

hands of the executor. The exception was clearly a mistake, and by the Act of 1802, ch. 101, sec. 2, it was enacted that the crop growing upon the land of any deceased person at the time of his death, *except when the land is devised*, shall be considered and is hereby declared assets in the hands of an executor. But the exception is done away with by the Act of 1807, ch. 136, sec. 1, which provided that after the first day of October then next the crop growing on the land devised by any deceased person and by him begun shall be deemed assets in the hands of the executor, in the same manner as the crop growing upon lands not devised, see however *Spencer v. Ragan*, 9 Gill, 480. The Code, Art. 93, sec. 220,<sup>3</sup> is also without the exceptions of the Acts of 1798 and 1802. As assets, therefore, the crop must be included in the inventory and appraised.

Under the Act of 1715, ch. 39, the executor had until the next last day of January to finish the crop, except when the land was devised. By the Act of 1798, ch. 101, sub-ch. 6, sec. 12, re-enacted in the Code, Art. 93, sec. 279,<sup>4</sup> the executor is authorized either to finish the crop on hand at the death of the decedent, or sell it as he shall judge most convenient; and if he does not judge it convenient to finish the crop, provision is made for the taking of it by the person entitled to the land at the appraisement, or in the event of the latter declining to take it, for its sale by the executor.

In the case of *Bevans v. Briscoe*, 4 H. & J. 139, it was settled that the executors of tenant for life (or his under-tenant for years), being entitled to the emblements have a right to ingress, egress or regress to preserve the crop, to gather it and carry it off. It follows that in doing this they are no trespassers upon, or tenants holding under the remainderman or reversioner. In other words, for the time the crops are growing, until they are taken off or a reasonable time given for taking them off, the reversioner is not entitled to the occupation of the lands, and consequently the executors of tenant for life (or his under-tenant) are not liable to pay for the use and occupation of the lands on which the crops were growing. But the possession of the demised premises by the executors is simply to preserve the crops, and if they occupy the premises or any part of them for any other purpose, they are liable to the reversioner for the use and occupation thereof, and they are of course liable for use and occupation if they occupy the premises after the emblements have been taken off. And it was held in *Dorsey v. Eagle*, 7 G. & J. 321, that the right of ingress and egress of an outgoing tenant after the determination of his lease, for the purpose \*of gathering and taking away the growing crops, will not enable **31** him to maintain trespass, *q. c. f.* against the succeeding tenant, who has a right to seed down the field on which such crop stands before it comes to maturity.<sup>5</sup>

<sup>3</sup> Code 1911, Art. 93, sec. 224.

<sup>4</sup> Code 1911, Art. 93, sec. 289.

<sup>5</sup> Where the renting is for a time certain, the tenant is not entitled to the outgoing crops which mature after the termination of his lease, except by the custom of the country, or express agreement with his landlord. *Dircks v. Brant*, 56 Md. 500. Cf. *Horn v. Bohn*, 96 Md. 8.

And a stipulation in the lease that the tenant shall farm the fields in rotation in a proper manner does not amount to an express agreement that he shall be entitled to re-enter to harvest and remove crops maturing after the determination of his tenancy. *Carmine v. Bowen*, 104 Md. 198.