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PART ONE

ESTOPPEL

I. IN GENERAL

§ 1. Generally; definitions and nature.

The term "estoppel" has been variously defined.¹ Perhaps no other technical legal term is more loosely used than the term "estoppel." It is used sometimes merely to indicate the existence of an ordinary prior paramount right in the opposite party or a general rule of law, as where it is said that a state cannot be estopped except by a valid act of its legislature; or to indicate the conclusive effect of a judgment; or to express the rule of law that courts will not enforce a demand contrary to public welfare or morals; or to express the rule of equity that "he who hath committed iniquity shall not have equity" or that suitors who invoke relief from a court of equity must come into court with clean hands; or to indicate waiver or acquiescence.²

The term "estoppel" is often held to apply only to matters of fact,³ but cases are not wanting in which one is said to be estopped to set up a right under the Constitution, or to take inconsistent legal positions, or to deny that he is an officer de jure in a criminal prosecution for acts done as such officer.⁴ It is very difficult, therefore, to frame any formal definition which will cover or include all the matters to which the term has been applied in the cases. Lord Coke's statement that "[i]t is called an estoppel or conclusion, because a man's own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth,"⁵ though sometimes criticized, has frequently been quoted or referred to by the courts.⁶ It has also been said that no more exact con-

1. Egbert v Duck, 239 Iowa 646, 32 NW2d 404.

2. Chicago, St. P. M. & O. R. Co. v Douglas County, 134 Wis 197, 114 NW 511.

3. Snyder v Studebaker, 19 Ind 462; Farmers' & M. Bank v Davies, 144 La 532, 80 So 713; Williams v Supreme Council, A. L. H. 80 App Div 402, 80 NYS 713; Chicago, St. P. M. & O. R. Co. v Douglas County, 134 Wis 197, 114 NW 511.

4. Chicago, St. P. M. & O. R. Co. v Douglas County, supra.

5. 2 Coke, Littleton 352a.

6. Spring v Bank of Mt. Pleasant (US) 10 Pet 237, 9 L ed 416; Woodmen of World L. Ins. Soc. v Greathouse, 242 Ala 529, 7 So 2d 89; United States Casualty Co. v Godwin, 158 Fla 64, 27 So 2d 612; Davis v Evans (Fla App) 132 So 2d 476; Suske v Straka, 229 Minn 408, 39 NW2d 745; State ex rel Mc-

e.g. 28 Am Jur 2d ESTOPPEL and W. § —

notative definition covering all the cases can be attempted and that it is better to leave the definition of estoppel to the gradual process of judicial inclusion and exclusion.⁷ Speaking generally, however, it may be said that estoppel is a bar which precludes a person from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth, either by the acts of judicial or legislative officers, or by his own deed, acts, or representations, either express or implied.⁸

In subsequent parts of this article will be found definitions of estoppel by deed,⁹ equitable estoppel or estoppel in pais,¹⁰ promissory estoppel,¹¹ and judicial estoppel.¹²

§ 2. Classification.

Generally, estoppels are said to be of three kinds: (1) by record, (2) by deed, and (3) by matter in pais.¹³ The first two are sometimes referred to as technical estoppels as distinguished from equitable estoppels or estoppels in pais.¹⁴ An estoppel by record is the preclusion to deny the truth of matters set forth in a record, whether judicial or legislative, and also to deny the facts adjudicated by a court of competent jurisdiction.¹⁵ While technical estoppels are regulated by well-settled rules and admit of certain application, it would be difficult to prescribe a rule of universal application in regard to what are called estoppels in pais, depending as they do on the particular circumstances of the case.¹⁶

The present article discusses generally estoppel by deed and estoppel in pais or equitable estoppel. Estoppel by record, estoppel by deed as applied to after-acquired title and to mortgages, and many particular applications of equitable estoppel or estoppel in pais, are treated under other titles of this work.¹⁷

Kittrick v Missouri Utilities Co. 339 Mo 385, 96 SW2d 607, 106 ALR 1169; White v La Due & Fitch, Inc. 303 NY 122, 100 NE2d 167; State ex rel. Squire v Murfey, B. & Co. 131 Ohio St 289, 2 NE2d 866; Williams v Edwards, 163 Okla 246, 22 P2d 1026; Burke v Barnum & Bailey, 40 RI 71, 99 A 1027.

7. Davis v Evans (Fla App) 132 So 2d 476; State ex rel. McKittrick v Missouri Utilities Co. 339 Mo 385, 96 SW2d 607, 106 ALR 1169.

8. Egbert v Duck, 239 Iowa 646, 32 NW2d 404; Smith v Smith, 265 NC 18, 143 SE2d 300; Farmers State Bank v Bowles, 52 ND 553, 203 NW 903, 40 ALR 377; Williams v Edwards, 163 Okla 246, 22 P2d 1026; United States Nat. Bank v Drabish, 187 Pa Super 169, 144 A2d 640; Burke v Barnum & Bailey, 40 RI 71, 99 A 1027; Southern R. Co. v Day, 140 SC 388, 138 SE 870; McClure v Wade, 34 Tenn App 154, 235 SW2d 835, 28 ALR2d 104; Kessinger v Anderson, 31 Wash 2d 157, 196 P2d 289.

9. § 4, *infra*.

10. § 27, *infra*.

11. § 48, *infra*.

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12. § 71, *infra*.

13. Simpson v Pearson, 31 Ind 1; Jackson v United Gas Public Service Co. 196 La 1, 198 So 633, cert den 311 US 686, 85 L ed 443, 61 S Ct 63; Williams v Supreme Council, A. L. H. 80 App Div 402, 80 NYS 713; Frost v Saratoga Mut. Ins. Co. (NY) 5 Denis 154; Denny v Wilson County, 198 Tenn 677, 281 SW2d 671; Davidson County v Beauchese, 39 Tenn App 90, 281 SW2d 266; Carruthers v Whitney, 56 Wash 327, 105 P 831.

14. West Winsted Sav. Bank & Bldg. Assn. v Ford, 27 Conn 282; Welland Canal Co. v Hathaway (NY) 8 Wend 480; Beardsley v Foot, 14 Ohio St 414.

Equitable estoppel arises from matter in pais, whereas estoppel by deed is based solely on a written instrument. Blackstock v Gribble (Tex Civ App) 312 SW2d 209, error ref n r e; Masterson v Boudlin (Tex Civ App) 151 SW 2d 301, error ref.

15. Swofford Bros. Dry Goods Co. v Owen, 37 Okla 616, 133 P 193; Watson v Goldsmith, 205 SC 215, 31 SE2d 317.

16. Beardsley v Foot, 14 Ohio St 414.

17. See the discussion under "Scope of Topic" at the beginning of this article.

§ 3. Attitude and policy of the courts, generally.

Inasmuch as the doctrine of estoppel operates, as stated by Lord Coke, to shut a man's mouth from speaking the truth,¹⁸ and is more or less in the nature of a forfeiture,¹⁹ estoppels have often been characterized as harsh or odious and not favored in the law.²⁰ This characterization, however, has frequently referred to technical estoppels and is most often found in the earlier cases. In other cases, and especially in the more recent ones, estoppels, especially those known as "equitable" or "in pais," are not deemed odious, but are said to be conducive to honesty and fair dealing and promotive of justice, and to stand on the broad grounds of public policy and good faith.¹ The technicalities incident to estoppels have gradually given way to considerations of reason and practical utility, and the courts of the present day seem disposed to give force and effect to a doctrine which is based upon principles of justice and the purest morality.² Estoppels are as readily and fully recognized in courts of law as in courts of equity.³ Nevertheless, the doctrine of estoppel must be applied with great care and the equity must be strong in its favor.⁴

It is still the rule that estoppels should be resorted to solely as a means of preventing injustice⁵ and should not be permitted to defeat the administration of the law,⁶ or to accomplish a wrong or secure an undue advantage,⁷ or to extend beyond the requirements of the transactions in which they originate.⁸ It is, moreover, recognized that the doctrine of estoppel when misapplied may be a most effective weapon for the accomplishment of in-

18. Lubric Oil Co. v Drawe, 26 Ohio App 478, 160 NE 93.

19. Kelley v Hazzard, 96 Ohio St 19, 117 NE 182.

20. Richardson v Boston (US) 19 How 263, 15 L ed 639; Wheaton v North British & M. Ins. Co. 76 Cal 415, 18 P 758; Franklin v Merida, 35 Cal 558; Smith v Sherwood, 4 Conn 276; Cobb County R. E. Membership Corp. v Board of Lights & Water Works, 211 Ga 535, 87 SE2d 80; Anfensen v Banks, 180 Iowa 1066, 163 NW 608; Hanson v Buckner, 34 Ky (4 Dana) 251; Harvey v Richard, 200 La 97, 7 So 2d 674; Scallan v Simmesport State Bank (La App) 129 So 2d 49; McLearn v Hill, 276 Mass 519, 177 NE 617, 77 ALR 1039; Barnett v Kemp, 258 Mo 139, 167 SW 546; Mitchell v Kintzer, 5 Pa 216.

1. Daniels v Tearney, 102 US 415, 26 L ed 187 (saying that the principle of estoppel has its foundation in a wise and salutary policy, and without it society could not well go on); Sprigg v Bank of Mt. Pleasant (US) 10 Pet 257, 9 L ed 416; Houston Nat. Bank v Eldridge, 17 Ala App 235, 84 So 430; Penn v Heisey, 19 Ill 293; Smith v Coutant, 232 Iowa 887, 6 NW2d 421; Board of County Comrs. v Brown, 183 Kan 19, 323 P2d 382; State ex rel. Shell Oil Co. v Register of State Land Office, 193 La 883, 192 So 519; Alexander v Walter (Md) 8 Gill 239; May v Kearney, 145 Neb 425, 17 NW2d 448; Grand Island v

Willis, 142 Neb 686, 7 NW2d 457; Horn v Cole, 51 NH 287; Waters' Appeal, 35 Pa 523.

Equitable estoppel is entitled to the distinction of being one of the greatest instrumentalities to promote the ends of justice which the equity of the law affords. Knauf & T. Co. v Elkhart Lake Sand & Gravel Co. 153 Wis 306, 141 NW 701.

2. Steen v Scott, 144 Fla 702, 198 So 489; New York Life Ins. Co. v Oates, 122 Fla 540, 166 So 269.

3. Arlin v Caplener, 229 Ark 718, 318 SW 2d 141.

4. Fiers v Jacobson, 123 Mont 242, 211 P2d 968.

5. Barnett v Kemp, 258 Mo 139, 167 SW 546; Smith v Smith, 265 NC 18, 143 SE2d 300.

6. Federal Land Bank v Modern, 189 La 627, 137 So 370, 95 ALR 918; Smith v Smith, 265 NC 18, 143 SE2d 300.

7. Costa v Pratt (Sup) 98 NYS2d 148, aff'd 277 App Div 806, 96 NYS2d 668.

8. McLearn v Hill, 276 Mass 519, 177 NE 617, 77 ALR 1039; Smith v Smith, 265 NC 18, 143 SE2d 300; Portland v Inman-Poulson Lumber Co. 66 Or 86, 133 P 829.

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justice.⁹ It is also recognized, however, that it is a doctrine capable of wholesome application;¹⁰ that when properly applied and kept within its proper function, it is founded upon reason and justice¹¹ and is a principle of good morals as well as of law;¹² that although it debars the truth in the particular case, it does so only where its utterance would convict the party of a previous falsehood and would be the denial of a previous affirmation upon the faith of which persons have dealt and pledged their credit or expended their money;¹³ and that it often enables right and justice to triumph where nothing else known to jurisprudence can do so.¹⁴ Hence, the courts do not hesitate to uphold a claim of estoppel wherever such action is essential to prevent fraud.¹⁵

II. ESTOPPEL BY DEED OR BOND

A. IN GENERAL

§ 4. Generally; definition and nature.

Estoppel by deed is a bar which precludes one party to a deed and his privies from asserting as against the other party and his privies any right or title in derogation of the deed, or from denying the truth of any material facts asserted in it.¹⁶ Estoppel by deed is technical in nature,¹⁷ and such an estoppel may conclude a party without any reference to the moral qualities of his conduct.¹⁸

9. *Roberts v Roberts*, 81 Cal App 2d 871, 185 P2d 381; *Anfenson v Banks*, 180 Iowa 1066, 163 NW 608; *Smith v Smith*, 265 NC 18, 143 SE2d 300.

10. *State ex rel. Shell Oil Co. v Register of State Land Office*, 193 La 883, 192 So 519.

11. *Hill v Farmers & M. Nat. Bank*, 97 US 450, 24 L ed 1051; *Gregg v Von Phul* (US) 1 Wall 274, 17 L ed 536; *Van Rensselaer v Kearney* (US) 11 How 297, 13 L ed 703; *Smith v Coutant*, 232 Iowa 887, 6 NW 2d 421; *Board of County Commrs v Brown*, 183 Kan 19, 325 P2d 382; *Knauf & T. Co. v Elkhart Lake Sand & Gravel Co.* 153 Wis 306, 141 NW 701.

12. *Gregg v Von Phul* (US) 1 Wall 274, 17 L ed 536; *Van Rensselaer v Kearney* (US) 11 How 297, 13 L ed 703; *Smith v Coutant*, 232 Iowa 887, 6 NW2d 421; *State ex rel. Shell Oil Co. v Register of State Land Office*, 193 La 883, 192 So 519.

13. *Van Rensselaer v Kearney* (US) 11 How 297, 13 L ed 703.

The law of estoppel makes the acts and conduct of a party binding against him whenever they should be so, and will not permit him to assert any claim to the contrary. Thus, he himself makes the law of his case and he must abide the consequences. *Hill v Farmers & M. Nat. Bank*, 97 US 450, 24 L ed 1051.

It is a salutary practical rule that a man shall not be permitted to deny what he has once solemnly acknowledged. *Spriegg v Bank of Mt. Pleasant* (US) 10 Pet 257, 9 L ed 416.

14. *Daniels v Tearney*, 102 US 415, 26 L ed 187; *Morgan v Chicago & A. R. Co.* 96 US 716, 24 L ed 743; *Smith v Coutant*, 232 Iowa 887, 6 NW2d 421; *State ex rel. Shell Oil Co. v Register of State Land Office*, 193 La 883, 192 So 519; *Costa v Pratt* (Sup) 98 NYS2d 148, affd 277 App Div 806, 96 NYS2d 868.

15. *Anfenson v Banks*, 180 Iowa 1066, 163 NW 608.

16. *Overstreet v Lamb* (Fla App) 128 So 2d 897; *Federal Land Bank v Bank of Lenox*, 192 Ga 543, 16 SE2d 9; *Jackson v United Gas Pub. Serv. Co.* 196 La 1, 190 So 633, cert den 311 US 686, 85 L ed 443, 61 S Ct 63; *Humble Oil & Refining Co. v Boudoin* (La App) 154 So 2d 239, writ refused 245 La 54, 156 So 2d 601; *Doten v Bartlett*, 107 Me 351, 78 A 456; *Lucas v Cowan* (Okla) 357 P2d 976; *Equitable Royalty Corp. v Hullet*, 206 Okla 233, 243 P2d 986; *Denny v Wilcox County*, 198 Tenn 677, 281 SW2d 671; *Davidson County v Beauchene*, 39 Tenn App 90, 281 SW2d 266; *Body v McDonald*, 79 Wyo 371, 334 P2d 513.

Practice Aids.—Allegation of estoppel by deed. 8 AM JUR PT. & PA FORMS 8:336.

17. *Welland Canal Co. v Hathaway* (NY) 8 Wend 480; *Equitable Royalty Corp. v Hullet*, 206 Okla 233, 243 P2d 986.

18. *McAdams v Bailey*, 169 Ind 518, 82 NE 1057; *Equitable Royalty Corp. v Hullet*, 206 Okla 233, 243 P2d 986.

