*John Hawkins and William May, Plaintiffs in error, *v.* Joshua Barney's Lessee, Defendant in error.

Constitutional law.—Statutes of limitation.—Evidence in ejectment.

The decision of this court, as to the validity of the law of Kentucky, commonly called the occupying claimants law, does not affect the question of the validity of the law of Kentucky, commonly called the seven years' possession law.

The seventh article of the compact between Virginia and Kentucky declares, "all private rights and interests of lands within the said district (Kentucky), derived from the laws of Virginia, prior to such separation, shall remain valid and secure, under the laws of the proposed state, and shall be determined by the laws now existing in this state (Virginia)." Whatever course of legislation by Kentucky, which would be sanctioned by principles and practice of Virginia, should be regarded as an unaffected compliance with the compact; such are all reasonable quieting statutes.

From as early a date as the year 1705, Virginia has never been without an act of limitation; and no class of laws is more universally sanctioned by the practice of nations, and the consent of mankind, that those laws which give peace and confidence to the actual possessor and tiller of the soil; such laws have frequently passed in review before this court, and occasions have occurred in which they have been particularly noticed, as laws not to be impeached on the ground of violating private rights.

It is impossible to take any reasonable exception to the course of legislation pursued by Kentucky on this subject; she has, in fact, literally complied with the compact, in its most rigid construction; for she adopted the very statute of Virginia, in the first instance, and literally gave her citizens the full benefit of twenty years, to prosecute their suits, before she enacted the law now under consideration. As to the exceptions and provisos and savings in such statutes, they must necessarily be left, in all cases, to the wisdom or discretion of the legislative power.

It is not to be questioned, that laws limiting the time of bringing suits constitute a part of the *lex fori* of every country—the laws for administering justice, one of the most sacred and important of sovereign rights and duties, and a restriction upon which must materially affect both legislative and judicial independence. It can scarcely be supposed, that Kentucky would have consented to accept a limited and crippled sovereignty; nor is it doing justice to Virginia, to believe, that she would have wished to reduce Kentucky to a state of vassalage; yet it would be difficult, if the literal and rigid construction necessary to exclude her from passing the limitation act were adopted, to assign her a position higher than that of a dependent on Virginia.

The limitation act of the state of Kentucky, commonly known by the epithet of the seven years' law, does not violate the compact between the state of Virginia and the state of Kentucky.

Where a patent was issued for a large tract of land, and by subsequent conveyances, the patentee sold small parts of the said land, within the bounds of the original survey; it has been decided by the courts of Kentucky, that the party *offering in evidence a conveyance of the large body, held under the patent containing exeptions of the parts disposed of, is bound, in an action of ejectment, to show that the trespass proved is without the limits of the land sold or excepted.

*458]

Error to the Circuit Court of Kentucky. In the circuit court, the lessee of Joshua Barney brought an ejectment for 50,000 acres of land, in the state of Kentucky, which he claimed under a patent from the commonwealth of Virginia to Philip Barbour, dated the 27th December 1785, and a deed from Barbour to him, dated the 7th of August 1786.

The defendants, William May and John Hawkins, derived their title under a junior grant to William May, for 4000 acres of land; and they proved, on the trial in the circuit court, that John Creemer, who had conveyed part of the land included in the grant to William May, settled on the land in 1790, and that both of the defendants in the ejectment had had possession of the land claimed by them ever since. The defendants introduced and read in evidence, a deed from Joshua Barney to John Oliver, dated the

6th of January 1812, by which the 50,000 acres, conveyed to him by Philip Barbour, were conveyed to John Oliver. The deed contained a recital that he had previously sold and conveyed to John Berryman, 11,000 acres of the land, and other small tracts to Charles Helm, in detached parcels.

The plaintiff then produced and read a deed in evidence, a deed executed by John Oliver and himself, on the 6th of January 1812, in which the former conveyances were recited, and in which it appeared, that the conveyance made by him to John Oliver, on the 6th of January 1812, was to secure the payment of $20,000 within three years, with power to John Oliver to sell the land, or any part of it, if Barney did not repay the sum which had been loaned to him by Oliver; he also produced in evidence, a deed executed by Robert Oliver, on the 21st October 1816, as the attorney in fact of John Oliver, by which the title of John Oliver, to the whole of the land, was released to Barney. This deed also recited the previous conveyances to Berryman and others.

