1889

Tenancies for Years

Earl Silas Peet
Cornell Law School

Follow this and additional works at: http://scholarship.law.cornell.edu/historical_theses

Part of the Law Commons

Recommended Citation
Peet, Earl Silas, "Tenancies for Years" (1889). Historical Theses and Dissertations Collection. Paper 97.
THESIS

TENANCIES FOR YEARS

By

EARL SILAS PEET

CORNELL UNIVERSITY
School—of—Law

May, 1889.
INTRODUCTION:- On account of the constant tendency of real estate toward aggregation, which tendency is being continually accelerated from the possibility of the aggregators being able to control the channels of trade and the market value of products by controlling the greatest amount of the goods which passed through those channels to that market, there is, as there ever has been, a gradual incorporation of small farms into the estates of larger landowners. As a further reason for this assimilation of small farms by the larger ones, it is an historical fact, persisting through the ages, that the unskillful mass will be ruled by the skillful few. Therefore, legislatures have been swayed by the well directed and concentrated power of privileged classes at the expense or in disregard of the less favored. In the primitive social organizations, the warrior was the dominant and, therefore, the privileged party, while the tiller of the soil was his servant; and not till the barons, with reverent search united their forces to preserve their rights, did the law-making power regard with favor the masses who obeyed those laws.

Thus it has come to pass in England that the few land
directors or landlords have survived the inroads into legislative favor of mighty corporation and other association.

Hence it is today that we find 'the whole of England, Ireland and Scotland held under deeds to a few landlords; and here in our free America, the boundaries of the larger farms are constantly lengthening. This is due partly to the cause that legislation, so far as it affects the farmer is made with little reference to his needs. But it is chiefly due to the cause of the last named cause, viz:— the inability of the great number of our farmers to combine to demand a due appreciation of their wants at the hands of the legislatures, together with the impossibility of their ruling their own markets by direct communication with them,—thereby obliterating that vast army of middle men or agents.

The important conclusion from the foregoing is that the by reason of the increasing aggregation of land under the ownership of a few which fact necessitates and ever increasing number of tenants to work the land of the large landowners, the law of Tenancies for Years embodies principles of ever widening interest and importance.
HISTORY, NATURE & DISTINCTION OF ESTATES FOR YEARS:

In the early common law and until the reign of Henry III, there were none but freehold estates in lands. While this state of things existed or rather as long as the Feudal system obtained, all tenants except of freehold held land at the will of the landlord and no estate in the lands which they could enforce in law. Such tenants held simply as the landlords' servants who for use of lands were to render some service to the landlord, and in case of being wrongfully dispossessed, could only sue for damages. But in Henry III. reign the writ of "Quare Ejectic infra terminum" was framed by which the termor could recover possession of the land as against any one except a stranger who entered and tortuously ousted the termor in which case the termor could only sue in the name of lessor.

Finally in Edward III. reign, the writ of ejectment, substantially like the writ now in use, was invented and so shaped as to enable the tenant of a term to recover it when deprived of the possession of the leased premises. From this time the security of possession of the land was vouchsafed
to tenants for years to the same extent as life tenants and the same remedies obtained.

An estate for years is one that is created by a contract called a lease, whereby one man called the lessor, lets to another, called the lessee, the possession of lands or tenements for a term of time fixed and agreed upon by the parties to the same. Wash. 291. And it matters not that the term is for less than a year provided the time of its existence is of definite extent. Ib. By a tenancy for years is meant more than a mere grant of a certain interest in land,—such as a portion of the crops or other products,—there is intended in a tenancy for years—a contract, more or less explicit as to the terms and conditions of the enjoyment of a term by the tenant and the time for which that enjoyment is to endure. Subject to the agreement in the lease, the use and products of the premises are the lessee's as owner. Thus a tenant, whether for life or years, may work and open mine on the premises, or a quarry, and the products of the mine or quarry are a part of the profits of the estate to which the tenant is entitled. Freer v. Stotenbur, 36 Barb. 841.

