THE STATE *vs.* PAUP ET AL.

It is an established rule, that every one is presumed to know the law; and the maxium *ignorantia juris non excusat*, is applicable to civil as well as criminal jurisprudence, and recognized in courts of chancery as well as at common law.

A departure from it, under any circumstances, should be distinctly marked, and so guarded as to leave the general rule unimpaired.

Instances in which the courts have departed from the rule (a number of which are referred to) are based upon the hardship of the peculiar cases, and the facilities for proving them, rather than principle.

Equity will relieve from a contract made by the parties under mutual mistake, not of the existence of a law, but of its legal effect.

Appeal from the Chancery side of the Pulaski Circuit Court.

BILL for injunction, filed by Paup and others against the State. The facts of the case, as condensed in the brief of Mr. PIKE, and found to correspond with the record, are substantially as follows:

By the act of Congress of 2d March, 1827, there was granted to the Territory of Arkansas, a quantity of public land, not exceeding two entire townships, for the use of a Seminary of Learn-

ing: "To be located *in tracts of land not less than an entire section,* corresponding with any of the legal divisions into which the public lands are authorized to be surveyed."

Afterwards, these lands were vested in and confirmed to the State.

On the 28th December, 1840, all the lands so granted had been selected and located, except 5 9-16 sections: and on that day an act of assembly passed, appointing the Governor agent of the State, with power to sell and dispose of such lands as so remained unlocated, "in legal subdivisions of not less than one half quarter section," with authority to purchasers so to select and locate.

Sales to be made on a credit of one, two, three, four and five years, secured by bonds to the Governor. *Acts of* 1840, *p.* 95.

On the 20th December, 1841, the Governor published an advertisement in the public papers, that he would sell at public auction, the 5 9-16 sections so unlocated, on the first Monday of May, 1842, "in legal subdivisions of not less than one-half quarter section," with authority to the purchasers to select and locate the same on any unappropriated lands of the United States within the State; provided such locations be not made contrary to law—price not less than $6 per acre.

Under this act and proclamation, (the 9th section of the act authorizing sale by the Governor at that price for six months after they were offered for sale,) John W. Paup purchased from the Governor, on the 15th August, 1842, the right to locate five hundred and twenty acres of land, at $6.12½ per acre, or, in all, $3,185, part of such unlocated lands; executed his bonds on the 24th September, 1842, to the Governor, with security, five in number, each dated 24th September,1842, each for $637, due at one, two, three, four and five years; and the Governor gave him a deed, or rather assignment, and power to locate said 520 acres.

Under this grant, Paup selected the following lands, viz:

The s. w. frl. qr. of sec. 18, 116.61 acres,

The s. e. qr. of sec. 19, 160 acres,

The w. ½ of the n. e. qr. of sec. 19, 80 acres,—all in T. 14 S., R. 27 W.

The n. e. qr. of sec. 24, 156.50 acres—in T. 14 S., R. 28 W.

In all, 517 41-100 acres.

The Land Officers at Washington, Arkansas, refused to allow these locations, as not warranted by the grant. Suit was brought on the bonds, and Paup filed his bill for relief, averring these facts, that he purchased, under assurances contained in the act of Assembly and proclamation of the Governor, that he could locate *unconnected* eighty acre tracts; and that the General Land Office had not confirmed his locations. Perpetual injunction was decreed.

The defence set up to the bill was, that Paup was not induced, by the act of Assembly or proclamation of the Governor, to suppose, nor did *they* act on the supposition, that isolated 80 acre tracts could be located: that a quantity less than an entire section could, by law, and under the decisions of the Secretary of the Treasury, Attorney General and Commissioner of the General Land Office, be entered, if the tracts were contiguous, for that resulted from the fact that there were 5 9-16 sections to locate: That if the State once located 640 acres in a body, she could after locate any less quantity, contiguous to it: even in half quarter sections—and without regard to quantity. Instances of confirmations of such locations under the act in question and a similar act, are stated in the answer.

The answer also avers that there were unappropriated lands in Arkansas, on which the 520 acres could have been located, so as to be confirmed.

And finally the act of Congress of 23d June, 1836, is relied on, which confirmed the previous locations under the grant in question.

On the 20th June, 1842, Paup wrote to the Governor, that as he had already purchased and located 640 acres, he could legally locate any contiguous quantity less than a section, and would take the whole residue unlocated, if it was less than a section, say 560 acres or even a little under.

