

R. v. London Borough of Hammersmith & Fulham, ex p. Lusi & Lusi

Queen's Bench Division

Roch J.

February 13, 1991

Introduction

For the purposes of Part III of the Housing Act 1985 ("Housing the Homeless"), a person becomes homeless intentionally "if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy": Housing Act 1985, s.60(1) (*Encyclopedia* para. 1-0126); see also Introduction to *R. v. City of Westminster, ex p. Khan*, above, p. 230.

When considering intentionality, an authority must look back to the last period of "settled" accommodation: *Din v. London Borough of Wandsworth* [1983] 1 A.C. 657; 1 H.L.R. 147, H.L. What constitutes "settled" accommodation is a "question of fact and degree depending upon the circumstances of each individual case," *per* Ackner L.J. in *Din* at the Court of Appeal. See also *R. v. London Borough of Merton, ex p. Ruffle* (1988) 21 H.L.R. 361.

By section 60(3), an act or omission in good faith is not to be treated as deliberate for the purposes of section 60(1). In *R. v. Eastleigh Borough Council, ex p. Beattie (No. 2)* (1984) 17 H.L.R. 168, Q.B.D., it was held that it is ignorance of a relevant fact which is to be disregarded, rather than ignorance of legal consequences. Ignorance about the unsettled nature of intended accommodation may amount to ignorance of a relevant fact and as such may mean that the departure was not "deliberate": see *R. v. Wandsworth L.B.C., ex p. Rose* (1983) 11 H.L.R. 105, Q.B.D.; see also *R. v. London Borough of Croydon, ex p. Toth* (1988) 20 H.L.R. 576, C.A.; *R. v. Mole Valley District Council, ex p. Burton* (1988) 20 H.L.R. 479, Q.B.D.; and, *R. v. Christchurch Borough Council, ex p. Conway* (1987) 19 H.L.R. 238, Q.B.D.

Facts

From 1986, the applicants lived in a flat next door to the business which the first applicant ran. The flat was shared with another man. In 1987, their daughter was born. In 1988, an old friend of the first applicant, a Mr. Besler, contacted him with a proposition that they go into business together in Turkey in the manufacture of cat and dog food.

The first applicant was qualified as an accountant in Turkey; he had also been the financial director of a Turkish company. Mr. Besler told the appli-

cant he would be in partnership with himself and one other person and that the business was a very attractive proposition.

The applicants decided to go to Turkey. First they visited the second applicant's mother in Eire, where they stayed for about two months. In August 1988, they moved to Turkey. There they stayed with the first applicant's parents in a one-bedroomed flat. They intended to obtain suitable and permanent accommodation if and when the first applicant's earnings allowed them to do so.

The business venture was not what the applicants had expected. The partnership was to be with three strangers who the first applicant concluded were merely using Mr. Besler for his money. The second applicant became depressed in Turkey, her asthma became worse and there were tensions over differences in religion. The applicants therefore decided to return to England.

In November 1988, on their return to England they applied for housing from the respondents. In January 1989, the applicants were notified that they were intentionally homeless. In February 1989, the applicants' solicitors wrote to the respondents raising several points including the question whether the accommodation in Turkey had been "settled."

On October 17, 1989, a further decision letter was sent to the applicants to the effect that the applicants were homeless, in priority need and homeless intentionally either because they had voluntarily left the accommodation in Turkey, alternatively because they had voluntarily left the accommodation in London, both of which it would have been reasonable to continue to occupy. In addition to setting out factors relevant to their decision, the respondents noted that the applicants "may have been unaware of relevant facts when leaving the accommodation in London to go to Turkey" but that because of the first applicant's failure to obtain firm assurances about the business they concluded that this "was not an action carried out in good faith."

The applicants sought judicial review. In the course of the proceedings, an affidavit sworn on behalf of the respondents stated *inter alia* that on leaving Turkey the applicants could have gone to Eire to stay with the second applicant's parents.

