sumed the very property she urges the creditors should resort to before calling on her. And though she is an heir of Edward McLaughlin, the proceeding here is against her, not as heir, but as surety to a defaulting administrator of the personal estate, and as fraudulent grantee of the real estate.

Their is no heir to this land, claiming it as heir, in any part of these proceedings, but a grantee of it, claiming by a deed, and which, if fraudulent, still entitles the grantee to hold it as grantee against the heirs of the grantor, of whom there is one other not here, and places the heirs as such entirely out of the case,—*hors de combat.*

*234] *As no other question arises on the appeal which is material and has not been arranged in submitting to a sale of the trust property, it is only necessary to add that the judgment below must be affirmed.

Mr. Justice McKINLEY dissented.

ORDER.

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 Columbia, holden in and for the county of Alexandria, and was argued by counsel. On consideration whereof, it is now here ordered and decreed by this court that the decree of the said Circuit Court in this cause be and the same is hereby affirmed, with costs.

PETER K. WAGNER, AND SIDONIA PIERCE WAGNER, HIS WIFE, JOHN LAWSON LEWIS, LOUISA MARIA LEWIS, THEODORE LEWIS, ELIZA CORNELIA LEWIS, ALFRED J. LEWIS, JOHN HAMPDEN LEWIS, ALGERNON SIDNEY LEWIS, GEORGE WASHINGTON LEWIS, AND BENJAMIN FRANKLIN LEWIS, ALL RESIDENTS AND CITIZENS OF THE CITY OF NEW ORLEANS AND STATE OF LOUISIANA, AND JOHN BOWMAN, AND MARY PIERCE BOWMAN, HIS WIFE, LATE MARY PIERCE LAWSON, RESIDENTS AND CITIZENS OF THE STATE OF TENNESSEE, AND GEORGE C. THOMPSON, A RESIDENT AND CITIZEN OF THE STATE OF KENTUCKY, COMPLAINANTS AND APPELLANTS, *v.* JOHN BAIRD AND OTHERS, RESPONDENTS.

There is a defence peculiar to courts of equity founded on lapse of time and the staleness of the claim, where no statute of limitations directly governs the case. In such cases the court often act upon their own inherent doc-

trine of discouraging, for the peace of society, antiquated demands, by refusing to interfere where there has been gross laches in prosecuting rights, or long acquiescence in the assertion of adverse rights.

The rule upon this subject, originally laid down by Lord Camden, in *Smith* v. *Clay*, 3 Bro. Ch., p. 640, note, and adopted by this court in 1 How., 189, again asserted.[1]

Long acquiescence and laches by parties out of possession are productive of much hardship and injustice to others, and cannot be excused but by showing some actual hindrance or impediment caused by the fraud or concealment of the party in possession, which will appeal to the conscience of the chancellor.[2]

The party guilty of such laches cannot screen his title from the just imputation of staleness, merely by the allegation of an imaginary impediment or technical disability.

The facts in this case bring it within the operation of the above principles, and the bill must, therefore, be dismissed.

THIS was an appeal from the Circuit Court of the United States for the District of Ohio, sitting as a court of equity.

*The case, as set forth by the complainants, is contained in the following extract from the brief of Mr. Ewing, one of their solicitors. [*235

The bill, which was filed on the 18th day of November, 1840, charges, that on or about the 21st of November, 1783, Brigadier-General Robert Lawson obtained of the State of Virginia a military land-warrant, No. 1,921, for 10,000 acres of land due him for military services in the Revolutionary war, in the Virginia line on Continental establishment.

That prior to the 12th of January, 1788, said warrant was lodged in the office of Richard C. Anderson, then principal surveyor of the Virginia military lands, and that prior to the 4th of June, 1794, divers entries had been made on said warrant, to wit: entries Nos. 1,704, 1,705, 1,706, 1,707, 1,714, 1,715, 1,716, 1,717, 1,718, and 1,719, of 1,000 acres each; and that Nos. 1,704, 1,705, and 1,706 had been withdrawn and reëntered, so as to leave Nos. 1,707 and 1,714 the first subsisting entries made for the said Robert Lawson on the surveyor's books.

That on the 4th day of June, 1794, the said Robert Lawson, by deed of indenture of three parts, between him, the said Robert Lawson, of the first part, his wife Sarah Lawson, of the second part, and James Speed, George Thompson, Joseph Crocket, and George Nicholas, of the third part, for the consideration therein expressed, conveyed to the said Thompson, Crocket, and Nicholas, for the uses and purposes therein specified, 2,000 acres of land, described as situate on White Oak Creek, on the northwest

[1] See note to *Bowman* v. *Wathen*, 1 How., 189.

[2] FOLLOWED. *Landsale* v. *Smith*, 16 Otto, 392.

side of the Ohio River, being the land mentioned in the first entry made for said Robert on the surveyor's books; which said 2,000 acres of land is averred to be the land embraced, not in a single entry, but in entries Nos. 1,707 and 1,714, made January 12th and February 11th, 1788.

That the said Robert Lawson, by the same deed, conveyed to the said trustees five other tracts of land of 1,000 acres each, described as being the last entries made on said warrant in the name of said Robert Lawson; which, it is averred, embrace the land contained in entries Nos. 1,718 and 1,719, made the 11th of February, 1788; entry No. 1,704, made February 11th, 1793; and entries Nos. 1,705 and 1,706, made the 21st of January, 1793.

Complainants file a certified copy of said deed, aver that the same was duly recorded in Fayette county, Kentucky, and on the 26th of February, 1798, a certified copy, from the records in Fayette county, Kentucky, was recorded in the recorder's office of Hamilton county, in the Northwestern Territory, in which county the lands in controversy lay. The original deed of trust is lost; due search has been made for it, and the *complainants verily believe that the original was consumed by fire in the recorder's office in Kentucky.

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That on the 16th of August, 1796, John O'Bannon procured of Lawson an assignment of 3,333⅓ acres of said warrant. That Lawson, at the time he made this assignment, was habitually intemperate, and mentally incapable of transacting business. O'Bannon well knew this,—knew of the deed of trust,—and procured the assignment by fraud, and on the false pretences that he was the locator of the whole tract of 10,000 acres.

That afterwards, on the 25th of August, 1796, O'Bannon, knowing that entry No. 1,707 had been conveyed to the trustees aforesaid, fraudulently withdrew so much of said warrant 1,921 as was entered in said No. 1,707, and caused the same to be entered on the lands in controversy; and, on the 29th of August, 1796, surveyed the same, and returned the plat to the surveyor-general's office.

That prior to the 12th of February, 1799, O'Bannon applied for a patent in his own name for said survey; and that on said day the trustees, in the deed of trust aforesaid, by Joshua Lewis, their agent, filed a caveat against the issuing of patents to the assignees on said warrant 1,921, and with it a copy of the deed of trust.

That O'Bannon continued to urge the department to issue patents on his claims under said assignment; which was for

a long time postponed, and, on the 9th of May, 1811, refused or suspended, because said assignment was in violation of the deed of trust aforesaid. That said deed of trust, among other things, directed the trustees aforesaid to convey the 2,000 acres of land first above mentioned to either of the sons of said Robert and Sarah Lawson that the said Sarah might direct, unless it should be necessary to dispose of the same for the use of the family; that the last-named 5,000 acres should be conveyed, 1,000 to America Lawson, 2,000 to John P. Lawson, and 2,000 to Columbus Lawson.

That the said Sarah did not, in her lifetime, direct the conveyance of the said 2,000 acres; and the said trustees did not convey the same, nor any part of the 5,000 acres. That all the trustees are dead, and that the last survivor of them, George Thompson, died on the 22d of March, 1834, leaving the complainant George C. Thompson his only child and heir at law.

