the jurisdiction supported by the attorney general, we conceived it right to give an opinion that the law hereafter may be understood.

BRYAN, MORRISON, AND DAVIDSON, Appellants, *v.* JOHN PRIMM, Appellee.

APPEAL FROM ST. CLAIR.

A *suppressio veri* in relation to any important fact affords ground for the interference of a court of equity to annul the contract. (1)
The assignee of a note, after it becomes due, takes it subject to all the equity existing between the original parties to it.
Notice of an equity, to an agent, is notice to his principal.
Though a bill for an injunction does not pray that the money be refunded, yet such relief can be granted, and a decree therefor is not erroneous.

Opinion of the Court by Chief Justice THOMAS REYNOLDS. This was a suit in chancery, commenced by Primm, for the

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(1) In a sale of land by a guardian, a mere *suppressio veri*, does not constitute fraud in the sale; but if there was a *suggestio falsi* the question would be different. *Mason* v. *Wait et al.*, 4 Scam., 127.

Fraud may consist as well in a *suppressio veri* as in a *suggestio falsi*; for in either case, it may operate to the injury of the innocent party. *Lockridge* v. *Foster et al.*, 4 Scam., 569.

These decisions of our court are apparently conflicting, and, to a casual reader, might be calculated to mislead. Indeed the cases of *Bryan & Morrison* v. *Primm*, and *Lockridge* v. *Foster et al.*, do not justify the syllabus of the reporter. In each of those cases there was a positive false affirmation which authorized the decision of the court; and in the last case the language of the opinion was as stated by the reporter; but it was not called for by the case—was a mere dictum of the court—and with all due deference to the very able judge who delivered the opinion, is not, we think, warranted by the law. How far a person is bound, when dealing with another, to communicate facts purely within his own knowledge, is a question about which great diversity of opinion has existed. CICERO held that a man was bound to communicate every fact within his knowledge, which was unknown to the one with whom he was dealing, and which might operate on the other in making the contract. Some modern jurists and moralists of eminence have adopted this doctrine. Although this may be and is true in morals, yet the courts of America have not seen fit to adopt so rigid a rule. Thus CHANCELLOR KENT says "From this and other cases it would appear that human laws are not so perfect as the dictates of conscience; and the sphere of morality is more enlarged than the limits of civil jurisdiction. There are many duties that belong to the class of imperfect obligations, which are binding on conscience, but which human laws do not, and can not undertake directly to enforce." 2 Kent's Comm., p. 490.

To constitute a *suppressio veri* such a fraud as will authorize a court to interfere and declare the contract void, there must be something more than a failure to *communicate* facts within the knowledge of the party—there must be *concealment*. Such concealment may be by withholding the information when asked for it, or by making use of some device to mislead. Or there may be cases in which such suppression would be held to be a fraud when no *act* was done by the party chargeable with it; such as where from the peculiar situation of the parties—"when the person stands in the relation of trustee or *quasi* trustee to another, as agent, fac-

purpose of setting aside a contract made with James W. Davidson and wife, and to enjoin a judgment obtained against himself by Bryan and Morrison upon a note executed under said contract. The bill alleges that sometime in July, 1808, Primm purchased of said Davidson and wife a certain tract of land lying in St. Clair County, which land descended to the wife of said Davidson as heir at law of one Peter Zip, deceased; that said Davidson and wife were to execute to him such deeds as would completely vest in him the same title which the said Zip, deceased, had in the premises. That, accordingly, said Davidson and wife, together with one Jane Everett, who claimed an interest in the premises, did execute to him a deed for said land—that in consideration of such purchase, he agreed to pay the said Davidson the sum of eight hundred dollars, for the payment of which, he executed his

tor, steward, attorney, or the like, if he would purchase of his principal or employer, any property entrusted to his care, he must deal with the utmost fairness, and conceal nothing within his knowledge which may affect the price or value." 2 Kent's Comm., p. 490. Or where one party possesses a knowledge of facts which, from the situation of the property, the other can not know, a suppression of such facts would render a contract invalid.

The conclusion to which we arrive is, that unless the case comes within some of the exceptions arising from the peculiar situation of the parties, a mere *failure* to communicate facts within the knowledge of one party and unknown to the other, does not make it fraudulent; in other words, the party must *do* some act to mislead. A late writer has so fully expressed our views on this subject, that we avail ourselves of the following extract from his truly valuable work: "If the seller knows of a defect in his goods which the buyer does not know, and if he had known would not have bought the goods, and the seller is silent, and only silent, his silence is nevertheless a moral fraud, and ought perhaps on moral grounds to avoid the transaction. But this *moral* fraud has not yet grown into a *legal* fraud. In cases of this kind there may be circumstances which cause this moral fraud to be a legal fraud, and give the buyer his action on the implied warranty, or on the deceit. And if the seller be not silent, but produce the sale by means of false representations, then the rule of *caveat emptor* does not apply, and the seller is answerable for his fraud. But the weight of authority requires that this should be *active fraud.* The common law does not oblige a seller to disclose all that he knows, which lessens the value of the property he would sell. He may be silent, leaving the purchaser to inquire and examine for himself, or to require a warranty. He may be silent, and be safe; but if he be more than silent—if by acts, and certainly if by words, he leads the buyer astray, inducing him to suppose that he buys with warranty, or otherwise preventing his examination or inquiry, this becomes a fraud of which the law will take cognizance. The distinction seems to be—and it is grounded upon the apparent necessity of leaving men to take some care of themselves in their business transactions—the seller may let the buyer cheat himself *ad libitum*, but must not actively assist him in cheating himself." 1 Parsons on Contr., 461. See also 1 Story's Eq., Sec. 203–8.

