

1875. took to perform." The defendant alleged that he would attend, and buy for the plaintiff. He thereby induced him to confide to him the duty of purchasing. The plaintiff was led by this fraudulent inducement into an arrangement, of which the defendant now wants to take an advantage to the detriment of the plaintiff. It is not for the Court to calculate with accuracy the hour that the defendant conceived, and when he consummated this fraudulent intent. It is enough that a fraudulent use is now being made of a position in which he was placed by a statement to which he is unwilling to give effect, and the abandonment whereof causes an injury to him to whom it was made. The act of fraud now complained of is the attempt to maintain the character of absolute owner of the premises in question, in place of that of trustee for the plaintiff; but it is only part of the general scheme, and the Court reckons this but as the second act in a play, the plot in which began when the defendant obtained a position on terms which he now refuses to make good.

Judgment.

I think the decree should be affirmed with costs.

PROUDFOOT, V. C.—The judgment of my brother *Blake*, I think, states correctly the result of the authorities in our Courts as to the cases in which parol evidence is admissible to convert an absolute deed into a mortgage. Whether we are so bound by these authorities as to be unable, though in accordance with the Court of Appeal in Chancery in England, or with the House of Lords, to decide contrary to them, until the Privy Council, the Court of Appeal from the Colonies, shall have sanctioned it, I do not at present mean to inquire. Some of the propositions stated in *Howland v. Stewart* (a), are clearly not law; as, for instance, where it is said that a deed cannot be corrected for mistake unless there be

(a) 2 Grant 71.