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Mortgages: Contribution from Estate of Deceased Joint Tenant

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extremely narrow construction.²¹ It remained for a later California case²² to give this tort a broader base on which to stand.

Which of these solutions is the more satisfactory? It is submitted (1) that the latter is more consonant with notions of fair play, and (2) that it falls more squarely in line with present day attitudes towards leases in general. As to the first conclusion, it would appear that in the normal case the lessor has no reason to believe that the first lessee will commit a wrong by holding over. Therefore, those decisions which put the burden of responding in damages on the lessor seem unjust. Criticism may be directed at the jurisdictions that place the burden of obtaining possession on the second lessee, for while it may happen that a statute gives the second lessee the right to damages for the withholding as incident to his cause of action for possession,²³ it seems fair and just to compensate the second lessee for the invasion of his rights without requiring him to sue for possession. As it may happen that time is of the essence, it seems reasonable to place the option of suing for possession or for damages with the second lessee, and the burden of compensation should thus be placed on the shoulders of the wrongdoer by giving the second lessee direct recourse against him. As to the second conclusion, we are told that when the reason for a particular rule no longer exists the rule should fall also. The view which regards a leasehold interest as an estate in the land finds its origin in principles of feudalistic land tenure. The political system embodying these principles is virtually dead. It seems anachronistic, therefore, to apply them to modern legal problems.

Myron E. Etienne, Jr.

MORTGAGES: CONTRIBUTION FROM ESTATE OF DECEASED JOINT TENANT.—The Supreme Court of Pennsylvania has held that a surviving tenant by the entirety co-mortgagor who pays off the mortgage after the death of his co-tenant is entitled to contribution from the estate of the deceased co-tenant.¹

In the usual case where both co-tenants continue living, it is well established that one of them upon paying off an encumbrance on the land is entitled to contribution from his co-tenant.² This right to contribution has been recognized when one co-tenant pays off taxes,³ makes repairs,⁴ or wishes to preserve her dower rights.⁵ The question suggested by the principal case is whether or not contribution should be allowed when one joint tenant dies before the mortgage is paid.

The cases rest the doctrine of contribution upon the equitable principle of subrogation.⁶ The paying co-obligor is entitled to contribution only to the extent of the other's ratable interest in the property.⁷ In so paying off the encumbrance he is

²¹*Boyson v. Thorn*, 98 Cal. 578, 33 Pac. 492 (1893).

²²*Imperial Ice Co. v. Rossier*, 18 Cal.2d 33, 112 P.2d 2631 (1941).

²³*See note 13 supra.*

¹*In re Dowler's Estate*, 84 A.2d 209 (Pa., 1951).

²*Newbold v. Smart*, 67 Ala. 326 (1880).

³*Willmon v. Koyer*, 168 Cal. 369, 143 Pac. 694 (1914); *Fed. Land Bank v. Newsome*, 175 Miss. 134, 166 So. 346 (1936).

⁴*Van Veen v. Van Veen*, 213 Ia. 323, 236 N.W. 1 (1931). But contribution is generally denied for improvements. *Cosgriff v. Foss*, 152 N.Y. 104, 46 N.E. 307 (1897).

⁵*Swaine v. Perine*, 5 Johns. Ch. 482 (N.Y. 1821); *Fitcher v. Griffiths*, 216 Mass. 174, 103 N.E. 471 (1913).

⁶*Newbold v. Smart*, *supra* note 2; *Martin v. Hickenlooper*, 90 Utah 150, 59 P.2d 1139 (1936).

⁷*Carpenter v. Koons*, 20 Pa. 222 (1852); *Tarbell v. Durant*, 61 Vt. 516, 17 Atl. 44 (1889).