

364 * is not the case of a sale of land under a decree. The relief which the petitioners seek can only be obtained according to the course of the common law or in the manner prescribed by the late Act of Assembly. 1825, ch. 103; 1831, ch. 41.

This is the first application which has been made to the Chancellor to enforce the delivery of possession according to the provisions of this Act. It is declared, that whenever any lands shall be sold by virtue of any process of execution from the Court of Chancery; and the debtor named in the process, or any other person holding under such debtor by title subsequent to the date of the decree shall be in actual possession of the lands so sold, and shall fail or refuse to deliver possession of the same to the purchaser thereof, the Court, on the application of the purchaser, and on no good cause having been shewn to the contrary by the said debtor, or other person concerned within the first four days of the term next succeeding that to which said process was returnable, shall issue a writ in the nature of a writ of *habere facias possessionem*, &c. commanding the sheriff to deliver possession of

365 the said lands * to the purchaser thereof; without any saving or exception as to the then growing or unfinished crop of the occupying tenant, which, in favor of agriculture and for the benefit of the public, is almost always made by this Court as well where the land is directed to be delivered by the decree itself to a party, as where it is ordered to be delivered to a purchaser from

case the lands had been sold to satisfy a mortgage. Before the bill was filed, but after the mortgage was made, the possessor had leased the lands of the mortgagor, for a term of years yet unexpired, he had covenanted to erect a mill which he had built, and alleged that he besides made other permanent improvements. He objected that he ought to have been made party; that he ought to be allowed for his lasting improvements, and that having obtained the lease without notice of the mortgage, he had a right to hold possession. But the purchaser taking the title of both plaintiff and defendant, has obtained a right paramount to that of this occupying lessee who claims under the defendant, who could give him no right in opposition to that of the mortgagee whose deed had been duly recorded. This lessee must seek reimbursement for his improvements and other losses from his lessor in whose place he stood. Whereupon it is ordered, that the possession be delivered; and that an injunction be issued accordingly.

CHAPLINE v. CHAPLINE.—KILTY, C., 12th July, 1810.—The Chancellor has not fully made up his mind as to the power of the Court to grant the injunction herein prayed; but supposing it to exist, he is not satisfied that it would be proper to exercise it at this time when it would be attended with the loss of the crop growing on the land. But it is ordered that an injunction be issued, in the manner which will then be directed, unless cause be shewn, to the contrary during the first four days of September Term next; provided a copy of this order be served, &c. before the 15th August next.

No sufficient cause having been shewn, an injunction was ordered on the 5th of October following.