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FARM TENURE LAW IN KANSAS

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FOREWORD

This report, which deals with the legal aspect of the landlord-tenant relationship, is a part of a general inquiry into farm tenure problems in Kansas. It is concerned with the entire body of rules relating to farm tenancies. This body of rules is commonly spoken of as the tenancy law and includes the common law, local custom, court decisions, statutory law, and constitutional provisions. The objectives of this study were threefold: (1) To learn of the problems of farm tenancy that are related to, or affected by, landlord-tenant law, (2) to analyze and interpret the present status of the law, and (3) to suggest possible improvements. Other parts of the farm tenancy inquiry treat of the characteristics of the tenant, the landlord, the lease, and the land.

The development of this report was in two phases. The laws and their interpretations by the courts were searched thoroughly. This was a long and detailed process. The Kansas Constitution, statutes enacted by the Legislature, and Supreme Court decisions relating to farm tenancy were studied. The interpretations of the Kansas statutes on farm tenancy and items dealing with the subject but not included in the statutes were investigated. This study of records preceded the field study conducted in November, 1939, for the purpose of determining the actual operation of the laws and their effect upon the normal daily relations of landlords and tenants. Nearly 100 interviews were held with judges, lawyers, tenants, landlords, bankers, justices of peace, agricultural officials, county agents, and others. These individuals were interviewed because of their familiarity with the problem of farm tenancy.

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FARM TENURE LAW IN KANSAS[1]

by
H. Alfred Hockley and Harold Howe[2]

The tenancy relationship is established whenever there is an understanding that a farm operator is given the right to farm the land of another. This understanding may take the form of a written lease or of an expressed or implied oral agreement.

The rights and duties of the two parties are not solely dependent upon the expressed agreement whether written or oral. The law implies several rights and duties in every tenancy, regardless of the agreement. The principal terms of the agreement which are supplied by the law are those which declare that a tenant has title to the crop produced whether it has or has not been harvested and the provision that a tenant is entitled to possession of the premises during the term of the tenancy. Generally, however, the rights and duties are dependent upon a fairly definite agreement. If the agreement fails to cover some aspect of the relationship, the courts will interpret what is implied if the case is presented to them. These interpretations are based chiefly on evidence they hear and on customary procedure.

The landlord-tenant relationship is essentially a cooperative venture which should operate to the mutual advantage of both parties over a long period of time. Some of the possible adjustments which are discussed may seem advantageous only to the tenant, but it is believed that eventually, they would be beneficial to both parties because they encourage the tenant to adopt more desirable farming methods. Any adjustments which will encourage better farming methods and at the same time promote a more amicable and business-like relationship will benefit both the landlord and the tenant.

Problems that arise in the landlord-tenant relationship can be solved only in part by legislation. A general understanding by landlords and tenants of the problems and solutions for these problems is fundamental. To be effective, legislation must be based on this understanding. In this connection, it should be emphasized that the information presented here is designed to promote adequate discussion before specific legislative action is taken.

SECURITY OF TENURE

One of the major difficulties in farm tenancy is the lack of assurance that the tenant will be operating the farm over

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a period of years. Statistics show that on April 1, 1940, approximately 35 percent of the tenants in Kansas had been on their farms for less than 27 months. Approximately 23 percent had been on their farms for less than 15 months. This lack of stability prevents the development of a permanently productive and conservational system of farming, which requires the adoption of long-time rotations and the building of livestock enterprises over a period of many years. Frequent moving has a detrimental influence upon the tenant and his family in their participation in community activities. Many tenants are slow to associate with the local church and school and with farm organizations if they do not know how long they will remain in the community. Moving from farm to farm also results in loss of time and money in locating a new farm. Serious retardation in the educational progress of the tenants' children also is associated with frequent moves.

Written Leases. — One of the factors contributing to instability is the annual oral lease, and the majority of leases in Kansas are oral. Although seldom questioned in court, considerable doubt has been expressed concerning the legal validity of the oral lease. Widespread use of written leases appears desirable. Whether written leases should be required by statute is a question for discussion. That the legislature has the power to enact a statute requiring written leases is seldom questioned. However, one problem would invariably arise: What would be the position of the two parties if they ignored the law and continued under an oral agreement?

The consensus is that the operator would be considered a squatter or a trespasser and would be in a more insecure situation than at present. This could be remedied, however, by providing in the statute that in the absence of a written lease it would be presumed that the two parties were operating under a lease outlined in the statute. The statute could then outline a model lease or leases indicating the length of term for which the relationship should run, method of termination or renewal, responsibility for repairs, the situation with reference to removal or compensation for improvements, maintenance of the premises, division of contributions and income, and other similar items. Under these circumstances the landlord and the tenant would be free to follow one of two procedures; they could either put their agreement in writing, or they could follow a lease outlined in the statute.

Like individuals, corporations generally lease their land for only one year at a time. The evil of insecurity of tenure is created in some instances by efforts of the corporation to sell the land. In justice to the corporations it should be stated that for the most part they are involuntary owners of land. It is in the interest of the public as well as the corporations

that the land be disposed of as rapidly as possible. Furthermore, several kinds of corporations, notably banks and insurance companies, are required by law to dispose of real estate within a definite period of time after the date the property has been conveyed to them in satisfaction of debts. Extensions of time may be granted in instances where the interest of the company will suffer by a forced sale. Although the corporation lease may provide for cooperation with federal and state agricultural programs, the tenant cannot be expected to take active interest in conservation practices when he is uncertain about the length of his lease.

