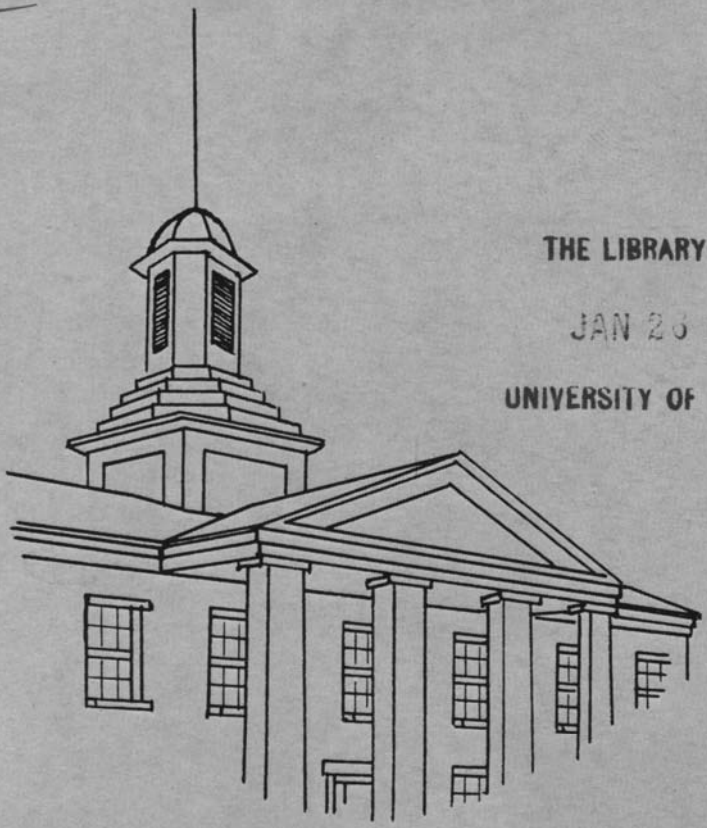

Circular
632

Law FOR THE ILLINOIS FARMER

By H. W. HANNAH

UNIVERSITY OF ILLINOIS · COLLEGE OF AGRICULTURE
EXTENSION SERVICE IN AGRICULTURE AND HOME ECONOMICS

The sketch on the cover is of the old Capitol at Vandalia, the third to be built there. The building, erected in 1836, still stands, preserved by the state. It was here that Lincoln served his first term in the legislature.

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Urbana, Illinois November, 1948

Cooperative Extension Work in Agriculture and Home Economics: University of Illinois, College of Agriculture, and the United States Department of Agriculture cooperating. H. P. Rusk, *Director*. Acts approved by Congress May 8 and June 30, 1914.

LAW
for the ILLINOIS FARMER

By H. W. Hannah[1]

TO PROVIDE the greatest measure of justice for the greatest number is the purpose of law in a democratic society. But nothing is more complicated than the effort to see that justice is done. As population and means of communication increase and interests overlap, laws become more numerous and their administration more complicated. We live in a web of legal restrictions, which, however, we normally think very little about.

Probably the reason we give these restrictions little thought is that in reality they assure each of us freedom and protection. The first purpose of our laws is to protect what we regard as fundamental human rights, then to see to it that justice is done so far as possible in all our day-by-day dealings with each other.

This circular contains only a very small part of our total body of laws — merely some of those that concern farm people and those in related businesses. Furthermore it describes only Illinois law; it makes no attempt to review federal laws and regulations.

The information included here will not enable anyone to act as his own lawyer. The purpose of the circular is rather to give its readers two kinds of help: first, information concerning their rights and responsibilities; second, a better realization of situations that may contain legal dangers. Knowing when a situation is dangerous or likely to become so will enable a farmer to consult a lawyer in time to settle issues that could lead to costly and long-drawn-out disputes.

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[1] Associate Professor of Agricultural Economics and member of the Illinois bar.

Part I

PERSONAL AND PROPERTY LAW

OUR PERSONAL AND OUR PROPERTY rights and responsibilities are defined by a body of law called the common law and by statutes.

The common law consists of a body of "unwritten" law; that is, law not written by legislative bodies but gradually developed by the decisions of courts over a long period — hundreds of years — and generally accepted in the English-speaking world. Our statutes are the written acts of our legislative bodies.

Laws having to do with personal and property rights may be called nonregulatory to distinguish them from laws that require certain things of businesses — that they be inspected or that they be operated according to certain rules.

REAL PROPERTY

The chief distinction between real property (real estate) and personal property is that real property is relatively immovable. The land and the improvements permanently attached to it — barns, fences, wells, tile lines, and like fixtures — are regarded as real property. Ownership of real property is usually called holding the title to it. "Holding title" usually means that the ownership is evidenced by an instrument that the law recognizes as a proper means of transfer, ordinarily a deed or a will.

For further information concerning the distinctions between real and personal property, see pages 22-23.

Deeds, Abstracts of Title, and Land Registration

Warranty deeds. Next to having our personal liberties defined and protected, we are perhaps more interested in the laws that secure property titles than in any others. The security of title to real estate depends upon two things: the existing facts which affect the title and the covenants or promises the seller makes the buyer. After a buyer has taken title, he may find it faulty. But if he does and if the seller has warranted a good title, the buyer can make him perfect the title.

Or, if the buyer loses the property thru the faultiness of the title, he can sue the seller for damages.

A seller may make two kinds of warranties, or promises — express and implied. *Express* warranties are those written into the deed. *Implied* warranties are those which are legally a part of the deed even tho not specifically mentioned in it.

Years ago the Illinois legislature provided that deeds for the conveyance of land may be in substantially this form:

(Form for deeding land)

The grantor (*here insert name or names of seller or sellers and place of residence*), for and in consideration of (*here insert consideration*) in hand paid, **conveys and warrants to** (*here insert grantee's, or buyer's, name or names*) the following described real estate _____ (*here insert description*)_____, situated in the county of _____, in the State of Illinois.

Dated this _____ day of _____, A.D. 19____.

(*Signature of seller*)_____(L.S.)

(Add as many lines for signatures as there are sellers. The letters L.S. take the place of a seal.)

This law also provides that every deed substantially in this form and duly executed shall be regarded as a legal conveyance, in fee simple, to the buyer (or grantee), his heirs, or to anyone to whom he may assign the property.[1] It further provides that the following covenants are implied by the seller (or grantor) in such a deed:

1. At the time the deed was delivered the seller had an indefeasible estate (estate free of claims), in fee simple, with the right and power to convey (that is, to transfer the real estate or pass the title by "sealed" writing).

2. The property was at that time free from encumbrances (claims or liens).

3. The buyer will have quiet and peaceable possession, and the seller will defend the title against all persons lawfully claiming it.

Quitclaim deeds. Quitclaim deeds are used mainly to clear titles to property. All who have even a remote interest in the property — often an interest too minor to be of any value — relinquish it by making a quitclaim deed to one person. That person then holds, if all interests are thus transferred to him, a clear title to the property.

[1] With a few exceptions, all voluntary transfers of real estate, whether as gifts or for substantial consideration, must be evidenced by a deed except when property is disposed of by will.

A law passed by the Illinois legislature provides that quitclaim deeds made out in substantially the following form and duly executed shall be a sufficient "conveyance, release, and quitclaim" of all existing rights in the premises described in the deed:

(Form for a quitclaim deed)

The grantor *(here insert seller's name or names and place of residence)*, for the consideration of *(here insert consideration)*, **conveys and quitclaims to** *(here insert grantee's or buyer's name or names)* all interest in the following described real estate *(here insert description)*, situated in the county of _____, in the State of Illinois.

Dated this _____ day of _____, A.D. 19____.

*(Signature of seller)*_____(L.S.)

Such a deed as the above does not, however, convey any rights acquired in the property *after* the deed was executed, unless the deed specifically so states.

Abstracts of title. If you are buying farmland, you need to know at least two important things about it: (**1**) the real value of the land in terms of its earning power, and (**2**) the condition of the title. In most states the title to land is not made a matter of public record, but instruments affecting it are recorded in the county courthouse.

The only way you can know whether the seller can give you a clear title to the land is to get a good abstract of title. This is a summary of the essential facts in all conveyances (instruments or deeds conveying title to the property) or encumbrances in any way affecting the title. Altho in Illinois the county boards of supervisors may require the county recorder to keep abstract books, few county recorders have actually been required to do so. Abstracts are therefore usually prepared by private companies.[1]

An abstract is not a guaranty of good title, tho many people seem to think it is. It is simply the record of what has legally affected the title to the property. It may show the title to be very weak. But that is the purpose of an abstract — to show up any flaws and give the buyer a chance to have the seller clear the title.

When you get the abstract, the safest thing to do is to take it to a

[1] Making an abstract of title means first searching the records in the offices of the county recorder, county clerk, and circuit clerk for instruments affecting the title to the property — deeds, mortgages, releases, divorce decrees, etc. Then the essential facts in each instrument or record must be summarized. Each summary is numbered and placed in position according to date. All records, summarized, chronologically arranged, and stapled together, form the abstract.

lawyer who has experience in preparing and examining real-estate documents. He will be able to pass judgment on the facts abstracted and detect any important omissions in the records.

The cost of having an abstract made and having it examined is sometimes high. A system of land registration or of public abstracting would relieve the individual of the cost of abstracting the records and examining the title. Under the present system of recording, however, anyone who intends to lend money on land or to buy land will find it good business to get an up-to-date abstract from a reliable company and have it examined by an experienced person.

Land registration. In Illinois it is possible for a county, under certain conditions, to institute the "Torrens system" of registering titles to land. The basic principle of this system, named for the Australian who invented it, is the registration of the *actual* title to land, instead of, as under the old system, the *evidence* of such title. The Illinois law states the object to be "to create an independent system of registration of land titles, and cause all instruments intended for the purpose of passing or affecting any title to real estate to be filed and registered in that department and no other."

Many students of the problem feel that the Torrens system[1] is a simple, economical way of handling land titles and that it should replace the present system. Others feel that there would be no advantage in adopting it. The development of photomicrography (a system allowing long documents to be photographed, reduced in scale, and stored as negatives in a small space) may simplify the present

[1] In Illinois, if half the legal voters of a county petition for the adoption of the Torrens system, the question whether it shall be adopted must be submitted to a vote. The number of people which must petition, however, is so high that it is very hard to get the issue voted on. In Cook county, where only 2,500 legal voters were required to petition and bring the issue to a vote, the plan was adopted many years ago, and a large part of the land in Cook county is now registered.

Under the Torrens system registering the title requires a court proceeding. First, the owner submits to the judge of the circuit court a written and sworn application giving certain information required by the law. The application is then referred to an examiner of title for his check and approval. A summons is next issued to all parties who may have an interest in the property, the summons making them defendants in the proceeding. The court then hears the case and enters a decree vesting the title in those to whom it has been shown that title belongs. The decree becomes binding, tho the case may be appealed as are other cases. A certificate of title is issued the applicant. The registrar, who is required to keep a "Register of Titles" containing all the certificates issued in his county, then registers the title.

Claims not settled in the proceedings are settled from an indemnity fund. Transfers and charges, tax sales, cancellation of certificates, and similar things which affect registered land are provided for.

system of keeping records. Those in favor of land registration, however, maintain that the issuing of certificates of title to land by appropriate governmental agencies is a service to which the public is entitled.

Wills, Estates, and Life Estates

Wills. Good wills are not as hard to make as most people think. Bad wills are nearly always the result of hasty preparation, unclear language, failure to conform to certain simple legal requirements, or the maker's attempt to provide for too many possible events or conditions.

Under Illinois law a will to be valid must meet these conditions:

1. The maker must be of sound mind and memory and at least 18 years of age.

2. The will must be in writing and be signed by the maker, or by someone for him in his presence and by his direction.

3. Two credible adults must witness and sign the will in the presence of the maker. These witnesses must be ready to swear before the county court, when requested to, that they saw the maker sign the will or that the maker acknowledged to them that it was his act.

It is not necessary to put dates and addresses in a will, tho certainly inserting a date to show when the will was made is a good plan. The language should be so simple and direct that the will cannot be misinterpreted. Of course the safest thing to do is to consult a competent lawyer about the wording of a will. The courts have had to interpret the meanings of certain phrases often used in wills; and those interpretations have come to be accepted in Illinois courts. There is some danger that the maker's intent may not correspond with these interpretations.

Wills may be used to dispose of all kinds of property, both real and personal, to create trusts, or to give many kinds of limited interests in property. The will below, consisting of one simple sentence, is all that is needed in order for the maker to leave his property to his wife.

LAST WILL AND TESTAMENT

June 1, 1948

I give all my property, both real and personal, to my wife, Sarah.

(*Signature*) John Jones

Witness: (*Signature*) Richard Roe
Witness: (*Signature*) Mary Brown

Estates. An estate is defined legally as "the interest which anyone has in lands, or in any other subject of property." This interest may vary from absolute ownership (a fee simple) to mere possession.

Whatever the legal definition, the average man thinks of an "estate" as the land and other property left by a deceased owner and not yet completely "administered," or land and other property held undivided by the heirs of a deceased owner.

When the heirs of an owner who has died hold farmland undivided, serious management problems are likely to arise. It is often hard for them to agree on how they shall rent the land, what improvements they shall make, and what, in general, to do as landlords. When this happens, it is usually best to hire a competent manager.

When one of the heirs stays on the farm, operating it as a tenant, questions arise as to what interest each heir should have and what expenses each should bear. Assuming that there are five heirs, the one operating the farm should get the tenant's share and also one-fifth of the landlord's share. In return for his landlord's share, he should bear one-fifth of the expense of improving the real estate, one-fifth of the taxes, and one-fifth of all other landlord expenses.

When several persons are common owners of a farm (tenants in common), a good many legal complications can arise, especially if one of the persons dies leaving several children or if there are children of deceased children. Owners in common would often be wise to make a settlement, transferring the title to one heir or selling the farm to someone outside the family.

Life estates, remainders, and reversions. A good many people hold land who are entitled only to a life interest. Such people are technically known as *life tenants*. Actually they are not tenants in the sense that the tenant on a farm is; they resemble owners more than tenants. During their lifetime they may rent the farm to others, farm it themselves and take all the income, or make nearly any use of it they see fit. They cannot, however, mortgage or sell the land because they are entitled *only* to the use of the property and not to the legal title. The fee, or title interest, belongs to some person who has been designated to take the land at the death of the life tenant or, if no one has been so designated, it belongs to the heirs of the one who created the life estate. Persons designated to take land at the death of the life tenant are called "remaindermen"; if no one is designated to take it, the "reversion" belongs to the creator of the life estate, his heirs or assigns. They are called "reversioners."

Life estates may be created by will or deed or may come about by operation of law. The dower interest the law gives a surviving husband or wife is an example of a life estate created by operation of law. When a person creates a life estate, however, he usually does it to assure a given person an income during life; but he may also wish to designate what shall happen to the land at the end of the life tenancy. Farm owners, for example, frequently deed the farm to their children, reserving a life estate in themselves. Or, a husband may make a will giving the land to his children, subject to a life estate in his wife.

Life tenants who are not related to the remaindermen or reversioners, or who have no interest in them, often use the land in such a way as seriously to impair its value to the next taker. Altho life tenants cannot wilfully destroy buildings, timber, or other parts of the real estate, neither can the remaindermen compel them to use sound farming practices. For this reason many believe life tenancy to be a poor form of ownership.

No matter how long a tenant has rented a farm from a life tenant, he must yield possession of the property at the time the life tenant dies. It is, therefore, good practice for a person who rents a farm from a life tenant to get the signatures of the remaindermen to the lease.

When the death of the life tenant does terminate a farm lease, the person leasing the land is entitled to harvest any crops that may be growing on it. He must pay to the administrator and the remaindermen rent for that part of the lease year which has expired.

Settling estates of those who have died. When a person dies, the property he leaves, both real and personal, must be legally disposed of.

Most of the law concerning the administration of estates was consolidated into the Probate Act by the Illinois legislature in 1939. This act specifies the way estates are to be settled. When the person who has died has left a will, the will must be presented for probate by the person who has it in his possession. The probate court, usually the county court, then issues letters-testamentary to the *executor* named in the will, or to another in accordance with provisions of the law. When there is no will, the person appointed by the court is known as an *administrator*. When both testate property (property *included* in the will) and intestate property (property *not included* in the will) are involved, the court may issue letters to an administrator with the will annexed.

