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Particular Forms of Agricultural Tenancies in the Southeastern States

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PARTICULAR FORMS OF AGRICULTURAL TENANCIES IN THE SOUTHEASTERN STATES†

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At common law certain particular tenancies developed which had their beginnings in the old manorial system of feudal times. The rules established by the English courts concerning these tenancies were technical and not adapted to the more complex and tempestuous civilization of today. The colonists brought these rules with them when they settled in this country. As the state codes developed, much of this inherited law was bound to push its way into the statute books, and some of the technicalities still remain to plague the legal profession and others interested in the law of real property and landlord and tenant. In fact the early English statutes were often enacted verbatim by the lawmaking bodies of the colonies and states as they were settled.

A great deal of simplification is needed with respect to the laws governing tenancies from year to year, tenancies at will, and tenancies at sufferance. Statutes have been enacted in some jurisdictions with a view to a general modernization of the law concerning these tenancies. These laws seem to avoid at least some of the pitfalls and technicalities which had arisen under the common law and early statutes. Much still remains to be done, and yet a satisfactory start has been made toward a better system of law in respect to these tenancies.

TENANCY FROM YEAR TO YEAR

A tenancy from year to year may be created either by an express contract specifically establishing a tenancy of that type or by a lease for one or more years, the holding over of the tenant, and the payment of the stipulated annual rent after the first year without a new contract.[1] The establishment of such a tenancy by a mere holding over has been recognized in numerous instances.[2] Of course the implied consent of the landowner is necessary to the establishment of the tenancy.[3]

In one instance a Georgia tenant who had been in possession for

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[1] Lamew v. Townsend, 147 Ark. 282, 227 S. W. 593 (1921).

[2] See Yancey v. Bruce, 109 Ark. 569, 160 S. W. 863 (1913); Beveridge v. Simmerville, 26 Ga. App. 373, 106 S. E. 212 (1921); Maynard v. Campbell, 115 S. C. 226, 105 S. E. 351 (1920); State *ex rel.* Sawyer v. Fort, 24 S. C. 510 (1885); Emerick v. Tavener, 9 Gratt. 220 (Va. 1852).

[3] Yancey v. Bruce, 109 Ark. 569, 160 S. W. 863 (1913); Emerick v. Tavener, 9 Gratt. 220 (Va. 1852).

several years, without saying anything to his landlord, left the rented premises in the hands of his son, who had formerly been his subtenant. The latter had remained in possession for the rest of the current year and a portion of the succeeding year as well. It was held that the father had never abandoned the premises and was therefore responsible for the rent for both years. The tenant's failure to pay the rent for an entire year would not put the landlord upon implied notice that the tenant had abandoned the premises, since a tenant will often remain in possession for a year or more without paying the rent.[4]

Two Tennessee tenants were in joint possession of land which they had held continuingly from year to year. One of them agreed to give sole possession of a designated portion of the land to the other. The landowner, prior to the time when this contract would become effective, notified the promisee to vacate the premises. He then proceeded to lease the entire property to the other tenant, granting him permission to build thereon. The promisee sued his fellow tenant for a breach of contract. His recovery was limited by the lower court to damages for the year he had been in possession prior to the notice to vacate. From this decision he appealed, claiming that his recovery should not be so limited. The appellate court ruled against him and even expressed doubt as to whether he was entitled to any relief.[5]

A Mississippi tenant who had been in possession of a farm for some time was shown to have paid rent to the administrator after the death of the landlord. The question arose as to whether this payment should be considered a refusal to recognize the title of the landlord or his heir. The court declared that such a payment would not have this effect and held that the tenant's continued possession of the premises would establish a tenancy from year to year.[6] Hence the payment to the administrator would not prevent the operation of the general rule in force in Mississippi[7] and elsewhere to the effect that a landowner's acceptance of rent for several years from a permissive occupant will establish a prima facie tenancy from year to year.

The Virginia court declared that it is a mere presumption that a tenant holding over after the expiration of his term, with no objection from his landlord, becomes a tenant from year to year. This presumption may be rebutted by evidence which shows that his retention of the premises, though it be with the permission of the lessor, is not as tenant from year to year, but in another capacity.[8] In this instant case the contract provided that the occupant should pay a sum in cash for the

[4] Roberson v. Simons, 109 Ga. 360, 34 S. E. 604 (1899).
[5] Boyd v. Martin, 53 S. W. 225 (Tenn. Chan. 1899).
[6] Richardson v. Neblett, 122 Miss. 723, 84 So. 695 (1920).
[7] Hamilton v. Federal Land Bank, 175 Miss. 462, 167 So. 642 (1936).
[8] Williamson v. Paxton, 18 Gratt. 475 (Va. 1869).

premises, and that if he failed to fulfill a certain condition in the instrument, then he would hold for the current year and the sum paid would be considered as rent. The occupant failed to fulfill the condition and his holding over under these circumstances could not be considered as establishing a tenancy from year to year but only a tenancy for the current year.

