

**Hunt Vs. Rousmanier**

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**Appeal No. :** 26 U.S. 1

**Appellant :** Hunt

**Respondent :** Rousmanier

**Judgement :**

Hunt v. Rousmanier - 26 U.S. 1 (1828)

U.S. Supreme Court Hunt v. Rousmanier, 26 U.S. 1 Pet. 1 1 (1828)

**Hunt v. Rousmanier**

**26 U.S. (1 Pet.) 1**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF RHODE ISLAND*

## **SYLLABUS**

It is a principle of equity that when an instrument is drawn and executed which professes or is intended to carry into execution an agreement, whether in writing or by parol, previously entered into but which by mistake of the draftsman either in

fact or in law does not fulfill or which violates the manifest intention of the parties to the agreement, equity will correct the mistake so as to produce a conformity of the instrument to the agreement.

The execution of instruments fairly and legally entered into is one of the peculiar branches of equity jurisdiction, and a court of equity will compel a delinquent party to perform his agreement according to the terms of it and to the manifest intention of the parties.

So if the mistake exists not in the instrument which is intended to give effect to the agreement, but in the agreement itself, and is clearly proved to have been the result of ignorance of some material fact, a court of equity will in general grant relief according to the nature of the particular case in which it is sought.

If an agreement was not founded on a mistake of any material fact, and if it was executed in strict conformity with itself, it would be unprecedented for a court of equity to decree another security to be given different from that which had been agreed upon or to treat the case as if such other security had in fact been agreed upon and executed.

Courts of equity may compel parties to execute their agreements, but it has no power to make agreements for them. The death of one of the parties and the consequent inefficiency of the security selected, intended to be valid and complete, but which was not so, will not give the right of interference.

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A mistake arising from ignorance of law is not a ground for reforming a deed founded on such mistake except in some few cases, and those of peculiar characters.

If the obligee of a joint bond by two or more agrees with one obligor to release him, and does so, and all the obligors are thereby discharged at law, equity will not afford relief against the legal consequences, although the release was given under a manifest misapprehension of the legal effect of it in relation to the other obligors.

It seems that there may be cases in which a court of equity will relieve against a plain mistake arising from ignorance of law. But where parties, upon deliberation and advice, reject one species of security and agree to select another under a misapprehension of the law as to the nature of the security thus selected, a court of equity will not, on the ground of misapprehension and the insufficiency of the security, in consequence of a subsequent event not foreseen, direct a security of a different character to be given or decree that to be done which the parties supposed would have been effected by the instrument which was finally agreed upon. The court would be much less disposed to interfere in such a case in favor of a particular creditor against the general creditors of an insolvent estate.

The appellant filed a bill on the chancery side of the Circuit Court of the United States for the District of Rhode Island setting forth that in January, 1820, Lewis Rousmaniere obtained from him two loans of money, amounting, together to \$2,150, and at the time the first loan was made, Rousmaniere offered to give, in addition to his notes, a bill of sale or mortgage of his interest in the brig *Nereus*, then at sea, as a collateral security for the repayment of the money. A few days after the delivery of the first note, dated 11 January, 1820, he executed a power of attorney authorizing the plaintiff to make and execute a bill of sale of three-fourths of the *Nereus* to himself or to any other person, and in the event of the loss of the vessel to collect the money which should become due on a policy by which the vessel and freight were insured. In the power of attorney it was recited that it was given as collateral security for the payment of the notes and was to be void on their payment, on the failure of which the plaintiff was to pay the amount and all expenses and to return the residue to Rousmaniere. On 21 March, 1821, an additional sum of \$700 was loaned, for which a note was taken and similar power of attorney given to sell his interest in the schooner *Industry*, this vessel being also still at sea.

On 5 May, 1820, Rousmaniere died intestate and insolvent, having paid \$200 on account of the notes, and the plaintiff gave notice of his claim to the commissioners of insolvency appointed under the authority of the Insolvent Law of Rhode Island. The plaintiff in his bill alleged that, on the return of the *Nereus* and

*Industry*, he took possession

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of them, and offered the interest of the intestate in them for sale, and the defendants having forbade the sale, this bill was brought to compel them to join in it.

