1961

Unilateral Mistake of Fact in Personal Injury Releases

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MANY PERSONAL INJURY CASES that appear on court calendars, as well as many not filed, are settled before trial. Settlements usually involve payment by the alleged wrongdoer in consideration of a release executed by the injured party. As for the alleged wrongdoer, this act settles the conflict in that the releasor has bargained away his legal remedy. As for the releasor, compensation for the injury was his objective.

Sparse authority to the contrary,[1] a release constitutes a contract, the validity of which can be affected by fraud, duress or mistake.[2] Generally, one need not go into equity and pray for specific relief from the release on one or more of these grounds.[3] The majority of jurisdictions permit the injured party to bring his action, notwithstanding the previous release of all claims. By way of replication to the defense of release, the injured party sets up his contention for avoidance. It is thereby possible, under this procedure, to avoid the release and bring the suit in one action at law.

The Mistake as Contemplated by the Law

The *Restatement* defines a mistake as being a state of mind not in accord with the facts.[4] Another source proposes that it is an act or omission made under an erroneous conviction of fact, which would not have been made or omitted, but for the erroneous conviction.[5] It has also been treated as the effect of erroneous ideas upon legal acts.[6] It seems that the authorities, notwithstanding a variance of expression, require a concurrence of an act and a state of mind, the former being inconsistent with the latter, in order for the mistake to produce legal consequences.

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1 45 Am. Jur. Release § 2 (1943).

2 45 *id.* § 17.

3 5 Williston, Contracts § 1551 (rev. ed. 1937).

4 Restatement, Contracts § 500 (1932).

5 Black, Law Dictionary 1453 (4th ed. 1951).

6 5 Williston, *supra*, n. 3, § 1535.

This view necessarily excludes the propriety of an act or decision from the legal meaning of mistake. Thus the individual, who intentionally releases another from liability for all known or unknown injuries, has made a very real mistake, in the common use of the word, if subsequently, serious injuries are discovered. But, this would not be a mistake within the legal meaning, since the act and state of mind were consistent. On the other hand, an intention to release another from liability for only known injuries, while the actual execution of the instrument embraced both known and unknown injuries, would be a mistake within the above definitions. However, other circumstances, which will be discussed below, would need be present in order to gain relief from the mistake.

When the mistake of fact is solely that of one party to the contract, it is termed unilateral.[7] Carrying this to its logical conclusion, the truest form of a unilateral mistake of fact exists when the non-mistaken party knows of the other's error.[8] Unilateral mistake, however, is not exclusively confined to this particular circumstance. It has been extended to cases when the non-mistaken party is not aware of the other's mistake. While ignorance of this error will cause the non-mistaken party to labor under an erroneous idea as to the other's state of mind, nevertheless this is a unilateral mistake in that the error as to state of mind is considered irrelevant.[9] Rarely will relief be afforded for this second type of unilateral mistake.

Unilateral Mistake, Generally

In the application of mistake of fact as a means for avoiding a contract, the rule is likely to be cited for the broad proposition that the mistake must be mutual in order to justify relief.[10] It is

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[7] 43 Words & Phrases 243 (perm. ed.).

[8] 5 Williston, *supra,* n. 3, § 1570A.

[9] *Ibid.*

[10] Automobile Underwriters v. Smith, 126 Ind. App. 332, 133 N. E. 2d 72 (1956); Doyle v. Teasdale, 263 Wis. 328, 57 N. W. 2d 381 (1953); Thomas v. Hollowell, 20 Ill. App. 2d 827, 155 N. E. 2d 827 (1959); Jordan v. Brady Transfer & Storage, 226 Iowa 137, 284 N. W. 73 (1939); Hanson v. Northern States Power Co., 198 Minn. 24, 268 N. W. 642 (1936); Cheek v. Southern R. Co., 214 N. C. 152, 198 S. E. 626 (1938); Diltz v. Sherrick, 108 Ohio App. 188, 161 N. E. 2d 93 (1958); Federoff v. Union Collieries, 141 Pa. Super. 308, 15 A. 2d 385 (1940); John J. Bowes Co. v. Town of Milton, 255 Mass. 228, 151 N. E. 116 (1926); Sheeran v. Irvin, 230 Ky. 307, 19 S. W. 2d 976 (1929); Hello World Broadcasting Corp. v. International Broadcasting Corp., 186

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frequently contended that to hold otherwise would seriously disturb the stability achieved by the objective theory of mutual assent. While, undoubtedly, this is the general rule, it is well settled, in the law of contracts, that avoidance will be allowed for "true" unilateral mistake (when one knows of the other's mistake).[11] The relief granted in this instance is not inconsistent with the objective theory. While it is the outward manifestation of assent that is controlling under this theory, it is confined to the manifestation that falls upon a reasonable mind, and not merely any mind.

