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words "general estate" were equivalent to "residuary estate" and amounted to an implied direction against apportionment but there was no direction for or against apportionment of such taxes imposed on the residuary gifts within the respective shares comprising the residuary estate.

The foregoing material has pointed up some of the highly technical difficulties encountered in arriving at an individual's estate tax burden. The trend is towards equitable apportionment and some states have bills in the current legislative sessions to provide for statutory apportionment.⁴⁹ In the principal case, North Carolina seems to have decided to stay inexorably with the common law view of pressing the entire estate tax burden on the residuary estate. The court distinguished a Kentucky case as applying an equitable apportionment rule⁵⁰ which indicates it will not adopt any. The recent amendment to the North Carolina distribution statute, c. 1325, will allow the widow a full marital deduction where there are no children, but it is submitted that a complete apportionment statute would be more equitable and it would give monetary relief to those unlucky enough to "reside in the residue."

JACK D. YARBROUGH.

Landlord and Tenant—Leases—Rights of Lessees under Oral Leases

In decisions growing out of a recent litigation, involving three appeals,¹ the Supreme Court has clarified considerably the North Carolina position on some of the rights of oral lessees, but at the same time has cast some doubt as to other rights under such oral leases.²

The litigation involved a situation wherein the plaintiff had, by oral agreement, leased two tobacco warehouses for three tobacco marketing

⁴⁹ Arizona—H. 45. Amends estate tax code to conform to federal provisions governing marital deduction. (Approved, March 13, 1953).

Connecticut—S. 203. Provides a more equitable apportionment of the federal estate tax within a fund consisting of the proceeds of life insurance. (Conn. has an apportionment statute, see note 12, *supra*).

Iowa—S. 345. Provides for equitable apportionment of estate tax among those interested in the estate.

Nebraska—LB. 578. Provides that the interest of any surviving spouse shall be determined prior to the payment of any federal estate tax or state inheritance tax. (Neb. has an apportionment statute. See note 12, *supra*).

Tennessee—S. 597. Permits marital deduction on inheritance tax. (Tenn. has an apportionment statute. See note 12, *supra*).

Vermont—H. 509. Relates to apportionment of federal estate tax in certain cases.

West Virginia—H. 24. Relates to the apportionment of death taxes among persons interested in the estate of decedent. CCH INH. EST. & GIFT TAX REP. (1950), 1953 Pending Legislation, ¶ 86,501, 509.

⁵⁰ Note 35 *supra*.

¹ Perkins v. Langdon, 231 N. C. 386, 57 S. E. 2d 407 (1950); Perkins v. Langdon, 233 N. C. 240, 63 S. E. 2d 565 (1951); Perkins v. Langdon, 237 N. C. 159, 74 S. E. 2d 634 (1953).

² It will be the object of this note to point up both results.

seasons. While the plaintiff was out of possession at the end of the first season, the lessor conveyed the property to a third party, and the plaintiff brought suit against the lessor for damages.³

After two appeals of the case to the Supreme Court on procedural matters,⁴ in the trial on the merits, the jury found the facts as alleged in the amended complaint to the effect that the defendant-lessor had, while the plaintiff-lessees were out of possession, conveyed the orally leased property to good faith purchasers for value and without notice in violation of an agreement that "during said term, the defendant would retain ownership . . . and not sell the same."⁵ The trial court rendered judgment for damages accordingly and the Supreme Court affirmed on appeal, primarily on the basis of the express covenant not to sell.⁶ The Court further held that even though the purchasers had knowledge of the existence of a lease on the property, they were none the less justified in relying on representations by the vendor that the outstanding lease was terminable on sale of the reversion at the end of one year.⁷

In reaching its conclusions, the court reaffirmed its position⁸ and clearly aligned itself with the almost universal rule that a landowner can sell the reversionary interest in the land, subject to a lease, in the

³ Perkins v. Langdon, 237 N. C. 159, 74 S. E. 2d 634 (1953).

