MEMORANDUM REGARDING—LEGAL RELATIONS AND RIGHTS OF PARTIES WHEN LAND OWNED

STATE	(1) Landlord and tenant, when	(2) Employer and cropper, when	(3) Tenants in common of the crop, when
ALABAMA	The Alabama Code of 1940 establishes the legal relationship between the parties when one party furnishes the land and the other party furnishes the labor to cultivate it, as that of landlord and tenant; and that regardless of whether the party furnishing the land also furnishes teams to cultivate it, and other supplies. **Alabama Code, 1940, Title 31, Sec. 23.** [See this Memorandum (1), p. 1, Ala.] The only exception is where persons raise crops by joint labor contributions, or joint material contributions, in such manner as to make them tenants in common of the crop. **Alabama Code, 1940, Title 33, Secs. 81 and 82.** [See this Memorandum (1), p. 1, Ala.] Whether the relationship is that of landlord and tenant, or tenants in common, depends on the intention of the parties as shown by their agreement and in the light of the surrounding circumstances. **Hand v. Martin, 205 Ala. 333; 87 So. 529 (1921).** [See this Memorandum (3), p. 1, Ala.]	The relationship of landlord and cropper, or landlord and laborer, is abolished in Alabama by Title 31, Sec. 23 of the Code of 1940, and the relation of landlord and tenant is established, except where the parties, by their agreement, become tenants in common. **Title 31, Sec. 23, code; Stewart v. Young, 212 Ala. 426; 103 So. 44 (1925).** (See this Memorandum, p. 2, Ala.)	"Tenants in common" are such as hold by distinct titles, and by unity of possession. **Words & Phrases, vol. 41, p. 319.** [See this Memorandum (3), p. 1, Ala.]. Persons farming on shares, or raising crops by joint contributions, in such manner as to make them tenants in common in such crops, each have a lien upon the interest of the other for supplies furnished. **Code 1940, Title 33, sec. 81.** The intent of the parties is the controlling factor. Where one party to a farming contract was not only to furnish the land but to assist in planting the same, and the other was to furnish labor, teams and tools, they were held to be tenants in common. **Hand v. Martin, 205 Ala. 333, (1921); Stewart v. Young, 212 Ala. (1925);** (See this Memorandum pp. 1,2, Ala.) Where a landlord and tenant agreed to purchase fertilizer to be paid for out of the crop at the equal expense of each, they became tenants in common of the crop. **Johnson v. McFay, 14 Ala. App. 170, 68 So. 716.** See also: **Lufkin v. Daves, 220 Ala. 443; 125 So. 811 (1930).** [See this Memorandum (3), p. 1, Ala.]
ARIZONA	There is no statutory definition of the relationship existing between the parties where one having no interest in land owned by another farms it in consideration of receiving a portion of the products for his labor. No general rule has been fixed. Courts consider: (a) Intention of the parties [**Gray v. Robinson, 4 Ariz. 24, (1893)**]; (b) public policy is best served by interpreting the relation to be that of landlord and tenant; **Birmingham v. Rogers, 46 Ark. 254;** (c) manner of division of crop; (d) stipulations in the agreement; (e) the use of technical words of demise has great weight; **Gray v. Robinson, ante;** (f) if the agreement confers exclusive possession it is one of tenancy; (g) the duration of the agreement is material. The courts lean toward the landlord and tenant construction. **A. & E. Enc. Law, 2d. ed. vol. 18, vol. 24, pp. 173, 1464; and cases cited.** (See this Memorandum, p. 4, Ariz.)	If there is no language in the contract importing a conveyance of any interest in the land, but by the express terms general possession is reserved to the owner, the occupant is a mere cropper. **Gray v. Robinson, 4 Ariz. 24, 33 Pac. 712.** (See this Memorandum p. 4, Ariz.) A cropper is defined as "one who, having no interest in the land, works it in consideration of receiving a portion of the crop for his labor," in **Gerrard Co. v. Cannon, 43 Ariz. 14, 28 P. (2d) 1016, decided in 1934.** The court then quotes **Gray v. Robinson, ante,** "under such a contract the occupier becomes merely the servant of the owner of the land, being paid for his labor in a share of the crop,"—and cites **Romero v. Dalton (1886), 2 Ariz. 210, 11 P. 863.** In **Gray v. Robinson, ante,** the court defined a cropper's contract generally as one in which one agrees to work the land of another for a share of the crops, without obtaining any interest in the land or ownership of the crops before they are divided. (See this Memorandum, pp. 4,5, Ariz.)	Neither the statutes nor the decisions in Arizona recognize the relationship of tenants in common between the parties to a crop-sharing contract. (For a discussion of tenants in common in general see this Memorandum, pp. 18, 19, under Mississippi.)
ARKANSAS	The relationship which exists between the parties to a crop-sharing agreement is governed by their intent, and is determined by the terms of their contract. If there is a demise or renting of the premises, the landlord to receive an undivided interest in the crop as rent, the relation of landlord and tenant exists. **(Tinsley v. Craige, 54 Ark. 346; 155 S.W. 897, decided 1891)** (See this Memorandum, p. 6, Ark.) The numerous Arkansas cases consistently hold that where there is a demise of the premises, or the landlord receives his share of the crop as rent, the relation is that of landlord and tenant, and title to the crop, before division, is in the tenant, subject to the landlord's lien for rent and advances. **Hammock v. Creekmore, 48 Ark. 264 (1886); Tinsley v. Craige, ante, (1891); Barnhardt v. State, 169 Ark. 567 (1925); Campbell v. Anderson, 189 Ark. 671, 74 S.W. (2d) 782, (1934).** (See this Memorandum, pp. 6, 7, Ark.) Also see: **Alexander v. Pardue, 30 Ark. 436; Birmingham v. Rogers, 46 Ark. 254.**	When the possession of land is not surrendered, and the contract vests no interest in it, the cultivator is a cropper, and the title to the crop is in the landlord until final division. **(Tinsley v. Craige, ante; Hammock v. Creekmore, ante.)** The distinction may be finely drawn between a tenant who pays half of the crop for the use of the land, livestock, feed and tools, and one who makes a crop as an employee to whom these things are furnishsd and who is given for his labor one half of the crop to be grown by him, but this distinction has been recognized by the Supreme Court of Arkansas in many instances. **(Barnhardt v. State, 169 Ark. 567; 275 S.W. 909. Decided 1925.)** (See this Memorandum, p. 6, Ark.)	In **Tinsley v. Craige, ante,** the court says in the opinion: If there is a demise or renting of the premises, with a stipulation that the landlord shall receive his rent by becoming an owner in an undivided interest in the crop, the relationship of landlord and tenant exists as to the premises, and the parties are **tenants in common** of the crop. If the contract between the landlord and one making the crop on his place shows that the parties intend to become tenants in common, the title to the crop vests as any other chattels held in common * * *. **(Harnwell v. Ark. Rice Growers Co-op Assn., 169 Ark. 622, 276 S.W. 371.)** (See this Memorandum, pp. 6, 7, Ark.) Joint tenancy exists where a single estate in real or personal property is owned by two or more persons under one instrument or act of the parties. [**Fullerton v. Storthz Bros., Inc., 190 Ark. 198, 77 S.W. (2d) 996.**]
GEORGIA	The relation of landlord and tenant exists when the owner of real estate grants to another simply the right to possess and enjoy its use, either for a fixed time or at the will of the grantor, and the tenant accepts the grant. No estate passes and the tenant has only the usufruct. **Ga. Code ann., sec. 61-101.** Such contracts may be by parole for any time not exceeding one year; if for a greater time they become tenancies at will. **Sec. 61-102.** Determining factors in fixing the relationship are: (1) Intent, as shown by the agreement; (2) whether there is a transfer of dominion and control over the premises. **Sauter v. Crary, 116 S.E. 231 (Ga. App. 1923).** (See this Memorandum, p. 9, Ga.)	Where one is employed to work for a part of the crop, the relationship of landlord and tenant does not arise. The title to the crop, subject to the interest of the cropper therein, and the possession of the land, remain in the owner. **Ga. Code ann. sec. 61-501, Croppers.** The most important factors in determining the relationship are the intent of the parties and whether dominion or control of the premises passes to the cultivator. If he receives his share of the crop as "wages," he is a cropper. If he pays the landlord his share of the crops as "rent," he is a tenant. **(Sauter v. Crary, ante.)** See also **Appling v. Odom, 46 Ga. 583 (1872).** (See this Memorandum, p. 9, Ga.)	No decisions have been found in Georgia holding that the parties to a cropper's contract are tenants in common of the crop. In **Padgett v. Ford, 117 Ga. 508, 510 (1903),** the Supreme Court of Georgia said: "It is now the settled law of this State that if one furnishes land or materials, and another does the labor necessary to produce the things to be sold, and the latter receives a part of the produce as compensation for his services, no partnership is created. * * * The analogous rule as to croppers, laid down in **Appling v. Odom, 46 Ga. 583** (See this Memorandum, Ga., p. 9.) has been codified. Civil Code, Sec. 3131."

