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Mistake

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MISTAKE.

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THESIS PRESENTED BY
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FOR THE DEGREE OF BACHELOR OF LAWS.

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CORNELL UNIVERSITY.

SCHOOL OF LAW.

1895.

MISTAKE.

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The Saxon kings by virtue of the royal prerogative occasionally granted relief in those cases which were without remedy in the courts. William I and his immediate successors also granted relief in like cases and in substantially the same manner. But the exercise of this judicial prerogative gradually becoming burdensome to the kings was frequently delegated to the chancellor or other court officers. Until Edward III in the twenty-second year of his reign ordered that "all such matters as were of Grace should be referred to and dispatched by the Chancellor or the Keeper of the Privy Seal" and thereby established an equity court. Which despite vigorous attacks at times has stood through the succeeding centuries aiding in the development of a rapidly expanding country and effectually meeting the needs of an advancing civilization. It is probable that for some time prior to the establishment of a court of equity mistake was one ground for the exercise of the king's judicial power. It is stated by a recent writer that, "From the time when jurisdiction was formally delegated to the chancellor by the crown, mistake has played a most important part as the occas-

ion of equitable rights and duties and for the exercise of jurisdiction in awarding equitable remedies. In the earlier periods, when the demands of the law courts and the court of chancery were sharply discriminated, when the common law judges were not influenced by equitable notions, this branch of equitable jurisprudence and jurisdiction consisted entirely in the means by which certain parties were prevented from holding and enjoying legal rights and certain other parties were relieved from the burden of legal duties and liabilities, which had originated under a mistake and which were complete and unassailable at law. In the progress of time as the common law became more and more conformed to equitable principles, the legal tribunals assumed a partial cognizance and gave a partial relief in cases involving mistake." (a)

A comprehensive definition of mistake is the one give by Prof. Pomeroy: "Mistake, therefore, within the meaning of equity and as the occasion of jurisdiction, is an erroneous mental condition, conception, or conviction induced by ignorance misapprehension, or misunderstanding of the truth, but without negligence, and resulting in some act or omission, done or suffered erroneously by one or both of the parties to a transaction, but without its erroneous character being in-

(a) Pomeroy on Equity Jurisprudence Sec. 852.

tended or known at the time."(a) It seems unnecessary however that the words "but without negligence" should have been inserted for all of the equitable maxims apply as a matter of course and "Equity aids the vigilant" is particularly applicable. Indeed most cases of mistake are cases in which the ignorance, misapprehension or misunderstanding of the truth is due in some degree to negligence. There can be no doubt that courts will not relieve a party from his mistake if they deem that he was negligent but it certainly is true that not all acts done or omissions suffered are deemed negligent. It is also certain that no court will degree relief unless the mistake is material and is shown by the most clear and convincing proof. In the following discussion only mistakes made by a party or parties to an agreement are considered. A mistake may be immaterial because it is of so little importance that the rights of parties of parties are practically the same in law whether or not reformation is decreed or when the loss to the aggrieved party is so inconsiderable that the court will not consider the matter.

In the case of *Rue v Meirs*, 43 N.J.Eq. 377, it was sought to give the court jurisdiction by asking a reformation of

(a) Pomeroy on Equity Jurisprudence, Sec. 830.

the instrument because the words "party of the first part" ⁴ were used where clearly the words "party of the second part" were intended. The New Jersey court refused to take jurisdiction on the ground that the mistake was immaterial and that it did no injury. The court said, "But these mistakes are palpable and do not create the slightest obscurity as to the meaning of the contract, nor prevent it from being so construed as to give full effect to the real intention of parties. It is a rule of construction of universal application, that a contract notwithstanding mistakes therein shall if the meaning of the parties be clearly discerned be construed as near the mind and apparent intent of the parties as it possibly may be, and the law will permit. The subsequent parts of this contract express the intention of the parties in language so clear, simple and explicit that it must in its present form be understood and construed just exactly as it would be after it was reformed. Where that is the case reformation can accomplish nothing.....A mistake which is harmless and does no injury needs no correction. This court cannot take jurisdiction on that ground."

A Virginia judge observed in the case of Weaver v Carter, 10 Lee 39, "Hence our courts have wisely said that even in

sales strictly by the acre no compensation is to be made for deficiency where the supposed deficit may fairly be presumed to arise merely from the variations of instruments or of mensuration."