The better aspect of the corporation lease is the fact that it usually is written. Any subsequent agreements also are reduced to writing. Many corporations recognize the value of long-term farm plans and are adopting them as a part of the lease.

Other Possibilites for Increasing Security by Lease Adjustments.--In addition to the written lease, four provisions that might be included in the lease have been suggested for obtaining greater security of tenure. They are: (1) Long-term leases, (2) long-term, cancellable leases, (3) automatically renewable leases, and (4) compensation for disturbance.

The use of long-term leases is difficult to achieve by a law, but much can be done to promote the voluntary use of long-term agreements which provide the stability so necessary to social and economic progress. Where the parties are unfamiliar with each other's integrity and where the landlord is unfamiliar with the tenant's ability, the first year probably should be a trial period.

For landlords and tenants who object to using long-term leases for various reasons, long-term cancellable leases are suggested. This form of lease usually contains provisions permitting the leases to be cancelled under specific conditions, after advance notice is given. Some of these conditions are: (1) Tenant is not cultivating the farm according to the rules of good husbandry, (2) tenant is delinquent in his rent, (3) either party dies, (4) landlord desires to operate the farm himself, (5) landlord or tenant has caused a breach in the contract which is not remedied after notice, and (6) either landlord or tenant is bankrupt or the farm is foreclosed.

Greater security of tenure may be obtained by the automatically renewable lease which requires advance notice of the termination of the lease. Thus, the lease is renewed automatically unless one party gives notice several months in advance of the end of the term. This would create no hardship on the part of either landlord or tenant. Upon proper notice, each would be free to terminate his part of the agreement at the expiration of any year. For the most part, the undesirable consequences of insecurity would be

eliminated. The Iowa legislature recently enacted a statute which provides that all agricultural tenancies should continue automatically from year to year unless one party gives notice of termination at least four months before the end of the lease.

Consideration might be given to a statute requiring compensation for disturbance when the tenancy is terminated without good cause. Terminating a tenancy results in costs to both landlord and tenant. The tenant bears the cost of moving, the loss resulting from damage to household property and farming equipment in transporting, and the inconvenience of finding another farm.

If compensation for disturbance is deemed advisable, the determination of what constitutes "good cause" becomes important, since the party so terminating the tenancy would not be required to pay compensation for disturbance. The conditions enumerated as grounds for canceling a long-term lease, in part, might constitute the definition in the statute of "good cause". Unless one of these conditions existed, compensation could be required.

If compensation is payable, the amount may be determined in several ways. First, it may be based upon the loss or damage sustained in each case. If this procedure is followed, the two parties may mutually agree upon the amount of compensation; or, in case of disagreement, the matter may be settled by arbitration or by a court qualified to evaluate such losses equitably and expeditiously. Second, it may be possible to fix a predetermined rate of compensation, such rate being either a percentage of the annual rental or a stipulated lump sum. This would eliminate the necessity for determining the amount of loss or damage in each individual case and possible differences and disputes would be eliminated.

Classification of Tenancies. —The action of the two parties results in the creation of a certain kind of tenancy. Each kind has its particular rights and duties under the law. There are two legal types of tenancies normally used in farming operations: (1) Tenancy under an agreement for a specified period of time, and (2) tenancy from year to year by operation of law. Most tenancies begin under the first type, with a definite lease agreement, whether written or oral. Under this agreement the tenant needs no specific notice of termination, for the date of termination is stated in the lease.

When a lease is for a definite term and the tenant plants a crop which will not mature until after the expiration of the term, the law does not extend the agreement of the parties to allow the tenant any right to harvest the crops. The action of the parties, however, may be such that the court can imply an agreement to allow the tenant to reenter to harvest the

crop. Thus, when the tenant plants wheat, although his lease expires March 1, and the landlord either expressly or impliedly tells the tenant that he will be permitted to harvest the crop, the landlord must permit him to harvest it.

The second type of tenancy may be created when a tenant occupies a farm under a written lease and prior to its termination the parties orally agree to a renewal. This oral renewal is void under the statutes, but if the tenant continues in possession with the consent of the landlord, he becomes by law a tenant from year to year.

The courts will consider this type of an oral renewal to be within the meaning of the law when it would work a fraud or undue hardship to determine that a tenancy relationship did not exist. This is illustrated by a case where a tenant, relying upon an oral renewal, makes substantial improvements and operations on the premises. Such improvements are considered part performance of the agreement and prevent the voiding of the lease. These improvements and operations, however, must be substantial. What activities on the part of the tenant and what knowledge the landlord has of these activities, which taken together may create a tenancy from year to year, are rather indefinite. The law does not specify these acts. Each case must be decided upon its own merits.

The slight variation of the second type of tenancy may be created under the law when the tenant continues to occupy the farm without a new agreement after the expiration of a written or oral lease. If the tenant is permitted to remain on the land and no further agreement is made, the law presumes a continuation of the kind of relationship found in the original lease. This arrangement may continue indefinitely.