⁴ On the first appeal in 231 N. C. 386, 57 S. E. 2d 407 (1950), upon demurrer *ore tenus* in the Supreme Court, the court held that mere allegations that the lessor had sold the premises during the term of the lease and that the lessees had been damaged as a result thereof, failed to state a cause of action, and remanded with leave to amend. In so holding the court said, "The gravamen of plaintiffs' cause of action is the sale of the leased warehouses before the expiration of the lease. But the weakness of the plaintiffs' position lies in the fact that the lease contains no stipulation against a sale of the leased properties during its existence . . ." *Id.* at 389, 390, 57 S. E. 2d at 409, 410.

Thereupon the complaint was amended to allege an agreement that the defendant covenanted not to sell for the term of the lease, and that while the plaintiffs were not in possession, the defendants conveyed to persons who purchased for value, in good faith and without notice. Perkins v. Langdon, 233 N. C. 240, 241, 63 S. E. 2d 565, 567 (1951). The case was again appealed by the defendant upon denial of motion to strike; whereupon the Court modified and affirmed. Perkins v. Landon, 233 N. C. 240, 63 S. E. 2d 565 (1951).

⁵ Perkins v. Langdon, 233 N. C. 240, 241, 63 S. E. 2d 565, 567 (1951).

⁶ Perkins v. Langdon, 237 N. C. 159, 74 S. E. 2d 634 (1953).

⁷ ". . . the question here presented is . . . whether, acting as ordinary prudent persons would have done, the purchasers were called upon, under the circumstances, to make inquiry of the lessees." Perkins v. Langdon, 237 N. C. 159, 169, 74 S. E. 2d 634, 642 (1953).

As to whether reliance of the grantee on statements made by the grantor in reference to reports regarding his title may or may not be relied on, the majority of the courts, as does North Carolina in this case, hold that justifiable reliance depends on the circumstances of the case. *U. S. v. Detroit Timber & Lumber Co.*, 200 U. S. 321 (1906); *Chicago v. Witt*, 75 Ill. 211 (1874); *Skeel v. Spraker*, 8 Paige 182 (N. Y. 1840); *Ohio River Junction R. R. v. Pennsylvania Co.*, 222 Pa. 573, 72 Atl. 271 (1909). *Cf.* Note, 38 L.R.A. (n.s.) 307 (1912).

⁸ Perkins v. Langdon, 231 N. C. 386, 57 S. E. 2d 407 (1950); *Wilcoxon v. Donnelly*, 90 N. C. 245 (1884); *Bullard v. Johnson*, 65 N. C. 436 (1871); *Kornegay v. Collier*, 65 N. C. 69 (1871); N. C. GEN. STAT. §§ 42-2, 8 (1943, recompiled 1950); 1 MORDECAI'S LAW LECTURES, 2d Ed., pp. 596, 597 (1916).

absence of a covenant to the contrary,⁹ and that the tenant cannot resist the transfer or ground a cause of action on the transfer or resultant change of landlords.¹⁰ It is further recognized, both in North Carolina and elsewhere, that a bona fide purchaser without notice of outstanding equities in the land, as in the case of a leasehold right, takes title free from such encumbrances.¹¹ This gives rise to the question of what constitutes notice to purchasers in North Carolina.

In the case of written leases, capable of registration, the answer is clear, inasmuch as under our Registration Act,¹² notice arises from registration only,¹³ and even actual notice will not suffice in the absence

⁹ *Garetson v. Hester*, 57 Cal. App. 2d 39, 133 P. 2d 863 (1943); *Achtar v. Posner*, 56 A. 2d 797 (Md. 1948); *Curry v. Engle*, 91 N. E. 2d 41 (Ohio App. 1949); *Brown v. Brown*, 164 Pa. Super. 350, 64 A. 2d 506 (1949); *Peterman v. Kingsley*, 140 Wis. 666, 123 N. W. 137 (1909); 2 *McADAMS, LANDLORD AND TENANT* § 233 (5th Ed., Ambert, 1934); 3 *THOMPSON, REAL PROPERTY* § 1380 (Perm. Ed. 1940); 1 *TIFFANY, LANDLORD AND TENANT* § 146 (3rd Ed. 1910); 1 *AMERICAN LAW OF PROPERTY*, §§ 3.59, 4.67 (1952) and cases cited therein; 51 C. J. S., *Landlord and Tenant*, § 258(a), p. 895 (1947) and cases cited therein.