Generally, estoppel by deed is based upon equitable considerations. In other words, it rests upon the inequity of allowing the party estopped from asserting a contrary position. The principle is that when a man has entered into a solemn engagement by deed, he shall not be permitted to deny any matter which he has asserted therein, for a deed is a solemn act to any part of which the law gives effect as the deliberate admission of the maker; to him it stands for truth, and in every situation in which he may be placed with respect to it, it is true as to him.¹⁹ It has been stated that it is a mistake to liken an estoppel by deed to an estoppel in pais.²⁰ It has also been stated, speaking of estoppel by deed in general, that the true principle of estoppel, as applicable to deeds, is to prevent circuity of action¹ and to compel parties to fulfil their contracts.² But where estoppel by deed arises, it is generally limited to an action on the deed itself; in a collateral action, there is ordinarily no estoppel.³

Estoppel by deed is a very important aspect of the law of estoppel. By reason of the operation of this doctrine, particularly upon grantors of real property⁴ and upon the passage of after-acquired title of such grantors,⁵ the effect of the doctrine upon grantees,⁶ and the effect and extent of control of recitals in conveyances as an estoppel upon parties thereto and their privies,⁷ many important and practical questions affecting the title to real property are controlled to a large extent. A person who is examining the record title to realty should be able to rely on the doctrine of estoppel by deed, without the necessity of having to investigate the possibility of a personal obligation to pay a money debt which might offset the estoppel by deed.⁸ Another important aspect of the doctrine, or one closely associated because of estoppel arising from a formal written instrument, is its relationship to liability upon various types of bonds, affecting both principals and sureties thereon.⁹ The doctrine of estoppel by deed has also been held applicable to mortgages, in some respects with particular emphasis due to the continuing nature of the relationships arising from a mortgage transaction.¹⁰

§ 5. Requisites or elements.

To constitute an estoppel by deed, a distinct and precise assertion or admission of a fact is necessary.¹¹ Hence, an estoppel by deed or similar instru-

19. *Thomason v Dayton*, 40 Ohio St 63; *Douglass v Scott*, 5 Ohio 194, reaffirmed 7 Ohio pt 1, p 227.

20. *McAdams v Bailey*, 169 Ind 518, 82 NE 1057.

1. *Casey v Inloes* (Md) 1 Gill 430; *Thomason v Dayton*, 40 Ohio St 63; *Buckingham v Hanna*, 2 Ohio St 551; *Body v McDonald*, 79 Wyo 371, 334 P2d 513.

2. *Casey v Inloes* (Md) 1 Gill 430; *Body v McDonald*, 79 Wyo 371, 334 P2d 513.

3. *Hughes v Cobb*, 195 Ga 213, 23 SE2d 701.

4. §§ 10 et seq., infra.

5. See 23 Am Jur 2d, DEEDS §§ 294 et seq.

6. §§ 13 et seq., infra.

7. §§ 19 et seq., infra.

8. *Humble Oil & Refining Co. v Boudoin* (La App) 154 So 2d 239, writ refused 245 La 54, 156 So 2d 601, stating further that it would be a dangerous precedent to hold that estoppel by warranty deed could be neutralized by a personal obligation to pay damages.

9. § 25, infra.

10. See MORTGAGES (1st ed §§ 8, 41, 240-256, 302, 1035-1037, 1240).

11. *Van Rensselaer v Kearney*, 11 How (US) 297, 13 L ed 703; *Erwin v Dekle*, 60 Fla 56, 53 So 441; *Equitable Royalty Corp. v Hullet*, 206 Okla 233, 243 P2d 986.

held to be operative as an estoppel, as to the material and essential facts recited, in the same manner in which recitals in a deed operate as an estoppel. The rule is well settled that the obligors in a bond—that is, the principal¹ and the sureties²—are estopped to deny the recitals therein. It is a salutary

1. *Bruce v United States*, 17 How (US) 437, 15 L. ed. 129 (bond of an Indian agent); *Crisman v Matthews*, 2 Ill 140 (forthcoming bond); *Miller v Elliott*, 1 Ind 484 (bond not to practice medicine, surgery, or obstetrics in a certain locality); *Ford v Clough*, 8 Mc 334 (tax collector's bond); *McIver Constr. Co. v Hurwitz*, 144 Md 451, 125 A 153 (stating rule with approval); *First Nat. Bank v Rogers*, 13 Minn 407, Gil 376 (recognizing rule, but holding it inapplicable to the case before the court because the recital involved a mere generality); *Metropolitan L. Ins. Co. v Bender*, 124 NY 47, 26 NE 345 (insurance agent's bond); *Haggart v Morgan*, 5 NY 422 (attachment bond); *Burnham v Edwards*, 125 Okla 272, 257 P 788, 53 ALR 600 (recognizing rule); *Capital Lumbering Co. v Learned*, 36 Or 544, 59 P 454 (replevin bond); *Portis v Parker*, 8 Tex 23 (delivery bond); *Fletcher v Jackson*, 23 Vt 581 (agent and attorney's bond); *Point Pleasant v Greenlee & Harden*, 63 W Va 207, 60 SE 601 (involving a liquor dealer's bond for license wherein the court also predicated the estoppel on principles of estoppel in pais).

The recital of a material fact in a bond, which is accepted by the obligee and acted on in belief of the truth of the statement, estops the obligor from showing in an action on the bond that the recital is not true. *Metropolitan L. Ins. Co. v Bender*, 124 NY 47, 26 NE 345, further holding that a recital in a penal bond that it is executed under seal estops the obligor from denying that fact, where it appears that he knew the difference in legal effect between sealed and unsealed instruments, and that he read, subscribed, and placed it in the custody of a person interested in having it accepted, and that the latter sealed and delivered it to the obligee, who received and acted on it in good faith.

But an interpleader in an attachment suit against his agent, in which property of the interpleader was seized while in the hands of the agent, is not estopped to claim the property as his own by recitals in a redelivery bond given by him to the effect that property of the agent had been attached, and was bound by the attachment, where both the interpleader and the agent advised the levying officer and the agent of the plaintiff of the ownership of the property, and the plaintiff was in no way deceived or induced to change its position to its own injury by any statement or conduct of the interpleader. *Woods Egan Live Stock Commission Co. v Hicks*, 92 Kan 922, 142 P 276.

As to estoppel on injunction bonds, see *INJUNCTIONS* (Rev ed § 351).

As to estoppel in respect of municipal and

other political division bonds, see *PUBLIC SECURITIES AND OBLIGATIONS* (1st ed §§ 184 et seq.).

2. *Dair v United States*, 16 Wall (US) 1, 21 L. ed. 491 (involving a distiller's revenue bond wherein the court predicated the estoppel of the sureties on the bond on the theory of inability to dispute the recitals on the face of the bond and also on the theory of equitable estoppel in pais for not conveying relevant information to the officer taking the bond when the opportunity was presented to do so); *State v McDonald*, 4 Idaho 468, 40 P 912 (sheriff's bond); *Ford v Clough*, 8 Mc 334 (tax collector's bond); *McIver Constr. Co. v Hurwitz*, 144 Md 451, 125 A 153 (bond to indemnify mortgagee against loss by reason of failure to make certain improvements on the mortgaged property); *Bruckway v Fetter*, 79 Mich 620, 45 NW 61 (liquor dealer's bond); *Bell v Kirkland*, 102 Minn 213, 113 NW 271 (contractor's bond on contract involving construction of a sewer in a municipality); *Hauenstein v Gillespie*, 73 Miss 742, 19 So 673 (guardian's bond); *Hall v Brackett*, 62 NH 509 (bank treasurer's bond); *Capital Lumbering Co. v Learned*, 36 Or 544, 59 P 454 (replevin bond); *Point Pleasant v Greenlee & Harden*, 63 W Va 207, 60 SE 601 (involving liquor dealer's bond for license wherein the court also predicated the estoppel on principles of estoppel in pais).

The validity of a decree for the sale of an infant's real estate for purposes of re-investment, and of the order appointing a trustee to make the sale, and of the bond reciting the due appointment of such trustee, executed to secure the faithful discharge by him of his duties, is not open to question by one who voluntarily became a surety upon the bond, thereby enabling his principal to obtain the proceeds of the sale. *United States v Hine v Morse*, 218 US 493, 54 L. ed. 1123, 31 S Ct 37.

A surety company furnishing a bond for a bank designated by the state treasurer as a depository for the collection of drafts, checks, and certificates of deposit that might come into his hands on account of any claims due the state, which bond contained the condition that the bank would promptly collect the proceeds of all such instruments entrusted to it, is, upon the bank's default, estopped to contend that only drafts, checks, and certificates of deposit for taxes were in the contemplation of the parties to the bond, although the provision for the appointment of the depository is part of an act relating to taxation, since the surety company, having given a bond sufficiently broad to cover paper derived from other sources, thereby enabling

practical rule in this respect that a man shall not be permitted to deny what he has once solemnly acknowledged.³ The obligor in a bond cannot contradict the recital of a particular fact recited in the instrument, such as the existence of a judgment; but a recital of a "generality to be done," such as the condition of payment in the bond, will not operate as an estoppel.⁴ Recitals contained in a void bond do not work an estoppel.⁵

Estoppel of the parties to a bond by virtue of the recitals therein contained has been applied to a variety of situations. Thus, where the value of a bond has been agreed on by the parties and the bond is executed in conformity to the agreement, the parties are estopped to deny that such agreed amount is not the true value of the bond.⁶ Similarly, one who, on the face of a bond, expressly acknowledges that he is principal, is estopped from setting up that he is only a surety,⁷ and the parties to a bond given for the faithful performance of the duties of an office to which it recites the appointment of the principal are estopped to deny the fact so recited.⁸ A recital or representation in a bond given by hotel lessees to secure the release of a lien thereon for repairs, that they are the owners of the hotel, estops them from denying that they are such owners for the purposes of the release and the enforcement of the lien against the bond.⁹

III. EQUITABLE ESTOPPEL, OR ESTOPPEL IN PAIS

A. IN GENERAL.

§ 26. Generally.

The more recent decisions of the courts have given a much wider scope to the doctrine of estoppel in pais than did the earlier cases,¹⁰ and the terms

the depository to obtain possession thereof, is precluded from denying that the bond is binding according to its terms. *State v United States Fidelity & G. Co.* 81 Kan 660, 106 P 1010.

As to the estoppel of sureties on a bond to procure an attachment, see 6 Am Jur 2d, ATTACHMENT AND GARNISHMENT § 619.

As to the estoppel of sureties on a bond given to release property from attachment, see 6 Am Jur 2d, ATTACHMENT AND GARNISHMENT §§ 540 et seq.

As to estoppel of the sureties on the bond of a public officer, see *PUBLIC OFFICERS AND EMPLOYEES* (1st ed § 414).

3. *Spring v Bank of Mt. Pleasant*, 10 Pet (US) 257, 9 L. ed. 416.

4. *First Nat. Bank v Rogers*, 13 Minn 407, Gil 376; *Burnham v Edwards*, 125 Okla 272, 257 P 788, 53 ALR 800.

5. *Caffrey v Dodgeon*, 38 Ind 512 (replevin bond void because justice of the peace in whose court action was attempted to be brought had no jurisdiction over the subject matter).

As to lack of estoppel of sureties on a void bail bond, see 8 Am Jur 2d, BAIL AND RECOGNIZANCE §§ 97, 173.

[28 Am Jur 2d]—40

6. *Speake v United States*, 9 Cranch (US) 28, 3 L. ed. 615, further holding that where the law provides that the penal sum of a bond shall be equal to the double value, and the parties voluntarily and without fraud consent to the insertion of a given sum, it is as much an estoppel as if the bond had specially recited that such sum was the double value; and that the obligors of an embargo bond are estopped to deny that the penalty of the bond is in the proper sum, namely, double the true value of the vessel and cargo.

7. *Spring v Bank of Mt. Pleasant*, 14 Pet (US) 201, 10 L. ed. 419.

8. *United States v Bradley*, 10 Pet (US) 343, 9 L. ed. 448.

As to the estoppel of sureties on the bond of a bank officer to allege that the principal did not hold the office where the bond recites that he holds such office, see 10 Am Jur 2d, BANKS § 82.

9. *Rice Window Mfr. Co. v Evans* (Fla) 71 So 2d 161.

10. *State ex rel. Atty. Gen. v Ward*, 272 Ala 616, 133 So 2d 303; *West Winster Sav. Bank & Bldg. Assn. v Ford*, 27 Conn 292; *New York Life Ins. Co. v Oates*, 141 Fla 161.

"estoppel in pais" and "equitable estoppel" are now generally used interchangeably as applicable to all estoppels other than those by record, deed, or bond.¹¹ Equitable estoppels operate in their own field as effectually as technical estoppels do in theirs.¹² Since, however, the principle which underlies equitable estoppel in its proper sense runs throughout all the transactions and contracts of civilized life,¹³ such estoppels cannot be subjected to fixed and settled rules of universal application, like legal estoppels, or hampered by the narrow confines of a technical formula.¹⁴ In other words, each case of estoppel must in the nature of things stand on its own bottom¹⁵—that is, the facts and circumstances of the particular case.¹⁶

Estoppels in pais seem, in their common-law origin, to have arisen only in case of those solemn and peculiar acts to which the law gave the power of creating a right, or passing an estate, and to which the law attached as much efficacy and importance as to matters appearing either by deed, record, or bond.¹⁷ These legal estoppels by matter in pais were few in number and operated to enforce some technical rule of the law.¹⁸ Other acts, statements, or admissions of a party, when not performed or made under seal or of record, were not originally considered at common law as estoppels, but merely as evidence, more or less important, and open to explanation or rebuttal.¹⁹

From the nature of equitable estoppel it is obvious that the doctrine may find a great variety of applications in connection with almost any sort of proceeding. In view of this fact, there is of course no attempt made in this article to discuss its detailed application in various types of proceedings. The doctrine of equitable estoppel also affects many substantive matters and ques-

192 So 637; *Titus v Morse*, 40 Me 348; *May v Kearney*, 145 Neb 475, 17 NW2d 448.

The ancient rules of the common law in relation to estoppels in pais have been relaxed, and the tendency of modern decisions is to take a broader view of the purpose to be accomplished by them, and they are now applied so as to reach the case of a party whose conduct is purposely fraudulent and will effect an unjust result. *Dair v United States*, 16 Wall (US) 1, 21 L ed 491.

11. *Haas v Haas*, 121 Ind App 335, 96 NE2d 116, reh den 121 Ind App 349, 98 NE2d 232; *State ex rel. Squire v Murfey, B. & Co.* 131 Ohio St 289, 2 NE2d 965.

12. *Guffey v O'Reiley*, 88 Mo 418; *Lindblom v Employers' Liability Assur. Corp.* 88 Mont 488, 295 P 1007; *May v Kearney*, 145 Neb 475, 17 NW2d 448; *Le Luz Community Ditch Co. v Alamogordo*, 34 NM 127, 279 P 72; *King v Stroup*, 22 NM 241, 160 P 367; *Knauf & T. Co. v Elkhart Lake Sand & Gravel Co.* 153 Wis 306, 141 NW 701.

13. *Penn v Heisey*, 19 Ill 295.

14. *Houston County Board of Revenue v Payner*, 236 Ala 381, 182 So 455; *Dalton Highway Dist. v Sowder*, 88 Idaho 556, 401 P2d 813; *Guffey v O'Reiley*, 88 Mo 418; *Lindblom v Employers' Liability Assur. Corp.* 88 Mont 488, 295 P 1007; *La Luz Community*

Ditch Co. v Alamogordo, 34 NM 127, 279 P 72; *King v Stroup*, 22 NM 241, 160 P 367.

Annotation: 171 ALR 106.

15. *Houston County Board of Revenue v Payner*, 236 Ala 381, 182 So 455; *State ex rel. McKittrick v Missouri Utilities Co.* 339 Mo 385, 96 SW2d 607, 106 ALR 1169.

16. *Trustees of Internal Improv. Fund v Claughton (Fla)* 86 So 2d 775; *Jennings v Bituminous Casualty Corp.* 47 Ill App 2d 243, 197 NE2d 513; *Mt. Vernon Trust Co. v Mt. Vernon (Sup)* 12 NYS2d 120, affd 265 App Div 910, 39 NYS2d 416.

17. *Davis v Davis*, 26 Cal 23; *Titus v Morse*, 40 Me 348.

18. *Horn v Gale*, 51 NH 287, saying that legal estoppels of this kind differ from equitable estoppels in that they disregard the equity and justice of the individual case on account of the supposed paramount importance of rigorously enforcing a certain and unvarying maxim of the law, and suggesting that the term "estoppel in pais" should not be applied to equitable estoppels.