To this bill the defendants demurred and their demurrer was sustained in the circuit court, but leave was given to the plaintiff to amend. An amended bill was then filed in which it was stated that it was expressly agreed between the parties that Rousmaniere was to give specific security on the *Nereus* and *Industry*, and that he offered to execute a mortgage on them. Counsel was consulted on the subject, who advised that the power of attorney which was actually executed should be taken in preference to a mortgage, because it was equally valid and effectual as a security and would prevent the necessity of changing the papers of the vessels or of taking possession of them on their return to port. These securities were, it was alleged, executed with a full belief that they would and with intention that they should give to the plaintiff, as full and perfect as security as would be given by a mortgage.

The defendants having also demurred to the amended bill, the circuit court decided in favor of the demurrer and dismissed the bill, and an appeal was entered to this Court. At the February session, 1823, this Court considered that the appellant might be entitled to the relief prayed for in equity, but the respondents were permitted to withdraw their demurrer and to file an answer in the court below.

[21 U. S. 8](#) Wheat. 174. The answer of the defendants admits the loans of money and the delivery of the promissory notes, and that but \$200 was paid before the death of the intestate. The execution of the powers of attorney was also admitted, but it was denied that possession of the vessels was taken by the appellant, and they alleged their resistance of the attempt to take possession of them.

The answer also asserts ignorance of any agreement for a specific lien on the vessels except that imported by the language of the powers of attorney; that they

had heard and believed that the appellant meant to be concerned as a partner in the voyage of one of the vessels, which was relinquished, and that afterwards he offered to loan the money on security, upon which the intestate offered to give a mortgage, but the appellant preferred taking the powers of attorney to avoid inconvenience, and took the powers of attorney by advice of counsel. The answer also states that a bill of sale of the vessels, dated the day before the death of the intestate, by which the vessels were intended to be conveyed to one Bateman, and which the respondents state they had heard and believed was intended to be executed on the evening of that day. The answer also alleges the insolvency of Rousmaniere

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and that it existed a long time before his death, which they assert must have been known to the appellant, and that the intestate resorted to improper modes to keep up his credit.

The evidence taken in the case consisted of the deposition of Mr. Hazard, the counsel who drew the papers, and in which he stated that they were intended by both parties to have the effect of a specific lien or mortgage, and he advised them they would have that effect, and also the deposition of Mr. Merchant to show that the appellant admitted that the motive by which he was induced to make the loan was to compensate Rousmaniere for the disappointment sustained by his not uniting with him in a voyage of one of his vessels, and accordingly an agreement was made by which the appellant was to let Rousmaniere have a sum of money, and that he was to give a bill of sale of a certain vessel, but that afterwards he refused to take the same on account of the inconvenience and difficulties which might attend the same, and that he had consulted with Mr. Hazard upon the subject, who told him that he could or would draw an irrevocable power of attorney to sell, which would do as well, or words to that effect, and which was accordingly done.

The circuit court pronounced a decree declaring that the appellant had no specific lien or security upon either of the vessels and no equity to be relieved respecting

them, and dismissing the bill with costs, from which decree, an appeal was entered to this Court.

On the part of the appellants it was contended that the decree ought to be reversed and a decree entered for the appellant.

That the answers to the bill do not respond to the only material facts in the cause, it being fully proved that the powers of attorney were intended to have the effect of a specific lien, the appellant is entitled to the relief he seeks upon the principles laid down in the former decisions of this Court.

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MR. JUSTICE WASHINGTON delivered the opinion of the Court.

This case was before this Court in the year 1823, and is reported in [21 U. S. 8](#) Wheat. 174, and was then argued at great length by the counsel concerned in it. After full consideration, it was decided that the power of attorney given by Rousmaniere, the intestate, to the appellant Hunt authorizing him to make and execute a bill of sale of three-fourths of the *Nereus* and of the *Industry* to himself, or to any other person, and in the event of their being lost, to collect the money which should become due under a policy upon them and their freight was a naked power not coupled with an interest, which, though irrevocable by Rousmaniere in his lifetime, expired on his death.

