

GROWING CROPS AND PERSONAL CHATTELS.

the sale of personal property, (pp. 88-90) based as they are, on the remarks of Mr. Justice Blackburn (Blackb. on Sales, 9, 10), are substantially correct of these principles; the first is that an agreement to transfer the property in anything attached to the soil at the time of the agreement, but which is to be severed from the soil and converted into goods, before the property is transferred by the purchaser, is an agreement for the sale of goods, an executory agreement within the 17th section. The second principle enunciated is, that when there is a perfect bargain and sale vesting the property at once in the buyer between severance, a distinction is made between the natural growth of the soil and *fructus industriales*. The former is an interest in land, the latter are chattels. These distinctions have been dwelt upon by Chitty likewise in his work on contracts. He gives at p. 80 the general rule in somewhat similar terms.

We shall now be better able to appreciate the difficulty in *Brantom v. Griffiths*. So far as relates to the provisions of the Statute of Frauds, we have seen that the sale of anything attached to the soil may or may not be a sale of an interest in land according to the time when it is intended that the property should vest in the vendor, and to the nature of the thing sold. We are thus enabled to get to one conclusion, namely, that growing crops are not goods and chattels in point of law for all purposes and under all circumstances. When dwelling upon this point, Mr. Justice Brett quoted with approbation a passage from Williams on Executors (7th edit. p. 709), in which the law is thus stated: "There are certain vegetable products of the earth which, although they are annexed to and growing upon the land at the time of the occupier's death, yet as between the executor or administrator of the person seized of the inheritance, and the heir in some cases, and between the executor or administrator of the tenant for life, and the remainderman or reversioner, in others, are considered by the law as chattels, and will pass as such. These are usually called emblements. The vegetable chattels so named are the corn and other growth of the earth, which are produced annually, not spontaneously, not by labour and industry, and thus are

called *fructus industriales*." In the present case the growing crops had belonged to the occupiers of a farm. The plaintiff, after the assignment, allowed the growing crops to remain on the land. Now, if we proceed upon the analogy of the cases upon the Statute of Frauds, the crops in question were chattels within the 17th section. Besides, at common law a growing crop, produced by the labour and expense of the occupier of lands, was, as the representation of that labour and expense, considered an independent chattel: per Justice Bazley in *Evans v. Roberts* (sup.) quoted in Benjamin on Sales, p. 90. Hence arises the question, should this analogy be applied to cases under the Bills of Sale Act.

In the judgment of Mr. Justice Brett was cited a number of instances where it is stated that growing crops are considered as mere chattels, but his Lordship nevertheless came to the conclusion that "although they are chattels for some purposes they are not so for all, and therefore they cannot be said to be within the Bills of Sale Act because they are chattels for all purposes, nor without the Act because they are chattels for no purposes." He then proceeds to consider whether they are goods. The argument against the contention that they are goods was, that the Act only includes goods which are capable of complete transfer by delivery, and that the statute only applies to things which at the time when the statute is to be applied to them might be delivered and are not, which is not the case with growing crops; these, therefore, are not within the Bills of Sale Act. This view was adopted by Mr. Justice Brett. A decision of the Court of Common Pleas in Ireland (*Sheridan v. McCartney*, 5 L. T. Rep. N. S., 27) in which the contrary was held, was adduced as an authority, but overruled on the ground that Chief Justice Monahan overlooked the real meaning of the provision as to stock or produce which ought not to be removed; "For it seems to me," said Mr. Justice Brett, "to apply to farm stock or produce, which is severed from the land, and which could be delivered, but by agreement or custom is prevented from being delivered, such as straw, and other things of a similar nature." Speaking of the quotation at Westminster of authorities