base their reliance on the free and voluntary good faith of the legislature. For the benefit of sheep-growers in some States dogs are subjected to a severe tax. Could not the legislature repeal such a law? If Congress establishes a tariff for the protection of certain manufactures, does that amount to a contract not to change it?

In short, the law does not, in our judgment, belong to that class of laws which can be denominated contracts, except so far as they have been actually executed and complied with. There is no stipulation, express or implied, that it shall not be repealed. General encouragements, held out to all persons indiscriminately, to engage in a particular trade or manufacture, whether such encouragement be in the shape of bounties or drawbacks, or other advantage, are always under the legislative control, and may be discontinued at any time.

JUDGMENT AFFIRMED.

SLAUGHTER'S ADMINISTRATOR *v.* GERSON.

1. The misrepresentation which will vitiate a contract of sale, and prevent a court of equity from aiding its enforcement, must relate to a material matter constituting an inducement to the contract, and respecting which the complaining party did not possess at hand the means of knowledge; and it must be a misrepresentation upon which he relied, and by which he was actually misled to his injury.
2. Where the means of knowledge are at hand and equally available to both parties, and the subject of purchase is alike open to their inspection, if the purchaser does not avail himself of these means and opportunities, he will not be heard to say, in impeachment of the contract of sale, that he was deceived by the vendor's misrepresentations.

APPEAL from the Circuit Court for the District of Maryland.

This was a suit in equity to enforce the lien of two mortgages upon two steamers. The case was thus:

On the 12th of July, 1864, one Slaughter, since deceased, purchased of the complainant, Gerson, a steamboat named

the George Law, for the consideration of $40,000. Of this sum he paid $15,000 in cash, and for the balance gave to Gerson his bond, conditioned to pay the same in two instalments of $12,500 each in three and six months thereafter. To secure the payment of these sums he at the same time executed to Gerson two mortgages, one upon the steamboat which he purchased, and the other upon a steamboat named the Chester, which he formerly owned. The first instalment on the boat not being paid at its maturity, the present bill was filed to enforce the mortgages by a sale of the steamboats, and the application of the proceeds to the demand of the complainant.

The answer of the defendant admitted the execution of the bond and mortgages, but set up, as a defence to their enforcement, that they were obtained from him by misrepresentation and fraud, and set forth the particulars in which such alleged misrepresentation and fraud consisted.

The substantial averments in this respect were these: That the defendant had established a line of steamboats from Baltimore to various landings on Chester River, on the Eastern Shore of Maryland, and landings on tributaries to that river; that the most important of these landings was at Queenstown; that no boat drawing more than 3½ feet of water could reach the wharf at this place except in case of an extraordinary high tide; that he purchased the George Law of the complainant for this route, upon a representation that it drew only this number of feet when fully laden; that this representation was false and fraudulent, and that the steamer, when placed on the route, grounded upon her first trip in 5 feet of water; and that, so soon as precise information was obtained of this fact, the defendant called upon the complainant to cancel the contract, offering at the same time to return the steamboat purchased, but that the complainant refused to comply with this proposition.

A great deal of evidence was taken in the case bearing upon these allegations of misrepresentation and fraud. This was in many particulars conflicting. Some of it tended to show that when the negotiation was first entered upon,

Slaughter did particularly state that it was indispensable to his purpose that the boat should not draw more than $3\frac{1}{2}$ feet water; that upon Gerson's saying that the boat was cheap at the price proposed for her, Slaughter said that he did not want her at any price if she drew more than $3\frac{1}{2}$ feet; that Gerson repeatedly said that she did not draw more; and that if she did, Slaughter should have her for nothing. On the other hand there was evidence which—if any conversation with Gerson, himself, had taken place at all—went to show that he never stated more than that *according to the representation of the captain* of the boat, she drew no more than the desired depth of water; and that it was plain that Gerson spoke only on the strength of what thus came to him.

