occupation or user without any agreement, he should be liable to pay a rent or any thing in the nature of compensation to his co-tenant for that occupation, to which to the full extent to which he enjoyed he had a perfect right. It appears impossible to hold such a case within the Statute, and an opinion to that effect is expressed by Lord Cottenham in McMahon v. Burchell, 2 Phill. 127, (and see S. C. 5 Hare, 322.) Again, there are many cases where profits *are made and are actually taken by one co-tenant, **51** yet it is impossible to say that he has received more than comes to his just share. For instance, if one tenant employs his capital and industry in cultivating the whole of the piece of land, the subject of the tenancy, in a mode in which the money and labor expended greatly exceeds the value of the rent or compensation for the mere occupation of the land,—in raising hops for instance, which is a very hazardous adventure—and he takes the whole of the crops, is he to be accountable for any of the profits in such a case, where it is clear that if the speculation had been a losing one altogether he could not have called for a moiety of the loss, as he would have been enabled to do had it been so cultivated by the mutual agreement of the co-tenants? The risk of the cultivation and the profit and loss are his own, and what is just with respect to the very uncertain and expensive crop of hops is also just with respect to all the produce of the land, the *fructus industriales* which are raised by the capital and industry of the occupier and could not exist without it. In taking all the produce he cannot be said to receive more than his just share and proportion to which he is entitled as tenant in common, as he receives in truth the remuneration for his own labor and capital. In the anonymous case before Lord North, Skin. 230, in which it was said, "if one of four tenants in common stock the land and manage it, the rest shall have an account of the profits, but if a loss come, as if the sheep, &c. die, they shall bear a part," it is evident from the context Lord North is speaking of a case, where one tenant in common manages by the mutual agreement of all for their common benefit, for he gives as an illustration the right of a part owner of a ship to an account when the voyage is undertaken by his consent, express or implied. When the natural produce of the land is augmented by the capital and industry of the tenant, in the case of grass, for instance, by manuring and draining, and the tenant sells it, or by feeding his cattle he makes a profit of it, the case seems to be neither within the words or the spirit of the Act, for the profits of the grass are *fructus industriales*. In that case, accordingly, it was held that where one of two tenants in common solely occupied the land, farmed it at his own cost, and took the produce for his own benefit, his co-tenant could not maintain an action of account against him under this Statute, as his bailiff, for receiving more than came to his just share and proportion; and see Denys v. Shuckburgh, 4 Y. & Coll. 42, where it is said that there can be no ouster between tenants in common in possession, and therefore if one takes more than his share of the rents the only remedy is account either by action under this Statute or bill in equity. The case of Henderson v. Eason was approved by the Court of Appeals in Israel v. Israel, 30 Md. 120, in which it was held to be settled, that, though where one tenant in common acts as bailiff for the other or is in exclusive perception of the rents and profits of the common property he will be held to account, yet a tenant in common who has not ousted his co-tenants cannot be held accountable for use and