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

crop-sharing contract when there is any demise of the premises, and the tenant has control thereof, and of the crops, and pays the landlord a designated part of the crop as rent. The latest reported case distinguishing the tenant from a cropper is *Elder v. Sturgess, 173 Okla. 620, 49 P. (2d) 221 (1935)*, in which the court says:

> The tenant has exclusive right to possession of the land he cultivates and an estate in the same for the term of his contract. and consequently he has a right of property in the crops.

(2) EMPLOYER AND CROPPER, WHEN

The Supreme Court of Oklahoma in *Elder v. Sturgess, ante*, quotes with approval its former opinion in *Empire Gas and Fuel Company v. Denning, 128 Okla. 145, 261 P. 929 (1927)*, distinguishing between cropper and tenant, in the following language:

> The difference between a cropper and a tenant is that the cropper is a hired hand. paid for his labor with a share of the crop he works to make and harvest. He has no exclusive right to possession and no estate in the land nor in the crop until the landowner assigns to him a share. The tenant has exclusive right to possession of the land he cultivates and an estate in the same for the term of his contract, and consequently he has a right of property in the crop.

In the earlier case of *Halsell v. First National Bank, 109 Okla. 220, 235 P. 538 (1925)*, the identical language as above is used in the syllabus. And in the later case of *Magnolia Petroleum Co. v. Jones, 185 Okla. 309, 91 P. (2d) 769 (1939)*, the court refused to overrule the *Empire Gas and Fuel Co. v. Denning* case.

(3) TENANTS IN COMMON OF THE CROP, WHEN

There is no statutory determination of when a landlord and tenant or cropper are tenants in common of the crop, and no decisions have been found defining that relationship of such parties in this State.

See *Arrington v. Arrington, 79 Okla. 243, 192 P. 689; Prairie Oil and Gas Company v. Allen (C.C.A. Okla.) 2 F. 2d, 566.*

(4) TITLE TO CROP PRIOR TO DIVISION

In the case of *Magnolia Petroleum Co. v. Jones, 185 Okla. 309 (1939)*, the court held:

> Where a tenant cultivates crops under a renter's contract providing that he shall pay a portion of the crop as rent, and shall gather same and deliver to the landlord his part, the tenant has a right to the possession of the entire crop until same is gathered and divided, and can maintain an action for damages for its destruction or injury.

Okla. Stat. of 1941, Title 41, Sec. 24, provide:

> **Crop rent.**—When any such rent is payable in a share or a certain proportion of the crop, the lessor shall be deemed the owner of such share or proportion, and may, if the tenant refuses to deliver him such share or proportion, enter upon the land and take possession of the same, or obtain possession thereof by action of replevin. (Laws 1901, p. 144; C.S. 1921, Sec. 7364; St. 1931, Sec. 10920.)

It would seem, then, that the landlord is the owner of the agreed proportion of the crop going to him for rent at all times, regardless of the fact that the relationship may be that of landlord and tenant. Presumably, as in all other jurisdictions, where the relationship is that of landlord and tenant, the tenant would have title to that portion of the crop to be retained by him.

If the agreement be that of landowner and cropper, the title to the crop remains at all times in the landowner prior to division.

(5) LIEN OF THE PARTIES ON THE CROP

Title 41, Sec. 24, of the Okla. Stat., 1941, gives the lessor the right to enter upon the land and take possession of his share of the crops when rent is to be paid in a share or proportion thereof, and to obtain possession by action of replevin. The section reads:

> **Crop rent.**—When any such rent is payable in a share or certain proportion of the crop, the lessor shall be deemed the owner of such share or proportion, and may, if the tenant refuses to deliver him such share or proportion, enter upon the land and take possession of the crop, or obtain possession thereof by action of replevin.

