

1893

The Estate in Coparcenary

Alex Payson Knapp
Cornell Law School

Follow this and additional works at: http://scholarship.law.cornell.edu/historical_theses

 Part of the [Law Commons](#)

Recommended Citation

Knapp, Alex Payson, "The Estate in Coparcenary" (1893). *Historical Theses and Dissertations Collection*. Paper 300.

This Thesis is brought to you for free and open access by the Historical Cornell Law School at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Historical Theses and Dissertations Collection by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

T H E S I S

--o--

T H E E S T A T E I N C O P A R C E N A R Y

For

Degree of Bachelor of Law

-By-

Alex. Payson Knapp

-----o-----

C o r n e l l U n i v e r s i t y

1893

C O N T E N T S.

-----o-----

P A R T I.

--o--

	Page
THE ESTATE OF CO-PARCEINARY IN ENGLAND UP TO THE YEAR 1775.	I

P A R T II.

--o--

THE ESTATE IN THE UNITED STATES GENERALLY.. . . .	16
---	----

P A R T III.

--o--

THE ESTATE IN MARYLAND.. . . .	24
--------------------------------	----

P A R T I.

--0--

An estate in Coparcenary arises where a person seized of lands and tenements in fee simple or in fee tail dies leaving only daughters, sisters or other female heirs, in which case the estate descends to such female heirs jointly ; they are called co-parceners and are said to hold in co-parcenary and to make but one heir to their ancestor. And in England an estate in co-parcenary also frequently arises in consequence of gavel kind and other customary decents to all male children, in which case they are co-parceners for which it is said by Littleton, co-parceners may be either by common law or by custom. The properties of co-parceners are in some respects like those of joint tenants ; they have the same unities of interest, title and possession and as they make but one heir they have one entire estate in the land in respect to a process against it. In several other points co-parceners differ from joint tenants. First they always claim by descent whereas joint tenants claim by purchase. For according to Littleton if sisters purchase land or tenements, they are joint tenants thereof, not co-parceners.

ers. So it follows that no estate may be held in coparcenary except those of inheritance, while the estates for life and for years may be held in joint tenancy. No unity of time is necessary to an estate in coparcenary, for if a man has two daughters to whom his estate descends, and one dies leaving as issue a son, this son and the surviving daughter, and when both daughters are dead their two heirs will be coparceners, though the estates vested in them at different times.(1) Coparceners though they may have a unity have not an entirety of interest ; for between themselves they have at law several free holds,(2)and Blackstone says, they are properly entitled each to a distinct moiety and of course there is no survivorship between them for each part descends severally to their respective heirs, though the unity of possession continues.(3) The possession of one coparcener is the possession of the others, and the entry of one, generally is taken as the entry of all and no divesting of the interest of the others. But Coke says,

(1) 1 Inst. 164a.

(2) 1 Inst. 164a.

(3) 2 Bla. Com. 188.

where one co-parcener enters specially, claiming the whole land and taking the whole profits, she gains one share, namely that of her sister by abatement, and yet her dying seised shall not take away the entry of her sister. But in a note to this passage it is said, "the contrary is held, that one co-parcener cannot be disseised with ^{out} actual ouster, and claim shall not alter the possession". Where both co-parceners are actually seised Coke says, the taking of the whole profits or any claim made by one, cannot put the other out of possession without an actual disseisin, (1) but if one enters claiming the whole and makes feoffment in fee, and takes back an estate to her and her heirs, and hath issue and dies seised, this descent shall take away the entry of the other sister, because by the feoffment the priority of the co-parcenary was destroyed. (2) As co-parceners constitute but one heir, they have one entire freehold in the land, as long as it remains undivided in respect to a stranger's process. But between themselves they have in law several freeholds, for they may convey to each other, by feoffment and release because their seisin is in some respects joint and

(1) 1 Inst. 373b.

