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John Lyon's Charity v. Shalson [2003] UKHL 32 (12 June 2003)

Judgments - John Lyon's Charity (Respondents) v. Shalson (Appellant)

HOUSE OF LORDS

SESSION 2002-03

[2003] UKHL 32

on appeal from: [2002] EWCA Civ 538

OPINIONS

OF THE LORDS OF APPEAL

FOR JUDGMENT IN THE CAUSE

John Lyon's Charity (Respondents)

v.

Shalson (Appellant)

ON

THURSDAY 12 JUNE 2003

The Appellate Committee comprised:

Lord Bingham of Cornhill

Lord Steyn

Lord Hoffmann

Lord Millett

Lord Scott of Foscote

HOUSE OF LORDS

OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT

IN THE CAUSE

John Lyon's Charity (Respondents) v. Shalson (Appellant)

[2003] UKHL 32

LORD BINGHAM OF CORNHILL

My Lords,

1. I am in complete agreement with the opinion of my noble and learned friend Lord Hoffmann, and I gratefully adopt his account of the facts and issues in this appeal.

2. The Leasehold Reform Act 1967 as amended gives to a qualifying tenant a statutory right to buy the freehold of the house of which he is the leaseholder. The effect is that the owner, instead of recovering his property on the expiry of the lease in the ordinary way, receives a capital sum representing the value of the house at the date when the tenant gave notice of his wish to buy. The calculation of that value is governed by a statutory formula clearly intended to yield a fair result as between tenant and owner, conferring no undue benefit on either. Thus the value is based (section 9 (1A)) on the amount which at the relevant time the house, if sold in the market by a willing seller, might be expected to realise on certain assumptions, among them (section 9(1A)(a)) that the vendor is selling for an estate in fee simple subject to the unexpired term of the existing tenancy.

3. A further assumption, with which alone this appeal is concerned, is (section 9(1A)(d))

"that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense."

This statutory language makes plain that the price will be diminished under this head if and only if it is found (i) that works of improvement (meaning works other than renewals and repairs) have been carried out by the tenant or his predecessors in title, (ii) that the tenant or his predecessors in title have carried out these works at their own expense, and (iii) that these works have increased the value of the house. To the extent of the increase attributable to those works the price payable for the house is diminished. The fairness of this provision is obvious. It would not be fair if the tenant were obliged to pay an enhanced price to the extent that such enhancement was attributable to works done by him or his predecessors in title (probably voluntarily) at their own expense: the tenant would in effect be paying twice. It would not be fair if the owner received a price inflated as a result of works done by the tenant or his predecessors in title (probably voluntarily) at their own expense: the owner would be reaping an adventitious gain as a result of works which he had had no right to require. Thus in each case where this assumption is in issue the question must be asked: has the value of this house been increased by any improvement carried out by the tenant or his predecessors in title at their own expense? If the answer to this question is yes, the market price must be reduced so as to discount the increase attributable to that improvement (or improvements, if there are more than one).

4. It has been common ground between the parties to this appeal that when this question is asked with reference to the extra storey and mansard roof built in the 1920s, the answer is yes, and they are agreed on the extent to which the price should be reduced on account of those works. The controversy has centred on the works, admittedly done by the appellant (Mr Shalson) and his predecessors in title, and admittedly done at their own expense, to reconvert the house from five flats to a single dwelling as it was when originally let.

5. It seems to me plain that these works were improvements within the statutory language, since they were not works of repair and renewal and the statutory language makes plain that whether such works cause an increase of value raises a separate question; it is not a defining characteristic of an improvement that it has the effect of increasing the value of the house. In the present case it is common ground that the improvements in question (the reversion works) increased the value of the house as compared with its value had those works not been done. Thus the question posed in paragraph 3 must be answered yes, and there is agreement on the extent to which the price must be diminished on that basis.

6. The Leasehold Valuation Tribunal and the Lands Tribunal held that the reconversion works did not entitle the appellant to pay a diminished price because their effect was to reverse the conversion works carried out in the 1940s and return the house to its original configuration. The Court of Appeal upheld those decisions: [2003] Ch 110; [2002] EWCA Civ 538. I would accept that those conversion works were, within the statutory language, improvements. It seems very questionable whether they were improvements carried out by the appellant's predecessor in title at his own expense, since the 1947 tenant was contractually bound to carry out the works and it seems likely (although there is no finding on this) that the rent payable under the lease was abated to reflect the expense to which he was committing himself. But even if it were accepted that the conversion works were improvements carried out by the appellant's predecessor in title at his own expense, it is quite plain that they did not (as of the valuation date, which is the only date that matters) increase the value of the house. The effect of the reconversion works voluntarily undertaken by the appellant and his predecessors in title was to undo the conversion works and so render them wholly irrelevant for purposes of the statutory calculation, as having no effect on the market value of the house.