Whether the person who takes over the management of an estate is an executor or an administrator, he is charged by law with the

preservation and management of the estate during the period of administration, the collection and payment of debts, and with making a final accounting and settlement. Many other specific duties are prescribed by law but these are the principal ones.

Executors and administrators should be selected carefully. Unless an executor is appointed by the terms of the will to serve without bond, he must post bond. An administrator must always post bond. When estates are not settled quickly and the property put in possession of those who are to take it, the honesty, interest, and managerial ability of the executor or administrator becomes highly important. When several heirs retain undivided interests in the property after the estate is settled, the possibility of bad and disinterested management is increased still further.

The legal procedures involved in settling estates are so complicated that most executors and administrators need legal assistance.

Both executors and administrators are entitled to a reasonable fee for their services. The amount they receive is determined by the court.

The Probate Act contains a provision for the simplified settlement of estates of less than $1000. The simplified procedure can be used, however, only when conditions specified in the act are met.

Property Not Disposed of by Will

When an owner of property dies without a will, the property descends to the heirs, subject to the dower rights of a surviving spouse (husband or wife). The law governing the disposal of such property is called the law of descent. Property not disposed of by will is known as intestate property; one who leaves such property is known as the intestate. When an intestate's spouse survives, the spouse may choose to take dower or refuse it. (A dower interest is a life interest in the real property.) Each state has laws regulating descent and dower; the following discussion concerns the law in Illinois.

When a spouse and children survive and the spouse does *not* elect dower, the spouse takes one-third of the personal property of the decedent absolutely and one-third of the real property absolutely. The children take two-thirds of the personal property and two-thirds of the real property. If a child has died and left children, the children take their deceased parent's share.

When the *spouse elects dower,* he or she takes one-third of the personal property and dower in the real property. (The dower is life interest in one-third of the real property.) The children take two-

thirds of the personal property and all the real property subject to dower. If a child has died and left children, the children take their deceased parent's share.

This part of the law operates in this way: If a man who owns an 160-acre farm in fee simple dies without a will and leaves a wife and four children, the children will each be entitled to 40 acres subject to their mother's dower interest. Her interest amounts to a life estate in an undivided one-third of the farm. But she does not have to take her dower interest; she can take one-third of the 160 acres, or about 53 acres, absolutely. The four children will then get about 27 acres each.

When a spouse but no children survive, the spouse takes all the personal property and one-half the real property absolutely, or can elect to take dower. When parents, brothers, or sisters survive the decedent, they take equal shares in one-half the real property, or in all the real property subject to dower. If one parent of the decedent is dead and the other living, the living parent takes the deceased parent's share. Likewise, the children of a deceased brother or sister take their deceased parent's share equally.

When no parents, or brothers or sisters, or the children of brothers or sisters survive the decedent, the spouse takes all the personal property and all the real property absolutely.

When children but no spouse survive, the children take equal shares in the estate. If one of the children of the decedent has died leaving children, those children take their parent's share equally.

When neither a spouse nor any children survive, the parents, brothers, and sisters of the decedent take equal shares in the estate. A surviving parent takes a deceased parent's share. The children of a deceased brother or sister take their deceased parent's share equally.

When no spouse and no children, no parents, brothers or sisters, or the children of brothers or sisters survive the decedent, the *collateral heirs* (grandparents, aunts, uncles, cousins, etc.) of the nearest degree of relationship take equal shares in the entire estate.

When there are no collateral heirs, the real property goes to the county in which the land is located; the personal property goes to the county of residence.

Effects of law may prove harmful. In situations such as that referred to above in which a man dies without a will, leaving a wife and four children, the estate usually has to be divided. Its breakup may have several harmful effects. One of the children may try to buy out

all the others and thus become heavily indebted. Or the children may sell their portions to adjoining owners and thus end what might have continued to be a productive farming unit. Partitioning the property between the widow and the children may be costly and slow, eventually burdening the land and perhaps subjecting it to unwise use while it is an unsettled estate.

Because of lack of competent and interested management, a decision of the heirs to remain as tenants in common and have the farm operated as an estate may not be a happy one.

Harmful effects of this law avoided by a will. An owner of property can prevent the difficulties that often arise under the law of descent by making a will or otherwise arranging for the disposal of his (or her) property at his death. Most farm owners want to leave their property in a manner that will be to the best interests of their families. One way to do this is for the owner to reach an understanding with the family concerning the wisest and most economic disposition of the property in the event of his death. It is then for the owner to take the necessary legal steps to carry out the understanding. At this point most owners will need the help of a good lawyer. (For various ways of holding title and advancing family interest in farm property, see pages 20-22.)

Taxes on Real Property

In Illinois farmers pay two kinds of taxes based on the value of their property: real-estate taxes and personal-property taxes. The amount they pay is determined by two things: the assessed valuation of their property and the rate (percent) of the tax levy. The total rate at which property is taxed is made up of various taxes authorized by law and levied for the support of schools, roads, and other specified purposes. These rates are uniform for property in the same taxing district.

By law any citizen of Illinois may request a copy of the description, schedule, and statement of property assessed in his name and the valuation placed on it. Such a request should be directed to the county assessor or supervisor of assessments. With this information a taxpayer has some basis for deciding whether his property has been equitably evaluated.

If, in comparison with the taxes of your neighbor, your taxes are not fair, it is because the value of your property, particularly your real estate if you are a farmer, has been assessed too high. Real estate

and improvements are assessed in Illinois once in every four years. This assessment is known as the *Quadrennial* or *General Assessment.*

If you are not satisfied with the evaluation put on your property, you may apply in writing to the BOARD OF REVIEW of your county, asking for a revision of the assessment. The appeal or complaint must be filed by August 1 to affect the assessment for the current year.

If you fail to pay your taxes for two years, the state may foreclose and sell the property. You may redeem the property within the period specified by law. If you do not, the property passes to the holder of the tax-sale certificate.

Boundary Lines

Disputes over property lines are sometimes hard to settle. The law prescribes this way for arriving at an agreement:

> . . . whenever the owner or owners of adjacent tracts of land shall desire to establish permanently the lines and corners thereof between them, they may enter [into] a written agreement to employ and abide by the survey of some surveyor, and after said survey is completed, a plat thereof with a description of all corners and lines plainly marked thereon, together with the written agreement of the parties, shall be recorded in the recorder's office of the county where the lands are situated; and the lines and corners of said survey so made and recorded shall be binding upon the parties entering into said agreement, their heirs, successors, and assigns, and shall never be changed.

This law also provides that when one owner refuses to have a survey made, the owner of the adjoining land may have a commission of surveyors appointed and the boundaries established.

The following laws are also of interest to landowners:

1. A law providing for the examination and registration of all surveyors.

2. A law permitting an owner to perpetuate facts relating to natural boundaries (streams, trees, rocks), by a petition to the Circuit Court.

3. A provision of the criminal code, making it a misdemeanor wilfully and maliciously to injure or remove any monument erected or tree marked as a boundary.

Owner's Right to Support of His Land

If you make an excavation near your property line that lets your neighbor's land cave in, your neighbor is entitled to be paid for the destruction of his "lateral support." If a coal company tunnels under

your land and causes it to sink, you are entitled to damages for the loss of your "subjacent support."

Lateral support is the right to have land supported by the land which lies next to it.

You as farm owner have a right to lateral support from all owners whose land adjoins yours, even tho part of the adjoining land is a road owned by the public. To what extent the right to lateral support would apply to damage caused by unchecked erosion on the adjoining land is an unsettled question. But the right of lateral support is effective against positive acts such as excavating or road grading. The damages recoverable are sometimes very small; but when a large area is affected, or buildings which for a long time have stood near the property line are caused to fall, substantial damages may be recovered.

Subjacent support is the right to have land supported by the land which lies under it. The right to subjacent support is important in agricultural areas where there is deep coal mining. Unless coal companies have contracts with the surface owners which excuse them from furnishing adequate support, they must use a reasonable degree of care to see that their tunnels are well enough propped to prevent the land from "sinking."

If an excavation made by one landowner is likely to destroy the support of another, the two had best reach an agreement before the work is started.

Protection Against Trespass

Many years ago the legislature passed the first general law against trespass. It was recently amended to read as follows:

> Whoever is about to enter unlawfully upon the enclosed or unenclosed land of another and is forbidden so to do by the owner or occupant, or by his agent or servant, and thereafter enters upon such land, or whoever is unlawfully upon the enclosed or unenclosed land of another and is notified to depart therefrom by the owner, or occupant, or by his agent or servant, and neglects or refuses so to do, or whoever wilfully or unnecessarily or without right enters any orchard, nursery, garden or any farm premises or improved farm land of another when a printed or written notice forbidding or prohibiting trespass in general or in any detail has been conspicuously posted or exhibited at the main entrance to such orchard, nursery, garden, farm premises or farm land, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than five dollars nor more than fifty dollars, and in addition thereto may be imprisoned in the county jail for not more than six months.

This present law is much stronger than any preceding Illinois law on trespass and gives farm owners and occupants more protection against negligent hunters and pleasure seekers than they have had in the past.

Fishing, Hunting, and Trapping Rights

Altho in Illinois the law holds that the ownership of fish and game rests in the state, the legislature felt that the people living on the land should have certain hunting and fishing rights that others do not have. It therefore passed several laws on this subject. The law on fishing reads as follows, and there are similar laws governing hunting and trapping.

> The owners residing on, or tenants of, farm lands, and their children, actually residing on such lands, shall have the right to catch or take with a hook and line, fish of the kind permitted to be taken or caught under the provisions of [the Fish and Game Code] from waters lying upon or flowing over such lands, of which they or their parents are the bona fide occupants or tenants, *without* procuring licenses . . . providing such fishing shall be done during the lawful season.

Any owner or tenant who intends to hunt, fish, or trap under these laws should clearly understand two things:

1. Only *occupants of the land* are excused from procuring a license. Even the children of an occupant must live at home to enjoy this privilege. An owner who does not live on his land must get a license to hunt, fish, or trap on his own land.

2. The law simply excuses occupants *from getting a license* to hunt, fish, or trap. It does not excuse them from other provisions of the Fish and Game Code, nor from getting a license if they want to hunt, fish, or trap on land belonging to anyone else.

Boys and girls under eighteen years of age do not need a license to fish with hook and line. They cannot, however, hunt and trap away from home without a license.

Another law has to do with a farmer's right to protect his crops and livestock from wild animals and birds. In order that he might exercise this right without incurring a penalty under the Game Code, the legislature enacted the following law:

> The owners and tenants of lands may destroy any wild bird or wild animal, other than a game bird or migratory game bird, when such wild bird or wild animal is destroying property upon his or her land, but no poison or poisonous substance shall be used.

Laws Concerning Trees

Questions are often raised about the rights which owners of adjoining property have in trees growing on a boundary line. The general rule is that the owners are *tenants in common;* that is, each of them owns an *undivided* interest in the tree. A rule giving each of them the part of the tree on his property would allow either virtually to destroy the other owner's part without his consent.

When fruit trees grow on one man's property and overhang the adjoining property, the general rule is that the overhanging fruit belongs to the owner of the tree. The owner of the adjoining property, however, may trim the branches or roots of any tree overhanging or encroaching upon his land, provided that he trims only the part on his side of the property line. The law makes special provision for hedge fences growing on division lines (see page 49).

The earliest Illinois law on trees imposed a fine for going on other people's property and cutting trees of any of a number of species. The same penalty was imposed for cutting trees on property belonging to churches and schools. Such cutting of trees was later made a misdemeanor under the criminal code.

The law imposes a penalty for allowing trees to obstruct highways or large streams important to drainage and for destroying trees used as boundary markers. It is also unlawful either to destroy or plant trees along state highways without the consent of the Department of Public Works and Buildings.

The native oak is by law the state tree. By law also the Governor issues a proclamation each spring setting a date for Arbor Day. Individuals and public agencies of various kinds are urged to take part in tree-planting ceremonies on this day.

Besides the laws here discussed, there are many on forestry, forest preserves, and protection against forest fires.

How to Buy Farm Property

Buying a farm is a costly venture. If you are buying one and want to be sure that it is worth what the seller is asking for it, you will either make a thoro appraisal yourself or have one made. In such an appraisal should be included the soil, the improvements, the expected income and expenses, the location and home uses, and all other factors affecting value. If after the appraisal is made, you are sure that it is worth what you will have to pay for it, you will have to take some or all the following steps:

1. Find a credit agency to finance the purchase. Choose an agency that will lend you the money you need on an amortized payment plan (a plan that provides for the reduction of the debt by pre-arranged and equalized installments), and that will charge not more than the going rate of interest. You will do well to get as long a term and as low an interest rate as you can.[1]

2. Draw up a contract with the seller. You and the seller will both sign this contract. Among other things, this contract should clearly specify the following conditions of sale:

(**a**) The amount of the purchase price and how it is to be paid.

(**b**) That insurance policies in force on the property shall be transferred to you, and that any payment for losses occurring following the date of the contract shall be payable as the interests of the parties appear.

(**c**) Whether crops not yet harvested or divided, agricultural-conservation payments not yet paid, or cash rent not yet due are to go to you or to the seller, or how they should be handled. (Provisions covering these points will depend somewhat on the time of year the farm is sold.)

(**d**) Whether you or the seller are to pay current taxes, assessments, and insurance premiums. (These may be divided between you and the seller, the amounts each of you are to pay depending on the amount of the current term of each item that has elapsed at the time of the sale date, or of taking possession, or of taking title. Sometimes the buyer simply agrees to pay all future installments. As a general rule, taxes assessed for the current year are paid by the one who gets the crops.)

(**e**) That the seller shall pay all past assessments, taxes, or obligations of any kind against the land, prior to final settlement.

(**f**) That the seller shall provide an abstract containing all entries up to the present transaction and showing a clear and merchantable title.

(**g**) That the seller shall deliver to you a warranty deed free of exceptions or conditions at the time you make your final settlement with him.

(**h**) Any special things which the seller agrees to do before delivery of possession, such as repairing a building or well.

[1] In Illinois for the past few years money could be had for about 4 percent interest. Twenty years may be considered a reasonable term for the loan tho many sound loans are made for shorter periods.

3. Reach an agreement with the lending agency specifying: (**a**) the amount you are to borrow; (**b**) the interest rate; (**c**) the period for repayment; (**d**) the number, amount, and date of your annual installments; (**e**) your repayment privileges, particularly the amount of principal you can repay in any one year; (**f**) appraisal fees or other loan charges; (**g**) any special provisions to apply if you fail to repay the loan.

4. Have a warranty deed executed by the seller. (**a**) See that this deed is placed in the hands of an escrow agent at the time you make the contract. (The lending agency often acts as escrow agent.)[1] (**b**) See that the deed specifies in whom the title is to vest (you and your wife as joint tenants and not as tenants in common). (**c**) See that it is signed and sealed by the seller and his or her spouse (husband or wife) and contains a properly executed waiver of dower and homestead rights, and is acknowledged before an authorized person.

5. Have the abstract examined. A competent attorney should be employed to do this.

6. Have any defects in title cleared. It is the seller's place to do this before a final settlement is made.

7. Have the deed recorded. Do this as soon as it is received.

8. Check the mortage and notes. See that they are in accord with the original agreement concerning the terms of the loan. A trust deed is often used in place of a mortgage.

9. Consider these additional points. Some of the following points should be cleared early in your planning, some later:

(**a**) Who is now occupying the farm? Is he a tenant, what are his rights? Does he have a written lease? When can his lease be terminated and you take possession? What are his rights in crops and improvements now on the land? (He may own hog houses, hen houses, brooders, temporary fencing. Find out.)

(**b**) If you are buying the farm thru a real-estate firm which offers to find you a loan, get the title examined; draw up the contract with the seller, or place the insurance; be sure that the service offered is competent, that the companies or individuals the real-estate firm

[1] An *escrow agent* is a person to whom a deed, bond, or other written engagement is delivered; he holds it until the performance or fulfillment of some condition. The deposit places the deed or bond beyond the control of the grantor but no title passes until the fulfillment of the condition.

chooses are thoroly reliable, and that the costs are not out of line with those that other companies or individuals would charge.

(**c**) Be sure that there are no valid liens,[1] judgments,[2] or other obligations against the property that would not appear in the abstract.

(**d**) Find out if anyone has an easement[3] to the use of the land as a roadway or for other purposes.