CHART OF CROP-SHARING CONTRACTS

BY ONE IS CULTIVATED BY THE OTHER UNDER AGREEMENT TO SHARE THE CROPS

(4) Title to crop prior to division	(5) Lien of the parties on the crop	(6) Remedy, if cropper violates agreement	(7) Remedy, if landlord violates agreement
It has long been settled that the landlord's lien does not carry any right of possession of the crops as against the tenant; that the tenant has the title with the right of possession and can maintain detinue against the landlord. **Kilpatrick v. Harper, 119 Ala. 452; Stewart v. Young, 212 Ala. 426 (1925).** [See this Memorandum (4), p. 2, Ala.] The tenant's title and possession, however, is subject to the lien of the landlord for rent, supplies, and advances. [See this chart, under (5), next.] (In those States where the relation of landlord and cropper still obtains, the title to the crop, until final division, is in the landlord.)	**Landlord's lien:** Alabama Code, 1940, Title 31, Sec. 15, gives the landlord a paramount lien, with preference over all other liens, on the crops grown on rented lands, for the current year, and for advances to aid in raising the crops. Sec. 25 extends to subtenants of the chief tenant the lien of Sec. 15, where the chief tenant's crop is not sufficient to satisfy the landlord's lien. (For resume of Ala. decisions, see Memorandum, pp. 2, 3, Ala.) The sole remedy for enforcement of the lien is by attachment. **Compton v. Simms, 209 Ala. 287; Code, Title 31, Sec. 20.** (See this Memorandum, p. 3, Ala.) **Cropper's lien:** "Croppers" having been abolished by code, Title 31, Sec. 23, the relation between the parties to a crop sharing contract is that of landlord and tenant or tenants in common of the crop. The tenant has title and possession of the crop, subject to the landlord's statutory lien, and needs no lien. Tenants in common each have a lien on the other's share for contributions. Code, 1940, Title 33, Sec. 81.	Since the Code of 1940, Title 31, Sec. 23, there is no relationship of landlord and cropper, in Alabama. When a tenant, without just cause, fails or refuses to plant the crops, he may be required to vacate the premises at the election of the landlord; and the landlord may recover possession by action of unlawful detainer. **(Code 1940, Title 31, Sec. 24.)** (See this Memorandum, p. 3, Ala.) When a tenant abandons or removes from the premises, the landlord may seize grown or growing crops, whether the rent is due or not, and cause them to be cultivated, in order to pay his rent and advances. The tenant may redeem the seized property, before sale, by tendering the rent, advances, and expenses of cultivation. **(Code 1940, Title 31, Sec. 13; Heaton v. Slaten, 25 Ala. App. 81, 141 So. 267.)** (See this Memorandum, p. 3, Ala.) Willful failure to cultivate at proper time constitutes abandonment. The burden of proving abandonment is on the party asserting it. It is a question for the jury. **(Heaton v. Slaten, ante.)**	The relation being that of landlord and tenant, or tenants in common, the tenant would find his remedy for violation by the landlord in the general law. There is no special statutory provision relating to the rights of the tenant in a cropping contract. Where the parties are tenants in common, they may proceed under **Code 1940, Title 33, Sec. 81.** [See (3), this chart.]
The title to the crop prior to division is determined by the relationship of the parties; that is, where they are landlord and tenant title to the crop is always in the tenant, subject to the landlord's lien, until final division; where they are employer and laborer (or cropper), title is in the landlord at all times prior to actual division. [See under (1) and (2) of this chart, and this Memorandum, p. 5, Ariz.] The relationship of the parties controls the title, and that relationship is determined by intent as interpreted in the light of the circumstances in each case. Where there is no demise of the premises the owner retains title and possession and has title to the crop. Where there is a demise, the relationship of landlord and tenant results, and the tenant has title and possession of the crops, subject to the landlord's lien for rent or advances, or both. **[24 Cyc. 1464; Gray v. Robinson, ante; Gerrard v. Cannon (1934), 43 Ariz. 14, 28 P. (2d) 1016]** (See this Memorandum, pp. 4, 5, Ariz.)	Where the relation of landlord and cropper exists the landlord has title and possession of the crops until final division, and no lien is necessary. [See under (4) this chart.] The landlord has a statutory lien on the crops growing or grown on the leased premises for rent thereof, and that whether payment is to be in money, property, or products of the premises, and also for the faithful performance of the lease. Such lien continues for 6 months after the expiration of the term of the lease. It extends to subleases and assignees, and may be enforced by action to recover possession, or by replevin against one to whom the crops were delivered by the tenant while rent was unpaid. **(Arizona Code, 1939, Sec. 71-306; Scottsdale Ginning Co. v. Longan, 24 Ariz. 356. Decided in 1922.)** (See this Memorandum, p. 5, Ariz.) He does not waive his lien by bringing suit in equity to foreclose. **[Gila Water Co. v. International Finance Corporation, 13 Fed. (2d) p. 1. (1926).]** (See this Memorandum p. 5, Ariz.)	No actual decisions of the Arizona courts defining the remedy of the landlord when the cropper violates the contract have been found. Other State courts have held: The cropper cannot recover for partial performance, and his interests become vested in the landlord, divested of any lien which may have attached **(Thigpen v. Leigh, 93 N. C. 47);** if the cropper fails to begin or continue the work, without good cause, the landlord may maintain forcible detainer and dispossess him **(Wood v. Garrison, 23 Ky. L. Rep. 295, 62 S.W. 728);** if the cropper takes the crop from the possession of the landowner, without his consent, such taking is larceny, robbery, or other offense, according to the circumstances. **(Parrish v. Com., 81 Va. 1.)** (See this Memorandum, p. 5, Ariz.)	Where the parties are employer and cropper, the cropper is a laborer and receives a share of the crop as wages. Under Sec. 62-215, Arizona Code of 1939, a laborer's claims for wages take priority over levies and attachments. Sec. 62-215: **"Wages to take priority over attachments and levies—Procedure:** In case of levy under execution, attachment, and like writs, except where such writ is issued in an action under this article, any miner, merchant, salesman, servant, or laborer who has a claim against the defendant for labor done may give notice of his claim, sworn to and stating the amount thereof, to the creditors and defendant debtor, and to the officer executing the writ, at any time within three days before the sale of the property levied on. * * *" (The Statute then sets out the procedure to be followed.)