Held (allowing the application)

(1) The reference to accommodation in Housing Act 1985, s.60(1) must be a reference to accommodation which is settled or which the person can occupy on a continuous basis; for accommodation to be the type of accommodation which either prevents a person being homeless or terminates the state of homelessness, such occupation does not have to be permanent in a sense that it cannot be determined, save at the wish of the occupant, nor even that the occupation can only be determined either by the wish of the occupant or an order of the court;

(2) Accommodation may be settled although the occupants may from the first intend to move on to better accommodation as soon as that becomes practical; whether accommodation is of a kind that the persons concerned do not become homeless from the moment of leaving their pre-

vious accommodation will always be a question of fact and degree; the intention of the occupants and of the person who allows them to occupy will be important but not decisive factors;

(3) The issue of settled accommodation was one which the respondents should have determined; the letter of decision and the affidavit filed on their behalf did not contain any indication that the respondents did consider the issue and their decision was consequently flawed;

(4) The proposition that the applicants could have stayed with the second applicant's mother in Eire was an irrelevant consideration; further it was a matter on which neither applicant was given any opportunity of making representations; sections 58 and 60(1) do not justify a housing authority looking at other possible accommodation available to applicants outside the United Kingdom when arriving at a conclusion whether such persons are homeless intentionally or not;

(5) The prospects of employment which lead a person to cease to occupy existing accommodation in the belief that he will be able to afford suitable permanent accommodation for himself and his family is capable of being a relevant fact; the respondents were right in their letter of decision to treat those matters as being relevant facts within the meaning of Housing Act 1985, s.60(3).

(6) On the question of good faith there is a distinction between honest blundering and carelessness on the one hand, where a person can still act in good faith, and dishonesty on the other where there can be no question of the person acting in good faith; the respondents failed to understand that distinction; further, before they could reach such a decision they would have to put the matters to the first applicant and hear what he has to say about it.

M. Westgate for the appellants, instructed by Messrs. Alan Edwards & Co., London W11.

L. Crawford for the respondents, instructed by Director of Legal Services, London Borough of Hammersmith and Fulham.

ROCH J.: This is an application by Mr. and Mrs. Lusi for judicial review of a decision of the London Borough of Hammersmith and Fulham, indicated to them by letter dated October 17, 1989, that decision being that Mr. and Mrs. Lusi were homeless, that they had a priority need for accommodation but that they were homeless intentionally. The relief sought is an order of certiorari to quash that decision; secondly, a declaration that the applicants are not intentionally homeless; and, thirdly, an order of mandamus requiring the respondents to determine the applicants' application according to the law and to carry out further investigations as to whether or not the applicants are intentionally homeless. The applicants also seek a declaration that, pending examination by the respondents of the application according to the law, the respondents have reason to believe that the applicants may be homeless and in priority need and interim relief ordering the respondent to secure that accommodation is made available for the occupation of the applicants and their daughter until the hearing of this application or until further order.

The facts of this matter are that the first applicant came to this country in 1980. He met the second applicant and they were married in 1984. In 1985 the first applicant began working in a kebab shop at 98 North End Road. It appears at some stage he took over that business. In December 1986 the applicants moved to live at 96 North End Road in London, which was next door to the kebab shop.

On May 17, 1977, their daughter, Aylin, was born. Some time in 1988 a man called Ahmed Besler contacted the first applicant with a proposition that the first applicant go into business with Mr. Besler in Turkey. The business was the manufacture of production of cat and dog food. It would seem that Mr. Besler was a man for whom the first applicant had worked for a number of years when the first applicant was a student. The first applicant holds a qualification as an accountant in Turkey. It would appear that whilst he was a student he worked for Mr. Besler. They had kept in contact since that time, principally by way of phone calls. They had kept in contact during the eight-year period between 1980 and 1988 when the first applicant was living in the United Kingdom.

The first applicant, in addition to being a qualified accountant, had held employment in Turkey as the financial director of a Turkish company. The details of the business proposition put to the applicant, according to the first applicant, are to be found at paragraphs 4 and 5 of his affidavit. The affidavit states that the first applicant was told by Mr. Besler that he would be in partnership with Mr. Besler and another person. Mr. Besler told him it would be difficult to arrange the fine details by telephone but broadly it was a very attractive proposition. This applicant says in his affidavit that because of their past relationship it would have been unthinkable for him not to have trusted Mr. Besler and to have accepted what Mr. Besler was saying. The first applicant says that he considered there was a good chance that the business would be a success although he appreciated there was always a risk that the business would fail.

