United Kingdom House of Lords Decisions

Cite as: [1979] UKHL 6, [1979] 1 WLR 294

JISCBAILII_CASE_CONTRACT

**Parliamentary Archives,
HL/PO/JU/4/3/1349**

Die Jovis 8° Martii 1979

Upon Report from the Appellate Committee to whom was referred the Cause Gibson (Respondent) against The Council of the City of Manchester (Appellants), That the Committee had heard Counsel on Wednesday the 24th day of January last upon the Petition and Appeal of the Council of the City of Manchester of Town Hall, Manchester M60 2LA praying that the matter of the Order set forth in the Schedule thereto, namely an Order of Her Majesty's Court of Appeal of the 17th day of January 1978 might be reviewed before Her Majesty the Queen in Her Court of Parliament and that the said Order might be reversed, varied or altered or that the Petitioners might have such other relief in the premises as to Her Majesty the Queen in Her Court of Parliament might seem meet; as also upon the Case of Robert Gibson lodged in answer to the said Appeal; and due consideration had this day of what was offered on either side in this Cause:

It is *Ordered* and *Adjudged,* by the Lords Spiritual and Temporal in the Court of Parliament of Her Majesty the Queen assembled, That the said Order of Her Majesty's Court of Appeal of the 17th day of January 1978 complained of in the said Appeal be, and the same is hereby, **Discharged** except as to Costs: And it is further *Ordered,* That there be no Order as to Costs in this House save that the Respondent's costs be taxed in accordance with Schedule 2 to the Legal Aid Act 1974: And it is also further *Ordered,* That the Cause be, and the same is hereby, remitted back to the Manchester County Court to do therein as shall be just and consistent with this Judgment.

Gibson (A.P.) (Respondent) *v.* The Council of the City of Manchester (Appellants).

HOUSE OF LORDS

GIBSON (A.P.) (RESPONDENT)

v.

THE COUNCIL OF THE CITY OF MANCHESTER (APPELLANTS)

Lord Diplock
Lord Edmund-Davies
Lord Fraser of Tullybelton
Lord Russell of Killowen
Lord Keith of Kinkel

Lord Diplock

My Lords,

This is an action for specific performance of what is claimed to be a contract for the sale of land. The only question in the appeal is of a kind with which the courts are very familiar. It is whether in the correspondence between the parties there can be found a legally enforceable contract for the sale by the Manchester Corporation to Mr. Gibson of the dwelling-house of which he was the occupying tenant at the relevant time in 1971. That question is one that, in my view, can be answered by applying to the particular documents relied upon by Mr. Gibson as constituting the contract, well-settled, indeed elementary, principles of English law. This being so, it is not the sort of case in which leave would have been likely to be granted to appeal to your Lordships' House, but for the fact that it is a test case. The two documents principally relied upon by Mr. Gibson were in standard forms used by the corporation in dealing with applications from tenants of council houses to purchase the freehold of their homes under a scheme that had been adopted by the council during a period when it was under Conservative Party control. Political control passed to the Labour Party as a result of the local government elections held in May 1971. The scheme was then abandoned. It was decided that no more council houses should be sold to any tenant with whom a legally binding contract of sale had not already been concluded. At the date of this decision there was a considerable number of tenants, running into hundreds, whose applications to purchase the houses which they occupied had reached substantially the same stage as that of Mr. Gibson. The two documents in the same standard form as those on which he principally relies had passed between each one of them and the corporation. So their rights too are likely to depend upon the result of this appeal.

My Lords, the contract of which specific performance is sought to be enforced is a contract for the sale of land. It is thus subject to the requirements as to writing laid down in section 40 of the Law of Property Act 1925; but nothing turns on this since the only contract that is alleged is one made by letters and accompanying documents passing between the parties. The outcome of this appeal depends upon their true construction.

In the Manchester County Court where the action started, the case was pleaded in the conventional way. The particulars of claim alleged an offer

in writing by the corporation to sell the freehold interest in the house to Mr. Gibson at a price of £2,180 and an acceptance in writing of that offer by Mr. Gibson. The judge (Judge Bailey) followed the same conventional approach to the question that fell to be decided. He looked to see whether there was an offer of sale and an acceptance. He held that, upon their true construction, the documents relied upon as such in the particulars of claim did amount to an offer and an acceptance respectively and so constituted a legally enforceable contract. He ordered specific performance of an open contract for the sale to Mr. Gibson of the freehold interest in the house at the price of £2,180.

