

lessee of a house and his partner agreed to pay the lessor annually, during the residue of the term, ten *per cent.* on the cost of new buildings if the lessor would erect them, *Hoby v. Roebuck*, 7 Taunt. 157, and the partner was held liable on the agreement during the residue of the term, though he had quitted the premises, and see *Donellan v. Read*, 3 B. & Ad. 899. A sale by a tenant of his fixtures to his landlord, on the expiration of the term, is also not a contract for an interest in land, *Hallen v. Runder*, 1 Cr. M. & R. 266.⁶³ And it has been determined, that if a partnership in a land speculation be established by general evidence, equity will deal with the land as the stock of the partnership, and the Statute will be no bar, *Dale v. Hamilton*, 5 Hare, 369, affirmed in 2 Phill. 266.⁶⁴

Crops—Standing trees, &c.—With regard to questions when the sale of growing crops and other produce of land is within the Statute,⁶⁵ the English cases appear to have settled upon distinctions between the natural produce of the land and *fructus industriales* as they are called, or such things as are raised by the industry of man, and yield an annual profit, which go as emblements, and may be taken in execution, and upon distinction between cases where such natural produce of the soil is to be severed by the seller, and where it is to be severed by the buyer. The whole subject is fully discussed in Benjamin on Sales, 84 *et seq.* It is thus held that a sale of agricultural products is not within the Statute, and this, it seems, whether they are to be severed before the property is transferred to the purchaser, or whether the property is at once vested in him, as where the plaintiff sold the defendant by parol all the potatoes in a close of two acres, at so much a sack, and defendant was to dig and remove them without delay; having dug and removed more than half of them he was prevented, by the frost spoiling them, from taking the rest. The plaintiff sued for the value of the spoiled potatoes, and it was held that no interest in land was intended to pass, *Parker v. Staniland*, 11 East, 362. In *Warwick v. Bruce*, 2 M. & S. 205, potatoes were sold while growing at so

⁶³ A sale of fixtures unsevered is not within either the fourth or the seventeenth sections. *South Balto. Co. v. Muhlbach*, 69 Md. 395; *Lee v. Gaskell*, 1 Q. B. D. 700. See the definition of "goods" in sec. 94 of the Sales Act of 1910, (Code 1911, Art. 83, sec. 97.)

⁶⁴ Cf. *Union Bank v. Mechanics' Bank*, 80 Md. 371. It is settled that the Statute does not apply to a contract of partnership to deal in lands. *Bruns v. Spalding*, 90 Md. 349; *Morgart v. Smouse*, 103 Md. 467; *In re De Nicols*, (1900) 2 Ch. 410. Cf. *Wiley v. Wiley*, 115 Md.—. But an agreement by one of the partners to assign to another his share of the partnership assets is within the Statute. *Gray v. Smith*, 43 Ch. D. 208. Cf. *Isaacs v. Evans*, (1899) W. N. 261.

⁶⁵ Under sec. 94 of the Sales Act of 1910, (Code 1911, Art. 83, sec. 97), "goods" includes all chattels personal other than things in action or money. The term includes emblements, industrial growing crops, and things attached to or forming a part of the land which are agreed to be severed before sale or under the contract of sale."