

A third classification, or rather distinction, will be much insisted upon in the present work, namely, that between ostensible ownership and ostensible agency. It is indeed obvious enough when pointed to, but its disregard has led to the strangest confusion and misconception.¹

(2) *Bases and Methods of Estoppel*.—The first of the above distinctions (that between personal and assisted misrepresentation) aids in very material degree the fuller apprehension of the bases and methods of estoppel; brings into clearer relief the concept of duty as underlying all its principles; and compels a closer examination of social obligations in the affairs of business and commerce.

The existence of a duty, not purposely and by palpable untruth to mislead another into a prejudicial change of position, is easily recognized; and the common law action of deceit has provided a remedy in damages for breach of it. The prescription of a legal duty, in the physical domain also, "to observe in varying circumstances an appropriate measure of prudence to avoid causing harm to one another,"² appears to be a natural and inevitable consequence of the establishment of social relations of even the most imperfect character. But the application of this latter conception to the realm of affairs is plainly of later growth. It must (such is human limitation), through a long course of struggle between it and its denial, become patently necessary and obviously right, before it can take its place as a principle of decision.

That the imposition of a duty of "an appropriate measure of prudence" in commerce is as essential for the effective conduct of business as it is for physical safety seems to the present writer to be a conviction now within measurable distance of complete acceptance. The strong tendency is in that direction, notwithstanding that the House of Lords has recently inti-

¹ See ch. XVII.

² Pollock on Torts (5th ed.), 22.