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

entitled to possession but not to the exclusion of the other, and remain joint tenants until a division is made or partition proceedings instituted. That doctrine in no manner conflicts with the pronouncement in *Alexander v. Zeigler, supra.*

It, therefore, appears that *Doty v. Heth, 52 Miss. 530 (1876)*, was overruled by *Alexander v. Zeigler, 84 Miss. 560 (1904)*, which in turn was approved by *Williams et al v. Sykes, 170 Miss. 88 (1934)*, in which last case the court said:

> 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.

(2) EMPLOYER AND CROPPER, WHEN

Notwithstanding the holdings in the cases cited under "(1) Landlord and Tenant, When," above, a relationship of landlord and cropper does exist in Mississippi, and is recognized in the statutes and decisions. Sec. 2238, Miss. Code of 1930, expressly recognizes a "laborer's" lien and a "cropper's" lien on the interest of the person contracting for the labor. These liens are paramount to all liens created by or against the person contracting for the labor, except the lien of the lessor of the land upon which the crop is made [see post, "(5) Lien of the Parties on the Crop, etc."].

Tiffany on "Landlord and Tenant," (vol. 1, Sec. 20), in distinguishing between tenant and "cropper" says:

> A controlling consideration in each case is whether the intention of the parties as indicated by their words and acts was to create the relation of landlord and tenant.
>
> Occasionally it has been said that an instrument providing for sharing the crop will not be construed as a lease unless such clearly appears to be the intention of the parties. *(Allwood v. Ruckman, 21 Ill. 200; Guest v. Updyke, 31 N. J. Law 352)*, and this would seem to be a reasonable ruling calculated to remove to some extent the difficulties with which the subject has been invested. * * * This view, that an agreement for the division of crops is in itself no evidence that a lease is intended, is indicated though not clearly stated, in a number of cases in which the construction of the instrument was adverse to the existence of a tenancy.

Citing, among other cases:

Shields v. Kimbrough, 64 Ala. 504.
Bourland v. McKnight, 79 Ark. 427, 96 S. W. 179.
Wood v. Garrison, 23 Ky. Law Reports, 295, 62 S. W. 728.

"Croppers" are clearly recognized in so late a case as *Jackson v. Jefferson, 158 So. 486, 171 Miss. 774 (1935):*

> Where tenant was authorized to sell the crop free from the share-cropper's lien, and to turn buyer's checks over to the landlord for collection, and the landlord was to turn back to the tenant amounts due croppers to be turned over to them, croppers' liens though waived as to the buyers of the crops were not waived as to the proceeds in the hands of the tenant or landlord. (Code of 1930, Sec. 2238.) (Taken from the Syllabus.)

The court says in the opinion:

> Mrs. Jackson owned a farm in Humphreys County * * *, and for about twenty years had rented it annually to Jenkins * * *. (She) rented it to Jenkins for the year 1933 at a standing rental of one thousand dollars. In addition (she) advanced Jenkins money with which to supply the farm during the year. Jenkins share-cropped to these four negroes part of the farm for that year; they made the usual share-cropping contract, which was that the landlord would furnish the land, teams, plow tools and "furnish" to make the crop; the tenants were to furnish the labor therefor; the proceeds to be shared half and half, the tenants first paying the "furnish" out of their half of the proceeds.

While the court calls this the "usual cropper's contract," there is no definition of the relationship between the parties. It is, however, obvious that no dominion or control of the premises passed to the share croppers, and the title to the crops was in Jenkins, the tenant, up to the time of the division.

It seems apparent that no clear line of demarcation has been laid down in Mississippi between "tenants" and "croppers," but that the trend of the decisions is towards the "tenant" relationship, or the relationship of tenants-in-common, as differing from "croppers" or "laborer."

However, where there is no demise of any interest in the premises to be cultivated, and a share of the crop goes to the cultivator "in lieu of wages," it is safe to say that the relationship would be declared to be that of landowner and "cropper," as would be the case in adjacent States. (See same heading under Alabama, Arkansas and Georgia, this Memorandum.)