Sec. 26 provides that a person entitled to rent may recover same from any purchaser of the crop, with notice. [See *Shelp v. Lewis, 188 Okla. 156 (1940).*] And Sec. 27 provides that when any person liable for rent attempts to remove his property or his crops from the leased premises, the person to whom the rent is owing, after proper affidavit and undertaking, may sue out an attachment in the same manner as provided by law in other actions.

Sec. 28 provides that in an action to enforce a lien on crops for rent of farm land, the affidavit for attachment shall state that there is due from the defendant to the plaintiff a certain sum, naming it, for rent of the farm land, describing same; further, that plaintiff claims a lien on the crop made on such land. Upon making and filing such affidavit, and executing an undertaking as prescribed in the preceding section, an order of attachment will issue as in other cases, and will be levied on such crops, or so much thereof as may be necessary. The proceedings in such attachment are the same as in other actions. *Cunningham v. Moser, 91 Okla. 44, 215 P. 758.*

While the landlord has a lien for, and may thus recover, the rent in a crop-sharing contract, he does not have a lien for supplies advanced. In the case of *Halsell v. First National Bank, 109 Okla. 220 (1925)*, the court says in regard to the question of the landlord's lien for supplies:

> In the absence of contract, under the law of this state, a landlord has no lien on the tenant's part of the crop for supplies furnished to make the crop, and the cases cited by the defendant to show otherwise are not applicable here for the reason they are dealing with a lien under statutory provisions. Under our statute the landlord has a lien for his rent but not for supplies furnished.

In the case of *Aikins v. Huff, 133 Okla. 268, 272 P. 1025*, it was held that a landlord has only a lien for rents on the crops grown during the year for which the rent is due.

Of course, if the cultivator of the land is a cropper, the landlord has title and possession of the crop and needs no lien for rent.

A laborer is given a lien on the products of his labor by Sec. 92, Okla. Stat., Annotated, which is as follows:

> Laborers who perform work and labor for any person under a verbal or written contract, if unpaid for the same, shall have a lien on the production of their labor for such work and labor; provided, that such lien shall attach only while the title to the property remains in the original owner.

Sec. 93 provides that this lien may be enforced as in ordinary actions, or by attachment proceedings as provided in the Code of Civil Procedure. And in *First National Bank v. Rogers, 24 Okla. 357, 103 P. 582*, it was held that a person who raises a crop, on another's land, is a cropper, or laborer, and not a tenant, and has a lien on the crop for the share due him, if he has complied with the statute.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

As seen in "(5) Lien of the Parties on the Crop," Sec. 24, Title 41, Okla. Stat., 1941, gives the landowner the right to enter on the premises and possess himself of his share of the crops if the tenant refuses to deliver such share.

Sec. 25 of Title 41 provides that any person removing crops from rented premises with the intention of depriving the landlord of any rent, or who fraudulently appropriates the rent due the landlord to himself, or any person not entitled thereto, shall be guilty of embezzlement; and Sec. 27 gives the person to whom rent is owning a right of attachment when any person liable for rent attempts to remove his property or his crop from the leased premises. *(See Cunningham v. Moser, 91 Okla. 44.)*

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

In *First National Bank v. Rogers, 24 Okla. 357, 103 P. 582,* the court held that one raising a crop on land of another for an agreed share is a cropper or laborer, and not a tenant, and has a lien for his share.

In *Taylor v. Riggins, 129 Okla. 57, 352 P. 146,* the court held that a sharecropper's action for the owner's refusal to permit him to tend crops under contract is one for breach of contract, not for conversion, and as heretofore seen, Sec. 92, Title 42, Okla. Stat., Annotated, gives the laborer a lien on the products of his labor. The cropper, being a laborer, would come under the provisions of this section.

SOUTH CAROLINA

(1) LANDLORD AND TENANT, WHEN

As in most of the other States, when there is a demise of the premises, and the tenant acquires an estate in the land for the term, with right of possession and title in the crop subject to the landlord's lien for rent and advances, the relationship is that of landlord and tenant.

