death, the will is admitted to probate or established by the judgment of a competent court. It is agreed on all hands that this section is applicable, provided the defendant was a bona fide purchaser. It is conceded in the brief submitted for the defendant, that he knew of Elizabeth Shappo's will. He knew, therefore, or might have known, that the property which he was about to purchase had, in clear and explicit language, been devised by its owner to the plaintiff who was at that time an infant. In short, he knew that if the will was valid, the title was in the plaintiff and not in John A. Shappo. Knowing so much it was his duty to know more. He could easily have put himself in communication with the plaintiff. A single question addressed to her would have disclosed the entire situation. He chose not to ask it. He preferred to shut his eyes and take the risk, hoping that rights which had remained dormant so long, would continue to remain so. When the defendant took the deed, the plaintiff, and not Shappo, was the true owner of the property. The defendant was possessed of sufficient information at the time to put him on inquiry. He had but to ask and he would have learned the whole truth. His carelessness in this regard led him into the dilemma. The plaintiff has been guilty of no fault and she should not lose her property through the fault of others. The section of the Code in question, cannot be construed to protect one who had actual notice of a will conveying the property away from the heir at law.

The authorities which are controlling upon this court, seem very clear in holding, that the defendant was not a bona fide purchaser. In Brush v. Ware, 15 Pet. 93, the court, at page 112, say:

"The law requires reasonable diligence in a purchaser to ascertain any defect of title. But when such defect is brought to his knowledge, no inconvenience will excuse him from the utmost scrutiny. He is a voluntary purchaser; and, having notice of a fact, which casts doubt upon the validity of his title, are the rights of innocent persons to be prejudiced through his negligence?"

See, also, Felix v. Patrick, 145 U. S. 317, 12 Sup. Ct. 862; Reed v. Gannon, 50 N. Y. 345; Ellis v. Horrman, 90 N. Y. 466.

The second of the above questions, must also be ruled in plaintiff's favor upon the authority of Sims v. Everhardt, 102 U. S. 300, where the plaintiff not only gave a formal deed, but accompanied it with a written statement, that she was of full age at the time. She recovered, although she did not disaffirm her deed until nearly 21 years after she attained her majority, the supreme court observing:

"We think the preponderance of authority is that, in deeds executed by infants, mere inertness or silence, continued for a period less than that prescribed by the statute of limitations, unless accompanied by affirmative acts, manifesting an intention to assent to the conveyance, will not bar the infant's right to avoid the deed."

This case was much stronger for the defendant than the case at bar. Here there was no formal conveyance of the land and no adequate consideration. The paper relied on, is merely a release of claims against Elizabeth Shappo and her estate, it conveys nothing, it is a receipt. It was disaffirmed in about 13 years after the plain-

tiff became of age. See, also, cases cited in note to Wells v. Seixas, 24 Fed. 82.

This cause, no matter how decided, is one of unusual hardship. This fact is fully recognized by the court. The law, imperfect and inadequate as it is in such cases, aims to protect those who, in legal contemplation, are regarded as ignorant and helpless, rather than those who are fully able to protect themselves and whose misfortune may be imputed to their own want of care.

The plaintiff is entitled to the judgment demanded.

NEWTON NAT. BANK et al. v. NEWBEGIN.

(Circuit Court of Appeals, Eighth Circuit. April 17, 1896.)

No. 712.

1. FRAUD—DILIGENCE—QUESTION FOR JURY.

While the N. Bank was in embarrassed circumstances, plaintiff was induced, by the fraudulent misrepresentations of its cashier, to subscribe, in May, 1890, for 62 shares of a proposed increase of its capital stock, and to pay in a large sum of money therefor. In the following November the bank failed, and plaintiff, who lived at a distance, in another state, receiving then his first intimation that anything was wrong, proceeded to make inquiries, and, as a result, instituted proceedings before the comptroller of the currency to have the stock standing in his name declared void, and himself not a stockholder. These proceedings failing, he took steps in May, 1891, to have a bill filed to rescind his subscription. At the request, however, of parties who were trying to reorganize the bank, he consented to withdraw such suit, and surrender his stock to be canceled, upon an express agreement that it should be without prejudice to his right to sue the bank for the fraud by which he had been induced to subscribe and pay his money therefor. Plaintiff did not participate in the reorganization, and consistently maintained that he was not a stockholder, and that the bank was liable to him for the money paid. Upon the reorganization the creditors of the bank accepted in settlement a payment in cash, and certain certificates of indebtedness. In November, 1891, plaintiff brought this action against the bank to recover the money paid by him, as a deposit. In December, 1892, the bank failed again. *Held*, that the questions whether the plaintiff exercised reasonable diligence in discovering the fraud, and in electing to cancel his subscription when he became aware of it, could not be decided as questions of law, but were properly submitted to the jury, whose finding that he did exercise such diligence was conclusive.

2. CORPORATIONS—SUBSCRIPTION TO STOCK—RESCINDING—INSOLVENCY.

Held, further, that, under the circumstances of the case, the occurrence of the insolvency of the bank before the commencement of plaintiff's action did not preclude him from rescinding his subscription and recovering back the money paid for his stock.

3. SAME.

It seems that when a subscription to the stock of a corporation is clearly shown to have been procured by fraud, and no long time has elapsed since the subscription, the subscriber has not actively participated in the management of the corporation, there has been no want of diligence in discovering the fraud or taking steps to rescind, and no considerable amount of corporate indebtedness has been incurred, since the subscription, which remains unpaid, the stockholder should be permitted to rescind his subscription as well after as before the corporation ceases to be a going concern.