and the person claiming such lien cannot now be dealt with as a mortgagee in possession. The cases of *Fawcett* v. *Burwell*, 27 Gr. 445 and *McGregor* v. *McGregor*, 27 Gr. 470 and on appeal (not reported), do not show how the enhanced value of the land should be investigated.

During the evidence in this case I stated that because the measure of relief in cases like the present was new, the parties had not apprehended the change in the law, and were directing their evidence more to the ordinary case of a mortgagee in possession than to that of a person claiming a lien, not for the actual cost of the improvements, but for the enhanced value given to the land by reason of his improvemen s ; that I did not see how I could go into minute details or calculations based upon the cost of the separate materials used, the estimated cost of teaming such materials, the cost of construction, and the estimated value of the defendant's labor in making the various improvements claimed. I stated I should consider the case as it would be dealt with at Nisi Prius; and that in a case of this kind I thought a jury would be directed to find :—

1st.—Had the lasting improvements been made by the defendant under a mistake of title? And if they should so find then they might consider what, on the evidence, the improvements had cost the defendant, not so much with a view to their giving a verdict for the actual cost, but as an assistance to them in considering the other and further questions to be then considered, which would be :—

2nd.—What was the present value of the farm with the improvements made by the defendant?

3rd.—What was the value of the farm when the defendant purchased it, and what would the farm be worth now, if in the same state, without the defendant's improvements?

4th.—Had the farm, since the defendant's purchase, increased in value from other causes than the defendant's improvements, and if so to find such value?

That having ascertained the several values above enumerated, the jury might then be directed to find the enhanced value by deducting from the present value the unimproved value, and also the value from other causes than the improvements. And in arriving at such a conclusion that they might give some consideration to any opinion they had formed of the actual cost or value of the improvements, so that their verdict should not in any event exceed such actual cost or value.

Guided by these propositions I have considered the evidence, very conflicting in some instances, adduced by the parties. Ten witnesses place the present value of the farm, with the improvements, at $7,000, while three place it at from $6,000 to 6,500. The weight of evidence, therefore, is in favour of $7,000. But the evidence as to the unimproved value of the farm is not so satisfactory. Three witnesses belonging to the Munsie family were examined on behalf of the plaintiffs, but their evidence impressed me with the idea that their family pride had been hurt by the sale of their old home, and that they held the farm, and quite naturally, at a higher value than oth rs not so personally interested in it. I have not, therefore, given much weight to their evidence. Besides two of these three witnesses had not been on the farm for some time prior to Lindsay's taking possession in 1865. Two other witnesses for the plaintiffs stated that they had not been on the farm during the time Lindsay was in possession until they made their examination of it a few weeks previously with a view of giving evidence of values, and as to one of those witnesses I came to the conclusion which I noted during his examination, that I should not place much reliance on his evidence. The other of these two appeared to be a shrewd, hard man of business, who stated, in answer to a question, that his estimate of value was based upon what he would be willing to give if he were buying the property. Two other witnesses for the plaintiffs had that personal knowledge of the farm which showed they were competent to speak as to its original state, and they considered that the farm when the defendant purchased was worth $4,500 and $5,000, and that its value now would not differ from its value in 1864.

Against the opinion of these two witnesses, whom I considered competent to give evidence of the state and value of the farm, the defendant examined six witnesses, owners of adjoining farms, all of whom had personal knowledge of this farm prior to and during the defendant's occupation of it. The defendant was also examined on his own behalf, and proved that he gave $4,400 for the farm ; that he thought it was too much, but he got his own time to pay