

entitled thereto, or may be subject to garnishment at law in any suit against the tenant for the recovery of the rent. R.S. 1929, Sec. 2599.

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

It appears that a cropper can sue for breach of contract when his share of a crop is withheld by the landlord.

In the case of *Beasley v. Marsh*, 30 S. W. 2d, 747 (1931), it was held, as stated in the Syllabus:

(1) Suit in a Justice's Court by a share cropper is held not dismissible because it charges defendant with conversion where the case could be treated as an action for breach of contract.

(2) The evidence was held sufficient to make it a question for the jury whether the defendant breached the contract in refusing to permit the cropper to take the share of the crop sued for.

(3) A finding that the cropper suing for the value of his share was entitled to possession of the property held not necessary, where the action was based on breach of contract, and not conversion.

In the opinion in that case the court says:

It appears that complaint is made only to the court's action with reference to the instructions. The defendant contends that his instruction No. A, in the nature of a demurrer to the evidence on the first count of plaintiff's petition, should have been given because this count is for conversion, and charged that plaintiff was a share cropper of the defendant, and that all the evidence showed that he was a mere cropper and that recovery thereon could not be had. The defendant relies for this contention on *Morrell v. Alexander* (No. App.), 215 S. W. 764 (1919). This case does hold that a cropper could not maintain action for conversion against a landlord where there has been no division of the crops, and setting aside of the cropper's portion. But that opinion also holds that, in a suit based on a petition similar to this one, the suit may be treated as a suit for damages for breach of contract. Since this is a case filed in the Justice of the Peace's Court, where strict pleadings are not required, we hold against the defendant on this point.

In a suit for failure of defendant landlord to give plaintiff cropper his share of the crop of corn, the petition while alleging that the defendant "converted" the corn is held to be sufficient to state a cause of action for damages for breach of contract.

The court cites:

Moser v. Lower, 48 Mo. App. 85.
Shoemaker v. Crawford, 82 Mo. App. 487.
Davies v. Bladwin, 66 Mo. App. 577.
Haggard v. Walker, 132 Mo. App. 463, 111 S.W. 904 (1908).
Steel v. Flick, 56 Pa. 172.
 12 Cyc. 980.

The court then held that while the action was called "conversion," which could not be maintained, the petition did state a cause of action for damages for breach of contract.

NORTH CAROLINA

(1) LANDLORD AND TENANT, WHEN

The same rule prevails in North Carolina as in most of the other States, i.e., when a demise of the premises is made in the crop-sharing agreement, the relationship between the parties is that of landlord and tenant. A North Carolina Statute, however (Sec. 2355, Code of 1939), varies the rule that a tenant has title to and possession of the crop, subject to the landlord's lien for rent, by declaring that unless otherwise agreed between the parties all crops shall be deemed to be "vested in possession" of the lessor at all times until all rents are paid and agreed stipulations performed. [See Sec. 2355, under heading (5) herein.] The Statute also provides that to entitle him to the benefits of the lien provided, the lessor must conform, in the prices that he charges for

advancements, to the provisions of Sec. 2482, which permits the lessor making advancement to charge 10 percent over the retail cash price in lieu of interest on the debt.

Commenting on this Statute, the North Carolina Law Review, vol. XX, p. 216 (1942), says:

The provision in our Statute that a landlord shall be "vested in possession" of the crops seems unique as applied to tenants.

(2) EMPLOYER AND CROPPER, WHEN

An agreement by him who cultivates the land that the owner who advances guano, seed wheat, etc. shall, out of the crop, be repaid the advancements in wheat constitutes the former a cropper and not a tenant. *State v. Burwell*, 63 N. C. 661. A cropper has no estate in the land and his possession is that of the landlord. *State v. Austin*, 123 N. C. 749, 31 S. E. 731.

In North Carolina the cropper and tenant occupy the same position as far as ownership of the crop is concerned. While the statute lessened the tenant's right in the crop by increasing the landlord's rights as a lienholder, it at the same time raised the cropper's status from that of a laborer receiving pay in a share of the crop, with title to the crop vested in the landowner, to that of one having a right and actual possession subject to the landlord's lien. *State v. Austin*, 123 N. C. 749, 31 S. E. 173, (1899).