(3) TENANTS IN COMMON OF THE CROP, WHEN

> The question most frequently discussed in connection with agreements for the division of crops between the landowner and the cultivator has been with regard to the rights of the parties in the crop before division. If one party has title to the whole crop to the exclusion of the other, he may, it is evident, by a transfer or mortgage thereof to an innocent purchaser, deprive the other party of his share * * * A number, perhaps a majority, of the courts recognizing the possibility of loss by one party of the share to which his claim entitles him, if the whole title is regarded as vested in the other, have asserted the doctrine that before division the two parties are tenants in common of the crop, that is, that each has an undivided interest therein, which is subject to his sole control, this view being, perhaps, more frequently based upon grounds of expediency than upon the construction of the particular agreement. This view * * * has been most frequently taken in cases in which the agreement was not regarded as involving a demise and creating the relation of landlord and tenant. (Tiffany on Landlord and Tenant, vol. II, Sec. 253-b.)

(Note: Most of the cases cited by Tiffany are New England or western cases. The cases cited here are selected from the States covered by this Memorandum.)

Smith v. Rice, 56 Ala. 417.
Romero v. Dalton, 2 Ariz. 210, 11 Pac. 863.
Doty v. Heth, 52 Miss. 530.
Jones v. Chamberlain, 52 Tenn. (5 Heisk) 210 (semple).
Betts v. Ratliff 50 Miss. 561.
Lowe v. Miller, 3 Grat. (Va.) 205, 46 Am. Dec. 188.

But in some cases, even though the cultivator is expressly stated to be a tenant, a tenancy in common in the crop is recognized as existing:

Smith v. State, 84 Ala. 438, 4 So. 683.
Tinsley v. Craige, 54 Ark. 346; 16 S. W. 570.
Johnson v. Hoffman, 53 Mo. 504.
Moses v. Lower, 43 Mo. App. 85.
Fagan v. Voght, 35 Tex. Civ. App. 528, 80 S. W. 664.
Rentfrow v. Lancaster, 10 Tex. Civ. App. 32, 31 S. W. 229.
Horsley v. Moss, 5 Tex. Civ. App. 241, 23 S. W. 1115.

If the agreement in such case be regarded as one of hiring, making the cultivator the servant of the landowner, a view quite frequently asserted, it is difficult to understand how a share of the crop which is to be delivered to the cultivator as wages can, before such delivery, be regarded as belonging to him.

Burgie v. Daves, 34 Ark. 179.
Tinsley v. Craige, 54 Ark. 346.
Gray v. Robinson, 4 Ariz. 24.
Graham v. Houston, 15 N. C. (4 Des. Law) 232.
Mann v. Taylor, 52 Tenn. (5 Heisk) 267.
Smith v. Rice, 56 Ala. 417.
Rakestraw v. Floyd, 54 S. C. 288, 32 S. E. 419.

That one thus employed to cultivate the land for a share of the crop has no proprietary interest therein is recognized in a number of cases:

Gray v. Robinson, 4 Ariz. 24, 33 Pac. 712.
Bryant v. Pugh, 86 Ga. 525.
Woodward v. Corder, 33 Mo. App. 147.
State v. Jones, 19 N. C. (2 Dev. & B) 544.
Cole v. Hester, 31 N. C. (9 Ired Law) 23.
Huff v. Watkins, 15 S. C. 85.
Richey v. DuPre, 20 S. C. 6.

If, however, instead of regarding the cultivator as the servant of the landowner, we regard the two as parties to a joint adventure, as has occasionally been suggested, they may well be joint owners or tenants in common of the crops. * * * As regards the existence of a tenancy in common of the crops where the relationship of landlord and tenant exists, the cases are not by any means in unison. As before stated, there are a number of decisions in which the landlord and tenant have been regarded as tenants in common of the crop, but there are perhaps even more cases in which the two relationships are regarded as inconsistent for the reason that crops regularly belong to the tenant, and the share of the crop which is eventually to go to the landlord is in the nature of rent, and the fact that an article is to be delivered in the payment of rent cannot make it the property of the landlord until it is delivered.

