Termination of Agricultural Tenancies

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TERMINATION OF AGRICULTURAL TENANCIES[1]

At common law[2] and by statutes generally,[3] a tenancy for a term, whether an agricultural tenancy or not, may be terminated at the

[97] Securities Act of 1933, § 15, 48 STAT. 84 (1933), 15 U. S. C. § 770 (1935).

[1] The Iowa statute providing for notice for termination of ordinary tenancies at will, as distinguished from agricultural tenancies, has been discussed in a Note (1940) 26 IOWA L. REV. 76.

[2] McKissick v. Ashby, 98 Cal. 422, 33 Pac. 729 (1893); Secor v. Pestana, 37 Ill. 525 (1865); Stockwell v. Marks, 17 Me. 455 (1840); Dorrell v. Johnson, 34 Mass. 263 (1835).

[3] *E.g.*, ILL. ANN. STAT. (Smith-Hurd, 1934) c. 80, § 12.

time agreed upon without notice. The Iowa statute so providing[4] was amended by the Forty-Eighth General Assembly so as to read:

> Where an agreement is made fixing the time for the 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 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 not later than November 1, 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 agreement.[5]

This Note is concerned with the conditions giving rise to the amended statute, its effect and application, and its constitutionality.

Conditions Giving Rise to the Statute

In spite of the desire of American agriculture to maintain owner-operated farms, and to reduce farm tenancy, the failure of present methods to decrease farm tenancy has become apparent. The situation is especially acute in Iowa, which, with the exception of certain southern states, has the greatest percentage of farm tenancy of any state in the nation.[6] In 1935, approximately 50 per cent of Iowa's farm population were tenants; this compares with a percentage of 30 per cent for the United States, again excluding the southern states.[7] This represents an increase of from 24 per cent for Iowa, and from 14 per cent for the United States, since 1880.[8] Accompanying the increase in farm tenancy, there has been a marked shift of population from agricultural areas to the city, the Iowa Senate Committee on Farm Tenancy having estimated that "thousands" leave Iowa farms every year.[9] Due to the apparent failure

[4] IOWA CODE (1935) § 10161.

[5] IOWA CODE (1939) § 10161.

[6] *Report of the President's Committee on Farm Tenancy*, H. R. DOC. NO. 149, 75th Cong., 1st Sess. (1937).

[7] *Ibid.*

[8] *Ibid.* While it is true that the national average decreased from 42.4% to 42.1% between 1930 and 1935 because of the relatively large decrease in the South (55.5% to 53.5%), elsewhere there was an increase from 28.5% to 30.6%. Murray, *Governmental Farm Credit and Tenancy* (1937) 4 LAW & CONTEMP. PROB. 489, 504. It has been predicted that if the rate of increase continues, "There will be no owner-operated farms in the United States by October 1, 1989." Kern, *Federal Farm Legislation* (1933) 33 COL. L. REV. 985, 1005, 1006. Kern bases this prediction on the increase during the last normal five-year period (1925-30), when the national average increased from 39% to 42.4%.

[9] Author's note to Senate Concurrent Resolution 17, IOWA SEN. J. (48th G.

of attempts to halt the increase of farm tenancy, it is being realized that, although efforts to reduce farm tenancy should continue, everything possible should be done to improve the farm lease and the relationship between the tenant and his landlord. Though the tenant has probably never had much bargaining power in negotiating the terms of the lease, and tenancy conditions in general have never been very satisfactory, the relationship of landlord and tenant has in recent years often become strained and impersonal, due largely to the fact that many landlords are now banks, insurance companies, and large landowners who "look at their farms merely from the viewpoint of an investor."[10] "It has been estimated that in Iowa, at the present time, the landlord-tenant relationships on two-thirds to three-fifths of all rented farms are strictly commercial in character."[11] The landlord's lack of genuine interest in his farm has been accompanied by a like disinterest on the part of the tenant, there being "more and more tenants who looked at their farms merely from the viewpoint of an exploiter, with little interest in preserving the landlord's property and maintaining soil fertility."[12] The President's Committee on Farm Tenancy led the way in 1937 by recommending that the states consider specific suggestions toward improvement of the farm tenancy situation by state legislation.[13] In 1938, the Iowa Farm Tenancy Committee, under

A. 1939) 1131. While in the nation the "urban population was larger by more than 14,600,000 in 1930 than in 1920 . . . the rural-farm population was smaller by at least 1,200,000 . . . due primarily to the migration from farm to city." Thompson and Whelpton, *The Population of the Nation* in 1 RECENT SOCIAL TRENDS (1933) 8, 9.

[10] Harris, Cotton and Schickele, *Some Legal Aspects of Landlord-Tenant Relationships* (1938) BUL. 371, Agricultural Experiment Station, Iowa State College, 9. "An area equal to eleven counties of the state is now owned by corporations . . . ." Author's note to Senate Concurrent Resolution 17, IOWA SEN. J. (48th G. A. 1939) 1131.

