nothing would be gained by attempting to go beyond them.

JUDGMENT AFFIRMED.

Mr. Justice BRADLEY did not sit during the argument, and took no part in this decision.

McQUIDDY *v.* WARE.

1. A man who has neglected his private affairs and gone away from his home and State, for the purpose of devoting his time to the cause of rebellion against the government, cannot come into equity to complain that his creditors have obtained payment of admitted debts through judicial process obtained upon constructive notice, and on a supposition wrongly made by them that he had no home in the State, or none that they knew of.
2. Especially is this true when there is no allegation of want of actual knowledge of what they were doing.
3. And still more especially true is it in Missouri, where the statutes of the State allow a bill of review of decrees or judgments obtained on constructive notice at any time within three years after they are obtained, and the complainant has let more than six years pass without an effort to have them so reviewed.
4. Allegations of general ignorance of things a knowledge of which is easily ascertainable, is insufficient to set into action the remedies of equity.

APPEAL from the Circuit Court for the Eastern District of Missouri; the case being thus:

At the beginning of the late rebellion, which broke out in 1861, McQuiddy, a resident of Nodaway County, Missouri, and owning a farm there, voluntarily entered the service of the Confederate States under General Sterling Price, and followed the fortunes of that officer and his army when they left Missouri. At this time there were two mortgages on different parts of his farm, or instruments of writing which the holders of them asserted to be mortgages. These were due, and the holders *in May, 1862, and November, 1863*, procured a decree of foreclosure of them. This proceeding

was made in professed pursuance of a statute of Missouri, regulating the subject of the foreclosure of mortgages, and which authorizes an order of publication instead of an actual service when the mortgagee alleges and the court in which the foreclosure is applied for, or its clerk, is satisfied "that the place of residence of the defendant is *unknown*." The foreclosures, therefore, so far as the records of them showed, were made on constructive notices, and on allegations such as above stated.

McQuiddy also owed money, when he left Missouri, to a third creditor; this debt being by a note unsecured. This creditor proceeded to get his debt by a proceeding in attachment, and in professed pursuance of another statute of Missouri, which authorizes a writ in that sort of proceeding to issue whenever the plaintiff files his petition setting forth his cause of action, with an affidavit that he has good reason to believe, and does believe, that the defendant has absconded or absented himself from his usual place of abode in this State, so that the ordinary process of law cannot be served upon him. Such affidavit was made by the unsecured creditor, and under it, in *November, 1863*, judgment was got; a judgment, of course, like the other, on a constructive notice, so far at least as the record of the proceeding showed.

On these three different judgments all parts of his farm were sold; a sale of one part being in 1863, and of the others in 1864, the sales following at no great intervals the dates of the judgments.

By the Revised Statutes of Missouri a party against whom judgment has been rendered on constructive notice simply, may come in at any time within three years afterwards and file a petition for review.*

In this state of things and of law, McQuiddy, *in July, 1871*, filed his bill in the court below, against the purchasers of the farm (one Ware, and others), and against their vendees, to set aside the sales and to have possession again of the property sold.

* Revised Statutes of 1855, p. 1280, §§ 13, 15, 16.

His bill attacked the jurisdiction of the court in all three cases alike.

He averred that the orders of publication were based on false statements, and that in one of the cases, proceeded in as in the case of a mortgage, the instrument proceeded on was not a mortgage, and that the proceeding was in truth a proceeding to enforce a lien on lands, instead of a suit to foreclose a mortgage, and required an affidavit of *non*-residence to authorize the giving of constructive notice; and that jurisdiction could not be acquired on affidavit of *unknown* residence, the sort of affidavit made in the case. He alleged further that his departure from the State was for a temporary purpose and with an intention of soon returning; that he left his wife at his domicile, and that copies of writs could have been served on her, and that he neither absconded nor absented himself from his usual place of abode in the sense of the statute, nor was his residence unknown; that all these facts were known to the parties in interest, including the respondents, who either purchased the property at the sales, or derived title from the person who did purchase.

By way of excuse for his want of diligence in his own affairs, he alleged that the state of feeling was such against him in Nodaway County, on account of the part he took in the rebellion, that he could not with any sort of safety return to the county, and that in 1863 he removed his family to Tennessee, where he had since continued to reside. He also alleged, in continuation of this excuse, that being absent from the State, though a resident of the county when the proceedings were instituted to deprive him of his rights, and no notice of the same having been given to any member of his family he had not a day in court given him, and was in ignorance of what was done until recently; and that as soon as practicable after ascertaining that the said illegal proceedings were had, he had taken steps to assert his rights.

The only charge of fraud in connection with the transactions disclosed in the bill related to the falsity of the affidavits on which the proceedings were based.

The complainant did not make any tender of money at

all; but he prayed that an account might be taken of what was due on the instruments of debt; that an account might be taken also of the rents and profits received by the vendees of the persons who had bought at the judicial sale, and that he, the complainant, might be allowed to redeem on payment of any balance.

The defendants demurred, and the Circuit Court sustained the demurrer. A decree having gone accordingly, McQuiddy brought the case here for review.

Mr. W. H. Letcher, *for the appellant*, cited numerous statutes of the State of Missouri, and decisions of the Supreme Court of the State upon them, to show that the proceedings were not in proper form, and that upon the facts alleged and which, of course, the demurrer admitted, no jurisdiction existed, and that the sales of necessity were void.

Mr. G. P. Strong, *contra*, contended that the statutes applicable to the case had been strictly pursued; and, moreover, that the case was void of equity.