A mistake also may be immaterial because it is not closely enough connected with the subject matter of the contract to be deemed the turning point in the transaction. Unless it is a mistake as to a necessary and intrinsic fact deemed material by the courts they grant no relief: regardless alike of how much a party may lose by his mistake or how much he has depended upon the supposed state of facts in making his contract. The case of *Dambmann v Schulting*, 75 N.Y. 55 is in point. The defendant being insolvent was about to assign when the plaintiff advanced him \$10,000. upon condition that he should be under no legal obligation to repay it providing he paid the amount already due plaintiff in full. The release given at the time contrary to the intention of the parties was of no force. Subsequently the defendant who was then able to pay his debt in full asked the plaintiff to give him a valid release upon payment of \$5000. Plaintiff accepted the proposition and did as requested. This action was brought to cancel the release that the other \$5000. might be

recovered. The grounds alleged were fraud and mistake. The court came to the conclusion that there had been no fraud and as to the mistake the court said, Earl J, writing the opinion, "It is further claimed that the plaintiff ought to be entitled to relief on account of mistake. He testified that he would not have executed the release, if he had known the defendant's financial condition. But as already shown, the defendant was in no way responsible for his ignorance and was under no legal or equitable obligation to disclose the facts as to his pecuniary circumstances. The plaintiff could have learned the facts by inquiry of the defendant or his vendees. There was no mistake as to any fact intrinsic to the release. Plaintiff knew that the defendant had not been legally discharged from his liability and for that the \$50000. he was to give him an absolute release and he gave him just such a release as he intended to. There was no mistake of any intrinsic fact essential to the contract or involved therein. The defendant's financial condition was an extrinsic fact which might have influenced the plaintiff's action if he had known it. But ignorance of or mistake as to such a fact is not ground for affirmative equitable relief."

It was said by Mr. Justice Swayne in the case of Grymes v

Sanders, et. al. 93 U.S. 55, "A mistake as to a matter of fact, to warrant relief in equity must be material and the fact must be such that it animated and controlled the conduct of the party. It must go to the essence of the object in view, and not be merely incidental. The court must be satisfied, ^{that} but for the mistake the complainant would not have assumed the obligation from which he seeks to be relieved." There is no exception to the rule that a mistake must be material affecting the substance of a transaction or the courts will refuse jurisdiction.

It is also laid down in a general way that a mistake must be mutual or the courts will not take cognizance of the matter. But this rule refers more particularly to those cases where reformation is sought. By this remedy an imperfect instrument is made to speak the contract of the parties thereby making it possible to enforce the agreement at law. It is plain that when a reformation is decreed the mistake must be shown to have been mutual otherwise courts would be engaged in making contracts for parties which they never intended and enforcing rights and granting remedies on a so called agreement which they never made. The courts seem to make no distinction between cases in which the draughtsman

makes a mistake and the parties, have no chance to correct it and those cases in which the writing is read by the parties and they make the same mistake. In either event according to legal interpretation it is a mutual mistake.

There is a class of cases however in which reformation is decreed where clearly there has been actual mistake by only one party to the agreement. These are those cases in which the party has been guilty of fraud and because of his fraud he is estopped from denying that the mistake was a mutual one. The courts holding him, as is perfectly just, to the contract which he fraudulently led the other party to suppose was being made.

In the somewhat peculiar case of *Rider v Powell*, 28 N.Y. 310, the judge who wrote the prevailing opinion seemed to have given this subject but little consideration and made an incorrect statement of law. In the dissenting opinion a correct statement was made as to reformation and rescission but the judge might have gone farther and recognized the fact that courts sometimes decree reformation in cases of fraud on one side. The plaintiff desired the reformation of a bond which provided for payment in annual instalments of \$3000. with interest only on each instalment as it became due rather

