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.

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*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

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

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

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suits for the recovery of land shall be brought within a limited period, they shall be barred by an adverse possession.[1]

Lewis *v.* Marshall, 1 McLean 16, reversed, in part.

*Appeal from the Circuit Conrt of Kentucky. The appellants claimed, in their bill, under the heirs of Charles Willing, deceased, a [*471 tract of land, in the state of Kentucky, by virtue of certain entries made in the lifetime of Charles Willing, with the proper surveyor, on the 27th of December 1783, and amended on the 11th and 12th of March 1784; and carried into grant by virtue of legal and valid surveys. This entry was averred to be good and valid. The patent was dated thirty years before the filing of the bill.

The bill stated, that Thomas Barbour had, by and under a void entry, obtained a legal title, elder in date, to the title held by Charles Willing, to a large portion of the land included in the patent to Charles Willing, and that the defendants had become vested with the title to the whole or parts of the land patented to Barbour, and were in possession of the same. It prayed, that those who held the said land under the elder legal title of Barbour might be decreed to convey the same to them; and for general relief.

The defendants, in their answer, resisted the equity asserted by the complainants, and asserted, that the entries of Charles Willing were void. They set up, in addition to the entry of Barbour, other claims and entries, under which they, other than Marshall and Fowler, originally settled and held. The validity of all those entries was denied by the complainants. These defendants relied upon twenty years' adverse possession, prior to the commencement of the suit.

Humphrey Marshall resisted the equity claimed in the bill, and asserted in himself a previously-acquired title to 12,313 acres, part of the land in contest, under an entry in the name of Isaac Halbert. That he afterwards acquired from John Fowler an interest in Barbour's patent, exhibiting evidence of this asserted title. He stated, that for a valuable consideration, he had sold and conveyed, under Barbour's title, certain portions of land to his co-defendants; and exhibited the deeds showing the extent of the same, and of the possession of each under the claim of Barbour. That these defendants were found by him in possession, under claims adverse to Barbour's, and he compromised with them, and gave them conveyances.

*Thomas Barbour, on the 23d of September 1804, conveyed the [*472 4530 acres, patented by him to John Fowler. In 1813, Halbert conveyed his title to H. Marshall. Neither Fowler nor Marshall, at these dates, was in possession of any part of the land, under either title, nor had either of them ever been in possession of any part of the interference. In 1819, Marshall and Fowler entered into a contract, by which Marshall was authorized to sell and convey to persons in possession, the title of Barbour.

In support of the heirship of the complainants, as the heirs of Charles Willing, the patentee, a deposition of William Jackson was taken, who deposed that he was acquainted with Charles Willing, late of Pennsylvania, and that he died in 1798; that Thomas Willing, Richard Willing, Elizabeth Willing and George C. Willing, were his only children and heirs. Also,

[1] Leffingwell *v.* Warren, 2 Black 606.

the deposition of A. G. Bird, the clerk of Christ's Church, in Philadelphia; who swore that he had the register book of burials of said church, and copied from said book an entry which was authenticated, and read as follows: "Burial in Christ's church-yard, 23d March 1788, Charles Willing."

Richard Willing, of the city of Philadelphia, deposed, that he had the family bible of his father, Thomas Willing, who, he swore, was very particular in entering the names of the births, marriages and deaths of his, the said Thomas's, brothers and sisters; and that in said bible was the following entry of record: "Charles Willing, son of Charles and Ann Willing, died at Coventry farm, the 23d March 1788, and was interred in Christ's church-yard."

The circuit court dismissed the bill, principally, on the ground that the statute of limitations of the state of Kentucky, as applied to courts of equity, barred the claim of the complainants. The complainants appealed to this court.

The case was argued by *Wickliffe*, for the appellants; and by *Clarke*, for the appellees.

For the *appellants*, it was contended, that the circuit court erred in dismissing the bill; as, if Fowler had parted with his interest in the land to Humphrey Marshall, then a decree should *have gone against all the *473] defendants, and particularly Humphrey Marshall, as time did not operate against the complainant, as to his title, he never having been in the possession of any part of the land. That the statute did not operate against the complainant's title, as to the defendants in possession, until they acquired the title of Barbour; because, until that title was vested in them, there was, in equity, no cause of action against them, as to the complainants in this cause. If the proof in this cause establish the fact that Charles Willing died in 1788, then the complainants are within the saving of the act of 1796, if that act be construed as is contended for, and was decided in the court below.

For the *defendants*, it was argued, that the possession of the defendants was clearly proved to have taken place in 1795, before the death of Charles Willing, who held at the time the title now set up by his heirs, he having died in 1798. The statute of limitations began to run against the complainants, and their ancestors, the time the defendants' possession commenced. He and his heirs had ten years, by special proviso, to institute suit; but failing to do it, were barred; the rule being the same in equity as law. Being non-residents, the law cast on them the privilege of ten years thereafter, within which to institute suit; they failed to do so. But in 1822, they filed their bill. Not only the ten years from the death of their ancestor were gone, but more than twenty years from the time of taking possession by defendants had elapsed. The consequence was, a total loss of the right of action, both at law and in chancery.

