

which could readily be found. *Daniel vs. Mitchell*, 1 *Story, C. C.*, 172; *Ainsley vs. Medlycot*, 9 *Ves.*, 21, *note a.*

The principle appears to be, that in a case of misrepresentation of facts, though inadvertently made, by mutual mistake of parties, or by mistake of either one of them, if the other has been prejudiced thereby, a court of equity will set it aside and declare it a nullity.

The jurisdiction of the court is supposed to be clearly established by the cases of *Evans vs. Bicknell*, 6 *Vesey*, 174; *Burrowes vs. Lock*, 10 *Vesey*, 470; *Bacon vs. Bronson*, 7 *Johns. Ch. Rep.*, 201.

It has been urged that this case is not unlike the case of Albert and wife vs. The Savings Bank of Baltimore, recently decided by this court, and referred to in the argument. It seems to me, however, to be totally dissimilar.

That was a case in which the bank, contrary to the provisions of its charter, had loaned a sum of money to one of its directors. The contract, though forbidden by its charter, was fairly and *bona fide* entered into, without the slightest taint of fraud or misrepresentation affecting its morality. The money loaned by the bank to the director, had been enjoyed by him, and not being paid at the time stipulated, the bank sold the securities held by it in pledge, and reimbursed itself. There could be no pretence, it seemed to me, *ex æquo et bono*, to compel the bank to pay back this money, either to the party who borrowed it or to any one else. Though the bank could not have recovered the money from the borrower, because of the legal inhibition to make the loan, yet still in *foro conscientiæ*, it was due, and being paid, no court of justice would lend its aid to compel its return. It would be repugnant to the plainest principles of justice.

But in this case, though the contract has been performed by the delivery of the property and payment of the consideration, yet, as its performance was the result of imposition, whether designed or not, practiced upon the purchaser, is immaterial—the court will rescind it, and place the parties in their original situation. In all the cases in which the contract has been re-