JUDGMENT : His Honour Judge Lewison QC Sitting as a Deputy High Court Judge, Chancery Division.
22nd February 2002.

1. In late 1981, Mr Nicholson and his then partner, Miss Wolff-Benjamin, came across Cemetery Lodge, Lower Bristol Road in Bath. The Lodge was built in the 19th century as accommodation for the keeper of the cemetery. However it has long since ceased to be occupied and was used by the Bath City Council as storage. It is a listed building.

2. The Bath City Council has, by reason of administrative changes, become the claimant. I shall refer to the claimant and to Bath City Council as "*the Council*". Miss Wolff-Benjamin has since left the property. Mr Nicholson is the only defendant. I shall refer to Mr Nicholson alone, except where necessary to refer to Miss Wolff-Benjamin.

3. Mr Nicholson and Miss Wolff-Benjamin had come to Bath from London with their baby with a view to finding somewhere to live, if necessary by squatting. They thought that the Lodge would be suitable. In early 1982 Mr Nicholson entered the Lodge through an insecure back door. He brought with him some cleaning materials and a sleeping bag. He fitted a lock to the back door and blocked the front door. The Council became aware that the Lodge was "*occupied by squatters*" as early as 13th January 1982.

4. In the early stages of his occupation he replaced broken windows, patched the floor where it was damaged, and mended the leaky water pipes. Over the next two months or so he made the place habitable and began to move in his possessions. In March 1982 he, Miss Wolff-Benjamin and their baby moved in to live there. Mr Nicholson has lived there ever since.

5. Over the years Mr Nicholson has carried out substantial repairs and improvements to the Lodge. These include decoration, the installation of a gas supply, the installation of a new bathroom, the repair of rotten floors and stairs, the installation of a chemical damp proof course, re-roofing, and insulation. Mr Nicholson also installed locked gates at the side of the Lodge. The total cost of these works exceeds £10,000.

6. Unknown to Mr Nicholson when he moved in, the foul drain from the existing WC had been severed and was acting as no more than a soak away. In 1984 the drain could no longer cope and it backed up. Mr Nicholson tried unsuccessfully to clear the drain by manual rodding. He then contacted the Council. The Council investigated and discovered that the drain had been severed under the highway about 150 yards away from the Lodge. They constructed a new connection to the public sewer. The works all took place outside the Lodge. While the works were in progress, the Council supplied Mr Nicholson with a portable Elsan chemical toilet and workmen employed by the Council came regularly to service and empty it. The cost of providing the toilet was estimated by the Council to be between £30 and £40 a week.

7. At some point in 1996 the Council carried out some works to the exterior of the lodge without Mr Nicholson's knowledge or consent. Those works were carried out after Mr Nicholson had been living in the lodge for more than 12 years.

8. Mr Nicholson says (and this is not disputed) that his occupation of the Lodge was beneficial to the property and fulfilled the Council's policy objectives for housing and for empty buildings. The Council had indeed been prepared to grant Solon Housing Association a licence for the Lodge with the squatters in residence.

9. In the autumn of 1982, some six months after Mr Nicholson had moved into the Lodge, he wrote to the Council to request the grant of a licence to the Second Bath Housing Cooperative, of which he was a member. That letter appears to have elicited no reply. As I have said, the works cost Mr Nicholson a substantial sum of money. Since he and his partner were barely making ends meet, in December 1982 they applied to the Council for an improvement grant. The Council's response was that grant was not available because Mr Nicholson was neither the owner nor the tenant of the Lodge. At some stage however, and I do not know when, Mr Nicholson received a grant for insulation works.

10. Independently the Council, which had discovered Mr Nicholson's occupation in January 1982, decided towards the end of that year that the grant of a lease to Mr Nicholson might be a solution. Mr

Nicholson made a telephone enquiry about his application for a lease in the summer of 1993. Negotiations for a lease began in earnest in August 1983. The Council in a letter headed "subject to contract and without prejudice" offered terms for a lease.

11. Mr Nicholson and Miss Wolff-Benjamin instructed solicitors, Titley Long, who replied on 22nd August 1983 that the terms were acceptable in principle, but they raised some points of detail. After further correspondence, Titley Long wrote on 25th November 1983 to say that the terms were agreed subject to detailed wording. As a result, Mr Jeliffe a valuer employed by the Council, reported to the Committee with a recommendation for the grant of a lease. The Committee approved the recommendation, and on 29th December 1983, Mr Jeliffe wrote to Mr Nicholson confirming that approval had been given and saying that the legal department had been instructed to finalise the lease.

