

much per acre, to be dug and carried away by the purchaser, with no restriction as to time; in *Sainsbury v. Matthews*, 4 M. & W. 343, they were growing and were sold at so much a sack, to be dug by the purchaser at the usual time and paid for then; in *Evans v. Roberts*, 5 B. & C. 829, a leading case, they were growing and were sold by the cover, to be turned up by the seller; and in all these cases the contract was held not within this section; and so of a crop of growing wheat, *Mayfield v. Wadsley*, 3 B. & C. 357. In *Jones v. Flint*, 11 A. & E. 753, the agreement (by parol) was that the defendant should give a certain sum for the crops of growing corn on the plaintiff's land, and the profit of the stubble afterwards; the plaintiff's cattle were to run with the defendant's, and the defendant was to have some potatoes growing on the land, and whatever lay-grass was in the fields, he to harvest the corn and dig the potatoes, and the plaintiff to **533** pay the tithes. It was determined that the intention of *the parties did not appear to be to contract for an interest in land, and the agreement therefore, was not within this section, but a contract for the sale of goods and chattels as to all but the lay-grass, and as to that, since the plaintiff did not part with the possession of the soil, a contract for the agistment of the defendant's cattle; and *Evans v. Roberts* was approved, and any distinction between crops, ripe and unripe, and between cases where the buyer and where the seller was to take the crops was denied. Where land had been let by parol to the defendant, from which he was to take two successive crops and give the plaintiff a moiety of them as the rent, and an appraisement of the crops of the second year was made while they were in the ground, in an action brought on the refusal of the defendant to pay half the value so ascertained, it was held that, the price having been ascertained by the appraisement, the case was brought to that of an action for goods sold and delivered, *Poulter v. Killenbeck*, 1 B. & P. 397. However, where a landlord agreed by parol to let a farm, the tenant to take the growing crops and pay for them, and also for the labor and materials for preparing the land for tillage, according to a valuation, it was decided that as the crops were growing and the tenant was to have them and the land also, and the labour and materials were so incorporated with as to be inseparable from it, the case was within this section, *Earl Falmouth v. Thomas*, 1 Cr. & M. 89. In other words, where the land is agreed to be sold and the purchaser takes the growing crops, they are considered part of the land.

On the other hand, an agreement for the sale of growing grass to be mowed and made into hay by the purchaser, being a contract for the vesture of the land, and conferring an exclusive right to the land for a time to make a profit of the surface, must be in writing, *Crosby v. Wardsworth*, 6 East, 602; *Carrington v. Roots*, 2 M. & W. 248. And the same has been held on the same principle as to a contract for the sale of growing poles, *Teal v. Auty*, 2 Brod. & Bing. 99; growing underwood, *Scovell v. Boxall*, 1 Y. & J. 396; and growing fruit, *Rodwell v. Phillips*, 9 M. & W. 501, where they were to be gathered and cut by the purchasers. But an agreement to sell standing timber at so much a foot, to be cut by the seller, was held not a contract for the sale of lands, &c., for the object of the party who sells timber is not to give the vendee any interest in his lands, but to give him an interest in the trees when they become goods