and therefore the holder cannot sue it should it refuse to pay. This rule, however, is rather losing ground and the other is coming into more general favour—that a cheque does operate to transfer the money of the maker to the holder and, consequently, that he has a right to sue the bank for the money.

Cheques are made payable either to bearer or order. If a cheque is made payable to bearer it can be transferred from one person to another simply by handing it to him—by delivery; but if a cheque is made payable to order, then the person who receives it, if wishing to transfer it to some one else, must write his name on the back. If he writes his name on the back it is called a blank indorsement, and this form is often used in transferring cheques. If, however, a person intends to send a cheque through the mail he should never write it payable to bearer, but always payable to the order of a particular person, so as to require his name to be written thereon in order to make a good transfer. This is a much safer way of sending cheques than simply by making them payable to bearer.

COMMERCIAL LAW

XV. THE LAW RELATING TO LEASES

A LEASE IS AN AGREEMENT, and, as every one knows, usually relates to the hiring of lands and houses. *If the agreement is to be for a longer period than one year it should be in writing,* for if it be not either party can avoid it, not morally but in law. The statute of frauds, which has been explained, would shield either party in not carrying out such an agreement if it were not in writing if by its terms it was to last for a longer period than one year.

There is another very important reason for putting such an agreement in writing. Much of the law relating to the two parties, landlord and tenant, is one-sided and in favour of the landlord. Our law on that subject is based on the English law. It was imported in the early colonial days, and, though it has been greatly changed by statute and by decisions of the courts, it is still very one-sided, as we shall see before finishing this paper. For this reason, especially, all leases relating to houses and stores or other buildings, even for a short period, should be in writing, with the rights and duties of both parties fully stated, so that both may clearly know what to do and to expect.

Unless something is said in the lease concerning repairs

the landlord is not obliged to make any. This statement shows at once the need of having a written lease. If the house is out of order—the locks, blinds, doors, and windows are not in good order—the tenant cannot claim anything of the landlord or require him to put them in good condition. Even if a house should become unfit for habitation in consequence of fire, or is blown down, or is flooded with water, the landlord is not bound to do anything unless he has stated that he will in his lease.

A fire broke out not long since in a large warehouse and burned it so completely as to render it wholly unfit for use; indeed, all the merchandise in it was wholly consumed. Nevertheless, when the lease expired and the tenants refused to pay as they had agreed to do, the landlord brought a legal proceeding against them to compel them to pay during the entire period, as though they had been staying there and selling goods and making money, and they were compelled to pay. *This is the common law on the subject*, and every tenant is bound to pay in such cases unless he has clearly stated in his lease that he is not to be holden in the event of the destruction of the building by fire, flood, lightning, or other cause.

Furthermore, it may be added that leases nowadays are often furnished with blank spaces to be filled up with names, the amounts to be paid, times of payment, etc., and persons often sign them without even reading them. They should not do this. They should be careful to read them over two or three times or more, until they fully understand them and are sure of their nature before signing or executing them. People are still more negligent in taking out insurance policies without reading them. They are very long and parts of them are printed in fine type and, perhaps, are quite difficult, especially for old eyes, to read. In truth some of the most important parts are put in the finest print—some of the exceptions against loss and other matters, which, we are quite sure, if a person when taking out a policy should read over and understand he would insist on having changed.

If a house becomes unfit for living therein by its own fault—for example, if it is overrun with rats, or becomes so decayed that the weather invades and is thereby rendered unfit—the tenant, so the law says, has indeed the privilege of quitting, if he did not know these things at the time of entering; but if he did, he would be required to live there, however much he might dislike the company of rats or the presence of the snow or rain, and also to pay his rent; or, if quitting for that reason, he would still be responsible for the rent as he would if living in the house. An eminent legal writer has stated the principle in this way: The tenant can leave if the defect was not known or anticipated by him, or known or anticipated if he had made a reasonable investigation or inquiry before he took the lease.

A tenant is not required to make general repairs without an agreement, but he must make those that are necessary to preserve the house from injury by rain and wind. If the shingles are blown off or panes of glass are broken others must be put in their places; and it is said that he would be bound even for ornamental repairs, like paper and painting, if he made an agreement to return the house in good order.

