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Judgments – Interest – Estoppel

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JUDGMENTS—INTEREST—ESTOPPEL

Sixteen years prior to the commencement of the present action, the State of Oklahoma had accepted, as payment in full, the amount due on a judgment rendered against the defendant. At that time, the state, in fact, had made an error in computing the claim and now sues to recover the additional amount due thereon, together with interest accrued from the date of the old judgment. *Held*, neither laches nor estoppel operated to defeat the state's claim, while acting in its sovereign capacity.¹ *State v. Shull*, 279 P.2d 339 (Okla. 1955).

With few exceptions,² a state acting in its "sovereign" capacity is not subject to the defenses of laches,³ estoppel,⁴ or the statute of limitations.⁵ Under the prevailing view, these exemptions stem not from any notion of extraordinary prerogative, but rather are allowed for reasons of public policy.⁶ The vast majority of cases hold that estoppel will not be invoked against the state even when there is negligence or omission by public officers in the discharge of, or the failure to perform their duty,⁷ or where the collection of funds is involved.⁸ And further, no estoppel ordinarily results from acquiescence in the violation of a law,⁹ or from delay in

1. A state acts in its sovereign capacity when it acts for the common benefit of all its people. *Commonwealth v. Masden*, 295 Ky. 861, 175 S.W.2d 1004, 1006 (1943). A fundamental reason why there can ordinarily be no estoppel against the public rights is that there is no one, except the legislature, who has authority to convey away such rights. *State v. Hutchins*, 79 N.H. 132, 105 Atl. 519 (1919). Sovereign functions have been defined as including those in which the state is dealing with matters of revenue. *Lovett v. City Treasurer of Detroit*, 286 Mich. 159, 281 N.W. 576 (1938); *State v. Brooks*, 183 Minn. 251, 236 N.W. 316 (1931); *Baker v. State Highway Department*, 166 S.C. 481, 165 S.E. 197 (1932).

2. *E.g.*, in *United States v. Standard Oil Co. of California*, 20 F. Supp. 427 (S.D. Cal. 1937), while holding for the United States, the court indicated, in strong dictum, the circumstances when the United States may be estopped. *Florida Livestock Board v. Gladden*, 76 So.2d 291 (Fla. 1954); *Att'y Gen. v. Central Ry.*, 68 N.J.L. 198, 59 Atl. 348 (1904).

3. *State v. Moore*, 49 Ariz. 51, 64 P.2d 809 (1937); *Estate of Ramsay v. People*, 197 Ill. 572, 64 N.E. 549 (1902); *State v. Excelsior Powder Mfg. Co.*, 295 Mo. 254, 169 S.W. 267 (1914).

4. *Barnett Inv. Co. v. Nee*, 72 F. Supp. 81 (W.D. Mo. 1947); *Greenwood v. State*, 230 Ala. 405, 161 So. 498 (1935); *Donovan v. City of Santa Monica*, 88 Cal. App.2d 386, 199 P.2d 51 (1948); *Outer Dock & Wharf Co. v. Los Angeles*, 48 Cal. App. 120, 193 Pac. 137 (1920).

5. *Ex parte State*, 206 Ala. 393, 90 So. 871 (1921); *People v. Hamill*, 259 Ill. 506, 120 N.E. 1052 (1913); *Horton v. Jones*, 110 Kan. 540, 204 Pac. 1001 (1922).

6. *Bennett's Inc. v. Carpenter*, 111 Colo. 63, 137 P.2d 780 (1943); *People v. Bradford*, 372 Ill. 63, 22 N.E.2d 691 (1939); *Appeal of Valicenti*, 298 Pa. 276, 148 Atl. 308 (1929).

7. *E.g.*, *Board of Comm'rs of Sedgwick County v. Conners*, 121 Kan. 105, 245 Pac. 1030 (1926); *People v. Detroit, G.H. & M. Ry.*, 228 Mich. 596, 200 N.W. 536 (1924); *Traveler's Insurance Co. v. Fricke*, 99 Wis. 367, 74 N.W. 372 (1898).

8. *E.g.*, *City of Clifton v. East Ridgelawn Cemetary*, 122 N.J.L. 115, 4 A.2d 79 (1939) (an ordinance permitting the location of a cemetery within municipality imposed a one dollar fee on each interment); *Duham v. State Tax Commission*, 179 P.2d 252 (Cal. 1947).

9. *People ex rel Nelson v. People's State Bank of Maywood*, 354 Ill. 519, 188 N.E. 853 (1933) (after 3 years, village trustees asserted that treasurer's deposits in excess of penal sum of depositary bond were in violation of an ordinance).

bringing suit.¹⁰ However, equitable estoppel may be invoked against a state with regard to acts done in its proprietary or private capacity,¹¹ as distinguished from its sovereign or governmental capacity. In spite of this well-settled rule, numerous attempts have been made to ignore the distinction between governmental and proprietary functions, and substitute therefor conceptions of universal justice, right, and fair play as a basis for estoppel.¹² The theory upon which these attempts rest is that estoppel applies against the state in a "proper case"; although no court seems yet to have attempted to define the words "proper case," being content rather, to decide each piece of litigation upon the particular facts presented.¹³ Thus, when a state recovered judgment for taxes due during certain years, it was estopped in another action to recover taxes for the same years that were once the subject of litigation.¹⁴ And, where it did not appear that any public rights were adversely affected, the state could not attack the status of a municipal boundary which had existed under legislative enactment for a period of eight years.¹⁵

In the instant case, the lapse of sixteen years did not supply the elements necessary to constitute an estoppel against the state. There have been decisions where, in addition to the lapse of time, *other* circumstances rendered it contrary to right and justice for the state to exercise a particular power, or to deny the validity of an act or contract.¹⁶ Apparently the majority herein did not find such additional circumstances. The dissent, on the other hand, reasoning solely on the basis of fair play, asserted that the state had no right and could not acquire a right either by design or mistake to compel the defendant, against his will, to remain its debtor, especially with regard to the ten per cent annual penalty interest (one hundred sixty per cent).¹⁷

10. *E.g.*, *United States v. Standard Oil of California*, 20 F. Supp. 427 (S.D. Cal. 1937).

