[1974] 3 All ER 824

Storer v Manchester City Council

LAND; Sale of Land

COURT OF APPEAL, CIVIL DIVISION
LORD DENNING MR, STEPHENSON AND LAWTON LJJ
5, 6 JUNE 1974

Sale of land – Contract – Formation – Exchange of contracts – Necessity for exchange – Concluded contract before exchange – Intention of parties – Offer by council by letter to sell council house to sitting tenant – Form of agreement for sale enclosed with letter – Agreement devised with object of dispensing with legal formalities – Agreement signed by tenant and returned to council – Date when tenancy ceased and mortgage repayments began left blank on agreement – Contract concluded by offer and acceptance – Contract binding on council though not signed by them and contracts not exchanged – Letter containing offer constituting sufficient note or memorandum of contract.

In 1970 the defendant city council, which was then controlled by the Conservative Party, adopted the policy of selling council houses to sitting tenants. The council instructed the town clerk to devise a simple form of agreement enabling sales to take effect at the earliest possible date with the object of dispensing with legal formalities. The plaintiff applied to buy the council house which he was renting, with a mortgage loan from the council. The application was approved by the city treasurer, and the town clerk, in a letter dated 9 March 1971, wrote to the plaintiff: 'I understand you wish to purchase your Council house and enclose the Agreement for Sale. If you will sign the Agreement and return it to me I will send you the Agreement signed on behalf of the [council] in exchange.' The letter went on to invite the plaintiff to choose a solicitor from a list to advise him on the purchase. Enclosed with the letter was a form headed 'Agreement for Sale' on which the council had filled in the plaintiff's name, the address of his house, the purchase price, the amount of the mortgage and of the monthly repayments; but the space on the agreement for the date on which the plaintiff's tenancy ceased and mortgage repayments commenced had been left blank. The agreement contained a warning that as from that date the property was at the plaintiff's risk. The plaintiff filled in the name of his solicitors and, on 20 March, he signed the agreement and returned it to the council. Before the town clerk had signed the agreement on behalf of the council and sent the council's part of the agreement to the plaintiff, there was an election and the Labour Party gained control of the council. Under Labour control the council resolved to discontinue selling council houses. The council took the view that, as contracts had not been formally exchanged, they were not bound to proceed with the sale to the plaintiff, and they wrote and informed him that they would not proceed with the sale. The plaintiff brought an

action alleging that there was a binding contract for the sale of the house and asking for specific performance of the contract.

Held – A binding contract for the sale of the house had been concluded by offer and acceptance when the plaintiff accepted the offer to sell contained in the letter of 9 March by signing the agreement for sale and returning it to the council, notwithstanding that contracts had not been exchanged and the contract had not been signed on behalf of the council. It was the council's intention (having regard to their instructions to devise a simple form of agreement and to the terms of the actual agreement sent to the plaintiff and the accompanying letter of 9 March) that the council would become contractually bound when the plaintiff had signed the agreement and returned it. The letter of 9 March signed by the town clerk constituted a sufficient note or memorandum of the agreement. The fact that the date when the tenancy ceased and the plaintiff became a purchaser had been left **824** blank did not prevent there being a concluded contract, for filling in that date was a mere matter of administration. Accordingly, the plaintiff was entitled to specific performance of the contract of sale (see p 827 *e* to p 828 *a d e h* and *j*, p 829 *e* and p 830 *a* and *b*, post).

Smith v Mansi [1962] 3 All ER 857 applied.

Eccles v Bryant [1947] 2 All ER 865 distinguished.

Notes

For the formation of contracts for the sale of land, see 34 *Halsbury's Laws* (3rd Edn) 205, para 342, and for cases on the subject, see 40 *Digest* (Repl) 11–14, *1–38*.

Cases referred to in judgments

Bigg v Boyd Gibbins Ltd [1971] 2 All ER 183, [1971] 1 WLR 913, CA, 12 *Digest* (Reissue) 64, *334*.

Eccles v Bryant [1947] 2 All ER 865, [1948] Ch 93, [1948] LJR 418, CA, 12 *Digest* (Reissue) 78, *416*.

Smith v Mansi [1962] 3 All ER 857, [1963] 1 WLR 26, CA, *Digest* (Cont Vol A) 1036, *44a*.

Appeal

This was an appeal by the defendants, Manchester City Council, against the order of his Honour Judge Steel, sitting at Manchester County Court, made on 13 July 1972, whereby it was ordered that there should be specific performance of an agreement (comprised in a document and a letter dated 9 March 1971) for the sale of a council house to the plaintiff, Desmond Harry Storer, and that the plaintiff's claim for damages should be adjourned sine die. The grounds of the appeal were that the judge was wrong in law in holding that the document and the letter constituted an offer by the defendants to the plaintiff capable of being accepted by the plaintiff, and that no contract came into existence between the plaintiff and the defendants. The facts are set out in the judgment of Lord Denning MR.

H E Francis QC and *A W Simpson* for the defendants.
Bruce Caulfield for the plaintiff.

6 June 1974. The following judgments were delivered.

LORD DENNING MR. In May 1971 there was a change in the control of the defendants, Manchester Corporation. Previously the Conservatives had been in control. Afterwards it was Labour. The change had legal repercussions. During the Conservative administration the policy of the corporation was to sell their council houses to tenants on favourable terms. They were willing to sell to any sitting tenant who had been in occupation more than a year. The sale price was to be the market value of the house if sold with vacant possession, but with a reduction for the tenant according to the length of time he had been in the premises as a tenant. He might get a reduction of from ten to 20 per cent on the price. Furthermore, the corporation were ready to give him a 100 per cent mortgage.

When the Labour administration took over in May 1971 that policy was reversed. The Labour-controlled administration decided that they would not sell council houses to tenants. But they realised that they could not go back on existing contracts. So they gave instructions to their officers that they were to fulfil existing contracts but not to make any fresh contracts. Now in many cases tenants had filled in various forms applying to buy their houses, but the contracts of sale had not been exchanged. The tenants claim that firm contracts had been made even though the contracts had not been exchanged. But the town clerk thought that the contracts were only binding when contracts of sale had been exchanged. So he wrote this letter to the tenants:

> 'At their meeting on the 7th July, 1971 the Council decided to discontinue the Scheme for the sale of Council houses, and to proceed only with those cases **825** where Contracts have been exchanged. As Contracts have not been formally exchanged in this case, I am unable to proceed with the proposed sale.'

Now the plaintiff, Mr Storer, one of the tenants, has brought this action to test that ruling.

The facts are these. Mr Storer was a tenant of a council house, 167 Moorcroft Road, Wythenshawe. On 15 November 1970 he filled in a request for information asking for the price and details of any mortgage. On 14 January 1971 the corporation wrote saying that they 'may be prepared to sell the house to you at the purchase price of £2,750', less a discount of 17 per cent (as he had had a council house for several years), making a net sum of £2,282. If he were granted a mortgage, it would be for £2,279 repayable over 25 years. They said in their letter: 'This letter should not be regarded as a firm offer of a mortgage.' Later on, however, they did make a firm offer, as I will show.

On 11 February 1971 Mr Storer filled in an application form to buy a council house. He said: 'I … now wish to purchase my Council house'. In it he asked for a loan on mortgage. On 9 March 1971 the city treasurer wrote to him:

> 'The Corporation will lend £2,279 repayable over 25 years with interest at 8 $^{1}/_{2}$% … the total monthly instalment payable will be … £14·98.'

On the same day, 9 March 1971, the town clerk himself wrote a letter which is of crucial importance in the case:

'Dear Sir,

Sale of Council Houses.

'I understand you wish to purchase your Council house and enclose the Agreement for Sale. If you will sign the Agreement and return it to me I will send you the Agreement signed on behalf of the Corporation in exchange. From the enclosed list of Solicitors, who are prepared to act for you and advise you on the purchase, please let me know the name of the firm that you select, as soon as possible.'

