DIN (A.P.) AND ANOTHER (A.P.)
(APPELLANTS)

v.

MAYOR ETC. OF THE LONDON BOROUGH OF WANDSWORTH
(RESPONDENTS) (ENGLAND)

Lord Wilberforce

MY LORDS,

A Lord Wilberforce
A Lord Fraser of Tullybelton
R Lord Russell of Killowen
A ~~Lord Lowry~~
R Lord Bridge of Harwich

This appeal arises under The Housing (Homeless Persons) Act 1977. In December 1979 the appellants, who are husband and wife, applied to the London Borough of Wandsworth, the respondents, for housing as homeless persons entitled to priority under the provisions of this Act. The respondents refused their application on the ground that they were " intentionally homeless ". The question is, or ought to be, whether the respondents in so doing erred in law: I say " ought to be " because the procedure adopted by the appellants was to sue the respondents in the Wandsworth county court for damages and a mandatory injunction to house them; this resulted in a trial with witnesses of issues of fact. At the conclusion of this trial His Honour Judge White found for the appellants, awarded them damages, declared that the determination of the respondents was void, and made an order that the respondents should forthwith secure that accommodation become available for the respondents and their family, subject to a stay pending appeal. The Court of Appeal by majority reversed this order, and the appellants now seek its restoration. I shall comment upon this procedure later in this opinion.

Speech for L. Lowry.

The Act of 1977 was an important measure imposing for the first time on housing (sc. local) authorities a duty to accommodate or to assist homeless persons. There had previously been legislative provisions for the benefit of the homeless through local authority welfare departments, but these suffered from weakness of definition and of means of enforcement. The Housing Act 1957, section 113, placed certain obligations upon local authorities as regards housing, including one of securing that in the selection of their tenants a reasonable preference should be given to persons occupying insanitary or overcrowded houses, having large families, or living in unsatisfactory housing conditions. The Act of 1977 (section 6 (2)) made use of this provision by bringing homeless persons within it, and by imposing on local authorities independent duties under that Act (see section 6(1)(*b*) and (*c*)).

In applying and interpreting this Act there are several important points to bear in mind. First, it is designed for the expressed purpose of bringing families together. Secondly, it forms part of a complex of duties which local authorities owe to categories of persons seeking housing. These persons are normally placed on a waiting list, in some areas a very long one, and are given accommodation according to a points system of priority. Inevitably every allocation of priority housing to homeless persons must have the effect of deferring the hopes of persons in other categories, some of whom may have been waiting for a long time. Thirdly, a decision against priority treatment under the Act does not mean that nothing can be done for the " homeless " applicants. They can join the waiting list for a council tenancy—indeed Mrs. Din did so in June 1979—or they can seek nomination to a housing association, or, with the help of advice, they can seek private sector housing, with temporary accommodation meanwhile. Fourthly, as the Act recognises, conditions may (and do) differ greatly from one authority to another, and in administering its provisions, they may be taken into account. The Act must be interpreted in the light of these matters, with liberality having regard to its social purposes, and also with recognition of the claims of others and the nature and scale of local authorities' responsibilities. It should be noticed that the Secretary of State has power (section 12) to give guidance to local authorities, and that

he has done so through a prescribed code of conduct. This (paragraphs 2–19) emphasises that it is for the authority to satisfy itself whether an applicant became homeless intentionally and that careful and sensitive inquiries will be important.

I can summarise fairly briefly the relevant statutory provisions. " Homelessness " is defined in section 1. It is not confined to cases where the applicant himself is without accommodation but expressly includes the case where a person has no accommodation which he, together with any other person who normally resides with him as a member of his family, is entitled to occupy. Subsection (3) adds that a person is " threatened with " homelessness " if it is likely that he will become homeless within 28 days.

Section 2 defines the homeless persons who are considered to have a priority need for accommodation. The housing authority must be satisfied either that the applicant has dependent children who are residing with him or who might reasonably be expected to reside with him or that he comes within another of the categories stated in the section.

Section 3 imposes on local authorities, when faced with a case of possible homelessness, to make appropriate inquiries. These relate to (i) the state of homelessness or threatened homelessness. (ii) the question of priority need (iii) inquiries necessary to satisfy them " whether he [the applicant] *became* " *homeless* or threatened with homelessness intentionally ".

Section 4 defines in detail the duties (so expressed) of local authorities in the various cases. If they *are satisfied* that a person is homeless, or threatened with homelessness, and that he has a priority need, but *are also satisfied* that he *became* homeless or threatened with homelessness intentionally, the duty is to furnish him with advice and appropriate assistance: (section 4 (1) and (2) (*b*)).

If they *are satisfied*, as above, but not satisfied that he *became homeless* intentionally, the duty is to secure that accommodation becomes available for him. (This is subject to certain considerations as to local connections with the authority's area: section 5.)

The words " are satisfied " must be noted: they leave the decision, on these issues of fact, to the local authority. On well-known principle, there is no appeal to a court against such a decision, but it may be subject to " judicial " review " for error in law including no doubt absence of any material on which the decision could reasonably be reached.

Section 8 contains safeguards as regards any decision of a local authority. The applicant must be notified of it; and, in particular, if the authority notifies him that they are satisfied that he *became* homeless intentionally, they must notify him of their reasons.

Finally, there are the critical provisions regarding intentional homelessness. These are contained in section 16 or 17, the relevant parts of which I must quote. I think it is more intelligible to do so in reverse order.

> " 17 (1) Subject to subsection (3) below, for the purposes of this Act " 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.
>
> " (2) . . . . . .
>
> " (3) An act or omission in good faith on the part of a person who " was unaware of any relevant fact is not to be treated as deliberate for " the purposes of subsection (1) or (2) above.
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> " (4) Regard may be had, in determining for the purposes of " subsections (1) and (2) above whether it would have been reasonable " for a person to continue to occupy accommodation, to the general " circumstances prevailing in relation to housing in the area of the " housing authority to whom he applied for accommodation or for " assistance in obtaining accommodation."

" 16. For the purposes of this Act accommodation is only available " for a person's occupation if it is available for occupation both by him " and by any other person who might reasonably be expected to reside " with him and any reference in this Act to securing accommodation " for a person's occupation shall be construed accordingly."

On these provisions the case of Mr. and Mrs. Din has to be decided. Can they successfully challenge the decision of the local authority that it was satisfied that the appellants became homeless intentionally within the definition in section 17 (1)? To answer this, we must consider the facts as they were before the local authority as the result of their inquiries.

The appellants are married with four children: there is no doubt that they would fall into a potential priority class. In 1977 the whole family moved, from Croydon, into accommodation at 56 Trinity Road, Wandsworth—accommodation which was suitable for the whole family to occupy. This belonged, under a lease, together with a shop, to a relative, Mr. Jaswail. Mr. Din entered into a loose partnership with Mr. Jaswail dealing with Pakistani food, but Mr. Din retained his existing employment with the Airfix Company. In April 1978 Mr. Jaswail withdrew from the business. The landlord of the premises accepted rent from Mr. Din without prejudice, but arrears of rent mounted up and Mr. Din came to be in financial difficulties. In June 1979 Mrs. Din went to the Housing Aid Centre in Wandsworth and was put on the waiting list for accommodation. She was advised that before she could be helped she would have to wait for a court order for possession to be made against her. Mr. Din was similarly advised on 2nd July 1979. On 28th August 1979 the appellants vacated the premises: no court proceedings had been initiated against them, and no demand for vacant possession had been made. I do not think that there is any doubt that this action was deliberate and intentional and fell within the provisions of section 17. They then went to live with Mr. Jaswail in a flat at Upminster: this was crowded accommodation. Mr. Din hoped to get employment with Ford Motors at Dagenham: in this he was unsuccessful. In November 1979 he returned to his previous job with Airfix and took a room in Wandsworth. In December 1979 the appellants were asked to leave the Upminster flat. On 20th December 1979 the appellants applied to the respondents as homeless persons under the 1977 Act. The respondents made appropriate enquiries and on 4th January 1980 notified the appellants that they were satisfied that the appellants' homelessness was " intentional ". The reasons given were that the appellants left 56 Trinity Road after they had been advised on two occasions to remain in occupation until the owners sought a court order: they disregarded this advice and moved to 179 St. Mary's Lane, Upminister knowing this to be only temporary accommodation.

