IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION
CLAIM NO. HCV 01694 OF 2005

IN THE MATTER OF all that parcel of land part of Maverly Mountain in the parish of St. Andrew being the land comprised in Certificate of Title registered at Volume 1108 Folio 922 of the Register Book of Titles

AND

IN THE MATTER of all that parcel of land part of Beverly Hills in the parish of Saint Andrew being the land comprised in Certificate of Title registered at Volume 1106 Folio 63 of the Register Book of Title

AND

IN THE MATTER of the Limitations of Actions Act of Jamaica, 1881

BETWEEN	**VALERIE PATRICIA FRECKLETON**	**CLAIMANT**
AND	**WINSTON EARLE FRECKLETON**	**DEFENDANT**

IN CHAMBERS
Mr. Jermaine Spence instructed by DunnCox for the claimant
Defendant absent and unrepresented

June 19 and July 25, 2006

EXTINCTION OF TITLE OF REGISTERED OWNER, SECTIONS 3, 4, 14 AND 30 OF THE LIMITATION OF ACTIONS ACT 1881

SYKES J

1. This application involves two plots of land. One is located at Maverly Mountain and the other at Beverly Hills. They were bought and registered in the names of Mrs. Valerie Freckleton, and Mr. Winston Freckleton as joint tenants. All this occurred during happier times. They have since separate and divorced. Mr. Freckleton has remarried and now lives in the United States of America. Mrs. Freckleton resides in Jamaica. Mrs. Freckleton now wishes to be registered as the sole proprietor in respect of both parcels of land.

2. She has applied by fixed date claim form for the following:

a. a declaration that the respondent by virtue of his non-occupation and non-possession of the properties comprised in certificates of titles registered at volume 1108 folio 922 and volume 1106 folio 63 of the Register Book of Titles since March of 1981 having discontinued possession of same and the claimant have since that time been in sole, undisputed and uninterrupted possession of the entirety of the said properties, the claimant, by virtue of sections 3, 4 and 14 of the Limitation of Actions Act of Jamaica 1881 has acquired an absolute title against the defendant in respect of the said properties.

b. further and/or in the alternative, a declaration that the claimant, having dispossessed the defendant of the said properties, has required an absolute title against the defendant in respect of the said properties.

c. an order that the Registrar of Titles endorse the certificates of titles registered at volume 1108 folio 992 and volume 1106 folio 63 of the Register Book of Titles so as to indicate that the claimant is the sole registered proprietor for the properties comprised in the said certificates of titles, having acquired an absolute title against the defendant in respect of the said properties.

3. In light of the far reaching nature of the declarations I need to examine the evidence of service before dealing with the substantive claim. Now that Mr. Freckleton lives in the United States of America, Master Lindo on October 6, 2005, granted permission to the applicant to serve her former husband him out jurisdiction. There are affidavits sworn by Mr. Ildelfonso of Broward County in the State of Florida, USA indicating that Mr. Freckleton has been served with the originating document and supporting affidavits. He has not filed an acknowledgement of service and neither has he filed a defence.

4. The fact that the matter is uncontested does not relieve the court of the obligation to see that the conditions are satisfied before the declarations can be granted.

Extinction of title

5. Between 1968 and 2003, the Judicial Committee of the Privy Council, the House of Lords and the Court of Appeal of England and Wales have authoritatively laid down the applicable law in a number of cases. These are ***Paradise Beach Transportation Company v Cyril Price Robinson*** [1968] A.C. 1072 PC ("Paradise"), ***Wills v Wills*** 64 W.I.R. 176 PC ("Wills"), ***J.A. Pye (Oxford) Ltd. v Graham*** [2003] 1 A.C. 419 HL ("Pye") and ***Buckinghamshire County Council v Moran*** [1990] Ch 623 CA ("Moran"). In the midst of these cases is the excellent judgment of Slade J. in ***Powell v McFarlane*** (1979) 38 P & CR 452 ("Powell") in which he stated with precision the intention necessary that must exist in the party who is claiming to have dispossessed the registered owner.