Coke, in discussing the different kinds of estoppel by matter in pais, enumerates the following: by livery, by entry, by acceptance of rent, by partition, and by acceptance of an estate. 2 Coke's Littleton, 352a.

19. *West Winsted Sav. Bank & Bldg. Assn. v Ford*, 27 Conn 282.

[28 Am Jur 2d]

tions. While its application to certain matters, such as real-estate rights generally, is discussed herein,²⁰ other articles in this work discuss its application to many particular matters.¹

§ 27. Definitions and nature.

Equitable estoppel, or estoppel in pais, is a term applied usually to a situation where, because of something which he has done or omitted to do, a party is denied the right to plead or prove an otherwise important fact.² The term has also been variously defined, frequently by pointing out one or more of the elements of, or prerequisites to,³ the application of the doctrine or the situations in which the doctrine is urged.⁴ The most comprehensive definition of equitable estoppel or estoppel in pais is that it is the principle by which a party who knows or should know the truth is absolutely precluded, both at law and in equity, from denying, or asserting the contrary of, any material fact which, by his words or conduct, affirmative or negative, intentionally or through culpable negligence, he has induced another, who was excusably ignorant of the true facts and who had a right to rely upon such words or

20. §§ 81 et seq., *infra*.

1. The reader is advised to consult the specific article dealing with the particular type of proceeding or substantive matter involved. In this respect, see the discussion under "Scope of Topic" at the beginning of this article.

2. *State ex rel. Atty Gen. v Ward*, 272 Ala 646, 133 So 2d 383; *Jennings v Bituminous Casualty Corp.* 47 Ill App 2d 243, 197 NE2d 513; *Anfenson v Banks*, 180 Iowa 1066, 163 NW 608; *Wichita Federal Sav. & L. Assn. v Jones*, 155 Kan 821, 130 P2d 556; *Albachten v Bradley*, 212 Minn 359, 3 NW2d 783; *Morgan v Reese*, 99 Ohio App 473, 59 Ohio Ops 272, 134 NE2d 581; *General Finance Corp. v Jackson (Okla)* 296 P2d 141; *Nesbitt v Eric Coach Co.* 416 Pa 89, 204 A2d 473; *Peterson v Ogden City*, 111 Utah 125, 176 P2d 599.

Estoppel may arise where a person is concerned in or does some act which will preclude him from averring anything to the contrary. *United States Casualty Co. v Godwin*, 158 Fla 64, 27 So 2d 612.

An estoppel arises where by conduct or acts a person has been induced to alter his position or do that which he would not otherwise have done, to his prejudice. *Willadsen v Crawford*, 75 SD 161, 60 NW2d 692.

3. Generally as to such elements or prerequisites, see §§ 35 et seq., *infra*.

4. "Equitable estoppel, or estoppel in pais, is that condition in which justice forbids that one speak the truth in his own behalf." *State ex rel. Shartel v Missouri Utilities Co.* 331 Mo 337, 53 SW2d 394, 89 ALR 607.

Estoppel means that a person is precluded by his own acts from asserting a right to the detriment of another who, entitled to rely

on such acts, has acted thereon. *Waugh v Lennard*, 69 Ariz 214, 211 P2d 806.

The substance of an equitable estoppel or estoppel in pais is the reasonable reliance by one person on the representation of another which will injure the first person if the other is permitted to assert the existence of a state of facts at variance with those represented. *Roberts v Friedell*, 218 Minn 89, 15 NW2d 496; *Exsted v Exsted*, 202 Minn 521, 279 NW 534, 117 ALR 599.

Estoppel is a preclusion in law which prevents one from alleging or denying a fact in consequence of his own previous act, allegation, or denial of a contrary tenor. *State ex rel. Shartel v Missouri Utilities Co.* 331 Mo 337, 53 SW2d 394, 89 ALR 607; *Gilbert v Globe & R. F. Ins. Co.* 91 Or 59, 174 P 1161, 178 P 358, 3 ALR 205.

Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity from asserting rights of property, contract, or remedy, which might perhaps have otherwise existed, as against another person who has in good faith relied upon such conduct and has been led thereby to change his position for the worse and who, on his part, acquires some corresponding rights of property, of contract, or of remedy. *Soverien Camp, W. W. v Newsom*, 142 Ark 132, 219 SW 759, 14 ALR 903; *Smith v Smith*, 265 NC 18, 143 SE2d 300; *Boddie v Bond*, 154 NC 359, 70 SE 824; *Vogel v Shaw*, 42 Wyo 333, 251 P 687, 75 ALR 639, quoting 2 *Pomeroy, Equity Jur* § 804.

An estoppel in pais is a right arising from acts, admissions, or conduct which have induced a change of position in accordance with the real or apparent intention of the party against whom they are alleged. *Ricketts v Southorn*, 57 Neb 51, 77 NW 965.

conduct, to believe and act upon them thereby, as a consequence reasonably to be anticipated, changing his position in such a way that he would suffer injury if such denial or contrary assertion was allowed.⁵ In the final analysis, however, an equitable estoppel rests upon the facts and circumstances of the particular case in which it is urged,⁶ considered in the framework of the elements, requisites, and grounds of equitable estoppel,⁷ and consequently, any attempted definition usually amounts to no more than a declaration of an estoppel under those facts and circumstances.⁸ The cases themselves must be looked to and applied by way of analogy rather than rule.⁹

5. *Arizona ex rel. Gaines v. Copper Queen Consol. Min. Co.* 233 US 87, 58 L ed 863, 34 S Ct 546; *Leather Mfrs. Nat. Bank v. Morgan*, 117 US 96, 29 L ed 811, 6 S Ct 657; *Dickerson v. Colgrove*, 100 US 578, 25 L ed 618; *Central Bank & Trust Co. v. General Finance Corp.* (CA5 Fla) 297 F2d 126; *Dickson v. Neal* (CA8) 2 F2d 533, cert den 269 US 556, 70 L ed 409, 46 S Ct 19; *Devine v. Cordovado*, 15 Alaska 232; *Glendale v. Coquat*, 46 Ariz 478, 52 P2d 1178, 102 ALR 837; *Hall v. Weatherford*, 32 Ariz 370, 259 P 282, 56 ALR 903; *Severign Camp, W. W. v. Newsum*, 142 Ark 132, 219 SW 759, 14 ALR 903; *Wheaton v. North British & M. Ins. Co.* 76 Cal 415, 18 P 758; *Martin v. Zellerbach*, 38 Cal 300; *Denver F. Ins. Co. v. McClelland*, 9 Colo 11, 9 P 771; *Cowles v. Bacon*, 21 Conn 451; *Brown v. Wheeler*, 17 Conn 345; *Triplex Shoe Co. v. Rice & Hutchins*, 17 Del Ch 356, 152 A 242, 72 ALR 931; *Robertson v. Robertson* (Fla) 61 So 2d 499; *Boesiger v. Freer*, 85 Idaho 551, 381 P2d 802; *Supreme Tent, K. M. v. Stensland*, 206 Ill 124, 68 NE 1098; *Jennings v. Bituminous Casualty Corp.* 47 Ill App 2d 243, 197 NE 2d 513; *Cook v. Walling*, 117 Ind 9, 19 NE 532; *Musselman v. McElhenny*, 23 Ind 4; *Sanborn v. Maryland Casualty Co.* 255 Iowa 1319, 125 NW2d 758; *Gas Serv. Co. v. Consolidated Gas Utilities Corp.* 145 Kan 423, 65 P2d 584; *Tarter v. Turpin* (Ky) 291 SW2d 547, 60 ALR2d 1205; *McDonald v. Goodman* (Ky) 239 SW2d 97; *American Gas & Ventilating Mach. Co. v. Wood*, 90 Me 516, 38 A 548; *J. F. Johnson Lumber Co. v. Magruder*, 218 Md 440, 147 A2d 208; *Maryland Teleph. & Teleg. Co. v. Ruth*, 106 Md 644, 68 A 358; *Bicelow v. Woodward*, 81 Mass (15 Gray) 560; *Suske v. Straka*, 229 Minn 408, 39 NW2d 745; *Albachten v. Bradley*, 212 Minn 359, 3 NW2d 783; *Turnipseed v. Hudson*, 50 Miss 429; *Biggs v. Modern Woodmen*, 336 Mo 879, 82 SW2d 898; *State ex rel. Shartel v. Missouri Utilities Co.* 331 Mo 337, 53 SW2d 394, 89 ALR 607; *Moore v. Sherman*, 52 Mont 542, 159 P 966; *Re Lee's Estate*, 137 Neb 567, 290 NW 437; *Monadnock Regional School Dist. v. Fitzwilliam* (NH) 203 A2d 46; *Drew v. Kimball*, 43 NH 282; *La Luz Community Ditch Co. v. Alamogordo*, 34 NM 127, 279 P 72; *King v. Stroup*, 22 NM 241, 160 P 367; *Triple Cities Constr. Co. v. Maryland Casualty Co.* 4 NY2d 443, 176 NYS2d 292, 151 NE 2d 856; *Lynn v. Lynn*, 302 NY 193, 97

NE2d 748, 28 ALR2d 1335, cert den 342 US 849, 96 L ed 640, 72 S Ct 72; *Morgenthaler v. Cohen*, 103 Ohio St 328, 132 NE 730; *Hastings v. Allen*, 14 Ohio 58; *Sequin v. Maloney*, 198 Or 272, 253 P2d 252, 256 P2d 514, 35 ALR2d 1412; *Commonwealth v. Moltz*, 10 Pa 527; *Hubbard v. Beverly*, 197 SC 476, 15 SE2d 740, 135 ALR 1206; *Smith v. Williams*, 141 SC 265, 139 SE 625, 54 ALR 964; *Security State Bank v. Cannon*, 39 SD 232, 163 NW 1040; *Lawrence County v. White*, 200 Tenn 1, 288 SW2d 735; *Bynum v. Preston*, 69 Tex 287, 6 SW 428; *Farmer v. Thompson* (Tex Civ App) 289 SW2d 351, error ref n r e; *Public Utilities Comm. v. Jones*, 54 Utah 111, 179 P 745; *Health v. Valentine*, 177 Va 731, 15 SE2d 98; *Rorrer Iron Co. v. Trout*, 83 Va 397, 2 SE 713; *Finley v. Finley*, 13 Wash 2d 735, 261 P2d 216, 42 ALR2d 1379; *Thomas v. Harlan*, 27 Wash 2d 512, 178 P2d 965, 170 ALR 1138; *McCarthy v. Union P. R. Co.* 58 Wyo 308, 131 P2d 326; *Vogel v. Shaw*, 42 Wyo 333, 294 P 687, 75 ALR 639.

6. § 26, *supra*.

7. As to such elements, etc., see §§ 35 et seq., *infra*.

8. *State ex rel. Atty. Gen. v. Ward*, 272 Ala 616, 133 So 2d 383; *Munger v. Boardman*, 53 Ariz 271, 88 P2d 536; *Terrell v. Weymouth*, 32 Fla 255, 13 So 429; *Boesiger v. Freer*, 85 Idaho 551, 381 P2d 802; *Jennings v. Bituminous Casualty Corp.* 47 Ill App 2d 243, 197 NE2d 513; *Board of County Commrs. v. Brown*, 183 Kan 19, 325 P2d 302; *Wichita Federal Sav. & Loan Assn. v. Jones*, 155 Kan 821, 130 P2d 556; *Bright v. Michel*, 242 Miss 738, 137 So 2d 153; *Biggs v. Modern Woodmen*, 336 Mo 879, 82 SW2d 898; *State ex rel. Consolidated School Dist. v. Haid*, 328 Mo 739, 41 SW2d 806; *Lindblom v. Employers' Liability Assur. Corp.* 88 Mont 488, 295 P 1007; *Grand Island v. Willis*, 142 Neb 606, 7 NW2d 457; *Monadnock Regional School Dist. v. Fitzwilliam* (NH) 203 A2d 46; *La Luz Community Ditch Co. v. Alamogordo*, 34 NM 127, 279 P 72; *King v. Stroup*, 22 NM 241, 160 P 367; *Parsons v. Lipe*, 158 Miss 32, 286 NYS 60; *Morgenthaler v. Cohen*, 103 Ohio St 328, 132 NE 730; *Morgan v. Reese*, 99 Ohio App 473, 59 Ohio Ops 272, 134 NE2d 581; *Lawrence County v. White*, 200 Tenn 1, 288 SW2d 735; *Vogel v. Shaw*, 42 Wyo 333, 294 P 687, 75 ALR 639.

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Although estoppel is sometimes said to be a mere rule of evidence, it is in reality one of substantive law, for the reason that it absolutely precludes a person from asserting what otherwise would be his right.¹⁰

§ 28. Basis, function, and purpose.

The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon.¹¹ The doctrine of estoppel springs from equitable principles and the equities in the case.¹² It is designed to aid the law in the administration of justice where without its aid injustice might result.¹³ Thus, the doctrine of equitable estoppel or

9. *State ex rel. Atty. Gen. v. Ward*, 272 Ala 616, 133 So 2d 383; *Berger v. Ohlson*, 9 Alaska 605, affd (CA9) 120 F2d 56; *Munger v. Boardman*, 53 Ariz 271, 88 P2d 536; *Board of County Commrs. v. Brown*, 183 Kan 19, 325 P2d 382; *Bright v. Michel*, 242 Miss 738, 137 So 2d 155; *Barron v. Federal Land Bank*, 82 Miss 50, 180 So 71; *Biggs v. Modern Woodmen*, 336 Mo 879, 82 SW2d 898; *State ex rel. Consolidated School Dist. v. Haid*, 328 Mo 739, 41 SW2d 806; *La Luz Community Ditch Co. v. Alamogordo*, 34 NM 127, 279 P 72; *King v. Stroup*, 22 NM 241, 160 P 367; *Ross v. Harding*, 64 Wash 2d 231, 391 P2d 526; *Barbee Mill Co. v. State*, 43 Wash 2d 353, 261 P2d 418.

11. *Miss LJ 237*.

10. *Suske v. Straka*, 229 Minn 408, 39 NW2d 745.

11. *Smith v. Coutant*, 232 Iowa 887, 6 NW 2d 421.

Estoppel is designed to protect the reliance and expectations of innocent persons from detrimental devastations by those who, by assent and recognition, have induced those reliance and expectations. *Russell v. Texas Co.* (CA9 Mont) 238 F2d 636, cert den 354 US 938, 1 L ed 2d 1537, 77 S Ct 1400.

Estoppel is based on the idea that one who has made a certain representation should not thereafter be permitted to change his position to the prejudice of one who has relied on it. *Sanborn v. Maryland Casualty Co.* 255 Iowa 1319, 125 NW2d 758.

The basis of an estoppel is that a party relying on it must have acquired rights in innocent reliance upon acts of the other party. *State ex rel. Booth v. Tatro*, 199 Wash 421, 92 P2d 206.

Estoppel is based upon the theory that where one has by his conduct induced another to change his position to his damage, disadvantage, or detriment, he is estopped from benefiting by such conduct. *Taylor v. Quinn*, 68 Ohio App 164, 22 Ohio Ops 292, 39 NE 2d 627.

Estoppel is based upon some misleading conduct or language of one person which, being

relied on, operates to the prejudice of another and is applied to the wrongdoer by the court in denial of some right which otherwise might exist, to prevent a fraud. *Dalroge v. Rochester German Ins. Co.* 177 Mich 442, 143 NW 608.

12. *State v. Mutual L. Ins. Co.* 175 Ind 59, 93 NE 213; *Irwine v. Dawson*, 197 Tenn 314, 273 SW2d 6.

The whole doctrine of equitable estoppel is a creature of equity and is governed by equitable principles. It is said to have been developed to prevent the unconscientious and inequitable assertion of rights or enforcement of claims which might have existed or been enforceable had not the conduct of a person, including his spoken or written words, his positive acts and his silence or negligent omission to do anything, rendered it inequitable and unconscionable to allow the rights or claims to be asserted or enforced. *J. F. Johnson Lumber Co. v. Maeruder*, 218 Md 440, 147 A2d 208.

Equitable estoppel is based upon the principle that a person is held to a representation made or a position assumed, where otherwise, inequitable consequences would result to another who, having the right to do so under all the circumstances of the case, has in good faith relied thereon. *Neshbit v. Erie Coach Co.* 416 Pa 89, 204 A2d 473.