The first applicant gave a similar account when interviewed by the respondents' housing officer. The accommodation that the applicants had at 96 North End Road consisted of a flat which they shared with a single man, who was a friend of the first applicant. That single man had paid half of the rent of £100 per week, and whenever the applicants were unable to pay their half of the rent that man had paid the whole of the rent. It would seem that that man used the flat principally as a place to sleep. It is clear from the answers given by the applicants, when interviewed by the respondents' housing officer, that it was an inconvenience for them, particularly for the second applicant, to have to share the accommodation with that single man.

The applicants, having decided to go to Turkey and to take up Mr. Besler's offer, went first to the Republic of Eire to the home of the second applicant's mother. They were there for a month or two. In about August 1988 the applicants went from the Republic of Eire to Turkey. The accommodation that they had in Turkey was at the flat of the first applicant's mother and father. It is clear from the interview notes that at one stage the first applicant told the housing officer that that was a two-bedroomed flat and he and his wife and daughter had one of the bedrooms with a room which could be divided by partitions.

Later the applicants were to assert, and they asserted it in their affidavits, that that flat was a single-bedroomed flat and that they, that is the

two applicants and their daughter, had to sleep in part of the living room which was partitioned off each night by the erection of a temporary partition.

The applicants say that it was their intention to obtain permanent and suitable accommodation in Turkey if and when the first applicant's earnings from the business venture permitted them to do so. It is clear from the affidavits and the answers in interview that the first applicant's parents would have been happy for the applicants and their daughter to share their flat indefinitely.

The affidavit of the first applicant and the answers given by him in interview are to the effect that the business venture turned out to be quite different from that represented to him by Mr. Besler in the two telephone conversations that preceded the applicants' decision to go to Turkey. The first applicant found that he would be in partnership not with Mr. Besler but with three strangers. He came to the conclusion that those men were, if not dishonest, unreliable. Mr. Besler had put money into the business and the first applicant's view was that those men were simply out to enjoy the money that Mr. Besler had put up.

It is also clear from the affidavits and the interviews that the second applicant became unhappy in Turkey. Both applicants knew what it would be like to share a flat with the first applicant's parents because they had done so on three occasions prior to August 1988 when they visited Turkey on holiday. The point is made that sharing a flat for the short period of a holiday is very different from sharing a flat as permanent accommodation.

It would seem that the second applicant suffers from asthma. It is said that she became very depressed, her asthma became worse and, although her mother-in-law was trying to be kind, there were tensions over the differences in religion and the fact that the mother-in-law wished her daughter-in-law to change her religion to that of the first applicant. There were concerns by the second applicant of the daughter being brought up in a religion other than her own. Consequently, the applicants decided to return to this country because of the combination of all those factors: the failure of the business venture as far as the first applicant was concerned, the unhappiness and the lack of proper accommodation and difficulties with the Turkish language and Turkish customs as far as the second applicant was concerned.

It is clear they came back to this country with no arrangements relating to accommodation except that they were able to stay at accommodation in Tooting belonging to a friend for one or two nights. On November 16, 1988, when they returned to this country, they immediately presented themselves as being homeless to the respondent authority.

They were interviewed for the first time on December 19, 1988. On January 17, 1989, the respondents reached what I call the first decision that the applicants were intentionally homeless. In that decision the respondents recorded in the letter that the flat in Turkey had been a two-bedroomed flat. On January 19, two days later, the second applicant pointed out that the flat was a one-bedroomed flat. That resulted in the second letter of decision from the respondents dated January 20, 1989, confirming their first decision that the applicants were intentionally homeless.

On February 6, 1989, the applicants' solicitors wrote a letter to the respondents, in which several points were raised, the first of which has to

be noted. The first point that was raised in the letter was that the local authority had not addressed the question of whether the accommodation in Turkey was settled accommodation within the meaning of the case law on section 60 of the Housing Act 1985. As a result of that solicitor's letter the applicants were re-interviewed in April 1989.

