JOHN MAXWELL, ADMINISTRATOR DE BONIS NON OF ROBERT MAXWELL, DECEASED, APPELLANT, *v.* JOSEPH S. KENNEDY, JESSE CARTER, MARY L. CARTER, HIS WIFE, DANIEL E. HALL AND DELPHINE HALL, HIS WIFE, AND MARTHA KENNEDY.

A lapse of forty-six years is a bar to relief in equity, although the creditor, during all that time, supposed the debtor to be insolvent and not worth pursuing, where it appears that for a considerable portion of that time he was in a condition to pay, and the creditor might, by reasonable diligence, have discovered it, and recovered the money by a suit at law.[1]

Where, upon the case stated in the bill, the complainant is not entitled to relief by reason of lapse of time and laches on his part, the defendant may demur.[2]

THIS was an appeal from the Circuit Court of the United States for the Southern District of Alabama.

*211] The bill was filed in the court below by Maxwell, the appellant, *against the above-named defendants, as the heirs of William E. Kennedy. Joseph and Martha Kennedy were his children, and Jesse Carter and Daniel E. Hall had married his daughters.

As the sole question which came up to this court was the correctness of a judgment of the Circuit Court in sustaining a demurrer to the bill, it is only necessary to state the substance of it.

The bill averred, that on the 10th of November, 1797, Robert Maxwell, the intestate of the complainant, recovered a judgment in South Carolina, against William E. Kennedy, the ancestor of the present defendants. The judgment was for £1,000 sterling, and costs, £114 9*s.* 2*d.*, no part of which was ever paid.

That immediately after the rendition of the judgment, in order to avoid the service of a *capias ad satisfaciendum* which had been issued, and also to avoid being apprehended for the murder of the said Maxwell, for which he had been indicted, Kennedy fled from South Carolina. Two or three years afterwards he was apprehended in Georgia, brought back to South Carolina, tried and acquitted. At this time he was stated in the bill to have been insolvent. Immediately afterwards, he returned to Georgia, where he remained for four or five years,

[1] CITED. *Landsdale* v. *Smith*, 16 Otto, 392–3; *Pulliam* v. *Pulliam*, 10 Fed. Rep., 26. See notes to *Bowman* v. *Wathen*, 1 How., 189, and *McKnight* v. *Taylor*, Id., 161.

[2] FOLLOWED. *Olden* v. *Hubbard*, 7 Stew. (N. J.), 86. CITED. *National Bank* v. *Carpenter*, 11 Otto, 568; *Credit Co.* v. *Arkansas Central R. Co.*, 15 Fed. Rep., 55.

still insolvent, so that no effort could have been successfully made to collect the above-mentioned judgment.

That after the expiration of that time Kennedy left Georgia, without its being known to any one in that part of South Carolina where he had gone, until about three years before his death, when, some time in the year 1822, it was ascertained that he was living in Mobile. That he was then residing with his brother, one Joshua Kennedy, and apparently dependent upon him for support. That when Kennedy went to Mobile, it was in a foreign country, and little or no intercourse existed between it and South Carolina; nor was there for a long time after it had been ceded to the United States. That while Florida was yet a Spanish province, viz., in the year 1806, the said Kennedy acquired an imperfect title to a considerable estate in land, of which, however, the complainant was entirely ignorant. That on the 13th of December, 1824, he conveyed this estate to his brother, Joshua Kennedy, for the consideration of $10,000, which, the bill averred, had never been paid.

That it was not until after the date of this deed, that the complainant discovered that William E. Kennedy was living, and he was then wholly without property.

That in the year 1805, he had married a female subject of *the crown of Spain, who owned considerable real and personal estate; all of which was settled upon her previously to the marriage. [*212

That on the 9th of April, 1825, William E. Kennedy died. Joshua Kennedy administered upon the estate, and returned an inventory to the Orphans' Court, amounting in value to $267. Up to the time of Joshua's death, which took place in 1839, he constantly represented his brother William to have died insolvent, and these representations prevented the complainant from attempting to enforce the long-standing judgment.

