REPORTS

ONTARIO.

(Reported for the LAW JOURNAL.)

MASTER'S OFFICE.

MUNSIE V. LINDSAY.

Improvements under mistake of title—Occupation rent—Tenants in common.

Improvements made under a mistake of title are not since R.S.O. c. 95, s. 4, allowed for as liberally as improvements made by a mortgagee in possession.

The enhanced value of a farm so improved is found by deducting from the present value of the land with the improvements, the estimated present value of the land without the improvements, *plus* any increase in value from other causes.

The occupation rent chargeable to a person improving land under a mistake of title should be the rental value of the land without the improvements.

A tenant in common occupying the joint property is not chargeable with the value of timber cut by him during his occupancy.

[Toronto, June 11—Mr. HODGINS, Q.C.

The facts sufficiently appear in the judgment taken in connection with the report of the case in 1 Ont. Rep. p. 164.

THE MASTER—The judgment allows to the defendant, Lindsay, the amount by which the lands and premises in the pleadings mentioned have been enhanced in value by lasting improvements made thereon by the defendant under the belief that the lands and premises were his own.

The lands were originally owned by one William Munsie, who died in 1854. By his will he devised the lands to his wife for life, and after her death to his son, Robert Munsie, who, it appears, was one of the attesting witnesses to the will. Robert Munsie conveyed the lands, in 1861, to his brother, James Munsie, who, in 1864, sold them to the defendant Lindsay. The tenant for life died in 1874. The judgment declares the devise to Robert Munsie invalid, and that as to the remainder in fee, after the life estate, the testator died intestate. The defendant Lindsay, by virtue of the conveyance referred to, is a tenant in common with those heirs of the late William Munsie, who are not affected by the conveyances; and the judgment partially recognizes his rights as such. Compensation for improvements does not necessarily depend upon their being made under a mistake of title. Thus a part owner who *bona fide* permanently benefits an estate by repairs or improvements, and a tenant for life completing permanently beneficial improvements to an estate which had been begun by the testator, have been allowed a lien for their expenditures: Snell's Equity, p. 143.

The cases heretofore decided by the Court do not prescribe very clearly defined rules by which the enhancement of value of lands by reason of improvements made under a mistake of title should be arrived at.

The English cases appear to allow the full value of the improvements, as in the case of a mortgagee in possession: *Nelson* v. *Clarkson*, 2 Ha. 176; 4 Ha. 97. The American cases are much to the same effect: Hilliard on Vend. 48. And the earlier chancery cases in this country apparently follow the same principle. In *Bevis* v. *Boulton*, 7 Gr. 39; *Brunskill* v. *Clarke*, 9 Gr. 430; *Fitzgibbon* v. *Duggan*, 11 Gr. 188, the expenditure for improvements by which the estate had been substantially improved, was allowed. In *Smith* v. *Bonisteel*, 13 Gr. 29, 35, the decree directed an account of the improvements made by the defendant, and to what amount and in what proportion they had enhanced the value of the property. *Pegley* v. *Woods*, 14 Gr. 47 and *Morley* v. *Matthews*, *Ib.* 551, show that the compensation allowed was based upon the enhanced value given to the land by the improvements. In *Carroll* v. *Robertson*, 15 Gr. 173, cases were referred to which showed that improvements made under a mistake of title had been allowed far more liberally than to a mortgagee in possession. A mortgagee in possession is usually allowed the sums expended by him in necessary repairs and lasting improvements with interest thereon: *Quarrell* v. *Beckford*, 14 Ves. 177, s. c. 1 Mad. 273; *Webb* v. *Rooke*, 2 Sch. & Lef. 676; subject to certain restrictions: *Sanson* v. *Hooper*, 6 Beav. 246; *Jorton* v. *South-Eastern Ry. Co.* 2 Sm. & Giff. 48, 73.

Gummerson v. *Banting*, 18 Gr. 516, was decided prior to Mr. Bethune's Act, 36 Vict. 22, (R. S. O. c. 95, s. 4); and in that case Spragge, C., following a decision of Mr. Justice Story in *Bright* v. *Boyd*, 1 Story's Rep. 478, 2 Story's Rep. 605, directed an account of the value of the improvements made, and how far the value of the land had been increased by such improvements. The statute now defines the lien for improvements made under a mistake of title to be "the amount by which the value of the lands is enhanced by such improvements;" so that the liberal rule referred to in *Carroll* v. *Robertson*, 15 Gr. 73, is no longer applicable,