THE

RELATIONSHIP

OF

LANDLORD AND TENANT.

BY

EDGAR FOA,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

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Leases of corporeal hereditaments.—At common law a lease for years of corporeal hereditaments might have been made for any length of term by parol (*y*). But by the Statute of Frauds (*z*) it was enacted (*a*) that all leases not in writing signed by the parties making them or their agents thereunto lawfully authorized by writing should have the force, both at law and in equity, of estates at will only. Leases, however, not exceeding three years from the making thereof, whereon the reserved rent is equal to two-thirds at least of the improved value of the premises, are excepted (*b*), even though such leases may be only to commence *in futuro* (*c*); and if such a lease be made by parol its terms may always be proved by parol evidence (*d*). But a lease for three years to commence at a future day, as it exceeds three years "from the making," cannot be made by parol (*e*). The Statute of Frauds applies only where the tenancy must of necessity last more than three years, and not where, at the time of the arrangement, it may last for less, though it may last for more (*f*):—as in the case of an ordinary tenancy from year to year (*g*). Nor does its provision requiring a party's signature extend to leases under seal (*h*).

A further Act passed in the year 1845 (8 & 9 Vict. c. 106) provides (*i*) that a lease required by law to be in writing shall be void at law unless made by deed. The Statute of Frauds, moreover (*k*), as will be shown more fully hereafter (*l*), forbids an action to be brought upon any agreement for a lease for a term however short, unless such agreement be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

But the rigour of these statutory provisions has been considerably mitigated by the courts both of law and equity. By the former, "estate at will," in the 1st section of the Statute of Frauds, was construed to mean an estate at will *in the first instance*, but convertible into a yearly estate or tenancy by the subsequent acts of the parties (*m*). Thus, occupation and payment of rent

(*y*) Except leases by corporations: *post*, p. 46.
(*z*) 29 Car. 2, c. 3.
(*a*) Sect. 1.
(*b*) Sect. 2.
(*c*) *Ryley* v. *Hicks*, 1 Str. 651.
(*d*) *Bolton* (*Lord*) v. *Tomlin*, 5 A. & E. 856.
(*e*) *Foster* v. *Reeves*, [1892] 2 Q. B. 255; *Rawlins* v. *Turner*, 1 Ld. Ray. 736.
(*f*) *Ex parte Voisey*, 21 Ch. Div. at p. 458, per Brett, L. J.
(*g*) *Hammond* v. *Farrow*, [1904] 2 K. B. 332, per Wills, J.
(*h*) *Aveline* v. *Whisson*, 4 M. & Gr. 801. See Williams's Real Property, p. 154 (20th ed.).
(*i*) Sect. 3.
(*k*) Sect. 4.
(*l*) See *post*, pp. 353 *et seq.*
(*m*) *Doe* v. *Bell*, 5 T. R. 471; *Clayton* v. *Blakey*, 8 T. R. 3; 2 Sm. L. C. 119, 127; *post*, p. 343.

under a lease inoperative by the statute were held to create, during the remainder of the proposed term, a tenancy which *primâ facie* was a tenancy from year to year upon the terms of such lease, so far as they were not inconsistent with a yearly holding; an agreement for a yearly tenancy being implied from acts which were taken to show an intention to create it (*n*). (The same rule applies, too, in the case of a demise void at common law (*o*), or by reason of not complying with the requirements of any other statute (*p*).)

The presumption of a yearly tenancy, however—displacing the tenancy at will created by the Statute of Frauds (and implied in the other cases (*q*) from the mere fact of occupation)—is liable to be rebutted by evidence (*r*), *e.g.*, by a gross disparity between the rent received and the real annual value (*s*). And, as will be shown more fully hereafter (*t*), in exactly the same way, where, instead of a void lease, there was an agreement, whether valid or invalid under the 4th section of the Statute of Frauds, to grant a future lease, followed by entry and payment of rent thereunder, the tenancy was likewise regarded as *primâ facie* a tenancy from year to year, upon such of the terms of the proposed lease as were applicable thereto (*u*). Nor was the attitude of the courts of common law in this matter altered by the 8 & 9 Vict. c. 106, s. 3; for the expression "void at law" in that section was construed by them to mean void *as a lease*, but valid as an agreement (*x*); and though in each of the decisions on this question (*y*) the instrument of demise was obviously capable of being construed as an agreement, it may probably be inferred that such an instrument, even if couched in words incapable of being regarded otherwise than as expressing an intention to effect an immediate demise (*z*), would, nevertheless, be good as an agreement (*a*). The result, therefore, was that entry and payment of rent under a lease falling within this statute also created a tenancy from year to year.