This principle is based on the evident intent of the par-
ties in the contract viz: That the contract has for its foundation or consideration the profits which may be realized from the use to which the property has been subjected and for which it is thereby represented to be valuable. So the tenant may attach fixtures, such as trees and nursery stock, buildings, and remove them before giving up possession at the end of the term. Kutter v. Smith, 2 Wall. 491-7. It seems that he may exercise this right until he yields possession, although the term may have expired. But this is an exception to the general rule by which the tenant forfeits these fixtures if he does not remove them during the term, being thereafter a part of the premises, his ownership ceases as to all rights. I. Wash. 291. And if by superior title in some person other than the lessor or by other means, the lessee's estate is determined not by his fault, he will have the privilege of removing the fixtures in a reasonable time. I. Wash. 292.

Though usual the reservation of rent is not essential to the validity of a tenancy for years by lease. Failing v. Schenk, 3 Hill 344; State v. Page, 1 Speers 408.

The word term signifies an estate for years, from the
Latin terminus, because the estate has a definite period to endure which is between a fixed beginning and ending. 1 Wash. 292.

An interesse termini is the interest which the tempore has prior to actual occupancy and after the delivery of the contract or lease. A lease does not take effect until delivery. It is unimportant when the lease was written.

What Constitutes Delivery of a Lease:

In Fisher v. Hall 41 N. Y. 416 (422) the doctrine is thus summed up by Judge Daniels: To constitute a complete delivery of a deed, the grantor must do some act putting it beyond his power to revoke. The delivery need not be to the grantee, but may be to another person, by sufficient authority from the grantee; or it may be to a stranger for and in behalf and to the use of the party without authority. (Church v.) Gilman 15 Wend. 680).

The grantee is presumed to have accepted. To constitute a delivery of a deed which will be effectual in transferring title, the grantor must part with the possession of the deed or the right to retain it by unequivocal declarations that he
holds as bailee for the grantee, that is with the consent of the grantee who left with the grantor. (Farrar v. Bridges 5 Hump. (Tenn.) 44). In Ruskin v. Shield 11 Ga. 636 it was held that the attestation clause reciting that the deed was delivered was not of itself sufficient to establish a delivery; and the same courts held in Rutledge v. Montgomery 30 Ga. 641, that there was no delivery of a deed which the grantor concealed from the grantee, and held not in subordination to him, but independent of his will and with the intention that it should not go into his custody. The same was held in the above N. Y. case.

A lease to A. for one year with a privilege of holding for three years is a lease for years either for one year or three years as lessee shall elect. 1 Wash. 294. And a lease for one year and so on from year to year, is regarded as one for two years certain and is an estate for years. Denn v. Cartright, 4 East, 29. Also an estate for years results where a person leases land till a certain debt is paid. 1 Wash 295; Horner v. Leeds 25 N. J. 106.

This is on the ground that what may be made certain is
certain as to the duration of a term. And, in the last above supposed case, it was claimed by estimation that the lessee could determine the length of time during which he must occupy the premises for the payment of the debt.

A termor with simply Interesse termini can maintain an action of ejectment when the time comes for actual possession by him under the lease but until actual occupancy or entry he cannot maintain an action for trespass. 1 Wash. 297.

In delivering possession, the lessor simply warrants his own right so to do as against paramount title and does not vouchsafe any possession as against strangers. Field v) Herrick 101 Ill. 210; Trull v) Granger 8 N. Y. 115. Not does it matter if the lessee neglects to enter as to his liability for rent provided it is not the lessor's fault on account of paramount title. 1 Wash. 297.

CREATION OF ESTATES FOR YEARS:

At common law estates for years could be created in three ways,- by deed, by writing not under seal, and by parole; but if an incorporeal hereditament, it must be created by deed. Wms. Real Prop. 195 & 327. By the Statute of Frauds
which has been adopted by nearly all the States, all leases for more than three years (one year in New York State) not put in writing and signed by the party charged shall have the force and effect of estates at will only. And in N. Y. leases for three years or more must be recorded in order to avail the lessee as against subsequent bona fide encumbrancers for value. As to leases for longer than one year the statutes of the several states differ as to whether such leases shall be under seal. One of the most difficult questions relating to leases is as to whether it is intended that they begin at present or in the future. To answer this, the intention of the parties, as gathered from the whole instrument, controls. If immediate possession follows with consent of lessor, the lease will be construed as a present demise, though the "lease to commence in future" be inserted into the lease.