That on or about the 22d of April, 1839, the heirs of the said William E. Kennedy, viz., the defendants in the present suit, filed a bill in the Court of Chancery of the First Chancery Division and Southern District of the State of Alabama, against the heirs and executors of Joshua Kennedy, and obtained a decree against them, which, on an appeal to the Supreme Court of Alabama, was confirmed. This decree adjudged that the deed of 13th December, 1824, was not made upon any consideration valuable in law, but for the purpose of securing an adequate provision for the children of the said William. It therefore further adjudged, that the heirs of

William were entitled to one half of the unsold lands, and one half of the proceeds of all which had been sold.

The bill then proceeded to aver, that a compromise had been made by the heirs and representatives of these two brothers, a discovery of which was prayed; and that, when made known, the share of the lands so conveyed to the heirs of William E. Kennedy might be held bound to satisfy the judgment obtained by the intestate of the complainant. It concluded with a general prayer for other and further relief.

One of the exhibits attached to the bill was a copy of the decree just mentioned, in the case of *Joseph S. Kennedy and others, Heirs of William E. Kennedy, Complainants*, v. *The Executors and Heirs of Joshua Kennedy*, which decree was passed on the 28th of November, 1840.

To the bill filed by Maxwell in the Circuit Court of the United States against the heirs of William E. Kennedy, the defendants demurred.

In May, 1845, the cause came up for argument upon the demurrer, when the Circuit Court sustained the demurrer and dismissed the bill.

From that decree the complainant appealed to this court.

The case was argued by *Mr. Dargan* and *Mr. Bibb*, for the appellant, and by *Mr. Sherman*, for the appellees.

*213] **Mr. Dargan*, for appellant.

The only question that can be successfully raised to the bill is the statute of limitations.

The idea of staleness is rebutted by the allegations of the bill. On this I will offer no remarks other than those contained in the bill itself.

If I can overcome the statute of limitations, the decree must be reversed. And I contend that the claim is not barred, because it is not within the statute. It is not every action of debt that is barred by our statute. But, on examination, it will be found that actions of debt, founded on lease under seal, bill single, and penal bill for the payment of money only, awards under seal shall be barred, if not sued within sixteen years. See Clay Dig., p. 327, § 81. And in section 82, page 327, it is enacted, that *scire facias* in debt on a judgment rendered in the state of Alabama shall be barred after twenty years. In neither of these sections, nor in any part of the act, is a bar created to an action of debt founded on a judgment rendered in a sister state, or a foreign country.

I think the rule of construing statutes of limitations is well settled, and is this,—that all actions of debt founded on the

grounds, or cause of action, named in the statute, are barred. But that a statute that bars an action of debt on a foreign judgment only would not bar an action of debt on a domestic judgment; and *vice versâ*. To this distinction, *Pease* v. *Howard*, 14 Johns. (N. Y.), 479, is a strong case. The court here say,—"It is not every action of debt that is barred by the statute; but those actions of debt alone, founded on the grounds named in the statute." Hence, if a statute should bar an action of debt founded on a bond, this statute would be no bar to an action on a judgment; or if the statute created a bar to an action of debt founded on a judgment, this act would not bar debt on a bond or lease; nor will an action of debt founded on a statute be barred by a statute barring debt on a lease, &c. 2 Har. & M. (Md.), 154; 1 Mason, 289.

In 2 Saund., p. 64, we find this case:—Debt on award; plea, statute of limitations; and demurrer to the plea. The court held, that debt on award was named in the statute, and therefore not barred. So in 2 Mod., 212, we find:—Debt on a sheriff's return of *fieri facias*. The court say,—"This is an action of debt founded on the breach of a legal duty as an officer of the court, and not on a contract. The statute, therefore, that bars debt on a contract, does not embrace or bar this action, founded on breach of a legal duty."