[11] Harris, Cotton and Schickele, *supra* note 10, at 9.

[12] *Ibid.*

[13] These suggestions, in the main, seem to follow the already-enacted provisions of the English Agricultural Holdings Act of 1923, 13 & 14 GEO. V, c. 9. The recommendations are as follows: "(a) Agricultural leases shall be written; (b) Improvements made by the tenant and capable of removal shall be removable by him at the termination of the lease; (c) The landlord shall compensate the tenant for specified unexhausted improvements which he does not remove at the time of quitting the holding, provided that for certain types of improvements the prior consent of the landlord is obtained; (d) The tenant shall compensate the landlord for any deterioration or damage due to factors over which the tenant has control, and the landlord shall be empowered to prevent continuation of serious wastage; (e) Adequate records shall be kept of outlays for which either party will claim compensation; (f) Agricultural leases shall be terminable by either party only after due notice given at least six months in advance; (g) After the first year payment shall be made for incon-

the supervision of the Iowa State Planning Board, also made an investigation and submitted recommendations.[14] Important suggestions were made concerning improvement of housing, soil conservation, restrictions upon the landlord's lien and the rights of a mortgagor in times of emergency, settlement of landlord and tenant differences by arbitration, termination of farm tenancies, and other pertinent problems. Pursuant to these suggestions, some effort was made at the Forty-Eighth General Assembly of Iowa to obtain the passage of needed farm legislation. Several bills were introduced,[15] but only one, that pertaining to termination of tenancies for a term, was enacted.

The need for a statutory requirement of notice for the termination of farm tenancies arises out of the nature of the farming occupation. Since crop production entails extended operations, including soil preparation, planting, the growing period, and harvesting, it is only reasonable that the tenant be certain of continued possession long enough to complete the production process.[16] Furthermore, in order that the tenant may be able to plan a crop program for following years in line with modern farming methods of

venience or loss sustained by the other party by reason of the termination of the lease without due cause; (h) The landlord's lien shall be limited during emergencies such as a serious crop failure or sudden fall of prices where rental payments are not based upon a sliding scale; (i) Renting a farm on which the dwelling does not meet certain minimum housing and sanitary standards shall be a misdemeanor, though such requirements should be extremely moderate and limited to things primarily connected with health and sanitation, such as sanitary outside toilets, screens, tight roofs, and other reasonable stipulations; (j) Landlord and tenant differences shall be settled by local boards of arbitration composed of reasonable representatives of both landlord and tenants whose decisions shall be subject to court review where considerable sums of money or problems of legal interpretation are involved." *Report of the President's Committee on Farm Tenancy, supra* note 6. For a general discussion of the merits of each of these recommendations, see Cotton, *Regulations of Farm Landlord-Tenant Relationships* (1937) 4 LAW & CONTEMP. PROB. 508, 512.

[14] See IOWA STATE PLANNING BOARD, REPORT AND RECOMMENDATIONS OF THE FARM TENANCY COMMITTEE (1938).

[15] The following bills were introduced: "To provide for a tenant's default in case of crop failure, and to limit the landlord's lien," SEN. FILE 200, 48th G. A. IOWA (1939); "To abolish, to create Iowa Farm Credit Board," SEN. FILE 314, 48th G. A. IOWA (1939); "To levy annual tax on owners of more than 160 acres of Iowa land, to create State Farm Tenancy Commission," SEN. FILE 315, 48th G. A. IOWA (1939); "Agricultural leases, relating to termination of," SEN. FILE 203, 48th G. A. IOWA (1939); "To provide for individual applications for foreclosure moratoriums in certain cases, to define emergency," SEN. FILE 314, 48th G. A. IOWA (1939).

[16] At common law the doctrine of emblements, "Who sows shall reap," was developed in order to assure the tenant of his crop. This doctrine, however,

crop rotation and soil conservation, a reasonable security of tenure from year to year is essential.[17]

The Iowa law prior to the amendment in question was unsatisfactory. At common law, agricultural tenancies *at will* were usually construed by the courts to be periodic tenancies, which require a notice of six months to terminate them; if the notice was not given, the tenancy continued for another year.[18] In Iowa, however, a statute providing that any person in possession of real estate with the assent of the owner is presumed to be a tenant at will[19] was interpreted to mean that tenancies at will could not be construed to be periodic tenancies.[20] To afford some protection to tenants at will, the same statute required that a notice of thirty days be given before one party could terminate the tenancy,[21] and provided that in the

