

Judgment 10/2003

**Roger v Roger
Court of Appeal
(Civil Appeal 313)
10th January, 2003**

Right to occupy real property – desirability of giving reasons for determination – this course not open to the Royal Court – effect of Section 6 (1) of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950 – reliance on proprietary estoppel – need for an "analysis of fairness".

IN THE COURT OF APPEAL OF GUERNSEY

Civil Division

The 10th day of January, 2003 before Richard Charles Southwell, Q.C., presiding, Christopher Simon Courtenay Stephenson Clarke, Q.C., and Kenneth Stuart Rokison, Q. C.

NORA FLORENCE ROGER

Appellant

v.

SIOBHAN ALICE COLETTE ROGER

Respondent

In the matter of the appeal by the
Appellant from the judgment of the Royal Court on 4th March, 2002;

THE COURT, having heard Advocates
M G. Ferbrache and N. J. Barnes for the respective parties thereon, GAVE JUDGMENT in the terms
attached hereto and:-

1. ALLOWED the appeal;
2. DECLARED that the Appellant had no legally enforceable right to remain in that part of the property, named as St. Mary Anthony, La Carrière Lane in the parish of the Vale, referred to in the said judgment, for her lifetime or at all; and
3. AWARDED costs to the Appellant on the standard recoverable basis in respect of the proceedings both in this Court and in the Royal Court.

K. H. TOUGH
Registrar of the Court of Appeal

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FRIDAY 10TH JANUARY 2003

IN THE COURT OF APPEAL OF GUERNSEY

NORA FLORENCE ROGER

V

SIOBHAN ALICE COLETTE ROGER

Before

**Richard Charles Southwell, Esq., QC; presiding
Christopher Simon Courtenay Stephenson Clarke, Esq., QC
Kenneth Stuart Rokison, Esq., QC**

Judgment delivered by Rokison, JA.

1. This is a sorry tale of a breakdown in family relationships. It concerns a dispute between the Appellant, Mrs. Nora Florence Roger (to whom I shall refer as “Mrs. Roger”) and her daughter-in-law, Mrs. Siobhan Alice Colette Roger (to whom I shall refer, without any disrespect, as “Siobhan”) as to the latter’s right to continue to live in a residential property known as “St. Mary Anthony” in La Carriere Lane in the parish of Vale, owned by Mrs. Roger.
2. St. Mary Anthony has been the home of Mrs. Roger and her family for over 35 years. She is now aged 81. The house was originally purchased by Mrs. Roger together with her late husband by means of three conveyances, one registered on 6th October 1966, and the other two on 2nd August 1971. Mrs. Roger’s husband died in 1985, and title to the property then became vested absolutely in Mrs. Roger. The youngest of Mrs. Roger’s six children, Charles, known as “Charlie”, met Siobhan in 1972 and Siobhan thereafter moved into St. Mary Anthony. They married in April 1976 and had three children – Kate, Anne and the youngest, Joanne, who is now aged 14 and still lives at home with her mother. Siobhan and Joanne presently live in part of the house, which has been referred to in these proceedings as “the Wing”, and which comprises a kitchen, sitting room, dining room, two bedrooms and two bathrooms. It is only partially self-contained, in as much as it shares all services except gas with the main part of the house which is occupied by Mrs. Roger.
3. In about November 1998, Charlie was diagnosed as suffering from terminal cancer and he died on 27th September 1999. Meanwhile, on 13th October 1994, Mrs. Roger had conveyed to Charlie a joint interest in the property with the effect that thereafter it would be vested in Mrs. Roger and Charlie “in the same manner as if they had purchased the premises of this conveyance for themselves, the survivor of them and the heirs of such survivor”. Significantly, no interest was passed under the conveyance to Siobhan, although it was no doubt contemplated at that time that Charlie would be likely to survive his mother and would make provision for his wife Siobhan were she to survive him. The background of the conveyance is complex, but in brief it was entered into for the purposes of providing security to the Bank in respect of Charlie’s increasing indebtedness which was at least in part attributable to the cost of

