Massey v Crown Life Insurance Co

COURT OF APPEAL, CIVIL DIVISION
LORD DENNING MR, LAWTON AND EVELEIGH LJJ
2nd, 3rd, 4th NOVEMBER 1977

Unfair dismissal – Excluded classes of employment – Employment under contract for services – Employer and manager agreeing for tax purposes that manager to be self-employed in the future – Inland Revenue accepting arrangement – Manager operating under firm name rather than own name – Manager continuing to perform same duties as before – Manager dismissed and bringing claim for unfair dismissal – Whether manager an individual who has entered into or worked under a contract of employment – Whether manager an' employee' – Trade Union and Labour Relations Act 1974, s 30(1), Sch 1, para 4(1).

Master and servant – Contract of service – Distinction between contract of service and contract for services – Declaration of parties – Intention of employer and manager to change manager's status to self-employed for tax purposes – Genuine agreement with explicit terms – Whether parties' agreement conclusive in determining status of manager.

The appellant was employed as a branch manager by the respondents, an insurance company, from 1971 until 1973 under two contracts, under one of which he was treated as an employee and under the other as a general agent. Under his contract as an employee the appellant was paid wages by the respondents from which PAYE tax and contributions to the respondents' pension scheme were deducted, and he received a memorandum under the Contracts of Employment Act 1963. Under the general agency contract the appellant was a freelance agent paid on commission only and free to work for other insurance brokers. In 1973 the appellant, who wished to be taxed as a self-employed person, approached the respondents with a view to coming to a new arrangement with them. The respondents agreed and the parties entered into a new agreement whereby the appellant called himself 'John L Massey and Associates', a name which he registered under the Registration of Business Names Act 1916. Under the new agreement John L Massey and Associates were appointed manager of the appellant's branch, the appellant was repaid his contributions from the respondents' pension fund, and was thereafter paid by the respondents without tax or other deductions being made. The appellant arranged with the Inland Revenue to be treated as a self-employed person for tax purposes. Under the agreement John L Massey and Associates were allowed to employ other persons in the course of their work, but the appellant's duties vis-à-vis the respondents remained almost identical to his previous duties. In 1975 the appellant was dismissed by the respondents with one month's notice. The appellant made a complaint to an industrial tribunal of unfair dismissal. The tribunal considered, as a preliminary issue, whether the appellant was entitled to make a claim for unfair dismissal under the Trade Union and Labour Relations Act 1974, para 4 of Sch 1 to which extended the right not to be unfairly dismissed only to an 'employee', which by s 30(1)[a] was defined as 'an individual who has entered into or [has worked under] a contract of employment'. A contract of employment was further defined as a 'contract of service . . . whether it is express or implied and (if it is express) whether it is oral or in writing'. The tribunal held that the work which the appellant performed for the respondents was not performed under a contract of employment. The appellant appealed to the Employment Appeal Tribunal which dismissed his appeal. He appealed to the Court of Appeal contending that his relationship with the respondents had remained throughout that of employer and employee regardless of what he chose to call himself or the way in which he was assessed to tax.

a Section 30(1), so far as material, is set out at p 578 *c*, post

Held – The appellant could not say that for the purpose of claiming tax advantages he was not an employee and then say that for the purpose of claiming compensation for unfair dismissal he was an employee. The 1973 agreement was a genuine transaction which had been aimed to effect, and did in fact effect, a change in the appellant's status from that of an employee to that of a self-employed person, and he was not therefore an 'employee' within the meaning of s 30 of the 1974 Act and could not bring a claim for unfair dismissal under the Act. Accordingly the appeal would be dismissed (see p 580 *b c* and *g h*, p 581 *a* and *c* to *e*, p 582 *f* to *j* and p 583 *a*, post).

Ferguson v John Dawson & Partners (Contractors) Ltd [1976] 3 All ER 817 distinguished.

Notes

For the right of an employee not to be unfairly dismissed, see 16 Halsbury's Laws (4th Edn) para 615.

For the distinction between a contract of service and a contract for services, see ibid para 501.

For the Trade Union and Labour Relations Act 1974, s 30(1), Sch 1, para 4, see 44 Halsbury's Statutes (3rd Edn) 1781, 1787.

