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QUASI CONTRACTS-MISTAKE-RECOVERY OF MONEY PAID IN SETTLEMENT OF DISPUTED CLAIM

QUASI CONTRACTS—MISTAKE—RECOVERY OF MONEY PAID IN SETTLEMENT OF DISPUTED CLAIM—Defendant, who had not heard from her husband during seven years of separation, believed that he had lost his life in the sinking

of a car ferry owned by the plaintiff, because a man employed by plaintiff on the car ferry was registered on plaintiff's books under a name similar to one which defendant's husband had occasionally used. After defendant started suit against plaintiff for damages, plaintiff, believing that the deceased was the husband of the defendant, paid $4000 to defendant and received a release of all claims. Subsequent investigation, made after inquiry by the real wife of the deceased, revealed that defendant's husband was still alive and that the deceased was in no way related to the defendant. In an action at law to recover the money thus paid, it was *held* that the money was paid under a mutual mistake of fact as to the identity of the deceased and could be recovered, notwithstanding that it was paid in compromise of a pending suit and that plaintiff was negligent in not discovering the truth before payment. *Grand Trunk Western R. R. v. Lahiff*, (Wis. 1935) 261 N. W. 11.

Mistake of fact is a well recognized ground of recovery of payments both in equity[1] and at law.[2] But the operation of mistake doctrines is restricted by the independent and countervailing policy in favor of extra-judicial settlement of disputed claims.[3] It is not too clear on the decided cases how far mistake can invalidate compromise agreements. Where the fact is one as to which the parties are in dispute, the compromise is an effective discharge, even though one of the parties later discovers that his original contention was correct.[4] Likewise, where the parties are conscious of uncertainty or doubt as to the existence of a fact material to liability, the general policy involved in the settlement of disputed claims will require an assumption of risk as to the fact which had been involved in doubt.[5] The serious question arises where, as in the principal case, some uncertainty existed as to a particular fact, but that uncertainty was removed prior to the execution of the compromise agreement.[6] An earlier Michigan case[7] in this situation apparently came to the conclusion that an assumption of risk was necessarily involved, even though investigation had in the meantime brought both parties to a clear, though erroneous, conviction as to the fact in question. There is dictum in the

[1] Oxenham v. Mitchell, 160 Md. 269, 153 A. 71 (1931); Thompson v. Currier, 70 N. H. 259, 47 A. 76 (1900); Epes v. Williams' Admr., 89 Va. 794, 17 S. E. 235 (1893). On rescission for mistake of fact, see comment in 13 CAL. L. REV. 246 (1925). Also see cases collected in 46 L. R. A. (N. S.) 279 (1913).

[2] Kane v. Morehouse, 46 Conn. 300 (1878); Chicago, etc. R. R. v. Malleable Iron Range Co., 187 Wis. 93, 203 N. W. 738 (1925); United States v. D'Olier Engineering Co., (D. C. Pa. 1914) 215 F. 209. See cases collected in 87 A. L. R. 649 *et seq.* (1933). Also see WOODWARD, THE LAW OF QUASI CONTRACTS, § 16 (1913).

[3] See cases cited in notes in 25 L. R. A. (N. S.) 287 (1910), and 13 L. R. A. 601 (1891).

[4] Progressive Life Ins. Co. v. Shope, 190 Ark. 927, 82 S. W. (2d) 8 (1935); Sears v. Grand Lodge A. O. U. W., 163 N. Y. 374, 57 N. E. 618 (1900).

[5] Dalpine v. Lume, 145 Mo. App. 549, 122 S. W. 776 (1909); Kowalke v. Milwaukee Electric Ry. & Light Co., 103 Wis. 472, 79 N. W. 762 (1899); Zibilich v. Rittenberg, 18 La. App. 628, 139 So. 309 (1932).

[6] Colorado Milling & Elevator Co. v. Howbert, (C. C. A. 10th, 1932) 57 F. (2d) 769; Newell v. Smith, 53 Conn. 72, 3 A. 674 (1885); Johnson v. Saum, 123 Iowa 145, 98 N. W. 599 (1904).

[7] McArthur v. Luce, 43 Mich. 435, 5 N. W. 451 (1880), discussed in WOODWARD, THE LAW OF QUASI CONTRACTS, § 17 at p. 22 (1913).

principal case to the effect that parties who reach a compromise agreement after having been conscious of an uncertainty or want of knowledge are precluded by the agreement from reasserting their former contentions on discovery of a mistake of fact. But the language of the court seems to limit the effect of that principle to cases where there is little or no attempt to reach the truth of the matter before compromise,[8] thereby making a more reasonable application of the doctrine of assumption of risk than was made by the Michigan court. In the principal case, doubt in the minds of the parties as to the subject of the mistake had been wholly removed by the time of the settlement. The case was properly held to be one where the mistake related to a fact outside the range of doubt or dispute, so that ordinary doctrines of mistake applied. From this conclusion it also followed that negligence in failing to discover the mistake was no obstacle to recovery.[9]

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[8] Kowalke v. Milwaukee Electric Ry. & Light Co., 103 Wis. 472, 79 N. W. 762 (1899); Dalpine v. Lume, 145 Mo. App. 549, 122 S. W. 776 (1909); New York Life Ins. Co. v. Chittenden & Eastman, 134 Iowa 613, 112 N. W. 96 (1907).

[9] Chicago, M. & St. P. R. R. v. Malleable Iron Range Co., 187 Wis. 93, 203 N. W. 738 (1925); Simms v. Vick, 151 N. C. 78, 65 S. E. 621 (1909); The Kingston Bank v. Eltinge, 40 N. Y. 391, 100 Am. Dec. 516 (1869).