Title to the crop prior to division, where the parties are not tenants in common, is clearly defined in a long line of Arkansas decisions, and is determined solely by the relationship of the parties to a cropping contract. When the relation is that of landlord and tenant, title and possession of the crop is in the tenant, prior to final division. When the relation is that of employer and cropper, or laborer, title and possession of the crop is in the landlord or employer at all times prior to final settlement and division. [See the cases cited under (1) of this chart.] (See this Memorandum p. 7, Ark.)	Every landlord has a statutory lien upon the crops grown upon the demised premises in any year for rent accruing during that year, and such lien continues for 6 months. Landlords also have a lien for advances to enable the tenant to make the crop. Such liens have preference over any mortgage of the crop by the tenant. **[Pope's Digest, Secs. 8845, 8846; Neal v. Brandon, 70 Ark. 79; Commodity Cr. Corp. v. Usrey, 199 Ark. 406, 133 S.W. (2d) 887; (Dec. 1939).]** (See this Memorandum, pp. 7, 8, Ark.) Sec. 8820, Pope's Digest (Sec. 6864, C. & M. Digest) provides an "absolute lien" for laborers who perform work or labor on any "object, thing, material or property," for such labor, subject to prior liens and the landlord's lien for rent and supplies. This statutory lien is superior to contractural liens even though the latter be prior in point of time. **Carraway v. Phipps, 191 Ark. 326, 86 S.W. (2d) 12. Decided September, 1935.** (See this Memorandum, p. 8, Ark.)	If a laborer, without good cause, abandon an employer before the completion of his contract, he becomes liable to such employer for the full amount of any account he may owe him, and shall forfeit to his employer all wages or share of crop due him, or which might become due him from his employer. **Pope's Digest, Sec. 8842, (Act Mar. 21, 1883).** The courts hold that where a sharecropper abandons his crop it is forfeited to the landlord. **Crawford v. Slatten, 155 Ark. 283, 244 S. W. 32; Rand v. Walton, 130 Ark. 431; Latham v. Barwick, 87 Ark. 328.** (See this Memorandum, p. 9, Ark.)	If an employer shall, without good cause, dismiss a laborer prior to the completion of his contract, unless by agreement, he shall be liable to such laborer for the full amount that would have been due him at the completion thereof, and such laborer is entitled to the lien provided in Sec. 8838 (Pope's Digest) for the enforcement of such liability (Pope's Digest, Sec. 8841). Under Sec. 8828, the laborer (or cropper) may mortgage so much of the crop as may be equal to his interest in it at the time, if the employer fails or refuses to furnish supplies agreed upon.
Whenever the relationship of landlord and cropper exists, the statute itself invests title and right to control crops growing or grown by the cropper in the landlord, until he has received his part of the crop and has been fully paid for all advances to the cropper in the year the crops were made to aid in making them. **(Ga. Code Ann. Sec. 61-502)** In a landlord and tenant relationship the tenant acquires possession and control over the premises for the term, and in making the crop performs the labor for himself. Title and possession of the crops are in him, subject to the landlord's lien for rent, and for advances. **(Sauter v. Crary, ante.)** (See this Memorandum, p. 9, Ga.) **(Ga. Code Ann. 1933, Sec. 61-201, 61-202.)**	Sec. 61-201, Ga. Code, 1933, gives a landlord a special lien, by contract in writing, for advances to tenants for the purpose of making crops. Sec. 61-202 gives landlords the right to secure themselves from the crops for stock, supplies, and utensils on terms agreed upon between the parties, and then provides that the lien shall arise by operation of law when the relation of landlord and tenant exists, as well as by special contract in writing, whenever such articles are furnished; and further provides that when the lien arises by contract in writing such contract shall be assignable by the landlord, and may be enforced by the assignee. (See this Memorandum, p. 10, Ga.) The cropper, as a "laborer" may maintain an action to enforce his statutory laborer's lien. **[Ga. Code 1933, Sec. 1801-1803; McElmurray v. Turner, 12 S.E. 359 (Ga. 1890).]** (See this Memorandum, p. 10, Ga.)	When a cropper unlawfully sells or disposes of any part of the crop, or excludes the landlord from possession of the same while title remains in him, the landlord, by statute, has the right to repossess such crop by possessory warrant, or any other process of law. (Ga. Code 1933, Sec. 61-503.) Persons purchasing corn or cotton in the seed from croppers who have no right to sell, after notice in writing by the landlord or employer, are guilty of a misdemeanor. **(Code, 1933, Sec. 61-9902.)** Croppers selling or disposing of any part of the crop, before the landlord has received his share in full for all advances in the year in which the crop was made, and to aid in making it, are guilty of a misdemeanor. **(Code 1933, Sec. 61-9904.)** (See this Memorandum, p. 11, Ga.)	Sec. 61-9904, Ga. Code 1933, provides that a landlord who refuses to deliver, on demand, to the cropper the part of the crop coming to him, or its value, after payment of all advances made, shall be guilty of a misdemeanor. When the landlord refuses to perform his part of the contract, the cropper may obtain necessary supplies, complete the crop, and hold the landlord's share for actual damages or he may sue for his special injury, including services, or, at the end of the harvest, he may sue for the full value of his share of the crop, or what his share would reasonably have been. **(Pardue v. Cason, 22 Ga. App. 289 ; S.E. 16; Russell v. Bishop, 110 S.E. ..4.)** (See this Memorandum, pp. 11, 12, Ga.)