This distinction is supported by so many adjudged cases, *and seems to be so well founded on reason,— [*214
that is, that a bar created by statute to debt on one cause of action, named in the statute, does not bar debt on another or different cause of action, not named in the statute,—that I submit it with some confidence it will be sustained by the court.

Now courts adopt, but do not create, statutes of limitations. If a demand is not barred at law by statute, it cannot be barred in equity. If, then, there is no statutory bar, is there any other bar to a recovery? Staleness of demand, when the demand is clear and definite, and it has not been asserted because of acts of defendant, (in running off, covering his property, and superinducing the belief of insolvency,) I do not think will be sustained by this court. What circumstance is there alleged in the bill that will take away the right of recovery, in the absence of any bar by statute? It was on this ground that the decree proceeded.

*Mr. Charles E. Sherman*, for defendants.

This case presents, in a striking point of view, the wisdom of the rule of chancery as to the effect of lapse of time in barring demands. Half a century has passed away since the

judgment sought to be now recovered was rendered. The parties are long since dead, as well as those who administered their estates. The complainant and defendants in the present suit were not born till long after the remote times spoken of in the bill, and can know nothing of what was then done. An entire generation has gone, and with it the evidences of its transactions. In such cases, courts of chancery refuse to interfere. The bill, indeed, admits this, but relies on certain circumstances stated in it, to avoid the conclusions arising from lapse of time, and to excuse the delay and neglect which have occurred. But from the allegations and admissions appearing on the face of the bill itself, and in the exhibits, they will not avail the complainant. The bill admits the fact that Dr. Kennedy's place of residence in Georgia was known; that he was brought back to South Carolina to be tried, no doubt at the instance of the family of Maxwell, and that he was there with an execution against him for this debt in the hands of the sheriff of the district where he was tried and acquitted. He was thus completely within the power of complainant's predecessor for the enforcement of the execution.

It was two or three years before he was brought back from Georgia, and when he returned there, he remained for four or five years more. Here are seven or eight years, during all *215] which time his residence was known, and also during which *he was subject to an action of debt on the judgment in the courts of Georgia, which it was the duty of complainant's predecessor to have brought, if he wished to keep the debt alive. The poverty of a debtor presents no legal excuse for the failure of a creditor to take the means necessary for the preservation of his rights.

There is no distinct or specific allegation as to the time when Dr. Kennedy left Georgia, and none that any pains whatever were taken to discover or ascertain his residence. However, it is admitted that he was discovered to be living in Mobile in 1822; and that he had no property or means is contradicted by the complainant himself, for he admits that he had, as early as 1805, married a Spanish lady, the owner of considerable real and personal estate, which, however, he had settled upon her before marriage; and that he, Kennedy himself, had "acquired an imperfect title to a considerable amount of real estate." And by turning to one of the exhibits annexed to and made a part of the bill, it will be found that, on the 6th of May, 1814, he had acquired, along with his brother, a certain Spanish grant made to one McVoy, and in his own name two other Spanish grants, made to one Price and one Baudain. By the chancellor's decree in the suit by his heirs

against the heirs of his brother Joshua, among the exhibits, the same thing is established. The decree also declares, that he had the reputation of being a physician of some eminence; that he was fond of ease, careless of wealth, and generous; and that, after the death of his wife, he went to live with his brother, depending upon him for every thing, although he had means enough of his own. Having discovered his residence, it would have been but reasonable diligence to have taken the means to ascertain his ability to pay, and to have enforced the judgment against him.

