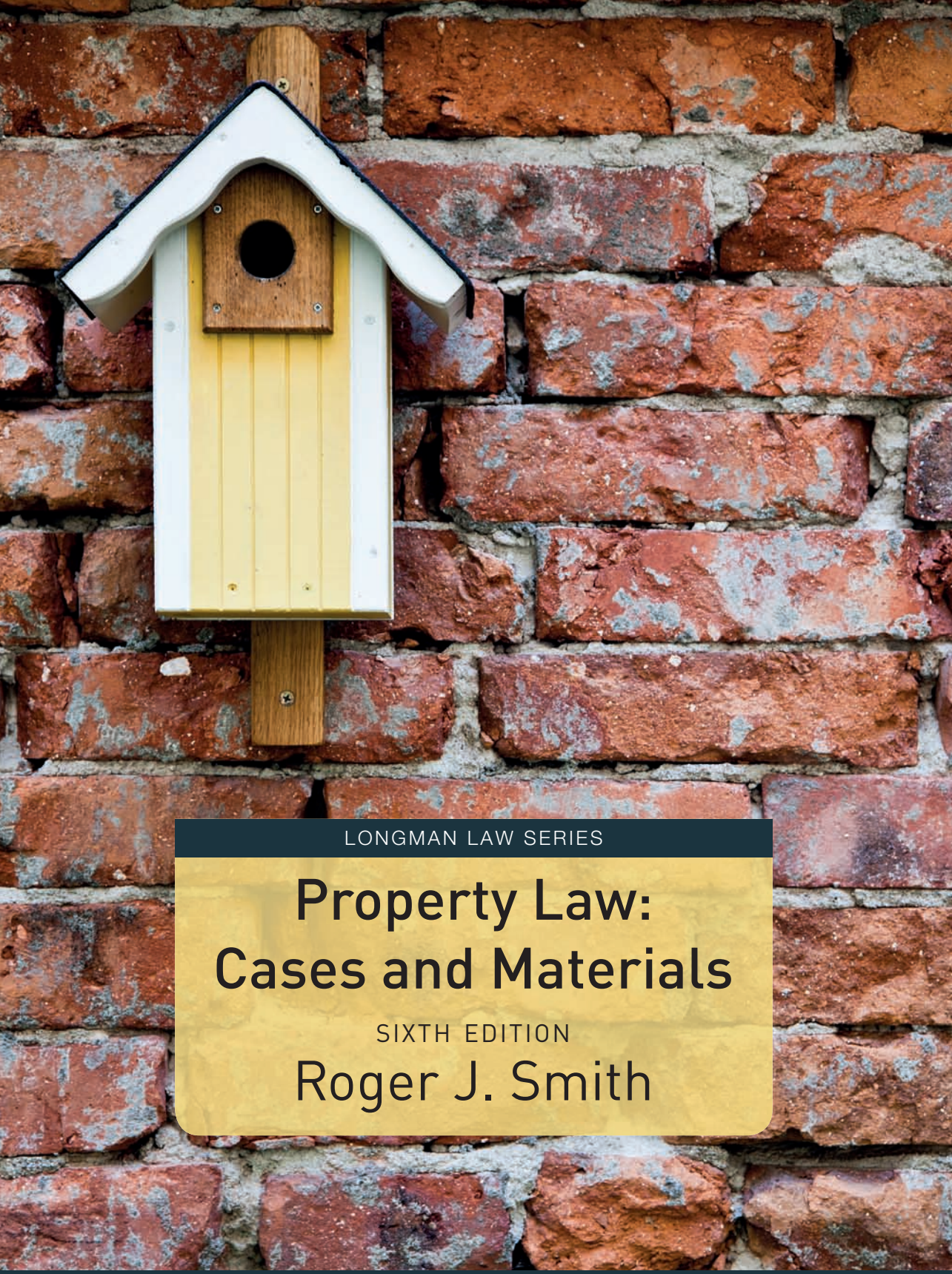

LONGMAN LAW SERIES

Property Law: Cases and Materials

SIXTH EDITION

Roger J. Smith

ALWAYS LEARNING

PEARSON

Property Law: Cases and Materials

B. Reliance

Extract 7.1.6

***Greasley* v *Cooke* [1980] 1 WLR 1306**

C had originally arrived as a maid, but lived with a member of a family (Kenneth) for nearly 30 years. During this period she had been assured by the family that she could stay in the house for her life; she looked after the house and a mentally ill family member.