That this species of security was agreed upon and given under a misunderstanding by the parties, of its legal character was conceded in the argument of the cause by the bar and bench, and the second question for the consideration of the court was whether a court of equity could afford relief in such a case by directing a new security of a different character to be given or by decreeing that to be done which the parties supposed would have been effected by the instrument agreed upon. After an examination of the cases applicable to the general question, it was stated by THE CHIEF JUSTICE, who delivered the opinion of the Court, that none of them asserted the naked principle that relief

could be granted on the ground of ignorance of law or decided that a plain and acknowledged mistake in law was beyond the reach of a court of equity. The conclusion to which he came is expressed in the following terms:

"We find no case which we think precisely in point, and are unwilling, where the effect of the instrument is acknowledged to have been entirely misunderstood by both parties, to say that a court of equity is incapable of affording relief. "

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The decree was accordingly reversed, but the case being one in which creditors were concerned, the Court, instead of giving a final decree on the demurrer in favor of the plaintiff, directed the cause to be remanded that the circuit court might permit the defendants to withdraw their demurrer and to answer the bill.

After the cause was returned to that court, the demurrer was withdrawn and an answer was filed in which the defendants, after admitting the loans mentioned in the bills by the plaintiff to their intestate and the notes given for the same by the latter and their nonpayment, assert their ignorance of any agreement between the plaintiff and their intestate that the former should have a specific security, other than the powers of attorney, to sell vessels and to collect the proceeds or the amount of the policies in case they should be lost, but express their belief that the powers of attorney were selected by the plaintiff in preference to the other securities which were offered by the intestate. The answer further states that the estate of Rousmaniere is greatly insolvent and had been so before his death; that the plaintiff had exhibited and proved his demand as stated in his bill before the commissioners of insolvency duly appointed upon the estate of Rousmaniere, and that his dividend thereon declared, or to be declared, the defendants were and would be ready to pay according to law.

The principal deposition taken in the cause is that of Benjamin Hazard, counselor at law, who deposes that he drew the powers of attorney, annexed to the original bill. That on the day the first power was executed, Hunt and Rousmaniere came to his office, when the latter stated that the former had loaned or agreed to loan to

him, a sum of money upon security to be given by him on his interest in the brig *Nereus*, and that he was desirous the security should be as ample and available to Hunt as it could be made. That he wished and was ready to give a bill of sale of the property or a mortgage on it or any other security which Mr. Hunt might prefer. Both the parties declared that they had called upon the witness to request him to draw the writings and to obtain his opinion as to the kind of instrument which would give the most perfect security to the lender. That the deponent then told the parties that a bill of sale or mortgage would be good security, but that an irrevocable power of attorney such as was afterwards executed would be as effectual and good security as either of the others, and would prevent the necessity of changing the vessel's papers and of Hunt's taking possession of the vessel upon her arrival from sea. That the parties then requested him to draw such an

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instrument as in his opinion would most effectually and fully secure Mr. Hunt, and that the plaintiff frequently asked him whilst he was drawing the power and after he had finished and read it to the parties, if he was quite certain that the power would be as safe and available to him as a bill of sale or mortgage, and that upon his assurances that it was, it was then executed. The witness then proceeds to express his opinion, from his knowledge of the parties and from their declaration at the time, that Rousmaniere would readily have given an absolute bill of sale of the property or any other security which could have been asked, and that Hunt would not have accepted the one which was afterwards executed if he had not considered it to be as extensive and perfect a security in all respects as an absolute bill of sale, and he adds, more positively, that such was the understanding and agreement of both the parties.

It appears by the testimony of this witness that he drew the power of attorney concerning the *Industry* for securing the second loan made by the plaintiff to Rousmaniere, and that the circumstances attending that transaction were essentially the same as those which have been stated in respect to the first loan.

We find another deposition in the record which deserves to be noticed, as it consists of declarations made by the plaintiff after the powers of attorney were executed, and may serve in some measure to explain the more positive testimony given by Mr. Hazard. This witness, William Merchant, deposes that after the decease of Rousmaniere, the plaintiff stated to him and to a Mr. Rhodes that in consequence of his declining to engage in an enterprise in one of the vessels of Rousmaniere, to which he had at one time consented, and of the complaints of Rousmaniere on that account, he was induced to offer to Rousmaniere a loan of money. That an agreement was accordingly made by which he, Hunt, was to let Rousmaniere have a certain sum on loan, and Rousmaniere was to give him a bill of sale of a certain vessel, but that afterwards, Hunt, reflecting that if he took that security he would have to take out papers at the custom house in his own name, be subject to give bonds for the vessel, and perhaps be made liable for breaches of law committed by others, he consulted with Mr. Hazard upon the subject, who told him that he could or would draw an irrevocable power of attorney, to sell which would do as well, and which was accordingly done.