It is the ground of estoppel that to permit one to prove representations on which another has acted to be false would be contrary to equity and good conscience. *Trustees of Internal Improv. Fund v. Cloughton* (Fla) 86 So 2d 775.

13. *Johnson v. Neel*, 123 Colo 377, 229 P2d 939; *Miami Gardens, Inc. v. Conway* (Fla) 102 So 2d 622; *Therrell v. Reilly*, 111 Fla 805, 151 So 305; *State v. Mutual Life Ins. Co.* 175 Ind 59, 93 NE 213.

The doctrine of estoppel is one of fundamental justice. Its application must depend upon the circumstances of each particular case, and courts have gone a long way in applying it to prevent manifest injustice and wrong. *Scott County v. Advance-Rumley Thresher Co.* (CA8) 288 F 739, 36 ALR 947.

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estoppel in pais is founded upon principles of morality and fair dealing and is intended to subserve the ends of justice.¹⁴ It always presupposes error on one side and fault or fraud upon the other and some defect of which it would be inequitable for the party against whom the doctrine is asserted to take advantage.¹⁵ It concludes the truth in order to prevent fraud and falsehood and imposes silence on a party only when in conscience and honesty he should not be allowed to speak.¹⁶

The proper function of equitable estoppel is the prevention of fraud, actual or constructive,¹⁷ and the doctrine should always be so applied as to promote

14. *Stone v Bank of Commerce*, 174 US 412, 43 L. ed 1028, 19 S. Ct 747; *Leather Mfrs. Nat. Bank v Morgan*, 117 US 96, 29 L. ed 811, 6 S. Ct 657; *Daniels v Tearney*, 102 US 415, 26 L. ed 187; *Dickerson v Colgrove*, 100 US 578, 25 L. ed 618; *Houston County Board of Revenue v Payner*, 236 Ala 384, 182 So 455; *Illinois Standard Mortg. Corp. v Collins*, 187 Ark 902, 63 SW2d 342; *Sovereign Camp, W. v Newsom*, 142 Ark 132, 219 SW 759, 14 ALR 903; *Bowen v Howenstein*, 39 App DC 585; *Hempstead v Broad*, 275 Ill 350, 114 NE 120; *Gillett v Wiley*, 126 Ill 310, 19 NE 287; *Johnson v Western Indiana Mfg. Co.*, 81 Ind App 79, 140 NE 559; *Cas Service Co. v Consolidated Gas Utilities Corp.*, 145 Kan 423, 65 P2d 504; *Victory Cab Co. v Churchill Downs, Inc.*, 312 Ky 363, 227 SW2d 921; *McLearn v Hill*, 276 Mass 519, 177 NE 617, 77 ALR 1039; *Guffey v O'Reilly*, 88 Mo 418; *Brusha v Board of Education*, 41 Okla 595, 139 P 298; *Palmer v Sovereign Camp, W. O. W.*, 197 SC 379, 15 SE2d 655; *Smith v Williams*, 141 SC 265, 139 SE 625, 54 ALR 961; *Security State Bank v Gannon*, 39 SD 232, 163 NW 1040; *Church of Christ v McDonald*, 180 Tenn 86, 171 SW2d 817, 146 ALR 1173; *Southern R. Co. v Lewis & A. Co.*, 139 Tenn 37, 201 SW 131; *Smith v Chipley (Tex Civ App)*, 24 SW2d 87; *Trayer v Bristol Parking, Inc.*, 198 Va 599, 95 SE2d 224.

An estoppel in pais is a moral question. It can only exist where the party is attempting to do that which exists would decide to be a wrong; something which is against good conscience and honest dealing. *Anfenson v Banks*, 180 Iowa 1066, 163 NW 608.

The doctrine of equitable estoppel is essentially one of good conscience. *Jefferson County Bank v Hansen Lumber Co.*, 246 Ky 384, 55 SW2d 54; *American Trust Co. v Bernstein*, 246 Mich 527, 224 NW 327; *Vineland v Fowler Waste Mfg. Co.*, 86 N.J. 342, 90 A 1054.

The doctrine of equitable estoppel is based on an application of the Golden Rule to the everyday affairs of men. It requires that one should do unto others as, in equity and good conscience, he would have them do unto him if their positions were reversed. *McNeely v Walters*, 211 NC 112, 189 SE 111; *Wake Forest v Holding*, 206 NC 425, 174 SE 296; *Re Southern R. Co.*, 196 NC 756, 147 SE 301.

The courts apply the doctrine of equitable estoppel in accordance with established general principles in order that the transactions and dealings may result justly and fairly with the parties concerned with them, and it prohibits a person, upon principles of honesty and fair and open dealing, from asserting rights the enforcement of which would through his omissions or commissions work fraud and injustice. *Rollschild v Title Guarantee & T. Co.*, 204 NY 458, 97 NE 879.

15. *Leather Mfrs. Nat. Bank v Morgan*, 117 US 96, 29 L. ed 811, 6 S. Ct 657; *Morgan v Chicago & A. R. Co.*, 96 US 716, 24 L. ed 743; *Merchants Nat. Bank v State Nat. Bank (US)*, 10 Wall 604, 19 L. ed 1008; *Trayer v Bristol Parking, Inc.*, 198 Va 599, 95 SE2d 224.

16. *Van Rensselaer v Kearney (US)*, 11 How 297, 13 L. ed 703; *Bowen v Howenstein*, 39 App DC 585; *Richardson v Atlantic Coast Lumber Corp.*, 93 SC 254, 75 SE 371.

Estoppel makes the acts and conduct of a party binding against him whenever it should be so. *Hill v Farmers & M. Nat. Bank*, 97 US 450, 24 L. ed 1051.

An equitable estoppel rests upon the doctrine that it will be against the principles of equity and good conscience to permit the party against whom the estoppel is sought to avail himself of what might otherwise be his undisputed rights. *Stone v Bank of Commerce*, 174 US 412, 43 L. ed 1028, 19 S. Ct 747.

"Equitable estoppels are admitted on the ground of promoting the equity and justice of the individual case by preventing a party from asserting his rights under a general technical rule of law, when he has so conducted himself that it would be contrary to equity and good conscience for him to allege and prove the truth." *Horn v Cole*, 51 NH 287; *Smith v Williams*, 111 SC 265, 139 SE 625, 54 ALR 964.

17. *Cook v Ball (CA7 Ind)*, 144 F2d 423, cert den 323 US 761, 89 L. ed 609, 65 S. Ct 93; *Hudson v Hudson*, 219 Ark 211, 242 SW2d 154; *Haas v Haas*, 121 Ind App 335, reh den 121 Ind App 349, 98 NE2d 232 (saying that an estoppel in pais is justified on the ground of prevention of fraud by a person sought to be estopped, the fraud consisting in the denial of that which the person sought to be estopped has previously asserted); *Wich-*

the ends of justice and accomplish that which ought to be done between man and man.¹⁸ Such an estoppel cannot arise against a party except when justice to the rights of others demands it¹⁹ and when to refuse it would be inequitable.²⁰ The doctrine of estoppel should be applied cautiously and only when equity clearly requires it to be done.¹ Hence, in determining the application of the doctrine, the counterequities of the parties are entitled to due consideration.² It is available only in defense of a legal or equitable right or claim made in good faith and can never be asserted to uphold crime, fraud, injustice, or wrong of any character.³ Estoppel is to be applied against wrong-

ta Federal Sav. & L. Asso. v Jones, 155 Kan 821, 130 P2d 556; *Re Stoball's Estate*, 211 Miss 15, 50 So 2d 635; *Sedlak v Estate*, 141 Neb 567, 13 NW2d 892, 134 ALR 490; *Grand Island v Willis*, 142 Neb 686, 7 NW2d 457; *White v La Due & Fitch, Inc.*, 303 NY 122, 100 NE2d 167 (saying that estoppel prohibits a person upon principles of honesty and fair dealing from asserting rights the enforcement of which would through his omission or commission work fraud and injustice); *Richey v Miller*, 142 Tex 274, 177 SW2d 255, 170 ALR 832.

The doctrine of estoppel is for the purpose of preventing the representations of a party from operating as a fraud upon one who has been led to rely upon them. *Union Mut. L. Ins. Co. v Mowry*, 96 US 544, 24 L. ed 674.

An equitable estoppel is called into existence only for the prevention of wrong and the redress of injury. *Wheaton v North British & M. Ins. Co.*, 76 Cal 415, 18 P 758.

The same result is sought where an estoppel is created as is sought where fraud is shown—namely, the prevention of an advantage to the party making representations or guilty of a fraud, or the prevention of harm to the adverse party who is either the victim of the fraud or who has been induced to change his position to his detriment by the representations or conduct of the party against whom the estoppel arises. *Holterman v Poynter*, 361 Ill 617, 198 NE 723, 101 ALR 842.

18. *Dickerson v Colgrove*, 100 US 578, 25 L. ed 618; *Lacy v United States (CA5 Ala)*, 216 F2d 225; *Cook v Ball (CA7 Ind)*, 144 F2d 423, cert den 323 US 761, 89 L. ed 609, 65 S. Ct 93; *Houston County Board of Revenue v Boardman*, 53 Ariz 271, 88 P2d 536; *Munger v Hudson*, 219 Ark 211, 242 SW2d 154; *Cantwell v Cantwell*, 237 Ind 168, 143 NE2d 275, cert denied and app den 356 US 225, 2 L. ed 2d 712, 78 S. Ct 700, reh den 356 US 954, 2 L. ed 2d 847, 78 S. Ct 913 (saying that principles of estoppel are founded on justice and fair dealing, and that it prevents a party from denying the existence of a fact and thus profiting by his own wrong, or from taking inconsistent positions in order to gain an advantage); *Haas v Haas*, 121 Ind App 335, reh den 121 Ind App 349, 98 NE2d 232 (saying that by estoppel the door is shut against asserting a right where that would result in

doing a wrong to some other person, or where in good conscience and honest dealing a party ought not to be permitted to gainsay his previous conduct); *Wichita Federal Sav. & Loan Asso. v Jones*, 155 Kan 821, 130 P2d 556; *Grand Island v Willis*, 142 Neb 686, 7 NW2d 457; *Palmer v Sovereign Camp, W. O. W.*, 197 SC 379, 15 SE2d 655.

The doctrine of estoppel has been formulated to prevent results contrary to good conscience and fair dealing. *McLearn v Hill*, 276 Mass 519, 177 NE 617, 77 ALR 1039.

19. *State ex rel. Shartel v Missouri Utilities Co.*, 331 Mo 337, 53 SW2d 394, 89 ALR 607; *State ex rel. Moss v Hamilton*, 303 Mo 302, 260 SW 466; *Baker-Cammack Textile Corp. v Hlood*, 206 NC 782, 175 SE 151; *Ott v Ott*, 182 SC 135, 188 SE 789; *Morrison Furniture Co. v People's Nat. F. Ins. Co.*, 149 Tenn 214, 259 SW 539.

The doctrine of estoppel can be invoked only to prevent injustice or fraud. *National Bank v Wells-Jackson Corp.*, 358 Ill 356, 193 NE 215, 98 ALR 618.

20. *McLearn v Hill*, 276 Mass 519, 177 NE 617, 77 ALR 1039.

The doctrine of estoppel in pais is never applied except where allowing the assertion of the right, or proof of the fact, to avail would be contrary to equity. *Gillett v Wiley*, 126 Ill 310, 19 NE 287.

1. *Bright v Michel*, 242 Miss 730, 137 So 2d 155.

2. *Kray v Mugeli*, 77 Minn 231, 79 NW 964, 1026, 1064, later app 84 Minn 90, 86 NW 882 (holding that an equitable estoppel will not arise in favor of riparian owners to prevent the destruction of a dam by which the water has been raised for the period of prescription, when their equities are not strong and substantial and the other parties have strong counterequities); *Re Stoball's Estate*, 211 Miss 15, 50 So 2d 635.

The doctrine of estoppel, being an equitable one, is essentially flexible, and therefore to be applied or denied as the equities between the parties may preponderate. *Peoples Nat. Bank v Manos Bros., Inc.*, 226 SC 257, 81 SE 2d 857, 45 ALR2d 1070.

3. *Crotty v Union Mut. L. Ins. Co.*, 144

doers, not against the victim of a wrong,⁴ although estoppel is never employed as a means of inflicting punishment for an unlawful or wrongful act.⁵

§ 29. Comparisons and distinctions.

Although originally there was some distinction made between estoppel in pais and equitable estoppel, they are now generally used interchangeably as applicable to all estoppels other than those by record, deed, or bond.⁶ However, equitable estoppel or estoppel in pais is distinguished from technical estoppel in that it arises out of the acts and conduct of the party estopped and not from a record, deed, or bond.⁷ It differs also in certain particulars from various legal bars which are in some respects analogous to it and which have substantially the same practical operation and to which the term "estoppel" is frequently applied, but which are more properly designated as "quasi estoppels."⁸ Quasi estoppels are sometimes said to include such matters as the doctrine of "election," the principle which precludes a party from asserting to another's disadvantage a right inconsistent with a position previously taken by him,⁹ waiver,¹⁰ ratification,¹¹ and laches.¹² Indeed, the doctrines of estoppel, waiver, and acquiescence are considered, by some courts at least, as of one family in the law, and the doctrine of laches is closely akin to these.¹³

Although the doctrine of estoppel may operate to preclude a man from speaking the truth, it must not be confused with the doctrine of impeachment, or with conduct affecting the credibility of witnesses. A man may say one thing out of court and another thing in court, but it is not estoppel if the purpose of the evidence showing this is only to affect the credibility of the witness, or to lay the ground for impeaching him. The doctrine of estoppel closes the mouth of the witness and thus creates an extraordinary legal situation, which does not exist where the credibility of a witness is at issue because of contrary statements, or where the impeachment process is put into execution in the trial of causes. Because of the dire penalty existing in estoppel, the law scrutinizes with care to determine whether the facts and circumstances distinguish the situation from a mere question of credibility or impeachment.¹⁴

US 621, 36 L ed 566, 12 S Ct 749; Daniels v Tearney, 102 US 415, 26 L ed 187; Dickerson v Colgrove, 100 US 578, 25 L ed 618; Kirby v Union P. R. Co., 51 Colo 309, 119 P 1042; Second Nat. Bank v Dyer, 126 Conn 101, 9 A2d 503; National Match Co. v Empire Storage & Ice Co., 227 Mo App 1115, 58 SW2d 797, cert den 290 US 668, 78 L ed 577, 54 S Ct 88; Oman v Wayne, 149 Neb 303, 30 NW2d 921; Sawtelle v Tatone, 105 NH 398, 201 A2d 111; Southern R. Co. v Lewis & A. Co., 139 Tenn 37, 201 SW 131; Texas Bkg. & Ins. Co. v Hutchins, 53 Tex 61; Howard v Howard, 122 Vt 27, 163 A2d 861, 84 ALR2d 585.

4. Roberts v Roberts, 81 Cal App 2d 871, 185 P2d 381.

5. Worsham Buick Co. v Isaacs, 121 Tex 587, 51 SW2d 277, 86 ALR 232.

6. § 26, supra.

7. Drexel v Berney, 122 US 241, 30 L ed 1219, 7 S Ct 1200.

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Equitable estoppel or estoppel in pais in its simplest terms means estoppel by conduct. Ross v Harding, 64 Wash 2d 231, 391 P2d 526.

8. Graybar Electric Co. v McClave, 91 Ariz 223, 371 P2d 350, 3 ALR3d 750; Humes Constr. Co. v Philadelphia Casualty Co., 32 RI 246, 79 A 1.

As to the distinction between abandonment of property and estoppel to assert a claim to it, see 1 Am Jur 2d, ABANDONED, LOST, AND UNCLAIMED PROPERTY § 5.

9. Humes Constr. Co. v Philadelphia Casualty Co., supra.

10. § 30, infra.

11. § 31, infra.

12. § 32, infra.