(3) TENANTS IN COMMON OF THE CROP, WHEN

A. B. Book, in vol. IV, Law and Contemporary Problems, p. 543, says:

In North Carolina, under the Statute of 1876-77, the cropper and tenant occupy the same position as far as ownership of crop is concerned. * * * In interpreting the Statute the North Carolina Supreme Court has * * * treated the Statute as one primarily * * * to secure the landowner in his rent and advances and has held that he is a trustee in constructive possession until the debts are paid, and that he acquired no title to the tenant's share. (*Batts v. Sullivan*, post.)

The court points out that while the first Section vests possession of the crop in the landlord, the second Section recognizes the actual possession in the lessee, or cropper, until division. [*Tobacco Grower's Association v. Bissett*, 187 N. C. 180 (1924).]

Where the distinction between share tenants and croppers has not been so affected by Statute, the cropper is said to be an employee. The crops belong either to the cropper and landowner as tenants in common, or to the landowner alone, subject to the cropper's lien as a laborer for his share after division and deduction for advances * * *. The holding that the parties to a cropping agreement are tenants in common appears to be well established in Texas, Tennessee, and Mississippi.

He does not, however, cite any North Carolina case so holding, and none has been found. In view of Sec. 2355, North Carolina Code [see under (5) herein], it appears that the relationship of tenants in common of the crop does not exist in North Carolina.

(4) TITLE TO CROP PRIOR TO DIVISION

Before Sec. 2355, N. C. Code, 1939, was passed (see next heading for Sec. 2355), title to the whole of the crop was, in contemplation of law, vested in the tenant (even where the parties had agreed upon the payment as rent of a certain portion of the crops) until a division had been made, and the share of the landlord had been set apart to him in severalty. (*Dover v. Rice*, 20 N. C. 567; *Gordon v. Armstrong*, 27 N. C. 409; *Biggs v. Ferrell*, 34 N. C. 1; *Ross v. Swaringer*, 31 N. C. 481; *Rowland v. Forlaw*, 109, N. C. 567, 13 S. E. 173.)

All crops raised on the land, whether by tenant or cropper, are by this section (2355) deemed to be vested in the landlord, in the absence of an agreement to the contrary, until the rent and advancements are paid. *State v. Austin*, 123 N. C. 749, 31 S. E. 731; *State v. Keith*, 126 N. C. 1114, 36 S. E. 169; *Durham v. Speeke*, 81 N. C. 87; *Smith v. Tindell*, 107 N. C. 88, 12 S. E. 121; *Batts v. Sullivan*, 182 N. C. 129, 108 S. E. 511.

For the lessor's protection, as between him and the tenant, the possession of the crop is deemed vested in the lessor. *State v. Higgins*, 126 N. C. 1112, 36 S. E. 113.

(5) LIEN OF THE PARTIES ON THE CROP

North Carolina Code, 1939, Sec. 2355, provides for the landlord's lien on crops for his rent and advancements, and the method of enforcing same. It reads:

Landlord's lien on crops for rent and advances, etc.—Enforcement: When lands are rented or leased by agreement, written or oral, for agricultural purposes, or are cultivated by a cropper, unless otherwise agreed between the parties to the lease or agreement, any and all crops raised on said lands shall be deemed and held to be vested in possession of the lessor or his assigns at all times, until the rents for said lands are paid and until all of the stipulations contained in the lease or agreement are performed, and all damages in lieu thereof paid to the lessor or his assigns, and until said party or his assigns is paid for all advancements made and expenses incurred in making and saving said crops. The landlord, to entitle himself to the benefits of the lien herein provided for, must conform as to the prices charged for the advances to the provisions of the article "Agricultural Liens," in the chapter "Liens."

This lien shall be preferred to all other liens, and the lessor or his assigns is entitled, against the lessee or cropper, or the assigns of either, who removes the crop from the lands without the consent of the lessor or his assigns, or against any other person who may get possession of said crop, or any part thereof, to the remedies given in an action upon the claim for the delivery of personal property * * *. (R.S., 1993; Code, Sec. 1754; 1896-7, 283; 1917 ch. 134; 1933, ch. 219.)