(*n*) See 2 Sm. L. C. 120, notes to *Doe* v. *Bell*, *supra*.

(*o*) *Doe* v. *Watts*, 7 T. R. 83; *Doe* v. *Morse*, 1 B. & Ad. 365; *Eccles. Commissioners* v. *Merral*, L. R. 4 Ex. 162.

(*p*) *E.g.*, the provisions of mortmain: *Magdalen Hospital* v. *Knotts*, 4 App. Ca. 324, per Lord Selborne; *Bunting* v. *Sargent*, 13 Ch. D. 330.

(*q*) See *ante*, p. 2, and *post*, p. 393.

(*r*) See *post*, p. 395.

(*s*) See *Roe* v. *Prideaux*, 10 East, 158; *Smith* v. *Widlake*, 3 C. P. Div. 10.

(*t*) *Post*, p. 343.

(*u*) *Chapman* v. *Towner*, 6 M. & W. 100.

(*x*) *Bond* v. *Rosling*, 1 B. & S. 371; *Rollason* v. *Leon*, 7 H. & N. 73; *Tidey* v. *Mollett*, 16 C. B. N. S. 298. (These decisions may be regarded as overruling *Stratton* v. *Pettit*, 16 C. B. 420.)

(*y*) Cases just cited.

(*z*) As to this, see *post*, p. 75.

(*a*) Dav. Prec. Conv. vol. 5, pt. 1, p. 17 (3rd ed.).

But the courts of equity, notwithstanding the fact that sect. 1 of the Statute of Frauds is in terms binding "both at law and in equity," went further still. By the extension to cases under this statute of the doctrine of part performance (*b*), any party to a lease, or to an agreement for a lease, void under this statute but capable of being specifically enforced, who had given or taken possession thereunder, was not only held entitled to require the other party to execute a valid lease, but was treated as actual lessor or lessee under a valid lease from the time of possession being so taken (*c*). And the courts of equity further held, in this respect following the line taken by the courts of law (*d*), that a demise void as such under the 8 & 9 Vict. c. 106, s. 3 (the words of which, as will be noticed, are only "void *at law*"), was nevertheless (although containing words of present demise) valid as an agreement, and consequently capable of being specifically enforced (*e*). Thus, while at law the tenant who took possession under a void lease or under a mere agreement (whether valid or invalid) remained nothing more than a tenant at will until he had paid rent, and thenceforward became tenant from year to year,—in equity, provided his claim to specific performance was one which could not be resisted (*f*), he was regarded as a tenant under the lease from the moment he took possession. Hence, for example, where in such a case a lessor, treating his lessee as a yearly tenant, brought ejectment (*g*) against him upon the usual notice to quit (*h*), and the lessee thereupon claimed specific performance of the lease in a court of equity, that court assumed jurisdiction to restrain the lessor's proceedings in ejectment until the hearing of the lessee's claim for specific performance (*i*).

(It is interesting to note that in one case, decided by Lord Mansfield, the ejectment proceedings actually failed in a court of law, on the ground that specific performance of the agreement would clearly be decreed in equity (*k*). But "great inconveniencies," as we are told by a high authority (*l*), resulted from the decision; though these, as he says, were "happily got rid of" by the effect of subsequent judgments (*m*). Lord Mansfield's

(*b*) As to this, see *post*, pp. 360—365.

(*c*) See the remarks of Jessel, M. R., in *Walsh* v. *Lonsdale*, 21 Ch. Div. 9, cited *infra*, pp. 13, 14.

(*d*) *Supra*, p. 10.

(*e*) *Parker* v. *Taswell*, 2 De G. & J. 559.

(*f*) As to this, see *post*, pp. 345 *et seq.*

(*g*) As to this, see *post*, pp. 765 *et seq.*

(*h*) As to this, see *post*, pp. 600 *et seq.*

(*i*) *Browne* v. *Warner*, 14 Ves. 156, 409; *Parker* v. *Taswell*, *supra*.

(*k*) *Weakly* v. *Bucknell*, Cowp. 473.

(*l*) Lord Redesdale, in *Shannon* v. *Bradstreet*, 1 Sch. & L. at p. 67.

(*m*) See also the reporter's note to *Doe* v. *Wroot*, 5 East, 132.

decision was an anticipation of the Judicature Acts by exactly a century.)

