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Recovery of Money Paid Under a Mistake of Law - Baltimore & Annapolis R. Co. v. Carolina Coach Co.

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Recovery Of Money Paid Under A Mistake Of Law

Baltimore & Annapolis R. Co. v. Carolina Coach Co.[1]

In 1950, under the terms of a sub-lease of a bus terminal from the Baltimore and Annapolis Railroad Co., appellant, to the Red Star Motor Line, both parties were to have joint control over one designated ticket agent and the lessee was given the right to pay ½ the salary of this employee and to deduct this amount of money from its monthly rent payment, should it elect to do so. Red Star paid the entire salary of this employee until December 1950, when he resigned and was replaced by another ticket agent, who was paid entirely by B. & A. until January, 1953. During the first period (ending December 1950), Red Star deducted from its rent payments an amount equal to only ½ the salary of the ticket agent, even though it was paying his entire salary. During the second period (from December '50 to January '53), B. & A. paid the entire salary and added an amount of money equal to one half of the salary of the

[1] 206 Md. 237, 111 A. 2d 464 (1955).

ticket agent to the rental bills which were submitted to and were paid without comment or objection first by Red Star and then by its successor (through a merger effected in 1952), the Carolina Coach Co. In effect, Red Star and Carolina Coach had borne the burden throughout both periods of ½ the salary of this designated ticket agent, even though the terms of the leasing agreement required that B. & A. be ultimately responsible for the entire salary of this employee. On January 21, 1953, Carolina demanded repayment from B. & A. of an amount equal to ½ the salaries of both the ticket agents who had been employed consecutively from December '50 to January '53. B. & A. refused this demand, and Carolina brought suit at law to recover this money. The Court of Common Pleas of Baltimore found for the plaintiff, and B. & A. appealed.

It was contended by B. & A. that the payments sought to be recovered were made by reason of a mistake of law on the part of Carolina Coach, and, hence, fell within the broad rule that payments made voluntarily under a mistake of law may not be recovered. However, the Court held "that the error of Red Star and of Carolina as to their private rights and liabilities in making the payments in question should be regarded . . . as not a mistake of law, pure and simple, so as to bar a recovery of the overpayments, but as involving a mistaken view of the facts",[2] and accordingly affirmed the judgment for plaintiff.

Two problems presented by such cases are: (a) Whether the facts show that the mistake which resulted in overpayments was a mistake of fact, or a mistake of law, or, possibly, a combination of both; and (b) To what extent must the result reached by the Court in such a case be governed by its determinations in regard to the first question?

The Court, through Chief Judge Brune, does not explicitly answer either question;[3] but, assuming that if the mistake were purely one of law recovery would be precluded, it infers that even if an academic analysis of the circumstances of the overpayment would indicate that the plaintiff's mistake may involve a conclusion of law, nonetheless, in deciding the case, the mistake would be regarded by the Court as though it were one of fact, and recovery

[2] *Ibid*, 245.

[3] Did the plaintiff make a mistake as to the actual contents, the terms, of the leasing agreement which would be a mistake of fact, or did the plaintiff merely misinterpret the legal operation of the terms which would be a mistake of law? Such questions are not susceptible to proof of a substantial objective nature.

would be permitted on that basis. The Court cited Pomeroy's statement that:

> "Mistakes . . . of a person with respect to his own private legal rights and liabilities may be properly regarded, — as in great measure they really are, — and may be dealt with as mistakes of fact."[4]

Not quoted by the Maryland Court, and apparently not accepted as explanation of the Court's approach, is Pomeroy's further conclusion that:

> "A general rule permitting the jurisdiction of equity to relieve from mistakes of the law pure and simple, in all cases belonging to this species, and confining its operation to them, would at once reduce to clearness, order, and certainty a subject which has hitherto been confessedly uncertain and confused."[5]

It is quite clear, however, that Pomeroy was dealing with mistakes as to private legal rights and liabilities not resulting in payments of money, for Pomeroy subsequently states an exception to this proposed general rule:

> "The general rule stated in the paragraph (§849) concerning mistakes as to one's own private legal rights and duties, is also subject to another important limitation. It is settled at law, and the rule has been followed in equity, that *money paid under a mistake of law* with respect to the liability to make payment, but with full knowledge, or with means of obtaining knowledge, of all the circumstances, cannot be recovered back."[6]

In the instant case, the Maryland Court proceeded to its result in an interesting fashion. It went to Pomeroy to help support its conclusion that the error here, even if one of law, should be treated as a mistake of fact, and in a *proceeding at law,* applied Pomeroy's general rule for granting *equitable relief,* even though that author has acknowledged that cases of money payments made under mistake of law form a well defined exception to the general rule, and therefore constitute a class in which relief has been denied. If the instant case is accepted as involving a payment of money under mistake of law, the Court of Appeals has adopted Pomeroy's general doctrine, but has rejected one of the limitations that has been commonly applied to it. That

[4] 3 POMEROY, EQUITY JURISPRUDENCE (5th ed., 1941), Sec. 849, 309.
[5] *Ibid,* 310.
[6] *Ibid,* Sec. 581, 318, *et seq.* Italics supplied.