That America Lawson intermarried with Joshua Lewis, December 23d, 1797. General Lawson died March 1, 1805, leaving three children, John Pierce Lawson, America Lewis, and Columbus Lawson, his heirs at law. That on the 10th of *June, 1809, said Sarah Lawson died. That on the 7th of January, 1807, John Pierce Lawson conveyed [*237 to Joshua Lewis all his interest in said lands. That on the 1st of June, 1809, John P. Lawson died, leaving Mary P. Lawson, now Mary P. Bowman, his only child and heir at law, who intermarried with complainant John Bowman. That on the 8th of January, 1815, Columbus Lawson died unmarried and intestate, leaving said America Lewis and Mary P. Bowman his heirs at law.

That about the 1st of January, 1813, John O'Bannon died, leaving Robert Alexander and George T. Cotton executors of his last will and testament. That Cotton, who qualified, applied to the General Land Office for a patent on survey No. 1,707, of 965 acres, as executor of said O'Bannon, but the patent was withheld, and the record thereof cancelled.

That, about the 21st of December, 1816, the said Cotton deposited in the General Land Office a paper, purporting to be a certificate of, and signed by, Robert Lawson, dated the 27th of November, 1802, and purporting to be witnessed by J. Bootwright and C. McCallister. Said certificate was false and forged; but by means thereof the patent was procured to be issued.

That Cotton died testate; complainants exhibit a copy of the will of O'Bannon, and of Cotton. The devisees of said John O'Bannon and George T. Cotton are not residents of

the district of Ohio; prays process of subpœna against them, or such of them as may be found in the said district; and that they, and such others as will voluntarily appear, be made defendants.

That on the 1st of October, 1830, America Lewis died; on the 20th of June, 1833, Joshua Lewis died, and left complainants their only surviving children and heirs at law. Aver that the remaining 3,000 acres of land, of warrant 1,921, not included in the deed of trust, vested in them as heirs of Robert Lawson, through America Lewis.

That America Lawson, afterwards Lewis, was under the disability of infancy or coverture during her whole natural life; and that at the time of issuing the patent to George T. Cotton, and from that time till her death, she was under the disability of coverture. That Columbus Lawson was an infant at the time of the death of his brother, John P. Lawson, and that he was killed at the battle of New Orleans, on the 8th of January, 1815; and that neither of the trustees in the deed of trust, nor either of the persons under whom complainants claim title, was ever resident in the State of Ohio.

That John Baird, James W. Campbell, Thomas Jennings, Isaac E. Day, Duncan Evans, William King, Victor King, Absalom King, William More, and Christian Snedecher, *238] (who are *made defendants,) are in possession of, and claim to have derived title to, portions to said tract No. 1,707, of 965 acres, mediately or immediately from George T. Cotton, executor of John O'Bannon, deceased. Call upon defendants to exhibit their title. Aver that they had full notice of the title of complainants and the fraud of O'Bannon; pray subpœna, &c.

An affidavit of search for the deed of trust, and belief that it is lost or consumed, is attached to the amended bill.

The defendants, terre-tenants, severally plead that they are *bonâ fide* purchasers, without notice of complainants' title. They answer jointly, putting in issue the material allegations of the bill; set forth specifically their own derivation of title; aver that the claim of complainants is stale, and that a part of the persons named as trustees have been in the State of Ohio since the execution of the deed of trust, and before the issuing of the patent. That the caveat was filed by Joshua Lewis without authority from the trustees, and that the patent was wrongfully suspended at the General Land Office. They refer to the certificate of Lawson, November 27th, 1802; the affidavit of James Speed, November 20th,

1803; and the certificate of James Morrisson, December 9th, 1816.

To these answers there is a replication.

The above statement of the case is taken, as was before remarked, from the brief of Mr. Ewing, and presents it in as strong a point of view, for the complainants and appellants, as can be given to it.

In the progress of the cause in the court below, a great mass of evidence was taken, and many exhibits were filed, which it is unnecessary to set forth.

In December, 1842, the Circuit Court dismissed the bill, with costs, an appeal from which decree brought it up to this court.

It was argued at the preceding term, by *Mr. Ewing* and *Mr. Scott* (in a printed argument), for the appellants, and *Mr. Stanberry*, for the appellees.

It is unnecessary to give any of the arguments of counsel, except upon the point of lapse of time, as the decision of the court turned upon that point.

Mr. Ewing, for the appellants.

And lastly, the defendants rely on the lapse of time.

The statute of limitations of Ohio, January 25th, 1810, bears directly upon this case. 1 Chase, 656, § 2. By the second section of this statute, all actions or suits for the recovery of possession, title, or claims to land are barred in twenty-one years; with a proviso, in these words:—"That if any person *or persons who are, or shall be, entitled [*239 to have, sue, or bring any suits, action or actions, as aforesaid, shall be within the age of twenty-one years, insane, feme covert, imprisoned, or beyond sea at the time when any such suit, action or actions, may or shall have accrued, then every such person or persons shall have a right to have, sue, or bring any action or actions aforesaid within the time hereby before limited in this act after such disability shall have been removed."

Unlike this, the statute of 21 James 1, c. 16, (4 British Stat., 751,) enumerates several forms of real actions, and bars or saves them; and there is nothing which can, in general terms, include a case in equity.

But we here come within the direct operation of the statute, and also within the direct action of the proviso. The law gives us twenty-one years, after disability removed, to bring this suit. It is subject to no discretion; we have a right to it.

And so are the decisions. *Larrowe* v. *Beam*, 10 Ohio, 502;

Tuttle v. *Wilson*, Id., 25; *Fales* v. *Taylor*, Id., 107; *Elmendorf* v. *Taylor*, 10 Wheat., 168–177; *Carey* v. *Robinson*, 13 Ohio, 181; *Lockwood* v. *Wildman*, Id., 452; *Ludlow* v. *Cooper*, Id., 582, foot of page.

The complainants are within the saving in the proviso. The trustees all resided out of the State until the death of Thompson, March 22, 1834. All of the *cestuis que trust* were absent from the State until their deaths. America Lewis died in 1830; Joshua Lewis, 1833.

In this state of things, there is no principle of equity which warrants the court in holding the complainants barred by time, until time would constitute a bar by the direct application of the statute of limitations.

Mr. Scott, on the same side.

The defendants cannot successfully repel the claim, here asserted by the complainants, on the ground assumed, that these claims are barred by the statute of limitations, which took effect June 1st, 1810 (see Ch. 18, Vol. VIII., p. 63). That statute does not commence running against land claims in this district until patent emanates. (See *Lessee of Wallace* v. *Miner*, 6 Ohio, 366, and 7 Id., 249.) The words "beyond sea," in the statute, are construed to mean out of the State. (*Richardson* v. *Richardson*, 6 Ohio, 125; *Wirt* v. *Homer*, 7 Ohio, 235; *Whitney* v. *Webb*, 10 Ohio, 513.) When the action accrued under the act of 1810, it is not barred by the subsequent act. (*Putnam* v. *Reese*, 12 Ohio, 21.)