MEMORANDUM REGARDING—LEGAL RELATIONS AND RIGHTS OF PARTIES WHEN LAND OWNED

STATE	(1) Landlord and tenant, when	(2) Employer and cropper, when	(3) Tenants in common of the crop, when
KENTUCKY	Under a crop-sharing contract, in Kentucky, if there is a demise of the premises, or if possession and control of the land passes from the landowner to the cultivator for a term, the relationship is that of landlord and tenant. [**Redmon v. Bedford, 80 Ky. 13 (1882)**] In that case the Court said: "The use of land under like contracts is common within this State, and it is evident from the provisions of the statute referred to (sec. 1, art. 5, chap. 66, Kentucky stat.) that the relationship of landlord and tenant exists in such cases although no defined term is to be found in the contract between the parties * * * ." (See this Memorandum, Ky. p. 12.)	The leading case of the very few reported cases in Kentucky, **Wood v. Garrison, 139 Ky. 803**, holds that where the landlord was to furnish the land, barn, tenant house, and pasture for a horse, and the cultivator was to do all of the necessary work to raise a crop of tobacco, which was to be shipped and sold by the landlord, and who was to pay one-half of the proceeds to the cultivator, the relationship between the parties was that of employer and cropper, under Sec. 2327, Ky. General Stat. The Court cites **Harrison v. Ricks, 71 N.C. 7**, where it was said, "A cropper has no estate in the land; that remains in the landlord; consequently, although he has in some sense the possession of the crop, it is only the possession of a servant and is in law that of the landlord * * * ." (See this Memorandum, Ky. p. 12.)	In Kentucky there is no statutory or judicial determination of the relationship of tenants in common as between a landowner and the person cultivating the land for a share of the crops. For a general discussion of the tenant-in-common relationship (See this Memorandum, Miss. pp. 18, 19.) Tiffany, in his work on "Landlord and Tenant," comments on the relationship as follows: "A number, perhaps a majority, of the courts recognizing the possibility of loss by one party of the share to which his claim entitles him if the whole title is regarded as vested in the other, have asserted the doctrine that before division the two parties are tenants in common of the crop * * * , this view being, perhaps, more frequently based on grounds of expediency than upon the construction of the particular agreement." (See this Memorandum, Miss. p. 18, and cases there cited.)
LOUISIANA	In Louisiana where land owned by one person is cultivated by another for a share of the crop, the trend of the decisions is to call the relationship between the parties one of landlord and tenant. Art. 2671 of the Civil Code of La., Sec. 5065 and 6602, recognizes that land may be leased for a share of the crop, and the relationship of landlord and tenant, or lessor and lessee may be created. **Jones v. Dowling, 125 So. 478 (1929); Lalanne Bros. v. McKinney, 28 La. Ann. 642 (1876); La. Farm Bureau v. Clark, 160 La. 294, 107 So. 115.** In **Busby v. Childress (La. App.), 187 So. 104 (1938)**, the Court held where it is not shown that there was an agreement that persons cultivating the land of another are to receive a share of the crop, or proceeds thereof, in lieu of wages, or circumstances are such as to show that that was the intention of the parties, the contract is considered a contract of lease.	One who cultivates land belonging to another for a share of the crop is a "cropper," or hired laborer, if the share to be received by him is in lieu of wages for his labor, and if control and dominion of the premises remain in the landowner. A share-cropper's contract is one in which a person agrees to work the land of another without obtaining any interest in the land or any legal possession of the premises further than as an employee. **Holmes v. Payne, 4 La. App. 345 (1926); Bres & O'Brien v. Cowan, 22 La. Ann. 438; Lalanne Bros. v. McKinney, 28 La. Ann. 642.** (See this Memorandum, La. p. 15.)	In Louisiana there does not seem to be any specific recognition of the relationship of tenants in common as applied to a landowner leasing land to another for a share of the crop, or paying a share of the crop as wages for the labor of cultivating the land. The Court, however, on a rehearing of **Jones v. Dowling, 125 So. 478 (1929)** stated in the opinion: "After careful consideration * * * we are convinced that we have correctly held that the interveners, the share tenants of the defendant, did not bear to him the relation of employers to employer, but that of lessees to lessor, and are entitled to their proportionate share of the cotton raised by them as cotenants with the defendant." (See this Memorandum, p. 14, La.)
MISSISSIPPI	The decisions in Mississippi are in conflict, but the clear trend is toward holding the relationship between the parties to a share-cropper contract to be that of landlord and tenant. **Schlicht v. Callicott, 76 Miss. 487 (1898). Alexander v. Zeigler, 84 Miss. 560 (1904). Williams et al v. Sykes, 170 Miss. 88 (1934).** (See this Memorandum, pp. 17,18.) The controlling consideration in every case must be the intention of the parties. In the latest case, **Williams et al v. Sykes**, the court said: "It is clear to us that the relationship between the landowner furnishing a house, land, and farm implements, and the share cropper furnishing the labor, is properly the relationship of landlord and tenant, and that the tenant has the right to the possession of the crops grown, subject to the landlord's lien." (See this Memorandum, pp. 17,18.) The relation of employer and cropper, or laborer, does, however, exist, as will be seen under the next heading.	While the trend of the judicial decisions in Mississippi is clearly toward holding the landlord and tenant relationship to exist in share-cropping contracts, the relationship of employer and cropper, or laborer, does exist. "Croppers" are clearly recognized in so late a case as **Jackson v. Jefferson, 171 Miss. 774 (1935)**, where it was said: "Where a tenant was authorized to sell the crop free from the share-cropper's lien, and to turn buyer's checks over to the landlord for collection, and the landlord was to turn back to the tenant amounts due croppers, to be turned over to them, croppers' liens, though waived as to the buyers of the crops, were not waived as to the proceeds in the hands of the tenant or landlord. Where there is no demise of the premises, and the share of the crop goes to the cultivator **in lieu of wages**, the parties are employer and laborer, or "cropper." (See this Memorandum, Miss. p. 18.)	In some cases, even though the cultivator is expressly stated to be a tenant, a tenancy in common of the crop is recognized as existing. (See this Memorandum, p. 18.) The case of **Doty v. Heth, 52 Miss. 530 (1876)**, held: "Exactly what relationship is created between the parties by a contract to crop on the shares is difficult to define. Somewhat extensive examination of the cases indicates that they are usually regarded as constituting the parties tenants in common of the crops * * *." But in spite of **Doty v. Heth**, which was overruled, it is difficult to see how a cropper having no demise or any estate in the land and receiving only a share of the crop "in lieu of wages," could be a tenant in common with the landowner or have "undivided possession of the crop." In other words, how can a share of the crop, which is to be delivered to the cultivator as wages, be regarded as belonging to him before such delivery? (See this Memorandum, pp. 18, 19.)
MISSOURI	It is well settled in Missouri that where in a crop-sharing agreement possession of the premises passes to the cultivator, the relationship of the parties is that of landlord and tenant. In the earliest reported case [**Johnson v. Hoffman, 53 Mo. 504 (1873)**], the court held the material question to be whether the agreement between the parties was a lease whereby the possession of the farm was transferred to the cultivator, or simply an agreement by which he was hired to cultivate the farm on shares, the defendant at all times holding the possession. 50 years later, in the case of **Jackson v. Knippel, 246 S.W. 1007**, the court held "The most important criterion in arriving at the intention of the parties and the consequential relationship created, is: Which party was entitled to the possession of the land? If it was the intention that the landowner should part with * * * the possession of the land for the purpose of cultivation, then * * * the relation between the parties is that of landlord and tenant." (See this Memorandum, p. 20.)	The relation of employer and cropper comes into existence when a cultivator of the land receives no demise of the premises, and possession and dominion over the same remain in the landowner, the cultivator to receive wages in the form of an agreed portion of the crop raised. In **Pearson v. Lafferty, 197 Mo.App. 123 (1917)**, the court held that where one cultivated land under an agreement to give the owner one-half of the crop, without renting the land for any fixed period, and without possession to the exclusion of the owner, he was a mere "cropper," and not a tenant. (See this Memorandum p. 21.)	There is considerable opinion in the reported Missouri cases holding the relationship between the landowner and the cultivator under a share-cropping contract as one of tenants in common of the crop. In **Pearson v. Lafferty, ante**, the court said: "Apart from divergencies in the results reached in the cases due to differences in the various agreements involved, there is considerable conflict in authority as to the respective interests or rights of the owners and the cultivators, or croppers, in and to the crop itself. It appears that the trend of judicial authority is to hold that a contract whereby one is allowed use of land to cultivate, the owner to have a share of the produce for its use, will, in general, at least, create a tenancy in common in the growing crop; and this is said to be so whether the agreement operates as a lease or a mere 'cropping contract.'" (See this Memorandum, p. 21, and same heading under Miss. pp. 18, 19, and cases there cited.)

