

gagors and privies in estate, it is absurd to suppose that the ingenuity of the profession would not be equal to the emergency of devising adequate means for the protection of mortgagees. One method which occurs to me would be (1) to require the mortgagor upon the execution of the mortgage, if not then himself in occupation, to produce a declaration showing who the person is who is in occupation, and a written acknowledgment of title from such person; and (2) to insert in the mortgage a provision requiring the mortgagor to produce at stipulated intervals similar evidence, and in default authorizing the mortgagee to take possession. Some such method would, it seems to me, be an ample protection to mortgagees, and at the same time not reduce the Statute of Limitations to waste paper.

It is not suggested that a mortgagee should be required on accepting a mortgage to obtain actual possession, but merely satisfactory evidence that the title of his mortgagor is acknowledged by the person in actual possession, before he advances his money to a mortgagor out of possession. Few mortgages are taken, I apprehend, without inquiry as to the possession, and there is no hardship in requiring that inquiry to take the shape I have mentioned.

It does not appear to me that Mr. McLaren has successfully made out his first proposition. On the contrary, I think the utmost that he can be said to have established is that it was the intention and policy of the Legislature to afford a reasonable protection to mortgagees, which I admit. Neither do I think the second proposition is made out, and on the contrary I would say that as a matter of public policy it would be a mistake to construe the provision in reference to mortgages so as virtually to abrogate the Act. And as far as the third and fourth propositions are concerned, I would say that the "plain construction" of the statute is not the sound one, if it involves the construction Mr. McLaren contends for; and that the only way the statute can be construed consistently with its other provisions and its general policy, is by restricting the rights of mortgagees as I have suggested.

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