had two serious limitations: (1) It did not assure the tenant, giving him only the right to enter, cut and carry away his crops, of possession in order to adequately care for his crops until they were harvested, and (2) it applied only to "an estate of uncertain duration, which has unexpectedly determined without any fault of such tenant." WOODFALL, LANDLORD AND TENANT (24th ed. 1939) 1018. In practice the right to emblements today has practically been replaced in England by Section 24 of the Agricultural Holdings Act of 1923, 13 & 14 GEO. V, c. 76. In America the doctrine of emblements has been replaced by statutes requiring notice for termination of tenancies at will. But even in the absence of these statutes, the courts almost always treated agricultural tenancies at will as tenancies from year to year and required a six-months' notice for their termination. Peel v. Lane, 148 Ark. 79, 229 S. W. 20 (1931); *see* German State Bank v. Herron, 111 Iowa 25, 27, 28, 82 N. W. 430, 432 (1900); Stedman v. McIntosh, 26 N. C. 291, 294, 295 (1844); WOODFALL, *supra* at 1018, 1019.

[17] Harris, Cotton and Schickele, *supra* note 10, at 10, 11. The need for security of tenure on rented farms was stressed by the Iowa Farm Tenancy Committee: "Successful farming and soil conservation require planning the farm program ahead for at least several years. Crop rotations with soil-building legumes usually run over four or more years; frequently limestone must be applied before clover or alfalfa can be grown; in many sections of the state more livestock must be kept to utilize the increased amount of hay and pasture, and barns must be enlarged or built anew to accommodate more livestock and to store more hay. Such changes require that the tenant be permitted to develop a genuine long-time interest in, and a reasonable security of tenure on, a particular farm." IOWA STATE PLANNING BOARD, *op. cit. supra* note 14, at 25.

[18] See note 16 *supra;* Note (1940) 26 IOWA L. REV. 76-9.

[19] IOWA CODE (1939) § 10159.

[20] Wixom v. Hoar, 158 Iowa 426, 139 N. W. 890 (1913); German State Bank v. Herron, 111 Iowa 25, 82 N. W. 430 (1900); O'Brien v. Troxel, 76 Iowa 760, 40 N. W. 704 (1889). These decisions have been criticised on the ground that the true interpretation of the Iowa statute is to regard it as a codification of the common-law rule, rather than as a modification of it. 1 TIFFANY, LANDLORD AND TENANT (1910) 111.

[21] IOWA CODE (1939) § 10159.

case of agricultural tenancies at will, in addition to the thirty-days' notice provision, termination could occur only on the first of March.[22] Another statute, which did not distinguish between urban and farm tenancies, provided that tenancies *for a term* were terminable at the end of the term without notice.[23] Thus, the situation in Iowa was that the farm tenant for a term might never know until the end of the term whether he would be permitted to remain upon the land, and the farm tenant at will was in only a slightly better position. Though these statutes may have been satisfactory to the urban tenant, who usually is interested in being able to terminate his tenancy immediately without notice or upon short notice, their application to farm tenancies has resulted in chaotic uncertainty concerning the continuation of these tenancies. An investigation of conditions in Iowa revealed that:

> Iowa tenants are highly unstable in the occupancy of their farms. The Census of Agriculture for 1935 indicated that on Jan. 1 of that year over one-third of the tenants of the state had been occupying their farms for less than 2 years. Such a high rate of mobility among tenants prevents the development of a permanently productive and conservational system of farming which requires the adoption of longtime rotations and the building up of livestock enterprises over a period of years. It has a deterrent influence upon the tenant and his family in their participation in community activities.[24]

A statute was needed which would require that notice be given a substantial period of time before agricultural tenancies could be terminated, which could not be contracted away, and which would apply to agricultural tenancies both at will and for a term.

Application and Appraisal of the Statute

In order to terminate a tenancy for a term, Section 10161 of the Iowa Code now requires that written notice of termination be given not later than the first of November, whereupon the tenancy shall terminate the following first of March; notice need not be given in the case of croppers, nor where there is default in the performance of the existing agreement.[25] Though the length of this notice is two months shorter than that recommended by the President's Committee on Farm Tenancy and the Iowa Committee on Farm Ten-

[22] IOWA CODE (1939) § 10160.

[23] IOWA CODE (1935) § 10161.

[24] Harris, Cotton and Schickele, *supra* note 10, at 10, 11.

[25] IOWA CODE (1939) § 10161.

ancy,[26] the new statute is a definite improvement over the former provisions which contained no notice requirement.[27]

Does the amendment apply only to tenancies for a term or does it embrace also tenancies at will? The amendment in terms applies to "the case of farm tenants," which apparently is broad enough to include farm tenants at will. However, in light of other factors, it seems improbable that the court will so interpret the amendment. The amendment is entitled "An Act to Amend Section 10161 of the Code of 1935" and appears in the Code of 1939 as a part of that section. Section 10160, providing for termination of tenancies at will, remains unchanged. Furthermore, the first sentence of Section 10160, which represented the entire section before it was amended, expressly refers only to leases which fix the time of termination and would seem to limit the following portion of the same section. The committee which sponsored the bill had great difficulty in determining exactly what they wanted done. Six amendments to the original bill were filed,[28] three of which were adopted. One amendment was filed, but not adopted, which would have lengthened the period of notice for termination of tenancies at will,[29] but the idea of giving the tenant at will a right to substantial notice apparently was abandoned before the final draft was prepared.

