ever expect in such a case of the fraud by which it has been attempted to deprive a plaintiff of the fruits of his judgment. I quite admit also that a mere transfer of property to one creditor with the intent to prefer him to another, and so hinder and defeat that other's execution, will not be invalid either by the common law, or the statute of Elizabeth, but I deny that a transfer can stand made not to a creditor to pay a debt, but as a sale to prevent the operation of an execution, although there be but one such, notwithstanding that language is to be found in *Wood* v. *Dixie*, and *Hale* v. *The Saloon Omnibus Co.*, which read literally would almost sustain that proposition A man may commit just as great a fraud in his design of defeating one creditor as of defeating a dozen, and indeed it was not contended otherwise on the argument of this case. Beatty, if he ought not to stand in any worse, certainly stands in no better position than Stephens. He was privy to the original transaction, and any suspicion he entertained then must have been amply confirmed by what transpired afterwards, and before he purchased from Stephens.

I should remark that it was stated in evidence that the elder Thomas had paid some debts to creditors in Canada since he had lived in Detroit, but they do not appear to have amounted to $300 in all. Though after Beatty had sworn that Thomas had given to him as one of his reasons for selling the property his desire to save it from the bank as well for himself as his other creditors, he, on his evidence being read over to him asserted that he had not meant to say that Thomas proposed to save any of it for himself. Yet it seems from what has taken place that it is for himself Mr. Thomas has saved it, and not for his creditors, and I should be ashamed of our jurisprudence if in such a case as this the court could not step in and wrench from the parties holding it, property which should never have been withdrawn from the reach of the creditors.

The law applicable to such cases as the present is plain enough. The only difficulty was in adjudging upon the facts to ascertain whether the conveyance has been contrived of malice, fraud, covin, or collusion to delay, hinder, or defraud creditors, or others of their just and lawful debts; and whether notwithstanding such intent in the one party the lands, &c., have been conveyed on good consideration and *bona fide* to a person not having notice of such covin, fraud, &c. Of recent cases on this subject I may refer to *Corlett* v. *Ratchie*, (L Times N. S p. 1) before the Privy Council; to *Thompson* v *Webster*, (5 Jurist N S. 668, and 921,) and in 7 Jurist. N. S., on appeal to the House of Lords. And to *Hale* v. *The Saloon Omnibus Co.*, already cited. It was contended that the whole conveyance here could not be declared void, inasmuch as it covered mortgages, and that there was no allegation that writs against goods of Thomas had issued so as to have entitled the plaintiffs to seize such mortgages had they remained the property of Thomas. The allegation in the bill is that the writs against lands were *duly* issued, and this was admitted on the hearing. Although as against a demurrer this form of allegation might not be sufficient, yet I think, coupled with the admission, it enables the court on the hearing to make a decree as to the mortgages. The writs against lands could not have *duly* issued had they not been preceded by writs against goods, and the mortgages were held out of the country at the time of bill filed.

The decree must be to declare these several conveyances from Thomas to Stephens void as against the plaintiffs, with costs as against the defendants George Thomas, Stephens and Beatty, and for the usual necessary consequential relief. I give no costs to or against the defendant F. A. Thomas. I think he was a proper party to the bill, but he very unnecessarily in his answer enters into a defence of his father in his affairs with the bank. If on being served with the bill he had disclaimed all interest in the suit, and the plaintiffs had nevertheless continued proceedings against him, he would then have had a claim to his costs.

At the opening of the case I ruled that the plaintiffs could not in this suit impeach the judgment of *Beatty* v. *Thomas*, as that question has been disposed of in a former suit between the same parties, but inasmuch as the conveyances from Thomas stand good as between him, Stephens, and Beatty, the result is that Beatty cannot enforce his judgment against the property covered by those conveyances.

U. S. LAW REPORTS.

Wells v. Cook.

(From the *Legal Journal.*)

Where there is a contract to sell or manufacture, and the vendor or manufacturer is guilty of a tort, either in fraudulently representing the quality of the article sold or in negligently making or labeling it, the general rule is that he is only liable to his immediate vendee for the wrong, because damage to third persons is not the necessary and natural consequence of his act, and to them the vendor owes no duty.