(2) 1 Inst. 243b.

in others several.(I) This estate is not severed or divided by law by the death of any one of the tenants, for if one die, her part shall descend to her issue, and but one process shall lie against them. But the issue of several co-parceners, because several rights descend, shall never join as heirs to their mothers, being but one heir together. And yet writ of partition lies between them. For example if a man has issue two daughters, and is disseised and the daughters have issue and die the whole issue shall join in one process, because one right of action descends from the common ancestor. And it makes no difference whether the common ancestor being out of possession died before the daughters, or after them, for that in both cases they must make themselves heir to the grandfather which was last seised. And when the issue have recovered possession, there are co-parceners, and one process shall lie against them all. In regard to the inheritances which may be held in co-parcenary, some are entire and some are several. And some entire inheritances are divisible, and some are not. If a villein descend to two co-parceners this is an entire in-

(I) 1 Cok. Lit. 164b.

heritance, and though the villein may not be divided the profit of him may. One co-parcener may have his service for one period and the other for another. A rent charge is entire and against the common right, yet it may be divided between co-parceners, though the land be thereby made chargeable by law with several distresses.(1) If a man have reasonable estovers as house bote, etc., attached to his freehold, they are so entire that they shall not be divided between co-parceners. So if a piscary uncertain, it cannot be divided, for that would be a charge to a tenent of the soil.(2) Courtesy ^{and} ~~dower~~ are incidents to estates in co-parcenary for there no survivorship takes place, as each share descends to the heirs of the respective co-parceners. But in such case, dower can only be assigned in common, for the widow cannot have it in a different manner from her husband.(3) Estates in co-parcenary may be destroyed by the alienation of one of the co-parceners to a stranger, which disunites the interest, and the lands cease to be held in co-parcenary as to the share so conveyed where there are

(1) 1 Inst. 164b.

(2) 1 Inst. 164b.

(3) Cok. Litt. 691 note 1.

three or more co-parceners.(I) Estates in co-parcenary may be dissolved by partition, which disunites the possession, by alienation of one co-parcener as above, and by the whole at last descending to and vesting in one single person, which brings it to an estate in severalty. Preston says, that a release from one co-parcener to the other does not make any degree in the title; he thinks that the releasee will hold by descent and not by purchase so that his ancestor will be deemed the first purchaser. On principle he adds, that a release by one, to one of several co-parceners, or to some of them, does make a degree in the title, and the releasee or several releasees will be the first purchaser or purchasers. Partition between co-parceners is either voluntary or compulsory. If they make a partition at full age and unmarried and of ⁿsame mind, of lands in fee simple, it is good for ever although the values are unequal, but if it be of lands entailed or if any of the parceners be of non sane mind, it shall bind the parceners themselves but not their issues, unless it be equal ; or if any be covert it shall

(I) Cok. Litt. 175a.

bind the husband but not the wife and her heirs; or if any be within age, it shall not bind the infant.(1) A partition which shall bind from its equality, must not only be founded on an equality in the value of the land, but also on an equality of advantage and profit arising from each share of the several owners ; as if one shall be encumbered with an assise from which the other is free, though each share be equal in its intrinsic value yet the partition is not equal, for the expense of managing the assise from which the other is free, which is a real action, and therefore dilatory and expensive, may eat up the whole profits of that part which it encumbers, and so make the partition unequal.(2) Where a partition is unequal the whole must be avoided because what is surplusage of the unequal part cannot be distinguished but by a new division, also the inequality makes the partition which consisted in the inequality of it, voidable in the whole. An infant is bound by the partition if it is equal, because she is bound to make partition, and whatever one is compelled to do may be done by that same

(1) 1 Inst. 166a.

(2) Cok. Litt. 171b.

person voluntarily. The unequal partition is not absolutely void as to the infant; the latter has the election either to affirm it at full age or to avoid it either during minority, or at full age by entering into the other part with her co-heirs. Littleton mentions four ^{kinds} ~~thoughts~~ of voluntary partitions.(1) The first is when partitioners agree to make a partition and do make a partition of the tenements so that each takes a particular part in the severalty. The second mode of voluntary partition is, where co-parceners agree to choose some friend to divide the lands, in which case the eldest daughter shall choose first and the other daughters according to their seniority. The part which the eldest daughter took by reason of her priority, she took more principally by courtesy. It did not descend to her issue, but the next eldest sister should have it, whereas all those privileges which the law gave to the eldest sister, that were beneficial to her descended to her issue, and even went to her assignee. The third mode of voluntary partition is where the eldest makes the division of the lands, in which case she shall choose last. The fourth

(1) Litt. sec. 244.

