

by circumstances, and payment of interest, even on part of the debt, keeps the whole alive, *Loftus v. Smith*, 2 Sch. & L. 642.³⁶ Where land was mortgaged in 1706 to A., a British subject who never took possession, and it was under the confiscation acts granted to B., it was held in an ejectment brought against C., who had been in possession for fifty years, that the jury could not presume that the mortgage was satisfied before the year 1780, for the defendant shewed no title in himself from the mortgagor, *Owings v. Norwood*, 2 H. & J. 96. As to mortgages of personalty, it would seem that this period of limitation does not apply; at any rate, in *Watkins v. Harwood supra*, where such a mortgage was claimed by way of set-off, the Court said that as the proceeding was not to foreclose, nor was in any shape against the thing mortgaged, but the mortgage was offered as evidence of a debt, limitations would run against the debt, and the mortgage was accordingly excluded. On the other hand, the case was relied on by the Chancellor in the *Ohio Life Ins. and Trust Co. v. Winn & Ross*, 4 Md. Ch. Dec. 253, where he held that in case of a promissory note secured by mortgage, the mortgagee having the legal title is not ousted by his note being barred by limitations, because the debt only is barred, and the party holding the title may retain his legal advantage; and he also determined that parties, entitled to be submitted in the place of such mortgagee, were entitled to the same exception from the operation of the Statute with respect to the proceeds of the mortgaged property. Though bonds given by an heir entitled to elect under our descent laws are not included in the Statute of Limitations, the like presumptions apply to them as to mortgages, *Boyd v. Harris, supra*.³⁷

Legacies.—*With regard to legacies, it was said in *Wood v. Reader*, 458 2 H. & McH. 145, that the recovery of a legacy could not be barred by limitations, because payment of it may be stopped till the debts are paid, and it would be uncertain when an action could be commenced. But it is now fully settled that, in enforcing claims to legacies charged on land, Courts of Equity adopt, by analogy to law, twenty years as a bar to

³⁶ **Mortgagor and mortgagee.**—Twenty years exclusive and adverse possession by mortgagor after condition broken bars foreclosure. The Statute runs in his favor from the time of the breach. The presumption of payment, however, is not conclusive; it may be rebutted by evidence of part payment of either principal or interest, by an admission of the debt's existence, or by other circumstances from which the non-payment of the debt may be inferred. The same doctrine applies to a mortgage to indemnify and also to a deed of trust to secure a debt. *Brown v. Hardcastle*, 63 Md. 484; *Subers v. Hurlock*, 82 Md. 42; *Baldwin v. Trimble*, 85 Md. 396; *Taylor v. Carroll*, 89 Md. 32.

In like manner twenty years exclusive and adverse possession by a mortgagee, without any account or acknowledgement of a subsisting mortgage, is a bar to redemption. *Crook v. Glenn*, 30 Md. 55. Cf. *Reeder v. Lanahan*, 111 Md. 387.

³⁷ So of a lien for owelty of partition and generally of all equitable liens on land. *B. & O. R. R. Co. v. Trimble*, 51 Md. 99. Cf. *Oswald v. Hoover*, 43 Md. 360.