The power of attorney from John Oliver to Robert Oliver was dated at Baltimore, on the 12th of October 1815, and was *as follows: "And further, I do hereby authorize and empower my said attorney to con- [*459 tract and agree for the sale, and to dispose of, as he may think fit, all or any of the messuages, lands, and tenements and hereditaments of and belonging to me, in any parts of the United States, or held by me in trust or otherwise. And to sell, execute and deliver such deeds, conveyances, bargains and sales, for the absolute sale and disposal thereof, or of any part thereof, with such clauses, covenants and agreements, to be therein contained, as my said attorney shall think fit and expedient. Or to lease and let such lands and tenements, for such periods and rents as may by him be deemed proper, and to recover and receive the rents due and to become due therefrom, and to give acquittals and discharges for the same, hereby meaning and intending to give and grant unto my said attorney my full power and whole authority in all cases, without exception or reservation, in which it is or may become my duty to act, whether as executor, administrator, trustee, agent or otherwise."

It was in evidence, that neither John Oliver nor Joshua Barney had ever been within the limits of the state of Kentucky, until within three months before the institution of the ejectment, when Joshua Barney came into the state. It was also proved, that the debt due by Joshua Barney to John Oliver was still unpaid.

On the trial, the circuit court instructed the jury, that the deed to John Oliver, and from Oliver to Barney, did not show such an outstanding title as the defendants could allege; and refused to instruct, generally, that the plaintiff had no right to recover. The court also refused to instruct the jury, that the plaintiff had no right to recover, unless he showed that the 11,000 acres did not cover the defendants' land recited to have been conveyed to Berryman. The court also refused to instruct the jury, that the law was for the defendants, if they found from the evidence, that the defendants had had the land twenty years in possession before the bringing of the suit. The defendants excepted to the opinion of the court, and prosecuted this writ of error.

*The case was argued by *Wickliffe*, for the plaintiffs in error; and [*460 by *Jones*, for the defendant.

For the *plaintiffs* in error, it was contended, that the defendant in error had not exhibited such a title in himself as would entitle him to recover in this action, when taken in connection with the proof introduced by the defendants below. 1. By the deed to John Oliver, he divested himself of the legal title; and the deed by Robert Oliver, the agent, does not re-invest him with that title; the mortgage money not having been paid, the conveyance was unauthorized by the letter of attorney. 2. According to the recitals in the deed of Barney to Oliver, and from Oliver to Barney, Barney had conveyed distinct parcels of the 50,000 acres to Berryman and Helm; and before he was entitled to the verdict and judgment against the defendant, it was incumbent upon him to prove, that Hawkins's possession was not only within the boundary of the 50,000 acres, but that it was without the tracts conveyed to Helm and Berryman.

The plaintiff was not entitled to recover, because the defendant proved an adverse possession, continued for more than twenty years, before the commencement of this action; and his absence from the commonwealth cannot avail him, because of the provisions of the act of the legislature of Kentucky of 1814. If, however, the provisions of the last-recited act are inoperative; that the plaintiff ought not to recover because of the provisions of the act of the legislature of February 9th, 1809; which law inhibits the recovery in this form of action, in a suit commenced after the 1st of January 1816, when the defendant had resided upon the land, claiming to hold under an adverse title in law or equity, for seven years before the commencement of the suit, or action at law.

Mr. Wickliffe argued, that Barney had not shown a right of entry to the 50,000 acres, patented by the commonwealth of Virginia to Philip Barbour. That he had not shown that he was entitled to that part of the land in possession of the plaintiff in error. The conveyance by Barney to John Oliver
*461] was absolute on *its face, and recites the former conveyances of part of the land; but by the instrument which was executed at the same time, that deed became a mortgage; the amount secured to be repaid in three years; the title remained in Oliver. The reconveyance is said to have been made in 1816, by Robert Oliver, as attorney in fact for John Oliver; but it is denied, that the power of attorney authorized that conveyance. The money which was due to John Oliver, was not paid, before the reconveyance by Robert Oliver, as his attorney; and was not, therefore, within the scope and purpose of his powers. It was, therefore, a void deed. A mortgagor cannot maintain ejectment, after the time fixed for the payment of the money, unless he can show that the same was paid. The legal estate is in the mortgagee. 1 A. K. Marsh. 52. The recitals in the deed from Barney to Oliver show, that 11,000 acres of the land had been conveyed to Berryman; and Barney was bound to show that the defendant lived out of the part so conveyed. 3 A. K. Marsh. 20; *Madison* v. *Owens*, 6 Litt. 281; 3 Ibid. 334.