Family Interest in the Ownership of Farmland

The legal interest an owner has in farmland or other real estate may be one of several kinds. He may hold the land in fee simple (the highest kind of ownership). He may have a life interest in it, or he may stand to take it on the death of the life tenant. He may also have one of several other kinds of legal interest in it, some of which, especially those dependent on future events, make ownership insecure and uneconomic. Likewise some kinds of ownership are not so well adapted to some situations as are others.

Suppose a young farmer and his wife, without children, have inherited a farm or part of a farm, or that they bought a farm before they had children. They farm it themselves. Since successful farming is a joint enterprise involving willing and intelligent cooperation between husband and wife, they will be equally interested in the ownership and use of the land. And they will want to make sure that, if either should die, the one who remains can use or dispose of the assets with as little interference and expense as possible.

Disadvantages of fee-simple ownership. In a case like the above, either the husband or wife could take ownership in fee simple, but, even if there are no children, such ownership would be open to at least three objections should the owner die: (**1**) the estate would have to be administered, a costly operation at best; (**2**) there would be a period while the estate was being settled when the surviving spouse would not have unhampered use of the property; and (**3**) by the laws of descent in some states, at least part of the land would go to the decedent's parents or brothers and sisters.

Advantages of joint tenancy. In this case a joint tenancy would probably be better than ownership in fee simple. Should one or the other die, title and ownership of the property would immediately pass to the other spouse and the farm would not be a part of the estate

[1] A *lien* is a legal claim against specific property for some service or benefit rendered to such property. [2] A *judgment* is an obligation created by the decree of a court. [3] An *easement* is the right of the owner of one tract of land to make some use of an adjoining tract.

to be administered. By *joint tenancy* is meant an undivided ownership of property by two or more persons, each having the right to take immediately all the property or his increased interest in it on the death of one of the joint tenants.

Some states require that a specific statement that a joint tenancy (not a tenancy in common) is intended appear in the deed. In those states, if such a statement does not appear in the deed, the conveyance will be called a *tenancy in common.* A tenancy in common differs from a joint tenancy in that it does not carry the all-important right of survivorship, so that when a tenant-in-common dies his share must be set aside and administered.

If this man and his wife should have children, a joint tenancy may still be the best type of ownership for them so long as the children remain dependent. But when the children become older, it may be best to make some other arrangement. If there are boys interested in farming, it might be desirable when they are thru school to include them as joint tenants. If the farm is small and more than one son is interested, it might be better to include one son as a joint tenant and help the others get established in business or on another farm. If the sons are not interested in farming and there are daughters who are, a similar arrangement could be made for them. A daughter has as much right presumably as a son to rear her children on the home farm.

A conveyance to one son with charges on the land in favor of the other children is another possibility. The charges should be reasonable, so they will not burden the land. They can be evidenced by a series of notes of successive maturity dates made out to the other children and making the land security for their payment.

Advantages of life estates and remainders. Farm owners who want to settle the title to the farm before their death and make sure that it passes on to the one interested in operating it often give that person a remainder and keep a life interest themselves. This gives the present owner the continued use and income from the farm for his lifetime. When he dies, all rights to the farm pass immediately to the remainderman without administration.

When life estates are created voluntarily in this way, the life interest is not likely to be harmful to the interest of the remainderman. As a matter of fact, the remainderman will probably be on the farm as a tenant of the person who holds the life interest long before that person's death. (For times when a life estate may be a poor form of ownership, see **Life estates, remainders, and reversions,** pages 9-10.)

Advantages of trusts. A landowner interested in having his descendants receive an income from the property after his death often feels that no one in his family has the interest or ability to handle the farm either as a landlord or an operator. In such case he can convey the land to trustees to manage and arrange that they pay the income to named beneficiaries.

A farm owner who is responsible for the support of small children, a wife, aged parents, or other relatives may find it desirable to make a will which at his death will create a trust for the benefit of his dependents. If he lives and some of the children become interested in farming, he can alter the will and create a joint tenancy or a remainder in favor of the interested children.

Four steps to take to arrange a safe and satisfactory title for a farm family. Many arrangements other than those named are possible. The object of any arrangement, however, should be to make sure that the land is not tied up during a long and perhaps costly settlement of the estate; that what was once a productive farm unit is not destroyed by partitioning; and that the heirs are protected.[1] But no matter what title arrangements are made, every owner of farmland should:

1. Get an up-to-date abstract for the property.

2. If the title is not clear, do whatever is necessary to clear it.

3. Decide, with the help of members of the family and other interested and competent people, what form of present and future ownership will best conserve the farm as a unit of production and also serve the best interests of the farm family.

4. Have the necessary legal documents prepared and signed.

PERSONAL PROPERTY

Personal property is any kind of property that is not real property. Land and the improvements permanently attached to it are real property. Money, stocks, bonds, household goods, livestock, farm machinery, clothing, jewelry, etc., are all personal property. For many purposes the law treats personal property, or "chattels," quite differently from real property. Following are some of the differences it makes:

1. Your personal property is *not subject to the same tax laws* as those that govern the taxation of real property.

[1] For a discussion of situations which may arise when arrangements for disposal have not been made, see **Property Not Disposed of by Will,** pages 11-13.

2. If you die without leaving a will, your personal property will pass first to the *administrator of the estate.* After all debts and other obligations imposed by law have been satisfied, the remaining personal property, if there is any, passes to your heirs. Real estate (real property) passes directly and immediately to your heirs.

3. Your rights in personal property are determined by the *law of the state in which you reside;* your rights in real estate are determined *by the law of the state in which the property is situated.*

4. You can transfer personal property with fewer legal controls than those that govern real property. Real property must be conveyed in writing and in accordance with the statutes governing its mode of transfer.

5. The usual instruments used to make personal property the *security for a debt* are the chattel mortgage, the conditional sales contract, and the forms required to perfect a statutory lien. The instruments usually used to secure real estate are the mortgage deed and the trust deed.

6. The types of legal action which you can take to *recover personal property* or to *secure damages* for the loss of it are different from those you would use to recover real property or to secure damages for its loss.

7. If you are a tenant, you can take from *rented premises* the removable fixtures that belong to you providing you remove them during your tenure; you cannot remove improvements or fixtures which are regarded as "affixed to" or a part of the real estate.

8. The law does not generally recognize *future estates or interests* in personal property; it recognizes them in real property.

INSTRUMENTS OF CREDIT AND SECURITY

Interest Rates

Statutory rate. According to common law, if you are lending money and fail to make an agreement with the borrower about the rate of interest the loan is to carry, you can collect no interest. To do away with this rule, the Illinois legislature established a statutory rate of not more than 5 percent to apply only when borrower and lender have not definitely contracted for or agreed on a different rate.

Legal rate. The legislature established 7 percent as the legal rate

of interest. The interest agreed upon is part of a contract. Any agreement to charge a higher rate of interest (except as discussed below) makes the whole contract invalid. The law also demands that a contract in which the interest is to be 7 percent be in writing. An oral agreement or an unsigned writing will bear only 5 percent, the statutory rate.

The courts have held that it is usurious, therefore unlawful, to charge a commission for making a loan which, when added to the interest rate, amounts to more than 7 percent a year on the money advanced. There are, however, three exceptions to the 7-percent limit:

1. A corporation may agree to pay more than 7 percent interest on a loan.

2. Anyone may charge more than 7 percent interest on a loan of not more than $5,000, if it is repayable on demand and secured by warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds, or other negotiable security pledged as collateral and if the loan is evidenced by writing.

3. A company organized under the Small Loans Act may make loans of $500 or less and charge as much as 3 percent interest a month on the first $150, 2 percent on the next $150, and 1 percent on the balance.

The first two exceptions could affect farmers but are not likely to. The third, however, has especial interest for them since so many use the credit that small-loan companies offer.

The law prohibits small-loan companies from encouraging borrowers to split or divide loans, to collect service charges and advance payments, and to compound interest. It also provides that companies may not obtain a higher rate of interest by permitting husbands and wives to have separate contracts for loans at the same time.

The law also contains detailed provisions for the licensing and bonding of small-loan companies and requires them to keep certain records. (For a further discussion of small-loan companies, see **Small loans,** pages 26-27.)

Short-Term Credit

Chattel mortgages. A chattel mortgage is the most common form of security for the short-term credit that farmers use.

A chattel mortgage allows the owner of personal property to transfer his legal title to another in return for a loan and at the same time keep and use the mortgaged property. The kinds of personal property

most often used as security in a chattel mortgage are feed, growing crops, livestock, and machinery. Other kinds of equipment may also be used. The mortgage must describe the property well enough to make it identifiable.

The law places two important limitations on the use of personal property as security for chattel mortgages. One is that a chattel mortgage which includes household goods must be joined in by both husband and wife. The other is that a landlord's statutory lien against crops takes precedence over the lien created by the mortgage.

To sell or dispose of mortgaged property without the written consent of the person who holds the mortgage is illegal. The penalty for doing so is a fine. The maximum fine may be twice the value of the property sold and a jail sentence not to exceed one year, or both.

To be valid against third parties, a chattel mortgage must be: (1) notarized, and (2) deposited for filing or recording in the office of the recorder of deeds within 10 days of its execution (signing). Moreover, the obligation secured by the mortgage must not mature more than five years after its execution.

When you pay off a chattel mortgage, be certain that a release is entered with the county recorder.

Chattel mortgages on feed, fertilizers, and unplanted crops. No chattel mortgage *on feed which is to be consumed* shall be invalid so long as the feed is consumed by livestock included in the same mortgage, or by livestock (horses and mules) used in producing a crop included in the mortgage.

No chattel mortgage on *fertilizers or seed to be used* shall be invalid if such seed or fertilizer is used to produce a crop included in the mortgage.

No chattel mortgage on *a crop not yet planted* shall be invalid so long as the crop can be matured within 12 months after the date of the mortgage.

Conditional sales. Every year Illinois farmers buy millions of dollars' worth of equipment, particularly trucks and automobiles, under conditional sales contracts. The Illinois courts have defined a typical conditional sale as a "transaction under which personal property is sold and delivered to a purchaser under a contract reserving title in the seller until payment is made."

The purpose of such a conditional contract is to give the buyer use of the property before he has paid for it and to protect the seller until the condition (payment of purchase price plus interest) is fulfilled.

If you are buying anything under a conditional sale contract, you will need to keep three facts in mind:

1. The total cost of an article will be more than the cash purchase price because of interest and service charges. Before signing a contract, be sure you know what interest rate you will have to pay and what the other charges will be.

2. Payments are ordinarily made in installments. Failure to pay an installment when it is due is ground for ending the contract. If the seller ends the contract, *he keeps all the payments made* on the article. Every buyer ought to understand very clearly this part of the contract.

3. The conditional sale, like installment buying, often requires little initial cash and is therefore likely to tempt some people to spend money unwisely. You should know from your farm records and your past and probable future income how much you can afford to take out of your earnings to meet the conditions of a contract of this kind. Consider also how soon and how urgently you need the property.

Conditional sales are not recorded. In Illinois there is no provision for recording conditional sale agreements. Since a buyer under such a contract has the property in his possession, he appears to be the owner, but he cannot sell the property without the consent of the seller. To do so constitutes breach of contract, no matter what property interest the buyer may be able to pass on to a second buyer. There are exceptions to this rule: the conditional sale of goods for resale is one exception.

In the past, Illinois courts have been inclined to protect persons who unknowingly purchase property covered by a conditional sale agreement or who accept such property as security. Because, however, of the widespread use of conditional sale contracts, particularly in the sale of trucks and automobiles, and because of the construction the courts have put on the provisions of the Uniform Sales Act, it is good business for a prospective buyer of such property to make sure that the property has been paid for. If, however, the seller is an authorized dealer, it will not be necessary to investigate ownership.

Small loans. Farmers in Illinois use millions of dollars' worth of short-term credit every year. Much of this credit they obtain from companies specializing in small loans.

Small Loans Act. The provisions of the Small Loans Act subject small-loan businesses to certain regulations. The law allows these companies to charge up to 3 percent a month on the first $150 of the unpaid principal of loans not larger than $500. They may charge 2

percent a month on the next $150 and 1 percent on the balance. This means that they may charge 33 percent interest yearly on $300, 35 percent on $150 or less, and between 33 and 36 percent on an unpaid principal balance of $150 to $300. Monthly payments on the principal reduce the amount on which interest must be paid for any succeeding month. (See page 24(3) for further discussion of small loans.)

Interest too high for farmers. Small-loan companies have a place in the credit field. Still it is not good business for farmers to use credit that may cost them as much as 36 percent a year when they can borrow money for less. Moreover, a farmer who is in a business with a good turnover should try to pay cash for small items and use his short-term credit only in substantial amounts, at reasonable interest rates, for buying livestock, grain, or equipment. A dairy, poultry, or mixed livestock and grain farm usually has a large enough turnover to permit such money management.

Long-Term Credit

Mortgages. Farms are sometimes bought for cash. Most buyers, however, can pay only part of the purchase price and must borrow the rest. Money loaned on land is usually secured by a first mortgage.

A mortgage has been defined as "a deed with a defeasance clause." This means that the borrower (*mortgagor*) makes a deed conveying legal title to the lender (*mortgagee*) on condition that when the amount specified has been paid, the deed will become void. The statement of this condition is the "defeasance clause."

In order to protect the mortgagor, Illinois courts have held that a deed without this clause in it may still be a mortgage if there is adequate proof that both parties intended it to be. It is important, however, that the mortgagor be sure he signs a mortgage, not a deed.

Mortgage form. To encourage the earmarking of instruments intended as mortgages, the Illinois legislature passed a law providing that mortgages may be in substantially this form:

The mortgagor (*insert name or names*) **mortgages and warrants to** (*insert name or names of mortgagee or mortgagees*) to secure payment of (*insert nature and amount of indebtedness, date payment is due, rate of interest, and whether secured by note or otherwise*) the following described real estate (*insert legal description*) situated in the county of _____, in the State of Illinois.

Dated this _____ day of _____ A.D. 19____.

(*Signature*)_____ (L.S.)

Mortgages do not have to be in this form. Many agencies, however, now use a mortgage designated as the "statutory form," which incorporates the legislative provisions.

Trust deeds. Mortgages are commonly thought to be the instruments most generally used in making farmland the security for a loan or indebtedness. As a matter of fact, deeds of trust are widely used in place of mortgages. A deed of trust is:

An instrument in use in many states, taking the place and serving the use of a common law mortgage, by which the legal title to real property (land and improvements) is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions.

A trust deed differs from a mortgage principally in the fact that a third party is brought into the transaction for the sole purpose of holding title until the seller or lender has been paid. When the notes which the trust deed secures have been paid, the trust ends, a release is executed and recorded, and the legal title passes to the buyer.

Trust deeds are subject to foreclosure, redemption, and other legal processes in the same way as are mortgages. In Illinois notes secured by trust deeds are recognized as legitimate investments for guardians and conservators.

It is important that a trust deed state that it is security for a specific indebtedness (the amount, dates payable, rate of interest, and names of the parties are necessary), and that it is for the use or benefit of the legal holder of the indebtedness.

Trust deeds require the same signatures, seals, and acknowledgments as other deeds of real estate.

Trust deeds have uses other than that of securing indebtedness. For instance, they are frequently used to establish and endow charitable, educational, and religious organizations.

Contract purchase of farms. The use of the installment contract has long furnished one means of buying city property. The contract reserves the title in the seller until he is paid. An independent agent, usually a bank, keeps the deed until the contract has been performed, at which time the deed is delivered to the purchaser. The agent is known as an *escroee* or *escrow agent.*

Farmland is not usually sold in this way. When a man buys a farm, he usually receives a deed and gives the seller a mortgage. He may sometimes, however, use a trust deed to secure the unpaid balance. In certain parts of the state there seems to be an increase in the

use of the installment contract as a means of buying farmland. The contract defers delivery of the deed until a stated amount of the purchase price has been paid or a given number of installments made.

Tho such contracts can be adapted to the sale of farmland, they are often used by an owner simply as a means of getting more rent. Suppose you want to buy a farm and you sign a contract agreeing to pay the seller a specified yearly installment plus interest. The amount is often more than a fair rental. You also agree to keep up or to make improvements on the farm and to pay taxes and insurance. You may have made a small down payment besides. The seller holds the title and does not give you a deed until you have paid a given number of annual installments — perhaps five. If you pull thru on the contract, it will have been a very favorable arrangement for the seller. If you are not able to meet some installment, you can be put off the farm, and your payments will then go as rent. In the meantime you have paid the taxes, made improvements, and taken care of all farm expenses, including what would have been the landlord's share. If you made a down payment, the seller keeps it, too.