6. The critical cases for the determination of this case are ***Paradise*** and ***Wills*** because they focus on dispossession of one co-owner by another co-owner. In ***Paradise***, an appeal from the Supreme Court of the Commonwealth of the Bahamas, by a will dated November 22, 1912, a testator devised land to his children and grandchildren as tenants in common. Before he died two of his daughters farmed the land on his behalf. This meant that the daughters did not possess in their own right and so could not have begun to have possession for the purposes of extinguishing their father's title. On October 23, 1913, the father died and his daughters continued farming until the early 1920's when they erected a house on the land. The daughters farmed the land until they died in 1962 and after their deaths, the land was occupied by one Mr. Cyril Price-Robinson and others, successors in title to the daughters. It is these successors who were the respondents in the appeal to the Board. The appellants claimed to be successors in title to those persons who along with the daughters would have been entitled to the land under the will of November 22, 1912. Consequently, the appellants argued, they were entitled to that portion of the land as would have devolved to their predecessors in title. For the appellants to succeed they had to establish that their predecessors in title at some point entered into possession of the land which had that occurred would have prevented the daughters from dispossessing the other tenants in common. The appellants commenced an action in 1963 against the daughters' successors in title, claiming their undivided share. The basis of the claim was that the

father's will devised to their predecessors in title and the daughters' predecessors in title as tenants in common. Now comes the crux of the appellants' arguments. They said that the daughters did not acquire title to the appellants' share because all the daughters had done was to continue farming, an activity in which they were engaged before the testator died. This activity, the appellants, submitted was insufficient to dispossess the other tenants in common. In other words, to use the language that should not now fall from our lips, the daughters had not done anything "adverse" to the possession of the appellants' predecessors in title and therefore time had not begun to run against the appellants' predecessors which meant that the daughters had not extinguished the title of the other title holders. Since the daughters died in 1962 and the action was commenced in 1963, it followed that the respondents (the daughters' successors) could not acquire a better title than the daughters had.

7. The appellants' submissions were founded on the idea that the daughters had to do some "hostile" act to show that they intended to bar and exclude the appellant's predecessors in title and since that had not been done the appellants' title was not extinguished. The appellants argued that despite the abolishing of the doctrine of non-adverse possession the daughters were not wrongfully in possession and title could not be extinguished unless and until there was a wrongful possession which would then have precipitated a right of entry and it was only when this right of entry arose that time began to run in favour of the daughters. That wrongful act never occurred and therefore time did not begin to run in their favour.

8. The finding of the trial judge, which was upheld, was that the daughters had been in possession for their own use and benefit and that they and their successors in title had been in exclusive possession since the father died. This was for more than the twenty years required by the relevant Bahamian legislation and so the paper title of the other co-owners, albeit tenants in common, had been extinguished.

9. Lord Upjohn, speaking for the Board, made a number of important conclusions. First, the relevant Bahamian statutes were the Real Property Limitation Act (No. 1), 1833 and the Real Property Limitation (1874) Act were identical to the Real Property Limitation Acts, 1833 and 1874 (UK). Second, Denman C.J. had definitively interpreted the United Kingdom statutes in two important cases. These were ***Nepean v Doe. d. Knight*** (1837) 2 M & W 894 and ***Cully v Doe d. Taylerson*** (1840) 11 Ad & E 1008. Third, Lord Upjohn held,

agreeing with the decisions of Denman C.J. in the two cases just cited, that the purpose of the sections 2 and 3 of the 1833 Act (UK) (sections 3 and 4(a) of the Limitations of Actions Act of 1881 (Jam)) was to rid the law of the doctrine of non-adverse possession. What was this doctrine of non-adverse possession?