The right of action in those under whom the complainants have derived title accrued, under the act of 1810, in *December, 1816, when the patent to Cotton was obtained; but as they were, and continued to be, non-residents, the statute of limitations never commenced running, against the claims now asserted by the complainants, until 1830, on the death of their mother, America Lewis, and in 1833, on the death of their father, Joshua Lewis. The statute commenced running against three sixth-parts of the lands now claimed in the bill on the death of Mrs. Lewis; and as respects two sixth-parts thereof, it commenced running on the death of Mr. Lewis. But the statute has never commenced running against the remaining sixth part, which is claimed by Mrs. Bowman. After the statute begins to run, it requires twenty-one years to complete the bar. And the Supreme Court of Ohio, sitting in bank, in the case of *Carey's Administrators* v. *Robinson's Administrators*, 13 Ohio, 181, has recently decided, that, where non-residents are within the

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saving clause of the act of limitations of 1810, the statute does not begin to run until their death; and that their heirs may commence suit within the period of twenty-one years, limited in the statute, after the death of such ancestor. And, in accordance with this decision, the same court, at the same term, in the case of *Lockwood and others* v. *Wildman and others*, decided, that, under the act of 1810, persons residing out of the State at the commencement of adverse possession are not barred under twenty-one years after the disability is removed. These decisions have overruled the decision made by the same court, at a previous term, in the case of *Whitney* v. *Webb*, 10 Ohio, 513, and demonstrate that the claims here asserted by the complainants are not barred by the statute of limitations.

The complainants are not barred on the ground that their demand is stale by reason of the lapse of time. The rules in equity, which allow lapse of time to be interposed as a bar to equitable relief, have been adopted in analogy to the statute of limitations in cases at law, and are governed by precisely the same principles. And here it is worthy of remark, that the statute of limitations of Ohio, in one important particular, is essentially different from any of the statutes of limitations of the British Parliament which have come under our notice. In the British statutes the particular suits are named, to which a limitation, as to the time of bringing them, is fixed; but as no suits in equity are named in those statutes, the courts have adjudged that those statutes, in direct terms, did not apply to suits in equity. The statutes of Ohio limit the time for bringing "actions of ejectment, or any other action for the recovery of the title or possession of lands," &c., to twenty-one years. In Ohio, there is no other action or *suit known to the law for the recovery of the title [*241
to land, except an action or suit in equity. And we, therefore, insist that this is an action or suit, and the only one the law authorized us to bring, for the recovery of the title and possession of the lands in question, and consequently it falls within the letter and spirit of our statutes of limitations. And if our construction of the statute be correct, it consequently results that the plea of the lapse of time has no application to this case, as the statute itself furnishes the rule, and the only rule, by which we can be barred. But suppose we are mistaken, in the construction we have contended for, will the condition of the defendants be improved? We think not: because the courts of equity, in England and in this country, have adopted the statute of limitations as fur-

nishing reasonable equitable rules for the limitation of suits in equity.

His honor, Mr. Justice McLean, in delivering his opinion in this case, in the Circuit Court, said,—"Had the statute of limitations remained open for our contemplation, and we construed it as above intimated, which would not bar the complainants' rights, still I should have been clearly of the opinion that they were barred by the lapse of time." The position here assumed by the learned judge will, I trust, be deemed a sufficient apology, on my part, for dwelling a little longer on this branch of the case than I originally intended. The Supreme Court of this State, in the case of *Amelia Fahr, Administrator of Casper Fahr*, v. *James Taylor and others*, 10 Ohio, 106, decided that chancery will not set up lapse of time against a claim, when an action of debt for its recovery would not be barred by the statute of limitations. In the case of *Ridley and others* v. *Holtman and others*, 10 Ohio, 521, the court decided that equity ordinarily acts in analogy to the law, giving effect to the statute of limitations, and therefore, where the owner of an older entry and junior patent, who was never in the State, died, with an adverse possession, under a junior entry and older patent, against him, equity, after the lapse of twenty-one years from his death, will allow the act of limitations to be set up, as a bar against his heirs, seeking to get in the legal title under the older entry. And, in the case of *Larrowe* v. *Beam*, 10 Ohio, 498, the court said:—"We do not know that there is any case in which the defence has been distinctly placed upon this ground (lapse of time), where there was a statute of limitations in force applicable to the case. If the party be guilty of such laches in prosecuting his title as would bar him if his title were solely at law, he should be barred in equity."

Mortgages are held not to be within the words of the statute *of limitations; and no positive rule hath, as yet, been fixed upon which shall be an absolute bar to redemption. But the making up of accounts, after long periods of time, being very difficult, and attended with great hardship on the mortgagee, it hath been thought reasonable to establish in equity, in analogy to the statute, a period at which, *primâ facie*, the right of redemption shall be presumed to be deserted by the mortgagor, unless he be capable of producing circumstances to account for his neglect, such as imprisonment, infancy, coverture, or by having been beyond seas, and not by having absconded, which is an avoiding or retarding of justice. (See *Knowles* v. *Spence*, Mos., 225; 1 Eq. Cas. Abr., 315; *Ord* v. *Smith*, Sel. Ch. Cas., 9, 10;

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Id., 56; *Jenner* v. *Tracy*, 3 P. Wms., 287, *n.*; *Belch* v. *Harvey*, Id.; 3 Sugden on Vend., App., *n.* 15; *Saunders* v. *Hoard*, 1 Ch. R., 184; *Clapham* v. *Bowyer*, Id., 206; 3 Atk., 313; *Bony* v. *Ridgard*, 1 Cox, Ch. Cas., 149; *Hever* v. *Livingston*, 1 P. Wms., 263; *Trash* v. *White*, 3 Bro. Ch., 289; *Leman* v. *Newnham*, 1 Ves., 51; and *Shipbrook* v. *Hinchingbrook*, 13 Ves., 387.) And to preserve uniformity between the proceedings in courts of law and equity, twenty years after forfeiture and possession taken by the mortgagee, no interest having been paid in the mean time and the mortgagor laboring under none of the disabilities enumerated in the statute of limitations, hath been fixed upon as the period beyond which a right of redemption shall not be favored. (See 3 Johns. (N. Y.) Ch., 134; and *Lamer* v. *Jones*, 3 Har. & M. (Md.), 328; and *Doe* v. *Calvert*, 5 Taunt., 170.)

It has been said that this rule is not founded on the presumption of an absolute conveyance, but is merely a positive rule, introduced for the sake of quieting the title, after so long a neglect to redeem. *Per* Eyre, C. B., in *Corbet* v. *Barker*, 1 Anstr., 143. The rule was first hinted at in *Winchcomb* v. *Hall*, 1 Ch. R., 40, and *Porter* v. *Emery*, 1637, Id., 97; then in *Saunders* v. *Hoard*, 1 Ch. R., 184; and *Clapham* v. *Bowyer*, Id., 206; and afterwards adopted as a rule of court, by Lord Keeper Bridgman and the Master of the Rolls, in *Pearson* v. *Pulley*, 1 Ch. Cas., 102; and followed by Lord King, in *White* v. *Ewer*, 2 Ventr., 340. But the rule seems not to have been permanently settled till about the middle of the last century. So late as the year 1722, an appeal came on in the House of Lords, wherein the doctrine was but imperfectly acknowledged. It was, however, there held, that a mortgagee in possession for seventy years, under legal title, should not be redeemed or disturbed; for so long an acquiescence should be taken as an implied waiver of the right to redeem, especially when the rents were insufficient to keep down the interest for more than *fifty years. *Stone* v. *Byrne*, 2 Bro. P. C., 399; S. P., 3 Johns. (N. Y.) Ch., 129. [*243

The rule, however, may now be considered as permanently established; and the principles on which it is founded are perfectly understood and clearly developed. It is true, courts of equity, by their own rules, independently of any statute of limitations, give great effect to length of time; but it is equally true, that they refer frequently to the statute of limitations, for the purpose of furnishing a convenient measure for the limitation of time, which might operate

as a bar, in equity, to any particular demand. (See *Beckford* v. *Wade*, 17 Ves., 87.)