¹⁰ *Garetson v. Hester*, 57 Cal. App. 2d 39, 133 P. 2d 863 (1943); *Peterman v. Kingsley*, 140 Wis. 666, 123 N. W. 137 (1909). *Perkins v. Langdon*, 237 N. C. 159, 164, 74 S. E. 2d 634, 639 (1953) ("This is so because such transfer of the reversion, subject to the lease, neither terminates the leasehold estate nor deprives the tenant of any of his rights to land."). N. C. GEN. STAT. § 42-8 (1943, recompiled 1950) ("The grantee in every conveyance of reversion in lands . . . has the like advantages and remedies . . . as the grantor or lessor or his heirs might have; and the holders of such estates . . . have the like advantages and remedies against the grantee of the reversion. . .").

See also, as to the general proposition that the lessee loses no rights by transfer of the reversion, *Miller v. Compton*, 185 S. W. 2d 754, 756 (Tex. Civ. App. 1945).

¹¹ *Chandler v. Cameron*, 229 N. C. 62, 47 S. E. 2d 528 (1948); *Lynch v. Johnson*, 171 N. C. 611, 89 S. E. 61 (1916) (dissent); *Beeson v. Smith*, 149 N. C. 142, 62 S. E. 879 (1908); *Derr v. Dellinger*, 75 N. C. 300 (1876); *Winborn v. Gorrell*, 38 N. C. (3 Ired. Eq.) 117 (1843) ("It is only the purchaser of the legal title without notice of a prior equity who can hold against . . . notice."); *Polk v. Gallant*, 22 N. C. 395 (1839); *Smith v. U. S.*, 153 F. 2d 655 (5th Cir. 1946); *Clemens v. Fuller*, 209 Ark. 849, 192 S. W. 2d 762 (1946); *Prince Surf Hotel v. McLendon*, 74 Ga. App. 805, 41 S. E. 2d 556 (1947); *Gulf Refining Co. v. Travis*, 201 Miss. 336, 29 So. 2d 100 (1946); *Eckman v. Buhl*, 116 N. J. 308, 184 Atl. 430 (1936); *Raisin v. Shoemaker*, 200 N. Y. Supp. 615, 206 App. Div. 122, *aff'd*, 238 N. Y. 603, 144 N. E. 921 (1923); *Wade v. Burkhart*, 196 Okla. 615, 167 P. 2d 357 (1946); *American Refining Co. v. Bank*, 356 Pa. 226, 51 A. 2d 719 (1947). See also, 1 *McADAM, LANDLORD AND TENANT* § 112 (5th Ed., Ambert, 1934); 2 *POMEROY, EQUITY JURISPRUDENCE* § 688 (5th Ed., Symons, 1941); 3 *POMEROY, EQUITY JURISPRUDENCE* § 753 (5th Ed., Symons, 1941); 1 *AMERICAN LAW OF PROPERTY*, § 3.59 (1952). *But cf.*, *Toupin v. Peabody*, 162 Mass. 495, 39 N. E. 280 (1895); *Bramhall v. Hutchinsonson*, 42 N. J. Eq. 372, 7 Atl. 873 (1886); 1 *TIFFANY, REAL PROPERTY* § 110 p. 175 (3rd Ed., Jones, 1939) ("If, on the other hand, the lease is not within the recording laws, the grantee, although a purchaser for value and without notice thereof, will, it seems, take subject thereto.")

