An Agricultural Law Research Article

Landlord-Tenant –Termination of Agricultural Tenancy –"Cropper" Defined

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Landlord-Tenant—Termination of Agricultural Tenancy—"Cropper" Defined.—Plaintiff sought an injunction to restrain defendant from farming a 60 acre tract. The defendant was in complete and absolute control of the tract from March 1, 1947, to March 1, 1955, during which period the annual rental was $350. No notice of termination of this arrangement was given. Defendant, however, did not reside on the land.[1] Plaintiff contended that this fact made the defendant a cropper, not entitled to notice of termination.[2] The trial court dismissed the petition. On appeal, the Supreme Court of Iowa *held,* affirmed. The fact that the defendant did not reside on the land did not make him a cropper; he was, therefore, a tenant and was entitled to notice. *Paulson v. Rogis,* 77 N.W. 2d 33 (Iowa 1956).

The Iowa statutes specifically except "croppers" from their provisions.[3] The instant case furnishes at least a partial definition of what

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the necessity of probate. The survivorship feature of joint tenancy is frequently known to laymen, but it is doubtful that the ease of destroying it irrespective of any intention to do so will become known until it is too late to remedy.

19 A decade ago several writers felt that the Iowa court appeared to have an auspicious attitude toward joint tenancies. See, *e.g.,* Fitzgibbons, *Joint Tenancy in Iowa,* 34 IOWA L. REV. 41, 62-63 (1948); Note, 32 IOWA L. REV. 539, 543 (1947); 32 IOWA L. REV. 155, 160 (1946).

20 See, *e.g.,* Note, *A Mortgage of Property Held in Joint Tenancy,* 41 IOWA L. REV. 425 (1956); Fitzgibbons, *supra* note 19, at 55.

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1 The 1954 census of agriculture reported that 7,725 Iowa farmers did not reside on the farms that they operated. UNITED STATES CENSUS OF AGRICULTURE: 1954, Vol. I, part 9 (Iowa), p. 16.

2 IOWA CODE § 562.6 (1954): "Where an agreement is made fixing the time of termination of the tenancy, whether in writing or not, it shall cease at the time agreed upon, without notice. In the case of farm tenants, except mere croppers, occupying and cultivating an acreage of forty acres or more, the tenancy shall continue for the following crop year upon the same terms and conditions as the original lease unless written notice for termination is given by either party to the other, whereupon the tenancy shall terminate March 1 following; provided further, the tenancy shall not continue because of absence of notice in case there be default in the performance of the existing rental agreement."

3 IOWA CODE § 562.6 (1954). § 562.5 provides: "In case of tenants occupying and cultivating farms, the notice must fix the termination of the tenancy to take place on the first day of March, except in cases of mere croppers, whose leases shall be held to expire when the crop is harvested; if the crop is corn, it shall not be later than the first day of December, unless otherwise agreed upon."

is meant by "cropper" as used in the Iowa statutes. It is now clear that one is not a cropper solely by virtue of the fact that he does not live on the land which he cultivates. Such a fact should be recognized where other elements are also presented. It will not, as contended by the plaintiff but not accepted by the court, be given conclusive effect.[4]

The distinction generally drawn between a tenant and a cropper is based on the estate or interest each has in the land.[5] The tenant is recognized as possessing an estate in the land which allows him to exercise absolute dominion over the crops raised thereon.[6] On the other hand, a cropper has no estate or interest in the land whatsoever, nor in the crops raised thereon but is rather a hired hand or employee, enjoying no right of exclusive possession.[7] In determining whether an individual is a tenant or a cropper the courts look to the intention of the parties as evidenced by the terms of the agreement, the subject matter and the surrounding circumstances.[8]

The plaintiff in the instant case contended that the words of the statute, "farm tenants, except mere croppers, *occupying* and cultivating" (italics supplied)[9] must be understood to mean that if one did not reside on the land, then he was necessarily a cropper. This must have been based on the proposition that a tenant is one who occupies, therefore those tenants who do not occupy must be croppers. If the non-occupying tenants were not so included then they were not covered by the statute, a result with which the motivation for the enactment of the statute could not be reconciled.[10] This contention relied upon by the

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[4] Other elements to be considered: (1) who has the right of possession? (2) who furnishes the supplies? (3) who divides off the crop? (4) are technical words found in the lease? (5) for how long is the agreement? See Davis v. Burton, 126 Mont. 137, 139, 246 P.2d 236, 237 (1952); Hampton v. Struve, 160 Neb. 305, 312, 70 N.W.2d 74, 78 (1955).

[5] Davis v. Burton, 126 Mont. 137, 246 P.2d 236 (1952); Hampton v. Struve, 160 Neb. 305, 70 N.W.2d 74 (1955); Cessac v. Leger, 214 S.W.2d 860 (Tex. Civ. App. 1948); Clark v. Harry, 182 Va. 410, 29 S.E.2d 231 (1944).

[6] Davis v. Burton, 126 Mont. 137, 246 P.2d 236 (1952); Hampton v. Struve, 160 Neb. 305, 70 N.W.2d 74 (1955); see also Strain v. Gardner, 61 Wisc. 174, 21 N.W. 35 (1884).

[7] Cessac v. Leger, 214 S.W.2d 860 (Tex. Civ. App. 1948); Clark v. Harry, 182 Va. 410, 29 S.E.2d 231 (1944); *cf.* Gray v. Robinson, 4 Ariz. 24, 33 Pac. 712 (1893). The census of agriculture defines croppers: "crop-share tenants whose landlords furnish all working power." UNITED STATES CENSUS OF AGRICULTURE: 1954, Vol. I, part 9 (Iowa), Introduction p. XXI.