As I have stated, the appellants later started proceedings in the county court. As to this procedure I have reservations. The local authority is, under the Act, carrying out statutory functions, and is required to make a decision based on findings of fact (being " satisfied " as set out above). Its decision can be the subject of judicial review (see above), but county courts have no power to make this. A procedure achieving, in effect, the same result by county court action appears to have been approved by the Court of Appeal (*De Falco* v. *Crawley B.C.* [1980] 1 All E.R. 913) and was not challenged in this case, so for the purposes of this appeal I will, under reservation, assume its validity. The evidence at the trial amplifies the facts in some respects and I am prepared to take it into consideration.

In his evidence Mr. Din said that the only reason that compelled him to quit the place (56 Trinity Road) was the rate demand—he was scared—and said later that the main reason why he left was that he could also be at a new place but his move was prompted by his fear. Mr. Godbold, an officer of the respondents, confirmed that this was what Mr. Din told the Housing Centre. Mr. Bruneau, head of the Housing Department, said that the reason why the local authority generally insisted on a court order was because of the " impossible shortage " of accommodation. A few weeks are of extreme importance on financial grounds and as affecting the pressure on the stock. He did not accept that it was inevitable for the applicant to leave

56 Trinity Road in June 1979. In December he " accepted on the evidence " that they had no chance of making his accommodation pay " and that " on " what I knew—whatever the time factor they would have had to have " left." In December " I accepted there was no possibility of him staying ". The imprecision, as regards time, of this evidence is to be noted.

So how does the matter stand? If one takes the words of the statute, the council has to be satisfied that the applicants became homeless intentionally (section 17). Under section 4(2)(*b*) their duty is limited to advice and assistance if " they *are* satisfied . . . that [they] *became* homeless . . . intentionally. The time factors here are clearly indicated: at the time of decision (the present), the local authority must look at the time (the past) when the applicants became homeless, and consider whether their action *then* was intentional in the statutory sense. If this was the right approach there could only be one answer: when the Dins left 56 Trinity Road their action was intentional within section 17, and the council was entitled to find that it would have been reasonable for them to continue to occupy 56 Trinity Road.

The appellants' argument against this is as follows: Whatever the position may have been in July 1979 when they left 56 Trinity Road, at the time of the decision in December 1979 they would have been homeless in any event: the original cause of homelessness (even if intentional) had ceased to operate. For section 17 to apply there must be a causal nexus between the intentional action and the homelessness subsisting at the time of the decision. On the facts of the case there was not, so that the decision was wrong in law. I am unable to accept this argument.

1. It cannot be reconciled with the wording of the Act. This is completely and repeatedly clear in concentrating attention on when the appellants became homeless and requiring the question of intention to be ascertained as at that time. To achieve the result desired by the appellants it is either necessary to distort the meaning of " in consequence of which " he ceases to occupy " (section 17(1)) or to read in a number of words. These are difficult to devise. Donaldson L.J. suggests adding at the end of section 17(1) " and still to occupy ": the appellants, as an alternative " to the " date of his application ". Both are radical—and awkward—reconstructions of the section.

2. Such an interpretation, or reconstruction, of the Act is not called for by any purposive approach. As I have pointed out, the Act reflects a complex interplay of interests. It confers great benefits upon one category of persons in need of housing, to the detriment of others. This being so, it does not seem unreasonable that, in order to benefit from the priority provisions, persons in the first category should bring themselves within the plain words. Failure to do so involves, as Mr. Bruneau pointed out, greater expense for a hard pressed authority, and greater pressure on the housing stock.

3. The appellants' interpretation adds greatly to the difficulties of the local authority's task in administering this Act. It requires the authority, as well as investigating the original and actual cause of homelessness, to enquire into hypotheses—what would have happened if the appellants had not moved, hypotheses involving uncertain attitudes of landlords, rating authorities, the applicants themselves, and even intervening physical events. The difficulty of this is well shown by the singularly imprecise and speculative evidence given as to what was likely to have happened in December 1979—see above. This approach almost invites challenge in the courts—all the more if it is open to applicants to litigate the whole state of facts with witnesses, de novo, in the county court, but still significantly if the applicants are limited to judicial review. On the other hand the respondents' contention involves a straightforward enquiry into the circumstances in which the applicants became homeless.

4. The appellants' argument is not assisted by the case of *Dyson* v. *Kerrier District Council* [1980] 1 W.L.R. 1205. There (as here) the applicant intentionally surrendered available accommodation in order to go to

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C O R R I G E N D U M

Page 4, line 2: delete "his" and insert "the"

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precarious accommodation (a " winter letting ") from which she was ejected and so became homeless. It was held (in my opinion, rightly) that she had become homeless in consequence of her intentional surrender. This does not in any way support an argument that a subsequent hypothetical cause should be considered to supersede an earlier actual cause. It merely decides that a disqualification for priority by reason of an intentional surrender is not displaced by obtaining temporary accommodation. As pointed out by Ackner L.J. in the Court of Appeal, it can be displaced by obtaining " settled " accommodation.

5. It does not follow from accepting the respondents' argument that occupants who move before a notice to quit takes effect will be held to be intentionally homeless. Such cases are likely to be covered by section 1(3), referred to above.

I agree therefore with the majority of the Court of Appeal in holding that the present case falls squarely within the provisions of the Act as to intentional homelessness and that there is no justification for reading these provisions otherwise than in their natural sense.

In the result the local authority was entitled to decide, on the facts, and in law, that the appellants became intentionally homeless. I would dismiss this appeal.

Lord Fraser of Tullybelton

MY LORDS,

The question in this appeal is whether the appellant became homeless " intentionally " in the sense of the Housing (Homeless Persons) Act, 1977. One of the main purposes of that Act was to secure that, when accommodation is provided for homeless persons by the housing authority, it should be made available for all the members of his family together and to end the practice which had previously been common under which adult members of a homeless family were accommodated in hostels while children were taken into care, and the family thus split up. The emphasis on treating the family as a unit appears from section 1 which provides that a person is homeless for the purposes of the Act if he has no accommodation, and that he is to be treated as having no accommodation if there is no accommodation which he " together with any other person who normally " resides with him as a member of his family . . . . is entitled to occupy " (section 1(1)(*a*)). The particular emphasis on families with children appears from section 2 which provides that a homeless person has " a priority need " for accommodation " when the housing authority is satisfied that he is within one of certain categories, the first of which is that " (*a*) he has " dependent children who are residing with him or who might reasonably " be expected to reside with him "; (section 2(1)(*a*)).

When a person applies to a housing authority for accommodation, the housing authority, if they have reason to believe that he may be homeless (as defined in section 1) or threatened with homelessness, have a duty under section 3 to make inquiries into three matters. The first of these is:

(1) whether he is homeless or threatened with homelessness;

If the housing authority are satisfied that the answer to that question is in the affirmative it has to go on to inquire into the other matters which are:

(2) whether he has a priority need, and

(3) whether he has become homeless or threatened with homelessness intentionally.

If the housing authority are satisfied that he has a priority need, but are not satisfied that he became homeless intentionally, they come under a duty " to secure that accommodation becomes available for his occupation."

(Section 4(5)). If the housing authority are not satisfied that he has a priority need, or if they are satisfied that he became homeless intentionally they come under the lesser duty of furnishing him with advice and appropriate assistance and of securing that accommodation is made available for his occupation for long enough to give him "a reasonable opportunity of "himself securing accommodation for his occupation" (section 4(3)), that is, to provide him with temporary bridging accommodation. The practical issue in this appeal is whether the respondents, as housing authority, owed the higher duty to the appellant or were entitled to be satisfied that he became homeless intentionally with the result that they owed him only the more limited duty.

