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## Legal Aspects of Farm Tenancy and Sharecropping in South Carolina

George H. Fischer

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# LEGAL ASPECTS OF FARM TENANCY AND SHARECROPPING IN SOUTH CAROLINA\*

GEORGE H. FISCHER\*\*

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\*This article is a product of the joint efforts of the Department of Agricultural Economics of Clemson College and the Law School of the University of South Carolina. In 1954 Dr. George H. Aull, Department of Agricultural Economics, Clemson College, approached Dean Samuel L. Prince, Law School of the University of South Carolina, relative to the preparation of a series of reports dealing with certain phases of the law governing the agricultural economy of South Carolina. The series is being sponsored by the Southeast Regional Land Tenure Committee, and is in part financed by the Farm Foundation of Chicago. Pursuant to numerous conferences between faculty members of the two schools and after consultation with members of the Southeast Land Tenure Committee, preparation of this article was decided upon as the initial study in the series. In executing the project the Law School engaged George H. Fischer, Esq., now of the Columbia Bar, formerly of the Editorial Staff of the Lawyers Cooperative Publishing Company, to perform the necessary research and write the report. General editorial supervision of the project was by Professor David H. Means, of the faculty of the Law School. With the permission of the parties in interest a slightly modified version of this article is being printed as bulletin No. 449 of the South Carolina Agricultural Experiment Station.

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# I.

## INTRODUCTION

The purpose of this article is twofold. The primary purpose is to provide a source from which the layman may gain information regarding the law in South Carolina pertaining to agricultural leases and sharecropping agreements and the

attendant problems which may arise during the course of such relationships. It is also hoped that a review of this nature, which brings together for discussion the applicable statutes and the body of the case law derived over generations of experience and precedent, will be of help to the practicing attorney in South Carolina. It would be difficult, at best, to prepare a survey of this type which would be equally appealing and of equal informational value to both the layman and the lawyer, but it was felt that some compromise in approach would be worth whatever slight disadvantage might be incurred in not directing the contents to the exclusive attention of either of these interested groups. The problems which arise in connection with agricultural leases and sharecropping agreements, in their most intimate sense, are certainly those of the parties to such relationships, but the law which will determine the solution to the problems is within the sole province of the practicing attorney. If, therefore, the layman embarking upon an agricultural lease or sharecropping agreement may better understand his rights and obligations arising thereunder, and the lawyer be assisted in rendering him advice, the twofold purpose of this undertaking will have been accomplished.

An effort has been made to keep the style of the article as simple as the subject would allow, and to avoid, where possible, the use of legal terminology not readily understandable to the average layman. There will, of course, be instances where the use of legal phrases could not be avoided without sacrificing something of the true meaning to be conveyed. The contents have been documented with references to source material so as to aid the lawyer who desires further information on a given topic. Where no South Carolina authority was found, cases from other states have been cited in support of the usual rule. The layman is referred to the applicable footnote to determine whether or not any given statement in the text is supported by South Carolina authority.

## II.

### TENANCIES, SHARECROPPING, AND OTHER RELATIONSHIPS

#### 1. TENANCY AND SHARECROPPING DISTINGUISHED

A tenancy relationship is the relation of the landlord and tenant, and exists where one person occupies the land of an-

other in subordination to the other's title, and with his consent, express or implied. The title and ownership of the land is in the landlord, but the exclusive right to possession and occupancy of the land is in the tenant. This right of occupancy and tenancy in the tenant is exclusive even as against the landlord himself, and the tenant is entitled to a quiet and peaceable enjoyment of the premises, without interference on the part of the landlord or strangers, throughout the duration of his term.

As a result of the lease agreement, there are certain mutual obligations which are implied as a matter of law on the part of both landlord and tenant. Each must be held accountable for the fulfillment of his respective duties and each must recognize the rights and privileges of the other, and civil remedies are available for the enforcement and protection of these correlative attributes of the relationship. Specific obligations, of course, tailored to fit the individual case may be provided for in the lease, and these also carry the sanction of law and may be implemented by civil procedures.

The relation of landlord and tenant is quite often found to exist between those owning farm lands and those who wish to occupy and cultivate these lands for a profit, or perhaps for a livelihood. The rural aspect of the relationship creates some rules which are peculiarly adapted to agricultural leases, but, for the most part, the basic and fundamental law applicable to an urban landlord and tenant relationship applies as well to a farm tenancy relationship. The primary distinction rests in the existence, under a farm tenancy, of a crop, which comes into being after the relationship has been entered into and creates a new property, as to which respective rights of ownership and possession must be determined. There are, of course, other elements of a farm tenancy which distinguish it from an urban tenancy, but the creation of this new property interest in a crop which grows as a part of the freehold estate, but, the title to which nevertheless, immediately becomes vested in the tenant, appears to be the source from which most distinctions evolve.

It is this same property right in the crop which distinguishes an agricultural landlord and tenant relationship from the other most common legal relationship between landowner and cultivator, and that is, the relationship of landowner and sharecropper. Under the landlord and tenant relationship the

title to the crop is in the tenant and the landlord has a statutory lien upon the crop for the payment of his rent. Under the landowner and sharecropper relationship, the title to the crop remains in the landlord and the cropper has a statutory lien for the value of his labor. The sharecropper is, in effect, an employee of the landowner. His wages are usually paid in a share of the crop, but it is not until after the crop is severed and a division of his interest set aside to him that he can claim any proprietary right in the crop itself. His primary obligation to the landowner is to cultivate the soil in a husbandlike manner and to employ such methods of tillage that will not unnecessarily depreciate the value of the premises.

Under the landlord and tenant relationship, we speak of the landlord's reversionary interest, which simply means his full right to the use and enjoyment of the premises which will revert to him upon the termination of the lease; such right being given to the tenant during the life of the lease agreement. It would be a misnomer, however, to refer to a reversionary interest in a landowner under a sharecropping agreement, since the full right to occupy and enjoy the premises never leaves the landowner, the cropper having the mere right to use the premises under the landowner's supervision.

Thus, when a person owns land, and he makes a contract with another person by which the one agrees to furnish the land, the implements for cultivating the land, the seed for planting it, the manure for fertilizing it, the supplies for the support of the party cultivating it, and agrees to give to the party so cultivating it a part of the crop, or any other compensation for his labor in cultivating, the relationship thereby arises of landowner and laborer, or master and servant. But if a person goes to another who is the owner of the land and agrees with him to cultivate the land which he owns, and to pay to the owner a certain compensation, whether it be a part of the crop or other compensation for use of the land, the relationship there arises of landlord and tenant; the landlord surrendering for the time being his possession of the land to the tenant.

The compensation which the landlord receives is, in common language, called rent. No matter what the tenant agrees to furnish by the terms of the lease contract, if the relation

of the landlord and tenant exists, the compensation to be rendered by the tenant is called rent.

A very significant segment of the law applicable to agricultural tenancies pertains to the right of the various parties to place a lien upon the crop, that is, to offer the crop as security for an indebtedness. The landlord, by statute, has a lien upon the crop to secure his payment of rent. The tenant, having ownership of title to the crop may also create a lien in addition to the one the law creates for the landlord, but should he place other liens upon the crop, they are subject to the priority of the landlord's lien. The cropper, on the other hand, having no title in the product of his labor, since the crop produced is wholly the property of the landowner, cannot create a lien upon the property to which he has no title. Nevertheless, the law does protect the cropper to the extent that it provides that he shall have a lien upon the crop to the extent of the value of his services in producing it, which will prevent the landowner from depriving him of his proportionate share.

In some instances inept terminology has caused confusion and given the courts difficulty in determining whether an agreement to cultivate the premises of another creates the relationship of landlord and tenant or that of landlord and cropper. The determinative factor, however, is not the titles by which the contracting parties choose to call themselves, but the provisions of the contract itself and the circumstances surrounding its execution. In other words, the rights and obligations created by the contract will be decisive of the relationship formed. Much of the ambiguity arising in cases where the status is uncertain could be avoided if the tenancy and cropper contracts were put in writing. It is difficult to establish the terms of an oral contract, as frequently the parties themselves have no definite idea as to the kind of relationship created thereby.

## 2. AGRICULTURAL PARTNERSHIPS

A third relationship between landowner and cultivator, though seldom found, is that of a partnership. This relationship exists where both the landowner and the cultivator are to share in the profits of the joint undertaking and are also liable for any losses which may occur. A partnership agreement implies, of course, that there is to be no payment for



either rent or labor, and a finding that the contract calls for the payment of rent will infer that a tenancy was intended.

### 3. KINDS OF TENANCIES

Estates which involve the relation of landlord and tenant may be classified generally into three categories: (1) tenancy for a term; (2) tenancy at will; (3) tenancy for years.

#### a. *Tenancy for a Term*

Every tenancy which must expire at a definite and fixed time, is a tenancy for a term. In the absence of legal inhibition a lease may be made for any length of time the parties elect.<sup>1</sup> The lease agreement providing for the term may be oral or in writing,<sup>2</sup> but if oral, the term may not exceed one year.

Where there is an express agreement as to the terms of the tenancy such tenancy ends without notice upon the last day of the agreed term.<sup>3</sup> Thus, where a lease, by its express terms, terminates on a given date or within a given number of years, no notice of termination is required to be given by either the landlord or the tenant.<sup>4</sup> A lease for a term of years is not terminated by the death of the lessee.<sup>5</sup> In such case the lease passes, at the death of the tenant, to his personal representative.<sup>6</sup>

A lease for a term may be created to commence in the future.<sup>7</sup>

#### b. *Tenancy at Will*

A tenant using and occupying real estate without an agreement, either oral or in writing, is a "tenant at will".<sup>8</sup> Such tenant is not a wrongdoer, and until his tenancy is terminated he cannot be said to be a trespasser.<sup>9</sup> Tenancies which start as tenancies at will may be changed by acts of the parties, express or implied, into tenancies for a term.<sup>10</sup>

1. *Cola. Ry., Gas & Electric Co. v. Jones*, 119 S. C. 480, 112 S. E. 267 (1922).

2. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-1.

3. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-62.

4. *Nat'l. Bank of S. C. v. People's Groc. Co.*, 153 S. C. 118, 150 S. E. 479 (1929).

5. *Charles v. Byrd*, 29 S. C. 544, 8 S. E. 1 (1888).

6. *Ibid.*

7. 32 Am. Jur., *Landlord and Tenant* § 63 (1941).

8. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-1.

9. *Jones v. Jones*, 2 Rich. 542 (S. C. 1846).

10. *Morgan Silver Plate Co. v. Bobo Undertaking Co.*, 107 S. C. 280, 92 S. E. 720 (1916).

The chief characteristics of a tenancy at will are the uncertainty as to the length of the term and the fact that either landlord or tenant can terminate the lease at any time on proper notice.<sup>11</sup> An agreement to lease which expressly embodies these two characteristics, either oral or in writing, will be construed as a tenancy at will.<sup>12</sup>

Where the tenancy is under a written lease for a specific time, with a provision that the tenant may retain possession of the premises so long thereafter as he desires, there is a tenancy at will.<sup>13</sup> Moreover, if a person enters and holds land under a contract to purchase, he may be regarded at least as a tenant at will.<sup>14</sup> At the end of a definite term the landlord may, if the tenant refuses to give up possession, eject the tenant, but if he suffers the tenant to remain in possession, the tenant will thereafter be a tenant at will, and the landlord will thereafter be entitled to a reasonable rental.<sup>15</sup>

As heretofore pointed out, a tenancy at will may be terminated by either party upon a proper notice to quit. By statute it is provided that all tenants at will shall vacate the premises upon twenty days' notice.<sup>16</sup> Unlike the tenancy for a term, the tenancy at will is terminated by the death of the lessor or the lessee.<sup>17</sup>

Under the 1952 Code of Laws of South Carolina, Sec. 41-60, it is provided that all tenancies for agricultural purposes shall end on the last day of December in each year unless there is an express agreement to the contrary. Hence, it would appear that a farm tenancy so created as to constitute a tenancy at will, with the characteristic of indefiniteness as to term, would, under this statute, end on Dec. 31, by operation of law. (See Sec. 41-61 for an enumeration of counties excepted, wherein such tenancies end on the first day of Dec.). It is assumed, of course, that should the tenant continue in possession after Dec. 31, with the acquiescence of the landlord, he would remain a tenant at will.

11. *Monarch Mills v. Godshall*, 173 S. C. 286, 175 S. E. 552 (1934); *Nimmer v. Chewning*, 155 S. C. 528, 152 S. E. 702 (1930).

12. 32 Am. Jur., *Landlord and Tenant* § 66 (1941).

13. *Nimmer v. Chewning*, 155 S. C. 528, 152 S. E. 702 (1930).

14. *Jones v. Jones*, 2 Rich. 542 (S. C. 1846).

15. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-54. *Willison v. Watkins*, 28 U. S. 43, 3 Pet. 43, 7 L. Ed. 596 (1830).

16. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-64.

17. *First Presby. Church of York v. York Depository*, 203 S. C. 410, 27 S. E. 2d 573 (1943).

### c. *Tenancy for Years*

A tenant using or occupying real estate under a written agreement for a term of one year or more is a "tenant for years".<sup>18</sup> Prior to the South Carolina Landlord and Tenant Act of 1946 it was held that if the lease contained no limitations as to the term, but the rent was payable at yearly intervals, the tenancy was from year to year.<sup>19</sup> Under the Act, there are interpretation difficulties as to whether an agricultural tenancy is still deemed to be from year to year, where there is no express agreement as to duration. The Act provides that "All tenancies of real estate other than agricultural lands shall be deemed from month to month unless there be an agreement otherwise."<sup>20</sup> By its own language, therefore, it does not apply to farm laborers or tenants at will. This would seem to imply that farm tenancies would be from year to year. The Act further provides, however, that "All tenancies of farm laborers, sharecroppers and renters of farm lands shall end on the last day of December in each year unless there be an express agreement to the contrary."<sup>21</sup> [The Act provides that farm tenancies shall end on the first day of December in certain designated counties.<sup>21a</sup>] Taken together, these two provisions of the Act apparently create a tenancy which, in the absence of agreement as to duration, will not be considered a tenancy from month to month but will nevertheless terminate at the end of the calendar year, irrespective of when the term commences.

## III.

### CREATION AND EXISTENCE OF THE LANDLORD-TENANT RELATION — THE MAKING AND INCIDENTS OF THE LEASE CONTRACT

#### 1. GENERALLY

Without a contract between the parties, express or implied, the relationship of landlord and tenant cannot exist.<sup>22</sup> It is essential to the relationship that one person occupy the prem-

18. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-1.

19. *Seibels v. Williams*, 190 S. C. 449, 3 S. E. 2d 484 (1939); *McNulty v. Windham*, 182 S. C. 462, 189 S. E. 754 (1937).

20. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-53.

21. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-60.

21a. Namely, Clarendon, Darlington, Dillon, Edgefield, Florence, Georgetown, Horry, Marion and Williamsburg Counties, CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-61.