On October 17, 1989, there was a further decision letter containing the decision, the subject matter of this application, which appears in the bundle at pp. 67 to 70 inclusive. That decision was, first, that the applicants were homeless; secondly, that they had a priority need for accommodation; and, thirdly, that the applicants were homeless intentionally. That third head of decision was put in the alternative. First, it was said that they had voluntarily left the accommodation in Turkey, namely, the flat in which they had been staying with Mr. Lusi's parents. Alternatively, it was said that the applicants had voluntarily left the accommodation at 96 North End Road, London. In both cases the respondents had come to the conclusion that it would have been reasonable for the applicants to continue to occupy those accommodations and that the facilities at those addresses were adequate for the applicants and their daughter.

The letter goes on to set out the factors which in the view of the local authority had a bearing on the reasonableness of the applicants continuing to occupy accommodation both in London and in Turkey. Having set out those factors in relation to both the accommodation in Turkey and the accommodation in North End Road, the local authority records that they have also given thought to the general circumstances prevailing within their area, and, having given thought to that, they concluded that the accommodation in Turkey was adequate with regard to the applicants' housing needs.

On the fourth page of that letter this paragraph appears:

"It is appreciated that you may have been unaware of relevant facts when leaving the accommodation in London to go to Turkey. These facts relate to Mr. Lusi's offer of employment, and refer to the proposed working arrangements, your contacts' involvement in the business, the number of and attitudes of your prospective colleagues, product distribution arrangements and your financial remuneration. However, we note that you did not obtain firm assurances about this important information and that the offer had been made verbally on the telephone. We, therefore, conclude that the act of leaving your accommodation in London when you may have been unaware of relevant facts was not an action carried out in good faith.

Weighing all the above factors, we have concluded that it was reasonable for you to continue to occupy your accommodation in London or, alternatively, in Turkey."

The application for judicial review was made on November 14, 1989. I granted leave to move on November 23, 1989. On January 18, 1990, the respondents filed an affidavit sworn by Judith McKerracher, who is the senior emergency housing officer with the respondent authority. One paragraph in that affidavit requires special notice. It is the ninth paragraph, which reads:

"In my opinion even if they were desperate to leave Turkey they could have gone to Ireland and stayed with Mrs. Lusi's parents. They had stayed with Mrs. Lusi's parents for approximately two months before going to Turkey, until they had secured permanent accommodation in

London. I would therefore invite this Honourable Court to dismiss the applicants' application."

Today I gave leave to Mr. Westgate, who appears for the applicants, to amend form 86A, and I ordered that all question of fresh service be waived, there being no objection by Mr. Crawford, who appears for the respondents, the respondents having had notice of the proposed amendment for some time. The purpose of that amendment is to add to the grounds for relief a further ground that that paragraph in Miss McKerracher's affidavit, which I have just cited, discloses that the respondents in reaching their decision took into account a consideration which was irrelevant.

The applicants' case is this. The accommodation that the applicants had in Turkey was not necessarily the type which caused them to cease to be homeless within the meaning of the 1985 Act. It was not settled accommodation. Mr. Westgate submitted that there were these factors which indicated that it was not settled accommodation: first, the length of time that the applicants were there, a period of some three months; secondly, the applicants always intended that their stay in the flat should be temporary and that they should move to permanent accommodation when the proceeds of the business venture allowed them to do so; thirdly, the move to Turkey and to that accommodation was made in contemplation of a specific objective which turned out to be unattainable; and fourthly, the accommodation and facilities available in the flat made it quite unsuitable for being settled accommodation for the applicants and their daughter.

The applicants' case goes on in this way. The respondent authority should have considered this point but failed to do so. It should have considered this point, first, because it was raised in the applicants' solicitor's letter of February 6, 1989. Despite that it was not covered in the decision letter of October 17, 1989. Further, it is a matter which was raised in the original form 86A but again it is not a matter dealt with in the affidavit filed on behalf of the respondents. The consequence according to the applicants is that the act which the local authority should have considered was the applicants' act in leaving their London address in June 1988. It was not a deliberate act, which is required before a person becomes homeless intentionally because of the provision of section 60(3). That was an act done in good faith but in ignorance of relevant facts which, if they had been plain to the applicants, would have resulted in them staying in their London accommodation. Those relevant facts are the true nature of the business opportunity that the first applicant was being offered by Mr. Besler.

