

being several incumbrances, the first mortgagee uses his security for the purpose of shielding the debtor from the junior mortgagees; in such cases, such a fraudulent or wrongfully occupying tenant, or an incumbrancer who makes such an ill use of his security, will be charged with the full value; that is, with such an amount of rents and profits as a skilful and diligent tenant might have made from the land.(i)

In this case, *Strike* informs us in his answer, that he obtained possession of the property in question, (the one lot actually, and the other legally, as landlord of *Rogers*, on whose property he levied a distress for rent in arrear,) under and by virtue of the deeds from *Rogers* to him, on the date of them, and that he took and received the whole rents and profits. Those deeds have been declared null and void by the decree of May 1822, as against the complainants, on the ground of fraud. It appears, then, that *Strike* obtained possession of the property in question, fraudulently; that he used those deeds against these creditors, and that he wrongfully held the possession, and received the whole of the rents and profits from the date of those deeds; consequently, according to the principles of equity, by which this court is governed, and I may venture to add, by the law of all civilized nations, in relation to rents and profits, *Strike* must be charged with the full value of the property in question, from the date of the deeds, down to the date of the sale, when he was turned out of possession.

In relation to the improvements, for which *Strike* claims an allowance, one would suppose, that in the administration of a system of jurisprudence in a civilized society, there could be no flux and reflux of the principles of justice; that however they might be altered or reformed, they could never, for any length of time, drop into disuse and then be called up again, and generally applied. But it would seem there is a fluctuation, perhaps indeed a mere change of fashion as to principles of law, as in every thing else.(j) It does not appear from any thing I can learn, that the doctrine, in relation to an allowance to the occupying tenant for ameliorations, except as to mortgagees in possession, has ever for a great length of time past, and until very recently, been presented to the consideration of a court of justice in this State as a subject of controversy; and, perhaps, never before so urged and investigated

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(i) Powell, Mortg. 292, n.—(j) "The law sometimes sleeps, and judgment awakens it; for, *dormit aliquando lex moritur nunquam.*" *Mary Portington's case*, 10 Co. 42.