- improvements to the property which had been and were to be carried out by Charlie who worked as a general builder.
4. Charlie and his family had lived at St. Mary Anthony rent free but had contributed to the household by carrying out various works of improvement. Other members of Mrs. Roger's family had contributed to a lesser extent towards various improvements in the house for which they had received no financial reward.
 5. Furthermore, Mrs. Roger had been prevailed upon to lend various sums of money to Charlie and Siobhan over the years, of which there is currently an outstanding balance of indebtedness of £16,500.
 6. One of the significant improvements made by Charlie was the further conversion of previous outbuildings which became known as "The Barn and Jug", which was conveyed by Mrs. Roger and Charlie to Siobhan on 17th August 1999, for a nominal consideration of £1. It was contemplated that this might provide a rental income to Siobhan after Charlie's death, which it was then appreciated was imminent.
 7. When Charlie died on 27th September 1999, the conversion work had not been completed, but it was thereafter completed by one of Charlie's surviving brothers, Brian, and Mrs. Roger continued to allow Siobhan and her younger daughter, Joanne, to continue to share occupation of the main part of the house in the meantime. Relations between Mrs. Roger and Siobhan were not good at this time, but Mrs. Roger welcomed the opportunity to continue to enjoy the company of Joanne, her granddaughter, of whom she was and is very fond.
 8. Although it had been Charlie's original intention that Siobhan would enjoy the rental income from The Barn and Jug, she decided to sell it and move to a flat elsewhere which could be purchased with the proceeds. In anticipation of Siobhan moving out of St. Mary Anthony, Mrs. Roger had paid to Siobhan a sum of £14,000 which was principally to pay off the overdraft in Charlie's former business account, which it was claimed was in debt because of expenditure by him on the property, even though, it appears, indirect payments for the same purpose had been made for Siobhan's benefit by other members of the Rogers family, namely Mrs. Roger's sons, Michael, Brian and Patrick. However, after the Barn and Jug had been sold for a net figure in excess of £170,000, and a modern two-bedroomed flat purchased in October 2000 with the use of part of the proceeds, Siobhan changed her mind and continued to live, with Joanne, in part of the house, occupying the rooms which were described in these proceedings as "The Wing".
 9. Unfortunately, relations between Mrs. Roger and Siobhan deteriorated further, partly because of Siobhan's relationship with another man, which it is alleged started within 6 months of Charlie's death and whose frequent visits to the property Mrs. Roger apparently resented.
 10. They were unable to resolve their differences and matters were brought to a head when, on 9th January 2001, Mrs. Roger applied to the Court for an order evicting Siobhan from occupation of the east wing of the premises. On 17th January 2001 these proceedings were commenced by Siobhan seeking a declaration that she was entitled to remain in that part of the property which she was currently occupying ("The Wing") for the remainder of her lifetime, subject to payment of all accounts for any services connected to the wing and one-half of any costs relating to St. Mary Anthony as a whole. The declaration was sought as the basis that there existed "a valid verbal agreement" between Siobhan and Charlie, on the one hand, and Mrs. Roger and her late husband on the other, that Charlie and his family should occupy the wing in consideration of the work and financial contribution thereto by Siobhan and Charlie, and that the property would ultimately devolve to Charlie for the benefit of his family and himself: and/or "a valid agreement" between Siobhan, Charlie and Mrs. Roger in 1998/9 to the intent that Siobhan was entitled to occupy the wing for the remainder of her lifetime. An alternative claim was put forward on the basis that "as a result of the said agreement" Mrs. Roger and her late husband, and subsequently Mrs. Roger alone, were holding St. Mary Anthony upon a constructive trust for themselves, Siobhan and Charlie.

