them, from employment without due cause, or for any night rider or other person by threats, written or verbal, or by intimidation in any form, to compel or seek to compel hired laborers, share croppers, or tenants, or their families, to vacate under fear or compulsion, the premises they have occupied. Any person convicted under this Section shall be punished by imprisonment in the penitentiary for not less than three years, and not more than 15 years. (1915, ch. 15, Sec. 2.)

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

Being a tenant in common of the crop, the cropper can maintain an action for partition, can recover for conversion, can interplead for his share of the crop, and can mortgage or sell his share of the crop which his labor produced.

Vol. IV, Law and Contemporary Problem, p. 543.
Hunt v. Wing, 57 Tenn. 139 (1872).
Jones v. Chamberlain, 52 Tenn. 211 (1871).

If the action be one for breach of contract, as where the landlord failed to furnish supplies or money to make the crop, the measure of damages is the value of the share, less necessary expenditures, not including labor, and less such sums as the sharecropper may have earned in other employment. *Matthews v. Foster, 238 S. W. 317 (Tex. Civ. App. 1922).*

TEXAS

(1) LANDLORD AND TENANT, WHEN

The most recent decision of the Supreme Court of Texas distinguishing the relationship of landlord and tenant from that of employer and cropper, in crop-sharing contracts, is *Brown v. Johnson, 118 Tex. Rep. 143, 12 S. W. 2d 543 (1929).* The case came before the Court in an agreed statement of facts, which were:

In December, 1924, appellee rented the land involved in this suit * * * for the year 1925, and agreed to pay as rent for said land one-third of all grain, and one-fourth of all cotton raised thereon. The appellee, of his own volition, entered into a contract with appellant for him to cultivate the land during the year 1925, the terms of said contract being as follows:

Appellee was to furnish the appellant the land, teams, tools and seed for the cultivation of said land, and appellant was to cultivate the land, gather and sell the crops therefrom, and when crops were sold, appellee was to receive from appellant one-half of the proceeds arising from the sale. The crops were not to be divided in kind.

The question submitted to the Supreme Court for adjudication was whether the trial court erred in holding that the relationship of landlord and tenant existed between appellee, Johnson, (the tenant of the owners of the land on which the crops were grown), and the appellant, Brown, (the grower of such crops under his contract with appellee).

The Supreme Court said:

It is our opinion that the question propounded must be answered in the affirmative (that is, that the Trial Court did err) under the facts stated in the certificate. The relationship of landlord and tenant is a question of fact, like that of possession, and may be proved by parole evidence. Likewise, the alleged relationship may be thus disproved. To sustain an action for rent, the relationship of landlord and tenant must exist. * * * To create the relationship of landlord and tenant no particular words are necessary but it is indispensable that it should appear to have been the intention of one party to dispossess himself of the premises and of the other party to occupy them. According to the certificate the legal rights of the appellee, Johnson, are held dependent upon a proper construction of the Landlord and Tenant Act as expressed in Articles 5222-5239. Those rights are primarily based on the contract he made with the owners of the fee in the lands cultivated by the appellant. The contract gives the appellee the exclusive possession of these lands with the right to use them during the term of his contract. * * * The relationship of landlord and tenant between himself and the owners of the fee was established by virtue of the terms of this contract. * * *

A casual reading of our Landlord and Tenant Law demonstrates that one of the essentials of a valid lease of the premises whereby the relationship of landlord and tenant is established is that exclusive possession of the premises rightfully belonging to one party is transferred to another, and that the relationship of landlord and tenant is established. As said by the Court of Criminal Appeals in *Lane v. State, 10 Tex. Criminal Appeals 593, 276 S. W. 712,* "It is true that the appellant was a mere tenant on the premises owned by the prosecuting witness, but, under the undisputed testimony, his right to the possession of said property was unquestioned, and neither the landlord nor any other person had a right to become a trespasser thereon and to thereby destroy the fruits of his labor." * * * No other elements of the Landlord and Tenant Act are to be found in the relationship of the parties growing out of this contract, and as the appellee set out to exercise the right given by the law to a landlord against a defaulting tenant in this case, when under the circumstances he was not entitled to do so, it appears that the proceedings were wrongful and the appellee acquired no rights thereunder, as a landlord, by virtue of the terms of the Landlord and Tenant Act.