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than on the whole sum remaining unpaid as the trial judge found was agreed between the parties. Balcom J. who wrote the opinion of the court said, "I am not aware of any adjudged case, in which it has been held that there must be a mutual mistake of fact by the parties to a written contract or some fraud on the part of the party not mistaken to entitle the party who made the mistake and who suffered by it, to have such contract reformed so that it will truly express the oral agreement of the parties which was to be carried into effect by the written contract and such a doctrine would be contrary to good sense and sound principle." It was said by Mr. Justice Wright in the dissenting opinion, "A mistake by the plaintiff when he made the contract as to the interest he was to receive on the bond and mortgage would not entitle him to have the contract so modified as to conform to his mistaken impression though it might be a ground for rescinding the contract on the ground that the minds of the parties never met in making it." The record states "And finally the rule of judgment in favor of the plaintiff was construed as a finding of the necessary facts viz, fraud or mistake of fact on the part of defendant. And the judgment of affirmance went upon that theory.

In a similar case the appellate court concluded that two notes did not conform to the agreement between the parties in that they did not bear interest. The judge who delivered the opinion referring to *Ryder v Powell*, supra, said, "While the ground upon which the decision was put, there being in the case no finding of fact is doubtless untenable, the principle asserted in the decision is clearly right and sound. It is that where a party who is to execute papers in consummating a contract draws, or causes or procures them to be drawn erroneously and palms or puts them off upon the opposite party in that shape without apprising him of the error or alteration, he commits a fraud, and relief in equity in reforming the instrument may be had on the ground either of mistake or fraud."

The other equitable remedies decreed to relieve parties from the effects of their mistakes are rescission and cancellation; these terms are sometimes used interchangeably, because the remedies are practically the same. But technically speaking cancellation is decreed when a reformation might have been had i.e. when there was a mutual mistake or a mistake on one side with fraud on the other. And rescission is decreed in all other cases. It is never necessary to show a

mutual mistake in order that the court may rescind the contract. A and B enter into an agreement, A to transfer certain described land to B and B to build A a storehouse. A made a mistake as to the amount of land he agreed to transfer and B was mistaken as to the location of the storehouse. Each was mistaken as to a material fact and yet there certainly was not a mutual mistake. In the hypothetical case above stated before either party had acted upon the agreement, at the request of either equity would decree a rescission. But if the parties could not be placed in statu quo, - if either would be substantially damaged by a rescission, the law would enforce the contract as it appeared by the instrument to have been made. In such cases equity would refuse jurisdiction in accordance with the maxim "Where the equities are equal the law shall prevail." If however A only was mistaken and he alone had acted on the agreement and made a transfer of his land equity would listen to his prayer and decree a rescission of the deed.

This is the dictum of a Rhode Island judge, "But besides the power to reform a writing so as to make it express the agreement of both parties as it was designed to do a court of equity has also power to rescind and cancel an agreement at

the request of one party, upon the ground that, without negligence, he entered into it through a mistake of fact material to the contract, when he can do so without injustice to the other party."

Owing to the reluctance of the courts to base a decision on the ground of mistake if any other ground can be found and to the fact that when the case is not tainted with fraud the parties are usually willing to settle it out of court; the great majority of cases in which rescission has been decreed are cases in which fraud plays some part. But the undoubted right remains in equity to rescind any agreement under the limitations noticed if mistake is clearly shown.

Mistake is divided into two great classes. Every mistake is one of law or of fact. A mistake of fact is defined in the California Civil Code, Sec. 1577 in the following manner: "A mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake and consisting in: first, an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or, second, belief in the present existence of a thing material to the contract which does not exist, or in the past existence of such a thing which has not existed."

The cases are numerous which hold that mistake as to matters of fact are always ground for relief. "The cases found on mistake seem to rest on this principle: that if parties believing that a certain state of things exist, come to an agreement with such belief for its basis, on discovering their mutual error, they are remitted to their original rights" (a) A mistake as to foreign law is considered a mistake of fact.(b) "It is an elementary principle that money paid under a mistake of material facts, where the party paying derives no benefit, may be recovered back."(c)

Mistake of law may be defined as an erroneous conclusion as to the legal effect of known facts. One of the great maxims of English and American law is: "Ignorantia juris non excusat." For this principle as for many others we are indebted to the Romans. It is obvious that if ignorance of the law was allowed as a sufficient excuse for breaking a contract parties would practically have their option as to whether they would break it or not. And it is impossible to foresee all the consequences which would result from allowing men to avoid their agreements and annul their contracts, on the plea that they did not understand the law. Some able judges have held that this maxim only applies to criminal (a) *Mowatt v Wright*, 1 Wend.358;(b) See 9 *Pickering* 111. (c) 3 *Barb.*223, see also 25 *N.Y.*239.

cases. In *Cooper v Phibbs*, L.R. 2 H.L. 149, Lord Westbury said, "It is said 'ignorantia juris haud excusat'; but in that maxim the 'jus' is used in the sense of denoting general law the ordinary law of the country. But when the word jus is used in the sense of denoting private right the maxim has no application."