22. *Stewart-Jones Co. v. Shehan*, 127 S. C. 451, 121 S. E. 374 (1924).

ises of another in subordination to the other's title, and with his consent, which may be either express or implied.<sup>23</sup> The relation of landlord and tenant cannot exist until the tenant has entered upon the premises and gone into possession.<sup>24</sup> It is not essential to the relation, however, that there be an agreement for the payment of rent,<sup>25</sup> if it can be shown by other means that a lease was clearly intended. Yet, if it is doubtful whether a lease was intended, the absence of any agreement as to rent will be an important circumstance.<sup>26</sup>

Whether a contract is to be understood as a lease, is a mere question of construction, and there is no artificial rule by which it is to be decided. The intention of the parties is to be collected from the whole instrument<sup>27</sup> or agreement. No particular form of words is necessary to create the tenancy relation. Whatever words are sufficient to show that one person intends to occupy the premises of another, and that such other will for a term divest himself of possession, are adequate in law to amount to a lease as effectually as if the most proper language had been employed for the purpose.<sup>28</sup>

Attention is called to the fact that an agreement to take charge of and manage a farm on shares is not a lease,<sup>29</sup> but a sharecropping agreement creating a master and servant relationship. This relationship is dealt with elsewhere in this article.

## 2. NECESSITY OF A WRITING

Any tenancy which is not to exceed one year in duration may be created by an oral agreement.<sup>30</sup> This applies to and renders valid an oral agreement of tenancy for a period not to exceed one year even commencing in the future, that is, commencing subsequent to the time of the agreement.<sup>31</sup>

An oral lease gives a tenant the right of possession for a maximum term of twelve months from the time of entering on the premises.<sup>32</sup> If the lease is for a shorter term than twelve months, the tenant, of course, will only be entitled

23. *Cola. Ry., Gas & Elec. Co. v. Jones*, 119 S. C. 480, 112 S. E. 267 (1922).

24. *Simon v. Kirkpatrick*, 141 S. C. 251, 139 S. E. 614 (1927).

25. *State v. Page*, 1 Speers 408 (S. C. 1843).

26. *Ibid.*

27. *State v. Page*, 1 Speers 408 (S. C. 1843).

28. 32 Am. Jur., *Landlord and Tenant* § 24 (1941).

29. *Maverick v. Lewis & Gibbs*, 3 McCord 211 (S. C. 1825).

30. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-51.

31. *Wright v. Ritz Theatre Co.*, 211 S. C. 161, 44 S. E. 2d 308 (1947).

32. *Hillhouse v. Jennings*, 60 S. C. 373, 38 S. E. 599 (1901).

to hold possession for the length of time stipulated.<sup>33</sup> If a tenant in possession under an oral lease for a year, continues in possession after the end of the year, he may be considered a tenant at will.<sup>34</sup> This will not, however, give such tenant a right to possession against the landlord or any person claiming under him after the first year.<sup>35</sup>

An agreement for the use and occupation of real estate for more than one year is void unless it is in writing.<sup>36</sup>

### 3. NECESSITY OF RECORDING

In order to give notice to third persons that one party holds property as the tenant of another, the lease or agreement for the use and occupancy of real estate must be recorded the same as a deed of real estate.<sup>37</sup> As used in the foregoing statement, the term "third persons" has been construed to mean subsequent creditors and purchasers for valuable consideration without notice.<sup>38</sup>

A lease for not more than a year need not be recorded.<sup>39</sup> Such lease, however, despite the fact that it is not recorded, will nevertheless be binding upon a subsequent purchaser of the property, even though the lease need not be in writing.<sup>40</sup> Thus, where a party purchased leased realty from a landlord and the tenant was in possession under an oral lease for one year, such possession by the tenant was sufficient to put the purchaser on inquiry as to by what right the tenant held possession, and when the purchaser failed to make inquiry, he was not a *bona fide* purchaser for value and was not entitled to prevail in ejectment proceedings against the tenant.<sup>41</sup> In the same case, however, the majority of the court held it to be an open question whether a *bona fide* purchaser without notice would be bound by a verbal lease made by the seller where the tenant had not entered into possession.<sup>42</sup>

33. *Ibid.*

34. *Matthews v. Hipp*, 66 S. C. 162, 44 S. E. 577 (1903).

35. *State v. Mays*, 24 S. C. 190 (1886).

36. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-52.

37. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-4.

38. *First Presby. Church of York v. York Depository*, 203 S. C. 410, 27 S. E. 2d 573 (1943).

39. *Ruff v. Cola. Ry., Gas & Elec. Co.*, 109 S. C. 312, 96 S. E. 183 (1918).

40. *Barksdale v. Hinson*, 212 S. C. 1, 46 S. E. 2d 170 (1948).

41. *Ibid.*

42. *Compare Adams v. Willis*, 225 S. C. 518, 83 S. E. 2d 171 (1954). For a criticism of the reasoning of the concurring majority opinion in *Barksdale v. Hinson*, 212 S. C. 1, 46 S. E. 2d 170 (1948). See also Means, *Landlord and Tenant*, 8 S. C. L. Q. 53, 54 n. 3 (1955).

#### 4. FRAUD OR MISTAKE

The general law, although unsupported as yet by judicial decision in South Carolina, is that if a party after the execution of the lease discovers fraud practiced by the other, the fraud may render the lease void or voidable at the option of the defrauded party, in which case the party imposed upon can secure its cancellation.<sup>43</sup> In some cases it has been held that the defrauded party could recover in an action for damages.<sup>44</sup>

As to what constitutes fraud, the stating of what one does not know or believe to be true is just as unjustifiable as the stating of what is known to be false.<sup>45</sup> In the case of a lease of farm lands, a misrepresentation as to the number of acres fit for cultivation may be deemed fraudulent, although it may not have been knowingly false, on the theory that the landlord is supposed to have superior means of information.<sup>46</sup> There may also be fraud in the concealment of facts known to the lessor and unknown to the lessee if not obvious and if of such a nature as to seriously impair the value of the lease.<sup>47</sup>

A lease may be affected by a mistake on the part of both landlord and tenant, or by a mistake of one of the parties if coupled with knowledge and misconduct on the part of the other, but a mere mistake by just one of the parties will be immaterial.<sup>48</sup>

#### 5. SUBLEASE

A sublease by a tenant without the written consent of the landlord is of no effect insofar as the rights of the landlord are concerned, but is effective as between the tenant and his sublessee.<sup>49</sup> Any rent collected by the tenant from his sublessee is deemed to be held in trust for the benefit of the landlord until the payment of the landlord's claim for rent.<sup>50</sup>

43. 32 Am. Jur., *Landlord and Tenant* § 45 (1941).

44. *Ibid.* See *Stuckey v. Metropolitan Insurance Co.*, 195 S. C. 358, 11 S. E. 2d 391 (1940).

45. *Lehigh Zinc & I. Co. v. Bamford*, 150 U. S. 665, 37 L. Ed. 1215, 14 S. Ct. 219 (1893).

46. Am. Jur., *Landlord and Tenant* § 46 (1941).

47. *Ibid.*

48. 32 Am. Jur., *Landlord and Tenant* § 47 (1941).

49. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-56.

50. *Ibid.*

## 6. ASSIGNMENT

In the absence of a restriction in the lease, a tenant for a definite term has the right to assign his interest in the lease.<sup>51</sup> The assignee thereafter assumes all the tenant's original relations to the landlord.<sup>52</sup>

## 7. SALE OF REVERSION

When real estate is sold while under lease, the purchaser immediately assumes the relationship of landlord to the tenant and is thereafter entitled to all the rights and benefits of a landlord.<sup>53</sup>

## 8. RENEWAL

A tenant, as against his landlord, has neither a right to renew or extend a lease in the absence of a covenant or agreement to renew or extend.<sup>54</sup> Such covenants or agreements are quite common, however. Sometimes they are in the original lease or they may be entered into after the lease term has commenced.

A renewal privilege in a lease partakes of the nature of an option, unilateral in nature; that is, it is binding upon the landlord without any corresponding obligation on the part of the tenant.<sup>55</sup> Notice by a tenant of an election to exercise the privilege of renewal must indicate the unconditional and unqualified determination to exercise the option, and if required to be given a certain number of days before the expiration of the lease, time will be considered as of the essence.<sup>56</sup>

An option to renew is strictly construed against the party claiming the option.<sup>57</sup> It will be valid, however, despite the fact that the renewal rental is not agreed upon.<sup>58</sup>

## 9. ESTOPPEL TO DENY LANDLORD'S TITLE

Where a person leases land from another, paying rent therefor, the relation of landlord and tenant arises, and during the existence of this relation the tenant is estopped to deny his

51. 32 Am. Jur., *Landlord and Tenant* § 319 (1941). See *Galphin v. Bennett*, 213 S. C. 216, 48 S. E. 2d 713 (1948).

52. *Willison v. Watkins*, 28 U. S. 43, 3 Pet. 43, 7 L. Ed. 596 (1830).

53. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-55.

54. 32 Am. Jur., *Landlord and Tenant* § 953 (1941).

55. *Pope v. Goethe*, 175 S. C. 394, 179 S. E. 319 (1935).

56. *Ibid.*

57. *So. Silica Min. & Mfg. Co. v. Hoefer*, 215 S. C. 480, 56 S. E. 2d 321 (1949).

58. *Rainwater v. Hobioka*, 208 S. C. 433, 38 S. E. 2d 495 (1946).

landlord's title.<sup>59</sup> This principle of estoppel operates to prevent the tenant from violating his contract whereby he obtained and holds possession.<sup>60</sup> Thus, a tenant cannot dispute the title of his landlord by setting up a title in himself or in a third person during the existence of a tenancy.<sup>61</sup> Likewise, the tenant cannot change the character of the tenure by his own act merely so as to enable himself to hold against his landlord.<sup>62</sup> If the tenant holds over after the expiration of his term and asserts title in himself, he is a trespasser.<sup>63</sup>

A tenant desiring to dispute the landlord's title must first show a distinct and *bona fide* abandonment of his possession of the premises.<sup>64</sup>

The tenant cannot claim adversely to his landlord until after the termination of the lease,<sup>65</sup> but he can acquire title by adverse possession to land outside the record title of the landlord.<sup>66</sup> By statute,<sup>67</sup> the possession of the tenant is deemed to be the possession of the landlord until the expiration of ten years from the termination of the tenancy, or, when there is no written lease, until the expiration of ten years from the time of refusal to pay rent.<sup>68</sup> It has been held, however, that a conveyance in fee simple by one who has only the rights of a lessee is an act which terminates the lease and that the grantee thereafter holds adversely to the landlord who is required to protect his title.<sup>69</sup>

The statute of limitations cannot commence to run until the tenant has provided the landlord with knowledge of his disclaimer of the landlord's title.<sup>70</sup> Hence, a tenant cannot show that a permissive possession was changed into an adverse possession without proving that notice of the change was, in some way, received by the landlord.<sup>71</sup>

59. *Stewart-Jones Co. v. Shehan*, 127 S. C. 451, 121 S. E. 374 (1924); *Givens v. Mullinax*, 38 S. C. L. (4 Rich.) 590 (1851).

60. *Willison v. Watkins*, 28 U. S. 43, 3 Pet. 43, 7 L. Ed. 596 (1830).

61. *Ibid.*

62. *Ibid.*

63. *Milhouse v. Patrick*, 6 Rich. 350 (1853).

64. *Wilson v. Weathersby*, 1 Nott & McCord 373 (1818).

65. *Lucius v. DuBose*, 114 S. C. 375, 103 S. E. 759 (1920).

66. *Ibid.*

67. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2426.

68. *DeLaine v. DeLaine*, 211 S. C. 223, 44 S. E. 2d 442 (1947).

69. *Trustees v. Jennings*, 40 S. C. 168, 18 S. E. 257, 891 (1893). See also *Few v. Keller*, 63 S. C. 154, 41 S. E. 85 (1902).

70. *Whaley v. Whaley*, 1 Speers 225 (1843).

71. *Floyd v. Mintsey*, 7 Rich. 181 (1854).



## IV.

## RIGHTS OF THE LANDLORD

## 1. RENT

a. *Generally*

Rent is a normal incident of the landlord and tenant relationship, although it is not essential to the establishment of the relationship.<sup>72</sup> Just as there is no particular language required to create the relationship of landlord and tenant, there is no form of words required to create an obligation to pay rent. Where it is found that the relationship of landlord and tenant does exist, and there is no contract specifying the amount of rent agreed upon, the law will imply an agreement to pay a reasonable sum for the use and enjoyment of the leased premises.<sup>73</sup>

It may be said that the standard for determining the amount of liability for rent, when there is no specific provision in the lease, is the fair rental value of the premises for ordinary years.<sup>74</sup> This rental value can be ascertained by the opinion of witnesses familiar with the land but the rent must be determined according to the circumstances in each case.<sup>75</sup> Land rent must be worth something as long as the land is fit for cultivation. Under this standard, however, it has been held that the tenant's liability would not be affected by an unforeseen and unpropitious crop year which would prevent the premises from producing as good a crop yield as normal during the tenancy.<sup>76</sup>

When there is a written lease, a stipulation in the lease as to the amount of rent is generally controlling.

If the lessee refuses to take possession of the land, he is nevertheless liable on his rent contract. The lessor may, if he desires, terminate the lease and release the lessee, in which case the lessee is liable only for the rental accruing up to the time of the notice of termination.<sup>77</sup> As a general rule, the measure of damages for the lessee's refusal to take possession according to the lease agreement, is the difference between the rent the lessee agreed to pay, and the actual rental value of

72. 32 Am. Jur., *Landlord and Tenant* § 429 (1941); *Floyd v. Floyd*, 4 Rich. 23 (1850).

73. *Ryan v. Marsh's Administrators*, 2 Nott & McCord 156 (1819).

74. 32 Am. Jur., *Landlord and Tenant* § 432 (1941).

75. *Lyles v. Lyles*, 1 Hill Eq. 76 (1833).

76. *Frazier v. Nicks*, 172 Ark. 1139, 292 S. W. 368 (1927).

77. *Simon v. Kirkpatrick*, 141 S. C. 251, 139 S. E. 614 (1927).

the premises.<sup>78</sup> In one decision of the South Carolina Court, it was said that after a lessee refuses to take possession the landlord could himself terminate the lease and release the lessee from liability, but that he was not bound to do so and could allow the premises to remain unoccupied and hold the lessee to his contract to pay rent.<sup>79</sup> On another occasion, however, it was held that a landlord who re-entered the premises after an abandonment by the tenant should use diligence in seeking a new tenant in order to lessen his damages.<sup>80</sup>

A tenant liable for rent is bound to make sure that his payment upon such obligation is made to the person who is entitled to such rent or to an agent, at least where the tenant has notice of facts which affect the right to the rent. Thus, the payment of rent by a tenant to the administrator of his deceased landlord, under the mistaken belief that he was the proper person to receive it, does not constitute a defense against the demand of the heirs for rent.<sup>81</sup> Likewise, if a tenant with notice of a sheriff's sale of the premises voluntarily pays rent, accruing since the sale, to the landlord, he is not thereby discharged from paying the purchaser.<sup>82</sup>

#### b. *Time of Accrual*

It is generally stipulated in the lease as to when the rent shall become due. Where the time of payment does not appear in the lease it will be assumed that the rent is due at the expiration of the lease, in the absence of a showing to the contrary.<sup>83</sup> However, when rents are payable in a portion of the crops raised on the leased premises and the contract does not state definitely when such share is payable, it is due when the crop matures or is ready for market. Thus, in a South Carolina case<sup>83a</sup> the Court pointed out that the law of the State gave a landlord a lien on all crops grown on the rented land for rent and held that as the crops, such as oats, corn

78. *Cleveland v. Bryant*, 16 S. C. 634 (1882). See *Richman v. Joray Corp.*, 183 F. 2d 667 (4th Cir. 1950).