11. Somewhat oddly, in her defence filed in the eviction proceedings, while Siobhan repeated the matters pleaded in these proceedings, as summarised above, her principal plea was one of estoppel based on an alleged representation by Mrs. Roger by herself, or through her son Brian, to Charlie, Siobhan and the remainder of Mrs. Roger's family that Siobhan would be permitted to remain in occupation of The Wing for the remainder of her lifetime: alternatively, Advocate Barnes, on her behalf, pleaded that Mrs. Roger knew or ought to have known that Siobhan and Charlie understood that Siobhan would be entitled so to remain. Unfortunately no particulars of the alleged representation or understanding were ever sought or offered.
12. The matter came before the Royal Court on 13th February 2002, and the hearing continued on 14th, 15th, 25th February and 1st, 2nd and 4th March – a total of 7 hearing days. Towards the end of the hearing, both before and after the learned Bailiff's summing up to the Jurats, there were discussions between the Bailiff and Counsel for both parties regarding the precise questions which should be put to the Jurats. A draft had previously been agreed between Counsel, but the questions were re-formulated and put to the Jurats in the following form:-

- (1) Whether having regard to the claim that the Barn and Jug was to be rented out to provide an income for Siobhan some further legally enforceable arrangement between the parties is to be inferred, namely that Siobhan was to be entitled to remain in occupation of part of St. Mary Anthony for her lifetime [or some other period – see question 4a] and not liable to be summarily evicted therefrom by Mrs. Nora Roger?

In considering this issue you must consider not only what the parties have told you but also what went through Charlie's mind in the months before his death?

- (2) Can you infer that Charlie felt assured by his Mother that Siobhan would have the right to occupy part of St. Mary Anthony on a permanent basis after his death?
- (3) Were the premises in respect of which Siobhan was to enjoy her right of occupation correctly defined in the eviction action as being a kitchen, dining room, two bedrooms and two bathrooms forming the east Wing of St. Mary Anthony?
- (4) If such occupation was assured what were the terms and conditions under which Siobhan was to occupy?
- a) For how long was she to be able to remain in occupation? Her cause says her lifetime but if you are satisfied from the evidence that some lesser period is to be inferred you should indicate accordingly;
- b) What contribution was she to make by way of costs of services and maintenance towards:-
- (a) the Wing?
- (b) the property as a whole?
- (c) was she to share the use of the garden and swimming pool?
- (d) whether or not she was to have the use of these facilities was she to pay a share of their upkeep?

When they returned, the Jurats answered these questions as follows:

- (1) Yes, for her lifetime:
- (2) Yes:
- (3) Yes:
- (4) (a) Siobhan's lifetime

- (b) the costs of maintenance of the Wing both internally and externally, together with the services, water, electricity, gas and rates, but not in relation to the property as a whole.
- (c) No.
- (d) No.

The Jurats gave no reason for their conclusions, but merely answered the questions posed without further elaboration.

13. In these circumstances, it was acknowledged on behalf of Mrs. Roger that the eviction proceedings fell away, and these were formally withdrawn.
14. The matter came back before the Royal Court on 19th April 2002. Meanwhile, Advocate Mark Ferbrache on behalf of Mrs. Roger had written to the Greffe of the Royal Court on 5th March 2002, referring to what had been determined by the Jurats as "The Stage 1 questions", and stating that, in the light of their determination of these questions, it was now necessary for the Jurats to determine the answers to "The stage 2 questions", which involved a determination of whether, in accordance with the principles laid down by the English Court of Appeal in Sledmore v Dalby (72 Planning and Compensation Reports 196) it is inequitable to allow Siobhan's expectations to be defeated by permitting Mrs. Roger to enforce her legal rights as the owner of The Wing. The letter enclosed further draft questions for the Jurats, the first of which read as follows:

“Having considered the present needs and situation of Mrs. Roger and balanced those against the present needs and use of The Wing by Siobhan is it still inequitable to allow Siobhan's expectation to stay in The Wing to be defeated by permitting Mrs. Roger to enforce her legal rights as owner of The Wing?”