A Louisiana statute[9] provides that if a person shall continue to occupy a predial estate (an estate for agricultural purposes) for one month after the expiration of his term without objection on the part of the lessor or someone claiming under him, the contract will be considered as renewed on the same terms for a year but no longer. However, this statute is not applicable where either party has announced his intention not to renew the lease contract on the same terms or for a full additional year. Here a rebuttable presumption is established. Where the lessee had definitely refused to renew the contract for another year and had only been permitted to hold over under an agreement to vacate on written notice to quit the premises, the presumption was declared to have been rebutted.[10]

Under the Kentucky statute[11] a tenant under contract for a term which is to expire on a day certain shall acquire no rights by holding over if proceedings to oust him are instituted within ninety days after the end of the term. However, if proceedings are not begun within that period, then the tenant cannot be ousted for a year from the day that the original tenancy expired. This statute has evidently altered the common law with respect to the effect of a tenant's continued occupation of land after his contract has expired.

A tenancy from year to year may be established where a farmer holds land under a lease contract which is invalid because of the Statute of Frauds. In one situation a Mississippi farmer contracted for the use of land under a five-year oral agreement which was invalid under the Statute. He had given five annual rent notes to the landowner and had paid the periodic rent agreed upon for four years without objection. It was held that he had become a tenant from year to year and was therefore entitled to the statutory notice to quit.[12] This is evidently an application of the part performance doctrine which seems to have been approved in an early Kentucky decision.[13] However, this doctrine cannot be employed in an instance where there has been no possession under the invalid oral contract.[14]

The common law required that a six months notice be given before

[9] LA. CIV. CODE ANN. §2688 (Dart 1932).
[10] Ashton Realty Co. v. Prowell, 165 La. 328, 115 So. 579 (1928).
[11] KY. REV. STAT. §383.160 (1946).
[12] Scruggs v. McGehee, 110 Miss. 10, 69 So. 1003 (1915).
[13] Morehead v. Watkyns, 44 Ky. 228 (1844).
[14] White v. Levy, 93 Ala. 484, 9 So. 164 (1891).

the end of the current period of tenure in order to terminate a tenancy from year to year. This rule was approved in early cases from Kentucky,[15] and North Carolina.[16] The aforementioned Kentucky statute[17] has no doubt altered the law in this respect, at least to a certain degree, and the present North Carolina law requires a notice of a month or more before the expiration of the current year's term.[18] The statutory period for notice is three months in Florida[19] and Virginia[20] and two months in Mississippi.[21] South Carolina requires a reasonable notice[22] and it must look forward to the end of the calendar year.[23] An Arkansas judge made remarks which seem to indicate that a reasonable notice would be sufficient under the law of that State.[24] The reasonableness of the notice would clearly be an issue of fact for the jury.

Where a statute prescribes a certain period, the parties may agree upon another time for the service of the notice.[25] If after the commencement of a yearly term an express lease is entered into between the parties for a definite time and it is agreed that the tenant shall quit the premises by that date, the form of the tenancy is superseded and notice is dispensed with.[26]

A Virginia landlord had notified his tenant from year to year that his rent for the next year would be a share of the crops rather than the fixed money rent he had been paying. The tenant had replied that he would do "what was right." Further notice was served on the tenant to go ahead. It was held that the tenancy from year to year was not terminated by this exchange. The court was of the opinion that even if the notice and tenant's reply had been sufficient to end the relationship, the action of the landlord in afterward notifying his irresponsible tenant to stop drinking whiskey and go ahead with the job would consitute a waiver of the notice previously given.[27]

The Georgia court has held that it is not necessary to give a tenant notice to vacate where the tenancy is for one year at a time.[28] However, it is probable that this contract was construed as establishing a continuous renewal agreement for one year at a time rather than a tenancy from year to year.