The cause coming on to be heard, in the court below, and that court being of opinion that the plaintiff had then no lien or specific security upon these vessels and no equity to

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have such lien or security created against the general creditors of Rousmaniere, dismissed the bill, from which decree the cause has been brought by appeal to this Court.

It must be admitted that the case, as it is now presented to the Court, is not materially variant from that which we formerly had to consider, except in relation to the rights of the general creditors against the insolvent estate of a deceased debtor in opposition to the equity which a particular creditor seeks by this bill to set up. The allegations of the bills filed in this cause, which were, on the former occasion, admitted by the demurrer to be true, are now fully proved by the testimony taken in the cause.

Before proceeding to state the general question to which the facts in this case give rise or the principles of equity which apply to it, it will be necessary distinctly to ascertain what was the real agreement concluded upon between the plaintiff and the intestate, the performance of which on the part of the latter was intended to be secured by the powers of attorney. Was it that Rousmaniere should, in addition to his notes for the money agreed to be loaned to him by the plaintiff, give a specific and available security on the *Nereus* and the *Industry*, or was the particular kind of security selected by the parties, and did it constitute a part of the agreement? It is most obvious from the plaintiff's own statement in his amended bill as well as from the depositions appearing in the record, that the agreement was not closed until the interview between the parties to it with Mr. Hazard had taken place. The amended bill states that the specific security which Rousmaniere offered to give was a mortgage of the two vessels, for which irrevocable powers of attorney were substituted by the advice of Mr. Hazard, and for reasons which it would seem were approved of and acted upon by the plaintiff. From the testimony of Mr. Merchant, it would appear that the security proposed by Rousmaniere was a bill of sale of the vessels, which the plaintiff declined accepting for reasons of his own, uninfluenced by any suggestions of Mr. Hazard, who merely proposed the powers of attorney as a substitute for the other forms of security which had been offered by Rousmaniere. The difference between these statements is not very material, since it is apparent from both of them that the proposed security, by irrevocable powers of attorney, was selected by the plaintiff and incorporated into the agreement by the assent of both the parties. The powers of attorney do not contain, nor do they profess to contain, the agreement of the parties, but was a mere execution of that agreement so far as it stipulated to give to the plaintiff a specific security on the two vessels in the mode selected and approved of by the parties, to

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which extent it was a complete consummation of the agreement. Such was the opinion of this Court upon the former discussion of this cause in the year 1823, and such is its present opinion. Upon this state of the case, the general question to be decided is the same now that it formerly was, and is that which has already

been stated.

There are certain principles of equity applicable to this question which as general principles we hold to be incontrovertible. The first is that where an instrument is drawn and executed which professes or is intended to carry into execution an agreement, whether in writing or by parol, previously entered into, but which, by mistake of the draftsman either as to fact or law does not fulfill or which violates the manifest intention of the parties to the agreement, equity will correct the mistake so as to produce a conformity of the instrument to the agreement. The reason is obvious -- the execution of agreements fairly and legally entered into is one of the peculiar branches of equity jurisdiction, and if the instrument which is intended to execute the agreement be from any cause insufficient for that purpose, the agreement remains as much unexecuted as if one of the parties had refused, altogether, to comply with his engagement; and a court of equity will, in the exercise of its acknowledged jurisdiction, afford relief in the one case as well as in the other by compelling the delinquent party fully to perform his agreement according to the terms of it and to the manifest intention of the parties. So if the mistake exists not in the instrument which is intended to give effect to the agreement, but in the agreement itself, and is clearly proved to have been the result of ignorance of some material fact, a court of equity will in general grant relief according to the nature of the particular case in which it is sought.