In *Kane* v. *Bloodgood*, 7 Johns. (N.Y.) Ch., 9 (affirmed in 8 Cow., 360), Chancellor Kent remarked, in substance, that the limitation of suits, being founded in public convenience, and attended with so much utility, the courts of equity have adopted principles analogous to those established by the statutes of limitations, as positive rules for their conduct.

Lord Camden, in *Smith* v. *Clay*, 3 Bro. Ch., 639, note, said, that laches and neglect were always discountenanced in equity; and therefore, from the beginning of that jurisdiction, there was always a limitation to suits. *Expedit reipublicæ ut sit finis litium*, was a maxim that had prevailed in chancery at all times, without the help of an act of Parliament. As, however, the court had no legislative authority, it could not define the bar by a positive rule. It was governed by circumstances. But as often as Parliament had limited the time of actions and remedies to a certain period, in legal proceedings, the Court of Chancery had adopted that rule, and applied it to similar cases in equity; for when the legislature had fixed the time at law, it would have been preposterous for equity to continue laches beyond the period to which they had been confined by Parliament; and therefore, in all cases where the legal right has been barred by Parliament, the equitable right to the same thing has been concluded by the same bar.

Lord Redesdale, in *Hovenden* v. *Annesley*, 2 Sch. & L., 607, said:—"I think the statute of limitations must be taken, virtually, to include courts of equity; for when the legislature limited the proceedings at law, in certain cases, and provided no express limitations for proceedings in equity, it must be taken to have contemplated that equity followed the law; and therefore it must be taken to have virtually enacted, in the same cases, a limitation for courts of equity also."

In the case of the *Marquis of Cholmondely* v. *Lord Clinton* (see 2 Meriv., 171, and 2 Jac. & W., 190), upon appeal to the House of Peers, Lord Eldon said he could not agree to, and had never heard of, such a rule, as that adverse
*244] *possession, however long, would not avail against an equitable estate; and he concluded by stating his opinion to be, that an adverse possession of an equity of redemption for twenty years was a bar to another person claiming the same equity of redemption, and worked the same effect as disseizin, abatement, or intrusion, with respect

to legal estates; and that, for the quiet and peace of titles, and of the world, it ought to have the same effect. During that whole period of twenty years, in which Lord Clinton had held adverse possession of the premises in question, the Marquis of Cholmondely, or those under whom he claimed, was not laboring under any of the disabilities enumerated in the statute. So that the bar in chancery, in analogy to the statute of limitations, was complete. Lord Redesdale was clearly of the opinion, that the plaintiffs were barred by the effect of the statute of limitations; and that the bill, therefore, should be dismissed. He wished it to be understood that his decision rested, principally, on that ground. He remarked that it had been argued that the Marquis of Cholmondely might, at law, have had a writ of right,—that was, a writ to which peculiar privileges were allowed; but courts of equity had never regarded that writ or writs of formedon, or others of the same nature. They had always considered the provision in the statute of James which related to rights and titles of entry, and in which the period of limitation was twenty years, as that by which they were bound, and it was that upon which they had constantly acted. He considered that the statute was a positive law, which ought to bind courts of equity, and that the legislature must have supposed that they would regulate their proceedings accordingly, by it. The decree of Sir Thomas Plumer was confirmed. The following clauses in Sir Thomas Plumer's opinion have a direct bearing on this question, viz.:—"Mrs. Damer, the devisee, is, on all sides, admitted to be the only person who could have had any claim of title under Horace, Earl of Orford, to this estate; and the full period of twenty years having elapsed since the death of George, Earl of Orford, when that title, if at all, first accrued, the remedy would have been taken away by the statute, in consequence of the laches and non-claim. The lapse of twenty years affords a substantive, insuperable plea in bar. It is the fixed limit to the remedy,—the *tempus constitutum;* one day beyond is as much too late as one hundred years. This is the peremptory, inflexible rule of law, fixed by positive statutes, if there has been adverse possession, and no disability or fraud. No plea of poverty, ignorance, or mistake can be of any avail. However clear and indisputable the title, if the merits could be inquired into," &c.

*Lord Chancellor Manners, in *Medlicott* v. *O'Donnell*, 1 Ball & B., 164, thus expressed himself:—"I think, then, I stand well supported by principle and authority in saying that the court is bound to regulate its proceedings by [*245

analogy, or in obedience to the statute of limitations. Upon a uniform concurrence of a long train of the highest authorities, I can entertain no doubt in the present case. It is clear that, had it been the claim of a legal estate, in a court of law, the remedy must, by analogy be equally barred in a court of equity." On the same ground, another case, between the same parties, has since been decided; the Lord Chancellor observing, that, where there has been adverse possession for twenty years, not accounted for by some disability, as coverture, &c., a court of equity ought not to interfere. 1 Turn., 107.

In New York, the analogy between the right to redeem in equity and the right of entry at law is complete and entire throughout. *Demarest* v. *Wynkoop*, 3 Johns. (N. Y.) Ch., 134.

Lord Manners, in the case of *Medlicott* v. *O'Donnell*, to which reference is had above, said:—"It has been suggested that I lay too much stress upon length of time, and that I attach more credit to it than Lord Redesdale or any of my predecessors have done. I confess, I think the statute of limitations is founded upon the soundest principles and the wisest policy, and that this court, for the peace of families and to quiet titles, is bound to adopt it, in cases where the equitable and legal title so far correspond, that the only difference between them is that the one must be enforced in this court, and the other in a court of law."

In *Cook* v. *Arnham*, 3 P. Wms., 287, the rule was put on this footing, that where length of time will not bar the right to bring an ejectment, then it shall not bar the right to file a bill in equity; and Sir Joseph Jekyll, in *Toyer* v. *Larington*, 1 P. Wms., 270, placed the rule on the same footing; and, in that shape, it was approved by Lord Redesdale in the cases above cited.

In *Nelson* v. *Carrington*, 4 Munf. (Va.), 332, and *Lamar* v. *Jones*, the court decided that lapse of time is permitted, in equity, to defeat an acknowledged right, on the ground only of its affording evidence of presumption that such right has been abandoned; and it never prevails where the presumption is outweighed by opposing facts and circumstances.

From the cases of *Topliss* v. *Baker*, 2 Cox, Ch. Cas., 122, in the Exchequer; *Turnstall* v. *McLelland*, Hardr., 519; *Hele* v. *Hele*, 2 Ch. Cas., 28; *Sibson* v. *Fletcher*, 1 Ch. R., 59; *Leman* v. *Newnham*, 1 Ves., 51; *Trash* v. *White*, 3 Bro. Ch. Cas., 291; *Hatcher* v. *Fineaux*, 1 Ld. Raym., 740; and *Blewitt* v. **Thomas*, 2 Ves., 669, we deduce these points:—
*246] that no rule exists, in equity, for presuming a release or satisfaction of a mortgage, after the lapse of twenty years,

or any other particular period of time, on the ground that no notice has been taken of the debt, either by payment of the interest on one side, or demand of principal and interest on the other; and that if a jury should on that ground presume the bond to be satisfied, yet the mortgagee will not thereby be prevented from showing the truth of the case to the court; and the court will, on proof that the money is due, or in the absence of proof that it has been paid, decree in favor of the mortgagee, notwithstanding a period of more than twenty years may have elapsed between the making of the mortgage and the last demand of principal and interest. But it will be incumbent on the mortgagee and his representatives to define, particularly, the period and essence of the acknowledgments which he avers to have taken place, and to show with accuracy the commencement and continuance of every disability which he suggests as the cause of forbearance.