LORD DENNING MR: . . . The first point is on the burden of proof. Mr Weeks referred us to many cases, such as *Reynell* v *Sprye* (1852) 1 De GM&G 660, 708; *Smith* v *Chadwick* (1882) 20 Ch D 27, 44 and *Brikom Investments Ltd* v *Carr* [1979] QB 467, 482–483 where I said that when a person makes a representation intending that another should act on it:

> 'It is no answer for the maker to say: "You would have gone on with the transaction anyway." That must be mere speculation. No one can be sure what he would, or would not, have done in a hypothetical state of affairs which never took place . . . Once it is shown that a representation was calculated to influence the judgment of a reasonable man, the presumption is that he was so influenced.'

So here. These statements to Miss Cooke were calculated to influence her – so as to put her mind at rest – so that she should not worry about being turned out. No one can say what she would have done if Kenneth and Hedley had not made those statements. It is quite possible that she would have said to herself:

> 'I am not married to Kenneth. I am on my own. What will happen to me if anything happens to him? I had better look out for another job now: rather than stay here where I have no security.'

So, instead of looking for another job, she stayed on in the house looking after Kenneth and Clarice. There is a presumption that she did so, relying on the assurances given to her by Kenneth and Hedley. The burden is not on her, but on them, to prove that she did not rely on their assurances. They did not prove it, nor did their representatives. So she is presumed to have relied on them. So on the burden of proof it seems to me that the judge was in error.

The second point is about the need for some expenditure of money – some detriment – before a person can acquire any interest in a house or any right to stay in it as long as he wishes. It so happens that in many of these cases of proprietary estoppel there has been expenditure of money. But that is not a necessary element. I see that in *Snell's Principles of Equity*, 27th ed (1973), p 565, it is said: 'A must have incurred expenditure or otherwise have prejudiced himself.' But I do not think that that is necessary. It is sufficient if the party, to whom the assurance is given, acts on the faith of it – in such circumstances that it would be unjust and inequitable for the party making the assurance to go back on it: see *Moorgate Mercantile Co Ltd* v *Twitchings* [1976] QB 225 and *Crabb* v *Arun District Council* [1976] Ch 179, 188. Applying those principles here it can be seen that the assurances given by Kenneth and Hedley to Doris Cooke – leading her to believe that she would be allowed to stay in the house as long as she wished – raised an equity in her favour. There was no need for her to prove that she acted on the faith of those assurances. It is to be presumed that she did so. There is no need for her to prove that she acted to her detriment or to her prejudice. Suffice it that she stayed on [sic] the house – looking after Kenneth and Clarice – when otherwise she might have left and got a job elsewhere . . .

Comment

(1) The presumption of reliance is a very important weapon for C. It has been accepted in subsequent cases,[8] though in *Coombes* v *Smith* (Extract 7.1.7 below) the presumption was rebutted. Both *Coombes* and *Greasley* are examples of how detriment and reliance issues are intertwined.

(2) Note that Lord Denning MR appears to accept acting on the assurance rather than requiring detriment. However, Dunn LJ adopted a more conventional analysis and other cases (including *Coombes*) use the language of detriment. Was there clear detriment in *Greasley*?[9]

(3) It sometimes happens that C voluntarily embarks on a course of conduct that benefits O: care services provide one example. O then makes a promise to C, who continues with the benefiting conduct. Should this be sufficient to establish an estoppel?[10]

C. Detriment

Some detriment is essential to an estoppel claim. Although improvement of the land is a feature of many cases, *Crabb* (sale of adjoining land) shows that this is by no means necessary.

Extract 7.1.7

***Coombes* v *Smith* [1986] 1 WLR 808**

C claimed a right to live in a house as long as she wished.

JONATHAN PARKER QC: . . . The second element or requisite is that the plaintiff must have expended money, or otherwise prejudiced himself or acted to his detriment, on the faith of his mistaken belief in his legal rights . . .