The tenant, by holding over with the consent of the owner as in the first illustration, becomes a tenant from year to year by operation of the statute, which provides that the landlord must give a definite notice to terminate since the law created a continuous tenancy. If the landlord desires to terminate the year-to-year tenancy, a 30-day notice must be given in accordance with Kansas statutes. This means that if there were an oral lease for a definite term and a holding over from year to year with the landlord's consent, according to law, notice to terminate this tenancy would have to be given 30 days prior to March 1.

If the lease were originally in writing with an oral renewal, the 30-day notice would have to be given to coincide with the termination date of the original lease. Since most notices are given more than 30 days prior to the termination of the lease, this feature of tenancy does not present much of a problem between landlords and tenants. Although the statute requires written notice, many tenants accept an oral

notice. Many corporation landlords send written notice to their tenants by registered mail, giving notice well in advance of the statutory 30 days. In fact, they generally give two or three months' notice.

A change in Kansas laws might clarify the rights relative to the termination of year-to-year leases. The present law specifies 30 days prior to March 1. For the many leasing arrangements based on crop years, beginning in the late summer or fall, this is an inappropriate notice. The law could take cognizance of the differences in crop years by dropping the "March 1" provision and providing for a certain number of days, or months, notice prior to the end of the lease year. In this case the original leasing agreement would determine the lease year.

Adjustments in the period of notice also might be considered. The 30-day notice is more applicable to urban than to rural tenancy. There appears to be no important reason for making the notice uniform in cities and rural districts. A longer period of notice, possibly four to six months, would be more satisfactory for farm tenancies. The period of notice to terminate a tenancy also might vary according to the type of farming. The length of time provided in the notice to terminate a livestock share lease should be considerably longer than one to terminate an ordinary crop agreement.

Conveyance of Rented Property. — Another problem which occasionally arises to disturb the security of a tenant is the sale of the property during the crop year. The law of Kansas permits the tenant, in the event the property is sold, to continue to the end of his lease whether the lease be oral or written. When a landlord sells the land, in the absence of any agreement to the contrary, the lease continues and the tenant's status is not changed.

If a farm is sold during the life of a lease, the purchaser takes the land subject to the right of the tenant to continue to occupy until the end of the tenancy. A tenant in possession is notice to a purchaser of the existence of a lease. The tenant merely acquires, and pays rent to, a new landlord.

A large number of the written leases, particularly corporation leases, circumvent this part of the law by providing for the immediate cancellation of the lease and the surrender of possession in the event of sale. This particular part of the lease creates something of a hardship and insecurity for tenants. Difficulty arises when the land is sold during the crop year and the tenant vacates. It is true that in such cases the lease provides for reasonable compensation for the growing crops. Even in this type of compensation there is no general agreement as to the method of ascertaining the value of such immature crops. Furthermore, the tenant is not re-

imbursed for the expense of moving, and frequently it is not possible to find a new farm.

The same law applies if the property is transferred involuntarily, as by mortgage foreclosure, tax sale, or upon death of either the landlord or the tenant. If the lease has been made prior to any of these events, it continues in force until the date of expiration.

Stock-Share Leases. —The only leases usually extending for more than one year are those covering the stock-raising enterprise. Most of these are in writing. Consequently, the relations between these parties are more intimate and substantial than is the case in the ordinary lease. Fewer disputes arise because the rights and duties of each have been defined adequately in writing. In framing stock-share leases efforts have been made to insert statements seeking to establish the fact that the lease is not a partnership. The usual stipulation that either party may not enter into an agreement to purchase goods in excess of a certain designated sum without the consent of the other is an example of an attempt to avoid the partnership relationship. While this and similar provisions make for greater clarity and definiteness in the lease, it is doubtful if they have any bearing on the legal status of the lease contract so far as third parties are concerned. The courts have been inclined to look at the effect the leasing arrangement has upon the third party who may have business dealings with the landlord or the tenant. In a stock-share lease more authority is given to each party to act for the two than is the case in a crop share lease which ordinarily is considered a joint venture. This fact is recognized by third parties having dealings with the parties to a stock-share lease, particularly in cases where this lease has endured for a long period of time. The fact that the stock-share lease legally may be a partnership, should not detract from this type of lease. It merely confirms a basic principle of stock-share leases which is that the parties should know each other well before entering into the arrangement.

The stock-share lease, being in force for periods of three or five years, gives the tenant some measure of security. He can plan his operations with less fear that he will be obliged to move. Both landlord and tenant benefit from the advantage of having long-term farm plans. The livestock enterprise on which the lease is based tends to promote the maintenance of soil fertility. The stock-share lease promotes a better and more permanent farm program and stimulates greater interest and participation in community life.

CONSERVATION AND IMPROVEMENTS

Fixtures and Improvements. — Tenant farmers occasionally find it advisable to make improvements or add fixtures to the premises. Whether they may remove these at the end of the lease is dependent largely upon two items: (1) There must be no damage to the land, and (2) the fixtures and improvements must not have become a part of the farm. Whether they have become a part of the farm is extremely difficult to determine. The degree of physical annexation and the intention of the parties usually are the important determining factors. Both lawyers and judges have pointed out that one of the controlling factors is the intention of the parties, and that each case is decided upon its own merits. The degree of physical annexation depends, as a general rule, upon the character of their attachment to the real estate or the use to which they are put. If attached to the real estate so as to be incapable of separation without serious injury to the land or buildings, they generally are considered a part of the farm. Or, if they are affixed to the real estate to be used there permanently, they are considered part of the farm. Some tenants construct sheds and other equipment on skids so that there may be no dispute with respect to removal at the end of the tenancy.

