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by contract. In accordance with this tendency is the case of *Love v. Nashville Agricultural and Normal Institution* (1922),³³ which holds that a private charitable corporation cannot be exempted from liability for injuries caused by a nuisance maintained by it on the theory that its funds are held in trust for the purposes of its creation. So also, in *Taylor v. Flower Deaconess Home and Hospital* (1922)³⁴ a charity hospital was held liable for failure to exercise due care in the selection of employees. In *Mulliner v. Evangelischer Diakonniessenverein* (1920)³⁵ the court holds that one entering a hospital has no thought of assuming the risk of injury from negligence. In this case Hallam, J., says, "This corporation must administer its functions through agents, as any other corporation does. It harms and benefits third parties as they are harmed or benefited by others. To the person injured the loss is the same as though the injury had been sustained in a private hospital for gain. In this case the deceased paid for the services he expected would be rendered, but this may not be a controlling fact. We do not believe that a policy of irresponsibility best subserves the beneficent purposes for which the hospital is maintained. We do not approve the public policy which would require the widow and children of deceased, rather than the corporation, to suffer the loss incurred through the fault of the corporation's employees, or, in other words, which would compel the persons damaged to contribute the amount of their loss to the purposes of even the most worthy corporation. We are of the opinion that public policy does not favor exemption from liability."

WENDELL J. PHILLIPS, '27.

REFORMATION OF WRITTEN INSTRUMENTS BECAUSE OF MISTAKES OF LAW

It has long been a general rule that Courts of Equity are powerless to correct mistakes of law, and order the reformation of written instruments executed while the parties labored under a mistaken idea as to their legal rights or status.¹ But like many broad general principles this particular one has become the plaything of many Courts until

33. 146 Tenn. 550; 243 S. W. 304.

34. 104 Ohio St. 61; 135 N. E. 287.

35. 144 Minn. 392; 175 N. W. 699.

1. *Norton v. Highleyman*, 88 Mo. 621.

now it is so warped by constant differentiations, exceptions, and direct evasions that it has almost ceased to exist as a true rule of law.²

Probably no general principle has resulted in greater divergence of judicial opinion and conflicting decisions.³ A great majority of the States have had this question presented to their highest tribunals, and the conclusions reached by these various Courts has thrown the law on the subject into irreconcilable conflict and confusion. Not only is the law confused among the various states, but within the same state the Courts, in many instances, have reached directly contrary results; although, in fairness to the attempted consistency of the various State Courts, we can say that the cases within the same state usually enunciate the general rule, and then by artistic distinctions and differentiations proceed to reach results wholly unsustainable under the general rule.

Some states have followed the general rule strictly.⁴ On the other hand, a few states seem prone to treat mistakes of law exactly the same as they treat mistakes of fact and grant relief in all cases.⁵ However, it is safe to say that most states still follow the general rule unless the Court can find in the case either (1) a mixed mistake of law and fact, or (2) some special circumstance which, in the opinion of the Court, justifies an exception to the general rule. It is this later group of cases that has thrown the law of this subject into such confusion and uncertainty thereby making it more and more difficult to tell in a particular case just what "special circumstances" the Court will consider sufficient to justify an exception to the general rule.

In enunciating the general rule, the Court in *Heavenridge v. Mondy*⁶ said: "It is settled law, that to entitle a party to reformation of a written instrument, it must be clearly and satisfactorily shown that there was a mistake of fact, *and not law*."⁷ This general rule has been frequently enunciated by the Federal Courts⁸ and the Supreme Court.⁹ The following States have also enunciated and applied the general rule: Georgia,¹⁰ Illinois,¹¹ Indiana,¹² Kentucky,¹³ Michigan,¹⁴ New

2. 34 Cyc. 911.

3. 34 Cyc. 911.

4. *Atherton v. Roche*, 192 Ill. 282, 55 L. R. A. 591.

5. *Bonbright v. Bonbright*, 123 Iowa 305, 98 N. W. 784.

6. 49 Ind. 434.

7. *Italics mine*.

8. *Hoover v. Reilly*, Fed. Cases No. 6677.

9. *Snell v. Atlantic F. & M. Ins. Co.*, 98 U. S. 85, 25 L. ed. 52.

10. 116 Ga. 915.

11. *Atherton v. Roche*, *supra*.

12. 22 Ind. App. 139, 53 N. E. 391; also 49 Ind. 434, *supra*.

13. 19 Kty. Law Rep. 1988, 44 S. W. 986 (Sembler).

14. 18 Mich. 354, 100 Am. Dec. 181.