[15] Morehead v. Watkyns, 44 Ky. 228 (1844).
[16] Irving v. Cox, 27 N. C. 521 (1845).
[17] *Supra* note 11.
[18] N. C. GEN. STAT. §42-14 (1943).
[19] FLA. STAT. ANN. §83.03 (1941).
[20] VA. CODE ANN. §5516 (1942).
[21] MISS. CODE ANN. §946 (1942). See Hamilton v. Federal Bank, 175 Miss. 462, 167 So. 642 (1936); Scruggs v. McGehee, 110 Miss. 10, 69 So. 1003 (1915).
[22] Robison v. Barton, 113 S. C. 212, 102 S. E. 16 (1920).
[23] Maynard v. Campbell, 115 S. C. 226, 105 S. E. 351 (1920); Floyd v. Floyd, 4 Rich. 23 (S. C. 1850).
[24] Lamew v. Townsend, 147 Ark. 282, 227 S. W. 593 (1921).
[25] Cherry v. Whitehurst, 216 N. C. 340, 4 S. E. 2d 900 (1939).
[26] Williams v. Bennett, 26 N. C. 122 (1842).
[27] Kellum v. Belote, 122 Va. 537, 95 S. E. 453 (1918).
[28] Lee v. Beasley, 159 Ga. 527, 126 S. E. 290 (1925).

A study of the other periodic tenancies, such as from month to month and from week to week, is not appropriate here, since it is clear that no agricultural tenancy would be taken on these terms.

Tenancy at Will

A tenancy at will may be said to be a leasehold interest in land of uncertain duration which can be terminated at the wish of the landowner. Yet it has been said that a tenancy which is determinable at the will of one party is also determinable by the other.[29] A tenant at will who holds over after a proper notice to quit the premises has been served upon him no longer occupies that relationship and becomes a tenant at sufferance.[30]

A tenancy at will may be established by an express provision of the lease contract. Thus an agreement where the landowner agrees to allow a person to use the land with the understanding that the latter will move whenever requested to do so by the owner has been held to establish a tenancy at will.[31] The North Carolina court decided that such a tenancy existed where a landowner agreed to allow a prospective occupant to cultivate the soil during his life or for as long as he pleased.[32] One judge was of the opinion that this was a mere personal contract and that no estate vested in the occupant.

The Louisiana court has held that a mere verbal permission to occupy land during the lifetime of the owner without any rent or other charge would establish a tenancy at will terminable at the pleasure of the owner.[33] It may be that the court was influenced by a rule that parol evidence was only admissible to prove the simple fact of the permission to occupy the land and not to establish title or other such interest in the property itself, whether it be of ownership, use, or habitation, derived from or created by the owner's permission.

In a rather recent case from Mississippi one of several owners in common of an undivided tract of land, without authority from his co-owners, made a crop-sharing contract covering the entire premises with a person wishing to cultivate the land. The court refused to recognize the validity of this contract and ruled that the occupant was a tenant at will with respect to the undivided portions of the co-owners and would be responsible to them for the reasonable value of the use and occupation. The court reasoned that in this situation an occupant working under an invalid contract was a tenant at will.[34]

A Kentucky landowner employed a farm laborer for a term of one

[29] Mhoon v. Drizzle, 14 N. C. 414 (1831).
[30] Sappenfield v. Goodman, 215 N. C. 414, 2 S. E. 2d 13 (1939).
[31] Humphries v. Humphries, 25 N. C. 362 (1843); Harrison v. Middleton, 11 Gratt. 527 (Va. 1854).
[32] Mhoon v. Drizzle, 14 N. C. 414 (1831).
[33] Bailey v. Ward, 32 La. Ann. 839 (1880).
[34] Vaughan v. McCool, 186 Miss. 549, 191 So. 286 (1939).

year at a stipulated sum per month. He agreed to keep the laborer's cow at a charge of one dollar a month and to furnish him a house at two dollars a month. After entering upon his duties the occupant refused to continue the work. The court definitely termed this a tenancy at will and declared that the tenant's interest was ended by his failure to perform the appointed tasks and there was no need for any notice to quit the premises.[35] It would seem that the arrangement here might very well have been called a cropper relationship. In an instance where the occupant was clearly shown to have been a cropper, the Georgia court held that his subsequent failure to comply with the terms of the agreement did not make him a tenant at will, and as such, subject to be dispossessed under a summary warrant.[36]

