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. Maas, 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 &c 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. 185, 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