(2) EMPLOYER AND CROPPER, WHEN

In *Brown v. Johnson, ante,* the Supreme Court cited the case of *Cry v. J. W. Bass Hardware Company, 273 S. W. 350 (1925),* from the Court of Civil Appeals, where the distinction between a tenant and a mere cropper is stated thus:

The distinction between a mere cropper and a tenant, entitling the tenant to a homestead right in the premises, is clear; one has the possession of the premises for a fixed time exclusive of the landlord, the other has not. The possession of the land is with the owner as against a mere cropper because a mere cropper is in the status of an employee, one hired to work the land and to be compensated by a share of the crop raised, with the right only to ingress and egress on the property. This is not so as to the tenant, who has a substantial right in the land itself for a fixed time.

The Court then quotes from 12 Cyc. 979, as follows:

The intention of the parties as expressed in the language they have used, interpreted in the light of surrounding circumstances, controls in determining whether or not a given contract constitutes the cultivator a cropper. If the language used imports a present demise of any character in the land passes to the occupier, or by which he obtains the right of exclusive possession, the contract becomes one of lease, and the relation of landlord and tenant is created. If, on the other hand, there be no language in the contract importing a conveyance of any interest in the land, but by the express terms of the contract the general possession of the land is reserved in the owner, the occupant becomes a mere cropper. * * *

The factor is "the right of exclusive possession" as to the legal effect of the contract, and not "the shares of the crop" only. In other words, when the contract evinces the intention, as here, of "renting land," and not merely a hiring "to work the land," the relationship of landlord and tenant legally exists.

(3) TENANTS IN COMMON OF THE CROP, WHEN

In Texas, when the relationship is determined to be that of landlord and cropper, it follows that the parties are tenants in common of the crop. In the case of *Rogers v. Frazer Brothers and Company, (D.A. 108, S. W. 727, 1908),* the action was brought by the payee on a note executed by the cultivator and secured by mortgage on the first four bales of cotton grown on the Rogers farm, against the landowner for conversion of such cotton. The defense set up the fact that Signoski, the cultivator, has sold his interest to him. The Court affirmed a judgment for the plaintiff mortgagee, and said:

The testimony shows that Signoski entered into a verbal contract with the appellant (the landowner) for the cultivation of 40 acres of land during 1904. By the terms of such contract appellant was to furnish the land, teams, and tools, and said Signoski was to cultivate the land and make a crop

thereon, get appellant's wood for him, feed his stock, make his fires, and milk his cows, for all of which he was to receive one-half of the crop and the appellant the other half. This is not an ordinary rental contract, creating the relation of landlord and tenant between the parties. It was renting on shares whereby appellant and Signoski each acquired title to an unidentified half interest of the crop grown upon the land, and made them tenants in common of the crop.

In *Turner v. First National Bank (C.A.) 234 S. W. 928 (1921)*, the cultivator's mortgagee brought an action to foreclose on a recorded mortgage lien on the crop of cotton raised by Vaughn on the farm of Corley. Turner was made a party defendant as having bought one bale of cotton, which was covered by the mortgage, from Vaughn and converted it to his own use. The trial court held that a landowner and cropper relationship existed, and that, therefore, Corley and Vaughn were tenants in common of the crop, and gave judgment for plaintiff for one-half of the value of the bale of cotton (Vaughn's interest). This judgment was reversed upon the finding that the court had erred because the contract had established a landlord and tenant relationship instead of that of landowner and cropper. The court pointed out that the landowner had used the word "rent" in his testimony, saying that the verb "to rent" meant to "let out" or "lease," and showed the intent to create an interest in the land.

