

(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 owing 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. Riggs*, 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 contractual 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.)

It is equally well settled that where the agreement is such that the relation between the parties is that of employer and laborer or share cropper, title and possession of the crops prior to division is in the landowner.

In *Miller v. Insurance Company*, 146 S. C. 123, 143 S. E. 663 (1928), it was held that a share cropper has no title to any portion of the crops until there is a division and he has received his share, and he cannot, therefore, maintain an action at law for possession of his share, but he has an equitable interest and can maintain action in equity for settlement and division of the crop.

Among the later decisions holding that a share cropper has no title or right of possession of the crop prior to division are the following:

Malcolm Mercantile Co. v. Britt, 102 S. C. 499.
State v. Sanders (1918), 110 S. C. 487.
Dacus v. Williamston Mills, (1921), 118 S. C. 245.
Lipscomb v. Johnson (1922), 123 S. C. 44.
Birt v. Greene (1923) 127 S. C. 72.
Peoples' Bank v. Walker (1925), 132 S. C. 254.

(5) LIEN OF THE PARTIES ON THE CROP

Both the landlord and the laborer or cropper have statutory liens on the crop raised, one for rent and advances, and the other for his wages as a laborer. Art. 3, Agricultural Lien, Sec. 8771, S. C. Code, 1942, provides:

Lien of landlord for rent and advances.—Every landlord leasing land for agricultural purposes shall have a prior and preferred lien for his rent to the extent of all crops raised on the land leased by him, whether the same be raised by the tenant or other person. No writing or recording shall be necessary to create such lien, but it shall exist from the date of the contract, whether the same be in writing or verbal, and the landlord and his assigns shall have the right to enforce such lien in the same manner, upon the same conditions, and subject to the same restrictions as are provided in this Article for persons making advances for agricultural purposes. And subject to the liens hereinafter provided for, and enforceable in the same way, the landlord and his assigns shall have a lien on all the crops raised by the tenant for all advances made by the landlord to such tenant during the year.

Under this section, the landlord's lien for rent extended to and covered the share of the third person and the crop raised by him as a share cropper with the tenant. *Hamilton v. Blanton*, 107 S. C. 142, 92 S. E. 275.

Sec. 8772—Laborer's lien on crops.—Laborers who assist in making any crop on shares, or for wages in money or other valuable consideration, shall have a lien thereon to the extent of the amount due them for such labor, next in priority to the lien of the landlord for rent; and as between such laborers there shall be no preference. Such portion of the crop to them belonging, or such amount of money or other valuable consideration as may be due them, shall be recoverable by an action in any court of competent jurisdiction.

Under this section a laborer or share cropper has a lien upon the crop next in priority to the landlord's lien for rent and is necessarily senior to a mortgage on the crop for fertilizer. *Birt v. Greene and Co.*; 127 S. C. 70, 120 S. E. 747; *Hamilton v. Blanton*, ante.

A sharecropper who has not been paid has a lien next in priority to the landlord's lien for rent on all crops raised, regardless of the question of division, and if a bank as crop mortgagee seizes any of the crop and appropriates the proceeds to its own use, it is liable to the sharecropper for conversion. *Dupon v. Home Bank*, 129 S. C. 283, 124 S. E. 12.

Sec. 8773—Rank of liens for rent, for labor, and for supplies: The landlord shall have a lien on the crops of his tenant for his rent in preference to all other liens. Laborers

who assist in making any crop shall have a lien thereon to the extent of the amount due them for such labor, next in priority to the landlord, and as between such laborers there shall be no preference. All other liens for agricultural supplies shall be paid next after the satisfaction of the liens of the landlord and laborer, and shall rank in other respects as they would under existing laws.

Sec. 8774—Indexing liens for advances: Every lien for advances shall be indexed in the Office of the Register of Mesne Conveyances or Clerk of the Court * * * of the county in which the lienor resides within 30 days from the date of the lien, and the indexing of the said lien shall constitute notice thereof to all third persons and entitle the same to the benefits of this article * * *.