The 640 acres were selected by Paup, June 20th, 1842, and were

W. ½ of sec. 19;

S. E. ¼ of sec. 13, and

S. W. ¼ of sec. 17—all in T. 14, S., R. 27 W.

On the 18th January, 1838, the Secretary of the Treasury stated to the Commissioner of the General Land Office, that he should "be disposed to authorize the selection of tracts of less quantity than an entire section, corresponding with the legal divisions in all cases where the aggregate constituted a contiguous quantity of 640 acres and upwards, and reject such detached locations as fell short of that quantity." And also, that the act of 23d June, 1836, confirmed all locations made previous to its passage, under this grant.

On the 23d May, A. D. 1842, Governor Yell wrote to the Commissioner of the General Land Office, in regard to the locations of the 5 9-16 sections under this grant, that the Land Officers at Washington, Ark's, expressed some doubt whether locations could be made in quantities less than a section: and requested that the Register and Receiver might be directed to withhold from sale the lands so located.

The Commissioner responded, on the 14th June, 1842, as follows—that, "understanding from your letter above, and that of the same date to the Hon. E. Cross, that the selections had been made in tracts *of less than a section in quantity,* no time was lost in advising that gentleman, that they could not be sanctioned without a special act of Congress. The law of the 29th January, 1827, making the grant to the State, directs that the selections be made in tracts of land of not less than an entire section, corresponding with any of the legal subdivisions into which the public lands are authorized to be surveyed: which has heretofore been so construed as to admit the locations of tracts of legal subdivisions, containing a less quantity than an entire section, when the aggregate quantity so located forms a contiguous tract of 640 acres and upwards." His letter of June 9, 1842, to Hon. E. Cross, states the same construction.

In his letter of 3d August, 1842, the Commissioner states the same construction of the grant.

In his letter of October 14, 1843, he says: "The selections are required to be made in entire sections or in half sections, by taking the north or south or east or west halves of adjoining sections, or they may be made by taking tracts corresponding in all cases with the legal subdivisions, in halves, quarters or eighths of sections, where the aggregate of the tracts so taken constitutes a contiguous quantity of 640 acres and upwards."

The testimony of the Register and Receiver at Washington proves that Paup thought he could locate in 80 acre tracts, and purchased under that impression and belief, to save his improvements: that the land officers refused to allow and never did allow any location of less than an entire section; and that the Governor himself acquiesced in, and admitted, the correctness of this decision, in June, 1842.

The State appealed.

CUMMINS for the State. It is very clear that the declarations of the party himself are not competent evidence in his favor to prove the objects of the purchase and the reasons therefor. (2 *Phil. Ev.* 154.)

It is a fundamental maxim, essential to the enforcement of all law, civil or criminal, and of course is as applicable in chancery as at law, that knowledge of the law shall be imputed to every one. *Broom's Leg. Max.* 122. 1 *Story's Eq. sec.* 111, *and notes;* and a party cannot, therefore, set up ignorance of the law to avoid his contracts. Where the mistake is one merely of law, no relief can be had. (1 *Sto. Eq. sec.* 113.) Strictly speaking, there seem no exceptions to this rule: and, that what are called exceptions to the rule, depend really upon some misapprehension, imposition, undue influence or confidence, or surprise. 1 *Story's Eq. sec.* 120 *to* 132.

PIKE, contra. Upon the point whether equity will relieve against ignorance or mistake of the law, where the object of the

contract has been defeated, referred to *Story's Eq. secs.* 111 to 139, and after classifying and commenting upon the cases cited by Story, and also those of *Drew v. Clarke, Cook* 374. *Champlin v. Laytin,* 1 *Edw.* 467. *Hitchcock v. Giddings,* 4 *Price* 135. *Stapylton v. Scott,* 13 *Ves.* 425. *Hall v. Reed,* 2 *Barbour Ch. R.* 505. *Lawrence v. Beaubien,* 2 *Bailey Law R.* 623. *Lowndes v. Chisolm,* 2 *McCord* 455. *Hopkins v. Mazyck,* 1 *Hill's Ch. R. Northross v. Graves,* 19 *Conn.* 584. *Farmer v. Arundel,* 2 *W. Bla.* 824. *Neeson v. Clarkson,* 4 *Hare* 97. *Pitt v. Pitt,* 1 *Turn. & Reese,* 180; he drew the following deductions:

First: That there is great confusion among the cases, and great uncertainty as to principles: and that the whole body of jurisprudence on these points, fails to establish any firm and well digested rule or set of rules on the subject.