In the case of *Jacoe v. Nash and Company, (C.A.) 236 S. W. 235 (1921)*, the action was brought by the cultivator's mortgagee against the landowner and the cultivator. In reversing the judgment for the plaintiff because of an insufficient showing of facts, the court said:

> Notwithstanding the agreement was that V. & B. would share the crops produced equally with Jacoe, yet if the understanding was such as to put the entire title to the crops in V. & B. with a lien in favor of Jacoe to secure the payment of the one-half, then the relation of landlord and tenant would thereby be created, so that Jacoe would not have a specific interest in the crops themselves, but only a landlord's lien against them to enforce payment as rent of the one-half. On the other hand, if the terms of the agreement were not such as to reveal an intention to this effect, but were only those which ordinarily exist between a landlord and the person to whom he lets his land on the halves, then, in that event, Jacoe would not merely have a landlord's lien on the crops to secure the payment of rent, but he would have a specific one-half unidentified interest in whatever may have grown on the land, and he and V. & B. would be tenants in common of all such crops * * *. In the latter instance Jacoe would have title to an unidentified one-half interest in the crops grown on the land, which would not be subject to mortgage by V. & B. and as to which no landlord's lien could exist to be waived by Jacoe.

See also:

Horsley v. Moss and Pennington, 5 Tex. App. 341 (1893).
Tignor V. Toney, 13 Tex. Civ. App. 518, 35 S. W. 88 (1891).
Fagan v. Vogt, 36 Tex. Civ. App. 528, 80 S. W. 664 (1904).
Barrett v. Govan, 241 S. W. 276, Tex. Civ. App. (1922).
Rosser v. Cole, 226 S. W. 510 (1921).

(4) TITLE TO CROP PRIOR TO DIVISION

When the relationship between the parties is that of landlord and tenant, title to the crop produced is in the lessee or tenant, and the landlord has a statutory lien on the crop for his rent. (See Art. 5222, Vernon' Texas Statutes, under next heading.)

When the relationship is that of landlord and cropper, there is no lien for the rent since the landlord has an interest in the specific property. *Rosser v. Cole (C. A.), 226 S. W. 510 (1920); Brown v. Johnson, 118 Tex. Rep. p. 143, 12 S. W. 2d, 543 (1929).*

In the case of *Rosser v. Cole (ante)*, the action was brought by the landowner against the cultivator for refusal to make a division of the crop. The defense was a general denial and a cross action for wrongful and malicious issuance of several writs of sequestration. The court affirmed a judgment for the defendant upon his cross action, holding that the parties were tenants in common of the crop, and that, therefore, there was no statutory lien in the landowner for his rent.

In *Spurlock v. Hilbrun (C.A.) 32 S. W. 2d, 393 (1930)*, it was held that under the statute the landlord has a lien for advances superior to that of a prior mortgage executed by the tenant. In that case the facts show that the relationship was that of landlord and tenant.

When the relationship is that of landlord and cropper, they are tenants in common of the crop [see under chart (3)], and each has title to his undivided one-half thereof.

The landlord in a landlord-and-tenant relationship does not become the owner of the agreed share of the crop until it is matured and divided. [*Trimly & B.V. Railway v. Doke, (C.A.) 152 S. W. 1174; Williams v. King, 206 S. W. 106.*]

(5) LIEN OF THE PARTIES ON THE CROP

The Texas Legislature in 1915 enacted a statute (Acts of 1915, p. 77), setting maximum rentals of one-third the value of the grain, and one-fourth the value of the cotton where the land was cultivated by a tenant who furnished everything except the land, and maximum rentals of one-half the value of the grain and one-half the value of the cotton where the landlord furnished everything except the labor. The statute provided that leases reserving rent exceeding those amounts should be unenforcible, and that there should be no landlord's lien for rent, and that if the landlord sought to collect more than the maximum rentals, the tenant could recover double the full amount of such rentals.