This method of selling land can be fairly used, but it often is not. A seller sometimes uses it to encourage an unsuspecting tenant, who is anxious to buy a farm, to commit himself beyond the ability of the farm to pay. It is especially likely to be used by unscrupulous sellers in disposing of farms that appear to be much more productive than they are.

RIGHTS OF LANDLORD AND TENANT

Agreements Between Landlords and Tenants

Every tenant in Illinois who rents farmland holds the farm under some kind of agreement. It may be an oral or a written agreement, long or short, adapted or not adapted to the farm and, as a written instrument, valid or invalid. In short, as a means of aiding the parties to it, it may be good, bad, or indifferent.

Legal essentials of a written lease. The most common agreement between landlords and tenants is a lease. To be legal a written lease must meet five requirements: (**1**) it must be *signed by both parties;* (**2**) it must specify a *definite period* during which the farm is to be leased; (**3**) it must contain a *description* of the property; (**4**) it must name a specific *lessor* (landlord) and *lessee* (tenant); and (**5**) it must provide for the payment of *rent.* A desirable farm lease contains, of course, more than these bare essentials.

Oral agreement. In the eyes of the law, if you rent a farm and do not have a written lease, you are a tenant from year to year. As a year-to-year tenant, you have only such rights as you are able to prove. Many oral agreements do not easily admit of proof.

One-year leases. A good many tenants, at the time they rent a farm, execute a one-year lease. If you are a tenant with such a lease, you must have it renewed in writing at the end of the year; otherwise you may find that your landlord can require you to move on less notice than that established in your original lease, or that issues which the original lease covered are not now covered since without renewal of the lease in writing you have become a year-to-year tenant. From your standpoint as a tenant, a fair lease in writing is highly desirable.

Notice to vacate land. Under a written agreement, a tenant is entitled only to the period of notice specified in his lease. If you are a tenant and have accepted the terms of a written agreement, one of which requires you to vacate the land immediately upon notice, you are bound by your agreement. If you do not have a written agreement, or if your written lease has expired and you are holding the land as a year-to-year tenant, the law in Illinois requires the landlord (or his agent) to give you 60 days' notice in writing. The notice must be delivered prior to the last 60 days of the term for which you have rented the farm and cannot be delivered earlier than four months prior to the last 60 days of the term. If, for example, the term ends on March 1, as the terms of most farm tenants do, notice would have to be given you between September 1 and January 1.

The period of notice provided by law does not always protect you (as a tenant) since it may be given after you have done your fall plowing and seeded wheat or spread limestone or fertilizer. By law you cannot recover in money for your work or seed or fertilizer, but you are permitted to harvest the wheat or other fall-seeded grain.

The best protection for both landlord and tenant is a good written lease, covering the essential points in the operation of the farm and specifying a long enough period of notice to give both parties a chance to make adjustments, preferably a period of six months to a year.

(*For more information about the law on farm tenancy, see Illinois Bulletin 465, "Legal Aspects of Farm Tenancy in Illinois." For discussion of the law concerning the legal position of a tenant who rents from a landlord having only a life interest in a farm, see page 10.*)

Landlord's lien. (For discussion, see pages 35-36.)

Tenant's Right to Take Removable Fixtures

Whether a tenant has a right to remove certain kinds of improvements erected at his own expense — hog houses, temporary fences, or cribs — is a question which often arises between farm landlord and tenant. Often neither has given any thought to the question until the tenant, having to move, proposes to take the improvements with him and finds that the landlord claims they are part of the real estate and must be left.

Conditions tenant must meet. An Illinois law clarifies to some extent the rights of each. It provides that:

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

This means that if you are a tenant and are to be entitled to your privileges under this law, you must meet three conditions:

1. You must not owe the landlord back rent; if you do, the landlord may distrain (hold) the improvements.

2. You must have put the improvements on the land yourself.

3. You must remove them *before* your term expires; if you do not, you will not be on the land as a tenant, and you cannot, therefore, by law remove them.

This law does not cover specifically those cases in which the tenant brought improvements with him. The courts have indicated, however, that the term "erected" includes improvements brought onto the farm as well as those a tenant actually erected or built there.

What are removable fixtures. The usefulness of the above law depends a great deal on the interpretation of the phrase "removable fixtures." The Illinois courts have held that a corn elevator set in a concrete foundation and a crib built on posts sunk in the ground are not removable fixtures, but that a blacksmith shop on skids is. *The general rule is that a fixture is removable when the parties intend it to be and when it can be removed without undue injury to the land or other buildings.* As a matter of fact nearly any structure not fastened permanently to another building or put on concrete foundations can be removed. Such buildings would include individual hog houses, brooder houses, and similar structures.

Any question whether such things as fences, windmills, cribs, bins,

or lean-to sheds can be removed should be settled in a lease. If you are a tenant without a written lease, or if the structure you are going to build is not covered by it, before you begin to build you should get a written agreement from the landlord allowing you to remove it or promising to pay you its fair unexhausted value when you leave.

Landlord's Right to Harvest Crops

Poor health, discouragement, poor crops, or better immediate prospects elsewhere sometimes lead a tenant to move before the term for which he has rented a farm has expired. Occasionally a tenant leaves before harvest without having made any arrangements to take care of the growing crops. When this happens the landlord's security for rent is endangered, and so the law protects him with this provision:

> When a tenant abandons or removes from the premises or any part thereof, the landlord or his agent or attorney may seize upon any grain or other crops grown or growing upon the premises or part thereof so abandoned, whether the rent is due or not. If such grain or other crops or any part thereof is not fully grown or matured, the landlord or his agent or attorney shall cause the same to be properly cultivated and harvested or gathered, and may sell and dispose of the same, and apply the proceeds, so far as may be necessary, to compensate him for his labor and expenses, and to pay the rent: *Provided*, the tenant may, at any time before sale of the property so seized, redeem the same by tendering the rent due and the reasonable compensation and expenses of the cultivation and harvesting or gathering the same, or he may replevy [*retake*] the property seized.

In interpreting this law the Illinois courts have held that it does not give the landlord the right to mature and harvest crops growing at the regular termination of the lease, but gives him the right only when the tenant leaves before the termination of the lease. Tho the act specifies that the landlord is to retain only rent, labor, and expenses out of crop sales, the courts have held that he is also entitled to damages for nonperformance of agreements in the lease. When, however, the tenant redeems crops matured and harvested by the landlord, the landlord is entitled, according to the law, only to rent due and to reasonable compensation and expenses for cultivating and harvesting.

The law makes no provision for livestock which a tenant abandons.

FARM MANAGER'S RELATIONS TO OWNER AND TENANT

If you own a farm and hire a manager for it, the manager is legally your agent and the general laws of agency apply to your relations (there are no specific state laws concerning farm managers). As your agent he can make you liable on contracts executed in the regular course of the farm business.

Owners often give their farm managers these powers: to insure buildings and other property belonging to the owner and to pay the insurance premiums; to sell grain and livestock belonging to the owner; to buy as much seed, feed, fertilizer, livestock, and materials as is necessary to meet the owner's obligations under the lease; to plan and supervise the putting up or the repair of buildings and improvements; to hire skilled labor for building, painting, ditching, fence building, or other work for which the landlord is responsible; to pay taxes on the farm property; to collect the rent and pay it to the owner; to find or to change farm tenants; to enforce the landlord's lien for rent; to evict tenants who refuse to move after due notice; to work with tenants in planning crop, livestock, and soil maintenance and improvement programs for the farm.

Thru negligence or neglect of duty, your farm manager may make you liable in personal injury cases. If, for example, he fails to have a dangerous well-top or a weak floor repaired, and someone comes to the farm and falls into the well or steps thru the floor and is hurt, you may be liable for damages.

If you are a tenant operating under a manager, you may deal with the manager instead of the owner in all matters except those in which you have been told by the owner that the manager does not have the power to act for him. Before you pay the manager the rent or other money due the owner, or before you accept a lease signed by a manager, be sure you know what his authority is.

FARM PARTNERSHIPS

The use of livestock leases and profit-sharing plans between father and son or employer and employe have lately been increasing. Such leases or agreements are often called "farm partnerships." They are partnerships in the sense that they are joint and cooperative arrangements between an owner and his tenant, or a father and his son, for carrying on the farm business and for receiving farm income propor-

tionate to each's contribution of land, equipment, livestock, feed, seed, fertilizer, machinery, labor, and operating expenses.

The general assumption is, however, that few of these arrangements are partnerships in the legal sense. Whether or not they are legal partnerships is important because if an owner and his tenant or a father and his son are in partnership, either of the partners can make contracts for the business, sell partnership property, or create partnership debts without the consent of the other. Moreover, the partnership would require a separate income-tax return and, should one of the partners die, there would have to be a partnership accounting.

The Illinois legislature in 1917 passed the Uniform Partnership Act, a standardized law now in effect in several states and Alaska. This act defines a partnership as "an association of two or more persons to carry on as co-owners a business for profit." It also says what is not a partnership: joint ownership of property, common ownership of property, or part ownership does not of itself establish a partnership; the sharing of gross returns does not of itself establish a partnership; the receipt by the landlord of a share of the profits, if received by him as rent, does not, of itself establish a partnership.

By definition, therefore, many enterprises in which a tenant or a son contributes only labor would not be partnerships. Whether or not a partnership exists between the parties depends partly on their intention. One who has to deal with a farm owner or a tenant is not, however, bound by the intentions of the parties, but may judge from their actions and the business setup whether there is a partnership. Each case must be considered by itself.

An Illinois appellate court held a livestock-share arrangement to be a partnership. In that case, however, there appeared to be an intention to create a partnership. Then, too, the Uniform Partnership Act had not yet been adopted.

If the parties do not wish to create a partnership, they should: (**1**) draw up a lease which states that no partnership is intended and specifically designates the landlord's share as rent; (**2**) agree that mutual consent is necessary for major purchases and sales, or specify who shall have authority to handle various kinds of transactions. These arrangements are not absolute insurance that the arrangement will not be considered a partnership, but they will add weight to the view that it is not.

AGRICULTURAL LIENS

A lien is a claim against specific property for the payment of a debt arising out of some service rendered to the property. The Illinois legislature has enacted laws giving people who render certain services a lien against the thing on which the service was rendered, until the charge is paid. If the charge is not paid, the lien may be foreclosed and the property sold to satisfy the debt. A mechanic, for example, has a lien for work he has done on an automobile or tractor and a lumber dealer for the lumber bought to build a house or a barn.

Because of their nature, some of these liens have been called *agricultural.* In Illinois there are several such liens. Stable owners and those who keep, yard, feed, or pasture domestic animals for others have a lien against the animals for feed and labor. Laborers, including farm hands, have preferred or prior liens for wages in cases in which the employer becomes insolvent. The owners of stallions and jacks registered with the State Department of Agriculture have a lien for the service fee against the mare or jennet and the progeny. To get the benefit of this lien, the owner of the stallion or jack must file a claim for lien (in writing and under oath) with the county recorder within eighteen months after the service.

When the commissioner of noxious weeds has to go on a man's land and destroy the noxious weeds, the county has a claim against the land for the expense of destroying the weeds. If the owner of the land does not pay the expenses, the county can foreclose the lien and, if necessary, sell the land. Similarly, taxes, drainage assessments, and other public charges against property constitute liens against such property until they are paid.

Landlord's Lien

Most states have a landlord's lien which gives the owner of the land a claim against the crops of his tenant for rent. The present Illinois law concerning a landlord's lien provides that:

> Every landlord shall have a lien upon the crops grown or growing upon the demised [rented] premises for the rent thereof, whether the same is payable wholly or in part in money or specific articles of property or products of the premises, or labor, and also for the faithful performance of the terms of the lease. Such lien shall continue for the period of six months after the expiration of the term for which the premises are demised, and may be enforced by distraint [holding] as in this Act provided.

As interpreted by the courts, this law has the following meanings:

1. The landlord's lien applies only to crops grown during any one year for the rent for that year. Fall-seeded crops, such as winter wheat, are exceptions, the court having held that since they grow in two different years they are subject to the rent for those two years.

2. The lien applies only to crops grown on land for which the landlord is entitled to rent.

3. The lien applies only to crops, not to other property of the tenant.

4. Since the lien is not against the tenant, but against the crops, it attaches even tho the grain may have been sold; the third party (usually an elevator) is subject to the lien unless it can be shown that the elevator operator had no reason for thinking the grain was grown on rented land. Many landlords furnish lists of their tenants to local elevators simply as a matter of protection.

5. The landlord's lien is superior to chattel mortgages or other claims against the crops.

Threshing, Baling, and Shelling Lien

Under an Illinois law the owners of threshing machines, clover hullers, corn shellers, and hay balers have a lien against the crop threshed, hulled, shelled, or baled. The lien attaches when the service is rendered and lasts for eight months. It is security either for the contract price of the job, or if no agreement was made, for a reasonable price.

These are the important facts concerning this lien:

1. It is good for eight months even tho the owner of the grain, hay, or clover seed retains full possession and control over it.

2. It is not valid against a purchaser unless the lien holder gives the buyer written notice of his lien before the buyer has made a final settlement with the seller.

3. There are no Illinois decisions on the application of this law. Lien laws, however, are strictly construed. If the Illinois courts adopt a strict interpretation, it is doubtful if the owners of mechanical corn pickers are entitled to a lien for custom work. It is also true that combine and pick-up balers were not in existence when the law was passed. The present language of the act, however, is such that the courts would be likely to consider that the owners of such machines were entitled to liens. Whether the courts will so hold is still problematical.

4. To enforce this lien, the holder must give the owner 10 days'

written notice that he intends to sell the property at a stated time and place. If the owner does not settle with the lien holder, the property may be sold and the lien satisfied. Any returns that remain after the lien is satisfied go to the owner.

Mechanic's Lien

Under Illinois law, builders, contractors, laborers, and materialmen have a claim for services performed or materials supplied, both against the buildings and against the owner's interest in any land connected with the buildings.

The lien attaches to the property on the date of the contract for service or materials. The basis of the lien is the existence of a contract. The contract, however, does not have to be in writing. To be effective against other creditors, a mechanic's lien must be either foreclosed or filed with the clerk of the circuit court within four months after the contract is completed. Lumber dealers, for example, and materialmen, architects, carpenters, painters, and contractors and their laborers are entitled to the lien.

The law generally applies to buildings and permanent fixtures. Putting on roofing and porches, adding rooms, installing baths and like improvements and repairs entitle the materialmen and contractors to a lien. The Illinois courts have held, however, that selling and installing lightning rods, building fences, furnishing fence posts, and moving buildings do not constitute the kind of service and material intended in the act and that the lien does not apply in these instances.

Any property against which a mechanic's lien has been foreclosed may be redeemed by paying for the services or materials for which the lien exists plus the costs and interest.

It is important that a farm buyer find out if any unsettled mechanic's liens exist against the house, barn, or other farm buildings. If such claims exist, and if the seller does not pay them, the buyer will either have to pay them or suffer a foreclosure against his property.

A mechanic's lien is against real property. It should not be confused with a lien granted garagemen and others for labor on or storage of chattels.

Storage and Repair Lien

Concerning storage and repair liens, the Illinois statutes make this provision:

> . . . every person, firm, or corporation who has expended labor, skill, or materials upon any chattel, or has furnished storage for said chattel, at

the request of its owner, reputed owner, or authorized agent of the owner, or lawful possessor thereof, shall have a lien upon such chattel beginning on the date of the commencement of such expenditure of labor, skill and materials or of such storage for the contract price for all such expenditure of labor, skill or materials, or for all such storage, or in the absence of such contract price, for the reasonable worth of such expenditure of labor, skill, and materials, or of such storage, for a period of one year and after the completion of such expenditure of labor, skill or materials, or of such storage, notwithstanding the fact that the possession of such chattel has been surrendered to the owner, or lawful possessor thereof.

Garagemen and automobile mechanics form the largest class of persons benefiting from this law. A farmer who has had work done on his automobile or tractor subjects it to the lien.

After a chattel has been returned to the owner, this lien lasts for only 60 days, unless within the 60 days the lien claimant files a notice of claim with the county recorder.