Lord Chancellor Erskine, in the case of *Hillary* v. *Waller*, 12 Ves., 239, said:—"The presumption in courts of law, from length of time, stands upon a clear principle, built upon reason, the nature and character of man, and the result of human experience. It resolves itself into this, that a man will naturally enjoy what belongs to him; that is the whole principle.—Then, as to presumptions of title: 1st. As to bond taken, and no interest paid for twenty years, nay, within twenty years, as Lord Mansfield has said; but upon twenty years the presumption is that it has been paid, and the presumption will hold unless it can be repelled; unless insolvency, or a state approaching it, can be shown; or that the party was a near relative; or the absence of the party having the right to the money; or something that repels the presumption, that a man is always ready to enjoy what is his own." In that case, a definite period was fixed, in analogy to the time at which courts of law raised similar presumptions, namely, "not less than twenty years"; implying that, *primâ facie*, after twenty years, a court of equity will raise the presumption of a reconveyance from the mortgagee or his heirs; the period wherein the presumption of payment of the mortgage money will arise. But all these presumptions may be repelled by evidence. The lapse of twenty years is only a circumstance on which to found a presumption of payment, and is not, of itself, a legal bar. *Jackson* v. *Pierce*, 10 Johns. (N. Y.), 414; *Ross* v. *Norvell*, 1 Wash., 14.

In the case of *Chalmer* v. *Bradley*, 1 Jac. & W., 63, the plaintiffs stated that they were ignorant of the facts. It was *possible, said Sir Thomas Plumer, they might [*247

be so. But was there not any thing that might lead them to that knowledge? Nothing appearing in the case, his honor directed an inquiry whether the plaintiffs had any notice of these circumstances, implied or otherwise; observing, that the reason why he directed this inquiry was, that, though he was impressed with the impolicy of permitting stale demands to be brought forward, though he knew that, on the principle stated in *Smith* v. *Clay*, Amb., 645, and 3 Bro. C. C., 639, note, a court of equity was not to be called into action by those who were not vigilant in support of their rights, and was aware of the monstrous inconvenience that would result at some period if the door was not shut to litigation, yet he fell in entirely with the opinion expressed by Lord Alvanley in *Pickering* v. *Stamford*, 2 Ves., 272. There the suit was commenced, after a lapse of thirty-five years, by persons who declared themselves ignorant of their rights. Lord Alvanley, under the circumstances of that case, could not be sure they were not ignorant, and therefore, stating strongly his opinion in favor of the general principle, that a party ought to be barred by length of time, and lamenting that he could not, in that instance, follow it, he directed similar inquiries; stating, at the same time, that if he (Lord Alvanley) were then to decide the case before him, he would decide it against the plaintiffs; and that, by the inquiries, he did not decide one way or the other; and would afterwards consider whether there was sufficient equity in the bill or not. It was, therefore, because there was not before him any direct and positive evidence to totally exclude all doubt upon it, that Sir Thomas Plumer directed the inquiries in *Chalmer* v. *Bradley*, to obtain some light on the circumstances under which the disputed enjoyment of the property had gone, reserving to himself to judge what should be the effect of the facts which might be found by the master, or what, even without that result, he might think right to be done.

The observations of Lord Camden, in *Smith* v. *Clay*, 3 Bro. C. C., 640, on which his honor, Mr. Justice McLean, in deciding this case, seemed to place so much reliance, do not, we respectfully submit, when rightly understood, conflict with the principles of the preceding cases. The words of Lord Camden are:—"A court of equity, which is never active in a relief against conscience, has always refused its aid to stale demands where the party has slept upon his rights and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence."

A demand in equity is never stale during that period in

which, were it a legal demand, it would not be barred by the *statute of limitations. The complainants have been basely defrauded of their rights, and do not, therefore, [*248 defile their consciences by the prosecution of this suit. The complainants never acted in bad faith towards the defendants. They have never slept upon their rights. They were constantly active in asserting their claims, by caveat, until Cotton obtained his patent, which gave him a right of entry. At that time, those under whom the complainants claim were laboring under disabilities, and this suit was commenced in less than twenty-one years after those disabilities were removed. The law has defined what reasonable diligence is, namely, the institution of a suit within the period limited in the law.

We are unable to perceive the bearing which the case of *Piatt* v. *Vattier*, 9 Pet., 413, can have on the present case. In that case, Piatt merely set out the claim which he had procured by assignment, and asked the court to decree a conveyance of a doubtful equity where there had been an adverse possession of more than thirty years; yet he did not, in his bill, charge that he, or those under whom he claimed, had been, during the whole period in which such adverse possession had been held, laboring under any of the disabilities enumerated in the statute of limitations; nor did he charge a single fact or circumstance to excuse the delay in bringing his suit, so as to shield his claim against the operation of the bar in analogy to the statute of limitations. Of what avail, then, was his proof?—as neither proof without allegation, nor allegation without proof, will warrant a decree. The complainants in this suit have averred and proved, not only that their claim, if a legal one, would not be barred by the statute of limitations, but they have also charged and proved such facts and circumstances as, independent of the statute, relieve their claim from the operations of the bar adopted in equity in that class of cases in which a bar in analogy to the statute would be applied.

A legacy given out of real property is only recoverable in a court of equity, and therefore is not within the express words of the statute of limitations. And it follows, that length of time alone will not bar it, but it will raise a presumption of payment, which, unless repelled by evidence of particular circumstances, will be conclusive. (See 1 Vern., 256; 2 Id., 21; and 2 Ves., 11.)

Time will not run against pure technical trusts, nor will it commence running in cases of fraud until the fraud has been discovered. (See *Bicknell* v. *Gough*, 3 Atk., 558; *Alden* v.

Gregory, 2 Eden, 280; 2 Vern., 503; 1 Ridg., 337; 2 Ves., 280; Cas. Temp. Talb., 63; 2 Sch. & L., 101; and Id., 474.)

*249] *The presumptions drawn by courts, against stale demands, are founded in justice and policy. Those presumptions are matters of evidence, and not, in most cases, *proprio jure*, matters of plea in bar; and a court of equity, equally with a court of law or jury, may draw the conclusion, if the lapse of time be put in issue by the pleadings, and the lapse of time be not satisfactorily accounted for.

Lapse of time imputed as laches may be excused by the obscurity of the transaction, whereby the plaintiff was disabled from obtaining full information of his rights, (*Muncy* v. *Palmer*, 2 Sch. & L., 487,) and equity will relieve against the mere lapse of time unaccounted for without misconduct in the lessee, or where the lessee has lost his right by the fraud of the lessor (*Lamar* v. *Napper*, 2 Sch. & L., 682, 689). These authorities need no comment, as they clearly demonstrate, when applied to the facts of this case, that the complainants' claim is not barred by lapse of time in analogy to the statute of limitations, nor by lapse of time independent of that statute, or by any other cause.

There is, however, one class of cases, in which a court of law will, in furtherance of justice, presume a conveyance in less than twenty years. This rule, however, only applies to cases of pure technical trusts, where the trustee is bound to convey to his *cestui que trust* at a particular period, or on the happening of a particular event, after the period has arrived, or the event had happened, on which the estate was to be conveyed, if the *cestui que trust* convey the estate to another, and an action or suit be brought by the bargainee against a person in possession. The court will not permit the plaintiff to be prevented from recovering, on the ground that the legal title is outstanding in the trustee, but will leave it to the jury to presume a conveyance from the trustee; upon these grounds, namely, that the court will presume that the trustee has done his duty, and that what had been done by the *cestui que trust* was rightfully done. (See *England* v. *Slade*, 4 T. R., 682, and *Doe* v. *Lyburn*, 7 T. R., 2.) It will at once be perceived that this class of cases has no application to the case at bar.

