(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