

upon the simple contract a limitation of three years is a bar. But although in the actions upon the bond and the simple contract judgment may be rendered against him, upon the plea of limitation applicable to each, that cannot, in any manner, affect his remedy by ejectment or the bill to foreclose.<sup>(l)</sup>

It appears, that more than thirty-two years have elapsed since the last payment before this suit was instituted. This great lapse of time affords ample ground for the presumption of satisfaction upon which the defendant relies; and if not explained or repelled must be admitted to be a complete bar to the plaintiffs' claim. Lapse of time operates as a bar, because of its raising a presumption either, that the claim never existed, or if it had once existed, that it has been satisfied. It cannot however be presumed, that this claim never existed, because that is expressly admitted by the defendant himself; consequently this lapse of time can only be insisted on so far as it affords a presumption of satisfaction. The defendant avails himself of it in like manner as he might have done of positive proof of payment. He adduces and relies upon it as evidence to sustain an allegation of payment.<sup>(m)</sup>

But the defendant does not frankly and directly declare, that he had actually paid the whole amount of the purchase money. After expressly admitting the contract, he then says, he does not admit, that he has obtained all the credits he ought to have; he denies that he admitted to any one, that any part of the purchase money was due, or that he promised to pay it; and he does not admit, that any part of the purchase money is due from him. All this, according to the letter, may be true, and yet the defendant may well know in his conscience, that he has not paid the whole purchase money. If he knew he had actually paid it, why not expressly say so, instead of saying he did not admit that any part of it was due from him? Perhaps, by a sort of mental reservation he meant to say, he did not admit it was due, not because he could, with a clear conscience, say he had, in reality, paid it; but, being authorized to rely upon the presumption arising from the lapse of time, he therefore did not admit it was due from him. This is certainly a very stale claim; but its being so ought not to be received as an apology for the slightest departure from that frankness which the court always expects from a defendant when

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<sup>(l)</sup> *Toplis v. Baker*, 2 Cox. 123.—<sup>(m)</sup> *Pow. Mort.* 361, note, 1153, 1155; *Chalmer v. Bradley*, 1 Jac. & Walk. 63; *Christophers v. Sparke*, 2 Jac. & Walk. 233.