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Accident and Mistake as Grounds for Relief in Equity

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ACCIDENT AND MISTAKE
AS GROUNDS FOR RELIEF IN EQUITY.

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Thesis presented by
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for the Degree of LL. B.

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1896.
The purpose of this article is to treat of the nature of the accidents and mistakes which will give rise to the exercise of equity jurisdiction. No attempt has been made to discuss the remedies incident to these classes of cases. Though the aid of equity has been granted for accidents and mistakes for several centuries, there yet remain many doubts and unsettled principles. It will be the writer's task to seek to clear these doubts and reconcile many of the conflicting adjudications; to formulate general tests, whereby it may be seen what cases come within, and those that are beyond, the jurisdiction of equity courts.

To enable the reader the better to understand the subject as complete and correct a definition as possible of each branch of the subject will be given, and this will be followed by an analysis and explanation viewed in the light of the discussions of this country and of England.

The subject proper, then, will be begun with a definition of an accident.
CHAPTER I.

ACCIDENT

In the sense in which accident is used in equity it may be defined as an unforeseen and injurious event, occurring external to the parties affected by it, and not attributable to their mistake, negligence or misconduct; and whereby either party, contrary to his own wishes or intention, loses some legal right, or incurs some legal obligation, and the other acquires a corresponding legal right, which, if under the circumstances, it were enforced, would be a violation of good conscience.

It will be seen that accident relates to facts wholly external to the parties, and refers to some event which happened after the transaction took place and which caused a change in the rights and liabilities of the parties, neither expressed nor contemplated by the parties at the time of making the transaction in question. Formerly it was understood that these facts were confined to act of Providence. This is not true today, and strictly speaking never was true. Mr. Story expresses the idea when he says that accidents extend to unforeseen events, misfortunes, loses, acts or omissions, which are not the result of negligence or misconduct of the parties. He has, however, expressed himself in terms that are too broad and comprehensive to be correct, for it is obvious that his classifications include many cases of mistake.
It must not be understood that equity will afford relief in all cases, upon merely showing to the court the accident. It must further appear that the parties have not been guilty of any negligence, or of any careless or thoughtless dealings, whereby they, or either of them, have involved themselves in unforeseen legal relations. (Sims v. Lyle, 4 Wash. C. C. 320)

Nor will equity interfere when the parties have a full and adequate remedy at law; this is based upon one of the well known maxims of equity; or if power has been bestowed upon the law courts by statute, to take cognizance of the accident, equity will be excluded. (Hall v. Hall, 43 Ala. 488)

So in cases of contract where the party has unconditionally agreed to perform his part, he can find no relief in equity, if by accident the subject matter is destroyed, or he is himself incapacitated. For instance, if a party unconditionally agrees to build a house, and before the same is finished it is by accident destroyed; he must suffer the loss and rebuild. This is due partly to the rigid rule of law which requires parties to fulfill absolute promises, and partly to the person's neglect in not inserting conditional clauses.

This latter class of cases must not be confused with forfeitures for the non-performance of a covenant by a certain fixed day; equity will grant relief when the breach can be compensated in damages. The reason for this distinction is clear; in the first case the party seeks to avoid the obligation imposed by his agreement, as in the common case of
the lessee seeking to avoid the payment of rent after accidental destruction of the premises. But in the second case it is not the obligation, but the penalty or forfeiture which he seeks to avoid, and equity will aid him.

If the party against whom relief is sought is upon equal equities, and entitled to equal protection with the other party, equity will not exercise its jurisdiction. In a case where an imperfect will was sought to be established against an innocent heir at law, equity refused to take cognizance because the heir was entitled by law to possession, and enjoyment, of the estate. Another case of frequent occurrence is that of a bona fide purchaser for value and without notice; an equity of which he was unaware cannot be set up against him.