BY ONE IS CULTIVATED BY THE OTHER UNDER AGREEMENT TO SHARE THE CROPS—Continued

(4) Title to crop prior to division	(5) Lien of the parties on the crop	(6) Remedy, if cropper violates agreement	(7) Remedy, if landlord violates agreement
Under Sec. 2325, Ky. Stat. 1936, it is provided: "A contract by which a landlord is to receive a portion of the crop planted, or to be planted, as compensation for the use or rent of the land, shall vest in him the right to such a portion of the crop when planted as he has contracted for * * *." It would seem, then, that title to the part of the crop contracted for vests in the landlord as soon as the crop is planted. (See this Memorandum, Ky. p. 13.) The title to the crop before division, where the cultivator is a "cropper," is in the landlord. In the case of **Wood v. Garrison, 139 Ky. 603**, the court cites Woodfall's "Landlord and Tenant," as follows: "It is frequently admitted * * * that under a pure and unqualified cropping contract the entire legal ownership of the crop is in the owner of the land until division. (See this Memorandum, Ky. p. 13.)	The Ky. Stat. (Sec. 2323 and 2324), provide that: "The landlord shall have a superior lien, against which the tenant shall not be entitled to any exemption, upon the whole crop of the tenant raised upon the leased or rented premises, to reimburse the landlord for money or property furnished to the tenant to enable him to raise the crop, or to subsist while carrying out his contract of tenancy * * *. The landlord may enforce the lien * * * by distress or attachment." Sec. 2317 provides that the landlord shall have a "superior lien" on the crops of the farm or premises rented for farming purposes, and the fixtures, household furniture, and other personal property of the tenant * * * for not more than one year. (See this Memorandum, Ky. p. 13.) There is no special provision for a cropper's lien, but he would have a laborer's lien for his labor in making the crop, and if denied his share, could bring action for breach of contract. (See this Memorandum, Ky. p. 13.)	In interpreting Sec. 2327, Ky. Gen. Stat., the Court of Appeals in **Hickman v. Fordyce (1918), 179 Ky. 737**, states: "* * * When a tenant has failed or refused to perform the labor or services he agreed to perform, or to do the thing he agreed to do, and within the time agreed upon, landlord is entitled to repossess himself of the premises under a writ of forcible detainer." The landlord is further protected by Sec. 1349, Ky. Stat., which provides a fine and liability for damages where a person wilfully entices or influences a laborer to abandon his contract. (See this Memorandum, Ky. p. 13.)	No statutory provision, nor case directly in point, is found in Kentucky which give any specific remedy to the cropper when the landowner violates the contract. In Missouri the cropper could sue for breach of contract if the landowner refused to permit him to take his share of the crop. **(Beasley v. Marsh, 30 S.W. 2d, 747, decided in 1931.)** In Kentucky the cropper doubtless could proceed under the general statutes for breach of contract.
Where the relationship is that of landlord and tenant, it is provided by statute that the crops belong to the landlord and the tenant in the proportion agreed upon between them. **(Act No. 211, 1908, which is Sec. 5065, La. Gen. Stat.)** Lessee's crops for the current year cannot be held to pay any debt of the landowner, or any mortgage which may have been recorded after the lease. **(Sec. 6602, La. Gen. Stat.)** Where the relationship is that of landowner and cropper, it is to be inferred from the few cases reported that title to the crop remains in the landowner until final division under the terms of the agreement. (See this Memorandum, La. p. 15.)	Act. No. 211, 1908, being La. Gen. Stat., Sec. 5065, provides that whenever a landowner leases land for a part of the crop, that part agreed upon between the parties is at all times the property of the landlord. The landlord, therefore, needs no lien for rent as he holds title to his part of the crops at all times. A cropper receiving a part of the crop in lieu of wages is a laborer and is entitled to a laborer's lien, and specifically is given the right of provisional seizure under Sec. 2147, Louisiana General Statutes. (See this Memorandum, La. p. 16.) See Sec. 5139, La. Gen. Stat., where the laborer's right to sue for wages is recognized. (See this Memorandum, La. p. 16.)	Sec. 4384, La. Gen. Stat. (Dart), makes it a misdemeanor for a third person to interfere with, entice away, or induce a tenant or hired hand to leave the services of the employer, or to abandon the land. (See this Memorandum, La. p. 16.) The landlord is further protected against the holding over of a laborer or cropper on the cultivated land by Sec. 6606.1 of the Gen. Stat., after the occupancy or possession shall have ceased. **La. Gen. Stat. (Dart), Sec. 4384, 4385, and 1291, 1293.** It is also unlawful for any person to go on the land of another in the night time to assist in moving a laborer or tenant therefrom. **(Sec. 1291, La. Gen. Stat.)** (See this Memorandum, La. p. 16.)	The cropper being a laborer, has a laborer's lien on the crop produced by him, and in Louisiana he may obtain a writ of provisional seizure under Sec. 2147, La. Gen. Stat. (Dart). This section reads: "In addition to the cases in which provisional seizures are allowed by the law, the right to such remedy shall be allowed to laborers on farms or plantations when they shall sue for their hire, or may fear that the other party is about to remove the crop, in the cultivation of which they have labored, beyond the jurisdiction of the court." Sec. 5139 provides that in any case instituted by a laborer for the recovery of wages, it is competent for the judge, upon application of either party, to try the case after three days' service of the citation. (See this Memorandum, La. pp. 16, 17.)
Title to the crop prior to division depends upon the relationship of the parties. Where that relationship is landlord and tenant, it is everywhere established that the title to the crop is in the tenant, subject to the landlord's lien for rent. Where the parties are held to be tenants in common, as they may be in Mississippi, as seen next above, they have joint possession and ownership. When there is no demise of the premises, and the landowner retains dominion and control, agreeing only to pay the cultivator a fixed portion of the crop in lieu of wages, title to the crop remains in the landowner at all times prior to division thereof. (See this Memorandum and cases cited on p. 19.)	Sec. 2238 of the Miss. Code of 1930 gives the employer and the "cropper" or "laborer" each a lien on the interest of the other for advances on the one hand, and wages on the other. This section reads: "Every employer shall have a lien on the share or interest of his employee on any crop made under such employment for all advances of money and for the fair market value of other things advanced by him, during the existence of such employment; and every employee, laborer, cropper, part owner, overseer, or manager, or other person who may aid by his labor in making any crop, shall have a lien on the interest of the person who contracts with them for such labor for his wages, share, or interest in such crops, whatever may be the kind of wages * * *." In addition the landowner is given a paramount lien for rent by Sec. 2186 of the code (See this Memorandum, p. 19). It is also made a misdemeanor for any person with notice of either lien to remove or sell such products with intent to impair such lien. (See this Memorandum, p. 20.)	Where a tenant, or a "cropper," violates the agreement with the landlord, the latter may have recourse, under Sec. 2198 and 2237 of the code, by obtaining an attachment when he verily believes that his tenant will remove the products from the leased premises before the expiration of his term. Also, if a tenant in arrears for rent deserts the premises so that sufficient distress cannot be had to pay the arrears, a Justice of the Peace may put the landlord in possession of the premises. The landlord can maintain an action for damages against a purchaser with notice of products subject to the lien for rent. **(Cohn v. Smith, 64 Miss. 816;** see this Memorandum, p. 20.)	There is no specific provision for any remedy for the cropper if the landlord violates the contract. Under Sec. 2238 (See this Memorandum, p. 19), he has a lien "* * * on the interest of the person who contracts" with him for his wages. The cropper, no doubt, could bring action for breach of contract where the landlord had violated his agreement.
It is apparently settled in most jurisdictions, and certainly in Missouri that in an agreement between an employer and cropper, the title to the crop before division is in the employer. Woodfall's "Landlord and Tenant," p. 125, states: "It is everywhere admitted that under a pure and unqualified cropping contract the entire legal ownership of the crop is in the owner of the land until division." It is equally well settled in Missouri that when in a cropping contract, the relationship is that of landlord and tenant, the title to the crop is in the tenant subject to the landlord's lien for rent and advances. (Note: There may be an exception in Louisiana, under Sec. 5065 of the Gen. Stat. See this Memorandum, La. p. 15. And in North Carolina the landlord by Sec. 2355, Code 1939, is "vested in possession" of the crops of both tenants and "croppers." See this Memorandum, N.C. p. 23.) (See this Memorandum, p. 21.)	Sec. 2976 to 2978 give the landlord a lien on the crops grown for 120 days after the expiration of the tenancy, and a superior lien for 15 days upon crops removed from the premises, wherever found. The lien may be enforced by distress or attachment, in the manner provided for the collection of rent. There is no specific provision for a cropper's lien, but it is said indirectly in **Morrell v. Alexander (Mo. App.) 215 S.W. 764 (1919)**, a cropper may sue for damages for breach of contract.	Sec. 2986, Mo. Stat., Ann., provides: "Any person who shall be liable to pay rent, whether same be due or not, or whether same be payable in money or other thing, if the rent be due within one year thereafter, shall be liable to attachment for such rent in the following instances." The statute then names as some of the instances: Intention to remove the property from the rented premises; when he has removed property within 30 days; and when he has disposed of crops so as to endanger collection of rent. The statute also provides that if any person shall buy a crop grown on demised premises upon which rent is unpaid, with knowledge of those facts, he shall become liable in an action for the value thereof, and may be subject to garnishment at law in any suit against the tenant for recovery of rent. (See this Memorandum, p. 21.)	A cropper can sue for breach of contract when his share of the crop is withheld by the landlord. In **Beasley v. Marsh, 30 S.W. 2d, 747 (1931)**, the court reviews **Morrell v. Alexander**, ante, and says: "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 * * *, 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. (See this Memorandum and citations on p. 22.)

