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LEGAL ASPECTS of FARM TENANCY IN ILLINOIS

By
H. W. HANNAH
and
JOSEPH ACKERMAN

Bulletin 465

UNIVERSITY OF ILLINOIS
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Legal Aspects of Farm Tenancy in Illinois

By H. W. HANNAH and JOSEPH ACKERMAN*

MOST FARM TENANTS and a great many farm landlords know very little about the legal aspects of the landlord-tenant relationship. Yet where misunderstandings arise, as they often do, the parties must finally depend upon the various principles of tenancy recognized in law for a settlement of their differences. A better knowledge of the nature and effectiveness, under the law, of agreements made by landlord and tenant, and of the rights and duties of the two parties, would prevent misunderstandings that otherwise occur.

But much more than the avoiding of misunderstandings between landlord and tenant is involved in the matter of a legal basis for tenancy. Proper use of land, and satisfactory economic, social, and cultural levels of farm life are all bound up in the question of adequate functioning of the landlord-tenant relationship. If improvement is to be made in tenant farming, general knowledge of legal provisions is necessary on the part of both tenants and landlords. Dependence on oral leases and local custom tends to discourage change and to preserve the existing practices and systems of farming, whether good or bad. The importance to Illinois agriculture of adequate landlord-tenant relationships is suggested by the fact that nearly half the farms in Illinois are operated by tenants.^b

The purpose of this bulletin is to set forth and explain the bearing of present laws on the farm-tenancy relationship in Illinois, and to suggest ways in which these laws might be improved. The suggested improvements are summarized in a discussion of a farm-tenancy code for Illinois. A glossary explains most of the legal terms used.

For the determination of rights and duties existing between landlords and tenants, there are three principal sources of legal authority: constitutional law, statutory law, and the common law as represented in court decisions. In all these sources of authority, state law rather than federal law is the controlling force. The federal constitution has only a broad bearing on the problem; the federal government is presumably without power to regulate landlord-tenant relationships; and federal common law is supposed not to exist.

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^bForty-three percent, according to U. S. Census of Agriculture (1940).

FARM-TENANCY LEGISLATION UNDER THE ILLINOIS CONSTITUTION

Altho no direct provisions for the landlord-tenant relationship or the leasing of property are contained in the Illinois constitution, the constitution must be considered in a discussion of farm-tenancy legislation because of the necessity that such legislation be constitutional.

The principle is well established that the general assembly has all powers not denied it by the federal and state constitutions. A long line of United States Supreme Court and Illinois cases upholds this proposition. Another principle which is almost an axiom is that state constitutions are limitations on the power of the general assembly and not grants of power to it. State legislatures therefore examine the state constitutions, not to see whether a contemplated exercise of power is granted, but only to see whether it is denied.

As to the power of the Illinois legislature to pass laws regulating the landlord-tenant relationship, there are no limiting clauses in the Illinois constitution other than the general safeguards, including those against special, discriminatory, and unreasonable legislation. In *Stewart v. Brady*¹ the court said, "Whether an evil exists, and what means should be adopted to prevent it, is a question for legislative determination." So long as legislative acts fall within the police power, that is, so long as they promote the health, safety, and general welfare of the people of the state, and so long as they do so in a reasonable manner or by "due process of law," they will be constitutional. In *Evans v. Chicago Title and Trust Company*,² the court held that "The legislature, while not disturbing vested rights, may regulate tenure of land, its acquisition, transfer, and rules of evidence affecting title."³

Without discussing the question of constitutionality further, it is safe to say that comprehensive farm-tenancy legislation can be made constitutional in Illinois. Whether it is constitutional when and if enacted and brought to issue, will depend upon how reasonable and beneficial it is and how it is drafted.

1. *Stewart v. Brady*, 300 Ill. 425, 133 N. E. 310 (1921)

2. *Evans v. Chicago Title and Trust Company*, 317 Ill. 11, 147 N. E. 412 (1925)

3. It is interesting to note that the Magna Carta, which furnished part of the historical precedent for our national and state constitutions, placed certain restrictions upon "keepers" of the land. One part reads, "The keeper of the land of an heir under age shall take of the land none but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods." Another reads, "The keeper, so long as he shall have custody of the lands, shall keep up the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out of the issues of the same land."

ILLINOIS STATUTES ON FARM TENANCY

The Illinois legislature has at various times provided laws for the protection of landlords and tenants. Many of the early enactments were revised in 1873, and portions of that revision have since been amended or changed and new laws added.⁴ Most of these enactments do not specifically cover farm tenancy but apply to tenancy of all types of property. Existing laws applicable to farm tenants and landlords may be conveniently classified into four groups:

1. Those providing remedies for the collection of rent.
2. Those relative to the creation and termination of the tenancy.
3. Miscellaneous statutes bearing on farm tenancy.
4. Common law principles affecting farm tenancy.

Actions for Collection of Rent

Among the remedies which a landlord may use in an action for rent are assumpsit, replevin, attachment, garnishment, the distress proceeding, or an action of debt. All these actions have only a general application and none are modeled specifically for the farm-tenancy contract. The Illinois Civil Practice Act, passed in 1933, simplifies the procedures of debt and assumpsit,⁵ but does not, according to the wording of the act, apply to the other actions.

Additional protection is afforded the landlord by the landlord's lien. It will be discussed later in this section.

Debt and assumpsit. Debt and assumpsit are the actions specified for the recovery of rent under the act of May 1, 1873,⁶ which lists certain conditions under which owners, executors, or administrators may sue for and recover rent or a fair and reasonable satisfaction for the use of lands. None of the conditions listed in the act apply to the usual farm-tenancy agreement, tho one provision applies where lands are held and occupied without an agreement for rent, a situation which has arisen occasionally in Illinois. In such instances the courts have allowed the landlord a "fair and reasonable satisfaction"⁷ for the use of his land, provided a contract, either expressed or implied,

4. See generally Illinois Revised Statutes, 1939, ch. 80

5. Illinois Revised Statutes, 1939, ch. 110, sec. 125: "The provisions of this act shall apply to all civil proceedings, both at law and in equity, unless their application is otherwise herein expressly limited, in courts of record, except in attachment, garnishment, replevin, or other actions in which the procedure is regulated by special statutes." The action of distress is regulated by special statute; debt and assumpsit are not.

6. Illinois Revised Statutes, 1939, ch. 80, sec. 1. This section now states that the rights given may be enforced "by a civil action."

7. Jackson v. Reeter, 201 Ill. App. 29 (1915)

creating the relation of landlord and tenant could be shown.⁸ A contract to pay rent may be inferred from mere occupancy, unless circumstances deny the idea of tenancy.⁹

Attachment, garnishment, and replevin. Attachment and garnishment are statutory remedies offered to any creditor as means of getting at the debtor's property and intangible assets. A landlord may resort to them when he has established a right against his tenant for rent due.

The action of replevin, provided by statute, lies when "any goods or chattels shall have been wrongfully distrained, or otherwise wrongfully taken, or shall be wrongfully detained."¹⁰ Replevin is frequently used in cases where distress is taken for rent. The defendant has been aided in this proceeding by an act simplifying the allegations necessary on his part.¹¹

Distress for rent.¹² Under Illinois law a tenant's personal property may be seized for rent:

"In all cases of distress for rent, the landlord, by himself, his agent or attorney, may seize for rent any personal property of his tenant that may be found in the county where such tenant shall reside; and in no case shall the property of any other person, although the same may be found on the premises, be liable to seizure for rent due from such tenant."¹³

The last part of this section, a restriction on the common-law rule that any property found on the premises could be distrained,¹⁴ protects the property of third parties.

The procedure for distraint is relatively simple. The landlord levies his distress warrant against the tenant, sets apart the goods, prepares an inventory, and then promptly files a copy of the warrant with the clerk of a court of record of competent jurisdiction, or with a justice of the peace if the amount claimed for rent does not exceed five hundred dollars.¹⁵ The advantage accorded the landlord under the distress statute is that he can legally hold the goods of the tenant prior to

8. *Hadley v. Morrison*, 39 Ill. 393 (1866); *Boley v. Barutio*, 120 Ill. 192, 11 N. E. 393 (1887)

9. *Alexander v. Alexander*, 52 Ill. App. 195 (1893)

10. Illinois Revised Statutes, 1939, ch. 119, sec. 1

11. Same, ch. 119, sec. 19: "It shall be sufficient for the defendant, in all cases of replevin for distress taken for rent, to allege generally without particularly setting forth the tenure or title to the lands whereon such distress was taken."