13. Seaman v Ironwood Amusement Corp., 283 Mich 220, 278 NW 51.

14. Lubric Oil Co. v Drawe, 26 Ohio App 478, 160 NE 93.

§ 30. — Waiver.¹⁵

Waiver and estoppel are closely akin,¹⁶ their legal effect is much the same,¹⁷ and the terms "estoppel" and "waiver" are often loosely used interchangeably.¹⁸ Under some circumstances a waiver may amount to an estoppel, but it does not necessarily do so.¹⁹ Although a waiver in a particular instance may be in the nature of an equitable estoppel and maintained on similar principles, they are not convertible terms.²⁰ There are well-recognized distinctions between the two,¹ and the one may exist without or apart from the other.² Thus, a waiver may be established even though the acts, conduct, or declarations are insufficient to establish an estoppel.³

Specifically, with regard to the distinctions between waiver and estoppel, a waiver is a voluntary and intentional abandonment or relinquishment of a known right,⁴ whereas an equitable estoppel may arise even though there was

15. Generally, as to waiver, see §§ 154 et seq., infra.

16. Grant v Norris, 249 Iowa 236, 85 NW2d 261; Mollick v Collins (Ky) 252 SW2d 665; Gould v Transamerican Associates, 224 Md 285, 167 A2d 905; First Nat. Bank v Davis, 123 Neb 304, 242 NW 655 (pointing out that knowledge of the facts is essential to both).

17. Yoshida v Liberty Mut. Ins. Co. (CA9 Cal) 240 F2d 824; Woodmen of World Life Ins. Soc. v Greathouse, 242 Ala 529, 7 So 2d 89.

18. Globe Mut. L. Ins. Co. v Wolff, 95 US 326, 24 L ed 387; Yoshida v Liberty Mut. Ins. Co. (CA9 Cal) 240 F2d 824; Williams v Neely (CA8) 134 F 1; Sovereign Camp, W. W. v Newson, 142 Ark 132, 219 SW 759, 14 ALR 903; Euclid Ave. State Bank v Nesbit (Iowa) 204 NW 253, reh den 201 Iowa 506, 207 NW 761; United States Fidelity & G. Co. v Miller, 237 Ky 43, 34 SW2d 938, 76 ALR 12; Gould v Transamerican Associates, 224 Md 285, 167 A2d 905; Schindel v Danzer, 161 Md 384, 157 A 283; Jefferson Life & Casualty Co. v Johnson, 238 Miss 878, 120 So 2d 160; Carpenter v St. Joseph L. Ins. Co., 212 Mo App 336, 246 SW 623; Kennedy v Grand Fraternity, 36 Mont 325, 92 P 971; Aron v Rialto Realty Co., 100 NJ Eq 513, 136 A 339, affd on op below 102 NJ Eq 331, 140 A 918; Humes Constr. Co. v Philadelphia Casualty Co., 32 RI 246, 79 A 1; Harvey v Philadelphia L. Ins. Co., 131 SC 405, 127 SE 836.

This is particularly so, for instance, with regard to the waiver of, or estoppel to assert, forfeitures under and conditions in insurance policies. See INSURANCE (Rev ed §§ 1008 et seq.).

19. Engstrom v Farmers & Bankers Life Ins. Co., 230 Minn 308, 41 NW2d 422; Johnson v Feskens, 146 Or 657, 31 P2d 667, 107 ALR 340.

20. Queen Ins. Co. v Young, 86 Ala 424, 5 So 116; Supreme Tribe, B. H. v Hall, 24 Ind

App 316, 56 NE 780; Grant v Norris, 249 Iowa 236, 85 NW2d 261; United States Fidelity & G. Co. v Miller, 237 Ky 43, 34 SW2d 938, 76 ALR 12; Linerick v Hone Ins. Co., 150 Ky 827, 150 SW 978; Shaw v Spencer, 100 Mass 382; Engstrom v Farmers & Bankers Life Ins. Co., 230 Minn 308, 41 NW2d 422; Parsons v Lane, 97 Minn 98, 106 NW 485; Aron v Rialto Realty Co., 100 NJ Eq 513, 136 A 339, affd on opinion below 102 NJ Eq 331, 140 A 918; Johnson v Feskens, 146 Or 657, 31 P2d 667, 107 ALR 340; Harvey v Philadelphia L. Ins. Co., 131 SC 405, 127 SE 836.

1. Yoshida v Liberty Mut. Ins. Co. (CA9 Cal) 240 F2d 824; Provident Life & Acci. Ins. Co. v Hudgens, 229 Ala 552, 158 So 757; Sovereign Camp, W. W. v Newson, 142 Ark 132, 219 SW 759, 14 ALR 903; Engfner v Order of United Commercial Travelers (Fla App) 156 So 2d 38; Mollick v Collins (Ky) 252 SW2d 665; United States Fidelity & G. Co. v Miller, 237 Ky 43, 34 SW2d 938, 76 ALR 12; Jefferson Life & Casualty Co. v Johnson, 238 Miss 878, 120 So 2d 160; Conklin v North American Life & Cas. Co. (ND) 88 NW2d 825; The Practitioners v Strickland (Tex Com App) 66 SW2d 686; Kessinger v Anderson, 31 Wash 2d 157, 196 P2d 289.

The distinction between waiver and estoppel is that a waiver is a voluntary relinquishment of a known right, while an estoppel consists of a preclusion which in law prevents one from alleging or denying a fact in consequence of his own previous act, avowment, or denial. Gilbert v Globe & R. F. Ins. Co., 91 Or 59, 174 P 1161, 178 P 358, 3 ALR 205.

2. Engfner v Order of United Commercial Travelers (Fla App) 156 So 2d 38; United States Fidelity & G. Co. v Miller, 237 Ky 43, 34 SW2d 938, 76 ALR 12.

3. Engstrom v Farmers & Bankers Life Ins. Co., 230 Minn 308, 41 NW2d 422; Doerr v National F. Ins. Co., 315 Mo 266, 285 SW 961, 54 ALR 1336.

4. § 154, infra.

§ 1 ESTOPPEL

VIII. PROCEDURE—Continued

A. PLEADING—Continued

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I. IN GENERAL

§ 1. Terminology

- a. "Estoppel"
- b. Other terms

a. "Estoppel"

An "estoppel" is a bar which precludes a person from denying the truth of a fact which has become settled in contemplation of law.

"Estoppel" is a term of wide implication,^{1,5} and implies that one who by his deed or conduct has

induced another to act in a particular manner will not be permitted to adopt an inconsistent position, attitude, or course of conduct and thereby cause loss or injury to such other.^{1,10} In the broad sense of the term, "estoppel" is a bar which precludes a person from denying the truth of a fact which has in contemplation of law become settled by the acts and proceedings of judicial or legislative officers, or by the act of the party himself, either by conventional writing or by representations, express or implied, in pais.¹

9.5 Ala.—Fursey v. Beck, 13 So.2d 179, 182, 241 Ala. 281.

Tarptitude or fraud

An "estoppel" involves a tarptitude or fraud such as misleading statements or acts, or concealment of facts by silence with result that one party is induced by words, conduct or silence of another party to do things which he otherwise would not have done.

Utah.—Wellsville East Field Irr. Co. v. Lindsay Land & Livestock Co., 137 P.2d 654, 194 Utah 418, rehearing denied 143 P.2d 278, 194 Utah 498.

9.10 Tex.—Brown v. Federal Land Bank of Houston, Civ.App., 130 S.W.2d 647, 652, error refused—Pennyington v. Pennyington, Civ.App., 115 S.W.2d 688, 692.

1. U.S.—Corpus Juris cited in James

v. Nelson, C.C.A., Alaska, 90 F.2d 910, 918.

Ky.—Corpus Juris cited in Horn v. Wells, 69 S.W.2d 1011, 1012, 253 Ky. 491.

La.—Corpus Juris quoted in Lewis v. King, 193 So. 19, 22, 157 Va. 718.

Sandifer v. Sandifer's Heirs, App., 195 So. 118.

Mo.—Corpus Juris Secundum quoted in Keck v. American Fire Ins. Co., 167 S.W.2d 664, 667, 237 Mo.App. 308.

Mont.—Corpus Juris quoted in Hoppla v. Lang, 241 P. 626, 616, 74 Mont. 558.

Neb.—Corpus Juris Secundum quoted in May v. City of Kearney, 17 N.W.2d 448, 458, 145 Neb. 175.

Ohio.—Glass v. Glass, App., 125 N.E.2d 375, 377.

R.I.—Corpus Juris cited in Chernick v. National Surety Co., 148 A. 418, 419, 50 R.I. 419.

S.C.—Corpus Juris quoted in Southern Ry. Co. v. Day, 123 S.E. 870, 873, 119 S.C. 285.

Tex.—Corpus Juris quoted in Masterson v. Bouldin, Civ.App., 151 S.W.2d 201, error refused—Corpus Juris cited in McLendon v. Federal Mortgage Co., Civ.App., 60 S.W.2d 324, 226.

—Corpus Juris quoted in Sugg v. Johnson, Civ.App., 234 S.W. 702, 712, reversed on other grounds Johnson v. Sugg, Com. App., 291 S.W. 857.

21 C.J. p 1059 note 1.

Similarly defined

(1) A bar which precludes a person from denying or asserting anything to the contrary of that which

"Estoppel" is also defined in terms of a preclusion,^{1,5} as the preclusion of a person from asserting a fact, by previous conduct inconsistent therewith, on his own part or the part of those under whom he claims, or by an adjudication on his rights which cannot be allowed to call in question.^{1,10} "Estoppel" is further defined as a rule of equity,^{1,15} and also as a conclusion of law.^{1,20}

has been established as the truth, whether by matter of record, by matter in writing, or by matter in pais.

Wash.—Corpus Juris Secundum cited in Kessinger v. Anderson, 196 P.2d 289, 296, 31 Wash.2d 157.

(2) A bar which precludes a person from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth, either by acts of judicial or legislative officers or by his own deeds or representations, either express or implied.

Pa.—U. S. Nat. Bank in Johnstown v. Drabish, 144 A.2d 640, 187 Pa. Super. 169.

(3) An impediment or bar to the assertion of a right of action arising by means of one's own act, or where he is forbidden to speak against his own act.

Ill.—Greer v. Carter Oil Co., 25 N.E.2d 805, 373 Ill. 168.

(4) "Estoppel" is a bar or impediment raised by the law which precludes one from alleging or from denying a certain fact, or state of facts, in consequence of the previous allegation, denial, conduct or admission, or in consequence of a final adjudication of the matter by a court of law.

Okl.—Wise v. Terhune, 204 P.2d 286, 290, 201 Okl. 231.

(5) Estoppel results from something which the law treats as so conclusive an admission that it cannot be controverted by the party making it.

U.S.—Columbia Ins. Co. of New Jersey v. Mari Waterman Co., C.C.A., N.Y., 21 P.2d 216, certiorari denied 46 S.Ct. 486, 271 U.S. 672, 70 L.Ed. 1144.

(6) Further definitions and explanations.

U.S.—H. S. for Use and Benefit of Johnson v. Morley Const. Co., D.C. N.Y., 17 F.Supp. 378, modified on other grounds, C.C.A., U. S. ex rel. Johnson v. Morley Const. Co., 98 F.2d 731, certiorari denied Maryland Casualty Co. v. U. S. for Use and Benefit of Harrington, 69 S.Ct. 244, 305 U.S. 651, 83 L.Ed. 421.

—Oertel Co. v. Glenn, D.C.N.Y., 17 F.Supp. 651, affirmed, C.C.A., Glenn v. Oertel Co., 97 F.2d 495.

Cal.—Havenport v. Stratton, 149 P.2d 4, 24 C.2d 232.

31 C.J.S.—19

It has been said that the word "estoppel" may be employed where, in equity and good conscience, the mouth is closed by guilty silence, while prosecuting a fraudulent claim on a wholly inconsistent state of facts, with full knowledge of all the facts, or where a person is shut out by the maxim, "He who comes into equity must come with clean hands."^{1,25} To use the quaint language of Lord Coke, it is so called

Mo.—Johnson v. Ferguson, 44 S.W.2d 620, 329 Mo. 263—Hodde v. Hahn, 222 S.W. 729, 252 Mo. 320.

N.Y.—Volk v. City of New York, 19 N.Y.S.2d 53, 259 App.Div. 247, reversed on other grounds 30 N.E.2d 596, 254 N.Y. 279.

Winston v. Saugerties Farms, 21 N.Y.S.2d 811, reversed on other grounds 33 N.E.2d 934, 257 N.Y. 718.

Ohio.—Carter v. Grossnickle, 11 Ohio N.P.N.S. 465.

Tenn.—Fentch v. Alexandria Bank & Trust Co., 149 S.W.2d 76, 80, 177 Tenn. 315.

Tex.—Harris v. Prince, Civ.App., 35 S.W.2d 1022, reversed on other grounds 121 S.W.2d 983, 132 Tex. 231.

21 C.J. p 1059 note 1 [a] (2), (3), (5)—(7).

"The generally accepted definition of estoppel is the commission of an act or the concealment of facts to one who is ignorant of the matter with the intent to induce and cause the other party to act upon it or change his position to his detriment or disadvantage."

Mo.—Olbert v. Key, App., 93 S.W.2d 1043, 1051.

When estoppel arises

(1) An "estoppel" arises where a man is concluded and forbidden by law to speak against his own act or deed; yea, even though it is to say the truth.

N.J.—New Jersey Suburban Water Co. v. Town of Harrison, 3 A.2d 623, 122 N.J.Law 159.

21 C.J. p 1059 note 1 [b] (3).

(2) Estoppel arises when one executes a deed.

Un.—General Contract Purchase Corporation v. Hitemski, 156 A. 727, 102 Pa.Super. 266.

S.C.—Corpus Juris quoted in Southern Ry. Co. v. Day, 138 S.E. 870, 873, 140 S.C. 358.

21 C.J. p 1059 note 1 [b].

Estoppel as to rules of law

Estoppels preclude the assertion of facts, not law.

La.—Strauss v. City of New Orleans, 118 So. 125, 166 La. 1635—Lewis v. King, 103 So. 19, 157 La. 718.

Miss.—Mississippi Power & Light Co. v. Pitts, 179 So. 263, 181 Miss. 341.

N.C.—Moore v. Willis, 9 N.C. 555.

1.5 Defined in terms of a preclusion

(1) Preclusion in law which prevents one from alleging or denying a fact in consequence of his own previous act, allegation, or denial of contrary tenor.

Miss.—Reliance Manufacturing Company v. Barr, 146 So.2d 569, 574.

Mo.—Stato ex inf. Shartel, ex rel. City of Sikeston v. Missouri Utilities Co., 53 S.W.2d 291, 241 Mo. 337, 59 A.L.R. 607—Hodde v. Hahn, 222 S.W. 729, 252 Mo. 320.

21 C.J. p 1059 note 1 [a] (1).

(2) Preclusion in law, resulting from previous act or conduct, and based on the conduct of one, or of another through whom the one claims.

N.J.—Brown v. Fidelity Union Trust Co., 9 A.2d 511, 126 N.J. 406.

21 C.J. p 1059 note 1 [a] (4).

(3) Preclusion by act or conduct from asserting right which might otherwise have existed, to detriment and prejudice of another who, in reliance on such act or conduct, has acted thereon.

Wash.—Reynolds v. Travelers' Ins. Co., 28 P.2d 310, 176 Wash. 36.

1.10 Ala.—Cooper v. Lindsay, 19 So. 379, 109 Ala. 335.

Miss.—Reliance Manufacturing Company v. Barr, 146 So.2d 569, 574.

Neb.—Whitaker v. Stout, 91 N.W.2d 41, 48, 166 Neb. 850—State v. Nielsen, 75 N.W.2d 721, 732, 163 Neb. 372—Application of Burlington Public Power Dist., 77 N.W.2d 773, 780, 163 Neb. 1—State v. Smith, 281 N.W. 551, 135 Neb. 423—Brislin v. E. L. Oliver Lodge No. 335, 279 N.W. 257, 260, 134 Neb. 517—Graham Ice Cream Co. v. Petron, 254 N.W. 869, 137 Neb. 172.

1.15 A rule of equity to prevent a person from taking advantage of a condition or situation when, with knowledge of the facts, he has so conducted himself as to lead the other party to believe that he would not do as he did.

Tex.—Perry v. Citizens Life Ins. Co., Civ.App., 163 S.W.2d 743.

1.20 Which must be based on facts found

Utah.—Skeen v. Van Sickle, 15 P.2d 341, 80 Utah 413.