To this general rule there are two exceptions in which the vendor is liable to third persons, not parties to the contract, who sustain a particular injury.

(1.) When the wrongful act or neglect is imminently dangerous to the lives of others, as if a dealer sell for resale a dangerous poison labelled as a harmless medicine, which is resold, and injures the person to whom it is administered.

(2.) Where the vendor or manufacturer, from the nature of the contract or service rendered, owes a duty to the public, and does a wrong aimed at the whole public, or the necessary and natural consequence of which is to injure whomsoever may come in the way, as if a bridge builder negligently build a bridge *per quod* a traveller is injured

Where there is no contract, and a party is guilty of some wrongful act or omission of duty in violation of the Common Law, and which is aimed at the whole public, and the natural and necessary effect of which is to injure some or many indiscriminately, the party so guilty is liable to any one injured. As if a team is left unguarded in the street, or a loaded gun is placed in the hands of a child, or a pit is left open in a public place, any one who thereby, without his fault as a proximate cause, is injured, can maintain an action against the wrong-doer.

Where such wrongful act or omission of duty violates no rule of the Common Law, but only a statute, or violates both, a party who sustains a particular injury, not common to the whole public, can only recover, when the wrong is imminently dangerous to human life, or its natural and necessary effect is to injure some or many indiscriminately, or where the wrong is to a party to a contract.

But these principles do not authorize a person to maintain an action against a vendor of sheep infected with foot-rot for fraudulently selling them as sound, in violation of a penal statute and of the Common Law duty to disclose the disease, when such person is not a party to the contract but a purchaser, in ignorance of the fraud, from the vendee of the fraudulent vendor before the vendee discovered the fraud. This is so, because, damage to the second purchaser is too remote a consequence of the wrong, and is not a natural and necessary consequence of it.

When a false representation is fraudulently made to the prejudice of another relying thereon, the party injured may recover in an action against the guilty party for the deceit, provided the false representation is made to him, directly or indirectly, or is made to and with the design to defraud the public indiscriminately But a false representation made to one person not designed to influence the conduct of others, can not give the latter a right of action.

An agent to whom false representations are made to the prejudice of his principal, not designed to influence personally the agent, has no right to rely on such representations in subsequent dealings with his principal, and if he do so, he has no right of action, because no contract with him is violated, nor is any duty to him personally violated. There can be no misfeasance, malfeasance or nonfeasance, except where there is an obligation or duty

The petition filed February 26, 1863, is as follows:—

Orlando Wells, plaintiff, against Solomon Cook, defendant.

Court of Common Pleas, Union County, Ohio, Petition.

The defendant, on or about the 1st day of November, A.D. 1861, sold to the plaintiff, as the agent of his brother, Osmond Wells, and for the said Osmond Wells, twenty-three head of wethers, and three head of buck sheep, the defendant well knowing, at the time of said purchase, that the said sheep were to be turned in with a large flock of sheep owned at that time by the said Osmond Wells, of eleven hundred head, all of which said eleven hundred head of sheep, at the time of said purchase, and turning in of the said twenty head of wethers and three head of buck sheep, were sound and healthy, and free from any disease.

The defendant, at the time of said purchase, wrongfully and fraudulently represented to plaintiff, that said sheep purchased of him were sound and healthy, and free from any disease, whereas the said sheep, although apparently healthy, were not sound and healthy, as the defendant then well knew, and wrongfully and fraudulently concealed the same from the plaintiff.

The plaintiff, afterwards on or about the 1st day of December, purchased of his brother, Osmond Wells, all of the before-mentioned sheep, including those purchased of defendant, solely relying, as to the soundness of said sheep, upon his own knowledge of the said eleven hundred previous to the purchase of the twenty-three head of wethers, and three head of bucks, of the plaintiff, and relying solely upon the representations of the defendant to him, as to the soundness of those purchased of him. The plaintiff avers, that said sheep, purchased of the defendant were, at the time of said purchase, unsound, and had a disease known as the "foot-rot," which is contagious, and which was communicated to the rest of said flock by the turning in of said sheep with said eleven hundred head.