In *Brock v. Haley and Company, 88 S. C. 373, 70 S. E. 1011,* the court in construing the written contract to create the relation of landlord and tenant says:

> We agree with the Circuit Court that it (the contract) creates the relation of landlord and tenant, and is not a mere contract for labor under the control and direction of the landowner. Brock, the owner, expressly agrees to rent the land to Gaines, and Gaines expressly agrees to pay the specified portion of the crop. That the parties regarded the contract as one of tenancy is manifest from the relationship and conduct of both. Under this construction it was competent at that time for Gaines to give an agricultural lien on the crop to be grown by him on the land * * * .

(2) EMPLOYER AND CROPPER, WHEN

In the case of *Loveless v. Gilliam, 70 S. C. 391, 50 S. E. 9, (1904),* the court said:

> This appeal is from a judgment of the Circuit Court affirming the judgment of a Magistrate's Court in favor of the plaintiff in an action of claim and delivery for a bale of cotton. The disputed facts are that in 1904 the defendant cultivated plaintiff's land under circumstances which made him a laborer upon shares of the crops grown by him. Three bales of cotton were raised upon the place. The first two were placed in a warehouse * * * in plaintiff's name, by her direction. The plaintiff directed the defendant to store the third bale in the same way, which defendant refused to do, but stored it in his own name. This action is the result of the defendant's refusal to deliver the cotton on plaintiff's demand. The Circuit Court agreed with the Magistrate's Court in holding the plaintiff was the owner of the cotton and entitled to the possession thereof until the division had been made * * * . Upon the facts stated, it must follow that the Circuit Court did not err, as a matter of law, in holding that the plaintiff was the owner of the cotton, and was entitled to possession until division was made. *Huff v. Watkins, 15 S. C. 86.* Judgment affirmed.

This was one of the earlier cases in which there was a clear cut decision that a share cropper has no right of title or possession in the crop until after division is made. It is cited with approval in a long line of cases, one of the later of which is *Hardwick v. Page, 124 S. C. 111, 115 (1922).* See also cases cited under (4) herein.

(3) TENANTS IN COMMON OF THE CROP, WHEN

Tiffany on "Landlord and Tenant," Sec. 253-b, discussing the relationship of tenants in common of the crop as between landlord and share cropper, says:

> The cases most frequently discussed in connection with agreements for the division of the crops between landowner and the cultivator have 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, or the former's creditors may levy thereon and so put it out of his power to deliver to the other party the latter's agreed share. Furthermore, the character of the rights of the respective parties to the crop before division will affect the character of the remedies which may be adopted by one in case the other undertakes to deprive him 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 agreement entitles him, if the whole title is regarded as being 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 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 that the parties are tenants in common of the crop has been most frequently taken in cases in which the agreement was not regarded as involving a demise, creating the relation of landlord and tenant, but in some cases though the cultivator is expressly stated to be a tenant, a tenancy in common of the crops is recognized as existing.

Of the considerable number of cases cited by Tiffany, none originated in South Carolina, and in the statutes and decisions of South Carolina there appears to be no reference to the relationship of tenants in common of the crop.

Tiffany continues:

> We will consider the question of the existence of a tenancy in common of the crops, first, on the theory that the agreement does not involve a demise of the land, creating the relationship of landlord and tenant. 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 crops which is to be delivered to the cultivator as wages can, before such delivery, be regarded as belonging to him. He has, it would seem, a mere contractural right against the landowner. That one thus employed to cultivate the land for a share of the crops has no proprietary interest is recognized in a number of cases.

In the footnotes on this observation only two cases from South Carolina are cited. *Huff v. Watkins, 15 S. C. 85 (ante, above); Ritchie v. Dupre, 20 S. C. 6.*

(4) TITLE TO CROP PRIOR TO DIVISION

It is well settled that where the relationship between the parties is that of landlord and tenant, the tenant has title and possession of the crop, subject to the landlord's lien for rent and advances. (See under this heading in the various States covered by this Memorandum.)