

upon the land or have been consumed by him or not ; nor does the occupying tenant's knowing any thing of his adversary's title make any difference, as to the nature and extent of his liability for rents and profits. At common law, no damages were recovered in any real action ; because, as it was said, until the right to the land was determined, the party could not be said to suffer any wrong. But it seems to have been considered as well established law, from a very remote period, that the right to maintain an action of trespass for the recovery of the mesne profits, followed as a clear and necessary consequence of the party's having established his right to the land itself. And it appears to be somewhat singular, that, during the period when real actions were much in use, the legislature should have deemed it necessary to interpose, for the purpose of allowing, by positive provision, the demandant, in many of them, to recover damages, or rents and profits ; and yet, that those real actions, so amended and improved, should have been superseded by the action of ejectment, in which, as it now seems to be settled, nothing is recovered but the land, and the party is left, as at common law, to recover the mesne profits in a separate action of trespass. But the right to recover the mesne profits by way of damages in the modern action of ejectment itself, is recognised by an *English* statute, passed in the year 1664, and the practice of so recovering them, seems to have prevailed for some time in *England*, and also in this State.(d)

As early as the year 1667, in a case where lands were settled for the payment of debts, the trustees were held accountable in equity for the rents and profits to the creditors for whom they were received ; and in 1685, it was held, by the Court of Chancery, that he who took the mesne profits by wrong, was considered as trustee for, and accountable to him who had the right ; and thenceforward the Court of Chancery made all persons account for the mesne profits they had received, to such persons as had the equitable title. And it is now settled, that where there is a serious difficulty in recovering at law, fraud, concealment, or the like, or where the title is merely equitable, the party may recover the rents and profits in equity.(e) But in chancery, as in the courts of common law, there seems to have been always a strong disposition

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(d) 2 Bac. Abr. tit. Ejectment, H. ; 16 & 17 Car. 2, c. 8 ; *Goodtitle v. Tombs*, 3 Wils. 120 ; *Lewis v. Beale*, 1 H. & McH. 185 ; *Joan & McCubbin v. Shields*, 3 H. & McH. 7 ; *Gore's Lessee v. Worthington*, 3 H. & McH. 96.—(e) *Norton v. Frecker*, 1 Atk. 525.