This case cannot be properly understood without a map, but I will try to explain it as best I can. Near Bognor Regis there is a village called Pagham. There is a road there called Hook Lane running east and west. On the south side of that road there is an area of land called Windmill Park. In 1946 a Mr Alford brought 5 1/2 acres of it. It formed a big square field with its north side next to the road. Now you must imagine that big field divided into two parts by a line running from north to south, with two acres on the eastern side of the line and 3 1/2 acres on the Western side; and the two acres divided by a line horizontally into two halves, the front portion (one acre) being next to the road and the back portion (one acre) with no access to the road. Mr Alford developed the two acres and left the other 3 1/2 acres undeveloped. On these two acres Mr Alford put two industrial buildings. On the front portion he erected offices and showrooms. On the back portion he erected a building for the manufacture of caravans. And he made a road on these two acres connecting the back to the front.

In 1962 Mr Alford died. His executors decided to develop the remaining 3 1/2 acres on the western side of the field. They obtained planning permission to erect dwellinghouses on it. Under this proposal there was to be a new estate road made to give access from Hook Lane to the new housing estate. It was to be made on the 3 1/2 acres, but was to run alongside the boundary line between the 3 1/2 acres and the two acres. It was to be called Mill Park Road. This road was to be to...
the advantage also of the buildings on the two acre portion because they could have access on to the near road. The proposal at that time was, however, that there should be only one access from the two acres on to the new road. This was to be at a point marked 'A' on the map, in the front portion, about half-way up from Hook Lane. It was thought at that time that one access would be sufficient because the whole of the two acres was in one occupation. The vehicles from the back portion (where caravans were made) could go along their own existing road to the front portion (where the offices and showrooms were), and then out at point A. This was to be the only access to the two acres. The previous access (from a side lane) was to be closed.

Planning permission was given for this development. But the executors of Mr Alford did not carry it out themselves. They sold the two acres to the plaintiff; Mr Crabb; and they sold the 3 1/2 acres to the defendants, Chichester Rural District Council ("the council"). The conveyances are of importance. By a conveyance dated 1st September 1965 the executors of Mr Alford sold the whole of the two acres with the two industrial buildings to Mr Crabb, and in the conveyance they agreed to erect a fence 5 ft 6 ins high along the boundary line, save for the access gap at point A. They also granted him a right of access at point A to the proposed new road and a right of way along it to Hook Lane. By a conveyance dated 8th December 1966 the executors of Mr Alford sold the 3 1/2 acres to the council, but they expressly reserved the right (which they had already granted to Mr Crabb) for the owner of the two acres to have access at point A to the proposed new road and a right of way along it to Hook Lane. In the same deed the council agreed to erect the fence 5 ft 6 ins high along the boundary line, save for the access gap at point A.

So on the conveyances the owners and occupiers of the two acres had a right of access along at one point, namely point A (halfway up the front portion). It was shown on the map as a gap about 20 ft wide; and from that point they had a right of way along the proposed new estate road to get to Hook Lane. The council were to

erect a close-boarded fence 5 ft 6 ins high along the whole boundary between the two acres and the 3 1/2 acres, except for the 20 ft gap at point A.

In 1967 Mr Crabb had a new idea about his two acres. He thought it would be desirable to split up the two portions and sell them separately for separate use. The front portion (with the offices and showrooms) was dearly separated from the back portion (with the manufacturing). But, if they were split up, he would need another access. The access at point A would serve the front portion. But he would need another access at another point (to be called point B) so as to serve the back portion, together with a right of way along the new estate road from point B to Hook Lane.

By this time Mr Crabb had engaged as his architect Mr Alford, who was the son of the original owner of the Land. On 22nd June 1967 Mr Alford, as architect for Mr Crabb, wrote this letter to the engineer of Chichester Council:

> 'For the attention of Mr. Stonier:

> 'Dear Sir . . .

> 'It would appear that Mr. Crabb may require two entrances off the new road, one to each of his two buildings. If you could let me know when you hope to set this fence line out I would be glad of the opportunity of meeting a representative of your Department on the site so that these matters can be finally settled and the line of the fence agreed . . .'

