UNITED STATES DEPARTMENT OF COMMERCE

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BUREAU OF THE CENSUS

J. C. CAPT, Director (Appointed May 22, 1941)

WILLIAM LANE AUSTIN, Director (Retired January 31, 1941)

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SIXTEENTH CENSUS OF THE UNITED STATES : 1940

AGRICULTURE

CROP-SHARING CONTRACTS

Prepared by JAMES H. GRAVES, LL. B.

Memorandum regarding legal relations and rights of parties when land owned by one is cultivated by the other under agreement to share the crops. The memorandum embraces 14 Southern States

(Appendix Section of Special Study—Plantations)

Prepared under the general supervision of

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UNITED STATES

GOVERNMENT PRINTING OFFICE

WASHINGTON : 1943

For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C.

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SIXTEENTH CENSUS OF THE UNITED STATES: 1940

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Volume I.—Statistics by Counties for Farms and Farm Property, with Related Information for Farms and Farm Operators; Livestock and Livestock Products; and Crops (six parts):

Part 1.—New England, Middle Atlantic, and East North Central States
Part 2.—West North Central States
Part 3.—South Atlantic States
Part 4.—East South Central States
Part 5.—West South Central States
Part 6.—Mountain and Pacific States

Volume II.—Statistics by Counties for Value of Farm Products, Farms Classified by Major Source of Income, and Farms Classified by Total Value of Products (three Parts):

Part I.—Northern States
Part 2.—Southern States
Part 3.—Western States

Volume III.—General Report—Statistics by Subjects for the United States, Geographic Divisions, and States (one volume):

Chapter I.—Farms and Farm Property
Chapter II.—Size of Farms
Chapter III.—Color, Tenure, and Race of Farm Operator
Chapter IV.—Farm Mortgages and Farm Taxes
Chapter V.—Work Off Farm, Age, and Years on Farm
Chapter VI.—Cooperation, Labor, Expenditures, Machinery, Facilities, and
Chapter VII.—Livestock and Livestock Products
Chapter VIII.—Field Crops and Vegetables
Chapter IX.—Fruits and Nuts, and Horticultural Specialties
Chapter X.—Value of Farm Products

United States Summary Bulletins.—Statistics for the United States, Geographic Divisions, and States in condensed form as follows:

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Second Series Summary—Farm Mortgages, Taxes, Labor, Expenditures, and Miscellaneous Farm Information; Goats and Mohair; and Fruits, Vegetables, and Minor Crops.
Third Series Summary—Value of Farm Products, Farms Classified by Major Source of income, and Farms Classified by Total Value of Products.

Territories and Possessions.—Farms and Farm Property, Livestock and Livestock Products, and Crops (one volume): (Separate agricultural bulletins are available for Hawaii and Puerto Rico).

Territories: Alaska, Hawaii
Possessions: American Samoa, Guam, Puerto Rico, Virgin Islands of the United States

Irrigation of Agricultural Lands.—Statistics by Drainage Basins and by Counties for 20 Irrigation States and a Summary for the United States (one volume).

Twenty Separate State Maps Showing Irrigation by Drainage Basins.
A Separate Composite Map Showing Irrigation by Drainage Basins.

Drainage of Agricultural Lands.—Statistics for 38 Drainage States with County Data for 36 States and a Summary for the United States (one volume).

A Separate Map of the United States Showing Location of Land in Drainage Enterprises for 38 States.

SPECIAL STUDIES AND MONOGRAPHS

Special Poultry Report.—Statistics by Geographic Divisions and States for Poultry of All Kinds on Hand and Raised; by Counties for Chickens and Chicken Egg Production by Number of Chickens on Hand; and by Counties for Farms Reporting Chickens and Turkeys Raised by Numbers Raised (one volume).

Cows Milked and Dairy Products.—Number of Cows Milked, Milk Produced, Disposition of Dairy Products, and number of Cows Kept Mainly for Milk Production, Classified by Number of Cows Milked, by Counties; with Related Data for Other Classes of Livestock and Livestock Products for the States and also for the United States (one volume).

Special Cotton Report.—Cotton Harvested by Number of Bales Harvested, and by Counties, with Acreage and Production of Cotton, and Value of Farm Products (one volume).

Special Cross-line Acreage Report.—Farms Reporting and Acreage by Place of Enumeration and by Location of Acreage, with Relationship to All Farms, by Counties: 1940 and 1935 (one volume).

Special Study—Abandoned or Idle Farms—Number and Acreage, with classification of those reporting acreage by cause of abandonment. Statistics for counties and a summary for the United States.

Drainage Monograph.—A Comparison of Agriculture Within and Outside of Drainage Enterprises in the Alluvial Lands of the Lower Mississippi Valley (paper bound).

Irrigation Monograph.—A Tabular and Graphic Presentation of Specified Irrigation Census Statistics (paper bound).

[1] Agriculture volumes I and II and the volumes "Irrigation of Agricultural Lands" and "Drainage of Agricultural Lands" are comprised of State bulletins. Separate bulletins for each State are available. Separate chapters of Agriculture volume III are also available.

CONTENTS

Synopsis of Tenancy Laws and Decisions Relating to Croppers in the South

This appendix has been prepared in connection with the 1940 Census of Agriculture. In an attempt to obtain information in addition to that contained on the regular Farm and Ranch Schedule and to show statistics on the major operating unit basis, a special Plantation Schedule was used. This schedule covered the operations on specified plantations including selected details relating to the owner, or manager, and croppers and other tenants. In a summarization of the data, many decisions rested upon the legal status of the several types of tenants, particularly those called sharecroppers.

To make the tenancy allocations and separations satisfactorily, the laws and decisions in the several States had to be consulted. These decisions depended not only upon the various State laws, but upon numerous essential details. The summaries of pertinent laws and court decisions appear in the following pages.

As this appendix is published as a separate bulletin without the definitions and explanations found in the Census of Agriculture volumes, a brief description of the tenure difficulties involved is given in this summary.

Among the many problems which arise in taking a census, perhaps none is more important than that which involves the tenure or the arrangement under which agricultural lands are operated. The definition of a farm, or working unit, is dependent upon the tenure classifications which are used.

These classifications in turn affect the number and type of farms and farmers reported, the size of farm, the number of work animals, income, the acreages of various crops, expenditures, facilities, age, and occupancy status and all averages and percentages derived from these data. For example, if croppers were included with landowners as a single farm, it would make a difference for the United States of about 567,675 in the number of farms and of 17.9 acres in average size of farm; and for the South a difference of 541,291 in the number of farms and of 27.0 acres in average size, representing changes of 18.0 percent and 21.9 percent, respectively, in the totals.

The greatest tenure difficulties result from the sharecropper system. Briefly, the question involved is whether the sharecropper should be considered merely a type of laborer or a farm operator. In reality, croppers have some of the characteristics of both laborers and tenants. Usually, but not always, the cropper works under the supervision of the plantation owner or manager, and the work stock is furnished to him for cultivation of the lands, but sometimes he also owns a work animal which is used on the place. Sometimes the plantation operator cares for and feeds the work animals in the plantation barn or stockade. Often, however, each cropper looks after the animals assigned to him. Arrangements regarding feed vary from region to region and from plantation to plantation. The amount and kind of advances or "furnishings" as cash, fertilizer, groceries, clothing, etc., also vary greatly, depending primarily upon the character of the tenant, local usage, and financial conditions. From the cropper's standpoint, the kind and amount of the crops paid as rent are most important and these items vary considerably. Sometimes a fixed portion of only the cash crops, such as cotton, is paid as rental, with varying proportions of corn or other crops. Differing local arrangements are also made in regard to the share or disposition of cottonseed, a byproduct of the cotton.

For other information relating to definitions of various tenures, see the general reports and special studies of the 1940 Census of Agriculture, particularly volume III and the Special Cotton Report. The latter is based on the size of operations, determined by the number of bales of cotton ginned, with income for the various bale groups.

For the convenience of readers a chart is presented showing the principal laws and decisions which determine the legal status of croppers in the various States. Since so many points are involved and since decisions sometimes hinge on small details of the tenant contracts, the reader is cautioned against using the summary without a thorough study of the material presented in the 1940 Census of Agriculture volumes.

MEMORANDUM OF CROP-SHARING CONTRACTS

Prepared by JAMES H. GRAVES, LL. B.

ALABAMA

(1) LANDLORD AND TENANT, WHEN

The Alabama code adopted July 2, 1940, establishes the legal relationship between the parties when one party furnishes the land and the other party furnishes the labor to cultivate it, as that of landlord and tenant; and that regardless of whether the party furnishing the land also furnishes teams to cultivate it and other supplies.

Title 31, Sec. 23 of the code, provides:

Relationship between party furnishing land and party furnishing labor.—When one party furnishes the land and the other party furnishes the labor to cultivate it, with stipulations express or implied to divide the crop between them in certain proportions, the relationship of landlord and tenant, with all it's incidents, and to all intents and purposes, shall be held to exist between them; and the portion of the crop to which the party furnishing the land is entitled shall be held and treated as the rent of the land; and this shall be true whether or not by express agreement or by implication the party furnishing the land is to furnish all or a portion of the teams to cultivate it, or all or a portion of the feed for the teams, * * * or all or a portion of the planting seed * * * fertilizer * * * or pay for putting in marketable condition his proportion of the crop after the same has been harvested by the tenant.

The editor's note on this section states:

In the Code of 1907 what now constitutes this section was divided into two sections, the first providing that if one of the parties furnished the land and the other labor and teams to cultivate it, the relationship of landlord and tenant existed; while the other provided that if the owner of the land also furnished teams to cultivate the land there was a relation of hire and the laborer would have a lien for his hire. By the revision of 1923 these two sections were combined, and the peculiar relation of landlord and laborer was abolished in Alabama. [*Stewart v. Young, 212 Ala. 426; 103 So. 44 (1925).*] Prior to this revision (1923), when the relation of landlord and tenant existed, title to crops vested in the tenant, subject to the landlord's lien and when the relation of landlord and laborer existed title vested in the landlord subject to the laborer's lien. By this revision (1940) it seems that title is vested in the person cultivating the land, be he tenant or laborer, and the landlord never has title to the crops. However, it should be observed that this section as revised does not extend to cases when joint labor is contributed. (See Title 33, Sec. 81, Code of 1940.)

However, this Sec. 23 of Title 31 does not extend to persons raising crops by joint labor contribution. They become "tenants in common" of the crop and each has a lien upon the interest of the other in such crops for supplies and materials furnished.

Title 33, Sec. 81 and 82 of the 1940 Code, provides:

Lien of tenant-in-common on crop of co-tenant.—Persons farming on shares, or raising crops by joint contributions, in such manner as to make them tenants in common in such crops * * * shall each have a lien upon the interest of the other in such crops for any balance due for provisions, * * * supplies, * * * material, * * * labor, * * * and money, or either, furnished to aid in cultivating and gathering such crops * * * in case of failure of either to contribute the amount and means as agreed upon by the parties.

Sec. 82 provides that such liens may be enforced by attachment, on the same grounds and in the same manner provided for the enforcement of landlords' liens on crops grown on rented lands; but this section does not prevent enforcement by any other remedy.

Stewart v. Young, Post (1925).
Lufkin v. Daves, 220 Ala. 443; 125 So. 811 (1930).

(2) EMPLOYER AND CROPPER, WHEN

The relationship of employer and cropper or laborer is abolished in Alabama by Title 31, Sec. 23 of the 1940 Code, and the relationship of landlord and tenant is established except where the parties by their agreement become "tenants in common." Since the adoption of this code, where the relationship of landlord and tenant exists the title to and possession of the crop is in the tenant until the division thereof. The relationship of "tenants in common" may exist where persons are farming on shares or raising crops by joint contribution. Each case depends on the intention of the parties as shown by their agreement. (See cases cited *ante.*)

(3) TENANTS IN COMMON OF THE CROP, WHEN

"Tenants in common" are such as hold by distinct titles, and by unity of possession.—Words and Phrases, Permanent ed., vol. 41, p. 319, citing:

Altabelle v. Montesi (Mass.), 15 N. E. (2d) 463.
Deal v. State, 80 S. E. 537, 14 Ga. App. 121.

When the landlord and tenant agreed that the landlord would furnish the land and mules and the tenant would cultivate the land, the crop to be divided, and it was subsequently agreed that the fertilizer would be purchased by the landlord on his credit but was to be paid for out of the proceeds of the crop at the equal expense of both parties, the court said, "Whatever the relationship between the parties under the original agreement was, the agreement to share equally the cost of the fertilizer made them tenants in common within the provisions of Title 33, Sec. 81 of the 1940 Code, and each owned a one-half interest in the crop subject to the lien of the other for supplies." *Johnson v. McFay, 14 Ala. App. 170, 68 So. 716.*

An agreement between plaintiff and defendant for raising and selling potatoes, defendant to furnish seed and plaintiff to furnish fertilizer and advance cost of cultivating, rents, etc., such advances to be repaid the plaintiff out of the proceeds, and the balance of the proceeds to be equally divided, was held to constitute plaintiff and defendant tenants in common of the crop under Title 33, Sec. 81, Code of 1940.

Lufkin v. Daves, 220 Ala. 443; 125 So. 811 (1930).
Stewart v. Young, 212 Ala. 426 (1925).
Hendricks v. Clemmons, 147 Ala. 590.
Johnson v. McFay, ante.

In the case of *Hand v. Martin, 205 Ala. 333; 87 So. 529 (1921),* it was held (quotation from Syllabus):

Where one of the parties to a farming contract was not only to furnish the land but to assist in the preparation of same and the planting of the crop, and the other was to furnish the labor, teams, and tools to cultivate and gather the crop, they

were neither "landlord and tenant" under the Code of 1907, Sec. 4742, as amended by the General Acts of 1915, p. 134, nor "hirer and laborer" under Sec. 4743, as amended by the General Acts of 1915, p. 112, but were "tenants in common" and governed by Sec. 4792 giving each of them a lien on the respective shares of the other for advances or contributions.

Editor's note under Sec. 23, Title 31 [continued from the quotation under (1) Landlord And Tenant, p. 1]:

Since by the revision of this Section in 1923, title to the property vests in the tenant, the landlord cannot maintain detinue to recover crop until his part has been set aside or divided, but must rely upon the enforcement of his lien, unless showing the relationship of tenants in common is created, then Title 33, Sec. 81 will demand consideration. Of course, if the relationship of tenancy in common existed, the landlord would have sufficient title, it would seem, to maintain detinue. But the courts have not decided this point and if they did decide that when the relationship of tenancy in common exists between landlord and tenant, the landlord has sufficient title to maintain detinue before division of the crop, that will be the only exception to the rule that a landlord has no title in crops and cannot maintain detinue for their recovery.

Crow v. Beck, 208 Ala. 444.
Williams v. Lay, 184 Ala. 54.

(4) TITLE TO CROP PRIOR TO DIVISION

It has long been settled that the landlord's lien does not carry any right of possession against the tenant; that the tenant has the title with the right of possession and can maintain detinue against the landlord.

Kilpatrick v. Harper, 119 Ala. 452; 24 So. 715.
Stewart v. Young, 212 Ala. 426; 103 So. 44 (1925).

In the case of Stewart against Young (212 Ala. 426), the court said:

In the absence of statute, persons farming on shares are tenants in common of the crop. By the Act of March 7, 1876, p. 172, a lien was declared in favor of each upon the interest of the other for excess contributions made by him. This statute became Section 3479 of the Code of 1876 and has continued without change to the present. (Code of 1923, Sec. 8872) * * * by amendment to Sec. 4742 (Acts of 1915, p. 134) and to Sec. 4743 (Acts of 1915, p. 112). Those sections were made to include contracts where the parties share in the cost of fertilizers used for the crop. We may here note that by Sec. 8807, Code of 1923, written by the Code Committee, Sec. 4742 and 4743, supra, are consolidated and revised so that the contract of hire under Sec. 4743 no longer obtains, all such contracts being converted into the relationship of landlord and tenant, and the same relationship extended to cases not theretofore within either section. We observe the present revised section (1940 Code, Title 31, Sec. 23), does not extend to cases where joint labor is contributed. So the tenants in common statute may still have a field of operation * * * .

In the case of *Heaton v. Slaten, 141 So. 267,* Court of Appeals of Ala., April 12, 1932, it was held:

(1) **Landlord and tenant:** Contract whereby one party furnishes land and others labor, crop to be divided equally, created landlord and tenant relationship (Code 1923, Sec. 8807) Code 1940, Title 31, Sec. 23.

(2) Tenants under share cropping agreement held to be entitled to possession of the crops subject to the landlord's lien for rent and advances, and could recover for the landlord's wrongful conversion thereof (Id.).

(3) A tenant under a share cropping agreement so long as he continues the tenancy in good faith has a leasehold estate and is entitled to possession to the exclusion of the landlord and the possession of the crops when gathered merely remains as it is, subject to the landlord's lien (Id.).

(5) LIEN OF THE PARTIES ON THE CROP

Code of 1940, Title 31, Sec. 15, provides:

Lien declared: A landlord has a lien, which is paramount to, and has preference over, all other liens, on the crop growing on rented lands for rent for the current year and for advances made in money or other things of value, either by him directly or by another at his instance or request for which he became legally bound or liable at or before the time such advances were made, for sustenance or well being of the tenant or his family, or for preparing the ground for cultivation, or for cultivating, gathering, saving, handling, or preparing the crop for market; and also on all articles advanced and on all property purchased with money advanced, or obtained by barter in exchange for articles advanced, for the aggregate price or value of such articles and property.

Sec. 16 of the same title provides that such rents and advances become due and payable on the first of November of each year in which the crop is grown unless otherwise stipulated. Sec. 25 of the same title extends to subtenants either lien declared by Sec. 15 where the chief tenant makes no crop or the crop made by him is not sufficient to satisfy the demands of the landlord.

The following is a brief resume of the Alabama decisions interpreting these sections:

(1) **Creation of lien:** (a) The lien exists independent of the section (Sec. 20) giving the right of enforcement *(Westmoreland v. Foster, 60 Ala. 448; Webb v. Darrow, 227 Ala. 441, 150 So. 357);* (b) landlord and tenant relationship is essential to the creation of the lien, and such lien does not exist where there is an implied liability for use and occupation, or where one of the several tenants in common occupies and cultivates the entire premises *(Hardin v. Pulley, 79 Ala. 381; Kennon v. Wright, 70 Ala. 434);* (c) the lien embraces everything of value, useful for the purposes enumerated, or tending to the substantial comfort and well-being of the tenant, his family or employees, but it must be for some one or more of the purposes mentioned in the statute *(Cockburn v. Watkins, 76 Ala. 486; Wells v. Skelton, 215 Ala. 357, 110 So. 813);* (d) the lien is not property or the right of property, but it is a statutory legal right to charge the crops with the payment of the rents or advances, in priority to all other rights, the property and right of property remaining in the tenant *(Wilson v. Stewart, 69 Ala. 302);* (e) it is a special lien on special property and is limited to the price or value of the articles advanced that year and cannot be extended to or increased by the price of articles advanced in the succeeding year, though Title 7, Sec. 967, carries over liens for unpaid balances to crops made in the following year *(Burgess v. Hyatt, 209 Ala. 472);* (f) advances to pay prior liens create a lien *(Landrum and Co. v. Wright, 11 Ala. App. 406, 66 So. 892);* (g) a landlord can assign his lien under Sec. 18 of this title, but cannot assign his right to create a lien *(Henderson v. State, 109 Ala. 40, 19 So. 733).*

(2) **Priority of lien:** (a) The landlord's lien follows the property. The preference over all other liens which is given by the statute on the crop grown during the current year continues so long as the property remains on the rented premises and follows its removal therefrom *(Craven v. Phillips, 214 Ala. 430, 108, So. 243).* After removal the lien remains paramount except as against innocent purchases for value without notice *(Orman v. Lane, 130 Ala. 305, Johnson v. Pruitt, 239 Ala. 44, 194 So. 409,* decided December 1939; *Metropolitan Life Insurance Company v. R. F. C., 230 Ala. 580, 162 So. 379; Webb v. Darrow, 227 Ala. 441, 150 So. 357).* (b) In view of the statute the landlord's lien for rent is paramount and has preference over all other liens on crops growing on rented lands for rent for the current year *(First National Bank v. Burnett, 213 Ala. 89, 104 So. 17).* (c) The landlord's lien for rent and advances dominates all claims any mortgagee may set up even though the mortgage was given before the beginning of the year *(Leslie v. Hinson, 83 Ala. 266; Hamilton v. Haas, 77 Ala. 283).* (d) A mortgage upon the crop even though prior in point of time is subordinate to the landlord's lien created by this section *(British & Mortgage Company v. Cody 135, Ala. 622, 33 So. 832; Walls v. Skelton, 215 Ala. 357).* (e) The landlord's lien is

superior to that of the laborer who works for the tenant on an agreement for one-half of the crop produced (*Hudson v. Wright, 1 Ala. App. 433*). (f) Landlord's lien covers bartered property, as where a tenant bought a cow with money advanced by the landlord and subsequently, through several barters, got a mule, the landlord was held to have a prior lien on the mule (*Butler-Keyser Oil Co. v. Howle, 4 Ala. App. 433; 56 So. 258*).

(3) **Enforcement:** Legal title to crops grown on rented lands is in the tenant, subject to the landlord's lien for rent and advances. The sole remedy for enforcement of the lien is by attachment (*Compton v. Simms, 209 Ala. 287, 96 So. 135, Code 1940, Title 31, Sec. 20*).

Sec. 20 provides that the landlord or his assignee may have process of attachment for the enforcement of his lien for rent and advances when the same is due and also, whether due or not; (1) when there is good cause to believe that the tenant or subtenant is about to remove from the premises, or dispose of the crop without paying such rent and advances, without the landlord's consent; (2) when the tenant or subtenant has removed from the premises or otherwise disposed of any part of the crop without paying the rent and advances, without the consent of the landlord; and (3) when the tenant has, or there is good reason to believe that he will, dispose of the crop or articles or money advanced in fraud of the rights of the landlord.

In the most recent case reported [*Johnson v. Pruitt, 239 Ala. 44; 194 So. 409 (1939)*], the court held: (1) That when a landlord authorizes the sale of cotton on which he has a lien for rent, he has a lien on the proceeds of the sale, not dependent upon any theory of constructive delivery of the cotton; (2) if the landlord consents in advance to the sale of the cotton grown on this leased land, he cannot enforce his lien on such cotton or on the proceeds of the sale unless in giving his consent he stipulated that the rent lien should be paid out of the proceeds; and (3) having so stipulated, he has a lien on the proceeds although there was no certain cotton set aside for him, either gathered or ungathered, to become subject to the sale. The court simply cites the Code of 1923, Sec. 8799, which is now Title 31, Sec. 15.

(4) **Cropper's lien:** The relation of landlord and cropper, or landlord and laborer, having been abolished by Title 31, Sec. 23 of the 1940 Code, the relation between the parties to a crop sharing contract is either that of landlord and tenant, or that of tenants in common. In the former case, the tenant has title and possession of the crop subject to the landlord's lien for rent and advances and no lien in favor of the tenant is required. In the latter relation, when the parties are tenants in common each has a lien upon the interest of the other in such crops for the balance due for provisions, supplies, teams, material, labor, services, and money, or either * * * in case of a failure of either to contribute the amount and means as agreed upon (Code 1940, Title 33, Sec. 81).

Such lien may be enforced by attachment upon the grounds and in the manner provided for the enforcement of the landlord's lien on crops grown on rented land, or by any other remedy (Code 1940, Title 33, Sec. 82).

(5) **Mortgage rights of landlord:** The Code of 1940, Title 31, Sec. 18 (Code of 1923, Sec. 8802), provides:

Assignment; remedy of assignee.—The claim of the landlord for rent and advances, or for either, may be by him assigned; and the assignee shall be invested with all of the landlord's rights and entitled to all his remedies for the enforcement.

The assignment may be; (a) by parole, or by mere delivery of the rent note, or by appropriate words in a mortgage (*Bennett v. McKee, 144 Ala. 601, 38 So. 129*); (b) the assignment may be by a mortgage or otherwise (*Ballard v. Mayfield, 107 Ala. 396, 18 So. 29; Farrow v. Wooley, 149 Ala. 373, 43 So. 144*); (c) it is not required to be recorded (*Bennet v. McKee, 144 Ala. 601, 38 So. 443*); (d) the landlord cannot assign the right to make advances to the tenant since the right is statutory and the statute does not embrace such a case (*Leslie v. Henson, 83 Ala. 266 3 So. 443*, applied in *Johnson v. Pruitt, ante*).

(6) **Mortgage rights of cropper:** The relation of landlord and cropper being abolished in Alabama by Code 1940, Title 31, Sec. 23, and a tenant in a crop-sharing contract having title and possession of the crop subject to the landlord's paramount lien, for rent and advances, the tenant would have the same right to mortgage crop as any other property, subject, of course, to the landlord's prior lien.

Prior to the Code of 1940, the "cropper," or laborer, would have had a lien for wages against the crop produced by him, and subject to the landlord's lien for rent and advances, under the following section of the code:

Title 33, Sec. 18, Code of 1940.—Lien in favor of agricultural laborers and superintendents: Agricultural laborers and superintendents of plantations shall have a lien upon the crops grown during the current year, in and about which they are employed, for the hire and wages due them for labor and services rendered by them in and about the cultivation of such crops under any contract for such labor and services; but such lien shall be subordinate to the landlord's lien for rent and advances, and to any other lien for supplies furnished to make the crops.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

Code of 1940, Title 31, Sec. 24, provides:

Tenant failing or refusing to plant crop; rented premises recovered by landlord.—In any case in which a tenant of farm lands shall fail or refuse, without just cause or excuse, to prepare the land and plant his crops, or a substantial portion of such crop to be grown as is usually planted by that time, on or before March 20, he may, at the election of the landlord, be required to surrender and vacate the rented premises and upon making such election, and upon notice thereof to the tenant, the landlord may proceed to recover possession of the rented premises by an action of unlawful detainer.

Code of 1940, Title 31, Sec. 13, provides:

Abandonment of premises; crops.—When a tenant abandons or removes from the premises or any part thereof, the landlord or his agent or attorney may seize upon any green or other crops grown or growing upon the premises or any part thereof so abandoned, whether the rent is due or not. If such green or other crop, or any part thereof, is not fully grown or matured, the landlord or his agent or attorney may cause the same to be properly cultivated, so far as may be necessary, to compensate him for his labor and expenses and to pay the rent and advances.

The tenant may at any time before the sale of the property so seized redeem the same by tendering the rent and advances due, and reasonable expenses and expenses of cultivation and harvesting or gathering the same. A tenant's willful failure to cultivate crops at the proper time constitutes abandonment, but differences of opinion as to cultivation do not warrant seizure. A landlord seizing crops wrongfully is not entitled to expenses. The burden of proving abandonment is on the party asserting it and the question of abandonment is one of fact for the jury to determine (*Heaton v. Slaten, 25 Ala. App. 81, 141 So. 267*).

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

Since the relation between the parties to a crop-sharing contract, in Alabama, is that of landlord and tenant, the tenant could bring action in breach of contract against the landlord for violation of the agreement by him. Also, being entitled to possession of the crop subject to the landlord's lien for rent and advances, he could recover for the landlord's wrongful conversion [*Heaton v. Slaten, 141 So. 267 (1932), p. 2, ante*].

When the parties are tenants in common, they may proceed under Title 33, Sec. 81, of the Alabama Code, *ante*, p. 1.

ARIZONA

(1) LANDLORD AND TENANT, WHEN

There is no statutory definition of the relationship existing between the parties where a person having no interest in the land owned by another farms it in consideration of receiving a portion of the products for his labor.

Vol. 24, Cyclopedia of Law, p. 1464, distinguishing between leases and contracts of employment, states the general rule to be:

> The general rule is that one who raises a crop upon the lands of another under a contract to raise the crop for a particular part of it is a mere cropper, and, where there is a joint occupation or an occupancy which does not exclude the owner from possession, the contract is a mere letting on shares, and the relationship of landlord and tenant is not created thereby (citing *Romero v. Dalton, 2 Ariz. 210, 11 Pac. 863, post*). * * * Now, however, this distinction is no longer made and the intention of the parties as expressed in the language they have used, interpreted in the light of surrounding circumstances, controls in determining whether or not a given contract constitutes a lease (citing *Gray v. Robinson, 4 Ariz. 241, 33 Pac. 712*).

Amer. and Eng. Encyclopaedia of Law, 2d, vol. 18, p. 173, states the rule as follows:

> The question whether an agreement constitutes a lease or an occupancy on shares has chiefly arisen in the case of agreements relating to farming lands whereby one party agrees to cultivate the land and is to receive as compensation therefor a share of the crop grown. Under such an agreement the relationship of the parties is not that of landlord and tenant (citing *Gray v. Robinson* and *Romero v. Dalton, ante*).

The general rules for determining the character of any agreement are stated as follows:

(a) In general: The courts have found it difficult to fix any general rule by which to determine whether the carrying on of farm operations by one not the owner, for a share of the crops, constitutes him a tenant, and the authorities in the different States, and even in the same State, are not perfectly uniform. It may be said, however, that there are certain rules now recognized as having a material influence in determining this question, though none of them can be said to be conclusive.

(b) Intention of parties: The chief criterion in determining whether the relationship is that of landlord and tenant or of cultivator on shares is * * * the intention of the parties, which is to be determined from the special terms of the contract, the subject matter, and the surrounding circumstances (citing *Gray v. Robinson, post*). When the agreement is verbal and the evidence as to the intention of the parties is conflicting, the question of intention is for the jury *(Howard v. Jones, 50 Ala. 67)*.

(c) Public policy: It has been held that public policy is best subserved by holding the relationship between the parties to be that of landlord and tenant * * * and the courts should lean toward a construction creating such a relationship (citing *Birmingham v. Rogers, 46 Ark. 254;* see also *Ferris v. Haglan, 121 Ala. 240; Ponder v. Rhea, 32 Ark. 435)*.

(d) The manner in which the crops are to be divided tends to show whether the agreement is intended to create the relationship of landlord and tenant or that merely of an occupant on shares or "cropper."

(e) Stipulations in the agreement inconsistent with the general rights of the parties occupying the relationship of landlord and tenant are of material force in construing the agreement as not creating the relationship of landlord and tenant (citing *McCatchen v. Crenshaw, 40 S. C. 511)*.

(f) Reservation of rent *Eo Nominee:* Great weight in favor of an intention to create the relationship of landlord and tenant has been given to an agreement reserving a part of the crops as rent *eo nominee* (citing *Harrison v. Ricks, 71 N. C. 7; Durant v. Taylor, 89 N. C. 351)*. * * * This is not conclusive, however *(Ponder v. Rhea, 32 Ark. 435; Haywood v. Rogers, 73 N. C. 320)*.

(g) The use of technical words of demise will, as a rule, render the agreement a lease and create the relationship of landlord and tenant [*Swanner v. Swanner, 50 Ala. 66; Gray v. Robinson (Ariz. 1893), 33 Pac. 712*]. This is not conclusive where the subject matter and situation of the parties show that it was not the intention of the parties to create the relationship of landlord and tenant *(Ferris v. Haglan, 121 Ala. 240; Harrison v. Ricks, 71 N. C. 7)*.

(h) Question whether the agreement confers upon the cultivator the exclusive possession of the premises is a material factor in determining the character of the agreement. If it does confer exclusive possession, it is a relationship of landlord and tenant, and *contra* (citing *Gray v. Robinson, post*).

(i) In earlier cases the courts considered the duration of the agreement a material factor. Thus, if it was for one crop only, it was a cropper's contract, but if for two or more crops it created the relationship of landlord and tenant.

(j) The fact that the agreement required the owner to furnish a part of the seed or implements does not seem to be of any moment in determining the character of the instrument; at least it is not controlling *(Redman v. Bedford, 80 Ky. 13; Hatchell v. Kimbrough, 49 N. C.; Harrison v. Ricks, 71 N. C. 7)*.

(2) EMPLOYER AND CROPPER, WHEN

In a very early Arizona case, *Romero v. Dalton (1886), 2 Ariz. 210, 11 Pac. 863,* the Supreme Court of Arizona held that where a person having no interest in the land owned by another, farms it in consideration of receiving a portion of the crop, such arrangement is a cropper's contract which created neither the relationship of landlord and tenant nor of partnership between parties.

In the later case of *Gray v. Robinson (1893), 4 Ariz. 24, 33 Pac. 712,* Robinson had entered into a contract with one Thomas for cultivating his (Robinson's) land and sharing the crop. After Thomas had raised, cut, and stacked the wheat, Gray, the sheriff, seized it under an execution on a judgment against Thomas. Robinson, learning that the wheat was in the possession of the sheriff, sued said sheriff for possession of the wheat and recovered it. The case arose on appeal with the sheriff, Gray, the appellant and Robinson the appellee.

The court in stating the case said that the principal contention grew out of the interpretation to be put on the contract between Robinson and Thomas. Appellant contended that it was a contract of lease creating the relationship of landlord and tenant and the appellee contended that it was a contract of hire or a "cropper's contract." The court said:

> A cropper's contract * * * may be defined generally as one in which one agrees to work the land of another for a share of the crops, without obtaining any interest in the land or ownership in the crops before divided * * *. The authorities are somewhat conflicting as to what words will constitute a contract one of lease, and what will constitute one of hire. The general rule as laid down by the weight of authority is that the character of a contract to cultivate land on shares is to be determined by ascertaining the intention of the parties as expressed in the language they have used. If the language used imports a present demise of any character by which any interest in the land passes to the occupier, or by which he obtains a right of exclusive possession, the contract becomes one of lease and the relationship of landlord and tenant is created *(Putnam v. Wise, 37 Am. Dec. 314,* and cases therein cited). If on the other hand there be no language in the contract

importing a conveyance of any interest in the land, but by the express terms of the contract the general possession of the land is reserved to the owner, the occupant becomes a mere cropper and the relationship of master and servant exists between him and the owner (citing among other cases *Romero v. Dalton, supra*).

The court then held the title and possession of both the land and the crop being in Robinson, Thomas had no such interest as would render it liable to execution for his debt so long as it remained *en masse*.

Over 40 years later in the case of *S. A. Gerrard Co. v. Cannon (1934), 43 Ariz. 14, 28 Pac. (2d) 1016*, it was held by the Supreme Court of Arizona that Japanese growers on a contract to produce, harvest, pack, and deliver crops to the shipping station for a specified percent of the net profits were "croppers and employees" and, within the line of their duties, agents of the landowner. The court said as to the status of the growers:

> Under the contract the growers had no interest in the land and none in the crops. They were to be compensated out of the profits realized from the crops. Their status is that known in law as "croppers"; that is, "one who having no interest in the land works it in consideration of receiving a portion of the crop for his labor" (citing 17 C. J. 382, Sec. 9). In *Gray v. Robinson (supra)* we said: "Under such a contract the occupier becomes merely the servant of the owner of the land, being paid for his labor in a share of the crop." (See also *Romero v. Dalton, 2 Ariz. 210, 11 Pac. 863.)*

(3) TENANTS IN COMMON OF THE CROP, WHEN

Neither the statutes nor the decisions in Arizona recognize the relationship of tenants in common between the parties to a crop-sharing contract.

For a discussion of tenants in common in general see this Memorandum, pp. 18, 19, under Mississippi.

(4) TITLE TO CROP PRIOR TO DIVISION

It follows from the decisions cited under the first three headings that the title to the crop prior to division is determined by the relationship of the parties; that is, where the relationship of landlord and tenant exists, title to the crop is always in the tenant until final division in accordance with the agreement, and where the relationship is that of employer and laborer (or cropper), title to the crop is in the landlord at all times prior to actual division.

When they are tenants in common, they "hold by several and distinct titles and by unity of possession" (Words and Phrases, Permanent ed., vol. 41, p. 319). Whatever their relationship, it must be determined by the intent of the parties interpreted by the language they have used and in the light of the circumstances of each case [*24 Cyc. 1464; Gray v. Robinson, 4 Ariz. 241, 33 Pac. 712; Gerrard v. Cannon (1934), 43 Ariz. 14, 28 Pac. (2d) 1016*].

Where there is no demise of the premises by the owner to the grower, he (the owner) retains title and possession and has title to the crop raised until it is divided. Where there is any demise of the premises, the relationship of landlord and tenant results and title to and possession of the crop is in the tenant *(24 Cyc. 1464; Gray v. Robinson, supra)*.

(5) LIEN OF THE PARTIES ON THE CROP

The Arizona Code of 1939, Sec. 71-306, provides:

> **Landlord's lien for rent:** The landlord shall have a lien upon the property of his tenant not exempt by law, placed upon or used on the leased premises, until his rent is paid. If the tenant fails to allow the landlord to take possession of such property for the payment of the rent, the landlord may reduce such property to his possession by action to recover possession and may hold or sell the same for the purpose of paying said rent. The landlord shall have a lien upon the crops grown or growing upon the leased premises for rent thereof whether payment is payable in money, articles of property or products of the premises, and also for the faithful performance of the terms of the lease, and such lien shall continue for a period of six (6) months after the expiration of the term for which the premises were leased. Where the premises are sub-let or the lease assigned, the landlord shall have the like lien against the sublessee or assignee as he has against the tenant, and may enforce the same in like manner.

In *Scottsdale Ginning Company v. Longan, 24 Ariz 356 (1922)*, the court held as stated in the Syllabus:

> The right of a landlord to take possession of a crop of a tenant in order to preserve and protect his lien for rent (under Sec. 71-306 above) may be asserted in an action of replevin against him to whom the crops were delivered by the tenant while rent was unpaid.

The U. S. Circuit Court of Appeals in *Gila Water Co. v. International Finance Corporation (1926), 13 F (2d), p. 1*, held that under the civil code of Arizona of 1913, paragraph 3671 (now Sec. 71-306 of the 1939 Code), giving a landlord a lien for rent on crops grown on the land, to continue for six months after the expiration of the term, he is not required to take possession of the crop through replevin or other legal proceeding, and does not waive his lien by bringing suit in equity to collect rent and foreclose the lien.

Before the division of the crop, the whole of it is the property of the landlord, and the cropper has no legal title to any part thereof which can be subjected to the payment of his debts or which he can assign or convey to a third person *(McNeely v. Hart, 32 N. C. 63, 51 Am. Dec. 377; State v. Jones, 19 N. C. 544)*.

When the respective rights in the crop have been adjusted and the cropper's part specifically set aside to him, the title thereto is in him and he may mortgage or dispose of same at will *(Parks v. Webb, 48 Ark. 293, 3 S. W. 521)*.

