

to be made at the hearing, or trial as a matter of substance arising out of the whole case; and which it was not necessary specially to advance, and rely on in any previous stage of the proceedings, to enable the party to have the benefit of it. Because, independently of all positive enactments, there must be a period of time after which every latent, or inactive claim to property must be presumed to have been radically defective in its origin, or to have been, in some one way or other completely satisfied. It is asking too much, to require, amidst the mutations of human affairs, and the perishable nature of all things, that the evidences of the right of property should be carefully preserved through a long and indefinite period of time. (g) A presumption of right and of the correctness of a state of things sanctioned by a long series of years is necessary to the peace of society. (h)

The rule, *nullum tempus occurrit rigi*, even in favour of the crown in England, has been as to many cases abolished, or overruled. (i) In Maryland, the Lord Proprietary was always held to be bound by the statute of limitations; (j) and the republic, since the revolution, has not only never, in any case, that I know of, claimed an exemption from it; but has expressly subjected her rights to its operation under circumstances where the propriety of doing so might well have been questioned. (k) The republic, in this instance, claims the application of no rule to which she herself is unwilling to submit; (l) and therefore, may well rely upon a presumption which is necessary to the peace of all, and which forms an important and essential principle in every code of jurisprudence.

On behalf of the petitioner it is contended, that the presumption, as urged against him, is deduced from the state of facts ordinarily existing between individuals, enjoying the common facilities of intercourse, where the creditor is in a condition to demand the payment of his claim, and the debtor is liable to legal coercion for

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(g) *Shipbrooke v. Hinchbrook*, 13 Ves. 396.—(h) *Sherman v. Sherman*, 2 Vern. 276; *Prince v. Heylin*, 1 Atk. 494; *Sturt v. Mellish*, 2 Atk. 610; *Smith v. Clay*, 3 Bro. C. C. 639, note; *Hercy v. Dinwoody*, 4 Bro. C. C. 255; *Cholmondeley v. Clinton*, 2 Jac. & Walk. 140; *Stevenson v. Howard*, 3 H. & J. 554; *Hillary v. Waller*, 12 Ves. 265.—(i) *Co. Litt.* 119, n. 1; *Com. Dig.* tit. Prerogative, (D. 86;) *Bac. Abr.* tit. Prerogative, E. 6; 3 *Blac. Com.* 307; *The Attorney-General v. Richards*, 2 Anstr. 615; *Simpson v. Gutteridge*, 1 Mad. Rep. 610; *Roe v. Ireland*, 11 East. 280; *Goodtitle v. Baldwin*, 11 East. 488; *Nimmo v. The Commonwealth*, 4 Hen. & Mun. 70; *The Mayor of Hull v. Horner*, Cowp. 108.—(j) *Kelly v. Greenfield*, 2 H. & McH. 138.—(k) 1818, ch. 90; 1839, ch. 34.—(l) *Cockey v. Smith*, 3 H. & J. 26.