Enclosed with that letter there was a form headed: 'City of Manchester. Agreement for Sale of a Council House'. The corporation had filled in various details, such as the name of the purchaser, the address of the property, the price, the mortgage, amount, and the monthly repayments. There was this item left blank: '7. Date when your tenancy ceases and mortgage repayments will commence', followed by these clauses:

'8. *Freehold* to be conveyed or transferred by the Corporation.

'9. There will be no abstract or investigation of title …

'10. *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.

'11. *Warning.* As from the date mentioned in 7 above the property is at your risk. If you are taking a mortgage from the Corporation it will be insured for you but the cost recharged to you. *If you are not taking a Mortgage insure it at once.* Your responsibility for repairs and for payment of rates also start from that day. My solicitors are … '

Mr Storer filled in that form. He filled in the name of solicitors, Messrs Hargreaves & Co. He signed the form himself and returned it on 20 March 1971. So he had done everything which he had to do to bind himself to the purchase of the property. The only thing left blank was the date when the tenancy was to cease.

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The sale would have gone through, no doubt, within a short time but for the corporation and the town clerk's office being so pressed. The housing manager passed a note to the town clerk suggesting that the sale be completed with effect from Monday 22 March or Monday 12 April. But nothing more was done before the election which brought a change of control in the corporation. The town clerk's staff were, apparently, overworked and did not deal with the matter in time. Then in May 1971 there was the election. In July 1971 the corporation, under the new control, resolved that there were to be no more sales to council tenants; but the corporation recognised that they had to go on with the cases where the corporation were legally bound.

Thereupon the town clerk wrote to Mr Storer and other tenants in like situation a letter saying: 'As Contracts have not been formally exchanged in this case, I am unable to proceed with the proposed sale.' Mr Storer took the advice of Messrs Hargreaves & Co. Some 120 other tenants also took advice. They were advised that there was a binding contract, even though formal contracts had not been exchanged. So this case of Mr Storer has come as a test case for Manchester Corporation. It is to decide whether or not 'exchange' is necessary in order to form a concluded contract.

When parties arrange for a sale 'subject to contract', that means, as a rule, that there is no binding contract until the contracts of sale have been formally exchanged. That is clear from *Eccles v Bryant*. But where there is no arrangement 'subject to contract', the only question is whether a contract has been concluded: see *Bigg v Boyd Gibbins Ltd*. One example is where

one solicitor is acting for both sides, such as in *Smith v Mansi*. It is 'artificial nonsense', Danckwerts LJ said ([1962] 3 All ER at 861, [1963] 1 WLR at 33), to have an exchange of contracts where there is only one solicitor acting. The present case is, I think, another example. The corporation put forward to the tenant a simple form of agreement. The very object was to dispense with legal formalities. One of the formalities—exchange of contracts—was quite unnecessary. The contract was concluded by offer and acceptance. The offer was contained in the letter of 9 March in which the town clerk said:

> 'I … enclose the Agreement for Sale. If you will sign the Agreement and return it to me I will send the Agreement signed on behalf of the Corporation in exchange.'

The acceptance was made when the tenant did sign it, as he did, and return it, as he did on 20 March. It was then that a contract was concluded. The town clerk was then bound to send back the agreement signed on behalf of the corporation. The agreement was concluded on Mr Storer's acceptance. It was not dependent on the subsequent exchange.

I appreciate that there was one space in the form which was left blank. It was cl 7 for 'Date when your tenancy ceases'. That blank did not mean there was no concluded contract. It was left blank simply for administrative convenience. A similar point arose in *Smith v Mansi* where Russell LJ said ([1962] 3 All ER at 865, [1963] 1 WLR at 37):

> 'There was nothing left for the parties themselves to do but agree the date. Its insertion in the already signed document—in the hands of the common solicitor—could surely be nothing but an administrative tidying up to be done, if at all, at the solicitor's convenience.'

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So here the filling in of the date was just a matter of administrative tidying up, to be filled in by the town clerk with a suitable date for the change-over—the date on which the man ceased to be a tenant and became a purchaser.

A further point was taken. It was said that the town clerk had not actually signed the form of agreement. No matter. He had signed a letter of 9 March 1971 and that was sufficient. It was a note or memorandum sufficient to satisfy the Law of Property Act 1925, s 40.

The final point was this. Counsel for the corporation said that the town clerk did not intend to be bound by the letter of 9 March 1971. He intended that the corporation should not be bound except on exchange. There is nothing in this point. In contracts you do not look into the actual intent in a man's mind. You look at what he said and did. A contract is formed when there is, to all outward appearances, a contract. A man cannot get out of a contract by saying: 'I did not intend to contract', if by his words he has done so. His intention is to be found only in the outward expression which his letters convey. If they show a concluded contract that is enough.

It seems to me that the judge was quite right in holding that there was a binding contract in this case, even though there was no exchange. It is a proper case for specific performance; and I would dismiss the appeal.

STEPHENSON LJ. I am of opinion that the judge was right in holding (1) that *Eccles v Bryant* did not lay down any rule of law and (2) that there was here a concluded contract for sale of the house let by the defendants to the plaintiff, notwithstanding that the town clerk had not completed the defendant's part of the contract nor sent it to the plaintiff in exchange for his part of the contract. Support for both these conclusions is to be found in the decision of this court in *Smith v Mansi*.

The town clerk's letter of 9 March 1971 contemplated that contracts would be signed and exchanged, and that a solicitor would advise the plaintiff on the purchase; but if the town clerk contemplated that a binding contract of sale would not come into existence before the exchange took place, he was forgetting his instructions to draw if possible (I quote from the report of the special sub-committee appointed by the Housing and Works Committee on 20 July 1970)—

> 'a simple form of agreement which could be entered into to enable the sale to take effect at the earliest possible date and without waiting for the completion of the full legal formalities.'

He was doing less than justice to his success in carrying out those instructions in the form of agreement which accompanied his letter. He had succeeded (I quote his own words on 3 August 1970) in devising 'a short agreement which would enable the purchaser to cease paying rent and to begin to pay instalments by way of mortgage repayments as soon as his application is approved.'

The plaintiff's application of 11 February 1971 was approved by the city treasurer's letter of 9 March 1971. The agreement for sale of the same date plainly expressed the intention of the defendants (and the plaintiff, as his evidence appears to have confirmed) to become bound by contract when the plaintiff signed his part and returned it to the defendants without waiting for the town clerk to sign his part or fill in the missing date in accordance with the housing manager's recommendations, or for the formality on the defendants' part of the contract being completed and sent to the plaintiff in exchange. The plaintiff's claim for specific performance was therefore rightly decided in his favour, and *Eccles v Bryant* was rightly distinguished.

I agree, for the reasons given by Lord Denning MR, that the appeal must be dismissed.

LAWTON LJ. I also agree. When counsel opened the defendants' case he told us that the issue was this: when did the parties intend to be bound contractually, the parties being the plaintiff, a council tenant, and the defendants, Manchester City Council? The town clerk was not selling the house: the defendants were. In the summer of 1970 the defendants, when adopting a policy for the sale of council houses, were mindful of the problems which would face those of their tenants who were not familiar with the buying and selling of property. It was clearly the intention of the defendants that as simple a procedure for the sale of the council houses as it was possible to devise should be adopted. It is manifest from the evidence (all documentary, and most of it consisting of minutes of the council and of their subcommittees) that they wanted to avoid the usual formalities which lead up to and follow the making of a contract for the sale of real property. That evidence, in my judgment, is enough to rebut the inferences which are normally to be drawn as to the intention of the parties when there are negotiations for a contract of sale carried out between solicitors—the inferences which should be drawn in the kind of situation with which *Eccles v Bryant* was concerned.

