

the order of the 5th of December, 1826, with interest on the amount of rents and profits charged to each defendant from the end of each year when they were received; and the whole appears to be well sustained in point of fact by the proofs, in the manner he has stated; therefore overruling all the exceptions to his report, it must be confirmed; subject, however, as regards the defendant Edward Hagthorp, to a deduction for that amount of rents and * profits of the property held by him from the time it was placed in the hands of the receiver, until the 17th of February, 1831, up to which day the auditor's statements have been made. **601**

It appears to have been the practice in many cases in this Court, where the object of the suit was to recover certain specified property, together with its rents and profits during the time of its unjust detention, to order an account of the rents and profits to be taken before the property itself was ordered to be delivered up. The inevitable consequence of such a course of proceeding is, that after the account has been so taken, and the property has been delivered, there will remain a claim for an unascertained amount of rents and profits which have accrued between the time up to which the account had been taken, and the delivery of possession, to be adjusted and recovered by a subsequent proceeding. *Crapster v. Griffith*, 6 H. & J. 144; *S. C.* 2 Bland, 5.

Observing the impropriety and inconvenience of this practice, I shall follow it no further. In cases of this kind a final decree should be passed directing the specific property to be delivered up; followed by a clause directing an account of the rents and profits to be taken up to the time of such delivery. By such a decree the controversy would be so far terminated; and the property itself being thus transferred to its true owner, there could be no occasion to call for the appointment of a receiver, as in this instance, to preserve it from any loss or injury to which it might be exposed while remaining in the hands of the defendant. And an exact period being thus fixed up to which the account may be brought by such a final determination in favor of the plaintiff's title, his rights, consequent upon that determination may be also finally decided, and the whole case closed, without going again to the auditor for a further account. *Kipp v. Hanna*, 2 Bland, 36.

It will be necessary, however, again to send this case to the auditor for the purpose of stating a final account upon the same principles, and in continuation of that last stated by him, shewing the amount of rents and profits with which each defendant is chargeable from that time to the time when the property shall have been delivered to the plaintiff. And for this purpose, the receiver in whose hands the property held by the defendant Edward Hagthorp has been placed, must also be ordered to make a