The corporation's appeal against this judgment was dismissed by a majority of the Court of Appeal (Lord Denning M.R. and Ormrod L.J.); Geoffrey Lane L.J. dissented. Lord Denning M.R. rejected what I have described as the conventional approach of looking to see whether upon the true construction of the documents relied upon there can be discerned an offer and acceptance. One ought, he said, to " look at the correspondence

2

" as a whole and at the conduct of the parties and see therefrom whether " the parties have come to an agreement on everything that was material." This approach, which in referring to the conduct of the parties where there is no allegation of part performance appears to me to overlook the provisions of section 40 of the Law of Property Act 1925, led him however to the conclusion that there should be imported into the agreement to be specifically performed additional conditions, against use except as a private dwelling-house and against advertising and a restriction not to sell or lease the property for five years. These are conditions which would not be implied by law in an open contract for the sale of land. The reason for so varying the county court judge's order was that clauses in these terms were included in the standard form of " Agreement for Sale of a Council House " which, as appears from the earlier case of *Storer v. Manchester City Council* [1974] 1 WLR 1403, was entered into by the Corporation and council tenants whose applications to purchase the freehold of their council house reached the stage at which contracts were exchanged. There was, however, no reference to this standard form of agreement in any of the documents said to constitute the contract relied on in the instant case, nor was there any evidence that Mr. Gibson had knowledge of its terms at or before the time that the alleged contract was concluded.

Lord Justice Ormrod, who agreed with the Master of the Rolls, adopted a similar approach but he did also deal briefly with the construction of the document relied upon by Mr. Gibson as an unconditional offer of sale by the corporation. On this he came to the same conclusion as the county court judge.

Lord Justice Geoffrey Lane in a dissenting judgment, which for my part I find convincing, adopted the conventional approach. He found that upon the true construction of the documents relied upon as constituting the contract, there never was an offer by the corporation acceptance of which by Mr. Gibson was capable in law of constituting a legally enforceable contract. It was but a step in the negotiations for a contract which, owing to the change in the political complexion of the council, never reached fruition.

My Lords, there may be certain types of contract, though I think they are exceptional, which do not fit easily into the normal analysis of a contract as being constituted by offer and acceptance; but a contract alleged to have been made by an exchange of correspondence between the parties in which

the successive communications other than the first are in reply to one another, is not one of these. I can see no reason in the instant case for departing from the conventional approach of looking at the handful of documents relied upon as constituting the contract sued upon and seeing whether upon their true construction there is to be found in them a contractual offer by the corporation to sell the house to Mr. Gibson and an acceptance of that offer by Mr. Gibson. I venture to think that it was by departing from this conventional approach that the majority of the Court of Appeal was led into error.

The genesis of the relevant negotiations in the instant case is a form filled in by Mr. Gibson on 28 November 1970 inquiring what would be the price of buying his council house at 174 Charlestown Road, Blackley, and expressing his interest in obtaining a mortgage from the corporation. The form was a detachable part of a brochure which had been circulated by the corporation to tenants who had previously expressed an interest in buying their houses. It contained details of a new scheme for selling council houses that had been recently adopted by the council. The scheme provided for a sale at market value less a discount dependent on the length of time the purchaser had been a council tenant. This, in the case of Mr. Gibson would have amounted to 20%. The scheme also provided for the provision by the corporation of advances upon mortgage which might amount to as much as the whole of the purchase price.

As a result of that inquiry Mr. Gibson's house was inspected by the corporation's valuer and on 10 February 1971 the letter which is relied

3

upon by Mr. Gibson as the offer by the corporation to sell the house to him was sent from the City Treasurer's Department. It was in the following terms:

" Dear Sir,

Purchase of Council House

Your Reference Number 82463 03

" I refer to your request for details of the cost of buying your Council
" house. *The Corporation may be prepared to sell the house to you at*
" *the purchase price of £2,725 less 20%=£2,180 (freehold).*

. . . .

" Maximum mortgage the Corporation may grant : £2,177 repayable

" over 20 years

" Annual fire insurance premium : £2.45

" Monthly Repayment charge calculated by

" (i) flat rate repayment method: £19.02

. . . .

" If you wish to pay off some of the purchase price at the start and
" therefore require a mortgage for less than the amount quoted above,
" the monthly instalment will change; in these circumstances, I will
" supply new figures on request. The above repayment figures apply
" so long as the interest rate charged on home loans is 8½%. The
" interest rate will be subject to variation by the Corporation after

" giving not less than three months' written notice, and if it changes,
" there will be an adjustment to the monthly instalment payable. This
" letter should not be regarded as firm offer of a mortgage.