Second: That it is very clear that compromises, and family arrangements and releases of litigated rights, and other acts and instruments of a like kind will not be interfered with on account of a mistake of law.

Third: That a person cannot avail himself of his mistake of law to obtain security which, through such mistake, he omitted to take when he could have had it; or to insert into an agreement, terms more favorable to himself, omitted under like mistake.

Fourth: That the courts have settled pretty firmly on the doctrine that money paid under a mistake of law cannot be recovered back; a doctrine repugnant to good sense, and really based upon a misunderstanding of the civil law.

Fifth: That it is very far from being settled that a promise can be enforced, when it is based exclusively on a mistake of law, going to the whole consideration: and that by the Civil Law such a promise clearly cannot be enforced; and that the latter cases have, in fact, fully adopted the principles of the civil law on this point. It may be considered settled, that a promise made under a mutual mistake of law has not the consent necessary to sustain it, and is not enforceable, especially where to prove the mistake proves there was really *no* consideration for the promise.

If the mistake here were then clearly one of law alone, which it is not, relief would still be given against it, upon the clearest principles of equity and justice.

Mr. Justice WALKER delivered the opinion of the Court.

The grounds of relief relied upon in this case, are that the contract, when entered into, was intended to effect a particular object, which, owing to a misapprehension of the law, has failed, and is of no value to the purchaser.

Every one is presumed to know the law, and whether this is true or false in point of fact, like most other great principles or starting points in science, it must be received and acted upon as true. The maxim, *ignorantia juris non excusat,* is applicable to civil as well as criminal jurisprudence, and recognized in courts of chancery as well as at common law. A departure from it, under any circumstances, should be distinctly marked, and so guarded as to leave the general rule unimpaired. Judge STORY and Chancellor KENT, have each elaborately discussed this subject. The first, in his Commentaries on Equity, thus closes his investigation, at page 151, vol. 1: "We have gone over the principal cases which are supposed to contain contradictions of, or exceptions to the general rule, that ignorance of law with a full knowledge of the facts, furnishes no ground to rescind agreements, or to set aside solemn acts of the parties. Without undertaking to assert that there are none of these cases which are inconsistent with the rule, it may be affirmed that the real exceptions to it are few, and generally stand upon some very urgent pressure of circumstances."

Chancellor KENT, upon the same subject, says: "Courts do not undertake to relieve parties from their acts and deeds fairly done, though under a mistake of law. Every man is to be charged, at his peril, with a knowledge of the law. There is no other principle which is safe and practicable in the common intercourse of mankind." *Lyon v. Richmond,* 2 *John. Ch. Rep.* 60.

Judge CATRON, in the case of *The Bank of the United States v. Daniel et al.,* 12 *Peters* 55, said: "The remedial power claimed

by courts of chancery to relieve against mistakes of law is a doctrine rather grounded upon exceptions than upon established rules."

It would be a useless consumption of time to multiply authorities upon this subject: as a rule to be cherished as of vital importance in the administration of the law, there can be no doubt; and exceptions, when made, should, for their merits and peculiar circumstances, clearly show the necessity of an exception.

We will next give attention to the cases which have been held exceptions to this very general rule.

In the case of *Bingham v. Bingham,* 1 *Ves.* 127, the plaintiff purchased property to which, by law, he was entitled, but was ignorant of his legal right. Upon a bill filed for that purpose, it was decreed that the purchase money should be refunded to him.

Willan v. Willan, 16 *Ves.* 72, was a case where relief was granted because it was, as said by Lord ELDON, impossible that the parties could have understood the effect of the covenant: he said it was a matter of surprise upon both, and decreed a rescision of the contract.

In *Executors of Hopkins v. Masyek et al.,* 1 *Hill's Ch. Rep.,* the court distinguished between ignorance and mistake of law. Ignorance, says the court, cannot be proved, and for that reason, the court cannot relieve against it. But not so in regard to a mistake of Law. That is sometimes susceptible of proof, and in conclusion they say, "mistakes, as to matters of fact, have always been regarded as relievable upon clear, full and irrefragable proof, and mistakes of law ought to be upon the same footing, when the proof is equally certain."

