

A curious error, presumably in the reporting, is to be found in the judgment of the Court of Appeal and the speeches of their Lordships. This is the use of the term *felo de se* to mean the *crime* of suicide, whereas it really means the suicide himself. *Felo de se* means the felon, not the felony; *felonia de se* is the correct *phrase* for the felony.⁸

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8. *vide* Kenny, *Outlines of Criminal Law* (14th edition), at p. 113n.

GREER v. KETTLE¹

THIS case deals with the limitations on the operation of an estoppel by recital in a deed. The respondents, in consideration of the appellants advancing £250,000 to the X Company, agreed to guarantee the loan, which was stated in the recital to the deed of guarantee, to be secured by a charge on certain validly issued shares held by the X Company in the Y Company. In fact, the shares had never been issued, and the House of Lords held that the existence of this security was a condition precedent to the respondents' liability under the guarantee. The appellants had contended that the recital in the deed stopped the respondents from denying the existence of the charge on validly issued shares. Lord Russell of Killowen and Lord Maugham, with whose judgments the rest of their Lordships concurred, both held that this contention failed on the ground that, as a matter of construction, the recital was that of the appellants rather than the respondents, and that the limitation laid down by Patteson J. in *Stroughill v. Buck*,² that "when a recital is intended to be a statement which all the parties to the deed have mutually agreed to admit as true, it is an estoppel upon all. But, when it is intended to be the statement of one party only, the estoppel is confined to that party, and the intention is to be gathered from construing the instrument" applied here.

Of interest in the case is Lord Maugham's account of the history of estoppel by recital in a deed, and also the alternative reason he advanced for refusing to hold the respondents estopped here. He relied on the inherent power of the Courts of Equity, at the instance of the party not alleged to have induced the mistake, to rectify documents containing misstatements of fact. This equitable right of rectification must conflict with, and, since the Judicature Act, greatly modify the operation of the Common Law rule of evidence of estoppel by deed. He contended that since the Judicature Act a case like *Lainson v. Tremere*,³ where an estoppel was held to operate, would be differently decided, and that "in all those cases when a party against whom an estoppel by deed is sought to be raised has a right to rectification which would, so to speak, destroy the alleged estoppel, or a right to rescission on equitable grounds, he has an answer to the estoppel which would not have been open to him at Common Law."

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1. [1938] A.C. 156.

2. [1850] 14 Q.B. 781.

3. 1 A. & E. 792.