7. I would accordingly allow the appeal and make the order which Lord Hoffmann proposes.

LORD STEYN

My Lords,

8. I have read the opinions of my noble and learned friends Lord Bingham of Cornhill, Lord Hoffmann and Lord Millett. For the reasons they have given I would also make the order which Lord Hoffmann has proposed.

LORD HOFFMANN

My Lords,

9. This appeal concerns the principle upon which the price which a tenant has to pay pursuant to section 9 of the Leasehold Reform Act 1967 for the freehold interest in a house should be adjusted to reflect any increase in its value attributable to improvements which he or his predecessors in title have made at their own expense.

10. Section 9(1A) of the 1967 Act provides that, in the case of houses over a certain rateable value, the price shall be "the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise" on various assumptions. The "relevant time" means the time at which the tenant gives notice of his desire to buy the freehold: section 37(1)(d). For present purposes, the only relevant statutory assumption is paragraph (d) of section 9(1A):

"on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense"

11. The appellant Mr Shalson was tenant of a large house in St John's Wood under a lease dated 19 May 1947 for a term of 99 years from 25 March 1947 at a yearly rent of £140. The lease had been granted in consideration of the covenants which it contained and the surrender of a 50 year lease of the same premises granted in 1921. That lease in turn had been granted in consideration of the surrender of a 95 year lease granted in 1843. The history is relevant because section 3(3) of the 1967 Act provides that if a tenant of property under a long tenancy, on the coming to an end of that tenancy, becomes tenant under another long tenancy, the Act is to apply as if there had been a single tenancy for a term beginning with the commencement of the earlier tenancy and expiring with the term of the later tenancy. Mr Munro, who appeared for the landlord, wanted to keep open the question of whether this provision could apply more than once and unify all three long tenancies. But, subject to that point (which need not be decided) all tenants since 1843 count as predecessors in title of Mr Shalson.

12. The house was originally a villa constructed for family occupation. At some time in the 1920s it was enlarged by the addition of an extra storey with a mansard roof. Under the 1947 lease, the tenant covenanted to carry out certain alterations to convert the house into five self-contained flats. It may be assumed that this reflected the weak demand for big Victorian houses in London just after the Second

World War. The work was done and for the next 40 years or so the house was in multiple occupation. The lease also contained a tenant's covenant (2(21)) not to make any further alterations without the landlord's licence in writing. During the 1980s the market changed. There was a demand for big family houses in good areas of London. The result was that while the 1947 works had originally increased the value of the house, the converted state of the house made it worth rather less in the 1980s than it would have been in its original state. Pursuant to a licence granted in 1983, the upper part of the house was converted into one dwelling with a self-contained basement flat beneath. In 1991 Mr Shalson acquired the lease and made further alterations, pursuant to a further licence, to convert the basement flat into a swimming pool, sauna, gym and maid's quarters. By the time Mr Shalson gave notice of his desire to buy the freehold on 19 November 1997, the house was once more arranged for family occupation, more or less as it had originally been constructed.

13. There is no dispute that Mr Shalson is entitled to a deduction for the extent to which the value of the house was increased by the addition of the mansard storey. The issue is over whether he is entitled to a deduction for the value which he and his predecessors in title have added to the house by reconverting it from five flats into a single dwelling, or whether the comparison should be with what the house would have been worth if it had remained in the state in which it had been let in 1843, 1921 or 1947. It is agreed that on the first assumption, the price produced by the statutory calculation is £275,298. On the second, it is £398,200.

14. The Leasehold Valuation Tribunal, which has jurisdiction under section 21(1)(a) of the 1967 Act to determine the price payable under section 9, considered that the correct comparison was with the house as originally let. This decision was upheld by the Lands Tribunal (Mr N J Rose FRICS). He said:

"Both the original conversion from a house to flats and the subsequent re-conversion from flats to a house were equally tenant's improvements and there is no requirement for the valuer to restrict his analysis to the effect of only one of them."