McLean, Justice, delivered the opinion of the court.—This suit in chancery was brought into this court by an appeal from the decree of the circuit court of Kentucky. In their bill, the complainants charge, that Charles Willing, under whom they claim, in his lifetime, made an entry with the proper surveyor, on the 27th of December 1783, and amended the same on

the 11th and 12th of March 1784, for 32,000 acres of land, on certain treasury-warrants, beginning 1280 poles south-west of the Lower Blue Licks, &c.; which entry *is alleged to be valid, and was carried into grant, after a legal survey had been made. The bill further states, that [*474 Thomas Barbour had, by virtue of a void entry, obtained the legal title, elder in date than the patent to Willing, for a part of the land covered by Willing's entry, survey and patent; and that the defendants are in possession of the land, and claim title to it under Barbour's patent and other claims. A release of their title is prayed, &c.

The defendants in their answer insist, that Willing's entry is void; and other claims than Barbour's are asserted, under which the defendants, except Marshall and Fowler, originally settled. Marshall sets up a title in himself, of elder date, under an entry in the name of Isaac Halbert, for 12,313 acres. That he afterwards purchased an interest in Barbour's patent from Fowler, and conveyed to his co-defendants. These deeds were executed several years before the commencement of this suit. The entries under which the defendants claim are, some, if not all, of prior date to Willing's; but their validity is contested by the complainants. In defence, an adverse possession of twenty years before the commencement of this suit, is relied on.

By the pleadings, the validity of the complainants' entry is involved, and also those under which the defendants claim. If Willing's entry should be held good, it might then be important to examine into the validity of the defendants' entry, which are of prior date. But if Willing's entry should be held bad, there would be an end to the controversy; as Barbour's patent, under which the defendants claim, is older than Willing's. If the title by adverse possession shall be sustained, as to all the defendants, no inquiry need be made into the validity of the respective entries.

No exception is taken to joining several defendants in the same suit, who claim separate tracts of land, from distinct sources of title. This is allowed by a statute of Kentucky, passed in 1796, which was designed to lessen the expense of litigation.

The statute under which the adverse possession is 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, [*475 or such title of entry, as aforesaid, 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 or title accrued or coming 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." It is not pretended, that the ancestor of the complainants was ever within the state of Kentucky, after possession of the land in controversy was taken by any of the defendants; consequently, had he lived and prosecuted his action, the statute could not bar his recovery. But his representatives, in asserting their right, must bring themselves within the limitation of ten years from the time of his decease, if the adverse possession were taken prior to that period. It is, therefore, important to ascertain the time of Charles Willing's death.

To prove this, the following extract from the register book of burials in Christ's Church, St. Peter's and St. James's, in Philadelphia, is read as

evidence: "Burial in Christ's church-yard, March 23d, 1788, Charles Willing."—Signed, Albert G. Bird, clerk; and duly certified by the bishop, &c. The clerk testifies, that the extract is truly copied from the original register-book of burials. Richard Willing, a witness, also states, that he is in possession of a family bible, kept by his deceased father, Thomas Willing, Esquire, who was very particular in making entries of the births, marriages and deaths of all his brothers and sisters and their children, and that the following entry is found in the book, in the handwriting of his father: "Charles Willing, son of Charles and Ann Willing, died at Coventry farm, the 23d March 1788, and was interred in Christ's church-yard." William Jackson, of Philadelphia, being sworn, states, that he was acquainted with Charles Willing, late of the state of Pennsylvania; and that he died sometime in the year 1798; leaving by his first wife, Thomas Willing, Richard
*476] Willing and *Eliza M. Willing, and by his second wife, George C. Willing, his only children and heirs-at-law.

If the ancestor of the complainants died in 1788, it is admitted, that the adverse possession cannot bar the recovery; as possession was not taken by any of the defendants, until after that period.

The entries in the register of burials, and in the family bible, are admissible evidence, in a case like the present; and if there were no other proof of the death of Charles Willing, the ancestor of the complainants, they might be considered as showing his death in 1788. But the deposition of Jackson, who was acquainted with Charles Willing, shows that he died in 1798; and he is identified as the ancestor, by the names of his children, stated by the witness. This statement is not contradictory to the entry in the register, or in the family bible. There must have been two persons named Charles Willing, who died at the periods stated; but the latter was the person in whose name the title set up by the complainants originated.

To bring the defence within the statute of limititations, it must appear, that possession of the land was taken by the defendants in the lifetime of Charles Willing. Had the land descended to his heirs, before a cause of action existed, by an adverse possession, the statute could not operate against them, until they came within the state. But it appears in this case, that the adverse possession commenced prior to the decease of Willing; and consequently, his heirs were limited to ten years from that time, for the operation of their claim. This was not done.

By the testimony, an adverse possession by the defendants and those under whom they claim, except Marshall, for more than twenty years before the commencement of this suit, is clearly shown. John Fowler, one of the defendants, though served with process, did not answer the bill; and no decree *pro confesso* was taken against him, in the circuit court. Humphrey Marshall, another defendant, who answered the bill, sets up adverse possession specifically in himself. It appears from his answer, that he conveyed, long before the commencement of the suit, to his co-defendants.
*477] He *conveyed to them, by deeds in fee simple, "with covenants to refund the purchase-money, in case of loss by any adverse claims;" which gives to him, as he alleges in his answer, a right to defend in his suit.

