

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 12: Miscellaneous and General

Miscellaneous

Section 116: Proprietary estoppel and mere equities

183. *Proprietary estoppel* The following is an example of how the doctrine of proprietary estoppel operates:
- The owner of land, A, in some way leads or allows the claimant, B, to believe that he or she has, or can expect, some kind of right or interest over A's land. To A's knowledge, B acts to his or her detriment in reliance on that belief. A then refuses B the anticipated right or interest in circumstances that make that refusal unconscionable. In those circumstances, an "equity" arises in B's favour. This gives B the right to go to court and seek relief. The court has a very wide discretion as to how it will give effect to this equity, but in so doing it will "analyse the minimum equity to do justice" to B. It will not give him or her any greater rights than he or she had expected to receive. The range of remedies that the courts have shown themselves willing to give is very wide. At one extreme, they have ordered A to convey the freehold of the land in issue to B. At the other, they have ordered A to make a monetary payment to B (in some cases secured on A's land).
184. Although the point is not finally settled, the weight of authority favours firmly the view that B's right or "inchoate equity" which arises after he has acted to his detriment but before the court can make an order giving effect to it is a proprietary, and not merely a personal right.
185. To put the matter beyond doubt, this section confirms the proprietary status of an equity arising by estoppel in relation to registered land. This means that it can be protected by entry of notice in the register, or, where the claimant is in actual occupation of the affected land, as an interest whose priority is automatically protected without the need for registration.
186. *Mere equities* A "mere equity" appears to be used to denote a claim to discretionary equitable relief in relation to property, such as a right to set aside a transfer for fraud or undue influence, a right to rectify an instrument for mistake, or a right to seek relief against forfeiture after a landlord has peacefully re-entered.