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argument in this court. The cases of *Groves v. Slaughter*, 15 Pet., 449, and the two cases of *Rowan v. Runnels*, 5 How., 134, in relation to the construction of the constitution of Mississippi, stand on very different grounds, as will be seen by a reference to the cases.

Upon this view of the subject, it will be certified to the Circuit Court, as the opinion of this court, that the banking associations organized under the acts of the legislature mentioned in the certificate of division were corporations within the meaning of the constitution of Michigan; and that these acts of the legislature are unconstitutional and void.

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 Michigan, and on the point and question on which the judges of the said Circuit Court were opposed in opinion, and which was certified to this court for its opinion, agreeably to *the act of Congress in such case made and provided, and was argued by counsel. On consideration [*819 whereof, it is the opinion of this court, that the banking associations organized under the act of the legislature of the State of Michigan, entitled "An act to organize and regulate banking associations," approved March 15th, 1837, and the amended act entitled "An act to regulate banking associations, and for other purposes," approved December 30th, 1837, were corporations or bodies corporate within the meaning of the constitution of the State of Michigan, and that these acts of the legislature are unconstitutional and void; whereupon it is now here ordered and decreed by this court, that it be so certified to the said Circuit Court.

GEORGE B. STEARNS, ADMINISTRATOR DE BONIS NON OF
JOHN O. PAGE, APPELLANT, v. RUFUS R. PAGE.

The general rules stated which govern a court of equity in opening accounts and sustaining claims which are barred by the statute of limitations.

Great caution is exercised, and the complainant is holden to stringent rules of pleading and evidence. He must state in his bill, distinctly, the particular act of fraud, misrepresentation, or concealment; must specify how, when, and in what manner it was perpetrated. The charges must be definite and reasonably certain; capable of proof and clearly proved.

If a mistake is alleged, it must be stated with precision and made apparent, so that the court may rectify it, with a feeling of certainty that they are not

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committing another and perhaps greater mistake. And especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discovery is, so that the court may clearly see whether, by the exercise of ordinary diligence, the discovery might not have been before made.¹

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

The bill, filed by Stearns as administrator *de bonis non* of John O. Page, proposed to open and review the accounts of the estate of said Page, which were filed from 1811 to 1816 by his widow and original administratrix, Sarah Page.

The record was very voluminous. There was a bill, and an amended bill, and amendments to the amended bill, and an amendment to one of the amendments to the amended bill. Then there were answers to all these bills, and exceptions to the answers, and motions for the production of books and papers; and a great mass of testimony filed. After all, the record was deemed incomplete, and a *certiorari* issued to bring up more.

*820] *It is unnecessary to give an extended account of all these things, because the opinion of the court is so intermingled with, and founded upon, the facts of the case, that it is sufficient for the Reporter to refer the reader to that opinion.

The defendant below pleaded the statute of limitations, although he answered the bill.

In October, 1843, the Circuit Court dismissed the bill, when the complainant appealed to this court.

It was argued by *Mr. Evans*, for the appellant, and *Mr. Allen*, for the appellee. Only such parts of their arguments will be given as bear upon the question of limitations.

Mr. Evans's third point was, that the plaintiff is not barred by the statute of limitations, nor by lapse of time.

The questions how far courts of equity are bound by statutes of limitations, and whether *ex proprio vigore*, or only by rules of their own by analogy to the statute, and how far and under what circumstances lapse of time is a bar, have been frequently discussed before this and other tribunals.

In many cases relief has been refused; in many cases it has

¹ APPLIED. *Beaubien v. Beaubien*, *Kimmell*, 9 Otto, 202, 210; *Pulliam* 23 How., 208. CITED. *Bailey v. v. Pulliam*, 10 Fed. Rep., 56. *Glover*, 21 Wall., 349; *Godden v.*

been granted. Many general expressions have been used, and frequent attempts been made to define with precision the principles which govern courts in these cases. But, after all, it comes to exactly this,—that there is and can be, in the nature of things, no certain and definite rule on the subject. Each case must depend upon the exercise of a sound discretion, growing out of the circumstances of the case. 3 Johns. Ch. Cas., 586.

Hercy v. Dinwoody, 2 Ves., 90–93, reviews the cases prior to that time, and repeatedly speaks of the *circumstances* as influencing the decision one way or the other.