Cases referred to in judgments

Alexander v Rayson [1936] 1 KB 169, [1935] All ER Rep 185, 105 LJKB 148, 154 LT 205, CA.

Construction Industry Training Board v Labour Force Ltd [1970] 3 All ER 220, 5 ITR 290, DC, Digest (Cont Vol C) 685, *226a*.

Davis v New England College of Arundel [1977] ICR 6, EAT.

Ferguson v John Dawson & Partners (Contractors) Ltd [1976] 3 All ER 817, [1976] 1 WLR 1213, [1976] 2 Lloyd's Rep 669, CA.

Global Plant Ltd v Secretary of State for Social Services [1971] 3 All ER 385, [1972] 1 QB 139, [1971] 3 WLR 269, Digest (Cont Vol D) 707, *6c*.

Graham (Maurice) Ltd v Brunswick (1974) 16 KIR 158, DC.

Inland Revenue Comrs v Duke of Westminster [1936] AC 1, [1935] All ER Rep 259, 104 LJKB 383, 153 LT 223, sub nom *Westminster (Duke) v Inland Revenue Comrs* 19 Tax Cas 490, HL, 28(1) Digest (Reissue) 507, *1845*.

Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 1 All ER 433, [1968] 2 QB 497, [1968] 2 WLR 775, Digest (Cont Vol C) 722, *6b*.

Stevenson Jordon and Harrison Ltd v MacDonald and Evans [1952] 1 TLR 101, 69 RPC 10, CA, 28(2) Digest (Reissue) 1086, *906*.

Cases also cited

Challinor v Taylor [1972] ICR 129, 116 Sol Jo 141.

Comrs of Customs and Excise v Pools Finance (1937) Ltd [1952] 1 All ER 775, CA.

Evenden v Guildford City Association Football Club Ltd [1975] 3 All ER 269, [1975] QB 917, CA.

Hammett v Livingstone Control Ltd (1970) 5 ITR 136.

Market Investigations Ltd v Minister of Social Security [1968] 3 All ER 732, [1969] 2 QB 173.

Morren v Swinton and Pendlebury Borough Council [1965] 2 All ER 349, [1965] 1 WLR 576, DC.

Napier v National Business Agency Ltd [1951] 2 All ER 264, 44 R & IT 413, CA.

Watling v William Bird & Son Contractors Ltd (1976) 11 ITR 70.

Appeal

This was an appeal by John Linnell Massey against a decision of the Employment Appeal Tribunal (Kilner Brown J, Mr A C Blyghton and Mr A J Nicol) dated 30th November 1976, dismissing his appeal against a decision of an industrial tribunal (chairman C H A Lewes) whereby the tribunal determined, on a preliminary issue, that the appellant could not pursue a claim for unfair dismissal against the respondents,

Crown Life Insurance Co, because he was not 'employed' by them at the date of his dismissal. The facts are set out in the judgment of Lord Denning MR. *a*

Alistair Sharp for the appellant.
Anthony Boswood for the respondents.

LORD DENNING MR. John Massey was the manager of the Ilford branch of the Crown Life Insurance Co of Canada. He was employed there from 1971 until 1975. On 17th November 1975 the company gave him one month's notice to terminate his agreement. He claims that he was unfairly dismissed and is entitled to compensation under the Trade Union and Labour Relations Act 1974. *b*

A man can only claim compensation for unfair dismissal if he is an employee employed under a contract of service. That appears from s 30(1) of the Act. It defines an 'employee' as 'an individual who has entered into or [has worked under] a contract of employment . . .'; and it defines 'contract of employment' as 'a contract of service or of apprenticeship . . .' So it is essential that the person concerned should be an 'employee' under 'a contract of service'. *c*

For the last 100 years the law has drawn a distinction between a 'contract of service' on the one hand and a 'contract for services' on the other; or, as it is sometimes put, between a master and servant relationship on the one hand, and between an employer and an independent contractor on the other. The distinction is important in the common law. A master is liable for all the wrongdoings of his servant in the course of his employment; but an employer is not liable for all the wrongdoings of an independent contractor. The distinction has also very important consequences under the statute law. In many trades and occupations, the employer is liable to pay taxes and insurance contributions and so forth in respect of servants who are employed under contracts of service; but not for independent contractors who are employed under contracts for services. *d* *e*