Jersey,¹⁵ New York,¹⁶ North Carolina,¹⁷ Texas,¹⁸ Utah,¹⁹ Oklahoma,²⁰ Delaware,²¹ Oregon²² and Idaho.²³

As has already been pointed out, a few States have apparently made no distinction between mistakes of fact and mistakes of law,²⁴ and have therefore granted relief in both cases. In the Iowa case of *Bonbright v. Bonbright*²⁵ the Court said: "It is now well settled in this State that a Court of Equity will reform a contract even where, through mistake of law, it does not express the true intent of the parties." Likewise it was held in West Virginia²⁶ that "where there is a mutual mistake between the parties to a written contract or deed, even though such mistake be legal, a Court of Equity will grant relief." Similar holding seems to prevail in Ohio.²⁷

It seems to be well settled in most jurisdictions that where the mistake involves a question of both law and fact, equity can step in and reform the instrument; providing, of course, that the mistake is mutual.²⁸ It seems also to be well settled that where the mistake of law is made by a scrivener when reducing the agreement to writing, there is sufficient cause for equity to step in and grant a reformation of the instrument.²⁹ But it has also been held that equity will never grant reformation when the mistake of law is due to the Court's overruling a prior decision.³⁰

Courts in order to stick to the general rule have held that "bare" mistakes of law furnish no grounds for equitable relief.³¹ But sometimes the Courts after admitting the general rule simply refuse to follow it and proceed to reform the instrument. However, when there are "special circumstances" or equities affecting the case the Courts have little trouble in getting away from the general rule.

Examples of these "special circumstances" are numerous. If one

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15. 50 Atl. (N. J.) 673 (Semble).
 16. 19 App. Div. 552, 46 N. Y. S. 288.
 17. 124 N. C. 622, 32 S. E. 917.
 18. 27 Tex. Civ. App. 262, 66 S. W. 94.
 19. 17 Utah 43, 53 Pac. 215.
 20. 203 Pac. (Okla.) 217.
 21. 117 Atl. (Del. Ch.) 823.
 22. 230 Pac. (Ore.) 812.
 23. 240 Pac. (Idaho) 859.
 24. *Bonbright v. Bonbright*, supra.
 25. 123 Iowa 305, 98 N. W. 784.
 26. *Biggs v. Bailey*, 49 W. Va. 188, 38 S. E. 499.
 27. *Evants v. Strode*, 11 Ohio 480;
McNaughton v. Partridge, 11 Ohio 223.
 28. *Griffin v. Townley*, 69 Mo. 13, 33 Am. Dec. 476.
 29. *Smith v. Owens*, 63 W. Va. 60.
 30. *Keynon v. Welty*, 20 Cal. Rep. 637;
Hardgree v. Mitchum, 51 Ala. 151.
 31. *Norton v. Highleyman*, supra.

party tries to take advantage of the other because of the mistake, equity will almost always give relief on general equitable principles.³² In *Whitmore v. Hay*³³ it was held that a mistake of law caused by the incorrect advice of a notary should be reformed in equity. Likewise where mistakes of law have been induced by the acts of the other party there is grounds for equitable relief by way of reformation.³⁴ *King v. Doolittle*³⁵ goes further in holding that where parties in good faith attempt to convey valid title to a piece of property, but because of a well settled principle of law, of which both parties were ignorant, the title would have failed, then equity will reform the deed so as to convey perfect title. A great many states allow the reformation of an instrument when, because of mistake of law, it fails to conform to the actual bargain made.³⁶ But as to this later proposition there is quite a line of cases holding exactly contra.³⁷

The Courts in granting reformation in some of these "special circumstance" cases have tried to make a distinction between so-called private and public rights in holding that if the mistake of law had to do with private rights then equity could grant relief, but if it was a matter of public rights, then equity would not grant relief. But it is difficult to understand how this private-public rights test could prove either practicable or satisfactory, because in each case presented to the Court it would resolve itself into a private rights case, and we would find equity granting relief in practically all cases.

In reviewing the whole mass of judicial opinion upon this subject the hopeless confusion of the law becomes more and more apparent. However the great majority of the Courts acknowledge the general rule. Some courts accept the rule strictly, others disregard it entirely, while the great bulk of the cases recognize the rule but tend to shy away from it in particular cases. No attempt can be made to formulate any rule that will tell just what "special circumstances" will be sufficient to take the case out of the operation of the general rule, but each case will have to be decided in relation to its own peculiar facts.

Some text writers³⁸ have said that the modern tendency is to get farther away from the general rule, but in view of two very recent

32. *Allen v. Elder*, 76 Ga. 674, 2 A. S. R. 63.

33. 85 Wis. 240, 55 N. W. 708, 39 A. S. R. 838.

34. *Heert v. Cruger*, 14 Misc. Rep. (N. Y.) 508, 35 N. Y. S. 1063.

35. 1 Head (Tenn.) 77.

36. *Corrigan v. Tiernan*, 100 Mo. 276;

2 Pomeroy Eq. Jur. (4th Ed.) Par. 845;

See also: *Bramhall vs. Bramhall*, 216 S. W. (Mo.) 766.

37. *Park v. Blodgett*, 64 Conn. 28.

38. See 34 Cyc. 911.

decisions,³⁹ both giving a strict construction to the general rule, it is impossible to agree that there is any particular well-defined tendency of the Courts at the present time. Furthermore in all probability the conflict and confusion that has existed in the decisions in the past will continue in the future. **HAROLD C. ACKERT, '27.**

39. *Brinton v. Johnson*, 240 P. (Idaho, 1925) 859;
Cushenberry v. Waite-Phillips Co., 240 P. (Kan.) 400.