

hence the County Court may have concluded, that as the plaintiff's title to recover the land from which the profits were derived, had been extinguished, by her own voluntary act, the consequential, or accessorial right to the profits necessarily fell also.

The judgment of the County Court, against the plaintiff's right to recover, may have been placed upon another ground wholly distinct from the question of jurisdiction. The action, as has been stated, was for money had and received to the plaintiff's use, and not trespass for the *mesne* profits. Now, it may be, that the court thought *the form* of the remedy had been misconceived. The statute of Merton gives these profits as damages, and they are to be recovered by action of trespass, as such profits are sued for, after a recovery in ejectment. The County Court may then have been of opinion that the action was misconceived, and, for that reason, have instructed the jury adversely to the plaintiff, and not, as has been suggested, for want of jurisdiction. *Stockett vs. Watkins, 2 Gill & Johns., 326.* Now, if this was the case, and the plaintiff failed in her action at law, because she had mistaken the form of the remedy, and not because the tribunal to which she appealed was incompetent to relieve her in a different form, it can scarcely be offered as an answer, when the effect of that judgment (being the judgment, in the case supposed, of a court of competent jurisdiction) is pressed as a reason why the defendant should not be impleaded again in a different court, for the same cause.

For these reasons, I am strongly inclined to the opinion, that as the plaintiff sued for these rents and profits at law, and failed to recover them there, the question as to them, must, in the language of the Court of Appeals in *Sellman vs. Bowen*, be regarded as *res adjudicata*, "that they cannot form the subject of a new litigation, the judgment which has already passed, having foreclosed the plaintiff."

There is besides another objection, which strikes me as of great force. This bill was filed on the 2d of November, 1841, and is to recover the rents and profits of land, her title to which, the complainant, on the 8th of April, 1839, transferred by her