WILLIAM SIMPSON MURDOCK, Plaintiff-in-Error, *v.* THE UNITED STATES TRADING COMPANY, represented by FIRESTONE PLANTATIONS COMPANY, through WARREN BROCKET, Manager, Defendant-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Decided February 17, 1932.

1. Equity considers that as done which ought to have been done.
2. When the plaintiff's complaint, otherwise called a bill, prays for relief in the same suit, the statements of the defendant in his answer are considered by the court in forming a judgment or decree upon the whole case.
3. Transfers to defeat or delay creditors and purchasers come under the head of "fraud." To render a person amenable to an injunction it is neither necessary that he be a party to the suit, or served with a copy of it, as long as he appears to have had actual or constructive notice.

Plaintiff, now defendant-in-error, was granted an injunction in the Circuit Court restraining defendant from using an automobile, ownership of which plaintiff claimed by virtue of a chattel mortgage executed by original owner, who later sold the automobile to defendant, now plaintiff-in-error. On writ of error to this Court, decree *affirmed.*

H. Lafayette Harmon for plaintiff-in-error. *Barclay & Barclay* for defendant-in-error.

MR. JUSTICE PAGE delivered the opinion of the Court.

This case is an appeal by writ of error brought by the plaintiff-in-error, defendant in the court below. Plaintiff, now defendant-in-error, brought an action of injunction in the Circuit Court for the Fourth Judicial Circuit in its Equity Division at the August term, 1930, Maryland County, praying that the defendant in the court below, William S. Murdock, be enjoined to abstain and desist

from the use of a certain motor car of the following description:

One big six 120 W. B. Regal Commander Studebaker Sedan Car 1928 model with full equipment, L. H. drive, grey body, mohair trim, bumpers, disc wheels, and from shipping, transporting, or exporting it or causing it to be shipped, transported or exported from the Republic to any foreign part. Plaintiff alleged the car to be its property, bought by it from one W. V. S. Tubman of the City of Harper in the County of Maryland, because said Studebaker sedan car was duly mortgaged to the said plaintiff, now defendant-in-error, by virtue of a certain chattel mortgage secured by a certain promissory note of the following order:

"Mortgage of chattel, No. 60A. OHIO LEGAL BANK COMPANY

CLEVELAND.

"Know all men by these presents, that Wm. V. S. Tubman, the Grantor, for the consideration of one dollar received to his full satisfaction from the United States Trading Company, the grantee, has granted, bargained, sold, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto the said grantee, its successors and assigns forever, the following described goods, chattels and property now remaining and being in his possession to wit:

"One big six 120 W. B. Regal Commander Studebaker Sedan Car 1928 model with full equipment, L. H. Drive, Grey Body, Mohair Trim, bumpers, disc wheels, printing on panel each front door, with extra tire and tube, engine No. 18345, Serial No. 4057706.

"To have and to hold, all and singular, the goods, chattels and property above granted, bargained and sold and intended to be granted, bargained and sold unto the said grantee, its successors and assigns.

"The condition of this mortgage is such that, whereas the said Wm. V. S. Tubman has executed and delivered unto the said United States Trading Company a certain promissory note of even date herewith for the sum of $1,580.46 it is expressly agreed by and between the said grantor and grantee that if said note, or the interest accrued thereon, shall not be paid within 15 days after falling due, the said note remaining unpaid, shall at once become due and payable at the election of said grantee; and that the said grantee may insure the value of said mortgaged goods and chattels against loss by fire, and hold the policy therefor as collateral security for the payment of said claim, until the same has been fully paid, any loss to be made payable to.....successors and assigns as.....interest may appear, and the expense thereof to be charged against said grantor.....; and the said grantor hereby agrees with the said grantee that he will pay to the said grantee the expenses of the execution, filing and refiling of this mortgage as by law provided, the amount thereof to be a charge and lien upon said goods and chattels.

"And the said grantor doth hereby covenant and agree to and with the said grantee, its successors and assigns, that in case default shall be made in the payment of the sum of money above mentioned or in the performance of any of the above mentioned covenants at the time limited for such payments or performance, or in case said grantor shall commit any waste or nuisance or attempt to secrete or remove the above described goods or chattels or any part thereof, or if said grantee, its successors or assigns, shall at any time before said sum of money become due, deem it necessary for its or their more complete and perfect security, the said grantee, its successors or assigns, are hereby authorized and empowered with or without the aid or assistance of any person or persons to enter

the dwelling house, store, or other premises of said grantor or each other place or places as the said goods or chattels may be placed, and take and carry away said mortgaged property, and sell and dispose of the same at public auction or private sale, without notice to said grantor; and out of the money arising from such sale, appropriate the amount necessary to indemnify the said grantees for any damages by them sustained by reason of the violation of any of the aforesaid covenants on the part of the grantor and render the overplus (if any) to said grantor, his heirs or assigns.

