fact that an execution was issued and returned appears in the record of the State court, but it was not made a part of the record of the Circuit Court, by bill of exceptions, and it cannot now be noticed. There is no ground of error on the face of the record, for the action of this court. The judgment of the Circuit Court is affirmed with ten per cent. damages.

ELIZABETH MOORE, COMPLAINANT AND APPELLANT, *v.* RAY GREENE AND BENJAMIN W. HAWKINS.

In the present case, where a bill was filed to set aside titles for frauds alleged to have been committed in 1767, the bill does not make out a sufficient case; and the evidence does not even sustain the facts alleged. And the disability to sue, arising from coverture, is not satisfactorily proved.

In case of alleged fraud, it is true that the statute of limitations does not begin to run until the fraud is discovered. But then the bill must be specific in stating the facts and circumstances which constitute the fraud; and in the present case, this is not done.

Where property was sold under an administrator's sale, the presumption is in favor of its correctness; and after a long possession under it, the burden of proof is upon the party who impeaches the sale.

THIS was an appeal from the Circuit Court of the United States for the district of Rhode Island, sitting as a court of equity.

The bill was filed by Elizabeth Moore, a citizen of the State of New York, the great-grandchild of John Manton, of Rhode Island, who died in 1767. It alleged a series of frauds, beginning in 1757, when one of his sons-in-law prevailed upon him by fraud to make a deed; then that his three sons-in-law conspired together to have him declared *non compos mentis;* then that they fraudulently set aside his will; then that one of his sons-in-law cheated his own children out of their share of the estate, and the administrator became a party to the fraud; then that the Town Council, conniving with the sons-in-law, adjudged the paper not to be a lawful will, and that all the parties fraudulently prevented an appeal. These charges of fraud were made to include many other transactions which it is not necessary to specify. The claim of the complainant was, that she was entitled to a share of the lands held by the defendants; and the prayer was, that a partition might be decreed.

Hawkins filed his answer, saying that he had purchased property from Samuel W. King, who derived it from his father, Josiah King, who inherited it from his father, William B. King; and that he and the Kings had been in the uninter-

rupted and quiet possession of the property for more than twenty years before the filing of the bill, and therefore he pleaded the statute of limitations. He also denied all knowledge of the important facts stated in the bill.

Greene answered and explained the manner in which he had come into possession of the property, viz: from his father, Samuel Greene, who was a devisee of his father, Joshua Greene, who purchased it from Josiah King, administrator of John Manton, in 1770; since which time, it had been in the possession of the family. He also denied all knowledge of the alleged frauds, and pleaded the statute of limitations.

After taking much testimony, the cause came up for hearing in November, 1854, when the Circuit Court dismissed the bill with costs. The complainant appealed to this court.

It was submitted on printed arguments by *Mr. Randall* for the appellant, and *Mr. Bradley* for the appellee.

The argument of *Mr. Randall* covered a great deal of ground, as may be supposed, from the long period of time which his investigation included. But it is not deemed material to state all these points, or the reply of the opposing counsel. The manner in which *Mr. Randall* proposed to escape from the plea of the statute of limitations was by alleging a series of disabilities, in this manner:

John Manton died in 1767. Anna Waterman, his daughter, died before her father, leaving a daughter named Betty.

Betty was born in 1756. Betty was thus in her 17th year when her grandfather died, and came of age in 1777.

Betty married Carpenter before 1775, whilst she was yet a minor.

Betty died in 1784–'5, leaving Elizabeth, the present plaintiff.

Elizabeth married Heman Moore in 1804, in the 19th or 20th year of her age.

Moore died in 1840.

Mr. Justice McLEAN delivered the opinion of the court.

This is an appeal in chancery from the Circuit Court for the district of Rhode Island.

The bill was filed to set aside certain titles for frauds alleged to have been committed in the year 1767, by a father against his own children, for the benefit of strangers. The frauds are stated to have been investigated and sanctioned, directly or indirectly, by the court of probate, by referees chosen by the parties to determine their matters of controversy, and by the highest courts of the State.

