> When exhibits are sent into the jury room it is understood that the jury are at liberty to inspect and experiment with them in any reasonable manner which occurs to them.[40]

If it is not carefully explained to the jury just what 'reasonable' experimentation might consist of and a warning issued to them of the shortcomings of any experiment they might perform (as the trial judge did here) the injustice to the defendant becomes more (not less) likely.

It is inevitable that juries will experiment with exhibits taken with them into the jury room, be it a comparison of handwriting samples,[41] a house-breaking implement or a weapon. The risk of evidence being manufactured is ever present, even if jurors are expressly warned to confine their deliberations to the evidence put to them in court. Only by as full and careful summing up by the trial judge as is possible, including detailed instructions as to possible tests on exhibits, can haphazard experimentation and confusion be avoided. Jurors certainly have the common-sense to devise their own tests in the jury room but they cannot know what status such tests have at law (and what weight to accord them in reaching a decision) unless given much needed assistance by the presiding judge.

MARK DARIAN-SMITH*

JE MAINTIENDRAI v. QUAGLIA[1] — PROMISSORY ESTOPPEL IN AUSTRALIA

Action by landlord for arrears of rent — Defence of promissory estoppel raised — Whether doctrine of promissory estoppel recognized in Australia — Whether the promisee must show detriment incurred.

In 1972 Lord Hailsham made the prediction that a time would come when the courts would need systematically to explore the doctrine of promissory estoppel and to reduce it to a 'coherent body of doctrine'.[2] Despite the contribution made by the Privy Council in *Ajayi v. Briscoe*[3] significant uncertainties have continued to plague those who seek to determine the ambit of the doctrine in England. In *Je Maintiendrai v. Quaglia*[4] the necessity for systematic exploration and coherent statement of principles arose in the Supreme Court of South Australia. In three strong and carefully reasoned judgments the Court seized this opportunity.

THE FACTS

The respondent was the tenant of a shop. The appellant was the lessor. The original written lease which commenced in March 1973 was for a three year term at a rent of $197 per month. A new three year lease was executed in July 1976. The rent was increased to $278 per month and provision was made for quarterly rises commensurate

[40] (1979) 21 S.A.S.R. 596, 598. This passage was expressly approved by Street C.J. in *R. v. Kozul* [1980] 2 N.S.W.L.R. 299, 302.

[41] For example see *R. v. Tilley* [1961] 1 W.L.R. 1309 and *R. v. O'Sullivan* [1969] 1 W.L.R. 497 (C.A.).

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[1] (1981) 26 S.A.S.R. 101.

[2] *Woodhouse A.C. Israel Cocoa Ltd S.A. v. Nigerian Produce Marketing Co. Ltd* [1972] A.C. 741, 758.

[3] [1964] 1 W.L.R. 1326.

[4] (1981) 26 S.A.S.R. 101.

with rises in the consumer price index. In October 1976 the tenant asked the landlord to reduce the rent to $240 per month. The landlord agreed and for eighteen months accepted the reduced rent without question. When the landlord discovered that the tenant was about to vacate the shop he demanded payment of the accumulated arrears of rent as fixed by the lease. When the tenant refused to pay an action was brought.

Was the tenant obliged to pay the rent fixed in his contract with the plaintiff or could he rely upon the landlord's promise to accept a lesser amount as a defence to the action upon that contract? In other words was the landlord estopped from recovering as arrears the additional amount which would have been due under the lease but for the reduction?[5] One thing was clear. The defendant had provided no consideration for the plaintiff's promise to forgo his contractual right to the rent. This point was made in quite unambiguous terms by King C.J.:

> The appellant's promise to reduce the rent has no contractual force because it was made without consideration. The acceptance of a sum which is less than that legally due is not binding and does not extinguish liability for the balance unless there is fresh consideration. . . . The evidence does not disclose fresh consideration. The respondents' case therefore rests upon an estoppel to which the facts are alleged to give rise.[6]

In view of the approach taken in earlier Australian authorities this point must be emphasized. It was made perfectly clear by all members of the Supreme Court of South Australia that if the respondent was to succeed he could not do so on the basis of any common law contractual principle. His only chance of success lay in the equitable defence of promissory estoppel. However, as King C.J. pointed out:

> Few areas of law have given rise to more controversy in the last few decades than the area of promissory estoppel. There is a question as to whether the very notion of estoppel based upon promise or statement of future intention has any place in our law.[7]

This was the first issue to be decided. Was the doctrine of promissory estoppel part of the law of Australia? Secondly, if it was, how was the defence to be made out? In particular, was it essential that the respondent be able to show that he had suffered a detriment and if so what form should this detriment take? These issues must be considered against a background provided by authorities in England and Australia.