What, then, are the particular circumstances, or the nature and kind of circumstances, which have been held to bar relief?

They will be found to be cases where the fraud was known to the party affected by it, and who has neglected, for a long time, to assert his rights.

Or where the circumstances afford a presumption almost irresistible, that the matter was adjusted and settled by the parties in the time of it.

Or where it appears satisfactorily, that evidence has been lost, papers burned, documents scattered, which could throw light upon it, thus leaving it altogether in doubt whether any fraud were really committed.

Or where it is inequitable to grant relief;—where there is a want of good faith and conscience in the party seeking it; *as where the sureties of an executor were called in, after a long period, to make good the fraud of his testator, &c.;—or where the property in question had passed into *bonâ fide* hands, large expenditures made, &c.

Where this is done with a knowledge of the party seeking relief, it is a want of good faith to seek it. Where without his knowledge, then it has arisen from want of reasonable diligence,—and the court will not permit an innocent man to suffer to help a negligent one.

Or where, on some ground of public policy, it is deemed right not to disturb family settlements and possessions.

But in cases of actual fraud, against the party himself, I know of no case where relief has been withheld, unless the circumstances of the case show clearly and satisfactorily that it was known and acquiesced in, or furnish sufficient presumption that it was settled.

Where is the case that mere lapse of time, without such circumstances, bars relief?

What would be said to a bill charging fraud, admitted by the answer, but repelling it by urging, You are too late.

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True, I defrauded you; whether you knew it or not, I neither know nor care. I have had the fruits of it thirty years, and I set you at defiance. What would the court say? If they would grant the relief, as I think they would, then it follows that mere lapse of time, in such a state of things, is no bar.

The cases maintain this view. Any quantity of them may be found.

Lord Erskine, in *Cotterell v. Purchase*, Forrester, 66, says,—“No length of time can prevent the unkennelling of a fraud.”

Lord Northington, in *Alden v. Gregory*, 2 Eden, 285, says,—“The next question is, in effect, whether delay will purge a fraud. Never, while I sit here. Every delay adds to its injustice, and multiplies its oppression.”

So in 2 Ves., 281, 282. No length of time merely, a bar. (See case.) And that was a case where no fraud imputed.

So in our own courts. *Prevost v. Gratz*, 6 Wheat., 481 :—“It is certainly true, that length of time is no bar to a trust clearly established; and in case where fraud is imputed and proved, length of time ought not, on principles of eternal justice, to be admitted to repel relief. On the other hand, it would seem that the length of time during which the fraud has been successfully concealed and practised is rather an aggravation of the offence, and calls more loudly upon a court of equity to give ample and decisive relief.”

In *Michoud v. Girod*, 4 How., 560, 561, no length of time, as against a party to the fraud.

*822] In *Warner v. Daniels*, 1 Woodb. & M., on p. 111, Justice Woodbury recognizes the general principle, that, where fraud exists, length of time is no bar, and cites several cases, *quod vide*.

So it will not be a bar if it would work injustice. Other cases cited by Woodbury, 112.

The true reason for the rule is stated in Fonblanque on Eq., 260 (marginal, p. 331) *in notis* :—“But though courts of equity will interpose to prevent these mischiefs, which would probably result from persons being allowed to bring forward stale demands at any distance of time to disturb the possessions of others, yet, as its interference in such cases proceeds upon the principles of conscience, it will not encourage, nor in any manner protect, the abuse of confidence, and therefore no length of time will bar a fraud.”

He afterwards adds,—“Unless it appears that the circumstances of the fraud were known to the party, and that with such knowledge he has lain by a considerable length of time.”

Before length of time can operate as a bar, it must appear,—be shown affirmatively,—that the party had knowledge.

It is important to keep this in mind. Some of the authorities speak of “equitable circumstances” being allowed to repel the bar, from which it would seem to follow, that the burden was on plaintiff; but the true rule is, that time is not of itself merely and *per se* a bar, but is made so, and may be made so, by the circumstances of the case.

There are numerous other cases, to the effect that time proves no bar, unless under circumstances. 10 Ves. (Sumner's edition), 423; 2 Johns. (N. Y.) Ch., 252; *Pugh's Heirs v. Bell's Heirs*, 1 J. J. Marsh. (Ky); *Bertine v. Varian*, 1 Edw. (N. Y.), 343.