"Now if the said W. V. S. Tubman, his heirs or assigns, shall well and truly pay the aforesaid sum of money and interest at the time and in the manner and form as above set forth, and shall keep and perform the covenants and agreements above contained on his part to be kept and performed according to the true intent and meaning thereof, this mortgage shall be void; otherwise the same shall be and remain in full force and virtue in law.

"In witness whereof I have hereunto set my hand and seal this 6th day of June in the year of our Lord one thousand nine hundred and twenty-eight.

"[Sgd.] WM. V. S. TUBMAN"
(Seal)

"Signed, sealed and delivered
in the presence of:
[Sgd.] M. S. SNYDER."

($1.00 Stamp)

"*ENDORSEMENT*—Chattel mortgage.

"STATE OF OHIO,
SUMMIT COUNTY SS.

"Wm. V. S. Tubman, being duly sworn, says the amount of this claim secured by the within mortgage is....., that it is just and unpaid.

"Sworn to and subscribed by
said Wm. V. S. Tubman
before me this 6th day of
June 1928.
"[Sgd.] HUGUENITE SNYDER."

"STATE OF OHIO,
"[Sgd.] OHIO LEGAL BANK COMPANY,
CLEVELAND."

This complaint or bill in equity of the plaintiff in the court below praying for the issuance of a writ of injunction was granted and an order for the writ of injunction to issue was given, whereby the defendant, now petitioner, was enjoined from the use of, or in any wise interfering with, said car (see complaint and writ). On the 21st of August, 1930, the defendant, Wm. S. Murdock, by and through his counsellors, Wm. V. S. Tubman and D. B. Cooper, filed his appearance and on the 29th of August filed his answer embodying twenty counts. Issue being joined and pleading resting with defendant's rejoinder, also containing twenty counts, the court on the 12th day of March, 1931, entered upon the hearing of the issues of law in the pleadings. At this stage the defendant's counsel gave notice that they waived counts 8, 12, 13, 15, 18, 19 and 20.

After arguments *pro et con* on counts 1 to 11, 14, 16 and 17 the court proceeded to give its ruling on 1 and 16 of the answer, overruling same, to which no exceptions were taken, except as to count 3, to which exception was taken. The defense counsel here requested the court to reduce its ruling to writing; this request the court refused to entertain on the ground that it was made after the court had given its ruling, to which exceptions were also taken.

In passing on this exception we would here remark that while the refusal of a judge or court to reduce its opinion to writing is a denial of a legal right and an obstruction against the regular mode of obtaining an ap-

peal, yet the request must be made before the court proceeds to hand down its opinion or charge, otherwise the doctrine of estoppel would operate. The court therefore did not err in not reducing its ruling to writing after it had been given.

We will pass on to counts 7–8 of the defendant's answer, supported by counts 9 and 10, set up in his brief, in which plaintiff-in-error further submits that:

> "Defendants-in-error, plaintiffs in the court below, holding a chattel mortgage on said car executed to them the said Wm. V. S. Tubman in the United States of America, June 6th, 1928, and having neglected to have said chattel mortgage probated and recorded so as to give notice to all mankind of its existence, and defendant-in-error having failed to object to said honest purchase, the Court of Equity should not lend its aid to such negligence, thereby making the plaintiff-in-error suffer in an honest and bona fide transaction. In addition to this contention, it is added in count 10 that it is reversible error in the court below to have admitted in evidence the said unrecorded and incomplete chattel mortgage identified and marked 'A' because said mortgage, being an agreement between two parties, should have been signed by both parties to said contract and duly probated and registered in order to make it legal evidence. Said mortgage was signed by only one party, and further the verification attached to said chattel mortgage supposed to have been made in the State of Ohio, U.S.A., does not specify any amount of debt which said mortgage is intended to secure, nor is it signed by any officer charged with the duty of taking oaths, all of which incompleteness and irregularities makes said document ineffectual and void."