As it does in non-release cases, the granting of relief for a "true" unilateral mistake applies equally to a release of a personal injury claim. Mistakes within this area fall into two major categories—namely, mistake as to the nature of the instrument executed or the claim covered, and mistake as to the injuries sustained.

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La. 589, 173 So. 115 (1937); Green v. Bankers Life Ins. Co. of Nebraska, 112 Kan. 50, 209 P. 670 (1922); Gross v. Stone, 173 Md. 653, 197 A. 137 (1938); James v. Tarpley, 209 Ga. 421, 73 S. E. 2d 188 (1952); Seigle v. Hamilton-Carhartt Cotton Mills, 89 Okla. 68, 213 P. 305 (1922).

[11] Galloway v. Russ, 175 Ark. 659, 300 S. W. 390 (1927): the plaintiff mistakenly believed he was purchasing a Frigidaire machine from a representative of the Frigidaire Company. The defendant knew of this mistake, but did not inform the plaintiff that he represented another company and that the subject of the contract was not a Frigidaire machine. The contract was set aside. In Nelson v. Pedersen, 305 Ill. 606, 137 N. E. 486 (1922), a contract for the purchase of a parcel of land was cancelled where the vendor knew that the purchaser believed he was buying a lot other than that described in the contract, but remained silent. In Frederich v. Union Electric Light & Power Co., 336 Mo. 1038, 82 S. W. 2d 79 (1935), it was held that the plaintiff was entitled to cancellation when, in an offer to buy an easement to flood land at a specific price, more than 90% of the land intended to be included was mistakenly omitted, so that the vendor must have recognized that the offer involved a mistake. In Davis v. Reisinger, 120 App. Div. 766, 105 N. Y. Supp. 603 (1907), the plaintiff was refused damages for the defendant's breach of a contract to deliver rice when the plaintiff knew that the defendant mistakenly sold a superior grade at prices of inferior grades. In Parker v. Title & Trust Co., 233 F. 2d 505 (9th Cir. 1956), a cancellation of title policies was allowed when the insured knew the title to the property was not good, but remained silent. In M. F. Kemper Const. Co. v. City of Los Angeles, 37 Cal. 2d 696, 235 P. 2d 7 (1951), relief was allowed for mistaken bid of a material character where the board accepted it with knowledge of the mistake.

See also, Freeman v. Croom, 172 N. C. 524, 90 S. E. 523 (1916); Fransen v. State, 59 S. D. 432, 240 N. W. 503 (1932); C. H. Young Co. v. Springer, 113 Minn. 382, 129 N. W. 773 (1911); Wilson v. Wyoming Cattle & Invest. Co., 129 Iowa 16, 105 N. W. 338 (1905); Hudson Structural Steel Co. v. Smith & R. Co., 110 Me. 123, 85 A. 384 (1912); Crosby v. Andrews, 61 Fla. 554, 55 So. 57 (1911); Bell v. Carroll, 212 Ky. 231, 278 S. W. 541 (1925).

Unilateral Mistake Respecting the Instrument Executed or Claim Covered

Cases arise in which the releasor signs a general release (all known or unknown, foreseen or unforeseen bodily or personal injuries, and the consequences thereof resulting from the accident), although he is in fact mistaken as to what the instrument purports to be. These circumstances appeared in *Palkovitz v. American Sheet and Tin Plate Company.*[12] The plaintiff executed a release of personal injury claims against his employer, mistakenly believing it to be a receipt for relief money. His mistake was not shared by the releasee, who knew, or should have known of the mistake, inasmuch as the terms of the instrument were explained inadequately by an interpreter, the releasor being ignorant of the English language. Avoidance of the release was allowed in this case.

