

dence that I venture to suggest any doubt as to the soundness of the law thus laid down. The words of section 22 (R.S.O. c. 111) are certainly extremely general, viz., "any person entitled to, or claiming under a mortgage"; but in spite of this generality of expression, it is conceded in the cases above referred to, that they certainly do not apply to the case of a mortgagee who takes his mortgage, from a mortgagor whose title is already barred under the statute; but somewhat inconsistently, it seems to me, it is said that if there is only a single day for the statute to run in order to bar the mortgagor, that then the making of the mortgage has the effect of stopping the running of the statute as against the mortgagee, and also in effect as against the mortgagor also. This is certainly a very extraordinary effect to give to an act of the mortgagor done behind the back of the person in occupation, and without any notice to him, and I venture to doubt whether this can really be the true meaning of section 22. The draftsman of that section doubtless had in view the simple case of a mortgage executed by a mortgagor while in possession either by himself, or his tenants, as against whom and all persons subsequently claiming under him it was probably intended to preserve the mortgagee's rights; but it is hardly probable that the mind of the draftsman was directed to the case of a mortgage made by a mortgagor out of possession and as against whom the statute had begun to run in favor of some third person; nor does there appear to be anything in section 22 which, by necessary intendment, can be deemed to cover that case.

If a mortgagor whose title has been barred cannot by executing a mortgage convey any estate, how can it be reasonably said that a mortgagor who is out of possession can nevertheless by merely executing a mortgage convey an estate so as to defeat, or vest in his mortgagee, the rights of a person in actual occupation and claiming adversely to the mortgagor, and who is no party to the transaction? It is quite clear that if instead of a mortgage, the owner out of possession were to execute an absolute deed of the land in fee, the grantee would take subject to the rights of any person in