A special problem is involved as to the effect of the statute as applied to tenants who hold over after the termination date in their leases without entering into new leases. Hold-over tenants have been regarded in Iowa as tenants at will,[30] this result being due, as already mentioned, to a statute which provides that any person in possession of real estate with the assent of the owner is presumed to be a tenant at will.[31] This statute has not been repealed or amended. It would logically follow that an agricultural tenant holding over is a tenant at will and that his tenancy could be terminated the following first of March, or any succeeding first of

[26] Recommendation (f) of the *Report of the President's Committee on Farm Tenancy, supra* note 6, and recommendation (26) of the IOWA STATE PLANNING BOARD, *op. cit. supra* note 14. The earlier drafts of the bill provided for a notice of six months. In England, notice to terminate a tenancy from year to year has been extended by statute to one year. English Agricultural Holdings Act of 1923, 13 & 14 GEO. V, c. 76. The so-called "Ames Lease" prepared by the Agricultural Economics Section, Iowa State College, recommends a notice of seven months.

[27] A bill has been introduced in the Forty-Ninth General Assembly to require that notice be given on the first of September, thereby extending the period of notice to six months. Des Moines Reg., Jan. 16, 1941, p. 4, col. 5.

[28] IOWA SEN. J. (48th G. A. 1939) 345, 387, 439, 447, 1136, 1073.

[29] *Id.* at 387.

[30] German State Bank v. Herron, 111 Iowa 25, 82 N. W. 430 (1900); O'Brien v. Troxel, 76 Iowa 760, 40 N. W. 704 (1888).

[31] IOWA CODE (1939) § 10159.

March, by the giving of a notice of thirty days by the landlord. To so restrict the application of Section 10161 would materially limit its scope, since it is common practice for tenants holding over not to enter into new leases. Surely the legislature did not intend the result suggested, and a contrary interpretation seems reasonable. When the legislature stated that the tenancy "shall continue for the following crop year upon the same terms and conditions as the original lease," it must have meant that the tenant in such a case continues to be a tenant for a definite term, the length of the term being fixed by the legislature as the "following crop year." The statutory presumption that a hold-over tenant is a tenant at will would thus be rebutted as to agricultural tenancies, and Section 10161 would apply. Another possible interpretation is that the statute applies to every farm tenant whose tenancy was commenced by a lease for a term, though he may have held over for several years, without regard to the question whether he is technically a tenant at will or a tenant for a term. Though the legislature should have expressed specifically the status of hold-over tenants, it would be indeed unfortunate if the Iowa court should fail to interpret Section 10161 as applying to them.

There seems to be no good reason for requiring a longer period of notice of termination of farm tenancies ending on a fixed day than for farm tenancies where the lease specified no termination date. The tenancy at will, by virtue of its tenuous nature, is especially in need of legislative protection. The requirement of the Iowa statute that a notice of thirty days be given of termination may be sufficient to allow the tenant at will a reasonable time in which to move, but the statute overlooks the more significant policy of increasing security of tenure in the interest of enabling long-range farm programs and creating in the tenant a genuine interest in, and sense of responsibility for, "his" farm. It is idle to say that persons should not enter into tenancies at will. Although well-advised persons would seek leases for a definite term, the fact is that many tenants are not well advised and tenancies at will continue to exist. Additional legislation providing for a longer period of notice for the termination of tenancies at will is needed in order to give tenants at will the same degree of protection now given tenants for a term.

The new statute was not designed merely to cover the situation where the lease is silent as to notice of termination, but was intended to prescribe a method of termination which could not be contracted away by the parties. The first of March is declared to be the termination date of every farm tenancy for a term, regardless of the day specified in the lease as the end of the term. Also, the effect of the statute is to prevent the parties from agreeing upon a different period of notice or upon no notice. Otherwise, the statute would afford little real protection, since landlords would be certain to insist upon doing away with the notice requirement in the lease, and farm tenants often lack bargaining power.[32]