The *Palkovitz* case[13] illustrates the fact pattern of a releasee who knew or should have known of the mistake, but who remained silent. In cases when the releasee causes the mistake by an intentional misrepresentation of fact, a strong circumstance for avoidance exists. Any contention that the releasee knew nothing of the mistake would obviously fail. Avoidance was allowed in a Washington case[14] when the releasee caused the mistake by representing the release to be a receipt for money received. The releasor could not read, write, speak or understand the English language.

The Excuse for the Failure to Read

The releasor is confronted with another problem aside from that of showing that his mistake was known or should have been known by the defendant. Generally, the cases in which the mistake went to the nature of the instrument, were the result of not reading the release upon its execution. The releasor must, therefore, produce an excuse for this omission, since it is well settled that one may not be heard to complain of signing a paper which he did not read. In *Heckenkamp v. Kennedy,*[15] the plaintiff executed a release, mistakenly believing that it covered only

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[12] 266 Pa. 176, 109 A. 789 (1920).

[13] *Ibid.*

[14] Mattson v. Eureka Cedar Lumber & Shingle Co., 79 Wash. 266, 140 P. 377 (1914).

[15] 267 F. 2d 887 (8th Cir. 1959), applying Missouri law. Accord, Bennett v. Himmelberger-Harrison Lumber Co., 116 Mo. App. 699, 94 S. W. 808 (1906);

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damages presently sustained and not future damages. There was evidence that the defendant knew of the mistake, inasmuch as he had misrepresented the contents of the release to the plaintiff. However, no avoidance was allowed since the plaintiff could read and had no excuse for the failure to do so.

Illiteracy is one of the two most common excuses for the failure to read. In *Miller v. Spokane Int'l Ry.*,[16] the plaintiff, a servant of the defendant, was seriously injured as a result of a fall from a moving train. Being ignorant of the English language, he executed a general release of claims under the belief that it was a receipt for wages. In consideration of this release, the defendant paid him $138.00. His illiteracy constituted a valid excuse for not reading the instrument, and he was awarded $7500.00 by the jury upon avoidance of the release.

The second of the two common excuses is a weakened condition resulting from the injuries sustained. These cases exemplify the courts' disdain for the hasty release of claims, notwithstanding the general view that settlements of disputes by compromise are favored.[17] In an Iowa case,[18] the releasor was

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Texas & P. R. Co. v. Poe, 131 Tex. 337, 115 S. W. 2d 591 (1938). But see, St. Louis, I. M. & S. R. Co. v. Smith, 82 Ark. 105, 100 S. W. 884 (1907); Joseph v. Tata, 161 N. E. 2d 763 (Sup. Ct. Mass. 1959). See also, Crawley v. Studebaker Corp., 183 Mich. 462, 149 N. W. 1019 (1914).

[16] 82 Wash. 170, 143 P. 981 (1914). Illiteracy was a valid excuse in the following cases: Palkovitz v. American Sheet & Tin Plate Co., 266 Pa. 176, 109 A. 789 (1920); Heuter v. Coastal Air Lines, 12 N. J. Super. 490, 79 A. 2d 880 (1951); Mattson v. Eureka Cedar Lumber & Shingle Co., 79 Wash. 266, 140 P. 377 (1914); Scott v. Bodnar, 52 N. J. Super. 439, 145 A. 2d 643 (1958); Meyer v. Haas, 126 Cal. 560, 58 P. 1042 (1899); Robles v. Preciado, 52 Ariz. 113, 79 P. 2d 504 (1938); Mairo v. Yellow Cab Co., 208 Cal. 350, 281 P. 66 (1929); Gimmarro v. Kansas City, 342 Mo. 428, 116 S. W. 2d 11 (1937); Markowitz v. Metropolitan Street R. Co., 32 Misc. 751, 65 N. Y. S. 784 (1900); Perry v. M. O'Neil & Co., 78 Ohio St. 200, 85 N. E. 41 (1908); Davis v. Whatley, 175 So. 423 (La. App. 1937).

[17] Kowalke v. Milwaukee Electric R. & Light, 103 Wis. 472, 79 N. W. 762 (1899); Borden v. Sandy River & R. L. R., 110 Me. 327, 86 A. 242 (1913).