¹² N. C. GEN. STAT. § 47-18 (1943, recompiled 1950), reading in part: "No conveyance of land, or contract to convey, or lease for more than three years shall be valid to pass any property, as against creditors or purchasers for a valuable consideration, from the donor, bargainor or lessor, but from the registration thereof . . ." [emphasis added].

¹³ *Spence v. Pottery Co.*, 185 N. C. 218, 117 S. E. 494 (1925).

of such.¹⁴ But in the case of oral leases for terms not exceeding three years, the question is not so simple. Such oral leases are, by necessary implication, excepted from the Statute of Frauds,¹⁵ nor are they required to be registered under the North Carolina Registration Act.¹⁶ Furthermore, it has been held that the record of an instrument of a class not authorized or required by law to be recorded, such as an oral lease for less than three years, does not constitute notice.¹⁷

North Carolina does, however, subscribe to the general, if not universal principle,¹⁸ that possession under equities not required to be registered constitutes notice to purchasers.¹⁹ The notice conveyed by such possession is of whatever claim the possessor asserts,²⁰ or which could have been ascertained by reasonable inquiry.²¹ Further, it has been held that any information, reasonably calculated to stimulate inquiry,²² constitutes notice of the possessors' claims whether or not the

¹⁴ *Eller v. Arnold*, 230 N. C. 418, 53 S. E. 2d 266 (1949); *Chandler v. Cameron*, 229 N. C. 62, 47 S. E. 2d 528 (1948); *State Trust Co. v. Braznell*, 227 N. C. 211, 41 S. E. 2d 744 (1947).

¹⁵ N. C. GEN. STAT. § 22-2 (1943), reading in part: "All contracts to sell or convey any lands . . . and all other leases and contracts for leasing lands *exceeding in duration three years* from the making thereof, shall be void unless said contract or some memorandum thereof, be put in writing. . . . [Emphasis added.]

¹⁶ N. C. GEN. STAT. § 47-18 (1943, recomplied 1950). The section, by implication of terms, applies only to those instruments capable of registration which includes only those instruments required by the Statute of Frauds (N. C. GEN. STAT. § 22-2 (1943)) to be in writing. *E.g.*, *Sansom v. Warren*, 215 N. C. 432, 2 S. E. 2d 459 (1939); *Eaton v. Doub*, 190 N. C. 14, 128 S. E. 32 (1932) (discussion of question per Stacy, J.); *Pritchard v. Williams*, 175 N. C. 319, 97 S. E. 570 (1918) (*But see* dissent by Clark, C. J.); *Wood v. Tinsley*, 138 N. C. 507, 51 S. E. 59 (1905); *Boyd, Some Phases of Title Examination and Real Estate Practice*, 20 N. C. L. Rev. 168, 193 (1941-42).

¹⁷ *Chandler v. Cameron*, 229 N. C. 62, 47 S. E. 2d 528 (1948). Thus it can be seen that the law as it stood prior to the Connor Act (N. C. GEN. STAT. § 47-18 (1943, recomplied 1950)), and where the Connor Act is not applicable, must be looked to as controlling. *Perkins v. Langdon*, 237 N. C. 159, 165, 74 S. E. 2d 634, 640 (1953).

¹⁸ For general text discussions and citation of cases from without North Carolina, concerning possession and implied notice, see 1 MERRILL, NOTICE, §§ 102, 103 (1952); 4 AMERICAN LAW OF PROPERTY, § 17.11 (1952); 66 C. J. S., NOTICE, § 11 (1950).

¹⁹ *Bost v. Setzer*, 87 N. C. 187 (1882); *Tankard v. Tankard*, 79 N. C. 54 (1878). Possession to constitute notice must be open, notorious and exclusive and presently existing. *Smith v. Fuller*, 152 N. C. 7, 67 S. E. 41 (1910); *Mayo v. Leggett*, 96 N. C. 237, 1 S. E. 622 (1887); *Johnson v. Hauser*, 88 N. C. 388 (1883); *Edwards v. Thompson*, 71 N. C. 177 (1874); *Webber v. Taylor*, 55 N. C. (2 Jones Eq.) 9 (1854).