In considering these two most important issues we find it as difficult to discriminate the interest of William Simpson Murdock, defendant in the court below, now

plaintiff-in-error, from that of Wm. V. S. Tubman, grantor of the chattel mortgage to the United States Trading Company represented by Firestone Plantations Company, Cape Palmas, Liberia, plaintiff in the court below, now defendant-in-error, and grantee, as an expert surgeon would find it to take a pound of flesh from a living human body without shedding a drop of blood; for how could the defendant, now plaintiff-in-error, William S. Murdock, on the one hand disclaim knowledge of the transaction between W. V. S. Tubman, the grantor and the United States Trading Company, the grantee under the chattel mortgage, regarding the sale of said car to himself as an honest purchaser, and at the same time set up the following grounds before the court in the pleadings to defeat said chattel mortgage:

> (a) Its non-probation and registration. (b) Said chattel mortgage is not signed by both parties. (c) The verification does not specify any amount of the debt. (d) Not signed by any officer charged with the duties of taking oaths which renders the documents ineffectual and void.

It is quite obvious that the relation between them as client and lawyer would certainly open to both parties the entire facts and circumstances surrounding the case, for where several parties have a joint interest, the common interest being proved, the admission of one is the admission of the other. *Old Blue Book* 51, Legal Principles and Rules, t. II, ch. X, § 17.

The grantor of the chattel mortgage, having a full knowledge of the stipulations and obligations to which he voluntarily subscribed, in attempting to dispose of the car in question is not without fault in keeping with the principle of law that all transfers to defeat or delay creditors and purchasers with notice of an outstanding title come under the head of fraud. B.L.D., "Fraud." There is a less amount of evidence required to prove fraud

in equity than at law; the court therefore does relieve in all cases of what might be called accident and mistakes.

Fraud in its ordinary application to cases of contract includes any trick or artifice employed by one person to induce another to fall into or detain him in an error, so that he may make an agreement contrary to his interest; and it may consist in misrepresenting or concealing material facts, and may be effected by words or by actions. Where a party intentionally or by design misrepresents a material fact or produces a false impression, in order to mislead another or to obtain an undue advantage of him, there is a positive fraud in the fullest sense of the term.

If a person takes upon himself to state as true that of which he is wholly ignorant, he will, if it be false, incur the same legal responsibility as if he had made the statement with knowledge of its falsity; every man being presumed to know the legal effect of an instrument which he signs or an act which he performs.

The equity doctrine of what constitutes a case of fraud in the view of courts of equity would be difficult to specify. It is, indeed, part of the nature of it, lest the craft of men should find ways of committing fraud which might escape the limits of such a rule of definition. The courts very wisely have never laid down any general rule beyond which they would not go, lest other means for avoiding the equity of the court should be found out. It includes all acts, omissions, or concealments, which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another; it may be stated, says Mr. Bouvier in his definition, as a general rule that fraud consists in anything which is calculated to deceive, whether it be a single act or combination of circumstances, whether it be by suppression of the truth or suggestion of what is false,

whether it be by direct falsehood, or by innuendo, by speech or by silence, by word of mouth, or by a look or a gesture. In short, fraud is defined to be any artifice by which a person is deceived to his disadvantage.

Following this definition and reviewing the entire records of the case, it is obvious and the Court finds it less difficult in pronouncing that from the signing of the chattel mortgage to the sale of the car to the plaintiff-in-error, the entire conduct or action on the part of the grantor of the chattel mortgage is based upon, highly seasoned with, and controlled by fraud.

We shall now pass on the next salient points for consideration, namely:

(a) Recognition and legal validity of chattel mortgage given by grantor; (b) perpetuation of injunction; (c) authorization of Firestone to take over this car under the terms of the chattel mortgage; and (d) adequate remedy and relief to all the parties concerned.

A chattel mortgage is a transfer of personal property as security for a debt or obligation in such form that upon failure of the mortgagor to comply with the terms of the contract, the title to the property will be in the mortgagee; it is an absolute pledge to become an absolute interest if not redeemed at a fixed time; strictly speaking, it is a conditional sale of a chattel as security for the payment of a debt or the performance of some obligation. Jones, Mortgages on Personal Property, § 1.

The condition is, that the sale shall become void upon the performance of the condition named. If the condition be not performed, the chattel is irredeemable; the title is fully vested in the mortgagee and can be defeated only by the due performance of the condition. Upon a breach, the mortgagee may take possession and treat the chattel as his own.