In pursuance of that letter there was a meeting on 26th July 1967, which was attended by Mr Crabb and his architect, Mr Alford, and by a representative of the council. There is no written note of what took place. Both Mr Crabb and his architect, Mr Alford, gave evidence about the meeting but unfortunately the council gave no evidence about it. The council undoubtedly had a representative there, but we do not know who it was. The engineer, Mr Stonier, said that he himself was not present. The only other person who might have represented the council was a Mr Queen. He is in Canada and not available to give evidence. But there is no doubt that they agreed the line of the fence which was to separate Mr Crabb's Land from the council's land. There is also no doubt that there was an agreement in principle that Mr Crabb should have, not only the access at point A, but also an additional access at point B, so as to give access from the back portion of his land an to the new estate road. Mr Crabb said that the council's representative made a firm commitment for
a second access at B, but the judge said that Mr Crabb was rather over-sanguine. The judge preferred the evidence of Mr Alford, who was rather more cautious. Mr Alford said: 'I thought we had got final agreement in that there was to be access at point B, but I saw further processes beyond the meeting.' He foresaw, no doubt, that there might have to be a document drawn up between the solicitors. Later on, in his evidence, Mr Alford was asked whether there was to be any payment for this additional access. He said: 'The normal anticipation at that time would be that some consideration would be demanded.' But the council's representative did not ask for any payment. Mr Alford said: 'My strong feeling is we would not be asked to pay that consideration when talking to the plaintiffs in 1967.'

Summing up the evidence, as accepted by the judge, the result of the meeting on 22nd July 1967 was that there was an agreement in principle that Mr Crabb should have an additional access at point B to the Land, because it was envisaged that he would sell his two acres of land in two portions; the front portion with access at point A to the new road, and the back portion, with access at point B to the new road. But the judge found there was no definite assurance to that effect; and, even if there had been, it would not have been binding in the absence of either writing or consideration. In order to be binding, there would have to be the legal processes foreseen by Mr Alford.

As it happened, no legal processes were gone through. The council made no formal grant to Mr Crabb of any access at point B or any easement over the new road. Nevertheless the parties acted in the belief that he had or would be granted such a right.

During the winter of 1967 the council erected a fence along the line of the agreed boundary, but they left gaps at point A with access to the front portion of Mr Crabb's land and at point B with access to the back portion. These two gaps were used by lorries which went in and out at points A and B as if they were exits and entrances. It was creating such a mess and disturbance of Mr Crabb's land that there was a meeting on the site on 31st January 1968, at which the council agreed that they would undertake a tidying-up operation; and they did so.

On 6th February 1968 there was an important development. The council gave orders for gates to be constructed at points A and B, and they were in fact constructed. We have before us the contractors' account dated 30th March 1968. The contractors erected a fence 5 ft 6 ins high all the way along the boundary, but they put gates in the fence at points A and B. At point A they erected a pair of oak close-boarded gates 18 ft wide, 5 ft 6 ins high, complete with posts and fittings, at a cost of £117 5s 6d. At point B they erected a similar pair 12 ft 3 ins wide and 5 ft 6 ins high, at a cost of £76 6s 0d. The gateposts were set firmly in concrete at points A and B, and were dearly intended to be permanent.

Some months later, in the autumn of 1968, Mr Crabb agreed to sell the front portion of his land to a purchaser and assigned to the purchaser the right of access at point A. But, here is the important matter, in the conveyance of the front portion of 4th October 1965, Mr Crabb did not reserve any right for himself (as the owner of the back portion) to go over the front portion so as to get at point A. Mr Crabb thought that he already had a right of access at point B (where gates had already been erected) and so he did not need to reserve any right to get to point A: The judge found:

... Mr Crabb believed that he had an assurance by the Council that he would have access at point B from the Council's land and was content to rely on that assurance. He did not reserve any right of access [across the front portion. He] would not have been prepared to proceed with the sale of the [front portion to the purchaser] without reserving access over it ... if he had not believed . . . that he would have access [at point B] over the Council's land.'

But then, in January 1969, there was a new development. Mr Crabb put a padlock on the inside of the gate at point B. The council were incensed by this, but they did not say a word to Mr Crabb. They went on to his land. They took down the gates at point B. They pulled them out of the concrete. They took them away and filled the gap with extra posts and a close-boarded fence to match the existing fence. In short, they shut up the access at point B. The judge said: 'The council gave no notice to Mr Crabb of its intention to take this step: It seems to me that it was a discourteous and high-handed act.'