How long Dr. Kennedy lived under the dominion of Spain will best be shown by a reference to the historical facts connected with that part of the country where he lived. From the treaty for the cession of Louisiana, the United States claimed the Perdido as the eastern boundary of that cession. In 1810, Mr. Madison, by his proclamation, declared it a part of the United States. And by an act of Congress of 14th May, 1812, all that portion of country lying east of Pearl River, west of the Perdido, and south of the thirty-first degree of latitude, was annexed to the Territory of Mississippi, embracing the city of Mobile. And on the 12th of February, 1813, Congress passed an act authorizing the President to take possession of the same. In the same year, the Spanish officers finally *retired. At this date, therefore, Dr. [*216 Kennedy ceased to be under the dominion of Spain, and became subject to the laws of the Territory of Mississippi, and liable to be sued in her courts. In 1817 the Territory of Alabama was created, and in 1819 it was admitted as a state into the Union. As to the deed made by Dr. Kennedy to his brother Joshua, in 1824, the exhibits show the object for which it was made. There is no charge of fraud against Dr. Kennedy in the bill, for acting as he did. The decree of the chancellor shows the reasons and motives in which the deed originated; and that it was secret is contradicted by the same decree, which says, that, "very soon after the deed was executed, Joshua Kennedy declared to many of those very friends whom he had consulted before, and to others at various times, that he had succeeded in his purpose; that the Doctor had made over his property to him, and that now his, the Doctor's, children would have plenty; that they would soon be rich." The decree also shows, that, in the spring of 1829, Joshua caused an advertisement to be inserted in a public newspaper in Mobile, offering for sale and lease, some of the lands, in which, speaking of the land to be leased, he states,—"At the expiration of which period, the property shall revert to the

legal heirs and representatives of William E. Kennedy deceased, and to the undersigned in equal proportions."

One portion of the lands conveyed by that deed — the McVoy claim—was, as appears by the deed itself, acquired by Dr. Kennedy in 1814, when, beyond all question, the country was part of the United States, and when there could have been no impediment to the acquisition of the property by Joshua in his own name. But what is still more remarkable, the conveyance was made to the two brothers jointly. As to the other claim, the chancellor says:—"Whether Joshua Kennedy originally had any interest on the Price claim or not, does not seem to be clear from the evidence; but about the year 1818 or 1819 there seems to have been a deed of partition, which is now lost, by which an equal interest on that claim was recognized between the brothers."

The bill is full of contradictions. In one place it admits that Dr. Kennedy's residence in Mobile was discovered in 1822, whilst it says in another that it was not until after the deed of 1824. It says in one place that Joshua, who became the administrator of his brother, never settled the estate, and in consequence the personal assets remained in his hands at the time of his death; whilst in another, exactly the contrary is stated.

*217] It will be observed there is no allegation in the bill, that *either the complainant or his predecessor ever presented this claim to Joshua as administrator, or took any measures to enforce payment out of the personal estate, which, by the laws of Alabama, required to be exhausted before resort can be had to the realty. And there is no charge of fraud whatever, either against Dr. Kennedy or his heirs, but that its whole scope and tendency is to offer excuses for the delay and neglect of the complainant and his predecessor. No exemplification of the judgment was produced.

The defendants have demurred to the bill, and under the state of facts apparent on its face and in the exhibits, it is contended that the claim is barred by lapse of time. In South Carolina, the payment of a judgment is presumed after the lapse of twenty years. This is the common law presumption, and is the rule in most of the states of the confederacy. In the state of Alabama, the statute of limitations bars domestic judgments in twenty years. Nothing is said as to judgments of sister states. It cannot be pretended they should be placed on a better footing than domestic. The bill admits a knowledge of the residence of Dr. Kennedy for a period of seven or eight years in Georgia, immediately after the judgment was obtained; and also a knowledge of his residence,

and that of his administrator and heirs, in Alabama, from 1822; so that the complainant has slept upon his rights for a period of more than thirty years, even if the time during which it is alleged the residence of Dr. Kennedy was unknown is deducted. The fact, that a creditor is ignorant of the domicile of his debtor, is not regarded in the courts of the country where the debtor resides; they make no presumptions in favor of strangers. The highest effort of legal comity is to place the stranger in the same situation as the citizen. Statutes of limitation and presumptions arising from lapse of time belong to the *lex fori*. The citizen of another state is not to be placed on a better footing than citizens of the state where suit is brought. *McElmoyle* v. *Cohen*, 13 Pet., 327.