MEMORANDUM REGARDING—LEGAL RELATIONS AND RIGHTS OF PARTIES WHEN LAND OWNED

STATE	(1) Landlord and tenant, when	(2) Employer and cropper, when	(3) Tenants in common of the crop, when
NORTH CAROLINA	A demise of the premises and surrender of exclusive possession for a term is necessary to create the relation of landlord and tenant between the parties to a crop-sharing contract in North Carolina, as in most other states. The rule that such a tenant has title and possession of the crop, subject to the landlord's lien for rent and advances, is, however, varied by a North Carolina statute declaring that unless otherwise agreed between the parties, all crops shall be deemed to be "vested in possession" of the landlord at all times until all rents and advances are paid. (Sec. 2355, N. C. Code of 1939; see this Memorandum N. C. p.23.) The statute also provides that to entitle the landlord to the benefit of the lien, he must conform, in the prices charged for advancements, to the provisions of Sec. 2482, which limits such charges to 10 percent over the retail cash price, which is to be in lieu of interest. (See this Memorandum N. C., p. 23.)	A cropper in North Carolina is one who, having no estate in the land, cultivates it for a share of the crop, (**State v. Burwell, 63 N. C. 661; State v. Austin, 123 N. C. 749**; see this Memorandum N. C. p.22.) By Sec. 2355, N. C. Code, however, the cropper and the tenant occupy the same position as far as ownership of the crops is concerned. The statute lessened the tenant's rights in the crop by increasing the landlord's right as a lien holder vested in possession of the crop, and 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, 1898**; see this Memorandum N. C. p. 22.	While the relationship of tenants in common between a landlord and a cropper in a crop-sharing contract is well established in some States, (Miss., Tex., and Tenn.), no N. Car. case has been found holding that such a relationship exists. In view of Sec. 2355 of the N. Car. Code (See this Memorandum N. C., p. 23.) it appears that this relationship of tenants in common of the crop does not exist. The landlord could not well be "vested in possession" of the crop, as declared by the statute, and at the same time be a tenant in common of the same crop, since tenants in common "hold by one and the same undivided possession." (A. and E. Enc. 2d, vol. XVII, p. 651; see this Memorandum Miss., p.19.)
OKLAHOMA	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."	The Supreme Court of Oklahoma in **Elder v. Sturgess**, ante, quotes with approval its former opinion in **Empire Gas and Fuel Co. 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.	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.**
SOUTH CAROLINA	When, in a crop sharing contract there is a demise of the premises and the person cultivating the land acquires an estate therein, with right of title to and possession of the crop, subject to the landlord's lien for rent and advances, the relationship is that of landlord and tenant. Under such an agreement it is competent for the tenant or lessee to give an agricultural lien on the crop grown by him subject to the landlord's statutory lien for rent and advances. **S. C. Code Sec. 8771; Brock v. Haley & Co., 88 S. C. 373.**	The distinction between a tenant and a cropper is that a tenant has an estate in the land for a given time, and a right of property in the crops; while the cropper has an estate in the land, nor ownership of the crops, but is merely a servant and receives his share of the crops from the landlord in whom the title is. It is always a question of the construction of the agreement under which the parties are acting. **Taylor v. Donahue, 125 Wis. 513. Huff v. Watkins, 15 S. C. 86; Loveless v. Gilliam, 70 S. C. 391 (1904).** In South Carolina the cropper, as a laborer, does have a statutory lien on the crop to the extent of the amount due for his labor, next in priority to the lien of the landlord for rent. **(S. C. Code, Sec. 8772;** see this Memorandum S. C., p.27.)	No reference to the relationship of tenants in common of the crop as between landowner and cultivator on shares has been found in the S. C. Stat. and decisions, and no such relationship appears to be recognized in S. C. Tiffany, in his work on Landlord and Tenant, Sec. 253-b, says: "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 vested in the other, have asserted the doctrine that before division the two parties are tenants in common of the crop * * *, this view being perhaps more frequently based upon grounds of expedience than upon the construction of the particular agreement." (See this Memorandum S. C., p. 26.)
TENNESSEE	The relationship of landlord and tenant in Tennessee rests upon the agreement between the parties, followed by the possession of the premises by the tenant under the agreement. An express contract is unnecessary and tenancy may be inferred from the conversations and actions of the parties. (See this Memorandum Tenn., p. 28, and cases there cited.) If the effect of the arrangement between the parties in a share-cropping contract is to give the cultivator the possession of the land, the exclusive possession, it is frequently termed, a tenancy is created. (Tiffany on Landlord and Tenant, vol. I, p. 121.) While there is no statutory definition of the relation of landlord and tenant as applied to share-cropping contracts in Tennessee, Michie's Digest of Tenn. Rep., p. 410, cites Bouvier's Law Dictionary, vol. II, p. 115: "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 * * * for a definite period."	Although Tennessee statutes make frequent reference to "share croppers" in giving landlords liens on crops raised on their lands, and frequently use the phrase "tenant or share cropper," they do not define what a share cropper is. However, there can be no doubt that the relationship is the same as that in other States, namely, one of employer and laborer. In the case of **McCutchin v. Taylor, 79 Tenn. 259,** the court held that an agreement to give a part of the crop in consideration of the labor of tillage is as much a hiring as an undertaking to pay in money. Perhaps the failure of the statutes to define share croppers is due to the earlier decisions to the effect that landowners and laborers working for a part of the crop were tenants in common of the crop. [See (3) following and this Memorandum Tenn., p. 29.]	A contract by a laborer with a landowner to farm on the shares does not create a partnership but they are tenants in common of the crop, and each may sell or mortgage his respective interest. **Jones v. Chamberlain, 52 Tenn. 210 (1871); Mann v. Taylor, 52 Tenn. 267 (1871); Hunt v. Wing, 57 Tenn. 139 (1872).** It is to be noted that these cases were tried in 1871-72, and no later cases have been found. However, the legislature of Tenn. by Acts of 1923-27, Sec. 8027, Williams' Tenn. Code, provides that nothing in this law shall affect the portion of the crop reserved as rent by the landlord of a share cropper * * *, it being the intention to treat the title to such portion of the crop as vested in the landlord unless the contract expressly provides otherwise. (See this Memorandum Tenn. p.29.) It would seem that the landowner and the cropper cannot now be tenants in common of the crop since title to the landlord's portion is vested in him by Sec. 8027.