" *If you would like to make formal application to buy your Council*
" *house, please complete the enclosed application form and return it to*
" *me as soon as possible.*

" Yours faithfully,

" (Sgd) H. R. PAGE
" CITY TREASURER

" Mr. Robert Gibson "

My Lords, the words I have italicised seem to me, as they seemed to Geoffrey Lane L.J., to make it quite impossible to construe this letter as a contractual offer capable of being converted into a legally enforceable open contract for the sale of land by Mr. Gibson's written acceptance of it. The words " may be prepared to sell " are fatal to this; so is the invitation, not, be it noted, to accept the offer, but " to make formal application to buy " upon the enclosed application form. It is, to quote Geoffrey Lane L.J., a letter setting out the financial terms on which it may be the council will be prepared to consider a sale and purchase in due course.

Both Ormrod L.J. and the county court judge in reaching the conclusion that this letter was a firm offer to sell the freehold interest in the house for £2,180, attached importance to the fact that the second paragraph, dealing with the financial details of the mortgage of which Mr. Gibson had asked for particulars, stated expressly, " This letter should not be regarded as a " firm offer of a mortgage. " The necessary implication from this, it is suggested, is that the first paragraph of the letter *is* to be regarded as a firm offer to sell despite the fact that this is plainly inconsistent with the express language of that paragraph. My Lords, with great respect, this surely must be fallacious. If the final sentence had been omitted the wording of the second paragraph, unlike that of the first, with its use of the indicative mood in such expressions as " the interest rate *will* change ", might have been understood by council tenants to whom it was addressed as indicating a firm offer of a mortgage of the amount and on the terms for repayment stated if the council were prepared to sell the house at the stated price. But whether or not this be the explanation of the presence of the last sentence in paragraph 2, it cannot possibly affect the plain meaning of the words used in paragraph 1.

4

Mr. Gibson did fill in the application form enclosed with this letter. It was in three sections; section A headed " Application to buy a council " house ". Section B " Application for a loan to buy a council house " and section C " Certificate to be completed by all applicants." He left blank the space for the purchase price in section A and sent the form to the corporation on 5 March 1971 with a covering letter in which he requested the corporation either to undertake at their own expense to carry out repairs to the tarmac path forming part of the premises or to make a deduction from the purchase price to cover the cost of repairs. The letter also intimated that Mr. Gibson would like to make a down payment of £500 towards the purchase price instead of borrowing the whole amount on mortgage. In reply to the request made in this letter the corporation, by letter of 12 March 1971, said that the condition of the property had been taken into consideration in fixing the purchase price and that repairs to the tarmac by the corporation could not

be authorised at this stage. This letter was acknowledged by Mr. Gibson by his letter to the corporation of 18 March 1971 in which he asked the corporation to " carry on with the purchase as per my application already in " your possession."

My Lords, the application form and letter of 18 March 1971 were relied on by Mr. Gibson as an unconditional acceptance of the corporation's offer to sell the house; but this cannot be so unless there was a contractual offer by the corporation available for acceptance, and, for the reason already given 1 am of opinion that there was none. It is unnecessary to consider whether the application form and Mr. Gibson's letters of 3 and 18 March 1971 are capable of amounting to a contractual offer by him to purchase the freehold interest in the house at a price of £2,180 on the terms of an open contract, for there is no suggestion that, even if it were, it was ever accepted by the corporation. Nor would it ever have been even if there had been no change in the political control of the council, as the policy of the corporation before the change required the incorporation in all agreements for sale of council houses to tenants of the conditions referred by the Master of the Rolls in his judgment and other conditions inconsistent with an open contract.

I therefore feel compelled to allow the appeal. One can sympathise with Mr. Gibson's disappointment on finding that his expectations that he would be able to buy his council house at 20 per cent below its market value in the autumn of 1970 cannot be realised. Whether one thinks this makes it a hard case perhaps depends upon the political views that one holds about council housing policy. But hard cases offer a strong temptation to let them have their proverbial consequences. It is a temptation that the judicial mind must be vigilant to resist.