Whiting v. Allaire 1 N. Y., 305-11; Holley v. Young 36 Me. 520; Bussman v. Ganster 72 Pa. St. 285. To tell whether the instrument is a lease or an agreement for a lease, it is usually sufficient to decide if there is anything left incomplete by the parties. If not, it may operate as a present demise.
CONDITIONS IN LEASES:

By a condition in a lease is meant a clause of contingency on the happening of which the estate granted may be defeated. 2 Bl. Comm. 299. It is a general rule that, when by license a lessor permits a tenant to break the condition in a certain particular, the condition stands as to all the other bonds of the condition and works a waiver by the lessor only of that particular object of the license. For example, where lessee has made a breach of condition not to sublet, and the lessor receives rent from such sub-lessee, the lessor has waived his right to avoid the lease, but if the lessee should sublet again the lessor could restrain the lessee from the future enjoyment of his lease. Ireland v. Nichols 46 N. Y 413. But no breach of condition not to alien will result from decree of bankruptcy or surrender by eminent domain unless such cases be specifically stated in the condition. Jackson v. Corliss 7 Johns. 531; Smith v. Putnam 3 Pick. 221. Of course the death of the lessee does not break the condition against alienation or assignment because the executor or administrator is the deceased personal representative, and can
alienation unless specifically restricted by the lease. General terms against alienation will not avail against alienation by the lessee's personal representatives, the necessity arising from the Act of God. Seers v. Hind 1 Ves. Jr. 295; Bemis v. Wilder 100 Mass. 446.

In Bemis v. Wilder above where lessee held against assignee in bankruptcy depending for his right upon a covenant in his lease on his part not to sublet not to prevent or suffer any other person or persons to occupy or improve the premises except with the consent of the lessor. Held, that although lessee could not take advantage of a condition broken by himself in this case, moreover Judge Colt held, it is well settled that an assignment by operation of law passes the estate discharged of the covenant to the assignee and this would seem to be so where the transfer arises from voluntary proceedings in insolvency, as distinguished from proceedings in invitum provided no fraud enters the transaction.

Nor is it a breach of condition against alienation if a partner, who goes out of the partnership and another comes in and takes his place as copartner, the partners being the

Courts construe conditions, which work forfeitures, strictly. Thus a condition against subletting does not cover an assignment of a term and in such cases an assignment will not work a forfeiture. Lynde v. Hough 27 Barb. 415; Field v. Mills 23 N. J., 254. And so is an underletting not a breach of a condition against assigning the term. 33 N. Y. 81 Supra. 1 Wash. 317. And since conditions in leases are for the sole benefit of a lessor, his assignee cannot take advantage of any breach before assignment to himself. Where one makes a lease with a conditional limitation viz, lease absolute for three years and for two years thereafter if he the lessor did not sell the property; held, that a sale at any time during the last two years would avoid the lease. Knowles v) Hull 97 Mass. 206; Morton V. Weir 70 N. Y. 247.

COVENANTS IN LEASES:

Covenants are either,

1. Implied as of law, or,

2. Expressed as of Deeds.

A covenant for quiet enjoyment is implied in a lease.
Mayor of N. Y. v. Mabie 13 N. Y., 150. That is as against superior title, but not as against strangers or trespassers. But the lessee cannot claim pay for voluntary repairs of the premises. 1 Wash. 326. If lessor does not fulfill his agreement to make repairs, the lessee is not justified in abandoning the premises, but his action would be one on covenant or agreement. Tibbetts v. Percy 24 Barb. 39; 1 E. D. Smith 253.

But such a breach of contract would be a good counter claim in an action by the lessor for rent. Kelsey v. Ward 38 N. Y. 83.

On the part of the lessee, if no covenant is expressed in the lease the rent is implied to be paid at the end of the unit of the term. Ridgley v. Stillwell 27 Mo. 128. The tenant is bound to keep buildings in repair to preserve timber, to keep the soil in a proper state of cultivation, and a failure to do this renders him liable to an action for waste. 1 Wash. 326 #3.