The meaning of the expression "becomes homeless intentionally" is explained by section 17 (1) which provides as follows:

> "17(1) Subject to subsection (3) below, for the purposes of this "Act 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.
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> "(4) Regard may be had, in determining for the purposes of sub-"sections (1) and (2) above whether it would have been reasonable for "a person to continue to occupy accommodation, to the general "circumstances prevailing in relation to housing in the area of the "housing authority to whom he applied for accommodation or for "assistance in obtaining accommodation."

That section has to be read along with section 16 which provides as follows:

> "16. For the purposes of this Act accommodation is only "available for a person's occupation if it is available for occupation "both by him and by any other person who might reasonably be "expected to reside with him and any reference in this Act to securing "accommodation for a person's occupation shall be construed "accordingly."

This appeal brings out once more the distressing results of shortage of housing accommodation which exists in certain parts of the United Kingdom. So far as directly relevant to the appeal the facts here are simple. In 1977 the appellant with his wife and four children moved from Croydon, where they had been living for some years, to live in Trinity Road, Wandsworth, in a flat above a shop there. The tenant of the whole premises was the appellant's brother-in-law and the appellant and his family were to assist the brother-in-law in running a take-away food business from the shop premises, in return for which they were to occupy the flat above the shop rent free. Unfortunately, the take-away food business was not successful and the appellant's brother-in-law fell into arrears with the rent. He left in April 1978 and went to live elsewhere where he got work. The appellant and his family stayed on in the Trinity Road accommodation and tried to run the take-away food business but they ran increasingly into debt. In the summer of 1979 the appellant sought advice from the Housing Aid Centre in Wandsworth and was advised that the housing authority could not help him until there was a court order for possession against him and that until such an order was issued he should stay on in the accommodation at Trinity Road. In July 1979 he received a distress warrant for rates. This alarmed the respondent and on 28th August, contrary to the advice received from the appellant's housing advice centre, he and his family left Trinity Road while the accommodation there was still available to him, and went to live with relatives at Upminster in the hope of getting work at Dagenham. The accommodation at Upminster was much too small to be suitable for a prolonged stay by the appellant and his family. He failed to get work at Dagenham and in November 1979 he himself returned to his previous job in Wandsworth and soon got temporary lodgings there. He left his wife and

children at Upminster, but in December they were asked by their relatives to leave. On 20th December 1979 he applied to the respondents as housing authority for accommodation under the 1977 Act.

The respondents rejected his application for permanent accommodation on the ground that he had left the Trinity Road accommodation on 28th August while it was still available for his accommodation, and when it would have been reasonable for him to continue to occupy it. They, or their officials, recognised that by December that accommodation would almost certainly have ceased to be available for the appellant, because the landlord would have evicted him for failing to pay the rent. But they disregarded that fact (if it be a fact) as irrelevant on the ground that the accommodation had been available when he became homeless in August, and that they were not concerned with any change of circumstance in that respect occurring thereafter. The argument on behalf of the appellant was that the respondents had erred in respect that by December 1978 the effective cause of his homelessness was no longer his having left in August but the fact that the accommodation would no longer have been available for him in any event.

Before I consider that matter I should mention another point which was disputed at an earlier stage of these proceedings but which is not now in dispute. The respondents' decision that the appellant had become homeless intentionally involved their determining two issues—viz. (1) That he had deliberately done something in consequence of which he had ceased to occupy the accommodation at Trinity Road, and (2) that that was accommodation " which it would have been reasonable for him to continue to " occupy " (section 17 (1)). The appellant now accepts that they were entitled to determine the latter issue against him. I think that is clearly right, although the determination is one of exceptional difficulty because it requires the comparison of things which are unlike. The appellant, quite rightly from his point of view, wished to leave the accommodation at Trinity Road in July 1979, as soon as he recognised that he could not run the take-away food business profitably. He naturally wished to avoid getting further into debt for arrears of rent and rates. The concern of the respondents was that persons with families such as the appellant, who were likely to become homeless, should stay on in their accommodation as long as possible in order to avoid swelling the number of those for whom they had a duty to secure accommodation, and they were entitled to have regard to their obligation to other families in this regard (section 17 (4)). As Wandsworth is in Inner London it is within judicial knowledge that housing in the respondents' area was very scarce. For that reason the respondents' determination that it would have been reasonable for the appellant to continue to occupy the accommodation at Trinity Road after July 1979 was, in my view, one that they were well entitled to make, although if the same issue had arisen in another part of the country where accommodation was under less pressure the position might have been different.

I return to the question whether the respondents were entitled to decide that the appellant had deliberately done something in consequence of which he ceased to occupy accommodation which was available for his accommodation. I feel no doubt that they were entitled to do so. The 1977 Act contains various provisions relating to persons who have " become " homeless intentionally. In all these provisions the word " become " in one of its tenses is used and attention is thus concentrated on how the condition of homelessness began. In section 17 (1) itself the provision is that a person " becomes " homeless intentionally if he " ceases " to occupy accommodation which is available for him; the word " ceases " evidently assumes that he has been occupying the accommodation up till the time when he " becomes " homeless. Again, in section 3 the housing authority is directed to inquire whether the applicant " is " homeless (section 3 (2)(*a*)) and, if so, whether he " became " homeless intentionally (section 3 (2)(*b*)(ii)). The same contrast between the question whether the applicant " is " homeless at the time of the housing authority's inquiry and the question whether he " became " homeless, which must be looking to some earlier date, is

seen in section 4(3)(*a*) and 4(2)(*b*) and 4(5)(*a*)(i) and 4(5)(*b*). Perhaps the most striking example of such a contrast is in section 11 which makes it an offence to give false information with intent to make a housing authority believe that a person:

" (*a*) *is* homeless or threatened with homelessness, or

" (*b*) *has* a priority need, or

" (*c*) *did not become* homeless or threatened with homelessness " intentionally . . . "

In face of such repeated emphasis it is, in my opinion, impossible to read the provisions in the Act as to becoming homeless otherwise than literally, and as looking to the date at which homelessness began. It is therefore irrelevant for an applicant who is homeless at the date of his application, and who became homeless intentionally, to show that he would have been homeless by that date in any event. The material question is why he became homeless, not why he is homeless at the date of the inquiry. If he actually became homeless deliberately, the fact that he might, or would, have been homeless for other reasons at the date of the inquiry is irrelevant.

There can, in my opinion, be no doubt that that is the plain meaning of the statutory provisions. But it is said that it produces a result which is harsh and which ought to be ameliorated by some benevolent reading of the Act in favour of the applicant. No doubt there may be cases in which such an argument is admissible, but in my view this is not one of them. Although the parties to this appeal are, on the one side, a homeless person with a family including dependent children and, on the other side, a public authority—circumstances which might perhaps be urged in favour of a benevolent construction in favour of a homeless applicant—the true competition is between the appellant and the many other persons with families in the respondents' area who are homeless or threatened by homelessness. That is recognised by subsection (4) of section 17. In these circumstances of a competition between too many homeless persons chasing too little accommodation I would not consider it proper to depart from the plain and unambiguous meaning of the statutory provisions.

The view that I take appears to me to be entirely consistent with the decision of the Court of Appeal in *Dyson* v. *Kerrier District Council* [1980] 1 W.L.R. 1205, where the plaintiff became homeless in consequence of her deliberate act in ceasing to occupy accommodation at Huntingdon in October, 1978. She subsequently obtained other accommodation, which she knew would be only temporary, under a " winter let " which expired on 31st March 1979. The court held that her homelessness after 31st March 1979 was in consequence of her original act in ceasing to occupy permanent accommodation in October 1978. I respectfully agree, because on the facts of that case the original cause of her homelessness was still in operation at and after 31st March 1979. That, I think, was what Brightman L.J. who delivered the judgment of the Court of Appeal had in mind when he said at page 1213 H: " If the plaintiff had not left the Huntingdon flat in October " 1978 she would not have found herself threatened with homelessness in " March 1979 ". Counsel for the appellant sought to apply that language to the circumstances of this appeal and argued that even if the appellant had not left the Trinity Road accommodation on 28th August 1979 he would nevertheless have been homeless by the date of the respondents' inquiry. Be it so. The fact remains that the appellant's homelessness in December 1979 was a consequence of his deliberate act of moving out on 28th August. I accept that for section 17(1) to be applicable there must be a continuing causal connection between the deliberate act in consequence of which homelessness resulted and the homelessness existing at the date of the inquiry. Such a causal connection exists in this case, and that being so it is immaterial to inquire whether he might in other circumstances have been homeless then for other reasons.