But whatever did or did not thus take place in the origin of matters, it appeared that before the contract for the sale was executed, and with the intention of examining the vessel, in view of a purchase, Slaughter himself went to New York from Baltimore, where he resided, taking with him two shipcarpenters and a square to measure the steamer; his son, who afterwards was captain of the boat, accompanying the party. Whilst these persons were in New York, every opportunity which they desired was given to them to examine the vessel from one end to the other; and they made an extended and careful examination accordingly. They made a trip on her to one of the ports where she was running, and measured her draft on two occasions; once amidships, and once at the stern and bow. Gerson accompanied them on board, on their arrival in New York, and told them to look for themselves, and to go anywhere they pleased about the boat; that he was not "a steamboat man," and that he got all his information from the captain of the boat, to whose statements he referred them. One of the carpenters who accompanied Slaughter made a measurement of the boat while she was lying at the dock without any load, and reported that she drew 4 feet 6 inches at midships. The other of the carpenters made a measurement forward and aft, and reported that the boat drew at both

places 3 feet 6 inches. Both of these measurements were communicated to Slaughter, and the latter was accompanied with the declaration that the boat drew too much water for his purposes. The captain of the boat also took the defendant on to the dock where she was lying, and showed him that she was coppered three feet and nine inches from the keel, and that she showed her copper three inches out of water.

The bill of sale given to Slaughter contained a detailed description of the steamer, but did not state her draught.

The Circuit Court gave a decree for the complainant, and from it the defendant appealed to this court.

Mr. William Schley, for the appellant:

All knew that Mr. Slaughter wanted a boat to ply on a specified route, drawing, when laden, *not more than* 3½ feet water. The captain, of course, knew well that the draught much exceeded this, and that the boat would not suit at all. The doctrine of *caveat emptor* ought not to be applied. Unless the sea was calm—which does not appear—it was impossible to make an accurate measurement of the draught of water. Besides this, the rule of *caveat emptor*, however potent in actions *ex contractu*, is, comparatively, of small force in an action based on fraudulent misrepresentations.

But if there was no fraud on the part of Gerson or his agent, still, it is clear, from the testimony, that Slaughter would not have purchased the boat at any price, if he had known that she would not answer the purpose for which he wished to procure a boat. Upon the hypothesis that Gerson was acting honestly, the case presented is one of mutual mistake. Coming, as he has done into a court of conscience, Gerson submits himself to its power to make him do what is right, or to be left to his remedy at law. Foreclosure of a mortgage is in the nature of a specific performance of a contract, which will be refused, where the defendant has, by mistake, not originating in mere carelessness, entered into a contract framed differently from his own intention.*

* Willard *v.* Tayloe, 8 Wallace, 564.

Mr. B. W. Huntington, contra.

Mr. Justice FIELD delivered the opinion of the court.

A large amount of evidence was taken in this case bearing upon the averments in the answer of misrepresentation and fraud on the part of the complainant; and it is, in many respects conflicting. But the rules of law applicable to cases of alleged misrepresentation by a vendor with respect to property sold are well settled, and render of easy solution the questions upon which this case must turn.

The misrepresentation which will vitiate a contract of sale, and prevent a court of equity from aiding its enforcement, must not only relate to a material matter constituting an inducement to the contract, but it must relate to a matter respecting which the complaining party did not possess at hand the means of knowledge; and it must be a misrepresentation upon which he relied, and by which he was actually misled to his injury. A court of equity will not undertake, any more than a court of law, to relieve a party from the consequences of his own inattention and carelessness. Where the means of knowledge are at hand and equally available to both parties, and the subject of purchase is alike open to their inspection, if the purchaser does not avail himself of these means and opportunities, he will not be heard to say that he has been deceived by the vendor's misrepresentations. If, having eyes, he will not see matters directly before them, where no concealment is made or attempted, he will not be entitled to favorable consideration when he complains that he has suffered from his own voluntary blindness, and been misled by overconfidence in the statements of another. And the same rule obtains when the complaining party does not rely upon the misrepresentations, but seeks from other quarters means of verification of the statements made, and acts upon the information thus obtained.

The facts disclosed by the uncontradicted testimony of both parties bring this case clearly within the principle here stated. Previous to the execution of the contract of purchase, and with the view of examining the steamboat, the

defendant went from Baltimore to New York, taking with him his son, who subsequently became captain of the boat, and two shipcarpenters, and a square to measure her draught of water. Whilst there every opportunity was given him to examine the boat with his carpenters, and a most thorough and careful examination was made by them. On two occasions they measured the draught of the boat, and they witnessed her speed by accompanying her on one of her trips. The owner went with them to the boat on their arrival in New York, and told them to look for themselves, and to go anywhere they pleased about her. If, under these circumstances, the defendant did not learn everything about her, and ascertain her true draught, it was his own fault, and it would be against the plainest principles of justice to allow him to set up, in impeachment of the validity of his contract, loose statements respecting the draught before its execution, even though they were false in point of fact.