I will not today attempt to formulate the distinction except to repeat what I said in *Stevenson Jordan and Harrison Ltd v MacDonald and Evans*[1]:

> 'It is often easy to recognize a contract of service when you see it, but difficult to say wherein the difference lies. A ship's master, a chauffeur, and a reporter on the staff of a newspaper are all employed under a contract of service; but a ship's pilot, a taxi-man, and a newspaper contributor are employed under a contract for services.' *f*

In recent years the distinction has often come before the courts in one context or another. Modern cases start with *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance*[2] and go on to *Construction Industry Training Board v Labour Force Ltd*[3]; then *Global Plant Ltd v Secretary of State for Social Services*[4] on to *Maurice Graham Ltd v Brunswick*[5]; then *Ferguson v John Dawson & Partners (Contractors) Ltd*[6], and finally *Davis v New England College of Arundel*[7]. So there is the distinction running through the common law and running through the statute law, and here we have it again. What was the position of Mr Massey? He was the manager of the Ilford branch of the insurance company. For a couple of years, from 1971 to 1973, the company treated him as though he were a servant. They gave him a memorandum under the Contracts of Employment Act 1963. They paid him wages; and, *g* *h*

1 (1952) 1 TLR 101 at 111, per Denning LJ
2 [1968] 1 All ER 433, [1968] 2 QB 497
3 [1970] 3 All ER 220
4 [1971] 3 All ER 385, [1972] 1 QB 139
5 (1974) 16 KIR 158
6 [1976] 3 All ER 817, [1976] 1 WLR 1213
7 [1977] ICR 6 *j*

before paying him, they deducted the tax, they deducted the stamp, and they deducted graduated pension contributions from the amount they paid him. Further, they had a pension scheme of their own and he had to make contributions towards his pension. Being regarded as a servant, he was taxed for his income tax payments under Sch E.

But then in 1973 Mr Massey went to his accountant who advised him to change his relationship with his employers. The accountant said: 'I think you would be much better off if you so arranged your affairs as to be self-employed instead of being a servant. Then you will come under Sch D instead of Sch E.' That is what was proposed. Instead of wages subject to deductions, the company would pay him the full amount each week but they would not deduct tax or national insurance contributions or anything like that. He would get the full amount. It would be for him to account for tax to the Inland Revenue under Sch D.

He went to his employers, the Crown Life Insurance Co, and told them: 'I have been advised by my accountants to change over to Sch D. Will you agree?' They said: 'Oh, yes; we are agreeable.' So it was put through. They did it in this way. Instead of calling him 'Mr John L Massey', he was called 'John L Massey and Associates'. It was really just the same man under another name. He registered that new name under the Registration of Business Names Act 1916. With that new name he entered into a new agreement with the Crown Life. So far as his duties were concerned, it was in almost identical terms to the previous agreement. As a result of that new agreement, he said he was no longer a servant, he was an independent contractor. He was therefore liable to be taxed under Sch D. The position was placed before the Inland Revenue, and the Inland Revenue seem to have thought it was all right.

In order to get it regularised, the company wrote a letter to the inspector of taxes. It said:

> 'Re: J. L. Massey . . . I am enclosing a Form P.45 [that is the one you have for employees] in respect of the above named who is the Manager of our Ilford Division and who resigned from his Agreement on the 1st September 1973. I would advise you that Mr. Massey has now formed a Company called John L. Massey and Associates, and they have been appointed Manager of our Ilford Division with effect from the 2nd September 1973. All future remuneration will be paid to John L. Massey and Associates, and in view of the fact that they are a Company no tax deductions will be made by us. If there is any further information you require, please do not hesitate to contact me.'

That letter was not accurate. Mr Massey had not formed a company. He was just himself calling himself by a new name. But at any rate the company let the tax people see the two agreements. After seeing them, the tax people were quite content that Mr Massey should change over to a Sch D basis. The insurance company paid him the gross amount without any deductions thereafter. In consequence he himself would be liable under Sch D for tax on the gross amount, and he would have to pay tax under that schedule. So the accounts were conducted from 1973 to 1975.