It is more difficult to tell of what cases equity will take cognizance than to point out the few well defined instances which come within the jurisdiction of equity. No general classification of cases can be made which will be comprehensive enough to include all the instances within the scope of equity. A discussion of the cases in which aid may be obtained from equity will now be taken up.

Relief may be had in cases of lost instruments, sealed or otherwise; when penalties have been incurred; when powers have been defectively executed.

Under this first head come deeds, bonds, court records, promissory notes, and wills. But equity will not assume jurisdiction in all cases of this kind. It must be shown
by affidavit that the instrument was lost and an offer of indemnity, if one is necessary, is made, and then only when there is proof that there is no remedy at law or no remedy which is adequate or adapted to the best adjustment of the rights of the parties.

The jurisdiction of equity is most frequently invoked in the case of loss of sealed instruments. The jurisdiction was at first based upon two grounds,—first, because the common law required profert of all sealed instruments to entitle the plaintiff to maintain his action. This, of course, was impossible when a loss occurred. Equity never followed the law procedure in requiring a profert, so the parties natural resort was to equity. Second, because it was but just that, for the protection of the defendant the plaintiff should indemnify him against any future loss or liability by reason of a subsequent finding of the instrument. A law court could not properly or effectually demand the indemnity; while it certainly is within the province of equity to decree a bond of indemnity. Though it is true that profert is dispensed with, yet this, in theory, does not affect the jurisdiction of equity. (Livingston v. Livingston, 4 John. Ch. 294; Force v. City of Elizabeth, 27 N. J. Eq. 408)

A distinction is made in cases of sealed instruments between bills for discovery and bills for relief. In the first case equity is only supplemental to law, and no indemnity is required upon filing the bill. It cannot, therefore, deprive the law courts of their jurisdiction. But if
the bill prays for relief, or for a discovery and relief, then the bill seeks to change the forum of law to equity and the law is deprived of any further control in the matter.

The next instance of lost instruments is that of promissory notes, bills of exchange and checks. Here again equity assumes jurisdiction on the ground of indemnity. The loss must have occurred before maturity and it is immaterial whether the note is payable to bearer, endorsed in blank, or not endorsed at all. There is a difference of opinion in case of non-negotiable notes, many of the jurisdictions holding that since the note was a mere evidence of debt between the parties, and an action at law could be maintained without requiring any indemnity, and in case of assignment of such a note the assignee takes subject to all the equities maintainable against the original assignor, equity had no jurisdiction. This exception is not supported by a majority of the American States, nor should it be, for the party has the right to have delivered to him the original bill, as a receipt of payment; furthermore the defendant may, by lapse of time or other casualties, be prevented from establishing his equities, and he will, in any case, be put to a great inconvenience to set forth such equities. (Arckman v. Painter, 11 W. Va. 386; Allen v. Smith, 29 Ark. 74; Force v. City of Elizabeth, 27 N. J. Eq. 408; Hardman v. Rattenby, 53 Ga. 36)

In New York, and in all the states which have adopted the code procedure, jurisdiction is given to the law courts. Section 1917 of the New York Civil Code provides that oral
evidence may be introduced to prove the contents of a note or bill which has been lost, and an undertaking must be given.

In case of court records the rule seems to be uniform to the effect that equity cannot supply those lost by accident. (Clingham v. Hopkie, 78 Ill. 152; Kean v. Jordan, 13 Fla. 327) But Grant v. Lynch (45 Ala. 204) seems to circumvent this in part by saying that equity may, in a suit between the same parties, confirm by decree the title and grant other necessary relief, when the title in question depended upon a judicial sale and the records ordering the sale have been lost by accident.

Among the first cases in which equity exercised jurisdiction were penalties and forfeitures. As early as the reign of Phillip and Mary bills were filed in equity praying for relief expressly on the ground of accident. But by the growth of equity it has general jurisdiction in nearly all cases of this nature, no matter upon what ground the relief is sought, so that it is no longer of much importance to know what equity will take cognizance of these cases on account of accident. Care must be taken, however, to distinguish penalties from liquidated damages; from agreements to reduce a debt upon the prompt payment of the agreed sum; and from agreements to accelerate payment of an existing debt; for in neither of these instances will equity interfere.

