Landlord and Tenant-Estoppel of Tenant to Deny Landlord's Title

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fraud and evasions because the marriage relation offers opportunities that
do not exist to the same degree for single persons, for shifts and transfers
of property to secure exemptions from income taxes and to avoid the higher
brackets of such a tax, the United States Supreme Court held that rights
guaranteed by the Federal Constitution are superior to the supposed
necessity of these provisions to prevent fraud and evasions because of the
opportunities for same offered by the marriage relation. The State is
forbidden to deny due process of law or equal protection of the laws for
any purpose whatsoever. The provisions of the tax statute do not re-
establish what was formerly an incident of the marriage relation. Since
the property of the wife is still her own, the effort to tax the husband for
the wife's income did not make it his income and so the taxing as a joint
income, that which under the state's law is owned separately, merely to
secure a higher tax than would be the sum of the taxes on the separate
incomes, is an arbitrary and unreasonable classification. A forbidden tax
cannot be enforced to facilitate the collection of one properly laid.8

The dissenting opinion, written by Justice Holmes, in which Justices
Brandies and Stone concurred, was based on the ground that the husband
and wife usually get the benefit of the income of each other, and that
taxation may consider not only the legal command over, but the actual
enjoyment of the property taxed.9 The minority held that it is the
Court's business to supply any formula necessary to carry out the ex-
pressed intent of the legislature, and that the legislature here had clearly
indicated that it intended to accomplish a certain result within its power
to do—that of keeping one characteristic of the marriage relation. Since
the minority were of the opinion that the difference between the marriage
status and that of an unmarried person was a reasonable basis for the
classification, the question of denying due process does not arise under
their view.

The minority view is very plausible, for a tax on the basis of joint
incomes would seem not unreasonable in view of the fact that the benefit
of such incomes might enure to the head of the family, and he would then
be enjoying the income taxed, though he has not the legal command over
it.10 However, the state legislature has expressly made the wife's income
her separate property11 and, while the legislature undoubtedly has the
power to change the incidents of the marriage relation, as long as it has
given the wife the absolute control over her income, the measurement of
the husband's tax on the basis of the joint income to give the state the
benefit of the increased tax on the larger income is clearly an attempt to
measure the tax on one person's property or income by reference to the
property or income of another, and so is contrary to the Fourteenth
Amendment.12

L. J. H.

LANDLORD AND TENANT—ESTOPPEL OF TENANT TO DENY LANDLORD’S
TITLE—On April 15, 1927, the plaintiff leased certain real estate to the

10 Ibid.
11 Wisconsin Statutes, 1929, No. 246.01-.05.
defendant for a term of five years to commence on March 1, 1928. On September 22, 1927, the defendant filed a suit for condemnation of the fee-simple title of the same real estate. An interlocutory order of condemnation was entered and appraisers were appointed who, on November 29, 1927, appraised the fee-simple title at $23,578. On March 1, 1928, the defendant took possession under the lease and paid rent according to the terms of the lease. On September 18, 1929, the defendant, who was in undisturbed possession under the lease, paid into court the amount of the appraiser's award in the condemnation suit, without the knowledge or consent of the plaintiff and without surrendering possession. The plaintiff brought an action to enjoin the defendant from asserting the fee-simple title to the real estate and from doing any act inconsistent with the plaintiff's title and to quiet title to the real estate. Held, the defendant has not waived its rights under the condemnation proceedings and is not estopped from asserting the fee simple title to the real estate. An implied waiver, or waiver by conduct, is usually very difficult to distinguish from estoppel. Only the contention of the plaintiff based upon the principle of the estopped of the tenant to deny the landlord's title will be commented upon here.

The general rule is that a party who entered into possession under a lease is estopped, before he shall have surrendered possession, to deny that, at the time the lease was executed, his lessor had title to the leased land and every part of it. While the general rule is well settled, it is subject to an established exception that the tenant may always show that the title of his landlord has expired or has become extinguished since the period of tenancy commenced, for the tenant impliedly admits that the landlord has such a title as authorizes him thus to dispose of the premises, yet he cannot be held to affirm anything in respect to its continuance. If subsequent to the letting of the premises the tenant purchases his landlord's title, the tenancy is thereby extinguished or destroyed and the tenant may plead his purchase in bar of an action to recover the demised premises. A tenant may show that he has become a purchaser at a judicial or execution sale during the period of the tenancy, but it has been held that a tenant cannot acquire title to premises under an execution sale held to satisfy his own claim as creditor.

While the lessee may show that he has acquired his landlord's title during the period of the tenancy, he is precluded from showing that there is an outstanding paramount title in himself. Where the tenant has

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1 Russell v. Trustees of Purdue University, Appellate Court of Indiana, 178 N. E. 180 (October 28, 1931).
2 40 Cyc. 255.
3 Riverside Coal Co. v. No. Indianapolis Cradle Works (1923), 194 Ind. 175, 139 N. E. 674; Reese v. Coffee (192), 133 Ind. 14, 32 N. E. 720; Pence v. Williams (1895), 14 Ind. App. 86, 42 N. E. 494.
5 Higgins v. Turner (1975), 61 No. 249.
7 Matthew's Appeal (1833), 104 Pa. 444.
acquired title from a stranger or has acquired the landlord's title before entering into possession under the lease, he is held to have a paramount title. It has been argued that when the tenant acquires the lessor's title on a charge existing prior to the time of the lease, the tenant acquires a paramount title and should be estopped to assert it; but if he acquires the lessor's title on a charge arising after the lease, he does not, by asserting it, deny his landlord's title. The cases, however, do not recognize the distinction, but distinguish only between acquisition of the landlord's title before or after the tenancy commenced.

The question presented by this case is rather novel in that it does not fall clearly within any well-defined class of cases to which the general rule is applied or to which an exception to the general rule is recognized. In the principal case, the landlord, at the time the tenant entered into possession under the lease, held a title which was defeasible only by the tenant. While it would seem that the tenant, in exercising or enforcing the defeasance, is not denying his landlord's title or asserting a paramount title but is rather affirming and asserting his landlord's title, there is some conflict among the authorities as to the right of the tenant to acquire and assert against the landlord a title or interest based on the enforcement of such a defeasance. Some of these cases have been reconciled on the ground that the tenant is estopped only in actions based on the lease or the right of possession, but is not estopped in actions in which title is directly involved. Under this view, it is apparent that the principal case was correctly decided, for the landlord himself has put his title in issue by bringing an action to quiet title. While all the cases cannot be rationalized in this manner, it would seem that the court in this case chose the better view if the reason for the general rule is to prevent the tenant from making use of the possession under his lease in asserting a title adverse to or paramount to that of his landlord.

NEGLIGENCE—RES IPSA LOQUITUR—APPLICATION OF THE DOCTRINE—Action to recover for the death of James Wilkins who had been employed by the appellant railroad company as a car inspector. The complaint alleges that the appellant was assembling two trains on the same track, that were bound in opposite directions, and that the cabooses of sand trains were coupled together. It was the duty of the said Wilkins, as car inspector, to inspect the brakes of all outgoing trains. While so engaged in testing the brakes of the east-bound train, and pursuant and under the direction of the proper signal from the engineer, the deceased stepped between the cabooses for the purpose of releasing the angle cock, preparatory to the brake test. While the deceased was engaged in the performance of this

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9 Bower v. Bower (1847), 27 Tenn. 23; Smith v. Crosland (1884), 106 Pa. 413.
10 Tiffany on Landlord and Tenant, p. 496.
13 35 Corpus Juris 1232, sec. 575.
14 Houston v. Farris (1882), 71 Ala. 570.