

The term *recoupe* in the common law, signifies the keeping back or stopping something which is due, and is used for "to defalk, or to discount;" of which *Coulter's* case furnishes an illustration. It is from the common law doctrine of recouper that our legislative provisions for "pleading discount,"<sup>(u)</sup> and the *English* statutes of set-off, about half a century later, have been derived.<sup>(v)</sup> They all rest upon precisely the same principles. The object is to prevent cross actions, or, as the books express it, circuitry of action; and to allow the opposing claims of the same parties to be settled in one action, which must otherwise necessarily give rise to two actions; but however reasonable and desirable it may be, thus to put an end to two subjects of litigation in one and the same suit, yet, as it appears from *Coulter's* case, no man shall be allowed to obtain this advantage by his own wrong; and therefore it is, that an executor of his own wrong will not be allowed to recoupe and retain.

Every claim, however, must have a fair, legal, or equitable basis, whether presented to the court as the cause of an original action, or by way of recouper, discount or set-off. The claim for rents and profits, and the opposing claim for improvements, each of them rests upon principles of law and equity that are wholly separate and distinct. Whether or not the proprietor shall recover rents and profits must, in each case, depend upon the justice and equity with which he sustains his claim. If he has, for an unreasonable time, slept upon his rights, and there should appear to be any suspicious circumstances about his case, or any discoverable infirmity in it, the court will lessen, or altogether reject the claim. So, on the other hand, he who presents a claim for ameliorations, must, in like manner, show, that it is sustainable on its own independent, substantial, and fair principles of equity; as it stands exhibited before the court, it must appear in all respects unsullied by wrong or deception; it must have no taint of fraud about it;—if it has, it cannot be allowed.

Such claims as these for rents and profits, and for ameliorations, may very often present themselves in a court of equity in opposition to each other; and be set up by litigating parties, by way of recouper, discount or set-off, the one against the other. But if, as in the case of an executor *de son tort*, a man shall not be permitted to take advantage of his own wrong, even so far as to place him-

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(u) 1654, ch. 23; 1699, ch. 39; 1715, ch. 29; 1729, ch. 20, s. 5; 1785, ch. 46, s. 7. *Baltimore Insu. Comp. v. M'Fadon*, 4 H. & J. 42; *Brack. Law Misc.* 185.—(v) 2 Geo. 2, c. 22, s. 18; *Just. Inst.* b. 4, tit. 6, s. 80.