This statute was held unconstitutional by the Texas Supreme Court in the case of *Culberson v. Ashford, 118 Tex. 491, 18 S. W. 2d, 585 (1929).* Following the decision in that case, however, the legislature re-enacted the rent limitations statute, eliminating the provision directly limiting rentals and authorizing double damages, but providing that there should be no landlord lien either for rent or for supplies furnished, where the rental exceeded the shares named in the previous statute.

While this statute has not been directly attacked, A. B. Cotton in his Article on Regulations of Farm Landlord-Tenant Relationships, IV Law and Contemporary Problems, pp. 508-511, says that dicta in a series of cases before the Texas Court of Civil Appeals indicate that the legislature has power under the Texas Constitution ω abolish the landlord's lien, or to restrict it in any way in which it deems best for the public interest. Commenting further on this statute, A. B. Cotton says that since it has been held that the Landlord's Lien Statute does not apply to a cropper's contract, *(Brown v. Johnson, ante, 1920; Rosser v. Cole, 270 S. W. 510, 1920)*, and the landlord and cropper are tenants in common of the crop [*Horsley v. Moss, 1893; Tignor v. Toney, 13 Tex. (C.A.) 518, 35 S. W. 881, 1896*], the landlord has no need of a lien. Consequently, if he desires to secure a greater rental than the statute permits, he only needs to make a cropping agreement instead of a lease, and thus hold title to the crop, rather than a lien on it, as security for his rent.

Where the relationship between the parties to a crop-sharing contract is that of landlord and tenant, the landlord acquires his statutory lien for rent by virtue of the following Article in Vernon's Texas Statutes, 1936:

> **Article 5222.**—All persons leasing or renting land or tenements at will, or for a term of years, shall have a preference

lien upon the property of the tenant, as hereinafter indicated, upon such premises and for any rent that may become due, and for all money and the value of all animals, tools, provisions, and supplies furnished, or caused to be furnished, by the landlord to the tenant to make a crop on such premises; and to gather, secure, house, and put the same in condition for marketing, the money, animals, and tools, and provisions, and supplies so furnished, or caused to be furnished, being necessary for that purpose, whether the same is to be paid in money, agricultural products, or other property; and this lien shall apply only to animals, tools, and other property furnished or caused to be furnished by the landlord to the tenant, and to the crop raised on such premises. Provided, further, that all persons leasing or renting lands or tenements at will, or for a term of years, where the landlord furnishes everything except the labor and the tenant furnishes the labor, shall have a preference lien upon the crop or crops grown on such premises for any rent that may be due, and for all money, provisions, and supplies furnished, or caused to be furnished, by the landlord to the tenant to make a crop on such premises; and to gather, secure, house, put the same in condition for marketing, the money, provisions, and supplies so furnished, or caused to be furnished, being necessary for that purpose, whether the same is to be held in money, agricultural products, or other property, and this lien shall apply only to the crop or crops grown on the premises for the year in which the same is furnished, or caused to be furnished. This Article shall not apply in any way, or in any case where any person leases or rents lands or tenements at will or for a term of years for agricultural purposes, where the same is cultivated by the tenant who furnishes everything except the land, and where the landlord charges a rental of more than one-third of the value of the grain, and more than one-fourth of the value of the cotton raised on said land; nor where the landlord furnishes everything except the labor and the tenant furnishes the labor, and the landlord directly or indirectly charges a rental of more than one-half the value of the grain, and more than one-half the value of the cotton raised on said land, and any contract for the leasing or renting of land or tenements, at will or for a term of years, for agricultural purposes stipulating or fixing a higher or greater rental than that herein provided for, shall not carry any Statutory lien, nor shall such lien attach in favor of the landlord, his estate, or assigns, upon any of the property named, nor for the purposes mentioned in this Article. (Acts 1874, p. 55; P.D. 7418c; G.L. vol. VIII, p. 57; Acts 1915, p. 77; Acts 1931, ch. 100, sec. 1, p. 171.)

