

the ordinary form. He cannot bring ejectment while his payments have been regularly made. That is his normal state, and it may continue for ten years or for twenty. He may sooner, by default, acquire an estate, with its attendant rights, but he has no means of bringing about that state of things. In fact it is one which primarily he does not want, and he has in a sense secured himself as far as possible against it by his mortgagor's covenant for payment. He cannot protect the land for himself until the event happens, and the event is beyond his control. On principle therefore it would seem that the time of first accrual to him should be the time of default. Lord St. Leonards intimates in *Wrixon v. Vise*, 3 Dr. & W., 117, that the section corresponding to section 5, subsection (9) alone governs the case of mortgagees, and that the right first accrues when the forfeiture is incurred. In either case if the right first accrues to the mortgagee on the mortgagor's default, there would seem to be nothing either in the act itself or in principle to prevent the plain consequence that the right would be good against a person in possession prior to the mortgage. If such be not the law, then there would be good grounds, as already indicated, for holding that by section 22 the Legislature intended to make it so. That section is broadly worded; it nowhere makes mention of the mortgagor, and in terms it covers the case of a mortgagee against the world.

It is submitted that the foregoing considerations go well towards establishing the following propositions:

1. That it was the intention and policy of the Legislature to confer on mortgagees the special rights and privileges in question.
2. That as a matter of public policy the conferring of these was both justifiable and proper.
3. That the plain construction of the statute is in this case the sound one, and that as a matter of law the Act does confer these rights. That, moreover, the rights themselves are in accord with sound principles of law.
4. That the alternative state of the law would be undesirable and unjust.

J. B. McLAREN.

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