I would dismiss the appeal.

Lord Russell of Killowen

MY LORDS,

The facts and circumstances of this appeal have been sufficiently stated in the opinions of others of your Lordships. The correct conclusion in law turns upon a short point.

The Authority conclusively determined that when Mr. Din on 2nd August 1979 left No. 56 Trinity Road it would have been reasonable for him and his family to continue to occupy that accommodation beyond that date. It would follow that if Mr. Din had then applied as a homeless person it would have been a correct conclusion by the Authority that his then condition of homelessness was attributable to his voluntary withdrawal (unreasonably) from Trinity Road, and accordingly that for the purposes of sections 4 and 17 (1) of the 1977 Act he became homeless intentionally.

But that is not what happened. Mr. Din applied under the Act, claiming to be homeless and having a priority need (as to both of which the Authority was satisfied), towards the end of December 1979. The crucial question in this appeal is raised by the fact that by that date the Din family would in any event have been evicted from the Trinity Road accommodation.

The county court judge heard evidence from the appropriate official of the Housing Authority, of which we have only his notes. In his judgment he made the following comments and findings:

> (1) " It is not in dispute . . . that it was only a matter of time before " the Dins would have had to leave the premises in any event." (2) " Mr. Bruneau [the official above-mentioned] said he considered there " was no reason in the short period of weeks before an [eviction] order " would be made why Mr. Din should run down the [take-away food] " business completely . . .". (3) " By the end of December the " Plaintiffs [Dins] would in any event, whether or not they had followed " the Defendants [Housing Authority] advice, have been homeless."

There were several other passages in the judgment to the same effect, which I need not trouble to set out. In short the judge found on the evidence that the Dins' condition of homelessness, albeit that it had started in August by their voluntary move in August 1979, was not at the time of the late December application and its determination by the Authority any longer attributable to their voluntary departure in August, and could no longer bear the badge of intentional.

I make at this stage the comment that the case of *Dyson* v. *Kerrier D.C.* [1980] 1 W.L.R. 1205 was different in a vital respect. There the applicant had a secure council house tenancy in Huntingdon which she voluntarily surrendered to take temporary (winter let) accommodation in Cornwall. When that ended she became homeless because she had voluntarily surrendered her secure tenancy in Huntingdon, without which act she would still (at the time of application) have been there: therefore her homelessness was intentional. In that respect the case is the opposite of the present case.

What then of the present case? I entirely understand the reasoning behind the conclusions of those of your Lordships with whom I am about to differ: Mr. Din in August 1979 became homeless intentionally within the explanation afforded by section 17(1) of what is involved in becoming homeless intentionally: when the Authority made its enquiries at the end of December they were then entitled to say that he became homeless (in August) intentionally: the statutory language is satisfied. But I prefer to consider the statute more broadly, though not seeking to add to the language. The enquiries and conclusions of the Authority fall to be made at (or after) the application. Is the applicant now homeless? Has he now a priority need? In my opinion the investigation of the question whether he became homeless intentionally, which is to be made at the same time, is directed to the cause of his present homelessness. Why is he homeless now? If in the past he has become homeless intentionally and but for

that he would not now be homeless (as in the *Dyson* case, *supra*) well and good: that is why he is homeless now. But if on the facts as established in the present case he would be homeless now in any event, the past circumstances in which the homelessness originated appear to me to be no longer of any relevance: the past actions of the applicant are spent.

I recognise, of course, that questions not easy of solution may arise in any given case. There may well be situations which are neither within the *Dyson* case (*supra*) at one end and the instant case at the other. Those will fall for decision by the Authority under section 4, and normally will be unassailable. But in the instant case in my opinion the facts are clear and the Authority failed to consider whether the present homelessness was attributable to the applicant's actions in August 1979.

I would allow the appeal and restore the decision of the county court judge.

Lord Lowry

MY LORDS,

The learned county court judge put it well in his admirable judgment when he said:

> " The background to the case, which has important undertones, is " the acute shortage of accommodation in this part of London, the " unbearable pressures that homelessness must inevitably bring to " individual families however it may be that they have become homeless " and the difficult and at times almost impossible burden placed on " the local authorities in trying fairly to discharge the various duties " that Parliament has imposed upon them."

The Housing (Homeless Persons) Act 1977 (" the Act ") has given rise to a volume of cases which is remarkable, having regard to the short time it has been in force, the extent of the discretion it confers and the absence of an ordinary right of appeal: the courts cannot, whatever the procedure, upset a decision under sections 3 and 4 except within the bounds prescribed by *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223, remembering that one way of " contravening the law " is to misapply a statutory provision. The frequency with which judicial opinion has been divided is also notable, and the appeal now before your Lordships provides the latest example. As in other cases, the real contest here is not between the homeless citizen and the state: the duty of the housing authority is to hold the balance fairly among all homeless persons and to exercise a fair discretion according to law, while your Lordships' task is to declare the law relevant to this case.

Taj Din and Mansura Akther Din (" the appellants "), together with their four children, left 56 Trinity Road, Wandsworth on 28th August 1979, and in consequence ceased to occupy accommodation there which was available for their occupation and which it would have been reasonable for them to continue to occupy. Thereby, as they admit, the appellants became homeless intentionally within the meaning of section 17(1) of the Act. They went to stay with a brother-in-law, Mr. Jaswail, in his small flat in Upminster above a Kentucky Fried Chicken shop. This accommodation was far too small for them all to live in for any length of time and it was common ground, as set out in the appellants' particulars of claim in the county court action, that there was a continuing state of homelessness at all material times from 28th August 1979. As Ackner L.J. has said, " There " was no break in the homelessness, as the accommodation to which they " went in the brother-in-law's flat was intended to be, and could only have " been, for a short temporary period." It must also be accepted, for the purpose of these proceedings, that the appellants, if they had not left Trinity Road in August, would inevitably have become homeless in any event through having to leave there before 20th December 1979, the date of their housing application.

On these facts, my Lords, I agree with the majority in the Court of Appeal and with my noble and learned friends, Lord Wilberforce and Lord Fraser of Tullybelton, that the respondents were in law entitled to be satisfied that the appellants became homeless intentionally in a way which was relevant to their housing application and that accordingly the respondents were only subject to a duty towards the appellants (by virtue of section 4(2)(*b*) of the Act), to give them advice and appropriate assistance and to secure that accommodation was made available for their occupation for such period as the respondents considered would give the appellants a reasonable opportunity of themselves securing accommodation for their occupation.

I might be content to say no more, but out of respect for those of your Lordships who take a different view I would add some observations of my own, first summarising the main points of the appellants' argument.

They contend that, although they became homeless intentionally on 28th August 1979, this original cause of their homelessness was rendered a spent cause by the fact that, through having to leave the Trinity Road accommodation, they would in any event have become homeless by 20th December 1979, the date of their housing application: therefore, it is submitted, by the latter date that fact was the real cause of their homelessness, and one must, they say, consider the real cause of the homelessness at the time when the application is made. Or, as the learned county court judge said, " I cannot think it was Parliament's intention that if an applicant has " made himself intentionally homeless earlier than he need be he must " be barred from help after he would have been made homeless " unintentionally in any event ".