12. In early February 1984, Mr Nicholson obtained listed building consent for the demolition of the single storey extension to the property and the erection of a new extension and internal alterations. However, further progress towards the lease was held up while the drainage problem was sorted out. By August 1984 it looked as though a lease would be granted shortly, but the Council then received complaints about Mr Nicholson's conduct and decided that the complaints should be investigated before a lease was granted.

13. On 24th September 1984, Titley Long wrote to the Council asking for a longer term for the lease. Mr Jeliffe rejected this. By the end of the year, the Council had investigated the complaints and decided that there was no substance in them so that the lease could proceed.

14. On 4th January 1985 Mr Jeliffe wrote to Titley Long. He said: *"As your clients have been in occupation for some time now, I feel that it is appropriate for the lease to commence*."

15. Further correspondence took place during the spring of 1985, but in June 1985 Mr Nicholson and Miss Wolff-Benjamin withdrew their instructions from Titley Long and consulted Richard Nile instead. Richard Nile is a firm which specialises in housing work.

16. Through Richard Nile, Mr Nicholson requested further changes to the terms of the proposed lease which Mr Jeliffe resisted. On 14th June 1985, Richard Nile wrote to the Council. The letter concluded by saying, *"We would hope that agreement can be reached quickly so that the tenants can sign the agreement and obtain approval for the improvement grant without further delays."* The reference to *"the tenants"* was clearly a reference to Mr Nicholson and Miss Wolff-Benjamin.

17. In August 1985 Mr Nicholson took advice from Mr Pritchard, a surveyor. Mr Pritchard advised him that he was a residential tenant. Mr Nicholson said in evidence that he did not take this advice seriously, but he took it seriously enough to send a copy of Mr Pritchard's letter to Mr Chris Patten MP, whose help he had enlisted. On 23rd December 1984 Mr Jeliff wrote to Mr Nicholson saying that he would be going back to Committee for a decision whether to proceed with the lease or to begin proceedings for possession. This prompted Richard Nile to write a letter to be placed before the Committee. The letter set out a number of options for the structuring of a lease. It concluded by saying that although there was no lease, Mr Nicholson was at least entitled to a bare licence and perhaps to an interest acquired through the doctrine of proprietary estoppel.

18. The city solicitor took the view that the assertion that an estoppel had arisen was not without substance and consequently did not recommend that possession proceedings be instituted if a practicable alternative existed. The Committee met in April 1986 and authorised negotiations for amendments to the previously agreed terms and for the grant of a lease for up to 24 years.

19. In October 1986 Mr Nicholson applied for, and in December he obtained, planning permission to carry out further works to the lodge.

20. On 13th December 1986 Mr Nicholson wrote to Mr Barber of the Council's estates department. The letter was headed, *"Subject to contract and without prejudice"*. The letter set out the steps which Mr Nicholson had taken. It pointed out that the works would be expensive and that Mr Nicholson would have to borrow money to fund them and would have to do so on the security of the lease. He added:

"Without prejudice and subject to further professional advice, we would put it to you that a 125 year term might be necessary." It then expressed a willingness to negotiate on a rent and expressed the hope that the letter might form a basis for further progress.

21. Mr Nicholson wrote again on 1st January 1987 asking for a final meeting with Mr Barber. In October 1987, the Council asked what progress had been made. In fact, it appears, that nothing that happened in the intervening ten months.

22. On 4th February 1988 Mr Nicholson wrote to Mr Robinson in the estate department. His letter was headed *"Proposed long leasehold"*. He appears to have sent a copy of a specification of proposed works and hoped that this would enable a proposal of lease terms to be sent out very soon. On 8th May 1988, Mr Nicholson sent a further letter. This letter was headed *"Without prejudice and subject to contract"*. It was captioned, "*St James' Cemetery Lodge: Proposed terms of lease*". It began: *"Since we seem to be waiting a long time for fresh proposals from you, we now wish to state what terms we will require, among others, rather than lose time by waiting to respond to yours before springing ours on you*." It then set out the proposed terms. This letter elicited no reply, except an acknowledgement of receipt. Nothing then happened for three years.