CHART OF CROP-SHARING CONTRACTS

BY ONE IS CULTIVATED BY THE OTHER UNDER AGREEMENT TO SHARE THE CROPS—Continued

(4) Title to crop prior to division	(5) Lien of the parties on the crop	(6) Remedy, if cropper violates agreement	(7) Remedy, if landlord violates agreement
Before Sec. 2355, N. Car. Code, 1939, became effective, title to the whole of the crop was, in contemplation of law, vested in the tenant (even where the parties had agreed upon a certain share of the crops as rent) until a division had been made. Under a cropper agreement, the title was vested in the landlord at all times prior to division. (See this Memorandum N. C., p.22.) By Sec. 2355, title to all crops is vested in the landlord in the absence of an agreement to the contrary, until the rent and advancements are paid. **State v. Higgins, 126 N. C. 1112, 36 S.E. 113; citations in this Memorandum, N. C., p.23.**	Sec. 2355 (See this Memorandum S.C.,p. 23.) provides a landlord's lien on all crops for rents and advancements when lands are rented for agricultural purposes by either a tenant or a cropper, under either written or verbal contract. However, there is a restriction in this lien not found in any other State, that in making advancements the landlord must conform to the provisions of Sec. 2482 (See this Memorandum N. C.,p. 23.) limiting the amount charged for advancements to 10 percent over the retail cash price, under penalty of losing the lien. (See this Memorandum N.C.,p.23.) This lien is separate and distinct from the lien for advancements alone given under Sec. 2480, which latter lien is subordinate to the landlord's and laborer's liens, and provides that the agreement for advancements must be in writing. (See this Memorandum N.C.,p.23.) The landlord's lien is superior to all other liens but its priority is only for the year in which the crops are grown. (See this Memorandum N.C.,p.23.) The tenant or cropper have a lien under Sec. 2356, under certain conditions. (See this Memorandum N.C.,p.24.)	Under the N. C. Code the landlord may bring claim and delivery to recover possession of crops where his right of possession under sec. 2355 is denied, or he may resort to any other appropriate remedy to enforce his lien for rent due and advancements made. **Livingston v. Farish, 89 N. C. 140.** A tenant who removes any part of the crop before satisfying the landlord's lien becomes liable civilly and criminally. The remedy of claim and delivery was designed for the landlord's protection and cannot be invoked before the time fixed for division unless the tenant is about to remove or dispose of the crop, or abandon it. **Jordon v. Bryan, 103 N.C. 59, 9 S.E. 135.** A cropper who shall negligently and willfully refuse to cultivate the crop, or abandons the same without good cause before paying for advancements; or a landowner willfully failing or refusing to furnish advances according to his agreement; or any person who shall entice or persuade any cropper to abandon his agreement, is guilty of a misdemeanor under Sec. 4481. (See this Memorandum N. C., p.24.)	When a landlord gets possession of the crop otherwise than by the mode prescribed in Sec. 2355, and refuses or neglects upon notice of five days to make a fair division of the crop with the lessee or cropper according to the agreement, then the lessee or cropper is entitled to the same remedy given in an action upon a claim for the delivery of personal property. This section intends to favor the laborer as against those matters and things upon which his labor has been bestowed. **Rouse v. Wooten, 104 N. C. 229, 10 S.E. 190;** see this Memorandum N. C., p. 24; **State v. Keith, 126 N. C. 1114, 36 S.E. 169.**
When 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 possession of the entire crop until it is gathered and divided, and can maintain an action for damages for its destruction or injury. **Magnolia Petroleum Co. v. Jones, 185 Okla. 309 (1939).** Title 41 Sec. 24, Okla. Stat. of 1941, provides that when rent is payable in a share of the crop, the lessor shall be deemed the owner of such share, and if the tenant refuses to deliver such share, the lessor may enter upon the land and take possession of the share, or may obtain possession thereof by action in replevin. The landlord, then, 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. (See this Memorandum Okla., p. 25.) A mere cropper has no title to the crop prior to its division.	Since the lessor is deemed to be the owner of his share or proportion of the crop under a share-cropping agreement, he does not need any lien. Sec. 27 of Title 41 provides that when any person liable for rent attempts to remove the crops from the leased premises, the person to whom the rent is owing may sue out an attachment in the same manner as is provided by law in other actions. **Cunningham v. Moser, 91 Okla. 44, 215 P. 758.** In the absence of contract a landlord has no lien on the tenant's part of the crop for supplies furnished to make the crop. **Halsell v. First National Bank, 109 Okla. 220 (1925).** Laborers have a lien on the production of their labor, while the title to the property remains in the original owner, Sec. 92, and may enforce this lien as in ordinary actions or by attachment. A cropper being a laborer, has a lien on the crop for the share due him if he has complied with the statute. **First National Bank v. Rogers, 24 Okla. 357, 103 P. 582.** (See this Memorandum Okla., p.25.)	Sec. 25 of Title 41 provides that any person removing crops from rented premises with intention of depriving the landlord of any rent, or who fraudulently appropriates the rent, shall be guilty of embezzlement; and Sec. 27 gives the person to whom rent is owing the right of attachment when any such attempt to remove crop from the leased premises is made. **(Cunningham v. Moser, 91 Okla. 44.)**	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 share-cropper'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. 52, 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.
When the relation between the parties to a share-cropping contract is that of landlord and tenant, the tenant has title to and possession of the crop prior to division subject to the landlord's lien for rent and advances. Where the relationship of the parties is employer and laborer, or "cropper," title and possession are in the landowner, but the cropper has an equitable interest and can maintain action in equity for settlement and division of the crop. **[Miller v. Insurance Company, 146 S. C. 123 (1928);** see this Memorandum S. C. p. 27.] Under Sec. 8772 of the code, a laborer or cropper is given a statutory lien next in priority to the lien of the landlord for rent (8771) for the amount due him for his labor. (See this Memorandum S. C. p. 27.)	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. (S. C. Code, 8771.) Under sec. 8773 the landlord has a lien on the crop of his tenant for his rent in preference to all other liens. The laborer, or cropper, who assisted in making the crop has a lien thereon to the extent of the amount due him for labor next in priority to the lien of the landlord. All other liens for agricultural supplies shall be paid next after the satisfaction of the liens of the landlord and laborer. Under Sec. 8771, no writing or recording of the landlord's lien is necessary. (See this Memorandum S. C. p. 25.) If any portion of the crop is removed from the land, and the proceeds not applied to the payment of rent for the year, persons having liens have the right to proceed to collect their liens in the same way as if they had become due according to the contract before removal. **(S. C. Code, Sec. 8778.)** (See this Memorandum S. C. p. 27.)	Under Art. 3, Sec. 7032-1 to 7032-10, S. C. Code, it is made a misdemeanor: (1), to fraudulently refuse to render service agreed on; (2), to fraudulently refuse to receive and pay for service agreed upon; (3), to procure advances with fraudulent intent not to perform the work agreed on; (4), failure to make agreed advances with malicious intent; and, (5), specifically recognizes payment in the share of the crop where so agreed. (See this Memorandum S. C. p.27.) Under Sec. 8775, any person making advancements may show to the court clerk by affidavit that the person to whom the advancements have been made is about to sell or dispose of the crop, or in any way defeat the lien for advances, and the clerk may issue a warrant to any sheriff requiring him to seize and sell crop to satisfy the lien. (See this Memorandum S. C., p.27.)	The cropper has his lien under Sec. 8772 for wages due him, (see this Memorandum S. C. p. 27.), and he has an equitable interest in the crop and may maintain action in equity for settlement and division. **Miller v. Insurance Company, 146 S. C. 123 (1928).** The cropper is also given protection by sec. 7030-7, which provides that all contracts between landowners and laborers shall be witnessed by two or more disinterested persons and at the request of any party be executed before a magistrate, whose duty it is to explain the contract to the parties. Sec. 7030-8 provides for division of the crop by disinterested parties. (See this Memorandum S. C., p. 28.)
Sec. 8027, Williams' Tenn. Code, declares that the portion of the crop reserved by the landlord of a share cropper for rent is vested in the landlord whether that share is divided or undivided, unless the contract expressly provides otherwise. Sec. 8028 provides that the purchaser of a crop from a tenant with the landlord's written permission to sell shall issue check in payment to the landlord and tenant, and such check may not be cashed without the landlord's endorsement. In a "cropper" contract, then, the landlord has a statutory title to his share of the crop at all times, and under the overwhelming weight of authority in other States, he has title and possession of the entire crop until division. Where the contract is one of landlord and tenant, the tenant has title to the crop prior to division. **Schoenlaw-Steiner Trunk Co. v. Hilderbrand, 152 Tenn. 166, 274 S.W. 544 (1925);** see this Memorandum, Tenn., pp. 29, 30.	Under Sec. 8017 to 8020, the landlord has a lien on all crops grown on his land during the crop year for the payment of rent whether the contract be verbal or in writing; he has a like lien on all crops of tenants or share croppers for advancements. Even a purchaser, with or without notice, of crops subject to such lien is liable to the lienholder for the value of the crop not to exceed the amount of the rent and supplies furnished. (See this Memorandum Tenn. p. 30, and cases cited.) Sec. 8014, Williams' Tenn. Code, provides that a cropper shall have a lien upon the crop produced as a result of his labor for the payment of such compensation as agreed upon in the contract. This lien exists for 3 months from the 15th of November of the year in which the labor is performed, provided an account be sworn to before a justice of the peace or clerk of court. This lien is second to the landlord's lien, and to no other. (See this Memorandum Tenn., p.30.)	All crop liens may be enforced in a court of competent jurisdiction by original suit, execution, and levy, or by original suit, attachment and garnishment, and any number of demands may be joined in one suit. The lien holder must itemize his claim and make affidavit as in attachment proceedings. (Sec. 8022; see this Memorandum, p. 30.) For the protection of both landowners and laborers, or croppers, from intimidation, Sec. 11037 of the Criminal Statutes provides that it shall be a felony for any night rider or other person by threats or intimidation in any form to compel a landlord to discuss any hired laborer or share cropper or tenant by threats, written or verbal, or to compel such laborers or croppers under force or compulsion to vacate the premises they occupy. Conviction under this section carries punishment of from 3 to 15 years in the penitentiary.	If a share cropper is determined to be a tenant in common of the crop, he can maintain an action for partition, recover for conversion, interplead for his share of the crop, and mortgage or sell his share of the crop which his labor produced. **Vol. IV, Law and Contemporary Problems, p. 543; Hunt v. Wing, 57 Tenn. 139 (1872); Jones v. Chamberlain, 52 Tenn. 211 (1871).** If a cropper bring action 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 share cropper may have earned in other employment. (See this Memorandum Tenn., p. 31.)