Agister's Lien

English law very early recognized that those who pasture or feed the livestock of others have a right to keep such livestock until they have been paid for the pasture or feed. The person entitled to such a lien is called an *agister*. An Illinois law provides that "agisters and persons keeping, yarding, feeding, or pasturing domestic animals, shall have a lien upon the animals agisted [pastured], kept, yarded, or fed, for the proper charges due for the agisting, keeping, yarding, or feeding." The Illinois courts, interpreting this law, have established three important facts:

1. To be entitled to an agister's lien, the person claiming it must have the animals in his charge and under his control. An elevator company or feed company is not entitled to a lien simply because it supplies feed to another on credit.

2. There must be at least an implied agreement for the pasturing, feeding, or care before the lien can attach. One who wrongfully keeps the livestock of another is not entitled to a lien.

3. An agister's lien does not take precedence over a chattel mortgage unless the chattel mortgagee (one who lent money) consents to an arrangement whereby persons other than the mortgagor feed and care for the animals. A mortgage executed, however, while the animals were under agistment would be subject to the lien.

To enforce this lien, the one entitled to it, while still in possession of the animals and after requesting reasonable or agreed compensation

from the owner, may give 10 days' written notice to the owner, stating the time and place at which the property will be sold. After due publication of notice, as required by law, the animals may be sold and the amount claimed for feed, keep, or pasture recovered, together with the costs of the proceeding. The remainder, if there is any, is paid to the owner.

CONTRACTS AND WARRANTIES

Contracts[1]

What a contract is. Simply defined, a contract is "an agreement, upon sufficient consideration, to do or not to do a particular thing." Thus there are two absolutely necessary elements: agreement between the parties and adequate consideration.

Agreement between the parties. There must be a mutual understanding or a "meeting of the minds" before a contract can exist. If the parties are mistaken as to what was intended, there is no contract. Such agreement is usually reached thru a process of offer and acceptance, oftentimes including counter offers and much altering of conditions before an agreement is finally reached. Questions which concern delivery, quantity, weight, price, quality, payment, or any other things that may affect the agreement should be settled.

Adequate consideration. To be enforceable, a contract must provide that the parties exchange something of value. The thing of value may consist of money, labor, goods, or a promise to do or not to do some specific thing. A contract may come into existence when each party has promised something of value to the other, or when one party actually performs his part of the agreement in return for a promise from the other.

A valid contract is enforceable at law. If one party fails to carry out its terms, the other may seek one of two remedies: he may either sue for damages, or he may force the party who is not carrying out the terms to perform them. Forcing the performance of the terms is called specific performance.

Some contracts must be in writing. Most contracts which a farmer makes need not be in writing to be valid, but there are three important exceptions: (1) transfers of real estate and farm leases must be in writing; (2) a contract that is not to be performed within one

[1] For discussion of wage contracts, see pages 41-42.

year after it is made must be in writing and signed; (3) a contract to sell goods valued at $500 or more or a sale of such goods is enforceable only if the buyer accepts part of the goods or makes a partial payment, or if the contract is in writing and signed.

Contractual rights of a wife. By common law, when a man and woman married, they became as one. The "one" was the husband. He controlled his wife's person and property rights, was entitled to any money she might earn from outside employment, and represented her in suits and actions at law.

In Illinois and in other states, these common-law principles have been replaced by statutes giving women equal property rights with men. Illinois law gives married women the following rights: to own, purchase, sell, mortgage, or otherwise deal with her own personal and real property; to sue and to be sued without joining her husband with her; to defend in her own right if she and her husband are sued together; if she is deserted by her husband, she can prosecute or defend in his name any actions he might have prosecuted or defended; to be immune from her husband's creditors except in so far as his obligations are for family expenses and the education of their children; to enter into contracts; to "receive, use, and possess her own earnings, and sue for them in her own name, free from the interference of her husband or his creditors."

The law, however, does limit the right of husband and wife to contract with each other by providing that "neither husband nor wife shall be entitled to recover any compensation for any labor performed or services rendered for the other, whether in the management of property or otherwise." Interpreting this portion of the law, the courts have held that a wife is not entitled to compensation for nursing her husband during illness, nor is the husband entitled to compensation for labor performed on his wife's farm.

Warranties

A product sold by a merchant or dealer is accompanied by an implied warranty that it will do the thing it is supposed to do, or is fit for the use it is intended for. This is an established principle of law. Therefore if you buy a hayrake and find that you cannot use it because it has a mechanical defect, you can return the rake and get your money back. As a matter of business practice, sellers oftentimes "make the buyer whole" by replacing defective parts or by allowing him credit for further purchases.

Two important kinds of warranties — express and implied — accompany the sale of personal property (chattels). An *express* warranty results from plain statements the seller makes about the goods. An *implied* warranty results as a matter of law from the nature of the transaction and of the subject matter. When you buy a brooder stove, there is an implied warranty that it will burn satisfactorily and create enough heat for the amount of space that such stoves normally heat. There is no warranty that it will do something which such stoves do not ordinarily do unless the seller expressly so warrants.

A merchant or dealer, trying to make a sale, often makes representations which, while not true, are not stated expressly enough to constitute a warranty. His representations, called "puffing," do not become a part of the contract of sale. *Express* warranties are not often made. *Implied* warranties, however, accompany nearly everything a farmer buys or sells and are therefore more significant.

The following implied warranties are especially important to farmers: that livestock feed is fit for farm animals to eat; that if planted under normal conditions, seed will grow; that farm implements will perform satisfactorily the operations for which they are designed; that serum and virus are effective for the use for which they were made.

FARM LABOR

Farm Wage Contracts

The thoroness with which farm employers and farm laborers discuss the terms of employment varies considerably. From a legal standpoint such agreements have at least three important characteristics: (**1**) nearly all of them are oral; (**2**) most of them do not specify the length of time the laborer is to work: (**3**) many do not specify the wage he is to get.

Term of employment is important. If a wage contract specifies an indefinite term of employment or a term that will end within a year from the time the contract is made, the contract is valid whether it is in writing or not. But if the term of employment agreed upon is for a year or more, the agreement to be valid must be in writing and signed by both employer and employe.

The Illinois courts have held that when a man is employed for an indefinite time, the agreement constitutes a *hiring at will*. In controversies, facts may be introduced to show that he is employed by the day or by the month. Illinois decisions nevertheless indicate that

he is hired at will and that he may quit or be discharged at any time without incurring any liability or acquiring any rights because of the quitting or the discharge.

The application of this rule has sometimes been unjust to married farm laborers, because it has forced them to move out of their homes without sufficient notice. A simple written wage contract that states the length of time for which a man is hired and that provides that notice to quit be given a definite time in advance of the end of the contract would give a married farm laborer the protection he needs. When, however, a definite term has thus been agreed upon in writing, it is binding upon both employer and employe.

Wage rate. When a farm laborer is employed at no specific wage, the prevailing rate in the community for the kind of work he does will apply. Sometimes, however, the employe agrees to let the employer pay what he thinks the services are worth. Courts have generally held that such an agreement is invalid because the amount to be paid is not definite. This means that a laborer could not rely on his contract to recover wages. He would be entitled, however, to a reasonable wage for labor actually performed.

Other forms of payment. Questions about garden space, meat, milk, bonuses, and other forms of payment should be well settled between the parties. Agreements concerning room, board, laundry, chores, and Sunday work should be made with single men.

Employer's Liability

Farm owners and operators ask many questions about their liability for injuries to farm laborers or other laborers they employ, particularly as to the liability they may incur under the provisions of the Illinois Workmen's Compensation Act.

Agricultural exemptions. The Workmen's Compensation Act is a law making industrial employers generally responsible for injuries occurring to their employes during their hours of employment and laying down certain conditions concerning liability insurance. An agricultural exemption in the act reads:

> . . . nothing contained herein [that is, in the section which makes the act apply automatically to certain hazardous occupations] shall be construed to apply to any work, employment or operations done, had, or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, or to those who rent, demise, or lease land for any such purposes, or to anyone in their employ, or to any work done on a farm

or country place, no matter what kind of work or service is being done or rendered.

This language would seem to exclude a farm employer from liability for any kind of work done on a farm. The Supreme Court of Illinois, however, in a decision involving the exemption, held that the words, "any work done on a farm or country place" must be limited by the context of the act to mean work which is in its nature *a part of farming*. The court has held that persons employed to haul fertilizer to a farm, till farmlands, and hull clover were engaged in farm work and that their employers, therefore, were not subject to the provisions of the Workmen's Compensation Act.

The line of demarcation, however, between what is in its nature a part of farming and what is not has by no means been settled. The court has held that a farmer operating a sawmill on his farm *was subject to the act* where the sawmill employes were concerned, since in operating a sawmill he was engaged in an occupation other than farming. In another case a farmer who employed a carpenter to build a corncrib was held *exempt from the act*. The court here held that the man was still a farmer, not a building contractor. This decision lends weight to the view that so long as a farmer does not himself engage in other occupations, but only hires his building, ditching, painting, or other services done, he will not come under provisions of the act. This view is backed up by the last clause of the act, ". . . no matter what kind of work or service is being done or rendered."

A farmer should, however, for his own protection, make certain that independent contractors who employ laborers, such as carpenters and painters, are covered by liability insurance.

Common law liability. Under certain conditions a farmer may, however, be liable for injury to his farm hands or to others even tho he does not come under the provisions of the Workmen's Compensation Act. If it can be shown that the injured party is not barred from recovering damages by what the law has designated as contributory negligence (negligence on the part of the injured party), or by his assumption of risk, or by facts that show that the injury was due to the negligence of fellow workers; but that the injury was due to negligence on the farmer's part, the farmer is liable for damages.

The real purpose of the Illinois Workmen's Compensation Act is to remove such defenses as contributory negligence, assumption of risk, and injury by fellow workers and make it easier for a workman to recover damages. An employer not under the act may still be

liable for injury to his employes, but he is not so likely to be because the defenses named above can then be used. In any case, it is wise for an employer to maintain liability insurance.

Illinois Labor Legislation

The position of farm labor under the principal Illinois labor laws is as follows:

Acts applying to farm labor. *"An act to promote the welfare of wage earners by regulating the assignment of wages"* provides that no assignment of wages earned or to be earned shall be valid unless it meets certain requirements of this act, among which are that it shall be in writing, signed by the wage earner, and that it shall be given to secure an existing debt.

"An act to include in judgments for wages the services of the laborer's horse or team" provides that when a horse or team is furnished by a laborer and is necessary to his work, he may include the value of its services in an action for his wages.

Acts not applying to farm labor. The provisions of some of the principal Illinois labor acts specifically exclude farm labor. An act which makes *eight hours a legal day's work* specifically excludes farm labor; the Illinois Health and Safety Act and the Workmen's Occupational Diseases Act both specifically exclude farm labor in the language used in the Workmen's Compensation Act (pages 42-44); the Unemployment Compensation Act provides that "the term employment shall not include agricultural labor; domestic service in a private home . . . service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother . . ."

DRAINAGE AND WATER RIGHTS

Farm Drainage

Certain common-law principles concerning the drainage of land were early established by Illinois courts. One of these principles is that when one tract of land is naturally so situated that it drains across a lower adjoining piece of land thru natural depressions, its owner is entitled to this drainage and the owner of the land below cannot lawfully prevent the natural flow of water.

This common-law principle, however, did not meet the needs of a

growing agriculture. So the courts evolved a broader rule, which considerably increased the number of farms that could legally secure adequate drainage; the rule is this:

An owner whose land is so situated that it naturally drains across a lower adjoining piece of land thru natural depressions may increase the amount of flowage from his land by artificial ditches constructed on his own land, provided that the artificial ditches drain only the natural basin from which water could have flowed onto the lower land.

By an act of the legislature in 1879 the common-law principles concerning drainage were incorporated in the same statute that provided for the organization of drainage districts to drain land which could not be drained by enforcing common-law rights.[1]

Drainage Districts

Much of the land in Illinois is too flat to drain well naturally. In the central part of the state the prairie could not be farmed until the land had been tiled and ditched. To put in enough tile and ditches to handle the water meant crossing the land of many owners. The legislature made possible the construction of drainage works which cross property lines when it passed two acts on drainage, the Levee Act and the Farm Drainage Act.

Under both acts, drainage districts are so organized as to fall into one of two general classes: (**1**) districts formed by mutual agreement of the landowners within it and including only their land; (**2**) districts formed on the petition of either a *majority* of the adult landowners who own *one-third* of the land in the area to be drained, or on the petition of *one-third* of the adult landowners who own more than *one-half* of the land to be drained.

The second type of organization makes it possible to include in the district lands belonging to an unwilling minority. It is a far more common type of organization than the first and the only feasible type of district organization for drainage work on a large scale. Except in one-town and union districts (two towns) the petitions are directed

[1] The Farm Drainage Act approved in 1885 carries this provision: "Owners of land may drain the same in the general course of natural drainage, by constructing open or covered drains, discharging the same into any natural water-course, or into any natural depression, whereby the water will be carried into some natural water-course, or into some drain on the public highway with the consent of the commissioners thereto and when such drainage is wholly upon the owner's land shall not be liable in damages therefor to any person or persons or corporation."

to the county court. If the court approves the petition, it appoints commissioners to make a survey. Their report compares the costs and benefits of drainage. After the report is filed, the court sets a date for the hearing. Any interested person may appear at the hearing and file his objections. Assessments made for the operation of drainage districts are, like taxes, liens against the lands benefited.

The organization of drainage districts is a very exacting process and should be handled by persons familiar with the law and its operation.

Limits to Right to Build Dams

In Illinois the common law on damming or impounding (collecting and holding) water is that anyone who dams up or impounds water does so at his own risk. If his action subsequently causes damage to others, he will be liable for such damage. The rule holds whether he dams stream water or surface water.

A stream-bank owner has the right to dam a stream or make other uses of it so long as he does not interfere with the use of the water by downstream owners, divert the course of the stream, reduce the amount of water unreasonably, or cause water to back up on the lands of those above him.

It is not certain how liberal the Illinois courts may be toward one who dams, diverts, or stores surface waters or the water of irregular streams for water conservation or soil conservation and improvement.

The Supreme Court of Illinois has held that an owner of land receiving natural drainage from adjoining land may be prevented from building a dam or ridge that will cause water to back up on the adjoining land. There are no Illinois statutes on the damming up of waters for such purposes, but there are laws bearing on the construction of dams in general. These laws contain the following provisions:

1. Under the Soil Conservation District Law directors of soil conservation districts may, by enacting land-use regulations, make landowners carry out certain engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, and ditches.

2. The Levee Act provides for and regulates the construction of levees or embankments by providing for the formation of levee districts.

3. A dam or other obstruction cannot be put in a navigable stream without the approval of the state. However, in an Illinois case which went to the United States Supreme Court, the Court held that the con-

struction of a dam in a navigable stream was not objectionable if as a matter of fact the stream was not used for navigation.

4. Waters within or bordering on a city or village are under the jurisdiction of the municipal government and this jurisdiction extends three miles beyond the city limits. The municipal government may change a watercourse, construct dams, or perform other acts necessary for the welfare of the inhabitants.

5. A county may remove driftwood and other obstructions from natural watercourses. The law does not specifically give a county authority to dam streams, but if the circumstances warranted, the authority might be inferred.

6. Damaging a dam or wilfully obstructing the course of any stream or watercourse is a criminal offense. Obstructing wilfully the course of any stream or watercourse is also declared to create a public nuisance.

7. Owners of dams must provide fishways.

8. Illinois still has a "mill act" which permits the construction of a dam and the overflow of other people's land (providing the people are paid) for the purpose of operating a public grist mill.

FENCES

What Are Legal Fences?

According to one provision of the state law *a legal fence is a 4½-foot inclosure in good repair that will keep livestock off adjoining land and highways.*

It may be constructed of rails, timber boards, stone, hedge, barbwire, woven wire, or whatever the fence viewers of the township or precinct consider the equivalent. A second provision, however, gives the voters at the annual township meeting the right to determine what shall constitute a legal fence in their township; and in counties not under township organization the county board shall have the right to regulate the height of fences.

The laws regarding legal fences apply only to fences which keep livestock off adjoining lands or highways.

Electric Fences

Whether an electric fence can be considered a legal fence depends upon those portions of Illinois law which give discretion to fence viewers, township voters, and, in counties not under township organi-

zation, to county boards. But whether electric fences are legal, either by interpretation or amendment, should be decided wholly by the answer to the question: Can they safely keep livestock from trespassing?

