

wisely, as I presume to think, the courts have abstained from giving any general definition of what amounts to mistake. It is an easily arguable question whether mere forgetfulness of such a covenant—even if not negligent—can properly be called a mistake. The case of *Kelly v. Solari* (9 M. & W. 54), however, and the observations of Lord Blackburn in the House of Lords in *Brownlie v. Campbell* (L. Rep. 5 A.C. 952) establish that, in an action to recover money paid by mistake, it is sufficient to prove that at the time of the payment the person paying was actually ignorant that the money was not due, although he had the means of knowledge, and it was owing to his own carelessness or forgetfulness that he was in fact ignorant. There undoubtedly forgetfulness of the previous payment is treated as a mistake. . . . I feel great difficulty in saying that if this is a mistake at law it would not be considered a mistake in equity."

It is rather important to note that in these cases of claims for rectification on the ground of mistake, the error must be one of fact and not of law, nor, as a rule, on a point of construction, but see, as to the latter, a case where the mistake arose in the construction of a doubtful instrument of title. *Earl Beauchamp v. Winn* (31 L.T. Rep. 253; L. Rep. 6 H.L. 223) raised this point, and, moreover, decided that the court will not intervene unless the parties can be put back into what was substantially their earlier relative positions, and the mistake must be such as goes to the essence of the whole affair. On this subject as to the class of the mistake we may usefully refer readers to vol. 3, p. 2304, of Seton's *Forms of Judgments and Orders* (6th edit.), where there will be found a valuable summary of many of the earlier decisions. In general, the rule *Ignorantia juris excusat* is inapplicable to those questions of mixed law and fact which are so difficult to define, or to matters of mistake in respect of private rights.

The most common class of disputes as to rectification is in reference to marriage settlements. So anxious is equity to effect substantial justice that extrinsic evidence is admissible to modify