15. The Court of Appeal (Thorpe and Buxton LJJ and Moses J) upheld this decision: [2003] Ch. 110. But the reasoning of Buxton LJ, who gave a judgment with which the other two members agreed, was not quite the same as that of the Lands Tribunal. He said, at p 112, that works done to the house cannot constitute an improvement increasing its value if they consist

"only of reversing work done by a predecessor in title (or, even more remarkably, by the instant tenant) that depressed the value of the house and premises; which, as at the valuation date, the conversion into five flats indeed would have so done."

16. Buxton LJ was unwilling to accept that in principle the increase in value must be by reference to the state of the house and premises at the time of the grant. That might give rise to practical difficulties in discovering exactly what the state of the house then was. In the present case, it might require an inquiry going back to 1843. So Buxton LJ limited the principle, at p 113, to a case in which

"the alleged works of improvement are doing no more than altering previous works to the property that, in the market as it existed at the valuation date, would have been a depressing rather than an elevating factor in the market price."

17. In my opinion the language of section 9(1A)(d) is clear. A diminution in the open market value is to be allowed only by the extent to which that value has been increased by "any improvement" which has been carried out by the tenant or a predecessor at their own expense. For the tenant to secure a reduction, he must therefore, first, identify improvements which he or his predecessors have carried out at their own expense, and secondly, satisfy the tribunal that but for those improvements the house and premises would have been worth less.

18. The first of these two conditions requires consideration of any changes which have been made to the premises during the term of the lease, or the period which section 3(3) deems to have been the term of the lease. "Improvement" is a word of ancient lineage in the law of landlord and tenant and land law generally: see, for example, section 25 of the Settled Land Act 1882. In general terms it means additions or alterations to the house and premises which are not mere repairs or renewals: see *Hague on Leasehold Enfranchisement*, 3rd ed (1999), para 9-30. It is important to bear in mind that an improvement is a physical and not an economic concept. It refers to the works themselves and not to the

effect, if any, which they have upon the value of the premises. It is the second condition which deals with the effect on value. So the Lands Tribunal was in my opinion quite right to say that the 1947 conversion and the subsequent reconversion were both improvements, even though the 1947 improvements had been stripped out before the valuation date and, even if they had remained intact, would have reduced rather than increased the value of the house and premises.

19. The issue in this appeal turns upon what I have called the second condition. What does it mean to say that the value of the house and premises has been increased by the improvement? In my opinion, it signifies a simple causal relationship: but for the improvement, the house and premises would have been worth less. The comparison is between the value of the house as it stands and what its value would have been if the improvement had not been made.

20. The hypothetical house envisaged by this comparison is in my opinion one which has all the features of the real house, including its history, save for one: that the improvement in question had not been made. By that test, the 1947 improvements made no difference to the value of the house at the valuation date, because they had ceased to exist. On the other hand, if the reconversion had not taken place, the 1947 improvements would still have existed and the house would have been worth less. To the extent that it was worth more, the tenant was entitled to a reduction in the open market value.

21. I can see no room in the statutory language for a comparative hypothesis which assumes, as the Court of Appeal did, that the improvement in question had not been done and also that there had been no earlier changes which the improvement reversed. In considering whether an improvement has added to the value of the house, the comparison is simply with the house as it would otherwise have been. This seems to me fair to both parties. If the tenant had not carried out the reconversion, the landlord's interest would have been the reversion on a house converted into five flats. The tenant was under no obligation to reinstate. If the tenant increases the value of the landlord's interest by expenditure on reconversion, it would not seem fair that he should have to pay a second time when the landlord's interest is valued for the purposes of a sale of the freehold.

22. It seems to me no answer to this unfairness that the value of the landlord's interest had been depreciated by the improvements made by the tenant's predecessor in title in 1947. The landlord cannot complain of those changes. As it happens, he actually covenanted that they should be made. But even if he had not done so, he would have been in no position to complain; for example, if the lease had simply contained no covenant against alterations or the landlord had granted a licence. If the tenant had waited to serve his notice desiring the freehold before commencing the reconversion, he would have had to pay only for the landlord's interest in the unimproved house. It seems to me contrary to the purpose of paragraph (d) that the price should be increased because he does the improvements first.

23. The position might have been different if the 1947 lease had contained a covenant to reinstate the premises as a single dwelling before the end of the tenancy. It is unnecessary to express a concluded view, but it would seem to me arguable that in such a case the reinstatement was pursuant to the bargain for which the tenant had received consideration by the grant of the lease and was therefore not at his own expense for the purposes of paragraph (d): compare *Rosen v Trustees of Campden Charities* [2002] Ch 69.