12. Same, *see generally* ch. 80, secs. 16-35

13. Same, ch. 80, sec. 16

14. *Uhl v. Dighton*, 25 Ill. 154 (1861)

15. Illinois Revised Statutes, 1939, ch. 79, sec. 16

an adjudication of his claim for rent.¹⁶ By levying a distress warrant the landlord does not acquire a lien prior to all others, as has at times been claimed. If, for example, the warrant is issued after an assignment for the benefit of creditors,¹⁷ or after sale to a bona fide purchaser,¹⁸ the landlord acquires no lien.

In actions of distress the tenant can avail himself of any set-off, such as money due him from the landlord for materials or services, or of other defenses generally allowable,¹⁹ such as evidence that the rent has been paid. The tenant may have his property released from the distress warrant by posting a bond for double the amount of the rent claimed.²⁰

In cases where perishable property is involved, the court or justice of the peace may allow its sale by the landlord or his agent, and provide that the money be deposited with the clerk of the court or justice of the peace²¹ to await the outcome of the action. Where rent is payable wholly or in part in specific articles of property or products of labor, the landlord may distrain for their value only.²²

If the judgment is in favor of the defendant he is entitled to recover costs and have the distrained property returned.²³

There are two principal limitations on the use of the distress procedure. First, the right does not extend beyond a period of six months from the expiration of the term or termination of the tenancy²⁴; and, second, the tenant is allowed an exemption of the articles of personal property which are by law exempt from execution. Crops grown or growing upon the premises are not exempt.²⁵ Written leases often contain waivers of the tenant's exemptions.²⁶ However, the Illinois courts have held that since the exemptions are as much for the benefit of the debtor's family as for the debtor himself, they may not be waived by an agreement in advance of actual distress.²⁷ Thus

16. For a thoro discussion of the purpose and operation of the Illinois distress procedure see *Morgan v. Campbell*, 89 U. S. 381, 22 L. Ed. 796 (1874)

17. *Friedman v. Koppel*, 257 Ill. App. 568 (1930)

18. *Dawson v. Ellis*, 151 Ill. App. 118 (1909)

19. Illinois Revised Statutes, 1939, ch. 80, sec. 21

20. Same, sec. 26

21. Same, sec. 27

22. Same, sec. 29

23. Same, sec. 25

24. Same, sec. 28. In *Atkins v. Byrnes*, 71 Ill. 326 (1874), the court said, however, that the landlord need not wait until the expiration of the term to distrain, but could do so any time rent fell due and remained unpaid.

25. Illinois Revised Statutes, 1939, ch. 80, sec. 30

26. See *Parnell v. Daily*, 163 Ill. 646, 45 N. E. 414 (1896)

27. *Recht v. Kelley*, 82 Ill. 147, 25 Am. Rep. 301 (1876)

in *Curtiss v. Ellenwood*²⁸ the Illinois Appellate Court held ineffective an attempted waiver clause in a lease providing that on failure to pay rent when due the landlord could seize any property of the tenant. The court indicated that such a waiver made in advance could be accomplished only thru a chattel mortgage.

Articles of personal property which are exempt from execution by Illinois law are²⁹:

Necessary wearing apparel

Bible and school books

Family pictures

Pensions or bonuses received from state or federal government, for one year after the receipt of each pension or bonus payment; any balance at the end of one year after receipt of such payment is not exempt

Household furniture to the value of one hundred dollars (an additional \$300 worth if the head of a family); or—

Other property to the value of one hundred dollars, to be selected by the debtor (an additional \$300 worth if the head of a family)

The person in whose favor execution is issued may elect on what property the levy will be made, excepting exempted property, and provided that personal property shall be taken last.³⁰

Distress will not lie for obligations other than rent. In *Bates v. Hallinan*,³¹ a case involving a written crop-share lease providing that the tenant should "cultivate in a husbandlike manner," it appeared that the tenant did a very poor job of farming. Evidence disclosed that he probably should have raised 8,000 bushels of corn whereas he raised only 3,000. In the distress action the landlord included a request for one-half of the 5,000 bushels of corn the tenant should have but did not raise. The court held the distress could be levied only against what had been raised, and that some other remedy must be used to recover damages for the failure to cultivate in a husbandlike manner.

Distress before rent is due. Distress proceedings are not ordinarily commenced until the tenant has defaulted. In the Illinois act relating to distress, however, there is a provision which under certain conditions allows distress before the rent is due. The provision states that a landlord may institute distress "if any tenant shall, without the consent of his landlord, sell and remove, or permit to be removed, or be about to sell and remove, or permit to be removed, from the

28. *Curtiss v. Ellenwood*, 59 Ill. App. 110 (1894)

29. Illinois Revised Statutes, 1939, ch. 52, sec. 13

30. Same, ch. 77, sec. 11

31. *Bates v. Hallinan*, 220 Ill. 21 (1906)

demised premises, such part or portion of the crops raised thereon, as shall endanger the lien of the landlord upon such crops for the rent agreed to be paid.”³² The right to so distrain is one conferred by statute only, and the courts have construed the statute very strictly, holding that the landlord’s lien must be clearly endangered before the right to distrain exists, and that the landlord cannot invoke this section of the statute merely to harass and embarrass his tenant.³³

Whether or not a landlord’s lien is actually endangered is a hard question to answer. In a case where a tenant actually removed and sold a portion of the crops raised, and it was shown that such action did endanger the landlord’s lien, the right to distrain was upheld.³⁴ In this case the question arose as to whether the execution of a chattel mortgage was such a disposal of crops by the tenant as would allow the distress proceeding. In answering in the negative the court said that the statute must be strictly construed, and that the execution of a chattel mortgage was only a conditional disposal not contemplated by the act. In *Hopkins v. Wood*³⁵ the Appellate Court held that feeding crops to livestock might endanger the landlord’s lien and constitute a “removal” within the meaning of the act. Illinois law pertaining to chattel mortgages on feed crops makes a distinction between the feeding of such crops to work animals and to productive livestock.³⁶ The mortgagor can feed mortgaged crops to productive livestock so long as the animals also are included in the mortgage; also he may feed mortgaged feeds to work animals so long as the animals are used to produce crops which are mortgaged, even tho the animals are not included. This law might affect decisions on “removal.”

Landlord’s Lien on Crops

A significant measure for the protection of farm landlords exists in the form of a statutory lien for rent upon crops grown or growing. The language of the act providing for the lien is as follows³⁷:

“Any landlord shall have a lien upon the crops grown or growing upon the demised premises for the rent thereof, whether the same is payable wholly or in part in money or specific articles of property or products of the premises, or labor, and also for the faithful performance of the terms of the lease. Such a lien shall continue for a period of six months after

32. Illinois Revised Statutes, 1939, ch. 80, sec. 35

33. *Hill v. Coats*, 109 Ill. App. 266 (1903)

34. *Gross v. Schraeder*, 70 Ill. App. 625 (1896); *Johnson v. Cipperry*, 19 Ill. App. 638 (1886)

35. *Hopkins v. Wood*, 79 Ill. App. 484 (1898)

36. Illinois Revised Statutes, 1939, ch. 95, sec. 1a

37. Same, ch. 80, sec. 31

the expiration of the term for which the premises are demised, and may be enforced by distraint as in this Act provided."

The last clause, providing that the lien may be enforced by distraint, was added after the Illinois courts interpreting an earlier lien statute had held that distraint was not a proper remedy for the enforcement of the lien. The section previously discussed, dealing with the use of distress before rent is due, is looked upon as a means of protecting this lien.

The effectiveness of the act has been determined to a great extent by the interpretation put upon it by the Illinois courts. The language "upon the crops grown and growing" has been definitely interpreted to mean crops only and not other goods and chattels of the tenant.³⁸ "Grown or growing" refers to the year the crops are in the ground, and the landlord's lien is good only for that year's rent.³⁹ However, any crop which may be sowed in the autumn of one year and harvested in the next is subject to the lien for rent for either or both years.⁴⁰ "Upon the demised premises" refers to all land under the lease and includes all crops grown on such demised premises, regardless of who grew them—whether sublessees or someone at the will of the tenant.⁴¹ The lien attaches at the time the crop begins to grow,⁴² and is good against all crops or any portion of any crop for any rent due from all or any portion of the premises.⁴³ If a tenant holds under distinct leasings, however, and has paid the rent on part of the leasings, it has been held that the lien on crops grown on these leasings does not extend to rent due on the others.⁴⁴

The landlord's lien, since it is created by statute, is paramount to other claims against crops of the tenant, and can be lost only by waiver or failure to enforce within the time specified.⁴⁵ In *Travers v. Cook*⁴⁶ the court refused to allow the landlord a recovery in replevin against a constable who had levied an execution against the crops of the tenant; but the refusal was on the grounds that title and possession

38. *Felton v. Strong*, 37 Ill. App. 58 (1890)

39. *Frink v. Pratt & Co.*, 130 Ill. 327, 22 N. E. 819 (1889); *Miles v. James*, 36 Ill. 399 (1865)

40. *Nelson v. First Nat. Bank of La Harpe*, 184 Ill. App. 349 (1914);
Miles v. James, *above*

41. Illinois Revised Statutes, 1939, ch. 80, sec. 32; *Uhl v. Dighton*, 25 Ill. 154 (1861)

42. *Watt v. Schofield*, 76 Ill. 261 (1875); *Harvey v. Hampton*, 108 Ill. App. 501 (1903)

43. *Thompson v. Mead*, 67 Ill. 395 (1873)

44. *Gittings v. Nelson*, 86 Ill. 591 (1877)

45. *Lillard v. Noble*, 159 Ill. 311, 42 N. E. 844 (1895)

46. *Travers v. Cook*, 42 Ill. App. 580 (1891)

still remained with the tenant and that the lien alone did not give the landlord the right to maintain replevin. In *Richey v. Ford*⁴⁷ the landlord recovered from a mortgagee who had taken the crops and sold them with knowledge of the landlord's lien.