As a general rule it may be said that a tenancy at will arises where a party is allowed to take possession of land under a contract of sale, written or oral, or under an unexecuted contract of lease.[37] The same is true where a mortgagor holds over after foreclosure with the consent of the mortgagee[38] or where possession has been obtained under a parol trust.[39] However, where it was shown that the occupant held the premises as a purchaser and not as a tenant, a possessory action based on the theory of a tenancy is not maintainable.[40]

In one North Carolina case[41] an occupant held under a deed of trust arrangement where the instrument contained a stipulation for the retention of the premises until they were sold under the terms of the trust. After the land had been sold the occupant remained in possession. The court declared that such an occupant is a tenant at will or at sufferance for some purposes, but cannot be considered a tenant under a proper construction of the Landlord and Tenant Act,[42] which authorizes dispossessory proceedings, since that statute is only intended to cover those cases where the occupant has entered under some express or implied contract of lease with the landowner or his assigns or where he is in privity with those who have so entered. This interpretation would seem to exclude from the operation of the statute vendors or mortgagors[43] retaining possession under a contract for title which has not materialized.[44]

[35] McGee v. Gibson, 40 Ky. 105 (1840).
[36] Robson v. Cofield, 113 Ga. 1153, 39 S. E. 472 (1901).
[37] Dowd v. Gilchrist, 46 N. C. 353 (1854); Love v. Edmonston, 23 N. C. 152 (1843); Carson v. Baker, 15 N. C. 220 (1832); Jones v. Temple, 87 Va. 210, 12 S. E. 404 (1890).
[38] Buchmann v. Callahan. 222 Ala. 240, 131 So. 799 (1931).
[39] Wright v. Graves, 80 Ala. 416 (1885).
[40] Thrift v. Schurr, 52 Ga. App. 314, 183 S. E. 195 (1935).
[41] McCombs v. Wallace, 66 N. C. 481 (1872).
[42] N. C. GEN. STAT. §42-26 (1943).
[43] Culbreth v. Hall, 159 N. C. 588, 75 S. E. 1096 (1912); Greer v. Wilbar, 72 N. C. 592 (1875).
[44] Greer v. Wilbar, 72 N. C. 592 (1875).

An opposite construction seems to have been placed upon the Georgia Landlord and Tenant Act.[45] Here it has been said that where the interest of a landowner has been divested by a sale made pursuant to authority contained in a security deed, and he thereafter remains in possession, he becomes a tenant at sufferance of the purchaser, and, as such, may be summarily dispossessed under the statute.[46]

This difference of opinion seems to prevail even where the security deed or other instrument contains a provision which states that the debtor will become a tenant upon a default and sale pursuant to the power provided for in the instrument. Thus the North Carolina court held that the action of summary ejectment authorized by the Landlord and Tenant Act could not be brought where the security deed stipulated that those in possession at the time of the sale would immediately become the tenants at will of the purchaser, the statute being applicable only in instances where a more conventional tenancy relationship exists.[47] On the other hand, a Georgia court has held that summary proceedings under the Landlord and Tenant Act may be brought where a security deed provides that the possession of the mortgagor or any person holding under him after a foreclosure sale shall be as "tenants holding over," for such a directive is clearly the intention of the parties.[48] The court also declared that the statutory rule[49] that a term of unspecified duration shall be presumed to be for the calendar year is not applicable to such a situation as is here presented.

It has been held that a tenancy at will is not created until the prospective occupant enters the premises and that therefore the holder of a contract of tenancy who has never had possession is not allowed to maintain a possessory action.[50]

A South Carolina landowner leased certain premises to a tenant who afterwards assigned his interest to another with the owner's consent. After the assignee had gone into possession the landowner agreed to execute a new lease to him personally. However, after the assignee had signed the instrument, the landowner refused to go through with the deal and would not sign. It was held that under these circumstances the assignee was not within the meaning of a statute[51] which authorized the ejectment of persons going into possession of land as tenants at will. This assignee did not in the first instance go on the land as tenant at will. It was also declared that the unexcuted agreement for a new term could not have the effect of making the assignee a tenant at will, since

[45] GA. CODE ANN. §61-301 *et. seq.* (1941).
[46] Atlantic Life Ins. Co. v. Ryals, 48 Ga. App. 793, 173 S. E. 875 (1934).
[47] Prudential Ins. Co. v. Totten, 203 N. C. 431, 166 S. E. 316 (1932).
[48] Price v. Bloodworth, 55 Ga. App. 268, 189 S. E. 925 (1937).
[49] GA. CODE ANN. §61-104 (1941).
[50] Pollock v. Kittrell, 4 N. C. 585 (1817).
[51] S. C. CODE ANN. §8812 (1942).

