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Quasi-Contracts--Recovery for Mistake of Law--Settlement of Disputed Claim

In other words, there had been no showing of extreme hardship to the minority if the sale were *reasonably* deferred: the "equities" of the litigation appeared to be with the trustees. Viewed thus, the syllabus may seem broader than the record in this litigation actually requires. Certainly it is unlikely that the informed discretion of the chancellor in corporation reorganization work may be *wholly* excluded by a myriad of paragraphs in the indenture.

The present decision accordingly is one of considerable import for corporate bondholders. It has settled the issue of foreclosure jurisdiction, and has indicated that a very strong showing must be made before the terms of the bond issue may be disregarded wholly. Thus the court has upheld an authority in the majority bondholders, controlling the discretion of the trustees, where so stipulated. Perhaps, a more definite ruling may soon be had on the privilege of the minority to intervene in every case, agreements to the contrary notwithstanding.

QUASI-CONTRACTS — RECOVERY FOR MISTAKE OF LAW — SETTLEMENT OF DISPUTED CLAIM. — At a prior time, action had been begun against the present plaintiff, as receiver of an insolvent bank, to compel him to pay over the entire depositor's claim of a county. Believing that the county had priority over general creditors by virtue of an earlier decision[1] and at the direction of the commissioner of banking, plaintiff paid the claim in full. Subsequently, the Supreme Court of Appeals held that a county was not entitled on these facts to preference over general creditors.[2] Plaintiff then sued to recover the overpayment on the ground of mistake of law. *Held,* that there can be no recovery. *Finnell v. Peoples Bank of Keyser.*[3]

The doctrine that money paid under a mistake of law cannot be recovered is almost universally recognized.[4] Before the nine-

[1] Woodyard v. Sayre, 90 W. Va. 295, 110 S. E. 689, 24 A. L. R. 1497 (1922).
[2] Calhoun County Court v. Mathews, 99 W. Va. 483, 129 S. E. 399, 52 A. L. R. 751 (1925).
[3] 182 S. E. 888 (W. Va. 1935).
[4] Bilbie v. Lumley, 2 East 469 (1802); Gaffney v. Stowers, 73 W. Va. 420, 80 S. E. 401 (1913); Shriver v. Garrison, 30 W. Va. 456, 4 S. E. 660 (1887); Beard v. Beard, 25 W. Va. 486, 52 Am. Rep. 219 (1885): Haigh v. United States Bldg. *etc.* Ass'n, 19 W. Va. 792 (1882); Mayor of Richmond v. Judah, 5 Leigh 305 (Va. 1834); *Cf.* Burgess v. City of Cameron, 113 W. Va. 127, 166 S. E. 113 (1932); and for a compilation of cases with annotations, see (1911) 19 Ann. Cas. 794; (1926) 42 A. L. R. 305; (1927) 48 A. L. R. 1381; (1928) 53 A. L. R. 949; (1929) 63 A. L. R. 1346; (1931) 75 A. L. R. 658;

teenth century no distinction between mistake of law and mistake of fact is to be found.[5] On the contrary, early authorities both at law[6] and in equity[7] allowed recovery indiscriminately. Lord Ellenborough[8] in 1802 inadvertently established the rule denying recovery in the case of mistake of law:[9] clearly he was unfamiliar with the past decisions and misapprehended the function of the maxim, *ignorantia juris non excusat.*[10] Moreover, within ten years, Ellenborough reversed this decision, and held a mistake of law sufficient ground for disregarding the cancellation of a deed;[11] yet his ruling in the former case has become firmly entrenched in the common law, although subject to much criticism.[12]

Some courts have minimized the force of the general rule by establishing numerous exceptions to its operation.[13] Kentucky and Connecticut by judicial decision have refused to recognize any distinction between a mistake of law and one of fact.[14] Six states

(1908) 15 L. R. A. (N. S.) 183; (1910) 28 L. R. A. (N. S.) 440; (1918) 21 R. C. L. 143; (1929) 6 R. C. L. Supp. 1254; 3 WILLISTON, CONTRACTS (3d ed. 1920) 2812.