Where the relationship of landlord and tenant exists, the tenant has title to and possession of the crop and might mortgage same subject to the prior lien of the landlord given him under *Sec. 71-306 of the code*.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

If the cropper abandons the contract before completion, he cannot recover for a partial performance, and his interests become vested in the landlord, divested of any lien which may have attached to it for agricultural advances while it was the property of the cropper *(Thigpen v. Leigh, 93 N. C. 47)*.

If a cropper fails to begin the labor contracted to be done by him, or having begun without good cause fails to continue it, the landlord may maintain forcible detainer and dispossess him *(Wood v. Garrision, 23 Ky. L. Rep. 295, 62 S. W. 728)*.

Where a landowner contracts with one to crop his land and to give him part of the crop after paying all advances, and the crop has not been divided, such cropper is not a tenant but a mere employee, and the ownership of the entire crop is in the landowner, and if the cropper forcibly or against the consent of the landowner takes the crop from the possession of the landowner, such taking is larceny, robbery, or other offense according to the circumstances of the case *(Parrish v. Com., 81 Va. 1)*. See also *Shea v. Wood, 20 Ariz. 437 (1919)*.

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

The remedy of the cropper against the owner of the land for breach of the contract in refusing to permit him to perform is to recover the value of the contract at the time of the breach, which may be more or less than the value of the labor performed *(Cull v. San Francisco &c Land Company, 124 Calif. 591, 57 Pac. 456).*

Where the parties are employer and cropper, the cropper is a laborer and receives a share of the crop as wages. Under Sec. 62-215, Arizona Code of 1939, a laborer's claims for wages take priority over levies and attachments. The section reads in part, as follows:

Wages to take priority over attachments and levies—Procedure: In case of levy under execution, attachment, and like writs, except where such writ is issued in an action under this article, any miner, mechanic, salesman, servant, or laborer who has a claim against the defendant for labor done may give notice of his claim, sworn to and stating the amount thereof, to the creditors and defendant debtor, and to the officer executing the writ, at any time within three days before the sale of the property levied on. * * * (The Statute then sets out the procedure to be followed.)

ARKANSAS

(1) LANDLORD AND TENANT, WHEN

The Statutes of Arkansas do not define the legal relationship between the parties to a sharecropper agreement, but that relation has been judicially determined in very numerous decisions of the Supreme Court of Arkansas. A leading case is:

Hammock v. Creekmore, 48 Ark. 264; 3 S. W. 180 (Nov. Term, 1886).

Landowner and cropper—Title to crops: Hammock let Stewart have land to cultivate for one year, under an oral agreement that he would furnish the land, teams and farming utensils, and the crop was to be his, but after receiving one-half for the land, etc., and enough of the residue to pay for the supplies furnished, he would deliver what remained to Stewart. After the crop was raised, Stewart sold part of it to Creekmore, and Hammock sued Creekmore for conversion of it, asking a recovery to the extent of his interest in it. **Held:** That under the contract Stewart was only a laborer for part of the crop as wages; the crop belonged to Hammock, and he was entitled to recover for the conversion.

In the opinion the Court said:

The settled construction of such contracts by the courts is that the title to the crop raised vests in the landowner. If the terms of the contract had been such as to indicate the intention to create the relationship of landlord and tenant, as in *Alexander v. Pardue, 30 Ark. 436,* and *Birmingham v. Rogers, 46 Ark. 254,* the title to the crop would have been in Stewart, the tenant, subject to the landlord's lien for rent, and the landlord could have maintained no action at law against Creekmore for converting any part of it. *Anderson v. Boles, 44 Ark. 108.*

In *Tinsley v. Craige, 54 Ark. 346; 155 S. W. 897* (decided, 1891), the court recites the facts as follows:

Dunn raised a crop of cotton on Tinsley's land under a parole contract which both parties denominated a contract upon the shares. Tinsley states the terms in the following language, viz: "I was to furnish the land, teams, tools and feed for teams, and Dunn was to do the work in making the crop. Each one was to gather his half of the crop as nearly as practicable, and, after being gathered and hauled to the gin, if there was any difference it was to be equalized. Dunn was to pay me out of his half for what he got from me."

A part of the crop was removed from the premises and Tinsley caused the residue to be attached in the field for the purpose of enforcing the landlord's lien for supplies furnished Dunn. (This lien was asserted under Sec. 8846, Pope's Digest of Arkansas Statutes.)

Craige intervened, and claimed Dunn's interest in the cotton, and the main question for determination is: Was Dunn either a tenant or employee of Tinsley within the meaning of the Act. If he occupied either of those relations, the Act applies and the lien exists. * * * Inasmuch as the possession of the land was not surrendered, and the contract vested no interest in it (the land) in Dunn, he was not a tenant within the meaning of the previous decisions of this court. (The court then cites *Hammock v. Creekmore, ante.)* * * *

In attempting to ascertain the relationship in which the parties stood to each other the Circuit Court made the ownership of the crop the test. But the title to the crop is not the criterion for determining the relationship that exists between the parties. That is governed by their intent, and is determined by the terms of their contract. If there is a demise or renting of the premises, with a stipulation that the landlord shall receive his rent by becoming an owner in an undivided interest in the crop, the relationship of landlord and tenant exists as to the premises, and the parties are tenants in common of the crop.

Putnam v. Wise, 37 Am. Dec. 309, and note p. 318.
Johnson v. Hoffman, 53 Mo. 504.

In the much later case of *Barnhardt v. State (October, 1925)* the Supreme Court of Arkansas stated the rule in this manner:

Barnhardt v. State, 169 Ark. 567, 275 S. W., 909 —The distinction pointed out in the case of *Hammock v. Creekmore (ante)* has been consistently recognized by this court in later cases *(Rand v. Walton, 1930 Ark. 431; Woodson v. McLaughlin, 150 Ark., 340; Bourland v. McKnight, 79 Ark. 427).*

The distinction may appear to be finely drawn between a tenant who pays half the crop for the use of the land and livestock and feed therefor, with the necessary tools and implements to grow the crop, and one who makes a crop as an employee to whom these things are furnished and who is given for his labor one-half of the crop to be grown by him.

But this distinction has been recognized by this court in many instances. It had been recognized prior to the case of *Hammock v. Creekmore (ante).* The earlier cases were there reviewed and the law in regard to title to crops grown "on shares" was there restated to be as follows:

If the sharecropper raises a crop for the landlord as wages for his work, the title to the crop vests in the landlord, and the sharecropper has a lien thereon for his labor. If the sharecropper is to pay one-half of the crop for the use of the land, with the tools and teams and feed therefor, then the title to the crop is in the tenant, and the landlord has a lien thereon, and, in addition, the landlord has a lien for any necessary supplies of money or provisions to enable the tenant to make the crop, but the title to the crop is in the tenant.

This rule had a peculiar application in this case. The appellant, Barnhardt, was convicted under an indictment charging him with having aided and abetted one Osborne in embezzling 250 pounds of seed cotton belonging to Alfred Sohm. The trial court instructed the jury:

If you find * * * that Osborne made a contract with Alfred Sohm by the terms of which he was to be furnished by the said Sohm with the land, farming implements and seed to make a crop, and that he the said Osborne was to receive for his labor one-half of the proceeds of such crop, and that the said Osborne raised the cotton mentioned and described in the indictment pursuant to said contract, then the title to such cotton was in the said Alfred Sohm and it was his property.

The Supreme Court in its opinion declares:

This instruction is a correct declaration of the law and was properly given. But the trial court should also have given the converse thereof, embodied in instruction No. 7 requested by the appellant, as follows:

"If you find from the evidence that Sohm and Osborne entered into an agreement whereby Sohm rented to Osborne the land on which the cotton alleged to have been embezzled was grown, and that the said Osborne agreed to pay the said Sohm one-half of all cotton raised on said land as rent therefor, then your verdict will be not guilty." * * * It follows that the appellant could not have aided and abetted Osborne in embezzling cotton to which he had legal title.

Continuing, the Supreme Court says:

These instructions (to the jury), had both been given, would have submitted to the jury the question whether Osborne was a

tenant or whether he was a mere laborer. Instruction No. 7 should have been given so that the jury would have been advised what the distinction was between a sharecropper who makes a crop for the landlord under an agreement to pay as rent a given portion of the crop, and one who makes a crop for the landlord under a contract to be paid as wages for his labor an agreed share thereof, this distinction being determinative of the question of title to the cotton. The question of whether the agreement between the parties is one of landlord and tenant, or employer and employee, is a question of fact to be determined in each case when the ownership of the crop is in question.

In the still later case of *Campbell v. Anderson, 189 Ark. 671; 74 S. W. (2d) 782* (decided in 1934) (Syllabus):

Landlord and tenant—Title to crops: Where a sharecropper raises a crop for the landlord, and is to receive a part of the crop as wages, the title to the crop vests in the landlord; but where the sharecropper rents the land and pays one-half of the crop for its use, the title to the crop is in the tenant. The landlord's lien on his tenants crop is superior to the lien of laborers asserting liens thereon. The landlord's lien for advances made the cropper on his interest in the crop is also superior to the lien of laborers.

The Court cites: *Hammock v. Creekmore, (ante).*
Barnhardt v. State (ante).

(2) EMPLOYER AND CROPPER, WHEN

Definition of "Cropper."—A cropper is one who, having no interest in the land, works it in consideration of receiving a portion of the crop for his labor. *17 Corpus Juris, p. 382.*

The cropper's contract gives the cropper no legal possession of the premises further than as an employee; the legal possession is in the landlord * * * . Before the division of the crop the whole is the property of the landlord, and the cropper has no legal title to any part thereof, although in some jurisdictions the parties are held to be tenants in common.

Ark.-Bourland v. McKnight, 79 Ark. 427; 96 S. W. 179.
Hammock v. Creekmore, (ante, under L. & T. p. 6).

(3) TENANTS IN COMMON OF THE CROP, WHEN

Definition—Tenants in Common and Joint Tenants:

Joint tenancy requires unities of time, title, interest, and possession (Words and Phrases; *Reid v. Cromwell, 183 A. 758; 134 Me. 186).*

The difference between tenants in common and joint tenants is the right of survivorship, which has been abolished in many States. Joint tenancy exists where a single estate in real or personal property is owned by two or more persons under one instrument or act of the parties [*Fullerton v. Storthz Bros., Inc., 77 S. W. (2d) 996; 190 Ark. 198*].

Tenants in common are such as hold by several and distinct titles, and by unity of possession *(Deal v. State, 80 S. E. 537, 14 Ga. App. 121).*

If the intention to become tenants in common had been indicated; then the title would have vested as in other chattels held in common * * * . *(Hamby v. Wall, 48 Ark. 135.)*

In the case of *Harnwell v. Arkansas Rice Growers Co-op. Assn., 169 Ark. 622; 276 S. W. 371,* it was held (quoting from the Syllabus):

Landlord and sharecropper—Title to the crop: If the contract between the landlord and one making the crop on his place shows that the parties intend to become tenants in common, the title to the crop raised vests as any other chattels held in common, and either one of the common owners may maintain an action against one who converted the property to his use for the value of his interest. (The last "his" meaning the interest of the tenant in common.)

And in *Tinsley v. Craige, (ante p. 6):*

In attempting to ascertain the relationship in which the parties stood to each other the Circuit Court made the ownership of the crop the test. But the title to the crop is not the criterion for determining the relationship that exists between the parties. That is governed by their *intent,* and is determined by the terms of their contract. If there is a demise or renting of the premises, with a stipulation that the landlord shall receive his rent by becoming an owner in an undivided interest in the crop, the relationship of landlord and tenant exists as to the premises, and the parties are tenants in common of the crop.

(4) TITLE TO CROP PRIOR TO DIVISION

The question of title to the crop prior to division of it between the parties is dependent on the relation existing between them, i.e.:

(1) If the relation is landlord and tenant, the tenant has legal title to the crop before division.

(2) If the relation is landlord and cropper (or laborer) the title to the crop is at all times in the landlord and the cropper never has title to his share until after division.

Hammock v. Creekmore, 48 Ark. 264; 3 S. W. 180 (Nov. Term, 1886) (ante).
Tinsley v. Craige, 54 Ark. 346; 155 S. W. 897 (decided, 1891) (ante).

In the much later case of *Barnhardt v. State (October, 1925)* the Supreme Court of Arkansas stated the rule in this manner:

Barnhardt v. State, 169 Ark. 567, 275 S. W., 909. The distinction pointed out in the case of *Hammock v. Creekmore (ante)* has been consistently recognized by this court in later cases *(Rand v. Walton, 130 Ark. 431; Woodson v. McLaughlin, 150 Ark. 340; Bourland v. McKnight, 79 Ark. 427).* The distinction may appear to be finely drawn between a tenant who pays half the crop for the use of the land and livestock and feed therefor, with the necessary tools and implements to grow the crop, and one who makes a crop as an employee to whom these things are furnished and who is given for his labor one-half of the crop to be grown by him. But this distinction has been recognized by this court in many instances. It had been recognized prior to the case of *Hammock v. Creekmore (ante).* The earlier cases were reviewed and the law in regard to title to crops grown "on shares" was there restated to be as follows:

If the sharecropper raises a crop for the landlord as wages for his work, the title to the crop vests in the landlord, and the sharecropper has a lien thereon for his labor. If the sharecropper is to pay one-half of the crop for the use of the land, with the tools and teams and feed therefor, then the title to the crop is in the tenant, and the landlord has a lien thereon, and, in addition, the landlord has a lien for any necessary supplies of money or provisions to enable the tenant to make the crop, but the title to the crop is in the tenant.

(5) LIEN OF THE PARTIES ON THE CROP

Landlord's lien for rent:

Sec. 8845, Pope's Digest; Act of July 23, 1868—Every landlord shall have a lien upon the crop growing upon the demised premises in any year for rent that shall accrue for such year, and such lien shall continue for six months after such rent shall become due and payable.

(See *Neal v. Brandon, 70 Ark. 79* for construction of this section, and as to when the relation of landlord and tenant exists.)

The landlord has a lien on the entire crop for the rent whether the crop is raised by a tenant or a subtenant (*Jacobson v. Atkins, 103 Ark. 91).*

A landlord's liens for rent and for supplies are superior to that of a mortgage, so, as against a mortgage of the subtenant's crop, the landlord may apply the proportionate part to his lien for rent *(Morgan v. Russell, 151 Ark. 405; 236 S. W. 602).*

The landlord does not have a lien on his tenant's crop for rent accruing in previous years *(Henry v. Irby, 170 Ark. 928; 282 S. W. 3).*

In the more recent case of *Clemmons v. Byars, 197 Ark., 300, 122 S. W. (2d) 652 (Dec. 12, 1938),* it was held that the order of the Conciliation Committee (under the Frazier-Lempke

Bankruptcy Act) permitting the appellants to sell the cotton on which appellee had a lien for rent and supplies, was beyond his jurisdiction and, therefore, void.

Sec. 8844 of Pope's Digest of Arkansas, 1937 and Suppl. provides:

Liens under verbal contract—(Sec. 9, Act. Mar. 21, 1883.) When no written contract is made under this act, the employer shall have a lien upon the portion of the crop going to the employee for any debt incident to making and gathering the crop owing to such employer by such employee, without any necessity for recording any contract of writing giving such lien, and in such case no mortgage or conveyance of any part of the crop made by the person cultivating the land of another shall have validity, unless made with the consent of the employer or owner of the land or crop, which consent must be endorsed upon such mortgage or conveyance; provided, no such endorsement shall bind the party making it to pay the debt unless expressly so stipulated.

In *Commodity Credit Corporation v. Usrey, 199 Ark. 406; 133 S. W. (2d) 887* (decided Dec. 4, 1939), the Court held that a landlord has a lien for rents and advances due from tenant which may be enforced by appropriate action within six months from due date; citing Sec. 8845.

Landlord's lien for advances:

(Sec. 8846, Pope's Digest; Act of Apr. 6, 1885)—If any landlord, to enable his tenant or employee to make and gather the crop, shall advance such tenant or employee any necessary supplies, either of money, provisions, clothing, stock, or any necessary articles, such landlord shall have a lien upon the crop raised upon the premises for the value of such advances, which lien shall have preference over any mortgage or other conveyance of such crop made by such tenant or employee. Such lien may be enforced by an action of attachment before any court or justice of the peace having jurisdiction, and the lien for advances and for rent may be joined and enforced in the same action. Cases cited:

Few v. Mitchell, 80 Ark. 243.
Tinsley v. Craige, 54 Ark. 346, ante.
Noe v. Layton, 69 Ark. 551.

When a landlord endorses his consent on a written agreement between his tenant and the employees of that tenant, then and only then the lien of such employees has precedence over the landlord's lien (Sec. 8847). Subrenters are only liable for the rent of such portion of the premises as are cultivated or occupied (Sec. 8848). [*Dulaney v. Balls, 193 Ark. 701; 102 S. W. (2d) 887.*]

Purchasers of ginner receipts are not innocent purchasers as against the lien of landlord or laborer (Sec. 8849).

Sec. 8850 makes it unlawful for a lessee of lands who has sublet a portion thereof to collect any rent from the subtenent before final settlement with the landlord, without a written direction from the landlord to the subtenant stating the amount of rent authorized to be collected and Sec. 8852 makes it a misdemeanor for principal tenant or his agent to collect rent from subtenants without first having paid or settled with the landlord (Act Apr. 7, 1893).

Any landlord with a lien on the crop for rent is entitled to a writ of attachment for recovery of same, whether the rent is due or not; (1) when the tenant is about to remove the crop, (2) when he has removed any portion of it without the landlord's consent. (Sec. 8853.) (Dec. 28, 1860.)

Stone v. Lount, 174 Ark. 825, 296 S. W. 717.
Burns v. Thompson (June 1940) 200 Ark. 901, 141 S. W. (2d) 474.

But under Sec. 8854, before the writ of attachment may issue, the landlord must file affidavit of one of the above facts stating the amount claimed for rent or the value of the portion of the crop agreed upon as rent, and also must file a bond in double the amount of his claim conditioned to prove his lien at law, or pay such damages by reason of the attachment as may be adjudged against him. *Burns v. Thompson, (June 17, 1940), 200 Ark. 901; 141 S. W. (2d) 530.*

By Sec. 8858 landlords' liens for rent are declared assignable (Act Feb. 4, 1935), and by Sec. 8859 (same Act) the holder of any instrument evidencing rent for land on which crops are to be produced during the year may transfer or mortgage the same together with the lien in favor of landlords and the holder has the right to enforce the lien.

Cropper's lien: The term "cropper" and not "tenant" characterizes one who raises a crop upon the lands of another under contract to raise a crop for a particular part of it, and therefore such person has a lien upon the crop for whatever is due him from the landlord *(Burgie v. Davis, 34 Ark. 179).*

Sec. 8828, Pope's Digest (Sec. 6882, Crawford & Moses), being the Act of Mar. 21, 1883, provides:

Specific liens—Penalty for defrauding. Specific liens are reserved upon so much of the produce raised and articles constructed or manufactured by laborers during their contract as will secure all money and the value of all supplies furnished them by the employers, and all wages or shares due the laborer; and if either party shall, before settlement, dispose of or appropriate the same without the consent of the other, so as to defraud him of the amount due, such party shall be deemed guilty of a misdemeanor, and, upon conviction, may be fined not exceeding one hundred dollars and confined in the county jail not less than one nor more than six months. Provided, nothing in this section shall be construed as forbidding the laborer from mortgaging so much of his crop for necessary supplies as may be equal to his interest therein at the time, if the employer, having contracted to furnish such supplies, fails or refuses to do so.

Here neither the laborer nor the landlord may, before settlement between them, dispose of or appropriate any part of the crop without the consent of the other, so as to defraud him, under penalty of a misdemeanor. But, upon refusal or failure of the employer to furnish supplies as contracted, the laborer may then mortgage the crop to the extent of his interest therein at the time. A copy of such "contract" (presumably the mortgage) must be filed in the Recording Office, which is sufficient notice of the lien, otherwise no third party shall be prejudiced by the existence of the lien (Sec. 8839).

The Act of Mar. 11, 1895, (Sec. 8820 Pope's Digest—Sec. 6864, Crawford & Moses Digest), provides:

Lien absolute—Laborers who perform work or labor on any object, thing, material or property, shall have an absolute lien on such object, thing, material or property for such labor done and performed, subject to prior liens and landlord's lien for rent and supplies, and such lien may be enforced within the same time and in the same manner now provided for by law in enforcing laborer's liens on the product of labor done and performed.

In the case of *Carraway v. Phipps, 191 Ark. 326; 86 S. W. (2d)* (decided Sept. 30, 1935), Johnson, C. J., stated the case as follows:

The suit is predicated upon a laborer's contract of hire entered into by the appellee (Phipps) with appellant Carraway on April 21, 1934. This contract was in effect that appellee would assist Carraway in making his crop in 1934, for which services Carraway agreed to give Phipps one 500-pound bale of lint cotton. Phipps performed his contract of hire with Carraway, but Carraway was unable to deliver the bale of cotton as agreed because, on February 19, 1934, Carraway executed and delivered to appellant Harrell a mortgage upon the entire crop to be produced in the year 1934, which was immediately filed of record, and when the crop was gathered the mortgagee took possession of the entire crop, including the bale of cotton claimed by appellee, which was sold and the proceeds converted. The testimony is not in material conflict and presents only the question of law, is a crop mortgage which is prior in point of time superior to a laborer's lien as created by the statutes of this state?

In *Watson v. May, 62 Ark. 435; 35 S. W. 1108,* we expressly held that, under what is now Sec. 6848 of Crawford & Moses Digest (Sec. 8804 of Pope's Digest, *ante*) a laborer's lien created thereby was superior and paramount to a mortgage filed prior in point of time. This opinion was written in application to facts which accrued prior to March 11, 1895 (when the act was passed) and therefore this latter act was not construed or discussed in the opinion. Appellant's contention of this appeal is that what is now Sec. 6848 of Crawford & Moses Digest (Sec. 8804, Pope's Digest), and which is a part of the Act of 1868, was impliedly repealed by what is now Sec. 6864, or a section of the Act of March 11, 1895, and for this reason *Watson v. May, supra,* has no controlling effect upon the facts presented in this record. Was Sec. 6848 (Pope's 8804) repealed by Sec. 6864 (Pope's 8820)?

Continuing, the court said:

Repeals by implication are not favored and exist only where there is an invincible repugnancy. * * * (Citations.)

From a careful comparison of the language of the two sections, it is apparent that there is no invincible repugnancy or conflict between them.

Sec. 6848 (8804, *ante*) gives an absolute lien to laborers under contract upon the product of their labor, whereas Sec. 6864 (8820, *ante*) gives a lien to laborers upon "any object, thing, material or property, etc." In other words, Sec. 6848 gives an absolute lien upon the product, objects, property and other things already in existence but which are worked upon or improved by such labor. This Court many years ago announced the rule that statutory liens, which come into existence coeval with the inception of production are superior and paramount to contractural liens, although such contractural liens were created prior in point of time. (Citations.) Although the cases last cited and referred to apply only to statutory liens of landlords, they state sound principles of law, and we know of no good reason to deny their application to the facts of this record. The Circuit Court's views, conforming to these here expressed, should be approved and the judgment is therefore affirmed.

In other words, the statutory lien of the laborer is superior to the contractural lien (consisting of the mortgage given by the landlord on the whole crop), even though the latter was prior in point of time.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

Sec. 8842 (Act Mar. 21, 1883)—**Abandonment—forfeiture of wages or share of crop.**

If any laborer shall, without good cause, abandon an employer before the completion of his contract, he shall be liable to such employer for the full amount of any account he may owe him, and shall forfeit to his employer all wages or share of crop due him, or which might become due him from his employer. *(Latham v. Barwick, 87 Ark. 328, Rand v. Walton, 130 Ark. 431;* and see *Crawford v. Slatten, 155 Ark. 283; 244 S. W. 32,* holding that where a sharecropper abandons his crop, it is forfeited to the landlord.)

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

One who raises a crop upon the lands of another, under a contract to raise it for a particular portion thereof is a cropper, and not a tenant, and has a lien upon the crop for whatever is due him. *Burgie v. Davis, 34 Ark. 179.*

A cropper could also bring action for breach of contract where the acts of the landlord warrant it. (See Memorandum, p. 8, and Sec. 8828, p. 8.)

GEORGIA

(1) LANDLORD AND TENANT, WHEN

Georgia Code Ann. Title 61—Sec. 61-101:

Relation of landlord and tenant exists, when: When the owner of real estate grants to another simply the right to possess and enjoy the use of said real estate, either for a fixed time, or at the will of the grantor, and the tenant accepts the grant, the relationship of landlord and tenant exists between them. In such case, no estate passes out of the landlord, and the tenant has only a usufruct, which he cannot convey except by the landlord's consent, and which is not subject to levy and sale * * * .

Sec. 61-102:

How relationship created: Contracts creating the relationship of landlord and tenant for any time not exceeding one year, may be by parole, and if made for a greater time, shall have the effect of a tenancy at will.

Georgia Code Ann. Ch. 61-106—Croppers, Sec. 61-501:

Nature of the relationship: Where one is employed to work for part of the crops, the relationship of landlord and tenant does not arise. The title to the crop, subject to the interest of the cropper therein, and the possession of the land, remain in the owner (46 Ga. 584).

The agreement between the landlord and the cultivator may create the relationship of landlord and tenant, or of employer and laborer, depending upon the terms of their agreement, and the intention of the parties. One determining factor is the question of whether the landlord receives his share of the crop as "rent," or the cultivator receives his share as "wages." If the former, they are landlord and tenant; if the latter, they are employer and laborer. A further determining factor is whether the contract transfers any dominion and control over the premises. If there is a demise of such dominion and control, the relationship is that of landlord and tenant, and where no such dominion and control passes to the cultivator, the parties are employer and laborer.

The distinction is laid down in *Sauter v. Crary, 116 S. E. 231, (Ga. App. 1923),* as follows:

The fundamental distinction between the relations of landlord and cropper, and landlord and tenant, is in the fact that the status of a cropper is that of a laborer who has agreed to work for and under the landlord for a certain portion of the crop as wages, but who does not thereby acquire any dominion or control over the premises upon which said labor is to be performed, the cropper having the right merely to enter and remain on the premises for the purpose of performing his engagements; whereas a tenant does not occupy the status of a laborer, but under such a contract acquires possession, dominion, and control over the premises for the term covered by the agreement, usually paying therefor a fixed amount either in money or specifics, and in making the crop performs the labor for himself and not for the landlord. The vital distinction is in whether the person making the crop does so as a laborer upon the premises controlled by the landlord, or whether he performs the work for himself upon premises over which he has possession and control. When in any given case, it is necessary to determine which of these relationships exists, the general rule is applicable, that the true intention of the parties shall be given effect. The fact that under the terms of the contract the person making the crop is to receive a designated proportion thereof, constitutes one of the distinctive earmarks going to establish the status of a cropper, and whenever under the terms of the contract he is thus "employed to work for part of the crop," his status as a cropper thereby becomes fixed. Code, Sec. 3707.

It is possible, however, for a contract of landlord and tenant to be entered upon whereby the person renting and taking over the land is to pay therefor a certain fixed proportion of the crop which shall be made thereon during the term of the tenancy; provided, that the relationship of employer and employee does not exist; and provided, that the person making the crop is to receive possession and control of the premises.

The earliest case on this point is that of *Appling v. Odom, 46 Ga. 583 (1872),* in which case it was held that the landowner to whom a cropper was indebted for advances was entitled to possession of the crop as against the cropper's mortgagee. The opinion of the court reads as follows:

There is an obvious distinction between a cropper and a tenant. One has a possession of the premises, exclusive of the landlord; the other has not. The one has a right for a fixed time; the other has only a right to go on the land to plant, work, and gather the crop. The possession of the land is with the owner as against the cropper. This is not so of the tenant. The case made in the record is not the case of a tenant. The owner of the land furnished the land and the supplies. The share of the cropper was to remain on the land, and to be

subject to the advances of the owner for supplies. The case of the crop is rather a mode of paying wages than a tenancy. The title to the crop subject to the wages is in the owner of the land. We are of opinion, therefore, that no person can purchase or take a lien on the wages of the cropper, to-wit: his share of the crop until the bargain be completed, to-wit: until the advances of the planter to the cropper, for the supplies, have been paid for. A different rule might obtain, as to a tenant, the right of the landlord for supplies being only a lien. But the cropper's share of the crop is not his until he has complied with his bargain.

(2) EMPLOYER AND CROPPER, WHEN

Ga. Code Ann. Ch. 61-5—Sec. 61-501. Croppers:

Nature of relationship: Where one is employed to work for a part of the crop, the relationship of landlord and tenant does not arise. The title to the crop, subject to the interest of the cropper therein, and the possession of the land, remain in the owner.

(3) TENANTS IN COMMON OF THE CROP, WHEN

In the case of *DeLoach v. Delk, 110 Ga. 884 (March 1904)*, the court said:

Where under the terms of a contract between the owner of land and another who agrees to cultivate it on shares, the relationship of landlord and cropper is created, the title to all crops grown on the land remains in the landlord until there has been an actual division and settlement whereby he receives in full his share of the produce. Civil Code, Sec. 3131; *Wadley v. Williams, 75 Ga. 272; Wadley v. Scott, 80 Ga. 95.* That the cropper furnishes the labor necessary to the making of the crop, and is to receive a portion thereof as compensation for his services, does not place him in the situation of a partner having an undivided interest in the product of his labor. *Padgett v. Ford, 117 Ga. 510*, and cit. So if the owner of the land wrongfully refuses to comply with his obligations in the premises, the remedy of the cropper is to assert a laborer's lien on the crops grown by him *(McElmurray v. Turner, 86 Ga. 215)*. He cannot maintain against the landlord an action of trover, the title to the crop being in the latter. *Bryant v. Pugh, 86 Ga. 525 and 529.*

(4) TITLE TO CROP PRIOR TO DIVISION

Ga. Code Ann.—Sec. 61-502:

Title to cropper's crop in landlord: Whenever the relationship of landlord and cropper shall exist, the title to, and right to control and possess the crop growing and raised upon the lands of the landlord by the cropper, shall be vested in the landlord until he shall have received his part of the crops so raised, and shall have been fully paid for all advances made to the cropper in the year said crops were raised, to aid in making said crops.

Under this section it is clear that where the relationship of employer and cropper exists, the title to the crop before division is in the employer or landlord. Where the relationship is that of landlord and tenant, the title to the crop before division is in the tenant, subject to the landlord's lien for the rent and for advances where the special contractural lien under Sec. 61-201 has been taken by the landlord. (Code 1933, Sec. 61-201 and 61-202.) (See 2d col.)

(5) LIEN OF THE PARTIES ON THE CROP

Landlord's lien.—Where the relationship is that of landlord and cropper, the title to the crop prior to division is in the landlord, and no lien in his favor is necessary. [Ga. Code Ann. Sec. 61-502; *Fields v. Argo, 30 S. E. 29 (Ga. 1898).*]

Where the contract is such as to create the relationship of landlord and tenant, the title and possession prior to division of the crop, is in the tenant, but the landlord has a statutory lien on the crops for rent, and may secure a contractural lien for advances.

The Ga. Code of 1933, Sec. 61-201, provides a lien for advances, as follows:

Landlords may have, by special contract in writing, a lien upon the crops of their tenants for stock, farming utensils, and provisions furnished such tenants for the purpose of making their crops; and such lien shall be enforced in the manner prescribed elsewhere in this Code.

(For enforcement of liens on personal property, see Sec. 67-2401. For liens for supplies, see Sec. 61-202. For mortgages and bills of sale covering the crops, see Sec. 67-1101 et seq.)

Ga. Code, 1933, Sec. 61-202, provides:

Landlords furnishing supplies, money, horses, mules, asses, oxen, or farming utensils necessary to make crops, shall have the right to secure themselves from the crops of the year in which such things are furnished, upon such terms as may be agreed upon by the parties, with the following conditions:

(1) The lien provided for in this section shall arise by provision of law from the relationship of landlord and tenant, as well as by special contract in writing, whenever the landlord shall furnish the articles enumerated in said section, or any of them, to the tenant for the purpose therein named. Said lien shall be enforced in the manner provided in Sec. 67-2401.

(2) Whenever the lien may be created by special contract in writing as provided by Sec. 61-201, the same shall be assignable by the landlord, and may be enforced by the assignee in the manner provided for the enforcement of such liens by landlords.

(See Sec. 61-206, 207; 67-1706, 07; 67-2302.)

Ga. Code, Sec. 61-202:

Liens created by this Section are hereby declared superior in rank to other liens, except liens for taxes, the general and special liens of laborers, and the special liens of landlords for rent, to which they shall be inferior, and shall, as between themselves and other liens not herein excepted, rank according to date.

This is a special lien where the landlord and tenant relationship exists. In the relationship of landlord and cropper, the title to the crop is in the landlord at all times until final division and, of course, no lien in favor of the landlord is necessary.

Cropper's lien.—Since the cropper is an employee or laborer, he may maintain an action to foreclose the statutory laborers' lien. This lien is provided for in the following statutes:

Ga. 1933, Sec. 67-1801—**Lien of laborer, General.**—Laborers shall have a general lien upon the property of their employers, liable to levy and sale, for their labor, which is hereby declared to be superior to all other liens except liens for taxes, and special liens of landlords on yearly crops, and such other liens as are declared by law to be superior to them. (Acts 1873.)

Sec. 67-1802—**Special lien of laborers.**—Laborers shall also have a special lien on the products of their labor, superior to all other liens except liens for taxes, and special liens of landlords on the year's crop, to which they shall be inferior. (Acts 1873.)

Sec. 67-1803—**Rank of laborers' liens—How they arise.**—Liens of laborers shall arise upon the completion of their contract of labor, but shall not exist against bona fide purchases without notice, until the same are reduced to execution and levied by an officer, and such liens in conflict with each other shall rank according to date, dating each from the completion of the contract of labor. (Acts 1873.)

In *McElmurray v. Turner, 86 Ga. 215; 12 S. E. 359, (Ga. 1890)*, the action was brought by a cropper who had been discharged after the crop had been made, claiming a special lien upon the crop raised as a laborer. Affirming the judgment for the plaintiff, the court said:

The evidence shows that the plaintiff was not a "renter," but was what is known as a "cropper." The relation of landlord and tenant did not exist between her and McElmurray. He was to furnish the land, mules, etc., and she was to furnish the labor, and the crop was to be equally divided; and the evidence further shows that he was to control the crop until after the

rent and advances had been paid. Under the evidence, this was simply a mode of paying her wages for the labor of herself and children. She had, as against him, no title to any part of the crop which she raised, until the rent and advances should be paid. Her part of the crop which she had raised being in the nature of wages, she was entitled to foreclose a special lien thereon after she had paid her rent, and paid for the advances made to her by the landlord, which she alleges she did, and which the jury found to be true.

See also:

Lewis v. Owens, 124 Ga. 228, 52 S. E. 333.
Faircloth v. Webb, 125 Ga. 230, 53 S.E. 592.
Garrish v. Jones, 2 Ga. App. 382, 58 S. E. 543.
Howard v. Franklin, 124 S. E. 554 (Ga. Appr., 1924).

Before any action may be brought by the laborer to foreclose his lien, it must be shown that he has fully performed his contract, or that such performance has been impossible because of the conduct of the landlord. In *Payne v. Trammell, 115 S. E. 923 (Ga. App. 1923)*, it was held that a cropper who had been discharged for having unlawfully converted a portion of the crop to his own use had thereby lost his lien. The following is the syllabus by the court:

Under the general rule that, before a laborer's lien can be foreclosed, it must be shown that the laborer has fully completed the contract, a cropper, who under the law has the status of a laborer, is ordinarily not entitled to enforce such lien against his landlord without showing full compliance on his part with the terms of the agreement *(Harvey v. Lewis, 91 S. E. 1052)*, except that such a lack of full performance by the cropper will not defeat the foreclosure of such lien when, without fault on his part, such failure to fully comply with his contractural obligation is occasioned by processes of the law, *(Lewis v. Owens, 52 S. E. 333)*, or by the unauthorized acts and conduct of the landlord *(Ballard v. Daniel, 89 S. E. 603)*.

If the owner of the land wrongfully refuses to comply with his obligations in the premises, the remedy of the cropper is to assert his laborer's lien on the crops grown by him.

DeLoach v. Delk, 119 Ga. 884.
Lewis v. Owens, 124 Ga. 228, 52 S. E. 333.
Garrish v. Jones, 2 Ga. App. 382, 58 S. E. 543.
Fountam v. Fountam, 7 Ga. App. 361; 66 S. E. 1020.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

Ga. Code of 1933, Sec. 61-503:

Right of landlord to recover crops disposed of without his consent: In all cases where a cropper shall unlawfully sell or otherwise dispose of any part of a crop, or where the cropper shall seek to take possession of such crop, or to exclude the landlord of the possession of such crop while the title thereto remains in the landlord, the landlord shall have the right to repossess said crops by possessory warrant, or by any other process of law by which the owner of property can recover it under the laws of this state. (Acts 1889, p. 113.)

Sec. 61-9902:

Purchase of farm products from tenants: Any person who shall buy any corn, or any cotton in the seed, from persons residing on the lands of another as tenant or laborer of such other person, or from the agent of such tenant or laborer, when said tenant or laborer had no right to sell, after notice of such disability to sell has been given in writing by the landlord or employer to such buyer, shall be guilty of a misdemeanor. (Acts of 1875-76.)

Sec. 61-9904:

Illegal sale by cropper; refusal to deliver by landlord: Any cropper who shall sell, or otherwise dispose of any part of the crop grown by him, without the consent of the landlord, and before the landlord has received his part of the entire crop, and payment in full for all advances made to the cropper in the year the crop was raised, to aid in making it, shall be guilty of a misdemeanor. Any landlord who shall fail or refuse, on demand, to deliver to the cropper the part of the crop, or its value, coming to the cropper, after payment of all advances made to him as aforesaid, shall likewise be guilty of a misdemeanor. (Acts of 1889, p. 113; 1892, p. 115.)

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

The cropper, as an employee, is not entitled to an injunction against the landlord who intends to take possession of the land and crop. Where, however, the landlord has sought by force and violence to frighten the cropper into abandoning the crop, it was held that a court of equity could appoint a receiver to take charge of the crop. This was the holding of the court in *Russell v. Bishop, 110 S. E. 174 (Ga., 1921)*, with the following opinion:

The relation between the parties was that of landlord and cropper. The relation of landlord and cropper is really the relation of employer and employee. Ordinarily the employer may discharge the employee; and if the employer is solvent an employee is not entitled to an injunction against the employer for a breach of the contract, in the absence of other equitable grounds.

