

laid on the alleged defeating, divesting and interfering with the rights of the person in possession, which is the result of these decisions. Argument on this line is apt to be confusing, or misleading, or both. What we may call the common law rights of the person in possession (that is to say, the rights incident to his mere possession, or his further rights in connection with the defective title under which he may have taken possession), are manifestly in no wise prejudiced, either by the statute, by the giving of a mortgage, or by the decisions referred to. They are therefore out of the discussion entirely. His rights derived under the statute must also be excluded, not because they are foreign to the discussion, but because they are the subject of it. The question is, What rights does the statute, on a proper construction of it, confer on the person in possession as against a mortgagee and those claiming under him? It is obvious that a construction in favour of the rights contended for cannot be upheld by reasoning which assumes that these rights have been conferred. To do so would be to reason in a circle. It may be very disappointing to the man in possession to find that when he has almost reached the goal he is compelled to make a fresh start, simply because the owner has mortgaged the land, and the statute says that in that case the time must run anew against the mortgagee. He may contend that the statute is capable of a different construction, and that the other construction is to be preferred because it is more just, or more consistent, or better accords with the policy of the law; but he cannot base any argument against the adverse construction on the ground that it takes away his rights.

What then, on general principles, ought to be the law? A statute of limitation being admittedly desirable for general cases, how far, if at all, should it be modified in favour of mortgagees? The general rule seems a just one, that time should begin to run from the first accrual of the right of action against the person in possession. In the case of mortgages, should the time count from the accrual to the mortgagor or the accrual to the mortgagee himself? What should we deem just if we had now to make the law?