Lord Edmund-Davies

My Lords,

This is a hard case—and we all know where hard cases can take a judge. It is also a test case, some 350 others being in a like situation to the respondent. Mr. Gibson had been employed by the Manchester City Corporation for sixteen years and, since March 1959, tenant of their dwelling-house, 174 Charlestown Road, Blackley. As long ago as July 1968 he had intimated to the corporation his desire to buy his home, and to that end he had completed and sent them in the following December the form of application to purchase with which they supplied him. Events moved slowly, and in June 1970 Mr. Gibson enquired when he might have a decision on his application and whether he might meanwhile be permitted to make certain improvements, including the repair of paths. It was in September 1970 that the corporation resolved to sell the freeholds of their dwellings and not (as hitherto) merely leasehold interests. In October 1970, their Housing Manager wrote to Mr. Gibson, apologising for the delay and regretting that "... it is not possible to indicate how long it will be before I " will be able to give you the opportunity of purchasing your house ", adding that in due course the property would be valued and the applicant informed of the result. In the following month, the corporation circulated those tenants

who, like Mr. Gibson, had already expressed their desire to purchase their homes, and enclosed a brochure entitled " Full details of how you can " buy your council house ". This began: " The City Council are prepared " to sell freehold . . . any Council house ... to the tenant of that house, " providing he has been in occupation of it for at least one year ", at market value less a discount to be calculated according to the length of his

occupation. Particulars were also given about mortgage facilities.

Mr. Gibson filled in and submitted to the corporation a form attached to the brochure and beginning, " Dear Sir, Please inform me of the price of " buying my Council house ". The reply thereto, dated February 10th 1971, and signed by the City Treasurer, is important as it was the tenant's case that this constituted an offer by the corporation to sell. I set out its material parts:

" *Purchase of Council House*

" I refer to your request for details of the cost of buying your " Council house. The Corporation may be prepared to sell the house " to you at the purchase price of £2,725 less 20% = £2,180 (freehold).

" The details which you requested about a Corporation mortgage "are as follows:— maximum mortgage the Corporation may grant: " £2,177 repayable over 20 years . . .

..." This letter should not be regarded as a firm offer of a mortgage.

" If you would like to make formal application to buy your Council " house, please complete the enclosed application form and return it to " me as soon as possible."

The form itself, which Mr. Gibson completed on March 3rd, 1971, was headed: "Application to buy a Council house and application for a " mortgage. " He left the purchase price blank, but filled in the particulars required in relation to his application for a loan. And he signed the certificate at the end of the form, which was worded in this way:

" I have read the explanatory leaflet [i.e. the brochure] on how to " buy my Council house and your letter stating the costs involved, and " now wish to purchase my Council house. The above answers are " correct and I agree that they shall be the basis of the arrangements " regarding the purchase and, if appropriate, the loan between myself " and the Manchester Corporation."

Mr. Gibson sent off that form under cover of a letter dated March 5th, 1971, the opening paragraph of which read:

" With reference to enclosed application for purchase of above " property. Before the transaction is finalised I would appreciate " your comments on the following." [There followed a complaint that, although the Corporation's ' Direct Works' Department had undertaken to repair Mr. Gibson's tarmac paths, nothing had been done]. " I would therefore like your assurance that Direct Works will not " exclude these premises when re-surfacing or re-laying starts, or " alternatively would you deduct an amount of money from the " purchase price and I will undertake the repairs myself. Whichever " decision you arrive at I would like to make an initial cash payment " of £500—so I would be obliged if you will let me have the figures " to allow for the deposit mentioned. I have left the purchase price " blank on the application form until I hear from you."

On March 12th the Housing Manager retorted that, as the general condition of the property had been taken into account in arriving at the price of £2,180, he could not authorise repairing the paths. On March 18th Mr. Gibson replied by a letter which was said to constitute his acceptance of the corporation's alleged offer to sell and which read in this way:

" Reference your letter of March 12th ... In view of your remarks " I would be obliged if you will carry on with the purchase as per my " application already in your possession."

The corporation did not reply to that letter. In May 1971 the political control of the corporation changed hands and the scheme to sell off council houses was suspended. In July 1971 it was formally discontinued.