Sec. 8775—This section provides for the seizure and sale of the crops upon proof to the clerk that the person to whom advances have been made is about to sell or dispose of his crop, or is about to defeat the lien in any other way; with a provision permitting the person to whom the advances have been made to have a hearing before the Court of Common Pleas of the county in which he resides. The statute reads:

Clerk may seize crop, etc.—If any person making such advances shall prove, by affidavit, to the satisfaction of the Clerk of Court of the county in which such crop is, that the person to whom such advances have been made is about to sell or dispose of his crop, or in any other way is about to defeat the lien hereinbefore provided for, accompanied with a statement of the amount then due, it shall be legal for him to issue a warrant directed to any of the sheriffs of this state, requiring them to seize the said crop and, after due notice, sell the same for cash, pay over the net proceeds thereof, or so much thereof as may be necessary, in extinguishment of the amount then due; provided, however, that if the person to whom such advances have been made shall within 30 days after such sale has been made give notice in writing to the sheriff, accompanied with an affidavit to this effect, that the amount claimed is not justly due, then it shall be the duty of said sheriff to hold the proceeds of such sale subject to the decision of the court upon an issue which shall be made up and set down for trial at the next succeeding term of the Court of Common Pleas for the county in which the person to whom such advances have been made resides, in which the person who makes such advances shall be the actor.

Sec. 8778—When lien creditor may proceed before debt becomes due.—In case any portion of the crop is removed from the land rented or leased, and the proceeds thereof not applied to payment of the rent for the year, or to the other liens herein provided for, and this fact shall be made to appear by affidavit, persons holding liens herein provided shall have the right to proceed to collect the liens which will become due for rent and advances in the same way as if the sum had become due according to contract before such removal.

Persons other than the landlord supplying advancements of provisions, supplies, and other articles for agricultural purposes, have a lien (under Sec. 8779) upon such provisions and supplies in preference to all other liens existing or otherwise until the same shall have been consumed in the use. If the party to whom such supplies have been advanced shall endeavor to dispose of such supplies, or make them liable for his debts, then the party making the advances has the same remedy and means of enforcing his lien as provided for agricultural supplies.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

(This and the next heading are interdependent and should be read together.)

Civil Code of S. C., 1942, vol. IV, Sec. 7032-1-10:

Art. 3, Labor and Labor Laws: Any person who shall contract with another to render him personal service of any kind, and shall thereafter fraudulently and with malicious intent to injure his employer, fail or refuse to render such service as agreed upon, shall be deemed guilty of a misdemeanor.

Sec. 7030-1, any person who shall hereafter contract to receive from another person service of any kind and to compensate him therefor, and shall thereafter fraudulently or with malicious intent to injure his employee, fail or refuse to receive

such service, or to make compensation as agreed upon, shall be deemed guilty of a misdemeanor.

Sec. 7030-2, any person who shall hereafter contract with another to render personal service of any kind to him, and shall thereafter fraudulently and with malicious intent to injure the employer, procure advances in money or other thing of value from him, with intent not to render the service agreed upon, and who shall thereafter, with like intent, fail or refuse to perform the service agreed upon, shall be deemed guilty of a misdemeanor.

Sec. 7030-3, this section deals in the same general terms of the failure of the employer to make agreed advances with malicious intent to injure the employee.

Sec. 7030-4 is the first section of this article that specifically recognizes payment in a share of the crops:

Such contract shall clearly set forth the conditions upon which the laborer or laborers are engaged to work, embracing the length of time, the amount of money to be paid, and when; if it be on shares of the crops, what portion or portions thereof.

If the contract is verbal, it must be witnessed by two disinterested witnesses not related to the parties in the sixth degree. No transfer or assignment of the contract can be made.

Sec. 7030-5 provides for registration of such contracts where they are in writing.

Sec. 7030-6—This section provides penalties for violation of Sec. 7030 to Sec. 7030-5.

Under these sections fraud, and malicious intent to injure, must be alleged and proven.

When the crop has been raised the landlord has his lien under Sec. 8771 for rent and advances, be the other party tenant or cropper, and the remedies given under Sec. 8774 to 8778. [Ante, under (5).]

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

The Civil Code of S. C., 1942, Sec. 7030-6, prescribes the method of making contracts for labor and for punishment for breach of such contracts by either party with malicious intent.