While equity willingly aids a party seeking to avoid a penalty incurred by accident, it will never aid in the enforcement of a penalty or forfeiture, by reason of the maxim
that he who comes into equity must come with clean hands.

The cases arising from the defective execution of powers forms an interesting group, for the correction of which equity will take jurisdiction. But as these cases come up again in Mistake, the discussion of them will be reserved for that time. Suffice it here to remark that whatever is then said concerning Mistake, applies equally well in cases of Accident.

The above groups are the only attempts at classification of these cases which may be practicable. There are still many miscellaneous instances, some of which it will be interesting to examine.

Thus, where a person in a fiduciary relation has paid debts, distributive shares, and part of the legacies, relying upon the sufficiency of the estate, which is subsequently rendered insufficient, through no fault of his own, by theft, destruction, or other unusual occurrence, equity will relieve him from liability.

In Pooley v. Ray; Adm. (IP. Wm. 355) a mortgage was paid by Ray in obedience to a decree of court; it was afterwards discovered that about one half the sum had been paid. The legatee filed a bill to recover the part paid twice, and equity granted his prayer.

Chancellor Cowper, in Edwards v. Freeman (2 P. Wm. 447) says, that if an executor has paid a legacy on the supposition that the estate is sufficient, and it appears later there were not enough assets, the executor may recover the
legacy paid. In Clough v. Bond administration was granted to a wife and her brother; the proceeds were jointly deposited in a bank; the brother drew out the money and absconded. Equity went so far as to hold the estate of the administratrix's husband liable for the loss arising from the accident.

Equity has interfered to prevent the execution of a judgment obtained when, by accident, the defense could not be set up. Thus, where a person found money on a railroad train and delivered it to the company to be turned over to the loser. Upon failure to do this the finder sued the company and received a verdict. Before the execution the loser claimed the money and the company was allowed in equity to defeat the execution upon the ground that it was an accident that this defendant did not know of the loser's claim at the time of trial. (N. Y. & H. R. R. R. v. Haws, 56 N. Y. 175)

Also, when the plaintiff in an attachment receives a judgment at law, by concealing the validity of the claim, equity will interpose to protect the defendant against the judgment, because he was unable to set up the defense of invalidity. The concealment did not amount to a fraud. (Herbert v. Herbert, 49 N. J. Eq. 70)

When the bill in equity shows that evidence of which the defendant and his attorney were entirely ignorant and which would have materially reduced the judgment, had been discovered after judgment rendered, equity will stay the execution and adjust the rights of the parties. (Cairo & Fulton R. R. v. Titus, 27 N. J. Eq. 102)
There are a few cases of forfeitures which do not properly come under the preceding discussion of that head. When a life policy was to be forfeited after non-payment of a premium, the subsequent insanity of the insured preventing the payment of such premium, was sufficient in equity to prevent the forfeiture. (Wheeler v. Commer. Mut. L. Ins. Co., 82 N. Y. 182) And in cases of forfeiture for non-payment of rent, though the lessee had expressly waived the notice, yet equity said that notice was necessary to make the forfeiture valid and ignorance of this fact as a defense was such an accident as to defeat the forfeiture. (Palmer v. Ford, 70 Ill. 369)

Many specific instances might yet be given in which equity has exercised jurisdiction on grounds of accident, but perhaps it will be more profitable to formulate a general rule or test, as nearly correct as the nature of such a rule will permit. Whenever a party seeking relief has a clear right, which cannot otherwise be enforced in a suitable or adequate manner; or when he would be subjected to an unjustifiable loss, due to no fault or misconduct of his own; or where he has an equity superior to the party against whom he seeks relief; he may then invoke the assistance of equity, whenever such circumstances arise from accident.
CHAPTER II.