The tenant cannot get title by buying the tax title to the land of which he is tenant. Prettyman v. Walston 34 Ill. 191-2. As a general proposition, an assignee is only liable
for a breach of covenant which occurs while he remains possessed of the estate. Thus, if a lessee assign his term to A, who holds the premises for a while and then assigns to B, who holds them when the rent falls due, the lessor may sue the lessee upon his personal covenant to pay the rent. Or he may sue B and recover by reason of the privity of estate between them. But he could not hold A liable for any part of the rent by reason of his having held the premises as assignee for a part of the time. 1 Wash. 326; Taylor Landlord & Tenant #449; Graves v. Porter 11 Barb. 592. In the last cited case it is decided that when a person takes premises as assignee of a term between rent days he takes it "cum onere", subject to the payment of the rent which shall thereafter fall due. That is, when a person is assigned all the title, interest and right in a lease, he takes it as it stands, with its present liabilities. If rent is to be paid at a future date as by covenant in the lease, although a part of the time for which that rent is payable has passed at the time the assignee takes possession, still he is bound on his implied covenant with the assignor to pay rent for that past portion of the term.
Where the lessee was, by the term of his lease, at liberty to purchase the estate at a certain price at the end of the term, it was held, the assignment of his lease gave his assignee the right to claim the conveyance. Napier v. Darling 70 Pa. St. 87; Kerr v. Day 14 Pa. St. 112. In Napier v. Darling Supra., it was held that the agreement giving the option to purchase was not a mere personal covenant, but a right which, though resting solely with the lessee, might be transferred to his vendee (assignee), and enforced, at his election, with the same effect as if the contract had been absolute in its terms. Such a stipulation is in the nature of a continuing offer to sell.

Such a covenant is said to run with the land. And in general all covenants run with the land which are for the benefit of a lessor's estate, because it is presumed that he would not have made the lease except that those covenants formed a part of the consideration therefor. And because the lessee has the right to transfer or assign his interest in the term, if not expressly restricted, he has the right of assigning all his privileges under such lease. But, of course, since the lessor has this election to hold the lessee or his assignee for the
and express conditions, he has his election as to which he will look to for payment in the case above supposed where a privilege of purchase was given to the lessee. Van Rensallear v. Smith 27 Barb. 146-7. But if the covenant is to do something not beneficial to the estate or which is for the benefit of the lessor alone, that covenant would not run with the land. 1 Wash* 330. But he remains liable on his express covenants even though the lessor assent in writing to the assignment, and though he has actually received rent of the assignee. Bailey v. Wells, 8 Wis. 141; Port v. Jackson 17 Johns 239; Quackenbos v. Clarke 12 Wend. 556. In Bailey v. Wells Supra, the court held the above from the express provisions of the Statute of Frauds which declares that no assignment of a lease will be good unless in writing and signed by the party charged. Therefore no surrender to the lessor had been effected. In Port v. Jackson Supra, they court relies for their decision in a similar case upon an entirely different ground, viz,- the nature of the agreement between lessor and lessee. This is a case where the lessor had received rent from the assignee of his lessee. In the course of the opinion
the courts say, - The lessee continuing to be liable, he selects his successor, with a view to the future punctual payment of the rent, and trusting to the responsibility of the person to whom he sells, he takes from him such security, by way of covenant, or otherwise, as shall bind him to pay the rent, notwithstanding any future alienation that may be made of the land. And from the above cited cases it seems that if the lessor accepts rent from his lessee's assignee, he does not thereby accept a surrender on the part of the lessee, but still holds the lessee as guarantor how he may look to for any of the unpaid rent.

If buildings are destroyed without the fault of lessor or lessee neither will be obliged to rebuild in the absence of express covenant in the lease to repair or otherwise to the contrary. Post V. Vetter 2 E..D. Smith 248; Wells v. Castles 3 Gray 323.

ASSIGNMENT AND SUB-TENANCY:

Unless restrained by lease, a lessee may assign or sub-let his leasehold interest. Taylor L. & T. 22. And, if the
lease is under seal, the assignment must be under seal.

Bridgham v. Tileston 5 Allen 371.