Whether these principles or either of them apply to the present case must, of course, depend upon the real character of the agreement under consideration. If it has been correctly stated, it follows that the instrument by means of which the specific security was to be given was selected by the parties to the agreement, or rather by the plaintiff, Rousmaniere having proposed to give a mortgage or bill of sale of the vessels which the plaintiff, after consideration and advice of counsel, thought proper to reject for reasons which were entirely satisfactory to himself. That the form of the instrument so chosen by the plaintiff, and prepared by the person who drew it conforms in every respect to the one agreed upon is not even asserted in the bill or in the argument of counsel. The avowed object of the plaintiff was to obtain a valid security, but in such a manner as that the legal interest in the

property should remain with

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Rousmaniere, so that the plaintiff might be under no necessity to take out papers at the custom house in his own name, and might not be subject to give bonds for the vessels or to liabilities for breaches of law committed by those who were entrusted with the management of them.

That the general intention of the parties was to provide a security as effectual as a mortgage of the vessels would be can admit of no doubt, and if such had been their agreement, the insufficiency of the instruments to effect that object which were afterwards prepared would have furnished a ground for the interposition of a court of equity which the representatives of Rousmaniere could not easily have resisted. But the plaintiff was not satisfied to leave the kind of security which he was willing to receive undetermined, having finally made up his mind by the advice of his counsel not to accept of a mortgage or bill of sale in nature of a mortgage. He thought it safest, therefore, to designate the instrument, and, having deliberately done so, it met the view of both parties and was as completely incorporated into their agreement as were the notes of hand for the sum intended to be secured. In coming to this determination, it is not pretended that the plaintiff was misled by ignorance of any fact connected with the agreement which he was about to conclude. If then the agreement was not founded in a mistake of any material fact, and if it was executed in strict conformity with itself, we think it would be unprecedented for a court of equity to decree another security to be given not only different from that which had been agreed upon, but one which had been deliberately considered and rejected by the party now asking for relief, or to treat the case as if such other security had in fact been agreed upon and executed. Had Rousmaniere, after receiving the money agreed to be loaned to him, refused to give an irrevocable power of attorney, but offered to execute a mortgage of the vessels, no court of equity could have compelled the plaintiff to accept the security so offered. Or if he had totally refused to execute the agreement and the plaintiff had filed his bill praying that the defendant might be compelled to execute a mortgage instead of an irrevocable power of attorney, could that court have

granted the relief specifically asked for? We think not. Equity may compel parties to perform their agreements when fairly entered into according to their terms, but it has no power to make agreements for parties and then compel them to execute the same. The former is a legitimate branch of its jurisdiction, and in its exercise is highly beneficial to society. The latter is without its authority, and the exercise of it would be not only an usurpation of power, but would be highly mischievous in its consequences.

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If the court could not have compelled the plaintiff to accept or Rousmaniere to execute any other instrument than the one which had been agreed upon between them, the case is in no respect altered by the death of the latter and the consequent inefficiency of the particular security which had been selected, the objection to the relief asked for being in both cases the same -- namely that the court can only enforce the performance of an agreement according to its terms and to the intention of the parties, and cannot force upon them a different agreement. That the intention of the parties to this agreement was frustrated by the happening of an event not thought of, probably, by them or by the counsel who was consulted upon the occasion is manifest. The kind of security which was chosen would have been equally effectual for the purpose intended with a mortgage had Rousmaniere lived until the power had been executed, and it may therefore admit of some doubt, at least, whether the loss of the intended security is to be attributed to a want of foresight in the parties or to a mistake of the counsel in respect to a matter of law. The case will, however, be considered in the latter point of view.

The question, then, is ought the court to grant the relief which is asked for upon the ground of mistake arising from any ignorance of law? We hold the general rule to be that a mistake of this character is not a ground for reforming a deed founded on such mistake, and whatever exceptions there may be to this rule, they are not only few in number but they will be found to have something peculiar in their characters.

The strongest case which was cited and relied upon by the appellant's counsel was that of *Landsdown v. Landsdown*, reported in Mosely. Admitting for the present the authority of this case, it is most apparent from the face of it that the decision of the court might well be supported upon a principle not involved in the question we are examining. The subject which the court had to decide arose out of a dispute between an heir at law and a younger member of the family who was entitled to an estate descended, and this question the parties agreed to submit to arbitration. The award being against the heir at law, he executed a deed in compliance with it, but was relieved against it on the principle that he was ignorant of his title.

