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Promissory Estoppel as a Substitute for Consideration

George W. Atkins

crimes, but to speak of unnecessary analogies in the face of distinct differences is a dangerous practice.

What, then, are the differences which exist between the plea of double jeopardy, and the plea of autrefois convict or acquit? A review of the cases cited leads to the following conclusions:—1. The plea of double jeopardy originates from Constitutional provisions, while autrefois pleas find their source in the common law.

2. The plea of double jeopardy is only available in capital cases, while autrefois pleas are accessible under indictment for any crime.

3. Autrefois pleas require that there shall have been a verdict, an accepted plea of guilty, or a discharge of the jury without *reasonable necessity*. The plea of double jeopardy is available though no verdict has been given, if there was discharge of the jury without *absolute necessity*.

E. F. Hann, Jr.

PROMISSORY ESTOPPEL AS A SUBSTITUTE FOR CONSIDERATION

The recent case of *Langer v. Superior Steel Corporation*[1] presents the question of promissory estoppel in Pennsylvania as a substitute for consideration.

The defendant sent the plaintiff the following letter:

"Aug., 31, 1927.

"Mr. Wm. F. Langer,

"Dear Sir:

"As you are retiring from active duty with this company, as superintendent of the Annealing Department, on August 31, we hope that it will give you some pleasure to receive this official letter of commendation for your long and faithful service with the Superior Steel Corporation.

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[1]161 Atl. 571 (1932).

"The Directors have decided that you will receive a pension of $100 per month as long as you live and preserve your present attitude of loyalty to the company and its officers and are not employed in any competitive occupation. We sincerely hope that you will live long to enjoy it and that this and the other evidences of the esteem in which you are held by your fellow employees and which you will to-day receive with this letter, will please you as much as it does us to bestow them.

"Cordially yours,

"(signed) Frank R. Frost,
"President."

The defendant paid the $100 per month for about four years and then refused to pay any longer.

The Superior Court, after holding that there was sufficient consideration to support the promise, said, "This contract is enforceable also on the theory of promissory estoppel."

To support its holding the Court quotes section 90 of the Restatement of the Law of Contracts which states "a promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."[2]

Before discussing promissory estoppel we should note the difference existing between it and what is ordinarily called estoppel or equitable estoppel. In the latter we have a misrepresentation of fact by one party and a reliance thereon by the other party to his detriment.[3]

In the former we have a reliance on a promise to do something in the future as distinguished from a misrepresentation of a present fact.[4]

When will the courts invoke this doctrine of promis-

[2]The American Law Institute Restatement of the Law of Contracts p. 138.

[3]21 C. J. 1113.

[4]Langer v. Superior Steel Co., supra; Williston on Contracts p. 308.

sory estoppel?

Prof. Williston says, "Promises of future action, it is generally held, if they can furnish the basis for an estoppel at all, can do so only where they relate to an intended abandonment of an existing right and are made to influence others who are in fact induced to act thereby."[5]

Our Supreme Court followed this doctrine in the case of *Stayton v. Graham*[6] where the court said, "The doctrine of estoppel is applied to prevent statements of intended abandonment of existing rights from operating as a fraud upon a party who has been led to rely on them and thereby change his conduct and alter his condition."

Perhaps the most usual example of this intended abandonment of an existing legal right is where a party owing a debt promises his creditors that he will not plead the statute of limitations if the creditors do not sue until after the statute has run. The courts will hold that the debtor is estopped to plead the statute.[7]

Another situation in which the courts have invoked this doctrine is where there was a gratuitous oral license and the licensee made improvements and expended money in reliance thereon. The leading Pennsylvania case on this point is *Rerick v. Kern*.[8] In that case Kern applied to Rerick for permission to divert a stream and the permission was granted. Kern in reliance on the license diverted the stream and built a saw mill on the stream. Rerick brought a special action on the case for diverting the stream. The court held that although the license was revocable in the beginning it became irrevocable when Kern made expenditures on the faith of it.

The holding of *Rerick v. Kern* has been followed through a long line of Pennsylvania cases and is undoubted-

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[5]Williston on Contracts p. 309.

[6]139 Pa. 1 (1891).

[7]Armstrong v. Levan, 109 Pa. 177 (1885); Williston on Contracts p. 309.

[8]14 Serg. & R. 267 (1826).

ly the law today.[9]

The idea of a revocable license becoming irrevocable upon an expenditure of money in reliance thereon has been extended to other fields. For instance in the case of *Bassick Manufacturing Co. v. Riley*[10] the court recognized the fact that a gratuitous license to use one's name in a business enterprise may become irrevocable when the licensee expends money in reliance on the right to use the licensor's name.