According to the interpretation of the courts, knowledge on the part of the purchaser of the existence of the lien is a necessary fact in establishing the validity of the lien against third parties. In *Reinhardt v. Blanchard*⁴⁸ the court said: "When the purchaser of grain from a tenant knows the fact of such tenancy, and that his vendor, as such tenant, had raised the grain on the demised premises, it will be such notice as to put him upon inquiry as to the landlord's lien." If, however, the purchaser has no knowledge of the tenancy and the origin of the grain, he is not subject to the landlord's lien.⁴⁹

The practical outcome of this interpretation is that a landlord who wants to make sure his liens are preserved, should notify all prospective purchasers of the tenant's crop of his interest in it. Landlords who have many tenants find it good practice simply to supply all local elevator companies with lists of their tenants.

A lien does not of itself give the landlord a right to immediate possession of the crops.⁵⁰ Before the landlord can recover his share in an action of replevin, the crop must be divided and the landlord's share designated because the crop belongs entirely to the tenant until this has been done.⁵¹ While replevin and distress have been the attempted actions in many instances, they are not the only remedies available for the enforcement of the landlord's lien; other procedures, such as foreclosure or the filing of a claim seeking preference among the tenant's creditors, may be used.⁵²

Many leases contain provisions which purport to create liens on all property belonging to the tenant. Illinois courts hold that such provisions are, in effect, chattel mortgages, and to be valid must be acknowledged and recorded according to the law on chattel mortgages.⁵³

47. *Richey v. Ford*, 84 Ill. App. 121 (1899)

48. *Reinhardt v. Blanchard*, 78 Ill. App. 26 (1898). See also *Lawrence v. Elmwood Elevator Co.*, 258 Ill. App. 101 (1930); *Carter v. Anderson*, 56 Ill. App. 646 (1894); *Lynch v. Smith*, 154 Ill. App. 469 (1910)

49. *Finney v. Harding*, 136 Ill. 573 (1891); *Faith v. Taylor*, 69 Ill. App. 419 (1896)

50. *Wright v. Wilson*, 179 Ill. App. 630 (1913); *Chapin v. Miles and Ricketts*, 151 Ill. App. 164 (1909)

51. *Pearson v. Reese*, 286 Ill. App. 511, 3 N. E. (2d) 929 (1936); *Sargent v. Courier*, 66 Ill. 245 (1872)

52. *Faubel v. Michigan Avenue Boulevard Building Company*, 278 Ill. App. 159 (1934)

53. *Gubbins v. Equitable Trust Co.*, 80 Ill. App. 17 (1898); *Packard v. Chicago Title & Trust Co.*, 67 Ill. App. 598 (1896)

Abandonment and Emblements

Illinois law provides that in cases where a tenant abandons or removes from the premises or any part of the premises, the landlord or his agent may seize upon any grain or other crops grown or growing upon the premises or the part abandoned, even tho the rent is not yet due.⁵⁴ The landlord may cultivate, harvest, and sell the crop, taking out his rent and the expense to which he has been put, and giving the remainder over to the tenant. The tenant is privileged, however, to redeem the crops by tendering the rent and a reasonable compensation for expenses incurred by the landlord in handling the crop.

In *Bumgardner v. Scaggs*⁵⁵ the question arose whether under the abandonment act a landlord, when a tenant has removed from the demised premises at the expiration of a lease, may seize wheat or any other crop maturing after the expiration of the lease. The court answered rather clearly that the act did not so apply, but was meant to apply only to the growing and maturing of crops during the year for which the lease was executed. The court distinguished, and rightly so, between actual abandonment during the year of the lease and removal at the end of a term. A tenant moving at the expiration of his lease but before harvesting wheat may return and harvest the crop. Such right, known as the right to emblements, is a well-established principle of law.⁵⁶ The crops which may be so harvested by a tenant after the expiration of his lease are spoken of as "away-going crops." The rule giving the tenant a right to emblements is an exception to the common-law rule that growing crops follow the title to real estate.⁵⁷

Creation and Termination of Tenancy

The stability of a tenancy relationship is determined by the certainty of the beginning, duration, and termination of the lease. Since many who rent farm lands do not use written agreements or arrive at any definite understanding for the length, termination, and renewal of the

54. Illinois Revised Statutes, 1939, ch. 80, sec. 33

55. *Bumgardner v. Scaggs*, 180 Ill. App. 668 (1913)

56. In *Roberts v. McAllister*, 226 Ill. App. 356 (1922), the court said: "There can be no question as to the right of a tenant holding under a life tenant to sow annual crops and should the life tenant die before such crops are matured and harvested, the undertenant may mature, harvest, and remove the same. The right is called the right of emblements. It arises from the force of necessity and public policy. It has for its purpose the encouragement of agriculture and the protection of the life tenant and undertenant if any."

57. See *Chicago Joint Stock Land Bank v. McCambridge*, 343 Ill. 456, 175 N. E. 834 (1931)

term, the Illinois legislature has attempted to bring about more certainty in this matter.

The statute of frauds limits unwritten contracts. Illinois has enacted as a part of its law the essential elements of the old English act against frauds and perjuries providing, among other things, that under certain circumstances parties cannot be held responsible for agreements that are not in writing.⁵⁸

Illinois courts have held that a lease is a "chattel real," and does not constitute a sale of property.⁵⁹ If leases are excluded from the operation of the section of the statute of frauds governing the sale of land, on the theory that they are "chattels real," they will then fall under the provisions of Section 1,⁶⁰ which will give the same result, since it provides that "No action shall be brought, whereof to charge . . . any person upon any agreement . . . that is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized."

These provisions render void oral leases which cannot be performed within one year from the date of making.⁶¹ In other words an agreement to lease for a year, arrived at before the tenant is in possession, is void as a "chattel real," since more than one year must elapse before it is fulfilled. Usually the oral agreements which farm landlords and tenants make cannot be performed in one year; and consequently when such oral agreements are made, each party has legally only such rights as are commonly given landlords and tenants in similar circumstances. These rights may not be the same as those the parties agreed to orally, but will be determined by common law and custom.

To come under the statute of frauds, however, a lease must be wholly oral. A court has held that a telegram signed and sent by a landlord in response to an offer contained in a written communication is a memorandum in writing and prevents the lease being voided by the statute of frauds.⁶² The absence of any writing at all in such a large

58. Illinois Revised Statutes, 1939, ch. 59, sec. 2

59. *People v. City of Chicago*, 335 Ill. 450, 167 N. E. 79 (1929)

60. Illinois Revised Statutes, 1939, ch. 59, sec. 1

61. *Rader v. Huffman*, 125 Ill. App. 554 (1906); *Molliter v. C. M. Thom Van Co.*, 118 Ill. App. 293 (1905)

62. *Gaines v. McAdam*, 79 Ill. App. 201 (1898)

number of cases has emphasized the need for written leases; it has also led to the legal recognition of so-called "tenancies from year to year."

Tenancies from year to year. It has been estimated that three-fourths of all tenant farmers in the United States operate farms under inadequate oral agreements. This is cited as a major weakness of the tenancy system. That both landlords and tenants may have some measure of protection under these circumstances, the courts have created, and the statutory law of Illinois and many other states now recognizes, what are known as "tenancies from year to year."

The rule is well established in chancery that an oral contract even tho it is void because of the statute of frauds, may be enforced if one party relies on the contract and makes a substantial performance.⁶³ Tenancies from year to year arise from the same principle. The legislatures and courts merely say in effect: "If no notice is given by either party within a certain period (in Illinois not less than 60 days nor more than 4 months prior to 60 days before the termination of the tenancy)⁶⁴ a lease for another year exists."⁶⁵ In Illinois most tenancies commence on March 1, so the usual effect of the statute is to require that notice be given between September 1 and December 30. The provisions of such leases continue the same as in the original agreement.⁶⁶ When written leases are not renewed and the tenant remains on the farm, a tenancy from year to year exists. The written lease no longer applies except as the courts are willing to say that its provisions carry over.