79. *Simon v. Kirkpatrick*, 141 S. C. 251, 139 S. E. 614 (1927).

80. *Burkhalter v. Townsend*, 139 S. C. 324, 138 S. E. 34 (1927). See *U. S. Rubber Co. v. White Tire Co.*, — S. C. —, 97 S. E. 2d 493 (1956). For a discussion distinguishing the rule of damages where tenant fails to take possession or where there is an abandonment or surrender, see 51 C.J.S., *Landlord and Tenant* 250 at p. 888 (1947).

81. *Richardson v. Neblett*, 122 Miss. 723, 84 So. 695 (1920).

82. *Snyder v. Riley*, 28 S. C. L. (1 Speers) 272, 40 Am. Dec. 602 (1843).

83. *Williams v. Wolfe*, 130 S. C. 227, 126 S. E. 41 (1925).

83a. *McAlister v. Tucker*, 103 S. C. 204, 87 S. E. 1000 (1917).

and cotton, matured and were in a condition to be prepared for marketing or selling, then the landlord's rent became due and payable in the absence of any definite fixed time agreed upon for payment. A fixed time for payment in the lease, of course, would be binding.

Where the lease is for a term of years, creating a leasehold estate in the lessee, it is well settled that, upon the death of the lessee during the term, such estate vests in his executor or administrator, unless there is some provision in the lease stipulating for its termination upon the happening of such event.<sup>84</sup> And usually, in such a case, the lessee's estate remains liable on the covenants in the lease for the payment of rent as on the other contracts of the decedent for payment of money.<sup>85</sup>

Rent does not accrue from day to day. It is the general rule, therefore, that where a landlord terminates a tenancy between rent days, he is not entitled to apportion the rent and recover a proportionate part<sup>86</sup> if the lease does not provide for apportionment.<sup>87</sup> Likewise, rent is not apportionable between persons successively entitled when the right of one person ends and another begins during the rent period.<sup>88</sup> Where the landlord sells and conveys the leased premises during the term without reserving his right to rent, and the rent is not payable in advance, there is no apportionment between the seller and the purchaser.<sup>89</sup>

### *c. Rents Accruing After Death of Landlord*

Rents which accrue after the death of a landlord, dying intestate, pass to his heirs.<sup>90</sup> Hence, an administrator who collected rents after the landlord had died intestate was liable for the rent, but as trustee rather than in his official capacity.<sup>91</sup>

Where the landlord dies testate, the rent belongs to the devisees, and not to the executor.<sup>92</sup> Where the rent is left to

84. *Payne v. Harris*, 3 Stro. Eq. 39 (1849).

85. See *Charles v. Byrd*, 29 S. C. 544, 8 S. E. 1 (1888).

86. 32 Am. Jur., *Landlord and Tenant* § 453 (1941).

87. *Ibid.*

88. *Wilcoxon v. Donnelly*, 90 N. C. 245 (1884).

89. *Snyder v. Riley*, 28 S. C. L. (1 Speers) 272, 40 Am. Dec. 602 (1843); *Moore v. Turpin*, 28 S. C. L. (1 Speers) 32, 40 Am. Dec. 589 (1842).

90. *Kirkpatrick v. Atkinson*, 32 S. C. Eq. (11 Rich.) 27 (1859).

91. *Jewell v. Jewell*, 32 S. C. Eq. (11 Rich.) 296 (1860).

92. *Huff v. Latimer*, 33 S. C. 255, 11 S. E. 758 (1890); See *Moore v. Turpin and Powers*, 1 Speers 32 (1842).

the executor in the will, however, he has the right to collect and apply the rents as assets of the estate.<sup>93</sup>

d. *Rents Accruing Before Death of Landlord*

Rents which accrue during the lifetime of an intestate landlord belong to the personal representative.<sup>94</sup>

Where rent accrues during the lifetime of the landlord, or was secured by notes or other obligation of the tenant, it belongs to the executor as assets of the estate.<sup>95</sup>

## 2. LIABILITY FOR RENT AS AFFECTED BY:

### a. *Eviction*

An eviction of the tenant from the entire premises by the landlord will suspend the former's liability for rent.<sup>96</sup> The period of suspension corresponds to the period of eviction.<sup>97</sup> If the landlord does some act which deprives the tenant of beneficial enjoyment of the premises causing the tenant to abandon the premises, this may be treated as a constructive eviction which will likewise suspend the requirement for paying rent.<sup>98</sup> The tenant, however, must actually abandon the leased premises.<sup>99</sup> When the landlord's conduct is such that it amounts to a partial actual eviction, there can be no partial constructive eviction, the tenant can use and enjoy the remainder of the premises without being further liable for any part of the rent,<sup>100</sup> and the landlord cannot maintain proceedings to remove the tenant for nonpayment of rent.<sup>101</sup> The eviction, of course, either total or partial, must have occurred before the rent became due.<sup>102</sup>

### b. *Defects in Condition of Leased Premises*

Defects in the condition of the premises, where there is no covenant that the premises will be suitable for the use for which the lessee requires them, will not affect the tenant's liability for rent.<sup>103</sup> Even a breach of a landlord's agreement

93. *Staten v. Guillebeaux*, 123 S. C. 363, 116 S. E. 443 (1923).

94. *Kirkpatrick v. Atkinson*, 32 S. C. Eq. (11 Rich.) 27 (1859).

95. *Huff v. Latimer*, 33 S. C. 255, 11 S. E. 758 (1890).

96. 32 Am. Jur., *Landlord and Tenant* § 478 (1941).

97. *Ibid.*

98. *Crommelin v. Thiess*, 31 Ala. 412 (1858).

99. *Paterson v. Bridges*, 16 Ala. App. 54, 75 So. 260 (1917).

100. *Miller v. So. Rwy. Co.*, 131 Va. 239, 108 S. E. 838 (1921).

101. 32 Am. Jur., *Landlord and Tenant* § 480 (1941).

102. 32 Am. Jur., *Landlord and Tenant* § 490 (1941).

103. *Mallard v. Duke*, 131 S. C. 175, 126 S. E. 525 (1925).

to make repairs or alterations does not give the tenant the right to vacate the premises, but will only authorize a claim for damages against the landlord,<sup>104</sup> unless the breach is of such a serious nature as it amounts to a constructive eviction, as commented on above.<sup>105</sup> If the premises become so defective that they are dangerous to life or limb, the tenant, rather than expose himself and his family to such damages, may, upon failure of the landlord to perform his agreement to repair, either rescind the contract and abandon the premises or make the repairs himself and deduct the expense thereof from the rent.<sup>106</sup> These remedies of the tenant, of course, would not apply in the absence of a covenant to repair.<sup>107</sup>

### *c. Destruction of Subject Matter of Lease*

Where there is a substantial destruction of the subject matter of the lease by an Act of God, the tenant may elect to rescind, and on surrendering all benefits thereunder, shall be discharged from the payment of rent.<sup>108</sup> There may be some question as to whether the destruction of a tenant house, under an agricultural lease, would be a substantial destruction of the subject matter of the lease, since the land itself would remain valuable for agricultural purposes.<sup>109</sup> It has been stated, however, that if one rents a house for a year, and during the term it is rendered untenable by a storm, the rent ought to be apportioned according to the time it was occupied.<sup>110</sup> A loss by fire, on the other hand, whether by negligence or accident, is an ordinary risk that may fairly be said to have been within the contemplation of the parties.<sup>111</sup>

The parties to the lease may provide for the relief of the tenant from liability for or a reduction of rent should the premises be destroyed,<sup>112</sup> and the court will uphold such agreement. Ordinarily, the lessee is not entitled to a reduction in rent because of a slight shortage in the amount of acreage specified in the lease, although a reduction may be warranted

104. *Rowland & Sons, Inc. v. Bock et al*, 150 S. C. 490, 148 S. E. 549 (1929).

105. *Mallard v. Duke*, 131 S. C. 175, 126 S. E. 525 (1925).

106. *Timmons v. Williams Wood Products Corp.*, 164 S. C. 361, 162 S. E. 329 (1932).

107. *Cantrell v. Fowler*, 32 S. C. 589, 10 S. E. 934 (1890).

108. *Coogan v. Parker*, 2 S. C. 255 (1871).

109. *Ibid.*

110. *Ripley v. Wightman*, 4 McCord 447 (1828).

111. *Coogan v. Parker*, 2 S. C. 255 (1871).

112. *Ragan v. Lebovitz*, 195 N. C. 616, 143 S. E. 2 (1928).

where the rent is based on acreage and there is a substantial shortage.<sup>113</sup>

### 3. PLACE OF PAYMENT OF RENT

If the parties designate a place where the rent is to be paid, it is payable at that place. Thus, where a tenant agrees to deliver rent in a crop at a fixed place, the risk of the loss of such crop is upon the tenant until it is delivered at that place.<sup>114</sup> In the absence of an agreement in the lease, the rent is payable on the leased premises.<sup>114a</sup>

### 4. DISTRESS FOR RENT

A landlord may enforce his claim for rent by distress, which means that the landlord can require the taking of personal property from the tenant in an amount sufficient to satisfy his claim. In so doing he must provide the magistrate with an affidavit showing the amount due.<sup>115</sup> The remedy of distress, however, can not be used until the rent is due and payable.<sup>116</sup> Certain property of the tenant is exempt from distress for rent, such as personal clothing and food within the dwelling, bedsteads and bedding and cooking utensils.<sup>117</sup>

### 5. LANDLORD'S LIEN FOR RENT ON CROPS OF TENANT

#### a. Generally

Ordinarily, where the relation is that of landlord and tenant, as distinguished from that of employer and cropper, the title to the crops and produce of the land is in the tenant. At common law, therefore, the landlord had no lien for his rent, apart from his right, analogous to a lien, obtained by the seizure of the property on the demised premises for arrears of rent by way of distress. In South Carolina, however, as in most states, a statutory lien for rent is given the landlord upon the property of the tenant and, in case of agricultural lands, upon the crops raised on the demised premises.

113. 32 Am. Jur., *Landlord and Tenant* § 432 (1941); See also 36 L. R. A. (NS) 555 (1912).

114. *Magill v. Holston*, 6 Bat. 323 (Tenn. 1873); 32 Am. Jur., *Landlord and Tenant* § 468 (1941).

114a. 32 Am. Jur., *Landlord and Tenant* § 467 (1941).

115. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-151.

116. *Bailey v. Wright*, 14 S. C. L. (3 McCord) 484 (1826).

117. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-152.

Every landlord in South Carolina leasing land for agricultural purposes has a prior and preferred statutory lien for his rent to the extent of all the crops raised on the lands leased by him,<sup>118</sup> whether raised by the tenant *or by some other person*.<sup>119</sup> There is no necessity for an express agreement<sup>120</sup> as to the lien, since the lease contract carries with it the lien given by statute.<sup>121</sup>

It is not necessary that there be any writing or recording to create such lien, but it exists from the date of the lease contract, whether the lease itself be in writing or verbal.<sup>122</sup> The statutory lien given the agricultural landlord for rent is not renewable, however, even where the tenant consents.<sup>123</sup>

One taking a lien for advances with knowledge of a rent contract between the lienor and his landlord for the farm on which the advances are to be used, is chargeable with knowledge of the prior lien given by statute to the landlord.<sup>124</sup>

#### b. *Priorities*

The landlord's lien upon the crops of his tenant for rent takes priority over all other liens.<sup>125</sup> For example, it is superior to an ordinary chattel mortgage or a farm laborer's lien on the tenant's crops. One seeking to take advantage of the statutory lien, however, has the burden of proving that his claim is one for rent.<sup>126</sup>

The landlord's lien for rent is also superior to the lien of another person for supplies furnished to the tenant.<sup>127</sup> Thus, a landlord holding a preferred lien for rent on a cotton crop of the tenant made on the leased premises, is not estopped from asserting his lien as against a lien by another for advances, even though the landlord has himself taken a first lien for advances made to the tenant.<sup>128</sup>

Laborers who assist in making a crop have a lien thereon to the extent of the amount due for such labor, and this lien

118. *Kennedy v. Reames*, 15 S. C. 548 (1881).

119. See *Hamilton v. Blanton*, 107 S. C. 142, 92 S. E. 275 (1917); CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-501.

120. *Carter v. DuPre*, 18 S. C. 179 (1882).

121. *Hamilton v. Stubbs*, 105 S. C. 157, 89 S. E. 553 (1916); *Kennedy v. Reames*, 15 S. C. 548 (1881).

122. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-501.

123. *Tinman v. McMeekin*, 42 S. C. 311, 20 S. E. 36 (1894).

124. *State v. Reeder*, 36 S. C. 497, 15 S. E. 544 (1892).

125. *Hamilton v. Stubbs Co.*, 105 S. C. 157, 89 S. E. 553 (1916); CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-503.

126. *Burkhalter v. Odom*, 182 S. C. 391, 189 S. E. 650 (1937).

127. *Brewster v. McNab*, 36 S. C. 274, 15 S. E. 233 (1892).

128. *Carter v. DuPre*, 18 S. C. 179 (1882).

is next in priority to the landlord's lien for rent. As between such laborers there is no preference. The landlord's lien for advances is next in priority after the landlord's lien for rent and the laborer's lien for labor.<sup>129</sup>

*c. Recordation Unnecessary*

No recording of the landlord's lien for rent is necessary to create such a lien, but it exists from the date of the lease contract.<sup>130</sup> Even prior to the statute making the recording of the lien unnecessary, the South Carolina Court had held that as between the landlord and the tenant, the lien was good with or without recordation.<sup>131</sup>

*d. Property Subject to Lien*

A landlord seeking to assert a lien on a certain crop or the proceeds from its sale must prove that the crop on which he is seeking execution was produced upon the leased property. Where the affidavit, warrant or levy fails to show that the crops were raised on the leased premises, the landlord cannot maintain his action.<sup>132</sup>

The landlord's lien for rent is not confined to a particular crop even though the rent itself is payable in that crop. Thus, it could not be contended that, because the rent was payable in cotton, the lien was confined to the cotton, since the statute gives the landlord a lien upon all crops without reference to the manner in which the rent is to be paid.<sup>133</sup>

*e. Time in Relation to Agricultural Liens*

The question sometimes arises as to the period of time covered by the lien. It seems to be the general rule that the lien extends only to the crops of the particular year for which the rent was charged.<sup>134</sup> And it has been said that a landlord who wishes to enforce his claim must establish that the crops were grown on the leased premises during the term.<sup>135</sup> In an action to enforce his lien the landlord must plead that the crops were raised at a certain time and an affidavit which fails to state when the crops were grown is defective.<sup>136</sup>

129. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-503.

130. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-501.

131. *Davis v. Days*, 42 S. C. 69, 19 S. E. 975 (1894).

132. *Tinman v. McMeekin*, 42 S. C. 311, 20 S. E. 36 (1894).

133. *State v. Reeder*, 36 S. C. 497, 15 S. E. 544 (1892).

134. *Lee v. Payne*, 61 Ga. App. 16, 5 S. E. 2d 592 (1939); *Eastern Cotton Oil Co. v. Powell*, 201 N. C. 351, 160 S. E. 292 (1931).

135. *Fed. Land Bank v. Strickland*, 227 Ala. 116, 148 So. 799 (1933).