Alternatively, if that argument does not succeed, the local authority has in its letter of decision in the paragraph that I have cited decided that those matters are relevant facts, and they have misdirected themselves as to the law because they have equated ignorance of the true nature of the business proposition being made to the applicants with a lack of good faith.

The applicants go on to submit that if they are wrong on those points and the act that has to be looked at is the leaving of the flat in Turkey, then the decision relating to their quitting of the flat in Turkey is void for two reasons. First, an irrelevant factor was taken into consideration, namely that matter contained in paragraph 9 of the affidavit filed on behalf of the respondents, and secondly, the decision is irrational.

The respondents' case is that the applicants vacated 96 North Road,

London quite deliberately when that accommodation was still available for them and when it would have been reasonable for them to continue in that accommodation. Therefore, they are homeless intentionally. Alternatively, the same can be said as to their leaving the first applicant's parents' flat in Istanbul.

Mr. Crawford submits that the question of good faith was never an issue and the paragraph which appears on p. 4 of the decision letter need never have been written. The decision letter, if it had stopped at the bottom of the third page, would have made perfectly good sense. If Mr. Crawford is wrong about that, he submits that the first applicant has not acted in good faith. The first applicant is a qualified accountant who has experience as a financial director of a Turkish company, and it is inconceivable that he would have decided to go with his wife and child to Turkey relying solely on two telephone calls. Inevitably, as a qualified person, he would have asked to see accounts and the appropriate partnership agreement and so forth before making his decision. The applicants' conduct is to be judged against his background of being a professional man with experience as a financial director, and judged in that way the local authority concluded that leaving the accommodation in London was not an action carried out in good faith in that the ignorance of relevant facts was not ignorance in good faith.

Mr. Crawford also submits, and this in my view is a difficult point, that the facts relating to the business opportunities are not relevant facts within the meaning in section 60(3) because they are not facts which relate directly to the accommodation which the applicants were giving up or to the accommodation to which the applicants were going.

Counsel on both sides agree that there is only one authority which throws light on this point. That is the decision in *R. v. London Borough of Wandsworth, ex p. Rose* (1983) 11 H.L.R. 105, a decision of Glidewell J. (as he then was). In that case the applicant together with her daughter lived with her mother. She had been born in the United Kingdom but her parents had separated when she was a child and she had returned to Jamaica with her mother. Later the applicant came to the United Kingdom on the understanding that there was accommodation for her in her father's flat. The applicant made no specific inquiry as to what that accommodation would be or for how long it would be available. In the event, there was no adequate accommodation for her at her father's premises. It is clear her submission that her ignorance was ignorance in good faith of a relevant fact within the meaning of section 60(3) was accepted by the judge as a submission which could succeed. It is clear that the relevant factor of which the applicant was ignorant in that case related directly to the accommodation to which she was coming in the United Kingdom.

Mr. Crawford then continued with his submissions by taking me to the interviews and referring me to various answers given by the applicants, tending to show that the applicants, and in particular the second applicant, were unhappy with the accommodation at 96 North Road, London because it involved sharing with an unmarried man and that the move to Turkey was not solely prompted by the business proposition received by the first applicant. Clearly what has happened in this case, submits Mr. Crawford, is that the applicants went to Turkey. They have found that they did not like it and so they have come back and they have constructed this elaborate

case based on ignorance of relevant facts, which the respondents have quite rightly rejected.

As far as the amended form 86A with its additional ground is concerned, Mr. Crawford says that paragraph 9 of the respondents' affidavit should be read simply as pointing out a further factor which underlines the correctness of the respondents' conclusion that this was simply a case where the applicants went to Turkey, found that they did not like it and have come back to this country and constructed this case. Miss McKerracher was saying no more than that if the applicants had been desperate to leave the flat in Turkey they could have done so at any time and gone to Ireland to stay with the second applicants' parents.

