

## Opinion of the Court.

of the mortgagee as such. *Gilbert v. Cooley*, Walker's Chancery, 494, and *Jackson v. Bowen and Neff*, 7 Cowen, 13.

So in *Jackson v. Minkler*, 10 Johnson, 479, it was held that the assignee of a mortgage, in possession of the premises, is protected by the mortgage, though no foreclosure of it was shown, against an action of ejectment by a mortgagor.

The judgment of the court below, *Bryan v. Brasius*, 31 Pac. Rep. 519, was placed on this ground, and it is accordingly

*Affirmed.*

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BRYAN v. PINNEY.APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF  
ARIZONA.

No. 199. Submitted December 19, 1895. — Decided April 13, 1896.

*Bryan v. Brasius*, ante 415, followed.

THE case is stated in the opinion.

*Mr. William A. McKenney*, *Mr. Webster Street* and *Mr. B. Goodrich* for appellant.

*Mr. A. C. Baker*, *Mr. A. H. Garland* and *Mr. R. C. Garland* for appellees.

MR. JUSTICE SHIRAS delivered the opinion of the court.

This was an action of ejectment brought by T. J. Bryan in the district court of the Second Judicial District of the Territory of Arizona, against D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Maull and the Bank of Napa, to recover possession of block 98 in the town of Phoenix, county of Maricopa. The facts of this case, so far as they present questions for our consideration, are similar to those of the case of *Bryan v. Brasius*, just decided, and for the reasons there given, and on the authorities there cited, the judgment of the Supreme Court of Arizona is

*Affirmed.*