that instrument must be either entirely ignored or else regarded as having been carried into full force and effect according to the manifest intention of the parties at the time it was drawn up.[52]

In Georgia, by express statutory provision,[53] parol contracts for the use of land for a term exceeding one year shall have the effect of establishing a tenancy at will.[54] In some instances the tenant can be shown to have paid a consideration, in money, labor, or improvements, for the privilege of cultivating the land. In one such case the tenant had made the improvements called for by a parol contract. The court declared that the character of the tenancy would not be changed, but that the making of the improvements would operate as an estoppel upon the landlord to terminate the tenancy until the tenant had occupied the premises long enough for his outlay to offset the stipulated rent.[55] It also said the statute[56] providing that any rental contract of indefinite duration should be interpreted as a tenancy for a calendar year would have no application when by necessary implication, as in this case, a minimum duration of the tenancy was fixed in excess of a year.

Suppose a tenant at will makes a sublease, assignment, or transfer of the premises to someone else. It is a general rule that the making of a lease by a tenant at will to another terminates the tenancy and converts the tenant into a trespasser. In Alabama, however, it has been held that this proposition is subject to the qualification that it will have this effect only at the election of the landowner and that no other person, including a tenant trying to avoid the payment of rent, has a right to regard the tenancy as terminated.[57]

It is clear that a tenant at will should be entitled to the growing crops planted before a notice to quit has been served, and the right of ingress and egress to work and harvest such crops.[58] But this does not give him the right to hold the premises or to live on the land after notice.

In respect to the notice which is necessary to terminate a tenancy at will the laws in the several states differ widely. In North Carolina a tenant at will, if entitled to any notice at all and in the absence of a statute setting up a different rule, is entitled only to a reasonable notice to quit.[59] In fact the court has said that a tenancy at will is terminable *instanter*.[60] According to the Mississippi statute[61] notice to quit is nec-

[52] Morriss v. Palmer, 44 S. C. 462, 22 S. E. 726 (1895).
[53] GA. CODE ANN. §61-102 (1941).
[54] See Beasley v. Lee, 155 Ga. 634, 117 S. E. 743 (1923); Abbott v. Palmer, 136 Ga. 278, 71 S. E. 419 (1911); Sikes v. Carter, 30 Ga. App. 539, 118 S. E. 430 (1923); Beveridge v. Simmerville, 26 Ga. App. 373, 106 S. E. 212 (1921).
[55] Sikes v. Carter, 30 Ga. App. 539, 118 S. E. 430 (1923).
[56] GA. CODE ANN. §61-104 (1941). [57] Cook v. Cook, 28 Ala. 660 (1856).
[58] Buchmann v. Callahan, 222 Ala. 240, 131 So. 799 (1931); Humphries v. Humphries, 25 N. C. 362 (1843).
[59] Sappenfield v. Goodman, 215 N. C. 414, 2 S. E. 2d 13 (1939).
[60] Barbee v. Lamb, 225 N. C. 211, 34 S. E. 2d 65 (1945); Love v. Edmonston, 23 N. C. 152 (1843).
[61] MISS. CODE ANN. §946 (1942).

essary where the term is of uncertain duration, but there is no definite requirement of time prescribed for quitting the premises where the tenancy is strictly at will. Hence it is likely that a reasonable time would be allowed. It is supposed that this would also be the effect of the Virginia statute.[62]

In the case of a predial or agricultural lease in Louisiana, a statute[63] provides that where no time or duration of the estate has been specified, the tenancy is presumed to be for one year, since that is the time usually needed to raise, gather, and market a crop. Therefore, it is probable that no lease of uncertain duration concerning agricultural lands would be considered as a strict tenancy at will. Another statute[64] requiring ten days notice in tenancies of uncertain duration would most likely not apply to agricultural leases.

A tenancy at will in Kentucky may be terminated by the landlord's written notice of one month.[65] According to a Georgia statute[66] the interest of a tenant at will does not expire until two months after the landlord's notice of his desire to end the relationship, while the tenant may terminate the status by one month's notice. It is not necessary that the notice be in writing.[67] Upon the issue being raised by the tenant, evidence showing a notice of two months is essential to the landlord's recovery of possession.[68]

A Florida statute[69] formerly provided that any lease not in writing or without the lessor's signature would be deemed to establish a tenancy at will; however, this was later altered and such an occupancy now creates a tenancy at sufferance.[70] In this state all periodic tenancies, including those from year to year, which are created by a written contract are evidently to be deemed tenancies at will,[71] and three months' notice is required for the termination of such a tenancy.[72] Another statute[73] provides that the mere payment and/or acceptance of rent shall not be deemed to establish a renewed tenancy, but if the possession is continued with the written consent of the owner, a tenancy at will shall be established. This act seems to eliminate any possibility that a tenancy from year to year would arise from the payment and acceptance of rent in accordance with the general rule in effect in most of the southeastern states.