In the case of *Champlin v Laytin*, 1 Edw. Ch.467, the judge after referring to several cases which did not fully sustain his position said, "I think these cases are sufficient to establish the correctness of the position, that a contract entered into under a mutual misconception of legal rights, amounting to a mistake of law in both the contracting parties by which the object and end of their contract according to its intent and meaning, cannot be accomplished, is as liable to be set aside or rescinded as a contract founded in mistake of matters of fact. This court has the same power to grant relief in the one as in the other." This case was sustained by the highest court but as distinctly stated not on the ground of mistake of law. Mr Justice Bronson who wrote the opinion said, "The maxim, ignorantia legis non excusat is uniformly applied in the administration of criminal laws, and I am at a loss to conceive why the fitness of the

rule should ever have been doubted in civil cases."(a)

In the particular case just referred to, the decision was not placed on the proper ground in the lower court and the statement made by the vice chancellor was too broad to be sustained by the weight of authority. There is however no doubt that there are some exceptions to the rule in civil cases. For in the best considered modern decisions it has been laid down that there may be relief on the ground of mistake induced by ignorance or mistake of law pure and simple.(b)

Mistakes of law may be divided into two classes, 1. Those mistakes made by a party entering into a contract in regard to his own antecedent existing legal rights although he knows the full legal effect of the present transaction; 2. Those mistakes made by a party as to the legal effect of a transaction in which he is about to engage although he has full knowledge as to all of his prior existing legal rights and remedies. An excellent illustration of the first class of mistakes is the much criticised case of *Lansdown v Lansdown*, 1 Mosely's Reports 363. The whole case as there reported is as follows. "There were four brothers, the second died, and the eldest brother enters upon his lands, the youngest

(a) 18 Wend. 407. at p. 412.

brother claims a title, upon which they apply to Hughes a schoolmaster, their neighbor in the country (who acted as an attorney) for his opinion, who upon consulting a book called The Clerk's Remembrancer, gave it in favor of the youngest brother, because lands could not ascend; upon which the eldest brother agreed to *divide* the estate with the youngest and declared he would rather do so, than go to law, though he had the right: Upon which Mr. Hughes prepared deeds of lease and release of the moiety, which were executed by the eldest brother, and bonds for the penalty of 300 l. which was computed to be the value of the moiety, conditioned for the quiet enjoyment of their respective shares; the youngest brother died and the moiety descended on the defendant, the infant, his son and heir: And the Lord Chancellor decreed that the bond and deeds of lease and release, should be delivered up to the plaintiff, the eldest brother, being obtained by mistake and misrepresentation and that the defendant the infant, when he came of age should convey nisi, &c and his lordship said, That maxim of law, Ignorantia juris non excusat was in regard to the public, that ignorance cannot be pleaded in excuse of crimes, but did not hold in civil cases!"

Probably no court would go further than was done in this

case but there is a growing tendency to grant relief in cases of this class, some courts construing the mistake as one of fact and others squarely holding that they would relieve parties from the effects of such mistakes of law.

The second class of cases is illustrated by the widely cited case of *Hunt v Rousmaniere's Adm.*, 1 Peters 1. In almost every case of mistake arising in the United States since this one was decided either one party or the other has found occasion to refer to it. And sometimes both sides have found it useful. An Ohio judge said of the case, "It is cited by both the parties in this case to show that equity will and will not relieve against a mistake of law merely." (a) The fact that the case was twice before the Supreme Court of the United States probably largely accounts for such a use of it.