The case shows an adverse possession in the plaintiffs in error for twenty years; and adverse possession under a claim of title from the commonwealth of Kentucky for seven years. The act of the legislature of Kentucky, which protects the possession of the plaintiff in error, does not depend on the same principle with the act of 1812, which has been declared void, as to the provision for occupying claimants, by the court, in the case of *Green* v. *Biddle*.

No advocate for the rights of the state of Virginia, under the compact, ever meant to deny to the state of Kentucky the right to legislate over the land within her territory, so as to quiet possessions, and prevent litigation, for the purpose of sustaining old and dormant titles. The seventh and eighth articles of the compact between Kentucky and Virginia have been supposed to be violated by the limitation law. By that compact, the rights relating to lands were to be determined by the laws of Virginia. The laws of Virginia established limitations of actions, and those of Kentucky are in the same spirit, and on the same principles with the Virginia laws from 1750 or 1760; and the same principles have been maintained and established by the *laws of other states; they are to be found in the legislative enact- [*462
ments of Pennsylvania, of Tennessee, of North Carolina, of Massachusetts, and of other states. The compact was only intended to adopt and secure the general principles of the Virginia land laws, and cannot be construed as a total inhibition to Kentucky to legislate in relation to the lands in the state. 1 Bibb 22. Such has been the uniform construction given to this compact. 1 Litt. 115; 3 Ibid. 330.

The statutes of 1809 and 1813 are only statutes of limitation, and do not impair the obligation of any contract. Such laws may by some be considered unjust; but they are prospective, and affect remedies, without operating on rights. 1 Caines 402; 2 Rand. 305; 5 Johns. 132; 11 Ibid. 168; 1 Call 194, 202; 2 Bibb. 208; 4 Serg. & Rawle 364; 2 Gallis. 141; 4 Bibb 561; 1 Litt. 173; 3 Ibid. 318, 446, 464; 4 Ibid. 313; 5 Ibid. 34; 1 A. K. Marsh. 378; 2 Ibid. 388; 1 T. B. Monr. 164; 2 A. K. Marsh. 133, 318, 319, 615; 4 T. B. Monr. 523, 554.

Jones, for the defendant in error.—The first objection is, that the plaintiff below did not make out a title. That he was a mortgagor, and could not maintain the action, after a forfeiture, without showing payment of the money advanced by John Oliver. But the evidence shows that Barney had ceased to be a mortgagor, before the suit was brought. A mortgagor may maintain a suit against a mortgagee. 19 Johns. 325. The mortgage is a mere security; and a stranger cannot set up an outstanding mortgage. But the power of attorney was sufficient to authorize all that was done under it; and this was subsequently ratified by John Oliver. The power was full to the purposes of a release; and if so extensive, its operation to that effect was all that was required.

Mr. Jones denied, that it was the duty of the plaintiff in the circuit court, to show that the land sold to Berryman was not included in that for which this suit was brought. The authorities upon this point establish the principle, that the defendant must show that fact.

He contended, that the statutes of limitations violated the *con- [*463
tract. The decisions of the state court, upon the validity of the law, are not authority. The construction and meaning of a statute of a state belongs to the tribunals of the state. But questions, which go to the validity of the statute, are subject to the supervision of this court; whether such a law be constitutional, is an inquiry here, by the express words of the judiciary act. The acts of Kentucky make a material distinction between residents and non-residents, excluding the latter entirely from its operation; it requires actual possession, by one claiming title, and the possession of a

tenant is not sufficient. The law of 1814 repeals the law of 1796, and does not affect the savings in the Virginia statutes. It is inquired, whether the act of limitations is consistent with the contract? As a general rule, it has been said, that statutes of limitation relate to the remedy. But this distinction is not sound. There can be no right, without a remedy to secure it. It is not in the power of Kentucky, by any legislation, to take away a right to land which was vested before the compact, except such as is warranted by the laws of Virginia. He denied, that any such warrant existed.