1.25 Ala.—Le Fursey v. Beck, 13 So. 2d 179, 182, 241 Ala. 281.

§ 1 ESTOPPEL

"because a man's own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth."² However, this statement does not mean that the person is precluded from alleging the truth, as truth, but because what he now assumes to be true is something inconsistent with his former position.³

The purpose of estoppels is to prevent inconsistency and fraud resulting in injustice,⁴ but estoppel does not make valid the thing complained of, but merely closes the mouth of the complainant.^{4.5} Estoppel is a doctrine for the prevention of injustice, and is for the protection of those who have been misled by that which on its face was fair, and whose character as represented parties to the deception will not, in the interest of justice, be heard to deny;^{4.10} but one entitled to the protection of the doctrine must have been misled.^{4.15} It has been said that these principles are applicable to all estoppels.^{4.20}

Distinctions. The principle of estoppel is sometimes spoken of as a rule of evidence.⁵ However, it is not such;⁶ estoppels differ from evidence in that estoppels are received as conclusive and preclude all inquiry into the merits of the title, while evidence is merely the medium of establishing facts which do exist or have existed.⁷

The distinction between laches and estoppel is treated in Equity § 112. Abandonment distinguished see Abandonment § 2 b (8).

b. Other Terms

Various other terms have been employed in connection with estoppel, such as "estoppel at common law," "estoppel by laches," "technical estoppel," and "title by estoppel."⁸

In connection with estoppel, certain terms have been employed, such as "estoppel by contract" see

infra §§ 55-58, "estoppel by deed" see infra §§ 10-54, "estoppel by misrepresentation" see infra §§ 50-106, "estoppel by record" see infra §§ 4-9, and various other terms.⁸

The doctrine of estoppel to assume inconsistent positions in judicial proceedings, and a somewhat similar doctrine commonly referred to as "judicial estoppel," are treated infra §§ 117-120.

"**Estoppel by laches.**" A neglect to do something which one should do or to seek to enforce a right at a proper time has been termed "estoppel by laches."⁹

"**Technical estoppel.**" "Technical estoppels" are those which arise from matter of record or the deed of the party estopped,¹⁰ and sometimes conclude the party without any reference to the moral qualities of his conduct.¹¹

"**Title by estoppel.**" Where a person without title, having conveyed with warranty, subsequently acquires the title, it inures to the benefit of the grantee, who is said to acquire the title by estoppel.¹²

Waiver. While it has been said that the word "estoppel" is more susceptible of a general definition than is the word "waiver,"^{12.5} a number of general definitions of the word "waiver" have been given,

see infra § 61 and the C.J.S. definition Waiver.

§ 2. Classification

Estoppel is by matter of record, by matter in writing, and by matter in pais.

Library References

Estoppel C. 1, 12, 32.

It is commonly stated that there are three kinds of estoppel, namely, by matter of record, by matter in writing, and by matter in pais.¹³ However as is shown infra §§ 107-120 there are also certain legal bars which have the same effect as an estoppel and yet are not strictly such, which have been termed "quasi estoppels," or which are known by other names, such as the doctrine of estoppel to assume inconsistent positions in judicial proceedings, and the somewhat similar doctrine commonly referred to as "judicial estoppel."

§ 3. Odiousness of Estoppels

While estoppels have not been viewed with favor, nevertheless the wisdom and justice of the principle of estoppels are generally recognized.

While it is commonly stated in many decisions that estoppels are odious and are not favored in law because they exclude the truth,¹⁴ it has also been said

2. U.S.—*Corpus Juris* cited in *The Robin Gray*, D.C.N.Y., 53 F.2d 1037, 1049, reversed in part on other grounds, C.C.A., 65 F.2d 375, modified on other grounds 65 F.2d 376. *certiorari* denied *Sons Shipping Co. v. Approximately 3,251,000 Feet Board Measure of Lumber*, 54 S.Ct. 70, 299 U.S. 553, 78 L.Ed. 566. *Ala.*—*Woodmen of the World Life Ins. Soc. v. Greathouse*, 7 So.2d 89, 91, 212 Ala. 532. *Toussaint Nat. Bank of Dothan v. Eldridge*, 84 So. 430, 17 Ala.App. 235. *Del.*—*Corpus Juris* cited in *Colvocoresses v. W. S. Wasserman Co.*, 199 A. 607, 613, 8 W.Va. 253. *Miss.*—*Corpus Juris* Secundum cited in *Reliance Manufacturing Company v. Barr*, 146 So.2d 669, 674. *Pa.*—*Rowhall v. Wootleyhan Transport Co.*, 29 Del.Co. 314. 21 C.J. p 1059 note 2.

"The effect of an estoppel is, as Lord Coke said, to prevent a party from alleging or pleading the truth." *Minn.*—*Suske v. Straka*, 39 N.W.2d 745, 751, 229 Minn. 409.

3. N.H.—*Haynes v. Stevens*, 11 N.H. 28.

4. U.S.—*Joy v. Godechaux*, C.C.A.Mo., 35 F.2d 649, *certiorari* denied *Godechaux v. Joy*, 50 S.Ct. 239, 281 U.S. 723, 74 L.Ed. 1141.

- Ala.*—*Corpus Juris* Secundum quoted in *Fiscus v. Young*, 8 So.2d 614, 616, 243 Ala. 39.

- Cal.*—*Pacific Finance Corporation v. Hendley*, 7 P.2d 391, 119 C.A. 697. *Fla.*—*Griffin v. Dolan*, 6 So.2d 699, 149 Fla. 377.

- Ill.*—*Trustees of Schools v. Village of Chabokia*, 192 N.E. 563, 357 Ill. 538—*Mellin v. Community Consolidated School District No. 76*, 144 N.E. 13, 312 Ill. 376.

- Neb.*—*Corpus Juris* Secundum cited, in *Sedlak v. Duda*, 13 N.W.2d 892, 893, 141 Neb. 557, 154 A.L.R. 490. *N.Y.*—*Angrossa v. White Co.*, 290 N.Y.S. 204, 218 App.Div. 425, affirmed 11 N.E.2d 325, 275 N.Y. 521. *Mount Vernon Trust Co. v. City of Mount Vernon*, 12 N.Y.S.2d 139, affirmed 39 N.Y.S.2d 416, 265 App.Div. 940.

- R.I.*—*Corpus Juris* cited in *Chernick v. National Surety Co.*, 148 A. 418, 419, 50 R.I. 419.

- Tex.*—*Corpus Juris* Secundum quoted in *Kuehne v. Denson*, 219 S.W.2d 1006, 1009, 148 Tex. 54. *Corpus Juris* Secundum quoted in *Hensarling v. Southern States Life Ins. Co.*, Civ.App., 269 S.W.2d 655, 660, error refused no reversible error—*Corpus Juris* Secundum error in *Hamilton v. Hamilton*, Civ. App., 269 S.W.2d 491, 497, affirmed 250 S.W.2d 538, 154 Tex. 511—*Bell v. Mondy*, Civ.App., 147 S.W.2d 852, 854—*Greer v. Franklin Life Ins. Co.*, Civ.App., 109 S.W.2d 265, error dismissed—*The Royal Tailors error dismissed*—*The Royal Tailors v. Joseph*, Civ.App., 239 S.W. 639, 21 C.J. p 1060 note 4.

- Object and purpose of estoppel in pais* see infra § 62.

- 4.5 *Cal.*—*Harlan v. Harlan*, 161 P.2d 490, 79 C.A.2d 657.

- Tex.*—*Spence v. State Nat. Bank*, Com.App., 5 S.W.2d 754. *Staples v. Railroad Commission*, Civ.App., 358 S.W.2d 706, error refused no reversible error.

- 4.10 *Tex.*—*Kuehne v. Denson*, 219 S.W.2d 1006, 148 Tex. 54—*Davis v. Allison*, 211 S.W. 950, 109 Tex. 440. *Hensarling v. Southern States Life Ins. Co.*, Civ.App., 269 S.W.2d 655, error refused no reversible error.

- 4.15 *Tex.*—*Kuehne v. Denson*, 219 S.W.2d 1006, 148 Tex. 54—*Davis v. Allison*, 211 S.W. 950, 109 Tex. 440. *Hensarling v. Southern States Life Ins. Co.*, Civ.App., 269 S.W.2d 655, error refused no reversible error.

- W.2d* 1006, 148 Tex. 54—*Davis v. Allison*, 211 S.W. 950, 109 Tex. 440. *Hensarling v. Southern States Life Ins. Co.*, Civ.App., 269 S.W.2d 655, error refused no reversible error.

- 4.20 *Tex.*—*Kuehne v. Denson*, 219 S.W.2d 1006, 148 Tex. 54.

5. *Alaska*—*Fairhaven Gold Dredging Co. v. Golden Center Mines*, 7 Alaska 663.

- Cal.*—*Spear v. Farwell*, 42 P.2d 391, 5 C.A.2d 111—*Lake v. O'Brien*, 202 P. 158, 64 C.A. 513.

- 21 C.J. p 1060 note 5. *Estoppel in pais as rule of evidence* see infra § 63.

A rule of evidence by which a man is precluded from alleging or denying a fact in consequence of his own previous action, inaction, allegation, or denial, which has led another so to conduct himself that, if the truth were established, such other would be damaged.

- U.S.—*U. S. to Use of Noland Co. v. Maryland Casualty Co.*, D.C.Md., 38 F.Supp. 479.

- Cal.*—*Spear v. Farwell*, 42 P.2d 391, 5 C.A.2d 111—*Lake v. O'Brien*, 202 P. 158, 64 C.A. 513.

6. U.S.—*The Cargo*, C.C.A.N.Y., 53 F.2d 374, *certiorari* denied *Navigation Libera Tristina v. Molinelli, Glanusa & Rao, Inc.*, 52 S.Ct. 140, 241 U.S. 679, 76 L.Ed. 571.

- N.Y.*—*Mutual Life Ins. Co. v. Corey*, 31 N.E. 1905, 155 N.Y. 326.

7. U.S.—*The Cargo*, C.C.A.N.Y., 53 F.2d 374, *certiorari* denied *Navigation Libera Tristina v. Molinelli, Glanusa & Rao, Inc.*, 52 S.Ct. 140, 241 U.S. 679, 76 L.Ed. 571.

- Wyo.*—*Corpus Juris* Secundum cited in *Phoenix Assurance Company of New York v. Latta*, 373 P.2d 146, 151.

- 21 C.J. p 1060 note 7.

8. "Estoppel at common law" includes estoppel by record, estoppel by deed, and certain cases of estoppel in pais which are recognized in courts of law.

- N.C.*—*Thomas v. Conyers*, 151 S.E. 270, 198 N.C. 229.

- Equitable estoppel see infra § 50 et seq.

- Conduct see infra § 59.

- Negligence see infra § 102-106.

- Silence see infra § 87 et seq.

- Verdict or judgment see Judgments § 592.

- Warranty see infra § 10-54.

- Estoppel in pais see infra § 59 et seq.

- Quasi estoppel see infra § 107-120.

9. *Ky.*—*Jett v. Jett*, 188 S.W. 662, 171 Ky. 648.

- La.*—*Corpus Juris* quoted in *Voshburg v. Federal Land Bank of New Orleans*, App., 172 So. 567, 571.

- R.I.*—*Hunt v. Reilly*, 50 A. 833, 23 R.I. 471.

- Estoppel and laches distinguished see Equity § 112.

10. *Iowa*—*Hahner v. Iowa Legion of Honor*, 49 N.W. 185, 78 Iowa 245, 21 C.J. p 1061 note 21 [d], p 1062 note 30.

- Estoppel by: Deed see infra § 10-54.

- Record see infra § 4-9.

- Legal and equitable estoppel distinguished see infra § 62.

11. *N.Y.*—*Dezell v. Odell*, 3 Hill 215, 221, 38 Am.D. 628.

12. *N.Y.*—*Mutual Life Ins. Co. v. Corey*, 31 N.E. 1905, 155 N.Y. 326.

- Estoppel to assert after-acquired title see infra § 21-25.

- 12.5 *Mo.*—*Keck v. American Fire Ins. Co.*, 167 S.W.2d 664, 237 Mo. App. 305.

13. U.S.—*Westinghouse Electric & Mfg. Co. v. Formica Insulation Co.*, C.C.A.Ohio, 288 F. 330, affirmed 45 S.Ct. 117, 266 U.S. 342, 69 L.Ed. 316.

- Mont.*—*Hopkin v. Lang*, 241 P. 626, 74 Mont. 558.

- 21 C.J. p 1062 note 34.

- Estoppel by: Contract see infra § 55-58.

- Deed see infra § 10-54.

- Matter in pais see infra § 59 et seq.

- Record see infra § 4-9.

- Similarly stated: There are three kinds of estoppel, namely, by record, by deed, and by matter in pais.

- Tenn.*—*Denny v. Wilson County*, 281 S.W.2d 671, 198 Tenn. 677.

- Davidson County v. Deaucheane*, 281 S.W.2d 266, 39 Tenn.App. 90.

14. U.S.—*Sanford & Brooks Co. v. Commissioner of Internal Revenue*, C.C.A., 35 F.2d 312, reversed on other grounds *Burnet v. Sanford & Brooks Co.*, 51 S.Ct. 150, 282 U.S. 329, 75 L.Ed. 283.

- Carier v. Business Men's Assur. Co. of America*, D.C.Ky., 19 F.Supp. 599.

- Sachs v. Wadsworth*, Cust. & Pat. App., 48 F.2d 928—*Miller v. Haysman*, Cust. & Pat.App., 46 F.2d 188.

- Cal.*—*Jorda v. International Union, Allied Indus. Workers of America*, 15 Cal.Rptr. 429, 196 C.A.2d 22—*Hammond Lumber Co. v. Weeks*, 257 P. 573, 105 C.A. 315—*Lorenz v. Rousseau*, 238 P. 690, 55 C.A. 1.

- Colo.*—*Langley v. Young*, 211 P. 640, 72 Colo. 466.

- Conn.*—*Glendon v. Alubowicz*, 73 A.2d 491, 135 Conn. 611—*Rosak v. Dumut*, 135 A. 463, 105 Conn. 578.

- Ind.*—*Corpus Juris* Secundum cited in *Dowies v. Lambert*, 51 N.E.2d 52, 55, 114 Ind.App. 364, *reh'ing denied* 61 N.E.2d 897, 114 Ind.App. 364.

- Iowa.*—*Corpus Juris* Secundum quoted as to length in *Smith v. Contant*, 6 N.W.2d 421, 424, 232 Iowa 85—*In re Lunt*, 16 N.W.2d 25, 235 Iowa 62—*Stokesberry v. Burgher*, 262 N.W. 820, 220 Iowa 916—*McIntosh v. McIntosh*, 234 N.W. 234, 211 Iowa 750—*City Bank of Mitchellville v. Alcorn*, 176 N.W. 623, 188 Iowa 592.

- La.*—*Union Oil Co. of Cal. v. Touchat*, 85 So.2d 50, 229 La. 316—*Succession of Duttworth*, 196 So. 29, 195 La. 115—*Gibson v. De-kous*, 175 So. 609, 187 La. 860—*McDonald v.*

Prior litigation in general—Cont'd

el proceedings from denying that mineral trust severed minerals from all of lands in question and placed minerals under the trust for term of 50 years from March 1, 1919, where it appeared that neither plaintiffs nor defendants in right in which they appeared in present action were parties to, or authorized the deeds, judgments or judicial proceedings. *Atwood v. Kleberg, C.C.A. Tex., 133 F.2d 69, 74.*

Where employer of musicians made escrow deposit with labor union to guarantee amount legally due musicians and issue as to whether employer had met obligation to leader and his orchestra was bitterly contested in employer's action to recover deposit from union, and leader was member of union which took necessary steps to protect his claim, and leader's attorney sat in on the trial, the judgment for employer "estopped" leader from maintaining action against employer for breach of contract. *Lyman v. Billy Rose Exposition Spectacles, 39 N.Y. S.2d 752, 755, 179 Misc. 512.*

Railroad

In action under Federal Employers' Liability Act for injuries sustained, where defendant railroad appeared and pleaded, it was "estopped" to object at the close of plaintiff's evidence to improper joinder. *McCall v. Uticairn, 6 N.W.2d 415, 418, 232 Iowa 867.*

Where statutes authorized Railroad Commission to fix freight rates and prevent unjust discrimination and also prohibited unjust discrimination in rates charged by railroads, railroad was not "estopped" from charging rate fixed by the commission because railroad had previously represented to shippers that a lower rate would be charged and shippers had made shipments in reliance on such representation. *Texas & N. O. R. Co. v. Yates, 161 S.W.2d 1650, 1652, 139 Tex. 80.*

Where receivers of lessee railroad and railroad which purchased lessee railroad at foreclosure sale operated properties of lessor railroad for 18 years and paid dividends on stock of lessor railroad as provided in lease before electing not to assume lease, purchasing railroad was "estopped" from asking an accounting for difference between net earnings of properties operated and amount paid under lease and from denying liability for unpaid amounts which accrued under lease before election. *James Black-*

Railroad—Cont'd

stone Memorial Library Ass'n v. Allen R. Co., 43 N.E.2d 695, 699, 316 Ill.App. 70.