My Lords, it was on the basis of the foregoing documents and correspondence that Mr. Gibson instituted proceedings in the county court in September 1974 for specific performance of what he, in effect, submitted was an open contract whereby the corporation had agreed to sell to him the freehold of his dwelling for £2,180. It was pleaded that the corporation had so offered by their letter of February 10th 1971 and the accompanying application form, the acceptance (as I understand) being conveyed by Mr. Gibson's completing and returning that form and later " unconditionally " accepted the said offer by letter to the defendants dated 18th March 1971." Reliance was also sought to be laid upon an internal memorandum passing between two of the corporation's departments which was said to constitute an admission by the corporation that they had—presumably by *that* date—sold the freehold to Mr. Gibson. It is convenient to mention also at this stage that both in the county court and in the Court of Appeal the plaintiff relied further upon the fact that during 1971 the Town Clerk, in the course of a letter he sent a city councillor who had espoused Mr. Gibson's case, had written regarding the Treasurer's letter of February 10th 1971:

> " *Mr. Gibson accepted this offer,* but before the papers could be
> " passed to me for preparation of the formal contract the local elections
> " intervened. Since then no more contracts have been prepared, pending
> " a formal decision being taken by the present Council regarding the
> " policy to be adopted in relation to the sale of Council houses . . ."

It is, however, right to observe that, later in his same letter, the Town Clerk wrote of the unwisdom of Mr. Gibson's having carried out certain alterations "... before there was a binding contract in existence ", although these words may—or may not—have been intended to refer to the absence of any " formal contract ", a fact to which the writer also adverted.

The pleaded defence was simple: The corporation had made no offer; alternatively, if they had, Mr. Gibson had not accepted it; the internal memorandum constituted no admission; and there was non-compliance with section 40 of the Law of Property Act 1925. None of these pleas found favour with the learned county court judge, who ordered specific performance.

The appeal was dismissed in extemporary judgments delivered by Lord Denning, Master of the Rolls, and Ormrod L.J., with Geoffrey Lane L.J. dissenting. The majority upheld the pleaded case of offer and acceptance, whereas Geoffrey Lane L.J. held that it failed *in limine* as it was impossible to regard the corporation's letter of February 10th 1971 as an offer to sell. I agree with him, and for the reasons he gave. These are to be found at [1978) 1 W.L.R. 529D to 530E and there would be no advantage in my repeating them. There was at best no more than an invitation by the corporation to tenants to apply to be allowed to purchase freeholds. I am not, however, with Geoffrey Lane L.J. in treating Mr. Gibson's letter of March 5th 1971 (regarding non-repair of his tarmac paths) as a counter-offer which had the effect of destroying an offer to sell—if the corporation had made one. On the contrary, I read it as merely exploratory of the possibility of a reduction in price in the eventuality indicated. In other words, this case is like *Stevenson* v. *McLean* (1880) 5 Q.B.D. 346 and unlike *Hyde* v. *Wrench* (1840) 3 Beav. 334. But that point is of no practical importance in this appeal, for, even had there been an offer, I hold that Mr. Francis, Q.C., was right in submitting that there followed no acceptance, but nothing more than an application to buy at an unstated

price, coupled with an application for a loan.

The offer and acceptance approach obviously presenting certain difficulties, the majority held in the Court of Appeal that it was not the only one, and it is undoubted that, as Cheshire and Fifoot observed (Law of Contract, 9th Edition, 26) "... there are cases where the courts will certainly hold

7

" that there is a contract even though it is difficult or impossible to " analyse the transaction in terms of offer and acceptance: see e.g. *Clarke* " v. *Earl Dunraven* [1897] A.C.59". The Master of the Rolls said (at 523 H) that in such cases—

> " You should look at the correspondence as a whole and at the " conduct of the parties and see therefrom whether the parties have " come to an agreement on everything that was material. If by their " correspondence and their conduct you can see an agreement on all " material terms—which was intended thenceforward to be binding— " then there is a binding contract in law even though all the formalities " have not been gone through: see *Brogden* v. *Metropolitan Railway* " *Co.* (1877) 2 App. Cas. 666."

On that alternative basis, Lord Denning concluded that the parties had in truth contractually bound themselves. His first ground for so concluding was the nature of the correspondence between the parties, and I have already indicated why, for my part, I hold that of itself this disclosed the making of no contract. His second ground was that, in the belief that a contract to sell would emerge, the plaintiff did much work in repairing and improving his house and premises. But no evidence was called as to when such work had been done, and it appears from the correspondence that, although as far back as June 1970 Mr. Gibson had enquired whether he might proceed to improve the property, "... to the mutual benefit of the City and " myself until such time as my case comes up for consideration ", the corporation's reply in the following October gave no encouragement to the tenant to execute any improvements, and concluded, " If at any time you " decide to withdraw your application I should be obliged if you would " let me know." It is therefore impossible to conclude that improvements were executed on the basis that the corporation had already committed themselves to sell. Nor, with respect to the Master of the Rolls, can it be material that, entirely unknown to Mr. Gibson, the corporation at one stage took 174 Charlestown Road off the list of houses being maintained by them and put it on the list of " pending sales ", for that action had been taken in February 1971 in relation to all cases where the Direct Works Department had been notified that sales were " proceeding ". And it has to be observed that this alteration in the list was effected a month earlier than the time when, according to the plaintiff's pleaded case, he accepted the corporation's " offer " to sell. And, finally, the Town Clerk's letter to Councillor Goldstone already referred to, cannot in my judgment have relevance to the matter of *consensus ad idem.* I have already sought to show that, read as a whole its wording is equivocal; and, even were it clear, the proper question is not whether the Town Clerk considered that a contract had been concluded but whether this was so in fact and in law.