mode of voluntary partition is to have the lands divided, and for the sisters to draw lots for their shares. Coke mentions other partitions in deed than those mentioned, for a partition between two co-parceners, that one shall have and occupy the land from Easter until the first of August in severalty and the other shall occupy from August until Easter, yearly to them and their heirs, is a good partition. It is said that partition between co-parceners, neither amount to nor require an actual conveyance. It is less than a grant. Its operation is not supposed to vest the land by a fresh livery of seisin. For co-parceners are already in possession of the whole land. Partition then makes no degree. It merely adjusts the different rights of the parties to the possession each was as much seised of it by descent from the common ancestor, as she was of her undivided share before partition. So while at common law, partition by joint tenents could be made only by deed, and by tenents in common only by livery without ^{deed} these, co-parceners could make a partition by parol only, without deed or livery. And not only were lands capable of such partition but corporeal hereditaments which generally speaking were not

grantable without deed.(1) And also if a rent was reserved or granted for owelty of partition, a parol reservation or grant, without deed, was good and effectual between co-parceners. At present, however, by the Statute 29 Car. 2, it has been made necessary both with respect to tenents in common and co-parceners that a partition shall be made in ^{writ} ~~righting~~, and among joint tenents a deed is necessary as it was at the common law. Where co-parceners cannot agree upon any of the preceding modes of partition, anyone or more of them may by the common law, bring a writ of partition against the others, and when the judgement is given upon this writ, it is that partition shall be made between the parties, and that the sheriff in his proper person shall go to the lands and tenements, and by the oaths of twelve lawful men of his bailiwick, shall make partition between the parties, and that one part of the land shall be assigned to the plaintiff and another to another, not making mention in the judgement of the eldest sister more than of the younger.(2) At common law the writ of partition

(1) 4 H. & M. 19.

(2) Litt. sec. 247-8.

lay for one co-parcener, tenent for the freehold, against the other, and against the alienee of such co-parcener, but it lay not for the alienee, nor for the tenent by courtesy. And if one co-parcener had made a lease for life she could not afterwards bring a writ of partition during the continuance of that estate. If there are three co-parceners and the eldest purchase a share of the youngest, this will not defeat her right for a partition against the middle sister. So also if the eldest has a husband and he purchases the share of the younger one, he is a stranger and no co-parcener. But being seised of the estate in the right of his wife they jointly shall have a writ of partition against the middle sister. A tenent by the courtesy may have a writ of partition under the statute, and all land and other things capable of a division must be divided upon a writ of partition and set out by metes and bounds under the law of England.(I) There are also several kinds of incorporeal heriditaments which cannot be divided among co-parceners they are therefore allotted to the eldest sister and the

(I) 1 Inst. 175a.

others had an allowance out of the rest of the inheritance but where nothing descended it was agreed that each should have them for a certain time. Partitions between co-parceners are now usually made by means of a bill in chancery, in the same manner as a partition between joint tenants.(1) Although the law gives to a co-parcener a power to sever her own share, yet since the partition is compulsory, the law will not put partitioners in a worse condition, at the partition, than if they had enjoyed their shares in co-parcenary, and therefore on a suit commenced for any part, or on eviction of any part they shall have like remedy, as if they had enjoyed in common, in which case if a suit had been commenced both parties must have been impleaded and on a recovery, there had been equal loss to both.(2) There is therefore after partition a warranty annexed to each part. For there is a condition annexed to every partition that if one is evicted from the share allotted to him, the party so evicted may enter on the moiety and avoid a partition of

(1) Stor. Eq. 599-611.

(2) 1 Inst. 173b.

an undivided moiety that is left. It is no objection to a partition among co-parceners, that there is an outstanding continuing particular estate in another for life in the land. If therefore a testator devise to his widow, "her livery" upon a tract of land during her life, and the same land to one of his sons in fee, a bill of equity lies for partition of that land among the heirs of that son, in the widow's life time, and that too without making for a party, for the decree will be made subject to her rights.(1) There was by the common law of England, another principle attending the estate in co-parcenary, which originated in the laws respecting estates in frank marriage.(2) If one of several daughters had an estate given with her in frank marriage by her ancestor (which was a species of estate tail given by a kinsman to his kinswoman as a marriage portion), in this case if lands descended from the same ancestor to her and to her sisters in fee simple, she or her heirs should have no share of them unless they would agree to divide the lands so given in frank marriage, in equal proportion

(1) 4 Munf. 328.