It has in effect been held by this court that where the relation of landlord and cropper exists, the landlord cannot be enjoined from taking charge of the crops, in the absence of an allegation of insolvency; the cropper having an adequate remedy at law, *Nicholson v. Good, 76 Ga. 24.* It will be noted, however, in this case that the landlord did not elect to breach his contract with his cropper and suffer the legal consequences thereof; but he sought to frighten the cropper and to compel him through fright to abandon his contract. The landlord resorted to violence, in short, to mob violence, to effectuate his intent and purpose. * * * It therefore seems to us that the judge was authorized, under the peculiar facts of this case, to issue an injunction against the landlord, though solvent, restraining him from going upon and taking charge of the crops by the means and in the manner alleged in the petition.

In the case of *Hanson v. Fletcher, (1937), 183 Ga. 858, 190 S. E. 29, 49 App. 300*, the landlord instituted a suit to enjoin the cropper from continuing to occupy the premises after his discharge as an employee. The court granted the injunction, but appointed a receiver to harvest and divide the remaining crops, as prayed for by the defendant. Exception was as to the order appointing the receiver. The court said:

While it is ordinarily true that under the relation of landlord and cropper, the landlord has the right to control and possess the crops until he has received his portion, and is fully paid for all advances made by him to aid in their production (Code, Sec. 61-502), the right may be varied by special agreement.

The court then went on to say that by the terms of the contract, authority to market the crops was granted to the cropper and, therefore, the court below did not err in appointing a receiver, although it did not appear that the landlord was insolvent. The court cites *Russell v. Bishop, 152 Ga. 428*, and *George v. Bulland, 178 Ga. 589*. The court also points out that this case differs from *Nicholson v. Cook, 76 Ga. 24*, and *Casey v. McDaniel, 154 Ga. 181, (113 S. E. 804)*, where it was held that the cropper having adequate remedy at law did not need equitable relief.

Where the relationship of landlord and cropper exists, and the landlord wrongfully refuses to perform his part of the contract, the cropper has three courses of procedure open to him: (1) If the landlord's breach consists of a refusal to furnish articles which may be obtained elsewhere, it is the cropper's privilege to obtain them, complete the crop as contemplated by the contract, and hold the landlord and the landlord's share of the crop responsible for the actual damages resulting from the breach of the contract; or (2) the cropper may sue immediately for his special injuries, if any, including the value of the services rendered; or (3) he may wait until the expiration of

the harvest season, and sue for the full value of his share of the crop, or what his share would reasonably have been under a faithful performance of the contract by both parties. *Pardue v. Cason, 22 Ga. App. 284, 96 S. E. 16.*

KENTUCKY

(1) LANDLORD AND TENANT, WHEN

As in most, if not all, of the states covered in this memorandum, Kentucky statutes and decisions hold that where there is a demise of the premises the relation between the parties to a cropping contract is that of landlord and tenant. A leading Kentucky case is :

Redmon v. Bedford, 80 Ky. 13 (1882)—Redmon held an estate for life in a tract of land. Preceding his death, and in that year, he permitted one Tate to cultivate a field in wheat on shares; Redmon to furnish one half of the seed wheat, and Tate the other half. Tate was to sow, cultivate and cut the wheat; pay for threshing; and give to Redmon one half of the crop after it was threshed, to be delivered at the machine. Nothing was said about the time of the renting. Tate * * * harvested the crop, and when the wheat was ready to be delivered, Bedford, the appellee, who had administered on the goods of Redmon, took one half of the wheat, and this controversy is between Bedford and the heirs or children of the decedent, the latter claiming interest in the crop, or a part of the rent. We think the appellants were entitled to recover, and that the relation of landlord and tenant existed between the life tenant and Tate.

The first Section of Article 5, Chapter 66, General Statutes, provides that when contracts are made by which the landlord is to receive a portion of the crop as compensation for the use or rent of the land, the rights of the landlord shall be protected * * * . The use of land under like contracts is common within this state, and it is evident from the provisions of the statute referred to that the relationship of landlord and tenant exists in such cases, although no defined term is to be found in the contract between the parties, nor had the renting terminated at the death of the life tenant. (See Sec. 29, Gen. Stat., ch. 39.)

(2) EMPLOYER AND CROPPER, WHEN

The leading case of the very few cases reported in Kentucky in which the legal relationship between parties to a crop-sharing contract is considered is *Wood v. Garrison, 139 Ky. 603, 62 S. W. 728.* This case, with *Redmon v. Bedford, ante,* and *Hickman v. Fordyce, post,* are the only cases cited in the annotations in Carroll's Kentucky Statutes, 1936, to Sec. 2325 and 2327. Sheppard's citations do not reveal any later cases.

In *Wood v. Garrison* the court says:

Appellant as landlord contracted with appellee as tenant for the cultivation of about twelve acres of land in tobacco in Fayette County, for the year 1899. By the terms of the contract the landlord was to furnish the land, the barn room, and also to furnish a tenement house, yard and garden attached, to be occupied by the tenant, and pasture a horse for the tenant. The tenant was to do all the work necessary to plant, to raise and prepare the tobacco for marketing, and when ready for sale the landlord was to ship it, sell it, and pay half of the proceeds to the tenant.

Under this contract the tenant took possession of the tenement house, yard, etc. and planted out some tobacco beds and plowed a portion of the tobacco land. Then the tenant abandoned the work, refusing to complete it. The landlord took charge of the tobacco land and instituted forcible detainer proceedings against the tenant to recover the house. Judgment was rendered for the landlord by the Magistrate, which was traversed by the tenant, and on the trial in the Circuit Court, upon the above facts appearing, a peremptory instruction was given and judgment rendered for the tenant. The landlord appeals.

The question presented is, was appellee a tenant by the contract in which it was stipulated that he was to labor for the landlord, and having begun, without good cause fails to comply with his contract? Or was he a tenant under a contract within the meaning of Section 2325, Kentucky Statutes, which is as follows:

Section 2325—A contract by which a landlord is to receive a portion of the crop planted, or to be planted, as compensation for the use or rent of the land, shall vest in him the right to such a portion of the crop when planted as he has contracted for, though the crop may be planted or raised by a person other than the one contracted with; and so if the land be planted in a different kind of crop than the one contracted for, and for the taking of or injury to any of the crops aforesaid, the landlord may recover damages against the wrongdoer. The landlord may also have an injunction against any person to prevent the taking or injuring of his portion of the crop aforesaid; but nothing contained in this section shall bar the landlord of his right to such damages against the person contracted with as he may sustain by reason of the land being planted, without his assent, in a crop other than that contracted for, or not planted at all, nor for failure to cultivate the crop in a proper manner. This Section shall include a purchaser, without notice, of a growing crop or crops remaining on the premises though severed from the land; but it shall not apply to a purchaser in good faith, without notice, of a crop, after it has been removed for the space of twenty (20) days from the rented premises on which it was planted.

Sec. 2327 of the Stat. is as follows:

Section 2327 When a tenant enters or holds premises by virtue of a contract, in which it is stipulated that he is to labor for his landlord and he fails to begin such labor, or if, having begun, without good cause fails to comply with his contract, his right to the premises shall at once cease, and he shall abandon them without demand or notice. (Acts 1893.)

In our opinion both of these Sections of the Statutes were enacted for the protection of the landlord; other Sections were provided to protect the rights of the tenant. These two sections may be applied to two or more distinct classes of contracts, or may apply to the same class. Where the landlord rents the premises to the tenant to be cultivated in designated crops, and where the landlord is to receive portions of the crop, and where the custody and control of the premises are vested completely in the tenant for a specific term, it is then that Section 2325 only would apply. But where the tenant is to furnish labor and the landlord everything else, and the tenant to receive either so much in money or a given proportion of the crop raised to pay for his work, then the tenant and his contract come within Section 2327, quoted above. He is what is sometimes called a "cropper," a term applied to a person hired by the landlord to cultivate the land, reserving for his compensation a portion of the crops raised.

Steel v. Frick, 56 Pa. St. 172.
Adams v. McKesson, 91 Am. Dec. 183.
Fry v. Jones, 2 Rawle 12.

In Woodfall's Landlord and Tenant, p. 125, it is stated: "It is everywhere admitted, (see cases previously cited), that under a pure and unqualified cropping contract the entire legal ownership of the crop is in the owner of the land until division."

As said by Rodman, J., in *Harrison v. Ricks, 71 N. C. 7,* "A cropper has no estate in the land; that remains in the landlord; consequently, although he has in some sense the possession of the crop, it is only the possession of a servant, and is in law that of the landlord; the landlord must divide to the cropper his share. In short, he is a laborer receiving his pay in the share of the crop."

Under the facts of this case, as stated above, appellee appears to come within the definition of the term "cropper," which is a tenancy contemplated and included in Section 2327. If such a tenant fails to begin the labor contracted to be done by him, or having begun, without good cause fails to continue it, the landlord may maintain forcible detainer and dispossess him, and he might also be entitled to such other remedies provided in Section 2325 as were applicable to the state of the case.

The judgment of the Circuit Court was reversed.

(3) TENANTS IN COMMON OF THE CROP, WHEN

In Kentucky there is no statutory nor judicial determination of the relationship of tenants in common as between landowner and the person cultivating the land for a share of the crops. For a general discussion of the relationship of tenants in common of the crop, see this Memorandum, Mississippi, pp. 18, 19.

(4) TITLE TO CROP PRIOR TO DIVISION

Carroll's Kentucky Statutes, 1936, Sec. 2325:

A contract by which a landlord is to receive a portion of the crop planted, or to be planted, as compensation for the use or rent of the land, shall vest in him the right to such a portion of the crop when planted as he has contracted for, though the crop may be planted or raised by a person other than the one contracted with. Also if the land be planted in a different kind of crop than the one contracted for, and for the taking of or injury to any of the crops aforesaid, the landlord may recover damages against the wrongdoer. The landlord may also have an injunction against any person to prevent the taking or injuring of his portion of the crop aforesaid; but nothing contained in this section shall bar the landlord of his right to such damages against the person contracted with as he may sustain by reason of the land being planted, without his assent, in a crop other than that contracted for or not planted at all, nor for failure to cultivate the crop in a proper manner. This Section shall include a purchaser, without notice, of a growing crop or crops remaining on the premises though severed from the land; but it shall not apply to a purchaser in good faith, without notice, of a crop, after it has been removed for the space of twenty (20) days from the rented premises on which it was planted.

Under the language of this section: "Shall *vest in him* the right to such portion of the crop *when planted* as he has contracted for * * *," would seem to confer *title* to that portion of the crop.

In most of the other States it is well settled that when the relation of landlord and tenant exists, title to the crop is in the tenant, subject to the landlord's lien for rent.

As to "cropper" contracts, the court in *Wood v. Garrison, ante,* p. 12, says:

But where the tenant is to furnish labor and the landlord everything else, and the tenant to receive either so much money or a given proportion of the crop raised as pay for his work, the tenant and his contract come within Section 2327 quoted above. He is what is sometimes called a "cropper," a term applied to a person hired by the landowner to cultivate the land, receiving for his compensation a portion of the crops raised.

Steel v. Frick, 56 Pa. St. 172.
Adams v. McKesson, 91 Am. Dec. 183.
Fry v. Jones, 2 Rawle 12.

The title to the crop before division, then, is in the landlord where the cultivator is an employee or "cropper." The court, in *Wood v. Garrison,* quotes Woodfall's Landlord and Tenant, as follows:

In Woodfall's Landlord and Tenant, p. 125, it is stated: "It is everywhere admitted (see cases previously cited), that under a pure and unqualified cropping contract the entire legal ownership of the crop is in the owner of the land until division."

(5) LIEN OF THE PARTIES ON THE CROP

Carroll's Kentucky Statutes, 1936, Sec. 2323 and 2324, provide:

Landlord's lien for money or supplies furnished: enforcement of lien:

(1) A landlord shall have a superior lien, against which the tenant shall not be entitled to any exemption, upon the whole crop of the tenant, raised upon the leased or rented premises, to reimburse the landlord for money or property furnished to the tenant to enable him to raise the crop, or to subsist while carrying out his contract of tenancy. But the lien of the landlord shall not continue for more than one hundred and twenty (120) days after the expiration of the term. If the property upon which there is a lien is removed openly from the leased premises, without fraudulent intent, and not returned, the landlord shall have a superior lien upon the property so removed for fifteen (15) days from the date of its removal, and may enforce his lien against the property wherever found.

(2) The landlord may enforce the lien given in Section 1 of this Section by distress or attachment, in the manner provided in this Chapter for the collection of rent, and subject to the same liability. (This section was adopted in 1942.)

Baldwin's Kentucky Statutes, 1942, Sec. 383.070, (Carroll's Kentucky Statutes, 1936, Sec. 2317), gives the landlord renting premises for farming or coal-mining purposes a lien on the produce of the premises, and on the fixtures, furniture, and other personal property owned by the tenant or under-tenant after possession is taken, but not for more than one year's rent due, and to become due * * *

Sec. 2317, amended in 1910 and 1932, provides:

A landlord shall have a superior lien on the crops of the farm or premises rented for farming purposes, and the fixtures, household furnitures, and other personal property of the tenant, and under-tenant, owned by him after possession is taken under the lease; but such lien shall not be for more than one (1) year's rent due, nor for any rent which has been due for more than eleven (11) months, but every other landlord shall have a superior lien on the fixtures, household furniture, and other personal property of the tenant, or under-tenant, from the time possession is taken under the lease to secure the landlord in the payment of four (4) months rent, due or to become due, but such lien shall not be effective for any rent which is past due for a longer time than the lien is given. And if any such property is removed openly from the premises, without fraudulent intent, and not returned, the landlord shall have a superior lien on the property so removed for fifteen (15) days from the date of its removal and may enforce his lien against the property wherever found, provided, that the provisions of this Act shall not apply to, or in any manner affect the rights of landowners who lease lands for coal mining purposes.

Sec. 2317-a, (passed in 1932), specifically declares that Sec. 2317 does not repeal nor interfere with Sec. 2323 and 2325.

These sections give the landlord a lien on the crops of a "tenant." The cropper being a laborer, and the landowner having title and possession of the crop at all times before division, no lien in his favor is necessary. There is no special provision in Kentucky for a cropper's lien, but he would have a laborer's lien for his labor in making the crop and he could doubtless sue for the value of his share, where it was denied him by the landowner, by an action for breach of contract.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

In *Hickman v. Fordyce (1918), 179 Ky. 737, 201 S. W. 307,* the Court of Appeals of Kentucky interpreting Sec. 2327 of the State., says:

This Statute intended for the protection of the landlord should be so liberally construed as to embrace all contracts of tenancy in which the tenant agrees in consideration of the use and possession of the premises to labor for his landlord by making improvements on the rented premises or in any other manner. The services which the tenant agrees to perform take the place of rent which he might have contracted to pay at a stipulated time * * * , and the failure to perform the service or labor he agrees to perform, or the failure to do the thing he agrees to do, will have the same effect as if he had to pay according to the terms of the contract the money rent he had agreed to pay. Accordingly, when a tenant has failed or refused to perform the labor or service he agreed to perform, or to do the thing he agreed to do, and within the time agreed upon, landlord is entitled to repossess himself of the premises under a writ of forcible detainer.

This case is cited with approval in *Demundbrun v. Kentucky National Park Commission, 278 Ky. 521 (1939).*

Carroll's Kentucky Statutes, 1936, Sec. 1349:

If any person shall willfully entice, persuade or otherwise influence any person, or persons, who have contracted to labor for a fixed period of time, to abandon such contract before such period of service shall have expired, without the consent of the employer, he shall be fined fifty dollars, ($50.00),

and be liable to the party injured for such damages as he may have sustained (1893).

While a cropper is not a tenant, but a laborer, the wording of Sec. 2327 (p. 12, this Memorandum), seems to include "cropper" in the meaning of "tenant," for a tenant does not labor for his landlord even in a crop-sharing contract, but for himself, and pays a part of the crops raised to the landlord as *rent*, while a cropper is a "laborer for his landlord," and receives a part of the crop as "wages." And the court in *Hickman v. Fordyce, ante* (p. 13 of this Memorandum), says that this statute should be liberally construed * * * (and) when a tenant has failed or refused to perform the labor * * * , the landlord is entitled to repossess himself of the premises under a writ of forcible detainer.

Further protection is given the landlord by Sec. 1349 (p. 13 of this Memorandum), against enticing or persuading a laborer (cropper) to abandon his contract.

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

No statutory provision, nor cases directly in point, are found in Kentucky which give any specific remedy to the cropper where the landowner violates the contract. In Missouri it has been held that while a cropper cannot maintain a conversion against the landowner prior to the division of the crop, he was entitled to maintain conversion for one-half of the produce of cotton sold in which he had not released his interest. *Grammar v. Sweeney, 297 S. W. 706 (1927).* A cropper could also sue, in Missouri, for breach of contract where the landowner refused to permit him to take his share of the crop. *Beasley v. Marsh, 30 S. W. 2d, 747 (1931).*

LOUISIANA

(1) LANDLORD AND TENANT, WHEN

The statutes of Louisiana do not make any definite distinction between landlord and tenant relationship, and employer and cropper relationship, where land owned by one person is cultivated by another for a share of the crop; but the tendency is toward the landlord and tenant relationship unless the cultivator is definitely to receive a part of the crop "in lieu of wages" for his labor, and the landlord does not surrender any estate in the land. Where the "cropper" relationship is established by the agreement between the parties, the courts, in the few reported cases, have pointed out that the cultivator or cropper is an employee only and not a lessee or tenant.

Art. 2671 of the Civil Code of Louisiana, and Sec. 5065 and 6602 of the Louisiana General Statutes (Dart) [see post under "(4) Title to Crop Prior to Division"], recognize that land may be leased for a share of the crop; and where it is not shown that the agreement is that the party cultivating the land is to receive a part of the crop "in lieu of wages," the relationship is that of landlord and tenant, or lessor and lessee.

In the case of *Jones v. Dowling, 125 So. 478 (1929)* the court states a clear distinction between a lessee and an employee in agreements whereby the owner permits another to cultivate his land in consideration of allowing the cultivator a share of the crops. The court says:

> Contracts by which the owner permits another to cultivate his land in consideration of allowing him a share of the crops are of a personal nature, and, although the law recognizes that lands may be rented for a share of the crop (Article 2671, Civil Code of Louisiana), it is generally recognized that under such contracts the person cultivating the land may be merely an employee.

Lalanne Bros. v. McKinney, 28 La. Ann. 642.
Bres and O'Brien v. Cowan, 22 La. Ann. 438.
Holmes v. Payne 4 La. App. 345.
Kelley v. Rummerfield, 117 Wis. 620, 94 N. W. 640.

But where it is *not* shown there was an agreement that the person cultivating the land is to receive a share of the crop, or the proceeds thereof in lieu of wages, or the circumstances are such as to show that such was the intention of the parties, such contract will be considered as a contract of lease. *(Louisiana Farm Bureau, etc. v. Clark, 160 La. 294, 107 So. 115; Louisiana Farm Bureau, etc. v. Bannister, 161 La. 957, 109 So. 776.)*

There was not any express stipulation that the share of the crop to be raised by the plaintiff would be in lieu of wages, and there is no showing that the defendant reserved the right to direct, supervise, or control plaintiff in planting, cultivating, or harvesting the crop.

The agreement was, therefore, held to be one of lease, and the relation between the parties was that of landlord and tenant, or lessor and lessee.

> We there held * * * that where the lessor leases land to a tenant under a share contract, the crop produced belongs to the lessor and the lessee respectively, in the proportion fixed by the contract between them.

On a rehearing of this same case, Land, J., says:

> After careful consideration of our original opinion, we are convinced that we have correctly held that the interveners, the share tenants of the defendant, did not bear to him the relation of employees to employer, but that of lessees to lessor. and are entitled to their proportionate share of the cotton raised by them as co-tenants with the defendent.

In the case of the *Louisiana Farm Bureau, etc. v. Bannister (1926)*, the Cotton Growers' Association attempted to compel a member under a marketing agreement to deliver cotton of his tenants, raised on shares on his land, where such tenants were not parties to the marketing agreement. The court said:

> Plaintiff's contention, briefly stated, is that all cotton grown on the lands of defendant is affected by the marketing contract regardless of any interest the other person not a member of the Association may have in said cotton, and that one who leases land on a share basis is the sole owner of the crop, such a contract being legally considered as one for hire, and that the only remedy of the producer is to claim the laborer's lien on the thing produced.
>
> * * * * * * * * * * * * * * * * *
>
> The theory propounded by the plaintiff Association was accepted by the Court of Appeals, which, on the authority of *Bres and O'Brien v. Cowan, 22 La. Ann. 438*, and *Lalanne Bros. v. McKinney, 28 La. Ann. 642*, held that Gillis and Slaven (the share-croppers hired) were not partners of the defendant, nor his lessees, but merely laborers on his farm, entitled to their proportionate share of the cotton only as wages. We think the Court of Appeals erred in their ruling. In the case * * * relied on, the landowners expressly hired certain laborers to cultivate their plantations, giving them in lieu of wages a specified share of the proceeds of the crop. In the instant case the relationship * * * was clearly that of lessor and lessee. Such contracts have received statutory recognition.

Act. No. 100 of 1906 (Dart's Statutes, Sec. 6602) was expressly enacted to prevent crops of the lessees from being taken to pay the debt of the landowner, and Act No. 211 of 1908 (Sec. 5065 of Dart's Statutes) provides: The court then quotes the statute [see under (4) post], and cites *Louisiana Farm Bureau, etc. v. Clark, post,* and then says:

> Under the laws of this state products produced upon the land of landlords, under share contracts, belong in the proportion agreed upon to the landlord and the tenant.

(2) EMPLOYER AND CROPPER, WHEN

It is apparent from the case of *Jones v. Dowling (ante)*, that one who cultivates land belonging to another for a share of the crop is a cropper, if the share to be received by him is *in lieu of wages* for his labor, and if there is a reservation by the landlord of control of the premises.

An early Louisiana case is that of *Lalanne Bros. v. McKinney, 28 La. Ann. 642, (1876)*, in which the court held that where between certain laborers and their employer it was agreed to give them in lieu of wages one-half of the proceeds of the cotton crop and other produce, there was plainly no partnership and they were "croppers." In their opinion the court said:

Plaintiffs instituted suit against the defendants proceeding, *first*, by sequestration and, *secondly*, by attachment. The property sequestered and attached was released under bond, upon which Anderson and Gantt were sureties. Judgment was rendered in favor of plaintiffs. On appeal the judgment of the District Court was affirmed, execution issued, which was returned *nulla bona*, and proceedings were undertaken against the sureties. Gantt appealed from the judgment against him. In the opinion the Supreme Court says: "The sureties in their defense claim that they are not bound because the property replevined did not belong to their principal, but to certain freedmen who worked upon McKinney's plantation. Admitting that they could successfully relieve themselves by making proof of these facts, this proof is wanting. The testimony of the laborers shows that the contract between them and McKinney was that they were hirers to be paid by one-half of the proceeds of the cotton, and by reserving half of the other produce. The contract was exactly like the one between the Cowans and their laborers, reported in 22 Ann. 438, where it was said: The plantation in question was owned by the defendants in 1867, and cultivated by them in cotton. The defendants employed certain laborers and agreed to give them in lieu of wages one-third of the gross product of the cotton. There was plainly no partnership in this. The plantation was the Cowan's; and the cotton as it grew was theirs. The supplies were furnished to them for the crop; and every fiber of the *cotton*, as it matured, was affected by the privilege."

On this point the judgment was affirmed.

In the case of *Holmes v. Payne, 4 La. App. 345 (1926)* it is held:

(1) A "cropper's contract" is one in which one agrees to work the land of another for a share of the crop, without obtaining any interest in the land or ownership of the crop before division.

(2) A "cropper's contract" gives the cropper no legal possession of the premises or crops further than as an employee.

(3) Until the cropper's part of the crop is specifically set aside to him, the title thereto is in the landlord, but after adjustment of the cropper's share it belongs to him.

This case cites *Bres and O'Brien v. Cowan; Lalanne Bros. v. McKinney;* and *Louisiana Farm Bureau v. Bannister; ante.*

(3) TENANTS IN COMMON OF THE CROP, WHEN

In Louisiana there does not seem to be any recognition of the relationship of tenants in common as applied to a landlord leasing land to another for a share of the crop, or paying a share of the crop as wages for the labor of cultivating the land; and Sec. 5065 and 6602 of Dart's Louisiana General Statutes [see post (4)] definitely fixes the ownership of the crops grown or growing under crop leases.

(4) TITLE TO CROP PRIOR TO DIVISION

Louisiana statutes specifically determine the ownership of the crop, grown or growing, when land is leased for a portion of said crop.

Act No. 211, 1908, (Sec. 5065, Louisiana General Statutes), provides that the part of the crop which the owner is to receive, as agreed upon by both of the parties, is the property of the landlord at all times. The Statute reads:

Crop leases—Lessor owner of share.—Whenever the lessor leases land to the lessee for part of the crop, that proportion or part of the crop, or crops, agreed upon by both parties to the contract, which the lessor shall receive shall be, and is hereby declared to be, at any and all times the property of the lessor.

Act No. 100, 1906 (Sec. 6602, Louisiana General Statutes) provides:

Lessee's crops not liable for debt of landowner.—The growing crops of lessee for the current year under a lease, recorded or not recorded, cannot be held to pay an ordinary debt of the landowner, or any mortgage, whether judicial or conventional, which may have been recorded after the date of the lease.

In the case of *Louisiana Farm Bureau, etc. v. Clark, 160 La. 294, 107 So. 115*, the court said:

Under the laws of this state products produced upon the land of landlords, under share contracts, belong in the proportion agreed upon to the landlord and the tenant.

When the relationship is employer and cropper, however, it is to be gathered by inference from the cases reported that the title to the crop remains in the landlord at all times until division thereof.

Lalanne Brothers v. McKinney, ante.
Bres and O'Brien v. Cowan, ante.
Holmes v. Payne, 4 La. 345 (1926) ante.

(5) LIEN OF THE PARTIES ON THE CROP

Landlord's lien.—Act No. 211 of 1908 (Louisiana General Statutes, Sec. 5065) provides that whenever a landowner leases land for a part of the crop, that part agreed upon between the parties is at all times the property of the landlord. The landlord, therefore, needs no lien on the crop, having title to his part at all times.

Sec. 5058 of Louisiana General Statutes (Dart) provides:

Sec. 5058—Farmers and planters authorized to pledge crops.—In addition to the privilege now conferred by law any planter or farmer may pledge or pawn any agricultural crop, either planted and growing, or in contemplation of being planted, in order to secure the payment of advances in money, goods, and necessary supplies that he has received, may receive currently therewith, or may thereafter require in order to enable him to prepare the ground, plant and grow the crop, harvest or gather the same, or otherwise, in the production thereof, by entering into a written pledge of said crop, or any portion thereof; * * *

The statute then limits the debt secured to that for money and supplies necessary for production of the crop; provides for recording; and gives such pledges rank according to the date of filing, and further provides:

Provided, that the right or pledge thus conferred shall be subordinate to the claims of laborers for wages and for the rent for the land upon which the crop is being produced. (Laws of 1874, No. 66; 1922, No. 93.)

Sec. 5064 of Louisiana General Statutes (Dart) fixes the priority of privileges and pledges on crops as follows:

All privileges and pledges on crops granted by existing laws of this state shall rank in the following order of preference: (1), privileges of laborers: (2), privileges of lessors: * * * * * ; (4), pledges under Section 5058, above; (5), pledges of furnishers of supplies and money * * * . (Laws of 1886, No. 89.)

In the case of *Bres and O'Brien v. Cowan, 22 La. Ann. 438*, it was held (Syllabus):

The privilege given to a furnisher of supplies attaches to every fiber of the cotton made during the year, as fast as it matures, and a sale or other disposition made of any part thereof by the planter will not defeat this lien. Therefore, if the planter has sold or transferred a portion of the crop to the laborers in payment of their wages for making the crop, the assignee or transferee of the cotton by the laborers in payment of a debt they owe will not enable such third party to hold the cotton in opposition to the claim of the furnisher of supplies * * * .

Regarding the laborers in this case, the court in the opinion says:

There is no question in this case of the privilege of the laborers inasmuch as their contract was evidently entered into before the Act of March 1867, by which, for the first time, a privilege in favor of laborers was established.

Sec. 5066 of Louisiana General Statutes (Dart) provides a penalty for the lessee who sells the lessor's share of the crop in the following language:

In the event the lessee, or any other person acting with the consent of the lessee, sells, causes to be sold, or in any manner makes disposition of such part or portion of the crop, or crops, belonging to the lessor as provided for in Section 1 (Sec. 5065, Louisiana General Statutes) of this Act, such act by the lessee or any other person is hereby declared a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not to exceed one thousand dollars, or imprisoned not to exceed one year, or both fined and imprisoned at the discretion of the court. (Laws of 1908, No. 211; 1934, No. 45.)

But the attorney general's opinion is that there is no law for prosecution of the person who buys cotton from tenant farmers without the consent of the landlord. (O.A.G. Opinions Attorney General 1932-34, p. 251.)

In regard to the lien of parties in a sharecropper contract, the Tulane Law Review, vol. XIV, p. 449 (1939-40) says:

In the case of share croppers, only that portion of the crop actually belonging to the share cropper is free from the liens contracted by the landlord, and the portion belonging to the landlord may be burdened by the privilege, even while the crop is still in the ground. (Citing Act No. 211, 1908, Dart's Louisiana General Statutes, Sec. 5065 and 5066.)

Cropper's lien.—The person planting a crop on the land of another and receiving for his labor a part of the crop in lieu of wages is a laborer and has a privilege or lien for his wages. Sec. 2147, Louisiana General Statutes (Dart) gives the laborer the right of provisional seizure. The Statute is as follows:

In addition to the cases in which provisional seizures are allowed by the law the right to such remedy shall be allowed to laborers on farms or plantations when they shall sue for their hire, or may fear that the other party is about to remove the crop, in the cultivation of which they have labored, beyond the jurisdiction of the court.

(See Dart's Louisiana Code of Practice, Art. 284-295; and the title "Landlord and Tenant," Louisiana Digest, Sec. 96.)

Sec. 5139 of Louisiana General Statutes (Dart) provides:

In all cases instituted before any court of this state by a laborer or laborers upon any farm or plantation for the recovery of his or their wages, it shall be legal and competent for the Judge upon the application of either plaintiff or defendant to try the suit either in chambers or in open court after three days service of the citation. (Laws of 1874, No. 25.)

Farm tenants who work land "on shares" occupy the status of lessees or tenants, rather than employees of the landowner. Hence they are not entitled to maintain writs of provisional seizure against crops, nor to enforce payment of the balance of the account allegedly due from the landlord. [*Busby v. Childress (La. App. 187 So. 104).*]

The last named case, tried in 1938, held (quoting from the Syllabus):

Where it is not shown that there was an agreement that persons cultivating the land of another are to receive a share of the crop, or proceeds thereof, in lieu of wages, or circumstances are such as to show that that was the intention of the parties, the contract is considered a contract of lease.

In this case the evidence sustained the finding that the relation between the farm laborers and the landowner was that of landlord and tenant and, therefore, they had no privilege, as laborers, on the products of the soil, and the writ of provisional seizure was properly dissolved. In the opinion the court cites only those cases cited above in this Memorandum.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

Sec. 4384 of Louisiana General Statutes (Dart) provides:

Section 4384—Share or hire contracts—Third person causing breach—Penalty.— Whoever shall wilfully interfere with, entice away, intimidate or induce a hired person, tenant or share hand, to leave the services of the employer, or to abandon the land the subject of the contract, or who shall knowingly take into his employ any such person before the expiration of the contract, shall be guilty of a misdemeanor, * * * and shall be liable in a civil action for damages to double the amount of any debt due by said hired person, tenant, or share hand to the person who made the advances. (Act No. 54, 1906.)

Sec. 1 of this statute was declared unconstitutional on the ground that its enforcement would result in involuntary servitude. *(State v. Olivier 144 La. 51, 80 So. 195.)* (The editor remarks that the language of the opinion is broad enough to include the entire statute, but that only the first section was before the court, and that, therefore, the remainder is included in his compilation of the statutes.)

The section immediately following this, however, provides:

Any person taking advantage of the provisions of this Act, who shall falsely or fraudulently cause the arrest of, or otherwise unlawfully detain, a hired person, tenant, or share hand who has not violated the contract, or after its completion, shall be guilty of a misdemeanor, and be fined or imprisoned, etc.

The landlord is further protected against the holding over of a laborer or a cropper on the cultivated land by Sec. 6606.1 of the Louisiana General Statutes, which provides:

Notice of removal.—When any share cropper, half hand, day laborer, or any occupant of land holding through the accommodation of the owner, or any other occupant other than a tenant or a lessee shall be in possession of any house, building, or rented estate, after the purpose of such occupancy and possession shall have ceased and terminated, whether for reason of breach or the termination of the contract, or otherwise, and the owner of such house, building, or rented estate so occupied and possessed, or his agent, shall be desirous of obtaining possession of said premises, he shall demand and require, in writing, such occupant or possessor to remove from and leave same, allowing him five calendar days from the day such notice is served (Act No. 298, 1938).

The provisions of this Act immediately following provide the procedure where such occupier refuses to comply with the notice, and state that nothing in this Act shall be construed to conflict with, or repeal, any existing laws. It will be noted that this provision applies to "occupants other than a tenant or a lessee," thereby recognizing a class, or classes, of occupancy different from those of lessees or tenants, viz., "croppers."

Louisiana General Statutes (Dart), Sec. 4384:

Share or hire contracts—Third person causing breach—Penalty: Whoever shall wilfully interfere with, entice away, intimidate, or induce a hired person, tenant, or share hand to leave the service of the employer, or abandon the land the subject of the contract, or who shall knowingly take into his employ any such person before the expiration of the contract, shall be deemed guilty of a misdemeanor * * * .

Dart's Criminal Statutes, Sec. 1291, 1293:

Sec. 1291—Entry of premises in nighttime to remove laborer or tenant prohibited: It shall be unlawful for any person, or persons, to go on the premises, or plantation, of any citizen of this state, in the nighttime or between sunset and sunrise, and move, or assist in moving, any laborer or tenant, or the effects or property of any laborer or tenant therefrom, without the consent of the owner or proprietor of said premises or plantation (Acts 1926, No. 38).

Editor's note: The Act set out in the two sections preceding is a reasonable exercise of police power, and does not violate the due process and equal protection clauses of the Federal Constitution. *State v. Hunter, 164 La. 405, 114 So. 76, 55 A.L.R. 309.*

Sec. 1292 excepts the discharge of a civil or military order. Sec. 1293 provides a penalty of fine or imprisonment, or both, for a violation of this Act.

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

The "cropper," being a laborer, has a laborer's lien on the crop produced by him, and in Louisiana he may obtain a writ of provisional seizure under Sec. 2147, Louisiana General Statutes (Dart). [See under "(5) Lien of the Parties on the Crops," p. 15 of this Memorandum.]

MISSISSIPPI

(1) LANDLORD AND TENANT, WHEN

Tiffany in his work on "Landlord and Tenant," vol. 1, Sec. 20, says:

> We have before referred to the distinction between a tenant and a "cropper," so called, and the question whether one is upon land in one capacity or the other has frequently arisen, it being a very usual custom in this country for the owner of land and another person to agree that the latter shall sow and raise a crop, or crops, on the premises, which when raised shall belong to the two in certain named proportions. * * * A controlling consideration in each case is whether the intention of the parties as indicated by their words and acts was to create the relationship of landlord and tenant.

Tiffany then goes on to say that if the agreement is in writing, it has to be construed, and if it is verbal, it is a question of fact for the jury to determine the intent. Among the cases cited is *Betts v. Ratliff, 50 Miss. 561.*

The author states further:

> The fact that the possession of land is intended to pass out of the owner into the person who is to cultivate it conclusively shows an intention that the relationship of landlord and tenant shall be created. * * * While if there appears an intention not to give possession, the relationship of landlord and tenant cannot exist.

In the case of *Schlicht v. Callicott, 76 Miss. 487, 24 So. 869, (1898),* it was held:

> A contract that one of the parties is to furnish the other a dwelling house for himself and family, with adjacent land, and with teams and utensils, and that such other party is to cultivate the land and pay one half of the crop for the use of the property, creates the relation of landlord and tenant.

(Note: This payment is not "in lieu of wages," but "for the use of the property," which latter would seem to be "rent" rather than "wages.")

The court further said:

> Contract of lease was that Schlicht was to furnish to Callicott a dwelling house for himself and family, the land to be occupied and worked by Callicott; also necessary teams, gear, and farming tools for working the land, with feed for the team, and Callicott was to work the land properly to make and gather the crop to be grown, and to pay or deliver to Schlicht one-half of the crops so made and gathered. The parties seem to have treated each other as landlord and tenant until after this suit arose, and we think correctly so.

And in *Alexander v. Zeigler, 84 Miss. 560 (1904),* the facts were that Zeigler was the owner of a farm, and in the year 1912 contracted with one Horton to make a crop on shares; Zeigler to furnish the land, team and farm implements, and to feed the team, and Horton to furnish the labor to make and gather the crop; the crop to be equally divided between them.