That a statute of limitations may be set up in defence in equity, as well as at law, is a principle well settled. It is not controverted by the counsel for the complainants. But he insists, that the statute did not operate against

the complainants' title, as to the defendants in possession, until they acquired Barbour's title. The defendants entered under titles adverse to that claimed by the complainants. It is not, in this view, a question whether these titles were paramount to the complainants, in equity or at law. They were adverse, and within the provisions of the statute; and if the limitation had run, before the commencement of this suit, the right of entry was tolled, and no relief can be given in chancery.

Whatever may have been the state of the title, as it regards the defendants, it is difficult to conceive, how the complainants could have a right which they were unable to enforce. If the elder patent vested in Barbour the legal title, and might have been set up by the defendants, before they claimed under it, to defeat an action of ejectment brought by the complainants; they might have sought relief in a court of chancery. Their entry was made prior to the emanation of Barbour's grant; consequently, they had the right to contest the validity of his entry.

The limitation act of 1809, which requires suit to be brought within seven years after an adverse possession commences, under a connected title, in law or equity, from the commonwealth, would protect the possession of the defendants. The facts of the case bring them within the provisions of this act; but it has not been set up in the answers, nor relied on in the argument.

Statutes of limitation 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 *paralyzed, where the enjoyment of its fruits is uncertain; and litigation without limit produces ruinous consequences to individuals. [*478
The legislature of Kentucky have, therefore, wisely provided, that unless suits for the recovery of land shall be brought within a limited period, they shall be barred by an adverse possession.

The court are of the opinion, that the defendants, except Marshall, having brought themselves within the provisions of the act of 1796, in showing an adverse possession of more than twenty years, before the commencement of this suit, have sustained their defence, and consequently, that the bill of the complainants, as to them, must be dismissed.

As the extent of the interference of Marshall's claim, under the patents of Barbour, and Halbert and others, with Willing's entry, does not appear from the proof in the cause, and as such proof is essential, to enable the court to determine on the respective rights of the parties; the cause may be certified to the court below, as to him, for further proceedings.

Fowler, one of the defendants, has not answered the bill; the merits of his claim cannot now be investigated. The cause, as to him also, may be sent down for further proceedings.

This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Kentucky, and was argued by counsel: On consideration whereof, it is ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be and the same is hereby affirmed, as to all the respondents and appellees,

except Humphrey Marshall and Fowler; and as to him, the said Marshall, it is adjudged and decreed by this court, that the decree of the said circuit court be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said circuit court, for further proceedings to be had therein, as to the said Humphrey Marshall, according to law and justice, and in conformity to the opinion and decree of this court; and it is further adjudged and decreed by this court, that this cause be and the same is hereby remanded to the said circuit court for further proceedings to be had therein, as to the said defendant Fowler, who did not answer the bill, and against whom there was no decree.

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*479] *The Bank of the United States, Plaintiff in error, *v.* George B. Martin, Defendant in error.

Jurisdiction.

The district court of the United States for the state of Alabama has not jurisdiction of suits instituted by the Bank of the United States; this jurisdiction is not given in the act of congress establishing that court, nor is it conferred by the act incorporating the Bank of the United States.

Error to the District Court of Alabama.

Webster stated, that on inspecting the record of the proceedings in the court below, he was satisfied, the district court of Alabama had not jurisdiction of suits instituted by the Bank of the United States. It has already been decided, that the courts of the United States have jurisdiction in suits brought by the bank, only by virtue of the special provision in the charter; and the right of the bank to sue in the district court of Alabama is not given by the act incorporating the bank. He referred to the tenth section of the act of congress of September 1789: and to the act of the 21st of April 1820, constituting the courts of Louisiana. *Bank of United States* v. *Deveaux*, 6 Cranch 61.

Marshall, Ch. J., delivered the opinion of the court.—This is a writ of error to a judgment rendered in the court of the United States for the district of Alabama, dismissing a suit brought by the Bank of the United States, in that court, for want of jurisdiction. Consequently, the jurisdiction of that court presents the only question to be considered.

The act, which establishes a district court in the state of Alabama, declares, that the judge thereof "shall in all things have and exercise the same jurisdiction and powers which were by law given to the judge of the Kentucky district, under an act entitled, 'an act to establish the judicial courts of the United States,' and an act entitled, 'an act in addition to the act entitled an act to establish the judicial courts of the United States,'" approved the 2d of March 1793. The 10th section of the judiciary act pro-
*480] vides, "that the *district court in Kentucky shall, besides the jurisdiction aforesaid, have jurisdiction of all other causes, except appeals and writs of error hereinafter made cognisable in a circuit court, and shall proceed therein in the same manner as a circuit court." The 11th section of the same act describes the jurisdiction of the circuit court. A bank of the United States did not then exist; and it was determined by this court