23. From June 1991 onwards the Council made desultory attempts to contact Mr Nicholson, and tried, in Mr Gratton's words, "*to rationalise his occupation"*. The Council got the impression that there must be some landlord and tenant relation between them and Mr Nicholson. That was made clear to Mr Nicholson's solicitors in September 1999 in a letter from Mr Gratton who had by then taken over the matter.

24. Finally, in February 2000, the Council demanded possession and served a notice to quit. The claim was begun on 22nd March 2000. Mr Nicholson defends the claim on the basis that he has acquired title by adverse possession.

25. There are three issues for me to decide. (1) Did Mr Nicholson take possession of the Lodge? (2) If so, was his possession adverse? (3) If so, has he acknowledged the Council's title in his letter of 8th May?

26. Section 15(1) of the Limitation Act 1980 provides: *"No action shall be brought by any person to recover any land after the expiration of 12 years from the date of which the right of action accrued to him, or, if it first accrued to some person through whom he claims to that person."*

27. Paragraph 1 of schedule 1 to the Act provides: *"Where the person bringing an action to recover land or some person through whom he claims has been in possession of the land and has, while entitled to the land been dispossessed or discontinued his possession, a right of action shall be treated as having accrued on the date of the dispossession or discontinuance."*

28. Paragraph 8(1) of the same schedule provides: *"No right of action to recover land shall be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run referred to below in this paragraph as 'adverse possession', and where under the preceding provisions of this schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land."*

29. Subparagraph (4) says*: "For the purpose of determining whether a person occupying any land is in adverse possession of the land, it shall not be assumed by implication of law that his occupation is by permission of the person entitled to the land, merely by virtue of the fact that his occupation is not inconsistent with the latter's present or future enjoyment of the land. This provision shall not be taken as prejudicing a finding to the effect that a person's occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case."*

30. Section 29(2)of the Act says: *"If the person in possession of the land benefits or personal property in question acknowledges the title of the person to whom the right of action has accrued –*
(a) the right shall be treated as having accrued on and not before the date of the acknowledge; and

(b) in the case of a right of action to recover land which has accrued to a person entitled to an estate or interest taking effect on the determination of an entailed interest against whom time is running under section 27 of this Act

section 27 shall thereupon cease to apply to the land."

31. Section 30(1) provides: *"To be effective for the purposes of section 29 of this Act, an acknowledgement must be in writing and signed by the person making it."*

32. Traditionally, possession has been said to have two components, factual possession and an intention to possess. In **Lambeth Borough Council v. Blackburn** [2001] 33 HLR 847, Clarke LJ said: *"It is not immediately obvious why intention is a separate component but that question is likely to be the subject of debate in the House of Lords in the near future, but it currently represents the law which I must apply."*

33. Factual possession was described by Slade J in **Powell v. Macfarlane** [1977] 38 P&CR 452 as follows: *"Factual possession signifies an appropriate degree of physical control. It must be a single and exclusive possession, although there can be a single possession exercised on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent, cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control, must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. Everything must depend on the particular circumstances, but broadly I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."* That description of factual possession has been approved by the Court of Appeal in **Buckinghamshire County Council v. Moran** [1990] 1 Ch 623 and in **Lambeth LBC v. Blackburn** itself.

34. In my judgment, Mr Nicholson has dealt with the lodge as an occupying owner might have been expected to do. By March 1982 he had secured the lodge and installed a lock on the back door. He had secured the front door by blocking it. He had made it inhabitable by carrying out works of repair and had moved in his belongings and had begun to live there with his partner and their child. Had the Council attended the lodge in March 1982, they would have found that Mr Nicholson was in control of the property, had secured it against the world, and was living in it with his family. Had the Council wished to get the lodge vacant, they would have had to proceed through the courts and could not have used a self-help remedy.

35. By the time that the drainage problem arose, Mr Nicholson had been living in the property for over two years and had applied for and received listed building consent for the demolition and rebuilding of part of the property. I do not regard the negotiations with the Council for the grant of a lease, or the applications for improvement grant negative factual possession. The works that the Council carried out to deal with the drainage problem were not carried out on the Lodge itself and did not, in my judgment, interfere with Mr Nicholson's factual possession of the Lodge nor, in my judgment, did the provision of the Elsan chemical toilet.

36. By the time that the Council provided that facility, Mr Nicholson had been openly living in the property for over two years. By that time possession had passed to him and the provision of the Elsan was insufficient to amount to a resumption of possession by the Council.