[32] "Surely as to the terms of the lease the tenant is now at the mercy of the

An attempt to evade the statute might be made by giving a notice the terms of which are uncertain. For example, the landlord might state in a notice that he will have the right to terminate the tenancy upon the first of March *if he so desires at that time.* After such a notice the tenant would be in no better position than if no notice had been given, since his continuance on the land would still be uncertain. Hence, a court should and probably would rule that such a notice is ineffective. This result would be in accord with those decisions which require that notice of termination of tenancies at will, periodic tenancies, and tenancies for a term created by leases which provide for notice must be unequivocal in its terms,[33] "leaving no doubt as to the intention of the party giving it . . . ."[34] Nor is a notice regarded as sufficient if it is conditional, such as a statement that the tenancy is to be terminated unless certain repairs are made.[35] However, it has been held that a notice is not defective because it is accompanied with an alternative statement that if the tenant continues in possession he is to pay an increased rent, which is regarded as an offer to enter into a new lease.[36] Could a landlord evade the statute by giving a written notice in accordance with the statute, but at the same time taking the tenant aside and telling him that he is to disregard the notice and that a final notice will be given subsequently when the landlord definitely decides to continue the tenancy? Surely such a notice would be ineffective, for although the landlord has apparently technically complied with the statute, the effect of accompanying a written notice with an oral admonition to ignore it is to render the meaning and purpose of the written notice uncertain.

Though the landlord and tenant may not be able to agree in ad-

landlord." Harris, Cotton and Schickele, *supra* note 10, at 8. In the recent case of John Hancock Ins. Co. v. Behr, 229 Iowa 900 (1940), the question was raised whether § 10161, as amended, prevented the parties from providing in the lease for a shorter notice than the statute designates. But the court decided the case upon another ground and refused to discuss the effect of § 10161.

[33] D'Arcy v. Martyn, 63 Mich. 602, 30 N. W. 194 (1886); Columbia Brewing Co. v. Miller, 124 Mo. App. 384, 101 S. W. 711 (1907); Ayres v. Draper, 11 Mo. 548 (1848); Baltimore Dental Ass'n v. Fuller, 101 Va. 627, 44 S. E. 771 (1903); Fotteral v. Armour, 218 Pa. 73, 66 Atl. 1001 (1907).

[34] 2 TIFFANY, *op. cit. supra* note 20, at 1443.

[35] Baltimore Dental Ass'n v. Fuller, 101 Va. 627, 44 S. E. 771 (1903).

[36] Amsden v. Floyd & Blaisdell, 60 Vt. 386, 15 Atl. 332 (1888). *Contra*: D'Arcy v. Martyn, 63 Mich. 602, 30 N. W. 194 (1886); Columbia Brewing Co. v. Miller, 124 Mo. App. 384, 101 S. W. 711 (1907); Ayres v. Draper, 11 Mo. 548 (1848). However, even a court holding such a notice insufficient will uphold a notice which contains the alternative proposal that the tenant begin at once to pay an increased rent in advance, there being no option which the tenant has the privilege of exercising at the time of termination specified by the notice. Candler v. Mitchell, 119 Mich. 464, 78 N. W. 551 (1899).

vance to dispense with the statutory notice, it surely will be held that, as in the case of statutory notice for termination of tenancies at will,[37] the parties may terminate the tenancy by surrender at any time without notice. The purpose of the statute is to prevent termination without notice by *one* party. There is no reason why *both* parties may not terminate the tenancy by mutual assent though no notice of termination has been given; indeed, injustice would be done if they were not permitted to do so. The Iowa Committee on Farm Tenancy made the recommendation, which was not adopted, that if either party should seek to terminate the lease after having failed to give notice, the disturbed party might elect to accept the termination, in which case he would be entitled to compensation for disturbance.[38] The Committee further recommended:

> A minimum amount of such compensation, perhaps 10 or 20 per cent of the annual rental value of the farm, should be specified in the statute as being claimable by the disturbed party solely on the ground of belated notice of termination.[39]

The legislative adoption of such a provision would be inadvisable, for the reason that undue hardship would be placed upon the party proposing termination in a case where both parties desire termination. The tenant may have discovered that he could lease a better farm elsewhere, and the landlord may have found a new tenant willing to pay more rent, in which event termination would not cause injury to either party. The well-established doctrine of surrender adequately takes care of this type of situation by permitting termination without notice, and there is no need for requiring one party to compensate the other.

The Iowa statutes providing for termination of agricultural tenancies are different from similar statutes of other jurisdictions in that the Iowa statutes exempt "croppers" from their effect.[40] Croppers' "leases" which do not specify a time for termination are held by Section 10160 to expire when the crop is harvested, and if the crop is corn, termination shall be not later than the first day of December. A "cropper" is usually defined as one who agrees to work upon the land of another for a share of the crop without obtaining any interest in the land.[41] However, it has been held that it is not essential to this definition that payment be made in crops, the crucial inquiry being whether the cultivator has an interest in the land.[42] Though the courts have had little difficulty in deter-

[37] Brayton v. Broomer, 131 Iowa 28, 105 N. W. 1099 (1906).

[38] IOWA STATE PLANNING BOARD, *op. cit. supra* note 14, at 35.

[39] *Ibid.*

[40] IOWA CODE (1939) §§ 10160, 10161.

[41] Steel v. Frick, 56 Pa. 172, 175 (1867); 1 TIFFANY, *op. cit. supra* note 20, at 38.

