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THE AMERICAN AND ENGLISH ANNOTATED CASES

CONTAINING THE IMPORTANT CASES SELECTED FROM THE CURRENT
AMERICAN, CANADIAN, AND ENGLISH REPORTS

THOROUGHLY ANNOTATED

EDITORS: WILLIAM M. MCKINNEY AND H. NOYES GREENE

VOLUME XXV
ANN. CAS. 1912 D

EDWARD THOMPSON COMPANY, NORTHPORT, L.I. N.Y. (1912)
BANCROFT-WHITNEY COMPANY, SAN FRANCISCO (1912)

[the Note referred to in King v. Durkee-Atwood follows verbatim]

NOTE

Right of Landlord or Tenant to Revoke or Withdraw Notice to Quit

Rule in United States

The very decided preponderance of authority in the United States is to the effect that a notice to quit given by a landlord or tenant may be revoked or withdrawn before it has been acted on, so that thereafter the rights of the parties are the same as if such notice had not been given. *Collins v. Canty*, 6 Cush. (Mass.) 415; *Arcade Invest. Co. v. Gieriet*, 99 Minn. 277, 109 N.W. 250; *Whitney v. Swett*, 22 N.H. 10, 53 Am. Dec. 228; *Supplee v. Timothy*, 124 Pa. St. 375, 16 Atl. 864. See also *Dockrill v. Schenk*, 37 Ill. App. 44; *Ewing v. O'Malley*, 108 Mo. App. 117, 82 S.W. 1087; *Morgan v. Powers*, 83 Hun. 298, 31 N.Y.S. 954; *Stedman v. McIntosh*, 27 N.C. 571; *Brown v. Montgomery*, 21 Pa. Super. Ct. 262; *Fitzpatrick v. Childs*, 2 Brews. (Pa.) 365. It was said in *Whitney v. Swett*, 22 N.H. 10, 53 Am. Dec. 228, that it was competent for the defendant to waive the notice, which would leave the parties in the same position as if no notice had been given, and that such waiver might be unqualified or it might be conditional.

The court said in *Arcade Invest. Co. v. Gieriet*, 99 Minn. 277, 109 N.W. 250: "It is well settled that a notice by the landlord to a tenant to quit may be waived by the landlord giving it, and that such notice is thenceforth inoperative. *Whitney v. Swett*, 22 N.H. 10, 53 Am. Dec. 228. The landlord may evidence his intention to waive the termination of the tenancy by such notice, by any conduct sufficiently manifesting such intention. Thus, if he gives a second notice, he thereby waives his right to proceed under the first notice."

But see *contra* *Western Union Tel. Co. v. Pennsylvania R. Co.*, 120 Fed. 362, wherein it was held that a valid notice terminating a lease given by a landlord or tenant could not be withdrawn except by consent of both parties. In that case the court said: "It is, however, contended by the complainant that the notice to quit was waived, and that a tenancy under the lease still continues. It will be observed that withdrawal of a notice to quit is not, like a waiver of forfeiture, the act of one party, but requires the assent of both; and when such joint assent is given it creates a new tenancy. The question, then, whether there was a waiver of a notice to quit is one of intent on the part of both parties to the tenancy. 'When a valid notice to quit is given by the landlord or tenant, the party to whom its given is entitled to count on it, and it cannot be withdrawn with the consent of both parties. If such consent is given, there is a new agreement between the parties, and a new tenancy is created, which exists only under that new agreement.'"

Rule in England and Canada.

In England and Canada, on the other hand, it seems to be well settled that such a notice may not be withdrawn at the option of the party giving it, but only by mutual consent. *Tayleur v. Wildin*, L. R. 3 Exch. 303; *Re Magee*, 10 Manitoba 1. See also *Jenner v. Clegg*, 1 M. & Rob. 213; *Doe v. Batten*, 1 Cowp. 243; *Blyth v. Dennet*, 13 C.B. 178, 76 E.C.L. 178. *Compare* *Dominion Col Co. v. McLeod*, 7 East.L.Rep. (Nova Scotia) 201. In *Re Magee*, 10 Manitoba, the court said: "In strictness a valid notice to quit cannot be waived, and when once it is given ... the tenancy will inevitably be determined upon its expiration. The expression 'waiver of notice to quit' is commonly used, but it will be found that what is meant, when in such cases it is said the notice to quit has been waived, is, that both parties have agreed not to enforce the notice to quit by mutually agreeing that there shall be a new tenancy. In *Cole on Ejectment*, p. 55, it is said, 'A notice to quit can be waived and a new or continuing tenancy created only by the express or implied consent of the parties.'" In *Tayleur v. Wildin*, L. R. 3 Exch. 303, it was said: "It is clear that whether the notice to quit is given by the landlord or the tenant, the party to whom it is given is entitled to insist upon it, and it cannot be withdrawn without the consent of both."