The statutory provisions with respect to the notice necessary to terminate a "tenancy from year to year" have been rigidly adhered to in court interpretations. The statute requires that the notice must be in writing and that it must be given within the period mentioned above. The courts have held, in accordance with the statute, that a written notice within the period designated is essential⁶⁷; that such notice must be signed by one having authority; that it must accurately describe the property in question⁶⁸; and that the right to notice is reciprocal.⁶⁹

63. *Morrison et al v. Herrick et al*, 130 Ill. 631, 22 N. E. 537 (1889). See also *Doubet v. Doubet*, 186 Ill. App. 316 (1914), holding that plowing and sowing in reliance on an oral agreement were such acts as would take a lease out of the statute of frauds.

64. Illinois Revised Statutes, 1939, ch. 80, sec. 5

65. *Lake v. Campbell*, 18 Ill. 106 (1856); and *Tanton v. Van Alstine*, 24 Ill. App. 405 (1887)

66. *Clinton Wire Cloth Co. v. Gardner et al*, 99 Ill. 151 (1881)

67. *Willhite v. Schurtz*, 294 Ill. 309, 128 N. E. 551 (1920)

68. *Sheldon v. Sutherland*, 222 Ill. App. 598 (1921)

69. See *Tanton v. Van Alstine*, in note 65

In determining whether the relation of landlord and tenant exists and whether or not the arrangement can be called a tenancy from year to year, the Illinois courts have said that the reservation of an annual rent is the leading circumstance.⁷⁰ The intention of the parties as to the control to be reserved in the landlord, and the amount of seed, equipment, or other items furnished by the landlord are also considered by the courts.⁷¹

At best, the judicial creation of a tenancy from year to year is a weak substitute for an agreement in writing, even tho it does accomplish some good for those who never take the trouble to enter into specific written agreements.^{71a}

Removal of Fixtures by Tenant

Under Illinois law a tenant has protection against the loss of such removable improvements as he has made at his own expense during his tenancy. The language of the act giving this protection is as follows:

"Subject to the right of the landlord to distrain for rent a tenant shall have the right to remove from the demised premises all removable fixtures erected thereon by him during the term of his lease, or of any renewal thereof, or of any successive leasing of the premises while he remains in possession in his character as tenant."⁷²

To the protection thus granted there are at least three limiting factors which make the statute, as the Appellate Court expressed it in *Donnelly v. Thieben*,⁷³ "a privilege allowed him [the tenant], rather than an absolute right to the things themselves." The first limitation is that the removal by the tenant must be made "while he remains in possession in his character as tenant;" the second is that he can take only "removable fixtures," the ultimate definition of "removable" being left to the court in each instance; the third is that he cannot remove fixtures so long as he is subject to distress for rent.

This statute on removal of fixtures was not written primarily for agricultural leases; consequently the great majority of decisions construing it do not involve farm improvements or equipment. There are a few decisions in point, however, which may indicate the answer to situations arising in the future. In *Hacker v. Munroe*⁷⁴ the court laid

70. Herrell v. Sizeland, 81 Ill. 457 (1876)

71. Creel v. Kirkham, 47 Ill. 344 (1868)

71a. See Illinois Circular 503, "Farm Leases for Illinois," for a discussion of the advantages of a written lease and for recommended lease forms

72. Illinois Revised Statutes, 1939, ch. 80, sec. 34

73. Donnelly v. Thieben, 9 Ill. App. 495 (1881)

74. Hacker v. Munroe, 176 Ill. 384, 52 N. E. 12 (1898)

down three generally recognized tests to determine whether a fixture is or is not realty:

1. Is it annexed to the realty?
2. Is it applicable to the use of the realty to which it is attached?
3. What was the intention of the party making the annexation?

These are not the only tests used, however. The possibly injurious effect of a removal upon the freehold, the understanding existing between the landlord and tenant (either at the time of construction or later), and the effect of such removal upon innocent third parties all have entered into court decisions in such cases. In *Smyth v. Stoddard*,⁷⁵ for example, the court held that a blacksmith shop on skids, brought to the premises by the tenant and removed by him, was a removable fixture, but that a corncrib built on posts set in the ground was not a removable fixture despite the fact that the landlord had agreed orally with the tenant that the latter could take the crib with him. Apparently the reason for the latter decision was not that the posts were set in the ground, but that the farm had been sold to a third party who thought that the corncrib went with it. In *Miller v. Bennett*⁷⁶ the Appellate Court held that a corn elevator set in a concrete foundation, without any agreement having been made for its removal, could not be removed thru a suit instituted after the termination of the tenancy.

A lease or separate written agreement may be made to provide that all fixtures supplied by a tenant at his own expense can be taken by him, regardless of injury to the real estate,⁷⁷ or that the tenant will be compensated at an agreed rate for the unexhausted value of the improvements he does not remove. In such cases, of course, the tenant is protected. (See page 267 for a further discussion of compensation.)

The question often arises why a tenant, if he is not allowed to remove a fixture, cannot exact compensation from the landlord. In *Diederich v. Rose*⁷⁸ the Illinois Supreme Court held that the right of a tenant to exact payment for improvements comes from express contract only. Tenants often make improvements without securing any such agreement, and are unable to force compensation.

The language of the statute rigidly construed precludes a tenant's removing fixtures after he ceases to remain in possession as tenant. If he holds over after the expiration of the term of the lease, his right of

75. *Smyth v. Stoddard*, 203 Ill. 424, 67 N. E. 980, 96 Am. St. Rep. 314 (1903)

76. *Miller v. Bennett*, 239 Ill. App. 306 (1925)

77. *Sanitary District of Chicago v. Cook*, 48 N. E. 461, 169 Ill. 184, 39 L. R. A. 369, 61 Am. St. Rep. 161 (1897)

78. *Diederich v. Rose*, 228 Ill. 610, 81 N. E. 1140 (1907)

removal ceases to exist.⁷⁹ This rigid interpretation might of course work injustice in certain specific cases. A liberal view was taken in an early appellate court decision which held that the tenant could remove fixtures within a "reasonable time" after the expiration of the lease.⁸⁰ The best policy for the tenant is, of course, for him to take the removable fixtures before the expiration of the lease.

Further light on the attitudes taken by courts toward the removal of farm fixtures is afforded by two Indiana cases. In *Ricketts v. Darrell*⁸¹ the court held that where stakes and rails had been wrongfully taken by a party and used for fencing his land, the rightful owner could not replevy them because they had become a part of the wrongdoer's real estate. In *McCracken v. Hall*⁸² the court held that a pump placed in a well by the tenant could be removed.

Mechanics' lien for work ordered by tenant. An interesting problem has arisen in Illinois under the mechanics' lien statute in cases where the tenant has requested work done on the landlord's property. In *Fehr Construction Company v. Postal System of Health Building*⁸³ the court held that where the tenant makes permanent improvements with the consent or knowledge of the landlord, the mechanics' lien will attach to the property. It is not clear at what point the lack of consent of the landlord would preclude the lien.

Eviction and Suits for Possession of Land

Three principal modes of legal action for bringing about the forcible removal of tenants are available to Illinois landlords. It should be remembered that none of the statutes on which these actions are based are set up specifically for farm leases.

Forcible entry and detainer. The action of forcible entry and detainer⁸⁴ may be maintained when a tenant refuses to leave after the expiration of his lease or after due notice to quit the premises. The first section of this act states: "That no person shall make an entry into lands or tenements except in cases where entry is allowed by law, and in such cases he shall not enter with force, but in a peaceful manner."⁸⁵ This section is a limitation on the use of the action rather

79. *Dreiske v. People's Lumber Co.*, 107 Ill. App. 285 (1903)

80. *Sherman v. Saylor*, 36 Ill. App. 356 (1889)

81. *Ricketts v. Darrell*, 55 Ind. 470 (1876)

82. *McCracken v. Hall*, 7 Ind. 30 (1855)

83. *Fehr Construction Company v. Postal System of Health Building*, 288 Ill. 634, 124 N. E. 315 (1919)

84. Illinois Revised Statutes, 1939, ch. 57

85. Same, sec. 1

than an expansion of it. In *Burns v. Nash*⁸⁶ the Appellate Court said, "In this Act there is discernible a certain public policy, based on humane considerations of the wrong, oppression, and hardships which might ensue if families, in any kind of weather, at any time of day or night, might be forcibly ejected from their homes, with all their effects, without notice or warning."