[42] Alwood v. Buckman, 21 Ill. 200 (1859).

mining as a matter of law who are croppers, whether the agreement in a particular case is simply a contract of hire or amounts to a lease of an interest in the land often presents a difficult question of interpretation.[43] If the legislature had not exempted croppers, the court certainly would have done so; notice of termination of a cropper's interest in the land he is cultivating is unnecessary since he has no interest in the land, his only interest being in a contract of employment.[44] However, the Iowa legislature apparently used the term "croppers" in a broad sense to include lessees, not merely employees of the owner, who cultivate land which they do not live upon. Section 10160 itself refers to the agreements of croppers as "leases." Furthermore, since the general notice requirements apply only to farm tenants "occupying" the farm, the statutes fail to provide for tenants who do not occupy the land they have leased, unless such tenants may be said to be "croppers." Any doubt which there may have been was removed by decisions of the Iowa court which applied the croppers' provisions to persons who were lessees rather than mere hirelings.[45] The nonapplicability of the general notice provisions to lessees who do not live on the land is desirable, since such lessees probably in most cases are farmers who desire to cultivate for a season or two a few acres adjoining their farms and have no desire that those arrangements continue for a great length of time.

Constitutionality of the Statute

It might be contended that the amendment constitutes an unwarranted restriction of freedom to contract and to alienate real property and therefore violates the due process[46] and equality clauses[47] of the United States and Iowa constitutions. It is unlikely that a court would so hold. Freedom of contract and alienability of property are not absolutes; reasonable regulation for a legitimate end does not contravene constitutional safeguards.[48] There can be lit-

[43] *Cf.* Gray v. Robinson, 4 Ariz. 24 (1893); Alwood v. Buckman, 21 Ill. 200 1859).

[44] "Under such a contract the occupier becomes merely the servant of the owner of the land, being paid for the labor in a share of the crop." Gray v. Robinson, 4 Ariz. 24, 32 (1893).

[45] 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, 24 N. W. 749 (1885). The Iowa court's use of the expression "field tenant or cropper" is further indication that the statute affects tenants as well as croppers in the strict meaning of the term. Johnson v. Shank, *supra* at 220, 24 N. W. at 750.

[46] U. S. CONST. AMEND. XIV, § 1; IOWA CONST. Art. I, § 1.

[47] U. S. CONST. AMEND. XIV, § 1; IOWA CONST. Art. I, § 6.

[48] West Coast Hotel Co. v. Parrish, 300 U. S. 379 (1936); Nebbia v. New York, 291 U. S. 502 (1934); Hardware Dealers' Mut. Fire Ins. Co. v. Glid-

tle question that the problem of farm tenancy requires legislative attention and that the general welfare demands remedial legislation.[49] The position of the farm tenant and his relation to the general welfare is very similar to that of the industrial laborer, in whose behalf remedial legislation has been sustained.[50] Each lacks bargaining power and is a potential augmentor of the army of the unemployed.[51] The significance of the tenancy problem to the welfare of Iowa residents is forcefully shown by the number of tenants in Iowa and the amount of Iowa land under cultivation by tenants. In 1935, it was estimated that over half of Iowa's 220,000 farms were tenant farms;[52] 58 per cent of the farm land in the state, representing an investment of over one and one-third billion dollars, was operated by persons who did not own it.[53] In addition to the undesirable economic and social consequences that result from the impoverishment of a sizeable group of the inhabitants of the state, the irreparable damage to soil fertility which unstable farm tenancy conditions foster is of vital concern to the state.[54] In view of these considerations, there should be little doubt about the amendment's validity so far as the due process clauses are concerned.

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den Co., 284 U. S. 151 (1931). *But cf.* Louis K. Liggett Co. v. Baldridge, 278 U. S. 105 (1928); Tyson & Bro. v. Banton, 273 U. S. 418 (1926). The fact that a statute similar to the one under consideration was enacted by the English Parliament indicates that it was regarded by that body as being within the scope of "due process" in the meaning of the Magna Charta. 13 & 14 GEO. V, c. 9 (1923).

[49] It is true that "Traditionally, in America . . . agriculture has been an industry over which the state has exercised little control under the police power, except where production was threatened by pests, and there are many cases in which agriculture has been used as an illustration of those things which the state could not regulate." Cotton, *supra* note 13, at 527. But the United States Supreme Court, though declaring the Frazier-Lempke Act unconstitutional, nevertheless recognized the farm tenancy problem as a proper one for congressional action. Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 600 (1935). And the Iowa court in Blume v. Crawford County Farm Bur., 217 Iowa 545, 250 N. W. 733 (1934), justified aid to agricultural societies partly on the general interest of the state in the welfare of the farm population.