A letting by lessee of a portion of leased premises for the whole term is an assignment of such portion and not an underletting; and, as an assignment, the assignee becomes liable for all the covenants, pro tanto, to the lessor. 1 Wash 334. And this would be so even though the premises were let for more than what lessee paid for them. Otherwise where first lessee reserves any of the powers incident to the lessor. For example, such as entry etc. Collins v. Hasbrouck 56 N. Y. 157. Unless a tenant of a lessee can be charged as assignee, he is a subtenant and is liable neither in equity or law to the lessor. Bedford v. Terhune 30 N. Y., 458; Davis v. Morris 36 N. Y., 574. The reason for this is that, in cases of assignment, no reversion remains in the assignor.

A tenant for years, unless restrained by the covenants and conditions of his lease, may under let the premises or any part of them or carve up his estate into such forms as he sees fit, and, during the continuance of the term, the original lessor is so far divested of the possession, that, if he were to find the premises vacant, he would have no
more right to enter upon them than a stranger. Brown v. Powell 25 Pa. St. 229; Wms. Real Prop. 335-6. The assignee or grantee of the lessor is entitled to rent from last pay-day.

Stillwell v. Doughty 3 Brdf. 359. As to the liability of the mortgagee of a term, the better opinion is that such mortgagee becomes responsible as assignee when he takes possession under his deed, but not before. Felch v. Taylor 13 Pick. 133; Walton v. Cronly 14 Wend. 83; Astor v. Miller 2 Paige 68. This is so because the mortgagee has simply a chattel interest in the estate. In cases of general assignments of debtor for benefit of his creditors, such assignee of debtors lease will not be charged as assignee till he elects to take the lease after a reasonable time to see if by so doing the lease will be to the advantage of creditors. Journey v. Brackley 1 Hilton 447.

OF RENT, EVICTION, DESTRUCTION AND USE OF PREMISES:

No claim against the lessee or his assignee for rent until they have enjoyed the premises during the whole time for which the payment of a rent is stipulated to be made, unless the rent is payable in advance. Boardman v. Osborn 23 Pick. 295. And where no time is fixed for such payment to be
made, it is not due till the end of the year, or the rent period. Ridgley v. Stillwell 27 Mo. 128. It has been held that where the lessor was given power to determine the lease by selling the estate at any time and he sold it between the times of payment of rent, he could not recover rent for the time during which the lessee had occupied the premises after the last preceding rent day. Nicholson v. Munigle 6 Allen 215; Zule v. Zule 24 Wend. 76. The same doctrine applies where the demise was by parole. 6 Allen 219, n.

The principle upon which these cases were decided seems to be the power of the lessor to destroy the tenant's enjoyment of the estate at the former's option; and if this be done, the lessor must suffer the inconveniences which his own will has occasioned rather than making the passive lessee suffer them. The same principle applies where the tenant is evicted by paramount title between rent days. If a tenant is evicted by the public enemy or by the public armed force the tenant will still at common law be held for the rent. Shilling v. Holme 23 Cal. 227; Opposite held in Bailey v. Lawrence 1 Bay 499.

But if landlord wrongfully evicts a tenant for years
from a portion of the premises, the tenant will not be bound
to pay any rent. 1 Wash. 343. So where the second lessee of
lessor evicts the first lessee,—the act being so far the
act of the lessor that it operates as such. Wright v. Lattin
38 Ill. 293. As to damages see Larkin v. Misland 100 N. Y.
212. The exemption from payment of rent dates from the last
rent day. Chatterton v. Fox 5 Duer 64. The use by the lessor
of a part of the rented house for immoral purposes will be a
substantial eviction. Dyett v. Pendleton 8 Cowen 727. Where
there is constructive eviction as above, the tenant must
quit the premises in order to be relieved from paying rent.

See above citations. Also Bareel v. Lawton 90 N. Y
293. The rule is,—any obstruction by the landlord to the ben-
eficial enjoyment of the demised premises, or a diminution of
the consideration of the contract by the acts of the landlord,
amounts to a constructive eviction. Lewis v. Payn 4 Wend. 423
Here trespass of a lessor does not amount to an eviction. An
entry by the lessor for the purpose of making repairs or
for lessee's benefit would not work an eviction. Peterson v.
Edmonson 5 Harrington 378. If the entire premises are destroy-
ed without lessor's fault, the lessee will be liable at common
law for rent unless otherwise stipulated.