Certain merchants furnished Horton with supplies and took a deed of trust on his crop, in which deed the appellant, Alexander, was trustee. Horton made six bales of cotton, and Zeigler took possession of four of them. This was a suit in replevin brought by Alexander to recover from Zeigler possession of one bale of cotton. It was contended for appellant that the relation of landlord and tenant existed, and the case of *Schlicht v. Callicott, ante,* was cited in support of that contention. For the appellant it was contended that Zeigler and Horton were tenants in common, citing in support of the contention *Doty v. Heth, 52 Miss. 530, post,* and therefore replevin would not lie, citing *Holton v. Binns, 40 Miss. 491.* In the opinion the court said:

> The rule that one tenant in common cannot institute replevin against his co-tenant does not control this case. Horton was a tenant and appellee was his landlord. This point was expressly decided upon almost identical facts in *Schlicht v. Callicott, 76 Miss. 487.*

In the much later case of *Williams et al v. Sykes, 170 Miss. 88, 154 So. 727 (1934),* the court expressly approves *Alexander v. Zeigler* as authority, and says:

> In the former decision (154 So. 267) we held that where one person working land for another on shares, the landlord furnishing the house, land, and farming implements, and the tenant the labor, each having one-half of the crops produced, the relationship of landlord and tenant exists, and that replevin by the tenant against the landlord for the possession of his share of the crop was maintainable.
>
> In the suggestion of error it is contended that the joint owners of property have each an equal right to the possession of the joint property, and that replevin will not lie in favor of one as against the other, citing *Holton v. Binns, 40 Miss. 491 (1866),* and *Doty v. Heth, 52 Miss. 530,* and contended that the decisions had not been clearly overruled in *Schlicht v. Callicott, 76 Miss. 487, 24 So. 869,* and *Alexander v. Zeigler, 84 Miss. 560, 36 So. 536 (1904).* In support of this argument counsel cite and rely upon *Staple Cotton Co-operative Association v. Hemphill, 142 Miss. 298, 107 So. 26,* wherein we said that there seems to be some difference in the holding of this court in *Doty v. Heth* and the holding in *Schlicht v. Callicott* and *Alexander v. Zeigler.* The first case, *Doty v. Heth,* seems to hold that the landowner and the share cropper are co-tenants of the farm products growing upon the premises, while the last two cases seem to hold that the relationship of landlord and tenant exists, and that the rights of third persons are governed by the law of landlord and tenant. Without undertaking to decide which is the correct holding, but treating the case as if the landowner and the share cropper were co-tenants, but not so holding, we think the suit of plaintiffs must fail because it is not entitled to the immediate possession of the property to the exclusion of the tenant, and that it must be entitled to the immediate possession of such property as against both the landlord and the tenant, and the landowner and the share cropper, before it is entitled to the remedy of replevin created by Chapter 275, laws of 1924 * * * . The decision in *Doty v. Heth, 52 Miss. 530,* was not based on replevin but it was a suit in the Chancery Court to establish a lien. The pronouncement that share cropper and landlord were co-tenants, if authority, was overruled by *Alexander v. Zeigler,* and impliedly overruled by the case of *Schlicht v. Callicott,* these two cases being later than the case of *Doty v. Heth,* and are necessarily controlling. What we said in the case of *Staple Cotton Co-operative Association v. Hemphill, 142 Miss. 298, 107 So. 24,* is not authority for the proposition contended for. That case on its facts, and the law applicable thereto, was properly decided and it was not necessary to harmonize *Doty v. Heth* and *Alexander v. Zeigler, supra.* Had we been required to determine whether they were inconsistent, and which were the prevailing cases, we would have been compelled to hold that *Alexander v. Zeigler* was authority, and that the prior cases had been modified or overruled by that case.
>
> It is clear to us that the relationship between the landowner furnishing a house, land, and farm implements, and the share cropper furnishing the labor, is properly the relationship of landlord and tenant, and that the tenant has the right to the possession of the crops grown, subject to the landlord's lien. His rent is measured by the amount of the crop, and it is the duty of the tenant to turn over to the landlord his share of the crop as rent for the premises. It is still true that as between co-tenants and tenants-in-common, each is

entitled to possession but not to the exclusion of the other, and remain joint tenants until a division is made or partition proceedings instituted. That doctrine in no manner conflicts with the pronouncement in *Alexander v. Zeigler, supra.*

It, therefore, appears that *Doty v. Heth, 52 Miss. 530 (1876)*, was overruled by *Alexander v. Zeigler, 84 Miss. 560 (1904)*, which in turn was approved by *Williams et al v. Sykes, 170 Miss. 88 (1934)*, in which last case the court said:

It is clear to us that the relationship between the landowner furnishing a house, land, and farm implements, and the share cropper furnishing the labor, is properly the relationship of landlord and tenant, and that the tenant has the right to the possession of the crops grown, subject to the landlord's lien. His rent is measured by the amount of the crop, and it is the duty of the tenant to turn over to the landlord his share of the crop as rent for the premises.

(2) EMPLOYER AND CROPPER, WHEN

Notwithstanding the holdings in the cases cited under "(1) Landlord and Tenant, When," above, a relationship of landlord and cropper does exist in Mississippi, and is recognized in the statutes and decisions. Sec. 2238, Miss. Code of 1930, expressly recognizes a "laborer's" lien and a "cropper's" lien on the interest of the person contracting for the labor. These liens are paramount to all liens created by or against the person contracting for the labor, except the lien of the lessor of the land upon which the crop is made [see post, "(5) Lien of the Parties on the Crop, etc."].

Tiffany on "Landlord and Tenant," (vol. 1, Sec. 20), in distinguishing between tenant and "cropper" says:

A controlling consideration in each case is whether the intention of the parties as indicated by their words and acts was to create the relation of landlord and tenant.

Occasionally it has been said that an instrument providing for sharing the crop will not be construed as a lease unless such clearly appears to be the intention of the parties. *(Allwood v. Ruckman, 21 Ill. 200; Guest v. Updyke, 31 N. J. Law 352)*, and this would seem to be a reasonable ruling calculated to remove to some extent the difficulties with which the subject has been invested. * * * This view, that an agreement for the division of crops is in itself no evidence that a lease is intended, is indicated though not clearly stated, in a number of cases in which the construction of the instrument was adverse to the existence of a tenancy.

Citing, among other cases:

Shields v. Kimbrough, 64 Ala. 504.
Bourland v. McKnight, 79 Ark. 427, 96 S. W. 179.
Wood v. Garrison, 23 Ky. Law Reports, 295, 62 S. W. 728.

"Croppers" are clearly recognized in so late a case as *Jackson v. Jefferson, 158 So. 486, 171 Miss. 774 (1935):*

Where tenant was authorized to sell the crop free from the share-cropper's lien, and to turn buyer's checks over to the landlord for collection, and the landlord was to turn back to the tenant amounts due croppers to be turned over to them, croppers' liens though waived as to the buyers of the crops were not waived as to the proceeds in the hands of the tenant or landlord. (Code of 1930, Sec. 2238.) (Taken from the Syllabus.)

The court says in the opinion:

Mrs. Jackson owned a farm in Humphreys County * * *, and for about twenty years had rented it annually to Jenkins * * *. (She) rented it to Jenkins for the year 1933 at a standing rental of one thousand dollars. In addition (she) advanced Jenkins money with which to supply the farm during the year. Jenkins share-cropped to these four negroes part of the farm for that year; they made the usual share-cropping contract, which was that the landlord would furnish the land, teams, plow tools and "furnish" to make the crop; the tenants were to furnish the labor therefor; the proceeds to be shared half and half, the tenants first paying the "furnish" out of their half of the proceeds.

While the court calls this the "usual cropper's contract," there is no definition of the relationship between the parties. It is, however, obvious that no dominion or control of the premises passed to the share croppers, and the title to the crops was in Jenkins, the tenant, up to the time of the division.

It seems apparent that no clear line of demarcation has been laid down in Mississippi between "tenants" and "croppers," but that the trend of the decisions is towards the "tenant" relationship, or the relationship of tenants-in-common, as differing from "croppers" or "laborer."

However, where there is no demise of any interest in the premises to be cultivated, and a share of the crop goes to the cultivator "in lieu of wages," it is safe to say that the relationship would be declared to be that of landowner and "cropper," as would be the case in adjacent States. (See same heading under Alabama, Arkansas and Georgia, this Memorandum.)

(3) TENANTS IN COMMON OF THE CROP, WHEN

The question most frequently discussed in connection with agreements for the division of crops between the landowner and the cultivator has been with regard to the rights of the parties in the crop before division. If one party has title to the whole crop to the exclusion of the other, he may, it is evident, by a transfer or mortgage thereof to an innocent purchaser, deprive the other party of his share * * * A number, perhaps a majority, of the courts recognizing the possibility of loss by one party of the share to which his claim entitles him, if the whole title is regarded as vested in the other, have asserted the doctrine that before division the two parties are tenants in common of the crop, that is, that each has an undivided interest therein, which is subject to his sole control, this view being, perhaps, more frequently based upon grounds of expediency than upon the construction of the particular agreement. This view * * * has been most frequently taken in cases in which the agreement was not regarded as involving a demise and creating the relation of landlord and tenant. (Tiffany on Landlord and Tenant, vol. II, Sec. 253-b.)

(Note: Most of the cases cited by Tiffany are New England or western cases. The cases cited here are selected from the States covered by this Memorandum.)

Smith v. Rice, 56 Ala. 417.
Romero v. Dalton, 2 Ariz. 210, 11 Pac. 863.
Doty v. Heth, 52 Miss. 530.
Jones v. Chamberlain, 52 Tenn. (5 Heisk) 210 (semple).
Betts v. Ratliff 50 Miss. 561.
Lowe v. Miller, 3 Grat. (Va.) 205, 46 Am. Dec. 188.

But in some cases, even though the cultivator is expressly stated to be a tenant, a tenancy in common in the crop is recognized as existing:

Smith v. State, 84 Ala. 438, 4 So. 683.
Tinsley v. Craige, 54 Ark. 346; 16 S. W. 570.
Johnson v. Hoffman, 53 Mo. 504.
Moses v. Lower, 43 Mo. App. 85.
Fagan v. Voght, 35 Tex. Cir. App. 528, 80 S. W. 664.
Rentfrow v. Lancaster, 10 Tex. Cir. App. 32, 31 S. W. 229.
Horsley v. Moss, 5 Tex. Cir. App. 241, 23 S. W. 1115.

If the agreement in such case be regarded as one of hiring, making the cultivator the servant of the landowner, a view quite frequently asserted, it is difficult to understand how a share of the crop which is to be delivered to the cultivator as wages can, before such delivery, be regarded as belonging to him.

Burgie v. Daves, 34 Ark. 179.
Tinsley v. Craige, 54 Ark. 346.
Gray v. Robinson, 4 Ariz. 24.
Graham v. Houston, 15 N. C. (4 Des. Law) 232.
Mann v. Taylor, 52 Tenn. (5 Heisk) 267.
Smith v. Rice, 56 Ala. 417.
Rakestraw v. Floyd, 54 S. C. 288, 32 S. E. 419.

That one thus employed to cultivate the land for a share of the crop has no proprietary interest therein is recognized in a number of cases:

Gray v. Robinson, 4 Ariz. 24, 33 Pac. 712.
Bryant v. Pugh, 86 Ga. 525.
Woodward v. Corder, 33 Mo. App. 147.
State v. Jones, 19 N. C. (2 Dev. & B) 544.
Cole v. Hester, 31 N. C. (9 Ired Law) 23.
Huff v. Watkins, 15 S. C. 85.
Richey v. DuPre, 20 S. C. 6.

If, however, instead of regarding the cultivator as the servant of the landowner, we regard the two as parties to a joint adventure, as has occasionally been suggested, they may well be joint owners or tenants in common of the crops. * * * As regards the existence of a tenancy in common of the crops where the relationship of landlord and tenant exists, the cases are not by any means in unison. As before stated, there are a number of decisions in which the landlord and tenant have been regarded as tenants in common of the crop, but there are perhaps even more cases in which the two relationships are regarded as inconsistent for the reason that crops regularly belong to the tenant, and the share of the crop which is eventually to go to the landlord is in the nature of rent, and the fact that an article is to be delivered in the payment of rent cannot make it the property of the landlord until it is delivered.

Smyth v. Tankersley, 20 Ala. 212.
Treadway v. Treadway, 56 Ala. 390.
Ponder v. Rhea, 32 Ark. 435.
Taylor v. Coney, 101 Ga. 655, 28 S. E. 974
Betts v. Ratliff, 50 Miss. 561.
Dearer v. Rice, 20 N. C. (4 Der. & B.) 567.
Peebles v. Lassiter, 33 N. C. (11 Ired Law) 73.
Ross v. Swaringer, 31 N. C. (9 Ired Law) 481.
Magill v. Holston, 65 Tenn. (6 Boxt) 322.
Texas & P.R.R. Co. v. Bayliss, 62 Tex. 571.

In the case of *Doty v. Heth, 52 Miss. 530 (1876)*, the court said:

Tenancy usually carries with it the idea of a legal ownership of a term in the land, which cannot be subjected to sale under execution, and also the exclusive ownership of the products to be raised thereon. This would be so even where rent reserved was a portion of the products. In such case the relationship of landlord and tenant would exist, and the legal title to the crop would vest in the tenant. Exactly what relationship is created between the parties by the contract to crop on the shares is difficult to define. Somewhat extensive examination of the cases indicates that they are usually regarded as constituting the parties tenants in common of the crops, but not joint tenants nor tenants in common of the land * * * .

While this case was overruled by *Alexander v. Zeigler (ante)*, and the latter case was approved in *Williams v. Sykes, 170 Miss. 88, 154 So. 727 (1934)*, it was not overruled on this point, and the court in *Williams et al v. Sykes said:*

Doty v. Heth (ante) seems to hold that landowners and share croppers are co-tenants of the farm products growing upon the premises, while the last two cases, *Schlicht v. Callicott* and *Alexander v. Zeigler*, both *ante*, seem to hold that the relationship of landlord and tenant exists * * * . Without undertaking to decide which is the correct holding, but treating the case as if the landowner and the share cropper were co-tenants, but not so deciding, we think the suit of the plaintiffs must fail * * * .

The court then goes on to decide that *Alexander v. Zeigler* is "authority," and that case holds the parties to be landlord and tenant.

A. & E. Enc. Law, 2d ed., vol. XVII, p. 651, defines "tenants in common" as follows:

In tenancy in common the co-tenants hold by one and the same undivided possession, and this unity of possession is the only unity required to constitute such a tenancy. The extent of the respective interests of the co-tenants, their source of title, the times at which their interests become vested, and the periods of duration may be different. And at common law a difference in one or more of these particulars was necessary in order to constitute the estate an estate in common as distinguished from a joint tenancy.

It is difficult to see, notwithstanding *Doty v. Heth*, how a cropper having no demise of any estate in the land, and having no dominion or control over the premises, and receiving only a share of the crop "in lieu of wages," can be aught but a laborer; or how he could have any "undivided possession" of the crop with the landowner. As Tiffany says, *ante:* "It is difficult to understand how a share of the crop which is to be delivered to the cultivator as wages can, before such delivery, be regarded as belonging to him."

(4) TITLE TO CROP PRIOR TO DIVISION

Title to crop prior to division depends upon the relationship of the parties. Where that is landlord and tenant, it is thoroughly established in all jurisdictions that the title to the crop is in the tenant, subject to the landlord's lien for rent. Where the parties are tenants in common, as in Mississippi they frequently appear to be [see chart under (3) and this Memorandum], they have joint possession and ownership. When there is no demise of the premises, and the landowner retains dominion and control, agreeing only to pay the cultivator a fixed portion of the crops *in lieu of wages*, title to the crop remains in the landowner prior to the division thereof.

Burgie v. Daves, 34 Ark. 179.
Tinsley v. Craige, 54 Ark. 346.
Gray v. Robinson, 4 Ariz. 24.
Graham v. Houston, 15 N. C. (4 Dec. Law) 232.
Mann v. Taylor, 52 Tenn. (5 Heisk) 267.
Smith v. Rice, 56 Ala. 417.
Rakestraw v. Floyd, 54 S. C. 288, 32 S. E. 419.

(5) LIEN OF THE PARTIES ON THE CROP

Sec. 2238 of the Miss. Code of 1930 gives the employer and the "cropper," or "laborer," each a lien on the interest of the other for advances on the one hand and wages on the other. This section reads:

Employer and employee—Lien declared.—Every employer shall have a lien on the share or interest of his employee on any crop made under such employment for all advances of money, and for the fair market value of other things advanced by him, or anyone at his request, for himself and family, and business during the existence of such employment, which lien the employer may offset, recoup, or otherwise assert and maintain; and every employee, laborer, cropper, part owner, overseer, or manager, or other person who may and by his labor in making, gathering, or preparing for sale or market any crop shall have a lien on the interest of the person who contracts with them for such labor for his wages, share or interest in such crops, whatever may be the kind of wages, or the nature of the interests, * * * which lien such employee, laborer, cropper, part owner, overseer or manager, or other person may offset, recoup, or otherwise assert and maintain. Such liens shall be paramount to all liens and incumbrances or rights of any kind created by or against the person so contracting for such assistance, except the lien of the lessor of the land on which the crop is made, for rent and supplies furnished as provided in the chapter on "Land and Tenant."

The landowner is given a paramount lien on the products raised on the premises to secure the payment of rent by Sec. 2186, Code of 1930, which reads as follows:

Lien of Landlord: Every lessor of land shall have a lien on the agricultural products of the leased premises, however, and by whomsoever produced, to secure the payment of the rent and the money advanced to the tenant, and the fair market value of all advances made by him to his tenant for supplies for the tenant and others for whom he may contract, and for his business carried on upon the leased premises; and the lien shall be paramount to all other liens, claims, or demands upon such products. And the claim of the lessor for supplies furnished may be enforced in the same manner, and under the same circumstances as his claim for rent may be; and all of the provisions of law as to attachments for rent and proceedings under it

shall be applicable to a claim for supplies furnished, and such attachment may be levied on any goods and chattels liable for rent as well as on the agricultural products.

The landlord is given further protection in a lien for the reasonable value of livestock, utensils, and equipment furnished, not only on the property so furnished, but also on the crops raised. Sec. 2187, Miss. Code of 1930, reads:

Lien for livestock—Implements: A landlord shall have for one year a lien for the reasonable value of all livestock, farming utensils, implements, and vehicles furnished by him to his tenant upon the property so furnished, and has an additional security therefor upon all the agricultural products raised upon the leased premises. The said property so furnished shall be considered as supplies and the lien therefor may be enforced accordingly. Such lien shall be a superior and first lien, and need not be evidenced by writing, or if in writing, need not be recorded.

Further, it is a misdemeanor for any person, with notice of the landlord's or the cropper's lien on any agricultural products to remove or conceal such products with intent to impair such lien. Sec. 1019, Miss. Code of 1930, provides:

Any person who, with notice of an employer's, employee's laborer's, cropper's, part owner's or landlord's lien on any agricultural products, and with intent to defeat or impair the lien shall remove from the premises on which it was produced, or shall conceal or aid, or authorize to remove or conceal, anything subject to such lien, and upon which any other person shall have such lien, without the consent of such person, shall * * * be subject to fine or imprisonment.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

Where a tenant (or a cropper) violates the agreement with the landowner, the latter may have recourse under Sec. 2198 and 2237 of the code, which are as follows:

Sec. 2198, Miss. Code of 1930:

Remedy when claim due in certain cases.—When any landlord or lessor shall have just cause to suspect and shall verily believe that his tenant will remove his agricultural products on which there is a lien, or any part thereof, from the leased premises to any other place, before the expiration of his term, or before the rent or claim for supplies will fall due, or that he will remove his other effects so that distress cannot be made, the landlord or lessor in either case on making oath thereof, and of the amount the tenant is to pay, and at what time the same will fall due, and giving bond * * * may obtain an attachment against the goods and chattels of such tenant * * *; and if bond in double the amount due is not given, the property will be sold, or so much thereof as may be necessary, to pay the rent due.

Sec. 2237, Miss. Code of 1930:

Proceedings when tenant deserts premises.—If a tenant, of lands being in arrears for rent, shall desert the demised premises, leaving the same uncultivated or unoccupied, so that a sufficient distress cannot be had to satisfy the arrears of rent, any Justice of the Peace of the county * * *, at the request of the landlord and upon proof, may view the premises * * * and may put the landlord in possession of the premises.

In *Cohn v. Smith, 64 Miss. 816, 2 So. 244,* it was held:

It being a crime for a person with notice of the lien to remove the products from the leased premises without the landlord's consent (Sec. 1261—now 1019), the landlord can maintain an action for damages against the purchaser with notice of products subject to the lien for rent.

In *Bedford v. Gartrell, 88 Miss. 429, 40 So. 801,* it was held that the landlord's lien is superior to the lien of a deed of trust given by the tenant on crops for advances of supplies.

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

There is no specific provision for any remedy for the cropper if the landlord violates the contract, other than in sec. 2238, cited, p. 19. It is probable that in such case the cropper could bring action in damages under the general law.

MISSOURI

(1) LANDLORD AND TENANT, WHEN

The earliest reported case that has been found (1873) in which there was a judicial determination of the relationship existing between the parties to a crop-sharing contract is *Johnson v. Hoffman, 53 Mo. 504,* in which the court said:

The material question is, whether the agreement between the parties was a lease whereby the possession of the farm was transferred to the plaintiff, or simply an agreement by which the plaintiff was hired to cultivate the farm on shares, the defendant at all times holding the possession exclusively for himself.

The court then cites the agreement (which was written) whereby Hoffman "leases, rents and lets" unto Johnson his farm in St. Charles County. Continuing, the court holds:

Contracts of this character although unknown in England are frequent in the United States. The authorities, however, are conflicting in the several states, as to whether they create the relationship of landlord and tenant, or simply make them croppers on the shares. In my judgment no definite ruling can be laid down on this subject. Each case must be determined by the words of the written agreement between the parties. It is obvious from the language of this agreement, that the plaintiff was to have possession of the farm, for the length of time indicated therein. The crops, however, were to be divided between the parties. They were, therefore, tenants in common of the products of the farm with the possession of the land in the plaintiff as tenant of the defendant as his landlord.

Fifty years later (1923) in the case of *Jackson v. Knippel, 246 S. W. 1007,* it was held that a written instrument demising and leasing 55 acres of land for a term of one year, wherein lessor agreed to furnish one and one-half bushels of seed to the acre and 125 pounds of fertilizer per acre, and lessee agreed to pay lessor one-half of the wheat to be threshed and delivered to the lessor, the lessee agreeing not to underlet the premises or any part thereof, or assign it, without the written assent of the lessor, created the relationship of landlord and tenant between the parties. (The court cites and quotes from *Johnson b. Hoffman, ante.)* Continuing the opinion, the court said:

While it has been said in contracts of this character, whether it is to be held as one for raising a crop on joint account, or one of employment in payment for services to be made in a share of the crops, or a lease with rent, payable in kind, depends primarily on the intention of the parties, yet—"The legal form in which the agreement is couched is most material in determining its character." The most important criterion in arriving at the intention of the parties and the consequential relationship created is: Which party was entitled to the possession of the land? If it was the intention that the landowner should part with, and the other party have, the exclusive possession of the land for the purpose of cultivation, then as a general rule the transaction will be considered a lease, and the relation between the parties that of landlord and tenant. (The court cites 50 L.R.A. 254; 81 Am. St. Rep. 562; *Johnson v. Hoffman, ante.)*

Thus it seems to be settled in Missouri that where in a crop-sharing agreement possession of the premises passes to the cultivator, the relationship is that of landlord and tenant.

(2) EMPLOYER AND CROPPER, WHEN

The relation of employer and cropper, or laborer, seems to come into existence when a cultivator of the land receives no demise of the premises, possession and dominion of which remain in the landowner, but is to receive his wages in a portion of the crop raised. In the case of *Haggard v. Walker, 132 Mo.*

App. 463 (1908), 111 S. W. 904, where the plaintiff landowner contracted to furnish the land and the wheat to be sowed, and defendant was to break the land in the fall, sow the wheat, cultivate, harvest, and thresh it, and the crop was to be divided equally between them, the relation of landlord and tenant did not exist, but defendant was a mere cropper on shares, and plaintiff was not entitled to recover unpaid rent by attachment under the Landlord and Tenant Act.

And in the case of *Pearson v. Lafferty, 197 Mo. App. 123 (1917) 193 S. W. 40*, the court held that where one cultivated land under an agreement to give the owner one-half of the crop, without renting the land for any fixed period, and without possession to the exclusion of the owner, he was a mere cultivator or "cropper," and not a tenant.

(3) TENANTS IN COMMON OF THE CROP, WHEN

In *Kamerick v. Castleman, 23 Mo. App. 481 (1886)*, where an owner let his land to another on shares, under a contract which fixed no time for the termination of the letting, which did not contain any stipulation as to who should gather the crop, and which did not require the tenant to deliver to the owner his share of the crop, the owner and the tenant were tenants in common of the crop.

In *Moser v. Lower, 48 Mo. App. 85 (1892)*, where plaintiff was, under an agreement with defendant, a cropper on defendant's land, for raising corn, the stalks left after cutting the corn were a part of the crop, and the plaintiff and defendant were tenants in common of the stalks, as they had been of the corn.

In *Pearson v. Lafferty, 197 Mo. App. 123, 193 S. W. 40 (1917)*, the court said:

> Apart from divergencies in the results reached in the cases due to differences in the various agreements involved, there is considerable conflict in authority as to the respective interests or rights of the owners and the cultivators or croppers in and to the crop itself. It appears that the trend of judicial authority is to hold that a contract whereby one is allowed use of land to cultivate, the owner to have a share of the produce for its use, will, in general, at least, create a tenancy in common in the growing crop; and this is said to be so whether the agreement operates as a lease or a mere "cropping contract."

The court cites *Johnson v. Hoffman; Kamerick v. Castleman; Moser v. Lower;* note to *Kelly v. Rumerfield, 98 Am. St. R. 959; R.C.L. 374, 5;* and numerous other cases in States from coast to coast. (See this Memorandum, **pp. 18, 19,** Mississippi, and cases there cited.)

(4) TITLE TO CROP PRIOR TO DIVISION

In *Morrell v. Alexander, 215 S. W. 764 (1919)*, it was held that under an agreement whereby plaintiff was to plant, cultivate, and raise crops, and furnish all labor in consideration of a share of the crop, while defendant was to furnish everything else, plaintiff was a mere cropper, and the title to the crop, as well as legal possession thereof, remained in the defendant landlord, until the division of the crop and setting aside of the plaintiff's portion.

In *Robbins v. Grooms, 257 S. W. 503 (1924)*, it was held that under a contract whereby defendant was to have possession of plaintiff's farm and cultivate it, each to have one-half of the corn raised, to be divided and put in separate pens on the farm by the defendant, until such division plaintiff had no exclusive title to any of the corn.

It is apparently settled in all jurisdictions that in an agreement between an employer and cropper, the title to the crop before division is in the landowner. A leading case is *Wood v. Garrison, 139 Ky. 603, 62 S. W. 728.* In Woodfall's "Landlord and Tenant," p. 125, the author states:

> It is everywhere admitted that under a pure and unqualified cropping contract the entire legal ownership of the crop is in the owner of the land until division.

It is equally well settled that when in a cropping contract the relationship is that of landlord and tenant, the title to the crop is in the tenant, subject to the landlord's lien for rent and advances. (There may be an exception to this in Louisiana under Sec. 5065 of the Louisiana General Statutes. See this Memorandum, p. 15, Louisiana, and see this heading under the various States covered in this Memorandum. There is no "cropper" relationship in Alabama. This Memorandum, p. 1, Alabama.)

(5) LIEN OF THE PARTIES ON THE CROP

In Missouri Revised Statutes, Annotated (1939), vol. IX, Sec. 2976, 2977, and 2978, it is provided:

> **Section 2976—Landlord has a lien on crops grown, etc.—** Every landlord shall have a lien upon the crops growing on the demised premises in any year for the rent that shall accrue for such year, and such lien shall continue for eight months after such rent shall become due and payable, and no longer. When the demised premises, or any portion thereof, are used for the purpose of growing nursery stock a lien shall exist and continue on such stock until the same shall have been removed from the premises and sold, and such lien may be enforced by attachment in the manner hereinafter provided. (R.S. 1929, Sec. 2589.)
>
> **Section 2977—Landlord's lien against crop of tenant:** Every landlord shall have a superior lien, against which the tenant shall not be entitled to any exception, upon the whole crop of the tenant raised upon the leased or rented premises, to reimburse the landlord for money or supplies furnished to the tenant to enable him to raise and harvest the crops or to subsist while carrying out his contract of tenancy, but the lien of the landlord shall not continue for more than 120 days after the expiration of the tenancy, and, if the property upon which there is a lien be removed from the leased premises and not returned, the landlord shall have a superior lien upon the property so removed for fifteen days from the date of this removal, and may enforce his lien against the property wherever found. R.S. 1929, Sec. 2950.
>
> **Section 2978—Lien, how enforced:** The landlord may enforce the lien given in the preceding section by distress or attachment, in the manner provided in this chapter for the collection of rent, and subject to the same liability, and the actions for money or supplies and for rent may join in the same action. R.S. 1929, Sec. 2591.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

Sec. 2986, Missouri Statutes, Annotated:

> **Attachment for rent will lie, when.—**Any person who shall be liable to pay rent, whether the same be due or not, or whether the same be payable in money or other thing, if the rent be due within one year thereafter, shall be liable to attachment for such rent in the following instances:
>
> (1) When he intends to remove the property from the leased or rented premises; (2) when he is removing his property from the leased or rented premises; (3) when he has, within thirty days, removed his property from the leased or rented premises; (4) when he shall in any manner dispose of the crops, or any part thereof, growing on the leased or rented premises, so as to endanger, hinder, or delay the collection of rent; (5) when he shall attempt to dispose of the crop, or any part thereof, growing on the leased or rented premises, so as to endanger, hinder, or delay the collection of rent; (6) when the rent is due or unpaid after the demand therefor. (The method of procedure is set out in the statute in detail.) * * * Provided, if any person shall buy any crop grown on demised premises, upon which any rent is unpaid, and such purchaser has knowledge of the fact that such crop was grown on demised premises, he shall be liable in an action for the value thereof, to any party

entitled thereto, or may be subject to garnishment at law in any suit against the tenant for the recovery of the rent. R.S. 1929, Sec. 2599.

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

It appears that a cropper can sue for breach of contract when his share of a crop is withheld by the landlord.

In the case of *Beasley v. Marsh, 30 S. W. 2d, 747 (1931)*, it was held, as stated in the Syllabus:

(1) Suit in a Justice's Court by a share cropper is held not dismissible because it charges defendant with conversion where the case could be treated as an action for breach of contract.

(2) The evidence was held sufficient to make it a question for the jury whether the defendant breached the contract in refusing to permit the cropper to take the share of the crop sued for.

(3) A finding that the cropper suing for the value of his share was entitled to possession of the property held not necessary, where the action was based on breach of contract, and not conversion.

In the opinion in that case the court says:

It appears that complaint is made only to the court's action with reference to the instructions. The defendant contends that his instruction No. A, in the nature of a demurrer to the evidence on the first count of plaintiff's petition, should have been given because this count is for conversion, and charged that plaintiff was a share cropper of the defendant, and that all the evidence showed that he was a mere cropper and that recovery thereon could not be had. The defendant relies for this contention on *Morrell v. Alexander (Mo. App.), 215 S. W. 764 (1919)*. This case does hold that a cropper could not maintain action for conversion against a landlord where there has been no division of the crops, and setting aside of the cropper's portion. But that opinion also holds that, in a suit based on a petition similar to this one, the suit may be treated as a suit for damages for breach of contract. Since this is a case filed in the Justice of the Peace's Court, where strict pleadings are not required, we hold against the defendant on this point.

In a suit for failure of defendant landlord to give plaintiff cropper his share of the crop of corn, the petition while alleging that the defendant "converted" the corn is held to be sufficient to state a cause of action for damages for breach of contract.

The court cites:

Moser v. Lower, 48 Mo. App. 85.
Shoemaker v. Crawford, 82 Mo. App. 487.
Davies v. Bladwin, 66 Mo. App. 577.
Haggard v. Walker, 132 Mo. App. 463, 111 S.W. 904 (1908).
Steel v. Flick, 56 Pa. 172.
12 Cyc. 980.

The court then held that while the action was called "conversion," which could not be maintained, the petition did state a cause of action for damages for breach of contract.

NORTH CAROLINA

(1) LANDLORD AND TENANT, WHEN

The same rule prevails in North Carolina as in most of the other States, i.e., when a demise of the premises is made in the crop-sharing agreement, the relationship between the parties is that of landlord and tenant. A North Carolina Statute, however (Sec. 2355, Code of 1939), varies the rule that a tenant has title to and possession of the crop, subject to the landlord's lien for rent, by declaring that unless otherwise agreed between the parties all crops shall be deemed to be "vested in possession" of the lessor at all times until all rents are paid and agreed stipulations performed. [See Sec. 2355, under heading (5) herein.] The Statute also provides that to entitle him to the benefits of the lien provided, the lessor must conform, in the prices that he charges for advancements, to the provisions of Sec. 2482, which permits the lessor making advancement to charge 10 percent over the retail cash price in lieu of interest on the debt.

Commenting on this Statute, the North Carolina Law Review, vol. XX, p. 216 (1942), says:

The provision in our Statute that a landlord shall be "vested in possession" of the crops seems unique as applied to tenants.

(2) EMPLOYER AND CROPPER, WHEN

An agreement by him who cultivates the land that the owner who advances guano, seed wheat, etc. shall, out of the crop, be repaid the advancements in wheat constitutes the former a cropper and not a tenant. *State v. Burwell, 63 N. C. 661.* A cropper has no estate in the land and his possession is that of the landlord. *State v. Austin, 123 N. C. 749, 31 S. E. 731.*

In North Carolina the cropper and tenant occupy the same position as far as ownership of the crop is concerned. While the statute lessened the tenant's right in the crop by increasing the landlord's rights as a lienholder, it at the same time raised the cropper's status from that of a laborer receiving pay in a share of the crop, with title to the crop vested in the landowner, to that of one having a right and actual possession subject to the landlord's lien. *State v. Austin, 123 N. C. 749, 31 S. E. 173, (1898).*

(3) TENANTS IN COMMON OF THE CROP, WHEN

A. B. Book, in vol. IV, Law and Contemporary Problems, p. 543, says:

In North Carolina, under the Statute of 1876-77, the cropper and tenant occupy the same position as far as ownership of crop is concerned. * * * In interpreting the Statute the North Carolina Supreme Court has * * * treated the Statute as one primarily * * * to secure the landowner in his rent and advances and has held that he is a trustee in constructive possession until the debts are paid, and that he acquired no title to the tenant's share. *(Batts v. Sullivan, post.)*

The court points out that while the first Section vests possession of the crop in the landlord, the second Section recognizes the actual possession in the lessee, or cropper, until division. [*Tobacco Grower's Association v. Bissett, 187 N. C. 180 (1924).*]

* *

Where the distinction between share tenants and croppers has not been so affected by Statute, the cropper is said to be an employee. The crops belong either to the cropper and landowner as tenants in common, or to the landowner alone, subject to the cropper's lien as a laborer for his share after division and deduction for advances * * * . The holding that the parties to a cropping agreement are tenants in common appears to be well established in Texas, Tennessee, and Mississippi.

He does not, however, cite any North Carolina case so holding, and none has been found. In view of Sec. 2355, North Carolina Code [see under (5) herein], it appears that the relationship of tenants in common of the crop does not exist in North Carolina.

(4) TITLE TO CROP PRIOR TO DIVISION

Before Sec. 2355, N. C. Code, 1939, was passed (see next heading for Sec. 2355), title to the whole of the crop was, in contemplation of law, vested in the tenant (even where the parties had agreed upon the payment as rent of a certain portion of the crops) until a division had been made, and the share of the landlord had been set apart to him in severalty. *(Dover v. Rice, 20 N. C. 567; Gordon v. Armstrong, 27 N. C. 409; Biggs v. Ferrell, 34 N. C. 1; Ross v. Swaringer, 31 N. C. 481; Rowland v. Forlaw, 108, N. C. 567, 13 S. E. 173.)*

All crops raised on the land, whether by tenant or cropper, are by this section (2355) deemed to be vested in the landlord, in the absence of an agreement to the contrary, until the rent and advancements are paid. *State v. Austin, 123 N. C. 749, 31 S. E. 731; State v. Keith, 126 N. C. 1114, 36 S. E. 169; Durham v. Speeke, 81 N. C. 87; Smith v. Tindell, 107 N. C. 88, 12 S. E. 121; Batts v. Sullivan, 182 N. C. 129, 108 S. E. 511.*

For the lessor's protection, as between him and the tenant, the possession of the crop is deemed vested in the lessor. *State v. Higgins, 126 N. C. 1112, 36 S. E. 113.*

(5) LIEN OF THE PARTIES ON THE CROP

North Carolina Code, 1939, Sec. 2355, provides for the landlord's lien on crops for his rent and advancements, and the method of enforcing same. It reads:

Landlord's lien on crops for rent and advances, etc.—Enforcement: When lands are rented or leased by agreement, written or oral, for agricultural purposes, or are cultivated by a cropper, unless otherwise agreed between the parties to the lease or agreement, any and all crops raised on said lands shall be deemed and held to be vested in possession of the lessor or his assigns at all times, until the rents for said lands are paid and until all of the stipulations contained in the lease or agreement are performed, and all damages in lieu thereof paid to the lessor or his assigns, and until said party or his assigns is paid for all advancements made and expenses incurred in making and saving said crops. The landlord, to entitle himself to the benefits of the lien herein provided for, must conform as to the prices charged for the advances to the provisions of the article "Agricultural Liens," in the chapter "Liens."

This lien shall be preferred to all other liens, and the lessor or his assigns is entitled, against the lessee or cropper, or the assigns of either, who removes the crop from the lands without the consent of the lessor or his assigns, or against any other person who may get possession of said crop, or any part thereof, to the remedies given in an action upon the claim for the delivery of personal property * * * . (R.S., 1993; Code, Sec. 1754; 1896-7, 283; 1917 ch. 134; 1933, ch. 219.)

The landlord's lien, where same attaches, by the express terms of the statute is made superior to all other liens. *Burwell v. Cooper, 172 N. C. 79, 89 S. E. 1064; Reynolds v. Taylor, 144 N. C. 165, 56 S. E. 871; Wooten v. Hill, 98 N. C. 49, 3 S. E. 846; Rhodes v. Fertilizer Co., 220 N. C. 21 (1941), 16 S. E. 2d, 408.*

The lien of the landlord takes precedence to that of a third party for advances, notwithstanding the priority of the latter in time. *(Spruill v. Arrington, 109 N. C. 192, 13 S. E. 779.)* This precedence is to the extent of the advances made. *(Wooten v. Hill, ante; Supply Co. v. Davis, 194 N. C. 328, 139 S. E. 599.)* The statutory landlord's lien under this section is superior to that of one furnishing supplies to the cropper under Sec. 2480. *(Glover v. Dail, 199 N. C. 659, 155 S. E. 575.)* Every person who makes advancement to a tenant or cropper of another, does so with notice of the rights of the landlord. *(Thigpen v. Leigh, 93 N. C. 47; Thigpen v. Maget, 107 N. C. 39, 12 S. E. 272.)* The landlord's lien priority is only for the year in which the crops are grown, and not for the balance due for an antecedent year. *(Ballard v. Johnson, 114 N. C. 141, 19 S. E. 98.)* The liens for rent and advancements are in equal degree and attach to the crops raised by the tenant on the same land planted during one calendar year, and harvested in the next. *(Brooks v. Garrett, 195 N. C. 452, 142 S. E. 486.)*

The landlord's lien given by Sec. 2355 is separate and distinct from agricultural liens for advances provided for in Sec. 2480, which is as follows:

Lien on crops for advances: If any person makes any advances, either in money or supplies, to any person who is engaged in, or about to engage in, the cultivation of the soil, the person making the advances is entitled to a lien on the crops made within one year from the date of the agreement in writing herein required, upon the land in the cultivation of which the advance has been expended, in preference to all other liens, except the laborer's and landlord's lien, to the extent of such advances. Before any advance is made, an agreement in writing for the advance shall be entered into, specifying the amount to be advanced, or fixing a limit beyond which the advances if made from time to time during the year, shall not go; and this agreement shall be registered in the Office of the Register of the County, or counties, where the land is situated, on which the crops of the person advanced are to be grown * * * . (Then there is a provision covering a case where the land is in more than one county; and a provision that a lien shall be good as to any crop which may be harvested after the end of said year. There have been various revisions down to 1935, ch. 205.)

