to inconvenient results, is not necessarily any proof that it is unsound; but one can well understand that a doctrine fraught with such extraordinary results as that enunciated by Mr. Justice Maclennan and adopted by Mr. Justice Burton, would not be too readily assented to by any judge who did not deem it absolutely necessary for the decision of the case before him. The refusal of the Chief Justice and Mr. Justice Osler to concur in that opinion can therefore be well understood; and in view of their refusal, it may be useful to consider a little more at large the probability of the doctrine being sustained in future cases.

It may be observed that the possession under which the defendant claimed commenced after the execution of the mortgage which was given to secure the purchase money, and this case, therefore, was not one of a mortgagor executing a mortgage while out of possession, and there seems to be no question that the mortgage at the time it was executed was sufficient to carry the legal estate free from any claim of any third party to possession. The possession under which the defendant claimed was therefore acquired originally under the mortgagor after the execution of the mortgage; and while there seems less objection to holding that in such a case the statute would not run in favor of the occupant as against the mortgagee, yet the cases hereafter referred to and to which Mr. Justice Maclennan seems to give his unrestricted assent, seem to go the full length of laying down the doctrine that the mortgage would have been equally effectual to stop the running of the statute as against a person in adverse possession to the mortgagor at the time the mortgage was given, and it is to that particular state of facts that I desire more particularly to direct attention.

It must be conceded at the outset that the opinion expressed by Maclennan, J.A., is amply supported by the decisions of the English Court of Queen's Bench in *Doe, Palmer* v. *Eyre*, 17 Q.B. 366, and of the Exchequer in *Ford* v. *Ager*, 2 H. & C. 279, and *Doe, Baddeley* v. *Massey*, Ib. 373, and by the decision of the Chancery Divisional Court in *Cameron* v. *Walker*, 19 O.R. 212—and it is therefore with some diffi-