²⁰ *Avent v. Arrington*, 105 N. C. 377, 10 S. E. 991 (1890); *Heyer v. Beatty*, 83 N. C. 285 (1880).

²¹ *Tankard v. Tankard*, 79 N. C. 54 (1878); *Edwards v. Thompson*, 71 N. C. 177 (1874) (though the purchaser does not know or have any means of knowing the interest).

²² *Blankenship v. English*, 222 N. C. 91, 21 S. E. 2d 891 (1942); *Austin v. George*, 201 N. C. 380, 160 S. E. 364 (1931); *Truitt v. Grandy*, 115 N. C. 54, 20 S. E. 293 (1894) (the circumstances must be such as to impose a duty on the person sought to be charged with a duty to make inquiry); *Loan Association v. Merritt*, 112 N. C. 243, 17 S. E. 296 (1893); *Ijames v. Gaither*, 93 N. C. 358

purchaser in fact makes an inquiry.²³

Just what information will be held sufficient to stimulate inquiry such as will constitute notice is a question on which the decisions are not very illuminating. However, it has been held that, while information demanding inquiry must be definite,²⁴ it is sufficient if it is such as men ordinarily act upon,²⁵ and comes from a reliable source.²⁶ Thus, it has been held that newspaper reports actually read are a source of information that imposes a duty of inquiry.²⁷ But in a situation, such as the principal case, would the name of the lessees, denominated as such, painted on the building or printed on a card, prominently displayed on the building, constitute notice from inquiry inducement?²⁸

The logic of protecting the bona fide purchaser without *possession-or-inquiry* notice is inescapable; otherwise, every purchaser of realty would buy with the possibility that he takes subject to an oral lease, and no amount of inquiry would protect him as a matter of law against such hidden equities.²⁹ But from the point of view of the lessee out of possession, the rule may be harsh, unless he is entitled to an action at law for damages against the lessor for the loss of his estate in the leasehold.³⁰

Although no prior North Carolina case has been found so holding, it is generally accepted in jurisdictions where the question has arisen

(1885) (where party has information reasonably calculated to excite attention and stimulate inquiry, he is charged with constructive notice of all that reasonable inquiry would have disclosed, the theory being that knowledge which one ought to have is imputed to him); *Blackwood v. Jones*, 57 N. C. (4 Jones Eq.) 54 (1858).

²³ *Ijames v. Gaither*, 93 N. C. 358 (1885).

²⁴ *Republic Steel Corp. v. Willis*, 243 Ala. 127, 9 So. 2d 297 (1942); *Goddard Grocer Co. v. Freedman*, 127 S. W. 2d 759 (Mo. App. 1939); *Evans v. Century Ins. Co.*, 201 S. C. 273, 22 S. E. 2d 877 (1942).

²⁵ *Curtis v. Mundy*, 44 Mass. 405 (1841).

²⁶ *Person v. Daniel*, 22 N. C. 360 (1833) (neighbor); *Kenniff v. Caulfield*, 140 Cal. 34, 73 Pac. 803 (1903) (responsible third party); *Johns v. Gilliam*, 134 Fla. 575, 184 So. 140 (1938) (tax collector); *Huges v. Williams*, 218 Mass. 448, 105 N. E. 1056 (1914) (lawyer); *St. Helen Shooting Club v. Barber*, 150 Mich. 571, 114 N. W. 399 (1908).

²⁷ *Cunningham v. Brown*, 265 U. S. 1 (1924).

²⁸ The question has apparently not been answered, though in one case, it has been that the name and address of the equitable owner, on a "for sale" sign on a vacant lot was not such possession as to constitute notice. *Ballona v. Petex*, 234 Mich. 273, 207 N. W. 836 (1926).