That being the desire of the defendants, the town clerk was asked to report. He did so in a memorandum dated 3 August 1970. In it he set out what he envisaged by way of a simple procedure; but he went on, and properly so, to invite the defendants' attention to various problems which might arise if the ordinary procedure for an exchange of contracts and the like was not adopted. It is clear from that memorandum that he envisaged that a document would come into existence which, when signed by the plaintiff, would bind both parties. His report was accepted and, from the early autumn of 1970 onwards, the procedure which had been recommended by the town clerk was used; and it was that procedure which was in use

when the plaintiff became interested in the possibility of buying his council house.

It was a procedure set out in a number of pro forma documents; and, for the reasons which have already been given, it is clear in my judgment, that it always was the intention of the defendants that, when the tenant finally signed the document, then the council house was his.

It seems to me that the letter of 9 March 1971, which was relied on by the defendants as the basis of their submission that they were not bound until there had been an exchange, is inconsistent with their own case. The language of that letter is not the language which one would expect if it had been the intention of the parties that there should be no contract until there had been an exchange. For example, the opening sentence is: 'I understand you wish to purchase your Council house and enclose the Agreement for Sale'—not the draft agreement for sale, but the agreement for sale. The next paragraph is: 'If you will sign the Agreement and return it to me I will [and I stress the word "will"] send you the Agreement signed on behalf of the [defendants] in exchange.' In other words, they were envisaging that, once the tenant had signed, then he would be entitled to a counterpart. What was being done was very much like what is done when somebody buys a washing machine on hire-purchase. The purchaser signs the hire-purchase agreement and he gets a copy of what he has signed. That was what the defendants intended should happen on the sale of council houses.

If there is any doubt about this matter, in my view it is dissipated by the way the defendants behaved after the plaintiff had signed and sent off his part of the agreement, because in a memorandum of the defendants dated 12 March 1971 the housing manager wrote to the town clerk as follows: 'I refer to your memorandum … and recommend that the sale of the above-mentioned property be completed with effect from' and two dates were set out. The last sentence in the document is 'Please inform me as early as possible of the completion date … ' He clearly was assuming that the matter had been contractually dealt with the moment the agreement for sale was signed by the tenant.

It was also submitted by counsel for the defendants that the omission of the date from the agreement for sale was a material omission. I do not agree. The moment that agreement was signed it became an open contract. As an open contract the date of completion would be a matter which would have to be negotiated afterwards; and, if there was no agreement, within such time as the court found to be reasonable. Clause 11 of the agreement is not a contractual clause at all: it was merely a warning word as to what in law are the consequences of signing an agreement for the sale of real property.

Appeal dismissed. Leave to appeal to House of Lords refused.

Solicitors: *Sharpe, Pritchard & Co* agents for *Leslie Boardman*, Manchester (for the defendants); *Hargreaves & Co*, Manchester (for the plaintiff).

Wendy Shockett Barrister.

[1978] 2 All ER 583

Gibson v Manchester City Council

LAND; Sale of Land

COURT OF APPEAL, CIVIL DIVISION
LORD DENNING MR, ORMROD AND GEOFFREY LANE LJJ
17 JANUARY 1978

Sale of land – Contract – Formation – Exchange of contracts – Necessity for exchange – Concluded contract before exchange – Intention of parties – Offer by council in printed form to sell council house to sitting tenant – Tenant completing and returning application to purchase but asking for reduction of purchase price on account of repairs required – Council advising that state of property taken into account in establishing purchase price – Tenant asking council to continue with sale in accordance with application – Council refusing to proceed with application following change in policy – Whether offer made by council and accepted by tenant – Whether conduct of parties and correspondence between them disclosed a contract for purchase by tenant – Whether parties ad idem – Whether contract binding on council although not reduced to formal written document.

In November 1970 the defendant city council adopted a policy of selling council houses to sitting tenants. The plaintiff who was renting a council house applied on a printed form supplied by the council for details of the price of the house and mortgage terms available from the council. The plaintiff paid a £3 administration fee and on 10 February 1971 the city treasurer wrote to the plaintiff: '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 letter then gave details of the mortgage likely to be made available to the plaintiff and went on: '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 application form was headed 'Application to buy a council house' and concluded with a statement: 'I … now wish to purchase my Council house. The above answers [ie the answers in the application form] are correct and I agree that they shall be the basis of the arrangements regarding the purchase … ' The plaintiff completed the application form except for the purchase price and returned it to the council under cover of a letter dated 5 March asking whether the council would repair a path 'or alternatively would you deduct an amount of money from the purchase price and I will undertake the repairs myself'. The council's housing manager replied on 12 March that the general condition of the property had been taken into account in fixing the purchase price. On 18 March the plaintiff wrote to the council: 'Ref your letter of 12 March … 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.' Thereafter the plaintiff's house was removed from the council's maintenance list and placed on their house

purchase list. In May 1971 following the local government elections there was a change in control of the council and on 7 July the council resolved to discontinue the scheme for the sale of council houses forthwith and to proceed only with those sales where there had been an exchange of **583** contracts. On 27 July the council wrote to the plaintiff to advise him that the council was unable to proceed further with his application to purchase. The plaintiff brought an action alleging that there was a binding contract for the sale of the house and asking for specific performance of the contract.

Held – (Geoffrey Lane LJ dissenting)—Although the transaction had not been reduced to a formal written document, it was clear from the correspondence as a whole and the conduct of the parties that they were ad idem as to the essential terms of the contract, and (per Ormrod LJ) having regard to the fact that the court was dealing with a policy decision by a local authority to sell council houses to tenants and not an alleged contract of sale between two private individuals, and construing the council's letter of 10 February 1971 in the light of the background to the transaction, the circumstances, the relationship established between the parties, and the fact that there was no outstanding contingency against which the council were refraining from committing themselves, the statement in the city treasurer's letter of 10 February 'The Corporation may be prepared to sell the house to you' meant 'The Corporation are prepared to sell the house to you' and was a firm offer which the plaintiff by his letter of 18 March requesting the council to carry on with the purchase had accepted. Since there was a concluded contract for the sale of the property and it was sufficiently evidenced in writing, the plaintiff was entitled to specific performance. The appeal would therefore be dismissed (see p 586 *h j*, p 587 *d* and *j*, p 588 *c d* and *f*, p 589 *c* and *e* to *g* and *j* to p 590 *b* and *f*, post).

Brogden v Metropolitan Railway Co (1877) 2 App Cas 666 and *Storer v Manchester City Council* [1974] 3 All ER 824 applied.

Notes

For the formation of a contract from the intention of the parties, see 9 *Halsbury's Laws* (4th Edn) para 263, and for cases on the subject, see 12 *Digest* (Reissue) 58–60, *300–313*.

For the formation of contracts for the sale of land, see 34 *Halsbury's Laws* (3rd Edn) 205, para 342, and for cases on the subject, see 40 *Digest* (Repl) 11–14, *1–38*.

Cases referred to in judgments

Brogden v Metropolitan Railway Co (1877) 2 App Cas 666, HL, 12 *Digest* (Reissue) 60, *313*.

Hyde v Wrench (1840) 3 Beav 334, 4 Jur 1106, 49 ER 132, 12 *Digest* (Reissue) 71, *360*.

Storer v Manchester City Council [1974] 3 All ER 824, [1974] 1 WLR 1403, 73 LGR 1, CA, *Digest* (Cont Vol D) 793, *26a*.