Upon this state of things the Acts just referred to supervened, and the effect of the fusion of law and equity upon this matter is well illustrated in a leading case (*n*) decided by the Court of Appeal in the year 1882. The plaintiff was tenant in occupation of certain premises from the defendant under an agreement for a lease which provided for the payment on demand of a whole year's rent in advance. (Though the holding in this case was under an agreement, precisely the same reasoning applies to a holding under an actual demise invalid by the Statute of Frauds and the 8 & 9 Vict. c. 106, s. 3, because such an instrument, as already pointed out (*o*), though void as a lease, is good as an agreement.) He had entered and paid rent, so that his position at law, as just explained, was that of tenant from year to year under such of the terms of the proposed lease as were consistent with a yearly tenancy. The landlord had demanded a year's rent in advance, and two days later, it being unpaid, put in a distress (*p*). The tenant thereupon brought an action in the Chancery Division claiming damages for wrongful distress, an injunction to restrain the defendant from continuing in possession under the distress, and specific performance of the agreement. Upon his behalf it was contended that the stipulation for payment of a whole year's rent in advance at all times on demand was not applicable to the yearly tenancy created (both because the rent was incapable of being ascertained before the end of the year (*q*), and because, as such a tenancy is always determinable at a half-year's notice (*r*), the tenant might be turned out of possession while the period for which he had paid rent was still running (*s*)), and that consequently the landlord could not exercise a right of distress for rent so payable in advance, as long as specific performance had not in fact been ordered. But Sir G. Jessel, M. R, said (*t*): "A tenant holding

(*n*) *Walsh* v. *Lonsdale*, 21 Ch. Div. 9.

(*o*) *Supra*, pp. 10, 11. As to leases void at common law, see *infra*, p. 17.

(*p*) As to this, see Book II., *post*.

(*q*) *Post*, p. 482. The demise was of a mill, and the rent was made to depend upon the number of looms—not being less than a certain number, so that a *minimum* rent was provided for—which should be "run" in the course of a year.

(*r*) *Post*, p. 607.

(*s*) See 2 Sm. L. C. at p. 122, notes to *Doe* v. *Bell*.

(*t*) The subjoined passages from his judgment (which on account of their importance are set out at length) are, it is submitted, essential to the decision, and in no sense *obiter dicta*, because, on any other basis, the distress must have been unlawful for the reasons just given; for though the former objection might have been overcome by means of the *minimum* rent, the latter would have remained insuperable.

under an agreement for a lease *of which specific performance would be decreed* (*u*) stands in the same position as to liability as if the lease had been executed. He is not, since the Judicature Act, a tenant from year to year: he holds under the agreement, and every branch of the court must now give him the same rights. . . . There is an agreement for a lease under which possession has been given. Now, since the Judicature Act the possession is held under the agreement. There are not two estates as there were formerly, one estate at common law by reason of the payment of the rent from year to year, and an estate in equity under the agreement. There is only one Court, and the equity rules prevail in it. The tenant holds under an agreement for a lease. He holds, therefore, under the same terms in equity as if a lease had been granted, it being a case in which both parties admit that relief is capable of being given by specific performance. That being so, he cannot complain of the exercise by the landlord of the same rights as the landlord would have had if a lease had been granted. On the other hand, he is protected in the same way as if a lease had been granted: he cannot be turned out by six months' notice as a tenant from year to year. He has a right to say, 'I have a lease in equity, and you can only re-enter if I have committed such a breach of covenant as would, if a lease had been granted, have entitled you to re-enter according to the terms of a proper proviso for re-entry.' That being so, it appears to me that, being a lessee in equity, he cannot complain of the exercise of the right of distress merely because the actual parchment has not been signed and sealed." And the other members of the Court also held that the rights of the parties must depend upon the terms of the lease, *as it ought to be framed* in pursuance of the agreement between them.

The principle of the above decision has been followed in several subsequent cases (*x*); nor is it apparently even necessary (though always advisable (*y*)) that the party who claims the benefit of equitable doctrines as to the tenancy should ask for specific performance in the action (*z*). The doctrine, however (as it has been held), only applies where the court in which the action is brought

(*u*) *Coatsworth* v. *Johnson*, 55 L. J. Q. B. 220, shows that it is otherwise where that remedy is not available.