Smyth v. Tankersley, 20 Ala. 212.
Treadway v. Treadway, 56 Ala. 390.
Ponder v. Rhea, 32 Ark. 435.
Taylor v. Coney, 101 Ga. 655, 28 S. E. 974
Betts v. Ratliff, 50 Miss. 561.
Dearer v. Rice, 20 N. C. (4 Der. & B.) 567.
Peebles v. Lassiter, 33 N. C. (11 Ired Law) 73.
Ross v. Swaringer, 31 N. C. (9 Ired Law) 481.
Magill v. Holston, 65 Tenn. (6 Boxt) 322.
Texas & P.R.R. Co. v. Bayliss, 62 Tex. 571.

In the case of *Doty v. Heth, 52 Miss. 530 (1876)*, the court said:

> Tenancy usually carries with it the idea of a legal ownership of a term in the land, which cannot be subjected to sale under execution, and also the exclusive ownership of the products to be raised thereon. This would be so even where rent reserved was a portion of the products. In such case the relationship of landlord and tenant would exist, and the legal title to the crop would vest in the tenant. Exactly what relationship is created between the parties by the contract to crop on the shares is difficult to define. Somewhat extensive examination of the cases indicates that they are usually regarded as constituting the parties tenants in common of the crops, but not joint tenants nor tenants in common of the land * * * .

While this case was overruled by *Alexander v. Zeigler (ante)*, and the latter case was approved in *Williams v. Sykes, 170 Miss. 88, 154 So. 727 (1934)*, it was not overruled on this point, and the court in *Williams et al v. Sykes said:*

> *Doty v. Heth (ante)* seems to hold that landowners and share croppers are co-tenants of the farm products growing upon the premises, while the last two cases, *Schlicht v. Callicott* and *Alexander v. Zeigler*, both *ante*, seem to hold that the relationship of landlord and tenant exists * * * . 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 deciding, we think the suit of the plaintiffs must fail * * * .

The court then goes on to decide that *Alexander v. Zeigler* is "authority," and that case holds the parties to be landlord and tenant.

A. & E. Enc. Law, 2d ed., vol. XVII, p. 651, defines "tenants in common" as follows:

> In tenancy in common the co-tenants hold by one and the same undivided possession, and this unity of possession is the only unity required to constitute such a tenancy. The extent of the respective interests of the co-tenants, their source of title, the times at which their interests become vested, and the periods of duration may be different. And at common law a difference in one or more of these particulars was necessary in order to constitute the estate an estate in common as distinguished from a joint tenancy.

It is difficult to see, notwithstanding *Doty v. Heth*, how a cropper having no demise of any estate in the land, and having no dominion or control over the premises, and receiving only a share of the crop "in lieu of wages," can be aught but a laborer; or how he could have any "undivided possession" of the crop with the landowner. As Tiffany says, *ante:* "It is difficult to understand how a share of the crop which is to be delivered to the cultivator as wages can, before such delivery, be regarded as belonging to him."

(4) TITLE TO CROP PRIOR TO DIVISION

Title to crop prior to division depends upon the relationship of the parties. Where that is landlord and tenant, it is thoroughly established in all jurisdictions that the title to the crop is in the tenant, subject to the landlord's lien for rent. Where the parties are tenants in common, as in Mississippi they frequently appear to be [see chart under (3) and this Memorandum], they have joint possession and ownership. When there is no demise of the premises, and the landowner retains dominion and control, agreeing only to pay the cultivator a fixed portion of the crops *in lieu of wages*, title to the crop remains in the landowner prior to the division thereof.

Burgie v. Daves, 34 Ark. 179.
Tinsley v. Craige, 54 Ark. 346.
Gray v. Robinson, 4 Ariz. 24.
Graham v. Houston, 15 N. C. (4 Dec. Law) 232.
Mann v. Taylor, 52 Tenn. (5 Heisk) 267.
Smith v. Rice, 56 Ala. 417.
Rakestraw v. Floyd, 54 S. C. 288, 32 S. E. 419.

