

If actual possession is once obtained by a mortgagee in assertion of his legal right of entry, it need not be maintained continuously for the statutory period. *Kay v. Wilson* (1877), 2 A.R. (Ont.) 133. But possession obtained by the mortgagee after the lapse of the statutory period does not cause his title to revive. *Court v. Walsh* (1882), 1 O.R. 167.

The words "possession or receipt of the profits" in R.S.O. (1914) ch. 75, sec. 20, *supra*, seem to include the case of a mortgagee receiving rent from a tenant in possession; receipt of such rent by a mortgagee for the statutory period will, it seems, bar the mortgagor's right to redeem. *Ward v. Cartlar* (1865), L.R. 1 Eq. 29; *Markwick v. Hardingham* (1880), 15 Ch.D. 339; 19 Halsbury, Laws of England, p. 149, note (l).

9. POSSESSION OF PART OF MORTGAGED LANDS.

The rule which prevailed prior to 3 & 4 Wm. IV., ch. 27, that no lapse of time barred the right of the mortgagor to redeem the whole of the mortgaged lands, if he held possession of part (*Rakestraw v. Brewer* (1728), Sel. Cas. Ch. 55, 2 P. Wms., 511) was abolished by sec. 28 of the statute. Hence it has been held that where a mortgagee had been in possession of part of the lands for more than 20 years, the right of the mortgagor to redeem that part was barred, although he held possession of the remainder of the lands. *Kinsman v. Rouse* (1881), 17 Ch.D. 104.

On the other hand, if a person has only a partial interest in the equity of redemption, *e.g.*, as tenant, he has a right to pay the whole mortgage debt and receive a conveyance of the mortgaged lands, subject to the rights of redemption of other persons interested in the equity. *Martin v. Miles* (1884), 5 O.R. 404, at 416. This principle, that the equity of redemption is an entirety which cannot be redeemed piecemeal or proportionately, has been held to apply even where the person redeeming is entitled only to a share in the equity of redemption and the other persons interested have been barred by the Statute of Limitations. *Faulds v. Harper* (1883), 2 O.R. 405, at 411, 11 Can. S.C.R., at pp. 645, 656.

10. WHEN TIME BEGINS TO RUN.

R.S.O. (1914), ch. 75, sec. 20, *supra*, provides that where a mortgagee has obtained possession, the mortgagor shall not bring any action for redemption "but within 10 years next after the time at which the mortgagee obtained such possession." The opinion has been expressed that the general rule that time begins to run from the taking of possession is subject to an exception if the mortgagee takes possession before the mortgage is due. *Fisher on Mortgages*, 6th ed., sec. 1404, citing *Brown v. Cole* (1845), 14 Sim. 427, 18 R.C. 116, says: "Time will not run in the case of a common mortgage until the day of redemption has arrived; for the mortgagor cannot redeem before that day." See also *Wilson v. Walton and Kirkdale Permanent Building Society* (1903), 19 Times L.R. 408. The proposition just quoted must, however, be accepted with caution. The decision in *Brown v. Cole*, was to the effect that a mortgagor is not entitled to redeem before the expiration of the time limited for payment of the mortgage debt. The deduction that the statute will commence to run only from the same date appears to be based upon the assumption that the