(*x*) *E.g.*, *Allhusen* v. *Brooking*, 26 Ch. D. 559; *In re Maughan*, 14 Q. B. D. 956; *Crump* v. *Temple*, 7 T. L. R. 120; and by the Court of Appeal in *Lowther* v. *Heaver*, 41 Ch. Div. 248.

(*y*) The claim should be "properly brought forward." See Jud. Act, 1873, s. 24 (7).

(*z*) *Furness* v. *Bond*, W. N. 1888, p. 78; 4 T. L. R. 457.

has competent jurisdiction both at law and in equity; hence, where a tenant who had entered under an instrument of demise void as a lease (though good as an agreement (*a*)) left after giving six months' notice, and the value of the premises exceeded the amount (*b*) which would have entitled a County Court to decree specific performance of the agreement, it was held that that Court had no right to treat the tenant as in under the agreement, and consequently to hold him liable for rent accrued due after he relinquished possession (*c*). Moreover, it applies only to cases where there is a contract to transfer a legal title, and an act has to be justified or an action maintained by force of the legal title to which such contract relates (*d*). It involves two questions: first, is there a contract of which specific performance can be obtained? Secondly, if yes, will the title acquired by such specific performance justify at law the act complained of, or support at law the action in question (*d*)? It is to be treated as though before the Judicature Act there had been first a suit in equity for specific performance, and then an action at law between the same parties; and the doctrine is applicable only in those cases where specific performance can be obtained between the same parties, in the same court, and at the same time, as the subsequent legal question falls to be determined (*d*).

The practical result of the whole is that, where possession has been given, the statutes restricting the ancient common law right of making leases in any manner by imposing formalities of writing and sealing, are, in those cases where relief is to be obtained by specific performance (*e*), at the present day of no effect: and inasmuch as that relief, as will be seen hereafter (*f*), will, as a rule, be granted in every case where a concluded agreement, though verbal only, is followed by the delivery of possession, it

(*a*) *Supra*, p. 11.

(*b*) See *post*, p. 345.

(*c*) *Foster* v. *Reeves*, [1892] 2 Q. B. 255. Sect. 89 of the Jud. Act, 1873, does not seem to have been referred to. It may be added that both this and the following section (sect. 90), as well as the Jud. Act, 1884 (47 & 48 Vict. c. 61), s. 18, show that a *defendant* stands in this respect on a different footing to a plaintiff; and that if sued in an inferior court he cannot be prevented from setting up—but only (except by consent) as an answer to, and to the extent of, the claim made against him—a defence and counterclaim involving matters beyond its jurisdiction.

(*d*) Per Farwell, J., in *Manchester Brewery Co.* v. *Coombs*, [1901] 2 Ch. 608 (referred to also *infra*, p. 17). It would appear, however, to have escaped attention in this case that the tenancy intended to be created by the instrument of demise being one from year to year, the legal estate, in spite of the non-execution of the deed by the lessors, became vested in the lessee by the entry and payment of rent, and the aid of the equitable doctrine appears therefore unnecessary.

(*e*) As to this, see *post*, pp. 345 *et seq.*

(*f*) *Post*, p. 363.

may be inferred that tenancies in corporeal hereditaments can in such cases be created in any manner whatever.

The same principle may now definitely be said to apply in the case of those anomalous instruments, hereafter referred to more in detail (*g*), where to a "periodic" letting by the week, month, quarter, or year there is added a stipulation on the part of the lessor that, whilst the rent is paid regularly or some other condition fulfilled by the lessee, the tenancy shall not be determined or the possession disturbed by the former. It was at one time held (*h*) that in the absence of a deed (which, where there had been no livery of seisin, was necessary at common law for the creation of a freehold interest (*i*)) the right to specific performance depended on whether the document was a mere agreement for a lease or amounted to an actual demise (*k*); and that in the latter event the provision against the determination of the holding was invalid, and could be altogether disregarded as being repugnant to the nature of the "periodic" tenancy created by the instrument (*l*). It seems, however, clear that at the present day the above case—being that of a feoffment not "evidenced by deed"—would (like the case of an ordinary lease required by law to be in writing (*m*)) fall within the scope of the stat. 8 & 9 Vict. c. 106, s. 3; that under this statute the instrument in question would be merely "void at law;" that it would be good as an agreement, whether amounting to an actual demise or not; that specific performance of such an agreement being available, the instrument, with its provision against determination by the lessor, would be capable of being fully enforced; and that the effect of the arrangement would be to convey a conditional estate for the life of the lessee (*n*).