In *Attwood* v. *Small*,* a case which received great consideration in the House of Lords, the defendant had sold to the complainants, constituting a company of numerous persons, certain freehold and leasehold property, including mines and ironworks, and had made certain statements respecting the capabilities of the property. The purchasers, not relying upon these statements, deputed some of their directors, together with experienced agents, to ascertain the correctness of his statements. These persons examined the property and works and the accounts kept by the defendant, receiving from him and his agents every facility and aid for that purpose, and they reported that the defendant's statements were correct. Upon a bill filed to rescind the contract, on the ground of fraud, the House of Lords decided that the contract could not be rescinded, reversing, in that respect, the decree of the Court of Exchequer, not merely because there was no proof of fraud, but because the purchasers did not rely upon the vendor's statements, but tested their accuracy; and, after having knowledge, or the means of knowl

* 6 Clark & Finnelly, 232.

edge, declared that they were satisfied of their correctness, holding that if a purchaser, choosing to judge for himself, did not avail himself of the knowledge, or means of knowledge, open to him or to his agents, he could not be heard to say he was deceived by the vendor's representations, the doctrine of *caveat emptor* applying in such case, and the knowledge of his own agents being as binding as his own knowledge.

The doctrine, substantially as we have stated it, is laid down in numerous adjudications. Where the means of information are at hand and equally open to both parties, and no concealment is made or attempted, the language of the cases is, that the misrepresentation furnishes no ground for a court of equity to refuse to enforce the contract of the parties. The neglect of the purchaser to avail himself, in all such cases, of the means of information, whether attributable to his indolence or credulity, takes from him all just claim for relief.

We have thus far assumed that the evidence in the case before us discloses false representations on the part of the vendor, but justice to him requires us to say that the evidence is insufficient to warrant this conclusion. The vendor stated to the purchaser that he was not a steamboat man, meaning evidently, from the context, that he was not familiar with the particulars in regard to which the purchaser desired information, and referred him to the statements of the captain, at the same time inviting him and his party to examine the boat in every particular. The measurement made by one of his carpenters showed that the boat drew four feet and six inches of water at midships whilst lying unloaded at the dock. The measurement by the other carpenter showed that the boat then drew, forward and aft, three feet and six inches, and both of these measurements were reported to the defendant, and the latter was accompanied by the declaration that the boat drew too much water for his purpose. The captain of the boat also took the defendant on to the dock, by which the boat was lying, and pointed out to him that she was coppered three feet and

nine inches from the keel, and that she then showed only three inches out of water, and, of course, that she then drew, forward and aft, unloaded, three feet and six inches. The purchase was thus made by the defendant, with his eyes open, after every opportunity had been afforded him for the inspection of the vessel.

DECREE AFFIRMED.

ALEXANDER *v.* ROULET.

Prefects in California, however appointed or elected, had no power, after the conquest of the country by the United States, to make grants of the common or unappropriated lands of the pueblos within their jurisdiction. And titles derived from them cannot, unless assisted by legislation, be regarded as valid.

ERROR to the Circuit Court for the District of California.

Alexander brought ejectment against Roulet and others in the court below to recover a piece of land in San Francisco, California. The title was thus: The conquest of California was complete, as decided by this court,* July 7th, 1846. On the 12th of January, 1850, Horace Hawes, at that time, by virtue of an appointment from the then military governor of the then Territory of California, and an election by the people of the district, acting as the prefect of the district embracing the then pueblo, now city of San Francisco, granted to Edward Carpenter the premises in controversy. The title of Carpenter, thus acquired, became vested in the plaintiff. The premises were within the limits of the said pueblo, now city of San Francisco.

The court gave judgment for the defendant, holding, among other things, that although each prefect of California, while the same was part of the Mexican territory, had power to make grants of the common and unappropriated lands of the pueblos within their jurisdiction, yet that

* Stearns *v.* United States, 6 Wallace, 590.