(5) LIEN OF THE PARTIES ON THE CROP

Sec. 2238 of the Miss. Code of 1930 gives the employer and the "cropper," or "laborer," each a lien on the interest of the other for advances on the one hand and wages on the other. This section reads:

> **Employer and employee—Lien declared.**—Every employer shall have a lien on the share or interest of his employee on any crop made under such employment for all advances of money, and for the fair market value of other things advanced by him, or anyone at his request, for himself and family, and business during the existence of such employment, which lien the employer may offset, recoup, or otherwise assert and maintain; and every employee, laborer, cropper, part owner, overseer, or manager, or other person who may and by his labor in making, gathering, or preparing for sale or market any crop shall have a lien on the interest of the person who contracts with them for such labor for his wages, share or interest in such crops, whatever may be the kind of wages, or the nature of the interests, * * * which lien such employee, laborer, cropper, part owner, overseer or manager, or other person may offset, recoup, or otherwise assert and maintain. Such liens shall be paramount to all liens and incumbrances or rights of any kind created by or against the person so contracting for such assistance, except the lien of the lessor of the land on which the crop is made, for rent and supplies furnished as provided in the chapter on "Land and Tenant."

The landowner is given a paramount lien on the products raised on the premises to secure the payment of rent by Sec. 2186, Code of 1930, which reads as follows:

> **Lien of Landlord:** Every lessor of land shall have a lien on the agricultural products of the leased premises, however, and by whomsoever produced, to secure the payment of the rent and the money advanced to the tenant, and the fair market value of all advances made by him to his tenant for supplies for the tenant and others for whom he may contract, and for his business carried on upon the leased premises; and the lien shall be paramount to all other liens, claims, or demands upon such products. And the claim of the lessor for supplies furnished may be enforced in the same manner, and under the same circumstances as his claim for rent may be; and all of the provisions of law as to attachments for rent and proceedings under it

shall be applicable to a claim for supplies furnished, and such attachment may be levied on any goods and chattels liable for rent as well as on the agricultural products.

The landlord is given further protection in a lien for the reasonable value of livestock, utensils, and equipment furnished, not only on the property so furnished, but also on the crops raised. Sec. 2187, Miss. Code of 1930, reads:

Lien for livestock—Implements: A landlord shall have for one year a lien for the reasonable value of all livestock, farming utensils, implements, and vehicles furnished by him to his tenant upon the property so furnished, and has an additional security therefor upon all the agricultural products raised upon the leased premises. The said property so furnished shall be considered as supplies and the lien therefor may be enforced accordingly. Such lien shall be a superior and first lien, and need not be evidenced by writing, or if in writing, need not be recorded.

Further, it is a misdemeanor for any person, with notice of the landlord's or the cropper's lien on any agricultural products to remove or conceal such products with intent to impair such lien. Sec. 1019, Miss. Code of 1930, provides:

Any person who, with notice of an employer's, employee's laborer's, cropper's, part owner's or landlord's lien on any agricultural products, and with intent to defeat or impair the lien shall remove from the premises on which it was produced, or shall conceal or aid, or authorize to remove or conceal, anything subject to such lien, and upon which any other person shall have such lien, without the consent of such person, shall * * * be subject to fine or imprisonment.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

Where a tenant (or a cropper) violates the agreement with the landowner, the latter may have recourse under Sec. 2198 and 2237 of the code, which are as follows:

Sec. 2198, Miss. Code of 1930:

Remedy when claim due in certain cases.—When any landlord or lessor shall have just cause to suspect and shall verily believe that his tenant will remove his agricultural products on which there is a lien, or any part thereof, from the leased premises to any other place, before the expiration of his term, or before the rent or claim for supplies will fall due, or that he will remove his other effects so that distress cannot be made, the landlord or lessor in either case on making oath thereof, and of the amount the tenant is to pay, and at what time the same will fall due, and giving bond * * * may obtain an attachment against the goods and chattels of such tenant * * *; and if bond in double the amount due is not given, the property will be sold, or so much thereof as may be necessary, to pay the rent due.