The well-recognized doctrine of courts of equity, as to the effect of lapse of time in barring judgments and other claims, as well in analogy to statutes of limitation as where no such statutes exist, will be found laid down in 2 Story Eq., § 1520; and by this court in *McKnight* v. *Taylor*, 1 How., 167; and in *Bowman* v. *Wathen*, Id., 189. See, also, *Cholmondeley* v. *Clinton*, 2 Jac. & W., 141, 151; *Foster* v. *Hodgson*, 19 Ves., 184, 186; *Smith* v. *Clay*, Amb., 645; *Carr* v. *Chapman*, 5 Leigh (Va.), 164; *Hayes* v. *Goode*, 7 Id., 452.

The objection of lapse of time, apparent on the face of the *bill, may be taken on demurrer. Story Eq. Pl., §§ 484, 503, 751, and cases there cited. Where there is no relief, there is no discovery. *McClanahan* v. *Davis*, decided at the present term. [*218

*Mr. Bibb*, for the appellant, in reply, laid down the following propositions:—

I. The frame of the bill, and the equity thereof, apart from the length of time or the statute of limitations.

II. That the statute of limitations of Alabama does not apply to the case.

III. That the length of time, when no statute of limitations can be applied as a positive bar, and when compared with the facts stated in the bill and confessed by the demurrer, is no bar to the discovery and relief prayed.

Upon the first head, *Mr. Bibb* proceeded to show that, upon the averments of the bill, confessed by the demurrer, the appellant was without remedy at common law; but although the remedy was gone, the right remained.

Upon the second point, he relied upon the argument of *Mr. Dargan*.

Upon the third point, he contended that length of time, without any statute of limitation, was no reason for a demurrer.

In this case it admitted all the causes stated in the bill, why the judgment was still unsatisfied. 3 Bro. Ch., 646; 3 Atk., 225; 2 Ves. Sr.,109.

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

The facts stated in the bill are admitted by the demurrer, and the only question is whether the complainant is entitled to relief in a court of equity, when so many years have elapsed, since the judgment was obtained against the father of the defendants.

The judgment was rendered in South Carolina on the 10th of November, 1797, and this bill was filed against the appellees in Alabama on the 22d of February, 1844. A period of more than forty-six years had therefore elapsed, during which neither the plaintiff who obtained the judgment, nor his administrator, nor the present complainant, who is administrator *de bonis non*, made a demand of the debt, or took any step to procure its payment.

It is not alleged in excuse for this delay, that his residence was, during all the time, unknown. On the contrary, it is admitted that it was known for some six or eight years after the judgment was obtained; and although he was afterwards lost *sight of for a long time, and supposed to have gone beyond sea and died in parts unknown, yet he was again discovered in 1822 residing in the state of Alabama, where for three years afterwards he was accessible to the creditor, and amenable to judicial process.

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Neither is it alleged that he designedly and fraudulently concealed his place of residence from the creditor; nor that the conveyance of his property was made for the purpose of hindering or preventing the recovery of this debt. The delay is accounted for and sought to be excused altogether upon the ground, that, when his place of residence was known, he was always in a state of poverty and insolvency, which made it useless to proceed against him.

It is, however, not necessary, in deciding the case, to inquire whether even this state of poverty would justify the delay of so many years without some demand upon the party, or some proceeding on the judgment, to show that it was still regarded as a subsisting debt, and intended to be enforced whenever the debtor was able to pay. The facts stated in the bill, and those which appear in the exhibits filed with it by the complainant, do not show this continued condition of utter destitution and want which the complainant relies upon. For when he was discovered in 1822, in Alabama, his situation as

to property was such as to make it highly probable that the debt might then have been recovered by an action at law,—if it was not already barred by the act of limitations of that state.