JOHNSON, Justice, delivered the opinion of the court.—This is a writ of error to a judgment of the circuit court of Kentucky, brought to reverse the decision of that court, on a bill of exceptions. The suit was ejectment, by Barney, brought to recover a part of a tract of 50,000 acres of land, in possession of Hawkins, within the limits of his patent. Both parties claimed under Virginia patents, of which Barney's was the eldest. The plaintiff below proved a grant to Barbour, and a conveyance from the patentee to himself. The defendant below proved a grant to one May, a conveyance from May to Creemer, and from Creemer to himself. He then proved, that Creemer entered into possession under May, in 1796, and resided on the land so conveyed to him, until he sold to defendant below; who has had peaceable possession of the premises ever since, until the present suit was
*464] brought, which was May 4th, 1817. *This state of facts brings out the principal question in the cause, which was on the constitutionality of the present limitation act of that state, commonly known by the epithet of the seven years' law. The court charged the jury in favor of Barney, and the verdict was rendered accordingly.

It is now argued, that, by the seventh article of the compact with Virginia, Kentucky was precluded from passing such a law. And that this court has, in fact, established this principle, in their decision against the validity of the occupying claimant laws. I am instructed by the court to say, that such is not their idea of the bearing of that decision. On a subject so often and so ably discussed in this court and elsewhere, and on which the public mind has so long pondered, it would be an useless waste of time to amplify. A very few remarks only will be bestowed upon it. The article reads thus: "All private rights and interests of lands within the said district, derived from the laws of Virginia, prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in this state." Taken in its literal sense, it is not very easy to ascribe to this article any more than a confirmation of present existing rights and interests, as derived under the laws of Virginia. And this, in ordinary cases of transfer of jurisdiction, is exactly what would have taken place, upon a known principle of international and political law, without the protection of such an article. We have an analogous case in the 34th section of the judiciary act of the United States; in which it is enacted, that the laws of the several states shall be rules of decision in the courts of the United States; and which has been uniformly held to be no more than a declaration of what the law would have been without it: to wit, that the *lex loci* must be the governing rule of private right, under whatever jurisdiction private right comes to be examined.

And yet, when considered in relation to the actual subject to which this

article was to be applied, and the peculiar phraseology of it, there will be found no little reason for inquiring, whether it does not mean something more than would be *implied without it? or why it was introduced, if not intended to mean something more? It had an almost anomalous subject to operate upon. I perceive, that in the copy of Littell's laws, which has been sent to our chambers, some one has had the perseverance to go over the legislation of Virginia, relating to the lands of Kentucky, whilst under her jurisdiction, and to mark the various senses to which the word rights has been applied, in the course of her legislation. It is curious, to observe how numerous they are. Her land system was altogether peculiar, and presented so many aspects in which it was necessary to consider it, in order to afford protection to the interests imparted by it, that it might, with much apparent reason, have been supposed to require something more than the general principle, to secure those interests. So much remained yet to be done, to impart to individuals the actual fruition of the sales or bounties of that state, that there must have been, unavoidably, left a wide range for the legislative and judicial action of the newly-created commonwealth. When about then to surrender the care and preservation of rights and interests, so novel and so complex, into other hands, it was not unreasonably supposed by many, that the provisions of the compact of separation were intended to embrace something beyond the general assertion of the principles of international law, in behalf of the persons whose rights were implicated in, or jeoparded by the transfer. Such appears to have been the view in which the majority of this court regarded the subject in the case of *Green* v. *Biddle;* when, upon examining the practical operation of the occupying claimant laws of Kentucky, upon the rights of land-holders, they were thought to be like a disease planted in the vitals of men's estate, and a disease against which no human prudence could have guarded them, or at least no practical prudence, considering the state of the country, and the nature of their interests. And when, again, upon looking through the course of legislation in Virginia, there was found no principle or precedent to support such laws, the court was induced to pass upon them as laws calculated in effect to annihilate the rights secured by the compact, while they avoided an avowed collision with its literal meaning. But in all their *reasoning on the subject, they will be found to acknowledge, that whatever course of legislation could be sanctioned by the principles and practice of Virginia, would be regarded as an unaffected compliance with the compact. [*465 [*466

Such, we conceive, are all reasonable quieting statutes. From as early a date as the year 1705, Virginia has never been without an act of limitation. And no class of laws is more universally sanctioned by the practice of nations, and the consent of mankind, than laws which give peace and confidence to the actual possessor and tiller of the soil. Such laws have frequently passed in review before this court; and occasions have occurred, in which they have been particularly noticed as laws not to be impeached on the ground of violating private right. What right has any one to complain, when a reasonable time has been given him, if he has not been vigilant in asserting his rights? All the reasonable purposes of justices are subserved, if the courts of a state have been left open to the prosecution of suits, for such a time as may reasonably raise a presumption in the occupier of the soil that the fruits of his labor are effectually secured beyond the chance of

litigation. *Interest reipublicæ ut finis sit litium;* and *vigilantibus non dormientibus succurrit lex,* are not among the least favored of the maxims of the law.