The appellants say that the " intentional homelessness " which occurred in August cannot be taken into account so as to deprive them of their priority unless the act of becoming intentionally homelessness is causally linked to the homelessness existing in December, and they further contend that the intentional homelessness is *not* causally linked to the December homelessness if the appellants would in any event have been homeless in December.

On the other hand, my noble and learned friend, Lord Wilberforce, has pointed out that these arguments cannot be reconciled with the actual wording of section 17(1) and that what would be required to sustain them is a reconstruction of the Act. I concur, and I further agree that the appellants' interpretation is not required by reference to the purpose of the Act. I readily adopt the view of my noble and learned friend, Lord Fraser of Tullybelton, that all the provisions which relate to becoming homeless concentrate attention on *how* the homelessness began and look unambiguously to the *date on which* homelessness began. I also agree with both of my noble and learned friends that *Dyson* v. *Kerrier District Council* [1980] 1 W.L.R.1205 does not help the appellants' cause. I shall, however, have something to say about that case.

I accept that, for section 17(1) to bite, the act of becoming homeless intentionally, as the appellants did, must be causally linked to homelessness at the time of the housing application. It would, for example, be absurd if a priority applicant who became homeless intentionally in September and obtained good accommodation in October for other than temporary occupation and then lost that accommodation " unintentionally " in November could lose his priority for a housing application made in December. To avoid this result, in construing the Act, does not need words to be implied: it merely recognises the obvious fact that, when the housing authority make appropriate inquiries under section 3(1), they will inquire into the origin of the homelessness (which I shall call " the relevant home- " lessness ") on which the applicant relies. The relevant homelessness in my example originated in November and the applicant did not *then* become homeless intentionally. In the present case, on the other hand, inquiries showed that the relevant homelessness began in August 1979 when the appellants became homeless intentionally.

Their argument necessarily disregards this aspect of causation and concentrates on something else: what would have been the position if the deliberate act which caused the relevant homelessness had not occurred. They then say that the real cause of their homelessness is not the act which caused it but something which did not cause it, namely the fact that they would have been homeless unintentionally by December if they had not already become homeless intentionally in August.

The appellants have prayed in aid a fallacious analogy with the rule governing responsibility for damages in tort by referring to cases like *Jobling* v. *Associated Dairies Lt.* [1981] 3 W.L.R.155. The principle there discussed is that the effect of a subsequent event may be to limit or terminate an earlier tortfeasor's liability, and the victim's entitlement, to damages. It has nothing to do with the interpretation of section 3(2)(*b*)(ii) and 17(1) of the Act or with the type of causation with which your Lordships are now concerned.

My point is clearly illustrated by the observation of Waller L.J. in the Court of Appeal:

> " The question which has to be considered is not ' What would " ' have caused him to become homeless if he had not intentionally " ' become homeless? ', nor is it ' Would he have become homeless or " ' been threatened with homelessness if he had not already become " ' homeless? ' . . . The real question for the housing authority was " ' Were they satisfied he became homeless intentionally? ' . . . I " do not myself see how the addition of another cause, whether it be " real or hypothetical, can break the chain of causation which still " exists."

The appellants say that their homelessness in December was due not to their leaving Trinity Road in August but to the fact that they *would have been* evicted by December; it seems clear, however, that the cause of their being homeless in December *was* their leaving in August: if they had *not* left then, the cause of their homelessness in December would have been their later eviction (which did not occur), but to say that they would have become homeless from a cause which did not occur does not extinguish the actual cause.

With regard to statutory interpretation, I think the appellants would need to read into the Act a provision that " when it appears that an applicant " who became homeless intentionally would have been rendered homeless in " any event before the date of his application, then he shall be deemed not " to have become homeless intentionally."

I have had the opportunity of reading in draft the thoughtful and challenging speech of my noble and learned friend Lord Bridge of Harwich who takes the view that, although it is common ground that the appellants were continuously homeless since August 1979, they were, having regard to the terms of section 1 of the Act, not homeless while living in the Upminster accommodation, from which it would follow that their relevant homelessness began only in December. It was, moreover, not a *Dyson* situation at that time, because in that case the Huntingdon flat was treated as available to the plaintiff when she became homeless in Helston, whereas the Trinity Road accommodation was not available to the appellants in December. Lord Bridge does not require to consider the case on this footing, because his view of the Act leads to a conclusion in favour of the appellants, even if they are assumed to have been continuously homeless since August. But I have to deal with the point because, on my view of the law, the result would be different if the appellants' relevant homelessness began in December.

The appellants' pleadings in the county court alleged continuous homelessness and this situation has been accepted as common ground. I cannot say in point of law that this could not be right. At best, from the appellants' point of view, it was a question of fact and degree whether at any time after

leaving Trinity Road the appellants ceased to be homeless within the meaning of section 1(1). When a person becomes homeless, he remains homeless for so long as he has no accommodation, that is " if there is no " accommodation which ", in this case, " he, together with any other person " who normally resides with him as a member of his family . . . . . has " . . . . . an express or implied licence to occupy." I consider that to be homeless and to have found some temporary accommodation are not mutually inconsistent concepts. Nor does a person cease to be homeless merely by having a roof over his head or a lodging, however precarious.

My Lords, when one studies sections 3 and 4 of the Act, one finds different duties—under section 3(4) to " secure that accommodation is made " available for his occupation pending any decision which they may " make . . . ."; under section 4(3) to " secure that accommodation is made " available for his occupation for such period as they consider will give him " a reasonable opportuniy of himself securing accommodation for his " occupation "; under section 4(4) to " take reasonable steps to secure that " accommodation does not cease to be available for his occupation "; and under section 4(5) " to secure that accommodation becomes available for " his occupation ". It is clear from the context and the words used that the accommodation referred to in sections 3(4) and 4(3) is intended for temporary occupation and that the accommodation mentioned in section 4(4) and 4(5) is for other than temporary occupation, since there is no temporal adverbial qualification of the word " occupation ". There is a similar absence of qualifying words in sections 1(1), 5(3) and 5(5) (both of which are linked with section 4(5) by reference), but section 5(6) is different: it speaks of securing that accommodation is available " until it is determined whether " subsection (3) or (5) above applies to him ". Sections 16 and 17, on the other hand, are concerned with occupation other than temporary occupation. It follows from this analysis that a person continues to be homeless while he enjoys temporary occupation. Section 3(4) deals with a special case where it is uncertain whether the person is then homeless, but it is clear that a person is not homeless when he is in occupation under sections 1(1)(*a*), 4(4), 4(5), 16 and 17. Section 1(1)(*b*) would arise in relation to non-temporary occupation. The anomalous case, however, is occupation " by " virtue of . . . . . an order of a court " under section 1(1)(*a*)(i), since this could occur in relation to any kind of accommodation.

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. For example, the Housing Authority would not be discharging their duty under section 4(5) by securing that accommodation on such precarious terms was made available for a person's occupation. It is also, in my view, still a matter for debate whether the terms " occupation " and " occupy " are appropriate to describe the position of a person sharing a house as a guest without having any portion of the accommodation definitely allotted to him.

My Lords, I now have to come back to *Dyson* v. *Kerrier District Council* [1980] 1 W.L.R. 1209, the case which Donaldson L.J. cited in the Court of Appeal in support of the argument that the Act could not be construed literally, since *Dyson* could be regarded as an example of deliberately leaving available accommodation, acquiring a new home and then being held to have become homeless intentionally on having to give up that home, thus proving that on the construction of the Act supported by the respondents " a person who became homeless intentionally could never redeem himself " but would always bear the mark of Cain ".

