bill put upon the record until some time after that day. There is, however, no charge whatever made against this defendant; and therefore the bill will be dismissed as to him with costs.

I have said, that the recital and proviso, of the indenture of the 17th of August, 1797, from Anthony Hook to John Hook, gave to that instrument the features and character of a mortgage. Consequently the original parties stood, and their legal representatives now stand in the relation to each other of mortgagor and mortgagee, or trustees and *cestuis que trust*. No acts or circumstances appear to have occurred to destroy the redeemable quality of that deed. Hagthrop and wife, as administrators of the late John Hook, have succeeded to his character of trustee. And the defendants, who all claim under them, except Nathaniel Chittenden, who deduces his claim from the late John Hook, being purchasers with notice, for so much as they respectively hold, stand charged with the same trusts.

The whole of the property mentioned in the bill has been continually *in the possession of the late John Hook, and those who have succeeded to and claim under him ever since the year 1797. They have protected it, relieved it from burthens and charges, and have placed upon some parts of it lasting improvements. It now, therefore, only remains to apply the rules of equity in relation to these matters, and to direct how the accounts shall be taken. **590**

If a mortgagee, without the assent of the mortgagor, assigns the mortgaged estate to an insolvent person, who he puts into possession, he will be held answerable for the rents and profits received both before and after the assignment. Upon the principle of its being a wilful breach of trust to transfer the property to another; which, as trustee, he had no right thus to dispose of to the prejudice of the mortgagor. *Powel Mort.* 948; 2 *Fonb. Eq.* 179. A trustee is, in no case, to be charged with imaginary values; but only with what he actually receives. And the same rule applies to a mortgagee in possession, who is regarded as a trustee. But no default must be imputed to him; for, in all such cases, he will be charged with what he might have made, but for his default. The annual value is that which the premises are actually worth net, according to a fair estimate, clear of all necessary charges.

Under the head of just allowances, it has long been the course of the Court, to allow a trustee, or mortgagee, in possession, for all necessary expenses incurred for the defence, relief, protection, and repairs of the estate; such as costs of suit, and fees for taking opinions and procuring directions necessary for the due execution of the trust; *Fearns* v. *Young*, 10 *Ves.* 184; *Willis on Trustees*, 123, 147; *Lewin on Trusts*, 452, 456; *Jones* v. *Stockett*, 2 *Bland*, 417; taxes, paving contributions, ground rent, and sums expended in necessary repairs. *Powel Mort.* 956, *n.*; *Balsh* v. *Hyham*, 2 *P.*