Art. 5223 provides that such preference liens shall continue as to the crops and as to the supplies so long as they remain on the rented premises, and for one month thereafter, and if agricultural products are stored in warehouses, the lien attaches so long as they remain stored, and that such lien shall be superior to all liens exempting such property from forced sale.

Art. 5225 provides that the tenant, while the rent and advances remain unpaid, shall not, without the consent of the landlord, remove or permit to be removed from the premises so leased or rented any agricultural products produced thereon, or any of the animals, tools, or property furnished as aforesaid.

Cropper's lien.—A statutory lien is given certain classes of laborers, including farm hands, by Art. 5483, which provides as follows:

Whenever any * * * cook, laborer, or farm hand, male or female, may labor and perform any service * * * or any farm hand under or by virtue of any contract or agreement, written or verbal, with any employer * * * , in order to secure the payment of the amount due or owing under such contract or agreement, * * * the hereinbefore mentioned employee shall have a first lien upon all products or things of value * * * that may be created in whole or in part by the labor, or that may be used by such person or persons, or necessarily connected with the performance of such labor or service * * * . Provided that the lien herein given to a farm hand shall be subordinate to the landlord's lien provided by law.

Section 5488.—The lien created by this chapter shall cease to be operative after six months after the same is fixed, unless suit be brought within said time to enforce said lien.

There seems to have been some doubt whether the preceding sections would apply to a cropper because of the provisions of Art. 5465, which are:

Article 5465—Payment of wages: Under the operation of this law, all wages, if service be by agreement, performed by the day or week, shall be due and payable weekly, or if by the month, shall be due and payable monthly, all payments to be made in the lawful money of the United States.

The doubt seems to arise from the language "all payments to be made in lawful money of the United States."

The overwhelming authority is that a cropper is a "laborer," and certainly he is a "farm hand." He does not labor by the day or week or month, but for the crop season, and it would, therefore, seem that Art. 5465 does not take the cropper out of the protection of Art. 5483, and that he does have a lien for his wages, even if those wages be a share of the crop.

Further, under the statutes it is provided that in order to perfect a laborer's lien, the laborer must make duplicate accounts of the amount due him, presenting one to his employer, and having the other filed with the county clerk within 30 days after the indebtedness has accrued. However, in *Neblett v. Barron, 104 Tex. 111 (1911)*, the Court of Appeals held that a farm hand working on the land at $1.00 per day, to be paid out of the first cotton sold, would have to have filed the account for the first weeks wages within 30 days. Upon the appeal of this case to the Supreme Court, it was held that a laborer's wages did not accrue within the meaning of the statute until the first cotton was sold, the Court saying:

(The) employment was not for a fixed or a definite time, but from its nature was more or less indefinite, but for such time as he would labor his compensation was fixed and measured at the rate and sum of $1.00 per day for the time he so labored. * * * The entire amount of the hire was to be paid when the cotton, or the portion of the same first disposed of, was sold. Therefore, the maturity of his demand was postponed by contract between him and his employer for several months beyond the completion of his first month's work.

(6) REMEDY, IF CROPPER VIOLATES AGREEMENT

The landlord is given a statutory remedy in the event of a violation of the contract by the cropper or tenant by Art. 5227 of the statutes, as follows:

When any rent or advances shall become due, or the tenant shall be about to remove from such leased or rented premises, or to remove his property from such premises, the person to whom the rents or advances are payable, his agent, attorney, assigns, heirs, or legal representative may apply to the Justice of the Peace * * * for a warrant to seize the property of such tenant.

(The articles following provide the method of procedure in an action of distress.)