How should the notice to terminate a tenancy at will be brought to the attention of the tenant? The Alabama court has said that the notice

[62] VA. CODE ANN. §5516 (1942).
[63] LA. CIV. CODE ANN. §2687 (Dart 1932).
[64] LA. CIV. CODE ANN. §2686 (Dart 1932).
[65] KY. REV. STAT. §383.140 (1946).
[66] GA. CODE ANN. §61-105 (1941).
[67] Farlow v. Central Oil Co., 39 S. E. 2d 561 (Ga. App. 1946).
[68] Harrell v. Souter, 27 Ga. App. 531, 109 S. E. 301 (1921).
[69] FLA. STAT. ANN. §83.01 (1941).
[70] FLA. STAT. ANN. §83.01 (1941).
[71] FLA. STAT. ANN. §§83.01, 83.02 (1941).
[72] FLA. STAT. ANN. §83.03 (1941).
[73] FLA. STAT. ANN. §83.04 (1941).

must be given in such a way that the tenant may be made cognizant of the landlord's intent.[74]

There seems to be no doubt that a purchaser of the landlord's reversionary interest may, upon giving the required statutory notice, terminate the tenancy at will and proceed to oust the tenant.[75]

Tenancy at Sufferance

A tenancy at sufferance is not really a tenancy at all, the occupant being on the premises without any lawful claim. It exists where an occupant who has been on the land rightfully continues to hold over without any legitimate reason and with the mere sufferance of the owner. Thus where a tenant for an agreed term continues on after its expiration, a tenancy at sufferance is established.[76] In a situation where a tenant had held over in this manner, the court remarked that a tenant at sufferance is a wrongdoer in possession without the permission of the owner and because of his laches or neglect.[77] The Florida court has defined a tenant at sufferance as one who comes into lawful posession of land otherwise than by operation of law and who continues to occupy it after his right to do so is at an end.[78]

Where for a number of years a tenant has held under an oral lease, made subject to the right of the landlord to sell the property at any time, and the tenant continued on the land after being promptly notified of a sale, a tenancy at sufferance was created.[79] The same is true where a tenant at will in Georgia continues in possession for more than two months after the required statutory notice.[80] The rights of a tenant at will terminate at his death, and the Kentucky court has held that the wife of such a tenant thereafter remaining in possession was, if a tenant at all, merely a tenant at sufferance.[81]

A Georgia farmer occupied land under a cropping contract and remained in possession after the agreement had expired. Here the court declared that he held as a tenant at sufferance and could be proceeded against under the Landlord and Tenant Act, since the original entry did not have to be under a tenancy to place him subsequently in that category.[82] In this case the period of holding over before eviction proceedings were begun was only eight days, and the dissenting judge pointed out that to have the effect of changing the farmer's status to

[74] Cook v. Cook, 28 Ala. 660 (1856).
[75] Tatum v. Padrosa, 24 Ga. App. 259, 100 S. E. 653 (1919).
[76] Crawford v. Jones, 27 Ga. App. 448, 108 S. E. 807 (1921).
[77] Willis v. Harrell, 118 Ga. 906, 45 S. E. 794 (1903).
[78] Brady v. Scott, 128 Fla. 582, 175 So. 724 (1937); Coleman v. State, 119 Fla. 653, 161 So. 89 (1935). See also Baker v. Clifford-Mathew Inv. Co., 99 Fla. 1229, 128 So. 827 (1930).
[79] Minor v. Sutton, 73 Ga. App. 253, 36 S. E. 2d 158 (1945).
[80] Crawford v. Jones, 27 Ga. App. 448, 108 S. E. 807 (1921).
[81] Perry v. Teal, 142 Ky. 441, 134 S. W. 458 (1911).
[82] Malone v. Floyd, 50 Ga. App. 701, 179 S. E. 176 (1935).

that of a tenant at sufferance, the subsequent occupancy would have to be of sufficient length to warrant an inference of consent to a different status. This seems a very reasonable attitude.

