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