It is impossible to take any reasonable exception to the course of legislation pursued by Kentucky on this subject. She has, in fact, literally complied with the compact, in its most rigid construction; for she adopted the very statute of Virginia, in the first instance, and literally gave to her citizens the full benefit of twenty years to prosecute their suits, before she enacted the law now under consideration. As to the exceptions and provisos and savings in such statutes, they must necessarily be left, in all cases, to the wisdom or discretion of the legislative power.

It is not to be questioned, that laws, limiting the time of bringing suit, constitute a part of the *lex fori* of every country; they are laws for administering justice; one of the most sacred and important of sovereign rights and duties; and a restriction upon which must materially affect both legislative and judicial independence. It can scarcely be supposed, that Kentucky would have consented to accept a limited and crippled sovereignty; nor is it doing justice to Virginia, to believe, that she *would have *467] wished to reduce Kentucky to a state of vassalage. Yet it would be difficult, if the literal and rigid construction necessary to exclude her from passing this law were to be adopted; it would be difficult, I say, to assign her a position higher than that of a dependent on Virginia. Let the language of the compact be literally applied, and we have the anomaly presented, of a sovereign state governed by the laws of another sovereign; of one-half the territory of a sovereign state hopelessly and for ever subjected to the laws of another state. Or a motley multiform administration of laws, under which A. would be subject to one class of laws, because holding under a Virginia grant; while B., his next-door neighbor, claiming from Kentucky, would hardly be conscious of living under the same government. If the seventh article of the compact can be construed so as to make the limitation act of Virginia perpetual and unrepealable in Kentucky; then I know not on what principle, the same rule can be precluded from applying to laws of descent, conveyance, devise, dower, curtesy, and in fact every law applicable to real estate.

It is argued, that limitation laws, although belonging to the *lex fori*, and applying immediately to the remedy, yet indirectly they effect a complete divesture and even transfer of right. This is unquestionably true, and yet in no wise fatal to the validity of this law. The right to appropriate a derelict is one of universal law, well known to the civil law, the common law, and to all law; it existed in a state of nature, and is only modified by society, according to the discretion of each community. What is the evidence of an individual having abandoned his rights or property? It is clear, that the subject is one over which every community is at liberty to make a rule for itself; and if the state of Kentucky has established the rule of seven years' negligence to pursue a remedy, there can be but one question made upon the right to do so: which is, whether, after abstaining from the exercise of this right for twenty years, it is possible now to impute to her the want of good faith in the execution of this compact.

Virginia has always exercised an analogous right, not only in the form of an act of limitation, but in requiring actual seating and cultivation. In

the early settlement of the country, the man who *received a grant of land and failed, at first, in three, and afterwards, in five years, to seat and improve it, was held to have abandoned it; it received the denomination of lapsed land, was declared to be forfeited (Mercer's Abr.), and any one might take out a grant for it. The last member of the eighth article of this compact, distinctly recognises the existence of the power in Kentucky to pass similar laws; notwithstanding the restrictions of the seventh article, and also the probability of her resorting to the policy of such laws. It restricts her from passing them for six years; and what is remarkable, the protection of this restriction is expressly confined to the citizens of the two states; leaving the plaintiff below, and all others, not citizens of Virginia, to an uncontrolled exercise of such a power. Forfeiture is the word used in the old laws, and forfeiture is that used in the compact, and the term is correctly applied; since it supposes a revesting in the commonwealth: and it is remarkable, how scrupulously Kentucky has adhered to the Virginian principle in her seven years' law, since the benefit of it is confined to such only as claim under a grant from the commonwealth; thus literally applying the Virginian principle, of a revesting in the commonwealth and a regranting to the individual.

Upon the whole, we are unanimously of opinion, that the court below charged the jury incorrectly on this point; and if it stood alone in the cause, the judgment would be reversed. But as it must go back, there are two other points raised in the bill of exceptions which it is necessary to consider here.

The one is upon the sufficiency of the power of attorney executed by John to Robert Oliver, and under which the latter executed a deed to Barney, to revest in him the fee-simple of the land. Upon looking into that instrument, we are satisfied, that although not professional in its style and form, it contains sufficient words to support the deed; and there was no error in the decision of the court as to this point.