But where a fraud appears in a stated account, the whole will be opened, though of a great many years' standing. *Vernon v. Vawdry*, 2 Atk., 119; *Whalley v. Whalley*, 1 Meriv., 436; 3 Bro. Ch. Cas. (Am. ed. 1844), 646, 527, n.

This subject has been before the court recently. Attention drawn to it in *Lewis v. Beard*, decided this term. They refer to *McKnight v. Taylor*, 1 How., 161, and to *Piatt v. Vattier*, 9 Pet., 416, as containing their views of the general rules applicable to such cases.

It is to be noticed, that all these cases were cases where the circumstances rendered it inequitable to grant the relief,—cases of unmitigated neglect, leaving no reasonable doubt of injustice being done by granting the relief sought.

There was no occasion, therefore, to examine the cases where such circumstances were wanting. Adopting the *principle applicable to such a state of facts, and almost the language of an English case, they say the [*823 court will not be called into activity, unless where conscience, good faith, and reasonable diligence exist on the part of the plaintiff. Certainly. Conscience and good faith, in not disturbing others' possessions, and reasonable diligence, so that no pretence of acquiescence might arise.

But whatever effect is to be given to lapse of time, or the statute of limitations, ordinarily, it is quite clear, from all the authorities, that it does not begin to operate until the discovery of the fraud. It must be full and complete discovery.

In cases of fraud, the statute begins to run from the time of such full and complete disclosure as enables the parties interested to see the nature and extent of the fraud committed. *Croft v. Administrators of Townsend*, 3 Desaus. (S. C.), 239; *Wamburzee v. Kennedy*, 4 Id., 474. See also the

cases cited by counsel in 4 How., 552; *Boone v. Chiles*, 10 Pet., 223.

Vague rumors not sufficient. A party possessing imperfect information is guilty of no laches. See cases cited by counsel as before, 4 How., 552.

In the case at bar, the discovery was made within six years from filing the bill. So alleged in the bill. Not denied by answer. Is therefore to be taken as true.

The defendant is bound to negative particularly all circumstances alleged in the bill calculated to avoid the statute. 8 Cow. (N. Y.), 360; 3 Johns. (N. Y.) Ch., 384, 391; Story on Eq. Pl., § 754 *et seq.*; 6 Ves., 586; 2 Paige (N. Y.), 576; same, in 11 Pick. (Mass.), 331; 3 Paige (N. Y.), 273; and cases in any number cited in Cow. & Hill's Phil. Ev. Discovery of paper written by J. O. P., since bill filed, not denied by answer.

The offer to refer to arbitrators is a waiver of the bar relied upon. This not denied by answer. *Baillie v. Sibbald*, 15 Ves., 185; *Farnham v. Brooks*, 9 Pick. (Mass.) 212; 2 Story, Eq., § 1521, *et seq.*; 1 Id., § 523, *et seq.*

Equitable circumstances may be shown to repel the whole effect of the bar. 2 Story, Eq., § 1524. (See note on p. 737.)

There are other equitable circumstances in the case, which should do away the effect of the lapse of time. The books and papers are in existence, and intelligible.

This was a reason assigned in *Pickering v. Lord Stamford*, 2 Ves., 585. But it appearing that the account had been so regularly kept, that there was no difficulty in ascertaining the personal estate of the testator, &c., relief was decreed; and a case, too, where the Master of the Rolls had said he should be glad to get rid of it.

*824] *Time has not obscured the transactions, or only to our detriment. We are the party whom time and death have injured.

The language in 4 Howard is, where the original transactions have become obscure, and by time.

The court must see that time has actually and in fact produced its accustomed effect, before it shall operate.

Above all, where it is evident that no such result has followed, why should effect be given to it?

This case differs from most others which are reported in this,—that the defendant is the original party, with all his faculties and knowledge fresh upon him.

Why then should plaintiff—the estate of J. O. Page—be deprived of its rights? Has he or any of the representatives

been guilty of such laches as shall debar him? Upon what ground will the court not be called into activity?

The case furnishes no presumption of payment. It is not a case for presumption. The answer negatives it.

