*Dunlop *v.* Hepburn *et al.*

Mesne profits.

Explanation of the decree in this cause (1 Wheat. 179), that the defendants were only to be accountable for the rents and profits of the lands referred to in the proceedings, actually received by them.

Appeal from the Circuit Court for the district of Columbia.

February 24th, 1818. Washington, Justice, delivered the opinion of the court.—By the decree of this court, made in this cause, at February term 1816 (1 Wheat. 179), the defendants were ordered "to make up, state and settle, before a commissioner or commissioners to be appointed by the circuit court of the district of Columbia for the county of Alexandria, an account of the rents and profits of the tract of land referred to in the proceedings, since the 27th day of March 1809, and that they pay over the same to the complainants, John Dunlop & Co., or to their lawful agent or attorney." The commissioners appointed by the circuit court to execute this part of the decree of this court made a report, in which they state, "that it did not appear to them that the said William Hepburn and John Dundas, or the legal representatives of the said Dundas, ever received any rents or profits of the land from the 27th day of March 1809, until the date of the report; but *that [*232
the reasonable rents and profits of the said land, in its untenantable situation, from the said 27th day of March 1809, to the 27th day of March 1816, with due care, would be equal to $2077.60."

The cause coming on to be heard in the court below, on this report, and that court being of opinion, that under the decree of this court, the defendants were only to be accountable for the rents and profits actually received, it was decreed, that the bill, so far as it seeks a recovery of rents and profits, should be dismissed; from which decree, an appeal was prayed to this court.

I am instructed by the court to say, that the decree of the circuit court is in strict conformity with the decree and mandate of this court and is, therefore, to be affirmed.

Decree affirmed.

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object is to bring the authorities in review before the learned reader, and to suggest that it may yet be considered as subject to judicial doubt.[1]

[1] To defeat an ejectment, by proof of an outstanding title, it must be a valid and subsisting one. Hunter *v.* Cochran, 3 Penn. St. 105: Sherk *v.* McElroy, 20 Id. 25; Wray *v.* Miller, Id. 111; Riland *v.* Eckert, 23 Id. 215; McBarron *v.* Gilbert, 42 Id. 268. The general rule is, that the plaintiff in ejectment must recover on the strength of his own title, and when an outstanding title, *better than his own*, is shown, he must fail to recover. Bear Valley Coal Co. *v.* Durant, 95 Penn. St. 72.