The landlord's lien, where same attaches, by the express terms of the statute is made superior to all other liens. *Burwell v. Cooper*, 172 N. C. 79, 89 S. E. 1064; *Reynolds v. Taylor*, 144 N. C. 165, 56 S. E. 871; *Wooten v. Hill*, 98 N. C. 49, 3 S. E. 846; *Rhodes v. Fertilizer Co.*, 220 N. C. 21 (1941), 16 S. E. 2d, 408.

The lien of the landlord takes precedence to that of a third party for advances, notwithstanding the priority of the latter in time. (*Sprull v. Arrington*, 109 N. C. 192, 13 S. E. 779.) This precedence is to the extent of the advances made. (*Wooten v. Hill*, ante; *Supply Co. v. Davis*, 194 N. C. 328, 139 S. E. 599.) The statutory landlord's lien under this section is superior to that of one furnishing supplies to the cropper under Sec. 2480. (*Glover v. Dall*, 199 N. C. 659, 155 S. E. 575.) Every person who makes advancement to a tenant or cropper of another, does so with notice of the rights of the landlord. (*Thigpen v. Leigh*, 93 N. C. 47; *Thigpen v. Maget*, 107 N. C. 39, 12 S. E. 272.) The landlord's lien priority is only for the year in which the crops are grown, and not for the balance due for an antecedent year. (*Ballard v. Johnson*, 114 N. C. 141, 19 S. E. 98.) The liens for rent and advancements are in equal degree and attach to the crops raised by the tenant on the same land planted during one calendar year, and harvested in the next. (*Brooks v. Garrett*, 195 N. C. 452, 142 S. E. 486.)

The landlord's lien given by Sec. 2355 is separate and distinct from agricultural liens for advances provided for in Sec. 2480, which is as follows:

Lien on crops for advances: If any person makes any advances, either in money or supplies, to any person who is engaged in, or about to engage in, the cultivation of the soil,

the person making the advances is entitled to a lien on the crops made within one year from the date of the agreement in writing herein required, upon the land in the cultivation of which the advance has been expended, in preference to all other liens, except the laborer's and landlord's lien, to the extent of such advances. Before any advance is made, an agreement in writing for the advance shall be entered into, specifying the amount to be advanced, or fixing a limit beyond which the advances if made from time to time during the year, shall not go; and this agreement shall be registered in the Office of the Register of the County, or counties, where the land is situated, on which the crops of the person advanced are to be grown * * *. (Then there is a provision covering a case where the land is in more than one county; and a provision that a lien shall be good as to any crop which may be harvested after the end of said year. There have been various revisions down to 1935, ch. 205.)

The lien created by this section is preferred to all others, the only exceptions being that in favor of the landlord, and that of the laborer, contained in Sec. 2488. (*Williams v. Davis*, 183 N. C. 90, 110 S. E. 577.) It has been specifically held in *Glover v. Dall*, 191 N. C. 659, that the landlord's lien under Sec. 2355 is superior.

Under Sec. 2649, it is provided that all claims against personal property of \$200.00 and under, may be filed in the office of the nearest Justice of the Peace; if over \$200.00, or against any real estate, in the office of the Superior Court Clerk in any county where the labor has been performed. Sec. 2470 provides for notice to be filed as hereinbefore provided, except in those cases where a shorter time is prescribed, at any time within six months after the completion of the labor, or the final furnishing of the materials, or the gathering of the crops. Sec. 2471 provides that the date of filing fixes the priority of the lien.

Sec. 2472 provides:

The lien for work on crops given by this chapter shall be preferred to every other lien or incumbrance which attaches to the crops subsequent to the time at which the work was commenced.

(See *Grissom v. Rickett*, 98 N. C. 54, 3 S. E. 921, cited in *White v. Riddle*, 198 N. C. 511, 152 S. E. 501.)