[18] Platt v. American Cement Plaster Company, 169 Iowa 330, 151 N. W. 403 (1915). A weakened condition resulting from the injuries was a valid excuse in the following cases; Baltimore & O. R. Co. v. Morgan, 35 App. D. C. 195 (1910); Whitmarsh v. Pennsylvania R. Co., 61 F. Supp. 850 (D. C. Pa. 1945); Shaw v. Victoria, 314 Mass. 262, 50 N. E. 2d 27 (1943); Union P. R. Co. v. Harris, 63 F. 800 (8th Cir. 1894), *aff'd.*, 158 U. S. 326, 15 Sup. Ct. 843 (1895); Smith v. Occidental & O. S. S. Co., 99 Cal. 462, 34 P. 84 (1893); Chicago, R. I. & P. R. Co. v. Lewis, 109 Ill. 120 (1884); Bliss v. New York C. & H. R. R. Co., 160 Mass. 447, 36 N. E. 65 (1894); Connors v. Richards, 230 Mass. 436, 119 N. E. 831 (1918); McCall v. Toxaway Tanning Co., 152 N. C. 648, 68 S. E. 136 (1910); Leonard v. Hare, 325 S. W. 2d 197 (Civ. App. Tex. 1959). See also, Albarello v. Meier, 159 N. Y. S. 2d 761 (City Ct. N. Y. C. 1957).

in a serious condition at the time he executed the release. Due to this condition he was unable to read the release and believed that it was a receipt for back wages. His weakened condition was a valid excuse for not reading the paper, and avoidance was allowed.

Other circumstances have been recognized by the courts as constituting a valid excuse for the failure to read the release. It was a valid excuse for the inability to read when the room in which the release was executed was so poorly lighted that reading was not possible;[19] or when the releasor was unable to read due to the fact he did not have his glasses with him and could not see without them;[20] or when the releasor was justified in relying upon the misrepresentations of his attorney that the instrument covered only back wages and tips;[21] or when the releasor, while in a state of grief, was called from the funeral parlor for the purpose of executing a release of a wrongful death claim for the death of his child.[22]

The Presence of Other Persons When the Release is Executed

It is essential that the releasor have no means at hand for ascertaining the contents of the instrument. If there are persons present, aside from the defendant or his agent, the releasor must call upon them to read the release to him. In *Anderson v. Meyer Bros. Drug Company,*[23] the plaintiff was unable to read the release, due to the effects of her injuries. However, her resulting mistake provided no ground for avoidance since her mother was present at the time the release was executed and could have read it to her if requested to do so.

Similarly, it has been held that a release could not be avoided when an injured servant, unable to read due to defective eyesight, could have called upon his relatives, who were present at the time the release was executed;[24] or when the re-

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[19] Robertson v. George A. Fuller Construction Co., 115 Mo. App. 456, 92 S. W. 130 (1905).

[20] Green v. St. Louis-San Francisco R. Co., 224 Mo. App. 517, 30 S. W. 2d 784 (1930). Accord, Whitehead v. Montgomery Ward, 194 Ore. 106, 239 P. 2d 226 (1951).

[21] Ricketts v. Pennsylvania Railroad, 153 F. 2d 757 (2d Cir. 1946), 164 A. L. R. 402 (1946).

[22] Jordan v. Guerra, 23 Cal. 2d 469, 144 P. 2d 349 (1943).

[23] 149 Mo. App. 554, 130 S. W. 829 (1910).

[24] Hall v. Kansas City S. R. Co., 209 S. W. 582 (Kansas City Ct. App. 1919).

leasor did not have his glasses, but his wife could have read the paper.[25]

Unilateral Mistake as to the Instrument, Summarized

The "first glance" impression that a unilateral mistake of fact will not be relieved is overcome by a study of the cases. The courts have relieved mistaken releasors from their contracts, and there is no indication that they will not continue to do so. When the facts disclose a unilateral mistake that was known, or should have been known by the releasee, coupled with the releasor's excuse for not reading the release, a sound case for avoidance exists. In *Heuter v. Coastal Air Lines*,[26] an excellent summary of the law was set forth by the court:

> To avoid the release he could properly rely upon the evidence of his illiteracy, his illness, the absence of friends and counsel, his lack of understanding and the omission of all explanation, the haste, pressure and somewhat startling circumstances surrounding the procurement of his mark, and invoke pertinent equitable principles based upon unfair and unconscionable conduct of the defendant.