Mr. Justice DAVIS delivered the opinion of the court.

In the view we take of this case we are not required to wade through the various statutes of Missouri, and the decisions of the courts of the State, in order to determine whether or not the proceedings in question are valid. The complainant is not, in our opinion, in a position to invoke the aid of a court of equity to decide that question. The bill presents the case of a man who chose to neglect his private interests for the purpose of devoting his time to the destruction of the government, complaining that his creditors enforced the collection of their debts on a wrong theory of his status, in consequence of entering the service of the enemy. There is no pretence that the debts were not meritorious, or that the judgments were entered for a larger amount than he owed. The real ground of complaint is that he was not an absent or absconding debtor, or a person whose residence was unknown, and was not, therefore, sub-

ject to the proceedings which were instituted against him. Whether this be so or not it is easy enough to see in the anomalous condition of affairs existing at the time in Missouri, that creditors might honestly suppose that an individual leaving his State to destroy the government under which his rights of property were acquired, did not intend to return to it, and proceed to collect their debts under that supposition. The inquiry is whether a party acting in this way has stated such a case as entitles him to equitable relief, because his creditors, who ought to have been provided for before he left, mistook the condition he occupied, and treated him as a person who had permanently abandoned his home.

There is no averment that he did not have *actual notice* of the proceedings against him in time to protect his rights. And it is fair to infer, in the absence of such an averment, that it could not be truthfully made. It is difficult to suppose, when he moved his family to Tennessee, that he did not communicate with friends in Missouri who were acquainted with the true state of his affairs.

Besides, if the proceedings against him were irregular, why did he not seek his remedy under the statutes of Missouri, which concede to the party against whom judgment has been rendered on constructive notice only, the right to come in at any time within three years and file his petition for review. If this had been done, and the State court had permitted the cases to be reopened for the reasons set forth in the bill, his remedy would have been complete, as the bill charges the purchasers at the sale with notice of all irregularities. It cannot be said that there was no opportunity of doing this, for the earliest judgment was in May, 1862, and both the others in November, 1863, and the war was substantially over in May, 1865. There is no averment of the want of this opportunity, nor is the absence of it aided by the general allegation, without specification of time or circumstance, that he could not with safety return to Nodaway County on account of existing prejudices. This might be true, and yet the opening of the judgments obtained by an attorney, as his personal presence was not required for that

purpose. It were easy enough before the three years expired to communicate with St. Louis by letter, or even to go there, and it is very certain that he could not have been under any apprehension while there of being disturbed in the assertion of his legal rights.

But if the proceedings, instead of being irregular and voidable, are null and void, as they are characterized in the bill, the remedy at law is complete, for there is in such a condition of things nothing in the way of the successful maintenance of an action of ejectment, which will result not only in the restoration of the lands, but also their rents and profits.

Apart from all this, the maxim that he who seeks equity must do equity in the transaction in respect to which relief is sought, has not been observed by this complainant. While admitting his indebtedness, and that it has existed for ten years or more, he does not make a tender in court of what is justly due, although he is asking the court to set aside the proceedings by which this indebtedness was satisfied, on the ground of their absolute nullity. The willingness to pay what is found to be due on the adjustment of the accounts for rents and profits is not the sort of offer required of a person in the situation of this complainant.

Moreover, there has been an utter lack of personal diligence, which is required in such a case as this in order to bring into activity the powers of a court of equity. Equity always refuses to interfere where there has been gross laches in the prosecution of rights. There is no artificial rule on such a subject, but each case as it arises must be determined by its own particular circumstances. These proceedings were begun early in the war, and yet no move is made to disturb them until July, 1871, more than six years after hostilities ceased. Why this delay? The complainant says he was in ignorance of them until recently, and that as soon as he ascertained them he took steps to assert his rights. Such a general allegation will not suffice to provoke the interposition of a court of equity. It will not do to remain wilfully ignorant of a thing readily ascertainable. There has been

free and uninterrupted communication between Tennessee and Missouri since the war closed, and the courts everywhere accessible for the prosecution of any cause of action. Besides, in the very nature of things, the complainant must have known soon after it occurred that an improved farm, once occupied by him, was in the possession of adverse claimants. This was notice sufficient to put him on inquiry, and this inquiry would have resulted in ascertaining all the facts stated in the bill. There is no reason given for the delay, nor any facts and circumstances on which any satisfactory excuse can be predicated.

Here, then, is the case of a party engaging in the rebellion without provision for his debts, to which there was no defence, asking a court of equity, after the lapse of many years without sufficient excuse for the delay, to interfere in his behalf because his creditors adopted the wrong methods for the enforcement of their claims against him. And this, too, without any specific charge of fraud, except in the matter of the affidavits on which the proceedings were founded.

Such a charge, under the circumstances, is too weak and unsatisfactory to relieve the complainant from the consequences of his own folly.

In any aspect of the case we think the demurrer was properly sustained, and the decree of the Circuit Court dismissing the bill is therefore

AFFIRMED.

HUMASTON *v.* TELEGRAPH COMPANY.

1. Where a person, on a given contract, covenants to pay a sum whose amount is to be contingent on certain events and is to be ascertained by arbitrators, such person, if he prevent any arbitration, may be sued at law on a *quantum valebat*, and the sum due may be ascertained by a jury under instructions from the court. If the jury, under such instructions, find that only so much is due, the plaintiff can recover nothing more.
2. A contract of a special nature explained and interpreted so as to sustain a charge under which, in a case like that just stated, the jury found as due much less than the plaintiff claimed.