The lien created by this section is preferred to all others, the only exceptions being that in favor of the landlord, and that of the laborer, contained in Sec. 2488. *(Williams v. Davis, 183 N. C. 90, 110 S. E. 577.)* It has been specifically held in *Glover v. Dail, 191 N. C. 659,* that the landlord's lien under Sec. 2355 is superior.

Under Sec. 2649, it is provided that all claims against personal property of $200.00 and under, may be filed in the office of the nearest Justice of the Peace; if over $200.00, or against any real estate, in the office of the Superior Court Clerk in any county where the labor has been performed. Sec. 2470 provides for notice to be filed as hereinbefore provided, except in those cases where a shorter time is prescribed, at any time within six months after the completion of the labor, or the final furnishing of the materials, or the gathering of the crops. Sec. 2471 provides that the date of filing fixes the priority of the lien.

Sec. 2472 provides:

The lien for work on crops given by this chapter shall be preferred to every other lien or incumbrance which attaches to the crops subsequent to the time at which the work was commenced.

(See *Grissom v. Rickett, 98 N. C. 54, 3 S. E. 921,* cited in *White v. Riddle, 198 N. C. 511, 152 S. E. 501.)*

Sec. 2361 is as follows:

Whenever servants and laborers in agriculture shall by their contracts, oral or in writing, be entitled, for wages, to a part of the crops cultivated by them, such part shall not be subject to sale under executions against their employers or the owners of the land cultivated.

Sec. 2362 provides:

If any landlord shall unlawfully * * * seize the crop of his tenant when there is nothing due him, he shall be guilty of a misdemeanor. If any lessee or cropper * * * shall remove the crop, or any part thereof, from the land without the consent of the lessor * * * , and without giving him * * * five days' notice of such intended removal, and before satisfying all of the liens held by the lessor * * * on said crop, he shall be guilty of a misdemeanor.

The tenant or cropper is further protected in the matter of advances by the provisions of Sec. 2482, which reads:

Prices to be charged for articles advanced, limited: In order to be entitled to the benefits of the liens on crops in favor of the landlord and other persons advancing supplies, under the article "Agricultural Tenancies," of the chapter "Landlord and Tenant," and under the present article, or on a chattel mortgage on crops, such landlord or person shall charge for such supplies a price, or prices, of not more than 10 percent over the retail cash price, or prices, of the article, or articles, advanced, and the said 10 percent shall be in lieu of interest on the debt for such advances; * * * . (Then there is provision for coupon books and trade checks to be considered as supplies.) If more than 10 percent of the retail cash price is charged on any advance made under the lien or mortgage given on the crop, then the lien or mortgage shall be null and void as to the article, or articles, as to which such overcharge is made. At the time of each sale there shall be delivered to the purchaser a memorandum showing the cash price of the articles delivered.

Sec. 2488 gives the person making advances the right to have the crop seized and sold when the amount advanced is due and unpaid, and the tenant is about to sell or dispose of the crop to defeat the lien, upon making affidavit to that effect, before the Clerk of the Superior Court; but this proceeding specifically does not affect the rights of the landlords and laborers.

In the case of *Rhodes v. Fertilizer Co., 220 N. C. 21 (1941), 16 S. E. 2d, 408,* it was held:

(1) A landlord's lien for rent is superior to all other liens and attaches to the crops raised upon the land by the tenant, and entitles the landlord to the possession of the crops for the purpose of the lien until the rents are paid, C. S. 2355, and when it is not required that the lease be in writing, a note for the rent executed by the tenant constitutes mere evidence of the contract.

(2) An agricultural lien for advances, when in writing, takes priority over all other liens except the laborer's or landlord's lien, to the extent of the advances made thereunder, C. S. 2488.

North Carolina Law Review, vol. XX (1942), p. 217 (commentating on *Rhodes v. Fertilizer Company, ante)* says:

Once the relationship of landlord and tenant is established, the lien attaches automatically. [*Burwell v. Cooper Cooperative Co., 172 N. C. 79 (1916); Ford v. Green, 212 N. C. 70 (1897).*]

Under our Statute, a tenant and a "cropper"—one who farms the land for a share of the crops—have the same status as far as ownership in the crop is concerned * * * . Until his claim is satisfied, the landlord may sue for conversion either the tenant, or any purchaser from the tenant, who denies his right to the crop, and may follow the crop through as many hands as necessary * * * .

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

Under North Carolina Code the landlord may bring claim and delivery to recover possession of crops raised by the tenant or cropper where his right of possession under Sec. 2355 is denied, or he may resort to any other appropriate remedy to force his lien for the rent due and the advances made. *Livingston v. Farish, 89 N. C. 140.* If a tenant at any time before satisfying the landlord's lien for rent and advances removes the crop, or any part of it, he becomes liable, civilly and criminally. *Jordon v. Bryan, 103 N. C. 59, 9 S. E. 135.* The remedy of claim and delivery was designed for the landlord's protection, and it cannot be resorted to before the time fixed for division, unless the tenant is about to remove and dispose of the crop, or abandon a growing crop (Id.).

North Carolina Code of 1939, Sec. 4480:

Local—Violation of certain contracts between landlord and tenant: If any tenant or cropper shall procure advances from a landlord to enable him to make a crop on the land rented by him, and then willfully abandon the same, without good cause and before paying for such advances; or if any landlord shall contract with a tenant or cropper to furnish him advances to enable him to make a crop, and shall willfully fail or refuse, without good cause, to furnish such advances according to his agreement, he shall be guilty of a misdemeanor and shall be fined not exceeding 50 dollars, or imprisoned not exceeding 30 days. Any person employing a tenant or cropper who has violated the provisions of this section, with notice of such violation, shall be liable to the landlord furnishing such advances for the amount thereof, and shall also be guilty of a misdemeanor * * * . This Section shall apply to the following counties only. (The Statute then names 40 counties.)

The provisions of this section were held to contravene the State Constitution, prohibiting imprisonment for debt except in cases of fraud, and an indictment not averring fraud will be quashed. *State v. Williams, 150 N. C. 802; Winton v. Early, 183 N. C. 199.*

Sec. 4481 of the Code:

Tenant neglecting crop; landlord failing to make advances; harboring or employing delinquent tenant: If any tenant or cropper shall procure advances from a landlord to enable him to make a crop on the land rented by him, and then willfully refuse to cultivate such crop, or negligently or willfully abandon the same, without good cause and before paying for such advances; or if any landlord who induces another to become a tenant or cropper by agreeing to furnish him advances to enable him to make a crop, shall willfully fail or refuse, without good cause, to furnish such advances according to his agreement; or if any person shall entice, persuade, or procure any tenant, lessee, or cropper who has made a contract, agreeing to cultivate the land of another, to abandon, or to refuse, or fail to cultivate such land, or after notice shall harbor or detain on his own premises, or on the premises of another, any such tenant, lessee, or cropper, he shall be guilty of a misdemeanor * * * .

(This section was made applicable to 25 counties, some of them being the same as those mentioned in the preceding section.)

Sec. 2366 provides that when any tenant or cropper willfully neglects or refuses to perform the terms of his contract, without good cause, he shall forfeit his right to the possession of the premises. (This section applies in 58 counties.)

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

Code of 1939, Sec. 2356:

Rights of Tenant.—When the lessor, or his assigns, gets the actual possession of the crop, or any part thereof, otherwise than as by the mode prescribed in the preceding Section (2355), and refuses, or neglects, upon a notice written or oral, of five days, given by the lessee or cropper, or the assigns of either, to make a fair division of said crop, or to pay over to such lessee or cropper, or the assigns of either, such part thereof as he may be entitled to under the lease or agreement, then and in that case, the lessee or cropper, or the assigns of either, is entitled to the remedies against the lessor, or his assigns, given in an action upon a claim for the delivery of personal property to recover such part of the crop as he, in law and according to the lease or agreement, may be entitled to. The amount or quantity of the crop claimed by the lessee or cropper * * * shall be fully set forth in an affidavit at the beginning of the action.

This section intends to favor the laborer as to those matters and things upon which his labor has been bestowed, and that he shall certainly reap the benefits of his toil. *Rouse v. Wooten, 104 N. C. 229, 233; 10 S. E. 190.*

While one who labors in the cultivation of a crop, under a contract that he shall receive his compensation from the crops when matured and gathered, has no estate nor interest in the land but is simply a laborer—at most a cropper—his right to receive his share is protected by this Section which for certain purposes creates a lien in his favor, which has precedence over agricultural liens made subsequent to his contract, but before the crop is harvested. *Rouse v. Wooten, ante.*

The lessor has no right to take the actual possession from the lessee or cropper, and can never do so except when he obtains the same by an action of claim and delivery, upon the removal of the crop by the lessee or cropper. *State v. Copeland, 86 N. C. 692.*

When the lessee is wrongfully denied possession of his crop by the lessor, he is left to his civil remedies under this section for the breach of trust should his lessor refuse to account. *State v. Keith, 126 N. C. 1114, 36 S. E. 169.* When the cropper dies before harvesting his crop, his personal representatives are entitled to recover his share of the crop. *Parker v. Brown, 130 N. C. 280, 48 S. E. 657.*

OKLAHOMA

(1) LANDLORD AND TENANT, WHEN

In Oklahoma, as in most of the States covered in this Memorandum, the relationship of landlord and tenant arises in a

crop-sharing contract when there is any demise of the premises, and the tenant has control thereof, and of the crops, and pays the landlord a designated part of the crop as rent. The latest reported case distinguishing the tenant from a cropper is *Elder v. Sturgess, 173 Okla. 620, 49 P. (2d) 221 (1935)*, in which the court says:

> The tenant has exclusive right to possession of the land he cultivates and an estate in the same for the term of his contract. and consequently he has a right of property in the crops.

(2) EMPLOYER AND CROPPER, WHEN

The Supreme Court of Oklahoma in *Elder v. Sturgess, ante*, quotes with approval its former opinion in *Empire Gas and Fuel Company v. Denning, 128 Okla. 145, 261 P. 929 (1927)*, distinguishing between cropper and tenant, in the following language:

> The difference between a cropper and a tenant is that the cropper is a hired hand. paid for his labor with a share of the crop he works to make and harvest. He has no exclusive right to possession and no estate in the land nor in the crop until the landowner assigns to him a share. The tenant has exclusive right to possession of the land he cultivates and an estate in the same for the term of his contract, and consequently he has a right of property in the crop.

In the earlier case of *Halsell v. First National Bank, 109 Okla. 220, 235 P. 538 (1925)*, the identical language as above is used in the syllabus. And in the later case of *Magnolia Petroleum Co. v. Jones, 185 Okla. 309, 91 P. (2d) 769 (1939)*, the court refused to overrule the *Empire Gas and Fuel Co. v. Denning* case.

(3) TENANTS IN COMMON OF THE CROP, WHEN

There is no statutory determination of when a landlord and tenant or cropper are tenants in common of the crop, and no decisions have been found defining that relationship of such parties in this State.

See *Arrington v. Arrington, 79 Okla. 243, 192 P. 689; Prairie Oil and Gas Company v. Allen (C.C.A. Okla.) 2 F. 2d, 566.*

(4) TITLE TO CROP PRIOR TO DIVISION

In the case of *Magnolia Petroleum Co. v. Jones, 185 Okla. 309 (1939)*, the court held:

> Where a tenant cultivates crops under a renter's contract providing that he shall pay a portion of the crop as rent, and shall gather same and deliver to the landlord his part, the tenant has a right to the possession of the entire crop until same is gathered and divided, and can maintain an action for damages for its destruction or injury.

Okla. Stat. of 1941, Title 41, Sec. 24, provide:

> **Crop rent.**—When any such rent is payable in a share or a certain proportion of the crop, the lessor shall be deemed the owner of such share or proportion, and may, if the tenant refuses to deliver him such share or proportion, enter upon the land and take possession of the same, or obtain possession thereof by action of replevin. (Laws 1901, p. 144; C.S. 1921, Sec. 7364; St. 1931, Sec. 10920.)

It would seem, then, that the landlord is the owner of the agreed proportion of the crop going to him for rent at all times, regardless of the fact that the relationship may be that of landlord and tenant. Presumably, as in all other jurisdictions, where the relationship is that of landlord and tenant, the tenant would have title to that portion of the crop to be retained by him.

If the agreement be that of landowner and cropper, the title to the crop remains at all times in the landowner prior to division.

(5) LIEN OF THE PARTIES ON THE CROP

Title 41, Sec. 24, of the Okla. Stat., 1941, gives the lessor the right to enter upon the land and take possession of his share of the crops when rent is to be paid in a share or proportion thereof, and to obtain possession by action of replevin. The section reads:

> **Crop rent.**—When any such rent is payable in a share or certain proportion of the crop, the lessor shall be deemed the owner of such share or proportion, and may, if the tenant refuses to deliver him such share or proportion, enter upon the land and take possession of the crop, or obtain possession thereof by action of replevin.

Sec. 26 provides that a person entitled to rent may recover same from any purchaser of the crop, with notice. [See *Shelp v. Lewis, 188 Okla. 156 (1940).*] And Sec. 27 provides that when any person liable for rent attempts to remove his property or his crops from the leased premises, the person to whom the rent is owing, after proper affidavit and undertaking, may sue out an attachment in the same manner as provided by law in other actions.

Sec. 28 provides that in an action to enforce a lien on crops for rent of farm land, the affidavit for attachment shall state that there is due from the defendant to the plaintiff a certain sum, naming it, for rent of the farm land, describing same; further, that plaintiff claims a lien on the crop made on such land. Upon making and filing such affidavit, and executing an undertaking as prescribed in the preceding section, an order of attachment will issue as in other cases, and will be levied on such crops, or so much thereof as may be necessary. The proceedings in such attachment are the same as in other actions. *Cunningham v. Moser, 91 Okla. 44, 215 P. 758.*

While the landlord has a lien for, and may thus recover, the rent in a crop-sharing contract, he does not have a lien for supplies advanced. In the case of *Halsell v. First National Bank, 109 Okla. 220 (1925)*, the court says in regard to the question of the landlord's lien for supplies:

> In the absence of contract, under the law of this state, a landlord has no lien on the tenant's part of the crop for supplies furnished to make the crop, and the cases cited by the defendant to show otherwise are not applicable here for the reason they are dealing with a lien under statutory provisions. Under our statute the landlord has a lien for his rent but not for supplies furnished.

In the case of *Aikins v. Huff, 133 Okla. 268, 272 P. 1025*, it was held that a landlord has only a lien for rents on the crops grown during the year for which the rent is due.

Of course, if the cultivator of the land is a cropper, the landlord has title and possession of the crop and needs no lien for rent.

A laborer is given a lien on the products of his labor by Sec. 92, Okla. Stat., Annotated, which is as follows:

> Laborers who perform work and labor for any person under a verbal or written contract, if unpaid for the same, shall have a lien on the production of their labor for such work and labor; provided, that such lien shall attach only while the title to the property remains in the original owner.

Sec. 93 provides that this lien may be enforced as in ordinary actions, or by attachment proceedings as provided in the Code of Civil Procedure. And in *First National Bank v. Rogers, 24 Okla. 357, 103 P. 582*, it was held that a person who raises a crop, on another's land, is a cropper, or laborer, and not a tenant, and has a lien on the crop for the share due him, if he has complied with the statute.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

As seen in "(5) Lien of the Parties on the Crop," Sec. 24, Title 41, Okla. Stat., 1941, gives the landowner the right to enter on the premises and possess himself of his share of the crops if the tenant refuses to deliver such share.

Sec. 25 of Title 41 provides that any person removing crops from rented premises with the intention of depriving the landlord of any rent, or who fraudulently appropriates the rent due the landlord to himself, or any person not entitled thereto, shall be guilty of embezzlement; and Sec. 27 gives the person to whom rent is owning a right of attachment when any person liable for rent attempts to remove his property or his crop from the leased premises. *(See Cunningham v. Moser, 91 Okla. 44.)*

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

In *First National Bank v. Rogers, 24 Okla. 357, 103 P. 582,* the court held that one raising a crop on land of another for an agreed share is a cropper or laborer, and not a tenant, and has a lien for his share.

In *Taylor v. Riggins, 129 Okla. 57, 352 P. 146,* the court held that a sharecropper's action for the owner's refusal to permit him to tend crops under contract is one for breach of contract, not for conversion, and as heretofore seen, Sec. 92, Title 42, Okla. Stat., Annotated, gives the laborer a lien on the products of his labor. The cropper, being a laborer, would come under the provisions of this section.

SOUTH CAROLINA

(1) LANDLORD AND TENANT, WHEN

As in most of the other States, when there is a demise of the premises, and the tenant acquires an estate in the land for the term, with right of possession and title in the crop subject to the landlord's lien for rent and advances, the relationship is that of landlord and tenant.

In *Brock v. Haley and Company, 88 S. C. 373, 70 S. E. 1011,* the court in construing the written contract to create the relation of landlord and tenant says:

> We agree with the Circuit Court that it (the contract) creates the relation of landlord and tenant, and is not a mere contract for labor under the control and direction of the landowner. Brock, the owner, expressly agrees to rent the land to Gaines, and Gaines expressly agrees to pay the specified portion of the crop. That the parties regarded the contract as one of tenancy is manifest from the relationship and conduct of both. Under this construction it was competent at that time for Gaines to give an agricultural lien on the crop to be grown by him on the land * * * .

(2) EMPLOYER AND CROPPER, WHEN

In the case of *Loveless v. Gilliam, 70 S. C. 391, 50 S. E. 9, (1904),* the court said:

> This appeal is from a judgment of the Circuit Court affirming the judgment of a Magistrate's Court in favor of the plaintiff in an action of claim and delivery for a bale of cotton. The disputed facts are that in 1904 the defendant cultivated plaintiff's land under circumstances which made him a laborer upon shares of the crops grown by him. Three bales of cotton were raised upon the place. The first two were placed in a warehouse * * * in plaintiff's name, by her direction. The plaintiff directed the defendant to store the third bale in the same way, which defendant refused to do, but stored it in his own name. This action is the result of the defendant's refusal to deliver the cotton on plaintiff's demand. The Circuit Court agreed with the Magistrate's Court in holding the plaintiff was the owner of the cotton and entitled to the possession thereof until the division had been made * * * . Upon the facts stated, it must follow that the Circuit Court did not err, as a matter of law, in holding that the plaintiff was the owner of the cotton, and was entitled to possession until division was made. *Huff v. Watkins, 15 S. C. 86.* Judgment affirmed.

This was one of the earlier cases in which there was a clear cut decision that a share cropper has no right of title or possession in the crop until after division is made. It is cited with approval in a long line of cases, one of the later of which is *Hardwick v. Page, 124 S. C. 111, 115 (1922).* See also cases cited under (4) herein.

(3) TENANTS IN COMMON OF THE CROP, WHEN

Tiffany on "Landlord and Tenant," Sec. 253-b, discussing the relationship of tenants in common of the crop as between landlord and share cropper, says:

> The cases most frequently discussed in connection with agreements for the division of the crops between landowner and the cultivator have been with regard to the rights of the parties in the crop before division. If one party has title to the whole crop to the exclusion of the other, he may, it is evident, by a transfer or mortgage thereof to an innocent purchaser deprive the other party of his share, or the former's creditors may levy thereon and so put it out of his power to deliver to the other party the latter's agreed share. Furthermore, the character of the rights of the respective parties to the crop before division will affect the character of the remedies which may be adopted by one in case the other undertakes to deprive him of his share. A number, perhaps a majority, of the courts, recognizing the possibility of loss by one party of the share to which his agreement entitles him, if the whole title is regarded as being vested in the other, have asserted the doctrine that before division the two parties are tenants in common of the crop, that is, that each has undivided interest therein which is subject to his sole control, this view being perhaps more frequently based upon grounds of expediency than upon the construction of the particular agreement. This view that the parties are tenants in common of the crop has been most frequently taken in cases in which the agreement was not regarded as involving a demise, creating the relation of landlord and tenant, but in some cases though the cultivator is expressly stated to be a tenant, a tenancy in common of the crops is recognized as existing.

Of the considerable number of cases cited by Tiffany, none originated in South Carolina, and in the statutes and decisions of South Carolina there appears to be no reference to the relationship of tenants in common of the crop.

Tiffany continues:

> We will consider the question of the existence of a tenancy in common of the crops, first, on the theory that the agreement does not involve a demise of the land, creating the relationship of landlord and tenant. If the agreement in such case be regarded as one of hiring, making the cultivator the servant of the landowner, a view quite frequently asserted, it is difficult to understand how a share of the crops which is to be delivered to the cultivator as wages can, before such delivery, be regarded as belonging to him. He has, it would seem, a mere contractural right against the landowner. That one thus employed to cultivate the land for a share of the crops has no proprietary interest is recognized in a number of cases.

In the footnotes on this observation only two cases from South Carolina are cited. *Huff v. Watkins, 15 S. C. 85 (ante, above); Ritchie v. Dupre, 20 S. C. 6.*

(4) TITLE TO CROP PRIOR TO DIVISION

It is well settled that where the relationship between the parties is that of landlord and tenant, the tenant has title and possession of the crop, subject to the landlord's lien for rent and advances. (See under this heading in the various States covered by this Memorandum.)

It is equally well settled that where the agreement is such that the relation between the parties is that of employer and laborer or share cropper, title and possession of the crops prior to division is in the landowner.

In *Miller v. Insurance Company, 146 S. C. 123,143 S. E. 663 (1928)*, it was held that a share cropper has no title to any portion of the crops until there is a division and he has received his share, and he cannot, therefore, maintain an action at law for possession of his share, but he has an equitable interest and can maintain action in equity for settlement and division of the crop.

Among the later decisions holding that a share cropper has no title or right of possession of the crop prior to division are the following:

Malcolm Mercantile Co. v. Britt, 102 S. C. 499.
State v. Sanders (1918), 110 S. C. 487.
Dacus v. Williamston Mills, (1921), 118 S. C. 245.
Lipscomb v. Johnson (1922), 123 S. C. 44.
Birt v. Greene (1923) 127 S. C. 72.
Peoples' Bank v. Walker (1925), 132 S. C. 254.

(5) LIEN OF THE PARTIES ON THE CROP

Both the landlord and the laborer or cropper have statutory liens on the crop raised, one for rent and advances, and the other for his wages as a laborer. Art. 3, Agricultural Lien, Sec. 8771, S. C. Code, 1942, provides:

Lien of landlord for rent and advances.—Every landlord leasing land for agricultural purposes shall have a prior and preferred lien for his rent to the extent of all crops raised on the land leased by him, whether the same be raised by the tenant or other person. No writing or recording shall be necessary to create such lien, but it shall exist from the date of the contract, whether the same be in writing or verbal, and the landlord and his assigns shall have the right to enforce such lien in the same manner, upon the same conditions, and subject to the same restrictions as are provided in this Article for persons making advances for agricultural purposes. And subject to the liens hereinafter provided for, and enforcible in the same way, the landlord and his assigns shall have a lien on all the crops raised by the tenant for all advances made by the landlord to such tenant during the year.

Under this section, the landlord's lien for rent extended to and covered the share of the third person and the crop raised by him as a share cropper with the tenant. *Hamilton v. Blanton, 107 S. C. 142, 92 S. E. 275.*

Sec. 8772—Laborer's lien on crops.—Laborers who assist in making any crop on shares, or for wages in money or other valuable consideration, shall have a lien thereon to the extent of the amount due them for such labor, next in priority to the lien of the landlord for rent; and as between such laborers there shall be no preference. Such portion of the crop to them belonging, or such amount of money or other valuable consideration as may be due them, shall be recoverable by an action in any court of competent jurisdiction.

Under this section a laborer or share cropper has a lien upon the crop next in priority to the landlord's lien for rent and is necessarily senior to a mortgage on the crop for fertilizer. *Birt v. Greene and Co.; 127 S. C. 70, 120 S. E. 747; Hamilton v. Blanton, ante.*

A sharecropper who has not been paid has a lien next in priority to the landlord's lien for rent on all crops raised, regardless of the question of division, and if a bank as crop mortgagee seizes any of the crop and appropriates the proceeds to its own use, it is liable to the sharecropper for conversion. *Dupon v. Home Bank, 129 S. C. 283, 124 S. E. 12.*

Sec. 8773—Rank of liens for rent, for labor, and for supplies: The landlord shall have a lien on the crops of his tenant for his rent in preference to all other liens. Laborers who assist in making any crop shall have a lien thereon to the extent of the amount due them for such labor, next in priority to the landlord, and as between such laborers there shall be no preference. All other liens for agricultural supplies shall be paid next after the satisfaction of the liens of the landlord and laborer, and shall rank in other respects as they would under existing laws.

Sec. 8774—Indexing liens for advances: Every lien for advances shall be indexed in the Office of the Register of Mesne Conveyances or Clerk of the Court * * * of the county in which the lienor resides within 30 days from the date of the lien, and the indexing of the said lien shall constitute notice thereof to all third persons and entitle the same to the benefits of this article * * * .

Sec. 8775—This section provides for the seizure and sale of the crops upon proof to the clerk that the person to whom advances have been made is about to sell or dispose of his crop, or is about to defeat the lien in any other way; with a provision permitting the person to whom the advances have been made to have a hearing before the Court of Common Pleas of the county in which he resides. The statute reads:

Clerk may seize crop, etc.—If any person making such advances shall prove, by affidavit, to the satisfaction of the Clerk of Court of the county in which such crop is, that the person to whom such advances have been made is about to sell or dispose of his crop, or in any other way is about to defeat the lien hereinbefore provided for, accompanied with a statement of the amount then due, it shall be legal for him to issue a warrant directed to any of the sheriffs of this state, requiring them to seize the said crop and, after due notice, sell the same for cash, pay over the net proceeds thereof, or so much thereof as may be necessary, in extinguishment of the amount then due; provided, however, that if the person to whom such advances have been made shall within 30 days after such sale has been made give notice in writing to the sheriff, accompanied with an affidavit to this effect, that the amount claimed is not justly due, then it shall be the duty of said sheriff to hold the proceeds of such sale subject to the decision of the court upon an issue which shall be made up and set down for trial at the next succeeding term of the Court of Common Pleas for the county in which the person to whom such advances have been made resides, in which the person who makes such advances shall be the actor.

Sec. 8778—When lien creditor may proceed before debt becomes due.—In case any portion of the crop is removed from the land rented or leased, and the proceeds thereof not applied to payment of the rent for the year, or to the other liens herein provided for, and this fact shall be made to appear by affidavit, persons holding liens herein provided shall have the right to proceed to collect the liens which will become due for rent and advances in the same way as if the sum had become due according to contract before such removal.

Persons other than the landlord supplying advancements of provisions, supplies, and other articles for agricultural purposes, have a lien (under Sec. 8779) upon such provisions and supplies in preference to all other liens existing or otherwise until the same shall have been consumed in the use. If the party to whom such supplies have been advanced shall endeavor to dispose of such supplies, or make them liable for his debts, then the party making the advances has the same remedy and means of enforcing his lien as provided for agricultural supplies.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

(This and the next heading are interdependent and should be read together.)

Civil Code of S. C., 1942, vol. IV, Sec. 7032-1-10:

Art. 3, Labor and Labor Laws: Any person who shall contract with another to render him personal service of any kind, and shall thereafter fraudulently and with malicious intent to injure his employer, fail or refuse to render such service as agreed upon, shall be deemed guilty of a misdemeanor.

Sec. 7030-1, any person who shall hereafter contract to receive from another person service of any kind and to compensate him therefor, and shall thereafter fraudulently or with malicious intent to injure his employee, fail or refuse to receive

such service, or to make compensation as agreed upon, shall be deemed guilty of a misdemeanor.

Sec. 7030-2, any person who shall hereafter contract with another to render personal service of any kind to him, and shall thereafter fraudulently and with malicious intent to injure the employer, procure advances in money or other thing of value from him, with intent not to render the service agreed upon, and who shall thereafter, with like intent, fail or refuse to perform the service agreed upon, shall be deemed guilty of a misdemeanor.

Sec. 7030-3, this section deals in the same general terms of the failure of the employer to make agreed advances with malicious intent to injure the employee.

Sec. 7030-4 is the first section of this article that specifically recognizes payment in a share of the crops:

> Such contract shall clearly set forth the conditions upon which the laborer or laborers are engaged to work, embracing the length of time, the amount of money to be paid, and when; if it be on shares of the crops, what portion or portions thereof.

If the contract is verbal, it must be witnessed by two disinterested witnesses not related to the parties in the sixth degree. No transfer or assignment of the contract can be made.

Sec. 7030-5 provides for registration of such contracts where they are in writing.

Sec. 7030-6—This section provides penalties for violation of Sec. 7030 to Sec. 7030-5.

Under these sections fraud, and malicious intent to injure, must be alleged and proven.

When the crop has been raised the landlord has his lien under Sec. 8771 for rent and advances, be the other party tenant or cropper, and the remedies given under Sec. 8774 to 8778. [Ante, under (5).]

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

The Civil Code of S. C., 1942, Sec. 7030-6, prescribes the method of making contracts for labor and for punishment for breach of such contracts by either party with malicious intent.

Such contracts may be either verbal or written (Sec. 7030-4); and may be registered by either party (7030-5). Sec. 7030-6 provides that there shall be no conviction under Sec. 7030-5 unless warrant is issued within 30 days from the commission of the offense, and declares that those sections shall not be operative where the inducement for any contract is money or other thing of value, advanced to or for the employee, prior to the commencement of the services thereunder. Such contracts are declared null and void.

Sec. 7030-7 provides that all contracts made between owners of land * * * and laborers shall be witnessed by one or more disinterested persons, and, at the request of either party, be duly executed before a magistrate, whose duty it is to read and explain the same to the parties. Such contracts shall clearly set forth the conditions upon which the laborer or laborers engage to work, embracing the length of time, the amount of money to be paid, and when; if it be on shares of crops, what portion of the crop or crops.

> **Sec. 7030-8—Crops to be divided by disinterested person:** Whenever laborers perform under contract on shares of crop, or crops, such crop or crops shall be gathered and divided off before its removal from the place where it is planted, harvested, or gathered, such division to be made by a disinterested person, when desired by either party to the contract. Such disinterested party shall be chosen by and with the consent of the contracting parties; whenever the parties fail to agree upon and disinterested party, or, if complaint is made that the division has been unfairly made, within ten days after such division, it shall be the duty of the Magistrate residing nearest to the place where such crop or crops are planted, harvested, or gathered, to cause, under his immediate supervision, such equitable division as may be stipulated in the contract * * * . When such division has been made, each party shall be free to dispose of their several portions as to him, or her, or them, may seem fit; provided, that if either party be in debt to the other for any obligation incurred under contract, the amount of said indebtedness may be then and there settled and paid by such portion of the share or shares of the parties so indebted as may be agreed upon by the parties themselves, or set apart by the Magistrate, or any party chosen to divide said crop or crops.

Sec. 7030-9 makes it a misdemeanor for a person fraudulently to secure advances in a lease or crop-sharing contract, and then refuse to cultivate the land. It is also a misdemeanor for a lessor or landowner to withhold peaceful entry and possession of the land.

Sec. 7030-10 makes it a misdemeanor for any person to entice away any tenant or laborer under contract with another, or to employ such laborer knowingly.

Sec. 7030-11 provides for the payment of all laborers on plantations in lawful money unless otherwise provided by special contract.

In addition to these provisions [headings (6) and (7) herein] the laborer (cropper) has his lien under Sec. 8772, and could maintain an action for breach of contract against the landlord where the circumstances warranted.

TENNESSEE

(1) LANDLORD AND TENANT, WHEN

There is no statutory definition of the relation of landlord and tenant as applied to share-cropping contracts in Tennessee. Michie's Digest of Tennessee Reports, p. 410, cites the definition of the landlord and tenant relationship in Bouvier's Law Dictionary, vol. II, p. 115, as follows:

> The term landlord-and-tenant denotes the relationship which subsists by virtue of a contract express or implied between two or more persons for the possession or occupation of lands or tenements either for a definite period, from year to year, for life, or at will.

The relationship does not rest upon the landlord's title, but upon the agreement between the parties, followed by the possession of the premises by the tenant under the agreement. *(Beasley v. Gregory, 2 Tenn. App. 378).* A tenant in the popular sense is one who is in occupation of land and tenements, title to which is in another, the terms of whose occupation are defined by the agreement. [*Metropolitan Life Insurance Company v. Moore, 167 Tenn. (3 Beeler) 620, 72 S. W. 2d 1050.*] An express contract is unnecessary and tenancy may be inferred from the conversations and actions of the parties. [*Laird v. Riggle, 53 Tenn. (6 Heisk) 620.*] Where premises are occupied as an incident of employment, the relation of landlord and tenant is not thereby created. Upon termination of the employment the right of occupancy ceases and the servant becomes a trespasser. [*Croom v. Reichman, 8 Tenn. Civ. App. (Higgins) 86.*]

Tiffany, in his work on real property (vol. I, p. 121), with relation to landlords and tenants, says:

> If the effect of the arrangement is to give the cultivator the possession of the land, the exclusive possession as it is frequently termed, a tenancy is created.

Although Tennessee statutes do not declare what the relationship is when a landowner agrees with another party to cultivate his land for a share of the crops, undoubtedly the general rule of tenancy would hold.

(2) EMPLOYER AND CROPPER, WHEN

Although the Tennessee statutes make frequent reference to share-croppers in giving landlords lien on crops raised on their lands, and frequently use the phrase "tenant or share cropper," they, nevertheless, do not define what a sharecropper is, nor what is his relation with the owner of the land.

In the case of *McCutchin v. Taylor, 79 Tenn. 259*, the court held that an agreement to give a part of the crop in consideration of the labor of tillage is as much a hiring as an undertaking to pay in money.

The distinction between a tenant and cropper does not appear to have been drawn by any of the Tennessee cases, or by the statutes. It has been distinctly drawn in a California case arising in the United States District Court, in the opinion in which among many cases cited there are a number heretofore reviewed in this Memorandum under this heading. The case of *O'Brien v. Webb (1921), 279 Federal 117*, reviews a number of cases drawing the distinction between tenant and cropper, and in the opinion the court states the case as follows:

> Cropping contracts between an owner of land and an alien Japanese resident, designated as the "cropper," by which the owner employed the cropper to cultivate the land for four years, with the right to occupy a house thereon, using the house, machinery, and tools of the owner, who reserved general possession of the land, the cropper to receive for his services one-half of the crops after they were harvested, "provided, that the cropper shall have no interest or estate whatsoever in the land described herein"; held, not to create the relationship of landlord and tenant, nor to vest the alien with an interest in the land, which rendered the contract involved as in violation of the California Alien Land Law of November, 1920.

In the last case cited above, the court cites and quotes from *Taylor v. Donahue, 125 Wis. 513, 103 N. W. 1099*, distinguishing between tenant and cropper, as follows:

> The distinction between a tenant and a cropper is that a tenant has an estate in the land for a given time, and a right of property in the crops, and hence makes the division thereof between himself and the landlord in case of an agreement upon shares; while a cropper has no estate in the land, nor ownership of the crops, but is merely a servant, and receives his share of the crops from the landlord, in whom the title is. It is always a question of the construction of the agreement under which the parties are acting.

The cases cited by the court arose in many parts of the United States, but among them were the following from States included in this Memorandum, and which have already been reviewed under the different State headings:

McNeely v. Hart, 32 N. C. 63, 51 Am. Dec. 377.
Brazier v. Ansley, 33 N. C. 12, 51 Am. Dec. 408.
Hunt v. Mathews, 132 Ala. 286, 31 So. 613.
Hudgins v. Wood, 72 N. C. 256.
Pearson v. Lafferty, 197 Mo. App. 123, 193 S. W. 40.

(3) TENANTS IN COMMON OF THE CROP, WHEN

A contract by a laborer with a landowner to farm on the shares does not create a partnership, but they are tenants in common of the crop, and each may sell or mortgage his respective interest.

Jones v. Chamberlain, 52 Tenn. 210 (1871).
Mann v. Taylor, 52 Tenn. 267 (1871).
Hunt v. Wing, 57 Tenn. 139 (1872).

In *Mann v. Taylor, ante*, the court said:

> The contract between Long and Barrier is one of a character now frequently made in this country, and partakes of the nature of a contract between landlord and tenant, whereby tenant agrees to cultivate the land and pay a share of the crops to the landlord, rather than a contract of partnership.
> If the agreement is for a division of specific crops, the owner of the land and the occupant are regarded as tenants in common of these crops. Farming on shares makes the owner of the land and the farmer tenants in common of the crop. Thus, a contract by which A should have possession of B's farm and put in crops on shares, makes them tenants in common of the crops, and A may sell or mortgage his share of the crops. Where the owner of the farm was to furnish teams and fodder, fuel, seed, and farm implements, and the other party do the work, cultivate and secure the crops, and these were to be divided between them in certain proportions, it was held to constitute a tenancy in common of the crops.

In the case of *Hunt v. Wing*, the court said:

> While those contracts by which the laborer undertakes to make a crop for a given share of it do not create a partnership between the parties, as was decided by this court in the case of *Mann v. Taylor*, yet they are owners in common of the crop.

In *Jones v. Chamberlain, ante*, it was held that an oral lien given to the landowner for supplies was not enforcible. Jones and one Harwell entered into a written agreement by which Harwell was to cultivate Jones' land, and each was to share equally in the crops. It was, thereafter, orally agreed that Harwell's half should stand good for advances made during the year. Harwell subsequently conveyed his one-half interest to Chamberlain to secure an indebtedness, which conveyance was recorded. After the crop had been harvested, Jones secured possession and sold it, keeping the proceeds to pay for his advances. Chamberlain sued to recover the value of one-half of the crop from Jones, but the Trial Court held that Jones had a superior right under his claim for supplies. This decision was reversed, and in reversing it the Supreme Court of Tennessee says:

> We are of opinion that an agreement for the conveyance of a crop to be raised and gathered is such an agreement for the conveyance of personal estate that it would be void as to creditors or subsequent purchasers for value without registration. Mr. Washburn (vol. I, p. 497) states as the result from a variety of cases that "farming on shares makes the owner of the land and the farmer tenants in common of the crops. Thus, a contract by which A should have possession of B's farm and put in crops on shares, makes them tenants in common of the crops and A may sell or mortgage his share of the crops." It appears that if the tenant can mortgage his share of growing crops, to make the conveyance effectual as against creditors the conveyance must be registered.

