

and chattels, *Smith v. Surman*, 9 B. & C. 561.⁶⁶ As it is expressed in *Washbourn v. Burrows*, 1 Exch. 107, when the owner of the soil sells what is growing on the land, whether natural produce, as timber, grass, or apples, or *fructus industriales*, as corn, pulse, or the like, on the terms that he is to cut or sever them from the land and then deliver them to the purchaser, the purchaser acquires no interest in the soil, which in such cases is only in the nature of a warehouse for what is to come to him merely as a personal chattel. There, in a plea of usury, it was averred that certain crops of grass growing on an estate, called the Sheeping-house estate, were assigned by way of security for a loan, and the Court thought that the plea would be satisfied by showing that the grass was to be severed and delivered as a chattel, and that the averment did not necessarily imply the transfer of an interest in land.

In *Ijams v. Hoffman*, 1 Md. 423, it was assumed that the sale of a field of growing corn was within the 17th section of the Statute, see, however, *Wolfe v. Hauver*, 1 Gill, 94. And in *Dorsey v. Eagle*, 7 G. & J. 321, it was held that a right of ingress and egress of an out-going tenant to remove his away-going crops did not give him such a possession, as would enable him to maintain trespass against the incoming tenant, who had a right to seed the field in which the crop stood before it came to maturity. The authority of *Crosby v. Wadsworth* has been several times recognized, as in *Addison v. Hack* and *Dorsey v. Eagle*. In *Smith v. Bryan*, 5 Md. 141, where *A. by a written contract sold certain trees upon his land to B. who was to have the liberty of entering and cutting them, and B., having cut some of them, resold the residue to A. by parol, it was held that both the original sale and the re-sale were sales of goods within the 17th section. The Court said, citing 1 Greenl. Ev. sec. 271, that where timber or other produce of the land, or any other thing annexed to the freehold, is specifically sold, whether it is to be severed from the soil by the vendor, or to be taken by the vendee under a special license to enter for that purpose, it is still in contemplation of the parties evidently and substantially a sale of goods only. 534

Year clause.—With respect to agreements not to be performed within the space of a year. This branch, it is well settled, does not extend to contracts which may or may not happen to be performed within a year, but only to those cases where the matter of the agreement between the parties is not to be performed on either side within a year; and the word “performed” is construed to mean the entire performance of the contract by both parties. So that if it appears to be intention that his share of the contract is to be performed by one of the parties within the year, the Statute does not apply; as in *Donellan v. Read*, 3 B. & Ad. 899, where

⁶⁶ A sale of growing trees to be presently cut and removed by the vendee is not within the 4th section. *Quære*, as to the 17th section? *Leonard v. Medford*, 85 Md. 666; *Marshall v. Green*, 1 C. P. D. 35. In *Purner v. Piercy*, 40 Md. 212, it was held that the sale of a growing crop of peaches to be gathered by the vendee as they matured was not within the 4th section, but seemingly within the 17th. See also *Wilson v. Fowler*, 88 Md. 601; *Sentman v. Gamble*, 69 Md. 310; and notes 65 *supra* and 126 *infra*.