Since this action of forcible entry and detainer is based on the right to possession rather than to title, a new lessee can institute a suit to dispossess the old tenant holding over.⁸⁷ The action can be brought before a justice of the peace and a six-man jury. The judgment may be for only a part of the premises if the facts show that the plaintiff is entitled to no more. Provisions of the Illinois Civil Practice Act apply.

Ejectment. A second remedy open to a landlord to recover possession of his property from a tenant after expiration or breach of a lease is ejectment. Ejectment may be brought by "any person claiming an estate in land, in fee for life or years, either as heir, devisee, or purchaser."⁸⁸ Such person must be able to show a present right to the property. It is possible for the landlord in an ejectment proceeding also to recover damages for rents and profits; a separate action is not necessary. A statement of such claims may be filed at any time within a year after the judgment in ejectment. Where a tenant is sued in ejectment by a party other than the landlord, the tenant must give the landlord immediate notice, because the landlord's title may be put in jeopardy by this action.

Summary judgment on affidavit. A third and simpler device for the recovery of land exists under a provision of the Illinois Civil Practice Act. Section 57 of the Act⁸⁹ provides that: "subject to rules, if the plaintiff, . . . in any action to recover the possession of land, with or without rent or mesne profits, . . . shall file an affidavit or affidavits, on the affiant's personal knowledge, of the truth of the facts upon which his complaint is based and the amount claimed . . . the court shall enter a judgment in his favor . . . unless the defendant shall . . . " file an affidavit showing a good defense.

The advantage of this summary-judgment proceeding is that it greatly simplifies the plaintiff's action in cases where the defendant is clearly in the wrong.

86. *Burns v. Nash*, 23 Ill. App. 552 (1887)

87. *Allen v. Webster*, 56 Ill. 393 (1870)

88. Illinois Revised Statutes, 1939, ch. 45

89. Same, ch. 110, sec. 181

Miscellaneous Statutes on Landlord-Tenant Relationship

Altho the Illinois laws most directly affecting farm tenancy have been discussed, there remain some others which are worthy of mention because of their indirect bearing on the problem.

Arbitration. That a system of arbitration be established to enable farm landlords and tenants to settle disputes readily and inexpensively is a recommendation frequently made by those interested in farm-tenancy legislation. There now exist in many states, including Illinois, statutes providing generally for the submission of disputes to arbitration. In early cases under these arbitration statutes many courts were hostile toward them and held them unconstitutional, the argument being that judicial powers belonging to the courts had been conferred on arbitrators. This feeling has partially disappeared, owing no doubt to the statutory and judicial limitations that have been placed upon the use of arbitration.

The Illinois arbitration act⁹⁰ provides that:

" . . . all persons having requisite legal capacity may, by an instrument in writing to be signed by them, submit to one or more arbitrators to be named in the manner indicated by such writing, any controversy existing between them, and may, in such submission, agree that any court of competent jurisdiction, or any court therein named (provided it is of competent jurisdiction) may pass upon any questions of law arising in such arbitration proceedings, and that a judgment or successive judgments, of such court shall be rendered upon the award made pursuant to such submission, and for payment of fees and costs of the arbitrator or arbitrators."

This act has been before the Illinois Supreme Court many times and certain questions of interpretation which have arisen seem to be well settled. In *White Eagle Laundry Co. v. Slawek*⁹¹ the court said, "The object of arbitration is to avoid the formalities, delay, and expense attending litigation in court, and it has been recognized from a very early period by the common law as a method of settling disputes." Substantially the same language appears in *Podolsky v. Raskin*,⁹² decided a year earlier.

The Illinois statute is of the general type which coordinates the arbitration procedure with the local court, it being possible for a court of competent jurisdiction to pass upon matters of law involved in the controversy and to enter judgment on the award. It is true, of course, that the arbitration method was recognized at common law, and that

90. Illinois Revised Statutes, 1939, ch. 10, sec. 1

91. *White Eagle Laundry Co. v. Slawek*, 296 Ill. 240, 129 N. E. 753 (1921)

92. *Podolsky v. Raskin*, 294 Ill. 443, 128 N. E. 534 (1920)

an award when finally made under common-law procedure could be sued upon, but there was no way of forcing a party to continue the arbitration to the point where an award could be made. One thing which the Illinois Act did in cases coming under it was to make irrevocable the agreement to arbitrate. In the case previously cited, *White Eagle Laundry Co. v. Slawek*⁹¹ the constitutionality of the act was attacked on the ground that by making the agreement irrevocable it conferred judicial powers on the arbitrators. The court refused to uphold this contention, saying that the statute did not confer judicial powers on the arbitrators, and that the election to use the proceeding was a voluntary matter. It is significant in this connection that even in cases where the court refers a pending case to arbitrators, the consent of the parties concerned is essential.

Some questions may arise as to the value of arbitration proceedings when the statutory provision ties the procedure so closely to the courts. There is an advantage, however, in such an arrangement. Not only can many awards be made without the active intervention of the court, but when an award made under the supervision of the court is sued upon, the plaintiff can base his claim upon the award rather than upon the original cause of action.

Of special significance from the standpoint of arbitration legislation specially designed for landlord-tenant differences is the Illinois precedent with respect to general agreements to arbitrate. In *White Eagle Laundry Co. v. Slawek*, cited on page 255, and *Cocalis v. Nazlides*⁹³ the court held that a general agreement between two parties to submit to arbitration all controversies which might arise between them in the future is void. The enforcement of the agreement would, in the opinion of the court, deprive a party of his right to resort to judicial process if a controversy should arise. This rule voiding general agreements to submit future controversies to arbitration seems to be well settled in Illinois. However, this fact should not discourage using such agreements, because if the parties in a controversy stand by their agreement, the benefits of arbitration can still be realized.

Difference between arbitration and appraisal. An agreement to settle by appraisal some *well-defined special problem* which may arise in the future will, however, hold under Illinois law, because such an agreement has been described by Illinois courts as something different from an agreement to arbitrate future controversies. In the *Cocalis* case the court said that such a provision really amounts to an agreement that a certain fact will be required as a condition precedent to a

93. *Cocalis v. Nazlides*, 308 Ill. 152, 139 N. E. 95 (1923)

recovery, citing the proof-of-loss clause in insurance contracts as an example. The court said further, "If there is no matter in dispute there is no question for arbitration, and accordingly it was held in *Morton v. Gale*, 95 Ill. 533, where annual rent was to be ascertained by appraisers, their decision was not an arbitration because there was no matter in controversy when the leases were executed." A similar conclusion was reached in *Pearson v. Sanderson*⁹⁴ in which case a question arose over a provision in a lease for appraisers to establish the value of improvements remaining at the termination of the lease. The court held that such appraisal was not arbitration because no controversy existed. The amount set by the appraisers could be enforced, however, in a future controversy arising out of the lease.

In framing arbitration legislation for landlords and tenants in Illinois it would be well to consider several points: the limitation put by courts upon a general executory agreement to arbitrate, the difference between arbitration and appraisal, and the suitability of the present arbitration statute.

Recording and execution of leases. Illinois statutes do not require the recording of leases. However, under the Torrens system of land registration, available to all counties in Illinois but used only in Cook county, leases and other instruments creating a charge on land may be registered.⁹⁵

In cases where leases are executed outside the state of Illinois affecting property in the state, such leases are valid if good where executed.⁹⁶

Payment of taxes in lieu of rent. It is not lawful in Illinois for an alien landlord to provide in the lease that the payment of taxes by the tenant shall constitute a part of the rent.⁹⁷

Limitation of action on leases. In the case of written leases, suit may be brought in Illinois within ten years after the cause of action accrues, or within ten years after any payment or written promise to pay has been made.⁹⁸ In the case of oral agreements, suit may be commenced within five years after the accrual of the cause of action.⁹⁹

Death of life tenant. The death of a life tenant terminates immediately his rights in the property. At common law a tenant of the life tenant had no further right in the property and, in case rent was not

94. *Pearson v. Sanderson*, 128 Ill. 88, 21 N. E. 200 (1889)

95. Illinois Revised Statutes, 1939, ch. 30, sec. 103

96. Same, ch. 30, sec. 154

97. Same, ch. 6, sec. 9

98. Same, ch. 83, sec. 17

99. Same, ch. 83, sec. 16

yet due, could move and escape paying it.¹⁰⁰ To remedy this situation the Illinois legislature in 1897 passed "an Act in relation to landlord and tenant"¹⁰¹ providing that:

"When a tenant for life shall demise any lands and shall die on or after the day when any rent becomes due and payable; his executors or administrators may recover from the undertenant the whole rent due, but if any such tenant for life shall die before the day when any rent is to become due, his executors and administrators may recover the proportion of rent which accrued before his death, and the remainderman shall recover the residue."