11. *City of East Point v. Upchurch Packing Co.*, 58 Ga. App. 829, 200 S.E. 210 (1938); *City of New Castle v. Withers*, 291 Pa. 216, 139 Atl. 860 (1927); *Strand v. State*, 16 Wash.2d 107, 132 P.2d 1011 (1943).

12. *E.g.*, *Farrell v. Placer County*, 23 Cal.2d 625, 145 P.2d 570 (1944); *cf.* *Los Angeles v. Los Angeles County*, 72 P.2d 138 (Cal. 1937). In addition, Florida has attempted to accomplish this intent, in the collection of license taxes, by legislative enactment. FLA. STAT. § 205.12 (1955).

13. *E.g.*, *State v. Horr*, 165 Minn. 1, 205 N.W. 444 (1925).

14. *Bridge Co. v. Douglas*, 12 (Bush) Ky. 673 (1877).

15. *State ex rel Landis v. Coral Gables*, 120 Fla. 492, 163 So. 308 (1935).

16. *E.g.*, *People ex rel Petty v. Thomas*, 361 Ill. 448, 198 N.E. 363 (1935); *Village of Clawson v. Van Wagoner*, 268 Mich. 148, 255 N.W. 743 (1934); *Boardwalk & Seashore Corp. v. Murdock*, 26 N.Y.S.2d 319, 36 N.E.2d 678 (1941); *Ervin v. Pittsburgh*, 339 Pa. 241, 14 A.2d 297 (1940).

17. The theory upon which interest on judgments is allowed is that it is a measure of damages fixed by the legislature; it is not interest in its strict sense, nor is it based on any contract express or implied, since a judgment is not a contract save in a very recondite and remote sense of term. See *Morley v. Lake Shore & M.S.R. Co.*, 146 U.S. 162 (1892); *Wyoming Nat'l Bank v. Brown*, 7 Wyo. 494, 53 Pac. 291 (1898).

The decision in the present case is in conformity with the well-settled doctrine that a sovereign, while functioning governmentally, cannot sleep. However, since a relatively large amount of interest had accrued; and since interest on a judgment is generally considered to be a measure of damages as distinguished from compensation for use of money,¹⁸ it appears grossly unfair to give the doctrine the blanket application illustrated herein.

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ATTORNEYS—DISBARMENT—QUANTUM OF PROOF REQUIRED

During disbarment proceedings in the Circuit Court, an attorney's license to practice was rescinded because he refused to reply to interrogations by the presiding Judge as to whether he was presently, or had ever been, a member of the Communist Party, on the ground that his answer might tend to incriminate him. *Held*, reversed. Appellant's refusal to answer being insufficient, without more, to sustain the Circuit Court's ruling, and due process having been denied the attorney by the court's presumption of his guilt. *Sheiner v. State*, 82 So.2d 657 (Fla. 1955).

The precise question presented in the instant case had not been adjudicated previously in Florida, nor in any of her forty-seven sister states. While there are a number of grounds for disbarment, they are often stated in broad general terms¹ which make them difficult to interpret. The practice of law is generally considered a privilege,² and the purpose of disbarment has been held to be for the protection of the public and the courts and not to punish the attorney.³ For this reason, it has been held that disbarment is neither a prosecution, penalty, nor forfeiture.⁴ However, the Florida view is contra, the precedent for the court's decision in the *Sheiner* case having been established in *Florida State Board of Architecture v. Seymour*.⁵

18. *Ibid*.

1. E.g., misconduct rendering an attorney unfit to be entrusted with the powers and duties of his office *In re Clifton*, 115 Fla. 168, 155 So. 324 (1934); conduct showing such lack of good moral character as to render the attorney unworthy of public confidence: Connecticut Grievance Comm. of Hartford County Bar v. Broder, 112 Conn. 263, 152 Atl. 292 (1930).

2. On the federal level: Application of Levy, 348 U.S. 887 (Tex. 1954); FED. SUP. CT. R., RULE 58; Communist Control Act of 1954, 50 U.S.C.A. §§ 841-844. State cases: *In re Anastoplo* 3 Ill. 2d 471, 121 N.E. 2d 826 (1954); *In re Clifton*, *supra* note 1.

3. *Ex parte Wall*, 107 U.S. 265 (1882); *In re Mains*, 121 Mich. 603, 80 N.W. 714, 716 (1899); *People ex rel. Karlin v. Culkin*, 248 N.Y. 465, 162 N.E. 487.

4. *In re Rouss*, 116 N.E. 783 (N.Y. 1917).

5. 62 So.2d 1, 3 (Fla. 1952): "It is, accordingly, our view that a proceeding to revoke appellee's certificate as an architect amounts to a prosecution to effect a penalty or forfeiture as contemplated by Section 932.29, Florida Statutes, 1941, F.S.A. . . ." *In re Durant*, 80 Conn. 140, 67 Atl 497 (1907) agrees with the Florida view.