The first point to make in this connection is that this is not, as Mr Nield acknowledged, a case in which expenditure of money on the property can be relied upon as creating the equity. The only relevant expenditure (on the installation of central heating) was incurred long after the issue of the writ and without the knowledge of the defendant. The acts of detriment relied upon are those which I listed earlier in this judgment. I take them in turn. Two questions have, it seems to me, to be asked in relation to each of them: (1) was it done in reliance on the defendant's assurances or, in other words, on the faith of the plaintiff's mistaken belief, the existence of which I have, for present purposes, to assume? and (2) by doing it, did the plaintiff prejudice herself or otherwise act to her detriment? The first act relied on by the plaintiff is allowing herself to become pregnant by the defendant. In my judgment, it would be wholly unreal, to put it mildly, to find on the evidence adduced before me that the plaintiff allowed herself to become pregnant by the defendant in reliance on some mistaken belief as to her legal rights. She allowed herself to become pregnant because she wished to live with the defendant and to bear his child. The second question accordingly does not arise, but I would in any event have been unable to treat the act of the plaintiff in allowing herself to become pregnant as constituting detriment in the context of the doctrine of proprietary estoppel.

[8] One example is *Wayling* v *Jones* (1993) 69 P&CR 170.
[9] See *Bostock* v *Bryant* (1990) 61 P&CR 23.
[10] *Wayling* v *Jones* (1993) 69 P&CR 170; *Grundy* v *Ottey* [2003] WTLR 1253.

The second act relied on as detriment was the plaintiff's act in leaving her husband and moving to 67, Bulwark Road. As I have already said, I know nothing about the plaintiff's marriage save that it was not a happy one, and that it was never consummated. In his closing speech, Mr Nield suggested that by moving to 67, Bulwark Road the plaintiff was giving up the chance that her marriage might survive. But I cannot conjecture, let alone making any finding about, what the chances may have been of the plaintiff's marriage becoming a happy and successful one. The reality is that the plaintiff decided to move to 67, Bulwark Road because she preferred to have a relationship with, and a child by, the defendant rather than continuing to live with her husband. It seems to me to have been as simple as that. There is no evidence that she left her husband in reliance on the defendant's assurance that he would provide for her if and when their relationship came to an end: the idea of detriment or prejudice is only introduced ex post facto.

The third act relied on is giving birth to Clare. I take that to be no more in effect than a repetition of the first act relied upon and I make the same observations in relation to it.

The fourth act relied on is not an isolated one but a course of conduct on the part of the plaintiff in looking after 33, Stanway Road, being ready for the defendant's visits, and looking after Clare. But these things were done by the plaintiff as occupier of the property, as the defendant's mistress, and as Clare's mother, in the context of a continuing relationship with the defendant. Even if the plaintiff held the requisite mistaken belief and did these things on the faith of that belief, I cannot see how any question of prejudice or detriment arises from them. The same observations apply to the fifth act, or category of acts, relied on, namely, redecorating the property and installing the decorative beams which I have mentioned.

Lastly, it is pleaded that in reliance on the defendant's alleged assurances, the plaintiff took no other steps to provide for herself and Clare, i.e., she did not look for a job. Apart from the fact that there was no evidence that she forebore to look for a job on the faith of a belief that she was legally entitled to security of tenure, I cannot regard her omission to look for a job as a detriment. The contrary would seem to be more readily arguable, in view of the fact that until things went wrong between them the defendant was content to pay all the bills and to pay an allowance to the plaintiff for herself and Clare.

In my judgment, therefore, even assuming the existence of the requisite mistaken belief, it has not been established that she acted to her detriment on the faith of that belief so as to give rise to an equity in her favour to remain at the property . . .

Comment

(1) The conduct here is typical of many relationships. If estoppel had been proved, it would mean that representations would almost invariably become enforceable as between persons living together. Even allowing for this, is the decision justified? *Southwell* v *Blackburn* [2014] EWCA Civ 1347 reveals a more generous approach.

(2) O had no objection to C's living in the house until the daughter reached 17, so can it be argued that C got a good deal (even if short of her mistaken belief)?

(3) Sir Nicolas Browne-Wilkinson V-C in *Grant* v *Edwards*[11] appears to support 'Setting up house together, having a baby, making payments to general housekeeping expenses . . .' as detriment. Is this consistent with *Coombes* v *Smith*?

(4) See also the detriment analysis in *Gillett* v *Holt* (Extract 7.1.3 above). Does this cast doubt on *Coombes* v *Smith*?

(5) On the facts, it was found that C had no mistaken belief and so an estoppel could not in any event be made out.

[11] [1986] Ch 638 at p 657.

2. The effect of the estoppel

A. Use as a sword

Extract 7.2.1

***Dillwyn* v *Llewelyn* (1862) 4 De GF&J 517 (45 ER 1285)**

LORD WESTBURY LC: . . . Subsequently the father and mother became desirous that the Plaintiff, their son, should reside in their immediate neighbourhood, and accordingly they selected a small estate and determined to give it to the son in order that he might build a proper dwelling-house for his residence thereon . . .