Pomeroy, himself, might approve such a course of action is indicated by his statement in a footnote:

> "If the doctrine formulated in §849 be correct, then it seems that this particular rule forbidding the recovery back of money paid under a mistake of law is based upon an erroneous conception of the principle which should govern such cases. This rule itself is an illustration of the disinclination of equity courts to depart from a doctrine, settled at law, when the rights and the remedies are the same in both jurisdictions."[7]

Near the end of the opinion the Court says:

> "The *Restatement, Restitution,* in the Introductory Note to Ch. 2, Topic 3, 'Mistake of Law' (page 180) points out that the broad rule against relief from the consequences of a mistake of law has been considerably limited to avoid the injustice which would result from the universal application of so broad a rule and that 'by a process of attrition it has been limited to cases similar to that of Bilbie v. Lumley (2 East 469, in which the broad rule was first announced), that is, to cases where a benefit has been conferred upon another because of a supposed duty to him in response to an honest demand by him'."[8]

It appears, however, that the Court of Appeals may have gone further than the Restatement in granting relief, for it could be reasoned that in the instant case plaintiff overpaid defendant "because of a supposed duty to him and in response to an honest demand by him". When the defendant added an amount equal to ½ the salary of the ticket agent to the monthly rental bills and submitted these bills to plaintiff who paid them, there was, presumably, an "honest demand" by defendant which was certainly complied with by plaintiff "because of a supposed duty" to defendant. *Bilbie v. Lumley's* fact situation is embodied in the Restatement as follows:

> "A insures his ship with the B insurance company and innocently fails to reveal facts, as the result of which the insurance policy creates no liability on the part of the insurance company. Upon the happening of the loss, B, now with full knowledge of the facts, pays

[7] *Ibid,* 319, footnote 7. And see also 5 WILLISTON, CONTRACTS (Rev. ed., 1937), Sec. 1589, 4435, *et seq.,* saying: "There seems no logical reason for distinguishing in this particular (mistake as to private antecedent rights) between a bill to reform or to rescind and an action for money had and received." Parenthetical material added.

[8] *Supra,* n. 1, 245.

> A, both A and B mistakenly believing that B is liable upon the policy. B is not entitled to restitution."[9]

There is no question that B was mistaken as to its private legal rights, duties, and liabilities. Conceivably, if *Bilbie v. Lumley* were to come before the Maryland Court today, it could grant B the right to recover on the basis of its holding in the instant case that if payment is made because of a mistake as to the payor's private rights and liabilities, such error will be regarded by the Court as a mistake of fact and the right to recover the money granted accordingly.[10]

As direct Maryland authority for application of this doctrine, the Court in the instant opinion quoted from and relied heavily upon its application in the equity case of *Oxenham v. Mitchell* in 1931.[11] Before 1931, recovery back of money paid by mistake had been allowed in Maryland,[12] but in all of these instances the mistake was decided to be one of fact, and recovery was granted on that theory. There had been numerous cases brought seeking recovery for money paid because of a mistake of law in which relief was denied. A great many of these involved taxpayers seeking to recover money paid to a municipality as taxes that subsequently were declared illegal by the courts.[13] In all these tax cases the court denied the right of the plaintiff to recover, citing the basic rule that there could be no recovery of a payment made voluntarily under a mistake of law on the part of the payor. The Court of Appeals stated:

> "But the character of the payment never depends, as we have seen, on the knowledge of the party, and if voluntary, it is binding, although made under the impression, that the demand was legal."[14]

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[9] RESTATEMENT, RESTITUTION (1937), Sec. 45, Illustration 2, 185.

[10] It is well to remember that there are many mistake of fact situations in which the courts will refuse to grant the right to recover back money paid out by mistake as, for example, in cases where the agreement between the parties is in the nature of a compromise of a disputed issue, or where the mistake was collateral to and not directly material to the agreement between the parties, or where the risk of mistake has been expressly or impliedly assumed by one or both of the parties to the transaction, or where the circumstances are such that the dictates of good faith and conscience do not require that the plaintiff should recover the money from the defendant. For an analysis of all such situations see RESTATEMENT, RESTITUTION (1937), Sec. 15, *et seq.*

[11] 160 Md. 269, 153 A. 71 (1931), noted 17 Va. L. Rev. 602 (1931).

[12] Baltimore and Susq. R.R. Co. v. Faunce, 6 Gill. 68 (Md., 1847); Citizens' Bank v. Grafflin, 31 Md. 507 (1869).

[13] M. & C. C. of Balt. v. Lefferman, 4 Gill 425 (Md., 1846); Morris v. Mayor & C. C. of Balt., 5 Gill 244 (Md., 1847); Lester v. Baltimore, 29 Md. 415 (1868); Mayor and C. C. of Balt. v. Hussey, 67 Md. 112, 9 A. 19 (1887); Monticello Co. v. Balto. City, 90 Md. 416, 45 A. 210 (1900); Baltimore v. Harvey, 118 Md. 275, 84 A. 487 (1912).

