

and requiring payment to her (C.) of the rent then due. A., notwithstanding this notice, paid the rent to B., and was afterwards compelled, by distress, to pay the amount over again to C. *Held*, that the money having been paid to B. with full knowledge of the facts, could not be recovered back. "It was not against conscience" for B. to retain the money.

In *Bilby v. Lumley*, 2 East, 470, an underwriter having paid the loss, sought to recover the amount paid, on the ground that a material circumstance had been concealed at the time of the contract. It appearing, however, that he knew of this fact at the time of the adjustment, it was held that he could not recover. This case forms as good an example as we could wish for the application of our principle. It is said, if the underwriter had been ignorant of the fact at the time of the adjustment, he might have recovered. But having known the facts, and being ignorant only of the law, he was defeated. There seems to be some ground here for saying, *Ignorantia facti excusat; ignorantia juris non excusat*. But, on reflection, all the case decides is, that where an underwriter has been misled in issuing the policy, and, after full knowledge of the fraud, pays the money, he cannot recover it again. And if it be answered, that the underwriter did not know that *by law* he was relieved from payment, the reply is, not that every one is assumed to know the law, but that the other party was in no way responsible for the ignorance. In other words, it is a case of unilateral mistake, not caused by the other party; and if it had been a mistake of fact under the same circumstances there would have similarly been no relief.

In *Freeman v. Jeffries*, L. R. 4 Ex. p. 197, Kelly, C. B., puts the following hypothetical cases, which are useful by way of further illustration: "If A. pay money to B., supposing him to be the agent of C., to whom he owes the money, and B. be not the agent, it may be recovered back again." In this case the mistake may be one of law, as in the interpretation of a power of attorney; or of fact, as to whether there ever was a power of attorney. In both cases