[5] 3 WILLISTON, CONTRACTS § 1581.

[6] Hewer v. Bartholomew, Cro. Eliz. 614 (1598); Bonnel v. Foulke, 2 Sid. 4 (1657).

[7] Turner v. Turner, 2 Rep. in Ch. 154 (1722); Lansdowne v. Lansdowne, 2 Jac. & W. 205 (1730).

[8] In the case of Bilbie v. Lumley, *supra* n. 4, Lord Ellenborough asked counsel if anyone knew of a case where recovery had been allowed for a mistake of law. The response indicated that neither he nor counsel were familiar with the two cases cited, *supra* n. 6. Lord Ellenborough was preeminently a criminal lawyer and a perusal of his holding shows that he misapprehended the scope of the maxim, *ignorantia juris non excusat,* because that doctrine is applicable to the reformation and rescission of contracts, or recovery make under a mistake, only when such contract or payment is tainted with illegality. See 3 WILLISTON, CONTRACTS § 1581.

[9] By the great weight of authority at the present day as well as in the past recovery is allowed under a mistake of fact. See 3 WILLISTON, CONTRACTS § 1581.

[10] See *supra* n. 8.

[11] Perrott v. Perrott, 14 East 423 (1811).

[12] KEENER, QUASI-CONTRACTS (1893) § 85; WOODWARD, QUASI-CONTRACTS (1913) § 35; 3 WILLISTON, CONTRACTS § 1582; 7 COL. L. REV. 476 (1907); 24 GEO. L. J. 760 (1936); 21 HARV. L. REV. 225 (1908); 32 HARV. L. REV. 283 (1919); 45 HARV. L. REV. 336 (1932).

[13] See Note, 32 HARV. L. REV. 283 (1919). The exceptions may be classified as follows: (1) mistake of foreign law has always been dealt with as a mistake of fact; (2) public moneys erroneously disbursed are recoverable; (3) money paid to trustee or court officers under mistake of law may not be retained; (4) payments made under a void statute, or on reliance of a decision, later overruled must be returned. Only one case has been found supporting this exception. School Township v. State, 150 Ind. 168, 49 N. E. 961 (1898). *Contra,* Metzger v. Greiner, 9 Ohio Cir. Ct. (N.S.) 364 (1906).

[14] Bank v. Catlin, 82 Conn. 227, 73 Atl. 3 (1909); Bronson v. Leibold, 87 Conn. 293, 87 Atl. 979 (1913); Supreme Council v. Fenwick, 169 Ky. 269, 183 S. W. 906 (1916).

permit recovery in both cases by statutory provisions.[15] Georgia and South Carolina adhere to a metaphysical distinction whereby recovery is permitted for mistake of law, though none is allowed for ignorance of the law.[16] No less an authority than Williston[17] contends that "it is impossible to coordinate the cases so as to produce satisfactory results, because the rule itself distinguishing mistake of law from mistake of fact is founded on no sound principle . . . . the only way for the law on the subject to obtain uniformity and certainty is by the gradual broadening of the exceptions . . . . induced by the manifest injustice of the rule, until they so far coalesce that courts will venture to put mistakes of law and of fact on the same footing." One learned author[18] maintains that there is in England at the present day, as well as in France, Italy and Germany, no difference between the two classes of cases.

West Virginia has inflexibly followed the rule that money voluntarily paid under a claim of right, and with knowledge of the facts by the person making payment, cannot be recovered back on the ground that there was no liability to pay in the first instance.[19] It is at least arguable this is a sound "rule of thumb" from a pragmatic approach, regardless of how unsatisfactory it may appear from the historical or theoretical viewpoint.[20] Indeed, most questions of law are doubtful: at least one school of juristic thought takes the position that all law is but a prophecy of what the courts will do in fact.[21] One possible rationale of the majority rule is grounded upon public policy. It is apparent that questions of mistake of fact lend themselves to proof because the facts of a case must of necessity grow out of the particular transaction between the parties.[22] On the other hand, a mistake of law can never be confined within the narrow limits of a specific case; and a mis-

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15 See CAL. CIV. CODE (Deering, 1923) § 1578; GA. CODE ANN. (Michie, 1926) § 4576; MONT. REV. CODE (Choate, 1921) § 7486; N. D. COMP. LAWS ANN. (1913) § 5855; OKLA. COMP. STAT. ANN. (Bunn, 1921) § 5002; S. D. COMP. LAWS (1929) § 822.