10. When the limitation statute of James 1 (21 Jac 1, c 16) was passed the judges found it difficult to accept that a paper owner might lose his land by the simple fact of another person being in possession without any "hostile" act by the dispossessor. The judges engrafted on the statute the requirement that there must be something in the nature of an ouster of the paper owner by the person claiming title to the land by possession. According to the law that developed from this judicial creation the dispossessor must not just occupy the land with the animus possidendi, he must go further to actively bar the paper owner. It was said that the dispossessor had to use the land in such a manner that was clearly and obviously inconsistent with the title of the paper owner. It was this development that became known as "adverse possession". If the dispossessor was in possession with the necessary animus possidendi but did not commit any "hostile" acts inconsistent with the paper owner's title in order to show that he was ousting the paper owner he was said to be in "non-adverse possession". The practical result of this was that the animus possidendi coupled with possession was not enough to extinguish the paper owner's title. The dispossessor must use the land in such a manner as to make it clear that he was behaving like the owner and that use when examined must show that he ousted the paper owner. Anything less was insufficient to dislodge the paper owner's title. Not surprisingly an intricate body of case law developed and as can be imagined, the distinctions drawn between cases on what amounted to either adverse (read hostile) or non-adverse possession were very fine if not imaginary. The United Kingdom's Real Property Limitation Act of 1833 had as one of its object the abolition of this body of law. The relevant provisions of the United Kingdom legislation were enacted in the Bahamas and Jamaica. In Jamaica the provisions are found in the Limitation of Actions Act of 1881.

11. One of the necessary reforms was abolishing the common law doctrine that the possession of one tenant in common was the possession of all (section 12 of the UK Act; i.e. section 14 of the Jamaican Act 1881). The effect of this reform was that one co-owner, whether joint tenants or tenants in common, could extinguish the title of the other. This explains why Denman C.J. stated, in the cases cited above, that (i) section 12 of the UK Act

of 1833 made possession of co-tenants **separate** possessions from the time they became tenants in common and time ran from the date they became tenants in common; (ii) the effect of section 2 of the UK Act of 1833 (i.e. section 3 of the Jamaican Act) was to do away with the doctrine of non-adverse possession and the question becomes simply whether the requisite number of years has elapsed from the time the right of entry of the paper owner accrued, regardless of the nature of the possession of the person claiming title by extinction of the paper owner's title. In other words for the purposes of extinguishing title the requirements were the same whether the dispossessor was a co-owner or complete stranger. After 1833 English law did not require an act of ouster or disseissin before the title of the paper owner was extinguished. The 1833 did not create a title in the dispossessor. What it did was to prevent the paper owner from asserting his title after the lapse of the requisite period of time (see section 34 of UK legislation and section 30 of the Jamaican legislation). This development in the law explains why we should no longer say that anyone gets title by adverse possession. The dispossessor is not conferred with a title. What he has is the ability to resist any attempt by the paper owner or his successor in title to assert his title after passage of the requisite period of time. The paper owner's title is extinguished.

12. The law as explained by Lord Upjohn in ***Paradise*** was approved by the House of Lords in ***Pye*** and applied to Jamaica in ***Wills***. From the time of ***Wills*** we, in Jamaica, ought not to speak any longer of acquiring title by adverse possession. There is no such thing as title by adverse possession. The further importance of the ***Paradise*** and ***Wills*** cases lies in the reminder to us that where there are co-tenants and one co-tenant is claiming that he has dispossessed the other the evidence has to be examined carefully because there are times when the law implies that a co-tenant is in possession for another co-tenant. However, in the final analysis it is a question of fact whether this is so or not.