Release

Where dispute between cooperatives and broker or jobber to which cooperative sold milk was settled by payment of certain sums of money and mutual releases were given, and cooperative's agent negotiating the release would be absolutely estopped from questioning the releases if the agent were the principal, and principal had full knowledge of acts of agent and approved such acts, cooperative was "estopped" from claiming any moneys to be due from broker or jobber to cooperative, whether or not contract for sale of milk to broker or jobber out of which claims arose was legal or illegal. *United States v. Dake, D.C.N.Y., 42 F.Supp. 833, 839.*

A subcontractor was not "estopped" from asserting against surety of contractor's completion bond invalidity of purported release executed by subcontractor to contractor, where surety knew nothing about release until long after its execution and did not act in reliance upon it. *Brooks-Wright, Inc., v. Maryland Casualty Co., 29 A.2d 882, 883, 133 N.J.Eq. 15.*

Generally, where a person with a capacity of reading and understanding an instrument signs release, he is, in absence of fraud and imposition, bound by its contents and is "estopped" from saying that its provisions are contrary to his intentions or understanding. *Megee v. Fasulis, 134 P.2d 815, 817, 57 Cal.App.2d 275.*

Reliance on acts or representations in general

One is "estopped" from denying what by one's conduct one has induced others to act upon as true. *Harris v. City of Roanoke, 38 S.E.2d 363, 365, 179 Va. 1.*

One knowingly receiving purchase price of his own estate, sold by one assuming to act under valid power, "estops" himself in equity from denying such power. *Cobb v. Massey, Mo., 169 S.W.2d 733, 735.*

An infant who represents himself to be, and appears to be an adult, is "estopped" from setting up infancy only if he has received a benefit under the contract he fraudulently induced and retains it. *Feinsilver v. Schiffer Motors, 23 A.2d 283, 284, 127 N.J.L. 467.*

Reliance on acts or representations in general—Cont'd

Where one person's act or promise causes another in reliance thereon to forbear from doing a thing to his detriment, promisor is "estopped" from taking advantage of the forbearance. *Langdon v. Langdon, 117 P.2d 371, 373, 47 Cal.App.2d 28.*

A party who makes representations to commercial agents relative to his business may be "estopped" from denying such representations to parties to whom such communications are made. *Thomas v. Fitts-Smith Dry Goods Co., Tex.Civ.App., 151 S.W.2d 243, 246.*

A party may be "estopped" to insist on a claim or to take a position inconsistent with admission previously made by him and relied on by another party in changing his position. *Glascock v. Bradley, Tex.Civ. App., 152 S.W.2d 439, 442.*

Defendant was "estopped" to contend that plaintiffs were not the parties with whom he dealt as principals, by seeking to rely on his dealings with the plaintiffs as principals to sustain credit which he succeeded in obtaining. *Ford v. Jones, 17 S.E.2d 756, 757, 66 Ga.App. 233.*

Plaintiffs were not "estopped" from maintaining suit for a decree that proceedings of a drainage district's officers with respect to issuance of warrants of district were void where record did not show that plaintiffs had made any representations which had been believed and relied upon by defendants. *Sweidund v. Denver Joint Stock Land Bank of Denver, Colo., 118 P.2d 460, 461, 108 Colo. 400.*

To be "estopped" from asserting title to realty, one must have led another by words or conduct to believe that the former had no interest in the realty, and the other must have relied on the misleading words or conduct in such manner as to change his position for the worse. *Froslee v. Sonju, 297 N.W. 1, 3, 4, 209 Minn. 522.*

Where delay in commencement of action was caused by plaintiffs' reliance upon defendant's representation that decision in a similar previously commenced action would be determinative of plaintiffs' rights, defendant was "estopped" from pleading laches or the statute of limitations as a defense to plaintiffs' action. *Adams v. California Mut. Bldg. & Loan Ass'n, 116 P.2d 75, 76, 18 Cal.2d 487.*

Reliance on acts or representations in general—Cont'd

In action to quiet title to interest in realty, wherein defendant contended that plaintiffs were "estopped" by their conduct and representations that they had already conveyed all their interest to defendant, to assert thereafter any interest, evidence sustained finding that plaintiffs did not represent that they were conveying their entire interest to defendant. *Turnbow v. Horn, 149 S.W.2d 560, 561, 292 Ark. 192.*

In order to prove that plaintiff was "estopped" from asserting ownership in realty, defendant in action to determine title to realty was required to show that she acted as an innocent purchaser and that she relied on plaintiff's words or conduct to her detriment. *Froslee v. Sonju, 297 N.W. 1, 3, 4, 209 Minn. 522.*

One whose language or conduct leads another to do what he would not otherwise have done is "estopped" to subject another person to loss or injury by disappointing expectations on which he acted, but such remedy is always so applied as to promote ends of justice. *Glascock v. Bradley, Tex.Civ. App., 152 S.W.2d 439, 442.*

Under New Jersey law in order to "estop" maker of representation, he must either have been conscious of its falsity or negligent concerning it, and the party to whom the representation was made must have been ignorant of the fact and also have had no convenient opportunity to ascertain it. *Auzano v. Metropolitan Life Ins. Co. of New York, C.O.A.N.J., 118 F.2d 430, 435.*

A defendant, in action to quiet title, was not "estopped" to claim title to one of tracts involved from same source as plaintiffs because of his insistence upon title through another source, where there was no showing that plaintiffs were lulled into a sense of security or changed their position by reason of defendant's act. *Warfield Natural Gas Co. v. Ward, 149 S.W.2d 705, 718, 286 Ky. 73.*

Where a void lien emerges from an illegal transaction, the maker will be "estopped" to set up its invalidity where he has induced a stranger to become its purchaser on representations that asserted its validity. *Lincoln v. Bennett, Tex.Civ.App., 135 S.W.2d 632, 633.*

Under the doctrine of "equitable estoppel", where a person with knowledge of the facts induces another to believe he acquiesces in or ratifies a transaction or will offer no

Reliance on acts or representations in general—Cont'd

objection to it, and the other in reliance on that belief alters his position, such person is "estopped" to repudiate the transaction to the other's prejudice. *Robinson v. Great Atlantic & Pacific Tea Co.*, 28 A.2d 468, 469, 470, 139 Me. 194.

Reliance by owners of properties outside city on their grantors' assurances that properties were to be free of future charges did not "estop" city from adopting ordinance providing for issuance of permits to such owners for use of city sewage system on payment of prescribed fees, though connections with such system were made with city's consent. *City of Lexington v. Jones*, 160 S.W.2d 19, 21, 289 Ky. 719.

An owner was not "estopped" from denying right of user of driveway to adjacent owner's garage because owner said nothing while adjacent owner demolished an old and erected a new garage where adjacent owner relied on his own observations as to user without making inquiry, and a reasonable investigation would have disclosed true facts. *Sanders v. Reid*, 25 A.2d 511, 514, 131 N.J. Eq. 407.

If one party, by words or conduct, induces a reasonable belief in the mind of another that he will do a thing or refrain from doing something except under certain limitations, and that other person is thereby induced to subsequently act to his own hurt, the former will be "estopped" from breaching an implied agreement arising from his words or conduct. *Richards v. Frick Reid Supply Corporation*, Tex.Civ.App., 160 S.W.2d 282, 287.

Son claiming land under parol gift from father who was record owner thereof by permitting loan company to advance money to father under belief that father was sole owner, and by allowing administrator of father's estate to act under such belief and approve loan company's claim, was "estopped" to question claim of loan company or rights of administrator in land. *Thornton v. Central Loan Co.*, Tex.Civ.App., 164 S.W.2d 218, 251, 252.

A person is held to a representation made or position assumed where otherwise inequitable consequences would result to another who, having the right to do so, has in good faith relied thereon, but party claiming that another is "estopped" must be misled to

Reliance on acts or representations in general—Cont'd

his injury. *Brownfield v. Southern Amusement Co.*, La.App., 198 So. 670, 675.

Surviving wife of decedent by intervening in succession proceeding and opposing administrator's distribution of proceeds of sale of community property, and claiming property as surviving wife in necessitous circumstances, ratified the legality of the sale and was "estopped" from subsequently denying validity of the sale as against an innocent purchaser who purchased the property from the administrator. *Womack v. McCook Bros. Funeral Home*, 193 So. 652, 654, 194 La. 290.

A clause in lease, providing that execution thereof was not governed or influenced by any representations of lessors as to earning capacity of leased property and that corporate lessee was guided only by its own judgment in making lease, without influence, representation, fraud or duress by lessors, did not "estop" lessee to allege in bill of complaint, praying cancellation of lease, that it was procured by lessors' fraudulent representations as to previous gross earnings of property. *Oceanic Villas v. Godson*, 4 So. 2d 689, 690, 148 Fla. 451.

Where a party to a proceeding, with right or duty to file a plea or defense or else be foreclosed as to his rights under it, is induced to withdraw it if filed, or to desist from filing it if ready and intending to do so in proper time, on representation of opposite party that he need not do so and that his right would be otherwise protected, and thus acts to his injury, equity will consider opposite party "estopped" from taking advantage of consequences of his failure so to plead. *Lunsford v. Kersey*, 13 S.E.2d 803, 805, 806, 191 Ga. 738.

Where purchaser at judicial sale relying on description of lands in advertisement of sale and representations of commissioner and mortgagor's children that all lands north of certain road were to be sold, purchased lands and was given deed containing description conforming to mortgage which did not include all the lands north of the road, children were "estopped" by their conduct from recovering land lying north of road but not included within mortgage description. *Courtney v. Farthing*, 137 S.W.2d 703, 707, 282 Ky. 54.

The alleged fact that defendant, as under-tutor for one of plaintiffs, had, in tutorship proceedings, expressed a belief that, by

Reliance on acts or representations in general—Cont'd

dissolution of corporation, in which plaintiffs had been stockholders, and which had owned rights under a mineral reservation, title of corporation in the mineral rights had passed immediately to plaintiffs, would not "estop" defendant from setting up defense in action against him that title had never vested in plaintiffs since the mistake was as to the law and not the facts. *Widley v. Gleason*, 190 So. 127, 129, 192 La. 1052.

Where adult heirs, and minor heirs by tutor, sold their interest in realty on the representation that they were legal heirs and with judicial admission that grantees were co-owners of a nine-tenths interest in the property, they were "estopped" from claiming that they were only irregular heirs of their ancestor and owned a one-fourth interest in the property rather than the one-fifth purportedly conveyed. *Jackson v. United Gas Public Service Co.*, 198 So. 633, 640, 641, 642, 196 La. 1.

If a minor falsely represents himself to be an adult, which he appears to be, to induce another to enter into a contract with him and thereby through such representation and appearance the other party is led to believe that infant is an adult and makes a contract with him, the benefit of which he obtains and retains, in an action on that contract the infant cannot set up privilege of infancy, since, by his fraudulent conduct, he has "estopped" himself from so pleading, and such rule applies in law and equity. *Reggiori v. Forbes*, 26 A.2d 145, 146, 128 N.J.L. 391.

Where defendant had made repairs on a vessel for which he had not been paid and owner in defendant's presence told plaintiff, who was buying an interest in the vessel, that there were no liens on the vessel, and defendant remained silent and knowingly permitted plaintiff to act in reliance upon such representation, defendant was "estopped" to assert possessory lien for such repairs against plaintiff. *Balestreire v. Arques*, 122 P.2d 277, 279, 49 Cal.App.2d 661.

Where purported contract for sale of substantially all of corporation's property was not ratified by its stockholders and was in effect an offer and before ratification intending purchaser notified corporation that he wished to withdraw offer because of misrepresentations made to him by corporation's agent, intending purchaser was not "estop-

Reliance on acts or representations in general—Cont'd

ped" to withdraw offer on ground that agent was led to cease efforts to sell property to others, since "equitable estoppel" rests on misrepresentation by the person sought to be estopped, and could not be invoked in favor of one who himself made the misrepresentation. *Masonic Temple v. Elbert*, 18 S.E.2d 584, 589, 339 S.C. 5.

The fact that injured theater patron was led by theater manager and his office assistant to believe that theater owner's liability for damages was admitted, filled out claim therefor, reported her condition to management from time to time, and was led by certain conduct, representations and promises to believe that she would be settled with throughout remaining six months of year in which she was injured, did not "estop" theater owner to set up two year statute of limitations in bar of suit by such patron's husband to recover damages, as there still remained about 1½ years in which suit might have been filed. *Jordan v. Concho Theatres*, Tex.Civ.App., 160 S.W.2d 275, 277.

Persons who accepted the succession of their deceased major brother were bound by brother's warranties and representations in deed conveying his interest in land, and were "estopped" to set up any alleged future acquired title as against the interest which brother warranted in his sale to third parties, since they inherited no greater rights than brother had. *Jackson v. United Gas Public Service Co.*, 198 So. 633, 640, 641, 642, 196 La. 1.

Minors, who received the benefit of a sale of land consummated by their duly authorized legal representatives, acting in good faith, were "estopped" to deny the judicial statements and admissions of such representatives. *Jackson v. United Gas Public Service Co.*, 198 So. 633, 640, 641, 642, 196 La. 1.

Payments made by retailer to wholesaler for gasoline purchased under a written contract were not made under circumstances indicating that retailer "waived" her right to a lower price, or that she was "estopped" by her conduct to recover any portion of sum paid, where it appeared that wholesaler had made a definite promise "that the overcharge would be fixed up," and that retailer acted in reliance upon such promise in making payments. *Clariglio v. Benedict & Co.*, 16 A.2d 593, 595, 127 Conn. 291.

Reliance on acts or representations in general—Cont'd

Guernsey milk producers who indorsed in general the promulgation of order by Commissioner of Agriculture and Markets to equalize milk prices paid to producers in production area were not "estopped" to oppose order in its specific application to Guernsey milk, even if there were an inconsistency in their position, where there was no change in position in reliance upon previous conduct of such producers. *New York State Guernsey Breeders Co-op. v. Noyes*, 30 N.E.2d 471, 475, 284 N.Y. 197.

The representation of a minor, in customer's contract which he was required to sign before being permitted to make any further contracts with defendant brokerage concern, that he was an adult, would not "estop" minor from avoiding a contract for purchase of an option on stock in a corporation, especially where uncontradicted evidence showed that minor did not read customer's contract before signing, and, when he tendered back the option, the value of the option was unaffected by minor's act or omission. *Woodall v. Grant & Co.*, 9 S.E.2d 95, 62 Ga.App. 581.

A party to a contract containing a provision that it shall not be modified or changed except by a writing signed by him may by conduct "estop" himself from enforcing the provision against a party who has acted in reliance upon the conduct, and the act of an agent who possesses the power of the principal, or who has been held out by the principal to possess his power, in respect to the provision alleged to have been altered or changed, may also "estop" his principal. *Biloz v. Tioga County Patrons' Fire Relief Ass'n*, Sup., 21 N.Y.S.2d 643, 648.

Where decree found for plaintiff a stated aggregate amount of "principal and interest to date" and approved commissioner's report in record, containing findings under which respective amounts of principal and interest could be readily calculated, plaintiff was not "estopped" from seeking amendment of decree so as to segregate lump total into proper components of principal and interest and so as to provide for future interest only on principal, as against claimant in fl. fa. proceeding which bought land from defendant after entry of decree, in absence of evidence of reliance on terms of decree or prejudice therefrom. *Bank of Tupelo v. Collier*, 15 S.E.2d 499, 502, 192 Ga. 409.