The legal history of the case commences in July, 1767, by the execution of a deed by the administrator of John Manton to Waterman and Pearce. From this period, a series of events are detailed, genealogical and historical, sweeping over near a century. Acts are stated in the bill, as it would seem, from mere vague reports, and sometimes resting on conjectures. And many of the facts set forth, if proved, and were of modern occurrence, would not be sufficient to avoid the titles enumerated; but the facts are denied generally by the answers, and not sufficiently proved by the evidence.

The lands when sold were comparatively of little value, but, by the progress of time and the advance of improvements, they are now covered with large manufacturing establishments and flourishing villages. Generation after generation has risen up and passed away, of individuals connected with these titles, who increased the value of the property by their large expenditures; and the property, by deed or will, or by the law of descents, has been transmitted through the generations that have passed, without doubt as to the legal ownership.

The bill was filed in 1851; its averments of facts, by which the lapse of time and the statute of limitations are sought to be avoided, are loose and unsatisfactory. The adverse entry is alleged to have been made, under the deed of the administrator of Manton, in 1767; and it appears that Betty Waterman, the complainant's grandmother, through whom the title is claimed to have descended, was born in 1756. She was of age in 1777, and in ten years afterward her right was barred by the statute. It is true, the date of her coverture does not appear, but as she was only eleven years of age in 1767, she could not then have been married; and if her marriage occurred subsequently, it was a cumulative disability, which is not allowed by the statute of Rhode Island. The complainant became of age, as it appears, in 1815, and her ten years expired in 1825. Her disability of coverture, and it was cumulative, expired in 1840, more than ten years before the bill was filed.

The complainant avers that from the death of John Manton, in 1767, to 1822–'3, and '4, his estates were the subjects of legal controversy and litigation in courts of law; and that ever since, renewed and continued claims and demands, by the heirs of Lydia Thornton and Betty Carpenter, for their proportion of said estates, as his rightful heirs at law, upon the assignees of the Manton estate, and upon all persons deriving title under them, have been continuously prosecuted. But prosecutions to stop the operations of the statute must be successful, and lead to a change in the possession.

When fraud is alleged as a ground to set aside a title, the statute does not begin to run until the fraud is discovered; and this is the ground on which the complainant asks relief. But, in such a case, the bill must be specific in stating the facts and circumstances which constitute the fraud; and also as to the time it was discovered. This is necessary to enable the defendants to meet the fraud, and the alleged time of its discovery. In these respects the bill is defective, and the evidence is still more so.

The complainant's counsel seem to suppose, that as the defendants in their answer admit the property, at least in part, was originally acquired under a sale of Manton's administrator, they are bound to show the proceedings were not only conformable to law, but that they must go further, and prove the debts for which it was sold were due and owing by the deceased. So far from this being the legal rule, under the circumstances of this case, the presumptions are in favor of the present occupants, and the complainants must show the administrator's sale was illegal and void. After an adverse possession of more than eighty years, when the facts have passed from the memory, and, as in this case, the papers are not to be found in the probate court, no court can require of the defendants proof in regard to such sale. The burden of proof falls upon him who attempts to disturb a possession of ages, transmitted and enjoyed under the forms of law.

Whether we consider the great lapse of time, and the change in the value of the property, or the statutes of limitation, the right of the complainant is barred. The decree of the Circuit Court is affirmed.

BURR H. BETTS, APPELLANT, *v.* JOHN H. LEWIS, AND MARY M. F. LEWIS, HIS WIFE.

According to the practice prescribed for the Circuit Courts, by this court, in equity causes, a bill cannot be dismissed, on motion of the respondents, for want of equity after answer and before the hearing.

THIS was an appeal from the District Court of the United States for the northern district of Alabama.

It was a bill filed by Betts against Lewis and wife, under the same circumstances which gave rise to the case of Lewis *v.* Darling, reported in 16 Howard, 1. It will be seen by a reference to that case, page 6, that Burr H. Betts was one of the legatees in the will of Samuel Betts.