THE ENGLISH BACKGROUND

As familiarity with the history of the doctrine of promissory estoppel in England is assumed, discussion of the English authorities is brief and attention is directed to the uncertainties which persist.[8]

Promissory or quasi-estoppel[9] had its genesis in Lord Cairns' statement in *Hughes v. Metropolitan Railway*.[10]

> It is the first principle upon which all courts of equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results — certain penalties or legal forfeiture — afterwards by their own act or with their own consent enter upon a course of negotiation which has the affect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or

[5] *Ibid.* 102.
[6] *Ibid.*
[7] *Ibid.*
[8] For a comprehensive review of the English authorities see Spencer, Bower and Turner, *The Law Relating to Estoppel by Representation* (3rd ed. 1977) by A. K. Turner, 367-401.
[9] Promissory estoppel or quasi-estoppel is the term used to describe estoppel based upon a statement of intention or promise as to the future. Estoppel by representation or estoppel *in pais* refers to a representation as to an existing fact.
[10] [1877] 2 App. Cas. 439.

> will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties.[11]

The principle was restated in its modern form by Denning J. (as he then was) in *Central London Property Trust v. High Trees House Ltd.*[12] He held that an estoppel could be based upon an assurance regarding the future. He decided that a promissor cannot exercise original rights where 'a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise was going to be acted upon by the person to whom it was made and which was in fact so acted upon'.[13] Although Lord Denning's pronouncement regarding promissory estoppel is technically *dicta* the decision is regard as 'one of the leading cases of our generation'[14] and has frequently been cited as the basis of the modern doctrine.[15]

Despite the apparently authoritative statements in *High Trees* and subsequent decisions such as *Combe v. Combe*[16] some difficulties with the doctrine of promissory estoppel persisted. Its career and the difficulties it has encountered are admirably summarized by White J. in *Je Maintiendrai v. Quaglia.*[17] As far as the English authorities are concerned there would appear to be an, as yet, unresolved difference of opinion as to whether the notion of 'detriment' is a vital component of the defence. It is clear that the promisee must have relied upon the promise and furthermore that he must have altered his position in such reliance. This requirement was firmly imposed by the Privy Council in *Ajayi v. Briscoe.*[18] Must it, however, be established that the promisee has acted *to his detriment* in reliance upon the promise? If it must, is this tantamount to insisting that the promisee must in fact provide consideration for the promise?[19] Lord Denning's view is that it is sufficient that the promisee has altered his position in reliance on the promise and that a detriment to the promisee is not necessary.[20] The clearest expression of his view is to be found in *W. J. Alan & Co. Ltd v. El Nasr Export & Import Co.*[21]

> A seller may accept a less sum for his goods than the contracted price, thus inducing him to believe that he will not enforce payment of the balance. . . . In none of

[11] *Ibid.* 448.
[12] [1947] K.B. 130. Hereinafter referred to as *High Trees.*
[13] *Ibid.* 134.
[14] Turner, *op. cit.* 369.
[15] It was firmly established by Lord Denning in *Combe v. Combe* [1951] 2 K.B. 215 that such a promise could be relied upon only as a defence. It could not be relied upon as giving rise to a cause of action.
[16] [1951] 2 K.B. 215.
[17] (1981) 26 S.A.S.R. 101, 110-14.
[18] [1964] 1 W.L.R. 1326. 'Their Lordships are of opinion that the principle of law as defined by Bowen L.J. has been confirmed by the House of Lords in the case of *Tool Metal Manufacturing Co. Ltd v. Tungsten Electric Co. Ltd,* where the authorities were reviewed and no encouragement was given to the view that the principle was capable of extension so as to create rights in the promisee for which he had given no consideration. The principle, which has been described as quasi estoppel and perhaps more aptly as promissory estoppel, is that when one party to a contract in the absence of fresh consideration agrees not to enforce his rights an equity will be raised in favour of the other party. This equity is, however, subject to the qualifications (1) that the other party has altered his position, (2) that the promisor can resile from his promise on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position, (3) the promise only becomes final and irrevocable if the promisee cannot resume his position.' This quotation is from the judgment of Lord Hodson, 1330.
[19] This was suggested in the recent Court of Appeal decision in *Brikom Investments v. Carr* [1979] 2 All E.R. 753 *per* Cumming-Bruce L.J., 764-5.
[20] Denning A. T., 'Recent Developments in the Doctrine of Consideration' (1952) 15 *Modern Law Review* 1, 5.
[21] [1972] 2 All E.R. 127.