Whatever error or fraud ever existed now exists. Whatever wrong was done remains.

It furnishes no evidence of acquiescence. The nature of the wrong, and the mode of doing it, so far as appellants were concerned, and proportions, three eighths, forbid almost discovery. The then administrator disposed to peace, a woman. No means of redress then but at law; no means of proof; no opportunity for a discovery from defendant.

It seeks to disturb no innocent person's possessions, but is against the original wrongdoer. It is not against the representatives of the original party, and who may be supposed to be left without the means of defence, &c., as in *Mooers v. White*, 6 Johns. (N. Y.) Ch., 369. It will scarcely be urged by defendant, that, whatever errors or mistakes were committed, they did not originate in his representations. They could arise from no other source. Nobody else had the means of furnishing the *data*. Nobody else had inducements to falsify. The answer admits that he gave all the information in his power.

It will be said the answer denies all fraud. This is not sufficient; it does not deny, but admits, the gross errors which are the result of that fraud.

A denial of fraud is not sufficient nor conclusive, if the facts and circumstances are such as to lead to a different conclusion. *Howard v. Camp*, Walk. (Mich.) Ch., 427.

Fraud may be presumed in equity, though it must be proved at law. *Lord Chesterfield v. Jannsen*, 1 Atk., 352; *Denton v. McKenzie*, 1 Desaus. (S. C.), 300; *Warner v. Daniels*, (cases cited by court,) 1 Woodb. & M., 103; *Watkins v. Stockett*, 6 Har. & J. (Md.), 435; *Boyden v. Walker*, 2 Id., 292.

*But if there remains any doubt as to the fraudulent representations of defendant, we are entitled to relief [*825 on the ground of mistake.

The court will open a settlement made by mistake, though receipts have passed and a note has been given. 4 Desaus. (S. C.), 122.

"But if there has been any mistake, or omission, or accident, or undue advantage, or fraud, by which the account stated is in truth vitiated, and the balance is incorrectly fixed, a court of equity will not suffer it to be conclusive upon the

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parties, but will allow it to be opened and reëxamined." 1 Story, Eq., § 523.

In some cases the whole account will be opened, in others a more moderate remedy given. *Ib. seq.*

And though an account be settled by arbitrators, it is not conclusive if an error can be shown in the account. *Patterson v. Pearl*, 3 Atk., 530; 1 Mad. Ch., 101.

There must be error enough upon the bill to show there is reason for it; and if plaintiff proves some of the errors, he entitles himself to a decree. *Twogood v. Swanton*, 6 Ves., 486. He may take advantage of errors in law, as well as in fact. *Roberts v. Kuffin*, 2 Atk., 112.

Mistake is within the same rule as fraud, both as regards time and reliefs. 2 Younge & Coll., 58, cited in 2 Story, Eq., 739, note.

Time does not run against the remedy for a mistake until it be discovered. 4 J. J. Marsh. (Ky.), 77; *Bertine v. Varian*, 1 Edw. (N. Y.), 343; 1 Paige (N. Y.), 564. See also 1 Woodb. & M., p. 107, cases cited by Woodbury and remarks, showing what is equivalent to a fraud,—such as availing himself of false representations of others, enjoying fruits, &c.

The relation of these parties was of a fiduciary character, whether it were a copartnership or not,—a relation which the courts regard and watch with great scrutiny. Much in any aspect was intrusted to defendant; his control was great, his account large.

1 Story, Eq., 497, note:—"A settled account between attorney and client, or between other persons standing in confidential relations to each other, will be opened more readily than any others; and even, it is said, upon general allegations of error, without any errors being pointed out, when the answer admits errors."

So if a partner, who exclusively superintends the business of the concern, should, by concealment of the true state of the affairs, purchase the share of the other partner for an inadequate price, the purchase will be held void. 1 Story, Eq., § 220; *Maddeford v. Austwick*, 1 Sim., 89; *Smith in re Hay*, 6 Mad., 2; *E. I. Co. v. Donald*, 9 Ves., 275.

*826] *Mr. Allen* said, that, where a bill calls for a general account on the ground of fraud, it is not sufficient to make a charge of fraud in general terms; it should be pointed out, and the point stated. 1 Story, Eq. Pl., 251.

