

TENANTS IN POSSESSION—*Continued.*

put purchasers of lands under its decrees in possession, by an order passed upon the petition of the purchaser, such an authority being deemed indispensable to the full and complete administration of justice. *Oliver vs. Caton*, 297.

2. But this authority is restricted to those cases, in which persons holding the possession against the purchaser, are either parties to the proceedings, and whose rights are consequently determined by the decree, or persons, who come into possession, *pendente lite*, claiming title to the land, under the parties to the bill, or some of them. *Ib.*
3. Where the party who is in possession, acquiring his title prior to the institution of the proceeding in which the decree passed, it would be irregular and improper to investigate, and pass judgment upon it in this summary mode by way of motion. *Ib.*
4. Occupying tenants and lessees claiming title under the party against whom the decree passes, must be made parties to the suit, if it is intended to conclude their rights thereby, and if the existence of their rights, is suggested to the court at the hearing, it will so frame the decree as expressly to guard them from prejudice. *Ib.*
5. In this case, the party in possession claimed title under a lease for ninety-nine years, renewable forever, executed long prior to the institution of the proceedings under which the decree was passed, by a mortgagor, who, by the terms of the mortgage, was to remain in possession until default was made by the non-payment of the interest; the annual payment of which would preclude, by its terms, a foreclosure of the mortgage. **HELD—**

That such an interest derived from such a source, and attended with a considerable outlay of money in the improvement of the property, would require, before the rights of the party are absolutely concluded, that the regular and established cause of legal proceedings should be pursued. *Ib.*

TRUSTEES, THEIR DUTIES, &c.

1. The court subjects trustees to a rigorous measure of justice, where their conduct has been at variance with their duty. *Bentley vs. Shreeve*, 215.
2. Where a trustee does not show what amount of interest he has actually received, he will be charged with the whole amount accruing upon the trust money, to be computed from a reasonable time after the commencement of the trust. *Ib.*
3. In July, 1843, a trustee received the note of A., in payment for a purchase of trust property. The note was without security, and became due in September, 1843. The trustee died in the summer of 1846, without having sued upon the note, and a new trustee was appointed, who received the note from the administrators of the old trustee, in 1847. In March, 1848, the new trustee instituted proceedings upon the note; and in the fall, of 1848, A. was found to be insolvent.

HELD—

That in the absence of proof to the contrary, the court will presume