(2) 2 Bla. Com. 190.

with the rest of the lands descending. This was called bringing those lands into hotch pot, which is explained by Littleton in these words "It seemeth", says he, "that this word hotch pot, is in English a pudding, for in a pudding is not commonly put one thing alone, but one thing with other things together". This term was used therefore to express that the lands both those given in frank marriage, and those descended in fee simple, should be mixed and blended together, and then divided in equal portion among all the daughters. But this was left to the choice of the donee in frank marriage, and if she did not choose to put her lands into hotch pot, she was presumed to be sufficiently provided for, and the rest of the inheritance was divided among her other sisters. I believe that ~~all~~ hotch pot took place only where the lands descending were in fee simple. The word hotch pot, now obsolete in the law of co-parcenary probably suggested those provisions which are enacted in many laws of descent and distribution. Such is the nature of the estate in co-parcenary according to the common law down to the Revolution. Its development in the mother country after

1775 does not concern the purpose of this treatise, and we will now take up a description of its place as an estate in the history of the common law as adopted by the United States.

P A R T II.

---o---

It will be necessary, before entering into a discussion of the estate in co-parcenary in the United States to consider briefly the kind of people who first settled in the Colonies and the social conditions they brought with them from the mother country. Obviously only the settlers of English extraction are the ones in whom we are interested. The people who settled New England were very different from those who settled the South. The former did not spread over a wide surface of country but settled in townships, while the latter occupied solitary plantations. As the numbers of those in the North increased and outgrew the original settlements, they moved off in bodies, each occupying an allotted piece of ground, a part of which was held in common. They were no great estates as in the South, and all the towns and villages were within easy reach of each other. There were several causes for this difference between the Northern and the Southern colonies^s. One was that the former made it a great point to worship frequently together and

so could not bear to be widely scattered. But the principal cause was that those in the North were mainly descended from the yeoman and burgher classes, while those in the South were generally taken from the landed gentry. At that time among the English yeoman and cottagers, much of the land was still held and farmed in common by villages, so the system of townships and small holdings fell in with the home usage of the colonies and they had no special taste for large landed estates even if they could have got them. In the South the land holding instinct of the people asserted itself, and they spread over a large extent of territory, until the greater was held in very large estates. This being analagous to the state of affairs in the mother country, the system of law as applying to estates, was retained, and until quite a late date the entail was still in force. The more striking peculiarities of joint ownership sprang from the feudal law. The relation of lord and tenent was a personal one and involved protection by the lord and service by the tenent. To bestow the same feud on two or more tenents enlarged the duty of protection and did not, at least in

a commensurate degree enlarge the amount of service rendered. The feudal law was therefore averse to the severance and multiplication of services(I) and joint ownership was admitted to the law with reluctance. The joint tenants were one person as far as the feudal law and all other persons, other than themselves, were concerned, and as between themselves they were allowed few separate rights. The joint tenancy was the first joint estate. Then the estate in co-parcenary came into existence, and finally when the power to alien their estate was allowed joint tenants and co-parceners in response to the demands of a system hostile to the feudal law the alienee of such interest held, not as a joint tenant nor a co-parcener with those who had ^{not} disposed of their interest, but as the tenent in common a new species of joint ownership. By the time of the Revolution ^{the estate of} ~~a certain~~ co-parcenary had become a very complicated subject to deal with, so much so that in the previous chapter it has been impossible to do more than indicate its principal characteristics. Lord Coke says of it that, "it is a cunning learning replete with subtle distinctions and

antiquated erudation". It will be easily be seen therefore why the estate never flourished in the North. There was there a strong revulsion among the people against anything savoring of the feudal distinctions which had oppressed their ancestors. In the South it was different. Holding the same religion, connected by ties of blood with the land holding classes of the mother country for whose benefit all the laws bearing on estates were enacted, it is not surprising that they clung fondly to those institutions which formed the bonds with their people on the other side. Kent says, "by the New York revised statutes persons who take by descent under the statute if there be more than one person entitled, take as tenants in common, in proportion to their respective rights, and it is only in very remote cases which can scarcely ever arise, that the rules of the common law doctrine of descent can apply. As the estates descend in every state to all the children equally there is no substantial difference left between co-parceners and tenants in common. The title inherited by more persons than one is in some of the states declared to be tenancy in common

