In *Brumston* v. *Robius*, 4 Bing. 11, a landlord's receiver allowed the tenant to make a deduction in respect of a payment for land tax every year for seventeen years greater than the landlord was liable to pay. The tenant assigned his tenancy, and the landlord, discovering his mistake, distrained the assignee for the arrears. The court held that he had no right so to do. The court placed great stress upon the hardship of the case, and it was remarked that "the demand was most unconscientious." Best, C. J., however, observed that "it is an established principle, that if money be given or paid (and settlement in account is the same thing) with a full knowledge of all the circumstances at the time of the payment, it cannot be recovered back by the payer," citing *Brisbane* v. *Dacres* as authority.

There is a class of cases growing out of similar subject-matter as the above, and which are said by Mr. Justice Story, 1 Eq. Juris. sec. 112, to resolve themselves into an overpayment by mistake of law or of fact, and probably of the former. In this class may be cited *Widley* v. *Cooper's Company*, and *Atwood* v. *Lamprey*, cited in a note to *East* v. *Thornbury*, 3 P. Wms. 127; *Currie* v. *Goold*, 2 Madd. 163; *Smith* v. *Alsop*, 1 id. 623; *Nichols* v. *Lason*. 3 Atk. 573. But it does not appear in any of these cases that the mistake was not mutual; and none of them profess to proceed on the ground of mistake of law. There is, also, a decided conflict between them and the decision in *Brigham* v. *Brigham*, 1 Ves. Sr. 126, and Belt's Supp. 79. These cases come properly under the head of private rights defined by Lord Westbury as follows:

"It is said *ignorantia juris haud excusat;* but in that maxim the word 'jus' is used in the sense of denoting general law, the ordinary law of the country; but when the word 'jus' is used in the sense of denoting private right, that maxim has no application. Private right of ownership is matter of fact. It may be the result, also, of matter of law; but if parties contract under a mutual mistake and misapprehension as to their relative and respective rights, the result is that that agreement is liable to be set aside as having proceeded on a common mistake." *Cooper* v. *Phibbs*, 15 W. R. 1053; 2 L. R., H. L. Cas. 149.

There is, also, a class of cases sometimes cited as bearing on this question, which, in fact, stand not upon mere mistake of law, stripped of all other circumstances, but upon other and distinct grounds. Among these may be enumerated cases of compromise of doubtful rights. In *Naylor* v. *Winch*, 1 Sim. and Stu. 555, Vice-Chancellor Leach lays down the doctrine, that "if a party, acting in ignorance of a plain and settled principle of law, is induced to give up a portion of his indisputable property to another under the name of 'compromise,' a court of equity will relieve him from the effect of his mistake. But when a doubtful question arises, *** it is extremely reasonable that parties should terminate their differences by dividing the stake between them in the proportion which may be agreed upon." See, also, *Gibbons* v. *Caunt*, 4 Ves. 894; *Stockley* v. *Stockley*, 1 Ves. & Bea. 23.

There is likewise a class of cases commonly classed under this head, which really have but slight bearing on the question. These are cases of family agreement to preserve family honor or family peace. See 1 Story's Eq. Jur. sec. 113, n. And, as has been said by Lord Eldon, in family arrangement, an equity is generally administered in equity, which is not applied to agreements generally: *Stockley* v. *Stockley*, 1 Ves. & B. 30. The principal cases of this character are *Gordon* v. *Gordon*, 3 Swanst. 400; *Dunnage* v. *White*, 1 id. 137; *Cann* v. *Cann*, 1 P. Wms. 723; *Stapilton* v. *Stapilton*, 1 Atk. 2; *Pullen* v. *Keady*, 2 id. 537; *Cory* v. *Cory*, 1 Ves. Sen. 19; *Clifton* v. *Cockburn*, 3 Myl. and K. 76; *Neal* v. *Neal*, 1 Keen. 672; *Frank* v. *Frank*, 1 Cas. in Ch. 84.

There are, also, cases where parties have done what it was not their purpose to do; or where they have not done what they did purpose to do, and in which relief is denied. A familiar illustration of the first of these mistakes is where two are bound by a bond, and the obligee releases one, supposing that the other will remain bound. In such case there is certainly nothing inequitable in the co-obligor's availing himself of his legal rights; nor of the other obligor's insisting upon his release. See 1 Story's Eq. Jurisp. 124. An illustration of the second of these mistakes is where the parties would have introduced into their agreement a certain clause, but omitted it from an erroneous impression as to the effect of its insertion: See *Innham* v. *Child*, 1 Bro. Ch. 92; *Cockerell* v. *Cholmeley*, 1 Russ. and Myl. 418.

The case of *Platt* v. *Bromaye*, 24 L. J., N. S., Ex. 63, is the most recent English case we have been able to find on the subject. There the plaintiff, to secure advances made to him by the defendant, assigned to him his present, and also his after-acquired, property; and the former being insufficient to pay the debt, the latter was sold with the assent of the debtor, who supposed that the assignment passed the after-acquired property. The action was to recover the proceeds of such after-acquired property, and judgment given for defendant. Pollock, C. B., said that the plaintiff, having assented to the act, could not recover, although it was proved that there was a mistake in point of law, or a mistake in point of fact. Park, B., thought he must be bound by a mistake of law, but that point was immaterial, as the jury were not satisfied that there was a mistake of law; and it was said that the debtor had done nothing but what he ought, in justice, to have done.

Having given the English cases which decide or contain dicta that mistakes of law are not the subject of relief, we will now refer briefly