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EQUITY-LACHES AND ESTOPPEL AS BARRING EQUITABLE RELIEF IN PROTECTION OF AN EASEMENT

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EQUITY—LACHES AND ESTOPPEL AS BARRING EQUITABLE RELIEF IN PROTECTION OF AN EASEMENT—Grantors had conveyed to plaintiff a certain lot in a subdivision with a provision “leaving a street sixty feet wide between Block Five . . . and the . . . tract herein conveyed.” A plat of the addition, showing the street, had also been filed. Subsequently, the grantors conveyed to the defendant the land theretofore comprising the street. Construction on that land was begun and seventy-two days later when the building was 40 per cent completed and represented an expenditure of \$2,000, plaintiff filed a suit to restrain interference with his easement, serving notice thereof on the defendant the same day. The trial court denied plaintiff an injunction on the ground that he was estopped by his delay in seeking equitable relief. On appeal, *held*, affirmed. Though the easement may be recognized, equitable relief by injunction was properly denied. *Hamilton v. Smith*, (Ark. 1948) 208 S.W. (2d) 425.

The emphasis on the concept that “equity will lend its aid only to those who are vigilant in asserting their rights”¹ suggests that the court, in principle if not in terms, relies upon the bar of laches. It is of interest to note, however, that the court speaks of “estoppel” rather than of laches.² These concepts are similar in that they are founded on some act of the party against whom the bar is claimed which has prejudiced the party claiming the bar. The general differentiation is that in laches the emphasis is on delay; in estoppel, on representation.³ Equitable estoppel is a more formalized concept developed from the common law estoppel *in pais*,⁴ and requires a showing of reasonable reliance⁵ on the acts, acquiescence, or silence of the other party.⁶ Laches, on the other hand, is a broader concept appealing to the traditional conscience of the equity court.⁷ The essential elements are thus more general and each case depends upon its own facts.⁸ Though the passage of time is emphasized, that alone will

¹ Principal case at 427.

² Principal case at 427. The court may have been influenced to use the term estoppel rather than laches because of the statement found in some of the cases that laches will not be applied to defeat a strict legal right. 4 POMEROY, EQUITABLE REMEDIES, 2d ed., § 1445 (1918), and that doctrine has been specifically applied to seeking an injunction for the protection of an easement, *Galway v. Metropolitan E.R. Co.*, 128 N.Y. 132, 28 N.E. 479 (1891); 13 L.R.A. 788 (1891).

³ *California Packing Corp. v. Sun-Maid Raisin Growers*, (C.C.A. 9th, 1936) 81 F. (2d) 674; *In re International Mineral Co.*, (D.C. Conn. 1915) 222 F. 415.

⁴ *McQuitty v. McQuitty*, 332 Mo. 1057, 61 S.W. (2d) 342 (1933); 3 POMEROY, EQUITY JURISPRUDENCE, 5th ed., § 802 (1941).

⁵ *King v. Knudson*, 209 Iowa 1214, 229 N.W. 839 (1930); *Wollenberger v. Hoover*, 346 Ill. 511, 179 N.E. 42 (1931); *Whitfield v. Hatch*, 235 Ala. 38, 177 S. 149 (1937).

⁶ Silence or acquiescence may constitute a representation sufficient to raise estoppel when there is a duty to speak. *Pettit-Galloway Co. v. Womack*, 167 Ark. 356, 268 S.W. 353 (1925); *Sherlock v. Greaves*, 106 Mont. 206, 76 P. (2d) 87 (1938).

⁷ *Wolpert v. Gripton*, 213 Cal. 474, 2 P. (2d) 767 (1931); *Gillons v. Shell Co.*, (C.C.A. 9th, 1936) 86 F. (2d) 600.

⁸ *Cook v. Knight*, 106 S.C. 310, 91 S.E. 312 (1917); *Burton v. Ryan*, 88 Ind. App. 549, 165 N.E. 260 (1929); *Woods v. Saunders*, 247 Ala. 492, 25 S. (2d) 141 (1946).

not justify the interposition of the bar.⁹ Prejudice must be shown; but that prejudice may result not only from direct reliance as in estoppel, but from the indirect consequences of the passage of time, such as obscuration of evidence,¹⁰ changes in value,¹¹ and intervention of the rights of third parties.¹² Thus, laches being founded on the broad equitable concepts of justice, the courts have not imposed the limitation of the right to rely.¹³ In the principal case it is certain that there was present the prejudice necessary to give rise to the defense of laches; and if we may accept the trial court's finding that a delay of seventy-two days was too great,¹⁴ the decision is sound. The case stands as a warning, however, that, in cases involving improper building, large equities can be obtained in so short a time that diligence in bringing legal action is imperative.¹⁵

Chester Lloyd Jones, S. Ed.

⁹ *Harper v. Harper*, 159 Va. 210, 165 S.E. 490 (1932); *Turner v. Hunt*, (Tex. Comm. App. 1938) 116 S.W. (2d) 688; *Moseley v. Briggs Realty Co.*, 320 Mass. 278, 69 N.E. (2d) 7 (1946).

¹⁰ *Lutyens v. Ahlrich*, 308 Ill. 11, 139 N.E. 50 (1923); *Evans v. Linck*, 280 Mich. 278, 273 N.W. 568 (1937); *Walker v. Norton*, 199 Ark. 593, 135 S.W. (2d) 315 (1940).

¹¹ *Byrne Realty Co. v. South Florida Farms Co.*, 81 Fla. 805, 89 S. 318 (1921); *Horn v. Hull*, 169 Ark. 463, 275 S.W. 905 (1925).

¹² *Carter v. Price*, 85 W. Va. 744, 102 S.E. 685 (1920); *Langston v. Hughes*, 170 Ark. 272, 280 S.W. 374 (1926).

¹³ *Berkey v. St. Paul Nat. Bank*, 54 Minn. 448, 56 N.W. 53 (1893). But an outward recognition of plaintiff's right may constitute an excuse for delay, *Browning v. Browning*, 85 W. Va. 46, 100 S.E. 860 (1919); *Angeloff v. Smith*, 254 Mich. 99, 235 N.W. 823 (1931), or the continuance of wrongful invasion of rights in the face of protests may result in defendant's failing in his appeal to the conscience of the court. *Pioneer Mining Co. v. Pacific Coal Co.*, 4 Alaska 463 (1912).

¹⁴ Compare the following cases involving injunction against interference with an easement where it was held that laches did not bar relief: *Bacon v. Onset Bay Grove Assn.*, 241 Mass. 417, 136 N.E. 813 (1922) (delay of thirty-five days); *Yunkes v. Webb*, 339 Ill. 22, 170 N.E. 709 (1930) (delay of five months but little expenditure involved); *Beaudoin v. Sinodinos*, 313 Mass. 511, 48 N.E. (2d) 19 (1943) (delay of sixty-four days). See also *Manheim v. Urbani*, 318 Mich. 552, 28 N.W. (2d) 907 (1947).

¹⁵ See Comment, 46 MICH. L. REV. 654 at 656-657 (1948).