I do not consider, my Lords, that without the benefit of argument I should go down a side road to analyse *Dyson,* but I am far from satisfied that it was correctly decided. It could well be that the plaintiff, having become homeless intentionally when she left the Huntingdon flat, was continuously homeless during the temporary winter letting and therefore rightly lost her priority. That is a result which I would understand and accept. But that was not the basis of decision in *Dyson.* The court held that the plaintiff

became threatened with homelessness at Helston on 19th March and actually homeless on 25th May when she had to leave the flat. On this basis I find it very hard to accept the complete rewriting of section 17(1) and (2) which I find at pp. 1214H and 1215D of the report. I agree with the observation of the learned Lord Justice at p.1214A that subsections (1) and (2) of section 17 should not be construed in such a way that different results are reached before and after homelessness, and I cannot accept a construction of section 17(2) according to which the plaintiff in *Dyson* became threatened with homelessness intentionally on 19th March at Helston because she did something at Huntington, namely, surrender the tenancy, the likely result of which was that she would be *forced* to leave accommodation at Huntingdon. I mention this aspect of *Dyson* only to explain an anomaly which Donaldson L.J. (quite justifiably, I think) sought to recruit in favour of the appellant's case.

My Lords, the appellants relied strongly on the policy of the Act in order to displace its literal meaning. The legislation aims to remedy the mischief of lack of accommodation and the splitting up of families to which it leads. To achieve the remedy, heavy burdens are placed on housing authorities, but section 17 relieves those authorities by describing circumstances in which a person can become homeless or threatened with homelessness " intentionally ". No one really becomes homeless or threatened with homelessness *intentionally*; the word is a convenient label to describe the result of acting or failing to act as described in section 17. The result of the housing authority's enquiries under section 3(1) will define their obligation to the homeless person under section 4. Clearly Parliament did not intend to *punish* persons for becoming homeless intentionally: the object was to lay down conditions for retaining priority and thereby to discourage persons from so acting as to increase the already heavy burden on housing authorities. The method was to postpone the claims of those who so acted and to give their places in the queue to those who did not. Housing authorities were further helped by the arbitrary definition of " threatened with homelessness " in section 1(3). The housing authority may properly decide that it would have been reasonable for a person to continue to occupy accommodation, even when it would also have been reasonable to leave, and finally section 17(4) confers for the purpose of subsections (1) and (2) an administrative discretion which depends on the general circumstances prevailing in relation to housing in the area. Indeed, so wide is this administrative discretion and so untypical of a judicial proceeding in its exercise, that I wonder whether *certiorari* could ever lie, regardless of the actual form of the housing committee's written decisions.

It does not make sense, against this background, for a person to become homeless intentionally and yet regain his lost priority as soon as the accommodation which he ceases to occupy becomes unavailable, as it will inevitably do where shortage of accommodation is the problem. The use of section 17(1) and (2) to adjust priorities will then be meaningless.

In practice homeless persons will be advised in their own interests by housing staffs, as these appellants were, and most people will accept the advice tendered. It is the sad misfortune of the appellants that, through panicking about the debt for rates (which they have now most creditably discharged), they became intentionally homeless contrary to advice.

My noble and learned friend, Lord Bridge, has rightly pointed to the waste of time and money on proceedings which arises from the policy of housing authorities based on the prevailing interpretation of section 17. It also seems unacceptable that anyone should have to cling to accommodation and defend hopeless cases of ejectment for tactical reasons and thus be compelled by the law to misuse court procedure lest his claim to a house be irretrievably prejudiced. I have already commented on the volume of litigation resulting from decisions of housing authorities in their administration of the Act. All this strongly indicates the need for Parliament to review the legislation in the light of experience.

There is, to my mind, no question here of queue-jumping or other unmeritorious conduct. But, applying the law, as I see it, to the facts, I am coerced to hold that the appellants lost their priority by becoming homeless in a relevant way. Therefore I would dismiss this appeal.

Lord Bridge of Harwich

MY LORDS,

The Housing (Homeless Persons) Act, 1977 (" the Act ") confers an important and valuable right on a homeless person who has a priority need for accommodation. The categories who can claim a priority need are set out in section 2 of the Act. The nature of those categories, including those with dependent children, pregnant women, and the disabled, gives some indication of the social policy underlying the Act. A homeless person who has a priority need can look to the relevant housing authority to secure that accommodation becomes available for his occupation. This throws a heavy burden on already hard-pressed housing authorities in areas, of which Wandsworth is undoubtedly one, where there is a desperate shortage of housing accommodation and a long housing waiting list. It may also no doubt engender a sense of grievance among those on that list who either have no priority need or cannot claim to be homeless, although their existing accommodation is far from satisfactory, to see others going to the head of the queue. But the Act embodies an important safeguard against abuse, in that the authority's duty to secure accommodation for the homeless person with a priority need is only for a limited period if they are satisfied that he became homeless intentionally: section 4(3). It is only if they are not so satisfied that they must house him indefinitely: section 4(5).

Against this background it is not surprising that many authorities adopt a general policy under the Act in relation to those whose circumstances render their continued occupation of their existing home precarious, of advising them to wait until a court order is made for their eviction. This may involve the expenditure of unnecessary legal costs by somebody but, from the authority's point of view, it postpones the evil day when the expense of providing accommodation, whether temporary or permanent, will fall upon the ratepayers. Even after a court order for possession has been made, if its operation is suspended, a person does not become formally " threatened " with homelessness "—a condition which also imposes a duty on the authority—until 28 days before the order will take effect.

This appeal raises the question of how the Act applies to a person with a priority need who voluntarily leaves accommodation prematurely. I use the expression " leaves accommodation prematurely " as a convenient shorthand to describe the action of a person whose tenure of accommodation has become so precarious, due to circumstances for which he cannot be held responsible, that it can be foreseen that within some reasonably short period (exceeding 28 days) he will have to leave in any event, but who chooses to move out at a time when the housing authority can properly conclude that it would have been reasonable for him to continue in occupation. I will return to the facts of the instant appeal later in this opinion, but to illustrate graphically the problem of construction of the Act which arises when a person leaves accommodation prematurely I take the example of a person who receives a summons for possession with a hearing date two months ahead, who recognises that he will have no defence to the claim, and moves out immediately. On a date, say, four months later, being homeless and in priority need, he applies to the housing authority for accommodation under the Act. The housing authority take the view that on receipt of the summons it would have been reasonable for him to continue in occupation at least until the hearing of the summons but that when the summons was heard an order for possession to take effect within at most six weeks would have been made. What is their duty?

Under sections 3 and 4 of the Act there are three questions, relevant for present purposes, which the housing authority must ask and answer in relation to an applicant for accommodation. They are:

(i) Is he homeless?

(ii) Has he a priority need?

(iii) Did he become homeless intentionally?

The formula to be applied in deciding whether a person became homeless intentionally is found in section 17(1), which provides:—

> " . . . 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."

In answering the first two questions, the authority are clearly concerned with the applicant's circumstances at the date of application. Is he *presently* homeless? Has he *presently* a priority need? It seems to me to be equally clear that the question whether " he became homeless " intentionally " imports an inquiry as to the cause of his *present* state of homelessness. To reach this conclusion I do not, with respect, find it necessary, as was suggested in the Court of Appeal, to read any words into section 17(1) which are not there. Section 17 is simply concerned to define what is meant by becoming homeless intentionally. But in construing the phrases "whether he became homeless intentionally " and " that he became " homeless intentionally " in the context in which they are found in sections 3 and 4, it would be absurd to hold that the housing authority are at liberty to rely on any past act or omission on the part of the applicant which satisfies the section 17 formula but which is not causally related to the applicant's present state of homelessness.

Thus, on the true construction of sections 3 and 4 and in the application of section 17(1), the third question the housing authority must ask and answer may be expanded into the following form:—

> " Is the applicant's present homelessness the result of a deliberate " act or omission on his part in consequence of which he ceased to " occupy accommodation which was available for his occupation and " which it would have been reasonable for him to continue to occupy? "

Asking that question in the circumstances of my illustrative example of the person who left accommodation prematurely when he received the summons for possession, the housing authority must necessarily give it a negative answer. By the time he applies to the authority for accommodation the fact that he left prematurely has no causal connection with his present homelessness. He would now be homeless in any event.

