CONTRACTS - ACCEPTANCE BY MISTAKE

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CONTRACTS — ACCEPTANCE BY MISTAKE — Plaintiff mailed to defendant's agent a written offer to purchase a piece of property. A check was mailed with the offer which was to be the initial payment for the land, if the offer was accepted. In the lower corner of the check was noted, "to be cashed when contract is signed." Defendant's agent acknowledged the check and affirmed the stipulation. He instructed his stenographer not to deposit the check, but she did so, inadvertently. Plaintiff received notice of the check's deposit before the agent attempted to return the credit. Plaintiff brought an action for specific performance. HELD, that this was a valid contract even though acceptance was made by mistake. Hotz v. Equitable Life Assurance Society of the United States, (Iowa, 1937) 276 N. W. 413.
It is a uniform requirement to the existence of a contract that there be a meeting of the minds of the contracting parties. However, it is generally held that the necessary mutual assent is to be measured by an "objective," rather than a "subjective" standard. The important factor is what one party, by his words, acts or conduct, leads the other party reasonably to believe is intended. Sub­jective intent of either the offeror or offeree is of no consequence, with but few exceptions. The issue in the principal case has not been presented squarely to the courts prior to this time. The court's result in the instant case on the legal issue may be accepted on general contract principles, and supported by analogy. If we assume that the offeree led the offeror reasonably to believe that his offer had been accepted, it would seem to follow that there was an acceptance, since the subjective intent of the parties is disregarded. However, this assumption is based on the conclusion that the act of the stenographer in depositing the check, was, in legal effect, the act of the offeree. The offeree can hardly be

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1 13 C. J. 263, § 46 A. (1917).
2 1 WILLISTON, CONTRACTS, rev. ed., §§ 67A, 94 (1936); Eleftherion v. Great Falls Mfg. Co., 84 N. H. 32, 146 A. 172 (1929), where the court held that the question of concurrence of the minds is tested by what the parties give each other to understand, rather than by their actual understanding. Benedict v. Pfunder, 183 Minn. 396, 237 N. W. 2 (1931). See also, Shulman v. Moser, 284 Ill. 134, 119 N. E. 936 (1918), where the defendant signed the contract without reading it. But it should be noted that if the defendant is induced to sign a contract which does not express his intent, he is not bound because he has not led the other to "reasonably believe." J. I. Case Threshing Machine Co. v. Southwestern Veneer Co., 135 Ark. 607, 205 S. W. 978 (1918).

3 But the act must be intended in order that there be assent. Daeges v. Beh, 207 Iowa 1063 at 1066, 224 N. W. 80 (1929), where the court said, "It is not necessary that the parties are conscious of the legal relations which their words or acts give rise to, but it is essential that the acts manifesting assent shall be done intentionally, which means that there must be a conscious will to do those acts." See also, 1 WILLISTON, CONTRACTS, rev. ed., § 66, note 1 (1936); 1 CONTRACTS RESTATEMENT, § 20 (1932).
4 Shulman v. Hartford Public Library, 119 Conn. 428, 177 A. 269 (1935); Security Insurance Co. v. Davis, (Tex. Civ. App. 1931) 45 S. W. (2d) 376; In re Goldberg's Estate, 157 Misc. 49, 283 N. Y. S. 72 (1935), where it was held that a marriage was acceptance of the offer when the woman married on stipulation that she would receive but $5,000 of her husband's estate.
5 In an alleged unilateral contract, the offeree can deny doing the act with intent to accept, since the act standing alone is ambiguous. Hewitt v. Anderson, 56 Cal. 476, 38 Am. Rep. 65 (1880).
6 In cases of "jesting" or "boasting" offers, the courts hold that if the offeror leads the offeree reasonably to believe that he is making a bona fide offer, an acceptance creates a contract. 1 WILLISTON, CONTRACTS, rev. ed., § 21 (1936); Deitrick v. Sinnott, 189 Iowa 1002, 179 N. W. 424 (1920). The principal case relies on the "accord and satisfaction" cases, where a check is sent, noted, "in full satisfaction." See, Minnesota & Ontario Paper Co. v. Register & T. Co., 205 Iowa 1228, 219 N. W. 321 (1928); Bryan, Keefe & Co. v. Howell, 92 Fla. 295, 109 So. 593 (1926). Cases where a mistake in terms of the offer is made by the telegraph company present another analogy. Western Union Tel. Co. v. Shotter, 71 Ga. 760 (1883), which holds the offeror bound by the mistake. See also, Strong v. Western Union Tel. Co., 18 Idaho 389, 109 P. 910 (1910), and cases annotated in 30 L. R. A. (N. S.) 409 (1911).
said to have led the offeror reasonably to believe there was an acceptance unless the act of depositing the check by the stenographer was within her authority as agent of the principal. This authority may be express, implied, or apparent. Express authority was not present as the direction to her was directly contrary to the act. Implied authority is based on the act being an incidental part of the express authority, not mentioned. Neither can the assumption be sustained on the doctrine of apparent authority, or authority by estoppel, since such authority is based on the assumption that the principal has held the agent out as having this authority. Moreover, estoppel presupposes a reliance on the representation. In this case, the offeree did not represent to the offeror that the stenographer had authority to deposit checks, and there can be no reliance where there is no representation. It is impossible to see how it can be said that there was an acceptance in this case by the offeree, since the act leading the offeror reasonably to believe there was an acceptance was the act of a person who in legal contemplation was a stranger to the offeree.

9. Ibid., § 246.
10. Ibid., § 246.