It is that action, depriving Mr Crabb of his access, which has led to all the trouble. Mr Crabb sought to settle the matter by agreement. The council did not object to his having access at point B and an easement to serve the back portion of the land, but the council wanted £3,000 for it. This was more than Mr Crabb was willing to pay. So no agreement was reached. In consequence this back portion of Land has been rendered sterile. Mr Crabb has been unable to sell it or
make use of it because it has no outlet anywhere.

In June 1971 Mr Crabb brought this action claiming a right of access at point B and a right of way along the estate road. He had no such right by any deed or conveyance or written agreement. So, in strict law, on the conveyance, the council were entitled to their land, subject only to an easement at point A, but none at point B. To overcome this strict law, Mr Crabb claimed a right of access at B on the ground of equitable estoppel, promissory or proprietary. The judge held that he could not avail himself of any estoppel. He said: 'In the absence of a definite assurance by the representative of the Council, no question of estoppel can arise, and that really concludes the action: Mr Crabb appeals to this court.

When counsel for Mr Crabb said that he put his case on an estoppel, it shook me a little, because it is commonly supposed that estoppel is not itself a cause of action. But that is because there are estoppels and estoppels. Some do give rise to a cause of action. Some do not. In the species of estoppel called proprietary estoppel, it does give rise to a cause of action. We had occasion to consider it a month ago in *Moorgate Mercantile Co Ltd v Twitchings* where I said that the effect of estoppel on the true owner may be that—

'his own title to the property, be it land or goods, has been held to be limited or extinguished, and new rights and interests have been created therein. And this operates by reason of his conduct—what he has led the other to believe—even though he never intended it'

The new rights and interests, so created by estoppel, in or over land, will be protected by the courts and in this way give rise to a cause of action. This was pointed out in *Spencer Bower and Turner an Estoppel by Representation*.

The basis of this proprietary estoppel—as indeed of promissory estoppel—is the interposition of equity. Equity comes in, true to form, to mitigate the rigours of strict law. The early cases did not speak of it as 'estoppel'. They spoke of it as 'raising an equity'. If I may expand that, Lord Cairns said in *Hughes v Metropolitan Railway Co*: . . . it is the first principle upon which all Courts of Equity proceed . . . that it will prevent a person from insisting on his strict legal rights—whether arising under a contract, or on his title deeds, or by statute—when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties. What then are the dealings which will preclude him from insisting on his strict legal rights? If he makes a binding contract that he will not insist on the strict legal position, a court of equity will hold him to his contract. Short of a binding contract, if he makes a promise that he will not insist on his strict legal rights—even though that promise may be unenforceable in point of law for want of consideration or want of writing—and if he makes the promise knowing or intending that the other will act on it, and he does act on it, then again a court of equity will not allow him to go back on that promise: see *Central London Property Trust v High Trees Houses*, *Charles Rickards v Oppenheim*. Short of an actual promise, if he, by his words or conduct, so behaves as to lead another to believe that he will not insist on his strict legal rights knowing or intending that the other will act on that belief—and he does so act, that again will raise an equity in favour of the other, and it is for a court of equity to say in what way the equity may be satisfied. The cases show that this equity does not depend on agreement but on words or conduct. In *Ramsden v Dyson* Lord Kingsdown spoke of a verbal agreement 'or what amounts to the same thing, an expectation, created or encouraged'. In *Birmingham Land Co v London and North Western Railway* Cotton LJ said that ' . . . what passed did not make a new agreement but what took place . . . raised an equity against him'. And it was the Privy Council who said that 'the Court must look at the circumstances in each case to decide in what way the equity can be satisfied', giving instances: see *Plimmer v Mayor of Wellington*.