Appeal

This was an appeal by the defendants, Manchester City Council, against the order of his Honour Judge Bailey, sitting in the Manchester County Court, made on 15 December 1976, whereby it was ordered that there should be specific performance of an agreement for the sale

of a council house to the plaintiff, Robert Gibson, provided a good title were made to the property, and that all future hearing of the action be adjourned generally. The grounds of the appeal were (1) that the judge was wrong in law in holding that a letter dated 10 February 1971 from the city treasurer which was relied on by the plaintiff as constituting an offer by the defendants to the plaintiff (a) constituted any such offer and (b) satisfied the requirements of the Law of Property Act 1925, s 40; (2) that accordingly (a) the defendants never made any offer to the plaintiff, (b) the plaintiff never accepted any such offer, (c) no contract came into existence between the plaintiff and the defendants, and (d) the requirements of s 40 were not satisfied in relation to any such contract. The facts are set out in the judgment of Lord Denning MR.

H E Francis QC and *A W Simpson* for the council.
George Carman QC and *Bruce Caulfield* for the plaintiff.

17 January 1978. The following judgments were delivered.

LORD DENNING MR. This is a test case affecting some 350 tenants of council houses in the City of Manchester. The council tenant is Mr Robert Gibson. He is a senior clerk in the works department of the corporation. He has been with them for many years.

In 1968 Manchester began to sell houses to council tenants. But at that time it was very restricted. Only one-quarter of one per cent of their houses were allowed to be sold to council tenants. Mr Gibson was one of the very first who applied to buy his house. But there was a long list of applicants, and his name did not come up at that time. In June 1970 the restriction was lifted. Thenceforward the corporation was enabled to sell its houses to council tenants without any restriction at all.

Mr Gibson himself followed all the prescribed procedures. He made his application in good time and in good order. He was entitled to beneficial terms because of his long tenure. He was able to buy his house at 20 per cent below the market price, and also to have a mortgage from the corporation on favourable terms.

All was going well with his application until May 1971. Then, to his dismay, things went wrong for Mr Gibson. There was a change in the control of the Manchester Corporation. Previously the Conservatives had been in control. Afterwards Labour gained control. Under the Conservatives the policy of the corporation had been to sell council houses to tenants, but when the Labour administration took over in May 1971 that policy was reversed. The Labour controlled administration decided not to sell council houses to tenants. They realised however they could not go back on existing contracts. So they gave instructions to their officers that they were to fulfil existing contracts but not to make any fresh contracts. The new Labour controlled administration said to the town clerk: 'You must fulfil those contracts by which we are legally bound, but not those by which we are not legally bound.'

We have had cases arising out of this new policy. In 1974 there was *Storer v Manchester City Council*. There were about 120 tenants like Mr Storer. The corporation argued: 'The contracts have not formally been exchanged. So we are not legally bound to sell council houses to Mr Storer and the other tenants.' This court held that, although there was not an actual exchange of contracts, nevertheless there was an agreement with a sufficient note or

memorandum to satisfy the Statute of Frauds. So the corporation were liable to sell the houses to those 120 tenants.

Now we have Mr Gibson and 350 tenants like him. The arrangements have not gone nearly as far as in Mr Storer's case. The question is whether there was a concluded contract. The county court judge held that there was and he ordered it to be specifically performed. The corporation appeal to this court.

So I must go through the material letters, to see whether there was a concluded contract between the parties. In November 1970 the corporation sent to the tenants a brochure. It gave details of the scheme which they were inaugurating for the purchase by the tenants of those houses, giving favourable terms as to price and as to mortgages. Mr Gibson immediately replied. He paid £3 as the administration fee. He sent forward his application on the printed form:

> 'Please inform me of the price of buying my Council house. I am interested in obtaining a mortgage from the Corporation to buy the house. Please send me the details … '

He gave his name, and said that he had been a tenant of this house for 12 years or more.

On 10 February 1971 the corporation sent to him the first of what I may call the contract documents. The city treasurer wrote saying:

> '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).'

(That 20 per cent was a discount allowed to Mr Gibson because of his tenancy.) The letter continued:

> "The details which you requested about a Corporation mortgage are as follows:

'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

> [After some further details, the letter said:] This letter should not be regarded as a firm offer of a mortgage. If you would like to make a formal application to buy your Council house, please complete the enclosed application form and return it to me as soon as possible.'

That is just what Mr Gibson did. He filled in his application form and returned the form. But he left the purchase price blank and wrote a covering letter of 5 March 1971. In it he said that there were various defects in the house, particularly in the tarmac path. He said that there was a lot of work to be done and he wanted either the price to be lowered or the corporation to repair the premises.

The corporation replied on 12 March 1971 in the following terms:

> 'Dear Sir, I refer to your letter concerning certain repairs to the path. Account is taken

of the general condition of the property at the time of the survey and valuation and the price is fixed accordingly, allowing for such defects as there may be. I regret I cannot authorise repairs of this nature at this stage.'

So there it was. Mr Gibson's suggestion was not accepted by the corporation. They said, in effect, that they would stand by their offer in the letter of 10 February 1971 but would not modify it. In reply, on 18 March 1971 Mr Gibson wrote this letter:

'Ref your letter of 12th March … 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.'

It seems to me clear that, by writing that letter, Mr Gibson discarded the suggestion which he had made in the covering letter. He returned to the simple application which was already in their possession, of which they had intimated their acceptance. As I view this letter of 12 March 1971, they had intimated that they would accept his application if he did not press this point about repairs.

We have had much discussion as to whether Mr Gibson's letter of 18 March 1971 was a new offer or whether it was an acceptance of the previous offer which had been made. I do not like detailed analysis on such a point. To my mind it is a mistake to think that all contracts can be analysed into the form of offer and acceptance. I know in some of the textbooks it has been the custom to do so; but, as I understand the law, there is no need to look for a strict offer and acceptance. 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. For that proposition I would refer to *Brogden v Metropolitan Railway Co*.

It seems to me that on the correspondence I have read (and, I may add, on what happened after) the parties had come to an agreement in the matter which they intended to be binding. Let me say what happened afterwards. Mr Gibson telephoned to the department and was told that his case was being dealt with. He did **586** much work on the house in the belief that all was well. The corporation took the house off the list of maintenance to tenants and put it on the list of owner-owned houses where the owners had to do the maintenance themselves. Then on Wednesday, 26 May 1971 there was an announcement in the newspapers that all transactions might be stopped. He wrote on Friday 28 May, this letter to the corporation:

'… I have already put glass doors on internally at considerable expense and have made enquiries ref replacement of certain W [window] Frames. It seems rather a high handed decision to take at this stage of the proceedings, with little or no consideration for the feelings of the unfortunate tenant.'

The housing manager replied that all applications were being held in abeyance. Mr Gibson wrote on 25 June saying:

'… when the Tory Council took control, we were contacted by phone to let us know of the change in the situation and that it was in order for us to go ahead with alterations … I realise that it was done verbally but nevertheless the message was passed and I feel sure that your officers will not deny that it was so.'

The whole story shows to my mind quite clearly that the parties were agreed and intended the agreement to be binding; and, if there had been no change in the control of the local authority, there can be no doubt whatever that this sale would have gone through.

Mr Gibson followed the matter up. He went to two local councillors who took it up with the town clerk. In a letter of 2 July the town clerk wrote to Councillor Goldstone, saying:

> ‘In the course of time Mr. Gibson’s application was dealt with by the City Estates and Valuation Officer, and also by the City Treasurer, who forwarded to him details of the purchase price, *the amount of mortgage which could be offered and the various methods for repayment. Mr. Gibson accepted this offer*, but before the papers could be passed to me for preparation of the formal Contract the local elections intervened.’

It is as plain as can be from that letter from the town clerk that he regarded everything as agreed.