An adjustment could be made in the law to facilitate the removal of fixtures and improvements. The tenant could be permitted to remove all movable fixtures which he has erected. The law might establish a list of items which the tenant could place on the farm and remove upon the termination of the lease. This procedure would leave the tenant free to sell the fixtures and improvements to the incoming tenant or to the landlord if he chose not to remove them.

The landlord should be protected by prohibiting removal of fixtures and improvements where irreparable damage would result. If damage did occur, the tenant should be required to make the necessary repairs.

There are certain types of fixtures and improvements which, because of their nature or because of circumstances in the case, cannot be moved. For example, when a tenancy is terminated and the tenant has no new farm or his new farm is many miles away, the right to remove a corn crib or a chicken house would be relatively meaningless for, as a practical matter, the tenant could not move it. There are many improvements that cannot be removed because it is a physical impossibility. A tenant cannot remove the residues of fertilizer he put on the soil a year before the termination of the lease. The landlord may agree in the lease or during its term to compensate the tenant for fixtures and improvements that he may make. In such circumstances, the law permits the value of such improvements to be deducted or set

off against the amount of the rent due. Improvements may be made by agreement in lieu of rent.

Improvements and fixtures generally are constructed by the landowner. There have been at least two notable exceptions, the Scully farms and on some dairy farms in the Kansas City milk shed. Scully-owned land is rented without improvements. Any fixtures or improvements necessary for the operation of the farm must be furnished by the tenant. When the tenant moves, he has the option of removing the improvements, finding a purchaser for them, or selling them to the landlord. In the case of tenants on dairy farms in the Kansas City area, some have constructed improvements and fixtures to comply with the milk ordinance. In the cases studied, it was found that there were five-year written leases, with no provision for compensation if the tenant is required to move at the end of the five-year lease. It was pointed out, however, that there is a relatively high degree of stability among this type of tenant so that, in reality, little hardship occurs even though the milk house and other improvements and fixtures must be of a permanent construction. Other instances of this kind probably may be found in other parts of the state.

One possible adjustment that has been proposed is legislation giving the tenant a right to compensation for the value of any fixture or improvement which he makes provided they are made with the consent of the landlord or are of a limited class enumerated in the statute. Such a statute should provide definitely the conditions under which the tenant may make improvements for which he may claim compensation, and the method of determining the value of such improvements.

The tenant should not be permitted to claim compensation for major or relatively permanent improvements unless previous consent to the making of the improvements has been obtained from the landlord. There are certain improvements which the tenant might well be permitted to make without obtaining the consent of the landlord and for which he might claim compensation for the unexhausted value at the termination of the lease. These improvements should be listed in the statute and might include items such as (1) Planting of perennial garden plants and small fruits not in excess of those necessary for domestic use; (2) constructing and repairing temporary fences and other items necessary in livestock production; (3) planting and maintaining temporary pastures; (4) spreading barnyard manure upon the farm; and (5) applying commercial fertilizer and lime to the extent and in such manner that its benefit to the land extends beyond the period of the lease.

It probably would be well to restrict further any improvements which the tenant may make by providing that the

amount of compensation claimable cannot exceed a specific percentage of the rents paid during the tenant's occupancy of the farm or by limiting the improvements to those not exceeding a stipulated value. It seems that the first procedure is preferable since it is related directly to the income-producing capacity of the farm. The disadvantage of the second procedure is that it may unduly limit the amount that can be spent on an important improvement but at the same time permit the making of a series of small improvements, the total value of which may be excessive. In any event, the total amount claimable should be limited through some device so that the immediate financial outlay of the landlord would not prove burdensome.

The principle to be used in determining the value of the fixtures and improvements should be set forth in the statute. Probably the compensation claimable should be their value to a typical incoming tenant. Thus, they would have to be adapted to the particular farm and to general farming practices in the community and would have to represent a useful addition to the farm. If they were improvements to the farm home or garden, the enhancement of the well-being of the tenant family would be given consideration. If they were related to the productive capacity of the farm, the increase in the income to the new tenant would be given consideration.

Compensation for fixtures and improvements doubtless would encourage the tenant to observe desirable farm practices and make it possible for him to operate much as if he were an owner-operator. The results would benefit both the landlord and the tenant.

Repairs. — There is no implied covenant that, when rented, the premises are fit for habitation or usable for the purpose for which rented. Under Kansas law, in the absence of any agreement the landlord is not bound to make repairs to buildings and fixtures. If he agreed to make repairs and failed to do so, he is liable to the tenant and the measure of damages is the difference in the rental value of the premises.

It is generally understood that the tenant must make repairs caused by his own negligence. The usual arrangement provides that the landlord furnish the material and the tenant furnish the unskilled labor for any necessary repairs. Some agreements provide that the tenant make the repairs and deduct the costs from the rent.

Corporate-owned farms generally are kept in better repair than other farms because of the necessity for sales inducement. Furthermore, the corporations ordinarily are financially better able to make repairs. Usually the same division of costs and labor in making repairs is followed by corporations as by individual landowners.