[But see (4) under chart]

(4) TITLE TO CROP PRIOR TO DIVISION

Although the cases cited under "(3) Tenants in Common of the Crop, When" of this Memorandum for this State, hold the landlord and sharecropper to be tenants in common of the crop, those cases were decided prior to 1927, and in that year the Legislature modified the previous statute in a manner which may throw new light on these decisions.

Sec. 8027, Williams' Tennessee Code, 1934, provides as follows:

> **Sec. 8027—Part of crop reserved to landlord.**—Nothing in this law shall affect the portion of the crop reserved as rent by the landlord of a share cropper, or for the rent or use of land producing same, whether divided or undivided, it being the intention to treat the title to such portion of the crop as vested in the landlord, unless the contract expressly provides otherwise. (L. 1923, ch. 71; L. 1927, ch. 33.)

Sec. 8028 provides that the purchaser of a crop from a tenant, with the landlord's written permission to sell, shall issue check in payment to the landlord and tenant jointly, and before such check is cashed it shall have endorsed on the back thereof the genuine signature of the landlord or his duly authorized agent.

In the case of *Schoenlaw-Steiner Trunk Company v. Hilderbrand, 152 Tenn. 166, 274 S. W. 544 (1925)*, it was held that

under a contract creating a third and fourth tenancy, the title to the crop was in the tenant, and the landlord could not recover in an action for conversion against mortgagees of the tenant who had taken possession of the crop. The court said:

> The evidence shows that at the time the defendant, Hilderbrand, shipped and delivered some cotton * * * , there had been no division of same between him (Hilderbrand) and complainant, and the title to the whole of the cotton was in the defendant, Hilderbrand, and complainant had no claim *in rem* to the same until a division thereof had been made between complainant and said Hilderbrand, and, therefore, complainant could not recover the value of its undivided one-fourth interest in said cotton.

The court cites 16 Ruling Case Law, p. 912, as follows:

> The fact that the rent is payable in property instead of money does not, until the property has been turned over to the landlord, confer any title thereto upon him. Thus in case of a lease of farming lands where the rent is a certain amount of the crops, no title to the crops vests in the landlord until they are set apart to him.

The court then pointed out that under the statute giving the landlord a lien on the crop to secure his rent, there was no distinction made between a rental contract whereby the rent was payable in part of the crops or in money. It was then stated that under the decisions of this State, the landlord's lien gave him "no property in, or right to, the crop."

(5) LIEN OF THE PARTIES ON THE CROP

A.—**Landlord's lien.**—The landlord has a lien on the crops raised on his land during any year for his rent for that year, as specifically provided in the following sections of the Code:

Section 8017—Rent lien on crop inures to benefit of assignee or person controlling land: A landlord and one controlling land by lease or otherwise shall have a lien on all crops growing on the land during the year for the payment of the rent for the year, whether the contract of rental be verbal or in writing, and this lien shall inure to the benefit of the assignee of the lienor. (Laws of '23, ch. 71).

Section 8018.—Also he shall have a like lien on all crops of tenants or share croppers grown during the year on the land, for the payment of necessary food, household fuel, money, and clothing supplied during the year to such tenant or share cropper, or those dependent upon him.

Section 8019.—Also he shall have a like lien on all crops of tenant or share cropper grown during the year on the land for the payment of necessary fertilizer, implements, work stock, feed for stock, seed, labor, and insecticide furnished to, and used by, such tenant or share cropper in the production of the crops.

Section 8020—Foregoing liens on equality, but superior to all other liens: The liens mentioned in the three preceding sections shall all be upon equality, but all shall be superior to all other incumbrances, liens, levy, or contract on said crops, regardless of the date of such other incumbrance, lien, levy, or contract.

Sec. 8023 provides that a purchaser, with or without notice, of a crop subject to any such lien shall be liable to the lien holder for the value of the crop, or any part of it, so purchased, not, however, to exceed the amount of rent due, and/or supplies furnished, and costs incurred in collecting same, if the crop, or part thereof, is delivered to or taken possession of by such purchaser before July 1 after the crop year; provided, the lien holder shall bring his suit against the purchaser within one year from the date of delivery to, or possession taken by the latter.

Sec. 8024 provides that any factor selling tenant's crops and applying the proceeds to indebtedness due him is liable for rent whether he has notice of the lien or not.

Sec. 8025 makes it a misdemeanor to dispose of any crop subject to landlord's lien for rent, with the purpose of depriving the owner of any such indebtedness.

It was held in *Meacham v. Herndon, 86 Tenn. 366, 6 S. W. 241*, that under a contract by which it was agreed that the landlord should furnish the tenant his supplies and should retain possession and control of the crop and sell it, and should pay one-half of the proceeds to the tenant after paying himself for supplies furnished, the rights of the tenant's mortgagee, even without notice of the terms of said contract, must be postponed to those of the landlord under the contract.

In *Bramlett v. Hurley, 160 Tenn. 653, 28 S. W. 2d, 633 (1930)*, it was held that the landlord's lien for work stock furnished the tenant is limited to the value of such stock to the production of the particular year's crop, and that the landlord could not, therefore, enforce as a lien upon the crop, a purchase-money note given for two horses. In the opinion the court said:

> We think it manifest that this lien was intended to apply to a current year and crop only * * * . The lien is not a continuing lien, but is restricted to supplies and furnishings furnished year by year in contribution to the making of the crop of the year. In so far only as the supplies or furnishings are to go into a given crop, and contribute to its making, is the lien to be recognized.

The editor's note on sec. 8017 of the code, giving a history of landlords' liens on crops, makes the following observation:

> The history of landlord-liens in the State indicates an unvarying purpose to extend and increase the protection afforded by its laws. [*Hunter v. Harrison, 154 Tenn. (1 Smith) 590, 288 S. W. 355.*]

B.—**Share Cropper's Lien.**—Tennessee statutes specifically give a farm laborer a lien for his wages on the crop raised by his effort.

Section 8014 (Williams' Tennessee Code, 1934)—**Lien upon crops:** When any person shall perform any labor or render service to another in accordance with a contract, written or verbal, for cultivating the soil, and shall produce a crop, he shall have a lien upon the crop produced which shall be the result of his labor, for the payment of such compensation or wages as agreed upon in the contract.

Section 8015—Extent of lien and enforcement: This lien shall exist three months from the 15th day of November of the year in which the labor is performed; provided, that an account of such labor rendered be sworn to before some Justice of the Peace or Clerk of the Court, showing the right of attachment.

Section 8016.—This lien shall in no wise abridge or interfere with the landlord's lien for rent and supplies; but the same shall be second to the landlord's lien, and no other.

These statutes seem ample to give the sharecropper a lien on the crop for his share thereof, but there have been no Tennessee cases found in which any of these sections have been interpreted.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

Section 8022 (Williams' Tennessee Code of 1934):

> All crop liens may be enforced in a Court of competent jurisdiction by original suit, execution, and levy, or by original suit, attachment, and garnishment, and all or any number of demands may be joined in one suit, or each established in a separate suit. Before any proceeding, * * * the lien holder shall itemize his claim, and himself or agent make affidavit in the manner required by law, in which affidavit it shall be stated that claim is correct, owing, unpaid, and bona fide, and not subject to any set-off or credit.

For the protection of both landowners and laborers and "croppers" from intimidation, Sec. 11037 of the Criminal Statutes of Tennessee (Williams' Tennessee Code of 1934) provides:

> It shall be a felony for any night rider or other person by threats, written or verbal, or by intimidation in any form to compel or seek to compel one having a hired laborer, share cropper, or tenant on his place, to dismiss them, or any of

them, from employment without due cause, or for any night rider or other person by threats, written or verbal, or by intimidation in any form, to compel or seek to compel hired laborers, share croppers, or tenants, or their families, to vacate under fear or compulsion, the premises they have occupied. Any person convicted under this Section shall be punished by imprisonment in the penitentiary for not less than three years, and not more than 15 years. (1915, ch. 15, Sec. 2.)

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

Being a tenant in common of the crop, the cropper can maintain an action for partition, can recover for conversion, can interplead for his share of the crop, and can mortgage or sell his share of the crop which his labor produced.

Vol. IV, Law and Contemporary Problem, p. 543.
Hunt v. Wing, 57 Tenn. 139 (1872).
Jones v. Chamberlain, 52 Tenn. 211 (1871).

If the action be one for breach of contract, as where the landlord failed to furnish supplies or money to make the crop, the measure of damages is the value of the share, less necessary expenditures, not including labor, and less such sums as the sharecropper may have earned in other employment. *Matthews v. Foster, 238 S. W. 317 (Tex. Civ. App. 1922).*

TEXAS

(1) LANDLORD AND TENANT, WHEN

The most recent decision of the Supreme Court of Texas distinguishing the relationship of landlord and tenant from that of employer and cropper, in crop-sharing contracts, is *Brown v. Johnson, 118 Tex. Rep. 143, 12 S. W. 2d 543 (1929).* The case came before the Court in an agreed statement of facts, which were:

In December, 1924, appellee rented the land involved in this suit * * * for the year 1925, and agreed to pay as rent for said land one-third of all grain, and one-fourth of all cotton raised thereon. The appellee, of his own volition, entered into a contract with appellant for him to cultivate the land during the year 1925, the terms of said contract being as follows:

Appellee was to furnish the appellant the land, teams, tools and seed for the cultivation of said land, and appellant was to cultivate the land, gather and sell the crops therefrom, and when crops were sold, appellee was to receive from appellant one-half of the proceeds arising from the sale. The crops were not to be divided in kind.

The question submitted to the Supreme Court for adjudication was whether the trial court erred in holding that the relationship of landlord and tenant existed between appellee, Johnson, (the tenant of the owners of the land on which the crops were grown), and the appellant, Brown, (the grower of such crops under his contract with appellee).

The Supreme Court said:

It is our opinion that the question propounded must be answered in the affirmative (that is, that the Trial Court did err) under the facts stated in the certificate. The relationship of landlord and tenant is a question of fact, like that of possession, and may be proved by parole evidence. Likewise, the alleged relationship may be thus disproved. To sustain an action for rent, the relationship of landlord and tenant must exist. * * * To create the relationship of landlord and tenant no particular words are necessary but it is indispensable that it should appear to have been the intention of one party to dispossess himself of the premises and of the other party to occupy them. According to the certificate the legal rights of the appellee, Johnson, are held dependent upon a proper construction of the Landlord and Tenant Act as expressed in Articles 5222-5239. Those rights are primarily based on the contract he made with the owners of the fee in the lands cultivated by the appellant. The contract gives the appellee the exclusive possession of these lands with the right to use them during the term of his contract. * * * The relationship of landlord and tenant between himself and the owners of the fee was established by virtue of the terms of this contract. * * *

A casual reading of our Landlord and Tenant Law demonstrates that one of the essentials of a valid lease of the premises whereby the relationship of landlord and tenant is established is that exclusive possession of the premises rightfully belonging to one party is transferred to another, and that the relationship of landlord and tenant is established. As said by the Court of Criminal Appeals in *Lane v. State, 10 Tex. Criminal Appeals 593, 276 S. W. 712,* "It is true that the appellant was a mere tenant on the premises owned by the prosecuting witness, but, under the undisputed testimony, his right to the possession of said property was unquestioned, and neither the landlord nor any other person had a right to become a trespasser thereon and to thereby destroy the fruits of his labor." * * * No other elements of the Landlord and Tenant Act are to be found in the relationship of the parties growing out of this contract, and as the appellee set out to exercise the right given by the law to a landlord against a defaulting tenant in this case, when under the circumstances he was not entitled to do so, it appears that the proceedings were wrongful and the appellee acquired no rights thereunder, as a landlord, by virtue of the terms of the Landlord and Tenant Act.

(2) EMPLOYER AND CROPPER, WHEN

In *Brown v. Johnson, ante,* the Supreme Court cited the case of *Cry v. J. W. Bass Hardware Company, 273 S. W. 350 (1925),* from the Court of Civil Appeals, where the distinction between a tenant and a mere cropper is stated thus:

The distinction between a mere cropper and a tenant, entitling the tenant to a homestead right in the premises, is clear; one has the possession of the premises for a fixed time exclusive of the landlord, the other has not. The possession of the land is with the owner as against a mere cropper because a mere cropper is in the status of an employee, one hired to work the land and to be compensated by a share of the crop raised, with the right only to ingress and egress on the property. This is not so as to the tenant, who has a substantial right in the land itself for a fixed time.

The Court then quotes from 12 Cyc. 979, as follows:

The intention of the parties as expressed in the language they have used, interpreted in the light of surrounding circumstances, controls in determining whether or not a given contract constitutes the cultivator a cropper. If the language used imports a present demise of any character in the land passes to the occupier, or by which he obtains the right of exclusive possession, the contract becomes one of lease, and the relation of landlord and tenant is created. If, on the other hand, there be no language in the contract importing a conveyance of any interest in the land, but by the express terms of the contract the general possession of the land is reserved in the owner, the occupant becomes a mere cropper. * * *

The factor is "the right of exclusive possession" as to the legal effect of the contract, and not "the shares of the crop" only. In other words, when the contract evinces the intention, as here, of "renting land," and not merely a hiring "to work the land," the relationship of landlord and tenant legally exists.

(3) TENANTS IN COMMON OF THE CROP, WHEN

In Texas, when the relationship is determined to be that of landlord and cropper, it follows that the parties are tenants in common of the crop. In the case of *Rogers v. Frazer Brothers and Company, (D.A. 108, S. W. 727, 1908),* the action was brought by the payee on a note executed by the cultivator and secured by mortgage on the first four bales of cotton grown on the Rogers farm, against the landowner for conversion of such cotton. The defense set up the fact that Signoski, the cultivator, has sold his interest to him. The Court affirmed a judgment for the plaintiff mortgagee, and said:

The testimony shows that Signoski entered into a verbal contract with the appellant (the landowner) for the cultivation of 40 acres of land during 1904. By the terms of such contract appellant was to furnish the land, teams, and tools, and said Signoski was to cultivate the land and make a crop

thereon, get appellant's wood for him, feed his stock, make his fires, and milk his cows, for all of which he was to receive one-half of the crop and the appellant the other half. This is not an ordinary rental contract, creating the relation of landlord and tenant between the parties. It was renting on shares whereby appellant and Signoski each acquired title to an unidentified half interest of the crop grown upon the land, and made them tenants in common of the crop.

In *Turner v. First National Bank (C.A.) 234 S. W. 928 (1921)*, the cultivator's mortgagee brought an action to foreclose on a recorded mortgage lien on the crop of cotton raised by Vaughn on the farm of Corley. Turner was made a party defendant as having bought one bale of cotton, which was covered by the mortgage, from Vaughn and converted it to his own use. The trial court held that a landowner and cropper relationship existed, and that, therefore, Corley and Vaughn were tenants in common of the crop, and gave judgment for plaintiff for one-half of the value of the bale of cotton (Vaughn's interest). This judgment was reversed upon the finding that the court had erred because the contract had established a landlord and tenant relationship instead of that of landowner and cropper. The court pointed out that the landowner had used the word "rent" in his testimony, saying that the verb "to rent" meant to "let out" or "lease," and showed the intent to create an interest in the land.

In the case of *Jacoe v. Nash and Company, (C.A.) 236 S. W. 235 (1921)*, the action was brought by the cultivator's mortgagee against the landowner and the cultivator. In reversing the judgment for the plaintiff because of an insufficient showing of facts, the court said:

> Notwithstanding the agreement was that V. & B. would share the crops produced equally with Jacoe, yet if the understanding was such as to put the entire title to the crops in V. & B. with a lien in favor of Jacoe to secure the payment of the one-half, then the relation of landlord and tenant would thereby be created, so that Jacoe would not have a specific interest in the crops themselves, but only a landlord's lien against them to enforce payment as rent of the one-half. On the other hand, if the terms of the agreement were not such as to reveal an intention to this effect, but were only those which ordinarily exist between a landlord and the person to whom he lets his land on the halves, then, in that event, Jacoe would not merely have a landlord's lien on the crops to secure the payment of rent, but he would have a specific one-half unidentified interest in whatever may have grown on the land, and he and V. & B. would be tenants in common of all such crops * * *. In the latter instance Jacoe would have title to an unidentified one-half interest in the crops grown on the land, which would not be subject to mortgage by V. & B. and as to which no landlord's lien could exist to be waived by Jacoe.

See also:

Horsley v. Moss and Pennington, 5 Tex. App. 341 (1893).
Tignor V. Toney, 13 Tex. Civ. App. 518, 35 S. W. 88 (1891).
Fagan v. Vogt, 36 Tex. Civ. App. 528, 80 S. W. 664 (1904).
Barrett v. Govan, 241 S. W. 276, Tex. Civ. App. (1922).
Rosser v. Cole, 226 S. W. 510 (1921).

(4) TITLE TO CROP PRIOR TO DIVISION

When the relationship between the parties is that of landlord and tenant, title to the crop produced is in the lessee or tenant, and the landlord has a statutory lien on the crop for his rent. (See Art. 5222, Vernon' Texas Statutes, under next heading.)

When the relationship is that of landlord and cropper, there is no lien for the rent since the landlord has an interest in the specific property. *Rosser v. Cole (C. A.), 226 S. W. 510 (1920); Brown v. Johnson, 118 Tex. Rep. p. 143, 12 S. W. 2d, 543 (1929).*

In the case of *Rosser v. Cole (ante)*, the action was brought by the landowner against the cultivator for refusal to make a division of the crop. The defense was a general denial and a cross action for wrongful and malicious issuance of several writs of sequestration. The court affirmed a judgment for the defendant upon his cross action, holding that the parties were tenants in common of the crop, and that, therefore, there was no statutory lien in the landowner for his rent.

In *Spurlock v. Hilbrun (C.A.) 32 S. W. 2d, 393 (1930)*, it was held that under the statute the landlord has a lien for advances superior to that of a prior mortgage executed by the tenant. In that case the facts show that the relationship was that of landlord and tenant.

When the relationship is that of landlord and cropper, they are tenants in common of the crop [see under chart (3)], and each has title to his undivided one-half thereof.

The landlord in a landlord-and-tenant relationship does not become the owner of the agreed share of the crop until it is matured and divided. [*Trimly & B.V. Railway v. Doke, (C.A.) 152 S. W. 1174; Williams v. King, 206 S. W. 106.*]

(5) LIEN OF THE PARTIES ON THE CROP

The Texas Legislature in 1915 enacted a statute (Acts of 1915, p. 77), setting maximum rentals of one-third the value of the grain, and one-fourth the value of the cotton where the land was cultivated by a tenant who furnished everything except the land, and maximum rentals of one-half the value of the grain and one-half the value of the cotton where the landlord furnished everything except the labor. The statute provided that leases reserving rent exceeding those amounts should be unenforcible, and that there should be no landlord's lien for rent, and that if the landlord sought to collect more than the maximum rentals, the tenant could recover double the full amount of such rentals.

This statute was held unconstitutional by the Texas Supreme Court in the case of *Culberson v. Ashford, 118 Tex. 491, 18 S. W. 2d, 585 (1929).* Following the decision in that case, however, the legislature re-enacted the rent limitations statute, eliminating the provision directly limiting rentals and authorizing double damages, but providing that there should be no landlord lien either for rent or for supplies furnished, where the rental exceeded the shares named in the previous statute.

While this statute has not been directly attacked, A. B. Cotton in his Article on Regulations of Farm Landlord-Tenant Relationships, IV Law and Contemporary Problems, pp. 508-511, says that dicta in a series of cases before the Texas Court of Civil Appeals indicate that the legislature has power under the Texas Constitution ω abolish the landlord's lien, or to restrict it in any way in which it deems best for the public interest. Commenting further on this statute, A. B. Cotton says that since it has been held that the Landlord's Lien Statute does not apply to a cropper's contract, *(Brown v. Johnson, ante, 1920; Rosser v. Cole, 270 S. W. 510, 1920)*, and the landlord and cropper are tenants in common of the crop [*Horsley v. Moss, 1893; Tignor v. Toney, 13 Tex. (C.A.) 518, 35 S. W. 881, 1896*], the landlord has no need of a lien. Consequently, if he desires to secure a greater rental than the statute permits, he only needs to make a cropping agreement instead of a lease, and thus hold title to the crop, rather than a lien on it, as security for his rent.

Where the relationship between the parties to a crop-sharing contract is that of landlord and tenant, the landlord acquires his statutory lien for rent by virtue of the following Article in Vernon's Texas Statutes, 1936:

> **Article 5222.**—All persons leasing or renting land or tenements at will, or for a term of years, shall have a preference

lien upon the property of the tenant, as hereinafter indicated, upon such premises and for any rent that may become due, and for all money and the value of all animals, tools, provisions, and supplies furnished, or caused to be furnished, by the landlord to the tenant to make a crop on such premises; and to gather, secure, house, and put the same in condition for marketing, the money, animals, and tools, and provisions, and supplies so furnished, or caused to be furnished, being necessary for that purpose, whether the same is to be paid in money, agricultural products, or other property; and this lien shall apply only to animals, tools, and other property furnished or caused to be furnished by the landlord to the tenant, and to the crop raised on such premises. Provided, further, that all persons leasing or renting lands or tenements at will, or for a term of years, where the landlord furnishes everything except the labor and the tenant furnishes the labor, shall have a preference lien upon the crop or crops grown on such premises for any rent that may be due, and for all money, provisions, and supplies furnished, or caused to be furnished, by the landlord to the tenant to make a crop on such premises; and to gather, secure, house, put the same in condition for marketing, the money, provisions, and supplies so furnished, or caused to be furnished, being necessary for that purpose, whether the same is to be held in money, agricultural products, or other property, and this lien shall apply only to the crop or crops grown on the premises for the year in which the same is furnished, or caused to be furnished. This Article shall not apply in any way, or in any case where any person leases or rents lands or tenements at will or for a term of years for agricultural purposes, where the same is cultivated by the tenant who furnishes everything except the land, and where the landlord charges a rental of more than one-third of the value of the grain, and more than one-fourth of the value of the cotton raised on said land; nor where the landlord furnishes everything except the labor and the tenant furnishes the labor, and the landlord directly or indirectly charges a rental of more than one-half the value of the grain, and more than one-half the value of the cotton raised on said land, and any contract for the leasing or renting of land or tenements, at will or for a term of years, for agricultural purposes stipulating or fixing a higher or greater rental than that herein provided for, shall not carry any Statutory lien, nor shall such lien attach in favor of the landlord, his estate, or assigns, upon any of the property named, nor for the purposes mentioned in this Article. (Acts 1874, p. 55; P.D. 7418c; G.L. vol. VIII, p. 57; Acts 1915, p. 77; Acts 1931, ch. 100, sec. 1, p. 171.)

Art. 5223 provides that such preference liens shall continue as to the crops and as to the supplies so long as they remain on the rented premises, and for one month thereafter, and if agricultural products are stored in warehouses, the lien attaches so long as they remain stored, and that such lien shall be superior to all liens exempting such property from forced sale.

Art. 5225 provides that the tenant, while the rent and advances remain unpaid, shall not, without the consent of the landlord, remove or permit to be removed from the premises so leased or rented any agricultural products produced thereon, or any of the animals, tools, or property furnished as aforesaid.

Cropper's lien.—A statutory lien is given certain classes of laborers, including farm hands, by Art. 5483, which provides as follows:

Whenever any * * * cook, laborer, or farm hand, male or female, may labor and perform any service * * * or any farm hand under or by virtue of any contract or agreement, written or verbal, with any employer * * * , in order to secure the payment of the amount due or owing under such contract or agreement, * * * the hereinbefore mentioned employee shall have a first lien upon all products or things of value * * * that may be created in whole or in part by the labor, or that may be used by such person or persons, or necessarily connected with the performance of such labor or service * * * . Provided that the lien herein given to a farm hand shall be subordinate to the landlord's lien provided by law.

Section 5488.—The lien created by this chapter shall cease to be operative after six months after the same is fixed, unless suit be brought within said time to enforce said lien.

There seems to have been some doubt whether the preceding sections would apply to a cropper because of the provisions of Art. 5465, which are:

Article 5465—Payment of wages: Under the operation of this law, all wages, if service be by agreement, performed by the day or week, shall be due and payable weekly, or if by the month, shall be due and payable monthly, all payments to be made in the lawful money of the United States.

The doubt seems to arise from the language "all payments to be made in lawful money of the United States."

The overwhelming authority is that a cropper is a "laborer," and certainly he is a "farm hand." He does not labor by the day or week or month, but for the crop season, and it would, therefore, seem that Art. 5465 does not take the cropper out of the protection of Art. 5483, and that he does have a lien for his wages, even if those wages be a share of the crop.

Further, under the statutes it is provided that in order to perfect a laborer's lien, the laborer must make duplicate accounts of the amount due him, presenting one to his employer, and having the other filed with the county clerk within 30 days after the indebtedness has accrued. However, in *Neblett v. Barron, 104 Tex. 111 (1911)*, the Court of Appeals held that a farm hand working on the land at $1.00 per day, to be paid out of the first cotton sold, would have to have filed the account for the first weeks wages within 30 days. Upon the appeal of this case to the Supreme Court, it was held that a laborer's wages did not accrue within the meaning of the statute until the first cotton was sold, the Court saying:

(The) employment was not for a fixed or a definite time, but from its nature was more or less indefinite, but for such time as he would labor his compensation was fixed and measured at the rate and sum of $1.00 per day for the time he so labored. * * * The entire amount of the hire was to be paid when the cotton, or the portion of the same first disposed of, was sold. Therefore, the maturity of his demand was postponed by contract between him and his employer for several months beyond the completion of his first month's work.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

The landlord is given a statutory remedy in the event of a violation of the contract by the cropper or tenant by Art. 5227 of the statutes, as follows:

When any rent or advances shall become due, or the tenant shall be about to remove from such leased or rented premises, or to remove his property from such premises, the person to whom the rents or advances are payable, his agent, attorney, assigns, heirs, or legal representative may apply to the Justice of the Peace * * * for a warrant to seize the property of such tenant.

(The articles following provide the method of procedure in an action of distress.)

By Art. 5237 it is provided that a tenant may not sublet the premises without the consent of the landlord. The article reads:

Article 5237.—Tenant shall not sublet. A person renting said lands or tenements shall not rent or lease the same during the term of said lease to any other person without first obtaining the consent of the landlord, his agent, or attorney.

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

Article 5236.—Should the landlord, without default on the part of the tenant or lessee, fail to comply in any respect with his part of the contract, he shall be responsible to said tenant or lessee for whatever damages may be sustained thereby; and to secure such damages to such tenant or lessee, he shall have a lien on all the property of the landlord in his possession not exempt from forced sale, as well as upon all rents due said landlord under said contract.

This would seem to apply solely to a tenant or lessee, and not to a sharecropper. That the cropper does have a remedy when the contract is violated by the landlord seems to appear from the decision of the Supreme Court of Texas in the case of

Crews v. Cortez, 102 Tex. 111, 113 S. W. 523, (1908). This action was brought by the cultivator "to recover damages to the extent of one-half the value of the crop planted and raised on the land of Cortez by Crews." Under an agreement by which the landowner was to furnish the necessary tools, teams, feed for teams, and seed, the plaintiff planted and cultivated a crop until forced to leave by threats of violence on the part of the landowner. The defendant (the landowner) then appropriated the crop and converted same to his own use. The question certified to the Supreme Court was:

Would the defendent in such a case be entitled to charge against the plaintiff any part of the reasonable cost and expenses of cultivating, gathering and marketing the crop after the time that the defendant wrongfully and illegally took possession and forced plaintiff to abandon the same?

In differentiating between the cases which the lower court considered to have been in conflict, the court said:

In *Rogers v. McGuffey (96 Tex. 565)* and in *Wagoner v. Moore and Stevens, 45 Tex. (C.A.) 308,* the contracts were broken before any crops had been brought into existence and therein they differ from *Fagon v. Voght, 357 (C.A. 528),* and *Tignor v. Toney (13 T.C.A. 518),* in which the decisions were based on the docket of wrongful and intentional conversion of personal property. * * * The damages which the plaintiff in this case is entitled to recover, on facts such as are found by the Jury and the Court of Appeals, are to be ascertained as indicated in *Rogers v. McGuffey,* by finding the value of the contract to him, or, in other words, of the pecuniary benefits which would have accrued to him had he been allowed to perform it fully. The claim asserted seems to be for the value of the stipulated share of the material, crops, and we shall assume that it would have constituted the entire compensation to plaintiff for fully performing the contract had it been received as a result of such performance.

The question arises, is he entitled to the value of all of it when he was relieved of part of the labor, and, perhaps, of other expenses that would have been necessary to further performance? As was said in *Rogers v. McGuffey,* such contracts sometimes are intended to furnish employment for the labor of the tenant or cropper. The profit to be realized out of the crops over and above the value of the labor and other outlays expended in the making of them is therefore not all that is contemplated in such contracts. Employment for the tenant or cropper when secured is valuable, whether a profit over and above such labor and other expenses is realized or not. And this may be true as to the labor of members of his family which he can control and utilize without extra expenses. * * * Such contracts so far partake of the nature of those for personal services as to make it just to take into consideration the purpose by which the damages for breaches of those contracts are ascertained, and, in cases where such results as we have just indicated have flowed from the breach, to deduct, not the entire value of the labor that was necessary to making of the crop, but only such sums as those thrown out of employment could, by reasonable diligence, have earned thereafter. But all other expenses, including those for hired labor, which the cropper would have incurred in performing his part of the contract should be deducted from the value of his share of such crops as he would have made, for the reason that he would have realized from the matured crop only the difference between the value of his share and the cost of their production. * * *

The plaintiff did not have the right to recover the entire value of the stipulated share of the crops he would have made, if, in order to make them, further expenditures, such as we have indicated, would have been necessary on his part, but he had only the right to recover the difference between such value and the amount of such further outlays added to the deductions to be made as for such earnings in other employment as are above indicated. Expenses incurred by the defendant for labor, and other things, in maturing and harvesting the crops are not to be deducted in estimating the plaintiff's damages. The plaintiff, if the facts be as found, is not charged with expenses incurred by the defendant.

A cropper might also bring action for breach of contract where the landowner has failed to carry out his part of the agreement.

In *Matthews v. Foster (C.A.) 238 S. W. 317 (1922),* the cultivator brought an action against the landowner for breach of contract to furnish him with a sufficient amount of money to make a crop, buy groceries, etc., plaintiff agreeing to cultivate the land and give defendant one-third of all crops produced and repay advances. On this appeal the court reversed a judgment rendered for the plaintiff because of improper considerations as to damages, saying:

There is not only no allegation as to the value of the crops that would have been produced, but also an utter failure to show what appellee earned after he leased the land of the appellant. The measure of damages in such cases is two-thirds of the value of the crops which would have been produced less further necessary expenditures, not including the labor necessary to mature and gather the crops, and less such sums as appellee may have earned in other employment.

VIRGINIA

(1) LANDLORD AND TENANT, WHEN

In a crop-sharing contract, if the effect of the arrangement is to give the cultivator the possession of the land—the exclusive possession, as it is frequently stated—a tenancy is created and the parties are landlord and tenant. If the possession is retained by the owner, there is no lease creating a tenancy, and it is merely a cropping contract. The basic distinction is that the tenant has an estate in the land and the "cropper" has none. [See (2) under chart.]

No set of words is necessary to constitute a lease, and in doubtful cases the nature and effect of the instrument must be determined in accordance with the intention of the parties as gathered by the whole instrument. *Upper Appomattox Company v. Hamilton, 83 Va. 319, 2 S. E. 195; Michie v. Lawrence, 3 Rand 571.*

(2) EMPLOYER AND CROPPER, WHEN

Where the relationship of master and servant exists, and the occupancy of the premises is because of this relationship, the occupant is generally considered merely as a servant and not as a tenant. *Va. Iron and C. Co. v. Dickenson, 143 Va. 250, 129 S. E. 228.*

With regard to the relationship of employer and cropper, Michie's Digest of Virginia Reports, vol. VI, p. 360 (1939), makes the following observation:

Cropper not a tenant.—Where a landowner contracts with one to crop his land and to give him part of the crop after paying all advances, and the crop has not been divided, such cropper is not a tenant but a mere employee, and the ownership of the entire crop is in the landowner. *Parrish v. Commonwealth, 81 Gratt. 1.* The relationship was held not to exist in *Lowe v. Miller, 3 Gratt. 205, 212, 213.* In *Rosen v. Sachs, 143 Va. 420, 130 S. E. 229,* the evidence was held not to show a lease, and that the relationship of landlord and tenant did not exist.

(A lease) is to be distinguished from a license—Very frequently it is a matter of great difficulty to determine whether the agreement under which the tenant holds is technically a lease or a mere license. The decisions on this subject are numerous and extremely difficult to reconcile. *Hanks v. Price, 32 Gratt. 107,110.*

In the matter of joint tenancy of the crops in a crop-sharing contract, Michie remarks:

Still greater difficulties often occur in deciding whether the agreement constitutes the tenant a lessee of the land, or a mere joint tenant of the crop. *Lowe v. Miller, 32 Gratt. 205,* is one of that class of cases in which this Court, after much deliberation, held that under the contract there was no lease but a mere joint tenancy in the crops raised on the land. *Hanks v. Price, 32 Gratt. 107, 110.*

A party in possession of land, but having no title thereto, was authorized by the owner to rent it on shares. This was not a lease as the reservation of a part of the crop was not incident to the reversion, and thus gave no right of distress. *Lowe v. Miller, ante.*

The leading case in Virginia for many years that distinguished between tenant and cropper (or employee) is *Parrish v. Commonwealth, 81 Gratt. 1 (1884).* In that case the landowner, Parrish, contracted with one Mitchell to grow a crop on his land for which he was to receive one-half of the crop, after paying all advances. Before the crop was divided, it became apparent that Mitchell's one-half interest would not pay the amount of Parrish's account for necessary advances by him to Mitchell. After the corn was gathered, Mitchell put 20 barrels in Parrish's corn house and put the remaining 10 barrels, over the protest of Parrish, in a tobacco house and kept the key. Parrish at once asserted his ownership of the corn in the tobacco house, and nailed up the door in Mitchell's presence. Mitchell attempted to remove the corn in the night, breaking the door with an ax, whereupon Parrish shot and killed him. The case arose from the appeal of Parrish from a verdict of the lower court finding him guilty of murder in the second degree. The ownership of the corn had a bearing on the result in the Supreme Court because it affected Parrish's right to defend his property within his curtilage. In reversing the lower court and declaring the case to be one of justifiable homicide, the Supreme Court said with regard to the ownership of the crop:

> The contract of February 3, 1882, between Mitchell and Parrish settles the status of Mitchell to have been that of a mere employee or cropper. Parrish had furnished Mitchell with a house and lot, free of charge, on a different place from that on which Mitchell cropped for Parrish, and nearly a mile away. Mitchell was entitled to nothing until Parrish had been fully reimbursed, out of Mitchell's share of the crops, for whatever Mitchell might owe him for supplies and otherwise. He was, therefore, no tenant. Parrish was to pay him for his services and the arrangement was only a mode of paying for Mitchell's labor. *2 Minor's Inst. 159.* * * * There had been no division of the crop. Mitchell, therefore, had no interest in the corn or other crops. *Taylor's Landlord and Tenant, p. 21, Note 6, and cases there cited.*

The Court, later in the opinion, continued:

> And all questions as to the employee, in cases of contracts similar to that between Mitchell and Parrish, being allowed to interpose a bill of "Claim of Right" as an immunity to criminal conduct, like Mitchell's, is expressly negatived by the decided cases. *State v. Jones, 2 dev. and Bat. 544; State v. Gay, 1 Hill 364.* In the case of *State v. Gay* it was held that "One who is entitled to a share of the crop for his services on plantation of another is not a joint tenant, or tenant in common with his employer in the crop produced. It is exclusively the property of the employer though he has made an executory contract to allow a certain portion of it to the cropper; and the latter may commit larceny in stealing a part of the gathered crop."

The Court then dismisses the discussion of the relationship between Parrish and Mitchell thus:

> The tobacco house was in Parrish's curtilage, and it had, therefore, all of the privileges and the protection of the capital or dwelling house. *Blackstone's Com. 225; Davis' Criminal Law, 150.*

This Parrish case is reported as being overruled in *Fortune v. Commonwealth, 133 Va. 669, 688 (1922),* where the Court said:

> Parrish's case, 81 Va. 1, is cited and relied on for the Commonwealth. In that case the Court was divided, there being a bare majority of one for the majority opinion. The holding of that opinion on the subject of the relationship of Parrish to the deceased cropper is in conflict with *Lowe v. Miller, 3 Gratt. (44 Va.) 205, 46 Am. Dec. 188 (1846),* not cited in the opinion, and is otherwise, as we think, unsound in its holding with respect to the principles of law applicable to the facts of that case, so that the Court as now constituted feels constrained to disapprove of such holding.

Continuing, in the Fortune case, the Court said further:

> However, of that case this should be said: "The decision was based both on the ground that the killing was done in order to prevent the aforesaid entry of the assailant into a building within the curtilage, by breaking and entering, and that, too, in the night time (which was held to have been a felony committed in the presence of the accused), and on the ground that the killing was in self-defense."

The Fortune case was stating the rule as it applied to an alleged criminal act, and as it affected the defense, and without regard to the relationship of the parties under the cropping contract.

All of the subsequent cases citing the Parrish case turned on a point of criminal law and evidence in a criminal case, and have nothing to do with the relationship of employers and croppers, or of landlords and tenants.

There is certainly room for doubt that the holding in the Parrish case *was* overruled by this decision which turned principally on the criminal features and not on the distinction between a cropper and a tenant. In the Lowe v. Miller case cited by the Court (decided in 1846), it was held (Syllabus):

> Lowe being in possession of the land to which he has no title, but which he was authorized to rent out for his own benefit, makes a written contract with A to let to him the land for a year upon the terms that Lowe shall find the tools to work the land, and the seed to sow it, and A shall board himself and family and work the crop, and when it is gathered, give one-half of it to Lowe. Held: this is not to be construed a lease rendering rent in kind, as the reservation of the one-half of the crop was not incident to the reversion and, consequently, gave no right of distress. But the contract constitutes the parties joint tenants of the crop raised.

It is difficult to see how this decision in the Fortune case, citing the Lowe case, does actually overrule the holding in the Parrish case as to the relationship of the parties, and the ownership of the crop.

In the Fortune case there was no question of any relationship of landlord and tenant, or employer and employee, between the parties, one of whom was shot in the chicken yard of the other in a controversy over a payment for eggs. After 38 years the Court seems to have gone out of its way to disapprove a decision on a collateral issue in the Parrish case as to the relationship of Parrish and Mitchell and the ownership of the crop, when there was no question of the relationship of the parties, or the ownership of any crop in the case being decided. The argument of the Court citing the ancient Lowe v. Miller decision (1846) was for the purpose of bolstering its decision on a question of criminal law. It is believed that the Parrish case is *not* overruled, and it certainly is still cited in this and other States as authority, and its holding as to the relationship of the parties is overwhelmingly sustained in other jurisdictions.