37. Mr Baker also relied on assertions by the Council of control over the Lodge. These assertions included warnings to Mr Nicholson not to carry out any works, but a mere assertion does not, in my judgment, negative factual possession, and in the case of the warnings not to do work, Mr Nicholson ignored them. So far as the works carried in 1996 are concerned, they were exterior works only which did not involve regaining possession of the Lodge and they were, moreover, carried out after Mr Nicholson had been in occupation of the Lodge for over 12 years.

38. I find that Mr Nicholson had factual possession of the Lodge, and has had it since March 1982.

39. The next component is the intention to possess. In **Powell v. Macfarlane** Slade J said: *"The animus posidendi which is also necessary to constitute possession was defined by Sir Nathaniel Linley MR in **Littledale v. Liverpool College**, a case involving an alleged adverse possession, as the intention of excluding the owner as well as other people. This concept is, to some extent, an artificial one, because in the ordinary case the squatter*

on property such as agricultural land will realise that at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be able to exclude him. What is really meant, in my judgment, is that the animus posidendi involves the intention in one's own name and on one's own behalf to exclude the world at large, including the owner with the paper title if he be not the possessor, so far as is reasonably practicable ands so far as the processes of the law will allow."

40. As I have said, in **Lambeth LBC v. Blackburn**, Clarke LJ said that it was not immediately obvious why intention was a separate component. His words were as follows: *"It is not perhaps immediately obvious why the authorities have required a trespasser to establish an intention to possess as well as actual possession in order to prove the relevant adverse possession. It seems to me that the answer lies in the fact that possession must be adverse, that is adverse to the interest of the paper owner. It can only be adverse if the adverse possession is apparent to the owner, that is, if it is manifest to the owner that the trespasser intends to maintain possession against the whole world, including the owner. That does not mean that it must in fact be known to the owner, but that it must be manifested to him so that, if he were present at the property, he would be aware that the trespasser had taken possession of it and intended to keep others out."*

41. When he turned to the facts of that particular case, Clarke LJ said: *"I accept Mr Arden's submission that we are concerned with the possession which the appellant had throughout the 12 years. We are thus concerned with the position at the outset which can be summarised as follows. The appellant broke the padlock on the front door and installed his own Yale lock. He moved into the flat and lived there as his home. He continued to live there for the next twelve years or more, gradually improving the flat and making it more habitable as time went by. He was in factual possession of the flat throughout the whole period. Mr Rowley submits that on those facts the appellant had intended to possess the flat to the exclusion of everyone, including the Council, and that he manifested that intention to the world, including the Council, as the true owner. He submits that from the outset the appellant satisfied the tests for intention discussed above. In particular he makes two submissions. The first is that the appellant dispossessed the owner by breaking the padlock and replacing it with a Yale lock of his own as contemplated by Slade J in* ***Powell*** *by Lord Halsbury in* ***Marshall*** *and by Slade LJ in* ***Moran.***

The second submission is that the dispossession was manifest to the true owner, or more relevantly would have been if the Council or its representative had been present at the property. If the owner had had a representative present at the flat from the beginning, he would have appreciated that the existing padlock had been removed, that it had been replaced by a new Yale lock and that the appellant was living in the flat. I accept those submissions. In my judgment, if the appellant's actions are to be judged entirely by reference to his acts, as Saxe LJ said in ***Tecbuild*** *they generally are, the position may be summarised, much as it was by Hoffmann J in* ***Moran*** *at first instance. I do not think that if the Council, on making an inspection, had found the old padlock removed, a new Yale lock installed and the appellant in residence, it could have come to any conclusion other than that the appellant was intending to exclude everyone, including the Council from the flat. Mr Arden submits that the installation of a Yale lock was equivocal and not unequivocal, because it might only have indicated an intention to keep whatever had been put inside the flat secure from thieves.*

However, for my part, I do not think that is a fair conclusion. In any event, the installation of the Yale lock was not the only step taken. The appellant had also removed the existing padlock and was living in the flat as his home. Those facts taken together would, in my opinion, have shown the owner unequivocally that the appellant intended to exclude everyone, including the Council from the flat. They amounted to a final, unequivocal demonstration of the defendant's intention to possess the land, as Slade LJ put it in Moran." In my judgment, the facts of the **Blackburn** case are indistinguishable from the facts of the present case.