A mere false representation does not constitute fraud. The party must know the representations to be false, and must use some means to deceive and circumvent. *Sims* v. *Klein*, post.

Fraud can not exist without an intention to deceive. *Miller* v. *Howell*, 1 Scam., 499.

Where a party, by the use of fraud and deception, obtains a conveyance, the parties who have made it may disregard it and convey to a third party, who may establish the fraud in equity, and be protected in his rights. *Whitney* v. *Roberts*, 22 Ill., 381.

note to the said Jane Everett for the sum of two hundred and sixty-six dollars; and for the balance of said purchase money, beside a small part paid, he executed his notes to the said Davidson. The bill further shows that at the time of making said contract, and of the execution of the deed aforesaid, the said wife of Davidson, who was the sole heir to the said Zip, was under the age of twenty-one years, and that since she has arrived at full age, has refused to execute a deed for said land, without the payment of an additional sum.

It is further shown, that after the note executed to the said Jane Everett became due, it was assigned to Bryan and Morrison, who purchased the same through their agent, William Atchison,—that said Atchison had a full knowledge of all the circumstances under which said note was executed. The said Bryan and Morrison commenced suit upon said note and recovered judgment.

The prayer of the bill is to perpetually enjoin said judgment and cancel the notes given pursuant to said purchase. An injunction to stay the collection of said judgment was granted by the judge in vacation. The bill as to Davidson and wife was taken *pro confesso*. Bryan and Morrison answered, setting forth their ignorance of all the circumstances under which said note was executed—that they are the innocent purchasers of said note—deny knowing that their agent had any knowledge of said circumstances, but do not deny that their agent possessed such information. During the progress of the suit in the court below, the injunction was dissolved and the said Bryan and Morrison proceeded and collected their judgment. Upon the final hearing of the cause, the court below decreed that the notes should be cancelled, and that Bryan and Morrison refund to the said Primm the money so collected. To reverse this decree this appeal is prosecuted. We will first consider whether the bill contains equity, if so, whether that equity attaches upon the note in the hands of Bryan and Morrison.

The knowledge by Davidson of his wife's being under age at the time of executing the conveyance, and not disclosing that fact to Primm, is surely a suppression of the truth; add to this the fact of his wife's disagreement to the contract after she arrived at full age, and I think it will not be contended that the bill contains no equity. Between Primm, then, and Davidson and wife, the decree ought to be affirmed. (1)

(1) The same defense may be set up against the assignee of a note, which was transferred after its maturity, as could be made against the original payee. *Tyler* v. *Young et al.* 2 Scam., 444; *Sargeant* v. *Kellogg et al.* 5 Gilm., 273; *Walter* v. *Kirk*

The next inquiry is, does this equity extend to Bryan and Morrison. They do not deny that Atchison, their agent, had knowledge of Primm's equity. This of itself would be notice to them. (1)

But regardless of this fact, the note was assigned to Bryan and Morrison after it became due. Under this circumstance, they took it subject to all the equity which attached in the hands of the original payee.* It was contended in the argument by the counsel for the plaintiff, that the court erred in decreeing the money to be refunded by Bryan and Morrison, when the bill did not pray for such relief.

It will be remembered, that the prayer, as to them, is for a perpetual injunction, that after the injunction was dissolved, they proceeded and collected their judgment. Could not the court then decree the money to be refunded? We have no hesitation in saying they could. Otherwise, the complainant would be turned round and compelled to seek his redress by an action at law. If the injunction had been made perpetual, without this additional relief, the same absurdity would have followed. (2) Let the judgment of the court below be affirmed and the defendant recover his costs. (*a*)

Judgment affirmed.

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et al. 14 Ill., 55. And so is the statute. Purple's statutes, p. 772, Sec. 8. Scates' Comp., p. 292.

An assignee of a note takes it subject to any defense existing between the maker and the payee which appears on the face of the note, or of which he had notice at the time of the assignment; and in such case it is immaterial whether the note was assigned before or after it became due. *Frink et al.* v. *Ryan,* 3 Scam., 324.

(1) The same is held in *Rector* v. *Rector et al.* 3 Gilm., 119, and *Doyle et al.* v. *Teas et al.* 4 Scam., 250.

*Laws of 1819, page 1.

(2) In *Isaacs* v. *Steele,* 3 Scam., 103, the court said they had no doubt that under the prayer for general relief, a court of chancery may decree that which is not specifically prayed for, and grant more than is asked. And again in *Manchester et al.* v. *McKee,* 4 Gilm., 519. "The general prayer is sufficient to authorize the granting of any relief which the statement of the bill would warrant." See also *Alexander et al.* v. *Tams et al.,* 13 Ill., 225. *Vansant* v. *Allmon,* 23 Ill., 30.

(*a*) The complainant is not confined to the particular relief prayed for in the bill, but, under the general prayer, is entitled to such a decree as the nature of the case may require. *Beebe and others* v. *Bank of New York,* 1 Johns. Rep., 529.