16 Culbreath v. Culbreath, 7 Ga. 64 (1849); Lawrence v. Beaubien, 2 Bailey 623 (S. C. 1831).

17 3 WILLISTON, CONTRACTS § 1581.

18 Stadden, *Error of Law* (1907) 7 COL. L. REV. 476.

19 Finnell v. Peoples Bank of Keyser, *supra* n. 3; Gaffney v. Stowers, *supra* n. 4; Shriver v. Garrison, *supra* n. 4; Beard v. Beard, *supra* n. 4; Haigh v. United States Bldg. *etc.* Ass'n, *supra* n. 4; Mayor of Richmond v. Judah, *supra* n. 4; *cf.* Burgess v. City of Cameron, *supra* n. 4.

20 See 45 HARV. L. REV. 336 (1932).

21 *Ibid.*

22 *Ibid.*

take of law is rarely, if ever, capable of proof.[23] Mental conviction is prerequisite to a litigable mistake. Subjective evidence would be patently unreliable in trying mental conviction as to a mistake of law. Thus it would seem that grave danger of fraud is inescapable if recovery be permitted for mistake of law. There may then be a justification behind such a rule analogous to that behind the statute of frauds. Should the case arise where other considerations outweigh the possibility of fraud, there would be a reasonable ground for exception to the general rule.

The result reached in the principal case is satisfactory in the light of the rule applicable to both mistakes of law and of fact, to the effect that where payment has been made without coercion or mistake of fact, to satisfy an honest claim, however unenforceable, the giving up of such claim by the recipient is good consideration for a contract.[24] However, were this decision to be based purely on mistake of law, all other considerations being ignored, the equities would rather tend toward permitting recovery in such event.[25] Even so, an overwhelming weight of authority supports the holding of the instant case, — with the possible exception of a single Indiana decision.[26]

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[23] *Ibid.*

[24] RESTATEMENT, CONTRACTS (1932) § 76; Shriver v. Garrison, *supra* n. 4.

[25] In the absence of change of position or some other defense to recovery, it would seem that, from the equitable standpoint, there would be no difference between allowing a recovery in this case and permitting it in another case where there had been a mistake of fact. *Cf.* W. VA. REV. CODE (1931) c. 44, art. 4, § 13: ". . . . if any personal representative, guardian, curator or committee shall pay any debt, the recovery of which could be prevented by reason of illegality of consideration, or lapse of time, or otherwise, when he knows, or by the exercise of due diligence could ascertain, the facts by which the same could be so prevented, no credit shall be allowed him therefor." It has been held that it is the duty of any such person to defend all doubtful demands against the estate. Hale v. White, 47 W. Va. 700, 35 S. E. 884 (1896).

Furthermore, it may be urged that other creditors are prejudiced by denying recovery in this case. See W. VA. REV. CODE (1931) c. 44, art. 4, § 73.

[26] In the case of Center School Township v. State, 150 Ind. 168, 49 N. E. 961 (1898), which is closely analogous to the principal case, recovery for mistake of law, growing out of a reversal of a prior decision of the same court, was permitted. The court said, in the syllabus, "A decision of a court of last resort is but an exposition of what the court construes the law to be, and in overruling a former decision the court does not declare the overruled decision to be bad law, but that it never was the law, and the court was simply mistaken in regard to the law in its former decision; the first decision is wholly obliterated, and the law as therein declared must be considered as though it never existed, and that the law always has been as expounded by the last decision."