In the light of the arguments addressed to your Lordships on behalf of the respondent authority, it is appropriate to add two further observations on the application of this construction of the Act to different circumstances in which it may be said that an applicant for accommodation under the Act has left prematurely accommodation which, by the time he makes his application, would in any event no longer have been available for his occupation. First, if this construction is correct, it can make no difference to its application whether the applicant for accommodation, during the period intervening between the time when he left previous accommodation prematurely and the making of his application under the Act, was continuously homeless or found some temporary accommodation for himself which in its turn has ceased, through no fault of his, to be available to him. In the latter case it is perhaps the more obvious that his premature leaving of the previous accommodation is quite irrelevant to his present homelessness because, in this instance, his homelessness first began when he had to leave the temporary accommodation and *ex hypothesi* by this time the former accommodation would no longer be available. In the former case there is a certain plausibility in the proposition that, the applicant having become homeless intentionally in the first place and remained so ever since, this is sufficient to establish the necessary chain of causation between

becoming intentionally homeless and the present state of homelessness. But it requires no profound philosophical analysis to demonstrate the fallacy in this proposition. Provided always that it can be demonstrated (or is accepted by the authority) that by a certain date a man was bound to be evicted from his home, it offends commonsense to hold that the cause of his homelessness after that date was that he chose to leave of his own volition before that date.

The second observation arises from the submission that the authority, in deciding whether an applicant became homeless intentionally, cannot be expected to take account of what might have happened in a hypothetical situation which in fact did not arise. Thus, if the authority find that the applicant voluntarily left accommodation which, on the face of it, remained available for his occupation and which it would have been reasonable for him to continue to occupy, they cannot be expected or required to consider the hypothetical question for how long the accommodation would have remained available if he had not left. I see the force of this and certainly accept that if an applicant vacates accommodation which he had an indefinite right to continue to occupy in circumstances in which there is no reason to anticipate a threat of eviction the authority are entitled to treat that as a continuing cause of homelessness without considering the mere possibility that some other cause might have supervened. This is the situation—the very converse of that involved in the present appeal—illustrated by the Court of Appeal's decision in *Dyson* v. *Kerrier District Council* [1980] 1 W.L.R. 1205. The plaintiff in that case occupied a council flat in Huntingdon in which, in practice, she could expect to remain as long as she wished. She chose to move to Helston to a privately rented flat on terms which gave her no statutory protection in possession. Some eight months after the move she was evicted from the new accommodation. The immediate cause of her homelessness was clearly that eviction. But the Court of Appeal held that the relevant deliberate act on which the housing authority were entitled to rely under section 17(1) in finding that she became homeless intentionally was vacating the Huntingdon flat. The essential basis of the decision was that the voluntary surrender of her Huntingdon tenancy was the cause of her homelessness which arose on eviction from the flat in Helston. Brightman L.J., giving the judgment of the court, put it thus, at p.1215:—

> " The district council were entitled to reach the conclusion that the " plaintiff became homeless on May 25, 1979, intentionally because " she deliberately had done something (surrendered the Huntingdon " tenancy) in consequence of which she ceased to occupy accommoda- " tion (the Huntingdon flat) which was available for her occupation " and which it would have been reasonable for her to continue to " occupy; and that, therefore, *if she had not done that deliberate act " she would not have become homeless on May 25.*" (My emphasis.)

But if a housing authority are minded to rely against an applicant on the fact that he voluntarily left accommodation on some date in the past as the cause of his present homelessness and to make that the basis of their conclusion that he became homeless intentionally, I do not see how the question how long the accommodation would otherwise have continued to be available for his occupation, hypothetical though it may be, can in all cases be avoided. In a sense perhaps it is a matter of degree. At one end of the spectrum, as already indicated, is the case (as in *Dyson*) where there was no reason to anticipate eviction from the vacated accommodation and the housing authority can properly assume that it would have remained available indefinitely. At the other end is the case where a court order for possession has already been made but the applicant, for some reason, leaves voluntarily more than 28 days before the date named in the order when, in the authority's view, it would have been reasonable for him to remain. But between these two extremes there may be an almost infinite variety of circumstances in which an occupier of residential accommodation will find himself in more or less obvious and more or less imminent danger of eviction on grounds which cannot be attributed to any earlier deliberate

act or omission on his part and where he may choose to leave voluntarily rather than wait for a court order for possession to be made against him. In any such case, the housing authority, on considering a later application for accommodation under the Act, assuming they find that he left the previous accommodation prematurely, having ascertained the revelant facts, must ask themselves the question: if the applicant had not left his previous accommodation, is it likely that he would now be homeless? If they answer that question in the negative, and that conclusion is one which a reasonable authority could reasonably reach on the facts, their conclusion that the applicant became homeless intentionally will, of course, be beyond challenge in the courts. But if they simply ignore the question, they fail to take account of the relevant issue which arises as to the cause of his present homelessness and thus proceed upon an erroneous construction of the Act.

In the instant case the appellants and their four children, in summer 1979, occupied 56, Trinity Road, Wandsworth, which comprised a shop with living accommodation over. Their occupation was under licence from the lessee, a relative, who had moved elsewhere. The business carried on in the shop was not prospering and the appellants found themselves under an ever-increasing burden of debt for unpaid rent and rates. They twice consulted the respondent housing authority and were told that the authority could not help them before there was a court order for possession against them. They left in July 1979 and went to live with the same relative in accommodation at Upminster. In December 1979 they were required to leave this accommodation and made their application to the respondent authority for accommodation under the Act.

In notifying (as required by section 8 of the Act) their decision on the application and the reasons for it, the respondent wrote, on the 4th January 1980, to the appellants in the following terms:—

> "Further to your interview on 28th December, and subsequent "investigations, it has been decided that you are homeless and in priority "need but your homelessness is regarded as intentional. The reasons "for this decision are that you left your accommodation at 56 Trinity "Road SW17 after you had been advised on two occasions by the "Wandsworth Housing Aid Centre to remain in occupation of 56 "Trinity Road SW17 until the owners sought a Court Order. You "disregarded this advice and moved to your relations, Mrs. Ahmad at "197 St. Mary's Lane, Upminster, Essex, knowing this to be only "temporary accommodation."

The case was pleaded and has been argued throughout on the basis, accepted as common ground between counsel, that the appellants became homeless in July 1979 when they left 56 Trinity Road. But "homeless" is defined in section 1 of the Act, and a person who has an express or implied licence to occupy accommodation is not homeless within that definition. It is plain from the undisputed primary facts that, from July to December 1979, the appellants and their children had at least an express or implied licence to occupy the accommodation which they in fact occupied at Upminster and therefore were not "homeless" within the definition. I should not myself think it right to decide an appeal on a basis accepted as common ground which involved an erroneous conclusion of law from undisputed facts. But for reasons which I have indicated earlier I do not think it makes any difference in principle whether the appellants' homelessness began in July or December.

The county court judge has found that the respondents properly concluded that the appellants in July 1979 deliberately ceased to occupy accommodation (56 Trinity Road) which was available for their occupation and which it would have been reasonable for them to continue to occupy. This view is not challenged. The judge had before him both affidavits and oral evidence from two officers employed in the housing department of the respondent authority who had investigated the circumstances relevant to the appellants' application and who, in consultation with their superior officer, to whom the authority's statutory function of making decisions under the Act was

delegated, had been responsible for formulating the authority's reasons for deciding that the appellants had become homeless intentionally. On the basis of this evidence the judge was, in my view, amply justified in reaching the conclusion which he expressed in the following terms:—

> " Put simply on the facts of this case the question that the Defendants " should have asked themselves was—even if the Dins had complied " with the advice given to them in June and July and had remained " where they were would they, by the time of their application, have " been homeless in any event. The Defendants clearly did not consider " the point. Had they asked themselves the question the answer on " the evidence would have had to be yes."