Then in November 1975 Mr Massey was dismissed. Thereafter he said: 'I want to claim for unfair dismissal.'

A claim for unfair dismissal was quite admissible if he was employed by the company under a contract of service, but not if he was employed under a contract for services. So here he was claiming as a servant whereas, for the last two years, he had been paid on the basis that he was an independent contractor.

The law, as I see it, is this: if the true relationship of the parties is that of master and servant under a contract of service, the parties cannot alter the truth of that relationship by putting a different label on it. If they should put a different label on it, and use it as a dishonest device to deceive the Inland Revenue, I should have thought it was illegal and could not be enforced by either party and they could not get any advantage out of it, at any rate not in any case where they had to rely on it as the

basis of a claim: see *Alexander v Rayson*[1]. An arrangement between two parties to put forward a dishonest description of their relationship so as to deceive the Inland Revenue would clearly be illegal and unenforceable. On the other hand, if their relationship is ambiguous and is capable of being one or the other, then the parties can remove that ambiguity, by the very agreement itself which they make with one another. The agreement itself then becomes the best material from which to gather the true legal relationship between them. This is clearly seen by referring back to the case of *Inland Revenue Comrs v Duke of Westminster*[2]. The Duke had a gardener and paid him for his work a weekly sum. But, in order to avoid tax, his solicitors drew up a deed in which it was said that his earnings were not really wages, but were an annual payment payable by weekly instalments. The House of Lords held that, to find out what the true relationship was and what the true nature of these payments were, you had to look at the deed. Lord Tomlin said[3]: 'Every man is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Acts is less than it is otherwise would be.' The gardener did the same work as before but the legal relationship was changed by the deed drawn up by the solicitors.

Likewise in this present case Mr Massey, as the tribunal found, worked under the new agreement in 1973 exactly as he worked under the previous agreement. The practical difference, they said, was that Mr Massey ceased to be a member of the company's pension scheme, and the pension contributions he had made under the previous agreement were returned to him. But otherwise everything went on just the same as before.

It seems to me on the authorities that, when it is a situation which is in doubt or which is ambiguous, so that it can be brought under one relationship or the other, it is open to the parties by agreement to stipulate what the legal situation between them shall be. That was said in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance*[4] in 1968 by MacKenna J. He said[5]:

> 'If it were doubtful what rights and duties the parties wished to provide for, a declaration of this kind might help in resolving the doubt and fixing them in the sense required to give effect to that intention.'

So the way in which they draw up their agreement and express it may be a very important factor in defining what the true relation was between them. If they declare that he is self-employed, that may be decisive.

Coming back to this case, for myself I have considerable doubt whether Mr Massey was really a servant from 1971 to 1973. It looks to me much more as if he was even in that time a commission agent. He could take on other work. He did in fact work for another insurance broker. He was paid on commission. He received a minimum sum but over and above that he was paid on commission as many commission agents are. So I think it is very doubtful whether he was under a contract of service from 1971 to 1973. But I am perfectly clear that afterwards in 1973, when this agreement was drawn up and recast, although the same work was done under it, the relation was no longer a master and servant relationship. It was an employer and independent contractor relationship. The change to 'John L Massey and Associates' was an unnecessary complication. It is significant that the tribunal found that both sides agreed that the agreement was, and was intended to be, a genuine transaction and not something which was done solely for the purposes of deceiving the inspector of taxes. They said: 'Had we thought otherwise, we would have held the agreement to be tainted with illegality with the consequence that it would have been void.'

1 [1936] 1 KB 169, [1935] All ER Rep 185
2 [1936] AC 1, [1935] All ER Rep 259
3 [1936] AC 1 at 19, [1935] All ER Rep 259 at 267
4 [1968] 1 All ER 433, [1968] 2 QB 497
5 [1968] 2 QB 497 at 513

It seems to me that those findings of the industrial tribunal were well-justified in the circumstances of this case. Mr Massey was not an employee. He was not employed under a contract of service so as to be able to avail himself of the unfair dismissal provisions in the 1974 Act.

