

Will. 455. It has been also said, and I think with justice, that when a mortgagee, thinking himself absolutely entitled, had expended considerable sums in repairs and lasting improvements, he should be allowed the value of them. *Powel Mortg.* 956, n. In a modern case, the value of new buildings, erected by the mortgagee, was allowed. *Hardy v. Reeves*, 4 *Ves.* 482. And a liberal allowance for the improved value of slaves while in the possession of the mortgagee was directed to be made. *Ross v. Norvall*, 1 *Wash.* 14. The grounds of these decisions appear to be that a mortgagee in possession is the legal holder of the estate; which the mortgagor may at any time redeem; and so prevent him from making any repairs or improvements; and if the *mortgagee has been long in possession claiming adversely, and suffered to treat the estate as his own, and the mortgagor stands by and permits lasting improvements to be made, he shall pay for them. *Davis v. Simpson*, 5 *H. & J.* 147; *Hepburn v. Sewell*, 5 *H. & J.* 211; *Howell v. Baker*, 4 *John. C. C.* 122; *Rawlings v. Stewart*, 1 *Bland*, 22, n.; *Strike's Case*, 1 *Bland*, 57; *Rawlings v. Carroll*, 1 *Bland*, 76, n.; *Swan v. Swan*, 3 *Exch. Rep.* 443.

But the estimate of the value of such lasting improvements is to be taken as they are at the time of accounting or passing the final decree. For such allowances are made upon the ground, that the improvements do, in fact, pass into the hands of the plaintiff as a new acquisition. And they can only be a new acquisition to him to the extent of their value at the time he recovers or obtains possession of them; and therefore their value at that time is to be allowed, and nothing more. *The Kierlighett*, 3 *Rob. Ad. Rep.* 101. It is also necessary to observe, that in charging rents and profits, the estimate must not include any profits which arise exclusively from such improvements; for, if they were to be embraced by the estimate, the occupier would, in fact, be paying for the profits of that which was his own. Therefore the estimate of rents and profits must be made in exclusion of such as appears to have arisen from the occupying claimant's own expenditure in improvements. *Moore v. Cable*, 1 *John. C. C.* 385.

The late John Hook disposed of the lot on Alice Anna street, and his representatives Hagthrop and wife, having disposed of the other property in a manner in which they had no right to do, and the bill standing unanswered and for true as to the negroes and movable property; Hagthrop and wife must be charged with the value of the whole of that property and interest thereon from the date of the deed from the late Anthony Hook to the late John Hook; and the account for the rents and profits of the chattels real, will commence from the same date. Hagthrop and wife must be charged with the rents and profits of all the chattels real, mentioned in the bill, up to the time when they, or any part of either passed into the hands of any of the present defendants.