

In cases where real estates have been sold, and the purchaser, who has been let into possession, refuses to pay the purchase money; because, as he alleges, the title of the vendor is defective; and yet continues to hold the estate, the court, on a bill by the vendor for a specific performance will set an occupation rent for the estate, which the vendee will be compelled to pay pending the litigation, upon the ground, that the party might recover at law for use and occupation. (*i*) And an occupation rent may be set of the estate as against a mortgagor, on a bill to have the mortgage redeemed, until the suit can be determined. (*j*) So too where a purchaser, under a decree of this court, after having been let into possession, failed to pay the purchase money; and, yet continued to hold the estate, after he and his sureties had become insolvent, the court set an occupation rent for the estate, which the purchaser, holding the possession, was compelled to pay, pending the proceedings to effect a re-sale for the payment of the balance of the purchase money. (*k*)

Where, on a decree for a sale of a mortgaged estate to satisfy

(*i*) *Smith v. Jackson*, 1 Mad. Rep. 618; *Dakin v. Cope*, 3 Cond. Cha. Rep. 66; *Donovan v. Fricker*, 4 Cond. Cha. Rep. 77.—(*j*) *Wilson v. Metcalfe*, 1 Russ. 530.

(*k*) *MACKUBIN v. FARRALL*.—This bill, filed on the 25th of June, 1823, stated, that the plaintiff George Mackubin, as trustee, had sold a tract of land to the defendant Walter Farrall for the sum of \$5,656 75; for the payment of which the defendant gave bond with sureties; that the defendant had paid a small part of the purchase money; and that he, and his sureties, were then insolvent. Whereupon it was prayed, that the land might be re-sold for the payment of the balance of the purchase money. The defendant, by his answer, said, that he had paid \$720; and admitted the truth of the other facts set forth in the bill. Upon which it was, on the 8th of December, 1823, *Decreed*, that the land be sold, &c.

After which the trustee by his petition, filed on the 30th of March, 1824, stated, that he had advertised the land for sale as directed by the decree, but could not sell it for want of buyers; and, that there was no prospect of his being able to sell it time enough for the purchaser to make a crop in the then present year; in the meantime the defendant was in possession, and interest was accruing on the claim upon it, and no benefit derived from the land, which was wholly insufficient to pay the amount of the claim. The trustee required to be directed whether he should rent the land for the valuation, that is, \$125, &c.

30th March, 1824.—*JOHNSON, Chancellor*.—The trustee is authorized to rent the land, taking such security for the rent as he may judge sufficient. If an offer to purchase at private sale, during the time for which it is rented, should be made, the trustee will communicate the same, if he judges it advantageous.

Under this authority the trustee permitted the defendant to continue in possession at the specified rent; and afterwards sold the land, which sale was finally ratified. After which the trustee reported, that he had received three years rent; upon which he was allowed seven per cent. for his trouble.