Waste. — Two kinds of waste are recognized under Kansas statutes, permissive and voluntary. Permissive waste occurs when the tenant permits the premises to deteriorate, and voluntary waste occurs when the tenant actually performs some act which is detrimental to the farm, such as excessively cutting and removing trees or some other resource of the premises. The damages which may be recovered for permissive waste are the actual damages, but treble damages may be recovered for voluntary waste. The courts have been slow to construe any act sufficient to constitute waste and only an action which is malicious in nature has been considered waste.

The subject of waste is closely connected with the problem of fixtures and improvements because, in a sense, it is the opposite. If tenants were encouraged to make improvements, necessarily there would be less waste. There is a real need for the recognition of waste in landlord-tenant relations. A statute providing for compensation to the landlord for deterioration caused by the tenant is equal in importance to a statute providing for compensation for improvements made by the tenant. This statute could list certain actions which would be deemed waste so that the courts and the parties concerned would have something concrete upon which to rely.

In arriving at the amount of damage due the landlord, a principle should be used which is somewhat similar to that used in arriving at the amount of compensation due the tenant for improvements. The decrease in the value of the farm to an incoming tenant as a result of the deterioration or damage committed by the outgoing tenant should be considered as well as any decrease in the selling value of the farm. The statute should be comprehensive and include all possible deterioration or damage to the rented property. The exact terms of such a statute would have to be carefully worked out after consideration of all the information available. The following items illustrate practices which, in most cases, would be considered deterioration and waste, and for which the landlord could claim compensation: (1) Plowing up permanent pastures; (2) failure to maintain erosion control devices; (3) permitting the land to become infested with noxious weeds; (4) negligent or improper use of the dwelling, barns, and fences; (5) improper care of gardens and orchards; and (6) removal of trees, earth, sand, or minerals without permission.

COLLECTION OF RENTS.

Payment of share rent usually is rather simple —the crops are delivered to the elevator and the landlord and tenant receive the proportionate share to which each is entitled. Little

difficulty is experienced by landlords in collecting such rent. Trouble more often arises in the collection of cash rent where the tenant has the responsibility of marketing the produce of the farm and paying the cash to the landlord. This is particularly true in years of poor crops when the receipts are barely sufficient to supply the tenant with expenses of operation and subsistence for his family.

Landlord's Lien. — All leases, whether written or oral, provide for some kind of rent. When the tenant occupies the farm without a lease, reasonable or customary rent is implied. Thus, according to the law, the obligation to pay rent is not dependent upon the completion of a formal lease. When the relation of landlord and tenant is implied by the action of the two parties, even in the absence of the contemplated agreement, the tenant's liability for rent arises just the same as if there were a formal agreement.

The statutes give the landlord a lien for rent on the crops of the current year only. The lien, of course, is necessarily dependent upon an indebtedness for rent. It attaches at the beginning of the tenancy but does not cover the personal property of the tenant. His personal property, therefore, may not be taken to satisfy the lien unless the landlord proceeds to collect the rent by court action as any ordinary debtor would collect by law the sum owed him. In the event the landlord obtains a judgment for rent, the officer may attach only such property as the law permits. The law specifically exempts certain articles belonging to the tenant, including household necessities, furniture, and the working tools and equipment of the head of the family.

The landlord has a right by law, if he desires to exercise it, to have the rent paid or his share delivered before the tenant removes any portion of the crop from the premises regardless of the motive of the removal. The lien extends to the entire crop even though the value of the crop far exceeds the amount of the rent and even though an attachment of the entire crop might serve to injure temporarily other creditors of the tenant. When a lease covers crop land and pasture land and provides for share rent for the crop land plus cash rent for the pasture, the lien on the crops also covers the cash rent due for the use of the pasture land.

The landlord's lien for rent is not given any particular priority with respect to other liens but ranks according to age. When a tenant sells the crop after harvest, the landlord's lien is superior to the purchaser's right in the crops because the landlord's lien attached before the sale —that is, attached when the crop was planted. The same rule applies to mortgages. A chattel mortgage on the tenant's share of the crop executed before the beginning of the tenancy would be superior to the landlord's lien, but if executed subsequent

to the beginning of the tenancy, would be inferior. A recent statute has been enacted providing that a chattel mortgage may be given upon crops as long as six months before they are planted.

Since the landlord's lien is superior to the rights of a purchaser of the crop, such purchasers as elevators, in numerous instances, take precaution to determine whether the rent has been paid before settling with the tenant for the law thus provides that a landlord may recover from the purchaser of the crop the amount of the rent due and damages, if any, if the purchaser had or should have had notice of the existence of the relation of landlord and tenant. In actual operation, the local elevator operator is familiar with the community and knows the people that rent the farms.

Controversies occasionally arise where the seller is a landowner operating his own farm and renting some additional land. The elevator operator knows him to be a landowner, but not a tenant. If the rent is not paid, the elevator operator, under the law, becomes liable for the rent and damages. Much the same situation occurs when a tenant has more than one landlord.

By agreement, parties may carry a rent due from year to year and the crop of the current year may be applied as a payment on the previously accrued rent. However, when there is no reference to an accrued indebtedness for rent in the current lease, a lien does not attach for that past indebtedness.

These rules governing the landlord's lien, of course, do not apply if the lien has been waived. Waivers are occasionally made for the purpose of enabling the tenant to borrow money for crop production. The landlord's lien becomes inferior to the crop mortgage when the lien is waived.