136. *Tinman v. McMeekin*, 42 S. C. 311, 20 S. E. 36 (1894).



As a general rule, and in the absence of an agreement to the contrary, it may be said that the landlord's right to collect his portion of the crop accrues upon the maturity of the crop and is not postponed until the end of the term.<sup>137</sup>

## 6. LANDLORD'S LIEN FOR ADVANCES ON CROPS OF TENANT

Subject to priority of the lien for rent and the laborer's lien for labor, the landlord and his assigns have a lien on all the crops raised by the tenant for all advances made by the landlord to such tenant during the year.<sup>138</sup> And this lien is valid whether the agreement under which the advances are made is written or oral.<sup>139</sup>

Unlike the lien for rent, however, the landlord's lien for advances must be indexed in the office of the register of mesne conveyances or the clerk of court of the county in which the land is located.<sup>140</sup> The indexing of the lien constitutes notice thereof to all third persons and entitles the landlord's lien to its priority over the lien of merchants from the time of indexing.<sup>141</sup> If not indexed, the lien is good between the landlord and tenant, *but* it will not be good against a merchant's recorded lien for advances.<sup>142</sup>

If the landlord can prove by an affidavit that the tenant to whom advances have been made is about to sell or otherwise dispose of his crop and thereby defeat the lien, a warrant may be issued and directed to the sheriff, directing him to seize the crop and, after due notice, sell it and use the proceeds to extinguish the lien. The seizure of the crop may be made elsewhere than on the land where it is made.<sup>143</sup>

## 7. TERMINATION OF TENANCIES

### a. *Expiration of Term*

The expiration or termination of a lease terminates all rights of the lessee in the premises, and it becomes his duty to surrender the possession of the premises to the landlord.<sup>144</sup>

137. *McAlister v. Tucker*, 103 S. C. 204, 87 S. E. 1000 (1916).

138. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-501.

139. *Sellers & Moore v. Campbell*, 103 S. C. 207, 87 S. E. 999 (1916); *Nexsen v. Ward*, 96 S. C. 313, 80 S. E. 599 (1914).

140. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-504.

141. *Ibid.*

142. *Whaley v. Jacobson*, 21 S. C. 51 (1884).

143. *Visanka v. Bradley*, 4 S. C. 288 (1873).

144. *Milhouse v. Patrick*, 6 Rich. 350 (1853).

Indeed, it is a covenant, either express or implied, of all leases for a definite period that a tenant, at the expiration of the lease, will yield and deliver up the possession of the premises to the landlord.<sup>145</sup>

In the absence of an express agreement to the contrary, all tenancies of farm laborers, sharecroppers and renters of farm lands terminate on the last day of December in each year,<sup>146</sup> except in Clarendon, Darlington, Dillon, Edgefield, Georgetown, Horry, Marion, Williamsburg and Florence Counties where such tenancies end on the first day of December in each year.<sup>147</sup> When there is an express agreement, either oral or written, the tenancy ends, without notice, on the last day of the term.<sup>148</sup>

#### b. *Termination for Cause by Landlord*

If a tenant fails to pay the agreed rent when due, or a reasonable rent for use and occupation when demanded, the tenancy may be terminated without notice.<sup>149</sup> Also, if the tenant abandons the leased premises, the landlord may retake possession and distrain any of the tenant's property found thereon.<sup>150</sup> An absence of the tenant for fifteen days after defaulting in his rent is considered an abandonment.<sup>151</sup>

A lease, where provided therein, may also be terminated by (1) eviction and re-entry on the part of the landlord;<sup>152</sup> (2) breach of covenant or conditions in the lease;<sup>153</sup> (3) surrender on the part of the tenant.<sup>154</sup>

The landlord has a right to eject the tenant and retake possession of the leased premises when (1) the tenant fails or refuses to pay the rent when due or demanded; (2) the term of tenancy or occupancy has ended; (3) the terms or conditions of the lease have been violated.<sup>155</sup> Where the tenant

145. For discussion of tenancies and their termination generally, see 1 Selden Society 7 (1937); 32 Am. Jur., *Landlord and Tenant* § 841 (1941).

146. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-60.

147. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-61.

148. Nat. Bank of S. C. v. People's Grocery Co., 153 S. C. 118, 150 S. E. 478 (1929); CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-62; Simon v. Kirkpatrick, 141 S. C. 251, 139 S. E. 614 (1927).

149. Simon v. Kirkpatrick, 141 S. C. 251, 139 S. E. 614 (1927); CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-65.

150. Sharp v. Kinsman, 18 S. C. 108 (1882).

151. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-66.

152. Simon v. Kirkpatrick, 141 S. C. 251, 139 S. E. 614 (1927).

153. *Ibid.*

154. *Ibid.*

155. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-101.

disclaims the title of the landlord to the leased premises and claims an adverse title in himself or some other person, the landlord may immediately bring an action to recover possession. But nothing less than some unequivocal act on the part of the tenant amounting to an actual disclaimer of the landlord's title can call this principle of law into play.<sup>156</sup> The landlord, however, does not have the right to take the law into his own hands and eject a tenant without legal process, even where the tenant holds over after the expiration of the term.<sup>157</sup>

As we have seen, a tenancy for a term ends on the last day of the agreed term, without notice.<sup>158</sup> Other tenancies, such as tenancies from month to month or at will may be terminated only after notice is given the tenant,<sup>159</sup> unless the tenant is disclaiming the landlord's title.<sup>160</sup> And it has been held that a tenant, holding over after the expiration of the term and refusing to pay rent, was not entitled to notice to quit.<sup>161</sup>

### *c. Ejection of Tenant*

Where the landlord is entitled to have the tenant ejected he may apply to any magistrate having jurisdiction to issue a written rule requiring the tenant forthwith to vacate the premises occupied by him or to show cause within 10 days why he should not be ejected.<sup>162</sup> The availability of this action, of course, is dependent upon the existence of a landlord-tenant relationship between the parties,<sup>163</sup> and this relationship must be determined by the magistrate.<sup>164</sup> If the tenant fails to appear and show cause within the ten day period why he should not be ejected, then the magistrate must issue a warrant of ejection and direct his constables or the sheriff to remove the tenant from the premises.<sup>164a</sup> If the tenant does make an appearance and contest the ejection, he has the right to request a trial by jury and the magistrate hears the case in the same manner as any other civil action<sup>165</sup> with

156. *Wolfe v. Herlihy*, 218 S. C. 90, 61 S. E. 2d 764 (1950).

157. *Sharp v. Kinsman*, 18 S. C. 108 (1882).

158. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-62.

159. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-63 and 64.

160. *Wadsworth Poor School v. Meetze*, 4 Rich. 50 (1850).

161. *State v. Stewart*, 5 Strob. 29 (1850).

162. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-102.

163. *Stewart James Co. v. Shehan*, 127 S. C. 451, 121 S. E. 374 (1924).

164. *Ibid.*

164a. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-104.

165. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-106.

either party having the right to appeal from the decision.<sup>166</sup> Both the landlord and tenant are given a full opportunity to be heard, with or without counsel, and since magistrate courts are not courts of general jurisdiction, a certain amount of informality is to be expected.<sup>167</sup>

#### 8. PENALTY ON TENANT HOLDING OVER AFTER DEMAND FOR POSSESSION

Any tenant, whether for life or years, by sufferance or at will, who remains in the possession after the expiration of his term, or after the landlord demands possession, for the space of three months after such demand, must forfeit double the value of the use of the premises, and this forfeiture may be enforced by a civil action.<sup>168</sup>

#### 9. WASTE

The tenant must exercise ordinary care in the use of the leased premises and is liable for an injury unnecessarily resulting from his wrongful acts or his failure to use such care.<sup>169</sup> It has been held that the tenant must use such care as a prudent man would use with his own property.<sup>170</sup> Thus a tenant may be liable in damages to his landlord where he alters or defaces the building on the leased premises without the landlord's consent,<sup>171</sup> or for an unauthorized cutting of timber,<sup>172</sup> or because of damage to the premises by fire which results from the tenant's wrongful act or negligence.<sup>173</sup>

Although there are few cases in South Carolina on the subject of waste, a South Carolina statute recognizes the existence of the landlord's remedy by reference to assessment of damages in waste actions.<sup>174</sup> A tenant at will who commits voluntary waste is liable to his landlord in an action of trespass.<sup>175</sup>

166. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-112.  
 167. *Wimberly v. Shorter*, 204 S. C. 558, 30 S. E. 2d 593 (1944).  
 168. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-72.  
 169. *Dial v. Gardner*, 104 S. C. 456, 89 S. E. 396 (1916); *Brigham v. Overstreet*, 128 Ga. 447, 57 S. E. 484 (1907).  
 170. *Moore v. Parker*, 91 N. C. 275 (1884).  
 171. *Koerke v. Coburn*, 6 So. 2d 249 (La. App. 1942).  
 172. *Lewis v. Virginia Carolina Chemical Co.*, 69 S. C. 364, 48 S. E. 280 (1904).  
 173. *Moore v. Parker*, 91 N. C. 275 (1884).  
 174. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-1518.  
 175. *Cannon v. Hatcher*, 19 S. C. L. (1 Hill) 260 (1833).

## 10. RIGHT TO EMBLEMENTS, MANURE, TIMBER

a. *Emblements*

Emblements are the products of the earth which are grown annually by labor and industry and not spontaneously. The term may also denote the right of the tenant to take and carry away, after the tenancy has ended, such of the annual products of the land as have been produced by his own labor.<sup>176</sup>

The general rule seems to be that when a tenant has a lease for a fixed term, and is, therefore, certain of the time when the lease will expire, he is not entitled to the crops left growing on the premises at the termination of the lease.<sup>177</sup> Since the tenant knows when the lease will expire he would be without right in planting a crop which would not mature by the end of the term.<sup>178</sup> On the other hand, a tenant holding by a tenure which is uncertain as to the time of its termination has generally been held entitled to crops growing on the premises when the lease period is ended, where the termination is not brought about by any fault or desire of the tenant.<sup>179</sup> Thus, a tenant is entitled to emblements where a lease of uncertain duration is terminated by an Act of God,<sup>180</sup> by operation of law,<sup>181</sup> or by some act of the landlord not motivated by fault of the tenant.<sup>182</sup>

The rule which prevents a tenant for a fixed term from having a right in an immature crop, not harvestable at the end of term, may not apply, however, to a mature and harvestable crop. In the latter situation the Courts of Alabama and Mississippi have held that the tenant should have a reasonable time to remove the crop after the term ends.<sup>183</sup>

An interesting situation arises as to crops or vegetables growing on the land when the tenant goes into possession, and in at least one instance, it was held that the tenant was entitled to the unmaturing products growing on the premises when the lease went into effect.<sup>184</sup>

176. BLACK, LAW DICTIONARY (4th ed. 1951).

177. 51 C. J. S., *Landlord and Tenant* § 349 (1947).

178. *Huckaby v. Walker*, 141 Ark. 477, 217 S. W. 481 (1920); *Sanders v. Ellington*, 77 N. C. 255 (1877).

179. *Price v. Pickett*, 21 Ala. 741 (1852); *Sollar v. Roddenbury*, 97 Ga. 148, 25 S. E. 410 (1895).

180. *Lingerfelt v. Gibson*, 161 Tenn. 477, 32 S. W. 2d 1047 (1930).

181. *Bateman v. Brown*, 297 S. W. 773 (Tex. Civ. App. 1927).

182. See note 180 *supra*.

183. *McClain v. Gilbert*, 30 Ala. App. 261, 4 So. 2d 203 (1941); *Opperman v. Littlejohn*, 98 Miss. 636, 54 So. 77 (1911).

184. *Friskkorn v. Ogden*, 16 Ala. App. 358, 77 So. 970 (1918).

The emblements growing on the leased premises at the death of the tenant do not appertain to the land and go to the landlord, but belong to the executor or administrator of the tenant.<sup>185</sup>

b. *Manure*

Manure made in the usual course of husbandry upon a farm is so attached to and connected with the realty that in the absence of any express stipulation to the contrary, it becomes appurtenant to and is treated as realty. Thus, where lands are rented for agricultural purposes, the manure on the premises at the conclusion of the lease belongs to the landlord,<sup>186</sup> though made by the tenant's stock.<sup>187</sup>

c. *Timber*

With respect to timber on leased land, there are some courts which have held that a tenant could cut and remove trees and underbrush to such an extent as was necessary to prepare the land for cultivation.<sup>188</sup> The farm tenant may also cut timber for such uses as firewood and repairing fences, etc.<sup>189</sup> The tenant, however, may not cut timber merely for purposes of sale and profit.<sup>190</sup>

## V.

### RIGHTS OF THE TENANT

#### 1. RIGHT TO POSSESSION

a. *In General*

If a person agrees with an owner of land to cultivate the land and to furnish to and pay to the owner a certain compensation, whether it be a part of the crop, or other compensation, the relation of landlord and tenant arises, and the landlord or owner of the land surrenders for the time being his possession of the land to the tenant.<sup>191</sup> A lease gives the absolute right of possession to the tenant and that part of the land

185. *McLaurin v. McColl*, 3 Strob. 21 (1848).

186. *Roberts v. Jones*, 71 S. C. 404, 51 S. E. 240 (1905).

187. *Ops. Att'y. Gen.* 125 (1925).

188. *Higgins v. State*, 58 Ga. App. 480, 199 S. E. 158 (1938); *Moss Point Lumber Co. v. Board of Supervisors*, 89 Miss. 448, 42 So. 290 (1906).

189. *Loudon v. Warfield*, 28 Ky. 196 (1830).

190. *Hill v. Burgess*, 37 S. C. 604, 15 S. E. 963 (1892).

191. *Prater v. Wilson*, 55 S. C. 468, 33 S. E. 561 (1899).

leased to the tenant may be considered as in his exclusive possession, even as against the landlord.<sup>192</sup> There is an implied obligation on the part of the lessor to deliver possession at the commencement of the term; and this obligation extends to anyone holding rightfully under the lessor.<sup>193</sup>

A lessee, however, has no estate in the land before entering into possession and therefore, in an action to recover possession of the lessor, the lessee must allege and prove an entry under the lease,<sup>194</sup> otherwise, having no estate in the land, he cannot compel the owner in possession to deliver him the possession. There are other remedies for a mere breach of contract.

In the event a prior tenant wrongfully holds over after the expiration of his lease and interferes with a new tenant, entitled to take possession, the law is divided as to the duty of the landlord. Under what is called "the American Rule," there is no implied covenant that the landlord will put the tenant in possession as against an intruder.<sup>195</sup> "The English Rule," on the other hand, provides that it is the duty of the lessor to see that the premises are open, both legally and actually, to the lessee on the day the term begins, and that the landlord should oust anyone then wrongfully withholding peaceable possession from the tenant.<sup>196</sup>

The parties to the lease may expressly fix their rights and obligations as to the duty of the landlord to deliver possession and the tenant's right of possession<sup>197</sup> and, unless there is an express provision in the lease, the landlord does not retain any right to occupy the premises during the term.<sup>198</sup> The right of the tenant to object to the landlord's failing to deliver full possession may be waived by the tenant, however, as where the tenant makes a voluntary payment of rent,<sup>199</sup> knowing that a former tenant intended to hold over a part of the premises. But, there has been held to be no waiver when the tenant accepted the leased premises after the time when

192. *Davis v. Clancy & Johnson*, 3 McCord 422 (1826).