15. Although this aspect of the matter had in fact been canvassed before the Royal Court at the trial, the Deputy Greffier replied to the letter stating that the matter must proceed by way of application rather than correspondence, and that the Court should begin consideration of Stage 2 of the case once a new cause seeking the appropriate relief had been tabled. Accordingly, an application dated 18th March 2002 was filed by which Mrs. Roger applied for a date to be fixed for a resumed hearing of the action, and for the Court to make further orders and directions, including one to the effect that Siobhan's equity (as determined by the Jurats) had been exhausted, and that it would no longer be inequitable to permit Mrs. Roger to enforce her legal rights as owner, including the right to evict Siobhan from The Wing.
16. At the hearing on 19th April 2002, after receiving further argument from Counsel, the learned Bailiff determined that it was not appropriate or permissible for the merits of the case to be re-opened before the Royal Court, but gave leave to Mrs. Roger to appeal the whole matter to this Court. On 14th May 2002, the learned Bailiff made orders as to costs, but ordered a stay of execution on the costs order for the time being, and on 20th June 2002, ordered that the costs order should be stayed pending the appeal.
17. It is accepted on both sides that the appeal to this Court encompasses the facts and the law, and we do not therefore share the procedural difficulties which plainly confronted the Royal Court in a case of this kind, where the possible application of the doctrine of proprietary estoppel necessarily involves mixed questions of law and fact, which it is difficult if not impossible to separate satisfactorily by posing questions to the Jurats and requiring from them "Yes" or "No" answers, if only because it results in the crucial questions being determined without any reasons for such determination being given – something which the Court of Appeal in England has recently emphasised in the case of Peter English and Emery Reimbold & Strick Limited (2002) 1 WLR 2409 is a fundamental requirement of justice in a common law jurisdiction. As the English Court of Appeal pointed out, this is not just because justice must not only be done but be seen to be done, but also because it is a necessary requirement

of a satisfactory appellate process for the appellate court to be able to understand from the judgment why the court below reached its decision.

18. In our view, had the procedural rules relating to the Royal Court so permitted, it would have been preferable in this case for the Learned Bailiff to have retired with the Jurats and for a comprehensive judgment on the law and facts to have been delivered following their deliberations. But we acknowledge that that course was not open to the Royal Court by reason of the clear provisions of section 6(1) of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law 1950, which draws no distinction between criminal and civil cases (unlike the provisions of sections 7 and 8 which follow).
19. Turning to the applicable principles of law and the relevant facts established before the Royal Court, it must first of all be observed that Siobhan's case before the Royal Court and this Court bore little resemblance to the pleadings. Siobhan's pleaded case of an "oral or verbal" agreement was abandoned, as was the alternative case of the creation of a constructive trust. In the end, Siobhan's case was put fairly and squarely on the application of the doctrine of proprietary estoppel. So far as the law is concerned, the Learned Bailiff in his summing up said that this was, so far as this jurisdiction is concerned, a "novel form of action", but, rightly in our view, did not direct the Jurats to the effect that proprietary estoppel was not known to Guernsey law. Guernsey law has, as we understand it, generally followed and applied English equitable principles in appropriate cases, and we see no reason to exclude the possibility of proprietary estoppel being invoked in an appropriate case. The Learned Bailiff went on to refer the Jurats to a helpful summary of the principles set out in the latest edition of Chitty on Contracts (although, for reasons not entirely clear to us, declined the Jurats' request to be furnished with a copy), as follows:-

"Proprietary estoppel is said to arise in certain situations in which a person has done acts in reliance on the belief that he has or that he will acquire rights in or over another's land..."

"...Where the requirements of proprietary estoppel are satisfied the landowner is precluded from denying the existence of the rights in question and may indeed be compelled to grant them..."

"... Proprietary estoppel operates in a variety of cases so disparate that it has been described as "an amalgam of doubtful utility." The cases can be divided broadly into two categories. In the first, one person acts under a mistake as to the existence or to the extent of his rights in or over another's land. Even though the mistake was in no way induced by the landowner, he might be prevented from taking advantage of it, particularly if he "stood by" knowing of the mistake or actively encouraged the mistaken party to act in reliance on his mistaken belief. These cases of so called "acquiescence" do not raise any questions as to the enforceability of promises and therefore they do not call for further discussion..."

