sheriff having made a deed to McCrea, the purchaser, than with the fact that he did not make one? The sheriff was commanded by process to sell the land. He advertised it for sale, and *received* £125 from McCrea, and, as appears by the sheriff's memorandum, which is good evidence, because it is an entry in the usual course of business, and against interest, he received this money as the price of this particular lot which McCrea had purchased. It was the sheriff's duty also to have made a deed. Admittedly, however, he did not make it for several years after the sale. A memorial, or a document professing to be a memorial, was executed in December, 1830, by the grantee, of what is alleged to have been this particular deed, and it was registered at that time. Possession was not taken under this supposed deed until about eighteen years after the making of it, and about twenty-three years after the actual sale; but possession has been held for the last eighteen years under this alleged deed, and the defendant now maintains his possession by virtue of it."

The Court held that there was sufficient evidence of the conveyance, but they relied on the other facts beyond the memorial, and it is probable that if they had been wanting the evidence would not have sufficed. It is to be remarked that the subscribing witnesses were not called, nor any reason given why they were not.

There would seem to be some danger in allowing mere length of possession and dealing with the property to be sufficient corroborative evidence whereon to adopt as evidence of a conveyance in fee simple absolute a memorial executed by a grantee. Take the case of a conveyance to such grantee for life only, or of a grant to uses to the use of some person in fee, but with a shifting use over, or of a devise in fee with an executory devise over on the happening of an event, and a memorial thereof executed by the grantee, referring to an instrument in fee simple absolute. Here the life tenant, or first taker, might have destroyed the instrument (to the custody of which he is entitled), and have conveyed in fee simple absolute, and the property have passed in fee *bonâ fide* through various hands during the life of tenant for life, or before the event whereon the shifting use or executory devise over is to take effect, for fifty years or more, and the possession and dealing with the property have thus been consistent with right of possession, and with the conveyance in fee as set out in the memorial. The reversioner, or other person entitled, or his heirs, are not supposed to enquire till their right accrues, and when it does they have to contend against evidence offered of the fraudulent memorial and the possession and dealing said to be consistently with it. Again, those entitled on the death of the life tenant, or on the event happening whereon their right accrued might have been under disability. It may be urged that it may always be assumed that a false memorial as above suggested could not be registered, on the ground that the registrar, as a public officer, would be presumed not to register the instrument if incorrect. It is known, however, that practically this assumption affords no safeguard, that as a general rule the registrars are quite incapable of placing a construction on an obscure will, or on any but the most common instruments, and are unwilling to incur the risk of declining to register on the ground of a supposed variance. Moreover, until the recent Registry Act, it was not necessary to set out in the memorial the quantity of estate, *i.e.*, the interest, conveyed, and therefore it was held that a memorial varying from the original in that respect, and so registered, was not defectively registered (*Lessee McLonald* v. *Murphy*, 2 Fox & Smith, 304 *in notis*; *Mill* v. *Hill*, 3 H. L. Ca. 828; *Wyatt* v. *Barwell*, 19 Ves. 435). The evidence therefore afforded by the mere fact of registry is, it may perhaps be urged, not so strong in regard to those particulars which need not be set forth as to those which must.

The cases when examined hardly go the length of shewing that mere length of possession, though for considerable time under an alleged grant in fee coupled with a memorial executed by the grantee, is sufficient evidence. There are either other facts which lead to the belief of, or are confirmatory of the instrument; or, if mere length of possession alone has been considered sufficient, it has been in cases other than on a question of whether the conveyance was in fee simple absolute to the grantee, and where the possession had was quite inconsistent with the instrument being otherwise than as set out in the memorial. I have pointed out that there may have been possession for fifty years or more under a conveyance or will alleged by the grantee or devisee to have been in fee, which possession was quite consistent with a lesser or conditional estate having in fact passed.