[14] Mayor and C. C. of Balt. v. Lefferman, *ibid*, 433.

And in another earlier case the Court quoted with clear approval Pomeroy's refusal to include money paid under mistake of law as being subject to his general rule allowing equity to correct mistakes of law as to private legal rights, saying in part:

> "But in paragraph 851 he (Pomeroy) says, 'it is settled at law, and the rule has been followed in equity, that money paid under a mistake of law, with respect to the liability to make payment, but with full knowledge or with means of obtaining knowledge of all the circumstances, cannot be recovered back'."[15]

In *Oxenham v. Mitchell*,[16] the plaintiffs filed a bill in equity to recover money which was paid in order to free their land from a supposedly outstanding leasehold interest which, however, had long before been extinguished. Plaintiffs mistakenly thought that they lacked full legal title to the land, although they knew all the facts and circumstances which had occurred in reference to the land and which would clearly have indicated that plaintiffs had a full legal title to the land, if the proper legal interpretation had been applied to these facts and circumstances. Plaintiffs had erred, apparently, through a mistake of law, but the Court wrote:

> "It is justly observed by Pomeroy: 'A private legal right, title, estate, interest, duty or liability is always a very complex conception. It necessarily depends so much upon conditions of fact, that it is difficult, if not impossible, to form a distinct notion of a private legal right, interest or liability separated from the facts in which it is involved and upon which it depends. Mistakes, therefore, of a person with respect to his own private legal rights and liabilities may be properly regarded — as in a great measure they really are — and may be dealt with as mistakes of fact. . . . It is not the less a representation of fact because the fact stated involves a conclusion of law, . . .' "[17]

The plaintiffs were allowed to recover. It is interesting that the Court in an opinion by Judge Parke, referring to Pomeroy's general rule and the exception which precludes

[15] Baltimore v. Harvey, 118 Md. 275, 279, 84 A. 487 (1912). This quotation, as we have already seen (n. 6), embodies an exception to Pomeroy's general rule for granting relief in mistake of law situations.

[16] *Supra*, n. 11.

[17] *Ibid*, 280.

recovery of money payments made under mistake of law,[18] chose to avoid this historic exception by treating the situation as being one of mistake of fact and hence within Pomeroy's general rule.[19]

In the instant case, the Court holds that the rule which the *Oxenham* case applied in equity applied at law, *i.e.*, payments made because of a mistake of law as to the private legal rights, duties, and liabilities of the payor will be viewed by the Court as though the mistake was one of fact, and recovery granted accordingly.[20] In doing so, it has joined the ranks of a growing number of jurisdictions that have tended in recent years to put mistake of law and mistake of fact on more of an even footing than they have been in the past. This could probably be said to have the support of the leading treatises of Pomeroy on Equity and Williston on Contracts, but with a recommendation for frank recognition on the part of the Courts that in this area mistake of law as to particular private rights may be corrected as well as mistake of fact.[21]

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[18] *Ibid*, 278-279.

[19] Equity courts in Maryland have granted various other types of equitable relief to parties who have acted under a mistake of law and suffered thereby. Three illustrative cases are: Lammot v. Bowly, 6 H. & J. 500 (Md., 1825); Broumel v. White, 87 Md. 521, 39 A. 1047 (1898); Prince de Bearn v. Winans, 111 Md. 434, 74 A. 626 (1909).

But never before Oxenham v. Mitchell had equity allowed recovery of money paid by reason of a mistake of law, unless the case of Carroll v. Bowling, 151 Md. 59, 133 A. 851 (1926), be considered as such an instance. Here the court allowed a group of executors to recover from the estate of life tenants money equal to a sum which the executors had placed (because of a mistake of law) in the hands of life tenants who had squandered it away to the detriment of the remaindermen. However, this case was decided more on the basis of the theory of subrogation than anything else, although at page 67 the court said:

> "Even if such a mistake . . . could be properly described as one of law, . . . the objection would not, in our opinion, apply to prevent the operation of . . . subrogation . . ."

[20] Of course, in all these cases it is necessary, in addition, for the plaintiff to prove that he is entitled to recovery of the money as against the defendant who in good faith and conscience ought to pay it over to the plaintiff. In other words, the plaintiff must prove not only that he acted by reason of mistake, but that defendant's retention of the money would be something in the nature of an unjust enrichment of the defendant at the expense of the plaintiff. Unless the plaintiff proves this part of his case, the mere fact that he acted through mistake of a private right or duty or liability will not enable him to recover. For two cases illustrative of this type of situation see Konig v. M. & C. C. of Balt., 128 Md. 465, 97 A. 837 (1916) and Gist et al. v. Drakely, 2 Gill 330 (Md., 1844). See also fn. 2, *supra*.

[21] *Circa*, *supra*, ns. 5, 7. *Cf.* 5 Williston, Contracts (Rev. ed., 1937), Secs. 1566, 1574, 1584, 1589, for treatment of the Oxenham case.