Turning now to the law, in my judgment the reference to accommodation in section 60(1) must be a reference to accommodation which is settled or which the person can occupy on a continuous basis. In my judgment, that construction arises from the wording of that subsection and also from the wording of section 58(2) and (2)(a). I gratefully and respectfully follow the analysis of the provisions in this section of the Act of Lord Lowry in the case of *Din & Anr. v. Wandsworth London Borough Council* [1983] A.C. 657, which appears at p. 677G. At p. 678B Lord Lowry said: "It follows from this analysis that a person continues to be homeless while he enjoys temporary occupation." At letter D Lord Lowry went on to say: "There will be difficult questions of fact and law, but an obviously temporary letting or licence to occupy will not, in my opinion, cause homelessness to cease."

In my judgment, for accommodation to be the type of accommodation which either prevents a person being homeless or terminates the state of homelessness, such occupation does not have to be permanent in a sense that it cannot be determined, save at the wish of the occupant, nor even that the occupation can only be determined either by the wish of the occupant or an order of the court.

Further, in my judgment, accommodation may be settled and not temporary although the occupants may from the first intend to move on to better accommodation as soon as that becomes practical. Whether the accommodation is of a kind so that the persons concerned do not become homeless from the moment of leaving their previous accommodation will always be a question of fact and degree. The intention of the occupants and of the person who allows them to occupy will be important but not decisive factors to be considered by a housing authority in deciding whether that accommodation does or does not prevent those persons from being homeless.

In my judgment, this was an issue which the respondents should have determined and on which the applicants have a worthwhile case. I accept Mr. Westgate's submission that the letter of decision and the affidavit filed on behalf of the respondents do not contain any indication that the respondents did consider this issue. Consequently, the decision is flawed.

On that point I propose to send the matter back to the respondent authority so that they can make an express finding as to whether or not the accommodation in Turkey was of a kind which prevented the applicants from becoming homeless in June 1988 when they left the accommodation at 96 North Road, London.

Turning to the additional ground brought in under the amendment to form 86A, although I suspect that the deponent merely intended to

advance an argument, that paragraph is expressed in terms which do justify the applicants' complaint that it would appear the respondents looked at the accommodation of the second applicants' parents in Ireland, concluded that the applicants could have gone to that accommodation and used that as a factor in arriving at the decision that the applicants were intentionally homeless.

That, in my judgment, was an irrelevant consideration. Further, it was a matter on which neither applicant was given any opportunity of making representations. It was an irrelevant consideration because the wording of section 58 and section 60(1), in my judgment, does not justify a housing authority in looking at other possible accommodation available to applicants outside the United Kingdom when arriving at a conclusion whether such persons are homeless intentionally or not. Section 58(1) makes it clear that the Act has in mind accommodation in England, Wales or Scotland.

The next ground raised by the applicants, that of irrationality, is not a ground on which it is necessary for me to reach a firm conclusion because this matter is going to be sent back to the respondent authority.

I am conscious that the local authority has based its decision on alternative grounds. They have based the decision that they should look at the act of the applicants leaving their London accommodation as well as looking at their act in leaving the flat in Turkey. Mr. Crawford submits that the local authority reached a correct decision that the applicants were homeless intentionally because they deliberately ceased to occupy the London accommodation which was available for their occupation, which would have been reasonable for them to continue to occupy. Therefore, the other defects in the respondents' decision are not matters of consequence. No relief should be granted, the local authority being correct in its decision on that ground. Reconsideration of the alternative basis of the decision would not lead to a different result.

The first matter that has to be decided is what is meant by the phrase, "any relevant fact" in section 60(3). Are relevant facts confined to those facts which relate to the accommodation being left or the accommodation to be occupied. I have had considerable hesitation about this matter. As I have already indicated, in the only previous authority the relevant fact clearly related to the accommodation to which Miss Rose was going. I am persuaded by Mr. Westgate that prospects of employment which lead a person to cease to occupy their existing accommodation in the belief that that person will be able to afford suitable permanent accommodation for himself and his family is capable of being a relevant fact. It relates indirectly to the accommodation being moved to and it relates indirectly to the act of leaving the existing accommodation because the person concerned believes that he will be able to afford suitable accommodation for himself and his family by reason of the employment or business opportunity being presented to him. I am reinforced in this construction by the phrase "any relevant fact," which would indicate that Parliament intended a wide construction to be given to that phrase.