193. *Sloan v. Hart*, 150 N. C. 269, 63 S. E. 1037 (1909).

194. *Willcox v. Bostick*, 57 S. C. 151, 35 S. E. 496 (1900).

195. *Jenkins v. Smith*, 92 Ga. App. 296, 88 S. E. 2d 533 (1955).

196. *Shelton v. Clinard*, 187 N. C. 664, 122 S. E. 477 (1924).

197. *Hannan v. Dusch*, 154 Va. 356, 153 S. E. 824 (1930).

198. *Collins v. Wheelless*, 171 Miss. 263, 157 So. 82 (1934).

199. *Rieger v. Welles*, 110 Mo. App. 166, 84 S. W. 1136 (1905).

the landlord should have delivered possession under the term of the lease.<sup>200</sup>

If a tenant merely moves away from the premises during the lease term, and such moving away is not construed as an abandonment, the landlord is not authorized to put another tenant in possession for the remainder of the first tenant's term, and the first tenant can return and recover possession.<sup>201</sup> In addition to his right to possession, the tenant has an implied easement or right of way to common passageways which allow him to get to and from the leased premises.<sup>202</sup>

*b. Remedies of Lessee for Nondelivery of Possession*

*(1) As Against Lessor*

If the lessor fails or refuses to put the tenant in possession of the premises at the commencement of the lease, the tenant is justified in repudiating the lease,<sup>203</sup> and refusing to pay any part of the rent.<sup>204</sup> The lessee may also bring an action to recover damages of the landlord for breach of contract to give possession.<sup>205</sup> As to the measure of his damages, the lessee is entitled to recover the excess, if any, of the rental value of the premises over the rent agreed upon in the lease.<sup>206</sup> Otherwise expressed, the lessee is entitled to recover the fair value of the use of the premises. If there is no difference between the rental value and the agreed rent, only nominal damages are recoverable.<sup>207</sup>

*(2) As Against Third Persons*

As a general rule, the lessee may bring an action to eject a third person who is withholding possession when the lease term is to commence.<sup>208</sup> And a tenant in possession may maintain an action of trespass for an injury to his possession.<sup>209</sup>

200. *Huntington Easy Payment Co. v. Parsons*, 62 W. Va. 26, 57 S. E. 253 (1907).

201. *Chancey v. Smith*, 25 W. Va. 404, 52 Am. Rep. 217 (1885).

202. *White v. Thacker*, 89 Ga. App. 656, 80 S. E. 2d 699 (1954).

203. 32 Am. Jur., *Landlord and Tenant* § 190 (1941).

204. *Ibid.*

205. *Snodgrass v. Reynolds*, 79 Ala. 452, 58 Am. Rep. 601 (1885); *Bowling v. Mangum*, 122 S. C. 179, 115 S. E. 212 (1922); *Newbrough v. Walker*, 8 Gratt 16, 51 Am. Dec. 127 (Va. 1851).

206. *Bowling v. Mangum*, 122 S. C. 179, 115 S. E. 212 (1922); *Hunt v. D'orval*, 23 S. C. L. (Dud.) 180 (1838).

207. *Kenny v. Collier*, 79 Ga. 743, 8 S. E. 58 (1888).

208. 32 Am. Jur., *Landlord and Tenant* § 190 (1941).

209. *Davis v. Clancy & Johnson*, 3 McCord 422 (1826).



### c. *Interference With Possession By Landlord*

As stated previously, during the term of the lease, the tenant is for all practical purposes the owner of the premises and the landlord has only his right to repossess the property at the termination of the lease.<sup>210</sup> As long as the lease continues, the tenant cannot be considered a trespasser upon the premises and cannot be turned out until the lease terminates.<sup>211</sup> An unauthorized entry upon the premises by the landlord is as much a trespass as an entry by a stranger.<sup>212</sup> Even when there has been a breach of a covenant by the tenant, the landlord may not forcibly interfere with the tenant's enjoyment of the premises.<sup>213</sup> This does not mean that there may not be occasions when the landlord would be authorized to enter the premises, as such occasion may arise if it is necessary for the landlord to enter to collect rent,<sup>214</sup> or to levy distress,<sup>215</sup> or where the landlord enters with the consent of the tenant. Even where the landlord goes on the premises with authority or permission, he nevertheless will be a trespasser if he goes beyond the purpose for which he is authorized to enter.<sup>216</sup>

As a general rule, there is a covenant for quiet enjoyment implied in every lease.<sup>217</sup> Such a covenant denotes that the tenant shall enjoy his possession of the premises in peace and without disturbance by the landlord, or anyone lawfully claiming under the landlord, or anyone asserting a title to the leased premises superior to that of the landlord.<sup>218</sup> Such a covenant, however, does not protect the tenant against acts of strangers,<sup>219</sup> and the lessee must protect himself against trespassers or other wrongdoers.<sup>220</sup> If the tenant observes the conditions of the lease, the covenant for quiet enjoyment will continue for the full term of the lease.<sup>221</sup> The wrongful evic-

210. *Columbia Ry., Gas & Elec. Co. v. Jones*, 119 S. C. 480, 112 S. E. 267 (1922).

211. *Willison v. Watkins*, 28 U. S. 43, 3 Pet. 113, 7 L. Ed. 596 (1830).

212. *Chancey v. Smith*, 25 W. Va. 404, 52 Am. Rep. 217 (1885).

213. *Ely v. Wickham*, 158 F. 2d 233 (10th Cir. 1946).

214. 32 Am. Jur., *Landlord and Tenant* § 195 (1941).

215. *Ibid.*

216. *Snedecor v. Pope*, 143 Ala. 275, 39 So. 318 (1905).

217. *Feinberg v. Sutker*, 35 Ga. App. 505, 134 S. E. 173 (1926).

218. *Hankins v. Smith*, 103 Fla. 892, 138 So. 494 (1931); *Smith v. Hightower*, 80 Ga. App. 293, 55 S. E. 2d 872, 41 A. L. R. 2d 1414, 1420 (1949).

219. *W. E. Stephens Mfg. Co. v. Buntin*, 27 Tenn. App. 411, 181 S. W. 2d 634 (1944).

220. *Hannan v. Dusch*, 154 Va. 356, 153 S. E. 824 (1930).

221. *Mathews v. Priest*, 165 So. 535 (La. App. 1936).

tion of the tenant by the landlord constitutes a breach of the covenant,<sup>222</sup> and may give rise to an action in tort for damages,<sup>223</sup> or in contract for breach of covenant.<sup>224</sup>

## 2. MODE OF CULTIVATION OF LAND

In a lease of farmland, there is an implied covenant that the tenant will use the lands only for farming purposes,<sup>225</sup> and that the farming will be conducted in a husbandlike manner.<sup>226</sup> There is also a covenant that the tillage of the farmland will not be contrary to good husbandry so as to unnecessarily exhaust the soil.<sup>227</sup> In addition to these implied covenants, the lease may contain specific provisions as to how or for what purposes the lands may be cultivated.<sup>228</sup>

## 3. OWNERSHIP OF CROPS

As between the landlord and the tenant the crops raised on the leased premises during the term are not a part of the landlord's right in the land and those crops which mature or are severed during the term of the lease are the property of the tenant<sup>229</sup> which he may do with as he pleases,<sup>230</sup> unless otherwise provided in the lease.<sup>231</sup> The rule is the same where the crop is only ready to be severed.<sup>232</sup> If a crop is matured when the term ends, the tenant can remove it within a reasonable time.<sup>233</sup> It may be said that the constructive possession is in the landlord until his rent and rent liens are paid, but that the actual possession is in the tenant.<sup>234</sup>

Thus, in South Carolina, where the relation of landlord and tenant exists, the ownership or title in the crop is in the tenant, and the landlord has his statutory lien upon the crop for rent.<sup>235</sup> The tenant, being the owner of the crop, may

222. *Hankins v. Smith*, 103 Fla. 892, 138 So. 494 (1931).

223. *Smith v. Hightower*, 80 Ga. App. 293, 55 S. E. 2d 872 (1949).

224. *Estes v. Gatliff*, 291 Ky. 93, 163 S. W. 2d 273 (1942).

225. *Ritchie v. State Board of Agriculture*, 219 Mo. App. 90, 266 S. W. 492 (1924).

226. *Prysi v. Kinsey*, 38 Ohio App. 92, 175 N. E. 707 (1930).

227. 32 Am. Jur., *Landlord and Tenant* § 224 (1941).

228. *Meeker v. Shull*, 235 Iowa 701, 17 N. W. 2d 514 (1945).

229. *Whaley v. Jacobson*, 21 S. C. 51 (1884).

230. *Watson v. State*, 20 Ala. App. 284, 102 So. 598 (1924); *Flynt v. Barrett*, 73 Ga. App. 396, 36 S. E. 2d 868 (1946).

231. *Riddle v. Hodge*, 83 Ga. 173, 9 S. E. 786 (1889).

232. *Opperman v. Littlejohn*, 98 Miss. 636, 54 So. 77 (1911).

233. *Ibid.*

234. *State v. Townsend*, 170 N. C. 696, 86 S. E. 718 (1915).

235. *Prater v. Wilson*, 55 S. C. 468, 33 S. E. 561 (1899).

also create a lien upon it in addition to the one the law creates for the landlord, but should he place any lien upon the crop, it is subject to the priority of the landlord's lien.<sup>236</sup>

With certain statutory exceptions<sup>237</sup> unsevered crops are regarded as part of the realty. Thus, an action of claim and delivery, which is designed to effect the recovery of personal property, will not lie for the purpose of obtaining possession of ungathered produce.<sup>238</sup>

It is an established principle of law that real property cannot be the subject of larceny. In an effort to improve the law in that respect, South Carolina has, by statute,<sup>239</sup> made the taking of crops, whether severed or not, a misdemeanor, punishable by imprisonment or fine. The purpose of this law is to protect field crops until they are gathered and housed, or at least severed and harvested.<sup>240</sup> The Courts have construed the statute to apply to the taking of kinds of crops referred to in the statute from the field before they are gathered by the owner, and not to the taking of severed crops merely because they happened to be in the field when taken.<sup>241</sup>

According to the early common law rule, growing crops were not subject to distress for rent.<sup>242</sup> They were made so, however, by a statute of George II, (St. 11 Geo. II, c. 19) and this seems to be the present rule in America. The statute of Geo. II, is cited in the Statutes at Large of South Carolina, Volume 2, p. 572, and although not binding in South Carolina as statute law, it has nevertheless been adopted in practice in this state.<sup>243</sup>

Where a portion of the crop raised on the premises by the tenant is to be used by him to pay the rent, the fact that circumstances during a given year are such that only a poor crop is raised will not alter the amount of rent to which the landlord is entitled.<sup>244</sup>

#### 4. DEATH OF LANDLORD OR TENANT

If an agricultural tenant holds under one having only a life estate in the premises and the life tenant dies during the

236. *Bank of Pendleton v. Martin*, 118 S. C. 74, 110 S. E. 76 (1921); *Whaley v. Jacobson & Son*, 21 S. C. 51 (1884).

237. CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 45-160; 19-478; 3-41.

238. *Norwood v. Carter*, 176 S. C. 472, 180 S. E. 453 (1935).

239. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 3-41.

240. *State v. Washington*, 26 S. C. 604, 2 S. E. 623 (1887).

241. *Ibid.*

242. 3 BLACKSTONE, COMMENTARIES p. 10; 11 Halsbury L. Eng. 133.

243. *Pemble v. Clifford*, 2 McCord 31 (1822).

244. *Frazier v. Nicks*, 172 Ark. 1139, 292 S. W. 368 (1927).

term, the agricultural tenant cannot be dispossessed until the crop for that year has been finished.<sup>245</sup> However, the agricultural tenant must secure the payment of rent accruing after the death of the life tenant to the one succeeding the person who held the life estate.<sup>246</sup> As a general rule, a lease for a term of years is not terminated by the death of the lessee, and in such case the rights of the lessee pass to his personal representative, who then becomes liable for the payment of rent.<sup>247</sup> This has been held to be so even where the lease provided for acts to be personally performed by the lessee, and forbade a transfer without the lessor's consent.<sup>248</sup>

With the exception of a tenancy at will and a tenancy created by a life tenant, the death of a lessor does not terminate a tenancy, but the land passes subject to the lease. Where the landlord dies testate, his right in the lease passes to the devisee, and where he dies intestate, his right passes according to inheritance laws, and in either case the new owner becomes the new landlord.<sup>249</sup>

## 5. UNHARVESTED CROPS AT EXPIRATION OF TENANCY

A crop which is growing and unharvested at the end of the term is called an away-going crop. Whether the tenant has any right, or the extent of his rights, to these crops, is determined by the type lease he has. Thus, when there is a lease for a fixed term and the tenant knows that a crop planted during the term cannot be harvested by the date of termination, he has no right to the unharvested crops.<sup>250</sup> The reason for this rule is that it is the tenant's own folly to sow when he knows that his lease will terminate before the harvest time.<sup>251</sup> Where a crop has fully matured, however, on the date of termination of a lease for a definite term, the tenant has a right to the crop although it is still unsevered.<sup>252</sup>

The right to emblements, referred to earlier in this work, is the right of a tenant under a lease for an *indefinite* period of time to remove from the land after the termination of his tenancy the annual crops planted thereon prior to termination,

245. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-253.

246. *Williamson v. Roberts*, 211 S. C. 179, 44 S. E. 2d 317 (1947).

247. *Charles v. Byrd*, 29 S. C. 544, 8 S. E. 1 (1888).

248. *Ibid.*

249. *First Presbyterian Church of York v. York Depository*, 203 S. C. 410, 27 S. E. 2d 573 (1943).

250. *Sharp v. Kinsman*, 18 S. C. 108 (1882).

251. *Sanders v. Ellington*, 77 N. C. 255 (1877).

252. *Opperman v. Littlejohn*, 98 Miss. 636, 54 So. 77 (1911).

provided the lease is not terminated as a result of fault on the tenant's part.<sup>253</sup> It is the object of the courts to encourage the tenant in good husbandry, and to that end favor is shown to the tenant who sows a crop as against the landlord or other person claiming the crop at the termination of the lease.

A tenant under a lease executed subsequent to a mortgage given by the lessor covering the leased premises is entitled, as against a purchaser on foreclosure, to the crops which have matured, although not harvested at the time title is transferred to the purchaser.<sup>254</sup> The tenant is a proper party to a foreclosure upon the leased premises, and if he is not joined as a party to the suit, his interest in the growing crops will not be affected.<sup>255</sup> If, however, *lis pendens* or foreclosure suit has been filed before the land is rented or the crop planted, the tenant is not entitled to the crop standing on the day of sale.<sup>256</sup> Where there is a judicial sale of the interest of the landlord only, a tenant under a valid lease is entitled to crops growing on the premises at the time of sale.<sup>257</sup>

The tenant entitled to emblements is not, however, entitled to all crops, but only those which have been grown by his own industry and labor, as opposed to those crops which grow naturally, such as trees, etc. Thus, the tenant is entitled to oats, corn, wheat, cotton, tobacco, etc., but not to young fruit trees or pine trees.<sup>258</sup>

Where the tenant has a right to emblements, such right must be exercised within a reasonable time after the tenancy has ended.<sup>259</sup> If the person having a right to the crop dies before the crops are ready to be harvested, his legal representative may come in and gather the crop.<sup>260</sup> Any of these rules, of course, may be varied by the parties if they choose to make special agreements as to emblements in the lease.