This is decided in Dyer v. Wightman 66 Pa. St. 425 where a tenant was evicted by the exercise of the right of eminent domain upon the ground that the tenant's right to damages is to be enforced by the tenant proving such right and the extent thereof before the jury appointed to assess damages. A lessee of buildings which are burned has no relief at law or in equity against an express covenant to pay the rent unless he has protected himself by a stipulation in the lease or the landlord has covenanted to rebuild. 3 Kent 486.

Though the rule is not equitable it is well settled. Gates v. Green 4 Paige 355. Changed by a statute in N. Y. Laws of 1860, Chap. 345. The above named cases proceed upon the principle that the loss is the lessee's to the extent of his covenant to pay rent, repair, or restore and not the lessor's because the lessee is the purchaser and owner of the premises to the extent of supporting his covenants, and he takes his own chances. If the tenant covenants to repair, he must rebuild if the premises are burned down. 1 Wash. 346.

And it is immaterial as to the lessee that the lessor has the property insured. Bellfour v. Weston 1 T. R. 310.
Opinion per Lord Mansfield.

The tenant has no right in equity to demand that the insurance money be applied in rebuilding the premises nor to restrain the lessor from suing for the rent until the structure is restored. Sheets v. Seldon 7 Wall. 416-24; Moffat v. Smith 4 N. Y., 126.

It is a general rule gathered from the cases that where a person leases a privilege, he is not bound to repair the premises or to keep in repair premises upon the condition of which the value of the leased premises depends. Eg. Water privilege from a canal, destruction of leased premise from fire. Doupe v. Genin 45 N. Y. 121-3. But where one leases one of many rooms in a house and the house burns down the lessee is not liable at common law for further rent. Graves v. Berdan 26 N. Y., 498.

In Grave v. Berdan Supra the court reasoned,- Where the lessee takes an interest in the soil upon which a building stands, if the building is destroyed by fire, he may use the land upon which the building stood, beneficially, to some extent, without the building, or he may rebuild the edifice; but where he takes no interest in the soil, as in the case of a basement, or of upper rooms in the building he cannot
enjoy the premises in any manner after the destruction of a building, nor can he rebuild; and there should be an abatement or apportionment of the rent.

OF SURRENDER HERGER ETX.

A surrender can be made only by deed unless time is as short as parole lease would be good if made. Kister v. Miller 25 Pa. St. 481.

Any acts which are equivalent to an agreement on the part of a tenant to abandon, and on the part of the landlord to resume possession of the demised premises, amount to a surrender of the term by operation of law. Talbot v. Whipple 14 Allen 177-80. The surrender to be of any effect in barring a claim for rent, must be with the assent of the lessor.


In Morgan v. Smith 17 N. Y., 537 a lessor agreed with his lessees to rent the premises for lessees at their risk. Afterwards the lessee delivered the key to lessor. Held, that there was no surrender, but simply an act to make it possible for lessee to carry out his agreement to rent the
the premises.

In Thomas v. Nesom 69 N. Y., 118, the court held that mere retention by the lessor of keys delivered to him by the lessee without lessor's request or assent,—as where keys were sent through the mail,—does not of itself amount to a surrender and acceptance. Also held, that the lessor was not bound to seek the tenant and tender to him the return of the keys. In this case the tenant had moved away from the premises before he sent the keys to lessor.

In Craske v. Christian Union Pub. Co. 17 Hun 316 & 9, where the keys were sent to lessor by lessee with a message that the premises were surrendered; and he replies by saying that they are received and intimates that if the tenant desires he will make an effort to rent them, several articles of the tenant also being left on the premises,—held not a surrender because the landlord's intimation clearly excludes the idea of acceptance. For a constructive surrender there must be an acceptance by the landlord.