As indicated, the landlord's lien usually ranks according to age—that is, according to whether it attached before the other encumbrances — but the following liens are superior to it regardless of age: Thresher's lien, artisan's lien, mechanic's lien, broomcorn seeder and hay baler's lien. A threshing machine operator, or anyone engaged in the business of threshing and harvesting grain crops, shucking, husking or gathering corn either by hand or machinery for others, and who, under contract with the owner or mortgagee of such crops, performs such work is entitled to a first and prior lien on the crops. Anyone operating a broomcorn seeder and baler or hay baler has a lien which is superior to all others and is specifically superior to prior encumbrances.

An irrigation lien is also provided, which covers the crop raised on the premises. This lien does not have any special priority; and it appears that when the tenant makes an irri-

gation contract, the rights of the irrigation company and the landlord to the crop would depend upon which lien first attached.

Pasture Lien. — The 1938 Special Session of the Legislature enacted a statute which apparently gave the landlord a lien on all livestock of his tenant for the cash rent when the rent was a share of the crop and cash. This Act was amended by the 1939 Legislature. The amendment provides that any owner of pasture lands shall have a lien on livestock which may be pastured, only in the event that the lands are leased exclusively for pasture purposes. It was probably the intention of the Legislature to eliminate liens on livestock for cash rent when the leased premises consisted of a farming unit which included both pasture lands and tillable lands on which crops were raised. It is the opinion of many lawyers that a landlord's lien against livestock of a tenant may not be enforced for cash rent when the leased premises include both pasture lands and tillable lands. There have been cases, however, where the landlord took the cattle in satisfaction of the rent due on the farm land. The lease covered both crop land and pasture land, and the rent for the pasture land was to be paid in cash. The rent was unpaid in years of crop failure and, since the crop was insufficient to pay the rent, the landlord took the cattle to satisfy his lien for rent.

Agister's Lien. — Anyone who receives, cares for, and pastures cattle for their owner for a certain period at a fixed rate is an agister. An agister has a lien on these cattle for the amount due him for such pasture. The owner of the cattle does not become a lessee of the pasture and there is no tenancy relationship involved. The usual arrangement in such cases is a contract in which the owner of the pasture agrees to feed the cattle at a fixed price and return them at a specific time. Before one may secure an agister's lien he must directly or indirectly bestow care upon the cattle, which care must be such as will give him possession and control of the cattle. If the cattle are voluntarily surrendered to the owner, the lien is lost. The statute granting this lien specifically provides that it is superior to a prior mortgage. To avoid trouble in collection the trade has developed a procedure to collect the amount due. The agister notifies the commission firm to whom the livestock are shipped of the amount of the pasture fee. The commission firm pays the fee from the proceeds of the sale direct to the agister.

Laborer's Lien. — One who performs service on the goods or chattels of another may have a lien for his labor. A farm laborer not having a relationship of tenant to the landlord may have a lien for his services, which attaches when the laborer begins work. This lien is little used in Kansas. As a

matter of practice, the laborer is paid by the week or month and does not wait for his wages until the crop is sold. This is particularly true in the areas where there are extensive grazing operations.

Kansas law especially protects the laborer's family. As pointed out, the laborer has a first lien for his services. If he becomes a debtor, his creditors may attach 10 percent of his wages, and the court costs must not exceed $4. Wage exemptions also are granted to him in subsequent months. These benefits of the law cannot be waived by him. The courts have pointed out that this law was created in the interest and for the benefit of the family of the debtor and for this reason he cannot waive it.

SETTLEMENT OF DISPUTES.

Eviction. —The usual method of disposing of a dispute between a landlord and a tenant is by breaking the lease. If the tenant refuses to move, he is evicted by a court action known as forcible detainer.

The action of forcible detainer is a summary and speedy legal method of removing a tenant and may be started in either the district or justice of the peace court. It can be maintained only if the tenancy relationship existed and was properly terminated or has expired. This legal process is rarely used even if the dispute arises during the crop year. The tenant is generally given to understand at the time of the dispute that he will have to move at the end of the year. When the legal procedure is used, it is principally because the tenant has been unable to find another farm or he may assume the dispute could be remedied by the agreement for the following year.

Actually, the cause of the action to remove is an expression of smouldering dissension created by previous misunderstandings. The important matter to be settled relates to the original disagreement between the parties.

If the tenancy was properly terminated and the requisite amount of notice of the action was given, judgment will be for the landlord. A notice is served on the tenant to vacate or answer within three days. If the tenant does not vacate, the landlord may have him evicted by the local peace officer. If the tenant be wrongfully evicted, he may recover damages from the landlord. The trial is informal, and the costs average about $3. The costs are more if the tenant must be forcibly evicted.

Arbitration.—Frequently disputes between landlords and tenants remain unsettled. The removal of the tenant does not solve the basic difficulty underlying a disagreement. Arbitration may be used to settle disputes in Kansas. An agreement may be made to submit a controversy to arbitration. A

statutory method is established in addition to the old common law method. By the statutory method the parties include a clause in the agreement providing that the award shall be made a rule of court. This action by the court gives the award the force of a judgment at law.

An agreement to arbitrate cannot oust the courts of their power to try the case without regard to the agreement; but the agreement is a contract and if one party breaches it, he is liable for that breach.