42. Mr Baker relies strongly on the negotiations for the grant of the lease as negativing an intention to possess. I do not agree. In **JA Pye (Oxford) Ltd v. Graham** [2000] Ch R 676, Neuberger J said: *"So far as the principle is concerned, it seems to me that an offer to the owner by a squatter to pay rent or take a tenancy is an acknowledgment of the ability of the owner to require the squatter to vacate the land, at least so long as the 12 year period is still running, but it is not inherently inconsistent with the squatter being in actual possession of the land, or with the squatter having the requisite animus posidendi. As was emphasised in* ***Powell v. Macfarlane*** *and in* ***Buckinghamshire County Council v. Moran,*** *the squatter must have the intention of excluding everyone from the land, including the owner, but only to the extent that it is lawful for him to do so.*

The mere recognition of the owner's ability, if he chooses to exercise it, to reclaim possession is not an acknowledgment that the owner actually has possession. An offer to pay rent can be contrasted with a request to the owner to keep out trespassers which Knox J described in ***Pavledes v. Rysebridge Properties Ltd*** *as involving the squatter actively requesting the owner to shoulder the responsibilities that possession has. In other words, requesting the owner to keep trespassers out is an acknowledgement that the owner, rather than the squatter, is in possession, whereas offering to pay rent is merely offering to change the basis upon which the squatter retains possession."* In my judgment, this accurately states the law and was not overruled in the Court of Appeal. The case of **R v. Secretary of State ex p Davis,** in my judgment, turned on its own special facts.

43. Moreover, during the pendency of the negotiations, Mr Nicholson continued to live in the Lodge. He had also made an application which involved the demolition and rebuilding of part of it. That application was made to the Council. Mr Baker stressed several times that the Council was a single corporate entity and that it would not be right to segregate its different functions. On that footing, the applications for listing building consent and planning permission were the clearest possible manifestation of an intention to possess.

44. Mr Baker also relied on the request to the Council to deal with the drainage problem as negativing an intention to possess. I accept Mr Watkinson's submission that the request was exactly the sort of request that an occupying owner or tenant would have made if a drainage problem arose. In my view, this kind of request is distinguishable from **Pavledes v. Rysebridge Properties** where the request was for the paper owner to prevent trespass on the land itself. The request in the present case did not require the Council to do anything on the land itself.

45. Moreover, in my judgment, Mr Nicholson had taken possession before any question of negotiation had arisen and before the drainage problem arose. Thus the question is not whether the request prevents possession from passing to Mr Nicholson, but whether possession having passed, it reverted to the Council. In my judgment it did not.

46. One relevant consideration is whether, had he been present at the land, the paper owner would have realised that the squatter had taken possession. In the present case, an internal memorandum of the Council dated 24th December 1982 explicitly states that squatters were in possession of the Lodge. There can be no doubt that the Council knew, or at least thought, that Mr Nicholson had taken possession of the Lodge.

47. I conclude therefore, that Mr Nicholson did have an intention to possess and did take possession of the Lodge by March 1982.

48. The next issue is whether Mr Nicholson's possession was adverse. Possession is not adverse if it is enjoyed by virtue of some permission. That permission need not be contractual and may be implied.

49. It is true that Mr Nicholson's possession was not inconsistent with the future plans that the Council had for the property, if indeed they had any, but that fact alone does not lead to the conclusion that possession was permitted. The court is able to infer the grant of a licence if the facts of the individual case justify the inference.

50. In **London Borough of Lambeth v. Rumbelow** (unreported) 25th January 2001, Etherton J said: *"But in order to establish permission in the circumstances of any case, two matters must be established. First there must have been some overt act by the landowner or some demonstrable circumstances from which the inference can be drawn that permission was in fact given. It is, however, irrelevant whether the users were aware of those matters. Secondly, a reasonable person would have appreciated that the user was with the permission of the landowner?"*

51. Was there any overt act or some demonstrable circumstances from which the inference can be drawn that permission was in fact given? Mr Baker submitted that the Council actively facilitated the occupation of the Lodge by Mr Nicholson by mending the drain and by providing the Elsan closet, neither of which the Council would have done had Mr Nicholson not been there. He also submitted that by entering into and continuing negotiations for the grant of a lease while Mr Nicholson remained in possession, the Council must have been tacitly agreeing that he could remain in

occupation, at least while those negotiations were going on. The negotiations were under consideration by the Council until the summer of 1988. I accept those submissions.

