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Landlord and Tenant—Attachment for Rent

acquire land under its power of eminent domain and lease it to a foreign company, since that would be doing indirectly what the state constitution prohibits the foreign corporation from doing directly. *State ex rel. Burlington & M. R. Co. v. Scott* (1888) 22 Neb. 628, 36 N. W. 121; *Koenig v. Chicago, B. & Q. R. Co.* (1889) 27 Neb. 699, 43 N. W. 423. The principal case distinguishes the Nebraska cases on the ground that the Nebraska Constitution differs from the Arkansas Constitution in that the former expressly prohibits a foreign railroad corporation not only from exercising the power of eminent domain but also from acquiring land in the state in any manner until it shall have become a body corporate pursuant to the laws of the state. The only pertinent clause in the Arkansas Constitution is, "Nor shall foreign corporations have power to condemn or appropriate private property." Const. Ark. art. 12 sec. 11.

The economic disadvantages to the modern big business projects under the minority view are clearly evident and seem to have been the chief reason why the courts have quite generally allowed foreign corporations to use this legal method of evasion. L. O. C., '31.

LANDLORD AND TENANT—ATTACHMENT FOR RENT.—Plaintiff sued to recover rent in aid of which an action of garnishment was issued and garnishee summons served upon banks in which defendant had funds on deposit. On appeal it was held that the landlord's statutory remedy of attachment for rent against the personal property, R. S. Mo. (1919) sec. 6893, was limited to personalty on leased premises, precluding attachment of tenant's bank deposits. *Phillips v. Hunter* (Mo. App. 1930) 31 S. W. (2d) 224.

This case was one of first impression, the court finding no other authority directly in point in the state. The Missouri statute provides that, "any person who shall be liable to pay rent . . . shall be liable in attachment for such rent . . . sixth, when the rent is due and unpaid after demand thereof . . . and that the person to whom the rent be owing . . . makes an affidavit of one or more of the foregoing grounds of attachment and that he believes that unless an attachment issue the plaintiff will lose his rent." The section further provides that the officer be authorized to issue an attachment for rent "against the personal property, including the crops grown on the leased premises . . . " The plaintiff maintained that the latter clause of the statute gave him a right of attachment of all the defendant's personal property, whether on or off the premises. In refusing to accept this interpretation of the statute the court reached the conclusion that if the plaintiff were given a right of attachment to all the personal property of the defendant, "a landlord would have a right superior to all creditors in that his attachment would reach not only the personal property on the premises, but also to any property belonging to the tenant no matter where it might be found although none of it was ever located or used upon the rented premises." This interpretation of the court in effect limits the statute to a declaration of the common law right of distress

against the property on the rented premises. *Hawkins v. Gill* (1844) 6 Ala. 620; *Greeley v. Greeley et al.* (1903) 12 Okla. 659, 73 Pac. 295.

By statute in Oklahoma as well as in Kansas the landlord has a lien for rent which may be enforced by attachment to be levied on the crop. The parts of these statutes corresponding to the sixth provision of the Missouri statute expressly authorize a general attachment whenever certain acts are done by the tenant as provided for in the general statutory attachment provisions, and in such case attachment may be levied against non-exempt property. *Tootle, Wheeler & Motter Mercantile Co. v. Floyd* (1910) 28 Okla. 308, 114 Pac. 259; *Erhardt v. Taylor* (1913) 90 Kan. 698, 136 Pac. 218. In this respect the Kansas and Oklahoma statutes are no broader than the Missouri statute, which although it does not expressly provide for general attachment for the landlord, does not, however, bar the remedy if the tenant commit the act or acts provided for in the general attachment law.

While the Missouri statute is not very clear in that the provision for attachment "against personal property, including crops grown on the leased premises" does not explain that it refers only to personal property on the land rented, yet the decision of the court seems justified, for the landlord is still given greater advantages than any other creditor. He may attach to enforce his prior lien on crops for rent and for money advances made to aid in their production and he has a right to attach the personal property of the tenant on the rented lands. Moreover, he has the same rights as other creditors to personalty that has never been on the rented property, under the general attachment law. M. E. S., '31.