Sec. 2361 is as follows:

Whenever servants and laborers in agriculture shall by their contracts, oral or in writing, be entitled, for wages, to a part of the crops cultivated by them, such part shall not be subject to sale under executions against their employers or the owners of the land cultivated.

Sec. 2362 provides:

If any landlord shall unlawfully * * * seize the crop of his tenant when there is nothing due him, he shall be guilty of a misdemeanor. If any lessee or cropper * * * shall remove the crop, or any part thereof, from the land without the consent of the lessor * * *, and without giving him * * * five days' notice of such intended removal, and before satisfying all of the liens held by the lessor * * * on said crop, he shall be guilty of a misdemeanor.

The tenant or cropper is further protected in the matter of advances by the provisions of Sec. 2482, which reads:

Prices to be charged for articles advanced, limited: In order to be entitled to the benefits of the liens on crops in favor of the landlord and other persons advancing supplies, under the article "Agricultural Tenancies," of the chapter "Landlord and Tenant," and under the present article, or on a chattel mortgage on crops, such landlord or person shall charge for such supplies a price, or prices, of not more than 10 percent over the retail cash price, or prices, of the article, or articles, advanced, and the said 10 percent shall be in lieu of interest on the debt for such advances; * * *. (Then there is provision for coupon books and trade checks to be considered as supplies.) If more than 10 percent of the retail cash price is charged on any advance made under the lien or mortgage given on the crop, then the lien or mortgage shall be null and void as to the article, or articles, as to which such overcharge is made. At the time of each sale there shall be delivered to the purchaser a memorandum showing the cash price of the articles delivered.

Sec. 2488 gives the person making advances the right to have the crop seized and sold when the amount advanced is due and unpaid, and the tenant is about to sell or dispose of the crop to defeat the lien, upon making affidavit to that effect, before the Clerk of the Superior Court; but this proceeding specifically does not affect the rights of the landlords and laborers.

In the case of *Rhodes v. Fertilizer Co.*, 220 N. C. 21 (1941), 16 S. E. 2d, 408, it was held:

(1) A landlord's lien for rent is superior to all other liens and attaches to the crops raised upon the land by the tenant, and entitles the landlord to the possession of the crops for the purpose of the lien until the rents are paid, C. S. 2355, and when it is not required that the lease be in writing, a note for the rent executed by the tenant constitutes mere evidence of the contract.

(2) An agricultural lien for advances, when in writing, takes priority over all other liens except the laborer's or landlord's lien, to the extent of the advances made thereunder, C. S. 2488.

North Carolina Law Review, vol. XX (1942), p. 217 (commentating on *Rhodes v. Fertilizer Company*, ante) says:

Once the relationship of landlord and tenant is established, the lien attaches automatically. [*Burwell v. Cooper Cooperative Co.*, 172 N. C. 79 (1916); *Ford v. Green*, 212 N. C. 70 (1897).]

Under our Statute, a tenant and a "cropper"—one who farms the land for a share of the crops—have the same status as far as ownership in the crop is concerned * * *. Until his claim is satisfied, the landlord may sue for conversion either the tenant, or any purchaser from the tenant, who denies his right to the crop, and may follow the crop through as many hands as necessary * * *.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

Under North Carolina Code the landlord may bring claim and delivery to recover possession of crops raised by the tenant or cropper where his right of possession under Sec. 2355 is denied, or he may resort to any other appropriate remedy to force his lien for the rent due and the advances made. *Livingston v. Farish*, 89 N. C. 140. If a tenant at any time before satisfying the landlord's lien for rent and advances removes the crop, or any part of it, he becomes liable, civilly and criminally. *Jordon v. Bryan*, 103 N. C. 59, 9 S. E. 135. The remedy of claim and delivery was designed for the landlord's protection, and it cannot be resorted to before the time fixed for division, unless the tenant is about to remove and dispose of the crop, or abandon a growing crop (Id.).

