might reasonably expect that the assertions were based upon expert knowledge derived from the manufacturer's experience and research. Furthermore, the buyer could not readily discount the statements by inquiry of other sellers as he might do, were the goods which were depreciated manufactured by another seller. The parties had satisfactory business relations previous to this transaction, a fact which would tend to make the buyer less suspicious than if the parties were strangers. Currently a common inducement to purchase is the statement that post-war products are superior to pre-war models. It is believed that a stricter responsibility should be imposed upon sellers than is established by the principal case.\(^{25}\)

Specific Performance—Option To Buy Land—Mistake of Ownership as a Defense—[Illinois].—By the terms of an option to buy land, the defendant bank agreed to convey by warranty deed a fee simple title to the plaintiff. In compliance with the requirements of the United States Farm Security Administration from whom the plaintiff wished to borrow part of the purchase price of the land the defendant also agreed to deliver to the plaintiff a title-insurance policy issued in favor of the government by an approved company in the amount of the purchase price of the property. The option agreement was recorded and the plaintiff occupied the land with the consent of the defendant. After the plaintiff had exercised the option, the defendant, upon application to a title-insurance company, was informed that a policy would not be issued unless half of the purchase price were put in escrow because the defendant held only a life estate and a contingent remainder in the property. The bank had relied upon its counsel's erroneous construction of a will under which its grantor had taken the land. When the plaintiff refused the bank's offer to convey the land by warranty deed but without a title-insurance policy, the bank conveyed the land by warranty deed to a third party. The plaintiff sued for specific performance, $1,500 damages, and vacation of the deed to the third party. The lower court refused to grant specific performance, but awarded the plaintiff $500 damages for breach of the contract. On appeal, held, the decree of the lower court is reversed and specific performance is ordered.\(^1\) Hardship does not excuse the vendor from performing. Smith v. Farmers' State Bank of Alto Pass.\(^2\)

of which he manufactures. There would likewise be less reason to assume that the statements were sales talk when the seller is a dealer handling both products and able to profit by the sale of either product. Conroy Piano Co. v. Pesch, 279 S.W. 226 (Mo. App., 1925).

\(^{25}\) A stricter rule would be in line with a policy designed to discourage unnecessary buying during boom times. It is arguable that purchasers would be less justified in relying upon sellers' statements during periods of depression when economic pressures would prompt sellers to make exhorbitant claims as to the quality of goods.

\(^1\) The appellate court did not pass upon the plaintiff's request for damages.

\(^2\) 390 Ill. 374, 61 N.E. 2d 557 (1945).
The court treated the request of the insurance company for an escrow deposit as a supervening difficulty. The opinion gave no weight to the misapprehension of the parties about the vendor's title. Yet it was the discovery of the true state of the title which prompted the insurance company to require the escrow agreement. As this misapprehension existed when the parties made the opinion agreement, the problem is one of mistake.

If the facts in the present case had been treated as raising a problem of mistake the outcome might have been different. Since the bank's error was based upon a mistaken conclusion as to the size of the interest which its grantor held under the will, this was a mistake of law characterized as a mistake of "antecedent private rights." If the mistake were common to both parties, this would be a mutual mistake and ground for rescission although the general rule denies relief from a mistake of law. Even if this were considered a unilateral mistake of law on the part of the bank, relief might be granted. Many courts will relieve from a unilateral mistake of private rights where, as in the principal case, the grantor is mistaken as to the size of his interest, although relief probably would not be granted if the bank's error were characterized as a unilateral mistake as to the legal effect of language.


4 Cooper v. Phibbs, L.R. 2 H.L. 149 (1867); Walbach v. Walbach, 165 Md. 8, 165 Atl. 809 (1933); Oxenham v. Mitchell, 160 Md. 269, 153 Atl. 71 (1930); 5 Williston, Contracts § 1589 (rev. ed., 1937).


6 The plaintiff's insistence upon specific performance although he no longer could obtain the fee originally bargained for suggests that complete ownership was essential only to the bank. The plaintiff knew he was protected by the title insurance regardless of the state of the title. To be of legal significance a mistake must be "regarding a fact assumed by [the parties] as the basis on which they entered the contract," Rest., Contracts § 502 (1932). If the purchaser's mistake was not of this type, it may be disregarded. However, since the purchaser is asking for heavy damages, such an assumption would not be conclusive. For a discussion of the difficulty in distinguishing between unilateral and mutual mistakes, see Thayer, Unilateral Mistake and Unjust Enrichment as a Ground for the Avoidance of Legal Transactions, Harvard Legal Essays 467, 468 (1934).

7 Peter v. Peter, 343 Ill. 493, 175 N.E. 846 (1931); Lusk v. Farmer, 144 S.W. 2d 677 (Tex. Civ. App., 1938); Hoy v. Hoy, 93 Miss. 732, 48 So. 903 (1908); Williams v. Merriam, 72 Kan. 312, 83 Pac. 976 (1905); Morgan v. Bell, 3 Wash. 554, 23 Pac. 225 (1892); Canedy v. Marcy, 13 Gray (Mass.) 373 (1859); cf. Darst v. Lang, 367 Ill. 219, 16 N.E. 2d 659 (1937); The Stoneham Five Cents Savings Bank v. Johnson, 295 Mass. 390, 3 N.E. 2d 730 (1938); Warren and Seavey, Notes on Restatement of Restitution 38 (1937).

