

3. Where the party has in contemplation of law never been out of possession.—As where a stranger entered and divided the profits of an estate with the real owner for more than twenty years, it was held that the latter might maintain ejectment, for where two are in possession the law adjudges it to him having right, *Reading v. Royston*, 2 Salk. 423; *Davidson's lessee v. Beatty*, 3 H. & McH. 594; *Cheney v. Ringgold*, 2 H. & J. 87; and accordingly, possession of part by the plaintiff, with title to the whole, is possession of the whole, *ibid.* and *Gibson v. Martin*, 1 H. & J. 545,¹⁴ the right to land drawing to it the possession, *Cresap's lessee v. Hutson*, 9 Gill, 276.¹⁵ So where a grant was made to A. in 1694, and in 1695 an adjoining tract was granted to B., and B. entered on part of A.'s land and claimed and used it for one hundred years, it was held that a conveyance would not be presumed from A. to B., nor actual ouster of that part, though actual, exclusive and uninterrupted occupation by enclosure (as the law then stood) for more than twenty years would have been sufficient to have barred A.'s title, *Hammond v. Ridgely*, 5 H. & J. 245. And if one hold lands by actual enclosure according to the lines of his deed, without knowledge that any lands outside of the lines of his deed were enclosed, under the supposition that the enclosure corresponded with these lines, and without any intention of holding any lands outside of the lines of the deed by adversary possession, the plaintiff's right of entry is not tolled, for a disseisin cannot be committed by mistake, and the relation of his possession to an adverse claim by the possessor is an essential ingredient of the title he asserts, *Davis v. Furlow*, 27 Md. 536.¹⁶

Color of title.—A difference, however, is taken between a party entering *bona fide* and claiming under colour of title,¹⁷ and a mere wrong-doer. The

¹⁴ *Parker v. Wallis*, 60 Md. 15. Except as to such part as may be actually occupied by the intruder claiming title. *Schlossnagle v. Kolb*, 97 Md. 285.

¹⁵ So where land is unoccupied he who has the true legal title is constructively in possession. *Schlossnagle v. Kolb*, 97 Md. 285; *Carter v. Woolfork*, 71 Md. 290.

¹⁶ Distinguish *Jacobs v. Disharoon*, 113 Md. 98.

¹⁷ **What is color of title.**—Color of title is "that which *in appearance* is title, but which *in reality* is no title." It is generally "immaterial whether the title be valid or not; provided the entry and claim be *bona fide* under that title." *Erdman v. Corse*, 87 Md. 509. "The paper title, to give color, must be so far *prima facie* good in appearance as to be consistent with the idea of good faith on the part of the party entering under it; the enquiry being, whether there existed such an apparent or colorable title, under which claim and entry could have been made in good faith; the party believing his title to be good, and his claim well founded. If such color and good faith do not exist, the party's seizin must be confined to his actual possession, which, before the Act of 1852, ch. 177, must have been clearly indicated by enclosures." *Baker v. Swann*, 32 Md. 358.

Color of title may be given by a void will, *Hanson v. Johnson*, 62 Md. 25; by a limitation over which is void because of an indefinite failure of issue, *Lurman v. Hubner*, 75 Md. 270; but not by a patent from the