

The first reflection that occurs to one would be that vast sums of money are continually being lent on mortgage security; that it would be a serious blow to both the borrowing and the lending classes to alarm capital by imperilling the security; and that it would be a grave peril if the mortgagee had to stand in the mortgagor's shoes as to the rights of persons previously in possession. It would have to be remembered that on lending money in that state of the law it would not suffice to satisfy oneself that there was no one in adverse possession, according to the old use of the word. The friendly possession of a tenant or of a relative of the mortgagor, might ripen into a title and cut out the mortgage, though it looked harmless enough at the time the mortgage was made. To have to secure satisfactory evidence of payment of rent or acknowledgment of title at the time of taking the mortgage (often on property at a distance) would be an intolerable burden and risk. Add to all this the fact that the person in possession has no claim on the Legislature to perfect his title. It is being perfected as a matter of policy only, not of right, and opposing considerations of policy must receive equal attention.

We should conclude, therefore, that in the case of a purchaser it would be no hardship to require him to get possession, or at his peril to neglect it, but in the case of a mortgagee it would be unreasonable to expose him to risk. The conveyance to him is only for security, and it is desirable that the multitude of such securities in the country be kept good and free from doubt, even if occasionally a possessory title is delayed in being perfected.

So much for what the law ought to be; and next, in defence of those decisions which say that the law is so. For this a good foundation is already laid if the former paragraph satisfactorily proves what it sets out to prove. The question now is as to the time of the first accrual within the meaning of the statute by which the mortgagee is affected. The mortgagee is not an owner; he has only a charge on the land, and has no estate in the land until after default. Even at law he is not entitled to possession, under a mortgage in