MISTAKE

We pass now to the second part of this discussion, Mistake. The courts of equity have, from an early period, exercised its jurisdiction in this class of cases. The first case arose in the time of Edward IV in 1 Cal. 3. In this case it was the intention of the parties to draw a bond for future services, but by mistake the bond read for present services. This was the origin of the doctrine that mistake in sealed instruments could be corrected in equity. The grounds for the jurisdiction in such a case were two,—first, the sanctity of seals at common law forbade the latter from interfering; second, if the law courts did take cognizance of the matter, it would be only to declare the instrument a nullity for want of real consent. This would more frequently work injustice than justice, so equity took the matter in charge and reformed the instrument, conforming it to the real intention of the parties.

Of the various definitions of mistake the following, taken from Pomeroy's Eq. Juris., seems the most complete and accurate:— "Mistake 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 parties to a transaction, but without its
Mr. Story adds surprise, imposition or misplaced confidence, as three other circumstances which produce mistake. This obviously is not correct, since imposition and misplaced confidence more properly belong to fraud, and relief should be sought on that ground. It is only when no element of fraud, either actual or constructive, exists, that relief may be obtained purely on the basis of mistake. The most natural division of this subject, and the one to be followed here, is mistakes of law and mistakes of fact.

A great deal of difficulty and obscurity surrounds the application of that familiar maxim of law laid down in Manser's Case (2 Coke 3), "Ignorantia legis neminem excusat"; to courts of equity. Though it is almost literally enforced at law it loses its rigor to some extent when applied to equity. In consequence of this relaxation two classes of exceptions have become well established,—first, a party is not bound to know of a private statute, or, second, the law of a foreign state or nation. (Hasen v. Foster, 9 Pick. III; Morgan v. Bell, 3 Wash. 556)

From this same laxity of construction the general rule prevails, both in England and America, that equity will allow a relief from a mere mistake of law, when it is within the discretion of the court, and then to be exercised only in the most unquestionable and flagrant cases. (Snell v. In. Co., 98 U. S. 90; Story, I Eq. Juris. Sec. 138; Pomeroy, Vol. II, Secs. 843 - 847; Griswold v. Hazard, 141 U. S. 284)
The United States Supreme Court has by well considered adjudications clearly set forth this distinction in applying the above maxim to suits in equity. In Hunt v. Roumanier Admin. (8 Wheat. 174) a creditor took a power of attorney for the sale of a ship under advice of counsel that that would secure him as well as a mortgage. The debtor shortly afterward died and the power of attorney was revoked by the death. Hunt then sought the equity court to have the instrument reformed. Relief was refused on the ground that the nature of the two instruments was a matter of general law.

In the second case, Griswold v. Hazard (141 U. S. 284) one Durant was arrested in Newport on a ne exeat. Griswold, who was but slightly acquainted with Durant, was asked by his nephew, a great friend of Durant, to give bail. Griswold went to the jail Saturday night for the purpose of giving bail to keep Durant out of jail on Sunday, and on the understanding that the latter would remain within the jurisdiction of the court. The instrument was drawn up by Hazard's attorney and read "to abide and perform the decrees of the court." There was no mistake in drawing the bond, but Griswold, upon reading it, believed that "perform" meant to answer for the appearance of Durant and according to the evidence both parties were mutually mistaken as to the legal import of the words used. The court held that it would be very inequitable to hold Griswold as surety for any decrees which might be rendered against Durant, when his real intention was to answer only for his appearance in court, and he was excused.
from his bond.