Judge Park in Lyon v. Reed 13 N. W. 306, thus sums up the law of surrender by operation of law: This term is applied in cases where an owner of a particular estate has been a
party to some act, the validity of which he is, by law, afterwards estopped from disputing, and which would not be valid if his particular estate had continued to exist. There the law treats the doing of such act as amounting to surrender. In such case, it will be observed, there can be no question of intention. The surrender is not the result of intention. It takes place independently, and even in spite of intention. As to merger, if the intermediate term is greater than the reversion term and there is a surrender of the intermediate term the reversioner holds only for his own smaller term. 1 Wash. 355. Therefore, there is a merger of the larger into the smaller estate. There is no merger where there is a remainder instead of a reversion.

LETTING LANDS UPON SHARES:

If the agreement amounts only to the effect that one who is to do the labor shall take charge of and manage the land in consideration of receiving the value of a fractional part of all the grain it is not regarded as a lease, but more in the nature of a payment for services rendered by a part
of the crops raised; and as a result the title to the whole crop remains in the owner of the land. Tanner v. Hills 48 N. Y., 362; Steele v. Frick 56 Pa. St. 172.

But if the agreement be for a division of the specific crops, the owner of the land and the occupant, in the above supposed case, are to be regarded as tenants in common of these crops. Putnam v. Wise 1 Hill 234; Chandler v. Thurston 10 Pick. 205; Dinehart v. Wilson 15 Barb. 595; Atwood v. Ruchman 21 Ill. 200. Also Tanner v. Hills 44 Barb. 428 and Lewis v. Lyman 22 Pick. 437.

On account of the powers and liabilities which differ so widely according as they are exercised or borne by tenants partners, or mere servants; it is of much importance to gain a clear appreciation of what characterizes lessees, tenants in common, and partners.

Landlords and those who hold under or with them are partners only when they are to share mutually the profits and losses. Putnam et. al. v. Wise 1 Hill 234. And it will not constitute a partnership if they agree that the occupier shall work the premises and divide the gross earnings. Ambler v. Bradley 6 Ver. Rep. 119.
The Court holding that, - They never shared in profit and loss. The share which the occupier received was a mere compensation for his labor. This agreement constituted the landlord and occupier master and servant. And it is the rule that whenever the occupier is to be renumerated for his labor with money, - whether the amount thereof is to be determined only after the crop has been sold, as by what a fraction of it will bring, or by an amount of money determined ab initio, - the relation thus established is that of master and servant. (Vid. 48 N. Y. 662 Supra.). But if the owner and occupier agree that there shall be a division of the crops or products themselves and that a part thereof shall go to the occupier and the rest to the owner, the relation of tenants in common is thereby created, and, as the result, the tenant can convey only his interest in such products. Putnam v. Wise Supra. And they are tenants in common though the owner delivers entire possession in fact.

The last propositions are true even though the technical word "Lease" and "to farmlet" be used in the contract.

But in Taylor v. Bradley 4 Abb. N. Y., Court of Appeals Dec. per Judge Woodruff, the reasoning of the above proposi-
tion, viz: That the owner would be a tenant in common even if he did not remain in possession or supervise a part of the operations, is strongly questioned and adjudged wrong on principle, but the court does not overrule the case in 1 Hill Supra. Yet the court reasons, If the question were new, I should say unhesitatingly that each case ought to be chiefly governed by the language employed by the parties to express their intention. Nor do I perceive any legal objection to a stipulation for the payment of rent in wheat or products of the land leased. Thus if a should demise, lease, and let the farm to B., to have and to hold for the term of x years rendering to A. an annual rent for the use of the farm, to wit: One half of the crops raised, - I perceive no sensible reason why the parties should not be deemed to intend an actual and technical lease which would entitle the lessee to possession, give him a term in the land, make his payment rent in the technical sense. But the court holds that in case there was an intention that the tenant should hold entire possession, - then a technical lease would not result.

If, however, the occupier agree to render x bushels of grain to be raised on the farm, the relation of lessor and
lessee would result.

Putnam v. Wise Supra. And as to distinguishing between tenants in common and lessees, it is immaterial whether the term be for a crop or for a year. Ib.

In the course of this brief investigation, I have endeavored to elucidate only some of the most perplexing problems which are of greatest practical importance in determining the rights of lessors and lessees. And in this endeavor I have constantly sought underlying principles instead of outlined anomalies.