[50] West Coast Hotel Co. v. Parrish, 300 U. S. 379 (1936); O'Gorman & Young v. Hartford Ins. Co., 282 U. S. 251 (1931); Sturges & Burn Mfg. Co. v. Beauchamp, 231 U. S. 320 (1913); Muller v. Oregon, 200 U. S. 412 (1908); Hunter v. Colfax Consol. Coal Co., 175 Iowa 245, 15 N. W. 1037 (1916).

[51] See author's note to Senate Concurrent Resolution 17, IOWA SEN. J. (48th G. A. 1939) 1131.

[52] Harris, Cotton and Schickele, *supra* note 10, at 8, 9.

[53] *Ibid.*

[54] The police power of the states has often been invoked to sustain legislation for the conservation of natural resources. Henderson Co. v. Thompson, 300 U.

Nor should the amendment be held to violate the equal protection and uniformity clauses of the federal and state constitutions. Both at common law[55] and by statute,[56] agricultural leases have been distinguished from ordinary tenancies. The farm tenant is interested in continuity of possession, while the urban tenant desires to be able to evacuate upon short notice. Accordingly, the restriction of the application of the amendment to farm tenancies seems to be a reasonable classification. However, the language of the statute that excludes urban land from the scope of the act may be subject to criticism. The statute provides that its application shall extend to tenancies of "40 acres or more," which might include urban land and exclude rural land.[57] It would have been preferable to have stated simply that urban acreage was not within the scope of the act. But since as a practical matter there are probably few farm tenants occupying an acreage of less than forty acres, and due to the judicial policy of upholding legislative classifications unless clearly unreasonable,[58] the possibility that the "40 acres" provision might in some instances not distinguish between rural and urban tenancies should not invalidate the statute.

A more serious constitutional problem is presented by the effect of the amendment upon leases existing at the time of its enactment. Application of the amendment to these leases might be regarded as an impairment of the obligation of contracts and therefore unconstitutional.[59] A court could easily avoid the necessity of passing upon this question by construing the statute as having only a pro-

S. 258 (1937); Bandini Petroleum Co. v. Superior Court, 284 U. S. 8 (1931); Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61 (1911); State v. Nelson County, 1 N. D. 88, 45 N. W. 33 (1890); Mendiola v. Graham, 139 U. S. 473 (1905). "The instability of farm tenure has resulted in the deterioration of tenant-operated farms with consequent serious losses in the fertility of the soil, a basic natural resource. In addition, there are serious economic losses involved in the frequent moving of tenants and undesirable results in rural social life." Cotton, *supra* note 13, at 509.

[55] The doctrine of emblements applied only to agricultural tenancies. See note 16 *supra*. Also, the courts were especially eager to construe agricultural tenancies as periodic tenancies. *See* German State Bank v. Herron, 111 Iowa 25, 27, 28, 82 N. W. 430, 432 (1900); Stedman v. McIntosh, 26 N. C. 291, 294, 295 (1844).

[56] *E.g.*, IOWA CODE (1939) § 10160.

[57] In Kroeger v. Bohner, 116 Mo. App. 208, 91 S. W. 159 (1905), the court regarded as agricultural land a tract of five or six acres in the City of St. Louis.

[58] Terrace v. Thompson, 263 U. S. 197 (1923); Ward & Gow v. Krinsky, 259 U. S. 508 (1922); Pullman Co. v. Knott, 235 U. S. 23 (1914); Barbier v. Connolly, 113 U. S. 27 (1885); Hubbell v. Higgins, 148 Iowa 36, 126 N. W. 914 (1910).

[59] U. S. CONST. Art. I, § 10; IOWA CONST. Art. I, § 21.

spective application.[60] Since the statute does not expressly apply to existing leases, such a construction would be reasonable. The additional fact that the apparent legislative purpose of the statute could be carried out by confining the statute's application to future leases lends further support to such a construction. It is not essential to accomplishing the purpose of the statute—the security of farm tenure—that existing leases be affected. The statute does not contemplate the prompt cure of an intolerable situation, but rather a security of farm tenure brought about by the application of the statute over a period of years.

Assuming, however, that the statute should be construed to apply to existing leases, what are the considerations involved? The amendment probably should not be regarded as impairing the obligation of those existing leases which already designated the first of March as the termination date. Neither the tenant nor the landlord in such a case loses his right to have the tenancy terminated at the time named in the lease if he acts promptly in giving notice. Analogous cases are those sustaining statutes of limitations as to existing causes of action when the persons affected were allowed a reasonable time to commence suit.[61] A period of only three months,[62] and in one case thirty days,[63] between enactment and the effective date of such statutes have been held to constitute reasonable periods of time. Since the statute in question was approved by the governor on May 3, 1939, and became effective on July 4, 1939, the parties had almost six months from the time of approval, and almost four months from the effective date, in which to give the required notice and prevent the tenancy from continuing for another year. Hence, it seems unlikely that the amendment will be held unconstitutional as to this type of lease.