My Lords, there are further difficulties in Mr. Gibson's way. It is common ground that, had the corporation not altered its policy, the parties would in the ordinary way have entered into a standard " Agreement for " Sale of a Council House ", such as that concluded in *Storer* v. *Manchester City Council* [1974] 1 W.L.R. 1403. That agreement contained a provision that:

" Deeds of Conveyance or Transfer and Mortgage to be in the
" Corporation's standard forms including conditions against use
" except as a private dwelling-house and against advertising and a
" restriction not to sell or lease the property for five years."

But in the instant case no such agreement was ever prepared or referred to, and it is not suggested that Mr. Gibson ever had knowledge of any special conditions, and still less that he assented to them. And as these special conditions are not such as may be implied in an open contract for the sale of land, their introduction would create—from his point of view—the difficulty of non-compliance with Section 40 of the Law of Property Act 1925 and therefore unenforceability. I am accordingly in respectful disagreement with the Master of the Rolls, who concluded (at 525 D) that—
"... such a clause is to be imported into the correspondence: or
" alternatively, when granting specific performance, the court in its

" discretion should include such a clause. The order should be for
" specific performance of an agreement for the sale of a council house
" containing the clauses in the form in general use in Manchester. It is
" a contract for sale on the terms of the usual agreement for selling a
" council house."

In the result, the alternative approach adopted in the Court of Appeal did not in my judgment avail the plaintiff.

My Lords, although this appeal could, as I have indicated, have been disposed of with considerable brevity, I have dealt with it at some length. This I have thought it right to do for three reasons. First, out of respect for the Court of Appeal, from whose majority judgment I am differing. Second, because this is indeed a hard case for Mr. Gibson, who had long wanted to buy his house and had every reason to think he would shortly be doing so on distinctly advantageous terms until the corporation's bomb-shell announcement. And, thirdly, because there are many tenants in a like situation and it is right that they should be fully informed why this appeal is being allowed. Sympathetic though one must be to Mr. Gibson, for the reasons I have indicated I am forced to the conclusion that this House should uphold the dissenting judgment of Geoffrey Lane L.J. and allow the appeal.

Lord Fraser of Tullybelton

My Lords,

I have had the advantage of reading in draft the speeches prepared by my noble and learned friends Lord Diplock and Lord Russell of Killowen. I agree with both of them and, for the reasons stated by them, I would allow this appeal.

Lord Russell of Killowen

My Lords,

The allegation of the respondent of a concluded contract for sale to him of his council house was quite simply based. He alleged an offer by the appellant to sell contained in the letter dated 10 February 1971 written by the City Treasurer to him: he alleged acceptance by him of that offer to him by a combination of the application form and his letter dated 18 March 1971. Thus he said was a contract for sale constituted, of which he claimed specific performance: a plain case of a contract constituted by offer to sell capable of acceptance as such. I do not see the relevance to the case of

general references to consensus in the judgments below. There was no oral evidence.

My Lords, I cannot bring myself to accept that a letter which says that the possible vendor " May be prepared to sell the house to you " can be regarded as an offer to sell capable of acceptance so as to constitute a contract. The language simply does not permit such a construction. Nor can the statement that the letter should not be regarded as a firm offer of a mortgage operate to turn into a firm offer to sell that which quite plainly it was not.

On that short ground I would allow the appeal and set aside the orders of the Court of Appeal and the county court judge, save as to costs having regard to the terms upon which leave to appeal was given by the Court of Appeal. For the same reasons there should be no order for costs in this House.

Lord Keith of Kinkel

My Lords,

I have had the advantage of reading in draft the speech of my noble and learned friend Lord Diplock. I agree entirely with his reasoning and conclusions, and accordingly I too would allow the appeal.

311373 Dd 0353246 140 3/79

BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII
URL: *http://www.bailii.org/uk/cases/UKHL/1979/6.html*