Consequently, I have reached the conclusion that the respondents were right in their letter of decision to treat the matters in the paragraph that I have cited as being relevant facts within the meaning of section 60(3). I have already reached the conclusion that in the last sentence in that paragraph the respondents have misdirected themselves as to the law in that they have equated ignorance of relevant fact to bad faith.

Mr. Westgate cited various authorities as to the meaning of good faith. First, he referred me to the judgment of Lord Denning M.R. in *Central Estates (Belgravia) Ltd. v. Woolgar* [1971] 3 All E.R. 647 where at p. 649H the Master of the Rolls referred to a claim being made in good faith when it is made honestly and with no ulterior motive. Phillimore L.J. rejected the application in that case on the ground that there was a lack of good faith, and he referred to it as a dishonest manoeuvre.

Lord Blackburn in *Jones v. Gordon* [1877] 2 A.C. 616, the judgment being at p. 628, said this:

“ . . . it is not enough to shew that there was carelessness, negligence, or foolishness in not suspecting that the bill was wrong, when there were circumstances which might have led a man to suspect that. All these are matters which tend to shew that there was dishonesty in not doing it, but they do not in themselves make a defence to an action upon a bill of exchange. I take it that in order to make such a defence, whether in the case of a party who is solvent and *sui juris*, or when it is sought to be proved against the estate of a bankrupt, it is necessary to shew that the person who gave value for the bill, whether the value given be great or small, was affected with notice that there was something wrong about it when he took it. I do not think it is necessary that he should have notice of what the particular wrong was. If a man, knowing that a bill was in the hands of a person who had no right to it, should happen to think that perhaps the man had stolen it, when if he had known the real truth he would have found, not that the man had stolen it, but that he had obtained it by false pretences, I think that would not make any difference if he knew that there was something wrong about it and took it. If he takes it in that way he takes it at his peril.

But then I think that such evidence of carelessness or blindness as I have referred to may with other evidence be good evidence upon the question which, I take it, is the real one, whether he did know that there was something wrong in it. If he was (if I may use the phrase) honestly blundering and careless, and so took a bill of exchange or a bank-note when he ought not to have taken it, still he would be entitled to recover. But if the facts and circumstances are such that the jury, or whoever has to try the question, came to the conclusion that he was not honestly blundering and careless, but that he must have had a suspicion that there was something wrong, and that he refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his own secret mind—I suspect there is something wrong, and if I ask questions and make farther inquiry, it will no longer be my suspecting it, but my knowing it, and then I shall not be able to recover—I think that is dishonesty. I think, my Lords, that that is established, not only by good sense and reason, but by the authority of the cases themselves.”

So there is a distinction between honest blundering and carelessness on the one hand, where a person can still act in good faith, and dishonesty on the other where there can be no question of the person acting in good faith.

In my judgment, in their decision letter the respondents have failed to understand that distinction and therefore have treated simple ignorance of relevant facts on the part of the first applicant when deciding to go to Turkey and giving up the accommodation in London as being an act not done in good faith.

Mr. Crawford may well be right that the failure of the first applicant to

ask for documentary evidence as to the new business and as to the proposed partnership may be evidence of a lack of good faith in a man who is a qualified accountant with business experience. But Mr. Westgate, in my judgment, is quite correct; before the respondents could reach such a decision they would have to put such matters to the first applicant and hear what he has to say about it.

For those reasons, I find that the decision of the respondents is flawed and I make an order or certiorari quashing that decision. I do not make the declaration that the applicants are not intentionally homeless but I do make an order of mandamus requiring the respondents to determine the applicants' application according to the law and requiring them to carry out further investigations as to whether or not the applicants are intentionally homeless. What I have in mind is giving the applicants an opportunity to deal with those matters to which I have referred in the course of this judgment.

Presumably, Mr. Crawford, the respondents will undertake to continue the temporary accommodation for the applicants whilst they are reconsidering the matter in the light of the judgment I have given.