MEMORANDUM REGARDING—LEGAL RELATIONS AND RIGHTS OF PARTIES WHEN LAND OWNED

STATE	(1) Landlord and tenant, when	(2) Employer and cropper, when	(3) Tenants in common of the crop, when
TEXAS	The Supreme Court of Texas in **Brown v. Johnson, 118 Tex. Rep. 143, 12 S.W. 2d, 543 (1929)**, says: "The relationship of landlord and tenant is a question of fact, like that of possession, and may be proved by parole evidence * * *. To create the relationship 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. * * * 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 * * *." (See this Memorandum, p.31.)	The Court of Civil App. of Tex. in the case of **Cry v. J. W. Bass Hardware Co., 273 S.W. 350 (1925)**, distinguished between a tenant and a cropper in the following language: "The distinction between a mere cropper and a tenant * * * 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." 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 the surrounding circumstances, controls in determining whether or not a given contract constitutes the cultivator a cropper." (See this Memorandum, p.31.)	In Tex., when the relationship is determined to be that of landlord and cropper, it follows that the parties are tenants in common of the crop. **Rogers v. Frazer Bros. and Co., 108, S.W. 727 (1908).** In that case the court held that a verbal contract between a landowner who furnished the land, teams, and tools, and the cultivator who made a crop on the land and performed other duties for the landowner for all of which he was to receive one-half of the crop, was not a rental contract creating the relation of landlord and tenant between the parties, but was a renting on shares whereby each party acquired title to an unidentified one-half interest in the crop, and made them tenants in common thereof. (See this Memorandum, p. 31.)
VIRGINIA	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.** (See this Memorandum, p. 34.) In a crop-sharing contract if the effect of the arrangement is to give the cultivator the possession of the land, a tenancy is created and the parties are landlord and tenant. If the possession is retained by the owner, it is merely a cropping contract. The basic distinction is that a tenant has an estate in the land, and the cropper has none.	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.** Michie's Digest of Virginia Reports, vol. VI, p. 360 (1939), states that: "It is very frequently 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.**" The Parrish case, ante, is believed to still be authority in Va. although there is conflict. (See this Memorandum, pp. 34, 35.)	An agreement between two persons for the raising of a crop on the land of a third by his license and permission, and for a division of the crop between such two persons, constitutes them joint tenants of the crop, and neither can defeat the interest of the other by taking a conveyance of the land from the owner. **Lowe v. Miller, 3 Gratt. 205 (1846).** The criterion in a tenancy in common is that no one knoweth his own severalty; and, hence, the possession of the estate is necessarily in common until a legal partition is made. **Hodges v. Thornton, 136 Va. 112.** (See this Memorandum, p.36.) (For a discussion of Tenants in Common, see under Miss., pp. 18, 19.)

BY ONE IS CULTIVATED BY THE OTHER UNDER AGREEMENT TO SHARE THE CROPS—Continued

(4) Title to crop prior to division	(5) Lien of the parties on the crop	(6) Remedy, if cropper violates agreement	(7) Remedy, if landlord violates agreement
When the relationship between the parties is that of landlord and tenant, title to the crop produced is in the tenant, and the landlord has a statutory lien on the crop for his rent. (Texas Stat., Art. 5222.) 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, namely, that of a tenant in common. **Rosser v. Cole (C.A.) 226 S.W. 510 (1920); Brown v. Johnson, 118 Tex. Rep. 148 (1928).** 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 etc. v. Doke, (C.A.), 152 S.W. 1174; Williams v. King, 206 S.W. 106.** (See this Memorandum, p. 32.)	In 1895 the Tex. Legislature enacted a statute setting maximum rentals of one-third and one-fourth of the crops, respectively, where the land was cultivated by a tenant who furnished everything except the land, and a maximum of one-half of the crops where the landlord furnished everything except the labor. The statute provided that leases reserving rent exceeding these amount were unenforcible and there should be no landlord's lien for rent. Held unconstitutional. The Legislature then passed another act providing that there should be no lien for rent or supplies where the rental exceeded the shares named in the first statute. Since the landlord's lien does not apply to a cropper's contract, and the landlord and cropper are tenants in common of the crop, the landlord, if he desires to secure greater rentals, has only to make a cropping agreement instead of a lease, and thus hold title rather than a lien on the crop. (See this Memorandum, pp. 32, 33.) A cropper has a lien under Sec. 5483. (See this Memorandum, p. 33.)	The landlord is given a statutory remedy in the event of a violation of the contract by a cropper, by Art. 5227 of the Tex. Stat., by applying for a warrant to seize the tenant's property when the tenant is about to remove same from the premises. Art. 5237 provides that a tenant shall not sublet the premises during the term of the lease without the consent of the landlord.	Art. 5236, Tex. Stat., provides that if a landlord, without default on the part of the tenant or lessee, fails to comply with his contract, he shall be responsible to such tenant or lessee for damages and the tenant or lessee shall have a lien upon the property in his possession, as well as upon all rents due the landlord under said contract. If this applies solely to a "tenant" or "lessee," a cropper does have a remedy when the contract is violated by the landlord as appears in the case of **Crews v. Cortez, 102 Tex. 111 (1908).** (See this Memorandum, pp. 33, 34.) A cropper might also bring action for breach of contract against his landlord if circumstances warrant it. **Matthews v. Foster (C.A.) 238 S.W. 317 (1922).** (See this Memorandum, p. 34.)
No Virginia cases have been found specifically defining the title to the crop in a crop-sharing contract prior to division, but the overwhelming authority in most of the other States is that where the relationship is landlord and tenant, title and possession of the crop is in the tenant prior to division, subject to the landlord's lien for rent and advances. Where the relationship is employer and cropper, title and possession of the crop is in the landlord at all times, on the authority of **Parrish v. Commonwealth, ante.** (See this Memorandum, p. 36.)	Sec. 6454, Va. Code, provides that any owner or occupier of land who contracts with any person to cultivate it, and makes advances to his tenant or laborer, has a lien on the crop for the advances in the year in which they are made, which lien has priority over all other liens on such crop or share thereof. He may enforce the lien by distress or by attachment, under Sec. 5522 and 6416. A person other than a landlord making advances of money or supplies to one engaged in the cultivation of the soil has a lien under Sec. 6452 on the crops maturing during the year, to the extent of such advances. Such persons must have their agreements reduced to writing. They must be signed by the parties; must define the limit of the advances; and must be docketed in the clerk's office. There is no provision in the statute for a cropper's lien. (See this Memorandum, p. 36.)	The landlord is protected by several statutes in cases where a cropper violates his agreement. Under Sec. 4454, it is larceny to obtain advances upon a promise in writing to deliver the crops or other property, and fraudulently failing or refusing to perform such promise. Under Sec. 4454-a it is a misdemeanor for a person cultivating the soil, under oral or written agreement, to obtain advances of money or thing of value with intent to injure or defraud his employer. It is a misdemeanor for a person renting the lands of another either for a share of the crop or for a money consideration, to remove any part of the crop without the consent of the landlord. When the rent is payable in other thing than money, the claimant of the rent, after 10 days' notice, may apply to the court for writ of attachment. (Sec. 5429.) Distress for rent will not lie unless the relationship of landlord and tenant exists between the parties. The right is not only incident to that relation, but is dependent upon it. **Church v. Goshen Iron Co., 112 Va. 694.** (See this Memorandum, p. 37.)	There is no statute giving a cropper a special lien on the crop but, being a laborer, he would have a laborer's lien on the part on which his labor was expended. He might also sue for breach of contract if the circumstances warranted. No Virginia cases have been reported in which the cropper attempted to assert his rights.

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