"In the second situation there is not merely "acquiescence" by the landowner, but "encouragement": that is, conduct by the landowner, or a representation by him, from which a promise to the other party (the promisee) can be inferred to the effect that the promisee has a legal enforceable interest in land or that one would be created in his Favour. If the other party acts in reliance on such a promise, the question will arise as to what extent the promise can be enforced..."

There is a more detailed analysis of the doctrine in the judgment of Hobhouse, LJ (as he then was) in Sledmore v. Dalby, but it is not necessary to go into further detail for the purposes of the present case.

20. As the Learned Bailiff rightly pointed out, it was into the latter category of case mentioned in Chitty that Advocate Barnes for Siobhan sought to put this case. It was therefore necessary for

him to point in the evidence to some representation or promise made to Siobhan by or on behalf of Mrs. Roger, or some conduct from which such a representation or promise could be inferred, to the effect that Siobhan had a legally enforceable interest in the property or that one would be created in her favour.

21. Although the estoppel case pleaded in the Defence in the eviction proceedings was primarily based on an alleged representation, Advocate Barnes was forced to accept that there was no evidence of any representation in terms having been made to Siobhan by Mrs. Roger or indeed by Siobhan's late husband Charlie, to the effect that Siobhan would be entitled to continue to occupy St. Mary Anthony or any part of it (other than the Barn and Jug which had been conveyed to her) for the duration of her lifetime or for any other period. As Siobhan had very fairly stated in her oral evidence before the Royal Court, the question was simply never discussed.
22. It was therefore necessary for Advocate Barnes to identify words or conduct from which such a promise should be inferred. In the Defence in the eviction proceedings, it was pleaded in the alternative that Mrs. Roger knew or ought to have known that Siobhan and Charlie understood that Siobhan would be entitled to remain in occupation of the Wing for her lifetime. But to found an estoppel, any such understanding must be communicated in some way, and reliance placed upon it, so as to make it inequitable in the circumstances for such understanding to be resiled from.
23. In this case, at the end of the day, Advocate Barnes placed principal reliance on the circumstances surrounding the conversion and transfer to Siobhan of the Barn and Jug. As we understand it, his submission was to the effect that Charlie had made it clear before his death that the Barn and Jug should be made available to Siobhan so as to provide her with an income, which would mean that she did not have to work; and that the necessary inference to be drawn from that expressed intention of which Mrs. Roger was aware, was that Siobhan would be entitled to continue to live in what remained of St. Mary Anthony. Advocate Barnes accepted that it would not be enough to establish that this would be a possible but not a necessary inference to be drawn.
24. We accept that Charlie did express the intention that Siobhan should be able to enjoy a rental income from the Barn and Jug, but we find it impossible to draw from this or from any other representation or conduct on the part of Charlie or Mrs. Roger a necessary inference that Siobhan would be entitled to enjoy rights of exclusive occupation of any part of St. Mary Anthony either for the rest of her life or indeed for any period at all.
25. In the first place, the Barn and Jug was conveyed to Siobhan, after which she was free to do with it as she pleased. She could have rented it out to provide an income (as at one stage she intended to do); she could have sold it and purchased or rented an alternative place to live (as was her stated intention at another stage). Whether or not she continued to live at St. Mary Anthony and for how long would no doubt depend on a number of factors, both economic and social, including the accommodation needs of herself and her youngest daughter, as well as relations with her mother-in-law, and how her mother-in-law, who after Charlie's death enjoyed full legal title to the property, chose to dispose of it when she ultimately died.
26. Second, at the time when Charlie expressed his intentions regarding the Barn and Jug, he and his family were not living exclusively in what became known as "the Wing", but were effectively sharing occupation of the house as whole with Mrs. Roger. There could be no inference of any intention that Siobhan would be entitled to enjoy rights of exclusive occupation of any part of the house. The most that could be inferred is that the status quo would continue.
27. Third, we conclude that it is impossible to draw a necessary inference that Siobhan would be entitled to occupation for the rest of her life, regardless of what happened to Joanne, whether or not Siobhan remarried, when Mrs. Roger died and in particular how the legal title to St. Mary

Anthony was disposed of after Mrs. Roger's death. If the legal title were left to anyone other than Siobhan or possibly her family, or were simply treated as part of Mrs. Roger's estate to be sold so that the proceeds could be distributed in accordance with her wishes, a subsisting life interest giving Siobhan the exclusive right of occupation of the whole or part of the property would likely have rendered it un-saleable or at best considerably reduced its resale value.