At first sight these two cases seem to be in direct conflict, but upon a closer study it will be seen that several plausible theories may, and have been, advanced, seeking to reconcile the two decisions, and not without success. Perhaps the easiest of these explanations is, that in the maxim, "Ignorantia juris neminem haut excusat," the word "juris" means a public law as distinguished from a private right, to which the maxim is claimed to have no reference. This was advanced by Lord Westbury in Cooper v. Phillips, (L. R. 2 H. L. 149 - 170) and again by Lord Chancellor King in the famous case of Lansdowne v. Lansdowne, ( Mosley, 364 ) The facts of the latter case, briefly stated, are,—the plaintiff was the eldest son of the intestate; he had a dispute with the younger brother of the intestate, his uncle, as to who should have the property. They referred the matter to one Hughes, a school-master, who consulted a book called "Clerks' Remembrancer" and advised that the property would never ascend, and farther stated that the property belonged to the younger brother. They therefore agreed to share the land. When the plaintiff discovered the mistake the court allowed him to cancel the agreements and take possession of the whole.

This distinction, notwithstanding authority from which it emanates, cannot justly be sustained. Is not a party made to suffer just as great an inequity in the case of a general law, when relief is refused, as he would in case of
a private right or statute? Why cannot the circumstances which prevent a recovery or remedial equity in case of a public law be applied with equal force and justice in case of a private right? There seems to be no apparent or inherent difference between the two classes of law to warrant the distinction.

The theory advanced by the American jurists, Mr. Bigelow (1 L. Q. Rev. 298) and Mr. Pomeroy, is that in the first case the party plaintiff had the choice of two distinct classes of securities, and he chose, though under mistake, as to the legal import of the security, the one less apt to secure him, and having done so the courts justly refuse to create a new instrument, or contract, between the parties. But in the later case the party had no choice; he was not mistaken as to the legal import of the instrument he intended to execute, namely, a bail bond; but he was mistaken as to the legal import of the terms used. In this case to reform the bond was not to create a new contract for the parties, but to carry out the contract the parties really intended to make. This certainly is easily deduced for a comparative study of the cases and is in harmony with the policy and practice of courts of equity. That is, that equity will enforce the intent as gathered from the evidence, but will never create new obligations between the parties. There is yet another distinction which may be drawn, and the one which seems to be the true criterion to determine equitable jurisdiction in questions of this character. It may be thus stat-
Equity will not interfere to grant relief in case of mistake of law, pure and simple, but it will very readily seize upon any additional circumstances, or equities, for the purpose of acquiring jurisdiction and granting the proper relief.

Mr. Pomeroy (Sec. 849) ventures to give the following as a criterion to determine when equity will interfere in cases of private right. "Whenever a person is ignorant or mistaken with respect to his own antecedent or existing private rights, interests, estates, duties, liabilities, or other relations, either of property or of contract, or of personal status, and enters into some transaction, the legal scope and operation of which he wrongly comprehends and understands, for the purpose of such assumed rights, interest, etc., or for carrying out such assumed duties, or liabilities, equity will grant its relief, defensive or affirmative, treating the mistake as analogous to, if not identical with, a mistake of fact." The writer refrains from further comment than to say that this rule is supported by a long line of eminent decisions and accords with the more general rule just previously stated.

It is well to consider here some of the specific instances in which relief has been sought in equity, for the purpose of learning what amounts to a mistake of law, and in what general class of cases equity will, or will not, interfere. In Webb v. Alexandria (33 Grat. 168) the defendant, a city in Virginia, issued bonds in lieu of others which had
been sold by order of the court under the confiscation act. The United States court held such bonds invalid. The city then sought to restrain Webb from transferring some of the bonds in his possession, and to have the same cancelled. The court granted the relief upon the ground of surprise and that the city ought not to be held to know what the court would decide in so novel a case. The New York courts refuse to grant relief upon grounds of surprise, saying that to do so would open the gates to a ceaseless flow of litigation. (Jacobs v. Morange, 47 N. Y. 57) And generally the cases are few where relief has been granted for surprise. As this Virginia case indicates, the courts will sometimes grant relief when the law is very doubtful or undecided. This was first recognized by Lord Chelmsford in the noted case of Beaucamp v. Winn, (L. R. 6 H. L. 223 - 224) when he said that though the court has established a rule for the construction of a deed, yet ignorance of what that construction would be ought not to deprive the party of relief for his mistake.

