and technicalities peculiar to the course of this court, and nothing more, were to be put aside. But it is asked on the part of the petitioner, in reference to the statute of limitations and the lapse of years relied on as a defence on behalf of the state; why this shew of justice and liberality, if the technical presumption arising from the lapse of time, of which the Legislature were fully advised, was to be relied on as a bar?

But as I have said upon a former occasion, in this, as in all other cases, it must strike every one, that the lapse of years cannot fail to give rise to an unanswerable presumption against the validity of an antiquated claim of any kind, however much it may have been originally a favourite of the law, as in cases of dower or the like. I cannot think it a reasonable demand on the court, to give parties the advantage of a stale and antiquated claim, to suffer them to make the court the depository of their slumbering rights; and then to come and revive them, when, from lapse of time, it is become utterly impossible to ascend to the whole justice of the case. There is surely a principle of limitation in the administration of every system of jurisprudence, to be derived out of the nature of things, which does entitle the court to avail itself of the universal maxim, *vigilantibus non dormientibus subveniunt leges.* (*d*) The maxims which refer to descents, discontinuances, non-claims, and collateral warranties, are only the wise arts and inventions of the law, to quiet possessions and strengthen the rights of property. (*e*) And in England it has been generally thought, that sixty years, the limitation to writs of right, is too long a time for titles to remain in dubio; and it has often been lamented there, by eminent lawyers, that the period had not been shortened. (*f*)

It is true that a mere formal plea of the statute of limitations has been, in some cases, said by courts of common law, not to be a plea to the merits. But a reliance upon the presumption arising from a great lapse of time has never been considered in Chancery as a defence of the same rigid and technical character. The statute of limitations, in equity as at law, must always be pleaded or specially relied on as a defence; but a presumption founded on a long lapse of time is a defence, which has always been allowed

---

(*d*) The Rebecca, 5 Rob. Adm. Rep. 104.—(*e*) Dudley *v.* Dudley, Prec. Cha. 249.—(*f*) Gilb. Exeu. 12; Charlwood *v.* Morgan, 1 New Rep. 66; Stackhouse *v.* Barnston, 10 Ves. 469.