On 4 August 1971 the town clerk wrote this to Councillor Silverman:

> ‘Although Mr Gibson’s application had been processed by the Housing, City Estates and Valuation Officers and City Treasurer’s Departments, formal contracts had not been prepared and exchanged prior to the suspension of the scheme for the sale of Council houses on the 14th May last. Accordingly, in view of the decision of the Council on the 7th July 1971, the sale of this property will not be proceeding. [Then there followed a note about repairs]: Following the Council decision of the 7th July referred to above, the Direct Works Department were instructed to deal with repairs to all Council houses, except those where they had been notified that sales were proceeding. This property, therefore, will now have been replaced on the maintenance list.’

That shows that the house had been taken off the maintenance list on the footing that the sale was proceeding; and it was put on it again after the Labour administration cancelled the sale.

It seems to me as plain as can be that there was a complete agreement of all the essential terms of this contract. As the county court judge said: ‘What more was the plaintiff to do? What more were the defendants to do? In my view the contract was complete’; and so it was.

It has been argued before us: ‘It was not complete in regard to the terms. If all the documents had been completed as expected, there would have been a simple **587** short agreement which included a clause[a] saying ”*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“.’

[a] Cf *Storer v Manchester City Council* [1974] 3 All ER 824 at 826, [1974] 1 WLR 1403 at 1406

It seems to me 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. It seems to me, as it did to the judge, that Mr Gibson ought not to have his expectations ruined by reason of the change of policy by the local government administration. To my mind there was a concluded contract, sufficiently evidenced by writing, which he is entitled to have specifically performed.

I would agree with the county court judge and would dismiss the appeal.

ORMROD LJ. I agree with the judgment of Lord Denning MR and would only add a little on my own behalf.

In my judgment there are two ways in which this case can be approached. The first is to consider whether the parties to the alleged contract had reached a consensus for the sale of 174 Charlestown Road by the council to the plaintiff. To answer that question, it seems to me that one must look at the whole of the dealings between these parties. The plaintiff had been

anxious to buy his council house for a long time. The council had been conducting a very limited sale of council houses for some years, limited by the government restrictions. In June 1970 the restrictions were removed, and the documents which are in the bundle before us show that the council reacted rapidly to that change of policy which freed them not only to sell council houses without restriction in number, but also enabled them to sell freeholds. They clearly went ahead with the intention of selling council houses to council tenants, and they published the brochure to which Lord Denning MR has referred already.

It is necessary in considering this case, in my judgment, to remember that this is not a sale or an alleged contract of sale between two private individuals or between an individual and some form of industrial or commercial concern. We are dealing here with a policy decision by a council (a local authority) to sell council houses to tenants.

The reason I say that is this: the council knew the tenant; they were proposing to sell at an extremely attractive price; they were prepared to offer very reasonable mortgage terms; and, of course, the reason for that was that the individual tenant concerned, instead of continuing to pay his rent to the council, if he bought the house and took on a mortgage, would continue to pay his mortgage instalments to the council, so that two parties would continue in a fairly close relationship not so very different in day to day practical terms from what it was before the sale except that the responsibility for repairs and so on would be shifted to the tenant. It is against that background that we have to consider this matter.

In November the brochure was published which was an open invitation to tenants to offer to buy their houses. It gave full details as to how to set about it. The plaintiff reacted immediately to that, filled in the form which was contained in the brochure, and applied to the council, asking the price:

> 'Please inform me of the price of buying my Council house. I am interested in obtaining a mortgage from the Corporation to buy the house. Please send me details about the monthly repayments based on the following method,'

and he picked the flat rate repayment method and filled in a few more details which **588** the council wanted to make sure that he qualified as a purchaser. Then he was asked to pay a £3 administration fee, which he paid, and he received in return the letter of 10 February 1971, which informed him that—

> 'The Corporation may be prepared to sell the house to you at the purchase price of £2,725 less 20% = £2,180 (freehold).'

The letter then went on to say that the council might grant a mortgage of £2,177 repayable over 20 years. I will come back to that document later.

The plaintiff, after querying the price because of what he said about his drive or pathway, sent the form in, giving his name, and applying for a loan on the terms which had been indicated already, and the matter then proceeded through the normal channels. The price was finally agreed in the letter of 18 March 1971 from the plaintiff, who had by this time received a note from the council to say that the valuation they had put on the house took account of the fact that certain repairs were required. So, having been assured of that, he worte the letter which, to my mind, is the acceptance of the offer. He said:

> '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.'

Thereafter the whole matter was placed in the council's pipeline, and it proceeded slowly.

The only difference, as I see it, between this case and *Storer's* case is that the plaintiff's file was a good way further back along the pipeline than Mr Storer's. There is absolutely nothing to indicate that, if the plaintiff's file had reached the point in the pipeline that Mr Storer's had on the date that Mr Storer's did, he would not have received exactly the same documents as

Mr Storer received and that the contract would not have proceeded. It seems to me clear that the parties were ad idem on the proposition that the council would sell and the plaintiff would buy this house at the price of £2,180. It is equally clear in fact that both sides assumed that he would raise this money by means of a mortgage supplied by the council on the terms of a flat rate mortgage. There is nothing whatever to indicate that there was any doubt in the minds of the council as to whether he was a suitable person to be given a mortgage. In fact, quite obviously they knew perfectly well that he was a suitable person because he was an employee of theirs, they knew all about him, and it was inconceivable that they would have refrained from granting him a mortgage on the terms they had indicated. For those reasons, I respectfully agree with Lord Denning MR that the right conclusion to draw from those facts is that these parties were ad idem on the question of sale.

The other way of looking at it is to analyse the documents more precisely. If one does that, then one must look primarily at the document of 10 February 1971 that is the council's letter. That letter, looked at strictly, deals with two propositions, connected but separate. The first is the question of the sale of the house and the price. The second is the question of mortgage, the amount of the mortgage and the amount of the monthly repayments. Those are dealt with in separate paragraphs.

Dealing with the question of sale, the first paragraph is the crucial one. That reads:

> '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).'

Had that paragraph read: 'The Corporation *are* prepared to sell the house to you at the purchase price … ', it would be difficult, it seems to me, to contend that that was not a firm offer which was capable of acceptance by the plaintiff; and, if accepted by the plaintiff, would constitute a contract. The question is: does the use of the phrase 'may be' instead of 'are' in that paragraph make all the difference between a contract and no contract? That depends, it seems to me, on whether or not there was any outstanding contingency against which the council were refraining from committing themselves. As far as I can see, there was, so far as the sale of the property was concerned, no outstanding contingency at that time at all. That being so, the use of the phrase 'may be' cannot make any difference, and I would be prepared to construe that paragraph as meaning: 'The Corporation *are* prepared to sell', construing it in the light of the background, the circumstances and the relationship which had been established between the parties.

That conclusion, I think, is suppoted by reference to the second part of the letter. When one comes to look at that part of the letter dealing with mortgage arrangements, it reads: 'The details you requested about a Corporation mortgage are as follows:—Maximum mortgage the Corporation may grant: £2,177 repayable over 20 years.' There again that could be of course a statement that the council cannot advance more, that they are not allowed to advance more, than £2,177, or it may mean that the council may probably grant a mortgage in that sum; and, when one looks at the penultimate paragraph of the letter, one finds it ending in what seems to me to be a highly significant sentence: 'This letter should not be regarded as a firm offer of a mortgage.' There is an old Latin principle which covers that situation very clearly. In a letter like that it seems to me that a clear distinction must be drawn between the use of the word 'may' in relation to the sale and 'may' in relation to the granting of a mortgage, in the light of that later sentence. Of course, there was a reason for that because the corporation, although they must have known about the plaintiff's general situation, had not got all the details. If the plaintiff had been an ordinary council tenant and not an employee, they would have needed some information about his means before deciding to grant the mortgage. That further information they received in his form supplied by the council which he filled in and sent. So counsel for the defendants, I think, is right in arguing that there was no binding contract on

the part of the council to grant a mortgage, but I think he is wrong in his submission that there was no binding contract of sale.