24. Similarly, I see no justification for taking the approach of the Lands Tribunal and aggregating the net effect of all improvements made during the course of the lease, so as to compare the house as it stands at the valuation date with the house as it was let in 1843 or 1921 or 1947. If that was what Parliament had meant, it would have said that the price was to be diminished by the extent to which its value had been increased by "all the improvements" carried out by the tenant or his predecessors at their own expense and not "any improvement" so carried out. The words "any improvement" mean that each improvement relied upon by the tenant must be separately considered in comparison with what the house would otherwise have been worth. If it has added nothing to the value, it is disregarded; it does not play a ghostly role in the calculation of the value added by a later improvement by assuming its absence as part of the hypothetical unimproved property.

25. Both sides produced examples, of varying degrees of realism, of how the construction favoured by the other would produce unfair results. On one side was the case, mentioned by Buxton LJ, in which the tenant made radical alterations which reduced the value of the premises and soon afterwards restored them to their original state. On the other was the tenant who built an expensive conservatory in 1995

only to find that the site had been occupied from the grant of the lease in 1830 until 1870 by an elaborate conservatory which the then tenant had demolished (with the consent of the landlord) but would, if it still existed, have made the house worth even more than with the new one.

26. In the case mentioned by Buxton LJ, it seems to me that a landlord who has allowed his tenant to make alterations which reduce the value of his reversion without any covenant for reinstatement has only himself to blame if he finds that the value of his reversion has been reduced. I do not think that he can recoup the consequences of his folly by making the tenant (or a new tenant) pay a price for the reversion which is higher than he would have had to pay if he had enfranchised while the house was still in its ruined state. On the other hand, taking the other example, it does not seem to me fair that an accident of history which has left no trace upon the property or the obligations of landlord or tenant should result in the tenant having to pay the landlord for an increase in the value of the reversion which his own expenditure has created.

27. There may of course have been more than one improvement which has increased the value of the house. In the present case, both the mansard storey and the reconversion had increased the value and the Lands Tribunal, when valuing the property on the assumption that the tenant's contentions were right, took both into account. In making this calculation, there cannot be any double counting. The amount by which improvement A (made in 1981) has increased the value of the house over what it would have been worth only with improvement B (made in 1991) and the amount by which improvement B has increased the value over what it would have been worth only with improvement A cannot add up to more than the increase in what the house would have been worth without either A or B. But that presents no problem in the present case, because the 1947 improvements added nothing to the value at the relevant date and fell to be altogether disregarded.

28. I would therefore allow the appeal and determine that the amount payable by the tenant is the agreed figure of £275,298. The landlord must pay the costs of the tenant in this House, the Court of Appeal and the Lands Tribunal.

LORD MILLETT

My Lords,

29. This appeal is concerned with the determination of the price payable by a tenant of a house held on a long tenancy for the right to enfranchise his property. Some time before the relevant date for valuation the tenant had at his own expense converted the property from a house divided into flats to a single house. This significantly increased the value of the property at the valuation date. The question is whether that increase should be left out of account in determining the enfranchisement price. Normally it should. The problem in the present case is due to the fact that the property was formerly a single house which had been converted into flats by a previous tenant, so that the enfranchising tenant had merely reconverted the property to its former condition as a single house.

30. The tenant's right to acquire the freehold of his house arises under the Leasehold Reform Act 1967. The purchase price payable for the freehold interest is ascertained in accordance with section 9. The subject-matter to be valued is "the house and premises" as at the relevant time, that is to say the time when the tenant gave notice of his desire to acquire the freehold. At that time "the house and premises" consisted of a single undivided house. Section 9 requires the property to be valued at the amount which it might be expected to realise if sold subject to the tenancy in the market by a willing seller to a willing purchaser. In arriving at the amount of the price, however, the valuer must make a number of assumptions. The present appeal is concerned with the assumption required by subsection (1A)(d) ("the subsection"):

"(d)....that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense."

The Court of Appeal held that works which merely reversed work done by a previous tenant and restored the property to its former condition were not works of "improvement" within the meaning of the subsection.

31. My Lords, there is no warrant for this conclusion in the wording of the subsection. In order to lead to a diminution in the price the works must (i) consist of an "improvement" (ii) be carried out by the tenant or a predecessor in title at his expense and (iii) increase the value of the house and premises at the relevant time. Nothing more is required. All three conditions were satisfied by the work of reconverting the property to a single undivided house. The work was an improvement, that is to say it was not merely a work of repair or renewal. It was carried out by the tenant at his expense. And it increased the value of the property at the relevant time, in that the property would have been worth less if the work had not been carried out and the house had remained divided into flats. There is no further condition that the work should not consist only of reversing some earlier work or merely restore the property to an earlier state.

