speaking of De Grey's opinion, said: "It certainly is very hard upon a judge, if a rule which he generally lays down is to be taken up and carried to its full extent." "In the case of *Bize* v. *Dickason*," he adds, "the money ought conscientiously to have been repaid."

Thus far we have on the one side the undoubted *dictum* of Mr. Justice Buller and the decision of Lord Ellenborough, that mistakes of law cannot be remedied, and, on the other side, the "intimation" of Lord Kenyon, the *dictum* (if it be only a *dictum*, which is very doubtful) of Chief Justice De Grey, and the opinion of Lord Mansfield.

The next important case on the subject is that of *Brisbane* v. *Dacres*, already cited. Here the plaintiff, while captain of a vessel belonging to the squadron of Admiral Dacres, had received on board his vessel a quantity of public specie and a large amount of private treasure, to be transported to England. Of the freight received for both, he paid over one-third part, according to a usage therefore established in the navy, to the admiral. Discovering that the law did not require captains to pay to admirals any part of the freight, he brought an action for money had and received, to recover it back from the admiral's executrix. The court held, unanimously, that he could not recover back the private freight. Gibbs, J., on the ground that it was illegal to carry the private treasure. Chambre, J., that, whether illegal or not, it was the practice of the admiral to receive his third part, and that that practice had the assent of the government. The point chiefly considered, however, by all the judges, respected the part of the freight paid on the public specie, and they held against Chambre, J., that the plaintiff could not recover. Gibbs, J., rested the case mainly on the ground that the money, being paid through a mistake of law, could not be recovered. He said: "We must take this payment to have been made under a demand of right, and I think that when a man demands money of another as a matter of right, and that other, with a full knowledge of the facts upon which the demand is made, has paid a sum, he never can recover back the sum he has so voluntarily paid." But, apparently hesitating to run counter to Lord Mansfield's maxim before cited, he said he had "considerable difficulty in saying that there was anything unconscientious in Admiral Dacres in requiring this money to be paid to him, or receiving it when it was paid." Heath, J., found it "very difficult to say that there is any evidence of ignorance of the law here," and Mansfield C. J., admitted that, "according to the doctrine of Lord Kenyon, an action might be maintained to recover it back, but I do not see how the retaining this is against his conscience," It is but fair to presume from the opinions, that the case of *Brisbane* v. *Dacres* turned upon the distinction that there was nothing in the transaction contrary to *æquum et bonum*.

In *Stevens* v. *Lynch*, 12 East, 38, the defendant—the drawer of a bill of exchange—with full knowledge of the fact that the plaintiff had given time to the acceptor after his dishonor of the bill, said to the holder: "I know that I am liable, and if the acceptor does not pay it I will." The court held that the defendant could not now defend upon the ground of his ignorance of the law when he made the promise.

The case of *Bilbie* v. *Lumley* above cited was recognized in *Gomery* v. *Bond*, 3 M. & S. 378, and in *East India Company* v, *Tritton*, 3 B. & C. 280. Neither of these cases has much value on the question under consideration. In *Gomery* v. *Bond* the defendant agreed for the purchase of some seed, but, on its being brought to him, would not accept it; on which the plaintiff requested him to try and sell it for him, which he tried to do, but, failing, brought it back again; the plaintiff refused to receive it, and brought the action for the price. The judge submitted to the jury: 1. Whether there was an agreement for sale. 2. Whether the plaintiff had waived it. 3. Whether he had done so in ignorance of his rights, telling them "that, if he did it under an ignorance of the law and impression that his remedy was gone, it would not amount to a waiver of the benefits of the agreement." The plaintiff had a verdict. A rule for a new trial was obtained on the ground that the third question was improperly submitted to the jury. Nothing was said directly about ignorance or mistake of rights; Lord Ellenborough thought there could be no doubt from the evidence that the plaintiff had waived the contract.

In the *East India Company* v. *Tritton* the plaintiffs sued to recover money paid by them as acceptors of a bill of exchange to the defendants on the faith of an insufficient prior indorsement, of the validity of which the plaintiffs had, and the defendants had not, the means of judging. The defendants received the money as agents, and before any notice of the insufficiency of the indorsement. The court held that the action could not be maintained, basing their arguments mainly on the grounds that the agents, having paid the money over to their principals in good faith, were not liable. Holroyd, J., thought the case of *Bilbie* v. *Lumley* sufficient to dispose of the question, but agreed with the majority of the court on the ground above stated.

Milius v. *Duncan*, 6 B. & C. 671, contains a *dictum* of Mr. Justice Bailey, that "if a party pay money, under a mistake of the law, he cannot recover it back;" but that case was concededly one of error of fact, and on that alone was the decision based.

In *Goodman* v. *Sayens*, 2 Jack. & W. 248, and in *Marshall* v. *Collett*, 1 Younge & Coll. 232, the maxim was repeated, but in neither was it demanded.