as in New York and New Jersey, and when it is not so declared the effect is the same, and technically the distinction between co-parcenary and estates in common may be considered as essentially extinguished in the United States. Stimson in his American Statute Law refers to the estate as effected or abrogated by statute. In section 1375 he says, "in a few states this tenancy is abolished and in all cases where two or more persons are entitled to an inheritance by descent, they take as tenants in common," citing the following states; New Hampshire, Rhode Island, New York, New Jersey, Indiana, Oregon, Georgia and Alabama. "But in others such persons always take in co-parcenary citing Ohio, Delaware, Kentucky, Missouri, Arkansas, Colorado and Florida. He ends by saying that in those states where no provision is made by statute, they would seem to take as co-parceners if of the female sex, and possibly if of both sexes. In the case of White vs Sayre 2 Ohio 110, it was held that one of two or more joint tenants, co-parceners, or tenants in common, may convey his interest or estate in the whole or in a particular part of the property so held. And his deed or

grant though purporting to convey an estate in severalty, when in fact he has only an estate in joint tenancy, co-parcenary or in common, is not void, but conveys the whole interest of the grantor in the premises purporting to be conveyed. Here the distinction is drawn between the three joint estates, the citation is taken from a late digest, and as it has not been over ruled on this point it may seem safe to presume that the estate of co-parcenary exists in Ohio, though probably in a modified form. O'Bannon vs Roberts 2 Dana(Ken) 55 holds that one co-parcener is liable to the others in chancery for their shares of the rents and profits of any land which he may have exclusively occupied. Also 6 Dana 176, that where one of several joint tenants or co-parceners buys in an incumbrance on the joint estate, the purchase will enure to the equal benefit of his co-tenents, if they elect to participate in the purchase upon condition of paying their due proportion of its actual cost. In 4 Howard(Miss) 315 the justice in delivering the opinion says, "they claim the land as heirs at law of John Hare, and co-parceners like tenants in common, must join both in actions ex contractu

and delicto". In the public statutes of Massachusetts edition of 1887, the estate is recognized as having a separate existence in the following passage, sec. 1 chap. 178, "persons holding lands as joint tenants, co-parceners or tenants in common may either by writ of partition at the common law or in the manner provided in this chapter ~~may~~ be compelled to divide such lands." In the cases cited under this section, there is no mention by name of the estate in co-parcenary, the beneficiaries taking as tenants in common rather than as co-parcener. Sec. 1304, revision of 1887 of the general statutes on Connecticut reads, "courts having jurisdiction of actions for equitable relief, may upon the complaint of any person interested, order the partition of any real estate held in joint tenancy, tenancy in common, or co-parcenary." It was held in 24 Conn. 23, that, "the established rule of the common law (by which partition would lie only between co-parceners) that the plaintiff must be in possession or seised of the land when the writ was brought has, since the remedy by partition has been extended to joint tenants and tenants in common, been uniformly adopted whether the remedy was sought by writ or by bill

in Equity. It is impossible to say whether Missouri, Kansas, Iowa, Illinois, California and Delaware keep the estate, owing either to the silence of the digests and Statutes, or the lack of both in the library. New York and New Jersey have declared by statute that where heirs would have taken as co-parceners they now take as tenants in common and probably that rule prevails in the majority of the states.

P A R T I I I .

-----o-----

Notwithstanding the statement of Chancellor Kent that the technical distinction between the estate in coparcenary and the tenancy in common may be considered as essentially extinguished in the United States, the quotation from the following case shows that at least in one state, Maryland, it is still in existence. In *Gilpin vs Hollingsworth* 3 Md. 190, it is laid down by Tuck, J, "that estates in joint tenancy; coparcenary, and in common, are different as legal estate, and their qualities and incidents are not the same ; tenancies in common and joint tenancies are recognized by the act of 1822, chap. 162, and estates in coparcenary by the Court of Appeals in the case of *Hoffar vs Dement* 5 Gill 132". The latter case was one upon an action of assumpsit. One Stonestreet had died intestate leaving four children, of which Ellen Hoffar was one. In the inferior court it was decided that the Plaintiffs could not recover because they had improperly made only Ellen Hoffar plaintiff when all the heirs should have been made parties plaintiff, being but

one heir all together, and the question came squarely up, whether or not they should be regarded as co-parceners or tenants in common. In the Court of Appeals it was held that in Maryland the children of parents who die intestate seised in fee of lands, tenements, or heridaments take as co-parceners and are so treated by the act of 1820 ch 191 sec. 5, and that if they cannot separately maintain an action of assumpsit, for money had and received, they cannot recover in separate actions upon an implied demise or agreement to rent, upon account for use and occupation. This decision left no doubt as to the fact that the estate still existed as such, and no later case appears to have overthrown the holding.