8 The misconstruction of the will by the bank's counsel, the admitted source of the misapprehension, was a mistake as to the legal effect of language. Such mistakes are said to be ground for rescission if mutual. Snell v. Insurance Co., 98 U.S. 85 (1878); Cherry v. Welsber, 195 Ta. 640, 192 N.W. 149 (1923); Franz v. Franz, 308 Mass. 262, 32 N.E. 2d 205 (1941); Petelski v. Winkel Garage Co., 190 Wis. 64, 208 N.W. 893 (1926); Mistake of Law: A Suggested Rationale, 45 Harv. L. Rev. 336, 342 n. 19 (1) (1931). English courts have granted
But reliance upon a mechanical application of common-law rules in order to determine the rights of the parties is of questionable value. This is especially so when, as in the principal case, the suit is brought in a court of equity, which may be more ready than a court of law to grant relief from a unilateral mistake of law.

Specific performance, the remedy sought in the present case, rests in the discretion of the court. The Illinois court, stating the criteria, said: "where [the contract] was fairly and understandingly entered into and no circumstances of oppression or fraud appear, equity will decree its performance." There are, thus, discretionary defenses which the defendant could have raised in the principal case. Gross inadequacy of consideration is a discretionary defense to a suit for specific performance. When accompanied by mistake, even a slight inadequacy of consideration may prevent specific performance. If the bank had to deposit for an indefinite period half of the purchase price, the consideration it received may be said to be inadequate. Furthermore, the request that the bank


The negligence which the Illinois court attributed to the defendant should not be a decisive factor in the decision. "The term 'negligent' in these cases [of unilateral mistake] is merely a vituperative epithet used to rationalize a decision arrived at on other grounds." Patterson, Equitable Relief for Unilateral Mistake, 28 Col. L. Rev. 859, 885 (1928); cf. Holt v. Mitchell, 96 Col. 412, 43 P. 2d 388 (1933). At most the negligent party should be made to pay for the expense incurred; the injured party should not get the benefit of the bargain. Sharp, Williston

on Contracts, 4 Univ. Chi. L. Rev. 30, 41 (1936).

It has been maintained that there is no legal or ethical basis for distinguishing between mutual and unilateral mistakes in general. Thayer, op. cit. supra, note 6, at 469; Sharp, Promissory Liability, 7 Univ. Chi. L. Rev. 250, 267 (1940).


In many cases courts of equity disregard this distinction between mistake of law and mistake of fact. Kentucky-West Virginia Gas Co. v. Preece, 260 Ky. 601, 65 S.W. 2d 163 (1933); Gilpatric v. Hartford, 98 Conn. 471, 120 Atl. 317 (1923); Shanklin v. Ward, 291 Mo. 1, 236 S.W. 64 (1921); Relief for Mistake of Law, 4 Fordham L. Rev. 466, 475 (1935).


Hemhauser v. Hemhauser, 110 N.J. Eq. 77, 158 Atl. 762 (1932); Linsell v. Halicki, 240 Mich. 483, 215 N.W. 315 (1927); Beaden v. Bransford Realty Co., 144 Tenn. 595, 232 S.W. 958 (1920). In recent years gross inadequacy of consideration has become a more generally accepted defense to a request for specific performance. 2 Chafee and Simpson, Cases on Equity 1185 n. 5 (1934).

Banaghan v. Malaney, 200 Mass. 46, 85 N.E. 839 (1908); Kelley v. York Cliffs Improvement Co., 94 Me. 374, 47 Atl. 898 (1900); Rest., Contracts § 267, Comment (b) (1934); Walsh, Equity 482-83 (1939); cf. Shikes v. Gabelnick, 273 Mass. 201, 173 N.E. 495 (1930); Moetzel & Mutters v. Koch, 122 Ia. 196, 97 N.W. 1079 (1904).
deposit one-half the purchase price in escrow makes the case analogous to those cases in which the plaintiff asks for compensation and part performance but the compensation demanded is the main object of the suit. In such cases specific performance is frequently denied.\textsuperscript{14}

The bank's subsequent conveyance by warranty deed to a third party should not influence the outcome of the case. The court believed that if the bank was willing to assume the risks incident to conveying by warranty deed, the bank should not complain if it was forced to carry out its bargain with the plaintiff. But the burden of warranting title and risking future loss, if and when the divesting contingency occurs, is less than the burden incident to the immediate deposit of half the purchase price in escrow for an indefinite period. Nor does it follow that because the vendor was obliged by the option agreement to obtain a title-insurance policy, the parties contemplated a discovery of a defect in title before the execution of the contract. A title-insurance policy is routine and common to many conveyance transactions. A sufficient consequence of such a stipulation in the option agreement is to require the vendor to pay the usual cost of such a policy; not to bind him unconditionally to procure one.