Whether the plaintiff will be in a position to proceed with the purchase if he does not get a council mortgage is another matter, but it is a matter for him to decide. What we have to decide is whether there was a contract to sell the property; and, for the reasons which I have given, in my judgment there was, and I think the county court judge was right, and I too would dismiss the appeal.

GEOFFREY LANE LJ. Lord Cairns LC in *Brogden v Metropolitan Railway Co* ((1877) 2 App Cas 666 at 672), to which reference has already been made, says this:

> 'My Lords, there are no cases upon which difference of opinion may more readily be entertained, or which are always more embarrassing to dispose of, than the cases where the Court has to decide whether or not, having regard to letters and documents which have not assumed the complete and formal shape of executed and solemn agreements, a contract has really been constituted between the parties.'

Unhappily I find myself in embarrassing disagreement with the judgments which have been delivered in this case by Lord Denning MR and Ormrod LJ.

Nobody has anything but sympathy for the plaintiff and the 349-odd other tenants who have found themselves caught in the cross-fire between the Tory Party faction and the Labour Party faction on the Manchester City Council. No doubt all those ladies and gentlemen have for many years been expecting, and expecting confidently,  that in due course they would be able to buy their council houses, of which they are tenants, at advantageous terms from the council. No doubt, on any view, the plaintiff at least got very close indeed to succeeding in that ambition. But what has to be decided as an unadorned question, not influenced by sympathy or politics, is whether it can truly be said that there was an offer by the council to sell and an unconditional acceptance by the plaintiff to buy, enabling a formal contract to be drawn without further reference to the parties and containing all the material terms which would eventually have to find their way into that contract.

Counsel for the plaintiff suggests that it is a mistake to think that all contracts have to be analysed into offer on the one hand and acceptance on the other. The true question, he suggests, is this: have the parties come to an agreement on everything which is material between them? In my judgment, on either of those two views, the council are entitled to succeed.

It is said by the plaintiff that agreement is to be found in the correspondence which passed between the parties over the months and, in particular, the letters and so on which went to and fro in February and March 1971. Indeed, there is no need to go back further in the history of these events than November 1970 when the housing manager sent a letter to the plaintiff, amongst others headed 'Sale of council houses' and containing this paragraph:

> 'You will note that under the new scheme you are required to forward an administration fee of £3 together with your request to purchase, but I must emphasise that this fee is treated as a payment towards the cost of the dwelling when the purchase is completed. The fee is not returnable if you decide not to proceed with the purchase. [Then the next paragraph but one:] I am, therefore, enclosing a copy of the brochure which has been prepared giving full details of the new scheme and I should be obliged if you would complete the form which comprises the last page and return it to me together with the £3 fee.'

We have been shown a copy of the brochure, and it is sufficient for the purpose of this case to say that in that brochure there is no mention of any special terms which might possibly find their way into the eventual contract between the parties.

The form was duly completed and sent back by the plaintiff, and received by the council on 2 December 1970. The form, addressed to the housing manager, said:

> 'Dear Sir, Please inform me of the price of buying my Council house. I am interested in obtaining a mortgage from the Corporation to buy the house. Please send me details about the monthly repayments.'

and so on. Then there is the document already referred to by Lord Denning MR and Ormrod LJ which is said by the plaintiff to be the offer by the council, namely, the first of the potentially contractual documents in this case. It is dated 10 February 1971 and is written not by the town clerk, as one would expect had this truly been a formal offer by the council, but by the city treasurer, Mr Page; and again, not surprisingly because it comes from the city treasurer, it is aimed primarily, if not entirely, at the financial aspects of this transaction, and it reads as follows:

> 'Purchase of Council House [then it gives a reference number and reads on:] 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,'

then he sets out the amount that the corporation 'may' grant, the annual fire insurance premium, and the monthly repayment charge on the mortgage if the plaintiff should require it. As Ormrod LJ has pointed out, at the end of the penultimate paragraph it says: 'This letter should not be regarded as a firm offer of a mortgage.' Then it reads:

> '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.'

it is said that that letter constitutes a firm offer to sell.

It is largely a matter of impression, but, although to Lord Denning MR and Ormrod LJ is appears perfectly plain that that was a firm offer, to me it appears equally plain that it was not. First of all, the words used 'may be' in the first paragraph and 'may grant a mortgage' and finally the expression 'If you would like to make a formal application to buy your Council house' are strange words to use if this was indeed a formal offer on behalf of the council. It is, in my judgment, no more than one would expect of a letter coming from the city treasurer. It is 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.

Secondly, the letter makes no mention at all of the special conditions which were undoubtedly in due course going to be included in the formal contract and the conveyance. If one looks at the report by the town clerk dated 3 August 1970, one sees that it sets out the terms which the council at that stage at any rate intended should be included in the contracts of sale to the tenants who were wishing to purchase their houses. Counsel for the plaintiff suggests that there were only matters of form of procedure outstanding and that all the material matters were agreed between the parties. I find myself unable to agree with that contention when I look at this report. It sets out in para 2 the fact that it intends to detail a summary of the conditions of sale, and then in para 3 it appears to set out the terms subject to which the tenancies have been created and indicates there, without going into it in unnecessary detail, which of those terms it is intended to include in the contract of sale. Just to take one or two examples, there is intended to be included a restrictive covenant that the

house shall be used as a private dwelling-house only, that there shall be no advertising, that the purchaser shall not obstruct accesses, and so on. It seems to me that none of those matters could possibly be described as matters merely of procedure. They are matters closely affecting the rights which the proposed purchaser will eventually enjoy over his property. It was suggested by counsel for the plaintiff that it would be very unlikely that any purchaser applying for planning permission to use the premises other than as a private dwelling-house would receive such permission. That, it seems to me, is not a consideration which can possibly affect the decision in this case.

It seems to me for all those reasons that it is quite impossible to treat this letter of 10 February as being a firm offer made by the council, and it is interesting to observe the further words which Lord Cairns LC uses once again in the *Brogden* case ((1877) 2 App Cas 666 at 672) in the remainder of the paragraph, the beginning of which I have read:

> 'But, on the other hand, there is no principle of law better established than this, that even although parties may intend to have their agreement expressed in the most solemn and complete form that conveyancers and solicitors are able to prepare, still there may be a *consensus* between the parties far short of a complete mode of expressing it, and that *consensus* may be discovered from letters or from other documents of an imperfect and incomplete description.'

Up to that point the passage supports the plaintiff's contention, but note these final words: 'I mean imperfect and incomplete as regards form.'

If that view of the letter of 10 February is correct then that is an end of the matter, but it is worthwhile perhaps considering what happened thereafter. The response to the letter from the plaintiff was to send back the formal document, which again be it noted is headed not 'Acceptance' but 'APPLICATION TO BUY A COUNCIL HOUSE and APPLICATION FOR A MORTGAGE'. It is a document which was supplied of course by the **592** council for the plaintiff to fill in. 'Section A: Application to buy a council house': there again, not an agreement to accept the council's offer. And therein various particulars are set out, namely, the wife and her work and her income. Then: 'Section C: Certificates to be completed by all applicants. I have read the explanatory leaflet on how to buy my Council house', that is the brochure to which I have referred—

> '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.'

But in the covering letter which accompanied that completed form the plaintiff is making a counter-suggestion. He says this:

> '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.'

What he is suggesting there in short is that the price of these premises to him should not be that which the council have put forward but that an allowance should be made for his repairing the drive or alternatively there should be an obligation on the council to make recompense in kind by repairing his drive themselves by direct labour.

That seemed to me quite plainly to be a counter-offer. The reply which the council sent is this:

> 'Dear Sir, I refer to your letter concerning certain repairs to the path. Account is taken of the general condition of the property at the time of the survey and valuation and the price is fixed accordingly, allowing for such defects as there may be. I regret I cannot authorise repairs of this nature at this stage.'