No one disputes that the courts' jurisdiction to review the decision of a housing authority under the Act is supervisory, not appellate. The court can only intervene on the well-known principles which find their classic expression in the judgment of Lord Greene, M.R. in *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223 at pp.228 and 229. It was not suggested in argument that a case otherwise within the jurisdiction of the county court was taken outside that jurisdiction because it raised an issue as to the legality of a housing authority's decision under the Act. Here the form of the action was a claim for damages for breach of statutory duty (within the county court limit) coupled with claims for declarations and an injunction. Without hearing argument on the jurisdiction issue, it would no doubt be wrong for your Lordships' House to make any considered pronouncement upon it. But, if the appellants are entitled to succeed on the merits, to dismiss the appeal on the ground that the wrong procedure was followed would merely force the appellants to institute fresh proceedings by way of an application for judicial review in which, unless the respondents introduced fresh evidence contradicting that given in the county court, the appellants would be bound to succeed. In the light of this I do not think that a doubt about a question of jurisdiction which was never argued should inhibit your Lordships' House from allowing the appeal.

In the short passage which I have quoted above from his judgment, the learned county court judge, in my view, formulated with precise accuracy the proper test to be applied by the respondent authority in deciding whether the appellants had become homeless intentionally and demonstrated the error vitiating their decision which entitled the court to treat it as invalid.

I am not at all sorry to reach this conclusion. It would seem to me a great injustice if a homeless person in priority need having once left accommodation prematurely, no matter how short the period for which the accommodation would have remained available and in which it would have been reasonable for him to continue to occupy it, may thereafter be treated as intentionally homeless for an indefinite period and thus disqualified from claiming the major benefit which the Act confers. Ackner L.J. thought this a just penalty for what he called " unfair queue jumping ". But I can detect no trace of any attempt to jump the queue in the circumstances in which these appellants left 56 Trinity Road. He pointed out further, no doubt quite rightly, that a person categorised as intentionally homeless can throw off that status when he again achieves " a settled residence ". But I wonder what chance the class of homeless person in priority need who is driven to rely on the housing authority's assistance under the Act has of finding " a settled residence " by his own efforts. If the respondent authority put the appellants on the street, as presumably they will if the appeal fails, the most likely outcome must surely be that the family will be broken up and the children taken into care.

I would only add that nothing I have said should be taken as encouraging housing authorities to adhere to a rigid policy of refusing help to those threatened with eviction until a court order for possession has been made against them. I understand such a policy to be widely followed. It must involve a great expenditure of unnecessary legal costs. I fully appreciate the pressures to which housing authorities are subject and the reasons why they are loth to accept the burden of providing accommodation until it is irresistibly forced upon them. But in cases, of which there must be

many, where eviction in due course can be foreseen as inevitable, it would surely be more reasonable for the housing authority to accept their re-housing responsibility voluntarily, possibly on a date to be agreed with the landlord who is entitled to recover possession, without putting him to the expense of litigation.

I would allow the appeal, set aside the order of the Court of Appeal, and restore the order of Wandsworth County Court.

313683 Dd.8208150 C3 11/81

Din (A.P.) and another (A.P.) (Appellants)

v.

Mayor etc. of the London Borough of Wandsworth
(Respondents)

My Lords, I have had the advantage of reading in advance the speech prepared by my noble and learned friend Lord Wilberforce which is now available in print. I agree with it and with the order he proposes.

The other members of the House will indicate their opinions.

The Question is:-

That the Costs of the Respondents in this House be paid out of the Legal Aid Fund pursuant to section 13 of the Legal Aid Act 1974.

As many as are of that opinion will say "Content". The contrary "Not-content".

The Contents have it.

MOSOR

Lord Fraser of Tullybelton is on the woolsack (L[illegible] having retired to Court of Appeal in library) pursuant to the Resolution of 22 February 1900.

HOUSE OF LORDS

DIN (A.P.) AND ANOTHER (A.P.)
(APPELLANTS)

v.

MAYOR ETC. OF THE LONDON BOROUGH OF WANDSWORTH
(RESPONDENTS) (ENGLAND)
(No. 2)

COSTS

Lord Wilberforce

MY LORDS,

Lord Wilberforce
Lord Fraser of Tullybelton
Lord Russell of Killowen
Lord Bridge of Harwich

Their Lordships heard argument upon the respondents' application for an order to be made, under section 13 of the Legal Aid Act 1974, that their costs in the House and in the Court of Appeal should be paid out of the Legal Aid Fund. Counsel appeared for the Law Society and for the respondents.

Their Lordships do not consider it necessary to restate the principles which should govern such applications: they have been sufficiently expounded by the House in *Gallie* v. *Lee* (No. 2) [1971] A.C. 1039 and *Davies* v. *Taylor* (No. 2) [1974] A.C. 225, as well as in several cases before the Court of Appeal.

They wish however to make it clear that the practice whereby orders for costs are provisionally made, subject to an opportunity being given to the Law Society to make representations with regard thereto, does not imply that such provisional orders against the Legal Aid Fund are made as of course whenever an unassisted party is successful. Such a procedure, placing, as it would, the onus upon the Law Society of showing why such an order should not be made, would not be in accordance with the terms of section 13, as interpreted in the cases referred to. The House in fact has to consider, and does consider, in each case, whether it is just and equitable that such a provisional order should be made, the fact that the unassisted party has succeeded being only one of the circumstances to be taken into account. For this reason information is sought from the parties as to such circumstances, including their financial resources. Their Lordships have no doubt that the Court of Appeal acts upon the same principles.

In the present case their Lordships are of opinion taking all the circumstances into consideration that the Respondents' costs of the Appeal in this House, but not in the Court of Appeal, should be borne by the Legal Aid Fund. As the House of Lords alone has jurisdiction to make a section 13 Order on costs incurred in the Court of Appeal so much of the Court of Appeal Order as was concerned with section 13 costs is of no effect and need not be formally discharged.

Lord Fraser of Tullybelton

MY LORDS,

I have had the benefit of reading in draft the speech prepared by my noble and learned friend, Lord Wilberforce. I agree with it and with the order proposed by him.

Lord Russell of Killowen

MY LORDS,

I concur.

Lord Bridge of Harwich

MY LORDS,

I concur.

313890—1 Dd 8208150 C3 3/82

Die Jovis 26° Novembris 1981

Din (A.P.) and another (A.P.) (Appellants) *v.* Mayor etc. of the London Borough of Wandsworth (Respondents).

Upon Report from the Appellate Committee to whom was referred the Cause Din (Assisted Person) and another (Assisted Person) against the Mayor and Burgesses of the London Borough of Wandsworth, That the Committee had heard Counsel as well on Monday the 5th as on Tuesday the 6th days of October last upon the Petition and Appeal of Taj Din and Mansura Akther Din both of 75 Mendip Crescent, Mendip Road, London S.W.11 praying that the matter of the Order set forth in the Schedule thereto, namely an Order of the Court of Appeal of the 23rd day of June 1981 so far as therein stated to be appealed against might be reviewed before Her Majesty the Queen in Her Court of Parliament and that the said Order so far as aforesaid might be reversed, varied or altered or that the Petitioners might have such other relief in the premises as to Her Majesty the Queen in Her Court of Parliament might seem meet; as also upon the Case of the Mayor and Burgesses of the London Borough of Wandsworth lodged in answer to the said Appeal; and due consideration had this day of what was offered on either side in this Cause:

It is *Ordered* and *Adjudged*, by the Lords Spiritual and Temporal in the Court of Parliament of Her Majesty the Queen assembled, That the said Order of Her Majesty's Court of Appeal (Civil Division) of the 23rd day of June 1981 in part complained of in the said Appeal be, and the same is hereby, **Affirmed** and that the said Petition and Appeal be, and the same is hereby, dismissed this House: And it is further *Ordered*, That the Appellants' Costs in this House be Taxed in accordance with the provisions of schedule 2 to the Legal Aid Act 1974; And it is also further *Ordered*, That the Respondents' Costs in this House be paid out of the Legal Aid Fund pursuant to section 13 of the Legal Aid Act 1974, the amount thereof to be certified by the Clerk of the Parliaments.

313863—6 Dd 8208201 50 3/82