52. Where a person is in possession of land pending negotiation for the grant of an interest in that land, it is a natural inference to draw that the owner permits him to remain there, at least until the negotiations have irretrievably broken down. In the present case, that inference is reinforced by the Council's actions in facilitating occupation by installing the drain, providing the Elsan closet, and also by authorising the payment of a grant for insulation works.

53. It is also the case that in a report to the Land and Buildings Committee in May 1986, the Director of Estate Management told the Committee that although Mr Nicholson had originally entered as a trespasser, he and Miss Wolff-Benjamin "*remain in occupation as temporary licensees".*

54. In my judgment, the Council did tacitly or impliedly give Mr Nicholson permission to continue to occupy the Lodge, at least during the pendency of the negotiations for a lease.

55. Would a reasonable person have understood the Council as having given such permission? In my judgment the answer is yes. I take comfort from the fact that Mr Nicholson's own solicitors asserted that this was precisely the position in the letter placed before the Committee at the end of 1984. The Council never dissented from that contention, and indeed, as I have related, the City Solicitor thought there was sufficient in it not to recommend the beginning of possession proceedings.

56. Mr Pritchard also advised Mr Nicholson that he was a tenant, which must have predicated consent to his occupation, and a claim to a tenancy was originally asserted in these proceedings, and again can only have had as its foundation an assertion that possession was permissive.

57. I find therefore that from 1984 at the latest, when the Council installed the new drain and provided the Elsan closet until at least the middle of 1988 when the negotiations ground to a half, Mr Nicholson's possession was with the Council's permission and hence was not adverse possession. Indeed, I think that his permission would have continued to be permissive until the Council told him that it was not. Mr Gratton's efforts to "*rationalise"* (not terminate) Mr Nicholson's occupation confirms the permissive nature of it.

58. The final issue is whether Mr Nicholson acknowledged the Council's title by the letter of 8th May 1988. Mr Watkinson accepts, in my judgment rightly, that if the letter is admissible, it is an acknowledgement, so the only question is whether it is inadmissible as being covered by *"Without prejudice*" privilege.

59. It is common ground that the attachment of the "*Without Prejudice*" label to a communication is neither a necessary nor a sufficient condition to attract the privilege. The letter was written in the context of ongoing negotiations for the grant of a lease. There was at the time no dispute between the parties, merely commercial negotiations. Although one or two letters in the sequence of correspondence are headed "*Without Prejudice*", there is no letter from lawyers which is so headed. In addition, the content of the letter is simply a setting out of terms which Mr Nicholson required.

60. Mr Watkinson submitted that if negotiations broke down there was a real prospect that Mr Nicholson would be evicted, so that there was an incipient dispute. In any such dispute, an acknowledgement of title might be a critical admission, and thus the admission ought to be protected by the *"Without Prejudice*" privilege.

61. In my judgment, the possibility of a dispute arising in the future if commercial negotiations break down is not enough to attract the privilege, otherwise all commercial negotiations would potentially be covered. As Mr Baker put it, the parties were looking forward to a possible future relationship, not compromising an existing dispute. Moreover, on no possible basis could the limitation period have expired before 1990. There had been many acknowledgements of title made open in the course of the negotiations. Indeed, the whole of the negotiations proceeded on the basis that the Council had title. The last such acknowledgement had been made in February 1988. Thus an acknowledgement of title made in 1988 would have had no significance if proceedings had been begun at any time up to

February 2000. So the crucial nature of this particular admission depends entirely on the fact that the Council did not begin proceedings until March 2000.

62. The considerations advanced by Mr Watkinson do not persuade me that the letter properly attracts the "*Without prejudice"* privilege. In addition, when asked in cross-examination why he headed the letter "*Without Prejudice*", Mr Nicholson replied, according to my note that he did so, *"To keep our options open and to put a point of view on the deal"*, and to avoid being committed to do anything. This reinforces my view that the "Without Prejudice" privilege did not attach to the letter.

63. I conclude, therefore, that although Mr Nicholson did take possession of the Lodge, his possession has not been adverse throughout the whole of the 12 years preceding the beginning of this action, an in any event, he has acknowledged the Council's title within that period. The defence therefore fails and the Council is entitled to possession.

Mr C Baker (Instructed by Messrs Steele & Co) appeared on behalf of the Claimant.
Mr D Watkinson (Instructed by Messrs Boffers Maclean) appeared on behalf of the Defendant.