There is no particular hardship in this case which ought to weigh with the court, and incline the scale in favor of the defendants. Should a decree be pronounced, eventually, in favor of the complainants, the defendants will, in reality sustain no loss. The complainants must pay them for all their lasting and valuable improvements, and moneys expended in

payment of taxes, less the rents and profits; and their warrantors must refund to them the expenses of this suit, ordinary and extraordinary, and the consideration paid, if any were *paid, and interest. This will throw the loss back upon those who originally perpetrated the fraud, [*250 to be relieved from which the complainants have been compelled to resort to this court. And we respectfully submit, that they are entitled to the relief which they ask. In extending relief to the complainants, we also submit, that no portion of the land ought to be decreed to the defendants, on the ground that the lands in question had been located and surveyed by O'Bannon; because, first, said location and survey were not made in pursuance of any contract; and if they were, the defendants do not show such a connection with O'Bannon as would justify this court in substituting them in his place. This court cannot make a contract for the parties, and then decree its specific execution.

Mr. Stanberry, for the appellees, in reply to *Mr. Scott.*

Lastly, if all other defence fails us, we rely upon the lapse of time and the staleness of the claim; and this is, under all the circumstances, a sure reliance. It is difficult to imagine a case to which this wholesome doctrine would better apply.

Whether the complainants trace their claim to the deed of trust, or by descent from Lawson, they come at too late a day into a court of equity to assert it. From the 16th of August, 1796, a claim adverse to theirs has been set up, and for twenty-seven years prior to the filing of the bill undisturbed possession of the land accompanied that adverse claim. However it may have been in the beginning, no single circumstance of fraud or notice attaches to this adverse title during this long possession.

Look now to the change of circumstances in this great lapse of time. All the parties to the transactions dead, and the subject-matter of the claim, worth only a few cents per acre in the beginning,—worth only $2.50 per acre when the possession commenced, and then a wilderness,—now turned into highly cultivated farms, and worth $30 per acre.

Now what sort of a case do these complainants make to overcome such a defence?

Let us take the title as claimed under the deed of trust in the first place. I have shown already that this land was not covered by that deed; but, if it be held to pass, though obscurely, by that deed, then what sort of a deed was that?

A voluntary post-nuptial settlement, a sort of conveyance barely tolerated, requiring the most favorable circumstances

for its support, and of little avail against present creditors and subsequent purchasers.

The counsel for complainants, in his printed brief, takes quite a new view of this kind of conveyance. He says, that *"each of the three considerations named in the deed is valuable, and sufficient to sustain it against creditors and subsequent purchasers."

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In answer to this, it is only necessary to refer to *Cathcart* v. *Robinson*, 5 Pet., 264, which establishes, or more properly recognizes, the doctrine, that a subsequent sale by the husband to an innocent purchaser is presumptive evidence of fraud in the settlement.

The great object of this conveyance was a reconciliation between Lawson and his wife, which soon fell through. Very shortly after the making of the settlement, we find Mr. and Mrs. Lawson making a joint application to one of the trustees for the sale of a part of the lands to meet their current expenses, but nothing is ever done by the trustees in the administration of the trust.

Between the date of the deed of trust and the year 1800, Lawson disposed of the entire 10,000 acres to various persons. The fact was known to the trustees and the *cestuis que trust.* All parties seem to have abandoned it, for not a single item of the property, real or personal, mentioned in it was ever administered under its provisions. Lawson and his family separated for ever. The complainants allege, that, for years before his death, he was reduced to a miserable wreck, both in body and mind, wholly unable to take care of himself. Strange that, under such circumstances, he should have been left altogether to the care of strangers.

He died between 1802 and 1805, and his wife and three surviving children, the youngest of whom (Columbus) was then sixteen, the other two considerably past their majority, were left to look after their property.

Mrs. Lawson died in 1809, her three children, then all of full age, surviving her.

Long before this date, all these parties were advised that this land was claimed by assignments from General Lawson, and as early as February 12th, 1799, a caveat against patents to the assignees was filed in the General Land Office by Joshua Lewis, who had married the daughter of General Lawson. Although under that caveat the patent for this 965 acres was suspended for sixteen years, not a step farther seems to have been taken to sustain it or make any proof.

Mrs. Lawson and her children continued to reside in Ken-

tucky, just where, if there were any proof to invalidate the claims set up under Lawson, it could be had.

On the 9th of January, 1807 one of the three children, John P. Lawson, conveys all his interest in the 7,000 acres embraced in the deed of trust to his brother-in-law, Lewis. This deed *contains the recital that the 7,000 acres, since the date of the deed of trust, had been conveyed by [*252 Robert Lawson to divers persons, and carefully provides that John P. Lawson should not be held to warrant against the claims of such purchasers.

John P. Lawson died about the 1st of June, 1809, leaving the complainant, Mary Pierce Bowman, his only child and heir at law.

Columbus Lawson died unmarried, about the 8th of January, 1815, leaving his sister, Mrs. Lewis, and his niece, Mrs. Bowman, his heirs at law.

Mrs. Lewis died about the 1st of October, 1830, and her husband about the 20th of June, 1833.

Ten years after the death of the last of Lawson's children, she having lived to the age of fifty-two, the grandchildren of Lawson, eleven in number, and all of full age, bring this suit.

Here, then, is a case of full notice of the adverse claim, brought home to the ancestors of these complainants more than half a century ago. They take but one step in all that time towards the assertion of their claim, and that step was taken before the present century commenced, and was never afterwards followed up. Perhaps they did not consider the property worth the cost and trouble of its pursuit. Now, after they are all gone, and all the parties to the fraud, if there was any, have also disappeared,—now, when the land is in hands very remote from the original owners, improved and subdivided into a cluster of farms, and made valuable by the labor of the occupants, at this late day, this long-abandoned claim is set up, and a court of equity is asked to dispossess these defendants.

If we look at the claim by descent, and not through the deed of trust, it is, if possible, still worse. Then it assumes the aspect of a bill brought to impeach an equitable title older than the one set up by the complainants,—a bill to set aside an assignment apparently good by matter *in pais*, exhibited just forty-four years after the voidable assignment was made.

But it is said, in answer to this great lapse of time, that it goes for nothing, for the reason that the statute of limitations, in consequence of non-residence, &c., would not bar the complainants if they had a legal title.

Very clearly it would bar them, if a legal title had descended to the children of Lawson instead of an equity, unless we pile one disability upon another. But there is no question of any statute of limitations as to the complainants. They never had the right to bring an action at law, for they have never had a legal title. No such cause of action has ever accrued to them. The legal title, as has been shown, was first vested in Cotton, and nothing appears in the case to
*253] prevent the operation of the *statute upon that title, the only one upon which it could operate. But if the case were otherwise, it is quite too late to contend that a court of equity will never refuse relief if the statute does not cover the case.

Piatt v. *Vattier*, 9 Pet., 405, is a leading case to the contrary. The court in that case act independently of the statute, and adopt the language of Lord Camden, as follows:—"A court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, where the party has slept upon his rights, or acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence. Where these are wanting, the court is passive, and does nothing: laches and neglect are always discountenanced; and therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this court."