(3) TENANTS IN COMMON OF THE CROP, WHEN

Michie's Virginia Digest, vol. VI, p. 103, defines tenants in common as follows:

> A tenancy in common is where two or more hold the same land with interests accruing under different titles; or accruing under the same title but at different periods; or conferred by words of limitation importing that the grantees are to take any distinguished share. *Carneal v. Lynch, 91 Va. 114, 20 S. E. 959; Patton v. Hoge, 22 Gratt. 443.* They must hold by several titles, not by a joint title, and occupy the same land or tenements in common; from which circumstance they are called tenants in common, and their estate a tenancy in common. *Hodges v. Thornton, 138 Va. 112, 120 S. E. 865.* Unity of possession is a requisite. *Talley v. Drumheller, 135 Va. 186, 115 S. E. 517 (1923).*
>
> **Farming on shares:** An agreement between two persons for the raising of a crop on the land of a third, by his license and permission, and for a division of the crop between such two persons, constitutes them joint tenants of the crop, and neither can defeat the interest of the other by taking a conveyance of the land from the owner. *Lowe v. Miller, 3 Gratt. 205 (1846).*

In *Hodges v. Thornton, 136 Va. 112*, the court held that:

The criterion in a tenancy in common is that no one knoweth his own severalty; and hence the possession of the estate is necessarily in common until a legal partition is made.

The cases cited by Michie above have no bearing on crop-sharing contracts as such, with the exception of the case of Lowe v. Miller [*ante*, under this chart, (2).]

[See (3) this chart and this Memorandum, under Mississippi, pp. 18, 19.]

(4) TITLE TO CROP PRIOR TO DIVISION

No Virginia cases have been found defining the title to the crop in a crop-sharing contract prior to division, but the overwhelming authority in the other States is that where the relationship is landlord and tenant, title and possession of the crop is in the tenant prior to division, subject to the landlord's lien for rent and advances. It is believed that *Parrish v. Commonwealth, 81 Gratt. p. 1, is still authority*, and that where the relationship is employer and cropper, title and possession of the crop is in the landlord at all times. [See chart (2) and this Memorandum, pp. 34, 35.]

(5) LIEN OF THE PARTIES ON THE CROP

Sec. 6454, Va. Code, provides that any owner or occupier of land who contracts with any person to cultivate it, and makes advances to his tenant or laborer, has a lien on the crop for the advances in the year in which they are made, which lien has priority over all other liens on such crop or share thereof. He may enforce the lien by distress when the claim is due, or by attachment when it is not yet due, in the same manner as for the recovery of rent, under Sec. 5522 and 6416. (These sections provide for distress and attachment.)

Sec. 6454 reads:

Sec. 6454—Lien of landlords and farmers for advances to tenants and laborers, priority: If any owner or occupier of land contracts with any person to cultivate or raise livestock on such land as his tenant for rent, either in money or a share of the crop or livestock; or if any person engaged in the cultivation of land shall make any advances in money, or other things to such tenant or laborer, he shall have a lien to the extent of such advances on all the crops or livestock, or the share of such laborer in the crops or livestock that are made, or seeded, or raised, grown, or fed on the said land during the year in which the advances are made, which shall be prior to all other liens on such crop or livestock, or such portion thereof, or share thereof; and he shall have the same remedy for the enforcement of such lien by distress when the claim is due, or by attachment when the claim is not yet payable, as is given a landlord for the recovery of rent under Sec. 5522 and 6416 * * * .

(The remainder of the section provides for affidavit before a justice of the peace as to the amount of the claim, that it is due, and is for advances made under contract to a tenant; or if it be for attachment, then the time when the claim will become payable, and that the debtor intends to remove the crops or livestock from the land.)

When the crops or livestock are subject to a lien of *fiere facias* or attachment, whether a levy be actually made or not, it is the duty of the person claiming a lien under this section to render to the sheriff a complete and itemized statement under oath of the claim for advances. Failure to render the itemized statement bars the lien.

Any person, other than a landlord, making advances to another person who is engaged in the cultivation of the soil, has a lien on the crop raised during the year in and about the cultivation of which the advances were made, but only if there is an agreement in writing signed by both parties, specifying the amount advanced, or the limit beyond which advances may not go; and if such agreement is docketed in the clerk's office. (Sec. 6452, Va. Code.)

Sec. 6452 reads:

Sec. 6452—Lien on crops for advances to farmers, etc.—If any person other than a landlord makes advances either in money or supplies, or other things of value, to anyone who is engaged in the cultivation of the soil, the person so making said advances shall have a lien on the crop which may be made or seeded, and/or fruit or other crops maturing during the year upon the land in or about the cultivation of which the advances so made have been, or were intended to be expended, to the extent of such advances; but the person making such advances shall not have the benefit of the lien given in this Section unless there is an agreement in writing signed by both parties in which there is specified the amount advanced, or the limit to be fixed beyond which any advances made from time to time during the year shall not go, and the said agreement be docketed in the Office of the Clerk of the County in which * * * the land lies * * * . (The remainder of the section relates to docketing, priority, itemized statement of account.)

Sec. 6453 provides for the protection of such liens by injunction.

This section (6452) applies only to advances made by a person "other than a landlord," whether advances are made to a landlord or a tenant. It gives a lien on the crop but does not fix the order of priority of the lien. The order of priority is fixed by Sec. 6455. This section giving a lien on crops for advances made by persons other than the landlord, must be read in connection with Sec. 6454, *ante*, 1st col., and 6455. Reading the three sections together, it appears that liens given by this section for advances made by one other than the landlord are subordinate to prior deeds of trust which have been duly recorded in the absence of agreement to the contrary between the mortgagee and the party making the advances. *McCormick v. Terry, 147 Va. 448, 453; 137 S. E. 452.*

Sec. 6455 is as follows:

Sec. 6455—Lien of landlords and other recorded liens not affected by lien given by Section 6452, nor exemption to poor debtors: The lien provided for in Section 6452 shall not affect in any manner the rights of the landlord to his proper share of the rents or his lien for rents or advances, or his right of distress or attachment for the same, nor any lien existing at the time of making the agreement in said Section which is required by law to be recorded, nor shall it affect the right of the party to whom the advances have been made to claim such part of his crops as are exempt from levy or distress for rent. (Code 1887, Sec. 2497.)

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

Any person obtaining advances upon a written promise to deliver his crops or other property in payment therefor, and fraudulently refuses to perform such promise, is guilty of larceny under Sec. 4454, Va. Code. The section reads:

Sec. 4454—Failure to perform promise to deliver crop, deemed larceny: If any person obtain from another an advance of money, merchandise, or other thing upon a promise in writing that he will send or deliver to such other person his crop, or other property, and fraudulently fails or refuses to perform such promise, and also fails to make good such advances, he shall be deemed guilty of larceny of such money, merchandise, or other thing.

Sec. 4454-a makes the person entering into an oral or written contract for personal services in and about the cultivation of the soil, who obtains advances, with intent to injure his employer, and fraudulently refuses or fails to perform such service, or to refund the advances, guilty of a misdemeanor, provided prosecution is begun within 60 days after the breach.

Sec. 4454-a reads:

Sec. 4454-a: If any person enters into a contract of employment, oral or written, for the performance of personal service to be rendered within one year, in and about the cultivation of the soil, and, at any time during the pendency of such contract, thereby obtains from the landowner, or the person so engaged in the cultivation of the soil, advances of money or other thing of value under such contract, with intent to injure or defraud his employer, and fraudulently refuses or fails to perform such service, or to refund said money or other thing of value so obtained, he shall be guilty of a misdemeanor; provided, that prosecutions herein shall be commenced within 60 days after the breach of such contract. (1924, p. 635; 1928, p. 358.)

It is unlawful for a person renting the lands of another, either for a share of the crop or for a money consideration, to remove any part of the crop without the consent of the landlord until the rent and advances are satisfied. Such offense is a misdemeanor (Sec. 4455-a).

Sec. 4455-a is as follows:

Code of 1942, Sec. 4455-a—Removal of crop by tenant before rents and advances are satisfied, a misdemeanor: It shall be unlawful for any person renting the lands of another, either for a share of the crop or for money consideration, to remove therefrom without the consent of the landlord, any part of such crop until the rents and advances are satisfied.

Every such offense shall be deemed a misdemeanor, and shall be punishable by a fine or imprisonment. (1922, p. 491.)

Sec. 5429, Va. Code, provides that where rent is to be paid in a share of the crop or thing other than money, and goods are distrained for rent, the claimant of the rent may sue out an attachment and have the court, or a jury, if either party requires it, ascertain the money value of the rent, and the court will order the goods sold to satisfy such judgment.

Sec. 5429 is as follows:

Sec. 5429—Remedy when rent is to be paid in other thing than money: Where goods are distrained or attached for rent reserved in a share of the crop, or in any thing other than money, the claimant of the rent having given the tenant 10 days' notice, or, if he be out of the county, having set up the notice in some conspicuous place on the premises, may apply to the Court to which the attachment is returnable * * * to ascertain the value in money of the rent reserved, and to order a sale of the goods distrained or attached. The Court will ascertain * * * by its own judgment, of, if either party require it, by the verdict of a jury, the extent of the liability of the tenant and the value in money of such rent and * * * other judgments.

(The court also orders the goods distrained or attached, or so much thereof as may be necessary, to be sold to pay the amount of the judgment.)

Distress for rent will not lie unless the relationship of landlord and tenant exists between the parties. The right is not only incident to that relation, but is dependent upon it. *(Church v. Goshen Iron Co., 112 Va. 694, 72 S. E. 685.)*

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

There is no statute giving a cropper a special lien on the crop but, being a laborer, he would have a laborer's lien on the part on which his labor was expended. He might also sue for breach of contract if the circumstances warranted. No Virginia cases have been reported in which the cropper attempted to assert his rights.

MEMORANDUM REGARDING—LEGAL RELATIONS AND RIGHTS OF PARTIES WHEN LAND OWNED

STATE	(1) Landlord and tenant, when	(2) Employer and cropper, when	(3) Tenants in common of the crop, when
ALABAMA	The Alabama Code of 1940 establishes the legal relationship between the parties when one party furnishes the land and the other party furnishes the labor to cultivate it, as that of landlord and tenant; and that regardless of whether the party furnishing the land also furnishes teams to cultivate it, and other supplies. **Alabama Code, 1940, Title 31, Sec. 23.** [See this Memorandum (1), p. 1, Ala.] The only exception is where persons raise crops by joint labor contributions, or joint material contributions, in such manner as to make them tenants in common of the crop. **Alabama Code, 1940, Title 33, Secs. 81 and 82.** [See this Memorandum (1), p. 1, Ala.] Whether the relationship is that of landlord and tenant, or tenants in common, depends on the intention of the parties as shown by their agreement and in the light of the surrounding circumstances. **Hand v. Martin, 205 Ala. 333; 87 So. 529 (1921).** [See this Memorandum (3), p. 1, Ala.]	The relationship of landlord and cropper, or landlord and laborer, is abolished in Alabama by Title 31, Sec. 23 of the Code of 1940, and the relation of landlord and tenant is established, except where the parties, by their agreement, become tenants in common. **Title 31, Sec. 23, code; Stewart v. Young, 212 Ala. 426; 103 So. 44 (1925).** (See this Memorandum, p. 2, Ala.)	"Tenants in common" are such as hold by distinct titles, and by unity of possession. **Words & Phrases, vol. 41, p. 319.** [See this Memorandum (3), p. 1, Ala.]. Persons farming on shares, or raising crops by joint contributions, in such manner as to make them tenants in common in such crops, each have a lien upon the interest of the other for supplies furnished. **Code 1940, Title 33, sec. 81.** The intent of the parties is the controlling factor. Where one party to a farming contract was not only to furnish the land but to assist in planting the same, and the other was to furnish labor, teams and tools, they were held to be tenants in common. **Hand v. Martin, 205 Ala. 333, (1921); Stewart v. Young, 212 Ala. (1925);** (See this Memorandum pp. 1,2, Ala.) Where a landlord and tenant agreed to purchase fertilizer to be paid for out of the crop at the equal expense of each, they became tenants in common of the crop. **Johnson v. McFay, 14 Ala. App. 170, 68 So. 716.** See also: **Lufkin v. Daves, 220 Ala. 443; 125 So. 811 (1930).** [See this Memorandum (3), p. 1, Ala.]
ARIZONA	There is no statutory definition of the relationship existing between the parties where one having no interest in land owned by another farms it in consideration of receiving a portion of the products for his labor. No general rule has been fixed. Courts consider: (a) Intention of the parties [**Gray v. Robinson, 4 Ariz. 24, (1893)**]; (b) public policy is best served by interpreting the relation to be that of landlord and tenant; **Birmingham v. Rogers, 46 Ark. 254;** (c) manner of division of crop; (d) stipulations in the agreement; (e) the use of technical words of demise has great weight; **Gray v. Robinson, ante;** (f) if the agreement confers exclusive possession it is one of tenancy; (g) the duration of the agreement is material. The courts lean toward the landlord and tenant construction. **A. & E. Enc. Law, 2d. ed. vol. 18, vol. 24, pp. 173, 1464; and cases cited.** (See this Memorandum, p. 4, Ariz.)	If there is no language in the contract importing a conveyance of any interest in the land, but by the express terms general possession is reserved to the owner, the occupant is a mere cropper. **Gray v. Robinson, 4 Ariz. 24, 33 Pac. 712.** (See this Memorandum p. 4, Ariz.) A cropper is defined as "one who, having no interest in the land, works it in consideration of receiving a portion of the crop for his labor," in **Gerrard Co. v. Cannon, 43 Ariz. 14, 28 P. (2d) 1016, decided in 1934.** The court then quotes **Gray v. Robinson, ante,** "under such a contract the occupier becomes merely the servant of the owner of the land, being paid for his labor in a share of the crop,"—and cites **Romero v. Dalton (1886), 2 Ariz. 210, 11 P. 863.** In **Gray v. Robinson, ante,** the court defined a cropper's contract generally as one in which one agrees to work the land of another for a share of the crops, without obtaining any interest in the land or ownership of the crops before they are divided. (See this Memorandum, pp. 4,5, Ariz.)	Neither the statutes nor the decisions in Arizona recognize the relationship of tenants in common between the parties to a crop-sharing contract. (For a discussion of tenants in common in general see this Memorandum, pp. 18, 19, under Mississippi.)
ARKANSAS	The relationship which exists between the parties to a crop-sharing agreement is governed by their intent, and is determined by the terms of their contract. If there is a demise or renting of the premises, the landlord to receive an undivided interest in the crop as rent, the relation of landlord and tenant exists. **(Tinsley v. Craige, 54 Ark. 346; 155 S.W. 897, decided 1891)** (See this Memorandum, p. 6, Ark.) The numerous Arkansas cases consistently hold that where there is a demise of the premises, or the landlord receives his share of the crop as rent, the relation is that of landlord and tenant, and title to the crop, before division, is in the tenant, subject to the landlord's lien for rent and advances. **Hammock v. Creekmore, 48 Ark. 264 (1886); Tinsley v. Craige, ante, (1891); Barnhardt v. State, 169 Ark. 567 (1925); Campbell v. Anderson, 189 Ark. 671, 74 S.W. (2d) 782, (1934).** (See this Memorandum, pp. 6, 7, Ark.) Also see: **Alexander v. Pardue, 30 Ark. 436; Birmingham v. Rogers, 46 Ark. 254.**	When the possession of land is not surrendered, and the contract vests no interest in it, the cultivator is a cropper, and the title to the crop is in the landlord until final division. **(Tinsley v. Craige, ante; Hammock v. Creekmore, ante.)** The distinction may be finely drawn between a tenant who pays half of the crop for the use of the land, livestock, feed and tools, and one who makes a crop as an employee to whom these things are furnishsd and who is given for his labor one half of the crop to be grown by him, but this distinction has been recognized by the Supreme Court of Arkansas in many instances. **(Barnhardt v. State, 169 Ark. 567; 275 S.W. 909. Decided 1925.)** (See this Memorandum, p. 6, Ark.)	In **Tinsley v. Craige, ante,** the court says in the opinion: If there is a demise or renting of the premises, with a stipulation that the landlord shall receive his rent by becoming an owner in an undivided interest in the crop, the relationship of landlord and tenant exists as to the premises, and the parties are **tenants in common** of the crop. If the contract between the landlord and one making the crop on his place shows that the parties intend to become tenants in common, the title to the crop vests as any other chattels held in common * * *. **(Harnwell v. Ark. Rice Growers Co-op Assn., 169 Ark. 622, 276 S.W. 371.)** (See this Memorandum, pp. 6, 7, Ark.) Joint tenancy exists where a single estate in real or personal property is owned by two or more persons under one instrument or act of the parties. [**Fullerton v. Storthz Bros., Inc., 190 Ark. 198, 77 S.W. (2d) 996.**]
GEORGIA	The relation of landlord and tenant exists when the owner of real estate grants to another simply the right to possess and enjoy its use, either for a fixed time or at the will of the grantor, and the tenant accepts the grant. No estate passes and the tenant has only the usufruct. **Ga. Code ann., sec. 61-101.** Such contracts may be by parole for any time not exceeding one year; if for a greater time they become tenancies at will. **Sec. 61-102.** Determining factors in fixing the relationship are: (1) Intent, as shown by the agreement; (2) whether there is a transfer of dominion and control over the premises. **Sauter v. Crary, 116 S.E. 231 (Ga. App. 1923).** (See this Memorandum, p. 9, Ga.)	Where one is employed to work for a part of the crop, the relationship of landlord and tenant does not arise. The title to the crop, subject to the interest of the cropper therein, and the possession of the land, remain in the owner. **Ga. Code ann. sec. 61-501, Croppers.** The most important factors in determining the relationship are the intent of the parties and whether dominion or control of the premises passes to the cultivator. If he receives his share of the crop as "wages," he is a cropper. If he pays the landlord his share of the crops as "rent," he is a tenant. **(Sauter v. Crary, ante.)** See also **Appling v. Odom, 46 Ga. 583 (1872).** (See this Memorandum, p. 9, Ga.)	No decisions have been found in Georgia holding that the parties to a cropper's contract are tenants in common of the crop. In **Padgett v. Ford, 117 Ga. 508, 510 (1903),** the Supreme Court of Georgia said: "It is now the settled law of this State that if one furnishes land or materials, and another does the labor necessary to produce the things to be sold, and the latter receives a part of the produce as compensation for his services, no partnership is created. * * * The analogous rule as to croppers, laid down in **Appling v. Odom, 46 Ga. 583** (See this Memorandum, Ga., p. 9.) has been codified. Civil Code, Sec. 3131."

CHART OF CROP-SHARING CONTRACTS

BY ONE IS CULTIVATED BY THE OTHER UNDER AGREEMENT TO SHARE THE CROPS

(4) Title to crop prior to division	(5) Lien of the parties on the crop	(6) Remedy, if cropper violates agreement	(7) Remedy, if landlord violates agreement
It has long been settled that the landlord's lien does not carry any right of possession of the crops as against the tenant; that the tenant has the title with the right of possession and can maintain detinue against the landlord. **Kilpatrick v. Harper, 119 Ala. 452; Stewart v. Young, 212 Ala. 426 (1925).** [See this Memorandum (4), p. 2, Ala.] The tenant's title and possession, however, is subject to the lien of the landlord for rent, supplies, and advances. [See this chart, under (5), next.] (In those States where the relation of landlord and cropper still obtains, the title to the crop, until final division, is in the landlord.)	**Landlord's lien:** Alabama Code, 1940, Title 31, Sec. 15, gives the landlord a paramount lien, with preference over all other liens, on the crops grown on rented lands, for the current year, and for advances to aid in raising the crops. Sec. 25 extends to subtenants of the chief tenant the lien of Sec. 15, where the chief tenant's crop is not sufficient to satisfy the landlord's lien. (For resume of Ala. decisions, see Memorandum, pp. 2, 3, Ala.) The sole remedy for enforcement of the lien is by attachment. **Compton v. Simms, 209 Ala. 287; Code, Title 31, Sec. 20.** (See this Memorandum, p. 3, Ala.) **Cropper's lien:** "Croppers" having been abolished by code, Title 31, Sec. 23, the relation between the parties to a crop sharing contract is that of landlord and tenant or tenants in common of the crop. The tenant has title and possession of the crop, subject to the landlord's statutory lien, and needs no lien. Tenants in common each have a lien on the other's share for contributions. Code, 1940, Title 33, Sec. 81.	Since the Code of 1940, Title 31, Sec. 23, there is no relationship of landlord and cropper, in Alabama. When a tenant, without just cause, fails or refuses to plant the crops, he may be required to vacate the premises at the election of the landlord; and the landlord may recover possession by action of unlawful detainer. **(Code 1940, Title 31, Sec. 24.)** (See this Memorandum, p. 3, Ala.) When a tenant abandons or removes from the premises, the landlord may seize grown or growing crops, whether the rent is due or not, and cause them to be cultivated, in order to pay his rent and advances. The tenant may redeem the seized property, before sale, by tendering the rent, advances, and expenses of cultivation. **(Code 1940, Title 31, Sec. 13; Heaton v. Slaten, 25 Ala. App. 81, 141 So. 267.)** (See this Memorandum, p. 3, Ala.) Willful failure to cultivate at proper time constitutes abandonment. The burden of proving abandonment is on the party asserting it. It is a question for the jury. **(Heaton v. Slaten, ante.)**	The relation being that of landlord and tenant, or tenants in common, the tenant would find his remedy for violation by the landlord in the general law. There is no special statutory provision relating to the rights of the tenant in a cropping contract. Where the parties are tenants in common, they may proceed under **Code 1940, Title 33, Sec. 81.** [See (3), this chart.]
The title to the crop prior to division is determined by the relationship of the parties; that is, where they are landlord and tenant title to the crop is always in the tenant, subject to the landlord's lien, until final division; where they are employer and laborer (or cropper), title is in the landlord at all times prior to actual division. [See under (1) and (2) of this chart, and this Memorandum, p. 5, Ariz.] The relationship of the parties controls the title, and that relationship is determined by intent as interpreted in the light of the circumstances in each case. Where there is no demise of the premises the owner retains title and possession and has title to the crop. Where there is a demise, the relationship of landlord and tenant results, and the tenant has title and possession of the crops, subject to the landlord's lien for rent or advances, or both. **[24 Cyc. 1464; Gray v. Robinson, ante; Gerrard v. Cannon (1934), 43 Ariz. 14, 28 P. (2d) 1016]** (See this Memorandum, pp. 4, 5, Ariz.)	Where the relation of landlord and cropper exists the landlord has title and possession of the crops until final division, and no lien is necessary. [See under (4) this chart.] The landlord has a statutory lien on the crops growing or grown on the leased premises for rent thereof, and that whether payment is to be in money, property, or products of the premises, and also for the faithful performance of the lease. Such lien continues for 6 months after the expiration of the term of the lease. It extends to subleases and assignees, and may be enforced by action to recover possession, or by replevin against one to whom the crops were delivered by the tenant while rent was unpaid. **(Arizona Code, 1939, Sec. 71-306; Scottsdale Ginning Co. v. Longan, 24 Ariz. 356. Decided in 1922.)** (See this Memorandum, p. 5, Ariz.) He does not waive his lien by bringing suit in equity to foreclose. **[Gila Water Co. v. International Finance Corporation, 13 Fed. (2d) p. 1. (1926).]** (See this Memorandum p. 5, Ariz.)	No actual decisions of the Arizona courts defining the remedy of the landlord when the cropper violates the contract have been found. Other State courts have held: The cropper cannot recover for partial performance, and his interests become vested in the landlord, divested of any lien which may have attached **(Thigpen v. Leigh, 93 N. C. 47);** if the cropper fails to begin or continue the work, without good cause, the landlord may maintain forcible detainer and dispossess him **(Wood v. Garrison, 23 Ky. L. Rep. 295, 62 S.W. 728);** if the cropper takes the crop from the possession of the landowner, without his consent, such taking is larceny, robbery, or other offense, according to the circumstances. **(Parrish v. Com., 81 Va. 1.)** (See this Memorandum, p. 5, Ariz.)	Where the parties are employer and cropper, the cropper is a laborer and receives a share of the crop as wages. Under Sec. 62-215, Arizona Code of 1939, a laborer's claims for wages take priority over levies and attachments. Sec. 62-215: **"Wages to take priority over attachments and levies—Procedure:** In case of levy under execution, attachment, and like writs, except where such writ is issued in an action under this article, any miner, merchant, salesman, servant, or laborer who has a claim against the defendant for labor done may give notice of his claim, sworn to and stating the amount thereof, to the creditors and defendant debtor, and to the officer executing the writ, at any time within three days before the sale of the property levied on. * * *" (The Statute then sets out the procedure to be followed.)
Title to the crop prior to division, where the parties are not tenants in common, is clearly defined in a long line of Arkansas decisions, and is determined solely by the relationship of the parties to a cropping contract. When the relation is that of landlord and tenant, title and possession of the crop is in the tenant, prior to final division. When the relation is that of employer and cropper, or laborer, title and possession of the crop is in the landlord or employer at all times prior to final settlement and division. [See the cases cited under (1) of this chart.] (See this Memorandum p. 7, Ark.)	Every landlord has a statutory lien upon the crops grown upon the demised premises in any year for rent accruing during that year, and such lien continues for 6 months. Landlords also have a lien for advances to enable the tenant to make the crop. Such liens have preference over any mortgage of the crop by the tenant. **[Pope's Digest, Secs. 8845, 8846; Neal v. Brandon, 70 Ark. 79; Commodity Cr. Corp. v. Usrey, 199 Ark. 406, 133 S.W. (2d) 887; (Dec. 1939).]** (See this Memorandum, pp. 7, 8, Ark.) Sec. 8820, Pope's Digest (Sec. 6864, C. & M. Digest) provides an "absolute lien" for laborers who perform work or labor on any "object, thing, material or property," for such labor, subject to prior liens and the landlord's lien for rent and supplies. This statutory lien is superior to contractural liens even though the latter be prior in point of time. **Carraway v. Phipps, 191 Ark. 326, 86 S.W. (2d) 12. Decided September, 1935.** (See this Memorandum, p. 8, Ark.)	If a laborer, without good cause, abandon an employer before the completion of his contract, he becomes liable to such employer for the full amount of any account he may owe him, and shall forfeit to his employer all wages or share of crop due him, or which might become due him from his employer. **Pope's Digest, Sec. 8842, (Act Mar. 21, 1883).** The courts hold that where a sharecropper abandons his crop it is forfeited to the landlord. **Crawford v. Slatten, 155 Ark. 283, 244 S. W. 32; Rand v. Walton, 130 Ark. 431; Latham v. Barwick, 87 Ark. 328.** (See this Memorandum, p. 9, Ark.)	If an employer shall, without good cause, dismiss a laborer prior to the completion of his contract, unless by agreement, he shall be liable to such laborer for the full amount that would have been due him at the completion thereof, and such laborer is entitled to the lien provided in Sec. 8838 (Pope's Digest) for the enforcement of such liability (Pope's Digest, Sec. 8841). Under Sec. 8828, the laborer (or cropper) may mortgage so much of the crop as may be equal to his interest in it at the time, if the employer fails or refuses to furnish supplies agreed upon.
Whenever the relationship of landlord and cropper exists, the statute itself invests title and right to control crops growing or grown by the cropper in the landlord, until he has received his part of the crop and has been fully paid for all advances to the cropper in the year the crops were made to aid in making them. **(Ga. Code Ann. Sec. 61-502)** In a landlord and tenant relationship the tenant acquires possession and control over the premises for the term, and in making the crop performs the labor for himself. Title and possession of the crops are in him, subject to the landlord's lien for rent, and for advances. **(Sauter v. Crary, ante.)** (See this Memorandum, p. 9, Ga.) **(Ga. Code Ann. 1933, Sec. 61-201, 61-202.)**	Sec. 61-201, Ga. Code, 1933, gives a landlord a special lien, by contract in writing, for advances to tenants for the purpose of making crops. Sec. 61-202 gives landlords the right to secure themselves from the crops for stock, supplies, and utensils on terms agreed upon between the parties, and then provides that the lien shall arise by operation of law when the relation of landlord and tenant exists, as well as by special contract in writing, whenever such articles are furnished; and further provides that when the lien arises by contract in writing such contract shall be assignable by the landlord, and may be enforced by the assignee. (See this Memorandum, p. 10, Ga.) The cropper, as a "laborer" may maintain an action to enforce his statutory laborer's lien. **[Ga. Code 1933, Sec. 1801-1803; McElmurray v. Turner, 12 S.E. 359 (Ga. 1890).]** (See this Memorandum, p. 10, Ga.)	When a cropper unlawfully sells or disposes of any part of the crop, or excludes the landlord from possession of the same while title remains in him, the landlord, by statute, has the right to repossess such crop by possessory warrant, or any other process of law. (Ga. Code 1933, Sec. 61-503.) Persons purchasing corn or cotton in the seed from croppers who have no right to sell, after notice in writing by the landlord or employer, are guilty of a misdemeanor. **(Code, 1933, Sec. 61-9902.)** Croppers selling or disposing of any part of the crop, before the landlord has received his share in full for all advances in the year in which the crop was made, and to aid in making it, are guilty of a misdemeanor. **(Code 1933, Sec. 61-9904.)** (See this Memorandum, p. 11, Ga.)	Sec. 61-9904, Ga. Code 1933, provides that a landlord who refuses to deliver, on demand, to the cropper the part of the crop coming to him, or its value, after payment of all advances made, shall be guilty of a misdemeanor. When the landlord refuses to perform his part of the contract, the cropper may obtain necessary supplies, complete the crop, and hold the landlord's share for actual damages or he may sue for his special injury, including services, or, at the end of the harvest, he may sue for the full value of his share of the crop, or what his share would reasonably have been. **(Pardue v. Cason, 22 Ga. App. 289 ; S.E. 16; Russell v. Bishop, 110 S.E. ..4.)** (See this Memorandum, pp. 11, 12, Ga.)

MEMORANDUM REGARDING—LEGAL RELATIONS AND RIGHTS OF PARTIES WHEN LAND OWNED

STATE	(1) Landlord and tenant, when	(2) Employer and cropper, when	(3) Tenants in common of the crop, when
KENTUCKY	Under a crop-sharing contract, in Kentucky, if there is a demise of the premises, or if possession and control of the land passes from the landowner to the cultivator for a term, the relationship is that of landlord and tenant. [**Redmon v. Bedford, 80 Ky. 13 (1882)**] In that case the Court said: "The use of land under like contracts is common within this State, and it is evident from the provisions of the statute referred to (sec. 1, art. 5, chap. 66, Kentucky stat.) that the relationship of landlord and tenant exists in such cases although no defined term is to be found in the contract between the parties * * * ." (See this Memorandum, Ky. p. 12.)	The leading case of the very few reported cases in Kentucky, **Wood v. Garrison, 139 Ky. 803**, holds that where the landlord was to furnish the land, barn, tenant house, and pasture for a horse, and the cultivator was to do all of the necessary work to raise a crop of tobacco, which was to be shipped and sold by the landlord, and who was to pay one-half of the proceeds to the cultivator, the relationship between the parties was that of employer and cropper, under Sec. 2327, Ky. General Stat. The Court cites **Harrison v. Ricks, 71 N.C. 7**, where it was said, "A cropper has no estate in the land; that remains in the landlord; consequently, although he has in some sense the possession of the crop, it is only the possession of a servant and is in law that of the landlord * * * ." (See this Memorandum, Ky. p. 12.)	In Kentucky there is no statutory or judicial determination of the relationship of tenants in common as between a landowner and the person cultivating the land for a share of the crops. For a general discussion of the tenant-in-common relationship (See this Memorandum, Miss. pp. 18, 19.) Tiffany, in his work on "Landlord and Tenant," comments on the relationship as follows: "A number, perhaps a majority, of the courts recognizing the possibility of loss by one party of the share to which his claim entitles him if the whole title is regarded as vested in the other, have asserted the doctrine that before division the two parties are tenants in common of the crop * * * , this view being, perhaps, more frequently based on grounds of expediency than upon the construction of the particular agreement." (See this Memorandum, Miss. p. 18, and cases there cited.)
LOUISIANA	In Louisiana where land owned by one person is cultivated by another for a share of the crop, the trend of the decisions is to call the relationship between the parties one of landlord and tenant. Art. 2671 of the Civil Code of La., Sec. 5065 and 6602, recognizes that land may be leased for a share of the crop, and the relationship of landlord and tenant, or lessor and lessee may be created. **Jones v. Dowling, 125 So. 478 (1929); Lalanne Bros. v. McKinney, 28 La. Ann. 642 (1876); La. Farm Bureau v. Clark, 160 La. 294, 107 So. 115.** In **Busby v. Childress (La. App.), 187 So. 104 (1938)**, the Court held where it is not shown that there was an agreement that persons cultivating the land of another are to receive a share of the crop, or proceeds thereof, in lieu of wages, or circumstances are such as to show that that was the intention of the parties, the contract is considered a contract of lease.	One who cultivates land belonging to another for a share of the crop is a "cropper," or hired laborer, if the share to be received by him is in lieu of wages for his labor, and if control and dominion of the premises remain in the landowner. A share-cropper's contract is one in which a person agrees to work the land of another without obtaining any interest in the land or any legal possession of the premises further than as an employee. **Holmes v. Payne, 4 La. App. 345 (1926); Bres & O'Brien v. Cowan, 22 La. Ann. 438; Lalanne Bros. v. McKinney, 28 La. Ann. 642.** (See this Memorandum, La. p. 15.)	In Louisiana there does not seem to be any specific recognition of the relationship of tenants in common as applied to a landowner leasing land to another for a share of the crop, or paying a share of the crop as wages for the labor of cultivating the land. The Court, however, on a rehearing of **Jones v. Dowling, 125 So. 478 (1929)** stated in the opinion: "After careful consideration * * * we are convinced that we have correctly held that the interveners, the share tenants of the defendant, did not bear to him the relation of employers to employer, but that of lessees to lessor, and are entitled to their proportionate share of the cotton raised by them as cotenants with the defendant." (See this Memorandum, p. 14, La.)
MISSISSIPPI	The decisions in Mississippi are in conflict, but the clear trend is toward holding the relationship between the parties to a share-cropper contract to be that of landlord and tenant. **Schlicht v. Callicott, 76 Miss. 487 (1898). Alexander v. Zeigler, 84 Miss. 560 (1904). Williams et al v. Sykes, 170 Miss. 88 (1934).** (See this Memorandum, pp. 17,18.) The controlling consideration in every case must be the intention of the parties. In the latest case, **Williams et al v. Sykes**, the court said: "It is clear to us that the relationship between the landowner furnishing a house, land, and farm implements, and the share cropper furnishing the labor, is properly the relationship of landlord and tenant, and that the tenant has the right to the possession of the crops grown, subject to the landlord's lien." (See this Memorandum, pp. 17,18.) The relation of employer and cropper, or laborer, does, however, exist, as will be seen under the next heading.	While the trend of the judicial decisions in Mississippi is clearly toward holding the landlord and tenant relationship to exist in share-cropping contracts, the relationship of employer and cropper, or laborer, does exist. "Croppers" are clearly recognized in so late a case as **Jackson v. Jefferson, 171 Miss. 774 (1935)**, where it was said: "Where a tenant was authorized to sell the crop free from the share-cropper's lien, and to turn buyer's checks over to the landlord for collection, and the landlord was to turn back to the tenant amounts due croppers, to be turned over to them, croppers' liens, though waived as to the buyers of the crops, were not waived as to the proceeds in the hands of the tenant or landlord. Where there is no demise of the premises, and the share of the crop goes to the cultivator **in lieu of wages**, the parties are employer and laborer, or "cropper." (See this Memorandum, Miss. p. 18.)	In some cases, even though the cultivator is expressly stated to be a tenant, a tenancy in common of the crop is recognized as existing. (See this Memorandum, p. 18.) The case of **Doty v. Heth, 52 Miss. 530 (1876)**, held: "Exactly what relationship is created between the parties by a contract to crop on the shares is difficult to define. Somewhat extensive examination of the cases indicates that they are usually regarded as constituting the parties tenants in common of the crops * * *." But in spite of **Doty v. Heth**, which was overruled, it is difficult to see how a cropper having no demise or any estate in the land and receiving only a share of the crop "in lieu of wages," could be a tenant in common with the landowner or have "undivided possession of the crop." In other words, how can a share of the crop, which is to be delivered to the cultivator as wages, be regarded as belonging to him before such delivery? (See this Memorandum, pp. 18, 19.)
MISSOURI	It is well settled in Missouri that where in a crop-sharing agreement possession of the premises passes to the cultivator, the relationship of the parties is that of landlord and tenant. In the earliest reported case [**Johnson v. Hoffman, 53 Mo. 504 (1873)**], the court held the material question to be whether the agreement between the parties was a lease whereby the possession of the farm was transferred to the cultivator, or simply an agreement by which he was hired to cultivate the farm on shares, the defendant at all times holding the possession. 50 years later, in the case of **Jackson v. Knippel, 246 S.W. 1007**, the court held "The most important criterion in arriving at the intention of the parties and the consequential relationship created, is: Which party was entitled to the possession of the land? If it was the intention that the landowner should part with * * * the possession of the land for the purpose of cultivation, then * * * the relation between the parties is that of landlord and tenant." (See this Memorandum, p. 20.)	The relation of employer and cropper comes into existence when a cultivator of the land receives no demise of the premises, and possession and dominion over the same remain in the landowner, the cultivator to receive wages in the form of an agreed portion of the crop raised. In **Pearson v. Lafferty, 197 Mo.App. 123 (1917)**, the court held that where one cultivated land under an agreement to give the owner one-half of the crop, without renting the land for any fixed period, and without possession to the exclusion of the owner, he was a mere "cropper," and not a tenant. (See this Memorandum p. 21.)	There is considerable opinion in the reported Missouri cases holding the relationship between the landowner and the cultivator under a share-cropping contract as one of tenants in common of the crop. In **Pearson v. Lafferty, ante**, the court said: "Apart from divergencies in the results reached in the cases due to differences in the various agreements involved, there is considerable conflict in authority as to the respective interests or rights of the owners and the cultivators, or croppers, in and to the crop itself. It appears that the trend of judicial authority is to hold that a contract whereby one is allowed use of land to cultivate, the owner to have a share of the produce for its use, will, in general, at least, create a tenancy in common in the growing crop; and this is said to be so whether the agreement operates as a lease or a mere 'cropping contract.'" (See this Memorandum, p. 21, and same heading under Miss. pp. 18, 19, and cases there cited.)