In *Hitchcock v. Giddings,* 4 *Price* 135, the Court of Exchequer decided that, where a vendor, through ignorance and mistake, agreed to sell property in which he had no interest at the time of the sale, the contract should be rescinded.

In *Fitzgerald v. Peck,* 4 *Littell* 127, Peck, under a misapprehension as to the amount of his legal liability, executed his notes for more than he was in law bound to pay, the court say, "If

Peck then can be relieved upon any ground, it must be that which the court below has assumed, that is, the ground of a mistake as to what he was really bound to pay," and the court granted the relief prayed.

In *Hall v. Reed,* 2 *Barbour Ch. Rep.* 503, the ground set up for a rescision of the contract, was ignorance of the existence of a statute declaring 2,000 pounds avoirdupois a ton, contrary to the usage of the country and the common understanding and the understanding of the complainant when he entered into the contract. The Chancellor, in this case, said, "The allegation of ignorance is put in issue by the answer. And I do not know of any means of proving his ignorance of the existence of a statutory provision, which the law presumes every citizen of the State to be acquainted with, who has arrived at the years of discretion. I can imagine a case, in which, the party holding the affirmative of the fact, may give such evidence as will satisfy a reasonable man, that he acted under a mistake of law. And courts have sometimes granted relief in such cases, where it could be done without impairing the rights of those who are not aware of the existence of such mistake when their right accrued." In this case, a distinction is taken between "ignorance of the law" and "mistake of the law;" and this distinction was also taken in *Lawrence v. Branbien,* 2 *Bailey Law Rep.* 623: and by Senator PAGE, in *Chaplin v. Layton,* 18 *Wend* 423. *In Layton et al. v. Chaplin,* 1 *Edw. Ch. Rep.* 467, it was held that a contract entered into under a material misconception of legal rights, amounting to a mistake of law in the contracting parties, by which the object of it cannot be accomplished, is as liable to be set aside or rescinded as a contract founded in mistake of matters of fact. In this case, the parties were advised of a prior conveyance, but mistook its legal effect. The court is very clear and explicit, both in the grounds assumed, and the reasons for assuming them. Both parties were equally mistaken in the law, resulting from the previous transfers. The court states the general rule fully, that ignorance of the law excuseth no man; and then say, "Yet there are cases in which this court will interfere upon the ground

of such mistake, in order to relieve a party from the effect of a contract. As for instance, if one is ignorant of a matter of law involved in the transaction, and another knowing it to be so, takes advantage of such circumstance to make the contract, here the court will relieve, although perhaps, more properly on account of fraud in the one party than of ignorance of law in the other.''

So, if both parties should be ignorant of a matter of law, and should enter into a contract for a particular object, the result whereof would, by law, be different from what they mutually intended; here, on account of the surprise, or immediate result of the mistake of both, there can be no great reason why the court should not interfere in order to prevent the enforcement of the contract, and relieve from the unexpected consequences of it. To refuse, would be to permit one party to take an unconsciencious advantage of the other, and to derive a benefit from a contract which neither of them intended it should produce.

There are a few other cases sustaining the exception to the general rule, but the books in which they are reported are not within our reach. In presenting the cases above, we have preferred to give the language of the courts touching the point at issue, that the precise ground on which each exception rested might be more clearly understood.

It will be seen that several of them distinguish between mistakes arising from ignorance of the existence of the law, and such as arise in cases where the law was known to exist, but the contract made under a misapprehension of its legal effect, denying all relief in the first instance, not because the injury itself may not be as great; but because of the presumption that every man knows the public laws of the country, and the general, if not invariable impossibility of proving a negative, which may be locked up in the bosom of the party chargeable with such knowledge. In the second instance, as to the legal rights of the parties, when misconceived under the law, they suppose the facts susceptible of proof in many instances, and when it is established that such was the case, and that injury has resulted to one or

both of the parties, which may be relieved against consistently with other general principles of equity, relief is granted.

