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would be willing to forego the compensation for the period the house has been in Government possession."

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This representation, in my view, does not relate to an existing fact, but refers to an intention or a promise in future. The representation is an expression of an intention and it may raise expectations, but it does not amount to an enforceable contract. The representation, however, is undeniably in the nature of a promise to relinquish a right to compensation. Estoppels, as pointed out by Garth C.J., in the *Ganges Manufacturing* Co., v. *Sourujmull and others* (1), are matters of infinite variety, and are by no means confined to the subject which are dealt with in Chapter VIII of the Evidence Act.

The case of the Government is that it has acted upon the representation made by the plaintiff in his letter Ex. D. 6. The Estate Officer, in his letter dated the 25th of October, 1945, (Ex. D. 5), addressed to Sat Narain plaintiff inviting the latter's attention to Ex. D. 6 had said that it had been undertaken by him that he would forego the compensation for the period the house had been under requisition. This house, he said, was released on that specific condition and the claim for compensation in those circumstances was considered to be not justified. It is admitted at the bar that the premises remained released for three years subsequently and although it was within the power of the Government, to again requisition the premises they did not do so in view of the representation of the plaintiff to forego the compensation. It was argued on behalf of the plaintiffs that it was not just on the part of

(1) I.L.R. 5 Cal. 669.

the Government to decline to pay compensation when it was made payable by the very statute which conferred the power to requisition the premises.

The ethics of a party's conduct are hardly relevant in a case like the present. The brief facts of this case are, that the plaintiffs were anxious to give up the compensation for the period during which their property had been requisitioned and were keen to get possession and offered inducement to the Government to release the property by representing, that they would not demand any compensation. The Government, on this, passed the order of cancellation and released the property and did not exercise their right to requisition the property for a period of three years. It cannot, therefore, be urged that there was no *quid pro quo* on account of which the Government was persuaded to derequisition the plaintiffs' premises.

In order to create estoppel the party asserting it has to show that it has been induced to act to its detriment or misled to its injury. It is an equitable defence when a party has deliberately led another to believe that a particular thing is true and to act upon such belief to its detriment. It is based on the theory that party setting up such defence has been misled or has been placed in a worse situation. A change of one's position for the worse because of reliance on another act is an element of estoppel. The detriment said to have been suffered in this case is that the Government gave up its right to hold the premises under the requisitioning order and thereby changed its position for the worse. The essence of doctrine of estoppel is that, where a person does or omits to do something which influences the action of another, who relies or acts thereon, equity will

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not permit him to controvert the same to the injury of the other party. As said by Lord Coke the name 'estoppel' was given because a man's own act stoppeth or closeth up his mouth to allege or plead the truth. The doctrine is predicated on the maxim that no one can be heard alleging his own turpitude as it was unconscionable to allow a person to maintain an inconsistent position by acquiescence and accepting the benefit and later on by repudiating it while retaining the benefit.

Estoppel is a preclusion in law preventing a man from alleging or denying a fact in consequence of his own previous allegation or denial. It is, however, a shield for defence, but not a weapon of attack and does not furnish a basis for action.

Under the common law the doctrine of estoppel by representation was confined to representation as to facts either past or present, but not to representations or promises concerning the future. A "promissory estoppel" which is a recent development of an equitable estoppel operates to preclude perpetration of fraud or causing of injury, in a case, where the representation or promise has been made to induce an action on the part of the party setting up the estoppel. In such a case the party making the promise is precluded from asserting want of consideration therefor. The doctrine of "promissory estoppel" is said to be older than the terminology. "That equity gave relief, before 1,500, to a plaintiff who had incurred detriment on the faith of the defendant's promise, is reasonably clear, although there are, but three reported cases." ,—(*vide Ames, Lectures on* Legal History, P. 143. American Jurisprudence, Vol. 19, paragraph 53, page 657-658 contains the following statement of law :—

> "The doctrine of promissory estoppel is by no means new, although the name has

been adopted only in comparatively recent years. According to that doctrine, an estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice. Promissory estoppel is sometimes spoken of as a species of consideration or as a substitute for, or the equivalent of, consideration; but the basis of the doctrine is not so much one of contract with a substitute for consideration, as an application of the general principle of estoppel, since the estoppel, may arise although the change of position of the promisee was not in any way an inducement to the promise and as not regarded by the parties as any consideration therefor."

