

DIFFERENCE BETWEEN A RECEIPT AND A RELEASE UNDER SEAL.

tion of County Judge for nearly a quarter of a century. Dignified but courteous in his bearing, a man of unimpeachable integrity and excellent judgment, his loss will be very deeply felt in the community of which he has been so long a useful and respected member.

SELECTIONS.

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A passenger who was injured in a railway accident accepted a sum of money by way of compensation, and signed a receipt which was expressed to be in discharge of his claim in full upon the railway company for all loss sustained and expenses incurred by the accident. After signing this receipt he became worse and applied for further compensation, which the railway company refused to give him; and he commenced an action at law against them, in which he claimed heavy damages. The company pleaded the common plea of payment and receipt of the sum of money in satisfaction of the plaintiff's claim, upon which the plaintiff, instead of replying to the plea, filed his bill, alleging that he had not replied because he was advised that the plea was a full and complete answer at law to his cause of action, and praying that the defendants might be enjoined from relying on the plea at the trial of the action, and from setting up the receipt as a satisfaction of the damages claimed, except to the extent of the sum already paid. The judgment of Vice-Chancellor Malins, who granted the injunction, is not reported, but the judgment of the lords justices, who reversed the decree of the vice-chancellor, and dismissed the bill with costs, is fully reported. *Lee v. Lancashire and Yorkshire Railway Co.*, 19 W. R. 729.

It is, or was, a common but reprehensible practice with railway companies, after an accident had occurred, to get the sufferers to sign a receipt, accepting a sum of money down for the injuries they have sustained, before they well knew the extent of those injuries. See the remarks of the Lord Justice Mellish (19 W. R. 732) on this practice. In cases of this description a bill will lie to restrain the railway company from relying on the plea that the plaintiff in the action received the sum in accord and satisfaction (*Stewart v. Great Western Railway Company*, 13 W. R. 907), by reason of the fraud involved.

The bill in *Lee v. Lancashire and Yorkshire Railway Company*, *sup.*, was probably filed on the authority of *Stewart v. Great Western Railway Company*, *sup.*; but in *Stewart v. Great Western Railway Company* fraud was alleged on the part of the company's agents, and that the company intended to rely on the receipt thus obtained as a defence to the action. This allegation gave the court juris-

diction, and enabled the lord chancellor to overrule the demurrer, although the bill did not go on to pray compensation. In *Lee v. Lancashire and Yorkshire Railway Company* no case of fraud was made by the bill or proved at the hearing, and the bill was dismissed on the ground that, in the absence of fraud, the plaintiff could not want the aid of a court of equity. In fact, the plaintiff did not want the aid of the court to set aside the receipt. This is apparent when we consider what the true nature of a receipt is, as distinguished from a release under seal. A release under seal extinguishes the debt (*Coppin v. Coppin*, 2 P. Wms. 295), or rather acts as an estoppel, and can only be set aside on bill filed, or under the equitable jurisdiction of a court of law. But a receipt, according to *Abbot, C. J.*, in *Skaipe v. Jackson*, 3 B. & C. 421, is nothing more than a primary acknowledgment that the money has been paid, or as *Littledale, J.*, said in the same case, it is not an estoppel, and amounts to nothing more than a parol declaration of payment. In *Graves v. Key*, 1 B. & Ald. 313, 318, where the holder of a bill had written on it a receipt in general terms, and the question was whether the receipt was conclusive evidence that the bill had been satisfied, the following reasons were prepared by the court for delivery: "A receipt is an admission only, and the general rule is that an admission, although evidence against the person who made it, and those claiming under him, is not conclusive evidence, except as to the person who may have been induced by it to alter his condition. *Straton v. Rastal*, 2 T. R. 366; *Wyatt v. Marquis of Hertford*, 3 East, 147; *Herne v. Rogers*, 9 B. & C. 586. A receipt, therefore, may be contradicted or explained, and there is no case, to our knowledge, in which a receipt upon a negotiable instrument has been considered to be an exception to the general rule."

Lord Ellenborough's dictum in *Almer v. George*, 1 Camp. 392, that a receipt in full, where the person who gave it was under no misapprehension and can complain of no fraud or imposition, operates as an estoppel and is binding on him, means, according to *Pollock, C. B.*, in *Bowes v. Foster*, 6 W. R. 257; 2 H. & N. 784, where the receipt in full is given as for a real receipt and discharge. *Almer v. George*, moreover, is distinctly overruled by *Graves v. Key*, *sup.*, and is not law. As *Martin, B.*, explained in *Bowes v. Foster*, the fact of a release may be pleaded; but a receipt cannot be pleaded in answer to an action, it is only evidence on a plea of payment; and where the defendant is obliged to prove payment, a document not under seal is no bar as against the fact that no payment was made. Thus, the effect of a receipt is destroyed on proof that it was obtained by fraud; (*Farrer v. Hutchinson*, 9 A. & E. 641), or that it forms part of a transaction which was merely colorable (*Bowes v. Foster*, *sup.*).