these cases does the party who acts on the belief suffer any detriment. It is not a detriment, but a benefit to him, to have an extension of time or to pay less, or as the case may be. Nevertheless, he has conducted his affairs on the basis that he has that benefit and it would not be equitable now to deprive him of it.

He went on to say: 'that all that is required is that the one should have "*acted* on the belief induced by the other party" '.[22]

The opposite view requires establishment of a detriment to the promisee incurred by reason of reliance on the promise as a vital component of the defence. This view is succintly expressed by Turner:

It is here submitted that in promissory estoppel, as in orthodox estoppel, detriment, in Dixon J.'s sense, will be found essential; for to go further must be perilously close to the enforcement of a simple gratuitous promise.[23]

THE AUSTRALIAN BACKGROUND

In Australia the difficulties surrounding the doctrine of promissory estoppel were more fundamental. Considerable doubts were expressed as to whether the doctrine was part of the law of Australia at all. The Australian editors of *Cheshire and Fifoot* argue strongly that the doctrine of promissory estoppel 'accomplishes nothing that cannot be accomplished by an application of orthodox contractual rules'.[24] Their view would seem to have been supported by the few Australian authorities in the area. In *Barns v. Queensland National Bank*[25] Lord Cairns' statement of principle in *Hughes v. Metropolitan Railway*[26] was expressly applied. However, the High Court made it clear that it required consideration for a promise to forgo contractual rights:

Regarding the case then as one in which some consideration must be shown, is there any such consideration in the present case? The suggested consideration is that Nott at the request of the mortgagees refrained from taking steps which might, and upon the evidence probably would, have resulted in his saving the property for his beneficiaries. We have some difficulty in saying that this is not a sufficient consideration to bring this case within the rule laid down in *Hughes v. Metropolitan Railway Co.*[27] (emphasis added).

The doctrine received some recognition in *Mulchahy v. Hoyne*.[28] However, as there could be no question of equitable relief being available in that case, the defence could not be made out. 'Can a party', asked Starke J. 'be allowed to say that he was led to suppose that the strict rights of the contract would not be enforced if he broke the law? Such a doctrine would be inimical to the interests of the State, and contrary to the policy of the law'.[29]

In the comparatively recent decision in *Albert House Ltd (in vol. liq.) v. Brisbane City Council*[30] the issue was whether the plaintiff was estopped from claiming compensation for injurious affection of a property affected by zoning changes. It was argued

[22] *Ibid.* 140.

[23] Turner, *op. cit.* 394. The reference is to Dixon J.'s judgment concerning estoppel by representation in *Grundt v. The Great Boulder Pty Gold Mines Ltd* (1938) 59 C.L.R. 641, 674-5.

[24] Starke J. G. and Higgins P. F. P., *Cheshire and Fifoot Law of Contract* (4th Australian ed. 1981) 608.

[25] (1906) 3 C.L.R. 925.

[26] (1877) 2 App. Cas. 439.

[27] (1906) 3 C.L.R. 925, 939. Turner (*op. cit.* 374) makes the following comment upon this decision '*Hughes v. Metropolitan Rail. Co.* was expressly cited in the judgment, and a *High Trees* estoppel was held, without any flourish of trumpets, to have been established'. In making this comment Turner appears to have overlooked the fact that the High Court insisted upon consideration.

[28] (1925) 36 C.L.R. 41.

[29] *Ibid.* 59.

