

standing of its purport and effect. Bigelow on Estoppel 389, 392, 393; 6 Am. Law Rev. 26-28; 1 Smith L. C. (4th Am. ed.) 413. A court of equity will investigate all the circumstances, and will enforce or reject the estoppel, as equity may require. *Hall v. Benner*, 1 Pa. 402; *Hockenbury v. Snyder*, 2 W. & S. 240; *Brant v. Va. Coal & Iron Co.*, 3 Otto 326, 335-337.

It does not appear that the plaintiff has been induced to change his position by any declaration or conduct of the defendant, and in such case there is no estoppel. *Corser v. Paul*, 41 N. H. 25; *Stevens v. Dennett*, 51 N. H. 324, 333, 334.

The lease from the plaintiff to Hetta, in 1842, was a lease of her own land, purchased by the plaintiff from Hilton in 1836, and held by the plaintiff in trust for Hetta; and, whatever might have been the effect of the lease upon her or her heirs if no subsequent deed of the premises had been executed, the lease was superseded by that deed, executed in pursuance of the understanding that she was entitled to such a deed upon payment of the money advanced by the plaintiff to Hilton upon the purchase of the land.

The defendant not seeking specific performance of any duty of the plaintiff, but only resisting his attack upon her title, derived from her mother's recorded deed and the quitclaim of the other heirs, is not affected by the statute of limitations. The second exception is overruled.

The substance of the verdict is, that, although a deed was not delivered by the plaintiff to his mother, it ought to have been. The plaintiff comes into court seeking equity, and he must do that which he seeks. Equity will not remove the cloud from his title, because he does not offer to do equity, which requires that he should offer to convey by quitclaim to the defendant the whole title, except such part as he has inherited, or could have inherited from his mother and her deceased heirs if the deed had been delivered.

*Bill dismissed.*

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SOLOMONS & a. v. CHESLEY.

In a trial upon the general issue, a brief statement, filed in the same cause, is not evidence for the plaintiff.

The validity of a bill of sale given as security for the price of spirituous liquors illegally sold, may be denied by the maker of the bill.

A bill of sale, unaccompanied by possession of goods capable of convenient manual delivery, will not transfer the title.

TROVER, for certain chattels, tried upon the general issue. The defendant executed a sealed bill of sale of the property to J. Y. & Co.,

given, as the jury found, as security for a debt due them for liquors illegally sold. Subsequently, the plaintiffs, in good faith, in payment of a debt due them, took a bill of sale of the same property from J. Y. & Co., having no notice of any defect in their vendor's title.

The vendees in both instances went through a form of taking possession, but the property always remained in the custody of the defendant. The jury found that the defendant is not estopped to claim the property by assenting to the sale of it by J. Y. & Co. to the plaintiffs, and that the defendant converted the goods to his own use; whereupon a general verdict was taken for the defendant. The plaintiffs excepted to the admission of parol evidence, showing that the first bill of sale was given as security and not in payment; and to the exclusion by the court, as evidence in the cause, of a brief statement of defence which had been filed, and in which it was alleged that the chattels were sold to the plaintiffs by the defendant in payment of a debt due from him to them for intoxicating liquors illegally sold; and they moved that the verdict be set aside, and a verdict entered for them.

*Bartlett* and *Hatch*, for the plaintiffs.

*Towle & Leavitt* and *Frink*, for the defendant.

FOSTER, J. The brief statement was properly excluded as evidence, upon the authority of *Larry v. Herrick*, ante, p. 40.

The defendant was not estopped to deny the validity of his grant to J. Y. & Co., by showing that it was founded upon an illegal consideration, and was therefore voidable. Bigelow on Estoppel 283, 285.

It was immaterial whether the bill of sale was given in payment of, or as security for, an illegal claim.

The defendant is not bound by the sale from J. Y. & Co. to the plaintiffs. The bill of sale from the defendant to J. Y. & Co. was not a sufficient "document of title" to stand in the place of the possession of the goods.

Where personal property is capable of convenient manual delivery upon sale, a mere bill of sale is not sufficient evidence of title to protect a purchaser, as against a vendor who is not estopped to deny the validity of his sale, except perhaps in those jurisdictions controlled by statutes founded upon the English "factor's acts" of 6 Geo. IV, c. 94, s. 2, and 5 and 6 Vict., c. 39; Benjamin on Sales (2d Am. ed.) s. 19 and note s.; s. 696 and note b.; s. 809.

*Judgment on the verdict.*