The present formal arbitration procedure is not well adapted to use in farming operations. In many instances the disputes are of such small value that it would cost more to have the arbitration procedure than to leave the matter unsettled. The possible solution, therefore, lies in an informal and inexpensive procedure. Local arbitration committees could be established as a voluntary effort to provide a mechanism to handle landlord-tenant disputes. These committees would be available if the parties wished to use them. Perhaps this group might be a subcommittee of the local planning committee.

Another possible solution might be the establishment of landlord-tenant arbitration boards by statute, making their use compulsory if the legislature so desired. Such a statute could provide certain standards for the selection of the arbitrators based on their familiarity with landlord-tenant laws, leasing practices, farming methods, and farm values. These arbitrators would soon gather an abundance of information relative to such problems and their experience in this particular field would increase the value of their services. On the other hand, the statute might allow the parties to select their arbitrators from a group of qualified persons and, to reduce the costs, might allow the use of a single arbitrator.

It is possible to write a lease containing a provision that arbitration procedure must be used to settle any dispute before the dispute may be taken to court for settlement. If this provision is included in the lease, the courts may take no jurisdiction of the case until there has been arbitration.

There is little arbitration procedure used in farm operations. Some provision for arbitration is made in leases of corporate land. An arbitration committee usually is authorized for the purpose of computing equitable settlements of disputes arising over adjustments to be made in favor of the tenant in the event of the premature termination of the tenancy caused by sale of the land. No specific cases were found where this provision was followed.

The law provides for the establishment of a small debtors' court. These courts were organized in a few counties but apparently were not successful, for most of them have been discontinued. Very meager information indicated that the

difficulties related to administration. The judgments obtained were unenforceable because the debtor had no property of sufficient value to satisfy the judgment. Little interest was taken in the administration since there was no compensation for the services of the judge. Little use was made of the law except in the more thickly populated areas.

It might be well to have a thorough survey of the history of the small debtors' court with a view toward remedying the evils and reviving the system to facilitate the settlement of disputes over farm practices. Some means must be devised to settle these disputes satisfactorily. The values involved generally are small and, consequently, need handling at low cost. Otherwise, these disputes are left unsettled and hinder smooth working relations.

Another possible method of solving disputes between landlords and tenants is the existing system of declaratory judgments. The law provides for the determination by the court of an actual controversy. The procedure is designed to settle the rights and duties of the parties to prevent damages from actually occurring. It is usable only where damages will ensue from some proposed action. Its value lies in the fact that the rights and duties of the parties may be defined prior to the damages and, thus, it is a preventive measure. The judgment is as binding as any other judgment of the courts.

To obtain this judgment, one party may petition the court for a judgment determining the right of each party. They must agree upon the facts and the court then indicates the law applicable to these facts. At present, the law permits the interpretation of a statute or the legal effect of a written instrument. Minor amendments might be made to the declaratory judgment law to facilitate its use in determining the legal effect of leases or other disputes arising from farming operations. The amendments could include a limitation upon costs to keep procedure within the reach of the average farmer.

SUMMARY AND CONCLUSIONS.

As a whole, Kansas laws governing the relationships between landlords and tenants are reasonable. Although they do not cover all phases of the situation, the legislature has been far-sighted enough to protect, generally, the rights and interests of both parties. The courts have been liberal in the interpretation of the laws.

Possible adjustments which might improve the landlord-tenant relationship have been mentioned as they related to the topic under discussion. In the interest of clarity they are reviewed here.

Kansas laws governing landlord-tenant relations are, for the most part, incorporated in one section of the code. To determine which laws actually apply and thus prevent any

confusion, consideration might be given to the advisability of incorporating into this section other laws now in force which pertain to landlord-tenant relations. However, many of these laws apply to urban relations as well as farm tenancies. It is evident that the two are sufficiently different that they merit separate and distinct regulations. Many urban leases are primarily concerned with the dwelling, and the tenant may move at will without disturbing his means of livelihood. This is not true of farm leasing. The lease of a farm is concerned with its operation for the use of the land resources. The proper use of the land, as influenced by the security with which the tenant holds the property and the rights and duties he has in the property, not only affects the farm tenant but significantly influences the manner in which the agricultural resources of the state are maintained.

The advantages of the written lease might be brought to more leasing arrangements by having a statute which establishes the definite provisions of a model lease or leases, and which provides that in the absence of a written lease it would be presumed that the two parties to any leasing agreement were operating under a lease outlined in the statute. The landlord and the tenant would then be free either to put their agreement in writing or to follow a lease outlined in the statute.

Landlords and tenants might be encouraged to use a long-term lease with cancellable provisions. This form of lease permits cancellation of the lease under specific conditions after advance notice is given. Automatically renewable leases, those which require advance notice of termination, are suggested as a method for obtaining security of tenure. Greater security of tenure also might be obtained by a statute requiring compensation for disturbance when the tenancy is terminated without good cause.

Some changes in Kansas laws might clarify the rights relative to the termination of year-to-year leases. Differences in crop years could be recognized by dropping the "March 1" provision and providing for a certain number of days, or months, notice prior to the end of the lease year. A notice period longer than the present 30 days, possibly four to six months, might be more satisfactory for farm tenancies. The period of notice to terminate a tenancy also might vary according to the type of farming.