. . . The Plaintiff was put in possession of the estate and immediately proceeded to build a dwelling-house thereon, and laid out, as it is stated, a sum of no less than £14,000. This expenditure took place in the lifetime of the father, and with his assent and approbation. No alteration was made by the father in his will, and he died in the month of August 1855. The question now arises, what estate the Plaintiff has in the property so given to him, and which was made the site of his dwelling-house . . .

About the rules of the Court there can be no controversy. A voluntary agreement will not be completed or assisted by a Court of Equity, in cases of mere gift. If anything be wanting to complete the title of the donee, a Court of Equity will not assist him in obtaining it; for a mere donee can have no right to claim more than he has received. But the subsequent acts of the donor may give the donee that right or ground of claim which he did not acquire from the original gift. Thus, if A gives a house to B, but makes no formal conveyance, and the house is afterwards, on the marriage of B, included, with the knowledge of A, in the marriage settlement of B, A would be bound to complete the title of the parties claiming under that settlement. So if A puts B in possession of a piece of land, and tells him, 'I give it to you that you may build a house on it', and B on the strength of that promise, with the knowledge of A, expends a large sum of money in building a house accordingly, I cannot doubt that the donee acquires a right from the subsequent transaction to call on the donor to perform that contract and complete the imperfect donation which was made. The case is somewhat analogous to that of verbal agreement not binding originally for the want of the memorandum in writing signed by the party to be charged, but which becomes binding by virtue of the subsequent part performance. The early case of *Foxcroft* v *Lester* (2 Vern 456), decided by the House of Lords, is an example nearly approaching to the terms of the present case.

Comment

(1) Although estoppel may sometimes operate as a shield, doing no more than denying O's claim to possession, *Dillwyn* is an excellent early example of its acting as a sword. This has been confirmed in large numbers of more recent cases, from *Crabb* to *Thorner*. How compelling is the analogy of part performance?

(2) Can its acting as a sword be justified when promissory estoppel has no such effect? Might the answer lie in the acquiescence origins of much of proprietary estoppel?

(3) It will be seen below that the remedy is not simply the enforcement of the promise, but involves some element of discretion. Australian analyses explain the circumvention of contractual rules (especially consideration requirements) by employing a restitutionary basis for estoppel.[12]

[12] *Waltons Stores (Interstate) Ltd* v *Maher* (1988) 164 CLR 387; *Commonwealth* v *Verwayen* (1990) 170 CLR 394; Spence (1991) 107 LQR 221.

B. The remedy

An important aspect of estoppel decisions over the past two or three decades has concerned the remedy.

Extract 7.2.2

***Crabb* v *Arun DC* [1976] Ch 179**

SCARMAN LJ: . . . I turn now to the other two questions – the extent of the equity and the relief needed to satisfy it. There being no grant, no enforceable contract, no licence, I would analyse the minimum equity to do justice to the plaintiff as a right either to an easement or to a licence upon terms to be agreed . . . It is interesting that there has been some doubt amongst distinguished lawyers in the past as to whether the court can so proceed. Lord Kingsdown refers in fact to those doubts in a passage, which I need not quote, in *Ramsden* v *Dyson*, LR 1 HL 129, 171. Lord Thurlow clearly thought that the court did have this power. Other lawyers of that time did not. But there can be no doubt that since *Ramsden* v *Dyson* the courts have acted upon the basis that they have to determine not only the extent of the equity, but also the conditions necessary to satisfy it, and they have done so in a great number and variety of cases. I need refer only to the interesting collection of cases enumerated in *Snell's Principles of Equity*, 27th ed (1973), at pp 567–568, para 2 (b).

In the present case the court does have to consider what is necessary now in order to satisfy the plaintiff's equity. Had matters taken a different turn, I would without hesitation have said that the plaintiff should be put upon terms to be agreed if possible with the defendants, and, if not agreed, settled by the court. But, as already mentioned by Lord Denning MR and Lawton LJ, there has been a history of delay, and indeed high-handedness, which it is impossible to disregard. . . . I am not disposed to consider whether or not the defendants are to be blamed in moral terms for what they did. I just do not know. But the effect of their action has been to sterilise the plaintiff's land; and for the reasons which I have endeavoured to give, such action was an infringement of an equitable right possessed by the plaintiff. It has involved him in loss, which has not been measured; but, since it amounted to sterilisation of an industrial estate for a very considerable period of time, it must surpass any sort of sum of money which the plaintiff ought reasonably, before it was done, to have paid the defendants in order to obtain an enforceable legal right. I think therefore that nothing should now be paid by the plaintiff and that he should receive at the hands of the court the belated protection of the equity that he has established. Reasonable terms, other than money payment, should be agreed: or, if not agreed, determined by the court.

