

MEMORIALS AS SECONDARY EVIDENCE.

If mere length of possession in those claiming under the memorial executed by a grantee is to be the only circumstance corroborative of the memorial, as evidence of a conveyance in fee as therein stated, the question at once arises what length of possession is required. Considering the cases above alluded to of a life estate only being in fact granted, and of limitations by way of shifting use, or by executory devise, and of disabilities, it may be said that the only safe guide would be that length of possession which the courts have established as that from which a title must be shewn to a purchaser, namely, sixty years. That rule is based on grounds applicable to the present question. The ordinary duration of human life is assumed to be sixty years: taking, therefore, as the root of title a conveyance sixty years old, from some one shewn to have been then in possession, but whose title is not otherwise shewn, and conveyances thence in a proper chain of title to the vendor, there is good reason to believe he has good title. It is fair to assume the grantor in the first conveyance was of age when he conveyed: taking him to be then only twenty-one, and to have died at the age of sixty, the right of those in remainder or reversion then accrued; twenty years would in ordinary circumstances bar them, and thus the sixty years possession would confer a title, but only barely so.

It will be observed, however, that after all the safety of the purchaser of the title under these circumstances, would rest more on the Statute of Limitations, than on the presumption that the conveyance is in fee simple absolute.

As between vendor and purchaser, and under the Act for Quieting Titles, stricter evidence is required than in ejectment, which is not final in its consequences, and in which the more temporary right to possession as between only the claimant and the defendant is in issue. It is evident that though the admission of a grantor by a memorial, or otherwise, that he conveyed in fee, may be evidence whereon a claimant in ejectment may establish mere *prima facie* right to possession, it is quite consistent with such admission that the conveyance is subject to be defeated on payment of money, by a shifting use, or the like matters which in ejectment the claimant is not required to negative,

but of which a purchaser must have evidence. As between vendor and purchaser, and under the Act for Quieting Titles, the following remarks from Hubback on Succession pt. 1, ch. 3, p. 62, apply:—"In weighing the insufficiency of evidence, the practice of conveyancers is more strict; in determining its admissibility, more lax than that of Courts of Justice. The former seems to be an effect of the difference in the position of the parties; the latter, of the difference in the powers and functions of those by whom the evidence is judged. The purchaser in *bona fide* transactions, by the mere possession of his purchase money, shews and offers to pass an indisputable to it; whilst the title to land not appearing by possession, he cannot have the same assurance of the vendor's right to the equivalent bargained for. This much seems to be settled; that higher evidence is necessary than such as would merely prevail in ejectment. There are erroneous judgments upon defective or unsound evidence which may be cured by another ejectment; but if the doubts upon a title should, after completion ripen into defects, the purchaser may find it impossible to regain the position which he held before the contract. What Lord Eldon observed of legitimacy seems to be true of any other matter of fact expressly or impliedly alleged on the abstract; that a jury may collect the fact from circumstances, and yet the Court would not compel a purchaser to take the title merely because there was such verdict. The Court will weigh whether the doubt is so reasonable and fair that the property is left on his hands not marketable. The rule applies generally to presumptions of fact, which conveyancers are slower of raising than Courts of Justice. Thus a seven years' absence without tidings, though it prevails as evidence of death in ejectment, is clearly insufficient as between vendor and purchaser. Besides the greater difficulty of retracing an erroneous step, there exists another cause of difference from forensic practice, the more extensive office of conveyancer's evidence, which is to afford reasonable satisfaction to the purchaser, that the title is good against all the world, and not merely like that of evidence in litigation, that it is sufficient to prevail against certain contending parties. In this particular, a vendor's evidence resembles that of a claimant of peerage: it is not to