

tober of the same year, when this bill was filed. *Thornton vs. Wynn*, 12 *Wheat.*, 183.

At the time this offer was made, all the negroes were living, and if it had been accepted by the defendant, the parties would have been placed in *statu quo*. That the infant has since died, and that they cannot to that extent be placed in the same situation, is the defendant's own fault, of which, of course, he cannot complain.

That the complainant repeated the offer in the presence of a witness in September, 1848, the rights of third parties not having intervened, and nothing more having been done by him than simply keeping possession of the property, cannot, I think, impair or take away his rights. And, therefore, if he had the right to come into this court for redress, that right remains now in full force and effect.

It has been said, and the assertion has received the sanction of some of the most eminent judges known to any age, that fraud and damage coupled together will entitle the injured party to relief in any court of justice. And it was observed by Lord Eldon, in *Evans vs. Bicknell*, 6 *Ves.*, 182, 183, "that if a representation is made to another, going to deal in a matter of interest upon the faith of that representation, the former shall make the representation good, if he knew that representation to be false; and that if there was a jurisdiction at law upon the doctrine, there was a concurrent jurisdiction in equity." The observation here is, if the party making the representation "knew it to be false," but upon the principle of the decision in *Joyce and wife vs. Taylor*, before referred to, the party will be equally bound by his representation, whether he knew it to be false or not, provided the other party believed in its truth, and, if it is false, is deceived by it. For, as Mr. Justice Story says, "the affirmation of what one does not know or believe to be true, is equally in morals and law as unjustifiable, as the affirmation of what one knows to be positively false." 1 *Story's Eq., sec.*, 193.

Now, it may very well be, that the defendant, John Mitchell, did not know what was the condition of those negroes with reference to their health. Indeed, one of his own witnesses