BY ONE IS CULTIVATED BY THE OTHER UNDER AGREEMENT TO SHARE THE CROPS—Continued

(4) Title to crop prior to division	(5) Lien of the parties on the crop	(6) Remedy, if cropper violates agreement	(7) Remedy, if landlord violates agreement
Under Sec. 2325, Ky. Stat. 1936, it is provided: "A contract by which a landlord is to receive a portion of the crop planted, or to be planted, as compensation for the use or rent of the land, shall vest in him the right to such a portion of the crop when planted as he has contracted for * * *." It would seem, then, that title to the part of the crop contracted for vests in the landlord as soon as the crop is planted. (See this Memorandum, Ky. p. 13.) The title to the crop before division, where the cultivator is a "cropper," is in the landlord. In the case of **Wood v. Garrison, 139 Ky. 603**, the court cites Woodfall's "Landlord and Tenant," as follows: "It is frequently admitted * * * that under a pure and unqualified cropping contract the entire legal ownership of the crop is in the owner of the land until division. (See this Memorandum, Ky. p. 13.)	The Ky. Stat. (Sec. 2323 and 2324), provide that: "The landlord shall have a superior lien, against which the tenant shall not be entitled to any exemption, upon the whole crop of the tenant raised upon the leased or rented premises, to reimburse the landlord for money or property furnished to the tenant to enable him to raise the crop, or to subsist while carrying out his contract of tenancy * * *. The landlord may enforce the lien * * * by distress or attachment." Sec. 2317 provides that the landlord shall have a "superior lien" on the crops of the farm or premises rented for farming purposes, and the fixtures, household furniture, and other personal property of the tenant * * * for not more than one year. (See this Memorandum, Ky. p. 13.) There is no special provision for a cropper's lien, but he would have a laborer's lien for his labor in making the crop, and if denied his share, could bring action for breach of contract. (See this Memorandum, Ky. p. 13.)	In interpreting Sec. 2327, Ky. Gen. Stat., the Court of Appeals in **Hickman v. Fordyce (1918), 179 Ky. 737**, states: "* * * When a tenant has failed or refused to perform the labor or services he agreed to perform, or to do the thing he agreed to do, and within the time agreed upon, landlord is entitled to repossess himself of the premises under a writ of forcible detainer." The landlord is further protected by Sec. 1349, Ky. Stat., which provides a fine and liability for damages where a person wilfully entices or influences a laborer to abandon his contract. (See this Memorandum, Ky. p. 13.)	No statutory provision, nor case directly in point, is found in Kentucky which give any specific remedy to the cropper when the landowner violates the contract. In Missouri the cropper could sue for breach of contract if the landowner refused to permit him to take his share of the crop. **(Beasley v. Marsh, 30 S.W. 2d, 747, decided in 1931.)** In Kentucky the cropper doubtless could proceed under the general statutes for breach of contract.
Where the relationship is that of landlord and tenant, it is provided by statute that the crops belong to the landlord and the tenant in the proportion agreed upon between them. **(Act No. 211, 1908, which is Sec. 5065, La. Gen. Stat.)** Lessee's crops for the current year cannot be held to pay any debt of the landowner, or any mortgage which may have been recorded after the lease. **(Sec. 6602, La. Gen. Stat.)** Where the relationship is that of landowner and cropper, it is to be inferred from the few cases reported that title to the crop remains in the landowner until final division under the terms of the agreement. (See this Memorandum, La. p. 15.)	Act. No. 211, 1908, being La. Gen. Stat., Sec. 5065, provides that whenever a landowner leases land for a part of the crop, that part agreed upon between the parties is at all times the property of the landlord. The landlord, therefore, needs no lien for rent as he holds title to his part of the crops at all times. A cropper receiving a part of the crop in lieu of wages is a laborer and is entitled to a laborer's lien, and specifically is given the right of provisional seizure under Sec. 2147, Louisiana General Statutes. (See this Memorandum, La. p. 16.) See Sec. 5139, La. Gen. Stat., where the laborer's right to sue for wages is recognized. (See this Memorandum, La. p. 16.)	Sec. 4384, La. Gen. Stat. (Dart), makes it a misdemeanor for a third person to interfere with, entice away, or induce a tenant or hired hand to leave the services of the employer, or to abandon the land. (See this Memorandum, La. p. 16.) The landlord is further protected against the holding over of a laborer or cropper on the cultivated land by Sec. 6606.1 of the Gen. Stat., after the occupancy or possession shall have ceased. **La. Gen. Stat. (Dart), Sec. 4384, 4385, and 1291, 1293.** It is also unlawful for any person to go on the land of another in the night time to assist in moving a laborer or tenant therefrom. **(Sec. 1291, La. Gen. Stat.)** (See this Memorandum, La. p. 16.)	The cropper being a laborer, has a laborer's lien on the crop produced by him, and in Louisiana he may obtain a writ of provisional seizure under Sec. 2147, La. Gen. Stat. (Dart). This section reads: "In addition to the cases in which provisional seizures are allowed by the law, the right to such remedy shall be allowed to laborers on farms or plantations when they shall sue for their hire, or may fear that the other party is about to remove the crop, in the cultivation of which they have labored, beyond the jurisdiction of the court." Sec. 5139 provides that in any case instituted by a laborer for the recovery of wages, it is competent for the judge, upon application of either party, to try the case after three days' service of the citation. (See this Memorandum, La. pp. 16, 17.)
Title to the crop prior to division depends upon the relationship of the parties. Where that relationship is landlord and tenant, it is everywhere established that the title to the crop is in the tenant, subject to the landlord's lien for rent. Where the parties are held to be tenants in common, as they may be in Mississippi, as seen next above, they have joint possession and ownership. When there is no demise of the premises, and the landowner retains dominion and control, agreeing only to pay the cultivator a fixed portion of the crop in lieu of wages, title to the crop remains in the landowner at all times prior to division thereof. (See this Memorandum and cases cited on p. 19.)	Sec. 2238 of the Miss. Code of 1930 gives the employer and the "cropper" or "laborer" each a lien on the interest of the other for advances on the one hand, and wages on the other. This section reads: "Every employer shall have a lien on the share or interest of his employee on any crop made under such employment for all advances of money and for the fair market value of other things advanced by him, during the existence of such employment; and every employee, laborer, cropper, part owner, overseer, or manager, or other person who may aid by his labor in making any crop, shall have a lien on the interest of the person who contracts with them for such labor for his wages, share, or interest in such crops, whatever may be the kind of wages * * *." In addition the landowner is given a paramount lien for rent by Sec. 2186 of the code (See this Memorandum, p. 19). It is also made a misdemeanor for any person with notice of either lien to remove or sell such products with intent to impair such lien. (See this Memorandum, p. 20.)	Where a tenant, or a "cropper," violates the agreement with the landlord, the latter may have recourse, under Sec. 2198 and 2237 of the code, by obtaining an attachment when he verily believes that his tenant will remove the products from the leased premises before the expiration of his term. Also, if a tenant in arrears for rent deserts the premises so that sufficient distress cannot be had to pay the arrears, a Justice of the Peace may put the landlord in possession of the premises. The landlord can maintain an action for damages against a purchaser with notice of products subject to the lien for rent. **(Cohn v. Smith, 64 Miss. 816;** see this Memorandum, p. 20.)	There is no specific provision for any remedy for the cropper if the landlord violates the contract. Under Sec. 2238 (See this Memorandum, p. 19), he has a lien "* * * on the interest of the person who contracts" with him for his wages. The cropper, no doubt, could bring action for breach of contract where the landlord had violated his agreement.
It is apparently settled in most jurisdictions, and certainly in Missouri that in an agreement between an employer and cropper, the title to the crop before division is in the employer. Woodfall's "Landlord and Tenant," p. 125, states: "It is everywhere admitted that under a pure and unqualified cropping contract the entire legal ownership of the crop is in the owner of the land until division." It is equally well settled in Missouri that when in a cropping contract, the relationship is that of landlord and tenant, the title to the crop is in the tenant subject to the landlord's lien for rent and advances. (Note: There may be an exception in Louisiana, under Sec. 5065 of the Gen. Stat. See this Memorandum, La. p. 15. And in North Carolina the landlord by Sec. 2355, Code 1939, is "vested in possession" of the crops of both tenants and "croppers." See this Memorandum, N.C. p. 23.) (See this Memorandum, p. 21.)	Sec. 2976 to 2978 give the landlord a lien on the crops grown for 120 days after the expiration of the tenancy, and a superior lien for 15 days upon crops removed from the premises, wherever found. The lien may be enforced by distress or attachment, in the manner provided for the collection of rent. There is no specific provision for a cropper's lien, but it is said indirectly in **Morrell v. Alexander (Mo. App.) 215 S.W. 764 (1919)**, a cropper may sue for damages for breach of contract.	Sec. 2986, Mo. Stat., Ann., provides: "Any person who shall be liable to pay rent, whether same be due or not, or whether same be payable in money or other thing, if the rent be due within one year thereafter, shall be liable to attachment for such rent in the following instances." The statute then names as some of the instances: Intention to remove the property from the rented premises; when he has removed property within 30 days; and when he has disposed of crops so as to endanger collection of rent. The statute also provides that if any person shall buy a crop grown on demised premises upon which rent is unpaid, with knowledge of those facts, he shall become liable in an action for the value thereof, and may be subject to garnishment at law in any suit against the tenant for recovery of rent. (See this Memorandum, p. 21.)	A cropper can sue for breach of contract when his share of the crop is withheld by the landlord. In **Beasley v. Marsh, 30 S.W. 2d, 747 (1931)**, the court reviews **Morrell v. Alexander**, ante, and says: "This case does hold that a cropper could not maintain action for conversion against a landlord where there has been no division of the crops * * *, but that opinion also holds that in a suit based on a petition similar to this one, the suit may be treated as a suit for damages for breach of contract. (See this Memorandum and citations on p. 22.)

MEMORANDUM REGARDING—LEGAL RELATIONS AND RIGHTS OF PARTIES WHEN LAND OWNED

STATE	(1) Landlord and tenant, when	(2) Employer and cropper, when	(3) Tenants in common of the crop, when
NORTH CAROLINA	A demise of the premises and surrender of exclusive possession for a term is necessary to create the relation of landlord and tenant between the parties to a crop-sharing contract in North Carolina, as in most other states. The rule that such a tenant has title and possession of the crop, subject to the landlord's lien for rent and advances, is, however, varied by a North Carolina statute declaring that unless otherwise agreed between the parties, all crops shall be deemed to be "vested in possession" of the landlord at all times until all rents and advances are paid. (Sec. 2355, N. C. Code of 1939; see this Memorandum N. C. p.23.) The statute also provides that to entitle the landlord to the benefit of the lien, he must conform, in the prices charged for advancements, to the provisions of Sec. 2482, which limits such charges to 10 percent over the retail cash price, which is to be in lieu of interest. (See this Memorandum N. C., p. 23.)	A cropper in North Carolina is one who, having no estate in the land, cultivates it for a share of the crop, (**State v. Burwell, 63 N. C. 661; State v. Austin, 123 N. C. 749**; see this Memorandum N. C. p.22.) By Sec. 2355, N. C. Code, however, the cropper and the tenant occupy the same position as far as ownership of the crops is concerned. The statute lessened the tenant's rights in the crop by increasing the landlord's right as a lien holder vested in possession of the crop, and at the same time raised the cropper's status from that of a laborer receiving pay in a share of the crop, with title to the crop vested in the landowner, to that of one having a right and actual possession subject to the landlord's lien. **State v. Austin, 123 N. C. 749, 31 S.E. 173, 1898**; see this Memorandum N. C. p. 22.	While the relationship of tenants in common between a landlord and a cropper in a crop-sharing contract is well established in some States, (Miss., Tex., and Tenn.), no N. Car. case has been found holding that such a relationship exists. In view of Sec. 2355 of the N. Car. Code (See this Memorandum N. C., p. 23.) it appears that this relationship of tenants in common of the crop does not exist. The landlord could not well be "vested in possession" of the crop, as declared by the statute, and at the same time be a tenant in common of the same crop, since tenants in common "hold by one and the same undivided possession." (A. and E. Enc. 2d, vol. XVII, p. 651; see this Memorandum Miss., p.19.)
OKLAHOMA	In Oklahoma, as in most of the States covered in this Memorandum, the relationship of landlord and tenant arises in a crop-sharing contract when there is any demise of the premises, and the tenant has control thereof, and of the crops, and pays the landlord a designated part of the crop as rent. The latest reported case distinguishing the tenant from a cropper is **Elder v. Sturgess, 173 Okla. 620, 49 P. (2d), 221 (1935)**, in which the court says: "The tenant has exclusive right to possession of the land he cultivates and an estate in the same for the term of his contract, and consequently he has a right of property in the crops."	The Supreme Court of Oklahoma in **Elder v. Sturgess**, ante, quotes with approval its former opinion in **Empire Gas and Fuel Co. v. Denning, 128 Okla. 145, 261 P. 929 (1927)**, distinguishing between cropper and tenant, in the following language: "The difference between a cropper and a tenant is that the cropper is a hired hand, paid for his labor with a share of the crop he works to make and harvest. He has no exclusive right to possession and no estate in the land nor in the crop until the landowner assigns to him a share. The tenant has exclusive right to possession of the land he cultivates and an estate in the same for the term of his contract, and consequently he has a right of property in the crop." In the earlier case of **Halsell v. First National Bank, 109 Okla. 220, 235, P. 538 (1925)**, the identical language as above is used in the syllabus. And in the later case of **Magnolia Petroleum Co. v. Jones, 185 Okla. 309, 91 P. (2d) 769 (1939)**, the court refused to overrule the **Empire Gas and Fuel Co. v. Denning** case.	There is no statutory determination of when a landlord and tenant or cropper are tenants in common of the crop, and no decisions have been found defining that relationship of such parties in this State. See **Arrington v. Arrington, 79 Okla. 243, 192 P. 689; Prairie Oil and Gas Company v. Allen (C.C.A. Okla.) 2 F. 2d, 566.**
SOUTH CAROLINA	When, in a crop sharing contract there is a demise of the premises and the person cultivating the land acquires an estate therein, with right of title to and possession of the crop, subject to the landlord's lien for rent and advances, the relationship is that of landlord and tenant. Under such an agreement it is competent for the tenant or lessee to give an agricultural lien on the crop grown by him subject to the landlord's statutory lien for rent and advances. **S. C. Code Sec. 8771; Brock v. Haley & Co., 88 S. C. 373.**	The distinction between a tenant and a cropper is that a tenant has an estate in the land for a given time, and a right of property in the crops; while the cropper has an estate in the land, nor ownership of the crops, but is merely a servant and receives his share of the crops from the landlord in whom the title is. It is always a question of the construction of the agreement under which the parties are acting. **Taylor v. Donahue, 125 Wis. 513. Huff v. Watkins, 15 S. C. 86; Loveless v. Gilliam, 70 S. C. 391 (1904).** In South Carolina the cropper, as a laborer, does have a statutory lien on the crop to the extent of the amount due for his labor, next in priority to the lien of the landlord for rent. **(S. C. Code, Sec. 8772;** see this Memorandum S. C., p.27.)	No reference to the relationship of tenants in common of the crop as between landowner and cultivator on shares has been found in the S. C. Stat. and decisions, and no such relationship appears to be recognized in S. C. Tiffany, in his work on Landlord and Tenant, Sec. 253-b, says: "A number, perhaps a majority, of the Courts recognizing the possibility of loss by one party of the share to which his agreement entitles him, if the whole title is regarded as vested in the other, have asserted the doctrine that before division the two parties are tenants in common of the crop * * *, this view being perhaps more frequently based upon grounds of expedience than upon the construction of the particular agreement." (See this Memorandum S. C., p. 26.)
TENNESSEE	The relationship of landlord and tenant in Tennessee rests upon the agreement between the parties, followed by the possession of the premises by the tenant under the agreement. An express contract is unnecessary and tenancy may be inferred from the conversations and actions of the parties. (See this Memorandum Tenn., p. 28, and cases there cited.) If the effect of the arrangement between the parties in a share-cropping contract is to give the cultivator the possession of the land, the exclusive possession, it is frequently termed, a tenancy is created. (Tiffany on Landlord and Tenant, vol. I, p. 121.) While there is no statutory definition of the relation of landlord and tenant as applied to share-cropping contracts in Tennessee, Michie's Digest of Tenn. Rep., p. 410, cites Bouvier's Law Dictionary, vol. II, p. 115: "The term landlord-and-tenant denotes the relationship which subsists by virtue of a contract express or implied between two or more persons for the possession or occupation of lands * * * for a definite period."	Although Tennessee statutes make frequent reference to "share croppers" in giving landlords liens on crops raised on their lands, and frequently use the phrase "tenant or share cropper," they do not define what a share cropper is. However, there can be no doubt that the relationship is the same as that in other States, namely, one of employer and laborer. In the case of **McCutchin v. Taylor, 79 Tenn. 259,** the court held that an agreement to give a part of the crop in consideration of the labor of tillage is as much a hiring as an undertaking to pay in money. Perhaps the failure of the statutes to define share croppers is due to the earlier decisions to the effect that landowners and laborers working for a part of the crop were tenants in common of the crop. [See (3) following and this Memorandum Tenn., p. 29.]	A contract by a laborer with a landowner to farm on the shares does not create a partnership but they are tenants in common of the crop, and each may sell or mortgage his respective interest. **Jones v. Chamberlain, 52 Tenn. 210 (1871); Mann v. Taylor, 52 Tenn. 267 (1871); Hunt v. Wing, 57 Tenn. 139 (1872).** It is to be noted that these cases were tried in 1871-72, and no later cases have been found. However, the legislature of Tenn. by Acts of 1923-27, Sec. 8027, Williams' Tenn. Code, provides that nothing in this law shall affect the portion of the crop reserved as rent by the landlord of a share cropper * * *, it being the intention to treat the title to such portion of the crop as vested in the landlord unless the contract expressly provides otherwise. (See this Memorandum Tenn. p.29.) It would seem that the landowner and the cropper cannot now be tenants in common of the crop since title to the landlord's portion is vested in him by Sec. 8027.

CHART OF CROP-SHARING CONTRACTS

BY ONE IS CULTIVATED BY THE OTHER UNDER AGREEMENT TO SHARE THE CROPS—Continued

(4) Title to crop prior to division	(5) Lien of the parties on the crop	(6) Remedy, if cropper violates agreement	(7) Remedy, if landlord violates agreement
Before Sec. 2355, N. Car. Code, 1939, became effective, title to the whole of the crop was, in contemplation of law, vested in the tenant (even where the parties had agreed upon a certain share of the crops as rent) until a division had been made. Under a cropper agreement, the title was vested in the landlord at all times prior to division. (See this Memorandum N. C., p.22.) By Sec. 2355, title to all crops is vested in the landlord in the absence of an agreement to the contrary, until the rent and advancements are paid. **State v. Higgins, 126 N. C. 1112, 36 S.E. 113; citations in this Memorandum, N. C., p.23.**	Sec. 2355 (See this Memorandum S.C.,p. 23.) provides a landlord's lien on all crops for rents and advancements when lands are rented for agricultural purposes by either a tenant or a cropper, under either written or verbal contract. However, there is a restriction in this lien not found in any other State, that in making advancements the landlord must conform to the provisions of Sec. 2482 (See this Memorandum N. C.,p. 23.) limiting the amount charged for advancements to 10 percent over the retail cash price, under penalty of losing the lien. (See this Memorandum N.C.,p.23.) This lien is separate and distinct from the lien for advancements alone given under Sec. 2480, which latter lien is subordinate to the landlord's and laborer's liens, and provides that the agreement for advancements must be in writing. (See this Memorandum N.C.,p.23.) The landlord's lien is superior to all other liens but its priority is only for the year in which the crops are grown. (See this Memorandum N.C.,p.23.) The tenant or cropper have a lien under Sec. 2356, under certain conditions. (See this Memorandum N.C.,p.24.)	Under the N. C. Code the landlord may bring claim and delivery to recover possession of crops where his right of possession under sec. 2355 is denied, or he may resort to any other appropriate remedy to enforce his lien for rent due and advancements made. **Livingston v. Farish, 89 N. C. 140.** A tenant who removes any part of the crop before satisfying the landlord's lien becomes liable civilly and criminally. The remedy of claim and delivery was designed for the landlord's protection and cannot be invoked before the time fixed for division unless the tenant is about to remove or dispose of the crop, or abandon it. **Jordon v. Bryan, 103 N.C. 59, 9 S.E. 135.** A cropper who shall negligently and willfully refuse to cultivate the crop, or abandons the same without good cause before paying for advancements; or a landowner willfully failing or refusing to furnish advances according to his agreement; or any person who shall entice or persuade any cropper to abandon his agreement, is guilty of a misdemeanor under Sec. 4481. (See this Memorandum N. C., p.24.)	When a landlord gets possession of the crop otherwise than by the mode prescribed in Sec. 2355, and refuses or neglects upon notice of five days to make a fair division of the crop with the lessee or cropper according to the agreement, then the lessee or cropper is entitled to the same remedy given in an action upon a claim for the delivery of personal property. This section intends to favor the laborer as against those matters and things upon which his labor has been bestowed. **Rouse v. Wooten, 104 N. C. 229, 10 S.E. 190;** see this Memorandum N. C., p. 24; **State v. Keith, 126 N. C. 1114, 36 S.E. 169.**
When a tenant cultivates crops under a renter's contract providing that he shall pay a portion of the crop as rent, and shall gather same and deliver to the landlord his part, the tenant has a right to possession of the entire crop until it is gathered and divided, and can maintain an action for damages for its destruction or injury. **Magnolia Petroleum Co. v. Jones, 185 Okla. 309 (1939).** Title 41 Sec. 24, Okla. Stat. of 1941, provides that when rent is payable in a share of the crop, the lessor shall be deemed the owner of such share, and if the tenant refuses to deliver such share, the lessor may enter upon the land and take possession of the share, or may obtain possession thereof by action in replevin. The landlord, then, is the owner of the agreed proportion of the crop going to him for rent at all times, regardless of the fact that the relationship may be that of landlord and tenant. (See this Memorandum Okla., p. 25.) A mere cropper has no title to the crop prior to its division.	Since the lessor is deemed to be the owner of his share or proportion of the crop under a share-cropping agreement, he does not need any lien. Sec. 27 of Title 41 provides that when any person liable for rent attempts to remove the crops from the leased premises, the person to whom the rent is owing may sue out an attachment in the same manner as is provided by law in other actions. **Cunningham v. Moser, 91 Okla. 44, 215 P. 758.** In the absence of contract a landlord has no lien on the tenant's part of the crop for supplies furnished to make the crop. **Halsell v. First National Bank, 109 Okla. 220 (1925).** Laborers have a lien on the production of their labor, while the title to the property remains in the original owner, Sec. 92, and may enforce this lien as in ordinary actions or by attachment. A cropper being a laborer, has a lien on the crop for the share due him if he has complied with the statute. **First National Bank v. Rogers, 24 Okla. 357, 103 P. 582.** (See this Memorandum Okla., p.25.)	Sec. 25 of Title 41 provides that any person removing crops from rented premises with intention of depriving the landlord of any rent, or who fraudulently appropriates the rent, shall be guilty of embezzlement; and Sec. 27 gives the person to whom rent is owing the right of attachment when any such attempt to remove crop from the leased premises is made. **(Cunningham v. Moser, 91 Okla. 44.)**	In **First National Bank v. Rogers, 24 Okla. 357, 103 P. 582,** the court held that one raising a crop on land of another for an agreed share is a cropper or laborer, and not a tenant, and has a lien for his share. In **Taylor v. Riggins, 129 Okla. 57, 352 P. 146,** the court held that a share-cropper's action for the owner's refusal to permit him to tend crops under contract is one for breach of contract, not for conversion, and as heretofore seen, Sec. 52, Title 42, Okla. Stat., Annotated, gives the laborer a lien on the products of his labor. The cropper, being a laborer, would come under the provisions of this section.
When the relation between the parties to a share-cropping contract is that of landlord and tenant, the tenant has title to and possession of the crop prior to division subject to the landlord's lien for rent and advances. Where the relationship of the parties is employer and laborer, or "cropper," title and possession are in the landowner, but the cropper has an equitable interest and can maintain action in equity for settlement and division of the crop. **[Miller v. Insurance Company, 146 S. C. 123 (1928);** see this Memorandum S. C. p. 27.] Under Sec. 8772 of the code, a laborer or cropper is given a statutory lien next in priority to the lien of the landlord for rent (8771) for the amount due him for his labor. (See this Memorandum S. C. p. 27.)	Both the landlord and the laborer, or cropper, have statutory liens on the crop raised, one for rent and advances, and the other for his wages as a laborer. (S. C. Code, 8771.) Under sec. 8773 the landlord has a lien on the crop of his tenant for his rent in preference to all other liens. The laborer, or cropper, who assisted in making the crop has a lien thereon to the extent of the amount due him for labor next in priority to the lien of the landlord. All other liens for agricultural supplies shall be paid next after the satisfaction of the liens of the landlord and laborer. Under Sec. 8771, no writing or recording of the landlord's lien is necessary. (See this Memorandum S. C. p. 25.) If any portion of the crop is removed from the land, and the proceeds not applied to the payment of rent for the year, persons having liens have the right to proceed to collect their liens in the same way as if they had become due according to the contract before removal. **(S. C. Code, Sec. 8778.)** (See this Memorandum S. C. p. 27.)	Under Art. 3, Sec. 7032-1 to 7032-10, S. C. Code, it is made a misdemeanor: (1), to fraudulently refuse to render service agreed on; (2), to fraudulently refuse to receive and pay for service agreed upon; (3), to procure advances with fraudulent intent not to perform the work agreed on; (4), failure to make agreed advances with malicious intent; and, (5), specifically recognizes payment in the share of the crop where so agreed. (See this Memorandum S. C. p.27.) Under Sec. 8775, any person making advancements may show to the court clerk by affidavit that the person to whom the advancements have been made is about to sell or dispose of the crop, or in any way defeat the lien for advances, and the clerk may issue a warrant to any sheriff requiring him to seize and sell crop to satisfy the lien. (See this Memorandum S. C., p.27.)	The cropper has his lien under Sec. 8772 for wages due him, (see this Memorandum S. C. p. 27.), and he has an equitable interest in the crop and may maintain action in equity for settlement and division. **Miller v. Insurance Company, 146 S. C. 123 (1928).** The cropper is also given protection by sec. 7030-7, which provides that all contracts between landowners and laborers shall be witnessed by two or more disinterested persons and at the request of any party be executed before a magistrate, whose duty it is to explain the contract to the parties. Sec. 7030-8 provides for division of the crop by disinterested parties. (See this Memorandum S. C., p. 28.)
Sec. 8027, Williams' Tenn. Code, declares that the portion of the crop reserved by the landlord of a share cropper for rent is vested in the landlord whether that share is divided or undivided, unless the contract expressly provides otherwise. Sec. 8028 provides that the purchaser of a crop from a tenant with the landlord's written permission to sell shall issue check in payment to the landlord and tenant, and such check may not be cashed without the landlord's endorsement. In a "cropper" contract, then, the landlord has a statutory title to his share of the crop at all times, and under the overwhelming weight of authority in other States, he has title and possession of the entire crop until division. Where the contract is one of landlord and tenant, the tenant has title to the crop prior to division. **Schoenlaw-Steiner Trunk Co. v. Hilderbrand, 152 Tenn. 166, 274 S.W. 544 (1925);** see this Memorandum, Tenn., pp. 29, 30.	Under Sec. 8017 to 8020, the landlord has a lien on all crops grown on his land during the crop year for the payment of rent whether the contract be verbal or in writing; he has a like lien on all crops of tenants or share croppers for advancements. Even a purchaser, with or without notice, of crops subject to such lien is liable to the lienholder for the value of the crop not to exceed the amount of the rent and supplies furnished. (See this Memorandum Tenn. p. 30, and cases cited.) Sec. 8014, Williams' Tenn. Code, provides that a cropper shall have a lien upon the crop produced as a result of his labor for the payment of such compensation as agreed upon in the contract. This lien exists for 3 months from the 15th of November of the year in which the labor is performed, provided an account be sworn to before a justice of the peace or clerk of court. This lien is second to the landlord's lien, and to no other. (See this Memorandum Tenn., p.30.)	All crop liens may be enforced in a court of competent jurisdiction by original suit, execution, and levy, or by original suit, attachment and garnishment, and any number of demands may be joined in one suit. The lien holder must itemize his claim and make affidavit as in attachment proceedings. (Sec. 8022; see this Memorandum, p. 30.) For the protection of both landowners and laborers, or croppers, from intimidation, Sec. 11037 of the Criminal Statutes provides that it shall be a felony for any night rider or other person by threats or intimidation in any form to compel a landlord to discuss any hired laborer or share cropper or tenant by threats, written or verbal, or to compel such laborers or croppers under force or compulsion to vacate the premises they occupy. Conviction under this section carries punishment of from 3 to 15 years in the penitentiary.	If a share cropper is determined to be a tenant in common of the crop, he can maintain an action for partition, recover for conversion, interplead for his share of the crop, and mortgage or sell his share of the crop which his labor produced. **Vol. IV, Law and Contemporary Problems, p. 543; Hunt v. Wing, 57 Tenn. 139 (1872); Jones v. Chamberlain, 52 Tenn. 211 (1871).** If a cropper bring action for breach of contract, as where the landlord failed to furnish supplies or money to make the crop, the measure of damages is the value of the share, less necessary expenditures not including labor, and less such sums as the share cropper may have earned in other employment. (See this Memorandum Tenn., p. 31.)

MEMORANDUM REGARDING—LEGAL RELATIONS AND RIGHTS OF PARTIES WHEN LAND OWNED

STATE	(1) Landlord and tenant, when	(2) Employer and cropper, when	(3) Tenants in common of the crop, when
TEXAS	The Supreme Court of Texas in **Brown v. Johnson, 118 Tex. Rep. 143, 12 S.W. 2d, 543 (1929)**, says: "The relationship of landlord and tenant is a question of fact, like that of possession, and may be proved by parole evidence * * *. To create the relationship no particular words are necessary, but it is indispensable that it should appear to have been the intention of one party to dispossess himself of the premises, and of the other party to occupy them. * * * A casual reading of our Landlord and Tenant Law demonstrates that one of the essentials of a valid lease of the premises, whereby the relationship of landlord and tenant is established, is that exclusive possession of the premises rightfully belonging to one party is transferred to another * * *." (See this Memorandum, p.31.)	The Court of Civil App. of Tex. in the case of **Cry v. J. W. Bass Hardware Co., 273 S.W. 350 (1925)**, distinguished between a tenant and a cropper in the following language: "The distinction between a mere cropper and a tenant * * * is clear; one has the possession of the premises for a fixed time, exclusive of the landlord, the other has not. The possession of the land is with the owner as against a mere cropper because a mere cropper is in the status of an employee, one hired to work the land and to be compensated by a share of the crop raised, with the right only to ingress and egress on the property." The Court then quotes from **12 Cyc. 979**, as follows: "The intention of the parties as expressed in the language they have used, interpreted in the light of the surrounding circumstances, controls in determining whether or not a given contract constitutes the cultivator a cropper." (See this Memorandum, p.31.)	In Tex., when the relationship is determined to be that of landlord and cropper, it follows that the parties are tenants in common of the crop. **Rogers v. Frazer Bros. and Co., 108, S.W. 727 (1908).** In that case the court held that a verbal contract between a landowner who furnished the land, teams, and tools, and the cultivator who made a crop on the land and performed other duties for the landowner for all of which he was to receive one-half of the crop, was not a rental contract creating the relation of landlord and tenant between the parties, but was a renting on shares whereby each party acquired title to an unidentified one-half interest in the crop, and made them tenants in common thereof. (See this Memorandum, p. 31.)
VIRGINIA	No set of words is necessary to constitute a lease, and in doubtful cases the nature and effect of the instrument must be determined in accordance with the intention of the parties as gathered by the whole instrument. **Upper Appomattox Company v. Hamilton, 83 Va. 319.** (See this Memorandum, p. 34.) In a crop-sharing contract if the effect of the arrangement is to give the cultivator the possession of the land, a tenancy is created and the parties are landlord and tenant. If the possession is retained by the owner, it is merely a cropping contract. The basic distinction is that a tenant has an estate in the land, and the cropper has none.	Where a landowner contracts with one to crop his land and to give him part of the crop after paying all advances, and the crop has not been divided, such cropper is not a tenant but a mere employee and the ownership of the entire crop is in the landowner. **Parrish v. Commonwealth, 81 Gratt. 1.** Michie's Digest of Virginia Reports, vol. VI, p. 360 (1939), states that: "It is very frequently a matter of great difficulty to determine whether the agreement under which the tenant holds is technically a lease or a mere license. The decisions on this subject are numerous and extremely difficult to reconcile. **Hanks v. Price, 32 Gratt. 107, 110.**" The Parrish case, ante, is believed to still be authority in Va. although there is conflict. (See this Memorandum, pp. 34, 35.)	An agreement between two persons for the raising of a crop on the land of a third by his license and permission, and for a division of the crop between such two persons, constitutes them joint tenants of the crop, and neither can defeat the interest of the other by taking a conveyance of the land from the owner. **Lowe v. Miller, 3 Gratt. 205 (1846).** The criterion in a tenancy in common is that no one knoweth his own severalty; and, hence, the possession of the estate is necessarily in common until a legal partition is made. **Hodges v. Thornton, 136 Va. 112.** (See this Memorandum, p.36.) (For a discussion of Tenants in Common, see under Miss., pp. 18, 19.)

BY ONE IS CULTIVATED BY THE OTHER UNDER AGREEMENT TO SHARE THE CROPS—Continued

(4) Title to crop prior to division	(5) Lien of the parties on the crop	(6) Remedy, if cropper violates agreement	(7) Remedy, if landlord violates agreement
When the relationship between the parties is that of landlord and tenant, title to the crop produced is in the tenant, and the landlord has a statutory lien on the crop for his rent. (Texas Stat., Art. 5222.) When the relationship is that of landlord and cropper, there is no lien for the rent since the landlord has an interest in the specific property, namely, that of a tenant in common. **Rosser v. Cole (C.A.) 226 S.W. 510 (1920); Brown v. Johnson, 118 Tex. Rep. 148 (1928).** The landlord in a landlord-and-tenant relationship does not become the owner of the agreed share of the crop until it is matured and divided. **Trimly etc. v. Doke, (C.A.), 152 S.W. 1174; Williams v. King, 206 S.W. 106.** (See this Memorandum, p. 32.)	In 1895 the Tex. Legislature enacted a statute setting maximum rentals of one-third and one-fourth of the crops, respectively, where the land was cultivated by a tenant who furnished everything except the land, and a maximum of one-half of the crops where the landlord furnished everything except the labor. The statute provided that leases reserving rent exceeding these amount were unenforcible and there should be no landlord's lien for rent. Held unconstitutional. The Legislature then passed another act providing that there should be no lien for rent or supplies where the rental exceeded the shares named in the first statute. Since the landlord's lien does not apply to a cropper's contract, and the landlord and cropper are tenants in common of the crop, the landlord, if he desires to secure greater rentals, has only to make a cropping agreement instead of a lease, and thus hold title rather than a lien on the crop. (See this Memorandum, pp. 32, 33.) A cropper has a lien under Sec. 5483. (See this Memorandum, p. 33.)	The landlord is given a statutory remedy in the event of a violation of the contract by a cropper, by Art. 5227 of the Tex. Stat., by applying for a warrant to seize the tenant's property when the tenant is about to remove same from the premises. Art. 5237 provides that a tenant shall not sublet the premises during the term of the lease without the consent of the landlord.	Art. 5236, Tex. Stat., provides that if a landlord, without default on the part of the tenant or lessee, fails to comply with his contract, he shall be responsible to such tenant or lessee for damages and the tenant or lessee shall have a lien upon the property in his possession, as well as upon all rents due the landlord under said contract. If this applies solely to a "tenant" or "lessee," a cropper does have a remedy when the contract is violated by the landlord as appears in the case of **Crews v. Cortez, 102 Tex. 111 (1908).** (See this Memorandum, pp. 33, 34.) A cropper might also bring action for breach of contract against his landlord if circumstances warrant it. **Matthews v. Foster (C.A.) 238 S.W. 317 (1922).** (See this Memorandum, p. 34.)
No Virginia cases have been found specifically defining the title to the crop in a crop-sharing contract prior to division, but the overwhelming authority in most of the other States is that where the relationship is landlord and tenant, title and possession of the crop is in the tenant prior to division, subject to the landlord's lien for rent and advances. Where the relationship is employer and cropper, title and possession of the crop is in the landlord at all times, on the authority of **Parrish v. Commonwealth, ante.** (See this Memorandum, p. 36.)	Sec. 6454, Va. Code, provides that any owner or occupier of land who contracts with any person to cultivate it, and makes advances to his tenant or laborer, has a lien on the crop for the advances in the year in which they are made, which lien has priority over all other liens on such crop or share thereof. He may enforce the lien by distress or by attachment, under Sec. 5522 and 6416. A person other than a landlord making advances of money or supplies to one engaged in the cultivation of the soil has a lien under Sec. 6452 on the crops maturing during the year, to the extent of such advances. Such persons must have their agreements reduced to writing. They must be signed by the parties; must define the limit of the advances; and must be docketed in the clerk's office. There is no provision in the statute for a cropper's lien. (See this Memorandum, p. 36.)	The landlord is protected by several statutes in cases where a cropper violates his agreement. Under Sec. 4454, it is larceny to obtain advances upon a promise in writing to deliver the crops or other property, and fraudulently failing or refusing to perform such promise. Under Sec. 4454-a it is a misdemeanor for a person cultivating the soil, under oral or written agreement, to obtain advances of money or thing of value with intent to injure or defraud his employer. It is a misdemeanor for a person renting the lands of another either for a share of the crop or for a money consideration, to remove any part of the crop without the consent of the landlord. When the rent is payable in other thing than money, the claimant of the rent, after 10 days' notice, may apply to the court for writ of attachment. (Sec. 5429.) Distress for rent will not lie unless the relationship of landlord and tenant exists between the parties. The right is not only incident to that relation, but is dependent upon it. **Church v. Goshen Iron Co., 112 Va. 694.** (See this Memorandum, p. 37.)	There is no statute giving a cropper a special lien on the crop but, being a laborer, he would have a laborer's lien on the part on which his labor was expended. He might also sue for breach of contract if the circumstances warranted. No Virginia cases have been reported in which the cropper attempted to assert his rights.

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