Then on 18 March there was another letter back from the plaintiff in answer to that:

> 'Ref your letter of the 12th March … 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.'

It is suggested that that letter of 18 March from the plaintiff was appropriate to revive, so to speak, the original offer, if there was one, by the council, and that one can accordingly disregard the counter-offer and rejection which took place in the interim.

The matter is dealt with conveniently in Cheshire and Fifoot's Law of Contract[b] in these terms, which I will read:

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[b] 9th Edn (1976), p 33

> 'Whatever the difficulties, and however elastic their rules, the judges must, either upon oral evidence or by the construction of documents, find some act from which they can infer the offeree's intention to accept, or they must refuse to admit the existence of an agreement. This intention, moreover, must be conclusive. It must not treat the negotiations between the parties as still open to the process of bargaining. The offeree must unreservedly assent to the exact terms proposed by the offeror. If, while purporting to accept the offer as a **593** whole, he introduces a new term which the offeror has not had the chance of examining, he is in fact merely making a counter-offer. The effect of this in the eyes of the law is to destroy the original offer. Thus in *Hyde* v. *Wrench*, "the defendant on June 6th offered to sell an estate to the plaintiff for £1,000. On June 8th, in reply, the plaintiff made an offer of £950, which was refused by the defendant on June 27th. Finally, on June 29th, the plaintiff wrote that he was now prepared to pay £1,000". It was held that no contract existed. By his letter of June 8th the plaintiff had rejected the original offer and he was no longer able to revive it by changing his mind and tendering a subsequent acceptance.'

It seems to me that that passage applies precisely to the circumstances in this case and, accordingly, even if the letter did amount to an offer, the plaintiff has failed to take advantage of it for the reasons which I have endeavoured to indicate.

The decision of this court in *Storer v Manchester City Council*, which was relied on by the judge seems to me to provide if anything good support for the council's case rather than the plaintiff's case. If I may just read a passage from Lord Denning MR's judgment ([1974] 3 All ER 824 at 826, [1974] 1 WLR 1403 at 1406), it reads as follows:

> 'On 11th February 1971 Mr Storer filled in an application form to buy a council house. He said: "I … now wish to purchase my Council house". In it he asked for a loan on mortgage. On 9th March 1971, the city treasurer wrote to him: "The Corporation will lend £2,279 repayable over 25 years with interest at 8 ½% … the total monthly instalment payable will be … £14·98." On the same day, 9 March 1971, the town clerk himself wrote a letter which is of crucial importance in the case.'

Note that superadded in that case to the treasurer's letter was this one from the town clerk, the counterpart of which does not exist in the case we are considering here today. That letter ran as follows ([1974] 3 All ER 824 at 826, [1974] 1 WLR 1403 at 1406, 1407):

> 'Dear Sir, *Sale of Council Houses*. I understand you wish to purchase your Council house and enclose the Agreement for Sale. If you will sign the Agreement and return it to me I will send you the Agreement signed on behalf of the Corporation in exchange. From the enclosed list of Solicitors, who are prepared to act for you and advise you on the purchase, please let me know the name of the firm that you select, as soon as possible.'

Lord Denning MR continued:

> 'Enclosed with that letter there was a form headed: "City of Manchester. Agreement for sale of a Council House." The Corporation had filled in various details, such as the name of the purchaser, the address of the property, the price, the mortgage, amount, and the monthly repayments. There was this item left blank: "7. Date when your tenancy ceases and mortgage repayments will commence," followed by these clauses: "8. *Freehold* to be conveyed or transferred by the Corporation. 9. There will be no abstract or investigation of title … 10. *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. 11. *Warning*. As from the date mentioned in 7 above the property is at your risk. If you are taking a mortgage from the corporation it will be insured for you but the cost recharged to you. *If you are not taking a Mortgage insure it at once*. Your **594** responsibility for repairs and for payment of rates also start from that day. My solicitors are … " Mr Storer filled in that form. He filled in the name of solicitors, Messrs Hargreaves & Co. He signed the form himself and returned it on 20th March 1971. So he had done everything which he had to do to bind himself to the purchase of the property. The only thing left blank was the date when the tenancy was to cease.'

None of the documents which in that case were held to be the contractual documents even exist in the present case. It is of course bad luck that the 'Storer' line of cases should fall on one side of the line and the 'Gibson' type of case on the other, but bad luck is proverbially fertile ground for bad law.

It seems from what I have endeavoured to indicate that the plaintiff, however much sympathy one may feel for him, has totally failed to establish on any view the necessary ingredients of a contract, and for those reasons I respectfully differ from Lord Denning MR and Ormrod LJ and I would allow the appeal.

Appeal dismissed. Leave to appeal to the House of Lords granted on terms.

Solicitors: *Leslie Boardman*, Manchester (for the defendants); *Hargreaves & Co*, Manchester (for the plaintiff).

Sumra Green Barrister.

[1979] 1 All ER 972

Gibson v Manchester City Council

CONTRACT

HOUSE OF LORDS
LORD DIPLOCK, LORD EDMUND-DAVIES, LORD FRASER OF TULLYBELTON, LORD RUSSELL OF KILLOWEN AND LORD KEITH OF KINKEL
24 JANUARY, 8 MARCH 1979

Contract – Offer and acceptance – Offer – Sale of land – Council informing tenant of council house that council 'may be prepared to sell' house to him – Tenant invited 'to make a formal application to buy' – Tenant completing and returning application to purchase – Council later refusing to proceed with application following change of policy – Whether council had made an offer to sell to tenant – Whether parties had concluded a binding contract.

In September 1970 a city council adopted a policy of selling council houses to its tenants. The respondent who was renting a council house applied on a printed form supplied by the council for details of the price of the house and mortgage terms available from the council. On 10 February 1971 the city treasurer wrote to the respondent that the council 'may be prepared to sell the house to you at the purchase price of £2,725 less 20% =£2,180 (freehold)'. The letter then gave details of the mortgage likely to be made available to the respondent and went on: '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 application form was headed 'Application to buy a council house' and concluded with a statement: 'I … now wish to purchase my Council house. The above answers [ie the answers in the application form] are correct and I agree that they shall be the basis of the arrangements regarding the purchase … ' The respondent completed the application form except for the purchase price and returned it to the council on 5 March. On 18 March the respondent wrote to the council: 'I would be obliged if you will carry on with the purchase as per my application already in your possession.' Before contracts were prepared and exchanged there was a change in control of the council following the local government elections in May 1971 and on 7 July the council resolved to discontinue the scheme for the sale of council houses forthwith and to proceed only with those sales where there had been an exchange of contracts. On 27 July the council wrote to the respondent to advise him that the council was unable to proceed further with his application to purchase. The respondent brought an action alleging that there was a binding contract for the sale of the house constituted by an offer contained in the city treasurer's letter of 10 February 1971 and his acceptance of it by the return of the application form on 5 March and his letter of 18 March, and claiming specific performance of the contract. The county court judge and, on appeal, the Court of Appeal ([1978] 2 All ER 583) held that there was a concluded contract for the sale of the house by the council and ordered specific performance. The council appealed.

Held – The parties had not concluded a binding contract because the council had never made an offer capable of acceptance, since the statements in the city treasurer's letter of 10 February that the council 'may be prepared to sell' and inviting the respondent 'to make formal application to buy' were not an offer to sell but merely an invitation to treat. The respondent was therefore not entitled to specific performance and accordingly the appeal would be allowed (see p 974 *f g*, p 975 *h j*, p 976 *e* and *g*, p 978 *g h*, p 980 *e f* and *h j* and p 981 *a*, post).

Decision of the Court of Appeal, Civil Division [1978] 2 All ER 583 reversed.

