

premises as a prudent owner, and no prudent owner would allow a farm to lie fallow for a season. Had the mortgagees adopted the course suggested, it is quite certain that this mortgagor would have complained loudly. It must be also remembered that in this case the mortgagees, at the instance of the mortgagor, had undertaken to be charged with an occupation rent, and it cannot be supposed that the intention was that the farm should be in the meantime idle.

Neither counsel cited any cases bearing upon the question, and the dearth of authority is singular. The judgment of Chancellor Halsted in *Schaeffer v. Chambers* (1847), 6 N. J. Eq. 548, commends itself to me. "A mortgagee by taking possession assumes the duty of treating the property as a provident owner would treat it, and of using the same diligence to make it productive that a provident owner would use. If it be a farm, he is not at liberty to let it lie untilled . . . ; he ought to cause the farm to be tilled, and that in a husbandlike manner."

That an allowance for crops in the ground can be made, is plain from the case of *Oxenham v. Ellis* (1854), 18 Beav. 233, a case not unlike the present, where the mortgagee had placed a tenant in possession, upon the terms that upon redemption there should be an arbitration as to the value of the crops. There it was said, "assuming neither the agreement nor the arbitration to be binding on the plaintiff, and that the occupation of the tenant is that of the mortgagee, some allowance must be made for the crops in the ground, either to the tenant or the mortgagee if he pays the tenant."

The mortgagor presented his appeal upon this head upon the unwarranted assumption that compensation for crops in the ground falls within the cases relating to permanent improvements.

The allowance made by the Master is a "just allowance," and it is conceded that, if any allowance is to be made, the sum allowed is reasonable.

The second item discussed is the amount paid one Whitelaw, the vendor of certain fixed machinery, as the balance due him upon the machinery under a lien or conditional sale agreement. The machinery formed part of the equipment of a mill upon the premises. There had been litigation between Whitelaw and the mortgagor, and an agreement was arrived at by which the litigation was settled. By this settlement, the validity of the lien was recognised, and the amount to be paid Whitelaw was ascertained, and the time for payment was fixed. Whitelaw undertook to tighten the bolts in a "sifter," one of the machines in question, and fix the bushing in it, and generally put it in a satisfactory