Unilateral Mistake Respecting the Nature and Extent of the Injury

The fact that serious personal injuries are not always immediately apparent to the injured party, or even to the trained physician, seems to account for the enormous volume of litigation involving a mistake as to the injury sustained. Basically, the cases present a similar fact pattern in which a release is obtained from a releasor who is mistaken, either as to the nature of his injuries or as to the extent of the injuries he has sustained. But the cases present a variety of judicial reasonings.

If both the releasor and releasee were ignorant of the serious nature of the injuries sustained by the releasor, the ground for avoidance would be mutual mistake.[27] If the releasor's mistake was caused by an innocent misrepresentation of the releasee or his agent, a common mistake would exist and the ground for avoidance would again be mutual mistake,[28] or constructive

[25] Higgins v. American Car Co., 324 Mo. 189, 22 S. W. 2d 1043 (1929).

[26] 12 N. J. Super. 490, 79 A. 2d 880 (1951).

[27] Atlantic Greyhound Lines v. Metz, 70 F. 2d 166 (4th Cir. 1934). See generally, 71 A. L. R. 2d at 90.

[28] McCarthy v. Eddings, 109 Colo. 526, 127 P. 2d 883 (1942).

fraud.[29] If the releasor was mistaken and the releasee knew or should have known of the mistake, the ground for avoidance would be unilateral mistake.

The fact pattern of "true" unilateral mistake, for which avoidance will be allowed, arises in two ways. In the first, the releasee knows or should know of the releasor's mistake, but remains silent. In *Nadeau v. Maryland Casualty Company*,[30] the plaintiff sought out the defendant's adjuster for the purpose of securing an advance on an accident policy. Although refusing the advance, the adjuster offered to settle the claim in full. The plaintiff accepted the offer and settled his claim for $673.65, but did so under a mistaken belief as to the serious nature of his injuries as described in the doctor's report. The adjuster was a man of fourteen years' experience in his field, and knew or should have known from the language of the doctor's report, that the plaintiff's injuries were serious. The release was no bar to the plaintiff's action.

The second situation, in which "true" unilateral mistake arises, is the result of the releasee causing the mistake by an intentional misrepresentation of the releasor's condition. The cases speak in terms of fraud under these circumstances, although the fact pattern is typical of "true" unilateral error. In view of the great number of non-release as well as release cases, in which knowledge of the mistake gives rise to avoidance,[31] it would seem that the fact that the mistake was known by the releasee would be sufficient, irrespective of the circumstance by which the knowledge was obtained. Avoidance was allowed in *Avery v. Eddy Paper Corporation*,[32] when it appeared that the plaintiff's mistake was caused by the intentional misrepresentations of the defendant's doctor, although the court spoke in terms of fraud.

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[29] Estes v. Magee, 62 Idaho 82, 109 P. 2d 631 (1940).

[30] 170 Minn. 326, 212 N. W. 595 (1927). Accord, Sullivan v. Elgin, J. & E. R. Co., 331 Ill. App. 613, 73 N. E. 2d 632 (1947); Janney v. Virginian Railway Company, 119 W. Va. 249, 193 S. E. 187 (1937) (it was said a mistake known to releasee would justify relief); Humphrey v. Erie Railroad, 116 F. Supp. 660 (D. C. N. Y. 1953); Graham v. Atchison, T. & S. F. R. Co., 176 F. 2d 819 (9th Cir. 1949); Kansas City Southern R. Co. v. Martin, 262 F. 241 (5th Cir. 1920). See also, Backus v. Sessions, 17 Cal. 2d 380, 110 P. 2d 51 (1941); Gambrel v. Duensing, 127 Cal. App. 593, 16 P. 2d 284 (1932). But see, Thomas v. Hollowell, 20 Ill. App. 2d 288, 155 N. E. 2d 827 (1959).

[31] Cases cited *supra* ns. 11 and 30.

[32] 295 Mich. 277, 294 N. W. 679 (1940).

Are Additional Elements Necessary for Avoidance?