28. Fourth, it was not suggested that there was any necessary inference as to the terms on which it was intended Siobhan should enjoy the alleged lifetime interest. But if she were to do so, terms would be necessary. It would of course be possible, if the inference were otherwise overwhelming, for an implication of reasonable terms which the Court could if necessary define in the event of inability to agree. But the fact that such terms were never mentioned, let alone discussed or agreed, is a strong factor against drawing the inference alleged.
29. For these and other reasons, we have concluded that Siobhan's case based on an alleged inference from the events concerning the Barn and Jug was a hopeless one. Furthermore, it is difficult to see in what manner and to what extent Siobhan is said to have changed her position to her detriment in reliance on any inferred agreement, representation or common understanding. She and her daughter have so far continued to enjoy the benefit of occupying part of St. Mary Anthony without payment of rent. But that is not itself a reason why this situation should be allowed to continue.
30. It is not possible for us to divine how it was that the Jurats came to the conclusion that the questions posed by the Learned Bailiff and in particular questions (1) and (2) should be answered in the affirmative, but we can only conclude that their conclusion was founded upon an error of law or fact.
31. Advocate Ferbrache for Mrs. Roger made two further submissions before us, which were raised in her "reply to the Respondent's Case" served on 21 November 2002. First (and this was the primary ground relied on in the Notice of Appeal) that, the Court having determined the extent of the equity created by the proprietary estoppel, it erred in law by not asking itself the question whether it was still inequitable to allow Siobhan's expectation to be defeated by permitting Mrs. Roger to enforce her legal rights as the owner of the property. This was what was described as the "stage 2" exercise upon which the Royal Court declined to embark when the matter came before it on 19 April 2002.
32. Second, that in any event Charlie could not have passed on to Siobhan any greater right than he himself enjoyed, and that if the correct analysis was, as suggested on behalf of Siobhan, that but for the common assumption that Siobhan would be entitled to enjoy a life interest in that part of the property known as "The Wing", Charlie would have taken steps to sever the joint interest in the property which he enjoyed with Mrs. Roger and lost the opportunity to do so, Siobhan cannot be entitled to be put in a better position than she would have been in had this occurred. Had the joint interest been severed and the property sold, Charlie, and subsequently through him, Siobhan, may have benefited from half the proceeds, but any interest in the property would have been destroyed.
33. As regards the former point, as we have observed it was raised by Advocate Mark Ferbrache at the trial before the Royal Court but was not embraced within the questions put to the Jurats, and the Court declined to consider it further when the matter came back before it on 19th April 2002. It appears there was some mutual misunderstanding. However, no objection was made on this ground to the point being raised and argued before us on the appeal.
34. Advocate Ferbrache relied principally on the decision in Sledmore v. Dalby the facts of which were remarkably similar in many respects to those in the present case. In the leading judgment with which Butler-Sloss LJ agreed, Roch LJ, referring to what was in that case the third ground of appeal, to the effect that the judge below should have found that, even if an expectation was created which gave rise to a proprietary estoppel, it was no longer inequitable to allow the

respondent's expectations to be defeated, after citing with approval the relevant passage from the 29th Edition of Snell on Equity, said:

"In the present case, the Respondent clearly has assumed that he will be allowed to stay in this house for the rest of his life rent free. In my judgment this is a case where the Respondent has to be content with something less than his expectations. The Recorder should have considered the position of the Appellant and her needs, and balanced them against the present use of the premises made by the Respondent and his present need for them".