In other cases, a distinction has been taken between contracts entered into for a particular purpose, and others; and where such particular object or purpose fails, relief is granted. And also in cases where the party, under a mistake of law sells that to which he has no title; and this is placed merely on the ground of a total failure of consideration. These are the most plausible grounds assumed for a departure from the general rule, the importance of which seems to be fully recognized. There appears to have been an effort by the courts to uphold the maxim that ignorance of the law shall not excuse, and at the same time, in cases of peculiar hardship, they have made distinctions between ignorance of the existence and of the legal effect of the law, and also of contracts for a special purpose and a general purpose, which, however plausible, when carefully considered, are infringements upon the maxim, and are allowed rather because of the hardship of the particular case and the facilities for proving it, than upon principle.

With these remarks, we will proceed to examine the facts of the case before us, and see to what class it belongs, and to what extent, if any, relief should be granted.

Notwithstanding the alleged ignorance of the law, it evidently does not belong to the first class of ignorance, that is, ignorance of the existence of the law. The contract refers directly to the law of Congress. The nature of the grant implies it, and the letter of the complainant given in evidence proves it beyond all doubt; and as regards a mistake about the quantity required to be entered according to the provisions of the law, there can be as little doubt: for in the letter of the complainant to the Governor, when in treaty for the land, he says: "The law requires that locations shall be made in tracts not less than 640 acres. As I have located that number of acres, I can also legally locate adjoining, any number of acres less than 640 acres." The impression of the complainant, as ascertained from this letter, was, that as he had already entered 640 acres, he could enlarge his loca-

tion on an adjoining tract by adding to it, even though the second location should be a less quantity than 640 acres. If, therefore, there was any misapprehension in this case, it must have consisted in this only, for by this letter he distinctly recognized two restrictive features of the act of Congress; one, that not less than 640 acres could be located in one connexion; the other, that the second entry or location must be contiguous and in connexion with the former, and not in detached tracts, as he has asserted in his bill; so that, in this respect, there could have been no misapprehension produced either by the act of the legislature or by the notice of the Governor: which provision in the act was probably intended to relate to the sale of the lands after location, and not to the tracts to be located. Concede the act (as it is,) to be somewhat vague and indefinite, still this complainant seems to have been in no respect deceived or mistaken, unless it should be in regard to his power to locate a less quantity than 640 acres. In this respect, there can be no doubt, from the nature of the transaction, that both the Governor and the complainant labored under a misapprehension. The Governor had no interest in the transaction; he could therefore have no motive to deceive the purchaser. It was a contract in behalf of the State, and it is not to be presumed that a State would intentionally wrong her citizen. The purchaser must have been aware that, unless he could make the location, the contract was worthless to him, and therefore, he could not have intentionally made a contract wholly valueless to himself.

That the law forbid the entry, is evident from the language of the act of Congress, as well as from the decision of the Land Officers, and the opinion of the Commissioner of the General Land Office. Indeed it has been decided by the Supreme Court of the United States, that the decision of the Land Officers of the proper Land Office is final. But if not, surely the purchaser was no more bound to appeal from their decision, than to apply for a special act of Congress for relief. The moment his application was presented and definitely rejected, the law of the case,

so far as his power to locate a less quantity than 640 acres was concerned, was definitely settled.

The result of the matter is this: the State attempted to confer power on the purchaser to do that which was forbidden by law, which she had herself no power to do, and of course could delegate no greater authority to her agent. What, then, did the purchaser get by his contract? Not property; for the State had no property in lands, until they were selected and affirmed to her. He, at most, only got a floating right, which floating right was, however, dependent upon a condition precedent, which, at the time of the making of the contract, was contrary to law, and therefore impossible to be performed, for, unless the purchaser could locate the float, it was utterly worthless. It was not property or other valuable thing; it was not even that which might secure a valuable thing. This then, is a peculiar case, stronger perhaps than any found in the books, in this, that it is not even a direct contract for property, but a contract for property dependent on a precedent unlawful act. Under a clear misapprehension of the legal effect of the contract, the complainant executed his note to the State for this and no other consideration. The question is, shall we permit the State to go on and collect this money from the purchaser, when she gave no consideration whatever and has lost nothing? We say, lost nothing; because it is evident that she never did part with her right to locate this 520 acres of land: the contract was void, against law, and consequently, the title remained in her. If she has been delayed in selecting other lands, it has been the result of her own misapprehension of the law, and should not prejudice the complainant's claims to equitable relief.

In view of the whole case, we think complainant was entitled to the relief prayed in his bill.

Finding no error in the decree of the circuit court, the same is, in all things affirmed, with costs.