The other question is one of more difficulty. Upon the face of the deed from Barney to Oliver, and the reconveyance from Oliver to Barney, there are recited several conveyances of parcels of the tract granted to Barbour, to several individuals, and particularly of one of 11,000 acres to one Berryman. The case on which the instruction was prayed makes out that Barney proved Hawkins to have trespassed within the limits of *the 50,000 acres; but it was insisted, that he ought also to have proved the [*469 trespass to be without the limits of the tract shown to have been conveyed away by himself. On the other side, it was insisted, that the *onus* lay on Hawkins, to prove that his trespass was within the limits of one of those tracts, and the court charged in favor of Barney. This we conceive to be no longer an open question; it has been solemnly decided, in a series of cases in Kentucky, that the party, offering in evidence a conveyance containing such exceptions, is bound to show that the trespass proved is without the limits of the land so sold or excepted. 3 A. K. Marsh. 20; 6 Litt. 281; 1 T. B. Monr. 142. The only doubt in this case was, as to which of the two parties this rule applies, since both, and Hawkins first in order, produced in evidence a deed containg the exceptions. But, whether by the exceptions, or by the deed, Hawkins's purpose was answered, if he proved the whole land out of Barney. Not so with Barney; for in the act of proving the re-investment

of the estate in himself, he proved it to be with the exceptions mentioned, and therefore, the rule unquestionably applied to him. From these observations, it results, that the court below erred in refusing to instruct the jury according to the prayer of Hawkins; to wit, "that if they believed the evidence, the plaintiff, Barney, had no right of entry when this suit was instituted, and that unless he showed that the 11,000 acres recited to be conveyed to Berryman by Barney did not cover the land in question, he was not entitled to recover in that suit." The judgment is reversed, and the cause remanded for a *venire facias de novo*.

Judgment reversed.

---

*470] *Josiah Lewis, Frances Lewis and William Rawle, Executors and Executrix of William Lewis, deceased, and the said Josiah Lewis, Margaret and Louisa Agaid, and Lewis H. Conover, heirs, &c., of said Lewis, and Richard Willing, Eliza M. Willing, Thomas Willing and George C. Willing, heirs, &c., of Charles Willing, deceased, Appellants, *v.* Humphrey Marshall, Jacob Feebeck, Henry Richey, John Fowler and others, Appellees.

Parties.—Statute of limitations.—Evidence of death.

By a statute of Kentucky, passed in 1796, several defendants, who claim separate tracts of land, from distinct sources of title, may be joined in the same suit.

The statute of limitations of Kentucky, under which adverse possession of land may be set up, prescribes the limitation of twenty years within which suit must be brought; and provides, "that if any person or persons entitled to such writ or writs, or title of entry, shall be, or were, under the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, or not within the commonwealth, at the time such right accrued or came to them, every such person, his or her heirs, shall and may, notwithstanding the said twenty years are or shall be expired, bring or maintain his action, or make his entry, within ten years next after such disabilities removed, or death of the person so disabled, and not afterwards."

The entries on the register of burials of Christ's Church, St. Peter's and St. James's, in Philadelphia, and the entries of the death of the members of the family, in a family Bible, are evidence, in an action for the recovery of land in Kentucky, to prove the period of the decease of the person named therein.[1]

The statute of limitations of Kentucky is a bar to the claims of an heir to a non-resident patentee, holding under a grant from the state of Kentucky, founded on warrants issued out of the land-office of Virginia, prior to the separation of Kentucky from Virginia, if possession has been taken in the lifetime of the patentee. Had the land descended to the heirs, before a cause of action existed, by an adverse possession, the statute could not operate against them, until they came within the state; if adverse possession commenced prior to the decease of the non-resident patentee, his heirs are limited to ten years from the time of the decease of their ancestor, for the assertion of their claim.

That a statute of limitations may be set up in defence, in equity, as well as at law, is a principle well settled.[2]

Statutes of limitations have been emphatically and justly denominated statutes of repose; the best interests of society require that causes of action should not be deferred an unreasonable time. This remark is peculiarly applicable to land titles; nothing so much retards the growth and prosperity of a country as insecurity of titles to real estate; labor is paralysed, when the enjoyment of its fruits is uncertain; and litigation without limit produces ruinous consequences to the individuals. The legislature of Kentucky have, therefore, wisely provided, that unless

---

[1] See Hyam *v.* Edwards, 1 Dall. 2; Kingston *v.* Lesley, 10 S. & R. 383.

[2] Peyton *v.* Stith, *post*, p. 485.