The principle of "promissory" estoppel, which is also known as "Equitable" or "quasi" estoppel is expressed in the following words in Halsbury's Laws of England, Third Edition, Volume 15, page 175 :—

"When one party has, by his words or "conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one, who gave the promise or assurance cannot afterwards be allowed to revert to their

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previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced."

In the recent years this doctrine has been considerably developed as will appear from *Lyle-Meller* v. *A. Lowis and Co. (Westminster) Ltd.*, (1). In that case the defendants had, by their conduct, given an assurance that gas lighters and refills embodied the plaintiff's inventions and they were liable to pay royalties, thereon and as it was intended that the plaintiff should act on the assurance and he had acted on it the defendants could not go back on their assurance.

Dennings L.J., said :

"I am clearly of opinion that this assurance was binding, no matter whether it is regarded as a representation of law or of fact or a mixture of both, and no matter whether it concerns the present or the future. It may not be such as to give rise to an estoppel at common law, strictly so called, for that was confined to representations of existing fact; but we have got far beyond the old common law estoppel now. We have reached a new estoppel which affects legal relations.

This new estoppel applies to representations as to the future. Take the kind of assurance which was held binding in *Central London Property Trust Ltd.* v. *High Trees House Ltd.* (2), and in *Tool Metal Manufacturing Co., Ltd.*, v. *Tungsten Electric Co., Ltd.* (3), *Tool Metal Manufacturing Co.*,

(1) (1956) 1 All. E.R. 247.
(2) (1956) 1 All. E.R. 256 (K.B.D.).
(3) (1953) 69 R.P.C. 108.

Ltd. v. *Tungsten Electric Co., Ltd.* (1), in the Court of appeal and in House of Lords *Tool Metal Manufacturing Co., Ltd.* v. *Tungsten Electric Co., Ltd.* (2). In each of those cases a creditor during the war gave a promise or assurance to the other party that he would for the time being forego sums which were thereafter to become due to him. In *Central London Property Trust Ltd.*, v. *High Trees House Ltd.*, (3), it was rent. In *Tool Metal Manufacturing Co., Ltd.*, v. *Tungsten Electric Co., Ltd.* (1) it was sums payable by way of compensation. The assurance was not a contract binding in law, but it was an assurance as to the future; it was intended to be acted on, it was acted on, and it was held binding on the party, who gave it. This appears distinctly from the speech of Lord Gohen *Tool Metal Manufacturing Co., Ltd.* v. *Tungsten Electric Co. Ltd.* (1).

I am not aware of any decisions of Courts in India, where a promise *in future* has been held to create an estoppel, but the decisions, both in England and in America, are based upon equitable principles and ought to be followed, the principle being that if a promise is made in the expectation that it would be acted upon and it was in fact acted upon the party making the promise will not be allowed, infairness, to back out of it and the Courts should insist that the promise so made must be honoured and the promisor cannot be allowed to act inconsistently. In this view of the matter, the appellant does not deserve to succeed on the principle of "promissory" estoppel. In the result, the appeal fails and is dismissed. In the circumstances of this case, the parties are left to bear their own costs throughout.

G. D. KHOSLA, C.J.—I agree.

G. D. Khosla, C. J.

B.R.T.

(1) (1954) 2 All. E.R. 28 (C.A.).
(2) (1955) 2 All. E.R. 657 (H.L.).
(3)(1956) 1 All. E.R. 256 (K.B.D.).

CIVIL MISCELLANEOUS

Before D. Falshaw, and S. B. Capoor, JJ.

GIAN SINGH SAHNI,—*Petitioner.*

versus

DISTRICT AND SESSIONS JUDGE, DELHI AND ANOTHER,—*Respondents.*

C. Misc. 746-D of 1960 in S.C.A. 37-D of 1959.

1961

Jan., 3rd.

Code of Civil Procedure (V of 1908)—Order 45. Rule 7—High Court Rules and Orders, Volume V, Chapter 8-A. Rule 3—Supreme Court Rules, Chapter XII, Rules 1A, and 3—Security deposit—Whether can be reduced to a figure lower than Rs. 2,500 by the High Court.

Falshaw, J.

Held, that Rules 1A and 3 of Chapter XII of the Supreme Court Rules permit the High Court granting the certificate to depart from the standard figure of Rs. 2,500 relating to security deposit and to reduce this amount in suitable cases.