[30] (1968) 118 C.L.R. 144.

that the Council had agreed to buy the plaintiff's land on the assumption that the plaintiff would not proceed with any claim for compensation. The trial judge accepted the Council's argument and held that 'the defendant impliedly promised the council' that it would not make a claim, and that this implied promise was intended to create legal relations and was one which was intended to be acted upon by the council.[31] As the Council did act upon the faith of such promise and thereby suffered a detriment he concluded that this implied promise gave 'rise to an estoppel so that the defendant should not be allowed to act in a way inconsistent with such promise'.[32] All members of the High Court however decided the case on traditional contractual principles. Taylor and Menzies JJ. considered that:

> Before this court it was common ground that whatever mode of expression might be adopted, the critical question was whether the appellant, in consideration of the making of the agreement of sale, had impliedly promised or undertook that it would not claim compensation for injurious affection. . . .

Kitto J. (who dissented on the facts) held that:

> it should be inferred that the appellant tacitly promised the respondent, upon the making of the contract *and in consideration of the respondent's entering into it*, not to make any claim for compensation. . . . The respondent's case is therefore, one of an implied collateral contract. . . .[33] (emphasis added).

It is upon this case that the Australian editors of *Cheshire and Fifoot* rely in their attack upon the doctrine of promissory estoppel. With respect to the learned authors this reliance is unfounded. In the first place there is an aspect of the *Albert House* case which sharply distinguishes it from any of the authorities, both English and Australian on promissory estoppel. At the time of the making of the promise upon which the defendant relied the parties were *not already in a contractual relationship.* The authorities show that the doctrine has been relied upon only in situations where a promise is made not to enforce a pre-existing contractual right. It has never been used as a means of enforcing gratuitous promises to forgo other legal rights.[34] Furthermore, the agreement in *Albert House v. B.C.C.* is a classic example of a collateral contract of the sort to which Kitto J. referred. 'If you will buy my land I will promise not to sue you.'[35] This case therefore provides no ammunition for an attack on the doctrine of promissory estoppel.[36]

It is against this background that the decision in *Je Maintiendrai v. Quaglia* must be considered.[37] Two important questions were yet to be authoritatively answered by an Australian Court:

(1) Is the doctrine of promissory estoppel part of the law of Australia?

(2) In order to rely upon the doctrine must be defendant show that he has acted upon the plaintiff's promise to his detriment?

THE DECISION IN *JE MAINTIENDRAI v. QUAGLIA*

1. *The defence of promissory estoppel is part of the law of Australia*

All members of the court agreed upon this point. Furthermore, it was made quite clear that it is available as an independent equitable defence to an action brought

[31] *Ibid.* 156.
[32] *Ibid.* 157.
[33] *Ibid.* 148.
[34] Turner, *op. cit.* 394.
[35] As in *Shepperd v. Ryde Corp.* (1952) 85 C.L.R. 1.
[36] This view remains unchanged in the 4th ed. of *Cheshire and Fifoot*, 605-8. For support for their view of the decision in *Albert House v. Brisbane City Council* the authors rely upon *Brikom v. Carr* [1979] 2 All E.R. 753.
[37] Some recognition of the doctrine has been given by State courts, *e.g. Parastatidis*

upon a pre-existing contract between promisor and promisee. The clearest expression of this acceptance of principle is to be found in the judgment of King C.J. After surveying the authorities, he paid particular attention to the views of the Australian Editors of *Cheshire and Fifoot*[38] and stated that on the view of the case taken in the High Court the question of promissory estoppel did not arise in *Albert House v. B.C.C.* The decision could not, therefore be regarded as a rejection of the doctrine of promissory estoppel.[39] He then referred to the opinion of the Privy Council in *Ajayi v. Briscoe*[40] which he stated to have 'clearly and unequivocally recognized estoppel arising from promise or statement of intention as part of the law'. He went on to say that, in the absence of High Court authority, that view should be accepted as authoritative.

2. *The requirement of detriment to the promisee as a component of the defence*

There *was* unanimity as to the requirement of detriment. All three judges agreed that it was essential that the defendant should have acted to his detriment in reliance upon the plaintiff's promise. The differences between the judges lay in their conclusions as to the type of detriment which must be established. The approach of each judge will briefly be examined.