Electric fences, however, are used largely as movable fences within the farm itself. Therefore, whether they constitute a legal means of withholding livestock may not be so important as whether the owner of an electric fence can be held liable for the death or injury of persons or of animals belonging to others. When injury to others is clearly caused by the owner's negligence (that is, when he has failed to see to it that his fence is properly constructed and installed) and when the injured parties themselves are not at fault, it is probable that the owner can be held liable for damages.

Responsibility for Division Fences

Illinois law provides that when the lands of two or more owners adjoin, each owner is responsible for making and maintaining a just proportion of the division fence. Each owner ordinarily assumes responsibility for a designated portion of the fence, usually one-half and usually the half on his right as he faces the division line from his own property. Such division is custom, however, not law.

When owners cannot agree on the portion of the fence each should maintain, the township fence viewers can mark and define the portion to be built and maintained by each. In counties organized by townships, town assessors and commissioners of highways are ex-officio fence viewers. In counties not under township organization, fence viewers are appointed by the county board.

When a person who has allowed his land to remain unfenced afterward fences it, using the fence of another, he must pay the owner of the fence his just share of the value of the fence as it stands. If they cannot agree on the value of the fence or the share which each owner should bear, they may call in the fence viewers, or the wronged person may bring an action before a justice of the peace.

The courts have held that an owner whose land adjoins that of another cannot avoid maintaining his share of the partition fence unless he chooses to let his lands lie without cropping them or using them for other farm purposes. An action may therefore be taken to compel a negligent adjoining owner to build or repair his share of a division fence. When repair is urgent, one owner may give the other ten days' written notice that repairs are necessary. If the repairs are not made within the ten days, the complaining owner may do the

work himself and recover from the other the expense of repairing the fence and other costs incurred.

An owner has the right to remove his portion of a division fence only if: (**1**) he gives the owner of the adjoining land one year's written notice, and (**2**) after he has removed the fence, he allows his land to lie open and unused for agricultural purposes. The owner of the adjoining land, however, may buy the other's interest in the fence.

Trimming Hedge Division Fences

To protect the land against injury from overhanging hedge trees, Illinois law provides that the owner of a hedge division fence must trim it to 4 feet in its eighth year. At least once every two years thereafter, he must cut it back or trim it to a height of not over 5 feet. The law further states that the provisions of the act do not apply to any hedge fence (not over 30 rods long) which protects an orchard, or buildings, or otherwise acts as a windbreak.

If an owner fails to cut his hedge, the owner of the adjoining land whose soil it injures may, if his own hedge is properly thinned, cut the hedge and recover the cost from the negligent owner.

The law on hedge fence applies only to division fences and fences along highways. A farmer can have all the hedge fence he wants so long as it does not overhang or adjoin his neighbor's land.

LIVESTOCK, DOGS, VICIOUS AND WILD ANIMALS

Damage by Trespassing Livestock

One law provides that if domestic animals break thru a good fence into another's property, their owner is liable for all damages they may do. This law also provides that the owner of animals running at large contrary to law is liable for damages whether the property they damage is fenced or not.

This law further provides that trespassing animals may be taken up and retained until their owner makes good the damage done. The person taking them up, however, must notify the owner within 24 hours, or if the owner is unknown, he must post notices at some public place near the premises. The Illinois courts, interpreting this law have laid down the following principles:

1. A may recover damages from **B**, who owns the adjoining land,

if **B's** livestock break thru **B's** part of the division fence, even tho **A's** part of the division is defective.

2. If **B's** livestock break thru **A's** part of a division fence, to recover damages **A** must show he was not negligent in keeping his part of the fence repaired. Unless he can prove that he was not negligent, **A** cannot even hold the trespassing animals.

Another Illinois law prohibits the owners of domestic animals from permitting the animals to run at large. If an owner does not use reasonable care in restraining his animals and allows them to roam the countryside, he will be liable in damages to anyone injured, fence or no fence. The same law also provides for a township pound where animals that are permitted to run at large may be retained and, if not claimed, sold by the poundmaster.

Trespassing bulls. A trespassing bull may do considerable damage, particularly if it serves cows that belong to someone else. If the bull is an inferior animal or if it is of a breed or type different from that of the cows it serves, the owner whose cows have accidentally been bred to it may suffer considerable loss. Whether the owner of the cows can recover damages depends upon the facts in each case. The following statements give the principles on which the courts have acted:

1. An owner who knows that his bull is in the habit of breaking out will, in nearly all cases, be liable for the animal's trespass. Maintaining good division fences is not a sufficient exercise of care to avoid his liability for damages. His only insurance against liability may be a strong bull pen. Most courts would consider that service to cows was an aggravation of the trespass and would allow damages.

2. When an owner has no knowledge that his bull has ever broken out, and when he has not been negligent in maintaining his part of a division fence, the Illinois courts have held that he is nevertheless liable for damages if the animal breaks thru his part of the fence. He is liable, too, if the bull gets on other people's property thru anything except a division fence, regardless of the condition of the fence.

3. When the bull gets thru the part of the division fence belonging to the owner of the adjoining land, and when the fence is not in good repair or reasonably strong at the point where the bull breaks thru, the owner of the bull cannot be held liable.

Thus the probability that the owner of a trespassing bull will be held liable for damages is quite high. The owner of a bull will therefore find it best to do whatever is necessary to prevent the animal from

trespassing. The promptness with which the owner of a trespassing bull goes after it may affect the extent of the owner's liability.

Right to Stray Animals

Estray is the legal term for a domestic animal of unknown ownership, running at large. The law does not apply to dogs, cats, and poultry.

A householder may take up a stray animal found on or about his premises. But within five days he must post notices of his possession in at least three public places in the township. He may then use the animal for his own benefit. In counties which have not prohibited animals' running at large, the right to take up estrays is limited to the period between October 31 and April 15.

A stray animal, except a cow in lactation, must not be used until notice has been posted. The notice must describe the animal, must state before what justice of the peace and at what time (not less than 10 nor more than 15 days from the posting of the notice) the taker-up will apply for appraisal of the animal. If the owner appears and claims the animal, the taker-up is entitled to payment for keeping, feeding, and advertising. If the stray animal dies or gets away, the taker-up is not responsible.

If the owner of a horse, mule, or ass, or a head of cattle that is an estray does not appear within a year, claim the animal, and pay for the charges and expenses, the animal will be sold at public auction. If the owner of a hog, sheep, or goat does not appear within three months, claim the animal, and pay for the charges and expenses, the animal will likewise be sold at auction. Any proceeds, beyond those paid to the taker-up for charges and expenses, go to the county.

Responsibility for Animals on Highway

When a person on the highway runs into an animal which is loose there, and he is injured or he damages his vehicle, he often attempts to hold the owner of the animal liable. What damages, if any, he can collect in a particular instance cannot be predicted with accuracy. These general rules, however, apply:

1. A farmer who is *negligent in maintaining his fences* and who allows his animals to roam the highway can be held liable for damage that the animals cause those who use the road.

2. A farmer who keeps his fences in good repair but who has ani-

mals that *he knows habitually break out* may be held liable for damage that these animals cause those using the road.

3. A farmer who keeps his fences in good repair and whose animals do not habitually break thru the fence and onto the highway can be held liable for damage if he *knew an animal was out* and on the highway and made no reasonable effort to get it in or if he was negligent in any other way.

4. A farmer who drives animals *along or across the highway,* particularly a paved highway, can be held liable for damage that the animals cause if he can be proved negligent. To avoid being held negligent, he must use whatever care is necessary to keep the animals under control. If animals are being driven at night or when the visibility is poor, it will require more care to warn motorists properly and to keep the animals under control. The amount and nature of the traffic will also affect the care which the owner will need to take. When the road is jammed with traffic, it may be negligent to try to drive a herd of cattle across it no matter how much caution is exercised.

Illinois law is not clear concerning a farmer's liability when he is not negligent in any way. It would seem reasonable for the courts to hold that where there is no negligence there is no liability. The Illinois Supreme Court, however, has ruled that an owner must keep his animals fenced in and that if they get out, even without his fault or knowledge, he is liable for the damage they may do.

Sheep-Killing Dogs and Biting Dogs

Sheep-killing dogs. In many Illinois counties the large numbers of stray dogs which roam the countryside and molest flocks virtually prevent sheep raising. Sometimes not the strays, but the neighbor's dog is responsible for the damage. In either case flock owners often turn to the law and its enforcing authorities for help.

There are four distinct forms of legal protection against dogs. First is the license requirement. The purpose of licensing dogs is to make dog owners more responsible for the dogs they keep, and to build up a county indemnity fund for flock owners who suffer loss because of dogs. The fund may also be used to compensate for losses of other domestic animals. The maximum indemnity for sheep is $15 for each injured or killed animal. To secure the indemnity, the owner must

present his claim to the township supervisor and follow a definite procedure prescribed by law. In counties not under township organization the claim should be presented to a justice of the peace.

Another law allows the owner of domestic animals to kill dogs not accompanied by their owners when the dogs are discovered in the act of chasing, wounding, or killing domestic animals.

An owner of livestock may put out poison for dogs on his own premises if he does so with reasonable care and with good intentions.

The owner of animals injured or killed by dogs also has a right of action against the dog's owner for all damages caused.

Altho these measures have done some good, they are not very effective when the number of stray dogs becomes as large as it is in many areas. In such localities either individual cooperation of farmers or rigid measures by local authorities are apparently the only solutions.

Biting dogs. The law recognizes three kinds of dogs: (**1**) those that have never bitten anyone; (**2**) those that have "had one bite"; and (**3**) those that habitually bite. An owner of a dog that has never bitten anyone need not fear liability until the dog has shown that he will bite. An owner of a dog that has once bitten someone should be extremely watchful of his dog's actions since the owner may be liable for the next offense. The owner of a dog which habitually bites should confine the dog, muzzle it, or dispose of it. Otherwise it may create more liability than he can afford.

When a watchdog is kept within a restricted area and warning signs are posted at entrances to the area, anyone who does not heed the signs cannot ordinarily complain if he is bitten. The common law does not interfere with the keeping and training of watchdogs if the dog is taught to discriminate between social or business callers and trespassers.

Vicious and Wild Animals

The owner of a bull, horse, boar, rooster, or of any animal capable of inflicting injury and of a known vicious nature is liable for the damage the animal may do. If the animal, however, has never shown any viciousness, the owner is not liable until it has; the same rule applies here that applies to dogs.

Also, anyone who keeps a wild animal of a recognized dangerous nature — a bear or a lion, for instance — keeps it at his own risk.

UNLAWFUL TO HAMPER TRAVEL ON HIGHWAYS

To enable people to travel on public highways safely and without undue annoyance, the Illinois legislature has enacted certain laws. These laws state in considerable detail what people cannot do in, on, or near a highway.

1. Placing loose earth, weeds, sod, or other vegetable matter, or any other material, on a road in such a manner as to *interfere with the free flow of water* from the dragged portion of the road to the side gutters or ditches is unlawful. (The law does not apply to work done by road officials.)

2. Planting *willow trees* on the margin of roads is declared a public nuisance.

3. *Hedge fences* along the line of a public highway must be kept trimmed to a height of 5 feet or less. Road commissioners may, however, at their discretion, permit a farmer to keep one-fourth of the total length of hedge along the highway untrimmed, as a windbreak for livestock.

4. Destroying or defacing *official* guide boards, posts, signs, and notices is punishable by fine.

5. Depositing "weeds, trash, garbage, or other *offensive matter* or any broken bottles, glass, boards containing projecting nails or any other thing likely to *cause punctures*" is punishable by fine. Putting broken glass on a highway is a misdemeanor. And going onto highways with cleated implements is unlawful.

6. Allowing *grain to spill* on a highway is unlawful.

7. Placing *obstructions* across a road, encroaching on a road with a *fence, plowing or digging* on a road, turning a *current of water* on a road so as to cause washing, and leaving *hedge cuttings* along a road for more than 10 days are acts punishable by fine.

8. It is unlawful for *itinerants* to hitch or turn loose any stock, cows, horses, or other animals on the highways for the purpose of feeding them; to camp on any public highway for more than 12 hours in any one township or road district; to camp opposite a school, cemetery, or church, or within 100 yards of a residence without the consent of the proper persons.

WILDLIFE, SOIL CONSERVATION, AND FIRE PROTECTION DISTRICTS

Wildlife Districts

Organizing a district. Many Illinois farm owners interested in the propagation of game animals and wildlife wish to have their efforts at propagation well protected. In response to their desires, the Illinois legislature in 1939 passed a law to provide for the organization of districts for propagating, maintaining, and controlling wildlife, and for abating noxious and harmful insects, birds, and other animals. These are the requirements for organizing such a district:

1. An area must consist of at least 1,280 acres lying wholly within one county and owned by at least four separate owners; the owners' lands must adjoin in such a way as to make the area a single, unbroken unit.

2. A petition must be submitted to the county judge by a majority of the owners in the proposed districts stating the name of the wildlife district and defining its boundaries. These owners must own three-fourths of the land.

3. A hearing must be set by the county judge. Following the hearing, an election must be held. To win the election the majority of the votes must be cast for the proposal.

Duties and powers of trustees. The district is governed by three trustees elected annually. Among their duties and powers are:

1. Levying annually a general tax, not over one mill on the dollar, on all taxable property in the district and using the tax money for district purposes.

2. Employing enough police to enforce the ordinances that the trustees pass concerning hunting, trespassing, destroying game cover, and other subjects.

3. Taking such action as is necessary to control, abate, or exterminate harmful animals, insects, and birds.

4. Propagating and liberating beneficial and song birds and game animals.

5. Limiting and controlling killing, hunting, and trapping within the district.

District trustees cannot enact regulations that conflict with the State Game Code. They can, however, enact regulations that contain more restrictions or limitations than the Game Code.

Soil Conservation Districts

The law concerning soil conservation districts establishes a procedure whereby landowners can organize a district for the systematic promotion of better land use and soil conservation and erosion-control measures. The law is administered by a State Soil Conservation Board.

Organizing a district. To organize a district any 25 or more landowners whose lands lie within the proposed district and who own 10 percent of the land by area must file a petition with the State Soil Conservation Board asking that the district be organized. The Board conducts a hearing, then a referendum. If those within the proposed district show enough interest and if the organization seems feasible, the district is established as a public corporation. When more than 50 percent of the landowners sign a petition, the State Board may dispense with the referendum.

An important function of the district is to afford a legal medium thru which other agencies, particularly federal agencies, can work directly with farmers.

Duties and powers of directors. A district is governed by a board of five directors, elected from among the landowners within it. A recent change in the law provides that all districts must elect five directors on or before March 1, 1948. Three shall serve two years, and two shall serve one year. After March 1, 1948, elections shall be held each year on or before March 1. Two directors shall be elected in odd years, three in even years.

Directors can, however, be nominated and elected at a yearly meeting if the State Board approves a petition requesting authority so to elect.

The directors, on behalf of the district, may enter into agreements with federal, state, or other agencies. Under the agreements, soil conservation surveys and land-use recommendations will be made; detailed plans may also be worked out with those owners in the district who wish to cooperate. The law provides that if and when the directors believe that some control of land use is necessary, land-use regulations may be formulated and submitted to a vote. If three-

fourths of all landowners having land within the district vote in favor of the regulations, they become effective. The directors have no power to levy taxes or assessments.

Copies of the Soil Conservation Districts Law may be had from the Director of the State Department of Agriculture (Springfield), who is by law chairman of the State Soil Conservation Board.

Fire Protection Districts

Organizing a district. An Illinois fire protection districts law provides that 50 or more legal voters living within the limits of a proposed district (a majority if there are fewer than 100 voters in the proposed district) may petition the county judge to have the question of the organization of a fire protection district submitted to a referendum vote. The judge must call a hearing at which those interested may appear and express their opinions. Then a referendum is held. If the majority of the votes cast are favorable, the district is organized. Additional lands may be annexed by subsequent proceedings.

Duties and powers of trustees. After the district is organized, the judge appoints three trustees who administer the affairs of the district. The trustees may formulate and publish ordinances designed to cut down the number of fire hazards in the district, employ a fire-fighting force, and purchase fire-fighting equipment. The trustees may raise money by taxation and by issuing bonds. The power to tax is limited to 2½ mills for each dollar of assessed, equalized valuation of property in the district.