In Georgia a person entered upon certain premises as the tenant of another who held merely a beneficial interest in the land, his right to the property being subject to the claim of a third party holding a security deed with power of sale. The land was sold and the holder of the deed became the purchaser. The tenant remained in possession, and the court held that he was a tenant at sufferance and might be dispossessed.[83]

If the lessee of a life tenant is in possession at the time of the latter's death, and continues to hold the property, he thereby becomes a tenant at sufferance. Where, however, the lessee is not in possession when the life tenant dies, or does not hold over, a mere recognition on the part of the remainderman of the previously executed rental contract with the life tenant will not have the effect of making the occupant a tenant at sufferance, a necessary element of that tenancy being the continuance of possession.[84]

A tenancy at sufferance may arise out of other relationships. Thus where a real estate mortgagor remains in possession after forfeiture without the express assent or dissent of the new owner, he stays in possession without right and is a tenant at sufferance.[85] It has also been held that where all right, title, and interest of a landowner has been divested by a transfer made under the power of sale in a security deed, and he thereafter remains in possession, he becomes a tenant at sufferance and therefore subject to be dispossessed in a summary proceeding.[86]

Where a purchaser of land is given possession without payment of the price and remains in control after a default in the payment of the installments provided for by the contract, a tenancy at sufferance exists.[87] The same result follows where an occupant of land has entered under the terms of a purchasing contract providing that he is to vacate the premises on request after a default in the payment of purchase money notes and then has held over after a failure to pay the first note.[88]

Sometimes a person whose land has been sold at an execution sale remains in control of the premises and his continued possession is merely tolerated by the purchaser, who at no time gives his consent to the extended occupancy. In a situation of this kind the court held that upon the consummation of the sale the former owner, who had led the purchaser to believe that he was going to quit the premises, became a

[83] Williams v. Federal Land Bank, 44 Ga. App. 606, 162 S. E. 408 (1932).
[84] Wright v. Graves, 80 Ala. 416 (1885).
[85] Buchmann v. Callahan, 222 Ala. 240, 131 So. 799 (1931).
[86] Lowther v. Patton, 45 Ga. App. 543, 165 S. E. 487 (1932).
[87] Bush v. Fuller, 173 Ala. 511, 55 So. 1000 (1911).
[88] Delph v. Bank of Harlan, 292 Ky. 387, 166 S. W. 2d 852 (1942).

tenant at sufferance. The mere fact that the purchaser had told the former owner that he would have to pay rent would not convert the holding into a tenancy at will.[89]

Again, a person made a purchasing contract with one who assumed to act as the agent of a landowner, the pact being subject to the latter's approval, and went into possession of the premises. The agreement was never ratified, however, and the occupant was held to be a tenant at sufferance.[90]

A Virginia tenant holding over after his term had come to an end gave a deed for the property to a third party. Here it was clear that a tenancy from year to year would result from the landlord's recognition of the occupant. If there had been no recognition, however, the uninterrupted possession would make the occupant a tenant at sufferance, and the tenant's transferee would have no more right to hold the property than he had himself.[91]

Under a Georgia statute making a tenant holding over liable for double rent, it has been held that a tenant at sufferance did not become so liable until after a demand for possession.[92]

In Florida any lease is deemed to establish a tenancy at sufferance unless it is in writing and signed by the landowner.[93] In the event of the entrance of a tenant under a written lease and the continuance of this possession after the term has expired, it would seem that the occupant will be considered a tenant at sufferance. However, if such possession should be continued with the newly executed written consent of the landowner, then the occupant would become a tenant at will.[94]

Another Florida statute[95] in effect in the twenties made it a misdemeanor for a tenant whose term had expired to hold possession for more than fifteen days after the service of a written demand. The period is shortened to ten days by amending acts.[96] The validity of these laws was upheld in an opinion in which the court remarked that the ten-day statute would have no application to verbal tenancy agreements, thus cutting down the usefulness of the act.[97]

A tenancy at sufferance continues until the landlord takes some affirmative action which will have the effect of transforming the holding into some other form of tenancy or until the interest is terminated.[98]

