but he is bound to go on and collect the taxes after the term of his office has expired, and the sureties on his bond are liable for the moneys by him collected, or that should have been collected, after that time."

Reynolds then had the right to sell. If he had the right to sell, he had the right to do anything to consummate the sale. He should have executed the deed. This clearly appears from the language of chapter 242, Act 1891, which declares that when a tax collector has made a sale, and then dies before making a deed, his successor in office shall be the proper person to make the deed. This is the only case in which the successor in office is clothed with any such power. It arises ex necessitate. "Expressio unius est exclusio alterius." If he be alive, he is the person to make the deed. Reynolds is alive. Certainly he was alive when this deed was made. This being so, A. H. Lyman and C. E. Lyman have no deed; and the time for obtaining one has passed, under section 81, c. 297, Acts 1893, above quoted. The rights of the persons holding or owning adverse title to that purported to be conveyed in the deed are not affected. And as the tax collector has received all the tax due, and the interest thereon, the state has no claim. There is no forfeiture.

KOSZTELNIK v. BETHLEHEM IRON CO.

(Circuit Court, E. D. New York. November 12, 1898.)

1. PLEADING—DENIAL OF EXECUT ON OF RELEASE—VERIFICATION ON INFORMATION AND BELIEF.
   Where it is shown that a plaintiff is unable to read the English language, he will be permitted to deny the execution of a release pleaded by defendant, and written in English, on information and belief; nor will a second paragraph of the reply be stricken out which alleges that, if he executed the release, he did so in ignorance of the nature of the instruments, and by reason of the fraudulent misrepresentations of defendant as to its contents.
2. RELEASE—AVOIDANCE FOR FRAUD—DEFENSE IN ACTION AT LAW.
   A plaintiff may show fraud touching its execution to avoid a release pleaded as a defense in an action at law, but not fraud inducing him to enter into contract of release, which is an equitable defense.

On Motion Attacking Sufficiency of Reply.

Catlin & Nekarda, for plaintiff.
Lord, Day & Lord, for defendant.

THOMAS, District Judge. This action is brought by the plaintiff to recover for personal injuries alleged to have been received by reason of the negligence of the defendant. The answer alleges as a separate defense that the plaintiff, for a valuable consideration, executed a release, discharging the cause of action. Upon the defendant's motion, the court directed the plaintiff to reply to this defense. Thereupon a reply was served by the plaintiff, which contains two subdivisions, as follows:

"First. He denies on information and belief all the allegations in said second defense contained. Second. For a further reply to said defense, plaintiff alleges that, if the instrument in writing described in said answer was signed

or executed by him, his signature thereto was obtained by the fraud and misrepresentation of defendant's agents, in suppressing and concealing from him the fact that the same was a release, and in falsely misrepresenting the contents of the same to the plaintiff, and in inducing plaintiff to sign the same without knowledge of its contents, he being unable to read said paper, by reason of his ignorance of the English language; and the said instrument was executed in consequence of such fraud and misrepresentation, and not otherwise."

A motion is now made "for an order striking out paragraph 1 of the reply as sham, and for a judgment upon the remainder of the said reply as frivolous." It appears from the evidence presented upon this motion that the plaintiff is unable to speak or read the English language; but the defendant's evidence tends to show that the release, which was in the English language, was at the time of its execution read to the plaintiff in his native tongue, and the nature of the contents thereof explained; that the plaintiff thereupon stated that he understood it, and that it was satisfactory; and that he forthwith signed the same; and that the plaintiff received the sum of $50 in money as a consideration for said release. It is urged on the part of the plaintiff that, on account of his ignorance of the English language, he can only deny upon information and belief that he executed the release. By reason of the peculiar facts stated in this case, it is sufficient that the denial of the release is upon information and belief.

The second subdivision of the reply is but a statement that, if the plaintiff's information and belief be incorrect, nevertheless he was induced to execute the release by false representations as to its contents, and as to the nature of the paper presented to him for signature. It will be observed that the charge of fraud relates simply to the execution of the paper, and not to any facts or circumstances inducing to the contract. It may be that the plaintiff could prove under the first subdivision whatever would be permitted in avoidance of the release in an action at law; but, as no harm arises from the amplification of the reply as contained in the second paragraph, there is no occasion for adjudging it frivolous, even if it could be deemed redundant.

Under the pleadings as they now stand, upon proof of the release on the trial, the plaintiff will be permitted to show any fraud touching the execution of the instrument, but will not be entitled to show that he was induced to make the contract of release by fraudulent representations, which would constitute an equitable, and not a legal, defense. Shampeau v. Lumber Co., 42 Fed. 760; George v. Tate, 102 U. S. 564, 570. If the plaintiff seeks to avoid the release by reason of false representations, whereby he was induced to make the contract, he must pursue his remedy by a suit in equity. It does not appear to the court that the reply is sham, or that the second subdivision thereof is frivolous, or, under the facts presented, inconsistent with the first subdivision. The motion is denied.

UNITED STATES v. STUBBS.

(District Court, S. D. New York. November 22, 1898.)

STAMP TAX—PROPRIETARY ARTICLES—"UNCOMPOUNDED MEDICINAL DRUGS."

The terms "uncompounded medicinal drugs or chemicals" in section 20 of the act of June 13, 1898 (chapter 448), are used in their pharmaceutical sense, and mean a drug or chemical that is not a mixture of different substances, but a single entity or substance only, though this substance may be a chemical compound. Patent medicines and other proprietary articles that are mixtures, are taxable under Schedule B; but those that are not made by mixing or compounding in the pharmaceutical sense, but are single distinct substances, whether elementary or strict chemical compounds, are within the exception of section 20 and need not be stamped.

At Law.

Henry L. Burnett, U. S. Atty., and Arthur M. King, Asst. U. S. Atty.

Dickerson & Brown, for claimant.

BROWN, District Judge. The above libel was filed to enforce an alleged forfeiture of a quantity of Aristol, Phenacetine and 10 other articles, under sections 20 and 22 of the act of June 13, 1898 (chapter 448), for being offered for sale without being stamped as proprietary articles. The only question raised was whether the articles are by that act subject to a stamp tax. A jury trial being waived, the cause has been heard by the court without a jury.

It was admitted that all the articles in question are covered by patents and a trade-mark, and that all are proprietary medicinal articles. As such, according to Schedule B (page 462), all would be subject to a stamp tax without doubt, except for the proviso of section 20. The latter section provides:

"That no stamp tax shall be imposed upon any uncompounded medicinal drug or chemical, nor upon any medicine sold to or for the use of any person which may be mixed or compounded for said person according to the written recipe or prescription of any practicing physician or surgeon, or which may be put up or compounded for said person by a druggist or pharmacist selling at retail only. The stamp taxes provided for in Schedule B of this act shall apply to all medicinal articles compounded by any formula, published or unpublished, which are put up in style or manner similar to that of patent, trade-mark, or proprietary medicine in general, or which are advertised on the package or otherwise as remedies or specifics for any ailment, or as having any special claim to merit, or to any peculiar advantage in mode of preparation, quality, use or effect."

This specific proviso establishes an exception to the general language of Schedule B and excludes from liability to tax all such articles as come within the proviso, even though they may be proprietary medicinal articles or covered by a patent or trade-mark. For the latter part of the clause above quoted shows clearly that in framing this proviso, Schedule B was present in the mind of the framers of the law, since it distinctly declares that "all medicinal articles compounded by any formula, which," etc., shall be subject to the "stamp