In *Bowman* v. *Wathen*, 1 How., 189, the same doctrine is fully recognized, and the principle upon which a court of equity denies relief to stale claims is strongly enforced and illustrated. The language of Sir William Grant is adopted, and quoted with approbation:—"Courts of equity, by their own rules, independently of any statutes of limitation, give great effect to length of time, and they refer frequently to the statutes of limitation, for no other purpose than as furnishing a convenient measure for the length of time that ought to operate as a bar in equity to any particular demand."

So, also, the language of Lord Redesdale, that "it never can be a sound discretion in the court to give relief to a person who has slept upon his rights for such a lapse of time; for though it is said, and truly, that the plaintiffs in this suit, and those under whom they claim, were persons embarrassed by the fraud of others, yet the court cannot act upon such circumstances."

And, again, what is said by the same Chancellor, that "every new right of action in equity that accrues to a party,

whatever it may be, must be acted upon, at the utmost, within twenty years."

If such is the doctrine in England, and has been found necessary there, it should find peculiar favor in this country, especially in reference to stale claims against real estate,—a species of property so much the subject of traffic among our people, and constantly undergoing such changes in value.

Mr. Stanberry, in reply to *Mr. Ewing*.

Mr. Ewing, in answer to lapse of time, relies upon the act for limitation of actions (which he says must govern this case), *passed January 25th, 1810 (1 Chase, 656). He claims that the second section provides the rule of lim- [*254 itation for all suits in equity, and that the proviso saves this case.

This is a novel construction of this act. It is entitled "An act for the limitation of actions," which carries the idea of common law proceedings.

The first section specially names all the personal actions, and affixes their respective bars.

The second section provides for the other description of actions, mixed and real, by enumerating the writ of ejectment or other action for the recovery of the possession, title, or claim of, to, or for any land, tenements, or hereditaments, and limits the time of bringing them within twenty-one years next after the right to such action or suit shall have accrued.

The proviso then saves the rights of persons entitled to any such actions, if under the disability of nonage, coverture, insanity, or absence from the State, until the full time of limitation has passed after the removal of the disability.

We say the language, "or other action for the recovery of the possession, title, or claim of, to, or for any land, tenements, or hereditaments," is intended to bar all forms of real actions. Such has been its uniform construction in Ohio. *Holt* v. *Hemphill*, 3 Ohio, 239.

Similar language has been used in all the Ohio acts of limitations. The act now in force, of June 1st, 1831 (Swan, 553), uses this language:—"Actions of ejectment, or other action for the recovery of the title or possession of lands," &c.

Larrowe v. *Beam*, 10 Ohio, 498, applies the statute of 1810 to a petition for dower. Grimke, J., says (p. 503), "that, at the time the right of the petitioner accrued, the mode of proceeding was by writ of dower, and so continued until 1824, when the petition in chancery was substituted."

Tuttle v. *Wilson*, 10 Ohio, 502, also a petition for dower,

and held to be barred by the statute. Wood, J., says (p. 26), —"The petition for dower is substantially, when prosecuted, a possessory action."

The actions at common law for the recovery of dower were classed under the form of real actions. They were either the writ of right of dower, or more commonly the writ of dower *unde nihil habet*. Booth on Real Actions, 118, 166.

The right to dower is strictly a legal right for the recovery of a legal estate. It is only for convenience that a remedy by petition in equity is given in Ohio. The courts of Ohio have not said that the statute of limitations applies directly to any other proceeding in equity.

The complainants are not, therefore, within the bar or the *255] *savings of the statute. It neither binds them nor precludes them. No cause of action, such as the statute contemplates, ever vested in them, for they never had a legal title or any right to sue in a court of law. For nearly half a century their claim has stood upon a voluntary settlement conveying only an equity. The case shows it was in effect abandoned, before the present century began, by all parties interested in it. But one step was ever taken to assert it, and that was as long ago as February, 1799, at the instance of Joshua Lewis. The caveat then filed did not so much as name O'Bannon, or caution any one against his assignment.

Besides this presumptive abandonment, the other facts shown by the complainants themselves would be sufficient, without this lapse of time, to protect the subsequent purchasers.

In *Cathcart* v. *Robinson*, 5 Pet., 264, this court, in reference to a post-nuptial settlement, refer to the subsequent control over the property by the husband; his notoriously offering it for sale, the trustee not intervening to prevent it; the letter of the wife to the trustee requesting him to assign part of the property to pay the husband's debts,—as evidence of fraud upon subsequent purchasers.

This case presents a similar state of facts, even to the interference of the wife.

Now, after the death of all the parties to this family arrangement, made chiefly for their own accommodation, and soon abandoned by them,—after the death of all their children, this long forgotten claim is set up by the grandchildren of the original parties, eleven in number, not one of whom was in being at the time of the settlement,—the youngest now thirty, and the oldest fifty, years of age!

We see who make this claim, and now what do they ask?

In this case, property worth $30,000. But if they are entitled to this, there is nothing to save from their claim the other 6,000 acres, of equal value; altogether, a property worth more than $200,000, which, at the date of the deed, was not worth $1,000.

And then from whom is this property to be taken? Honest purchasers, who paid a full value, and who have been in the undisturbed possession for thirty-five years.

Mr. Justice GRIER delivered the opinion of the court.

The appellants in this case filed their bill in the Circuit Court of the United States for the District of Ohio, claiming a certain tract of land in possession of the defendants, and praying a decree for the title and possession of the same.

The bill sets forth that Robert Lawson, under whom *complainants claim, had received for his services as an officer in the Revolutionary war a military warrant [*256 (No. 1,921) for ten thousand acres of land, which, before the 4th of June, 1794, was located in the Virginia military district, in tracts of one thousand acres each, under the following numbers of entries: 1,704, 1,705, 1,706, 1,707, 1,714, 1,715, 1,716, 1,717, 1,718, 1,719.

On the 4th of June, 1794, an indenture tripartite was executed between Robert Lawson, of the first part, Sarah, his wife, of the second part, and James Speed, George Thompson, Joseph Crocket, and George Nicholas, of the third part, by which, for the consideration therein expressed, Robert Lawson conveyed to the parties of the third part, among other things, "two thousand acres of military land, situated on White Oak Creek, on the north side of the Ohio, being the land mentioned in the first entry made for the said Lawson on the surveyor's books," in special trust, that they will "permit said Lawson and his wife, and the survivor, and the said Sarah, if she should again separate from her husband, to use, occupy, possess, and enjoy, during their natural lives and the life of the survivor, the lands on Fayette county, Kentucky," &c. And also that they will convey the two thousand acres of land on White Oak Creek to either of the sons of marriage to whom the said Sarah shall direct, &c. And the said Lawson covenanted with the trustees that he would, at no future time, "offer any personal violence or injury to his wife, and that he would abstain from the intemperate use of every kind of spirituous liquors, and that, if he should at any time thereafter again offer any personal violence or injury to his wife," the trustees were authorized to dispossess him of the hundred and fifty acres of land, &c.

The complainants aver, also, that the two entries numbered 1,707 and 1,714 covered the two thousand acres conveyed by this deed.

The bill further states, that on the 16th of August, 1796, Lawson made an assignment to one John O'Bannon of three thousand three hundred and thirty-three acres of his warrant which had not been surveyed; and charges, that, at the time of making said assignment, Robert Lawson was, as O'Bannon well knew, habitually intemperate, and had been so for a long time previous; that the faculties of his mind were much impaired, and that he was wholly incapable of making any valid contract; that the said assignment was without consideration, and procured by O'Bannon under false and fraudulent pretences.