This court will be governed by the decisions of the State courts, where the transactions arose in the construction given by them to the statute of limitations. 16 Pet., 455-457.

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The statute applies to this case. 1 Mass. Laws, 280, 13th February, 1787; 1 Maine Laws, 297.

This court will not interfere after so great a lapse of time as has passed in this case. 1 How., 161, 189. The decisions of the State court upon the subject are found in 3 Pick. (Mass.), 212, 237-248.

Mr. Justice GRIER delivered the opinion of the court.

A brief history of the conceded facts of this case, anterior to the filing of the amended bill, may save the trouble of a more tedious analysis of the bill and answer, with their numerous amendments, and tend to elucidate the merits of the case and the questions decided by the court.

John O. Page, the complainant's intestate, was a merchant in Hallowell, Maine. He built and owned shares in vessels employed in trade, and had a retail shop or store, which, for some years before his death, was managed by his brother, Rufus K. Page. In 1810, John O. Page went to England, leaving his business chiefly in the care of his brother, and died there, in February, 1811, intestate, leaving a widow and three minor children. Sarah Page, the widow, took out letters of administration on the estate. She filed an inventory of the property, amounting to the sum of \$64,000, and charged herself with additional receipts of cash in the administration accounts afterwards filed, showing the whole amount of the estate to be over \$80,000.

Rufus K. Page claimed to have been a partner with his brother in the store, by a parol agreement with him, whereby John should furnish the capital, and Rufus conduct the business, dividing the profits, five eighths to John and three eighths to Rufus.

The sureties of Sarah Page in her administration bond were Nathaniel Dummer, her father-in-law, and Thomas Bond, Esq., her brother-in-law, who also aided and counselled her in settling the estate. In February, 1812, Chandler Robins, register of the Probate Court, and John Agry, a respectable merchant and ship-owner, were mutually chosen by the administratrix and Rufus K. Page to settle all accounts between the estate of John O. Page and Rufus K. Page. By their settlement or award, Rufus was charged as debtor to John,—

*827]	*For capital advanced to store, . . .	\$10,769.00
	For five eighths of profits of store, . . .	12,934.00
	Amounting in all to . . .	\$23,703.00
	From which was deducted John's debt to store, . . .	7,828.00
	Leaving a balance due by Rufus to the estate, . . .	\$15,875.00

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After adding and subtracting various other matters of account not connected with the partnership, they found the balance due by Rufus to the estate to be \$17,190, of which \$8,106 was cash, and the remainder, \$9,084, consisted of John's share of the notes and accounts due to the store, and which Rufus retained in his hands for collection. The first administration account filed by Sarah Page acknowledges the receipt in cash of the sum of \$8,106 from R. K. Page, and the accounts afterwards filed show that she had received the balance of \$9,804, partly in cash and partly in notes.

Sarah Page settled the final account of her administration on the 20th of February, 1816. She died in 1826. In 1828, Stearns, the complainant, intermarried with Louisa, one of the daughters and heirs of John O. Page. In 1834, he took out letters of administration *de bonis non* on the estate of John O. Page, for the purpose of prosecuting claims under the treaty, of the United States with France. After this he commenced an examination of the administration accounts of Sarah Page, and began to entertain suspicions that Rufus K. Page had taken advantage of her ignorance of accounts, and had defrauded her in his settlement. And finally, at November term, 1838, more than twenty-six years after the settlement of defendant's account with the administratrix, this bill was filed against Rufus K. Page for a discovery and account.

The amended bill abounds in general charges of fraud against the defendant; alleges that he concealed from the administratrix the true state of the affairs of the deceased, which had been intrusted to his care; that the partnership claimed by him with the deceased was a false pretence, "and that the said Sarah did not distrust, or had it not in her power to disprove, the same"; that the accounts exhibited of the partnership transactions were totally false and fraudulent in their statements and aggregates, calculated and designed to deceive and mislead.

It charges, also, that some ten thousand dollars of private debts due by Rufus to John were intermingled with the partnership accounts so as to produce an erroneous result, and that he had sold and converted to his own use the brig Emmeline, which was owned, in whole or in part, by John, and rendered no account of the same.