Reliance on acts or representations in general—Cont'd

Where judgment creditor and judgment debtors entered into agreement under which judgment creditor was to refrain from attempting to enforce judgment for a year and judgment debtors promised to make payments from profits to be received from construction contracts and to pay judgment in full from award which judgment debtors expected to obtain in United States Court of Claims, judgment debtors, who paid none of proceeds from construction contracts to judgment creditor and who assigned Court of Claims award to a bank, were "estopped" to deny damage suffered by judgment creditor as result of his reliance upon their promises. *Long v. Thompson*, 113 P.2d 698, 702, 45 Cal. App.2d 161.

Where materialman, in accordance with custom to certify payment for materials furnished to public works subcontractor at end of each month, executed certificate for certain month, although subcontractor had merely promised to give note for materials furnished, and contractor relied on certificate in making payment to subcontractor of amount considerably larger than amount due for such materials, materialman was "estopped" from recovering on contractor's payment bond for such materials, but recovery would not be reduced by entire amount of contractor's payment to subcontractor, or by amount which would reduce claim to amount retained by contractor from amount due subcontractor. *United States, to Use of Noland Co., v. Maryland Casualty Co.*, D.C.Md., 38 F.Supp. 479, 484.

Where town in paying to bank a construction contract progress payment, which had been assigned to bank by contractor, did not act on contractor's certificate to town that he had paid claims in full, executed in connection with obtaining a prior progress payment, the certificate did not "estop" contractor's surety from claiming that assignment was ineffective because contractor was in default under his contract when the assignment was made. *Town of River Junction, Fla. v. Maryland Casualty Co.*, C.C.A. Fla., 133 F.2d 57, 58.

Removal of causes

A plaintiff cannot by joining several causes of action under state statutes or state court rules, "estop" defendant from removing an action to federal court. *Connors v.*

Removal of causes—Cont'd

Federal Deposit Ins. Corporation, D.C.Pa., 39 F.Supp. 812, 817.

Schools and school districts

Where an alleged contract between a teacher and parish school board has not been made in the manner required by law, the board cannot be "estopped" from questioning its legality. *Riche v. Ascension Parish School Board*, La.App., 200 So. 681, 686.

A teacher was not "estopped" from recovering retirement allowances from date when she reached retirement age on ground that she falsely stated her age on personnel card, under circumstances. *Talbot v. Independent School Dist. of Des Moines*, 299 N.W. 556, 567, 230 Iowa 949.

The act of negro teacher in applying for a position in the public school system and accepting the salary fixed in accordance with schedules adopted by the Board of Education providing for a substantial differential in favor of white teachers based solely on ground of race and color did not "estop" him from questioning the validity of such salary schedules. *Thomas v. Hibblitts*, D.C.Tenn., 46 F.Supp. 368, 371.

Where school board did not pay salary directly to teacher seeking to recover salary she would have earned if allowed to teach the next term, but teacher's salary was disbursed by the superintendent from a special account created by check and pay roll prepared by superintendent for board president's signature, board was not "estopped" to deny that teacher was its employee. *State ex rel. Gelson v. Winn Parish School Board*, La.App., 9 So.2d 342, 345.

A school teacher who does not seek by action for specific performance to require county board of education to approve nomination of the teacher is "estopped" from recovering damages from the board after employment of another teacher who receives emoluments of office, but is not estopped from recovering damages from board members individually, since no action for specific performance will lie against them as individuals. *Duff v. Chaney*, 164 S.W.2d 483, 487, 291 Ky. 308.

The mere fact that all members of a board of education, as individuals, have signed a contract employing a teacher does not "estop" the board from asserting the contract's invalidity while it is executory, but the rule does not apply if the contract has

Schools and school districts—Cont'd

been wholly or partially performed, and the proof supports ratification. *Lambers v. Board of Education of Town of Hot Springs*, 116 P.2d 639, 692, 45 N.M. 446.

Where teacher served two years as principal and for two preceding years as "vice principal in charge" and for year preceding that as "teacher in charge", and each year the resolution of employment stated definitely the capacity in which teacher was employed, school district was not "estopped" from denying that teacher acquired tenure as permanent principal on ground that although she was not employed as principal for probationary period of three years as required by city charter, she performed all of the duties as such for five years, in addition to her regular duties as teacher, and was paid additional compensation therefor. *Constantine v. Board of Education of City and County of San Francisco*, 111 P.2d 638, 700, 43 Cal.App.2d 734.

Where heirs of persons conveying quarter acre of their half quarter section of land to school township trustees for school purposes by warranty deed, providing that land conveyed should revert back to grantors or their heirs if it ceased to be used for such purposes, re-entered land under such deed on ground of breach of such condition subsequent after grantors conveyed half quarter section to another by warranty deed, such heirs obtained only after-acquired title, if any, to land warranted to such grantee and are "estopped" to deny that he and persons holding under him took title to entire tract under such deed. *Hughes v. Fifer*, 31 N.E.2d 634, 637, 218 Ind. 198.

Where it appeared from terms of "tenure-plan", adopted by school board, which provided that teachers should be dismissed only for certain stated causes, that it should be signed both by board and individual teachers affected thereby, and that it was only signed by individuals purporting to be officers of a voluntary teachers' association, the membership of which constituted only a little more than one-third of all teachers in district, board was not "estopped" from denying that it had a contract with a teacher whom it failed to re-engage, since there having been no such contract pre-existing, "estoppel" alone could not create a cause of action for one. *Fromen v. Goose Creek Independent School Dist.*, Tex.Civ.App., 148 S.W.2d 499, 465.

conduct of other as result of which that other party will not be permitted to raise contention inconsistent with his misleading conduct. Orchard Shopping Center, Inc. v. Campo, 5 Dist., 485 N.E.2d 1248, 1254, 93 Ill.Dec. 38, 44, 138 Ill.App.3d 656.

"Estoppel" is the preclusion, by acts or conduct, from asserting a right which might otherwise have existed, to the detriment and prejudice of another, who, in reliance on such acts and conduct, has acted thereon. C & H Const. & Paving Co., Inc. v. Citizens Bank, App., 597 P.2d 1190, 1202, 93 N.M. 150.

"Estoppel" generally refers to reliance by one party on words or conduct of another such that first party changes his position and suffers harm as a result. Allstate Ins. Co. v. Tucker, 1 Dist., 533 N.E.2d 1004, 1006, 127 Ill.Dec. 922, 924, 178 Ill. App.3d 809.

"Estoppel" forbids the assertion of the truth by one who has knowingly induced another to believe what is untrue and to act accordingly, but before the doctrine of estoppel may be invoked, the declarations or acts relied on must have induced the party seeking to enforce an estoppel to do what resulted to his detriment and what he would not otherwise have done. Roberts v. Maine Bonding and Cas. Co., Me., 404 A.2d 238, 241.

"Estoppel" prohibits party from escaping liability for his statements, actions or inactions if they have been relied on by other party. Glopak Corp. v. U.S., 12 Cl.Ct. 96, 103.

"Estoppel" arises whenever a party, by his word or conduct, reasonably induces another to rely on his representations, and leads another, as a result of that reliance, to change his position to his injury. Payne v. Mill Race Inn, 2 Dist., 504 N.E.2d 193, 199, 105 Ill.Dec. 324, 330, 152 Ill.App.3d 269.

"Estoppel" arises when one by his acts, representations, or silence, intentionally or through culpable negligence, induces another person to believe in existence of certain facts and that person justifiably relies on those facts to his detriment. Rosenbaum v. Davis Iron Works, Inc., E.D.Mich., 669 F.Supp. 813, 820.

"Estoppel" refers to reliance by one party on word or conduct of another whereby party changes its position and subsequently suffers harm; estoppel arises whenever one by his conduct, affirmative or negative, intentionally or through culpable negligence, induces another to believe and have confidence in certain material facts, and, the latter having the right to do so, relies and acts thereon and is as reasonable and inevitable consequence misled to his injury. American States Ins. Co. v. Action Fire Equipment, Inc., 2 Dist., 509 N.E.2d 1097, 1101, 109 Ill.Dec. 258, 262, 157 Ill.App.3d 34.

"Estoppel" implies the loss of a right or property because of acts or representations inconsistent with such rights which are relied on by another to his detriment. Cranston v. Winters, N.D., 238 N.W.2d 647, 650.

"Estoppel" is based on reliance upon statement of another without having the opportunity to know the truth and action based on that reliance which results in detriment to the actor. Warren Bros. Co. v. Metropolitan Government of Nashville and Davidson County, Tenn.App., 540 S.W.2d 243, 247.

To constitute an "estoppel" the party against whom it is sought to be enforced must have made a representation evidenced by promise or conduct which induced the person to whom it was directed to rely thereon. Fred v. Pacific Indem. Co., 494 P.2d 783, 786, 53 Haw. 384, 397.

To constitute "estoppel" sufficient to preclude a party from raising the statute of frauds as a defense, the party relying on it must be influenced by the acts or silence of the other and it must appear that the acts or conduct of the party estopped caused the party relying to act as he would not have acted. Zunino v. Paramore, 435 P.2d 196, 197, 83 Nev. 506.

Reliance by person claiming estoppel on words, acts or conduct of party against whom estoppel is asserted is essential to "estoppel". Weaver v. Bauer, 79 N.W.2d 361, 364, 76 S.D. 401.

"Estoppel" refers to an abatement, raised by law, of rights and privileges of insurer where it would be inequitable to permit their assertion; such relinquishment need not be voluntary, intended or desired by insurer, but it necessarily requires some prejudicial reliance of insured upon some act, conduct or nonaction of insurer. National Discount Shoes, Inc. v. Royal Globe Ins. Co., 424 N.E.2d 1166, 1170, 54 Ill.Dec. 263, 267, 99 Ill.App.3d 54.

An essential element of "estoppel" is that the party who seeks the benefit of an estoppel relied on the representations or conduct of the party to be estopped and was thereby led into a course of conduct whereby he will be substantially prejudiced if the other party is permitted to repudiate his former action and representation. Winne v. Bergen County, 116 A.2d 544, 550, 36 N.J.Super. 532.

In regard to insurance, doctrine of "estoppel" requires reliance on conduct of party to be estopped. Commercial Cas. Ins. Co. v. Mansfield, N.H., 96 A.2d 558, 564, 98 N.H. 120.

An essential element of "estoppel" is that party asserting estoppel show reliance upon conduct of his adversary and change of position in reliance thereon, and that party asserting estoppel would consequently be injured by an assertion of truth, or that adversary has benefited by former position of adversary. L. B. Price Mercantile Co. v. Gay, Fla., 44 So.2d 87, 90.

The term "estoppel" always involves notions of reliance by one party upon conduct of other and varies in meaning with conduct of latter, which may be either representation of fact (estoppel by misrepresentation), a promise (promissory estoppel) or merely the taking of a position, a manifestation of election. Commercial Insurance Co. of Newark v. Burnquist, D.C.Iowa, 105 F.Supp. 920, 937, 943.

"Estoppel" is equitable device available only to those who have suffered injury by reliance on another's misleading silence, omission, or act at time of transaction involved, when his knowledge thereof before its consummation charged him in conscience with obligation to reveal his claim or interest. Efron v. Haile, 103 N.Y.S.2d 561, 570, 200 Misc. 966.

"Estoppel" is effect of voluntary conduct of party whereby he is precluded from asserting rights which otherwise might exist against another person who in good faith has relied on such conduct and has been led thereby to change his position for worse. James

Talcott, Inc. v. Associates Discount Corp., C.A. Ark., 302 F.2d 443, 446.

"Estoppel" is a concurrence of the following elements: (1) conduct by party to be estopped by which he intentionally or through culpable negligence induces another to believe and have confidence in certain material facts; (2) action by party so induced in reliance, justifiably taken, upon the apparent state of the facts, and, (3) injury to party so induced which is caused by his reliance. Joy Enterprises, Inc. v. Reppel, 537 P.2d 591, 594, 112 Ariz. 42.

Doctrine of "estoppel" has application when one, by his acts, representations, or conduct, or by his silence when he ought to speak, induces another to believe certain facts exist and such other relies thereon to his detriment. Leaver v. Grose, Utah, 610 P.2d 1262, 1264.

"Estoppel" focuses upon effects of obligor's conduct on obligee and rises when party's conduct misleads another to believe that a right will not be enforced and causes him to act to his detriment in reliance upon that belief. Central States Southeast and Southwest Areas Pension Fund v. Ekco Products, Inc., D.C.Ill., 581 F.Supp. 374, 378.

"Estoppel" is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property, of contract, or of remedy. Finklestein v. Southampton Civic Club, Tex.App. 1 Dist., 675 S.W.2d 271, 278.

Representation

"Estoppel" consists of a false representation or concealment of material facts, made with knowledge, actual or constructive, of those facts, to a party without knowledge, or means to acquire it, with intention that it should be acted on, and with prejudicial reliance thereon by party to whom it was made. Fidelity & Cas. Co. of New York v. Jefferies, Tex.Civ.App., 545 S.W.2d 881, 886.

Defense of "estoppel" arises where one party makes by its words or actions a false representation of fact, and the other party reasonably relies on the misrepresentation and is prejudiced thereby. Arctic Contractors, Inc. v. State, Alaska, 564 P.2d 30, 40.

"Estoppel" results from a representation of fact which the party making such representation is not legally permitted to deny. Baillargeon v. Department of Water and Power of City of Los Angeles, 138 Cal.Rptr. 338, 342, 69 C.A.3d 670.

Basis of an "estoppel" is representation or conduct amounting to representation intended to induce course of action on part of person to whom representation is made, and where, as consequence, there is detriment to person relying on representation and taking action. DeSisto's Case, 220 N.E.2d 923, 925, 351 Mass. 348.

"Estoppel," under California law, implies acts amounting to representation or concealment of material facts, with knowledge thereof, to or from a person ignorant of truth, with intent that they be acted on, and reliance thereon by person claiming

estoppel to his prejudice. Sidebotham v. Robison, C.A.Cal., 216 F.2d 816, 829.

In order to constitute "estoppel," there must have been a representation or concealment of material facts, representation must have been made with knowledge, party to whom it was made must have been ignorant of the truth, it must have been made with intention that other party should act on it, and other party must have been induced to act on it. Moore v. Carter, 277 S.W.2d 427, 431, 38 Tenn. App. 603.

"Estoppel" arises where one makes representations to another concerning matter about which others act to his injury, or to benefit of one making representation, but reliance on representation must be reasonable. Holt v. International Indem. Co., 321 S.E.2d 374, 377, 171 Ga.App. 817.

Ordinarily, the representation must be of a present or past fact or state of things in order to establish an "estoppel". Kelly v. Gram, S.D., 38 N.W.2d 460, 466, 467.

In order to constitute "estoppel", there must be conduct amounting to false representation or concealment, and some in reliance on it must be misled into doing or failing to do something he would not otherwise have done or have failed to do. Sefcik v. Sheker, 41 N.W.2d 709, 712, 241 Iowa 571.

To constitute "estoppel," there must be conduct, acts, language or silence amounting to representation or concealment of material facts, such facts must be known to party estopped at time of such conduct or circumstances must be such that knowledge thereof is necessarily imputed to him, truth concerning them must be unknown to party claiming estoppel at times of such conduct and action thereon by him, conduct must be done with expectation that it will be acted on by other party or under such circumstances as to render such action both natural and probable and be relied on by him, and he must act thereon in such manner as to change his condition for worse. Fisher v. West Virginia Coal & Transp. Co., W.Va., 73 S.E.2d 633, 640.

Res Judicata distinguished

Although Clayton Act provision stating that a government decree in antitrust proceeding shall be prima facie evidence in subsequent private litigation as to all matters which decree would constitute an estoppel as between United States and the government defendants, decree does not conclusively estop a government defendant in subsequent private litigation and by referring to "estoppel" Congress intended collateral estoppel rather than res judicata. State of Mich. v. Morton Salt Co., D.C.Minn., 259 F.Supp. 35, 64.

Silence under duty to speak

Mere silence will not create "estoppel" unless the silent party was under some obligation to speak, and a party invoking such estoppel must show that it was the duty of the other party to speak, that the party invoking estoppel has been induced to act by reason of the silence, and that the silent party had reasonable cause to believe that the party invoking estoppel would so act. E. D. McGillicuddy Const. Co. v. Knoll Recreation Ass'n, 107 Cal.Rptr. 899, 905, 31 C.A.3d 891.