The 'minimum equity to do justice' or, as stated earlier in the judgment, 'the relief appropriate to satisfy the equity' test has been quoted and applied in very many subsequent cases. The question for consideration is how far the court possesses a discretion as to what remedy to give, going beyond the discretion inherent in every equitable remedy. More specifically, we need to consider whether (and how far) the 'equity' is based upon C's expectation or C's detriment.

Extract 7.2.3

***Pascoe* v *Turner* [1979] 1 WLR 431**

On the breakdown of a relationship, O purported to transfer a house to C. However, the absence of writing (let alone a deed) rendered C no more than a licensee.

CUMMING-BRUCE LJ: . . . On the judge's findings the defendant, having been told that the house was hers, set about improving it within and without. Outside she did not do much: a little

work on the roof and an improvement which covered the way from the outside toilet to the rest of the house, putting in a new door there, and Snowcem to protect the toilet. Inside she did a good deal more. She installed gas in the kitchen with a cooker, improved the plumbing in the kitchen and put in a new sink. She got new gas fires, putting a gas fire in the lounge. She redecorated four rooms. The fitted carpets she put in the bedrooms, the stair carpeting, and the curtains and the furniture that she bought are not part of the realty, and it is not clear how much she spent on those items. But they are part of the whole circumstances. There she was, on her own after he left her in 1973. She had £1,000 left of her capital, and a pension of some kind. Having as she thought been given the house, she set about it as described. On the repairs and improvement to the realty and its fixtures she spent about £230. She had £300 of her capital left by the date of the trial, but she did not establish in evidence how much had been expended on refurbishing the house with carpets, curtains and furniture. We would describe the work done in and about the house as substantial in the sense that that adjective is used in the context of estoppel. All the while the plaintiff not only stood by and watched but encouraged and advised, without a word to suggest that she was putting her money and her personal labour into his house. What is the effect in equity?

. . .

In *Crabb* v *Arun District Council* [1976] Ch 179 this court had to consider the principles upon which the court should give effect to the equity: [Scarman LJ is quoted]. So the principle to be applied is that the court should consider all the circumstances, and the counterclaimant having at law no perfected gift or licence other than a licence revocable at will, the court must decide what is the minimum equity to do justice to her having regard to the way in which she changed her position for the worse by reason of the acquiescence and encouragement of the legal owner. The defendant submits that the only appropriate way in which the equity can here be satisfied is by perfecting the imperfect gift as was done in *Dillwyn* v *Llewelyn*.

. . .

We are satisfied that the problem of remedy on the facts resolves itself into a choice between two alternatives: should the equity be satisfied by a licence to the defendant to occupy the house for her lifetime, or should there be a transfer to her of the fee simple?

The main consideration pointing to a licence for her lifetime is that she did not by her case at the hearing seek to establish that she had spent more money or done more work on the house than she would have done had she believed that she had only a licence to live there for her lifetime. But the court must be cautious about drawing any inference from what she did not give in evidence as the hypothesis put is one that manifestly never occurred to her. Then it may reasonably be held that her expenditure and effort can hardly be regarded as comparable to the change of position of those who have constructed buildings on land over which they had no legal rights.

This court appreciates that the moneys laid out by the defendant were much less than in some of the cases in the books. But the court has to look at all the circumstances. When the plaintiff left her she was, we were told, a widow in her middle fifties . . . Compared to her, on the evidence the plaintiff is a rich man. He might not regard an expenditure of a few hundred pounds as a very grave loss. But the court has to regard her change of position over the years 1973 to 1976.

We take the view that the equity cannot here be satisfied without granting a remedy which assures to the defendant security of tenure, quiet enjoyment, and freedom of action in respect of repairs and improvements without interference from the plaintiff. The history of the conduct of the plaintiff since April 9, 1976, in relation to these proceedings leads to an irresistible inference that he is determined to pursue his purpose of evicting her from the house by any legal means at his disposal with a ruthless disregard of the obligations binding upon conscience. The court must grant a remedy effective to protect her against the future manifestations of his ruthlessness. It was conceded that if she is granted a licence, such a licence cannot be