*828] *Afterwards, in October, 1841, by a further amendment to the bill, the complainant admits, that, "from means of information which he now has," there was a partnership between John and Rufus, but insists that the profits were to be divided between them in the ratio of two thirds to John and one third to Rufus.

The defendant, in his answer, after denying the general charges of fraud and mistake, asserts, that he entered into partnership, by parol agreement, with his brother, John, in 1806; that the business of the firm was transacted in the name of Rufus K. Page; that John advanced the capital, and Rufus superintended and conducted the business of the store, and the profits thereof were to be divided five eighths to John and three eighths to Rufus; that the books of the firm were kept on these principles, and always open to the inspection of John, and frequently examined by him; that when John advanced money or goods for the use of the firm, he took the notes of the firm; and that defendant gave notes to John for goods and money supplied, and (to use his own phrase) "for equalizing the capital," to the amount of over \$10,000; that immediately on the announcement of the death of John O. Page, an inventory of the goods in the store was taken and placed in the hands of Bond, the attorney of Sarah Page, the administratrix; that he afterwards settled fully and fairly all accounts with the administratrix and her attorney, and produces the books, and the statement of their final settlement as made out by Robins and Agry, the referees chosen by the parties to make the settlement and adjust the accounts, and shows, moreover, by the administration accounts filed by said Sarah, that he had paid her the balance of over \$17,000 found to be due by him according to the account thus stated.

He asserts, moreover, that John owned but one half of the brig Emmeline, which the administratrix afterwards sold to the defendant for the sum of \$3,000, with which she charged herself in her administration account. And finally, the answer relies on the settlement of accounts thus made more than twenty-five years before the filing of the bill, as a bar to all further account, especially after so great a lapse of time, when papers are lost, witnesses dead, and transactions forgotten, and pleads the statute of limitations.

Statutes of limitation form a part of the legislation of every government, and are necessary to the peace and repose of society. When they are addressed to courts of equity as well as to courts of law, as they seem to be in all cases of concurrent jurisdiction (as in matters of account), they are equally obligatory on each court. In other cases, courts of equity act upon *the analogy of limitations [829 at law, and sometimes upon their own inherent doctrine of discouraging, for the peace of society, antiquated demands, by refusing to interfere where there has been gross laches or unreasonable delay. They also interfere in many cases to prevent the bar of the statutes, where it would be

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inequitable or unjust: as, for example, if a party has perpetrated a fraud which has not been discovered till the statute bar may apply to it in law, courts of equity will interpose and remove the bar out of the way of the injured party. In cases of mistake also, as well as fraud, they will not consider the statute as running till after the discovery of the mistake, as laches cannot be imputed to the injured party till the discovery of the fraud or mistake has been made. 2 Story, Eq., § 1520. But as lapse of time necessarily obscures the truth and destroys the evidence of past transactions, courts of chancery will exercise great caution in sustaining bills which seek to disturb them. They will hold the complainant to stringent rules of pleading and evidence, and require him to make out a clear case. Charges of fraud are easily made, and lapse of time affords no reason for relaxing the rules of evidence or treating mere suspicion as proof. If a defendant can be compelled to open settled accounts, to explain or prove each item, after a lapse of near thirty years, by general allegations of fraud,—if the fraud can be proved by his inability to elucidate past transactions after so great a length of time, or by showing some slips of recollection, or by contradicting him in some collateral facts by the frail recollection of other witnesses,—no man's property or reputation would be safe.

A complainant, seeking the aid of a court of chancery under such circumstances, must state in his bill distinctly the particular act of fraud, misrepresentation, or concealment,—must specify how, when, and in what manner, it was perpetrated. The charges must be definite and reasonably certain, capable of proof, and clearly proved. If a mistake is alleged, it must be stated with precision, and made apparent, so that the court may rectify it with a feeling of certainty that they are not committing another, and perhaps greater, mistake. And especially must there be distinct averments as to the time when the fraud, mistake, concealment, of misrepresentation was discovered, and what the discovery is, so that the court may clearly see, whether, by the exercise of ordinary diligence, the discovery might not have been before made.¹

Every case must, of course, depend on its own peculiar circumstances, and there would be little profit in referring to the very numerous cases to be found in the books on this subject. In the case of *Michoud v. Girod*, 4 How., 504, *830] lately decided in *this court, transactions were investi-

¹ APPLIED. *Wood v. Carpenter*, 11 Otto, 140.

gated after a lapse of more than twenty years; but the facts proving the fraud were all on record, and were not disputed. The false accounts made out against the estate of the deceased by the executors were on file, and their iniquity was apparent on their face. Moreover, the complainants resided in Europe, and were kept in ignorance of their rights, and hindered from prosecuting them by the promises, threats, and fraud of the guilty parties.

