Proposed Bill Would Modify Present Lien Law

To the Members of the South Carolina Senate and House of Representatives:

During the 1916 session of the Legislature, Senator Charlton DuRant, at my request, introduced in the Senate the following proposed bills, to wit:

An Act to repeal Section 4165, Volume I, Code of Laws of South Carolina 1912, relating to indexing liens for advances.

Section 1. Be it enacted by the General Assembly of South Carolina, That Section 4165, Volume I, Code of Laws of South Carolina 1912, relating to indexing liens for advances, be, and the same is hereby, repealed.

Section 2. That all Acts or parts of Acts inconsistent with this Act be, and the same are hereby, repealed.

Section 3. This Act shall take effect immediately upon its approval by the Governor.

An Act to Amend Section 4162, Volume I, Code of Laws of South Carolina 1912, Relating to Lien of Landlord for Rent and Advances, by Striking out on lines nine and ten thereof the following, "Subject to the Liens Hereinafter Provided for and enforcible in the same way," and by adding on line ten thereof after the word lien the following, "Without a Writing of Any Kind," and by adding on line eleven thereof after the word tenant, the following, "Or Other Person," and by adding at the end of said section the following, "And the Purchaser of Said Crops Shall Be Liable to the Landlord and His Assigns for Said Crops or the Value Thereof to the Extent of Such Rent or Advances as Aforesaid."

Section 1. Be it enacted by the General Assembly of South Carolina, That Section 4162, Volume I, Code of Laws 1912, be, and the same is hereby, amended by striking out on lines nine and ten thereof the following, "subject to the liens hereinafter provided for and enforcible in the same way," and by adding on line ten thereof after the word lien the following, "without a writing of any kind," and by adding on line eleven thereof after the word tenant the following, "or other person," and by adding at the end of said section the following, "and the purchaser of said crops shall be liable to the landlord and his assigns for said crops or the value thereof to the extent of such rent or advances as aforesaid;" so that said section, when amended, shall read as follows:

Section 4162. Every landlord leasing land for agricultural purposes shall have a prior and preferred lien for his rent to the extent of all crops raised on the lands leased by him, whether the same be raised by the tenant or other person. No writing or recording shall be necessary to create such lien, but is shall exist from the date of the contract, whether the same be in writing or verbal, and the landlord and his assigns shall have the right to enforce such lien in the same manner, upon the same conditions, and subject to the same restrictions, as are provided in this article for persons making advances for agricultural purposes.

And the landlord and his assigns shall have a lien without a writing of any kind on all crops raised by the tenant or other person for all advances made by the landlord and his assigns to such tenant or other person during the year, and the purchaser of said crops shall be liable to the landlord and his assigns for said crops or the value thereof to the extent of such rent or advances as aforesaid.

Since the repeal of the agricultural lien law in 1902, the farmers of South Carolina have been in aa worse condition with respect to this matter than they were before, and a clear understanding of present conditions and the judicial decisions upon the subject will show the necessity of the aforesaid proposed bills or amendments. Under Section 3059, Code of Laws 1902, a merchant, for instance, could acquire a lien superior to the unwritten lien of the landlord for advances; but even a lien acquired under Section 3059 of the Code of Laws 1902, was limited to advances expended during the year in making the crop, and such a lien had to be indexed and reduced to writing.

Section 3059 of the Code of Laws 1902, provided for what was then commonly known as the so-called agricultural lien law and tihs section was repealed on the 4th day of March 1909, when the daily newspapers and pretended friends of the farmers with one acclaim announced the freedom of the individual framer. But a review of the decisions of the South Carolina Supreme Court since the 4th day of March, 1909, will show that the farmers of South Carolina were woefully deceived, and that the white farmers of South Carolina are today more at the mercy of the negro farm hand than ever before in the history of the State.

South Carolina is an agricultural community and the prosperity of all vocations, depends, to a very large extent, on the condition of the crops, and the condition of the crops in South Carolina depends to a greater extent on negro labor. Now, in order to control this negro labor, ever since the Civil War, the white farmer in South Carolina has had a lien for advances made to a farm hand, without a writing of any kind, and ever since the freedom of the slave, the Supreme Court of South Carolina has sustained the validity of this unwritten lien for advances, as can be seen from a study of the decisions in the matter of State vs. Elmore, 68 S. C., 145, and Nexsen vs. Ward, 96 S. C., 313.