This appears from the decree of the Chancery Court of the state, in a controversy between the heirs of William E. Kennedy, the debtor, and the heirs of his brother Joshua, which decree is one of the complainant's exhibits. It shows that in 1818 or 1819 the debtor held in his own right an undivided moiety of the real estate, which he conveyed to his brother, Joshua Kennedy, in 1824, as mentioned in the bill. And this conveyance upon the face of it purported to be in consideration of the sum of $10,000; a sum sufficient to pay the principal of the judgment, and a large portion of the interest. It is true that the complainant, in that part of the bill in which he speaks of this conveyance, states that he did not discover that the debtor was living and residing at Mobile until after the conveyance was made. If this allegation was consistent with the other statements in the bill, and could be regarded as a fact in the case, admitted by the demurrer, still, as he died in 1825, reasonable diligence required that the creditor should have taken some measures to ascertain whether the $10,000 had been paid; and to compel his administrator, who was also the grantee *in the deed, to account [*220
for it. The creditor had no right to presume, without inquiry, that his debtor, who had sold property for so large a sum of money, had within a year afterwards died utterly insolvent and almost penniless, so as to make it useless to investigate the state of his affairs, or to take any step towards the recovery of his debt. There is reason for believing, from the facts stated in the decree above mentioned, that, with proper efforts, he would at that time have learned the trust upon which the conveyance was made, and discovered that the debtor had left property of sufficient value to be at all events worth pursuing.

But the complainant cannot put his claim upon the ground that the residence of the debtor was not known until after he had made the conveyance and parted from this property. For in a previous part of his bill he admits that this information was obtained in 1822, which was two years before the deed was executed. And whatever might have been the wasteful and dissolute habits of the debtor, he yet at that time owned the land which at this late period the complainant is seeking to charge with this debt; and continued to hold it until the conveyance to his brother in 1824. And if the creditor chose to rest satisfied with information as to his habits and manner

of living, instead of using proper exertions to find out his situation as to property, his want of knowledge in this respect was the fruit of his own laches. The fact that he held the title to these lands could undoubtedly have been ascertained with ordinary exertions on his part. And he moreover might have learned, according to the statement in his exhibit before referred to, that after the death of Wm. E. Kennedy, his brother, the grantee in the deed frequently spoke of this conveyance as intended merely to prevent the property from being wasted by the careless habits of his brother, and to preserve it for his family. And as late as 1829, in an advertisement in a newspaper of the place, offering some of this land for sale or lease, he described it as property of which the children of Wm. E. Kennedy were entitled to one half. With all these means of information open to him from 1822 to 1829, the creditor cannot be permitted to excuse his delay in instituting proceedings upon the ground that he supposed the debtor to have lived and died hopelessly insolvent, until he obtained information to the contrary about the time this bill was filed. If he remained ignorant, it was because he neglected to inquire. If he has lost his remedy at law by lapse of time, or the death of the debtor, it has been lost by his own laches, or that of the administrator who preceded him.

*221] *It is the established rule in a court of equity, that the creditor who claims its aid must show that he has used reasonable diligence to recover his debt, and that the difficulties in his way at law have not been occasioned by his own neglect. A delay of twenty years is considered an absolute bar in a court of equity, unless it is satisfactorily accounted for. But here there has been a delay of more than forty-six years; and under circumstances, for a part of that time, which evidently show a want of diligence.