²⁹ *Perkins v. Langdon*, 237 N. C. 159, 166, 74 S. E. 2d 634, 640 (1953).

³⁰ A number of cases have so held. *Williams v. Young*, 78 N. J. Eq. 293, 81 Atl. 1118, 1119 (1910) (the court on facts closely analogous to the principal case, said: "When defendant wrongfully conveyed the land in question to an innocent purchaser for value without notice of complainant's leasehold estate, the leasehold estate in the land was necessarily destroyed . . . The conveyance to the innocent purchaser was, in effect, a conveyance of the term and the reversion. Complainant thereby became entitled to recover from defendant in an action at law. . ."); *Raisin v. Shoemaker*, 200 N. Y. Supp. 615, 206 App. Div. 122, *aff'd*, 238 N. Y. 603, 144 N. E. 921 (1923); *Grover v. Norton*, 183 N. Y. Supp. 731, 113 Misc. 3 (1920).

that a sale of the reversion to a bona fide purchaser which cuts off the lease rights of a lessee out of possession constitutes a wrong to the lessee for which he may have redress against his lessor,³¹ on the theory of breach of express or implied covenant of quiet enjoyment.³² This was one of the theories upon which the action in the principal case was brought.³³ However, by implication from the principal litigation, the North Carolina Court may be departing from this view, to the extent that such redress may not be had on the ground of breach of *implied*, as distinguished from *express*, covenant of quiet enjoyment. In the first appeal, the cause was remanded for further pleadings as to whether or not there was an express covenant not to sell for the period of the lease,³⁴ and it was the express covenant so found upon which the decision in the third appeal was predicated.³⁵ Consequently, notwithstanding the fact that further allegations and proof on the question of whether the purchaser took bona fide and without notice were also necessary, the principal litigation would seem, nevertheless, to imply a necessity of an express covenant in order to ground such an action. This in turn, may well indicate a restriction on North Carolina's implied covenant of quiet enjoyment in leases of realty.³⁶

In view of the finding that the lease contained such an express cove-

³¹ Actually, the theory on which the lessee is allowed to recover in many of the cases seems difficult of ascertainment, although the courts seldom refuse to grant relief. 3 Mo. L. REV. 299 (1938).

At lease three theories are possible on which to predicate an action for destruction of the leasehold estate: implied covenant to pay to lessee money had and received to his use, such amount as was received for the term; breach of engagement in the lease (covenant of quiet enjoyment); and in tort for wrongful destruction of the term. *Williams v. Young*, 78 N. J. Eq. 293, 81 Atl. 1118 (1910).

"In the usual case, however, the lessee seeks relief upon the ground that the lessor's conduct amounts to a breach of the implied covenant of quiet enjoyment." 1 AMERICAN LAW OF PROPERTY, § 3.50, p. 277 (1952).

³² By the weight of authority, including North Carolina, the ordinary lease raises an implied covenant that the lessee shall have the quiet enjoyment and peaceful possession of the premises, as regards the lessor or anyone claiming through or under him or anyone asserting paramount title. *Brewington v. Loughran*, 183 N. C. 558, 112 S. E. 257 (1922); *Improvement Co. v. Coley-Bardin*, 156 N. C. 256, 72 S. E. 312 (1911); *Huggins v. Waters*, 154 N. C. 443, 70 S. E. 842 (1911); *Conrad v. Morehead*, 89 N. C. 31 (1883); *McKesson v. Mendenhall*, 64 N. C. 502 (1870) [*But cf. Barneycastle v. Walker*, 92 N. C. 198 (1885)]; *Gulf Refining Co. v. Fetscham*, 130 F. 2d 129 (6th Cir. 1942), *cert. denied*, 318 U. S. 764 (1943); *Rulf v. Von Schoeler*, 52 So. 2d 82 (La. App. 1951); *Carpet Co. v. Fletcher*, 315 Mass. 350, 52 N. E. 2d 681 (1943); *Manufacturing Co. v. Buntin*, 27 Tenn. App. 411, 181 S. W. 2d 634 (1944); *L-M-S, Inc. v. Blackwell*, 149 Tex. 348, 233 S. W. 2d 286 (1950); *Sandall v. Haskins*, 104 Utah 50, 137 P. 2d 819 (1943); 1 AMERICAN LAW OF PROPERTY, § 3.47, n. 4 (1952).