I would only say a word about the recent case of *Ferguson v John Dawson & Partners (Contractors) Ltd*[1]. That case turned on its facts. Boreham J held that the real relationship of the parties was that of master and servant and that they had put the wrong label on it be regarding him as working on 'the lump'. The majority of this court accepted that view. But Lawton LJ[2] thought that the partners had deliberately put the right label on their relationship. The man was on 'the lump'. He had had all the benefits of it by avoiding tax. It was contrary to public policy that, when he had had an accident, he could throw over that relationship and claim that he was only a servant.

In most of these cases, I expect that it will be found that the parties do deliberately agree for the man to be 'self-employed' or 'on the lump'. It is done especially so as to obtain the tax benefits. When such an agreement is made, it affords strong evidence that that is the real relationship. If it is so found, the man must accept it. He cannot afterwards assert that he was only a servant.

In the present case there is a perfectly genuine agreement entered into at the instance of Mr Massey on the footing that he is 'self-employed'. He gets the benefit of it by avoiding tax deductions and getting his pension contributions returned. I do not see that he can come along afterwards and say it is something else in order to claim that he has been unfairly dismissed. Having made his bed as being 'self-employed', he must lie on it. He is not under a contract of service.

I agree entirely with the industrial tribunal and with the Employment Appeal Tribunal that he does not qualify to claim for unfair dismissal in this case, and I would dismiss the appeal.

LAWTON LJ. In the administration of justice the union of fairness, common sense and the law is a highly desirable objective. If the law allows a man to claim that he is a self-employed person in order to obtain tax advantages for himself and then allows him to deny that he is a self-employed person so that he can claim compensation, then in my judgment the union between fairness, common sense and the law is strained almost to breaking point. The appellant in this case is asking this court to adjudge that he is entitled to make claims with two different voices. The problem, it seems to me, is this: what was the status of the appellant at the material time in November 1975? At that time, for his own purposes, he had been claiming for over two years that he was a self-employed person and, if he was such, he could not claim compensation for unfair dismissal. The problem turns in my judgment on the surrounding facts and the terms of the contract.

I will start with the surrounding facts. In 1971 the appellant came into a business relationship with the respondents, a large life insurance office. He entered into two contracts in June 1971. The first appointed him to be manager. From then until the summer of 1973 the respondents treated him under that contract as an employee. But on the same day as he entered into a contract to be manager, he entered into another contract with the respondents to be a general agent. Clause 19 of that contract relating to general agency contains this provision: 'Nothing contained herein shall be construed to create the relationship of employer and employee between the Company and the General Agent.' Counsel for the respondents has told us, and it is almost certainly accurate and I would accept it as such, that in the world of insurance it is very common indeed to have freelance agents. The contract relating to general agency clearly made the appellant a freelance agent. The consequence of these two

1 [1976] 3 All ER 817, [1976] 1 WLR 1213
2 [1976] 3 All ER 817 at 828, [1976] 1 WLR 1213 at 1226

contracts running at the same time was that the appellant was wearing two hats, one as an employee and the other as a self-employed person. I can readily understand that by the summer of 1973 he felt that is was inconvenient for him to wear two hats, and somebody (maybe those with whom he worked or his accountant alerted) him to the advantages of wearing only one hat, namely that of being a self-employed person.

The fact that he had been wearing two hats for two years indicates to me that there was some ambiguity about his position with the respondents, and he was entitled, in my judgment, in the summer of 1973 to get that ambiguity cleared up. He did so, and the evidence shows that it was he who approached the respondents to be allowed to wear only one hat. They agreed that after the summer of 1973 he should only wear one hat. In order to ensure that he did wear only one hat, both he and the respondents entered into a new written agreement. It contains a large number of terms and, as counsel for the respondents pointed out to us, some of those terms (for example, the one which would have allowed his business of John L Massey and Associates to employ other persons in the course of his work as proprietor of the company) were fundamentally inconsistent with his being after the summer of 1973 merely an employee.