When parties are in doubt as to what their legal rights are, and with a view of peaceably adjusting the same, enter into a compromise, neither party will be heard to complain upon discovering that his surrendered rights were valid and capable of enforcement. And so in family arrangements, equity will not interfere, even though made upon grounds which would justify interference in case of strangers. (Westby v. Westby, 2 D. & W. 503; Shartel's Appeal, 64 Pa. 25)

The courts even go so far as to say that the parties
need have no right at all, if they only honestly believe that
either has, and being in doubt, enter into a compromise.
Both the English and American doctrines are illustrated by
the leading case of Rullen v. Ready (2 Atk. 587). There sev-
eral children, believing that all were equally entitled to
property left by will, divided the same. But one of the sons
had married and this was made a ground of forfeiture by the
will. The fact of the marriage was known, but the legal con-
sequence was not. The court refused to set aside the arrange-
ment.

It is too well settled that money paid under mis-
take of law cannot be recovered, to need any farther discussion
here.

We pass now to a consideration of the second divi-
sion of this head,—mistake of fact. A mistake of fact is a
mistake not caused by the neglect of a legal duty on the part
of the party making the same, and consisting in an uncon-
sciousness, ignorance, or forgetfulness of a fact, past or
present, material to the transaction, or in the belief in the
present existence of a thing material, or in the past exist-
ence of a thing not now existing. (Kerr—Fraud and Mistake,
Sec. 406)

The exercise of jurisdiction of equity in cases of
mistake of fact is the reverse of that in cases of mistake
of law, for in the former case it is the exception for the
court to withhold its jurisdiction. So that it would nec-
 essitate a complete digest to give all the instances in which
the aid of equity may be had. It will be better to consider the cases from a negative standpoint, considering only those in which no relief will be granted, always keeping in mind the test laid down in the Illinois cases, to the effect that the jurisdiction depends upon the adequacy of the remedy at law.

In Foster v. Clark, (79 Ill. 225) the master in chancery, by mistake, omitted a parcel of land in the deed given under a mortgage foreclosure. The correction of this mistake was purely equitable. But in Croft v. Dickens, (78 Ill. 131) the court refused to correct a mistake in an attachment bond, because the party would have by motion amended the bond at common law, and having failed to avail himself of the remedy at law, he cannot secure the aid of equity.

There may be two very general classes of mistake made, of this nature, one as to the subject matter, the other as to the terms of the contract. In the first instance the parties have fully expressed their intentions, but are mistaken as to the existence, size, shape, amount, price, or identity of the subject matter. In the second case they have agreed to terms concerning a proper subject matter, but by fault in reducing the terms to writing a mistake occurs as to the addition, omission, or misunderstanding of the terms used. In one case the intention in founded upon error - in the other the intention is erroneously expressed. The proper remedy would be recission in the first, and reformation in the second, case.
But to be entitled to relief it must be shown that the case comes under the general rule as limited by the following qualifications.

(I) The fact must be material, for equity—no more than law—will not trouble itself about little things. To be material it must go to the very essence of the contract and materially affect the rights of the parties.

(2) The party seeking relief must not be chargeable with any negligence connected with the mistake. The New York doctrine is that though the party is negligent he may recover provided that he leaves the other party in as good a position as he was before the mistake. (Maher v. Mayor, 63 N. Y. 455)

(3) When one party is acquainted with the facts and innocently lets the other fall into mistake, no relief can be had unless the party was under legal obligations to disclose the facts.

(4) When the parties have equal means of knowledge and deal at arm's length with each other, they must abide the consequences of any mistakes.