³³ Brief for Appellees, p. 15, *Perkins v. Langdon*, 237 N. C. 159, 74 S. E. 2d 634 (1953).

³⁴ *Perkins v. Langdon*, 231 N. C. 386, 389, 57 S. E. 2d 407, 409 (1950).

³⁵ *Perkins v. Langdon*, 237 N. C. 159, 166, 74 S. E. 2d 634, 641 (1953).

³⁶ See note 31, *supra*.

nant, the decision is foregone, and the liability of the lessor is clear, but *Quaere*: what result if no such covenant had been found?

In view of the implications of the present decision requiring a breach of *express* covenant to render the landlord liable for destruction of the leasehold right by sale to a bona fide purchaser, the difficulty of giving constructive notice when continued possession is impossible or contrary to the actual terms of the lease, it would seem that legislation is necessary to better protect the rights of the lessee. It is submitted that such protection could be adequately afforded by: (1) amending the Statute of Frauds³⁷ to require all leases of whatever duration to be evidenced by some writing; and (2) requiring all leases of whatever duration to be registered under our Registration Act.³⁸ Such registration would constitute constructive notice³⁹ to all purchasers of the reversion that there is an equity outstanding in the land,⁴⁰ and would thereby protect present lessees from loss of their estate without redress by the lessor's sale of it to a bona fide purchaser without notice of such interests.⁴¹

THOMAS L. YOUNG

Mortgages—Mortgages to Secure Future Advances

In the absence of a statute providing otherwise,¹ the validity of a mortgage or deed of trust to secure future advances is fully recognized today.² The common law sanctioned this type of mortgage as a useful

³⁷ N. C. GEN. STAT. § 22-2 (1943).

³⁸ N. C. GEN. STAT. § 47-18 (1943, recompiled 1950).

³⁹ *Spence v. Pottery Co.*, 185 N. C. 218, 117 S. E. 494 (1925).

⁴⁰ The requirement that all leases be registered would not be harsh, in view of the high literacy rate in our population today, and would have the positive effect of making land titles more certain, and would obviate the necessity of inspecting the property as to possession since registration alone would constitute notice of equitable claims in the form of leases outstanding.

⁴¹ It should be noted that a somewhat analogous problem has been resolved by the courts without the aid of legislation, where the record owner of land, title to which has been perfected in another by adverse possession, conveys when the owner by adverse possession is out of the land. The courts, while recognizing the impossibility of recordation of titles by adverse possession, generally hold that adverse title, once obtained is good even as against bona fide purchasers without notice.

The North Carolina Court has, in at least one case, aligned itself with this position. *Morse v. Freeman*, 157 N. C. 385, 72 S. E. 1056 (1911). *But cf.*, *Ricks v. Batchelor*, 225 N. C. 8, 33 S. E. 2d 68 (1945). For cases to the same effect from other jurisdictions, see, Note, 9 A. L. R. 2d 850 (1950).

¹ "No estate conveyed in mortgage shall be holden by the mortgagee for the payment of any sum of money or the performance of any other thing the obligation or liability to the payment or performance of which arises, is made or contracted after the execution and delivery of the mortgage, except as herein provided." N. H. REV. LAWS c. 261, § 3 (1942).

² *Lawrence v. Tucker*, 23 How. 14 (U. S. 1859); *Everist v. Carter*, 202 Iowa 498, 210 N. W. 559 (1926); *Toulbee v. First Nat. Bank of Jackson*, 279 Ky. 153, 130 S. W. 2d 48 (1939); *Hortman-Salmon Co. v. White*, 169 La. 1057, 123 So.