Petition under Chapter VIII, Volume 5 of the High Court Rules and Orders, Rules 3 and 4, read with Supreme Court, Rules, Part II. Order XII and Rule 1(1)-A, 2, 3 and 4.

I. M. LAL, ADVOCATE, for the Petitioner.

JINDRA LAL, ADVOCATE, *for the Respondent.*

JUDGMENT

Falshaw, J.

FALSHAW, J.—The question which arises in this application filed by Gian Singh Sahni is whether under any circumstances this Court has the power, after granting a certificate for fitness for appeal to the Supreme Court under article 133(1)(c) of the

Constitution, to dispense with the furnishing of the whole or any part of the security of Rs. 2,500 required to be deposited for the respondent's costs under rule 3 of Chapter 8-A of Volume V of the Rules and Orders of this Court.

The circumstances under which the question has arisen are as follows. The petitioner filed a petition in this Court under article 226 of the Constitution challenging his retirement from Government service at the age of 55, and raising the question whether the provisions of article 311 of the Constitution were applicable. His petition was dismissed by G. D. Khosla and Bishan Narain, JJ., on the 19th of February, 1959, and a certificate of fitness under article 133(1)(c) of the Constitution was granted by Chopra, J., and myself almost a year later, on the 15th of February, 1960. The present application was filed about two months later on the ground that the petitioner was not in a position to deposit the sum of Rs. 2,500 as security for the costs of the respondents, who are the District and Sessions Judge, Delhi, and the Administrator, Delhi Union Territory, because since his retirement, which he is challenging, he has only been in receipt of an interim pension of Rs. 50 per mensem. He had in fact applied within the period of six weeks fixed for the deposit of the security by rule 3 direct to the Supreme Court for relief in this matter, but his petition was dismissed by the order of K. Subba Rao, and J. C. Shah, JJ., dated 11th April, 1960, which reads :—

> "This is an application for exempting the petitioner from depositing security of Rs. 2,500. The appeal has not yet been admitted. In the circumstances, the petitioner may file an application in the High Court under rule 1A of Order XII of the Supreme Court Rules, 1950. The application is dismissed."

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His application in this Court was promptly filed after that order had been passed.

The relevant rules are as follows. Rule 3 of Chapter 8-A, Volume V of the High Court Rules and Orders reads—

> "When the Court grants a certificate, which shall be in Form B appended to those rules, the petitioner shall be required to deposit within ninety days, or such further period not exceeding sixty days, as the Court may, upon cause shown, allow from the date of the decree complained of, or within six weeks from the date of the grant of the certificate (whichever is the later date) a sum of Rs. 2,500 as security for the respondent's costs.
>
> In any special case the Court may, if it thinks fit upon the application of the respondent, require security to a larger amount; but in no case exceeding rupees five thousand."

Order XII of the Supreme Court Rules, 1950, deals with appeals on certificate by High Court. The relevant rules read as follows :—

> "(1) Subject to any special directions which the Court may give in any particular case, the provisions of Order XLV of the Code, and of any rules made for the purpose by the High Court or other authority concerned, so far as may be applicable, shall apply in relation to appeals preferred under Articles 132(1), 133(1) and 135 of the Constitution.
>
> (1A) The security to be furnished under Order XLV, rule 7(1)(a) of the Code

shall, unless otherwise ordered by the Court appealed from, be in the sum of Rs. 2,500. The Court appealed from may in appropriate cases enhance the amount of security to be deposited up to a maximum of Rs. 5,000.

* * * * *

(3) Where an appellant, having obtained a certificate from the High Court, fails to furnish the security or make the deposit required, that Court may, on its own motion or on application in that behalf made by the respondent, cancel the certificate and may give such directions as to the costs of the appeal and the security entered into by the appellant as it shall think fit or make such further or other order as the justice of the case requires."

The learned counsel for the respondents has contended that there is no ambiguity whatever in rule 3 of the Rules of this Court which fixes the security deposit at Rs. 2,500 and the only departure from this figure permitted is in an upward direction to the extent of Rs. 5,000 in special cases where the costs of the respondents may be expected to exceed the standard figure.

It would, however, appear to be rather surprising that if this Court has no power whatever to go below Rs. 2,500 the learned Judges of the Supreme Court should not have dismissed the petitioner's application outright instead of referring him to this Court and it seems to me that the rules of the Supreme Court do permit some departure from the standard figure.