That O'Bannon, well knowing that the aforesaid entry of
*257] 1,707 had been conveyed by the trust deed, on the 25th of *August, 1796, fraudulently withdrew it, and reëntered in his own name nine hundred and sixty-five acres under the same number on the waters of Straight Creek,—the tract in controversy in the present suit. That O'Bannon having obtained the plat and certificate, deposited them, before the 12th of February, 1799, in the Department of State, and applied for a patent; and Joshua Lewis, the son-in-law of Lawson, as agent for the trustees, entered on that day a caveat against the issuing of a patent to O'Bannon.

Lawson and his wife lived together but a short time after the execution of the trust deed. Mrs. Lawson went to Virginia, where she died in 1809, never having appointed, as provided by the trust deed, to whom conveyance should be made. Lawson died in Virginia, in 1805, the victim of intemperance. They left three children; America, intermarried with Joshua Lewis in 1797, and two sons, under whom complainants claim. In 1800, George Nicholas, one of the trustees, died, and some time afterwards James Speed and Joseph Crocket; and the trust thus became vested in George Thompson, the survivor. In 1834, George Thompson died, leaving George C. Thompson, one of the complainants, his son and heir at law, in whom the trust vested.

John O'Bannon died in January, 1812, having made a will and appointed Robert Alexander and George T. Cotton, his son-in-law, his executors. Alexander never qualified as executor. Cotton, as acting executor, on the 16th of July, 1813, executed a deed of the nine hundred and sixty-five acres to William Lytle, under whom the defendants claim. The deed of Cotton recites a patent to John O'Bannon in his lifetime, and warrants the title. Afterwards, on the 21st

of December, 1816, a patent issued from the United States to Cotton, "as executor of the last will and testament of John O'Bannon, in trust for the uses and purposes mentioned in his will."

The defendants plead in bar, that they are purchasers from Lytle, and those claiming under him, without notice, and exhibit their deeds. They also file an answer in support of their plea, in which the fraud alleged in the bill, and all facts going to show equity in the claim of complainants, are denied. And in an amended answer they set up the plea of the statute of limitations, and insist "that the deed of trust, under which complainants claim, is a stale claim, not attended with any circumstances to relieve it from such staleness, and that the bill should be dismissed on that account."

Various questions have been made before us, as to the nature and character of this deed of trust: whether its loss is sufficiently accounted for; whether, as a settlement of family * difficulties, it was not abandoned by all the parties concerned in it; whether it described the land [*258 in controversy; whether O'Bannon purchased with notice of it; whether he paid any consideration; whether the assignment to him by Lawson was fraudulently obtained; whether the legal title was vested in defendants by virtue of the patent to Cotton and his warranty; and whether the statute of limitations operated as a bar to complainants' claim.

On these and on other questions, which were argued with so much ability by the learned counsel, it is not the intention of the court to express an opinion; because, in our view of the case, they are not necessary to a correct decision of it.

The important question is, whether the complainants are barred by the length of time.

In cases of concurrent jurisdiction, courts of equity consider themselves bound by the statutes of limitation which govern courts of law in like cases; and this rather in obedience to the statutes, than by analogy. In many other cases they act upon the analogy of the limitations at law; as where a legal title would in ejectment be barred by twenty years' adverse possession, courts of equity will act upon the like limitation, and apply it to all cases of relief sought upon equitable titles, or claims touching real estate.[1]

But there is a defence peculiar to courts of equity, founded on lapse of time and the staleness of the claim, where no statute of limitations directly governs the case. In such cases courts of equity often act upon their own inherent doc-

[1] Quoted. *Godden* v. *Kimmell*, 9 Otto, 210.

trine of discouraging, for the peace of society, antiquated demands, by refusing to interfere where there has been gross laches in prosecuting rights, or long acquiescence in the assertion of adverse rights. (2 Story, Eq., § 1520.)

A court of equity will not give relief against conscience or public convenience where a party has slept upon his rights. "Nothing," says Lord Camden (4 Bro. Ch., 640), "can call forth this court into activity but conscience, good faith, and reasonable diligence; when these are wanting, the court is passive, and does nothing." Length of time necessarily obscures all human evidence, and deprives parties of the means of ascertaining the nature of original transactions; it operates by way of presumption in favor of the party in possession. Long acquiescence and laches by parties out of possession are productive of much hardship and injustice to others, and cannot be excused but by showing some actual hindrance or impediment caused by the fraud or concealment of the party in possession, which will appeal to the conscience of the chancellor. The party guilty of such laches cannot screen his
*259] title * from the just imputation of staleness merely by the allegation of an imaginary impediment or technical disability.

This doctrine has been so often asserted by this court, that it is unnecessary to vindicate it by argument. It will be sufficient to refer to *Piatt v. Vattier*, 9 Pet., 405, a case much resembling the present, and *Bowman v. Wathen*, 1 How., 189.

Can the complainants' case stand the test of this reasonable and well-established rule of equity?

The bill does not assert that either the trustees or the *cestuis que trust* were ignorant of the transaction between Lawson and O'Bannon, or of the fraud practised on Lawson, if any there was. Yet, with the exception of the caveat filed in Washington, in 1799, they show no assertion of claim under this voluntary post-nuptial settlement, from its date (June, 1794) till the filing of this bill in 1840. John O'Bannon lived till 1812; yet in all this time (sixteen years), no bill is filed to set aside his assignment from Lawson for the fraud *now* alleged, while the circumstances were fresh and capable of proof or explanation.

In 1813 (perhaps in 1811) the defendants, or those under whom they claim, entered upon these lands; they paid large and valuable considerations for their respective portions, without any knowledge of this lost deed of family settlement, or reason to suspect fraud in the transfer to O'Bannon. And whether the patent obtained by Cotton, and his warranty, had the effect of conferring on them the legal title or not, they

reposed in confidence on it. By their industry and expenditure of their capital upon the land for a space of twenty-seven years, they have made it valuable; and what was a wilderness, scarce worth fifty cents an acre, is now enhanced by their labor a hundred fold.

No bad faith, concealment, or fraud can be imputed to them. If the trustees or *cestuis que trust* chose to reside in Kentucky, and not look after these lands for near half a century, they can have no equity from a disability that was voluntary and self-imposed. The residence of the trustees in Kentucky was not considered as an obstacle or objection, in the minds of those who executed the deed, to their assuming the trust and care of lands in Ohio. There was no greater impediment to the prosecution of their claim in a court of equity at any time within forty years than there is now. They have shown nothing to mitigate the effect of their laches and long acquiescence, or which can entitle them to call upon a court of equity to investigate the fairness of transactions after all the parties to them have been so long in their graves, or grope after the truth of facts involved in the mist and obscurity consequent on the lapse of nearly half a century.

*We are all of opinion, therefore, that the lapse of time in the present case is a complete bar to the relief sought, and that the decree of the Circuit Court dismissing the bill should be affirmed, with costs. [*260

ORDER.

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 Ohio, and was argued by counsel. On consideration whereof, it is now here ordered and decreed by this court, that the decree of the said Circuit Court in this cause be and the same is hereby affirmed, with costs.

Mr. Justice McKINLEY did not sit in this cause.

MARIA MATHESON, JOHN DARRINGTON, ROBERT D. JAMES, BILLUPS GAYLE, JOHN GAYLE, AND EDWARD M. WARE, PLAINTIFFS IN ERROR, *v.* THE BRANCH OF THE BANK OF THE STATE OF ALABAMA AT MOBILE, DEFENDANTS.

Where the highest court of a State affirmed the judgment of a court below, because no transcript of the record was filed in the appellate court, such affirmance cannot be reviewed by this court under the twenty-fifth section of the Judiciary Act.