However, the effect of the statute is to change the termination date of existing leases which specified a termination date other than the first of March. The length of some of these leases might be

[60] A statute is generally construed to have only a prospective application when a retrospective application would render the statute unconstitutional, unless the legislature has clearly manifested an intention that it have a retrospective application. Thomas v. Disbrow, 208 Iowa 873, 224 N. W. 36 (1929); *In re* Culbertson's Estate, 204 Iowa 473, 215 N. W. 761 (1927); Davenport v. The Davenport & St. P. Ry., 37 Iowa 624 (1873).

[61] DeMoss v. Newton, 31 Ind. 219 (1869); Mulvey v. Boston, 197 Mass. 178, 83 N. E. 402 (1908); Kosiek v. Brigham, 169 Minn. 57, 210 N. W. 622 (1926); *cf.* Henley v. Myers, 215 U. S. 373 (1909); Bernheimer v. Converse, 206 U. S. (1906); Wilson v. Standefer, 184 U. S. 399 (1901). "It is a well-settled doctrine that mere methods of procedure in actions on contract that do not affect the substantial rights of the parties are always within the control of the State." Henley v. Myers, *supra* at 385.

[62] DeMoss v. Newton, Kosiek v. Brigham, both *supra* note 61.

[63] Mulvey v. Boston, 197 Mass. 178, 83 N. E. 402 (1908). *Contra:* Berry & Johnson v. Ransdall, 4 Metc. 264 (Ky. 1863).

materially altered by the statute. For that reason the obligation of these leases would seem to be impaired unless the police power of the state justifies such interference with contract rights. Every contract is deemed to have been made subject to the reasonable exercise of the state's police power.[64] It might be thought that the statute in question is distinguishable from those involved in other cases where the police power has been held sufficient to warrant destruction of existing rights, since most of those cases involved temporary legislation enacted to meet emergencies.[65] For example, mortgage moratorium legislation was upheld largely because an emergency existed.[66] However, the Supreme Court of the United States, in the recent case of *Viex v. Sixth Ward Building & Loan Ass'n of Newark*,[67] expressly held that the existence of an emergency is not essential in order to sustain a statute which is challenged as being in violation of the contracts clause. The Court said:

> We are here concerned with a permanent piece of legislation. So far as the contract clause is concerned, is this significant? We think not.[68]

The proper query is, not whether an emergency exists, but whether the worth of the statute to the public welfare outweighs the desirability of preserving the existing rights which are threatened by the statute.[69] The approach is much the same as if the court were considering a due process question.[70] There does not seem to be any great need that the statute in question be upheld as to existing leases whose termination dates the statute would alter. The purpose of the statute can be fully carried out by sustaining the statute only as to future leases and leases which would have terminated naturally on the first of March. Security of farm tenure and the economic and social benefits which will be derived from a stable tenancy situation cannot be accomplished overnight. As already mentioned, a continued condition of stability over a period of several years is the aim of the statute. Accordingly, the statute might

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[64] Home Bldg. & Loan Ass'n v. Blaisdell, 290 U. S. 398 (1934); Dillingham v. McLaughlin, 264 U. S. 370 (1924); Marcus Brown Holding Co. v. Feldman, 256 U. S. 170 (1921); Manigault v. Springs, 199 U. S. 473 (1905). "The economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts." Home Bldg. & Loan Ass'n v. Blaisdell, 290 U. S. 398, 437 (1934).

[65] See note 64 *supra*.

[66] Home Bldg. & Loan Ass'n v. Blaisdell, 290 U. S. 398, 439, 447 (1936).

[67] 60 Sup. Ct. 792 (1940).

[68] Veix v. Sixth Ward Bldg. & Loan Ass'n of Newark, 60 Sup. Ct. 792, 795 (1940).

[69] *See* ROTTSCHAEFER, CONSTITUTIONAL LAW (1939) 572.

[70] *See* Home Bldg. & Loan Ass'n v. Blaisdell, 290 U. S. 398, 448; Note (1932) 32 COL. L. REV. 476.

be held to be unconstitutional as to leases whose termination dates were changed by the statute.[71]

The Iowa General Assembly, in enacting the amendment to Section 10161, has but made a good start in a field where legislation is needed badly. Special attention should be given to the improvement of the landlord and tenant relationship. Among other things, tenancies at will should be made terminable only upon the giving of a four-months' notice. Many helpful suggestions can be had from the recommendations of the President's Committee on Farm Tenancy and the Iowa Farm Tenancy Committee.

[71] However, a different result might be reached if the alteration of a particular lease were slight. It would be absurd, though perhaps justifiable on technical grounds, to hold the statute valid as to a lease whose termination date is the first of March, and to hold it invalid as to a lease whose termination date is the second of March. If the constitutionality of the amendment as applied to such leases is ever before the court, the decision which will be reached is speculative and will depend largely on the type of case with which the court is presented.