32. Such a condition would frustrate the purpose of the subsection. It is designed to avoid the tenant having to pay a price which reflects a value in the property for which he has already paid: see *Hague on Leasehold Enfranchisement*, 3rd ed (1999), p 199, para 9-30. If the tenant carries out alterations to the property which enhance its value he thereby increases the value of the landlord's reversionary interest which he afterwards claims to acquire. The subsection prevents his own expenditure resulting in an increase in the price he has to pay. This would be the case whether or not the work consisted of merely reversing the effect of some earlier work. If the tenant in the present case had served his notice before commencing the work of reconversion, he could not have been required to pay a price which represented more than the current value of a house divided into flats. There is nothing in section 9 to enable the landlord to require the depreciatory consequences of the subdivision to be ignored; nor would this be appropriate when the reduction in the value of the property was due to works to which he had consented or at least not objected (and in the present case for which he had stipulated). It would make no sense to require the tenant to pay a higher price for the property because he served the notice after completing the work of reconversion instead of before commencing it. It would also be unfair when the increase in the value of the property was the result of works which he had carried out at his own expense.

33. The Lands Tribunal and the Court of Appeal were troubled by examples given in argument of cases where it was said that it would be unfair to take account of work to the extent to which it merely restored the property to its former state. Most of such cases were cases of demolition and reconstruction. An example was given of a house with an Edwardian conservatory in a conservation area. The tenant demolishes the conservatory and, after a lapse of some time spent in obtaining planning permission and listed building consent, erects a modern home extension in its place. It would be unfair to the landlord to reduce the price to reflect the value of the house with neither the conservatory nor the home extension. I agree. The price must be diminished by the extent to which the house with the home extension is more valuable than the house with a conservatory. But this is not because part of the value attributable to the construction of the home extension is to be ignored on the ground that it merely reversed the demolition of the conservatory. It is because the relevant improvement consisted of works of demolition and reconstruction. Whether works carried out independently at different times consist of a single improvement or two separate improvements is a question of fact. It is not one which is likely to cause difficulty in practice. The answer will often be found in the terms of the landlord's consent or a relevant planning permission. In the example given, it is highly unlikely that the tenant would ask for or that the landlord be prepared to grant consent to the demolition of the conservatory without its replacement by the home extension.

34. In my opinion, the reconversion of the property to a single undivided house was unquestionably an improvement carried out at the expense of the tenant which increased the value of the property and which should therefore result in a diminution of the enfranchisement price. But the subsection refers to "*any* improvement carried out by the tenant or his predecessors in title" (emphasis added). It is not sufficient to have regard only to the most recent improvement. The tenant is entitled to have account taken of any relevant improvement which satisfies the statutory criteria. The real question is whether the earlier work of subdividing the house into flats also constituted an improvement; and if so what effect if any it should have on the price.

35. My Lords, the concept of an "improvement" is a very familiar one in the law of landlord and tenant. It connotes additions or alterations which are not merely repairs or renewals. Whether an "improvement" really improves the property is considered from the point of view of the tenant alone, so that work may constitute an improvement although it does not increase the value of the property at all or even reduces it: see *Balls Brothers Ltd v Sinclair* [1931] 2 Ch 325. As my noble and learned friend Lord Hoffmann observes, the concept is a physical and not an economic one.

36. Accordingly the works by which the house was divided into flats constituted an "improvement" within the meaning of the subsection. And they were carried out by a predecessor in title of the enfranchising tenant. But they do not fall to be taken into account in determining the amount of the enfranchisement price for two separate and independent reasons: (i) they were not carried out at the tenant's expense; and (ii) had the house still been divided into flats at the valuation date they would not have increased the value of the property as at that date but reduced it.

37. The subdivision of the house into flats was carried out by the tenant as a term of the grant of the 1947 lease. It was, therefore, carried out not merely pursuant to a contractual obligation in that behalf but in consideration for the grant of the tenancy. Had the work been carried out by the landlord, he would either have charged a premium or an increased rent. Thus the work must be taken to have been carried out by the tenant in return for the grant of the tenancy at a reduced rent and without a premium, in other words at the expense of the landlord: see *Rosen v Trustees of Camden Charities* [2002] Ch 69, CA.

