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.
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> * * * * * * * * * * * * * * * * *
>
> 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.