(5) The mistake must be mutual. "Mutual" is qualified to mean that if the party seeks to reform, it must be mutual; if unilateral he may only rescind. (Lyman v. United Ins. Co., 17 John. 373; Nevins v. Dunlap, 33 N. Y. 676)

The general ground upon which these distinctions are based is that mistakes or ignorance of facts are proper subjects for relief only when they constitute a material ingredient to the contract, or disappoint the parties' intention
by error, or where it is inconsistent with good faith, or violates the obligations imposed by law upon the conscience of the parties. But where the parties are on an equal footing, and have equal facilities for knowing all the facts, and there is no surprise or imposition, there is not a proper ground for the interference of equity. This latter class includes those cases where doubt and uncertainty about the subject matter exists, and extends to family arrangements and compromises, unless one party gains an unconscionable advantage over the other. Nor will equity act to relieve a party mistaken as to his expectations, or benefits arising from the agreement, or to his motives for entering into the same. The New York Supreme Court has a peculiar doctrine somewhat along this line, decided in Davis v. Kling, (74 Hun. 598 - 1894). It is, that a person may be mistaken as to an expectation, or a fact expected to occur in the future, as well as to a fact already occurred. It is an extreme case and the above was the only theory whereby the court could render equity to the defendant, to which he was obviously entitled.

There is only one class of cases under this head to which special attention need be called; namely, the defective execution of powers. The defects which are remediable are of two kinds, first, where the donee has executed one instrument, from which the intent to execute the power may be inferred, but the instrument itself is informal or inappropriate, (Tollet v. Tollet, 1 Smith's Eng. C. 254); second, where there is a defect in the execution of a formal instru-
ment. (Chance on Powers, Secs. 2878, 9, 86, 90)

It will be seen from the above that the defects are made formal defects and that some instrument is requisite, so equity will not interfere in the non-execution of a power, as in the case where a party merely expresses his intention to execute the power without taking any farther steps to indicate the fulfillment of his intention.

The citation under the first head is the illustrative case. The donee executed to one Tollet a power by will, which should have been executed by deed, and the courts sustained the execution; farther stating that the reverse would not be aidăd in equity, for by a deed the donee would put beyond his power to control the subject matter of the power, and would be unable to properly execute the same.

Instances of the second class are very numerous, arising from the omission of a seal, or a signature, or a too small number of witnesses. The anomalous character of this class of mistakes consists in the definiteness of the specific cases in which equity will interfere to aid certain persons. It will exercise jurisdiction in favor of a bona fide purchaser, including mortgagor and lessee, of creditors, of a wife, of a legitimate child, and of a charity. On the other hand, relief has been denied when the execution was in favor of the donee himself, of a husband, illegitimate child, brother or sister, or any remote relative, or mere volunteer or stranger. In short, jurisdiction will be entertained only in the five cases given above. (See cases in Shell's Eq., p 362)
The single exception is in favor of a volunteer, when by accident the formal execution was rendered impossible. (Fonb. Eq. 338, note (h))

The general rule may be stated that if the party seeking relief has a greater equity, and the defect is not of the essence of the power, and the execution thereof will not defeat the real intent of the donee, equity will lend its aid to a meritorious party.

Equity has always been very free to relieve against mistakes in wills, when they are apparent on the face of the instrument, or may be shown by the proper construction. But the evidence in such cases must be very clear and unequivocal. The rule was but recently laid down in the New York Supreme Court, that equity will not relieve against a mistake of fact unless it is made to appear by a greater preponderance of evidence than is required in other civil actions. Manhattan Elevated R. R. v. Johnson, 84 Hun. 183 - 1895)

In closing, the writer would say that he has attempted to set forth clearly and forcibly the general doctrines and rules governing the subjects under consideration. While he regrets that the time and space would not allow a fuller discussion of this interesting branch of equity jurisprudence, yet he will feel well repaid if the reader is to any extent enabled to free himself of any doubts relative to these subjects by the perusal of this article.