Ga. App. 103, 65 S.E.2d 640 (1951).
6. Davis v. City of Atlanta, 84 Ga. App. 572, 66 S.E.2d 188 (1951).
7. 85 Ga. App. 124, 68 S.E.2d 242 (1951).

fer of the rent, separately from the reversion, it took on many of the characteristics of personal property. The transfer of a present right to the future possession and enjoyment of personal property is a chose in action. Therefore, it follows that the assignment of rents to accrue in the future, whether at a stated time or upon the happening of a specified event, entitles the assignee to collect the rents from one who has wrongfully received them from the tenant.[8]

In *Evans v. Looney*[9] it was held that where the reversioner of land that had been rented for standing rent conveyed it by warranty deed which contained no reservation of unpaid rent, the grantee acquired all the right, title and interest of the grantor. Under our law a landlord's lien on his tenant's crops for rent not due is an interest in land which will pass to his grantee. It makes no difference whether, as between the landlord and his tenant, the crops are treated as real or personal property. It would be simpler to follow the common law theory that not due rent passed as an incident of the reversion unless reserved by the grantor. The court did a neat job by reaching a just conclusion in the face of a statute making growing crops personalty.

8. Padgett v. Butler, 84 Ga. App. 297, 66 S.E.2d 194 (1951).
9. 86 Ga. App. 79, 70 S.E.2d 801 (1952).