Notes

For the formation of contracts for the sale of land, see 34 *Halsbury's Laws* (3rd Edn) 205, para 342, and for cases on the subject, see 40 *Digest* (Repl) 11–14, *1–38*.

Cases referred to in opinions

Brogden v Metropolitan Railway Co (1877) 2 App Cas 666, HL, 12 *Digest* (Reissue) 60, *313*.

Clarke v Earl of Dunraven, The Satanita [1897] AC 59, 66 LJP 1, 75 LT 337, 8 Asp MLC 190, HL, 12 *Digest* (Reissue) 85, *436*.

Hyde v Wrench (1840) 3 Beav 334, 4 Jur 1106, 49 ER 132, 12 *Digest* (Reissue) 71, *360*.

Stevenson v McLean (1880) 5 QBD 346, 49 LJQB 701, 42 LT 897, 12 *Digest* (Reissue) 71, *363*.

Storer v Manchester City Council [1974] 3 All ER 824, [1974] 1 WLR 1403, 73 LGR 1, CA, *Digest* (Cont Vol D) 793, *26a*.

Appeal

This was an appeal by the defendants, Manchester City Council, against a decision of the Court of Appeal ([1978] 2 All ER 583, [1978] 1 WLR 520) (Lord Denning MR and Ormrod LJ, Geoffrey Lane LJ dissenting), affirming an order made by his Honour Judge Bailey, sitting in the Manchester County Court on 15 December 1976, whereby he ordered specific performance of a contract for the sale by the council to the plaintiff, Robert Gibson, of the freehold interest in a dwelling-house known as 174 Charlestown Road, Blackley, Manchester, owned by the council. The facts are set out in the opinion of Lord Diplock.

H E Francis QC and *A W Simpson* for the council.

George Carman QC and *Bruce Caulfield* for Mr Gibson.

8 March 1979. The following opinions were delivered.

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 on 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 on by Mr Gibson were in standard forms used by the council 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 were 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 council. So their rights too are likely to depend on 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 s 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 on their true construction.

In the Manchester County Court where the action started, the case was pleaded in the **973** conventional way. The particulars of claim alleged an offer in writing by the council 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 (his Honour 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, on their true construction, the documents relied on as such in the particulars of claim did amount to an offer and an acceptance respectively and so consituted 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 council's appeal against this judgment was dismissed by a majority of the Court of Appeal ([1978] 2 All ER 583, [1978] 1 WLR 520) (Lord Denning MR and Ormrod LJ); Geoffrey Lane LJ dissented. Lord Denning MR rejected what I have described as the conventional approach of looking to see whether on the true construction of the documents relied on there can be discerned an offer and acceptance. One ought, he said, to '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'. 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 s 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*, was entered into by the council 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.

Ormrod LJ, who agreed with Lord Denning MR, adopted a similar approach but he did also deal briefly with the contruction of the document relied on by Mr Gibson as an unconditional offer of sale by the council. On this he came to the same conclusion as the county court judge.

Geoffrey Lane LJ in a dissenting judgment, which for may part I find convincing, adopted the conventional approach. He found that on the true construction of the documents relied on as constituting the contract, there never was an offer by the council 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 on as constituting the contract sued on and seeing whether on their true construction there is to be found in them a contractual offer by the council 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 enquiring what would be the price of buying his council **974** house at 174 Charlestown Road, Blackley, and expressing his interest in obtaining a mortgage from the council. The form was a detachable part of a brochure which had been circulated by the council 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 council of advances on mortgage which might amount to as much as the whole of the purchase price.

As a result of that enquiry Mr Gibson's house was inspected by the council's valuer and on 10 February 1971 the letter which is relied on by Mr Gibson as the offer by the council 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 8 ½%. 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 LJ, 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' on the enclosed application form. It is, to quote Geoffrey Lane LJ, a letter setting out the financial terms on which it may be the council would be prepared to consider a sale and purchase in due course.

Both Ormrod LJ 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, **975** is that the first paragraph of the letter it 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 the second paragraph, it cannot possibly affect the plain meaning of the words used in the first paragraph.

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 council on 5

March 1971 with a covering letter in which he requested the council 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 council, 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 council could not be authorised at this stage. This letter was acknowledged by Mr Gibson by his letter to the council of 18 March 1971 in which he asked the council 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 council's offer to sell the house; but this cannot be so unless there was a contractual offer by the council available for acceptance, and, for the reason already given I am of opinion that there was none. It is unnecessary to consider whether the application form and Mr Gibson's letters of 5 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 council. 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 council before the change required the incorporation in all agreements for sale of council houses to tenants of the conditions referred by Lord Denning MR 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% below its market value in the autumn of 1970 cannot be realised. Whether one thinks this makes it a hard case perhaps depends on 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 16 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 council 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 council resolved to sell the freeholds of **976** 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 council 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 council 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 10 February 1971 and signed by the city treasurer, is important as it was the tenant's case that this consituted an offer by the council 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 3 March 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 [ie 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 5 March 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 council'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 12 March 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 18 March Mr Gibson replied by a letter which was said to  constitute his acceptance of the council'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 council did not reply to that letter. In May 1971 the political control of the council 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 council had agreed to sell to him the freehold of his dwelling for £2,180. It was pleaded that the council had so offered by their letter of 10 February 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 on an internal memorandum passing between two of the council's departments which was said to constitute an admission by the council 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 on 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 10 February 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 council 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 s 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 extempore judgments delivered by Lord Denning MR and Ormorod LJ, with Geoffrey Lane LJ dissenting. The majority upheld the pleaded case of offer and acceptance, whereas Geoffrey Lane LJ held that it failed in limine as it was impossible to regard the council's letter of 10 February 1971 as an offer to sell. I agree with him, and for the reasons he gave. These are to be found in the reports below ([1978] 2 All ER 583 at 591–592, [1978] 1 WLR 520 at 529–530) and there would be no advantage in my repeating them. There was at best no more than an invitation by the council to tenants to apply to be allowed to purchase freeholds. I am not, however, with Geoffrey Lane LJ in treating Mr Gibson's letter of 5 March 1971 (regarding non-repair of his tarmac paths) as a counter-offer which had the effect of destroying an offer to sell, if the council 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* and unlike *Hyde v Wrench*. But that point is of no practical importance in this appeal, for, even had there been an offer, I hold that counsel for the council 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 **978** held in the Court of Appeal that it was not the only one, and it is undoubted that, as Cheshire and Fifoot observed[a]—

[a] Law of Contract (9th Edn 1976), p 26

> '… there are cases where the courts will certainly hold 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*) … ’

Lord Denning MR said ([1978] 2 All ER 583 at 586, [1978] 1 WLR 520 at 523) 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. For that proposition I would refer to *Brogden v Metropolitan Railway Co*.’

On that alternative basis, Lord Denning MR 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, Mr Gibson 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 council’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 council had already committed themselves to sell. Nor, with respect to Lord Denning MR, can it be material that, entirely unknown to Mr Gibson, the council 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 Mr Gibson’s pleaded case, he accepted the council’s ‘offer’ to sell. And, finally, the town clerk’s letter to the city councillor 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 council 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*. 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 s 40 of the Law of Property Act 1925 and therefore unenforceability. I am accordingly in respectful disagreement with Lord Denning MR, who concluded that ([1978] 2 All ER 583 at 588, [1978] 1 WLR 520 at 525)—

> '… 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. Secondly, 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 council's bombshell 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 LJ 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 Mr Gibson of a concluded contract for sale to him of his council house was quite simply based. He alleged an offer by the council 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. This he said was a contract for sale constituted, of which he claimed specific performance: a plain case of 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 on 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.

Appeal allowed.

Solicitors: *Sharpe Pritchard & Co* (for the council); *C M Alfille & Co* agents for *Hargreaves & Co* Manchester (for Mr Gibson).

Mary Rose Plummer Barrister.