

payments as rent, since what constitutes rent is a question of law and not of intention. Likewise, in spite of several decisions to the effect that an agreement by the lessee with the lessor to pay the taxes is in effect one to pay rent, the proper view is, it is submitted, that sums thus to be paid to a third person, not a representative of the lessor, do not constitute rent.

Hodgkins v. Price 137 Mass. 13;

People v. Swayze, 15 Abb. Pr. (N.Y.) 432.

It has been well said in this connection that 'rent has a fixed legal meaning, and to consider all payments which, by the terms of the lease, a tenant is bound to make, as coming within its definition, would lead to a confusion of ideas without necessity or advantage.'

In fact, by Section 77 of Article 81 of the Annotated Code of Maryland, it is provided that the tenant or person holding any leasehold estate shall pay the collector the taxes levied upon the demised premises.

Christopher Hughes vs. Elizabeth Young, 5 Gill and Johnson, 67.

Assuming, therefore, that the taxes on this property have been continuously paid by the lessee and his assigns, nevertheless, in my judgment, they do not constitute rent.

"It is settled that if no rent is demanded or paid for more than twenty consecutive years, such rent reserved is extinguished".

Rosenthal vs. Traub, 155 Md. 167, 170.

No evidence has been produced by the exceptants to show that the rent reserved in the lease has been either paid or demanded from the time of its creation, and the lease is sixty-eight years old. In fact no evidence has been produced by the exceptants, and it was stated in the above-entitled case of Rosenthal vs. Traub, at page 171, in the opinion of the Court, as follows: "The burden of proof is upon the exceptant, and I am by no means prepared to say he has made his case out, simply by the adduction of a lease executed more than half a century ago, without any proof whatever that the rent reserved by the lease has been exacted from the owner of this particular parcel." In addition to this, the respondent has offered testimony to the effect that no rent has been paid or demanded since the year 1888, by a witness, (Mrs. Lydia S. R. Snyder), eighty-three years of age, who was in a position to know and who has resided on that property since that time and now has a life estate in the same, and who also further testified that the lessor, Jacob Engle, and his sister Mary Engle, were dead at the time her husband acquired the property in question.

In my judgment, by virtue of Section 27 of Article 53 of the Annotated Code of Maryland, the rent reserved in the lease from Jacob Engle, herein referred to, has been extinguished, and as a result of that the fee simple title vested in the owners of the leasehold interest upon the expiration of the statutory period provided in the Act.

Safe Deposit & Trust Co. vs. Marburg, 110 Md. 410, 420;

Lewis vs. Kinniard, 104 Md. 653.

Rosenthal vs. Traub, supra.

As a result of the foregoing conclusions, in my judgment, the exceptions to the ratification of the sale should be overruled.

It is thereupon this 4th day of January, in the year 1939, by the Circuit Court for Frederick County, in Equity, adjudged, ordered and decreed that the exceptions to the ratification of the sale filed in this cause by J. Russell Boyer and Ettie May Boyer, his wife, on December 12, 1938, be and the same are hereby overruled. Costs incurred by said exceptions to be paid out of the funds in the hands of the Trustee.

Arthur D. Willard

Filed January 4, 1939.