Promissory estoppel has also been applied in the case of a parol promise to give land when there has been a taking of possession and making of valuable improvements on the land in reliance on the promise to convey.[11] In speaking of this type of a promise, Prof. Walsh says that the alleged donor is, "estopped from denying the validity of a parol gift or promise to make a gift."[12] In this type of case, however, the only kind of reliance that is sufficient to work an estoppel is, (1) the taking of possession and (2) making improvements on the land. There must be both as either one alone is not sufficient.[13]

In a recent case[14] where there was a parol promise to give land followed by a taking of possession and making improvements the court held that it was a promise reasonably inducing definite and substantial action which would result in injustice if it were not enforced. In support of their holding the court quotes section 90 of the Restatement.

Prof. Williston says in his work on Contracts that contracts of marriage settlement are to be supported by promissory estoppel.[15]

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[9]Baldwin v. Taylor, 166 Pa. 507 (1895); Willis v. Railway Co., 188 Pa. 56 (1898); Harris v. Brown, 202 Pa. 16 (1902); Bishop v. Buckley, 33 Pa. Super. Ct. 123 (1907); Leininger v. Goodman, 277 Pa. 75 (1923).

[10]9 Fed. (2nd.) 138 (1925).

[11]Williston on Contracts p. 312; Neale v. Neale, 76 U. S. 1 (1869).

[12]Walsh on Equity p. 407; Pomeroy's Equity Jurisprudence p. 904.

[13]Walsh on Equity p. 408.

[14]Greiner v. Greiner, 131 Kan. 760, 293 Pac. 759 (1930); See comment in 15 Minn. L. Rev. 825.

[15]Williston on Contracts p. 312.

In deciding whether or not such a contract was enforceable Cardozo, J. said that it was a unilateral contract and that the entering into the marriage was the consideration for the promise.[15a]

Subscriptions to charities constitute another class of cases that has been supported on the theory of promissory estoppel.[16] Several theories have been advanced as the basis for supporting such subscriptions,[17] but the best one is that of promissory estoppel[18] and this seems to be the theory followed in Pennsylvania.[19]

In a recent New York case[20] a divided court upheld a subscription to Allegheny College. Cardozo, J. in giving the opinion for the majority of the court said,

> "There has grown up of recent days a doctrine that a substitute for consideration or an exception to its ordinary requirements can be found in what is styled 'a promissory estoppel.'
>
> "Whether this exception has made its way in this state to such an extent as to permit us to say that the general law of consideration has been modified accordingly, we do not now attempt to say. Certain at least, it is, that we have adopted the doctrine of promissory estoppel as the equivalent of consideration in connection with our law of charitable subscriptions."

The other view is intimated by Kellogg, J. in the dissenting opinion when he says,

> "In order to make a bargain it is necessary that the acceptor shall give in return for the offeror's promise exactly the consideration which the offeror requests."

[15a]De Cicco v. Schweizer (N. Y.) 117 N. E. 807 (1917); See also article by Prof. Corbin in "Selected Readings on the Law of Contracts," p. 504.

[16]Ryerss v. Trustees, 33 Pa. 114 (1859); Reimensnyder, Adm. v. Gans, 110 Pa. 17 (1885); University of Pa. v. Coxe's Exers., 277 Pa. 512 (1923).

[17]See Horan v. Keane, 204 N. W. 546, (Minn. 1925).

[18]Williston on Contracts p. 252.

[19]See cases cited in note 16 supra.

[20]Allegheny College v. Bank, 246 N. Y. 369, 159 N. E. 173, 57 A. L. R. 980 (1927).

Justice Holmes stated this view in *French v. Boston, Nat. Bank*[21] when he said,

> "Reliance upon a promise gives it no new validity when such reliance is not the conventional inducement of the promise, that is to say, when it is not contemplated by the terms of the bargain as the equivalent of the promise."

He iterated this doctrine as a member of the Supreme Court of the United States when he said,

> "No matter what the actual motive may have been, by the express and implied terms of the supposed contract, the promise and the consideration must purport to be the motive for each other, in whole or at least in part. It is not enough that the promise induced the detriment, or that the detriment induced the promise, if the other half is wanting."[22]

The doctrine of promissory estoppel threatens to do away with the idea of a consideration which the offeror requests, so far as it is allowed to apply. It may be used as a basis for enforcing a promise where no consideration has been requested at all[23] if there has been a reliance on the promise by the promisee to his detriment. This endangers the whole doctrine of consideration which has been so long a basic element of our law of contracts. The doctrine is a result of the desire of the courts to relieve against hardships to those who honestly relied on the promises of others. In applying the doctrine it would seem that the courts should bear in mind this reason for its origin and that they should not extend it to new cases unless a failure to apply it would result in substantial hardship to the person who relied on the promise.

George W. Atkins

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[21]179 Mass. 404 (1901).
[22]Wis. & Mich. Ry. Co. v. Powers, 191 U. S. 379 (1903).
[23]Ricketts v. Scothorn, 57 Neb. 51, 77 N. W. 365 (1898).