North Carolina Code of 1939, Sec. 4480:

Local—Violation of certain contracts between landlord and tenant: If any tenant or cropper shall procure advances from a landlord to enable him to make a crop on the land rented by him, and then willfully abandon the same, without good cause and before paying for such advances; or if any landlord shall contract with a tenant or cropper to furnish him advances to enable him to make a crop, and shall willfully fail or refuse, without good cause, to furnish such advances according to his agreement, he shall be guilty of a misdemeanor and shall be fined not exceeding 50 dollars, or imprisoned not exceeding 30 days. Any person employing a tenant or cropper who has violated the provisions of this section, with notice of such violation, shall be liable to the landlord furnishing such advances for the amount thereof, and shall also be guilty of a misdemeanor * * *. This Section shall apply to the following counties only. (The Statute then names 40 counties.)

The provisions of this section were held to contravene the State Constitution, prohibiting imprisonment for debt except in cases of fraud, and an indictment not averring fraud will be quashed. *State v. Williams*, 150 N. C. 802; *Winton v. Early*, 183 N. C. 199.

Sec. 4481 of the Code:

Tenant neglecting crop; landlord failing to make advances; harboring or employing delinquent tenant: If any tenant or cropper shall procure advances from a landlord to enable him to make a crop on the land rented by him, and then willfully refuse to cultivate such crop, or negligently or willfully abandon the same, without good cause and before paying for such advances; or if any landlord who induces another to become a tenant or cropper by agreeing to furnish him advances to enable him to make a crop, shall willfully fail or refuse, without good cause, to furnish such advances according to his agreement; or if any person shall entice, persuade, or procure any tenant, lessee, or cropper who has made a contract, agreeing to cultivate the land of another, to abandon, or to refuse, or fail to cultivate such land, or after notice shall harbor or detain on his own premises, or on the premises of another, any such tenant, lessee, or cropper, he shall be guilty of a misdemeanor * * *.

(This section was made applicable to 25 counties, some of them being the same as those mentioned in the preceding section.)

Sec. 2366 provides that when any tenant or cropper willfully neglects or refuses to perform the terms of his contract, without good cause, he shall forfeit his right to the possession of the premises. (This section applies in 58 counties.)

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

Code of 1939, Sec. 2356:

Rights of Tenant.—When the lessor, or his assigns, gets the actual possession of the crop, or any part thereof, otherwise than as by the mode prescribed in the preceding Section (2355), and refuses, or neglects, upon a notice written or oral, of five days, given by the lessee or cropper, or the assigns of either, to make a fair division of said crop, or to pay over to such lessee or cropper, or the assigns of either, such part thereof as he may be entitled to under the lease or agreement, then and in that case, the lessee or cropper, or the assigns of either, is entitled to the remedies against the lessor, or his assigns, given in an action upon a claim for the delivery of personal property to recover such part of the crop as he, in law and according to the lease or agreement, may be entitled to. The amount or quantity of the crop claimed by the lessee or cropper * * * shall be fully set forth in an affidavit at the beginning of the action.

This section intends to favor the laborer as to those matters and things upon which his labor has been bestowed, and that he shall certainly reap the benefits of his toil. *Rouse v. Wooten*, 104 N. C. 229, 233; 10 S. E. 190.

While one who labors in the cultivation of a crop, under a contract that he shall receive his compensation from the crops when matured and gathered, has no estate nor interest in the land but is simply a laborer—at most a cropper—his right to receive his share is protected by this Section which for certain purposes creates a lien in his favor, which has precedence over agricultural liens made subsequent to his contract, but before the crop is harvested. *Rouse v. Wooten*, ante.

The lessor has no right to take the actual possession from the lessee or cropper, and can never do so except when he obtains the same by an action of claim and delivery, upon the removal of the crop by the lessee or cropper. *State v. Copeland*, 86 N. C. 692.

When the lessee is wrongfully denied possession of his crop by the lessor, he is left to his civil remedies under this section for the breach of trust should his lessor refuse to account. *State v. Keith*, 126 N. C. 1114, 36 S. E. 169. When the cropper dies before harvesting his crop, his personal representatives are entitled to recover his share of the crop. *Parker v. Brown*, 130 N. C. 280, 48 S. E. 657.

OKLAHOMA

(1) LANDLORD AND TENANT, WHEN

In Oklahoma, as in most of the States covered in this Memorandum, the relationship of landlord and tenant arises in a