Even where the lease is for a fixed term, the tenant will have a right, after termination, to harvest the crops if the lease is terminated by an act of the landlord<sup>261</sup> without just

253. *Price v. Pickett*, 21 Ala. 741 (1852); *Morgan v. Morgan*, 65 Ga. 493 (1880); *Hayes v. Wrenn*, 167 N. C. 229, 83 S. E. 356 (1914).

254. 15 Am. Jur., *Crops* § 20 (1938).

255. *Darlington v. Bush*, 100 S. C. 324, 84 S. E. 875 (1915).

256. *Tittle v. Kennedy*, 71 S. C. 1, 50 S. E. 544 (1905).

257. See 31 Am. Jur., *Judicial Sales* § 154 (1940).

258. *McClain v. Gilbert*, 30 Ala. App. 261, 4 So. 2d 203 (1941).

259. *Stoddard v. Waters*, 30 Ark. 156 (1875).

260. *Price v. Pickett*, 21 Ala. 741 (1852).

261. *Morgan v. Morgan*, 65 Ga. 493 (1880); 15 Am. Jur., *Crops* § 24 (1938).

cause.<sup>262</sup> And any tenant having a right to emblements has a concurrent right of ingress and egress so far as is necessary to gather and remove the crops.<sup>263</sup> If a tenant's lease is terminated while there are growing crops on the premises, and he is not entitled to harvest the crops, such crops generally pass to the next incoming tenant, unless they are expressly reserved by the landlord.<sup>264</sup>

## 6. CONDEMNATION OF LANDS UNDER LEASE

Any tenant occupying lands which are taken by a state authority under its powers of eminent domain, who has a growing crop on the land at the time it is so taken, shall be paid the full value of the crop. If the parties cannot agree on a value, the same will be established by appointed referees.<sup>265</sup>

## 7. WRONGFUL EVICTION OF TENANT

In some instances, the tenant may be evicted by the landlord without just cause. This frequently happens when the landlord mistakenly supposes that the tenant has done some wrong and usually the reason for the landlord's mistaken impression is a misunderstanding as to what the obligations are under the lease. There can be no eviction unless the tenant has gone into possession of the premises from which he claims to have been evicted.<sup>266</sup>

Where there is a wrongful eviction, the tenant may maintain a civil action against the landlord to recover damages,<sup>267</sup> the amount of which will be the difference between the fair rental value of the leased premises and the actual amount of rent agreed upon by the parties.<sup>268</sup> If the evidence shows that there is no difference between the rental value and the agreed rent, then there should be no recovery.<sup>269</sup> If the lessor has deliberately ousted the tenant, there will be no apportionment of rent which would allow the landlord to recover for rent due at

262. See 15 Am. Jur., *Crops* § 24 (1938).

263. *Floralia Sawmill Co. v. Parrish*, 155 Ala. 462, 46 So. 461 (1908).

264. *Friskkorn v. Ogden*, 16 Ala. App. 358, 77 So. 970 (1918).

265. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 25-56.

266. *Simon v. Kirkpatrick*, 141 S. C. 251, 139 S. E. 614 (1927).

267. *Saine v. Hertzog*, 106 S. C. 501, 91 S. E. 859 (1917).

268. *Heard v. Griffin*, 188 Ark. 235, 66 S. W. 2d 1060 (1934); *Watkins v. Haigwood*, 41 Ga. App. 598, 153 S. E. 609 (1930).

269. *McElvaney v. Smith*, 76 Ark. 468, 88 S. W. 981 (1905).

that time, since to do so would permit the landlord to profit by his own wrong.<sup>270</sup>

The expense to which the tenant is put in moving to another farm may also be considered as an element of damages.<sup>271</sup> Where a tenant was wrongfully evicted in the winter and forced to provide immediate temporary shelter, the court held that he could recover the expense of moving to a permanent home as well as the cost of moving to temporary quarters.<sup>272</sup> It has also been held that a tenant wrongfully dispossessed can recover punitive damages against the landlord.<sup>273</sup> If the tenant has done considerable work and made improvements on the premises in order to cultivate the land and is thereafter wrongfully evicted, he may recover the value of the improvements.<sup>274</sup>

As stated previously, the tenant is entitled to the uninterrupted occupancy and use of the whole of the leased premises. If he is wrongfully ousted from a material portion of the farm, and elects to stand on the basis of wrongful eviction, he should be excused from the payment of rent and allowed to recover such damages as he has sustained.<sup>275</sup> In this way, the tenant is protected from hasty action on the part of the landlord, and the remedy which is provided the tenant serves as a deterrent to the landlord attempting to take the law into his own hands.

## 8. TIMBER FOR AGRICULTURAL NEEDS

An agricultural tenant has the right to cut and use such timber standing on the leased premises as is necessary for agricultural needs.<sup>276</sup> Thus, timber on the premises may be used for fuel, or to make necessary repairs. This right is implied in the lease.<sup>277</sup> This right of the tenant, however, is subject to reasonable limitation and the landlord may charge waste if the amount of timber cut is excessive of the apparent needs.<sup>278</sup> A scarcity of timber, on the other hand,

270. *Cheairs v. Coats*, 77 Miss. 846, 28 So. 728 (1900).

271. *Taylor v. Crowe*, 190 Ark. 71, 77 S. W. 2d 54 (1934).

272. *McElvaney v. Smith*, 76 Ark. 468, 88 S. W. 981 (1905).

273. *Williams v. Columbia Mills Co.*, 100 S. C. 363, 85 S. E. 160 (1915).

274. *Heard v. Griffin*, 188 Ark. 235, 66 S. W. 2d 1060 (1934).

275. *Rice v. Dudley*, 65 Ala. 68 (1880).

276. 32 Am. Jur., *Landlord and Tenant* § 219 (1941).

277. *Higgins v. State*, 58 Ga. App. 480, 199 S. E. 158 (1938).

278. *Anderson v. Cowan*, 125 Iowa 259, 101 N. W. 92 (1924).

does not prevent a tenant from using an amount sufficient for his needs.<sup>279</sup>

As a general rule, a tenant does not have the right to cut timber to be used to build homes upon the premises.<sup>280</sup> Likewise, the tenant must not cut timber which he intends to sell for a profit,<sup>281</sup> and such a cutting will be considered waste.<sup>282</sup> The tenant may, however, sell the timber which it is necessary for him to cut in clearing the land for cultivation, provided the cutting can be shown to be good husbandry.<sup>283</sup>

## 9. MANURE

The manure which is on the premises at the expiration of the lease belongs to the landlord and cannot be removed by the tenant.<sup>284</sup>

## 10. SUBLEASING

A sublease is created where a tenant rents a portion of the leased premises to another for a period shorter than the term of the original lease.<sup>285</sup> If the transfer is for the full unexpired term, it is considered an assignment. In South Carolina, a sublease by a tenant without the written consent of the landlord is a nullity insofar as the rights of the landlord are concerned, and rent collected by a tenant from a subtenant will be deemed to be held in trust by the tenant for the benefit of the landlord until the payment of the landlord's claim for rent.<sup>286</sup> The lessee, of course, cannot sublet the premises to be used in a manner inconsistent with the original lease.<sup>287</sup>

A subletting does not affect the right of the parties to the original lease as to rent or as to covenants. Thus, a lessee who sublets the premises is not relieved of his obligations to pay rent by the fact that, after the sublease, the landlord accepts rent from the sublessee.<sup>288</sup> The rights and duties created by a sublease are the same as those created by an original

279. *Findlay v. Smith*, 6 Munf. 134 (Va. 1818).

280. *Lewis v. Virginia-Carolina Chemical Co.*, 69 S. C. 364, 48 S. E. 280 (1904).

281. *Higgins v. State*, 58 Ga. App. 480, 199 S. E. 158 (1938).

282. *Ward v. Sheppard*, 3 N. C. 283 (1803).

283. *Board of Supervisors v. Gans*, 80 Miss. 76, 31 So. 539 (1901).

284. *Roberts v. Jones*, 71 S. C. 404, 51 S. E. 240 (1905).

285. *Johnson v. Moxley*, 216 Ala. 466, 113 So. 656 (1927).

286. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-56.

287. *Parkman v. Aicardi*, 34 Ala. 393 (1859).

288. *Schachter v. J. T. Tuggle Co.*, 8 Ga. App. 561, 70 S. E. 93 (1911).



lease.<sup>289</sup> A sublessor, therefore, may be regarded as a landlord with respect to his sublessee.<sup>289a</sup>

Although the relation of landlord and tenant cannot be said to exist between the original landlord and sublessee, there are certain rights which exist between them. The sublessee must not make a use of the premises which would injure the premises or create waste.<sup>290</sup> Any restriction as to use in the original lease must be complied with by a sublessee.<sup>291</sup> On the other hand, the sublessee incurs no obligation to pay rent to the original landlord.<sup>292</sup> The original landlord, however, may have a lien on the crops grown by the subtenant, where the original tenant defaults in the payment of rent.<sup>293</sup>

## VI.

### SHARECROPPING

#### 1. INCIDENTS OF THE RELATIONSHIP

It is well settled that a person may be employed to cultivate land and receive as his compensation a share of the crop without the relation of landlord and tenant being created thereby.<sup>294</sup> Thus, where one grows a crop for the owner of the land and receives a share of the crop from the owner as wages, the relationship created is that of landlord and cropper,<sup>295</sup> and the contract between them need not be in writing.<sup>296</sup>

The essential difference between the treatment accorded the relationship of landlord and tenant and landlord and cropper lies in the fact that under the first relationship the title to the crop is in the tenant, while in the second relationship the title to the crop is in the landlord.<sup>297</sup>

Under a landlord-cropper relationship, the title to the crop remains in the landlord until the crop is divided and all the cropper is entitled to is a right to demand compensation for

289. *Rourke v. Bozarth*, 103 Okla. 133, 229 Pac. 495 (1924).

289a. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-56.

290. *Maddox v. Wescott*, 156 Ala. 492, 47 So. 170 (1908).

291. *Anderson v. Miller*, 96 Tenn. 35, 33 S. W. 615 (1896).

292. *Bowling v. Garber*, 250 Ky. 137, 61 S. W. 2d 1102 (1933).

293. *Foster v. Reid*, 78 Iowa 205, 42 N. W. 649 (1889).

294. *Rogers v. Collier*, 18 S. C. L. (2 Bail.) 581 (1832).

295. *Mills v. Eagle Star Ins. Co.*, 146 S. C. 123, 143 S. E. 663 (1928).

296. *Birt v. Greene & Co.*, 127 S. C. 70, 120 S. E. 747 (1924).

297. *Miller v. Eagle Star Ins. Co.*, 146 S. C. 123, 143 S. E. 663 (1928); *Smith v. Williamston Mills*, 136 S. C. 9, 134 S. E. 145 (1926); *Carpenter v. Strickland*, 20 S. C. 1 (1883); *Richey & Miller v. DuPre*, 20 S. C. 6 (1883).

his labor, which by the agreement, is to be measured by the amount of the crop raised.<sup>298</sup> For this reason, a share cropper cannot maintain an action at law for the possession of his share of the crop, but he has an equitable interest and can maintain an action in equity for a settlement and division of the crop.<sup>299</sup> The division of the crop between the landlord and cropper and the actual delivery to the cropper of his share perfects the cropper's legal title.<sup>300</sup> It is not necessary that both parties be present when the crops are divided.<sup>301</sup>

Since the cropper has no title to the crop before division he cannot make a valid mortgage of the crop, but it has been held that a recorded chattel mortgage executed on the cropper's interest in crops to be grown, creates an equitable lien on the cropper's interest which attaches when the crop comes into existence, and when subsequently a division is made to the cropper of his share, the mortgage attaches to his share of the crop and is prior to all subsequent liens, including the levy of a judgment creditor of the cropper.<sup>302</sup>

If the cropper appropriates a portion of the crop to his own use before division with intent to steal, he is guilty of larceny.<sup>303</sup>

Where a cropper voluntarily abandons the crop, without fault on the part of the landlord, he forfeits all his interest therein.<sup>304</sup> Even where a cropper has cultivated the crop to a point where it is of material value to the landlord before the abandonment, it has been held that he is entitled to no compensation for his labor prior to abandonment.<sup>305</sup> A different rule would apply, however, if the abandonment was due to misfortune or to some just cause.<sup>306</sup>

If the cropper fails to carry out his part of the contract, the landlord is not required to carry out his agreement to furnish rations and supplies.<sup>307</sup> It has been held, however, that a sale by the cropper to the landlord of his interest in the crop would not amount to an abandonment since the sale

298. *Richey & Miller v. DuPre*, 20 S. C. 6 (1883).

299. *Miller v. Eagle Star Ins. Co.*, 146 S. C. 123, 143 S. E. 663 (1928); *Rainwater v. Merchants and Farmers Bank of Cheraw*, 114 S. C. 353, 103 S. E. 587 (1920).

300. *Birt v. Greene & Co.*, 127 S. C. 70, 120 S. E. 747 (1924).

301. *People's Bank v. Walker*, 132 S. C. 254, 128 S. E. 715 (1925).

302. See note 295 *supra*.

303. *State v. Sanders*, 110 S. C. 487, 96 S. E. 622 (1918).

304. *Salley v. Cox*, 94 S. C. 216, 77 S. E. 933 (1913).

305. *Hardwick v. Page*, 124 S. C. 111, 117 S. E. 204 (1923).

306. *Salley v. Cox*, 94 S. C. 216, 77 S. E. 933 (1913).

307. *Ops. Att'y. Gen.* 179 (1930-31).

implied an assertion of ownership, the opposite of abandonment, and a purchase implied a recognition of the ownership asserted.<sup>308</sup>

Since the landlord is given a lien for rent over the crop of his tenant, it is only fair that a cropper should be given a lien over the crop for the value of his labor which went into producing the crop. It is provided by statute, therefore, that a laborer who assists in making any crop on shares or in wages or other valuable consideration shall have a lien thereon to the extent of the amount due for such labor<sup>309</sup> and the portion of the crop or the amount of money due can be recovered by an action at law.<sup>310</sup> The lien of the cropper is next in priority to the landlord's lien for rent, regardless of whether there has been a division.<sup>311</sup> The landlord may waive the priority of his lien, however, as where he signs a mortgage on the crops along with the cropper. The landlord's prior lien for rent would then be waived to the amount necessary to satisfy the mortgage indebtedness.<sup>312</sup> If a crop mortgagee from the landlord seizes any part of the crop and appropriates the proceeds to his own use, he is liable for conversion to the cropper.<sup>313</sup> In such case the mortgagee must account to the cropper for his share at the price received, if not less than the market value on the day settlement was demanded, plus interest.<sup>314</sup>

The cropper is entitled to his laborer's lien even though his contract is not reduced to writing, so long as it is witnessed by a disinterested person.<sup>315</sup>

Before the laborer's lien can be enforced, he must have completed the cultivation according to the terms of the contract,<sup>316</sup> unless he has a legitimate excuse<sup>317</sup> such as interference on the part of the landlord or a third person.<sup>318</sup>

If the landlord agrees that the cropper may mortgage his interest in the crop as security for advances from a merchant,

308. *Bank of Pageland v. Willis*, 109 S. C. 338, 96 S. E. 159 (1918).

309. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-502.

310. *Ibid.*

311. *Birt v. Greene & Co.*, 127 S. C. 70, 120 S. E. 747 (1924); *Hamilton v. Blanton*, 107 S. C. 142, 92 S. E. 275 (1917).

312. *Hamilton v. Blanton*, 107 S. C. 142, 92 S. E. 275 (1917).

313. *DuRant v. Home Bank*, 129 S. C. 283, 124 S. E. 12 (1924).

314. *Rainwater v. Bank of Cheraw*, 114 S. C. 353, 103 S. E. 587 (1920).

315. *Birt v. Greene & Co.*, 127 S. C. 70, 120 S. E. 747 (1924); *State v. Lanier*, 79 S. C. 103, 60 S. E. 225 (1908).

316. *Gardner v. Smith*, 39 Ga. App. 224, 146 S. E. 648 (1929).

317. *Lewis v. Owens*, 124 Ga. 228, 52 S. E. 333 (1905).

318. *Ballard v. Daniel*, 18 Ga. App. 449, 89 S. E. 603 (1916).

and that he will release any claim upon the cropper's interest, the landlord is thereafter barred from disputing the right of the merchant to a lien upon the cropper's interest, and an appropriation by the landlord of the cropper's interest would make him liable to the merchant.<sup>319</sup>

## 2. DAMAGES FOR BREACH OF CONTRACT BY LANDLORD

In an action by a cropper for an accounting from the landlord, claiming that the landlord failed to deliver to the cropper his share of the crop, the measure of the cropper's damages is the market value of his share at the time a division was demanded, with interest from that date.<sup>320</sup> If the landlord is guilty of fraud in withholding the cropper's share, punitive damages may be recovered.<sup>321</sup> In such action, however, the landlord is entitled to be credited with the amount he has expended in helping to plant, cultivate and gather the crop.<sup>322</sup>

## 3. DAMAGES FOR BREACH OF CONTRACT BY CROPPER

The measure of damages allowable to a landlord for a cropper's breach of contract to cultivate the land on shares is the difference between the landlord's share produced, and what it would have been if the contract had been complied with.<sup>323</sup> If no crop is raised, the landlord may recover for his share of what the crop would have been, based on the probable yield if the farm was properly cultivated.<sup>324</sup>

Where the crop is damaged because the cropper does not cultivate it according to his contract, the landlord can recover for the damage to his share.<sup>325</sup> If the tenant harvests the crop but fails to deliver the landlord's share, the landlord's measure of damages is the value of his share at the time fixed for delivery.<sup>326</sup>

## 4. STATUTORY PROVISIONS

Although the bulk of the law applicable to the sharecropper relationship is still to be found in the common law principles,

319. *Gardner v. Jarrett*, 121 S. C. 338, 113 S. E. 493 (1922).

320. *Mattison v. Glenn*, 117 S. C. 404, 109 S. E. 105 (1921).

321. *Sullivan v. Calhoun*, 117 S. C. 137, 108 S. E. 189 (1921).

322. *Allen v. Orr*, 113 S. C. 348, 101 S. E. 817 (1920).

323. 15 Am. Jur., *Crops* § 81 (1938).

324. *Ibid.*

325. *Johnson v. Bryant*, 61 Ark. 312, 32 S. W. 1081 (1895).

326. 15 Am. Jur., *Crops* § 81 (1938).

there are, in South Carolina, certain statutes which provide an extra measure of protection to the cropper against unscrupulous landlords. The law, in this respect, indicates that fair minded legislators have been no more sympathetic to the landed interest than they have to landless farm laborers. The remedies are there and the need is to teach the cropper how to use them.

a. *The Contract*<sup>327</sup>

All contracts in writing between landowners and croppers must be witnessed by one or more disinterested persons. If the cropper requests it, the contract shall be executed before a magistrate who may read it and explain it to the parties. The contract must clearly state (1) the conditions of work, (2) the length of time involved, (3) the amount of money to be paid, and (4) if on shares, the portion of the crops to be divided.

There is no prohibition, however, against the parties entering into an oral contract, if they desire. The statute simply gives the parties the privilege, for their own protection, to come under its terms if they choose to do so.<sup>328</sup>

b. *Division of Crops*<sup>329</sup>

The crops are to be gathered and divided before they are removed from the premises. When the parties desire, the division will be made by a disinterested person chosen by their mutual consent. If either party feels that the division is unfair, he may apply to the nearest magistrate to enforce a division according to the contract. After division the parties may dispose of their shares as they see fit, unless either party is indebted to the other, in which case, if the parties cannot agree, the magistrate may set enough of one party's share aside to satisfy the debt of the other. The magistrate has no jurisdiction as to a division of crops, however, when the amount in controversy is beyond his jurisdictional limits.<sup>330</sup>

c. *Fraud of Cropper*<sup>331</sup>

If the cropper obtains a contract to cultivate lands on shares, and thereafter secures possession of such lands, or money, supplies, or fertilizer, fraudulently or with intent to

327. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 40-401.

328. *Huff v. Watkins*, 18 S. C. 510 (1883).

329. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 40-402.

330. *Mayfield v. Bessinger*, 87 S. C. 369, 69 S. E. 673 (1910).

331. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 40-403.

injure the owner, and refuses to take possession and cultivate the lands to the injury of the owner, the cropper is guilty of a misdemeanor and subject to fine or imprisonment.

d. *Fraud of Landowner*<sup>332</sup>

If a landowner enters into a contract with a laborer for the latter to work the land for a share of the crop and thereafter, with intent to defraud the cropper, refuses to allow a use and occupation of such land, the landowner is guilty of a misdemeanor and is likewise subject to a fine or imprisonment.

## VII.

### ENFORCEMENT OF LIENS

#### 1. DISTRESS FOR RENT

A landlord may enforce collection of rent by distress proceedings. In so doing he should give his affidavit to the magistrate in the county where the premises are located, setting forth the amount of rent due, and the magistrate will issue his distress warrant and deliver it to a constable or the sheriff for enforcement.<sup>333</sup> This remedy is available only where the rent has been expressly reserved in the lease<sup>334</sup> and is in arrears,<sup>335</sup> provided, however, that the landlord may distrain upon crops before the rent becomes due, where the tenant removes any part of the crop from the rented premises and refuses to apply the proceeds to the payment of rent.<sup>336</sup> Rent cannot be deemed in arrears, however, merely by virtue of a clause in the lease accelerating the future and unearned rent before the end of the term.<sup>337</sup> If the rent is payable in a crop, it is nevertheless rent and subject to distress.<sup>338</sup>

Even though the statute allowing a landlord a lien for rent does not give the landlord a lien on the personal property of the tenant, other than on crops, he does have a right to distrain on such property.<sup>339</sup> The only property exempt from

332. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 40-404.

333. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-151.

334. *Smith v. Sheriff*, 1 S. C. L. (1 Bay) 443 (1795).

335. *Bailey v. Wright*, 3 McCord 484 (1826).

336. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-512; *Hamilton v. Blanton*, 107 S. C. 142, 92 S. E. 275 (1917).

337. *Gentry v. Recreation, Inc.*, 192 S. C. 429, 7 S. E. 2d 63 (1940).

338. *Fraser v. Davie*, 39 S. C. L. (5 Rich.) 59 (1851).

339. *Fidelity Trust & Mfg. Co. v. Davis*, 158 S. C. 400, 155 S. E. 622 (1930).

distress for rent consists of personal clothing and food within the dwelling, bedsteads and bedding, and cooking utensils.<sup>340</sup>

If the property distrained does not belong to the tenant, the tenant should so inform the distraining officer, who will then seek other property of the tenant. If the tenant does not have sufficient property to satisfy the lien, however, the officer may distrain upon the property of third persons.<sup>341</sup> An exception to the right to distrain the property of strangers found on the premises was found where the land was not sufficiently fenced, and cattle belonging to a neighbor wandered onto the premises.<sup>342</sup> On the other hand, such exception would not apply if the tenant was in possession of the cattle with the knowledge and consent of the owner.<sup>343</sup>

If the property distrained is subject to a chattel mortgage placed on the property and recorded before the lease was entered into or before the property was brought upon the premises, the landlord can pay the balance due on such mortgage and subject the property to the payment thereof, as well as to the payment of rent.<sup>344</sup> The same is true if the landlord has actual notice of an unrecorded purchase money lien.<sup>345</sup>

Any distress, of course, must be reasonable in respect to the amount of property distrained,<sup>346</sup> and any landlord who makes an unreasonable or excessive distress is liable for damages.<sup>347</sup> If the landlord distrains upon property of the tenant when, in fact, the tenant owes no rent, the landlord is guilty of conversion,<sup>348</sup> and where the levy under a distress warrant is excessive, the person procuring the levy is liable as a trespasser.<sup>349</sup> If the landlord acts wantonly or recklessly in distraining upon the tenant's crops, he will be liable for punitive damages.<sup>350</sup>

After the tenant's property has been distrained, he may free it by giving a bond, with sufficient surety, in double the amount claimed.<sup>351</sup> If the tenant fails to give such bond, the distraining officer may sell the property at public auction

340. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-152.

341. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-154.

342. *Reeves v. McKenzie*, 1 Bailey 497 (1830).

343. *Ibid.*

344. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-155.

345. *Ibid.*

346. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-158.

347. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-159.

348. *Salley v. Parker*, 112 S. C. 109, 98 S. E. 847 (1919).

349. *Cannon v. Cox*, 98 S. C. 185, 82 S. E. 399 (1914).

350. *Hatchell v. Chandler*, 62 S. C. 380, 40 S. E. 777 (1902).

351. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-160.

to the highest bidder,<sup>352</sup> who will take the property subject to any lien for taxes thereon.<sup>353</sup>

A lessee cannot distrain for rent upon one to whom he has assigned his lease. The technical reasons seem to be the want of privity of estate between them; the right of distress being inseparable from the reversion.<sup>354</sup> As between the lessee and sublessee, however, it has been held that the lessee may distrain for rent, on the theory that a subletting of property creates a relation of landlord and tenant between the parties, whereby the lessee grants an interest in the demised premises less than his own, and retains for himself a reversion.<sup>355</sup>

If the tenant's property has already been taken into custody by the sheriff, the landlord cannot distrain upon it.<sup>356</sup>

Where the landlord sued out a distress warrant and then died before a levy was made, the Court held that a distress warrant was merely a power of attorney which expired along with the landlord, and that the landlord's personal representative had no authority to distrain for rent which had accrued before his death.<sup>357</sup> It seems also that in South Carolina a landlord has no right of distress against goods in the hands of a tenant's personal representative for rent which accrued during the tenant's life.<sup>358</sup> It has also been held that a mere assignment of unpaid rent would not carry with it the right to a distress warrant.<sup>359</sup>

The fact that the tenant renews his lease for an additional year does not affect the landlord's right to distrain for the rent due the previous year.<sup>360</sup>

## 2. ENFORCEMENT OF LIENS FOR RENT AND ADVANCES

### a. *Warrant of Seizure*

If a landlord who has made advances to his tenant for agricultural purposes can show by affidavit to the satisfaction of the clerk of court in the county where the premises are located, that the tenant is about to dispose of his crops or

352. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-161.

353. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-162.

354. *Ragsdale v. Estis*, 8 Rich. 429 (1832).

355. 32 Am. Jur., *Landlord and Tenant* § 620 (1941); CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-56 authorizes a sublessor to distrain for rent against his sublessee.

356. *Williams v. Wolfe*, 130 S. C. 277, 126 S. E. 41 (1925).

357. *Bagwell v. Jamison*, Cheves 249 (S. C. 1840).

358. *Salvo & Wade v. Schmidt*, 2 Speers 512 (S. C. 1844).

359. *Staton v. Guillebeaux*, 123 S. C. 363, 116 S. E. 443 (1923).

360. *Talvande v. Cripps*, 3 McCord 147 (S. C. 1825).



otherwise defeat the landlord's lien for advances, and shall give a statement of the amount due, the clerk may issue his warrant to any sheriff in the State requiring him to seize the crop, and, after due notice, sell it and pay the landlord the amount due.<sup>361</sup> Before such warrant shall be issued, however, the landlord must provide a bond to the effect that he will reimburse the tenant for any loss he sustains should the warrant be set aside and its issuance found to have been illegal or imprudent.<sup>362</sup> Likewise, after seizure, the tenant may enter into bond and recover immediate possession of the crop so seized.<sup>363</sup>

Unless the affidavit for a warrant of seizure complies with the statutory requirements, it will be defective. Thus, an affidavit made on information and belief is insufficient unless it states the facts upon which the belief is founded, and those facts must be such that, if true, would warrant the belief.<sup>364</sup> An affidavit is insufficient if it merely alleges: "That he (landlord) has reason to fear and does believe that the debtor has disposed of, or is about to dispose of, his crops, the effect of which would defeat his lien."<sup>365</sup> Again, a statement in an affidavit that the tenant was about to sell or dispose of his crop, unaccompanied by any fact or circumstance tending to show that the act alleged was about to be done, was not sufficient, since to say that a person was about to do an act was nothing more than expression of a belief.<sup>366</sup> On the other hand, an affidavit that the tenant has sold a portion of his crop and has refused to pay the amount due, with intent to defeat the lien, has been held sufficient to support a warrant of seizure to enforce an agricultural lien.<sup>367</sup>

After the crops have been sold by the sheriff under a warrant of seizure, and within thirty days, the tenant may give an affidavit to the sheriff to the effect that the amount claimed due is excessive. In such event, the sheriff must hold the proceeds awaiting the decision of the court as to whether an excessive claim has been made.<sup>368</sup> If the tenant allows

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361. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-506.

362. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-511.

363. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-513.

364. *Baum v. Bell*, 28 S. C. 201, 5 S. E. 485 (1888).

365. *Ibid.*

366. *Sharp v. Palmer*, 31 S. C. 444, 10 S. E. 98 (1889).

367. *Mixson v. Holley*, 26 S. C. 256, 2 S. E. 385 (1887).

368. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-507.

the thirty days to pass without submitting his affidavit, his neglect will not be excused.<sup>369</sup>

An affidavit which denies that there is any indebtedness is sufficient,<sup>370</sup> and the amount of indebtedness is then a question for a jury to decide.<sup>371</sup>

If the landlord's claim for advances does not exceed one hundred dollars, the proceedings for seizure may be taken before the magistrate of the county in which the lien is indexed<sup>372</sup> and if enforcement is sought in the magistrate's court, the cropper must file his affidavit, as to an excessive amount claimed, within ten (10) days.<sup>373</sup>

In either the Court of Common Pleas or the magistrate's court, the tenant's affidavit must conform to the practice regulating the issuance of warrants of attachment.<sup>374</sup> The only conformity required, however, is with regard to the affidavit, and subsequent proceedings need not so conform.<sup>375</sup>

#### b. *Claim and Delivery*

Although not the general rule elsewhere, the South Carolina Court has held that claim and delivery is a proper remedy in an action by a landlord to enforce a crop lien.<sup>376</sup> In another instance, the Court held that where an outsider and not the tenant is in possession of the property claimed, an action in claim and delivery is the proper remedy for the enforcement of an agricultural rent lien upon farm produce.<sup>377</sup> And an action of claim and delivery has been maintained by a purchaser at a sale under a landlord's distress proceeding against the party to whom the tenant had turned over his crop without the plaintiff's consent.<sup>378</sup>

369. *Lightsey v. Rentz*, 85 S. C. 401, 67 S. E. 456 (1910).

