title the eldest son also claims, Co. Litt. 242 a. So also an entry as devisee will negative the presumption of an adverse holding to the common title, Tongue's lessee v. Nutwell, 22 Md. 445, and here, though not coming strictly under this head, may be mentioned Bowie v. O'Neale, 5 H. & J. 226, where it was held that the possession of a defendant, claiming and holding under the will of a husband devising the lands of his wife, could create no presumption of title, for the presumption arising from possession was rebutted by the will.

Tenants in common—Co-parceners, &c.—So also of co-parceners, tenants in common, &c. Where one tenant in common enters on land held in common, his entry is rightful, his possession lawful, and acts of ownership by him are authorized, and no inference of adverse possession can be drawn from them.[6] Hence exclusive possession by one tenant in common for more than twenty years, and perception of all the profits have been held not to constitute an ouster of his co-tenant, so as to make the possession adverse; though the ouster need not be by force, yet some act must be done equivalent to an ouster, or notice given to the co-tenant that the possession is adverse, Van Bibber v. Frazier, 17 Md. 436; Doe v. Phillips, 3 B. & Ad. 763.[7] In like manner, the possession of one co-parcener is the possession of all, and creates a seisin in another, which carries her share by descent to the others, Doe v. Keen, 7 T. R. 386; and, indeed, so far is the entry of one co-parcener from diverting the parts of the other, that it enures to the benefit of all, Co. Litt. 243 b.; Doe v. Pearson, 6 East, 173.

The presumption from possession arises indeed only when the possession proved is consistent with unqualified ownership. No presumption of a grant can be entertained, where the possession is explained by evidence showing that it was taken in virtue of some qualified interest or estate less than the absolute title, Colvin v. Warford's lessee, 20 Md. 357. See Raborg v. Donaldson, 26 Md. 312.

2. **Where possession of one is consistent with title of other—Mortgagor and mortgagee—Landlord and tenant—Trustee and *cestui que trust*.**—The possession of a mortgagor paying interest, (which will be presumed unless the contrary appear,) will not run against the mortgagee, Hall v. Doe *d.* Surtees, 5 B. & A. 687; Hertle v. McDonald, 3 Md. 366; 2 Md. Ch. Dec. 128; Evans v. Merriken, 8 G. & J. 39. And the payment of part of a mortgage will prevent the bar of the Statute for twenty years afterwards, though the mortgagor may have been in possession for upwards of nineteen years prior to the payment, Stump v. Henry, 6 Md. 201,[8] And the like is the rule as in the cases above cited, where the party claims under a lease, or where the relation of landlord and tenant can be implied, or the

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[6] Cf. Israel v. Israel, 30 Md. 120; Hammond v. Morrison, 33 Md. 95; McLaughlin v. McLaughlin, 80 Md. 115.

[7] Where one tenant in common conveys the whole estate in fee and his grantee enters and holds exclusive possession, such conveyance and possession are adverse to the title of the co-tenant and if continued for twenty years will bar his rights. Rutter v. Small, 68 Md. 133; Merryman v. Cumberland Co., 98 Md. 223.

[8] See note 36 *infra*.