By Art. 5237 it is provided that a tenant may not sublet the premises without the consent of the landlord. The article reads:

Article 5237.—Tenant shall not sublet. A person renting said lands or tenements shall not rent or lease the same during the term of said lease to any other person without first obtaining the consent of the landlord, his agent, or attorney.

(7) REMEDY, IF LANDLORD VIOLATES AGREEMENT

Article 5236.—Should the landlord, without default on the part of the tenant or lessee, fail to comply in any respect with his part of the contract, he shall be responsible to said tenant or lessee for whatever damages may be sustained thereby; and to secure such damages to such tenant or lessee, he shall have a lien on all the property of the landlord in his possession not exempt from forced sale, as well as upon all rents due said landlord under said contract.

This would seem to apply solely to a tenant or lessee, and not to a sharecropper. That the cropper does have a remedy when the contract is violated by the landlord seems to appear from the decision of the Supreme Court of Texas in the case of

Crews v. Cortez, 102 Tex. 111, 113 S. W. 523, (1908). This action was brought by the cultivator "to recover damages to the extent of one-half the value of the crop planted and raised on the land of Cortez by Crews." Under an agreement by which the landowner was to furnish the necessary tools, teams, feed for teams, and seed, the plaintiff planted and cultivated a crop until forced to leave by threats of violence on the part of the landowner. The defendant (the landowner) then appropriated the crop and converted same to his own use. The question certified to the Supreme Court was:

Would the defendent in such a case be entitled to charge against the plaintiff any part of the reasonable cost and expenses of cultivating, gathering and marketing the crop after the time that the defendant wrongfully and illegally took possession and forced plaintiff to abandon the same?

In differentiating between the cases which the lower court considered to have been in conflict, the court said:

In *Rogers v. McGuffey (96 Tex. 565)* and in *Wagoner v. Moore and Stevens, 45 Tex. (C.A.) 308,* the contracts were broken before any crops had been brought into existence and therein they differ from *Fagon v. Voght, 357 (C.A. 528),* and *Tignor v. Toney (13 T.C.A. 518),* in which the decisions were based on the docket of wrongful and intentional conversion of personal property. * * * The damages which the plaintiff in this case is entitled to recover, on facts such as are found by the Jury and the Court of Appeals, are to be ascertained as indicated in *Rogers v. McGuffey,* by finding the value of the contract to him, or, in other words, of the pecuniary benefits which would have accrued to him had he been allowed to perform it fully. The claim asserted seems to be for the value of the stipulated share of the material, crops, and we shall assume that it would have constituted the entire compensation to plaintiff for fully performing the contract had it been received as a result of such performance.

The question arises, is he entitled to the value of all of it when he was relieved of part of the labor, and, perhaps, of other expenses that would have been necessary to further performance? As was said in *Rogers v. McGuffey,* such contracts sometimes are intended to furnish employment for the labor of the tenant or cropper. The profit to be realized out of the crops over and above the value of the labor and other outlays expended in the making of them is therefore not all that is contemplated in such contracts. Employment for the tenant or cropper when secured is valuable, whether a profit over and above such labor and other expenses is realized or not. And this may be true as to the labor of members of his family which he can control and utilize without extra expenses. * * * Such contracts so far partake of the nature of those for personal services as to make it just to take into consideration the purpose by which the damages for breaches of those contracts are ascertained, and, in cases where such results as we have just indicated have flowed from the breach, to deduct, not the entire value of the labor that was necessary to making of the crop, but only such sums as those thrown out of employment could, by reasonable diligence, have earned thereafter. But all other expenses, including those for hired labor, which the cropper would have incurred in performing his part of the contract should be deducted from the value of his share of such crops as he would have made, for the reason that he would have realized from the matured crop only the difference between the value of his share and the cost of their production. * * *

The plaintiff did not have the right to recover the entire value of the stipulated share of the crops he would have made, if, in order to make them, further expenditures, such as we have indicated, would have been necessary on his part, but he had only the right to recover the difference between such value and the amount of such further outlays added to the deductions to be made as for such earnings in other employment as are above indicated. Expenses incurred by the defendant for labor, and other things, in maturing and harvesting the crops are not to be deducted in estimating the plaintiff's damages. The plaintiff, if the facts be as found, is not charged with expenses incurred by the defendant.