In this case, the complainant seeks to open an account stated and settled twenty-six years before the filing of his bill, and this account not rendered by the defendant to a woman unacquainted with business, and received by her without examination, but stated from the books, by referees or arbitrators chosen for the purpose, and in the nature of an award between the parties, executed and acquiesced in by both without complaint for a quarter of a century.

Six years is a statute bar to an action of account, both at law and in equity. Has the complainant stated in his bill, and sustained by proof, such a case as would justify the interference of a court of equity after so great a lapse of time?

1. Has he discovered any thing which was not as open to discovery by himself or his predecessor in the administration, more than twenty years before?

2. Has he shown any fraud, misrepresentation, or concealment, practised by the defendant on Sarah Page, and "made it palpable to the court," so that it would be justified in directing the whole account to be opened and taken *de novo*?

3. Or has such clear mistake or omission been shown with regard to any of the items of the account, that the court would grant liberty to the complainant to surcharge and falsify generally, or as to any particular item?

In order to repel the imputation of laches, the complainant states that he did not take out letters of administration *de bonis non* on the estate of John O. Page till the year 1834, eight years after the death of Sarah Page, the administratrix, and six years after his marriage with one of the heirs; "that, on examining the papers and accounts, he discovered that there was a considerable amount of property of said estate included in the inventory which had not been administered by said Sarah in her lifetime; that, in pursuing the inquiry, he gradually obtained information by various means, afforded, in the first place, by the state of those papers, and from sundry other sources and conversations with persons now living or deceased, which produced the persuasion and firm belief, that there was much of said prop-

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erty in the hands and possession of Rufus K. Page which has not been exhibited or accounted for by him," &c.; *831] *"but that how far the said Sarah Page was in the knowledge and possession of all the information in respect to the premises that has come to his knowledge, he is not able to say, on account of her death before he had any reason or opportunity to ascertain the same." It appears, therefore, that the complainant has discovered no fact of which Sarah Page was ignorant. He can specify no misrepresentation, concealment, or fraud, practised by defendant, which has for the first time come to light. He does not state what property was not accounted for by Sarah Page, or how she was deceived or defrauded by Rufus. In fact, taking the various bills and amendments together, it is very plain that this bill was filed on suspicion of fraud, and for the purpose of a discovery of facts from the defendant on which to found specific charges of fraud. It is clear, also, that these suspicions had their origin, not on the discovery of any new facts concealed from his predecessor in the administration, but from his necessary ignorance of facts of which Sarah Page and her counsel must have been fully conversant, from the very nature and circumstances of the case.

When this bill is divested of its general and vague charges of fraud in matters of which the complainant could have no personal knowledge, it might well be doubted whether it contains sufficient matter properly set forth to entitle the complainant to call on the defendant, after so great a length of time, to answer to its allegations and make a discovery with regard to facts so likely to be forgotten or indistinctly remembered.

But, waiving this point, let us examine the specifications of fraud or mistake which some attempts have been made to substantiate.

1. The complaint about the ship *Horatio* being found untenable is left out of the amended bill, and need not be noticed.

2. The bill denied that any partnership had existed between Rufus and John O. Page; but, after taking testimony to contradict the answer in this respect, an amendment, filed in 1841, admits the partnership, but charges that the terms were different from those stated in the answer. On this point, the answer, being responsive to the bill, must be taken to be true unless disproved by two witnesses, or something equivalent. The memorandum in the handwriting of John O. Page, not being signed by Rufus or himself, and never

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communicated to Rufus or assented to by him, cannot be received as evidence of the fact.

3. The notes of Rufus to John for \$10,000, if given, as stated in the answer, to show the amount of capital advanced to the store by John, are fully and properly accounted for.