Hobhouse LJ, as he then was, put it this way:

"However I would go further than Roch, LJ. I consider that the judgment appealed from is open to more fundamental criticism. The decision of the County Court judge in the present case was said to be an application of the principles of equitable estoppel, yet his conclusion produces a clear injustice. The doctrine of estoppel exists for the purpose of enabling courts to do justice, modifying what otherwise might be the strict legal rights of the parties. If the supposed application of such a doctrine produces injustice not justice, then something has gone wrong."

35. The point was not addressed by Advocate Barnes in his opening submissions, but when the point was put to him by the Court, he acknowledged that, as part of the exercise of considering the extent of the equity created by a proprietary estoppel and subsisting at the date when the Court's decision came to be made, it would be necessary to have an "analysis of fairness", for the purposes of which the Court would have to look at the parties' respective financial positions.
36. Without going into undue detail concerning the present relative financial positions of Mrs. Roger and Siobhan, it is plain from the evidence summarised on behalf of Mrs. Roger in the Notice of Application dated 18 March 2002 referred to above, and in Advocate Ferbrache's submissions to us, that Siobhan's financial position is much more favourable than that of Mrs. Roger. To summarise what seemed to us to be the most salient points: the flat which Siobhan purchased with the proceeds of the Barn and Jug is now said to be worth approximately £200,000 and produces an annual rent of £10,800: Joanne is now 14 years old so that Siobhan is therefore free to undertake employment, and indeed is currently employed earning £7,800 per annum, which together with the rent, widow's pension and child allowance gives her a total annual income of over £25,000. By contrast, Mrs. Roger is 81 years old and clearly well past working age. She enjoys a reduced widow's pension of £75.50 per week. She has a pressing need for possession of the Wing and its potential rental income, which is put at about £10,000 per annum. We were told that if Siobhan were to be permitted to occupy the Wing on the terms determined by the Royal Court, Mrs. Roger would need to sell the property as she cannot afford to maintain herself or the property. But, as we have observed, if Siobhan's life interest were to be upheld, the value of the property would be seriously diminished. She is otherwise dependent on the charity of her son, Brian, and her grandson to survive.
37. Having concluded that the Royal Court was in error in relation to what has been described before that Court as "Stage 1" it is not necessary for us to express any concluded view in relation to "Stage 2" and indeed, we doubt whether in the present case with its comparatively short time-span it is appropriate to divide the relevant issues into "stages". Suffice it to say that, although it would be a mistake to equate equitable doctrines with simple principles of fairness, as Hobhouse LJ observed in Sledmore v. Dalby:

"If the purported application of the principles of equitable estoppel, of which proprietary estoppel is but one limb, leads to a result which is patently unfair it would appear that something has gone wrong."

This confirms us in our overall conclusion that this appeal should be allowed. Nor do we consider it necessary to lengthen this judgment by considering the second of the two further

points summarised above or to consider the possible relevance of a great deal of further evidence which was adduced before the Royal Court and before this Court concerning the financial dealings within the Roger family and in particular the generosity which was said to have been shown to Siobhan over the years both by Mrs. Roger and her surviving sons.

38. For these reasons I would allow the appeal and declare that the Applicant, Mrs. Siobhan Roger, has no legally enforceable right to remain in that part of the property named as St. Mary Anthony, La Carriere Lane in the Parish of Vale for her lifetime or at all.
39. The eviction action having been withdrawn following the judgment of the Royal Court on 4th March 2002, we apprehend we have no jurisdiction to make any order in respect of it, but in the absence of agreement between the parties, which one hopes will be possible even at this late stage and despite all that has passed, it will be open to Mrs. Roger to commence a fresh eviction action if Siobhan fails or refuses to leave the property after the expiry of an appropriate period of notice.
40. It is a matter of great regret to this Court that this family disagreement has spawned this lengthy litigation which has only served, it appears, to increase the acrimony within the Roger family and to lead to a wholly disproportionate expenditure on legal costs which will have seriously depleted the family's assets.

I would therefore allow the appeal.

SOUTHWELL, JA: I agree.