There is, however, as it is thought, an exception to the above general rule which should not be overlooked. In the case of an agreement for letting merely inoperative under the Statute of

(*g*) See *post*, p. 112.

(*h*) *Browne* v. *Warner*, 14 Ves. 156.

(*i*) Possibly all that Lord Eldon, L.C., intended as to this in the last-cited case (see at p. 158 of the report) was that (there having been no livery of seisin) the only way of conveying a freehold interest was by means of a release, for which a deed of *some* kind was necessary. But if, as would seem to be the case, he meant to suggest that the instrument of letting there in question might have conveyed an estate for life if it had been made by deed, this would scarcely appear to be correct; for as it was executed before and not after the delivery of possession (cf. *Doe* v. *Browne*, 8 East, 165), it could not have operated as a release. See Litt. ss. 59, 459.

(*k*) See *post*, p. 74.

(*l*) *Browne* v. *Warner*, *supra*: followed by the C. A. in *Cheshire Lines Committee* v. *Lewis*, 50 L. J. Q. B. 121, apparently *per incuriam*, the statute next mentioned not having been referred to.

(*m*) *Supra*, p. 11.

(*n*) *Zimbler* v. *Abrahams*, [1903] 1 K.B. 577, C. A., following *Mardell* v. *Curtis*, W. N. 1899, p. 93.

Frauds the contract itself is perfectly valid and the only effect of the statute (*o*) is that in a contested suit no evidence can be given of that contract unless the formalities prescribed have been observed, the Court under certain circumstances (*p*) allowing those formalities to be dispensed with and the evidence to be given in their absence (*q*). But in the case of a letting by a corporation not under their common seal the contract itself is void in the sense that no contract exists of which specific performance can apparently be given at all (*r*). Hence to such a case the doctrine here discussed is, as it would seem, inapplicable, and the tenancy from year to year created by entry and payment of rent (*s*) still continues (*t*); though even here, as in all similar cases (*u*), the existence of a tenancy at all is only based on a presumption, which will have no place if some explanation of the occupation (other than that of trespass, which is negatived by the payment of rent) be forthcoming (*x*).

It should, moreover, be observed that it is not to be inferred that (even where the remedy of specific performance is available) an agreement for a lease is *for all purposes* equivalent to an actual lease. Thus, where a statute deals with "leases," agreements are not necessarily within its scope (*y*), and at all events will not be held to be within it if specific performance of them would for any reason be withheld (*z*). And, in any case, the equivalence of agreements and leases only applies as between the parties themselves, and not where the rights of strangers come in question (*a*). At the same time, the statement that the doctrine here referred to does not "affect the rights of third parties" (*b*) must not be taken too literally; and the sub-tenant, for instance, of a person entitled to the benefit of it would, it is thought, be able to enforce it against the head lessor.

(*o*) The enactment referred to in the last paragraph may for this purpose be regarded as a mere extension of the Statute of Frauds.

(*p*) See pp. 360—365, *post*.

(*q*) *Hunt* v. *Wimbledon Local Board*, 4 C. P. Div. 48, per Brett, L. J.

(*r*) See *post*, p. 364.

(*s*) *Supra*, p. 11.

(*t*) *Doe* v. *Taniere*, 12 Q. B. 998; *Wood* v. *Tate*, 2 N. R. 247; *Eccles. Commissioners* v. *Merral*, L. R. 4 Ex. 162.

(*u*) See this matter discussed, pp. 343, 395, *post*.

(*x*) *In re Northumberland Avenue Hotel Co.*, 33 Ch. Div. 16, per Cotton, L. J.

(*y*) See, *e.g.*, the Conv. Act, 1881 (44 & 45 Vict. c. 41), s. 18, sub-s. 17.

(*z*) *Swain* v. *Ayres*, 21 Q. B. Div. 289. See this matter discussed *post*, p. 667.

(*a*) See *Brook* v. *Biggs*, 2 Bing. N. C. 572; *Bird* v. *G. E. Ry. Co.*, 19 C. B. N. S. 268; and for a parallel case, *Tasker* v. *Small*, 3 My. & Cr. at p. 70, per Lord Cottenham, L. C., followed in *Commissioners of Inland Revenue* v. *Angus*, 23 Q. B. Div. 579. For other illustrations of the distinction, too, see *post*, pp. 74, 112, 142.

(*b*) Per Farwell, J., in *Manchester Brewery Co.* v. *Coombs*, [1901] 2 Ch. at p. 618.