

JOHN H. DUVALL ET AL. }

vs.

JOHN COALE. }

DECEMBER TERM, 1847.

[FRAUD.]

A PARTY who attempts to protect himself from the consequences of an engagement into which he has entered, upon the plea, that he has been imposed upon, must make out the imposition by proof.

Fraud is not to be presumed, and though it may not be necessary to prove it by direct and positive testimony, yet, the circumstances upon which the presumption of its existence is to be founded, should lead plainly and directly, and by strong implication, to that conclusion.

Deliberate settlements and solemn instruments are not to be impeached and overthrown by light and trivial circumstances, which, at most, furnish a foundation for ingenious minds to speculate upon, and to weave plausible theories of unfairness in the transaction with which they are associated.

[John Coale, of Howard district, having been indebted to Beale Duvall, in the sum of \$1187 55, executed to him a bill of sale of certain personal property, dated 27th November, 1824, to secure its payment. According to the allegations of the bill, the debt was, on the 8th of January, 1834, reduced to the sum of \$742 29; and on the 28th of October, following, Coale mortgaged certain real estate in Howard district, to Duvall, to secure the payment of the balance, in three annual installments, with interest; the last installment being due on the 28th October, 1837. The bill also stated, that said Duvall, had been long since dead, and that John H. Duvall and William B. Duvall, two of the complainants, were his administrators; that Coale had made but two small payments on the mortgage, one of \$65, on the 27th September, 1841, and the other of \$214 49, on the 21st February, 1842; the balance, with interest, being still due; and that the mortgage was afterwards assigned by said administrators, for a valuable and bona fide consideration, to Thomas John Bowie, the other complainant. The defendant, Coale, admitted in his answer, that he had signed the mortgage in question; but, stated that he knew nothing of its contents, save as they were afforded him by Duvall, who pro-