[8] Larson v. Archer-Daniels-Midland Co., 226 Minn. 315, 32 N.W.2d 649 (1948); White v. Saby, 126 Mont. 241, 260 P.2d 1116 (1953); Sayles v. Wilson, 31 Wyo. 55, 222 Pac. 1020 (1923).

[9] IOWA CODE § 562.6 (1954).

[10] See court's discussion in Benschoter v. Hakes, 232 Iowa 1354, 8 N.W.2d 481 (1943). Other questions under the statute have included: (1) Does the notice provision apply only to tenancies for a term or does it embrace also tenancies at will? Benschoter v. Hakes, *supra*, indicates that the statute applies to tenancies at will. The dissenting opinion urges that *only* tenancies at will are protected by the notice provi-

plaintiff required an equation of the terms "occupying" and "residing".[11] But the courts have generally refused to adopt this construction[12] and the Iowa court was not willing to do so in the instant case. In rejecting this contention Iowa is now aligned with those jurisdictions which regard the "interest" held to be a controlling factor. Since the defendant here was conceded to have complete and absolute control over the land during the years when he cultivated it, the conditions did not exist which could have created a cropper relationship.

The decision is sound from the policy standpoint since the factors which gave rise to the legislation in 1939 are still compelling today.[13] The large number of farmers who farm land which they rent is evidence of the fact that today it is the exception rather than the rule that a farmer will own all the land which he farms. An economically profitable enterprise requires that the farmer have more than the usual 160 acres to work.[14] Also, in order to realize the highest return from the resources available, long-range planning and operation are essential.[15]

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sion. (2) Is a hold-over farm tenant entitled to notice? Pollack v. Pollack, 72 N.W.2d 483 (Iowa 1955) held that a hold-over farm tenant is entitled to notice under IOWA CODE § 562.6 (1954).

[11] See Note, 26 IOWA L. REV. 366 (1941). It was there submitted that the legislation here under consideration used the term "cropper" to include lessees who cultivate land on which they do not live. Such a conclusion was based on three reasons: 1. The statutory reference to croppers' "leases". It is submitted, however, that the legislature did not intend to give any technical meaning to the phrase. 2. Since the notice provisions apply only to tenants occupying the land, tenants who do not occupy the land are overlooked unless such tenants are croppers. This reason was the contention submitted to the court in the instant case and rejected. 3. Early Iowa cases seemed to apply croppers' provisions to persons who were lessees rather than hirelings. Tantlinger v. Sullivan, 80 Iowa 218, 45 N.W. 765 (1890); Kyte v. Keller, 76 Iowa 34, 39 N.W. 928 (1888); Johnson v. Shank, 67 Iowa 115, 25 N.W. 749 (1885). These cases, however, not only were decided prior to the enactment of the statute but also in each of the cases it was assumed that the tenant was only a cropper.

[12] See, *e.g.*, Twiggs v. State Board of Land Comm'rs, 27 Utah 241, 75 Pac. 729 (1904); Fleming v. Maddox, 30 Iowa 239, 241 (1870).

[13] This may be shown by comparison of the number of part-owners in 1939, the year of the legislation, and 1954, the year of the last census. A part-owner is one who owns land but leases additional acres. Part-owners: 1940, 22,410 farming 5,132,750 acres; 1954, 30,595 farming 7,395,196 acres. Approximately one-half of these acres represent leased land. This, in turn, amounts to about 10 per cent of all the land farmed in Iowa. Figures for 1954: UNITED STATES CENSUS OF AGRICULTURE: 1954, Vol. I, part 9 (Iowa), p. 52; figures for 1940: UNITED STATES CENSUS OF AGRICULTURE: 1950, Vol. II, General Report, p. 996.

[14] About 30,000 Iowa farmers in 1954 rented additional acres. UNITED STATES CENSUS OF AGRICULTURE: 1954, Vol. I, part 9 (Iowa), p. 10. A recent Iowa State College study reveals that reduction in production costs comes quite rapidly with increase in farm size up to 160 acres, and that this continues up to about 240 acres. IOWA FARM SCIENCE, Vol. 9, no. 11, May, 1955, p. 3-751.

[15] "Successful farming and soil conservation require planning the farm program ahead for at least several years. . . . Such changes require that the tenant be permitted to develop a genuine long range interest in, and a reasonable security of

This is not possible if the farm is subject to a frequent change of operators. The decision in the instant case, together with *Benschoter v. Hakes*[16] and *Pollock v. Pollock*,[17] assures to farm tenants that security of tenure which it was the aim of the legislation to provide.[18]

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tenure on, a particular farm." IOWA STATE PLANNING BOARD, REPORT AND RECOMMENDATION OF THE FARM TENANCY COMMITTEE (1938). It was partly as a result of this committee's report that the code was amended to provide for four months' notice of termination of lease for farm tenants. IOWA CODE § 562.6 (1954).

16 232 Iowa 1354, 8 N.W.2d 481 (1943).

17 72 N.W.2d 483 (Iowa 1955).

18 "The legislature evidently felt that unstable tenure led to soil exploitation and waste. The amendment aims at security of tenure. . . ." Benschoter v. Hakes, 232 Iowa 1354, 1364, 8 N.W.2d 483, 487 (1943).