3. Character of occupation, whether as servant or tenant. Generally.—In the reported cases belonging to the second of the two

---

The prosecutor contracted with defendant to employ him to labour on a certain tract of land, agreeing to furnish land, team, food for the team, tools and seed, while the defendant was to furnish the labour and feed it, and to be responsible for all implements used by him. The prosecutor was to have one-half of the crop, and the defendant the other half, from which he was to pay all advances made him, and any help it might be necessary for him to hire. *Held*, that the relation was either that of master and servant or tenants in common, and that in either relation the prosecutor had a general ownership in the crops, and not a lien or claim under Ala. Code (1876) § 4353 punishing the selling of crops on which another has a "lien or claim." This provision is not intended for the protection of tenants in common against fraudulent acts of co-tenants, nor for the protection of masters against fraudulent acts of servants. *Ellerson* v. *State* (1881) 69 Ala. 1.

Under a more recent Alabama statute, Code 1896, § 2712, (Code of 1886, § 3065), it is provided as follows: "When one party furnishes the land and the team to cultivate it, and another party furnishes the labour, with stipulations, express or implied, to divide the crop between them in certain proportions, the contract of hire shall be held to exist."

Occupation of a separate and distinct house on a plantation, several hundred yards away from that of the owner of the plantation, under a contract by which the occupant is to have for his services as a labourer the use of the house and a monthly allowance of meal and meat, and a right to cultivate a small strip of land for his own benefit, constitutes him a lessee. *State* v. *Smith* (1888) 100 N.C. 466, 6 S.E. 8[illegible] (owner who expelled occupant by threats and a display of deadly weapons was held liable to be indicted for a forcible entry).

The relation of landlord and tenant is created by an agreement by an mortgagor to give a certain person all he can raise on a certain part of land in return for services. *Calvin* v. *Shimer* (1888) N.J.L. 13 Cent. 374, 15 Atl. 255. The contention of the defendant was that the petitioner was a tenant, the rent being paid in labour instead of money, while the petitioner insisted that the agreement was one, to take pay for services in grain of his own raising. Bird, V.C., upheld the former view, and held that the crops raised on the land passed with the title on a sale under foreclosure.

The relation of landlord and tenant exists, where one agrees to furnish another with a dwelling house, land, and a team and tools for working it, and the latter is to cultivate properly the soil and make payment of one-half the crops gathered. *Schlicht* v. *Callicott* (1898) 76 Miss. 487, 24 So. 869, (landlord held to be entitled to a remedy by way of attachment under a statute relating specifically to landlords and tenants).

A tenancy was held to be inferable, where the contractor agreed to cultivate during one year at his own cost the land of the contractee, to gather the crops, and to keep the fences in repair, while the contractee stipulated that the contractor should occupy the premises during the year. *Whaley* v. *Jacobson* 21 S.C. 51, (question involved was the right of the occupant to encumber the crop with a lien).

Arrangements of this character have also been viewed from other standpoints, suggestive of other distinctions besides that which is emphasized in the foregoing cases. Thus we find it laid down that a contract between a landowner and his labourers to cultivate a crop on shares creates a tenancy in common in the crop, and not the relation of landlord and tenant. *Smith* v. *Rice* (1876) 56 Ala. 417; *Brown* v. *Coats* (1876) 56 Ala. 417, 439; *Ragsdale* v. *Kinney*, (1898) 119 Ala. 454. But see Alabama cases, and Code section, supra.