Sec. 2237, Miss. Code of 1930:

Proceedings when tenant deserts premises.—If a tenant, of lands being in arrears for rent, shall desert the demised premises, leaving the same uncultivated or unoccupied, so that a sufficient distress cannot be had to satisfy the arrears of rent, any Justice of the Peace of the county * * *, at the request of the landlord and upon proof, may view the premises * * * and may put the landlord in possession of the premises.

In *Cohn v. Smith, 64 Miss. 816, 2 So. 244*, it was held:

It being a crime for a person with notice of the lien to remove the products from the leased premises without the landlord's consent (Sec. 1261—now 1019), the landlord can maintain an action for damages against the purchaser with notice of products subject to the lien for rent.

In *Bedford v. Gartrell, 88 Miss. 429, 40 So. 801*, it was held that the landlord's lien is superior to the lien of a deed of trust given by the tenant on crops for advances of supplies.

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

There is no specific provision for any remedy for the cropper if the landlord violates the contract, other than in sec. 2238, cited, p. 19. It is probable that in such case the cropper could bring action in damages under the general law.

MISSOURI

(1) LANDLORD AND TENANT, WHEN

The earliest reported case that has been found (1873) in which there was a judicial determination of the relationship existing between the parties to a crop-sharing contract is *Johnson v. Hoffman, 53 Mo. 504*, in which the court said:

The material question is, whether the agreement between the parties was a lease whereby the possession of the farm was transferred to the plaintiff, or simply an agreement by which the plaintiff was hired to cultivate the farm on shares, the defendant at all times holding the possession exclusively for himself.

The court then cites the agreement (which was written) whereby Hoffman "leases, rents and lets" unto Johnson his farm in St. Charles County. Continuing, the court holds:

Contracts of this character although unknown in England are frequent in the United States. The authorities, however, are conflicting in the several states, as to whether they create the relationship of landlord and tenant, or simply make them croppers on the shares. In my judgment no definite ruling can be laid down on this subject. Each case must be determined by the words of the written agreement between the parties. It is obvious from the language of this agreement, that the plaintiff was to have possession of the farm, for the length of time indicated therein. The crops, however, were to be divided between the parties. They were, therefore, tenants in common of the products of the farm with the possession of the land in the plaintiff as tenant of the defendant as his landlord.

Fifty years later (1923) in the case of *Jackson v. Knippel, 246 S. W. 1007*, it was held that a written instrument demising and leasing 55 acres of land for a term of one year, wherein lessor agreed to furnish one and one-half bushels of seed to the acre and 125 pounds of fertilizer per acre, and lessee agreed to pay lessor one-half of the wheat to be threshed and delivered to the lessor, the lessee agreeing not to underlet the premises or any part thereof, or assign it, without the written assent of the lessor, created the relationship of landlord and tenant between the parties. (The court cites and quotes from *Johnson b. Hoffman, ante.)* Continuing the opinion, the court said:

While it has been said in contracts of this character, whether it is to be held as one for raising a crop on joint account, or one of employment in payment for services to be made in a share of the crops, or a lease with rent, payable in kind, depends primarily on the intention of the parties, yet—"The legal form in which the agreement is couched is most material in determining its character." The most important criterion in arriving at the intention of the parties and the consequential relationship created is: Which party was entitled to the possession of the land? If it was the intention that the landowner should part with, and the other party have, the exclusive possession of the land for the purpose of cultivation, then as a general rule the transaction will be considered a lease, and the relation between the parties that of landlord and tenant. (The court cites 50 L.R.A. 254; 81 Am. St. Rep. 562; *Johnson v. Hoffman, ante.)*

Thus it seems to be settled in Missouri that where in a crop-sharing agreement possession of the premises passes to the cultivator, the relationship is that of landlord and tenant.

(2) EMPLOYER AND CROPPER, WHEN

The relation of employer and cropper, or laborer, seems to come into existence when a cultivator of the land receives no demise of the premises, possession and dominion of which remain in the landowner, but is to receive his wages in a portion of the crop raised. In the case of *Haggard v. Walker, 132 Mo.*