It is the existence of that written contract with its detailed terms which, in my judgment, distinguishes this case from *Ferguson v John Dawson & Partners (Contractors) Ltd*[1]. It is relevant perhaps to point out that in *Ferguson v John Dawson & Partners (Contractors) Ltd*[1] there was very little evidence indeed as to what the contract was. Such evidence as there was came from the defendants' foreman. According to the report of that case[2] all that happened was this. The foreman said: 'I did inform him that there were no cards, we were purely working as a lump labour force'; and, as Megaw LJ in his judgment pointed out, that being the situation, the court had to imply terms, and the terms which had to be implied were consistent solely with the relationship of master and servant. This case is entirely different. There are explicit terms; and it is interesting to note once again that, contemporaneously with the new agreement, there was executed an agreement which appointed the appellant to be general agent.

It clearly established that the parties cannot change a status merely by putting a new label on it. But if in all the circumstances of the case, including the terms of the agreement, it is manifest that there was an intention to change status, then in my judgment there is no reason why the parties should not be allowed to make the change. In this case, there seems to have been a genuine intention to change the status, and I find that the status was changed. It follows that there having been a change of status, the appellant cannot now say that there was not one.

In this connection it is relevant to see how the industrial tribunal approached the matter. They, like this court, were suspicious of the arrangement which was made in the summer of 1973. I must confess that, when I heard the facts of this case recounted by counsel on behalf of the appellant, I was equally suspicious. It seemed nothing more than a device to deceive the Inland Revenue in order to get a tax advantage. The industrial tribunal went into the facts and in the end came to the conclusion (and it is understandable once the full facts are discovered) that there had been a genuine attempt to make an agreement changing the appellant's status, and they excluded illegality. If there was no illegality, and it was a genuine arrangement, there could be only one consequence under the terms of the contract: the appellant changed his status. In those circumstances I can see nothing wrong with the approach which the appeal tribunal made. There was evidence to justify that approach and, in the circumstances, there can be no reason why this court should interfere with the findings of the industrial tribunal.

I too would dismiss the appeal.

1 [1976] 3 All ER 817, [1976] 1 WLR 1213

2 [1976] 3 All ER 817 at 822, [1976] 1 WLR 1213 at 1220

EVELEIGH LJ. I agree with both judgments and have nothing to add.

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

Solicitors: *Rosling, King, Aylett & Co* (for the appellant); *Coward Chance* (for the respondents).

Sumra Green Barrister.

Gibson v Manchester City Council

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

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

In November 1970 the defendant city council adopted a policy of selling council houses to sitting tenants. The plaintiff who was renting a council house applied on a printed form supplied by the council for details of the price of the house and mortgage terms available from the council. The plaintiff paid a £3 administration fee and on 10th February 1971 the city treasurer wrote to the plaintiff: 'I refer to your request for details of the cost of buying your Council house. The Corporation may be prepared to sell the house to you at the purchase price of £2,725 less 20%=£2,180 (freehold).' The letter then gave details of the mortgage likely to be made available to the plaintiff and went on: 'This letter should not be regarded as a firm offer of a mortgage. If you would like to make formal application to buy your Council house please complete the enclosed application form and return it to me as soon as possible.' The application form was headed 'Application to buy a council house' and concluded with a statement: 'I . . . now wish to purchase my Council house. The above answers [i e the answers in the application form] are correct and I agree that they shall be the basis of the arrangements regarding the purchase . . .' The plaintiff completed the application form except for the purchase price and returned it to the council under cover of a letter dated 5th March asking whether the council would repair a path 'or alternatively would you deduct an amount of money from the purchase price and I will undertake the repairs myself'. The council's housing manager replied on 12th March that the general condition of the property had been taken into account in fixing the purchase price. On 18th March the plaintiff wrote to the council: 'Ref your letter of 12th March . . . In view of your remarks I would be obliged if you will carry on with the purchase as per my application already in your possession.' Thereafter the plaintiff's house was removed from the council's maintenance list and placed on their house purchase list. In May 1971 following the local government elections there was a change in control of the council and on 7th July the council resolved to discontinue the scheme for the sale of council houses forthwith and to proceed only with those sales where there had been an exchange of