

tinues to run against the legal owner and all persons claiming under him, unless it is stopped by some of those acts of the person in possession which are referred to in the statute; for here the running of the statute is stayed not by any act to which the person in possession is a party, but solely by an act of the person out of possession: and according to the cases above referred to, every time a mortgage is executed a new starting point is given to the statute in favor of the owner out of possession, and if he is astute enough to keep up a constant mortgage of his property, the statute can never run against him, no matter how long the adverse possession may continue. In fact if the statute has all but run out against him, by simply executing a mortgage to another person for say ten dollars, he can at once stop the running of the statute

It is said that in England very few mortgages are given by persons in actual possession, but though a mortgagor is not in actual occupation he ought at least to establish to the satisfaction of his mortgagee, either that he is in possession by his tenants, or at all events that there is no one in adverse possession, and one would think that no prudent mortgagee would advance his money without being satisfied on that point, and while, as has been said before, it may be reasonable to hold that a mortgagee cannot be barred under section 22 as to his mortgagor or any one claiming under him, or deriving possession through him, until the lapse of ten years from the last payment, yet the case seems wholly different as regards persons already in occupation and in whose favor the statute has begun to run at the time the mortgage is given, and who are no parties to it.

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