The Chief Justice held that it was established in *Ajayi v. Briscoe* that there could be no estoppel unless the representee had altered his position in reliance on the promise. It is clear, he said, that in the case of estoppel based upon a representation as to an existing fact (estoppel *in pais*) the representor is estopped only if the representee would suffer a detriment if the representor acted inconsistently with the representation.[41] King C.J. went on to say that estoppel:

> rests upon the injustice to the representee or promisee of allowing the representor or promisor, in the circumstances which exist, to depart from the representation or promise. If the representee or promisee will suffer no detriment as a consequence of the other party resiling from his position and asserting his strict legal rights, it is difficult to see where the injustice of permitting him to do so would lie. . . . In my opinion, a person who promises or states his intention to another not to enforce or insist upon his legal rights is not estopped from resiling from that position and reverting to the strict legal position, *unless his doing so would result in some detriment and therefore some injustice to that other.*[42] (emphasis added).

In the view of the Chief Justice, then, the notion of detriment is synonomous with the notion of injustice. The question to be resolved in the case before him was whether the respondent would suffer a detriment which would render it unjust that the appellant should be allowed recover the arrears in rent.

In other words, would an order that the arrears be paid itself inflict a detriment on the defendant? The trial judge had found for the defendant upon the basis that the imposition of a lump sum liability upon a defendant who had been contemplating periodic payments would inflict sufficient detriment to entitle him to raise the defence of promissory estoppel. King C.J. did express some reservations about this finding and in particular considered the evidence as to detriment to be 'sparse'. The respondents' case would, he suggested, have been stronger if:

> there were evidence of financial hardship or embarrassment as a result of the debt accumulating or, . . . that the money had been spent in other ways and that the

v. Kotaridis [1978] V.R. 449; *N.S.W. Rutile Mining Co. Pty Ltd v. Eagle Metal and Industrial Products Pty Ltd* (1960) S.R. (N.S.W.) 495; but see *Meadows & Sons v. Rockman's General Store Pty Ltd* [1959] V.R. 68 *per* Hudson J.

[38] (1981) 26 S.A.S.R. 101, 103-4.
[39] *Ibid.*
[40] [1964] 1 W.L.R. 1326, 1329.
[41] (1981) 26 S.A.S.R. 101, 105.
[42] *Ibid.* 106.

> respondents were unable to pay, at any rate without difficulty or inconvenience. It would be stronger if there were evidence that they had conducted their affairs differently as a result of the reduction. . . .[43]

Nevertheless he refused to interfere with the finding of the trial judge on this point. The decision of the Chief Justice would support an argument that the defence of promissory estoppel may be made out if the defendant can do no more than point to a detriment which would result from an order enforcing payment of arrears according to the terms of a contract.

White J. referred to the strong argument of counsel for the appellant to the effect that the alleged detriment suffered by the defendant was insufficient and that the view of Lord Denning in *High Trees* in so far as it dispensed with the requirement of detriment was not part of the law of South Australia.[44]

He considered that Bowen L.J.'s formulation of principle in *Birmingham v. L. & N.W. Railway Co.*,[45] suggested that there:

> must be some restoration of the altered position before the resiling promisor will be permitted to go back on his promise; in turn the necessity to restore the position seems to suggest or assume that there has been some suffering of a detriment by the promisee.[46]

Turner argued that the conflict between the views of Lord Denning as expressed in *W.J. Alan & Co. Ltd v. El Nasr Export and Import Co.*[47] and *Central London Property Trust Ltd v. High Trees House Ltd*[48] and those of his brother judges in the same and other cases is more apparent than real. The requisite degree of detriment was, Turner suggested, present in both cases and, referring to the *High Trees* case he submitted that by choosing to:

> continue liable as tenant, and to pay rent, albeit a less rent, in the particular circumstances in which the war had affected the tenancy, and in electing to continue liable as tenant in reliance on the lessor's assurance that a less rent would be accepted in satisfaction, the tenant had altered his position so that, judging the matter at the date when the lessor proposed to resile from the arrangement, it would have been inequitable — and inequitable in the highest degree — for the Court to condone such a course of action.[49]

After expressing his approval of Turner's approach White J. turned to the facts of the case before him and concluded that:

> That is precisely the position here. Although the tenant was bound in contract by the terms of the lease to continue to pay the rent and observe the covenants in any event, it cannot be denied that the tenant would have had other choices open to him if the landlord had refused to reduce the rent on request. . . . By acting upon the landlord's promise of reduced rental, he continued in possession and lost his chances to adopt these alternatives. In other words, the tenant ordered his affairs on the basis that the promise would not be resiled from.[50]

Had White J. terminated his judgment at this point one would have concluded that his view as to the nature of the detriment required differed from that of the Chief Justice. He appeared to suggest that the detriment must be incurred between the making