[89] Hill v. Kitchens, 39 Ga. App. 789, 148 S. E. 754 (1929).
[90] Smith v. Singleton, Hunt & Co., 71 Ga. 68 (1883).
[91] Emerick v. Tavener, 9 Gratt. 220 (Va. 1852).
[92] Willis v. Harrell, 118 Ga. 906, 45 S. E. 794 (1903); Smith v. Singleton, Hunt & Co., 71 Ga. 68 (1883); Hill v. Kitchens, 39 Ga. App. 789, 148 S. E. 754 (1929).
[93] FLA. STAT. ANN. §83.01 (1941). [94] FLA. STAT. ANN. §83.04 (1941).
[95] FLA. STAT. ANN. §821.31 (1941).
[96] FLA. STAT. ANN. §§821.31, 83.04 (1941).
[97] Coleman v. State, 119 Fla. 653, 161 So. 89 (1935).
[98] Willis v. Harrell, 118 Ga. 906, 45 S. E. 794 (1903); Crawford v. Jones, 27 Ga. App. 449, 108 S. E. 807 (1921).

Generally it may be said that no notice is required to end a tenancy at sufferance, the occupant having become a wrongdoer by holding over without any legitimate interest.[99] In contradiction of all reason, however, a Kentucky statute[100] provides for one month's notice in writing to terminate this tenancy. It would seem that an interest of this kind, being merely permissive and without right, should require no previous notice for a termination.

In Alabama it has been said that although no notice is required to terminate a tenancy at sufferance, the service of a ten-day notice on such a tenant by necessary implication extends his lawful possession for that period, and that nothing short of a demand can make the possession unlawful until the stated time has elapsed.[101] The court further declared that a landowner's mistaken idea that a person in possession was a tenant at will would not change a tenancy at sufferance into a tenancy at will. However, a notice by the landowner to the occupant, wherein it was recited that the tenancy was one at will, would justify an inference that the holding was in fact at will.

CONCLUSION

With respect to that common type of farm tenancy, the tenancy from year to year, a return to the six months' notice for termination recognized by the common law is advocated. Pressure from urban dwellers has shortened this period of notice in several of the southeastern states. This is one of the situations in which it would be better to give different treatment to urban and farm tenants. Renters of farms should know at least six months in advance whether they will be permitted to remain on the leased premises another year.[102] It might be well to adopt a statute like the one enacted in Iowa[103] which provides that an agricultural lease continues from year to year unless either party gives notice as of a certain time before the end of the lease year. That statute requires a four months' notice but this could be changed to six or any other period desired. It is thought to be much better to treat agricultural tenants who hold over as tenants from year to year rather than at tenants at will.[104] In fact studies in Kentucky[105] and Oklahoma[106] indicate that sentiment is growing for the abolishment of tenancies at

[99] Bush v. Fuller, 173 Ala. 511, 55 So. 1000 (1911); Willis v. Harrell, 118 Ga. 906, 45 S. E. 794 (1903); Emerick v. Tavener, 9 Gratt. 220 (Va. 1852).

[100] KY. REV. STAT. §383.140 (1946).

[101] Bush v. Fuller, 173 Ala. 511, 55 So. 1000 (1911).

[102] A. H. Cotton, *Regulation of Landlord-Tenant Relationships*, 4 LAW AND CONTEMP. PROB. 532-533 (1937); H. A. Hockley and W. D. Nichols, LEGAL ASPECTS OF FARM TENANCY IN KENTUCKY 257 (1941).

[103] Iowa Laws 1939, c. 235.

[104] W. J. Coleman and H. A. Hockley, LEGAL ASPECTS OF LANDLORD-TENANT RELATIONSHIPS IN OKLAHOMA 17 (1940).

[105] H. A. Hockley and W. D. Nichols, *supra* note 102, page 257.

[106] W. J. Coleman and H. A. Hockley, *supra* note 104, page 17.

will in agricultural relationships of this sort. In two southeastern states, North Carolina[107] and Virginia,[108] the courts have used language in respect to tenancies of uncertain duration which would seem to favor tenancies from year to year rather than tenancies at will. Hence, under this view, the tenant who holds over without objection after a one year term has expired should become a tenant from year to year until he is ousted by the giving of the statutory notice. This would no doubt make the tenant more secure and give him a more stable status.

As the written tenancy contract replaces the oral, the tenancy from year to year and the tenancy at will are disappearing from the law books to a great extent. They are carried over from the feudal law and the manorial system and are not adapted to this day of definite contracts. The need for certainty is one of the keystones of the movement for the modernization of the juridical system. Of course, the tenancy at sufferance will be with us as long as tenants hold over after their leases are terminated.

[107] Stedman v. McIntosh, 26 N. C. 291 (1844).
[108] Elliott v. Birrell, 127 Va. 166, 102 S. E. 762 (1920).