15. One would have thought that after these nineteenth century reforms the law would have been settled. Much like their predecessors who encrusted the limitation statute of James 1 with a heavy body of case law designed to frustrate the intention of the legislators, the judges after the passage of these statutory reforms attempted to negate the operation of the reform. They felt that the paper owner was hard done by and sought to temper what they saw as injustice by introducing ideas not required by the law. This led the Courts of Appeal in England and Jamaica to fight a rear guard action against the operation of the

nineteenth century statutes. The rear guard action was turning the clock back. This resistance was described in ***Wills*** in this way at paragraph 18:

> *18 However, both in England and in Jamaica the courts did, in the second half of the last century, display some tendency to give the expression a more technical meaning and to require proof that the squatter used the land in a manner inconsistent with the owner's intentions. In England the beginning of the tendency can be seen in the decision of the Court of Appeal in Williams Brothers Direct Supply Ltd v Raftery [1958] 1 Q.B. 159. But the more important English case is the decision of the Court of Appeal in Wallis's Cayton Bay Holiday Camp Ltd v Shell Mex & BP Ltd [1975] Q.B. 94, in which the leading judgment was given by Lord Denning M.R., with a strong dissent from Stamp L.J. In Jamaica the most important decision is that of the Court of Appeal in Archer v Georgiana Holdings Ltd (1974) 21 W.I.R. 431. All three decisions relied heavily on the well-known but now controversial decision of the Court of Appeal in Leigh v Jack (1879-80) L.R. 5 Ex. D. 264.*

13. The effect of ***Pye, Wills*** and ***Moran*** is that judges cannot re-introduce the technicalities that the nineteenth century statutes sought to extirpate.

14. How then does the dispossessor mount the rostrum to claim his new found status? It is at this point that Slade J.'s elucidation in ***Powell*** demonstrates its value. He said at pages 470 – 472:

> *It will be convenient to begin by restating a few basic principles relating to the concept of possession under English law:*
>
> *(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.*
>
> *(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi").*
>
> *(3) Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or 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. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. "What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land*

involved but not subject to variation according to the resources or status of the claimants": West Bank Estates Ltd. v. Arthur, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession. On the particular facts of Cadija Umma v. S. Don Manis Appu the taking of a hay crop was held by the Privy Council to suffice for this purpose; but this was a decision which attached special weight to the opinion of the local courts in Ceylon owing to their familiarity with the conditions of life and the habits and ideas of the people. Likewise, on the particular facts of the Red House Farms case, mere shooting over the land in question was held by the Court of Appeal to suffice; but that was a case where the court regarded the only use that anybody could be expected to make of the land as being for shooting: per Cairns, Orr and Waller L.JJ. 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.

(4) The animus possidendi, which is also necessary to constitute possession, was defined by Lindley M.R., 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 in a position to exclude him. What is really meant, in my judgment, is that, the animus possidendi 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 himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.

The question of animus possidendi is, in my judgment, one of crucial importance in the present case. An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess, unless the contrary is clearly proved. This, in my judgment, is why the slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance of possession. The position, however, is quite different from a case where the question is whether a trespasser has acquired possession. In such a situation the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner.

A number of cases illustrate the principle just stated and show how heavy an onus of proof falls on the person whose alleged possession originated in a trespass.

16. The first two paragraphs numbered (1) and (2) respectively were criticised by counsel in ***Pye's*** case as being unhelpful because possession was defined in terms of itself. That is a fair point to make and so I accept the correction made by Lord Browne-Wilkinson at paragraph 40 of ***Pye*** when he said:

To be pedantic the problem could be avoided by saying that there are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control ("factual possession"); (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess"). What is crucial is to understand that, without the requisite intention, in law there can be no possession.

17. The Judicial Committee of the Privy Council in ***Wills*** at paragraphs 19 and 20 stressed the importance of scrutinising all the facts in any given case when it was said:

19 All those decisions may have been correct on their special facts. All of them rightly stressed the importance, in cases of this sort, of the Court carefully considering the extent and character of the land in question, the use to which it has been put, and other uses to which it might be put. They also rightly stated that the Court should not be ready to infer possession from relatively trivial acts, and that fencing, although almost always significant, is not invariably either necessary or sufficient as evidence of possession. Nevertheless, the decisions must now be read in the light of the important decision of the Court of Appeal in Buckinghamshire County Council v Moran [1990] Ch. 623 and the even more important decision of the House of Lords in Pye.