With reference to the question raised to defeat the mortgage because of its non-probation and registration, the Court would here remark that, the question is not well

taken and the court below did not err in not supporting same as, independently of statutes, a delivery is necessary to the validity of a chattel mortgage as against creditors. The registration statute simply provides a substitute for change of possession; if there is no change of possession, registration is not required. It is most difficult for this Court to understand the motive of W. V. S. Tubman after having signed and executed the said chattel mortgage in favor of the grantee and enjoyed all the benefits accruing to himself from said contract to thereafter in this action, take the legal interest of William S. Murdock, the plaintiff-in-error, and attempt to defeat his own legal act by having the court below declare said chattel mortgage illegal, void and of no binding effect. This Court without hesitancy says that he is by virtue of the rule of estoppel estopped from doing so.

In *East Africa Company* v. *Dunbar,* 1 L.L.R. 279, decided January term, 1895, this Court laid down the rule that the plea of estoppel is among the pleas calculated to prevent one from denying his own acts or deeds if well founded in truth and must meet the sanctions of courts of law and equity. Nothing would work greater injustice than for a man to execute a note or deed in favor of another and then attempt to prove its unlawfulness. In law, he would be estopped or hindered from doing it; and if such acts committed by any party, no matter in what capacity, become a question of truthfulness, neither the party himself nor any one representing him should be allowed to impeach his own deed, note, or acts.

As to point (b), we fail to see just reasons in law or equity why the judgment of the court below in perpetuating the injunction should be disturbed and not be affirmed by this Court.

As to point (c), we say that, although the judgment of the court below did not give authorization to Firestone to take over this car, the basis of this action under the terms of the chattel mortgage, yet it is the duty of this

Court to which the appeal is taken to give such judgment or decree as the court below should have given; the right therefore given to Firestone, the defendant-in-error, under the terms of the chattel mortgage to enter the dwelling house, store, or other premises of the grantor in case of default and take and carry away said mortgaged property is not only a right given and reserved to itself, but protected and supported by this Court under the laws of this Republic.

As to point (d), giving adequate remedy and relief to all the parties concerned in this action, we here remark in considering this question that courts are international in character, ordained, instituted, and established by the Deity himself and in the discharge of duty are not influenced by smiles, nor intimidated by frowns; they hold in trust the sacred rights of all men to life, limb, property and privileges; they know no rich, no poor, no citizen, no foreigner; they guarantee to every man the motto, "let justice be done to all." We repeat the rule this Court laid down in *Tubman* v. *Westphal Stavenow & Co.*, 1 L.L.R. 367 (1900), that this Court, as the last legal and equitable resort for justice, is unwilling to lay precedents based on technicalities which prevent all men from enjoying their rights under the laws of this Republic, be they Liberians or foreigners.

This Court will not lend its aid to those who seek to take advantage of others by evading a right and equitable course of conduct however adroitly they may endeavor to cover their intentions, for equity is righteousness.

Mr. S. Austin Allibone, LL.D., author of the *Dictionary of Authors,* in his review of Judge Bouvier's *Dictionary* and *Institutes of American Laws,* on page 143 cited this rule on the subject:

> "A court of equity may impose any terms in its discretion as a condition of granting or continuing an injunction." 2 B.L.D. (Rawle rev.) 1578.

To render a person amenable to an injunction it is

neither necessary that he be a party to the suit or served with a copy of it, so long as he appears to have had actual or constructive notice. In re *Lennon,* 166 *U.S.* 548, 554 (1897). The sole object of a preliminary injunction is to preserve the *status quo* of the rights of all parties concerned.

The *status quo* is the last actual, peaceable, uncontested status which preceded the pending controversy and a wrongdoer cannot shelter himself behind a sudden or recently changed status, though made before the chancellor's hand reached him.

The opinion and decree of this Court therefore is, (a) that the decree of the court below be affirmed and the injunction perpetuated; (b) that the United States Trading Company represented by Firestone Plantations Company, Cape Palmas, Liberia, by Warren Brocket, Manager, and defendant-in-error, take over said car in accordance with the terms of the chattel mortgage executed by the grantor; (c) that William Simpson Murdock, the plaintiff-in-error, recover from W. V. S. Tubman the full amount of the purchase money paid by him to the said W. V. S. Tubman of one hundred and ten pounds sterling and forty pounds for cost of various expenses including that of assembly and radiation; and (d) that the plaintiff-in-error, the defendant in the court below, pay the cost of this action. And this Court so decrees.

Affirmed.