A tenant of a farm must manage and cultivate it by the same rules of husbandry as are practised in his vicinity, and if his lease ends by any event that is uncertain and could neither have been foreseen nor foretold, he is entitled to the annual crop sowed or planted by him while he was in possession.

As we have stated, if the house is wholly destroyed the

tenant must still pay the rent, for the reason, which to many may seem absurd, that the law regards the land as the principal thing and the house as secondary. It is true that a man, in the event of his house burning down, might pitch a tent on the ground and live there, but it would be a decidedly chilly way of living, especially in the winter-time, in the northern part of our country. If a tenant should agree to return and deliver the house at the end of the term in good order and condition, reasonable wear and tear only excepted, he would be obliged to rebuild the house if it burned down. Once more, we ask, in view of these things, ought he not to make a written lease and well understand its terms before signing it?

The times for paying rent are usually specified in the lease, if one is made. When they are not the tenant is governed by the usage of the country or place where he lives.

When nothing is said about underletting the whole or a part to some one else the tenant has a right to do this, but remains bound to the landlord for his rent. Generally when written leases are made there is a clause stating that the tenant cannot underlet any portion or all without the landlord's consent.

A tenant is not responsible for taxes unless it is expressly agreed that he shall pay them.

If a lease be for a fixed time the tenant loses all right or interest in the land as soon as the lease comes to an end, and he must leave then or the landlord may turn him out at once, or, in other language, eject him. If, however, he stays there longer with the consent of the landlord he is then called a tenant at will and cannot be turned out by the landlord without giving a notice to him to quit. The statutes of the several States have fixed the

length of time that a notice must be given by the landlord to his tenant before he can turn him out. In many States a notice of thirty days must be given; sometimes sixty days' notice is required, or even longer.

It is an important question *what things a tenant may take away with him at the expiration of his lease.* Of course, there is no question whatever with respect to many things. Besides his wife and children he may take all his furniture and other movable property. But there are many things fixed to the house by the tenant that he desires to remove if he has the right to do so, and many questions have been asked and decided by the courts relating to this subject. The method of fastening them to the house is the test usually applied to determine whether they can be taken away or not. If they are fastened by screws in such a way as to show that the tenant intended to take them away, he can do so, otherwise he cannot.

In modern times the rule has been changed in favour of the tenant, and whatever he can remove without injuring the house, leaving it in as good condition as it would otherwise be, he can take away; for example, ornamental chimney-pieces, coffee-mills, cornices that are furnished with screws, furnaces, stoves, looking-glasses, pumps, gates, fence rails, barns or stables on blocks, etc. On the other hand, a barn placed on the ground cannot be removed, nor benches fastened to the house, nor trees, plants, and hedges not belonging to a gardener by trade, nor locks and keys. Of course, all these things may be changed by the written lease, and it should be clearly stated what things may be removed concerning which any doubt may arise. We have heard of a case in which a tenant put a pier-glass into a house, fastening it by means of cement. He asked and was given the landlord's

permission to do this at the time of putting it in, but when the lease ended the landlord would not allow him to take it out, and an appeal was made to a court, which decided in favour of the landlord. Doubtless this decision is correct. If the glass could have been taken away without injuring the wall then it belonged to the tenant. This shows the need of putting such matters in writing; otherwise the tenant will suffer unless the landlord be a man of the highest integrity.

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XVI. LIABILITY OF EMPLOYER TO EMPLOYÉS

PERSONS who are employed in mills, in erecting buildings, by railroad companies, and others, are frequently injured while pursuing their employment, and the question has often arisen whether the employer was liable for the injury thus suffered by them. The more important of these questions we propose to answer in this and the following lecture, as they are matters of every-day importance to many people.

First of all, an employé to recover anything for the loss that may have happened must show that in some way *his employer was negligent.* He cannot get something simply because he has been injured. The law in no country has ever said that he could. In all cases he must show that his employer failed in his duty in some way toward him to lay the foundation of an action against him. This is the first principle to keep clearly in mind.

Again, it is said that an employé cannot recover if the injury has happened to him in consequence of the negligence of a fellow-servant. By this is meant a person engaged in the same common employment. It is not always easy to determine whether two persons employed by the same company are fellow-servants, as we shall soon see, but the principle of law is plain enough that