The trustees may also contract with any adjacent city, village, or incorporated town for water to be used for fire protection. In areas where districts are organized, some farmers have built large storage cisterns for use in case of fire.

Part II

REGULATORY LAWS

THE LAWS discussed in this Part are called regulatory laws; that is, they require farmers and others engaged in particular kinds of enterprises to meet specific standards or to follow definite procedures. They are usually designed to protect the public. They often provide for inspection. Some state agency, frequently the State Department of Agriculture, is responsible for making the inspections and for enforcing the laws.

SALE OF FEEDS, FERTILIZERS, AND SEEDS

Commercial Feeds

Illinois farmers every year buy several million dollars' worth of commercial feed for livestock and poultry. Most of this feed is sold by reputable firms. If the protein it contains is of good quality and costs no more per unit than the protein in such standard supplements as tankage and soybean oilmeal, it will help farmers get economical livestock gains.

Two abuses, however, have arisen in the sale of commercial feeds, abuses which made public protection necessary. The worst abuse occurs when firms or individuals intentionally misrepresent the composition and feeding value of their feeds in order to sell them for more than they are worth. Such misrepresentations have assumed many forms. The second abuse occurs when firms or individuals do not know the chemistry of feeds or are careless about handling and mixing them. In either case the buyer pays too high a price for what he gets. He may also risk the health of his livestock.

Compulsory labeling. In an attempt to prevent "feed profiteering," the Illinois legislature in 1905 passed a law regulating the sale and analysis of concentrated feedstuffs. It provides that every lot or parcel of concentrated feedstuff (defined by the act) that is sold within the state must bear a plainly printed statement certifying the net weight, the name or brand, the name and address of the manufacturer; the name of each ingredient used; the minimum percent of crude protein and crude fat, of calcium, phosphorus, and iodine; and

the maximum percent of crude fiber and salt. A 1947 addition to this law provides that concentrated commercial feedstuffs must not contain more than 3 percent of weed seeds[1] by weight. The law also provides that any weed seed contained in concentrated feedstuffs must be processed or treated so as to make such seed incapable of germinating. Failure to comply with this law is a misdemeanor. A copy of the statement on the label must be filed with the State Department of Agriculture, which is empowered to regulate and administer this law.

The legal definition of concentrated commercial feeds is broad enough to include nearly all the most commonly used supplements: soybean, linseed, and cottonseed meals, tankage, and meat scraps. It does not include hay, straw, hulls, whole seeds, or the unmixed meals of cereal grains.

Penalties for improper practices. The State Department of Agriculture is authorized to take samples of concentrated commercial feeds, analyze them, and publish the results. Those who sell such feeds must have a license. Any company guilty of mislabeling, adulterating, or operating without a license is subject to penalty.

Seller's liability. A farmer whose livestock is injured by impurities, poisonous substances, or mechanical objects in the feed sometimes raises the question of the seller's liability. The courts hold that when a farmer buys feed from a man in the business of selling it, the sale is accompanied by an implied warranty that the feed is fit for the purpose intended. If it is not fit for the purpose and the buyer's livestock die, or if they get sick or are so injured by the feed that their value depreciates, the farmer can recover damages against the seller. In such cases it must be proved that the feed was imperfect at the time it was bought.

Feed is often carelessly handled on the farm: it is sometimes contaminated by other substances or spoiled by improper storage. Thus two practices will give a farmer reasonable protection: buying from a reliable dealer and being careful about handling, storing, and feeding.

Further information about the regulation of the sale of commercial feeds may be secured from the State Department of Agriculture, Springfield, Illinois.

[1] The law defines weed seeds as the seeds of all plants generally recognized as weeds within this state, including primary noxious weeds (Canada thistle, perennial sow thistle, field bindweed, leafy spurge, Russian knapweed, and hoary cress) and secondary noxious weeds (curled dock, wild garlic, dodders, bull nettle, buckhorn, quack grass, wild mustard, Johnson grass, ox-eye daisy, and wild carrot).

Commercial Fertilizers

The analysis, labeling, and sale of commercial fertilizers in Illinois are regulated by law. Commercial fertilizers are defined in the law as any substances, including combinations or mixtures, which are designed and offered for sale and which when applied to the soil are used to increase crop yields. The law does not apply to natural products (agricultural limestone, burnt or dehydrated lime) nor to marl and unprocessed animal manure which have not been manipulated so as to alter or change them chemically.

Guaranteed analysis required. Before any commercial fertilizer is sold or exposed for sale the manufacturer must file his name and address with the State Department of Agriculture and give a guaranteed analysis of the fertilizer. The analysis must show the percentage of nitrogen, of available phosphoric acid, and of potash soluble in water. No commercial fertilizer that contains two or more of these chemicals (nitrogen, phosphoric acid, and potash) can be sold or offered for sale unless the total amount of these chemicals equals at least 20 percent.

The Department of Agriculture must each year make one or more analyses of all commercial fertilizers registered in the state. The weight and brand or trademark must also be filed with the Department.

Labeling, licensing, and registration. The seller must put the above information on each bag, barrel, or package of the fertilizer. If shipments are made in bulk, the information must be attached to the invoice.

Each manufacturer, importer, agent, or seller of any commercial fertilizer in Illinois must each year pay a registration fee of $25 for each analysis of commercial fertilizer offered for sale or sold for consumption within the state and a license fee of 10 cents a ton on each ton sold. These fees are paid to the Department of Agriculture.

This law is administered by the State Department of Agriculture. Any false representation in the information the manufacturer is required to furnish the Department is punishable by fine.

Further information concerning this law may be obtained from the State Department of Agriculture, Springfield.

Agricultural Seeds

Must be labeled. The sale of agricultural seeds in Illinois is governed by an act to "regulate the selling, offering or exposing for sale

of agricultural seeds." The law covers all commonly used seeds, including hybrid corn and vegetable seeds. It provides that the containers in which agricultural seeds are offered for sale must bear a plainly written or printed tag or label containing the following information:

1. The commonly accepted name and type or variety; if there are two or more seeds each of which is in excess of 5 percent of the weight, the label must carry the words *mixture* or *mixed.*

2. The lot number or identification.

3. The origin (*where produced*) of specified seeds such as alfalfa, red clover, and field corn (*except hybrid corn*); if their origin is unknown, the fact must be stated.

4. The percentage, by weight, of all weed seeds.

5. The names and approximate number per ounce of specified kinds of weed seed or bulblets that are present in more than the specified amounts.

6. The percentage, by weight, of agricultural seeds other than those required to be named on the label.

7. Percentage by weight of inert matter (*matter which cannot grow*).

8. Percentage of germination (*germination test*), percentage of hard seed, and calendar month and year tested.

9. The name and address of the person who labeled the seed or who offers it for sale within Illinois.

Those who sell vegetable seed must label the kind and the variety and include the name and address of the person who labeled the seed or offers it for sale within Illinois. If the seed does not meet the standards for germination set by the State Department of Agriculture, the percentage of germination and of hard seed and the month and year it was tested must be given.

Other requirements. The law also makes it illegal to sell agricultural or vegetable seed in Illinois unless the tests required have been made within nine months of the sale, excluding the month in which the tests were made. It is also illegal to use false labels or false advertising. The sale of agricultural seed or of mixtures of agricultural seed containing any noxious weed seeds (Canada thistle, perennial sow thistle, field bindweed, leafy spurge, Russian knapweed, and hoary cress) is prohibited. This regulation does not apply to vegetable seeds.

Enforcement. The State Department of Agriculture is responsible for enforcing this act and making official seed analyses.

LAWS CONCERNING ANIMAL DISEASES

Rabies, or Mad Dog

The State Department of Agriculture has the power and the duty to prevent the spread of rabies among dogs and other animals. Whenever a case of rabies occurs in a locality, the Department can order that all dogs in the locality be kept in an inclosure from which they cannot possibly escape, or that they be kept muzzled and on a chain or on a leash made of some indestructible material.

The Department may further order all dog owners or keepers to take such protective measures as it may judge necessary to prevent the spread of this disease. It also has the power to determine the extent (or area) of the locality and the length of time that the preventive measures it orders shall remain in effect.

The expense of any action that the Department of Agriculture takes must be borne by the owner or keeper of the dog. Any officers who fail to carry out the provisions of this act are subject to penalty.

An Illinois law concerning the liability of the owner or keeper of a rabid dog provides that unless he knows it is rabid, he can be held liable only for the direct acts of destruction or damage that the dog may cause, not for any damage from disease spread by the dog.

The owner of animals destroyed because of the rabid condition of the dog may, however, be indemnified from the county dog-license fund, as in other cases. The owner must submit proof, of course, that the animals were so destroyed.

Hog Cholera

It is the duty of the owner or person in charge of swine who knows or suspects that hog cholera or any other contagious disease is present in the herd to use "all reasonable means" to prevent its spread. If a hog dies of cholera or is slaughtered because of it, it is the duty of the owner or person in charge either to burn the carcass immediately or bury it at least 2 feet deep. It is illegal to convey diseased swine, or swine known to have died of or been slaughtered because of any infectious or contagious disease, along any public highway or other public grounds or across any private lands.

Violators of the law covering hog-cholera control may be fined from $5 to $50 and held liable in damages to anyone suffering loss resulting from the violation.

In the only Illinois decision which construes this law, an appellate

court held that the purpose of the act was to give those who suffered from the wrongful spread of hog cholera a new legal right and to check the spread of it by making the violators of this law subject to criminal prosecution.

Widespread vaccination now holds hog cholera in check. If, however, people let up on vaccinating for a while, as they sometimes do, the disease may again spread over an area. In any event, this law applies.

Bang's Disease

Cooperative plans for testing and accrediting. By Illinois law the State Department of Agriculture is made a cooperating agency with the U. S. Department of Agriculture for the eradication of Bang's disease. A cattle owner may get his cattle tested for this disease by applying directly to the State Department of Agriculture. When an owner applies for the test, he enters into an agreement with the U. S. Department of Agriculture and the State Department of Agriculture to do certain things. By following the procedure prescribed by the Department, an owner may get his herd accredited as abortion free.

Payment of indemnities. If the owner consents, infected animals may be destroyed. For a purebred animal, an owner is entitled to a maximum indemnity of $50 from the State Department of Agriculture and $50 from the U. S. Department of Agriculture. For a grade animal, he is entitled to a maximum indemnity of $25 from each of these agencies. The payment of the indemnity by the State Department of Agriculture, however, is contingent upon the availability of funds for the purpose and upon payment by the U. S. Department of Agriculture of a sum equal to the amount the State Department is to pay.

Quarantine of infected animals. The infected animals which are not destroyed are subject to the quarantine rules and regulations of the State Department of Agriculture and cannot be disposed of except in compliance with its orders. To enforce these rules and regulations, employees of the State Department of Agriculture may enter, during usual working hours, "any premises, barns, stables, sheds, or other places where cattle are kept."

Shipping and sale of animals. Dairy or breeding cattle more than four months old cannot be shipped into Illinois, nor can such animals be shipped from public stockyards to points within the state, without a certificate of health. The certificate must be issued by a veterinarian in good standing.

By a 1947 amendment to the law, female cattle and breeding bulls more than 8 months old cannot be sold within the state except for slaughter unless: (1) they were tested for Bang's disease within sixty days before the date of sale and the test was negative; (2) they are under thirty months old and were vaccinated in calfhood; or (3) they are in an abortion-free accredited herd at the time of sale. The Department of Agriculture may permit two exceptions: (1) cattle can be sold for feeding purposes only; (2) they can also be sold when they are being transferred into a herd which has been vaccinated or into a herd known to be infected.

Cattle for feeding and grazing can be brought into the state without certificates of health, but during the feeding or grazing period they are held under quarantine by the State Department of Agriculture.

Other control plans recognized. A 1945 amendment to the law provides that "the owner of any herd of domestic cattle who desires to cooperate with the department in the elimination of Bang's disease under some plan or program other than the test and slaughter plan, may do so, without having his entire herd tested for Bang's disease, in accordance with the requirements of such plan and any other relevant provisions of this act."

A 1947 amendment to this act provides that any county may adopt the county area plan to eradicate the disease. This plan is authorized by the Animal Disease Act.

For further information on regulations for the control of Bang's disease, write the Department of Agriculture, Springfield.

Tuberculosis in Cattle

State-federal program. A program to eradicate tuberculosis in cattle is carried on cooperatively by the State Department of Agriculture and the federal government. All owners of dairy or breeding cattle in Illinois must submit their cattle to a tuberculin test upon request of the State Department of Agriculture. They must also provide the facilities necessary for making the tests and give such assistance as the Department may require. The direct expense for making the tests is paid by the Department. Cattle that react positively to the test (have tuberculosis) must be branded and tagged immediately. The owner must then keep the cattle until they are destroyed or their sale and transfer are approved.

A recent amendment to the Illinois law permits any county to adopt the county area plan for eradicating this disease. (Details of this plan may be obtained from the Department of Agriculture, Springfield). Counties which adopt the plan are authorized to employ a veterinarian and assistants.

Payment of indemnities. When cattle which have tuberculosis are destroyed, the federal government and the state pay the owner the difference between the salvage value and the fair appraised value of the animals. The portion the state pays is limited; it is also contingent upon the availability of funds for the purpose. The state may pay as much as $35 for a grade animal and $70 for a purebred one. To have an animal more than two years old appraised as a purebred, the owner must present a certificate of registration.

To be entitled to compensation an owner must meet several requirements: (1) he must be a resident of Illinois or an Illinois taxpayer; (2) he must have complied with the law on the subject; (3) if the animal was imported into Illinois, he must show that it was tested at the time it was brought into the state and was found free of tuberculosis; (4) he must furnish proof that animals added to his herd were added in compliance with the provisions of the law; (5) he must dispose of the animal within 30 days after it has been adjudged infected; (6) he must satisfactorily disinfect any infected premises.

Other provisions. Important to cattle owners are these other provisions of the law covering the eradication and control of this disease.

1. Owners of herds which have been found by the Department to be tuberculosis-free are entitled to a certificate showing that fact.

2. Cattle which show physical evidence of tuberculosis or which are known to have been tested and to have reacted positively cannot lawfully be sold unless the buyer or seller gets a permit from the Department. The permit requires that they be kept in quarantine until released by the Department.

3. For feeding or grazing, steers and female cattle of the beef breeds may be shipped into the state from a modified area or from a public stockyards without a tuberculin test, but they must be held in quarantine if required until released by the Department.

4. Cattle from state and federal accredited herds and from modified accredited areas may be shipped into Illinois with an authorized certificate without undergoing quarantine or a retest. All cattle, except those for feeding and grazing, which are shipped into Illinois

from areas or herds that are not accredited must be shipped with certificates of health. Such cattle are also subject to regulations concerning the tuberculin test and retest.

LICENSING AND REGULATING DISPOSAL PLANTS AND COMMUNITY SALES

Animal Disposal Plants

All rendering or animal disposal plants in Illinois must get a license every year from the State Department of Agriculture. The Department must inspect these plants and enforce the regulations provided by the law.

Buildings and carcasses. These are the regulations concerning plant buildings and the disposal of carcasses:

1. All rendering and animal disposal plants must have either concrete floors or floors of some other nonabsorbent material, have adequate drainage, be thoroly sanitary, and adapted to carry on the business.

2. All carcasses must be processed or disposed of within 48 hours of delivery at the plant.

3. Except for proper escapes for live steam, all cooking vats must be airtight.

4. Carcasses must be skinned and dismembered within the plant.

5. Uncooked carcasses or portions of carcasses must not be fed to livestock.

6. Such portions of carcasses as are not entirely disposed of by cooking or burning must be disposed of by burying or in such other manner as the Department may provide.

7. Portions of carcasses disposed of by burial must be buried so that no part of the body is nearer than 4 feet to the natural surface of the ground. Every part of the carcass must be covered with quicklime.

Transporting diseased animals. Regulations concerning the transporting of animals that have died of disease are very stringent:

1. Carcasses of animals that have died of disease must be hauled in a covered vehicle bed or tank so constructed that no drippings or seepings can escape from it.

2. Vehicles loaded with the carcass of an animal that has died of disease must be driven directly to the place of disposal. The driver

may, however, stop on the highway for other carcasses, but he must not drive into the yard or premises of any person without first obtaining that person's permission.