20 In Moran each member of the Court approved the following passage from the dissenting judgment of Stamp L.J. in Wallis's case [1975] Q.B. 94, 109-110:

> *"Reading the judgments in Leigh v Jack 5 Ex D 264 and Williams Brothers Direct Supply Limited v Raftery [1958] 1 QB 159, I conclude that they establish that in order to determine whether the acts of user do or do not amount to dispossession of the owner, the character of the land, the nature of the acts done upon it and the intention of the squatter fall to be considered. Where the land is wasteland and the true owner cannot and does not for the time being use it for the purpose for which he acquired it, one may more readily conclude that the acts done on the wasteland do not amount to dispossession of the owner. But I find it impossible to regard those cases as establishing that so long as the true owner cannot use his land for the purpose for which he acquired it, the acts done by the squatter do not amount to possession of the land. One must look at the facts and circumstances and determine whether what has been done in relation to the land constitutes possession."*

18. The person who is claiming that the title of the paper owner has been extinguished has to establish that there was (a) occupation or physical control of the land and (b) an

intention to possess. Intention to possess here means the statement of mind which says that the dispossessor has it in mind to possess the land in question in his own name or on his own behalf to exclude the world at large including the paper title owner so far as this is possible. An intention to own or even an intention to acquire ownership is not necessary but if present enhances the prospect of success.

19. The legal position now is that a registered owner of land or indeed any other owner may now have his title extinguished by his lack of vigilance. If the registered owner wishes to prevent this happening he simply needs to heed the advice of Slade J. in ***Powell***, that is to say, do some "slight" acts either by himself or on his behalf so that it will negative the burgeoning "right" of the dispossessor. Whether that "slight" act will be sufficient depends on the facts of each case. There can be no catalogue of "slight" acts.

20. It is important to appreciate that whether the paper owner's title has been extinguished depends on factual possession and intention of the dispossessor **and not** the intention of the paper owner.

Has Mr. Freckleton's title been extinguished?

21. Mrs. Freckleton and Mr. Freckleton were married on February 27, 1965. On or about 1967 both parties bought land at Sterling Castle, at Maverly Mountain (volume 1108 folio 922). Both of them were registered as joint tenants. Both parties paid the instalments on the purchase price which was eventually paid off in 1972. According to Mrs. Freckleton the payments by both parties continued until October 1971 when they emigrated to the United States of America. At this time she became the sole wage earner because her husband was studying.

22. They lived in the United States until 1978 when they returned to Jamaica. In 1979 they bought a house, as joint tenants, in Beverly Hills (volume 1106 folio 63) with the assistance of a mortgage from Victoria Mutual Building Society. Shortly after the purchase the marriage broke down. Mr. Freckleton left the house at Beverly Hills on April 18, 1981, and has not returned since. After he left Mrs. Freckleton would collect his housing allowance cheques from the Ministry of the Public Service to pay the mortgage. This continued until March 1982 when she was told that her husband had said that no more cheques were to be given to her. Since that time she has paid the mortgage without any assistance from her husband. The mortgage was eventually paid off in 1994.

23. Mr. Freckleton became the father of a child with a woman other than his wife on February 26, 1982, with the birth of his son. The parties were divorced in December 1982. In 1984 Mr. Freckleton left for the United States and has not returned to live in Jamaica.

24. The evidence is that since 1984 Mr. Freckleton has not returned to live in Jamaica though he has returned on occasions. When he came to Jamaica he did not visit the former matrimonial home in Beverly Hills. He did not contact his ex-wife. He has not paid any taxes or contributed to the payment of land taxes in relation to any of the properties. After Hurricane Gilbert in 1998 when there was severe property damage to the Beverly Hills home he did not contact Mrs. Freckleton or show any interest in any of the properties.