Recent cases afford illustrations of the principle. In *Inwards v Baker* it was held that, despite the legal title being in the plaintiffs, the son had an equity to remain in the bungalow 'as long as he desired to use it as his home'. Danckwerts J said: ' . . . equity protects him so that an injustice may not be perpetrated.' In *ER Ives Investments Ltd v High* it was held that Mr High and his successors had an equity which could only be satisfied by allowing him to have a right of access over the yard, 'so long as the block of flats has its foundations on his land'. In *Siew Soon Wah v Yong Tong Hong* the Privy Council held that there was an 'equity or equitable estoppel protecting the defendant in his occupation for 30 years'. In *Bank Negara Indonesia v Philip Hoalim* the
Privy Council held that, despite the fact that he had no protection under the Rent Acts, he had an equity to remain 'so long as he continued to practise his profession'.

The question then is: were the circumstances here such as to raise an equity in favour of Mr Crabb? True the council on the deeds had the title to their land, free of any access at point B. But they led Mr Crabb to believe that he had or would be granted a right of access at point B. At the meeting of 26th July 1967, Mr Alford and Mr Crabb told the council's representative that Mr Crabb intended to split the two acres into two portions and wanted to have an access at point B for the back portion, and the council's representative agreed that he should have this access. I do not think the council can avoid responsibility by saying that their representative had no authority to agree this. They entrusted him with the task of setting out the line of the fence and the gates; and they must be answerable for his conduct in the course of it: See Attorney-General to His Royal Highness the Prince of Wales v Colloms; Moorgate Mercantile Co Ltd v Twitchings.

The judge found that there was 'no definite assurance' by the council's representative, and 'no firm commitment', but only an 'agreement in principle', meaning I suppose that, as Mr Alford said, there were 'some further processes' to be gone through before it would become binding. But if there were any such processes in the minds of the parties, the subsequent conduct of the council was such as to dispense with them. The council actually put up the gates at point B at considerable expense. That certainly led Mr Crabb to believe that they had agreed that he should have the right of access through point B without more ado.

The judge also said that, to establish this equity or estoppel, the council must have known that Mr Crabb was selling the front portion without reserving a right of access for the back portion. I do not think this was necessary. The council knew that Mr Crabb intended to sell the two portions separately and that he would need an access at point B as well as point A. Seeing that they knew of his intention—and they did nothing to disabuse him, but rather confirmed it by erecting gates at point B—it was their conduct which led him to act as he did; and this raises an equity in favour against them.

In the circumstances it seems to me inequitable that the council should insist on their strict title as they did; and to take the high-handed action of pulling down the gates without a word of warning; and to demand of Mr Crabb £3,000 as the price for the easement. If he had moved at once for an injunction in aid of his equity—to prevent them removing the gates—I think he should have been granted it. But he did not do so. He tried to negotiate terms, but these failing, the action has come for trial. And we have the question: in what way now should the equity be satisfied?

Here equity is displayed at its most flexible: See Snell's Equity and the illustrations there given. If the matter had been finally settled in 1967, I should have thought that, although nothing was said at the meeting in July 1967, nevertheless it would be quite reasonable for the council to ask Mr Crabb to pay something for the access at point B, perhaps—and I am guessing—some hundreds of pounds. But, as counsel for the plaintiff pointed out in the course of the argument, because of the council's conduct, the back Land has been landlocked. It has been sterile and rendered useless for five or six years; and Mr Crabb has been unable to deal with it during that time. This loss to him can be taken into account. And at the present time, it seems to me that, in order to satisfy the equity, Mr Crabb should have the right of access at point B free of charge without paying anything for it.

I would, therefore, hold that Mr Crabb, as the owner of the back portion, has a right of access at point B over the verge on to Mill Park Road and a right of way along that road to Hook Lane without paying compensation. I would allow the appeal and declare that he has an easement, accordingly.

[...]

1 Page 314, ante, [1975] 3 WLR 286
2 See p 323, ante, [1975] 3 WLR at 297
3 2nd Edn (1966), pp 279-282
4 (1877) 2 App Cas 439 at 448, [1874-80] All ER Rep 187 at 191
5 [1956] 1 All ER 256, [1947] KB 130
6 [1950] 1 All ER 420 at 423, [1950] I KB 616 at 623
7 (1866) LR 1 HL 129 at 170
8 (1888) 40 Ch D 268 at 277, [1886-90] All ER Rep 620 at 622
9 (1884) 9 App Cas 699 at 713, 714, [1881-5] All ER Rep 1320 at 1325, 1326
Referring Principles:

IV.8.1 - Principle of pre-contractual liability