

to keep the adjudication upon the title entirely apart from the direction as to the mesne profits. It is not improper that the final decree, settling the right to the property, should also go on and decree an account for the rents and profits; but it is usual, where the property is sold, as in this case, to leave the account of the rents and profits to be provided for in the subsequent and further directions. (*f*)

Where the party has no equitable ground of relief, and is under the necessity of proceeding at law, by an action of trespass for the recovery of the mesne profits, the tenant or defendant, by pleading the statute of limitations, may prevent the plaintiff from carrying his claim in all cases, as far back as the commencement of his title, and the wrong he has suffered. And should he proceed in equity, if there has been a mere adverse possession without fraud or concealment, the account will be taken only from the time of filing the bill, for it was his own fault not to have filed it sooner. But where the bill is brought upon an equitable title, and there is a trust; and in the case of an infant, or where there has been any fraud; and in cases of dower, an account of the rents and profits will be ordered, and that from the time the title accrued. (*g*)

In an action of trespass for mesne profits, they are assessed at the discretion of the jury in damages, and therefore governed by no settled rule as to the amount. The jury may, if they think the circumstances of fraud and wrong warrant, or require it, give large and vindictive damages, even as much as four times the value of the mesne profits; (*h*) or, on the other hand, they may mitigate the damages down almost to nothing; and it does not appear, that their unlimited discretion, in this respect, has ever been materially controlled by granting new trials. The Court of Chancery is more steady in its principles, with regard to the amount of the mesne profits. If the occupant is the mere rightful holder of the property as a pledge; for example, as mortgagee who has been let into possession, he is held accountable for no more than he has actually received, what has really come into his hands, and not for the full value, or what he might have made by skilful and proper management. But where the occupant is a wrongful holder, or has obtained possession, and has held it fraudulently, or where, there

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(*f*) 1 Bac. Abr. tit. Accompt, B.; 2 Bac. Abr. tit. Damages; *Shish. v. Foster*, 1 Ves. 88; *Dormer v. Fortescue*, 3 Atk. 124; *Pulteny v. Warren*, 6 Ves. 73.—(*g*) *Dormer v. Fortescue*, 3 Atk. 124; *Pulteny v. Warren*, 6 Ves. 73.—(*h*) *Goodtitle v. Tombs*, 3 Wils. 118