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 *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 **111** 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 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. *Shipbrooke* v. *Hinchingbrook*, 13 *Ves.* 396. 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. *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.* 258; *Cholmondeley* v. *Clinton*, 2 *Jac. & Walk.* 140; *Stevenson* v. *Howard*, 3 *H. & J.* 554; *Hillary* v. *Waller*, 12 *Ves.* 265.

The rule, *nullum tempus occurit regi*, even in favor of the crown in England, has been as to many cases abolished, or overruled. *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. In Maryland, the Lord Proprietary was always held to be bound by the Statute of Limitations, *Kelly* v. *Greenfield*, 2 *H. & McH.* 138; 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. 1818, ch. 90; 1839, ch. 34. The Republic, in this instance, claims the application of no rule to which she herself is unwilling to submit, *Cockey* v. *Smith*, 3 *H. & J.* 26; 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.