38. Even if this had not been the case, however, and the work had been carried out by the tenant at his own expense, the result would have been the same. It may be assumed that, when the work of subdivision was originally carried out, it did increase the value of the property. As the years passed, however, market conditions changed; and the extent to which the subdivision increased the value of the property gradually dwindled and eventually vanished altogether. By the valuation date, it would have reduced the value of the property.

39. Had the tenant served an enfranchisement notice at any time when the property was still worth more subdivided into flats than as a single house, he would have obtained a reduction of the price to reflect the remaining value attributable to the work of subdivision. But by the time he began the work of reconversion to a single house, the property was worth less as a house subdivided into flats than it would have been as a single house. He could not have obtained the benefit of a diminution of the enfranchisement price by virtue of the subsection, since his predecessor's expenditure was no longer reflected in an increase in the value of the property at the relevant time. He would still have obtained a diminution of the price as the result of the expenditure, of course, but by a different means; had it not been carried out the house would have remained undivided and worth more, so that the price would have been higher.

40. The Lands Tribunal compared the property at the valuation date with the property as it was when originally let. But there is no warrant for this approach in the wording of the subsection either. The "extent to which the value of the house and premises has been increased" by an improvement is simply the difference between the value of the property with the improvement in question and the value of the property without it. The problem to which the approach of the Lands Tribunal gives rise is that it may take account of improvements in the distant past which have long since ceased to have any effect on the value of the property, and accordingly do not satisfy the conditions of the subsection. If the tenant constructs a home extension on a part of the lawn backing onto the rear wall of his house, for example, it will not help the landlord to show that a conservatory had originally stood on the site but had long since been pulled down.

41. On the other hand, the tenant is entitled to take advantage of any improvement, however ancient, which satisfies the conditions of the subsection. It must have the effect directly or indirectly of increasing the value of the property at the valuation date, but it need not have physically survived to that date. If a former tenant had increased the value of the house by adding a conservatory, and the enfranchising tenant increased the value of the house still further by demolishing the conservatory and erecting a home extension in its place, he would be entitled to a reduction in price which reflected the combined effect of both improvements. His own improvement would consist of works of demolition and reconstruction; but it would not be fair to reduce the price by an amount which reflected only the difference between the value of the house with a conservatory and the house with the benefit of the home extension. Had he not demolished the conservatory and built the home extension, he would still have been entitled to a diminution in the price to reflect the increase in the value of the house brought about by the construction of the conservatory.

42. This, of course, presupposes that the earlier work also increased the value of the property and did not reduce it. There is no question of netting off an increase against an earlier reduction. The landlord gets the worst of both worlds; he receives a lower price if the tenant carries out alterations which reduce the value of the property, and does not receive the benefit if the tenant carries out alterations which

increase it. The Court of Appeal were troubled by this. They took the case of a tenant who, for his own eccentric reasons, significantly altered the property in a way which materially reduced its value. They did not think that it would be sensible for a later tenant, let alone the same tenant, to obtain a reduction in the enfranchisement price merely by "putting that right".

43. But with respect it is not a question of putting anything right. The landlord must have consented or at least not objected to the earlier works which reduced the value of the property. Any diminution in the price which he receives is the result of the tenant's having lawfully carried out works which reduced the value of his reversionary interest. The landlord can avoid this result by taking a covenant in the lease that the tenant should obtain his prior consent to any works of improvement, and either refusing his consent or imposing a condition that the tenant restore the property to its former state at the termination of the tenancy. Even if the works of restoration should still fall to be treated as being carried out at the tenant's expense, as to which I prefer to express no opinion, the obligation would severely limit and perhaps eliminate any effect the works would have on the value of the landlord's reversionary interest.

44. The Court of Appeal expressed caution about taking account of works carried out in the distant past, on the ground that this would only be possible if a reliable history of the property was available. This is true, but it does not, with respect, affect the principle that every improvement, however ancient, which satisfies the statutory criteria and has the effect of increasing the value of the property at the valuation date may be taken into account. It must be remembered that the landlord is *prima facie* entitled to the full value of his interest in the property as it stands at the valuation date. If the tenant claims a diminution in the price he must establish the facts which entitle him to it.

45. For these reasons, and also for the reasons given by my noble and learned friend Lord Hoffmann whose speech I have had the advantage of reading in draft, I would allow the appeal.

LORD SCOTT OF FOSCOTE

My Lords,

46. I have had the advantage of reading in advance the opinion of my noble and learned friend Lord Hoffmann and am in agreement both with his conclusion that this appeal should be allowed and with his reasons for reaching that conclusion. I, too, would make the order that he has proposed.