Furthermore the union was held to be a proper subject of suit for another purpose in *Kisler* v. *Motion Picture Operators' Union*, 24 Ohio L. Rep 144, 3 Ohio L. Abs. 594, on second hearing, 4 Ohio L. Abs. 55 (1925). Thus it would appear that in this state the employer could maintain an action for damages against the labor union instigating a sit-down strike.

Under the present status of labor law in Ohio and other jurisdictions, the sit-down strike is thus an illegal weapon, but the present legal remedies are ill-suited to meet it. Labor law, however, is constantly being modified by social forces. It seems possible that public opinion might, in time, influence the courts and legislatures to such a degree that they will sanction the use of this new weapon. Whether or not this occurs it seems probable that the sit-down strike is destined to be a major weapon in the conflict between labor and industry.

GEORGE BAILEY

LEASES

LEASES — DEFECTIVELY EXECUTED LEASES — EFFECT IN EQUITY

In 1932, the plaintiff theatre corporation agreed to lease a part of the defendant's building for a period of about eight years at an annual rent. A lease was drawn up by the plaintiff in accordance with the understanding and forwarded to the lessor who failed to have it witnessed. The lessee went into possession and in 1935 surrendered possession at the end of the yearly rental period and brought this action in which it asked for a declaration that the instrument created only a tenancy from year to year. The defendant answered and requested specific performance of the original contract. Held, that such defectively executed lease may be evidence of a contract to make a lease which created in favor of the lessor the right of specific performance. *R. K. O. Distributing Corp.* v. *Film Center Realty Co.*, 53 Ohio App. 438, 5 N.E. (2d) 927, 6 Ohio Op. 512, 22 Ohio L. Abs. 402 (1936).

Ohio General Code, Section 8510, provides that a "lease . . . . must be signed by the . . . . lessor in the presence of two witnesses, who shall attest the signing and subscribe their names to the attestation. Such signing must also be acknowledged by the . . . ., lessor" before one of certain named officers "who shall certify the acknowledgment on the same sheet on which the instrument is written or printed, and subscribe his name thereto." Section 8517 provides that "nothing in this

chapter contained shall affect the validity of any lease . . . . of any lands for any term not exceeding three years, or require such lease to be attested, recorded or acknowledged."

The courts of Ohio have consistently held that an instrument purporting to be a lease for a period of three years or more which has not been executed in compliance with the requirements of Section 8510, is invalid as a lease and fails in its attempt to create the legal estate or the term designated in such instrument. *Richardson* v. *Bates*, 8 Ohio St. 257 (1858); *B. & O. Co.* v. *West*, 57 Ohio St. 161, 49 N.E. 344 (1897); *Toussaint Shooting Club* v. *Schwartz*, 84 Ohio St. 440, 95 N.E. 1158 (1911).

Though such an instrument does not create the legal estate for the period designated, it is well established that an implied periodic tenancy arises when possession is taken and rent paid under the agreement. The terms of such implied tenancy are those of the instrument except as to the length of the term. *B. & O. R. Co.* v. *West, supra; Toussaint Shooting Club* v. *Schwartz, supra, The Peoples Building, Loan and Savings Co.* v. *McIntyre;* 14 Ohio App. 28 (1921); *Weinberg* v. *Toledo Corp.*, 125 Ohio St. 219, 36 Ohio L. Rep. 307, 82 A.L.R. 1315 (1932). The majority of the states in this country have adopted the English view that a periodic tenancy is a continuing estate and therefore notice of termination must be given. In a year-to-year tenancy a six months notice is necessary while in tenancies for a smaller period, a full period's notice is required. See Tiffany, Landlord and Tenant, Vol. II, Page 1427; Thompson on Real Property, Sec. 1591. However, Ohio has taken the position that such implied periodic tenancies are terminable at the end of any rent period without notice. *Gladwell* v. *Holcomb*, 60 Ohio St. 427, 54 N.E. 473 (1899).

In equity a different effect has been given to such instruments where the tenant has gone into possession or has done certain acts which amount to part performance. This court has taken the position that, under appropriate circumstances, a lease, which has not been executed in accordance with the requirements of Section 8510, will be considered as a contract to make a lease and specific performance will be granted. This doctrine has been applied in the following Ohio cases in which such relief was granted to the parties under defectively executed leases for a period of more than three years; *Raitz* v. *Dow*, 10 Ohio C. C. (NS) 249, 20 Ohio C.D. 284 (1907); *Wheeler* v. *Mims*, 23 Ohio N.P. (NS) 527, 1 Ohio L. Abs. 107 (1921); *Parsons* v. *Weinstein*, 19 Ohio App. 521, 2 Ohio L. Abs. 648 (1924); *Pero* v. *Miller*, 32 Ohio App. 174, 166 N.E. 242, 6 Ohio L. Abs. 731 (1928) and *Anthony*

Carlin Co. v. *Burrow Bros.*, 54 Ohio App. 202 (1936). See *Richardson* v. *Bates*, 8 Ohio St. 257 (1858), and *Lithograph Building Co.* v. *Watt*, 96 Ohio St. 74, 117 N.E. 25 (1917). Under the Ohio doctrine of periodic tenancies the estate is terminable at the end of each period. If it is essential that there be an occupation plus payment of rent in order to set up the tenancy for the succeeding period, none of the above cases contain facts which would have given rise to such a tenancy for the period in controversy. The parties could rely only on their rights in equity or fail.