370. *Warren, Wallace & Co. v. Lawton*, 14 S. C. 476 (1881).

371. *McCraw v. Austell*, 125 S. C. 525, 119 S. E. 578 (1923).

372. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-508.

373. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-509.

374. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-510.

375. *Plumley v. Stewart*, 165 S. C. 316, 163 S. E. 777 (1932).

376. *Brookhart v. Langford*, 128 S. C. 350, 122 S. E. 867 (1924).

377. *Sumter County Duroc Stock Farm v. DuBose*, 127 S. C. 551, 121 S. E. 673 (1924); *Hamilton v. Blanton*, 107 S. C. 142, 92 S. E. 275 (1917).

378. *Hamilton v. Stubbs Co.*, 105 S. C. 157, 89 S. E. 553 (1916).

## VIII.

## REPAIRS AND IMPROVEMENTS

## 1. REPAIRS

According to the common law rule, the landlord, in the absence of a special agreement concerning the matter, is under no obligation to keep the rental premises in repair.<sup>379</sup> Likewise, in the absence of a covenant, no duty to repair is imposed upon the tenant.<sup>380</sup> In one case the Court said: "The lessor turns over the property and the lessee takes it as it is turned over to him. Any obligation to put the property in repair or to build houses not only may be but must be imposed by some contract apart from the mere lease of the land for a given term. The parties may incorporate such contract to put in repair or build new houses in the instrument that embodies the lease contract, but it is not necessary for them to do so. The two contracts are separate in their nature, in no wise inconsistent with each other, and one may be in writing and the other parol."<sup>381</sup>

If the lease is silent on the subject of repairs, there is ordinarily no obligation on the part of either landlord or tenant to repair.<sup>382</sup> There is authority to the effect, however, that a tenant is liable for permissive or voluntary waste, or for acts which involve a breach of his obligation to use the premises in a husbandlike manner.<sup>383</sup> As it is sometimes expressed, the tenant should make such repairs as will keep the premises from going to decay or delapidation.<sup>384</sup>

The tenant cannot, in the absence of contract, make repairs and charge the landlord therefor, particularly where the tenant knew the premises were in need of repair at the time he took possession.<sup>385</sup> Thus, if a tenant rents a house knowing that the roof leaks, and there is no contract to repair by the landlord, the tenant cannot deduct from the rent the amount he expends in repair.<sup>386</sup>

The parties may agree that the landlord shall make necessary repairs and thus vary the rights and obligations imposed

379. *Williams v. Salmond*, 79 S. C. 459, 61 S. E. 79 (1908).

380. *Ibid.*

381. *Ibid.*

382. *Reardon v. Averbuck*, 92 S. C. 569, 75 S. E. 959 (1912).

383. 32 Am. Jur., *Landlord and Tenant* § 780 (1951).

384. *Ibid.*

385. *City Council of Charleston v. Moorehead*, 2 Rich. 430 (S. C. 1846).

386. *Cantrell v. Fowler*, 32 S. C. 589, 10 S. E. 934 (1889).

by law from the relation.<sup>387</sup> If the agreement to make repairs is incorporated in the lease, it is an agreement to make repairs on notice, and failure to comply will, as a general rule, give rise to an action for breach of contract.<sup>388</sup> Where damages are recoverable, they are limited to those which reasonably may be said to have been within the contemplation of the parties when the lease was made.<sup>389</sup> A landlord is not liable for personal injuries sustained by a tenant or a member of the tenant's family as a consequence of his breach of a covenant to repair.<sup>390</sup> If an action for breach of covenant to repair is commenced by the tenant during the term, he may recover damages for the whole term and not merely for so much of the term as had expired.<sup>391</sup>

Moreover, the parties may stipulate that the tenant keep the premises in repair.<sup>392</sup> A covenant by the tenant to keep the leased premises in repair obligates him only to keep them in as good repair as they were when the term commenced.<sup>393</sup> Such covenant is generally satisfied if the premises are kept in substantial repair.<sup>394</sup>

At common law, a tenant's general covenant to repair bound him under all circumstances, even though the injury proceeded from an Act of God, from the elements or from a stranger.<sup>395</sup> Hence, a general covenant to keep leased premises in repair imposes upon the tenant the duty of rebuilding a structure upon the leased premises destroyed by fire, even though without the fault of the tenant,<sup>396</sup> and if the tenant stands by and permits the landlord to rebuild for his own benefit, the tenant will be considered as having abandoned the lease.<sup>397</sup> A covenant by the lessee to repair, of course, obligates him to repair defects caused by his own negligence,<sup>398</sup> or by the negligence of a third person,<sup>399</sup> but does not extend to a defective condition caused by the landlord.<sup>400</sup>

387. *Timmons v. Williams Wood Products Corp.*, 164 S. C. 361, 162 S. E. 329 (1932).

388. *Ibid.*

389. *Ibid.*

390. *Ibid.*

391. *Cohen v. Habenicht*, 14 Rich. Eq. 31 (S. C. 1868).

392. *Cline v. Black*, 4 McCord 431 (S. C. 1828).

393. *Taylor v. Gunn*, 190 Tenn. 45, 227 S. W. 2d 52 (1950).

394. 32 Am. Jur., *Landlord and Tenant* § 789 (1941).

395. 32 Am. Jur., *Landlord and Tenant* § 791 (1941).

396. *Cline v. Black*, 4 McCord 431 (S. C. 1828).

397. *Ibid.*

398. *Willson v. Cooper*, 40 So. 2d 828 (La. App. 1949).

399. *Kirby v. Davis*, 210 Ala. 192, 97 So. 655 (1923).

400. *Taylor v. Campbell*, 108 N. Y. Supp. 399 (1908).

In order to protect the tenant, it is customary, under a covenant to repair, to insert exceptions as to injuries to the premises resulting from such causes as damages by the elements, or by an Act of God, or by public enemies, etc.<sup>401</sup>

Generally, in determining the tenant's liability under a covenant to repair, consideration will be given to the age and character of the demised premises and to their condition at the time the lease commences.<sup>402</sup> If the condition complained of is due to the age of the premises and their condition at the time of the beginning of the lease, the existence of such defects does not constitute a breach of covenant.<sup>403</sup>

A covenant by the tenant to keep leased premises in repair imposes the burden upon the tenant to keep the premises in repair during the entire term.<sup>404</sup> And where no time is fixed at which the tenant is to make repairs, he has the entire term in which to make them.<sup>405</sup>

The general measure of damages for a tenant's breach of his covenant to repair is the amount by which the reversion is injured in consequence of the premises being out of repair.<sup>406</sup>

## 2. RIGHT OF TENANT TO REMOVE IMPROVEMENTS

Just as in the case of repairs, the tenant is not required to make improvements to the leased premises, in the absence of specific agreement therefor. The question may arise, however, as to the right of the tenant at the end of the term to remove improvements he has made.

In an early case, the South Carolina Court adopted the rule that the tenant is not permitted to remove improvements from the leased premises at the end of the term or to claim compensation therefor.<sup>407</sup> Even where a lease provides that the lessee shall make improvements, it is ordinarily construed as precluding him from removing them at the end of the term, it being presumed that such provision is intended to benefit the lessor.<sup>408</sup>

401. 32 Am. Jur., *Landlord and Tenant* § 795 (1941).

402. See 20 ALR 2d 1343 (1951).

403. *Judkins v. Charette*, 255 Mass. 76, 151 N. E. 81 (1926).

404. *City Hotel Co. v. Aumont Hotel Co.*, 107 S. W. 2d 1094 (Tex. Civ. App. 1937).

405. *Calhoun v. Wilson*, 27 Gratt. 639 (Va. 1876).

406. 32 Am. Jur., *Landlord and Tenant* § 801 (1941).

407. *Smith v. Brown*, 5 Rich. Eq. 291 (S. C. 1853).

408. *City of Greenville v. Washington Am. League Baseball Club*, 205 S. C. 495, 32 S. E. 2d 777 (1945).

In one instance, however, the South Carolina Court apparently followed a more liberal rule. In that case, the son-in-law of a landowner leased land from the father-in-law and made improvements with the expectation that his wife would some day inherit the premises from her father, who did not object to the improvements being made. The couple later separated, after a domestic quarrel, and the son-in-law claimed he was entitled to be recompensed for the improvements. The Court decided in favor of the son-in-law and awarded compensation for such improvements as had increased the rental value of the land.<sup>409</sup>

## IX.

### REMOVAL AND CONVERSION OF LIEN ENCUMBERED CROP

#### 1. CIVIL RIGHTS AND REMEDIES OF LANDLORD AND TENANT

A tenant can harvest and prepare his crop for market, and as long as he retains it on the premises or in his possession he can hold it until the rent is due, but if he removes it from the place he has rented, or parts with its possession, the landlord has the right to enforce his rent contract.<sup>410</sup> If the landlord has a lien on the property to secure advances made for agricultural purposes, and a person buys the property from the tenant with actual or constructive notice thereof before the sale, then the landlord has the right to seize the property under an agricultural warrant to satisfy his lien, which right is paramount to the right of the purchaser.<sup>411</sup> The landlord must, however, be able to state that the tenant is removing the crop or about to remove the crop to defeat the lien, and a mere suspicion based upon belief unsupported by facts that the tenant intends to remove the crop will not be sufficient.<sup>412</sup>

The landlord, as well as the tenant, or third person, may be responsible for a conversion or removal of the produce of the tenant growing on the leased premises. In fact, the landlord may be liable in punitive damages for seizing a crop

409. *Coggins v. McKinney*, 112 S. C. 270, 99 S. E. 844 (1919).

410. *Hamilton v. Stubbs Co.*, 105 S. C. 157, 89 S. E. 553 (1916).

411. *Leonard v. Brockman*, 46 S. C. 128, 24 S. E. 96 (1896).

412. *Baum v. Bell*, 28 S. C. 201, 5 S. E. 485 (1888). See, however, *Faust v. Bonnett*, 110 S. C. 435, 96 S. E. 489 (1918).

under lien for rent if, in conducting the seizure and sale, he acts wantonly or maliciously or recklessly.<sup>413</sup>

It is provided by statute<sup>414</sup> that no goods or chattels on the leased premises shall be taken under an execution by a third party, unless such third party, before removal of the property from the premises by virtue of the execution, shall pay the landlord all sums due for rent at the time of execution, not in excess of one year's rent. In case there is more than one year's rent in arrears, the person taking the execution may pay the one year's rent and add to the sum for which he is entitled to execution.

Under this statute the tenant cannot remove property from the premises at a time when the landlord is entitled to enforce payment of rent by distress, though a distress warrant has not actually been levied.<sup>415</sup> And, if the crops of the tenant have been taken into possession by the landlord under distress for rent, they cannot be taken away under seizure by warrant to enforce an agricultural lien.<sup>416</sup> The statute also applies to a receiver of the lessee,<sup>417</sup> or to a mortgagee of the tenant, where the mortgaged chattels were put on the premises before the mortgage was executed.<sup>418</sup>

## 2. CRIMINAL LIABILITY

### *a. Selling Property on Which Lien Exists*

If a tenant wilfully or knowingly sells or conveys any property on which a lien exists without first giving notice of the lien to the purchaser, he is guilty of a misdemeanor and subject to imprisonment or fine.<sup>419</sup> A tenant cannot be convicted, however, for selling property under lien, when the property is seized and sold by judicial process against him and against his will.<sup>420</sup> Thus, a sale of a cotton crop by a constable under a crop warrant is not such an act as will subject the tenant to prosecution.<sup>421</sup>

A third party may be guilty of disposing of property under lien as well as the tenant. In one instance a tenant obtained

413. *Hatchell v. Chandler*, 62 S. C. 380, 40 S. E. 777 (1902).

414. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 41-205.

415. *Williams v. Wolfe*, 130 S. C. 227, 126 S. E. 41 (1925).

416. *Brewster v. McNab*, 36 S. C. 274, 15 S. E. 233 (1892).

417. *Malcomson v. Wappoo Mills*, 85 F. 907 (C. C. D. S. C. 1898).

418. *Ex parte Stackley*, 161 S. C. 278, 159 S. E. 622 (1931).

419. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-4.

420. *State v. Johnson*, 51 S. C. 268, 28 S. E. 905 (1898).

421. *Ibid.*

advances, securing the payment thereof by a chattel mortgage on his crops. At the time of the advances the tenant informed his mortgagee of the terms of his lease. Later, the mortgage being in default, the mortgagee, under the power contained in the mortgage, seized the crops and sold them. The mortgagee was then prosecuted and convicted of disposing of property under lien.<sup>422</sup>

b. *Theft of Crops*

Anyone stealing a crop from the field, whether severed or not, is guilty of a misdemeanor and subject to imprisonment or fine.<sup>423</sup> This rule apparently does not apply in South Carolina to unsevered trees.<sup>424</sup> It would apply to severed trees, however, if the severance and the carrying away were two separate and distinct acts, as opposed to one continuous operation.<sup>425</sup>

c. *Burning of Crops*

Any person who wilfully or maliciously sets fire to and burns a crop, or causes it to be burned, if convicted, shall be sentenced to the penitentiary for from one to three years.<sup>426</sup> And, any tenant who burns or otherwise injures a crop then in his possession, is guilty of a misdemeanor and subject to fine or imprisonment or both.<sup>427</sup>

### 3. LIABILITY OF A PURCHASER OF LIEN ENCUMBERED CROPS

If a purchaser receives and disposes of a crop from a tenant, having notice of the landlord's prior lien for rent, he becomes liable to the landlord.<sup>428</sup> Actual notice of the landlord's prior lien is not essential, and the only requirement is knowledge of such facts as would, if pursued with due diligence, lead to the discovery of the lien.<sup>429</sup> Even if the purchase is made without notice that the crop is encumbered by a landlord's lien for rent, the purchaser will nevertheless be liable in damages if he refuses to surrender possession of the crop after notice of the lien.<sup>430</sup>

422. *State v. Reeder*, 36 S. C. 497, 15 S. E. 544 (1892).

423. CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 3-41, 3-42 and 3-43.

424. *State v. Collins*, 188 S. C. 338, 199 S. E. 303 (1938).

425. *Ibid.*

426. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 16-314.

427. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 16-385.

428. *Graham v. Seignious*, 53 S. C. 132, 31 S. E. 51 (1898).

429. *Ibid.*

430. *Parks v. Laurens Cotton Mills*, 70 S. C. 274, 49 S. E. 871 (1904).



The damages, however, are not the value of the crop or its proceeds, but the damage which the landlord sustains by reason of the impairment of the security he had for enforcing payment of his lien for rent.<sup>431</sup>

In one instance, however, a tenant shipped to his factors cotton subject to a lien for rent, with instructions to sell the same and apply the proceeds to the payment of the landlord for his rent. The factors received the cotton under these instructions, and with knowledge of the lien, sold the cotton, but refused to turn over the proceeds to the landlord. The Court there held that the landlord had a right against the factors to recover the proceeds of the cotton under their implied contract to pay to him the money had and received by them to his use.<sup>432</sup>

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431. *Ibid.*

432. *Markert v. North Augusta Co.*, 107 S. C. 135, 92 S. E. 201 (1917); *Drake v. Whaley*, 35 S. C. 187, 14 S. E. 397 (1892).