Such contracts may be either verbal or written (Sec. 7030-4); and may be registered by either party (7030-5). Sec. 7030-6 provides that there shall be no conviction under Sec. 7030-5 unless warrant is issued within 30 days from the commission of the offense, and declares that those sections shall not be operative where the inducement for any contract is money or other thing of value, advanced to or for the employee, prior to the commencement of the services thereunder. Such contracts are declared null and void.

Sec. 7030-7 provides that all contracts made between owners of land * * * and laborers shall be witnessed by one or more disinterested persons, and, at the request of either party, be duly executed before a magistrate, whose duty it is to read and explain the same to the parties. Such contracts shall clearly set forth the conditions upon which the laborer or laborers engage to work, embracing the length of time, the amount of money to be paid, and when; if it be on shares of crops, what portion of the crop or crops.

Sec. 7030-8—Crops to be divided by disinterested person: Whenever laborers perform under contract on shares of crop, or crops, such crop or crops shall be gathered and divided off before its removal from the place where it is planted, harvested, or gathered, such division to be made by a disinterested person, when desired by either party to the contract. Such disinterested party shall be chosen by and with the consent of the contracting parties; whenever the parties fail to agree upon a disinterested party, or, if complaint is made that the division has been unfairly made, within ten days after

such division, it shall be the duty of the Magistrate residing nearest to the place where such crop or crops are planted, harvested, or gathered, to cause, under his immediate supervision, such equitable division as may be stipulated in the contract * * *. When such division has been made, each party shall be free to dispose of their several portions as to him, or her, or them, may seem fit; provided, that if either party be in debt to the other for any obligation incurred under contract, the amount of said indebtedness may be then and there settled and paid by such portion of the share or shares of the parties so indebted as may be agreed upon by the parties themselves, or set apart by the Magistrate, or any party chosen to divide said crop or crops.

Sec. 7030-9 makes it a misdemeanor for a person fraudulently to secure advances in a lease or crop-sharing contract, and then refuse to cultivate the land. It is also a misdemeanor for a lessor or landowner to withhold peaceful entry and possession of the land.

Sec. 7030-10 makes it a misdemeanor for any person to entice away any tenant or laborer under contract with another, or to employ such laborer knowingly.

Sec. 7030-11 provides for the payment of all laborers on plantations in lawful money unless otherwise provided by special contract.

In addition to these provisions [headings (6) and (7) herein] the laborer (cropper) has his lien under Sec. 8772, and could maintain an action for breach of contract against the landlord where the circumstances warranted.

TENNESSEE

(1) LANDLORD AND TENANT, WHEN

There is no statutory definition of the relation of landlord and tenant as applied to share-cropping contracts in Tennessee. Michie's Digest of Tennessee Reports, p. 410, cites the definition of the landlord and tenant relationship in Bouvier's Law Dictionary, vol. II, p. 115, as follows:

The term landlord-and-tenant denotes the relationship which subsists by virtue of a contract express or implied between two or more persons for the possession or occupation of lands or tenements either for a definite period, from year to year, for life, or at will.

The relationship does not rest upon the landlord's title, but upon the agreement between the parties, followed by the possession of the premises by the tenant under the agreement. (*Beasley v. Gregory*, 2 Tenn. App. 378). A tenant in the popular sense is one who is in occupation of land and tenements, title to which is in another, the terms of whose occupation are defined by the agreement. [*Metropolitan Life Insurance Company v. Moore*, 167 Tenn. (3 Beeler) 620, 72 S. W. 2d 1050.] An express contract is unnecessary and tenancy may be inferred from the conversations and actions of the parties. [*Laird v. Riggle*, 53 Tenn. (6 Heisk) 620.] Where premises are occupied as an incident of employment, the relation of landlord and tenant is not thereby created. Upon termination of the employment the right of occupancy ceases and the servant becomes a trespasser. [*Croom v. Reichman*, 8 Tenn. Civ. App. (Higgins) 86.]

Tiffany, in his work on real property (vol. I, p. 121), with relation to landlords and tenants, says:

If the effect of the arrangement is to give the cultivator the possession of the land, the exclusive possession as it is frequently termed, a tenancy is created.

Although Tennessee statutes do not declare what the relationship is when a landowner agrees with another party to cultivate his land for a share of the crops, undoubtedly the general rule of tenancy would hold.