

to the freehold, he does thereby immediately vest it in the freeholder, so entirely, that it would be waste, in the tenant, afterwards to remove it; (q) and so it has been held, in the *English* court of admiralty, that if a person buys a ship, the title to which is notoriously invalid, it must be at his own peril that he proceeds to lay out money in repairing and improving her, as no allowance for ameliorations will be made in such case. (r)

In the argument of *Coulter's* case, (s) among other things, it is said, "in divers cases, one who is in of his own wrong, shall recoupe and retain, &c. He who hath a rent of £10 issuing out of certain lands, disseises the tenant of the land, in an assise brought by the disseisee, the disseisor shall recoupe the rent in the damages; so that where the mesne profits of the land, in such case, were of the value of £13, the disseisee shall recover but £3. The disseisor shall recoupe all in damages which he hath expended in amending the houses." And as an authority in support of the last position, a case is cited as far back as the year 1340. This argument is adduced in a case in which the only question was, whether an executor *de son tort* could retain. The court in their opinion held that he clearly could not, assigning the most satisfactory reasons; and they then go on to say, that "as to the case of recouper in damages in the case of rent-service, charge, or seck, it was resolved, that the reason of recouper in such case is, because otherwise when the disseisee re-enters, the arrearages of the rent-service, charge, or seck, would be revived; and therefore to avoid circuitry of action, and *circuitus est evitandus et boni judicis est lites dirimere, ne lis ex lite oriatur*, the arrearages during the disseisin shall be recouped in damages; but if the disseisor ought to have common on the land, the value of the common shall not be recouped, for by the regress of the disseisee, he should not have any arrearages or recompense for them." (t) The court take no notice of the position advanced in the argument, that "the disseisor shall recoupe all in damages which he hath expended in amending of the houses," and assign a reason for allowing the recouper in the other instances put, that is utterly incompatible with allowing a disseisor or *mala fide* possessor, to recoupe what he had expended in mending the houses, and therefore the position cannot be admitted to be sound law, to the full extent for which it was advanced, if at all.

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(q) Am. & Fer. Law Fix. 14, 241.—(r) Just. Inst. b. 2, tit. 1, s. 30; *Nostra de Conceicas*, 5 Rob. 294.—(s) 5 Co. 30.—(t) *Green v. Biddle*, 8 Wheat. 81