

(2) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract or sale be actually made, procured or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

(3) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods.

Where a tenant sells a growing crop of wheat to a party who pays therefor and tenant gives a receipt, statute is complied with. Evidence tending to show an acceptance of goods within meaning of this section. Meaning of term "actually receive." Constructive delivery of growing crops by tenant to landlord as against subsequent *bona fide* purchaser without notice. When a contract is executed defendant may rely on it, although suit may not be brought on it while executory; contract not executed. Statute of frauds. See notes to art. 21, sec. 44. *Stem v. Crawford*, 133 Md. 582.

This section changes rule that a sale of a crop not yet thrashed, shucked or gathered, was not a sale of goods, wares or merchandise, and hence was not within 17th section of statute of frauds. Purchaser held to have accepted and received wheat and given something in payment (if his contention is correct). Although a contract may not be enforced on account of statute of frauds it may serve as a defence. *Willard v. Higdon*, 123 Md. 452.

In order to satisfy this section, there must be a delivery of goods with an attempt to vest right of possession in vendee, and there must be an actual acceptance by latter with intent to take possession. The wording of this section relative to acceptance and receipt is substantially same as 17th section of statute of frauds. Case properly withdrawn from jury. *Worthington v. Lipsitz*, 131 Md. 256.

The furnishing by plaintiff to defendant of some seed and plants for use in producing a crop of tomatoes to be purchased at a price to be specified later is not in compliance with portion of this section requiring something in earnest to bind contract. The terms "earnest" and "part payment" are synonymous and mean something of value given by buyer and accepted by seller on account of purchase price. *Wenger v. Grummel*, 136 Md. 81.

Where there is no earnest money paid on a contract and no note or memorandum in writing, the contract is not binding under this section unless buyer accepts and actually receives at least a part of goods; there may be an acceptance without a receipt and *vice versa*. What amounts to acceptance and receipt. Evidence sufficient to go to jury. *Prayers. Castle v. Swift & Co.*, 132 Md. 633.

A recognition of a contract in one writing or several, even with a request for a release, refusal to perform or denial of validity of contract, is sufficient under this section. *Franklin Sugar Co. v. Egerton*, 288 Fed. (CCA 4th Cir.) 698.

This section referred to in deciding that a party was not obligated to accept or pay for goods because they were not purchased by agent actually authorized to do so or who was held out as having such authority. Scope of authority of "buyer." *Brager v. Levy*, 122 Md. 558.

*Cf.* sec. 69.

An. Code, sec. 26. 1910, ch. 346, sec. 23 (p. 273).

26. (1) The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in this sub-title called "future goods."

(2) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.