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

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

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

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

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

LOUISIANA

(1) LANDLORD AND TENANT, WHEN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) EMPLOYER AND CROPPER, WHEN

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

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

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

On this point the judgment was affirmed.

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

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

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

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

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

(3) TENANTS IN COMMON OF THE CROP, WHEN

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

(4) TITLE TO CROP PRIOR TO DIVISION

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

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

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

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

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

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

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

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

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

(5) LIEN OF THE PARTIES ON THE CROP

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

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

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

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

The section immediately following this, however, provides:

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

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

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

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

Louisiana General Statutes (Dart), Sec. 4384:

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

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

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

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

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

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

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

MISSISSIPPI

(1) LANDLORD AND TENANT, WHEN

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

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

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

The author states further:

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

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

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

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

The court further said:

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

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

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

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

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

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