

some claim of title against the plaintiff Payne (who was still in possession) and the cause was submitted to arbitration, which went in favour of the defendant, who thereupon went into possession under a writ of habere facias possessionem and remained in possession for about six years before the action was brought. The defendant set up the award as against the plaintiff Smith, who was proved to have been present at the arbitration proceedings, but not to have taken any part in them. The evidence was ruled out as being *res inter alios acta*, and the plaintiff Smith obtained the verdict. All that the case decides is that the evidence was rightly rejected.

It would be interesting to know what direction was given by the trial judge to the jury, but it is not reported. The verdict seems, however, to have been right. The plaintiff Smith was deemed to be in possession by reason of his mortgagor's continued possession and payment of interest, and the defendant had not acquired a statutory title.

The effect of the case is thus given in Pollock and Wright on Possession: "Ten years' possession has been decisive even against several years' subsequent possession under colour of title."

As exemplifying at once the risks attending *nisi prius* practice and the necessity of some system of registration of title or of deeds, it appears that the defendant went to trial in ignorance of Smith's title, and had trained the evidence concerning the award against the plaintiff Payne. Then, discovering the mortgage, the defendant sought to deflect this evidence against the mortgagee, which was not allowed. The two plaintiffs appeared to have been working together in the action, and it was complained by the defendant's counsel that Payne was going behind the award by way of using Smith's name as a second plaintiff.

The minor, though none the less important, question of the costs of the evidence concerning the award was later dealt with, when the defendant was allowed such costs as against Payne, as costs of the issue found in favour of the defendant as against Payne, who, of course, could not succeed in face of the award.