*The referees who stated these accounts had the partnership books and the parties before them, and [832 could best judge how the capital account had been kept, whether by credits in the books or giving the notes of the firm, which would be the notes of Rufus K. Page. The parties acquainted with the transaction had no difficulty about it, and the mere suggestion of a stranger to the whole transaction, now made, some thirty years afterwards, that possibly these notes were the private debt of Rufus, and not given to represent the capital of the store, cannot be received as evidence of mistake or fraud. The answer being responsive to the bill, and uncontradicted by the evidence, is conclusive of the fact. The accounts show that Rufus accounted with the administratrix for the goods of the store inventoried on the decease of John O. Page, for the capital of the firm, amounting to over \$10,000, and for John's share of the profits, exceeding \$12,000. The complainant has wholly failed to show any mistake, omission, fraud, concealment, or misrepresentation, on the part of Rufus K. Page, in connection with the subject.

4. The interest of John O. Page in the brig Emmeline was transferred by Sarah Page, the administratrix, to Rufus, and the amount accounted for by her in the inventory and administration accounts settled by her. Whether the money was paid to her by Rufus, as he asserts in his answer, or she made a gift of it to him on account of the known intention of her husband to give it to him by his will, is wholly immaterial in this case, as the administrator *de bonis non* can have no concern with property administered and accounted for by his predecessor in the trust.

In the course of the argument, the learned counsel noticed other items of account, which they alleged to be erroneously stated or not sufficiently explained; but as they were not charged in the bill, they will not be noticed.

The decree of the Circuit Court must therefore 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 Maine, and was argued by counsel. On consider-

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ation 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.

♦♦♦♦♦

*833] *THE UNITED STATES, PLAINTIFFS IN ERROR, v. RICHARD KING AND DANIEL W. COXE, DEFENDANTS.

The case of the *United States v. King and Cox* (3 How., 773) reviewed.¹

According to the practice of Louisiana, where cases are carried to an appellate tribunal, in which the court below has decided questions of fact as well as of law, the appellate tribunal also reviews and decides both classes of questions.

But this practice is not applicable to the courts of the United States. A writ of error in them brings up only questions of law, and questions of fact remain as unexaminable as if they had been decided by a jury below.²

Where the court below decides both law and fact, no bill of exceptions need be taken. The case then becomes like one at common law, where a special verdict is found or a case is stated, in neither of which is there any necessity for a bill of exceptions.

Where the court below decides the facts, a statement of them should appear upon the record; but if such a statement be filed after judgment is entered and a writ of error sued out, it cannot be considered a part of the record, which is closed against it.

Leaving this statement out, there is still enough in the record to enable the court to take cognizance of this case, because the defendants below asserted a legal title to be in themselves by virtue of a grant which severed the land claimed from the royal domain.

The construction of this grant, issued in 1797, by the Baron de Carondelet, to the Marquis de Maison Rouge, is a question of law upon which this court must review the decision of the Circuit Court.³

¹ This case and the previous decision in 3 How., 773, were subsequently relied upon by counsel as affording support to a motion to dismiss the appeal in *Surgett v. Lapice* (8 How., 48), but the court, *per* Catron, J., at page 65, say that this case "was not an action of title to quiet the plaintiff in possession of his land, but was a petitory action brought by the United States to recover land which was in the possession of the defendant, and to which the United States claimed a legal title. The suit was in the nature of an ejectment in a court of common law, and was therefore strictly an action at law, and in no respect analogous to a proceeding in equity to remove a cloud from the title of a party who not only holds the legal title, but is also actually in possession of the land in dispute; and as the United States cannot be sued in reconvention, if the defendant had claimed an equitable title in that case, it would have been no defence, because he could not make the United States a defendant, and himself a plaintiff, by a suit in reconvention. The whole proceedings were, necessarily, proceedings at law, and could therefore be removed by writ of error only, and not by appeal."

² FOLLOWED. *Boogher v. Insurance Co.*, 13 Otto, 95. CITED. *Prentice et al. v. Zane's Admr.*, 8 How., 486; *Jones et al. v. McMasters*, 20 Id., 22; *Burr v. Des Moines R. R. &c. Co.*, 1 Wall., 103; *Insurance Co. v. Folsom*, 18 Id., 249.

³ CITED. *Arguello et al. v. United States*, 18 How., 550.