3. The driver or owner of a vehicle used in conveying animals which the driver or owner has reason to believe died of disease must immediately after unloading the animals disinfect the vehicle bed, tank, wheels and all canvasing and covers with a solution of at least one part of creosol dip to four parts of water or with some other equally effective disinfectant.

Responsibility of owners of dead animals. Persons who owned or cared for an animal that has died must dispose of the carcass within twenty-four hours. Such carcasses may be disposed of by cooking, burying, burning, or by sale to a person licensed to dispose of dead animals.

Further information concerning the enforcement of this law may be obtained from the State Department of Agriculture, Springfield.

Community Sales of Livestock

A community sale, according to Illinois law, is "any sale or exchange of livestock or other personal property held by any person at an established place of business or premises where the livestock or personal property is assembled for sale or exchange and is sold or exchanged at auction or upon a commission basis at regular or irregular intervals but more frequently than three times a year."

So far as the sale of livestock is concerned, the purpose of the law is, first, to prevent the spread of contagious animal diseases and, second, to make sure that the operator of a community sale pays the sellers of livestock fully and promptly.

License necessary. The operator of a community sale must get a license from the State Department of Agriculture which must be renewed annually. He must furnish acceptable bond indemnifying livestock owners against fraudulent dealing, withheld payments, and other irregularities. Operators are required to keep records of the receipt and disposition of all livestock.

Inspection of premises and livestock. Animals known to be infected with or to have been exposed to any contagious or communicable animal disease cannot be consigned to or sold thru any community sale. The law on Bang's disease imposes restrictions on the transfer of cattle. These restrictions apply to cattle sold at com-

munity sales. To help enforce this provision and other sections of the law relative to sanitation and animal disease, the operator of a community sale must employ an approved supervising veterinarian to inspect the premises and all livestock offered for sale.

Animals for slaughter exempt. This act does not apply to the business of buying or assembling livestock for prompt shipment to or slaughter in any livestock market that is subject to the Federal Packers and Stockyard Act or to any market regularly inspected by the Bureau of Animal Industry of the U. S. Department of Agriculture.

Further information concerning the law governing community sales may be had from the State Department of Agriculture, Springfield.

LAWS TO CONTROL BEE DISEASES

Contagious bee diseases, easily spread and hard to control, have caused Illinois beekeepers losses for a long time. Foul brood, especially virulent and persistent, causes the most damage. Illinois law makes it the duty of every person who keeps one or more colonies of bees to keep them free from foul brood and other contagious diseases.

State inspection of apiaries. The State Department of Agriculture may have any apiary inspected. If the inspector finds American foul brood, he requests the owner to burn the infected bees, hives, combs, wax, honey, or other infected materials. The state does not pay the owner for the property thus destroyed.

If the owner is absent or refuses to grant the inspector's request, the inspector may give him notice to burn his bees and infected material within three days. The notice may be mailed or delivered personally by the inspector. It must be accompanied by instructions for destroying the infected materials. If the owner then fails to destroy the infected bees and materials, the State Department of Agriculture may "abate the nuisance" (destroy the bees and materials) and assess the costs against the owner.

Moving bees and equipment. This law further provides that a colony of bees or used bee equipment cannot be moved from one county of the state to another unless the State Department of Agriculture has issued the owner a certificate certifying that the colony or equipment has been inspected within 60 days of the time that it is to be shipped or moved and that it is free from foul brood. The law does not apply, however, to moving a live queen and her attendant bees in a cage, if it is without comb or brood.

A person who wishes to bring bees or used bee equipment into this state from another state or from a foreign country must likewise have them certified as free of foul brood.

Further information. Copies of the act to control foul brood and further information concerning its application may be obtained from the State Department of Agriculture, Springfield.

OTHER REGULATORY LAWS

Destruction of Noxious Weeds

Certain very hard-to-control weeds have been declared by the Illinois legislature as *noxious* weeds. Canada thistle, perennial sow thistle, leafy spurge, Russian knapweed, hoary cress, and European bindweed are included in this group.

The law makes it the duty of all landowners to destroy all noxious weeds growing on their land before the weeds bear seed. It is the duty of the township weed commissioners to enforce the provisions of this law and to destroy all noxious weeds which the owners themselves refuse to destroy.

A recent addition to the law provides for the establishment of a county weed-control department and a county weed-control commissioner. Such a department may be created upon petition of 25 legal voters from each of at least two-thirds of the townships or road districts in the county or 5 percent of the legal voters at the last general county election, whichever is fewer. When the county board receives the petition, it can establish such a department by resolution. The law sets up in detail the powers and the duties of a weed-control commissioner.

If the commissioners destroy the weeds, their work is charged against the owner's property. Moreover, the owner can be fined as much as $300 for refusing to destroy his weeds. Railroad companies may also be fined for not destroying noxious weeds growing on their rights-of-way.

The Department of Agriculture can investigate areas where leafy spurge or hoary cress are reported present or growing. The Department shall cooperate with the owner in eradicating them. It may agree to pay a fair portion of the cost of treatment and even to pay a fair rental for the land that is involved. If the owner refuses to cooperate, the Department may institute eminent domain or condemnation proceedings and take possession of the land until the weeds are eradicated.

The law also provides that anyone who brings in the seeds of Canada thistle, perennial sow thistle, European bindweed, Russian knapweed, hoary cress, or leafy spurge and allows them to be disseminated may be fined up to $100. The owner or occupier of land may also be fined $100 for allowing any of these plants to go to seed.

Highway commissioners are required to keep down weeds along the highways and are subject to penalty if they do not.

For an explanation of the law on weed seeds in agricultural seeds, write to the State Department of Agriculture, Springfield.

Analysis of Well Water

To further the public interest in safe water, the state has made certain services generally available. A chemical analysis of water in any well will be made by the State Water Survey, Urbana, and a bacteriological examination will be made by the State Department of Public Health, Springfield. Anyone who wants a test made should send for a sample container.

The Illinois Criminal Code makes it unlawful to dump refuse or put poison in any well.

Protection Against Nuisances

A nuisance is any act which unlawfully causes inconvenience, damage, injury to health, or offense to the senses. According to present law, it is a public nuisance to do these things:

1. To cause or suffer the carcass of any animal or any offal, filth, or noisome substance to be collected, deposited, or to remain in any place to the prejudice of others.

2. To throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any water course, lake, pond, spring, well, or common sewer, street, or public highway.

3. To render impure the water of any spring, river, stream, pond, or lake to the injury of others.

4. To obstruct or encroach upon public highways, private ways, . . . and ways to burying grounds . . .

Tho the law specifies other public nuisances, these are the ones most likely to affect farmers.

Illinois courts have declared a rendering works to be a nuisance when it did not control the offensive odors it created. They have also held that, tho every owner should enjoy reasonable use of a stream,

he has no right to destroy its use to those below him. Putting a gate across a highway and building or fencing out into the road are clearly nuisances. Other acts which have traditionally been regarded as public nuisances may still be so even tho they may not be enumerated in the law.

When some one individual is the only one who suffers from the act of another, the act does not amount to a public nuisance. It may, however, amount to a private nuisance. The sufferer may then enjoin the doer or secure damages. An example of such a private nuisance is the damming of a stream in such a way as to cause it to back up on the lands of another.

Accurate Weights and Measures

General law. The Illinois law on weights and measures provides that:

> . . . the weights and measures received from the United States under joint resolution of Congress approved June 14, 1836, . . . and such new weights and measures as shall be received . . . and . . . supplied by the State in conformity therewith and certified by the national Bureau of Standards, shall be the State Standards of weights and measures.

The law enables cities to set up a supervision and inspection service. It also specifies that when not otherwise provided by law, the Director of the State Department of Agriculture shall test and inspect all weights and measures anyone uses in dealing with the public. Those found violating the standards established by law may be prosecuted.

Specific laws. Aside from the general law on weights and measures, there are some specific laws. Among their provisions the following are of interest to farmers:

1. Commodities sold in package form must have a weight, measure, or numerical count conspicuously marked on the package.

2. Butter, oleomargarine, and bread must be sold by weight.

3. Milk bottles and barrels for fruits, vegetables, and dry commodities must meet certain standards specified by law.

4. The basic unit for measuring liquids must be the gallon.

5. The yard is the unit of length from which all other measures of extension are derived. A chain for measuring land must be 22 yards long, a rod 5½ yards, a mile 1,760 yards. "The acre for land measurement shall be measured horizontally and contain 10 square chains . . ."

6. A cord of wood must contain 128 cubic feet.

7. A bushel of alfalfa seed must weigh 60 pounds; bluegrass seed, 14 pounds; carrots, 50 pounds; coal, 80 pounds; ear corn, 70 pounds; shelled corn, 56 pounds; lime, 80 pounds; Irish potatoes, 60 pounds; and sweet potatoes, 50 pounds.

These weights and measures and many others designated in the law are standard. They apply whenever the parties to a contract have not agreed to some different weight or measure.

Obligation to Give Statistics

The State Department of Agriculture is obliged by law to "collect, compile, systematize, tabulate, and publish statistical information relating to agriculture," cooperatively with the U. S. Department of Agriculture.

Every year the State Department of Agriculture sends to each county clerk certain blank books which it is the duty of the local assessors to fill out and return. The law requires that "each owner of farmland or his agent or tenant shall report to the assessing officer any information required pertaining to information sought by the State Department of Agriculture, pursuant to this Act." Refusal to disclose the required information is a misdemeanor, punishable by fine or imprisonment, or both.

In 1939 this law was supplemented to include "data and information on the production and marketing of dairy products." Since then dairy plant owners or operators have been required to fill out and return blanks that were prepared and sent them by the State Department of Agriculture.

The information obtained under these laws is for public use only after it is compiled in such ways as to destroy the identity of the individual reports. The State Department of Agriculture, in cooperation with the U. S. Department of Agriculture, has for several years published agricultural statistics in an annual report called *Illinois Crop and Livestock Statistics*.

Insurance Companies and Contracts

Farmers are increasingly large buyers of various kinds of insurance. How much insurance a farmer should have, what he should have it on, where he ought to get it, and what kind of policy he would find desirable are problems that he must settle for himself. But protection against weak or unscrupulous companies and faulty or unclear contracts is something that has required state action.

The Illinois legislature as early as 1869 attempted to curb some of the injurious practices that then existed by enacting a law regulating insurance companies. Since that time the insurance laws of the state have been repeatedly amended and enlarged. A few years ago the legislature adopted the Illinois Insurance Code. The Code divides all insurance into three classes: (**1**) life, accident, and health; (**2**) casualty, fidelity, and surety; and (**3**) fire and marine. A company doing business in this state must be classified in one of these three groups and its operations, including its organization, its financing, and its investments, are subject to the regulations contained in the code. The following section of the act is of particular interest to policy holders:

> No company transacting the kind or kinds of business enumerated in class 1 [life, accident, and health] . . . shall issue or deliver in this state a policy or certificate of insurance, attach an endorsement or rider thereto, incorporate by reference by-laws or other matter therein or use an application blank, in this state until the form and content of such policy, certificate, endorsement, rider, by-law or other matter incorporated by reference or application blank has been filed with and approved by the director [of insurance]. . . . It shall be the duty of the director to withhold approval of any policy, etc., . . . if it violates any provisions in this code, . . . contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed . . .

When well administered, such a provision adds greatly to the safety of insurance contracts: a purchaser buys less at his own risk, and an insurance company will be able to find fewer reasons for avoiding policies on slight grounds.

APPENDIX

COUNTY COURTHOUSE

Local Seat of Government

Government, like private enterprise, must have a place to carry on its business. For farm people the county is the most important local unit of government. The center of governmental activity in the county is the courthouse.

The county board of supervisors or county commissioners are charged with the duty to erect, to keep in repair, and to maintain a county courthouse for the use of the courts of record, the county board, the states attorney, the county clerk, the county treasurer, the recorder, the sheriff, and the clerks of courts, and to provide suitable furniture for these officers. The sheriff is charged by law with the custody and care of the courthouse. He assigns space to the various officers, grants permission for the use of rooms, employs janitor and other service, and cares for the building generally.

When not all the space in the courthouse is needed for regular county officers, the board of supervisors may lease rooms to public agencies (state, towns, courts, and other municipal or public corporations). Space, however, cannot be leased for private enterprises. For example, an Illinois appellate court has held that the county board did not have authority to lease space for a private abstract business.

People are interested in the county courthouse chiefly for five reasons: (**1**) circuit and county courts are held there; (**2**) public sales of property for delinquent taxes are made there; (**3**) the administration of estates and the probate of wills are handled there, in the county court; (**4**) county officers have their offices there; and (**5**) many public records are kept there, the records of most general interest being those having to do with drainage districts, deeds, mortgages, chattel mortgages, taxes, mechanics' liens, marriages, deaths, and births.

Records in the Different Offices

In the *county recorder's office* the following records are to be found:

1. Deed records: these contain the recorded deeds to all property lying within the county.

2. A grantor's and grantee's index giving the names of all persons conveying or taking real estate and the volume and page where they will be found in the deed records.

3. Records (similar to deed records) of mortgages, releases, trust deeds, and chattel mortgages.

4. Certain private and public corporation records.

In the *county clerk's office* are kept records having to do with the administration of estates; probate of wills; tax assessments, payments, and sales; marriages, deaths, births; land drainage; and many others.

In the office of the *clerk of the circuit court* are decrees of the court, many of which affect personal and property rights of county residents.

Public Has Right to Examine Records

Illinois law makes clear the right of the public to examine and copy various kinds of records kept in the county courthouse. This is a quotation from the law:

> All records, indices, abstracts and other books kept in the office of any recorder, and all instruments deposited or left for recordation therein shall, during office hours, be open for public inspection and examination; and all persons shall have free access for inspection and examination to such records, indices, books and instruments, which the recorders shall be bound to exhibit to those who wish to inspect or examine the same; and all persons shall have the right to take memoranda and abstracts thereof without fee or reward.

The courts have held that any member of the public is entitled, during regular office hours, to inspect and examine records, indexes, books, and instruments on file without regard to his motives and that he can expect public officials to give him a reasonable amount of assistance in finding what he wants. Officials, however, are not obligated to make extracts or copies for him. Some counties offer an extracting or duplicating service for a stipulated fee. In those counties, anyone who pays the required fees is entitled to the service.

DEFINITIONS

Assignment — a transfer by one person to another of some interest in property. Generally refers to an unexpired term under a lease, or to something less than the whole interest in the property.

Amortization — a term usually applied to the reduction of a debt by prearranged and regular installments over a fairly long period.

Conveyance — transfer of legal interests in real property.

Deed — an instrument used in conveying the title to land.

Easement — a right acquired by an owner of one tract of land to make some use of an adjoining tract, such as the use of a roadway.

Encumbrance — a right possessed by another person that reduces the owner's equity in real property but that does not prevent him from passing title.

Enjoin — prevent.

Escrow agent — one who assumes custody of a deed pending a land buyer's payment of the purchase price.

Execute — to do all that is necessary to perfect a legal document such as a deed, a mortgage, or a lease.

Fee simple — a type of ownership of real estate. An owner in fee simple is entitled to the entire property, with unconditional power of disposition during his life; at his death intestate (without a will) the property descends to his heirs and legal representatives.

Joint tenancy — ownership of property by two or more persons each of whom has a right of survivorship. Right of survivorship is the right of the surviving person or persons ("tenant" or "tenants") to take the deceased person's share immediately (see pages 20-21). In Illinois such ownership can be created only by language which declares the conveyance is not intended to establish a tenancy in common.

Judgment — a decision of a court in a particular case.

Lien — a legal claim against specific property for some service or benefit rendered to such property.

Misdemeanor — a minor criminal offense punishable by a fine or a county jail sentence.

Oral — spoken, as distinguished from written. Some kinds of legal agreements are valid tho only spoken or oral, some are not valid unless written.

Reversion — the interest in an estate possessed by the grantor or his heirs after a life interest has been conveyed. The term applies to real property.

Tenancy in common — undivided ownership of real estate by two or more persons. Upon the death of a tenant in common his share in the real estate passes by inheritance (if he dies intestate) or by will. There is no right of survivorship.

Trust — an interest in real or personal property conveyed by one party to another to hold and manage for the benefit of those named in the conveyance.

Vacate — a term with two principal legal meanings: (1) the setting aside of some legal act; (2) moving from or leaving a house or farm.

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Important statutory references are given in columns two and three.

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