Under the law of inheritance in England, in the descent of property males are preferred to females and amongst males the law of primogeniture exists, and co-parcenary only occurs when a person dies intestate leaving two or more female heirs in the same or different degrees of kinship. But in Maryland there is no preference of males to females and no rule of primogeniture in the laws of inheritance, and co-parcenary arises in all cases where proper-

ty descends to two or more heirs, whether male or female, and whether by the same or different degrees of relationship to the intestate, the co-heirs constituting in law but one heir and having but one estate among them.(1)

In the case of the descent from a trustee holding the naked legal title the descent is as at common law, and co-parcenary would arise only as at common law.(2)

As the law had cast the title on the co-heirs and they had not like joint tenants voluntarily united in the ownership, it was thought unjust to impose on co-parceners the restrictions incident to joint tenancy. It was not necessary for co-parceners to have equal shares.

As to third parties the co-parceners hold but one freehold, but as between themselves they had for some purposes several freeholds, to some intents the seisin was joint, to some several.(3) In the case of 3 Md. 192 which held that the three joint estates were each and all recognized in Maryland a very interesting state of facts existed.

One Henry Hollingsworth died, and left a will with the

(1) 5 Gill. 32, 9 Gill 19, 3 Md. 190, 4 Md. 139, 32 Md. 57.

(2) Md. C. Art, 47 sec. 24.

(3) 1 Md. 172.

provision that, "all the rest and residue of my estate . . . I give and deviseto be divided amongst all my children in equal shares," He left children of the whole and of the half blood. The counsel for the plaintiff, children of the half blood, argued very cleverly, that wherever by devise a child would take the same estate as if the testator had died intestate, the will is inoperative and void and he takes under the law, because that estate is worthier and that the estate they would have taken from an intestate they would have taken as co-parceners not one in co-parcenary. He claimed that 5 Gill in laying down that children of an intestate took as co-parceners meant that the distinction in Maryland between co-parceners and tenets in common was purely formal. But the court went against him and held that the estate in co-parcenary came only by descent and that the children of the whole blood only, could take under the will. The possession of one parcener is the possession of all, and consequently one co-parcener cannot sue another for trespass, nor for use and occupation, (1) nor in ejectment unless there has been an actual ouster as in the

(1) 5 Gill 132.

case of joint tenancy. A co-parcener could not at common law commit waste on the property held in co-parcenary, and his co-tenant could not sue him for acts of waste.(1) No statute in force in Maryland seems to remedy this defect of the common law.(2) Where one co-parcener receives more than his share of the rent and profit, he could not at common law be held to account to his co-parcener, but now in Maryland by a construction of Statute 4 Anne ch 16, sec. 27, he can be made to account. The remedy would be by a bill of Equity, the action of account being practically obsolete.(3) The interest of a co-parcener is liable to dower and courtesy.(4) The co-parcenary may be determined, or severed by destroying any one of the unity as in joint tenancy if all were destroyed the property could be held in severalty. If all except the unity of possession are destroyed there arises a tenancy in common.(5) The co-parcenary may be determined by a partition and this may be voluntary or compulsory.(6) As between co-parceners any partition has an-

(1) 2 Bla. Com. 188.

(2) 13 Ed. chap. 22.

(3) 28 Md. 635.

(4) 1 Md. 171.

(5) 30 Md. 294.

(6) 23 Md. 85.

nexed to it the implied warranty that if by defeat of title in the ancestor either loses any part or share by eviction, it is treated as if no partition had been made between them. The party evicted may enter upon the others and defeat the partition, as for the condition broken or may vouch for them to warranty and obtain a recompense for the part lost. But the parties to a partition as co-parceners may regulate among themselves the extent and limit of their future liability, by the introduction of express covenant to that intent ; and will be considered as holding their separate shares independent of any implied warranties, or other conditions than that they have themselves chosen to express. And where the party covenants for quiet enjoyment and possession against himself and those claiming under him, he excludes the idea of a covenant against all the world. It is obvious that neither party could recover on this covenant for the eviction by a stranger.(I) It would perhaps be well to end this subject by a quotation from the pen of Mr. Venerables a distinguished member of the

(I) 9 Gill 26.

Baltimore bar. "The tendency of modern legislation and decisions has been to enlarge the rights of co-owners amongst themselves and to assimilate joint tenancy and co-parcenary, to tenancy in common. In some of the United States the difference between these three estates was practically abolished, but in Maryland we still have all of them although their points of difference are much fewer than at the common law".

Wm. Payson Knapp