However, the Supreme Court of South Carolina, in the matter of Cantey v. McClary-Broadway Co., 95 S. C., 30, has limited to some extent the aforesaid unwritten lien of the farmer, by holding that the farmer could not assert said unwritten lien for advances against a third party, without compliance with Section 4165 of the Civil Code of South Carolina 1912.

During the 1916 session of the Legislature, Senator DuRant, at my request, introduced the aforesaid bills or amendments, in order that the white farmer of South Carolina might have complete control of his negro labor, and in order to put a stop forever to the negro farm hand giving innumerable chattel mortgages, which at the end of the year, the white farmer must pay off, in order to get a farm hand for the next year.

With the view of showing the fairness and necessity of this proposed legislation in behalf of the white farmer, let me illustrate:

For instance, John Doe and Richard Roe are good bookkeepers and bank clerks and each get a good salary from their respective banks. Either of these distinguished gentlemen could owe every merchant in his home town and decline to pay their obligations and there is no process of law by which the salary of either of them could be atached; and this is true, for the simple reason, that the members of the Legislature protect the banks and corporations in the operation of their private affairs by the absence of and the refusal to enact a garnishment statute.

On the other hand, I have a white farmer friend in Sumerton, who at the beginning of the year, rented some land to a negro farm hand and supplied him with a horse, guano, plow stock, and gears for the horse; this arrangement between the white farmer and negro laborer was made verbally early one morning, and the negro farm hand agreed to come back next day and execute proper papers, which he did, but during the preceding evening, and within the space of twenty-four hours, the negro farm hand executes to a Syrian merchant in Summerton a chattel mortgage over the aforesaid crop, horse, guano, plow stock, and gears of my white farmer friend, and under the authority of Cantey v. McClary-Broadway Co., 95 S. C., 30, my white farmer friend is defeated out of any claim or lien in or on the crops grown on his own lands and for which he furnished the fertilizer and the horse and the gears with which to work said crop.

It might be argued that the merchant will not advance to the negro farm hand, if the proposed bills are enacted, but there is nothing in the proposed bills to prevent the white farmer releasing or assigning to the merchant his unwritten lien for advances, and when the negro farm hand understands that he must get the consent of the white farmer before he can mortgage his crops to the merchant, a friendly harmony and undrestanding will be promoted between the white farmer and the merchant and the negro laborer.

Further, it might be argued that the white farmer will cheat his negro laborer, if the unwritten lien for advances is not recorded, but when it is considered that the farmer already has an unwritten lien for rent and there is no demand for the repeal of the unwritten lien for rent; and when it is further considered, that at least sixty per cent. of the business of the country is done on open account, without any recorded lien for same, the argument that the white farmer might cheat his negro laborer if the lien for advances is not recorded, proves absurd and groundless.

In a private letter to the writer, the author of the Act of March 4, 1909, which repealed the agricultural lien law, or, rather, Section 3059 of the Code of Laws 1902, has this to say, to wit: "I was the author of the repeal bill; my purpose briefly stated was to place the landowners where they could control their labor and wrest that control from the hands of the merchant; my purpose also was to aid our farmers to get a cash basis, but the South Carolina Senate emasculated my bill; I did not disturb existing conditions in regard to farmers' or landlords' lien for supplies or rent."

It would appear that the South Carolina Senate, which is composed to a ery large extent of lawyers, either intentionally or ignorantly betrayed the white farmers of South Carolina, for when it is considered that under the old agricultural lien law the only lien thereby secured superior to the lien of the farmer was limited to advances made to the farm hand during the year, but now under the ubiquitous chattel mortgage whereby a lien thereby secured superior to the lien of the farmer includes past and present and future indebtedness, surely the white farmers of South Carolina have been crucified upon a cross of gold, and the bills herein proposed should be speedily enacted into law.

Finally, the enactment of the proposed bills into law, will enable the white farmers of South Carolina to protect the crops of the ignorant negro laborer, and farm hand, and tenant from the clutches of the organ agent, the picture agent, the patent medicine agent, and the usurious money lender.

"Wisdom cometh down from above and it becometh the strong to protect the weak."

Respectfully submitted,
J. J. CANTEY.

"Doctah, how's de way t' treat a mule dat's got distempah?"

"You betah treat him wif respect."—Puck.