the Greenville press, as to its want of power and capacity to compress cotton at the rate guarantied; but it is shown also that the demand at that point was for a compress that would compress cotton bales much above the average weight,—some of them running over 750 pounds in weight. Manifestly the press was not adapted to cotton bales of such size and weight, and the parties took that view of it themselves, and procured from the appellee a heavier press of 1,500 tons' pressure, better adapted to the size of the bales and the volume of business at that place. It is clear from the testimony that the parties contemplated a comparatively light-made press, and it is vain and unreasonable to expect from such a compress the service obtained from heavy presses of great power, costing two and a half times as much money. The evidence does not satisfactorily establish the alleged breach of warranty, nor does it establish the *bona fides* of the claim for breach of warranty, but leaves it to the imputation that it was an after-thought. It follows that the judgment and decree of the court below is affirmed, with costs; and it is so ordered.

PARLIN *et al. v.* STONE *et al.*

(Circuit Court, W. D. Missouri, W. D. June, 1880.)

1. ESTOPPEL IN PAIS—FALSE REPRESENTATIONS—MORTGAGES.
   An owner of lands who induces his creditor to accept as security a mortgage thereon from a third person, by representing that the third person is the owner, is estopped to claim the lands as against the lien of the mortgage.
2. EQUITY—REFORMATION OF INSTRUMENTS.
   When a mortgage shows on its face that the consideration moved from a certain person, and it appears that his name as mortgagee was omitted by mistake, equity will reform the instrument by inserting his name.

In Equity. Bill to reform and foreclose a mortgage.

Waters & Winslow, for plaintiffs.

Botsford & Williams, for defendants.

MCCRARY, J. This cause has been argued and submitted for final decree upon the merits. The plaintiffs bring their suit in equity to reform and foreclose a mortgage. The following are the material facts established by the proof: (1) Defendant John L. Stone was indebted to plaintiffs in the sum of about $1,600, part of which was his individual debt, and the balance was the debt of John L. Stone & Co. (2) This indebtedness was partially secured by collateral notes turned out by defendants. (3) Plaintiffs called upon said John L. Stone for additional security, and after some negotiation it was agreed that they were to have a mortgage on two tracts of land. (4) The defendant John L. Stone represented to the plaintiffs that one of the said tracts of land was defendants' property, and that the other tract was the property of his son Jeremiah Stone, and of record in his name. (5) Relying upon these

representations, the plaintiffs accepted two mortgages, one of which was executed by defendant John L. Stone, and the other by defendant Jeremiah Stone; the latter being the mortgage sued on in this case. (6) The representation of said John L. Stone, that the title to one of said tracts was in his son Jeremiah Stone, was not true in fact. The title to said tract was at the time in said John L. Stone, who had executed a deed to his son Jeremiah, which had never been delivered, and has never since been delivered, but has probably been destroyed. (7) In executing the mortgage sued on, the names of the plaintiffs, as mortgagees, were omitted by mistake.

Upon consideration of these facts, and the law applicable thereto, I have reached the following conclusions:

1. That plaintiffs are entitled to decree reforming the mortgage sued on, by inserting the names of plaintiffs as mortgagees, in accordance with the intention of the parties to the instrument. It is insisted by counsel for defendants that, inasmuch as no grantee is named in the mortgage, the instrument is void, and the defect cannot be cured by parol evidence. This point is not well taken, since it appears upon the face of the mortgage itself that the consideration for the mortgage moved from the plaintiffs; that it was given to secure a debt due to them; and that the omission to fill the blank left for the insertion of the names of the grantees, with the names of plaintiffs, was a mere oversight.

2. Inasmuch as the defendant John L. Stone, by his acts and representations, induced plaintiffs to believe that the land in controversy had been conveyed to Jeremiah Stone, and inasmuch as, acting upon that belief, the plaintiffs extended the time for the payment of their debt, and took a mortgage upon said land executed by said Jeremiah Stone to secure the same, John L. Stone is estopped to claim the land as against the lien of said mortgage. This, upon the doctrine of estoppel *in pais*. It would be a fraud upon the plaintiffs to permit said John L. Stone now to deny what by previous declarations and conduct he asserted, when on the faith of his representations the plaintiffs have acted. A person having title to real estate, who represents another as the owner, and thereby induces a third party to accept from that other a conveyance by deed or mortgage for a valuable consideration, is in equity bound by such conveyance, and is not permitted to set up his own title against it. *Rice* v. *Bunce*, 49 Mo. 231; Story, Eq. Jur. § 385; *Sweaney* v. *Mallory*, 62 Mo. 485; *Hart* v. *Giles*, 67 Mo. 175.

3. Inasmuch as the plaintiffs have received and collected certain collateral notes assigned to them as security for this debt, an account should be taken before a master or otherwise, as the court may direct, to ascertain the sum due the plaintiffs, and decree should be rendered reforming the defective mortgage, and foreclosing the same as against all the defendants, including the said John L. Stone. The other defendants named, who are subsequent purchasers, are clearly shown to have purchased with notice of plaintiffs' equities.

BALDWIN *v.* ROSIER *et al.*

(*Circuit Court, D. Iowa.* May, 1880.)

INFANCY—AVOIDANCE OF MORTGAGE—RIGHTS OF THIRD PERSONS.

In a suit to foreclose a mortgage given by an infant the defense of infancy is personal to the mortgagor, and cannot be set up by a subsequent lienholder.

In Equity. Bill to foreclose a mortgage.
Brown & Dudley, for plaintiff.
J. W. Rogers & Son, for defendants.

MCCRARY, J., (*orally.*) This is a bill to foreclose a mortgage executed by the defendant Rosier to the plaintiff to secure a promissory note. The defendant Rosier seeks to avoid the contract sued on by pleading his infancy at the time of its execution. The defendant Davis holds a subsequent lien on the premises mortgaged, and he joins with Rosier in his answer, and pleads the infancy of his co-defendant, Rosier, as a defense. To this answer, so far as Davis is concerned, the complainant excepts. The contract of an infant is not necessarily void, but only voidable, since the infant has an election to avoid it during his minority, and affirm it after reaching his majority. The privilege of avoiding his acts or contracts, when they are voidable only, and not absolutely void, is personal to the infant, and one which no one can exercise for him, except his heirs or legal representatives. A person, not a party to the contract, cannot take advantage of the infancy of the parties to it. It is a personal privilege. Schouler, Dom. Rel. (2d Ed.) 534, 535. I am of the opinion that the defendant Davis cannot set up as a defense the infancy of the defendant Rosier. The exceptions to his answer are therefore sustained.

CAHN *v.* WESTERN UNION TEL. CO.

(*Circuit Court of Appeals, Fifth Circuit.* December 7, 1891.)

TELEGRAPH COMPANIES—NON-DELIVERY OF MESSAGE—MEASURE OF DAMAGES.

Plaintiff, anticipating a heavy decline in the market price of certain corporate stock, and desiring to speculate in the same by selling on the exchange before the decline began, and thereafter purchasing at a lower figure, delivered to defendant telegraph company, in Columbus, Miss., a message to his brokers in New York city to sell a certain number of shares. The message was not delivered to the brokers until eight days later, during which time the stock had dropped from $73 to $55 per share. Plaintiff in fact had no stock to sell, but kept with his brokers securities, on the strength of which they would have sold the stock on exchange, and bought again on plaintiff's order. *Held,* in an action against the telegraph company to recover the difference in price between the stock at the time the message should have been delivered, and the time it actually was delivered, that the damages were too remote, uncertain, and speculative, and there could be no recovery therefor. 46 Fed. Rep. 40, affirmed.