The constitutionality of this act has been attacked. In *Wilson v. Hagey*,¹⁰² the defendant claimed that this was special legislation, that it deprived him of his property without due process of law, and that the subject matter was not related to the title as is required by the Illinois constitution. The court refused to sustain any of these arguments and held the act constitutional. This holding is significant because the same arguments raised in this case would probably be urged against general landlord-tenant legislation in case its constitutionality were attacked.

Evaluating improvements in cases of ejectment. While the procedure under those sections of the ejectment statute relative to improvement valuation¹⁰³ does not have general application to farm tenancy, yet the method used and recognized by the legislature, being similar to that often proposed for evaluating lasting improvements made by a farm tenant, is worth considering.

The law provides that any five of seven persons nominated by the court shall:

" . . . go on the premises and after viewing the same . . . assess the value of all such lasting and valuable improvements . . . [as] shall have been made prior to the receipt of such notice [of adverse claim] . . . and also assess all damages the land may have sustained by the commission of any kind of waste or reduction of soil by cultivation or otherwise . . ."

The Act further provides that the persons nominated shall, when making an assessment, "carefully distinguish between such improvements as were made on the land prior to notice and those which were made after notice," and shall also consider "all such necessary and lasting improvements as shall have been made . . . after the receipt of such notice."

100. *Blaine v. Blaine*, 202 Ill. App. 453 (1917)

101. Illinois Revised Statutes, 1939, ch. 80, sec. 36

102. *Wilson v. Hagey*, 251 Ill. 452, 96 N. E. 277 (1911)

103. Illinois Revised Statutes, 1939, ch. 45, secs. 56, 57

A similar method for the evaluation of improvements at the termination of an ordinary farm tenancy might be used.

Descent, dower, homestead, and taxation. General laws on descent,¹⁰⁴ dower,¹⁰⁵ homestead,¹⁰⁶ and taxation¹⁰⁷ have an effect upon farm tenancy. None of these are discussed here, however, because a thoro analysis would not only be a large task, but would be of doubtful value from the standpoint of the farm-tenancy problem, unless something more extensive than tenancy reform were contemplated.

Limitations on landlord's ownership. In addition to these laws there are those which affect the ownership of the landlord in such a way that tenancy is influenced. For example, an insurance company, within three years after the acquisition of land mortgaged to it, may be required to dispose of the land¹⁰⁸; likewise, an alien landlord can hold title to land for only six years after he reaches his twenty-first birthday.¹⁰⁹

Rural zoning. In Illinois rural zoning has not proceeded to the point where it has any appreciable effect upon farm tenancy. An act relating to county zoning¹¹⁰ has some provisions with relation to housing, but the act specifically states that the regulations are not to be imposed upon land used for agricultural purposes.

Game and fish privileges. Tenants are given certain privileges on the farm with respect to game and fish. They have a right to destroy any wild bird or wild animal (other than game birds or migratory water fowls) damaging their property,¹¹¹ and they and their children actually residing on the land may hunt,¹¹² trap,¹¹³ and fish,¹¹⁴ on their own land without procuring a license, so long as they abide by the laws relative to game, fur-bearing animals, and fish.

104. Illinois Revised Statutes, 1939, ch. 3, 39

105. Same, ch. 3, 41

106. Same, ch. 52, secs. 1-12

107. Same, ch. 120

108. Same, ch. 73, sec. 740

109. Same, ch. 6, sec. 2

110. Same, ch. 34, sec. 152

111. Same, ch. 61, sec. 78

112. Same, ch. 61, sec. 79

113. Same, ch. 61, sec. 80

114. Same, ch. 56, sec. 66

LANDLORD-TENANT RELATIONSHIPS UNDER COMMON LAW

The Illinois legislature has given statutory recognition to the common law of England as follows¹¹⁵: "The common law of England, so far as the same is applicable and of a general nature, and all statutes and acts of parliament made in aid of and to supply the defects of the common law, prior to the fourth year of James the First" (1607), excepting certain acts under Elizabeth and Henry VIII are in full force until modified or repealed by legislative authority.

Illinois common law includes in addition those principles laid down by the state courts, particularly those of Illinois. There is a difference of opinion about the extent to which common law emanates from the federal courts. Undoubtedly some does come from that source, but little that would be in point on the general subject of landlord-tenant relationships.

Implied Covenants in Farm Leases

In the absence of specific agreement covering the manner in which farm property is to be handled by a tenant, the courts have held that certain reasonable duties on his part are implied. Among the principles laid down are the following¹¹⁶: Only a reasonable use of the property for the purpose for which it is obtained is permissible; no waste should be committed; the farming should be done in a husbandlike manner; the soil should not be unnecessarily exhausted by negligent or improper tillage; and repairs should be made. In addition, a tenant is presumed to conduct the farm business according to well-established customs or usages of the region in which he lives, unless the lease specifically provides or implies otherwise.

While the tenant shall not farm in such a way as to injure the freehold, he is neither required to yield up the tenancy in the same condition as it was when he took it, nor in every respect to have properly tilled, manured, or pastured it. On the other hand the tenant can set up no claim for farming the land in a more beneficial manner than was required. Leases are governed by the laws applying to contracts. Where no express agreement appears, rules of common law, statutes, and the "customs of the country" govern questions which arise.¹¹⁷

115. Illinois Revised Statutes, 1939, ch. 28, sec. 1

116. *Walker v. Tucker*, 70 Ill. 527 (1873)

117. See generally 36 Corpus Juris 97-110, 682-717

Doctrine of Waste as a Basis for Land Usage

The doctrine of waste, as it has been developed by the courts, has not furnished an adequate basis for establishing good land usage. Failure on the part of the courts to get scientific information on the problems coming under their scrutiny has resulted in vague principles. The theory of equitable waste, allowing an owner to prevent an obvious injury to the premises altho the practices causing the injury may not be prohibited by the terms of the lease, has helped somewhat in protecting the landlord.¹¹⁸ A distinction as to the amount of waste permitted has been drawn between a life tenant and a tenant for a year or a term of years, giving a life tenant much more liberty to commit waste.¹¹⁹ The language of many wills and deeds creating life estates includes the statement "without impeachment of waste," which excuses the life tenant still further from making a reasonable use of the premises. The courts distinguish "permissive" waste, meaning damage which the tenant fails to prevent, from "voluntary" waste, meaning damage resulting from positive acts of the tenant. Liability is much greater for voluntary waste.

Among the specific things courts in this country have called waste are over-tillage, unusual rotations, clearing woods, breaking up pastures, altering buildings, cutting hay too early, sowing a pernicious crop, destroying fruit trees, removing ornamental trees, sowing all the land to wheat shortly before the end of the term, and selling manure.

Altho in the absence of an agreement a tenant does not have to spread manure, he cannot in this country, without the consent of the landlord, remove manure produced from feed grown on the farm. According to a Canadian case¹²⁰ also, manure cannot be considered as an emblement removable by the tenant at the end of his term.

Other Illinois Decisions Based on Common Law

The crop of a share tenant belongs to the tenant until it is divided and the landlord's portion set apart.¹²¹ This rule is well established in Illinois.

118. See 27 Ruling Case Law 1013-1015, *U. S. v. Bostwick*, 94 U. S. 53 (1876); *Keogh v. Peck*, 316 Ill. 318, 147 N. E. 266, 38 A. L. R. 115 (1925)

119. *Ohio Oil Co. v. Daugherty*, 240 Ill. 361, 88 N. E. 818, 36 L. R. A. (N. S.) 1108 (1909); *Bender v. Bender*, 292 Ill. 358, 127 N. E. 22 (1920); *Fifer v. Allen*, 228 Ill. 507, 81 N. E. 1105 (1907)

120. *Atkinson v. Farrell*, 27 Ont. L. 204, 8 Dom. L. A. 582 (1912)

121. *Sargent v. Courier*, 66 Ill. 245 (1872); *Dixon v. Niccolls*, 39 Ill. 372, 89 Am. D. 312 (1866); *Alwood v. Ruckman*, 21 Ill. 200 (1859); *Grotefendt v. Schlaepfi-Siever*, 213 Ill. App. 436 (1920); *John Hancock Mutual Life Insurance Co. v. Watson*, 200 Ill. App. 315 (1917)

The right to maintain trespass belongs to the tenant once he has gone into possession, and may be enforced even against the landlord unless he is there for the collection of rent, for necessary inspection of the premises, to deliver a notice, or by permission.