Indeed, if the court granted the relief asked for, the complainant would not only be protected from the consequences of his own neglect, but would derive a positive advantage from it. For if, when the debtor was discovered in Alabama in 1822, the complainant had then brought an action at law against him and recovered judgment, and then suffered that judgment to sleep until the time when this bill was filed, his claim would have been barred by the statute of limitations of that state. And if he could now avoid that bar, upon the ground that the act of limitations of Alabama applies only to domestic judgments, and could obtain the aid of a court of equity to enforce the judgment rendered in South Carolina, upon the ground that it is not within that act, he would derive an advantage from his omission to proceed against the debtor

when he discovered, in 1822, the place of his residence. He would obtain relief, because he neglected to sue at law when the debtor appears to have been in a condition to pay the debt; and when that fact could have been ascertained by reasonable exertions on his part. In the eye of a court of equity, laches upon a judgment of South Carolina cannot be entitled to more favor than laches upon a judgment in Alabama, and both must be visited with the same consequences. Relief in a court of equity, under the circumstances stated in the bill and exhibits, would be an encouragement to revive stale demands, which had been abandoned for years. The property now sought to be charged might not, in the lifetime of the original parties, have been thought worth pursuing; and in the changes in value continually occurring in this country, it may, after the lapse of so many years, have become of great value in the hands of the heirs of the debtor. And if under such circumstances it could be made liable, an old and abandoned claim, with the accumulated interest of near half a century, might become a tempting speculation. Sound policy, as well as the principles of justice, requires that such claims should not be encouraged in a court of equity.

It is unnecessary, in this view of the case, to determine whether the statute of limitations of Alabama does or does not *apply to this judgment. For the reasons above stated, we think the lapse of time, upon the facts stated in the bill and exhibits, is, upon principles of equity, a bar to the relief prayed, without reference to the direct bar of a statute of limitations. [*222

Another question has been made in this case; and that is, whether the objection arising from lapse of time, apparent on the bill and exhibits, can be taken advantage of on demurrer. Undoubtedly the rule formerly was that it could not; and that doctrine was distinctly laid down by Lord Thurlow, in the case of *Deloraine* v. *Browne*, 3 Bro. Ch. R., 646. The rule was perhaps followed for some time afterwards. It was placed upon the ground, that this defence was founded upon the presumption that the debt must have been paid, and as a demurrer admits the fact stated in the bill, it admits that the debt is still due; and if admitted to be due, the debtor in equity and good conscience is bound to pay it.

But the presumption of payment is not the only ground upon which a court of chancery refuses its aid to a stale demand. For there must appear to have been reasonable diligence, as well as good faith, to call its powers into action; and if either is wanting, it will remain passive and refuse its aid. This is the principle recognized by this court in

*Piatt* v. *Vattier*, 9 Pet., 416; *McKnight* v. *Taylor*, 1 How., 168; and in *Bowman et al.* v. *Wathen et al.*, Id., 189. If, therefore, the complainant by his own showing has been guilty of laches, he is not entitled to the aid of the court, although the debt may be still unpaid.

Upon this principle, the proper rule of pleading would seem to be, that, when the case stated by the bill appears to be one in which a court of equity will refuse its aid, the defendant should be permitted to resist it by demurrer. And as the laches of the complainant in the assertion of his claim is a bar in equity, if that objection is apparent on the bill itself, there can be no good reason for requiring a plea or answer to bring it to the notice of the court. Accordingly, the rule stated by Lord Thurlow has not been always followed in later cases. In *Hovenden* v. *Annesley*, 2 Sch. & Lefr., 638, Lord Redesdale says,—"If the case of the plaintiff as stated in the bill will not entitle him to a decree, the judgment of the court may be required on demurrer whether the defendant ought to be compelled to answer the bill." And in Story's Eq. Pl., § 503, and the note to it, he states the rule laid down by Lord Redesdale to be now the established one. In the opinion of the court, it is the true rule.[1] It is evidently founded upon sounder principles of reason than the one maintained by Lord Thurlow, *223] and is better calculated to disembarrass a suit from unnecessary forms and technicalities, *and to save the parties from useless expense and trouble in bringing it to issue, and applies with equal force to a case barred by the lapse of time, and the negligence of the complainant, as to one barred by a positive act of limitations. In the case before us, therefore, the demurrer was proper, and must be sustained, and the decree of the court below affirmed.

*Order.*

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Alabama, 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.

[1] CITED. *Landsdale* v. *Smith*, 16 Otto, 392–3.