In *Adams* v. *Connelly*, 10 Ohio L. Abs. 121 (1931), the court refused to grant specific performance, saying, that to grant such relief would be to do indirectly that which is forbidden by Section 8510. For other cases denying equitable relief on other grounds, see, *Langmeade* v. *Weaver*, 65 Ohio St. 17, 60 N.E. 992 (1901) and *Fried* v. *Cohn-Goodman*, 28 Ohio L. Rep. 91, 7 Ohio L. Abs. 713 (1928). See, also *Peoples Building, Loan & Saving Co.* v. *McIntyre*, 14 Ohio App. 28 (1921).

The English view on this problem is set in the case of *Parker* v. *Taswell*, 2 De. G. & J. 559 (1858). The court was called upon to determine the effect of an unsealed lease under the Real Property Act of 1845, 8 & 9 Vict. C. 106, 53, which provides that a lease "shall be void at law" unless made by deed. The court took the position that the legislature, in declaring that it shall be void at law, did not intend to interfere with the rights of the parties in equity. This position was affirmed in *Walsh* v. *Lonsdale*, L. R. 21 Ch. D. 9 (1882) with Jessel, M. R., stating that since the Judicature act of 1873 the equitable doctrine would be applied where there was a conflict between law and equity. This position has been criticised by some English writers. See, Cheshire's Modern Real Property, 2d ed. Page 135.

The English view has been evidenced either by decision or by way of dictum in the following cases in this country; *Reed* v. *Moore*, 91 Fla. 900, 109 So. 86 (1925); *Falck* v. *Barlow*, 110 Md. 159, 72 Atl. 678 (1909) and *Coffman* v. *Sammons*, 76 W. Va. 13, 84 S.E. 1061 (1915). One of the most vigorous opinions denying relief is that in *Ballas* v. *Bank of Harrington*, 15 Del. Ch. 140, 132 Atl. 688 (1926), in which the lessee had taken possession and had expended money in altering the premises. The court felt that to grant specific performance would, in effect, destroy the statute.

The present case raises the problem as to how Section 8510 should be interpreted. What was its purpose? Was it a declaration of the rights of the parties at law as the English court construed the Real Property

Act to be or was it a declaration of the rights in both equity and law? To grant specific performance of leases which fail to comply with statutory requirements tends to lessen the significance of such a statute. On the other hand there is the possibility of some hardship to a complaining party in situations where the theory of a periodic tenancy is not available. HOBERT H. BUSH

PARTNERSHIP

MARSHALING — RIGHT OF DEPOSITORS TO COMPETE WITH INDIVIDUAL CREDITORS IN THE SEPARATE ESTATES OF THE PARTNERS.

In 1911 a number of persons formed a co-partnership association for the purpose of engaging in the business of general banking. The Superintendent of Banks of the state of Ohio took over the bank in 1932 for liquidation and sued the owners of the bank for $50,000 alleging that the assets of the bank were insufficient to pay the liabilities to that extent. One of the objections made by the defendants to the maintenance of the suit was that firm creditors were not entitled to move against the partners and their non-partnership property until the individual creditors of the individual partners had obtained satisfaction of their claims. The court, in allowing the suit, granted the correctness of the general equitable rule contended for but said that the rule had been modified as to the depositors in and owners of unincorporated banks by the provisions of Section 710-80, General Code, and that depositors could share in the separate assets of the partners on an equal footing with the individual creditors. *State* v. *Steck*, 132 Ohio St. 198, 9 Ohio Bar 42, 5 N.E. (2d) 919, (1936).

Section 710-80 reads as follows: "The depositors in any unincorporated bank shall have first lien on the assets of such bank, in case it is wound up, to the extent of their several deposits, and for any balance remaining unpaid, such depositors shall share in the general assets of the owner or owners alike with the general creditors." Defendants' argument must have been that "general creditors" meant "general creditors of the firm." Only one case had previously construed this part of the section. The probate judge of Madison County in the case of *In re Johnson*, 3 Ohio Op. 540 (1935), held that "general creditors" meant "general creditors of the owner or owners." He stated, however, that the result would be the same if the words meant "general creditors of the firm." If the depositors, who have