The right to sue for injury to the farm or property on it depends on the right of the claimant in the property damaged. Where a railroad embankment caused an overflow of water on the tenant's crops, the right was held to be solely in the tenant.¹²² In such cases the courts try to determine whose property is injured. Because crops belong to the tenant until divided, the court held that he had the right to sue and that the landlord did not, altho the latter's rent was payable out of the crop. Injury to the freehold (buildings, fences, trees, etc.), on the other hand, would give the landlord a cause of action.

A tenant's knowledge of conditions prevailing on the farm at the time he makes his agreement may limit rights that he would otherwise have. For example, a tenant's knowledge when leasing land that the outlet to a ditch draining the land had been obstructed by a neighbor prevented him from recovering for subsequent damage to his crops.¹²³

Special assessments levied by a drainage district were construed not to be covered by a lease which provided that all assessments levied against the premises should be paid by the lessee.¹²⁴

SUMMARY OF ILLINOIS LAWS RELATING TO FARM LANDLORD AND TENANT

1. No provision is made in the Illinois state constitution for the landlord-tenant relationship.

2. Most Illinois legislation pertaining to landlords and tenants concerns the landlord-tenant relationship as a whole and is not designed specifically for farm tenancy.

3. One large body of statutes consists of remedies for the collection of rent. The actions of debt, assumpsit, replevin, attachment, and garnishment affect farm tenancy only generally. Distress for rent and the provisions for distress before rent is due apply more directly to farm tenancies. Under the distress action tenants may exempt the same items which they are allowed to exempt under an execution.

4. The landlord's lien for rent against crops grown during the year the rent accrues applies to any purchaser who knows that his

122. *Uffleman v. St. Louis Iron Mountain & S. Ry. Co.*, 194 Ill. App. 42 (1916)

123. *Funston v. Hoffman*, 223 Ill. 360, 83 N. E. 917 (1908)

124. *Carlyle v. Bartels*, 315 Ill. 271, 146 N. E. 192 (1924)

vendor is a tenant and that he has raised the crops on rented land. A landlord must use an appropriate action to enforce his lien.

5. The Illinois statute on abandonment protects a farm landlord to the extent of rent and expenses, so far as he is able to mature and harvest crops left by the tenant, but it does not make provision for damages resulting from the abandonment.

6. The right to emblements and away-going crops is recognized by Illinois courts.

7. Oral leases which cannot be performed within one year from the time they are made are void in Illinois. The judicial creation of "tenancy from year to year," however, gives an oral lease effectiveness, so far as the agreement can be determined from existing facts and evidence, provided that either party to the oral lease has relied on the lease and made a substantial performance. To terminate such a lease, written notice must be delivered from one party to the other not less than 60 days nor more than 4 months prior to 60 days before the termination of the tenancy.

8. Tenants not subject to distress for rent may take from the rented premises removable fixtures which they have built, provided they do so while they are still in possession of the land as tenants. The definition of "removable" is vague, but in general it means improvements which can be removed without undue injury to the premises.

9. For the eviction of farm tenants no special actions are provided in Illinois law. Ejectment, and forcible entry and detainer may be used.

10. Illinois statutory provisions for submitting disputes to arbitration can be used by farm landlords and tenants, but owing to judicial construction the agreement to arbitrate cannot be enforced if it precedes the controversy. This construction prevents agreements for arbitration contained in farm leases from being binding and effective if one party refuses to arbitrate.

11. Common-law principles serve as a general guide in landlord-tenant relationships, particularly under oral leases, but they are not complete or modern enough to apply to all the issues that arise.

12. Many Illinois statutes, such as those on descent, dower, homestead, wills, administrators and executors, and taxation, have an indirect effect on farm tenancy. These laws, however, have not all been drafted with the objective of good land use or improved tenancy in mind, and there is consequently need for improvement in them.

SUGGESTIONS FOR A FARM-TENANCY CODE FOR ILLINOIS

Emphasis is given by agricultural economists and others to the need for legislation to improve landlord-tenant relationships. Altho legislation alone cannot bring about completely desirable conditions, fair and workable laws can do much to prevent injustice in cases where no adequate agreement or understanding exists between landlord and tenant. The report of the President's Committee on Farm Tenancy recommends that states should consider suggestions for the improvement of lease contracts and general landlord-tenant relations.

One of the most urgent needs is a clearer distinction between farm and urban tenancy than that which exists under present laws. Also, because it is impossible to make laws that will apply to every problem arising under farm-tenancy agreements, such laws as are made must be carefully drawn to cover as many problems as possible. Laws covering leasing agreements will need to be adjusted from time to time to meet changing economic and social conditions.^a

For the benefit and convenience of Illinois farm landlords and tenants and others concerned with the law, the existing and suggested Illinois laws on farm tenancy need be brought together in a farm-tenancy code. In the following outline and discussion no attempt has been made to set up the sections as they would appear in a sample code, but rather to set forth either thru discussion or direct statement those provisions which appear to be essential.

Purpose of Code

The immediate purpose of the code should be to establish certain regulations which, in the absence of an adequate contract, will make the relationship between landlord and tenant more equitable than common law, custom, and statutes have made it heretofore. The ultimate purpose should be to help assure to the public a wise use of land.

Definition of Farm Tenancy

The term "farm tenancy" should apply to all instances where an owner of farm land conveys to a tenant a right over the use of that land and in return receives either cash, a share of the crop, a share of the livestock, or any combination of these forms of payment. Share-cropping should also be included under the definition of farm tenancy.

^aSee "Farm Leases for Illinois," Univ. Ill. Agr. Sta. and Ext. Cir. 503 (1940)

Creation and Termination of Tenancy

Written leases are desirable, and almost indispensable to the development of efficient farm-operation plans, but it is not felt that written leases should be required by law. In the first place, such a statute would probably fail to change materially the status of many of those landlords and tenants who under present conditions are content with oral leases. Under the statute of frauds, oral leases which cannot be performed within a year are void; but because of the high percentage of such leases the courts have found it necessary to create "tenancies from year to year." The courts would undoubtedly find it necessary to do the same if an additional statute requiring a written lease were enacted and the parties failed to execute such a lease.

In the second place, a requirement that all farm leases be written would tend to favor landlords because of their superior experience with business instruments. Any attempt to equalize the position of landlord and tenant thru legislative regulation of the provisions in leases would be very complicated and detailed. A lease adapted to one farm and to particular individuals may not be adapted to a neighboring farm or other individuals.

Present laws for notice to terminate a tenancy should be changed so that a written notice would be required to be given by either party at least six months before the expiration of the tenancy. The six-month period would give both landlord and tenant time to plan their programs for the following year. In individual cases, however, where the tenant has become well established on the farm and has made investments in livestock and equipment suited to the farm, the notice to terminate the lease should be given at least a year in advance. This provision for a notice longer than six months would not be a part of the code but should be made a part of the individual lease.

Farm leases should terminate February 1 instead of March 1, now the customary date. February 1 is much more desirable from the standpoint of planning and performing certain operations on the new farm. It is not felt that such a provision could be incorporated into the statute; it is merely suggested as a point to be included in the educational program that should supplement the code.

Laws relating to tenancies from year to year should be codified in this section on creation and termination of tenancies.

Implied Rights and Duties Under Tenancy Agreements

The best written farm leases leave little to implication, but many written leases fail to include even the basic requirements of the law

and are almost entirely devoid of provisions which promote good farming. Oral agreements, of course, are still less satisfactory. This section of the code should therefore state as a matter of law that the following duties always exist on the part of the tenant:

1. To use proper methods of tillage.
2. To destroy weeds.
3. To spread manure.
4. To keep tile outlets and drainage ditches open.
5. To make reasonable repairs where no cash outlay is involved and where an unusual amount of labor is not required.
6. To cause no destruction or impairment to the land or property thru neglect or improper management.

Because the common-law doctrine of waste is generally inadequate, the above provisions are desirable to give the landlord a valid claim where circumstances warrant.

This section of the code should also state the following duties on the part of the landlord:

1. To repair buildings and fences.
2. To insure the undisturbed occupancy of the tenant by the payment of all taxes and assessments against the property.
3. To maintain adequate drainage, a satisfactory water supply, and such minimum standards of housing as are prescribed by law.

This section on implied rights and duties should be revised and expanded whenever changing conditions warrant.

Emblements and Away-Going Crops

If notice to terminate is given according to law, there will be no problem of away-going crops (crops harvested by a tenant after the expiration of his lease). Where special circumstances such as abandonment or eviction for breach of contract occur and terminate the holding of the tenant before the crops are harvested, the present law on abandonment should be applied. The landlord is often handicapped in caring for the crops when a tenant abandons the premises, and any damages occasioned by the abandonment should be allowed the landlord in addition to rent and expenses. Because livestock-share leases are becoming more prevalent, the law on abandonment should include similar provisions with respect to productive livestock owned jointly by the landlord and tenant.