If the decision of the court proceeded upon the ground that the plaintiff was ignorant of the fact that he was the eldest son, it was clearly a case proper for relief upon a principle which has already been considered.

If the mistake was of his legal rights as heir at law, it is not going too far to presume that the opinion of the court

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may have been founded upon the belief that the heir at law was imposed upon by some unfair representations of his better informed opponent, or that his ignorance of a legal principle so universally understood by all, where the right of primogeniture forms a part of the law of descents, demonstrated a degree of mental imbecility which might well entitle him to relief. He acted, besides, under the pressure of an award which was manifestly repugnant to law, and for aught that is stated in this case, this may have appeared upon the face of it.

But if this case must be considered as an exception from the general rule which has been mentioned, the circumstances attending it do not entitle it, were it otherwise unobjectionable, to be respected as an authority but in cases which it closely resembles. There is a class of cases which it has been supposed forms an exception from this general rule, but which will be found, upon examination, to come within the one which was first stated. The cases alluded to are those in

which equity has afforded relief against the representatives of a deceased obligor in a joint bond, given for money, lent to both the obligors, although such representatives were discharged at law. The principle upon which these cases manifestly proceed is that the money being lent to both, the law raises a promise in both to pay, and equity considers the security of the bond as being intended by the parties to be coextensive with this implied contract by both to pay the debt. To effect this intention, the bond should have been made joint and several, and the mistake in the form by which it is made joint is not in the agreement of the parties, but in the execution of it by the draftsman. The cases in which the general rule has been adhered to are, many of them, of a character which strongly test the principle upon which the rule itself is founded. Two or three only need be referred to. If the obligee in a joint bond, by two or more, agree with one of the obligors to relieve him from his obligation and does accordingly execute a release by which all the obligors are discharged at law, equity will not afford relief against this legal consequence, although the release was given under a manifest misapprehension of the legal effect of it in relation to the other obligors. So in the case of *Worral v. Jacob*, 3 Merv. 271, where a person having a power of appointment and revocation, and, under a mistaken supposition that a deed might be altered or revoked, although no power of revocation had been reserved, executed the power of appointment without reserving a power of revocation, the court refused to relieve against the mistake.

The case of *Lord Irnham v. Child*, 1 Bro.C.C. 92, is a very strong one in support of the general rule, and closely

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resembles the present in most of the material circumstances attending it. The object of the suit was to set up a clause containing a power of redemption in a deed granting an annuity which, it was said, had been agreed upon by the parties, but which, after deliberation, was excluded by consent from a mistaken opinion that it would render the contracts usurious. The court, notwithstanding the omission manifestly proceeded upon a misapprehension of the parties as to the law, refused to relieve by establishing the rejected clause. It is not the intention of

the Court in the case now under consideration to lay it down that there may not be cases in which a court of equity will relieve against a plain mistake, arising from ignorance of law. But we mean to say that where the parties, upon deliberation and advice, reject one species of security and agree to select another under a misapprehension of the law as to the nature of the security so selected, a court of equity will not, on the ground of such misapprehension and the insufficiency of such security in consequence of a subsequent event, not foreseen, perhaps, or thought of, direct a new security of a different character to be given, or decree that to be done which the parties supposed would have been effected by the instrument which was finally agreed upon.

If the court would not interfere in such a case generally, much less would it do so in favor of one creditor against the general creditors of an insolvent estate whose equity is at least equal to that of the party seeking to obtain a preference, and who in point of law stand upon the same ground with himself. This is not a bill asking for a specific performance of an agreement to execute a valid deed for securing a debt, in which case the party asking relief would be entitled to a specific lien, and the court would consider the debtor as a trustee for the creditor of the property on which the security was agreed to be given. The agreement has been fully executed, and the only complaint is that the agreement itself was founded upon a misapprehension of the law, and the prayer is to be relieved against the consequences of such mistake. If all other difficulties were out of the way, the equity of the general creditors to be paid their debts equally with the plaintiff would, we think, be sufficient to induce the court to leave the parties where the law has placed them.

*The decree is to be affirmed with costs.*