The releasor, mistaken as to the instrument, needed an excuse for his failure to read the paper. But the majority of cases in which the mistake went to the injury do not seem to require more than "true" unilateral error. When the plaintiff's mistake was caused by the intentional misrepresentation of the defendant's doctor, the cases clearly hold that avoidance will be allowed.[33] The plaintiff is not required to consult his own physician or obtain independent advice.

A few cases have charged the releasor with ascertaining his condition by directly consulting the doctor (either the defendant's or his own physician) when the representation was made by the defendant's claim agent. This distinction between a misrepresentation made by the defendant's doctor, as opposed to one made by the defendant's claim agent, was drawn by a Missouri case.[34] The defendant's agent, in that case, told the plaintiff that the doctor had said that the plaintiff would be able to return to work within four months. The plaintiff executed a release, believing this to be a true statement of his condition. The court refused to relieve the plaintiff from his contract upon the reasoning that he could have contacted the doctor in order to determine the veracity of the agent's statement.

Similarly, in *Hetrick v. Yellow Cab Company*,[35] avoidance was denied the plaintiff. But, the plaintiff was seeing her physician every day while the release was being negotiated, and could have inquired of him whether or not the defendant's adjuster had made a truthful statement concerning her condition. The facts in this case might well support the conclusion that the plaintiff was not in fact mistaken as to her physical condition, and perhaps this may have influenced the court in its decision.

However, the majority of the authorities have not picked up the reasoning of the *Conklin*[36] and *Hetrick*[37] cases. No more

[33] In the following cases the defendant's doctor intentionally caused the plaintiff's mistake by misrepresenting his true physical condition and avoidance was allowed: Tattershall v. Yellow Cab Co., 225 Mo. App. 611, 37 S. W. 2d 659 (1931); Munnis v. Northern Hotel Co., 237 Ill. App. 50 (1925); Lion Oil Refining Co. v. Albritton, 21 F. 2d 280 (8th Cir. 1927); Matthews v. Atchinson T. & S. F. Ry. Co., 54 Cal. App. 2d 549, 129 P. 2d 435 (1942); Missouri Pac. R. Co. v. Treece, 188 Ark. 68, 64 S. W. 2d 561 (1933), *cert. den.* 292 U. S. 626, 54 Sup. Ct. 630.

[34] Conklin v. Missouri Pac. R. Co., 331 Mo. 734, 55 S. W. 2d 306 (1932).

[35] 167 Wash. 135, 8 P. 2d 992 (1932).

[36] *Supra*, n. 36.

[37] *Supra*, n. 37.

is required of a releasor when his mistake was caused by a misrepresentation of the defendant's claims agent than would be required of him when the mistake was caused by the defendant's doctor.[38] The mere showing of "true" unilateral error is sufficient. As stated by a Minnesota court:

> In any event, although in Minnesota the mistake need not be mutual in the sense that both parties are under a similar delusion, there must be concealment or at least knowledge on the part of one party that the other party is laboring under a mistake in order to set aside a release for unilateral mistake.[39]

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[38] In the following cases the defendant's agent intentionally caused the plaintiff's mistake by misrepresenting his true physical condition and avoidance was allowed: Stewart v. Steinoff, 119 S. W. 2d 76 (Mo. App. 1938); Frazier v. Sims Motor Transport Lines, Inc., 196 F. 2d 914 (7th Cir. 1952); Kennedy v. Raby, 174 Okla. 332, 50 P. 2d 716 (1935); Baumann v. Hutchinson, 124 Neb. 188, 245 N. W. 596 (1932); Capital Traction Co. v. Sneed, 26 F. 2d 296, 58 App. D. C. 141 (1928), *cert. den.* 278 U. S. 604, 49 Sup. Ct. 10; Southern R. Co. v. Nichols, 135 Ga. 11, 68 S. E. 789 (1910); Peoples Cent. Transit Lines, Inc. v. Myers, 267 Ky. 277, 102 S. W. 2d 21 (1937); Montgomery Ward & Co. v. Callahan, 127 F. 2d 32 (10th Cir. 1942). See also, Ciletti v. Union Pac. R. Co., 196 F. 2d 50 (2d Cir. 1952), (applying Nebraska law).

[39] Keller v. Wolf, 239 Minn. 397, 58 N. W. 2d 851 (1953).