Landlord's Lien

The present Illinois statute on the landlord's lien and court interpretations put upon it are acceptable. The landlord, as principal investor in the farm enterprise, should have this much protection.

Lien statutes have been criticized by some agricultural economists because they interfere with the securing of production credit. The farm enterprise, however, is more likely to be injured by the tenant's failure to pay his rent and prevent the attachment of the lien, than it is by his failure to secure production credit. The law should provide that the landlord may waive his lien where such waiver is necessary for the tenant to secure production credit.

Suggestions that the lien be modified in the event of crop failure or a drop in prices proceed from reasonable motives, but such modifications would be difficult to apply. Of much more value would be the adoption by the landlord and tenant of some method for adjusting the rent. The Illinois landlord's lien applies only to crops grown and growing, and not to other property of the tenant; which relieves it of many of the objections brought against liens of other states.

County Landlord-Tenant Commission

A county landlord-tenant commission should be established. It might be composed of the county judge, and two landowners and two tenant farmers elected from the county for a period of two years. It should be responsible for any appraisals which need to be made in carrying out this code; and it should have authority to settle certain questions of fact, as distinguished from questions of law, arising under provisions of the code.

Compensation for Improvements

The English Agricultural Holdings Act, allowing tenants compensation for improvements made by them, and generally cited as a model law, has three parts: one with respect to improvements requiring the consent of the landlord; another with respect to improvements requiring notice to the landlord (drainage being the only item included); and a third with respect to improvements requiring neither notice nor consent. In Illinois two divisions should be adequate: one requiring the landlord's consent, and another requiring notice, but no consent. In many cases the notice would merely amount to the tenant's telling the landlord his general farming plans, which is after all desirable.

In each division should be listed the important improvements which might be made. Provision should be made that questions as to the nature of improvements not listed or not clear should be taken to the county landlord-tenant commission. A great deal of care should be exercised in preparing these schedules so that they will apply to Illinois farming, and so that no injustice will be worked on either party.

Improvements requiring the consent of the landlord might include the following:

1. Construction, alteration, removal, or major repair of buildings and permanent fences.
2. Construction and repair of levees, tile lines, and drainage ditches.
3. Construction and repair of roads and bridges necessary on the farm.
4. Construction and repair of check dams, terraces, and other permanent and semi-permanent structures necessary to the conservation of the land.
5. Planting and care of woodlots and orchards.
6. Clearing land of obstructions to cultivation.

Improvements requiring notice to but not the consent of the landlord might include the following:

1. The spreading of limestone, phosphate, and other purchased fertilizers. The tenant should receive compensation for the difference between the value of the unexhausted fertilizers at the conclusion of the tenancy and the value of the fertilizers which were applied but unused at the beginning of the tenancy and for which the tenant did not pay.

2. Plowing under green manures and the seeding of permanent or temporary pastures which would improve and conserve the soil. The tenant should receive compensation for the difference between the value of such practices at the termination of the tenancy and the value of permanent and temporary pastures and green-manure crops which were on the farm at the beginning of the tenancy and for which the tenant did not pay.

3. Removable improvements of value to an incoming tenant.

The law should require that a tenant, in order to establish a valid claim for compensation for the unexhausted value of any items in either of the above two classes, must have in his possession adequate evidence of his expenditures, such as bills of sale, receipts, and records of the farm business. If the landlord and tenant cannot agree upon the value of unexhausted improvements, the county landlord-tenant commission should be requested to determine the appropriateness of the improvements for the farm and to fix a fair value on such improvements.

If the tenant moves before he is paid such a sum for unexhausted improvements as has been agreed upon by the landlord and tenant or fixed by the county landlord-tenant commission, the sum due the tenant should constitute a lien against the property, and should be made payable within a definite period, probably six months.

Damages for Unjust Disturbance

When a lease is terminated for an unjust cause, the injured party should be entitled to an award of damages suffered because of the termination. If the damages are not paid as requested, the aggrieved party should be given the advantage of a simplified procedure

before the county court to determine whether or not the disturbance was unjust. If the county court finds that the disturbance was unjust, it should request the landlord-tenant commission to determine the damages resulting from the disturbance.

Unjust disturbance would not, however, include notice given in accordance with the suggested law providing for six months' notice. While this differs from the English law allowing a disturbance payment, even when notice is given as provided in the lease, it is felt that in Illinois long-term leases should be encouraged by education rather than by any type of coercion.

The rights conferred upon landlords and tenants by this section should be supplementary to the right of either of them to test whether or not the lease has been breached. The purpose of the section should be to give some protection to parties who have a good defense to an action for a breach of their lease but who would be in a worse position by defending than by simply considering the lease terminated.

Minimum Housing and Health Standards

Surveys which have been made in Illinois indicate that certain minimum housing and health standards should be set up. These are important, not only from the standpoint of the tenant, but also from the standpoint of better landlord-tenant feeling. The following requirements should be included:

1. Safe and adequate water supply, properly protected
2. Sanitary toilet
3. Sound roof, walls, foundation, and floors

Any complaints about housing or health standards should be filed with the landlord-tenant commission. The commission could order an investigation to be made by the proper health authorities. If the authorities find that these standards have not been met, a notice should be sent to the landlord giving him 30 days in which to correct the deficiencies. If these are not corrected within 30 days after notice, the law should provide for a mandatory injunction to be issued by a court of competent jurisdiction requiring the work to be done or that it may be performed and charged to the landlord.

Limitation of Rights Created by the Code

Finally, in order to prevent ill-considered waiving of rights at the time leases are made, the code should contain the provision that, except as provided by law, no landlord or tenant, thru any agreement written or otherwise, may limit the rights accorded to either by the provisions of the code.

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(In Illinois Revised Statutes 1939)

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Alien landlords. Ch. 6, sec. 2.
Arbitration. Ch. 10, sec. 1.
Chattel mortgages (feed, unplanted crops, etc.). Ch. 95, sec. 1a.
Civil Practice Act (scope). Ch. 110, sec. 125.
Common law. Ch. 28, sec. 1.
County zoning. Ch. 34, sec. 152.
Demand for rent. Ch. 80, secs. 7, 8.
Descent. Ch. 39. *See also* ch. 3.
Distress before rent due. Ch. 80, sec. 35.
Distress for rent. Ch. 80, secs. 16-30.
Distress for rent (allegation of defendant). Ch. 119, sec. 19.
Dower. Ch. 41. *See also* ch. 3.
Ejectment. Ch. 45.
Election of property for execution. Ch. 77, sec. 11.
Employers' liability. Ch. 48, secs. 138-143.
Exemptions (debtors). Ch. 52, sec. 13.
Fences, legal definition, repair, etc. Ch. 54.
Fish, rights of tenant. Ch. 56, sec. 66.
Fixtures (removal). Ch. 80, sec. 34.
Forcible Entry and Detainer. Ch. 57.
Game, rights of tenant. Ch. 61, secs. 78-80.
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Weeds (duty to destroy noxious weeds). Ch. 139, sec. 39 (5); Ch. 121, secs. 56 (8), 150; Ch. 38, secs. 89, 90; Ch. 18.

GLOSSARY

- Assumpsit**—a form of legal action which may be used to recover damages caused by failure to perform a simple contract.
- Attachment**—a writ or order of the court commanding the sheriff to seize the property of a defendant to an action and to hold the property as security for the satisfaction of such judgment as may be rendered in the case.
- Chattel**—any item of personal property as distinguished from real estate.
- Chattel mortgage**—a mortgage of personal property as security for a debt.
- Chattel real**—a legal instrument representing a right to real estate, such as a lease.
- Common law**—rules developed thru decisions of the courts and applied by them as a matter of precedent.
- Demise**—a conveyance of real estate or of an interest in real estate.
- Distrain**—to take, thru legal process, the property of another and hold it to secure the payment of an obligation, usually rent.
- Distress**—a procedure thru which property may be taken and held to satisfy a debt.
- Ejectment**—a legal process to force an occupant from land and take possession; also to determine questions of title.
- Emblements**—growing crops which a tenant has the right to harvest and remove after he leaves the premises following termination of the tenancy.
- Forcible entry and detainer**—a simplified legal action for obtaining possession of land.
- Garnishment**—a legal process by which wages, salary, or other income of a debtor may be taken to satisfy a judgment in law.
- Lien**—a legal claim against items of property for services or materials expended on such property.
- Life estate**—the right to possess, use, and take profits from land during the life of the holder or during the life of another.
- Remainderman**—a person who takes property, by provisions in a will or deed, after a life tenant dies.
- Replevin**—a legal action for the recovery of goods or property wrongfully taken.
- Reversioner**—a person who takes property at the death of a life tenant in cases where the remainder has not been disposed of by the original owner. The reversioner is the original grantor or his heirs.

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