The outcome of the case, nevertheless, is consistent with a policy which denies relief for mistake of ownership where the parties to an agreement are equal in knowledge of the law and bargaining power. In those cases that do grant relief for a mistake of ownership, the mistaken vendor frequently is a widow under misapprehension as to her dower rights,\textsuperscript{15} or her rights under her husband's will;\textsuperscript{16} a widower mistaken as to his rights of curtesy;\textsuperscript{17} or an ignorant vendor who enters into an agreement with a confidant in whom she trusts.\textsuperscript{18}

The use of the term "mutual" to describe the mistake in some of these cases seems less significant than the unequal position of the parties to the agreement.\textsuperscript{19} In the present case, however, the mistaken vendor, a country bank, is

\textsuperscript{14} Durham v. Legard, 34 Beav. 611 (Ch., 1865); Corby v. Drew, 55 N.J. Eq. 387, 36 Atl. 827 (1897); Chicago, Milwaukee & St. Paul R. Co. v. Durant, 44 Minn. 351, 46 N.W. 676 (1890); Pomeroy, Equity Jurisprudence § 833 (2d ed., 1919).

The plaintiff also asked for $1,500 damages, but the report does not indicate the nature of this claim. If these damages are further compensation for the defect in title, the plaintiff's demand for specific performance is even more inequitable. The contract price of the property was only $3,500.

\textsuperscript{15} Peter v. Peter, 343 Ill. 493, 175 N.E. 846 (1931); Williams v. Merriam, 72 Kan. 312, 83 Pac. 976 (1905); Hoy v. Hoy, 93 Miss. 732, 48 So. 903 (1908); Canedy v. Marcy, 13 Gray (Mass.) 373 (1859), in which a widow's dower was conveyed through mistake of the heirs; cf. Lusk v. Parmer, 114 S.W. 2d 677 (Tex. Civ. App., 1938).

\textsuperscript{16} Stahl v. Schwartz, 67 Wash. 25, 120 Pac. 856 (1912).

\textsuperscript{17} Roberts v. Crouse, 89 W. Va. 15, 108 S.E. 421 (1921); Morgan v. Bell, 3 Wash. 554, 28 Pac. 925 (1892).


\textsuperscript{19} Cf. Burkhalter v. Jones, 32 Kan. 5, 3 Pac. 559 (1884), where the court said: "... and it must be remembered that she is ... a woman who had been recently left a widow, and who was presumably unaccustomed to the transaction of business."

In those cases where a plaintiff has made payments to court officers under a mistake of law
presumably the equal of the plaintiff in knowledge of the law and bargaining power. Thus, the court refuses to alleviate the harsh results of a bargain between parties who have negotiated on equal terms.

**Torts—Civil Liability of Suicide's Estate for Shock Occasioned by Discovery of Body—[Iowa].—**The plaintiff discovered the gory body of a friend who had cut his throat in her kitchen. She instituted a suit for damages against the administrator of the estate of the suicide for the shock which she suffered as a consequence of the discovery. The trial court granted a directed verdict for the defendant. Upon appeal to the Supreme Court of Iowa, held, that the question as to whether the deceased's action was "wilful" should have been sent to the jury; and if the conduct were "wilful," a cause of action existed. Judgment reversed. *Blakeley v. Shortal's Estate.*

There is almost no authority in the common law on the unique question whether suicide may be treated as tortious conduct. The suit in the present case appears to be the first of its kind to be recorded in the American reports. Two Scottish cases have been reported involving actions by rooming-house keepers against the administrators of the estates of tenants who had committed suicide in their rooms. In the first of these cases, where the manner of suicide was similar to that in the instant case, recovery was allowed, while in the second, where the suicide was by hanging, the action failed. In each case the basis of the action was that there had been a breach of an implied contract to use the premises only for dwelling purposes, a tenious theory which would not support the action in the principal case.

The unequal knowledge of the parties is expressly recognized and restitution is granted. Bull, Exec't v. United States, 295 U.S. 247 (1935); Carpenter v. Southworth, 165 Fed. 428 (C.C.A. 2d, 1908); Rest., Restitution § 46(b) (1937); Mistake of Law: A Suggested Rationale, 45 Harv. L. Rev. 336, 342 n. 19 (1932). Compare the result of the distinction between latent and patent mistake in bids, in giving relief more readily against skilled specialists than against unskilled homeowners. Lubell, Unilateral Palpable and Impalpable Mistake in Construction Contracts, 16 Minn. L. Rev. 137 (1932).

The basis of the directed verdict was that the injury arose at the time of the discovery of the body, which was after the deceased's death. Consequently there was no cause of action in existence at the time of the death of the deceased which might be brought by virtue of the Iowa survival statute against the administrator. The Iowa survival statute is very broad: "All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same." Iowa Code (1939) § 10957. The Supreme Court held that the cause of action was the wrongful conduct, which took place prior to death.

20 N.W. 2d 28 (Iowa, 1945).

In 1924 an action was initiated by a boardinghouse keeper in St. Louis against the administrator of the estate of a boarder who had committed suicide. There is no record of the case in the official reports. 28 Law Notes 23 (1924).


Anderson v. M'Crae, 47 Scot. L. Rev. (Sheriff Court Reports) 287 (1931).