CLARKE, JA: I also agree.

ROKISON, JA: May I first of all thank Counsel for the considerable assistance which they have given us in relation to this matter and indicate that, subject to any submissions which Advocate Barnes may wish to advance, the Court would be inclined to order that costs follow the event and must be paid by Siobhan, and that is in respect of the costs here and below.

ADVOCATE BARNES: Yes sir. I don't have submissions on that.

ROKISON, JA: And that I think would be on a recoverable basis.

ADVOCATE BARNES: Yes sir.

ADVOCATE MARK FERBRACHE: Yes sir.

ROKISON, JA: Is there anything else you wish to?

ADVOCATE MARK FERBRACHE: There's just one brief point, I think the impression has been created in Court this morning that Sledmore v. Dalby was only put to the Bailiff in the letter after the hearing, I was trying to find it in the transcript; I had put Sledmore v. Dalby to the Bailiff before the questions had gone to him, so I had actually raised that-

ROKISON, JA: I think if I may answer, it was certainly not our intention to indicate that the Sledmore v. Dalby point had not been raised by you, that part of the judgment to which you obviously refer was simply indicating that it was thought inappropriate to raise it as "Stage 2" after the matter had gone to the Jurats and the judgment had been given. But it was a procedural point. We weren't suggesting Mr. Ferbrache that you hadn't raised the point at all.

SOUTHWELL, JA: We'll certainly look at the judgment again and make quite certain that if there were any such impression to be derived from it, that will be corrected.

ADVOCATE MARK FERBRACHE: I'm obliged sir.

SOUTHWELL, JA: Could I just ask one point of factual detail; the documents appeared to refer to “The Wing” as comprising as stated in the judgment, a kitchen/dining room, two bedrooms and two bathrooms. Looking at the plan while the judgment was being delivered, it appeared to me to have a lounge and a kitchen - cum-dining room. That’s right I think isn’t it?

ADVOCATE MARK FERBRACHE: That’s correct sir.

SOUTHWELL, JA: And that again I think we’ll need to correct. Any other points you want to raise?

ADVOCATE MARK FERBRACHE: Can I just make this point sir? We’ve got the costs of here and below as I understand it on a recoverable basis. Will that include the eviction proceedings which will be withdrawn? Presumably only the Royal Court could deal with that, as it hasn’t dealt with costs?

SOUTHWELL, JA: What order was made?

ADVOCATE MARK FERBRACHE: No order was made I don’t think- perhaps Mr. Barnes can correct me?

SOUTHWELL, JA: Well it’s a puzzling situation but it’s not strictly before us. It may be that you need to apply to the Royal Court in the light of our judgment.

ADVOCATE MARK FERBRACHE: Can I just make one point on the recoverable costs issue, I’d be grateful to the Court; the difficulty is that up until 1st January the recoverable rate was £40 an hour-

SOUTHWELL, JA: Are you talking about the costs of the appeal?

ADVOCATE MARK FERBRACHE: The costs of the appeal sir, yes.

SOUTHWELL, JA: Well that has now all been resolved, has it not?

ADVOCATE MARK FERBRACHE: But it’s only the costs- the new rate as I understand it only applies from 1st January-

SOUTHWELL, JA: No it applies- if the appeal is determined after 1st January it covers all the costs of the appeal.

ADVOCATE MARK FERBRACHE: I misunderstood that-

SOUTHWELL, JA: I think if you look at Rule 13, this arose in the previous judgment, we looked at it and it appeared to cover that, so far from being confined in the way it has been changed as a result of some beneficial observations made by Mr. Clarke in a previous case, so I think you’ll find that that is the (inaudible) remedy.

ADVOCATE BARNES: I understood it to have retrospective effect as well.

SOUTHWELL, JA: Yes that is right.

ADVOCATE MARK FERBRACHE: I’m grateful to the Court and my friend.

SOUTHWELL, JA: So I think that is solved and we are very glad to have been able to have delivered judgment this week and not keep the parties in suspense any longer. Thank you very much to both Counsel for your help.