Statutory provision might be made for clarifying the situation as to the removal of improvements made by the tenant and compensation for fixtures and improvements that should not be removed. The improvements which the tenant may make or the fixtures which he may add to the premises, and for which compensation shall be payable, may be confined to those which are necessary for the operation of the

farm. The landlord should be protected from unwise or highly specialized fixtures or improvements that the tenant may make, by setting definite limits and specifying the types of improvements or fixtures for which the tenant may claim compensation.

In the interests of health, some rural sanitation statute might be desirable either as a portion of the landlord-tenant code or as an extension of the present sanitation laws.

Statutory provision also might be made for compensation to the landlord for deterioration caused by the tenant. This statute could list certain actions which would be deemed waste so the courts and the parties would have something concrete upon which to rely.

Usually little difficulty is experienced by landlords in collecting share rent. Trouble more often arises in the collection of cash rent. Statutory liens for the collection of rent and other charges appear to be reasonable and quite adequate, and no specific adjustments seem necessary.

In the settlement of disputes the present formal arbitration procedure is not well adapted to use in farming operations because the disputes in many instances are of such small value that the cost of the arbitration procedure would be more than the cost of leaving the matter unsettled. Local arbitration committees have been suggested as a voluntary effort to provide a mechanism to handle landlord-tenant disputes. The establishment of landlord-tenant arbitration boards by statute might also be considered. Leases may be written to provide that arbitration procedure must be used to settle any dispute before it may be taken to court for settlement. Minor amendments might be made to the declaratory judgment law to facilitate its use in determining the legal effect of leases or other disputes arising from farming operations.

Legislation is not a panacea for all farm tenancy problems. It may be considered as an aid in carrying out policies which have been carefully studied and are generally understood. With the firm conviction that a thorough understanding of the problems and possible solutions should precede the enactment of laws, suggested adjustments in the existing law are presented as a basis for discussion and not as recommendations for immediate legislative action.

APPENDIX

SOME KANSAS STATUTES DEALING WITH LANDLORD-TENANT RELATIONSHIPS

(Section numbers refer to General Statutes of Kansas, 1935, unless otherwise indicated)

SECURITY OF TENURE

Written Leases

Section 40-228. Restrictions on dealing in, and holding of, real estate by insurance companies.

Section 17-202a. Corporations not allowed to engage in farming.

Classification of Tenancies

Section 67-509. Notice to quit not necessary under an agreement for a specified period of time.

Section 67-502. Conditions under which a year-to-year tenancy is created.

Section 67-505. Thirty-day notice in writing must be given to terminate a year-to-year tenancy.

Section 67-506. Termination of farm tenancies to take place on March 1, unless governed by terms of original written lease contract.

CONSERVATION AND IMPROVEMENTS

Fixtures and Improvements

Sections 67-501 and 67-501a. Provisions for certain situations where landlord is renting farms in large numbers; provisions do not govern the ordinary landlord-tenant relationship.

Waste

Section 67-509. Notice to quit not necessary when a tenant at will commits waste.

Section 21-2435. Instances where offending party shall pay to the injured party treble the value of the thing injured, broken, or destroyed.

COLLECTION OF RENT

Landlord's Lien for Rent

Section 67-524. Any rent due for farming land is a lien on the growing crop.

Section 67-527. Attachment for non-payment of rent.

[3]G. S. 1941 Supp., Section 60-3504. Articles of personal property owned by the head of a family which are exempt from attachment.

Section 60-3505. Articles of personal property owned by a person other than the head of a family which are exempt from attachment.

Section 67-530. Tenant may waive, in writing, benefit of exemption.

Section 67-525. Statement of lessor's remedies when rent is payable in a share of the crop.

Section 67-526. Person entitled to rent may recover from the purchaser of the crop.

[3]G. S. 1941 Supp., Section 58-322. Chattel mortgage may be given on crops as long as six months before they are planted.

Sections 58-203 to 58-206, inclusive. Lien for threshing or husking.

Sections 58-218 and 58-219. Liens for seeding and baling broomcorn and baling hay.

Section 42-119. Lien upon a crop for water furnished under contract for irrigation purposes.

Pasture Lien

[3]G. S. 1941 Supp., Section 58-220. Owner of pasture land has a lien on livestock only when lands are leased exclusively for pasture purposes.

Agister's Lien

Section 58-207. Lien for feed and care of livestock.

[3]G. S. 1941 Supp., Section 58-220. Agister's lien on cattle pastured.

[3]G. S. 1941 Supp., Section 58-221. Method of disposing of the proceeds from sale of livestock to pay agister's lien.

Laborer's Lien

Sections 58-201 and 58-202. Artisan's lien which ordinarily is referred to as a laborer's or mechanic's lien.

Section 60-3495. Exemption of personal earnings to protect the laborer's family.

SETTLEMENT OF DISPUTES

Eviction

Sections 61-1301 and 61-1302. Action of forcible detainer may be used to remove a tenant.

Arbitration

Section 6-101. Submission of a controversy to arbitration.

Section 6-103. Time and place of arbitration.

Sections 20-1301 to 20-1312, inclusive. Method of establishing a small debtors' court; jurisdiction of this court.

Sections 60-3127 to 60-3132, inclusive. Jurisdiction, procedure, costs, and remedial character of declaratory judgments.

[3]G. S. 1941 Supp., Section 60-3132c. Purpose of declaratory judgments.

[3]1941 Supplement to General Statutes of Kansas, 1936.