[43] *Ibid.* 107.
[44] *Ibid.* 108.
[45] [1888] All E.R. 620.
[46] (1981) 26 S.A.S.R. 101, 110-11.
[47] [1972] 2 Q.B. 189.
[48] [1947] K.B. 130.
[49] Turner, *op. cit.* 393.
[50] (1981) 26 S.A.S.R. 101, 115-16. It must again be noted that there was absolutely no evidence as to these matters before the court. In neither examination in chief nor cross-examination had the defendant, despite direct questioning, alleged that any of these factors existed.

of the promise and its revocation. In other words the detriment must be incurred as a result of the making of the promise and not as a result of the resiling therefrom. King C.J., it will be recalled, suggested that detriment resulting from the resiling itself is sufficient. White J., however, went on:

> Looking at the matter as from the moment of demand of a large lump sum, it would in my view be unjust in the extreme to allow the landlord to resile from that promise and demand money which he had said would not be demanded. The tenant had no doubt spent the money on other things and did not have it readily available to meet the lump sum.[51]

In other words, he also suggested that detriment occasioned by the breaking of the promise will suffice.

Attention must now be directed to the dissenting judgment of Cox J. Whilst he recognized the availability of promissory estoppel as a defence he refused to allow the defendant to rely upon it in this case. There was, he concluded, a requirement of detriment and it had not been satisfied by this defendant. This was for the simple reason that he had failed to produce any evidence of detriment.[52]

As to the type of detriment required, it need not be great but it must be 'substantial, not merely speculative or conjectural. It is not enough simply to be able to fashion some sort of argument about it'.[53]

> What is relevant to the present question is the contrast between the respondent paying the additional rent each month in the normal way and . . . the respondent having to find all the arrears in a single payment now. Would that belated, unexpected demand by the appellant give rise to a detriment to the respondent? Had the respondent so changed his position in the meantime that it would be inequitable to require him now to pay the arrears? . . . The bare monetary obligation could not constitute a detriment in the relevant sense. Something additional to that was needed. However, what the respondent said in evidence hardly amounted to any more than the assertions that the new rent was too high and that he found it harder to pay a higher rent than a lower one. That is readily understandable, but it has little to do with the equitable defence. Evidence, direct or indirect, about the respondent's position at the time the appellant made its demand for the arrears, compared with his position when the oral agreement was made, is practically non-existent. The only way in which it could possibly be said to disclose a detriment to the respondent, in my opinion, is by so attenuating the word as to deprive it of any real meaning.[54]

As to the views of the trial judge which were implicitly approved by the majority, Cox J. expressed the opinion that the decision on the facts was purely speculative and went on to say that:

> The doctrine of promissory estoppel is a salutary corrective to an otherwise undesirable rigidity in the law of contract, but I do not think that it should be applied as liberally as that.[55]

CONCLUSIONS

It is suggested, with respect, that the approach of the majority, whilst stressing a requirement of detriment, in fact pays mere lip service to it. In *Je Maintiendrai v. Quaglia* there was in fact no evidence of detriment at all. Despite its avowed insistence on detriment the majority view has made available the remedy of promissory estoppel

[51] *Ibid.* 116.
[52] The excerpts from the transcript of evidence in Cox J.'s judgment demonstrate clearly that that was the case, (1981) 26 S.A.S.R. 101, 118-20.
[53] *Ibid.* 117.
[54] *Ibid.* 120.
[55] *Ibid.* 121.
[56] Turner, *op. cit.* 394.

in a case where in fact no detriment was incurred as a result of the promise itself. If any detriment was suffered, and there was no evidence of this either, it was as a result of the revocation of the promise. Such an approach is likely to attract the criticism of those who see a generous approach to the doctrine of promissory estoppel as another nail in the coffin of the doctrine of consideration, in other words, as going 'perilously close to the enforcement of a simple gratuitous promise'.[56] Those who applaud the decision will no doubt do so on the basis that, though the technique of the majority may be deficient in that, whilst stating a requirement of detriment, it allowed the defence to succeed where none was shown, the result accords with common sense. Surely, the supporters of the majority will argue, the time has come when all promises seriously made with the intention of affecting legal relationships should be enforced without the necessity for clutching at straws to establish consideration or detriment.

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