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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 [*260 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.

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.

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The intention of the parties to raise a constitutional question is not enough. It must be actually raised and decided in the highest court of the State.¹

THIS case was brought up from the Supreme Court of the State of Alabama, by a writ of error, issued under the twenty-fifth section of the Judiciary Act.

In 1845, the Branch Bank of Mobile obtained a judgment in the Circuit Court of Mobile county (State court) against Maria Matheson, John Darrington, and Robert D. James, for the sum of ten thousand five hundred and seventy-three dollars and eighty-two cents.

On the 29th of May, 1846, the defendants sued out a writ of error, returnable to December term, 1846, of the Supreme Court of the State of Alabama. Billups Gayle, John Gayle, and Edward M. Ware became their securities upon the appeal bond.

On the 22d of January, 1847, being a day of the December term, 1846, the counsel of the Branch Bank filed a certificate of the clerk of the court below, stating the judgment and writ of error; when it appearing that no transcript of the record was filed, the Supreme Court of the State of Alabama *261] affirmed the judgment of the court below, and also entered up judgment against the securities in the appeal bond.

In April, 1847, the defendants sued out a writ of error, and brought the case up to this court.

Mr. Inge, counsel for the defendants in error, moved to dismiss the case for want of jurisdiction, apparent upon the record, which motion was resisted by *Mr. Gayle*, counsel for the plaintiffs in error.

Mr. Chief Justice TANEY delivered the opinion of the court.

The record in this case is a very brief one. It states that a certificate was filed in the clerk's office of the Supreme Court of the State of Alabama, from the clerk of the Circuit Court for Mobile county, setting forth that a judgment had been obtained in that court by the bank against the plaintiffs in error for the sum of \$10,573.82 and costs, from which judgment they had presented a writ of error to the Supreme Court; and that this certificate having been produced in the Supreme Court by the attorney for the bank, and the transcript of the record in the Circuit Court not having been filed, the writ of error was thereupon dismissed, and

¹ See note to *Commercial Bank v. Buckingham*, 5 How., 317.

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the judgment of the Circuit Court affirmed. It is upon this judgment that the writ of error has been presented to this court.

It appears from the argument against the motion, that the question intended to be raised here is whether the acts of the State of Alabama creating a bank and branches are not in violation of the tenth section of the first article of the Constitution of the United States, which declares that "no State shall emit bills of credit."

But in order to bring that question before this court, it should have been raised in the Supreme Court of the State, and have been there decided. There are many cases in the reports in which this court have so ruled. In this case the Supreme Court of the State dismissed the writ of error to the Circuit Court, and affirmed its judgment, because the plaintiffs in error had not filed a transcript of the record; and no question as to any matter of right in contest in the suit was raised or decided. There is nothing, therefore, in the record which this court is authorized to review, and the writ of error must be dismissed for want of jurisdiction.

ORDER.

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Alabama, and was argued by counsel. On consideration whereof, and it appearing to the court upon an inspection of the said transcript that *there is nothing in the record which this court is authorized to review, it is thereupon now here [*262 ordered and adjudged by this court, that this cause be and the same is hereby dismissed, for want of jurisdiction.

DUNCAN MCARTHUR'S HEIRS, COMPLAINANTS, v. WALTER DUN'S HEIRS.

The proviso in the second section of the act passed on the 1st of March, 1823 (3 Stat. at L., 773), entitled, "An act for extending the time for locating Virginia military land-warrants and returning surveys thereon to the General Land Office,"—which proviso is as follows, viz. "Provided, that no locations, as aforesaid, in virtue of this or the preceding section of this act, shall be made on tracts of lands for which patents had previously been issued, or which had been previously surveyed; and any patent which may nevertheless be obtained for land located contrary to the provisions of this act shall be considered null and void,"—protected an entry which had been