25. She said that she has renovated the Beverly Hills property and has changed the locks on the doors so that he will not be able to enter the house with keys he had when he left in 1981. She saw him in 1990 in Florida in the United States and he did not express any interest in either property.

26. Indeed when it was reported to her that there was a squatter at the Maverly property she quickly took steps to have the squatter evicted.

27. From this evidence Mrs. Freckleton has been in occupation of the property at Beverly Hills and has exercised control over the Maverly property. It seems to me that at least from 1984 she has had the intention to possess in her own right and in her own name to the exclusion of not only her former husband but the world at large. When she formed this intention from 1984 it continued right up to the date of filing her fixed date claim form. There is no evidence that she wrote to him or did anything to indicate that she was possessing the properties for both of them. She has never asked him for any contribution to pay for repairs to the Beverly Hills property. There is no evidence that she solicited funds to pay an expenses involved in the ownership and management of the properties. During this period Mr. Freckleton did not engage in any conduct in relation to either property that manifested any intention to continue in possession. Mrs. Freckleton's possession became exclusive since 1984 and by 1996, Mr. Freckleton's title was extinguished. There is no evidence before me from which I could infer that from 1984 onwards Mrs. Freckleton's possession was a joint one with her former husband.

28. I have looked at the character of the house at Beverly Hills. It was being used as dwelling by both parties prior to Mr. Freckleton's departure from the home. Other than perhaps renting it to other persons it does not appear that it was suitable for any purpose

other than to be used as a place of residence. Other than living there, paying taxes, executing repairs and changing the locks it is difficult to see what else Mrs. Freckleton could do to indicate an intention to possess. She was already on the property when Mr. Freckleton left. I am satisfied that what has been done by Mrs. Freckleton since 1984 constitutes possession.

29.I now turn to the Maverly property. On the evidence this lot appears to be open land. She has paid the taxes and evicted a squatter. It is true that she has not used the land for anything but is there more required of her in the circumstances before it can be said that she has possession? I do not think so.

30. I have relied on Slade J.'s judgment in ***Powell.*** Slade J's judgment, may seem a hard one on the facts. He was dealing with an out and out trespasser and one can understand his language in that context. One is left with the clear impression that but for the age of the claimant (a fourteen year old) he might well have succeeded. Here I am dealing with adult joint tenants. If one examines the ***Paradise*** case it will be observed that the kind of language used by Slade J. in respect of trespasser is absent. The daughters continued farming after the death of their father was sufficient to place them in factual possession. No additional act was required of them to establish factual possession. The only remaining question was whether they had the animus possidendi. The reason seems to be that a joint tenant need not adduce the same type of evidence needed by a trespasser who wishes to extinguish title. Similarly in ***Wills*** the conduct relied on by the Board to establish possession in one joint tenant sufficient to extinguish the title of the other consisted of (a) not accounting to other joint tenant for rents received and (b) the joint tenant in possession did not invite the other to the house when she visited Jamaica. The cases of ***Paradise, Wills, Powell*** and ***Moran*** show that one cannot transpose conduct in one case into another and say, "The person is that case did so and so, therefore the dispossessor in the instant must do the same kind of act." One must look at each case carefully to see what acts were done and whether those acts, in the context of the particular case, are sufficient to establish possession.

31.I should explain why I chose 1984 and not 1981, as mentioned in the claim. In my view when he left Jamaica in 1984 that marked a clear break between the claimant and the properties in Jamaica as well as his wife. Even if Mr. Freckleton intended to possess the properties after 1984, once Mrs. Freckleton formed the animus possidendi coupled with

occupation or control time began to run against him. From that time he must manifest his intention by conduct. It is only then will there by some evidence which can be examined to see whether he has negatived any discontinuance of possession. The declarations are granted.