

limitation, under one or other name or form, is to be found in all codes of law. It is a rule, which, as to some cases, is prescribed in positive terms by the legislature, while as to others it is the result of usage or judicial decisions; but in all instances the lapse of time specified, as applicable to the case, gives a rule by which all courts of justice are bound. The statute of limitations does not apply in terms to proceedings in courts of equity; it applies to particular actions at common law, and limits the time within which they shall be brought, according to the nature of those actions; but it does not say there shall be no recovery in any other mode of proceeding. If the equitable title be not sued upon within the time within which a legal title of the same nature ought to be sued upon, to prevent the bar created by the statute, the court acting by analogy to the statute, will not relieve. If the party be guilty of such laches in prosecuting his equitable title as would bar him, if his title were solely at law, he shall be barred in equity; that is all the operation this statute has or ought to have on proceedings in equity.(e)

But at law, as well as in equity, there are various peculiarities, which have been held to be sufficient to take a case out of the operation of the rule. They are either such as have been omitted to be noticed in the statute itself;(f) or they are such as the statute has expressly specified; or they are such as arise out of facts and circumstances,—as where the courts of justice have been closed by some great national calamity;(g) or where the parties stand in the relation to each other of trustee and *cestui que trust*;(h) or where the party, by omitting to plead or ask in his answer the benefit of the statute of limitations, thereby tacitly admits, that the rule cannot or need not be applied to his case;(i) or where, by an express declaration or acknowledgment admitting the claim, he thereby renews the contract or cause of suit, and thus tacitly admits that his case is not within the terms of the rule.(j) In all cases where this court, having cognizance of the whole case, finds it unconscionable to suffer the statute of limitations to be applied, it will be disregarded; and in all other cases, of which this court does

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(e) *Bond v. Hopkins*, 1 Scho. & Lefr. 428; *Stackhouse v. Barnston*, 10 Ves. 466; *Shipbrooke v. Hinchbrook*, 13 Ves. 396; *Cholmondeley v. Clinton*, 2 Jac. & Walk. 139; *Christophers v. Sparke*, 2 Jac. & Walk. 233; *The Rebecca*, 5 Rob. Ad. Rep. 104; *Morgan v. Davis*, 2 H. & McH. 17.—(f) 4 Bac. Abr. 472.—(g) *Co. Litt.* 249. (h) 4 Bac. Abr. 473.—(i) *Prince v. Heylin*, 1 Atk. 494.—(j) *Oliver v. Gray*, 1 H. & G. 213.