in the note as an authority for the doctrine laid down in the text. See also Geal vs Woodworth. 3 Paige. page 470.

Upon the authority of all these cases, and upon every principle of Equity and justice, it seems to me that the defendants (who claim under Andrew McLaughlin) are entitled to compensation for such permanent and lasting improvements and meliorations as were made by Andrew McLaughlin previous to the filing of the original bill, at which time he must be held to have had notice of the title of the complainants, and afterwards to have held at his peril, and liable to all the consequences of an adverse decision Green vs Biddle. 8 Wheaton. 79.

5. The question now occurs, how are the rents and profits to be charged? and how is the value of such lasting and valuable improvements to be estimated? There seem to be no fixed rules, governing this subject, applicable to every case.

The rules laid down by the Court of Appeals, Jones vs Jones, are that when the rents and profits are charged agreeably to the improved value of the property, then the improvements are to be estimated at their original cost, but if upon value, independent of the improvements, then the rule is that the value of the improvements is to be taken as they are at the time of accounting or passing the final decree.

I have read the testimony taken under the remanded commission very carefully and it appears to me that it would be literally impossible to take a satisfactory account of the actual cost of such improvements and meliorations as are lasting and beneficial.



An intelligent witness for the defendants (Mr. Collins) - when asked upon his cross examination if he had distinguished in the account he had furnished the improvements from the repairs, replied to the question: "I was asked to separate permanent improvements from repairs, and have done so as near as I could, though some persons might not agree with me as to what were repairs and what were improvements."

Here opens his labor est. The difficulty is to distinguish lasting and beneficial improvements from mere repairs and perishable outlays, which in such a building are perhaps, the most costly. It will, therefore, be necessary in this case to adopt the present value of the improvements, made previous to the institution of the original suit, as the true and equitable rule applicable to the case, which will necessitate the adoption of the co-relative rule of charging the rents and profits according to the value of the hotel before the improvements were made.

I am aware that this will not do perfect and complete justice between the parties, but what rules would do. In cases like this, we can only hope to approximate to what is equal and just - absolute perfection is denied. An account will be ordered of the rents and profits of the original hotel property from the time that the complainants' title accrued - which shall be taken in accordance with the views herein expressed - and the defendants (who claim under Andrew McLaughlin) shall be charged with such proportion of said rents and profits as may upon such accounting be found to be due to these complainants, as devisees or legatees of their grandfather, David Barnum.

And the Auditor of this Court will be directed to -