These are the essential facts of the case. The complainant lent money to the defendant's intestate and after taking the advice of counsel decided to take security in the form of an irrevocable power of attorney to sell certain vessels and apply the proceeds to the debt. The case was first before the court on an appeal from a decree sustaining a demurrer and dismissing the bill. In reversing the decree of

(a) *Mc Naughten et.al. v Partridge et.al.*, 11 Ohio 225

the Circuit Court, the Supreme Court said; Mr. Chief Justice Marshall delivering the opinion, "We find no case which we think precisely in point; and are unwilling where the effect of the instrument is acknowledged to have been entirely misunderstood by the parties, to say that a Court of equity is incapable of affording relief."(a) At the trial it was admitted that the parties to this agreement acted under a mutual mistake as to the law, neither knowing that this power of attorney could be revoked by the death of Rouzmaniere. Mr. Justice Washington in the opinion of the court which he delivered made a very clear and comprehensive statement of the law of mistake. He said, "There are certain principles of equity, applicable to this question, which, as general principles we hold to be incontrovertible. The first is, that where an instrument is drawn and executed, which professes, or is intended, to carry into execution, an agreement, whether in writing or parol, previously entered into, but which by mistake of the draughtsman, either as to fact or law, does not fulfill or which violates the manifest intention of the parties to the agreement, equity will correct the mistake so as to produce a conformity of the instrument to the agreement.

(a) 2 Wheaton 174 at page 216.

The reason is obvious- the execution of agreements, fairly and legally entered into, is one of the peculiar branches of equity jurisdiction, and if the instrument which is intended to execute the agreement, be, from any cause, insufficient for that purpose, the agreement remains as much unexecuted, as if one of the parties had refused, altogether, to comply with his engagement, and a Court of Equity will, in the exercise of its acknowledged jurisdiction, afford relief in the one case, as well as in the other, by compelling the delinquent party fully to perform his agreement, according to the terms of it, and to the manifest intention of the parties. So, if the mistake exist not in the instrument which is intended to give effect to the agreement, but in the agreement itself and is clearly proved to have been the result of ignorance of some material fact, a Court of Equity will, in general, grant relief, according to the nature of the particular case in which it is sought."

Further on the learned judge continues, "That the general intention of the parties was to provide a security as effectual as a mortgage of the vessel would be can admit of no doubt, and if such had been their agreement, the insufficiency of the instruments to effect that object which were afterwards

prepared, would have furnished a ground for the interposition of a Court of Equity, which the representatives of Rousmaniere could not easily have resisted. But the plaintiff was not satisfied to leave the kind of security which he was willing to receive, undetermined; having finally made up his mind, by the advice of his counsel, not to accept of a mortgage or bill of sale, in nature of a mortgage. He thought it safest, therefore, to designate the instrument; and, having deliberately done so, it met the view of both parties, and was as completely incorporated into their agreement, as were the notes of hand for the sum intended to be secured. In coming to this agreement it is not pretended that the plaintiff was misled by ignorance of any fact, connected with the agreement which he was about to conclude. If, then, the agreement was not founded upon a mistake of any material fact, and it was executed in strict conformity with itself; we think it would be unprecedented, for a Court of Equity to decree another security to be given, not only different from that which had been agreed upon, but one which had been deliberately considered and rejected by the parties not asking for relief; or to treat the case, as if such other security had in fact been agreed upon and executed.

On page 16 of the same case, the court said, "It is not the intention of the Court, in the case now under consideration to lay it down, that there may not be cases in which a Court of Equity will relieve against a plain mistake, arising from ignorance of law. But we mean to say, that where the parties, upon deliberation and advice, reject one species of security and agree to select another, under a misapprehension of the law as to the nature of the security so selected, the Court of Equity will not, on the ground of such misapprehension, and the insufficiency of such security in consequence of a subsequent event, not foreseen, perhaps, or thought of, direct a new security, of a different character, to be given, or decree that to be done which the parties supposed would have been effected, by the instrument which was finally agreed upon." (a)

In this second class of cases all courts seem to take the position held in *Hunt v Rousmaniere*, supra, that parties will not be relieved from mistakes of law, when they have deliberately chosen one course in preference to another. But when they have not deliberated on their course and agree that a certain thing shall be done in order to fully carry out their contract, having absolutely no doubt or question as to its

being the proper legal course and it subsequently turns out that they have labored under a mistake, courts differ greatly as to whether relief should be granted or not.

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