A cropper might also bring action for breach of contract where the landowner has failed to carry out his part of the agreement.

In *Matthews v. Foster (C.A.) 238 S. W. 317 (1922),* the cultivator brought an action against the landowner for breach of contract to furnish him with a sufficient amount of money to make a crop, buy groceries, etc., plaintiff agreeing to cultivate the land and give defendant one-third of all crops produced and repay advances. On this appeal the court reversed a judgment rendered for the plaintiff because of improper considerations as to damages, saying:

There is not only no allegation as to the value of the crops that would have been produced, but also an utter failure to show what appellee earned after he leased the land of the appellant. The measure of damages in such cases is two-thirds of the value of the crops which would have been produced less further necessary expenditures, not including the labor necessary to mature and gather the crops, and less such sums as appellee may have earned in other employment.

VIRGINIA

(1) LANDLORD AND TENANT, WHEN

In a crop-sharing contract, if the effect of the arrangement is to give the cultivator the possession of the land—the exclusive possession, as it is frequently stated—a tenancy is created and the parties are landlord and tenant. If the possession is retained by the owner, there is no lease creating a tenancy, and it is merely a cropping contract. The basic distinction is that the tenant has an estate in the land and the "cropper" has none. [See (2) under chart.]

No set of words is necessary to constitute a lease, and in doubtful cases the nature and effect of the instrument must be determined in accordance with the intention of the parties as gathered by the whole instrument. *Upper Appomattox Company v. Hamilton, 83 Va. 319, 2 S. E. 195; Michie v. Lawrence, 3 Rand 571.*

(2) EMPLOYER AND CROPPER, WHEN

Where the relationship of master and servant exists, and the occupancy of the premises is because of this relationship, the occupant is generally considered merely as a servant and not as a tenant. *Va. Iron and C. Co. v. Dickenson, 143 Va. 250, 129 S. E. 228.*

With regard to the relationship of employer and cropper, Michie's Digest of Virginia Reports, vol. VI, p. 360 (1939), makes the following observation:

Cropper not a tenant.—Where a landowner contracts with one to crop his land and to give him part of the crop after paying all advances, and the crop has not been divided, such cropper is not a tenant but a mere employee, and the ownership of the entire crop is in the landowner. *Parrish v. Commonwealth, 81 Gratt. 1.* The relationship was held not to exist in *Lowe v. Miller, 3 Gratt. 205, 212, 213.* In *Rosen v. Sachs, 143 Va. 420, 130 S. E. 229,* the evidence was held not to show a lease, and that the relationship of landlord and tenant did not exist.

(A lease) is to be distinguished from a license—Very frequently it is a matter of great difficulty to determine whether the agreement under which the tenant holds is technically a lease or a mere license. The decisions on this subject are numerous and extremely difficult to reconcile. *Hanks v. Price, 32 Gratt. 107,110.*

In the matter of joint tenancy of the crops in a crop-sharing contract, Michie remarks:

Still greater difficulties often occur in deciding whether the agreement constitutes the tenant a lessee of the land, or a mere joint tenant of the crop. *Lowe v. Miller, 32 Gratt. 205,* is one of that class of cases in which this Court, after much deliberation, held that under the contract there was no lease but a mere joint tenancy in the crops raised on the land. *Hanks v. Price, 32 Gratt. 107, 110.*

A party in possession of land, but having no title thereto, was authorized by the owner to rent it on shares. This was not a lease as the reservation of a part of the crop was not incident to the reversion, and thus gave no right of distress. *Lowe v. Miller, ante.*