EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2017] CSIH 69
P1181/15

Lord Brodie
Lord Malcolm
Lord Glennie

OPINION OF THE COURT

delivered by LORD GLENNIE

in the reclaiming motion

by

MASROOR HUSSAIN

Petitioner and reclaimer

against

GLASGOW CITY COUNCIL

Respondent

Petitioner and reclaimer: M Dailly (sol adv); Drummond Miller LLP
Respondent: MacColl QC; Glasgow City Council Legal Department

14 November 2017

Introduction

[1] This reclaiming motion (appeal) raises a question as to the terms which may legitimately be attached by a local authority to the award of a grant under section 71(3) of the Housing (Scotland) Act 2006 ("the Act"). The same question could possibly be relevant to the provision of a loan under that section, but is unlikely to arise in connection with the provision or arrangement of other forms of assistance thereunder.

Outline Facts

[2] The relevant facts are not in dispute. The petitioner and reclaimer is the co-owner with his wife of Flat 2/2, 196 Langside Road, Glasgow, located on the second floor of a tenement block of flats in Govanhill (respectively "the building" and "the flats"). The respondent, the local authority, is the Glasgow City Council ("the council"). A survey of properties in the area carried out by the council identified certain works which required to be carried out to the fabric of the building. In April 2011 the council served on the owners of the flats, including the petitioner, a "work notice" in terms of section 30 of the Act stating that the property was in disrepair; and that works had to be carried out to put right a large number of defects listed in the notice, viz the roof, windows, chimney heads, stonework and pointing, gutters and downpipes, drainage, timbers in the roof space, walls and ceilings, a damp proof course and some structural defects within the flats. There was no appeal against the work notice in terms of section 64 of the Act. The 21 day period allowed to complete these works expired on 3 May 2011 without the works having been done.

[3] It is averred by the council in its answers to the petition, and we did not understand it to be disputed, that the owners of the flats submitted a proposed voluntary scheme of repairs. The council rejected this as unsuitable and decided to carry out the works itself. It told the petitioner and other flat owners that it would be instructing the necessary repairs through a statutory contract in accordance with the work notice issued in April 2011. The contract would be supervised by a surveyor it would appoint. The letter also advised the petitioner and other flat owners that the council would be prepared to offer grant assistance for the cost of the repairs.

[4] A meeting between the council and the flat owners, including the petitioner, was held on 8 October 2012. As appears from the minutes of the meeting, the council confirmed that owner occupiers would be eligible for a grant of 50% of the cost of the repairs. If they wished to be considered for a grant of up to 75%, the maximum grant available, then full income and family details supported by documentary evidence would have to be provided to the respondent – the top slice of the grant, the portion above 50%, was means tested. The minutes also record that it was made clear at the meeting that a condition of the grant funding was that the flat owner's share of the cost of repairs (whether 25% or 50%) must be fully paid to the respondent by the time the final account for the works was issued. This was normally 6 months or so after the works had been completed; and therefore each flat owner had roughly one and a half to two years, depending on how long the repairs took, to raise his share of the cost of the work. It was stated that failure to pay this amount by this time would see the grant eligibility removed and the owner would be liable for their full share of the cost of the works. This condition was repeated on a number of occasions, including in a letter dated 9 October 2012 confirming what had been discussed at the meeting.

[5] The petitioner submitted his grant application on 2 November 2012. His application for a grant of 75% of the cost of repairs was approved by the council subject to a number of conditions. So far as relevant to this appeal, it was a condition of the grant that failure by him to pay his 25% share of the cost of repairs by the time the final account was agreed would result in the grant being removed and he would then be liable for his full (100%) share of the costs of the repairs. This was set out in an email from the council to the petitioner dated 16 November 2012 and reiterated in a further email of 21 November 2012. In the email of 21 November 2012 the condition was highlighted in bold. On the same day

the council wrote to the petitioner confirming the 75% grant towards his share of the costs of the repairs, subject to the condition that his 25% share of the cost of the repairs had to be paid by the time the final account was agreed. The petitioner did not challenge this condition.

[6] The works commenced on 29 November 2012. On 26 July 2013 the petitioner was sent a letter notifying him of the likely costs. Assuming a grant of 75% was payable, the petitioner's contribution to those costs would be £15,884.89. The letter also reiterated that it was a condition of the grant that the petitioner's share of the cost of repairs be paid to the council by the time the final account was issued. The petitioner was reminded that failure to pay his share of the costs by this time would see his grant eligibility removed and he would be liable for the full cost of the works, including an additional sum to cover professional and administrative expenses.

[7] In due course the works were completed. A final account for the works was issued by the contractors on 7 May 2015. On 27 May 2015, notices were sent by the council to the petitioner and the other owners seeking payment of their respective shares of the cost (after deduction of grant monies). The contribution required from the petitioner was £21,360.89, to be paid no later than Friday 10 July 2015. Immediately underneath this figure was a warning that failure to pay his contribution by that date would result in the council issuing an account for the full cost of the works – i.e. in those circumstances the petitioner would be liable for his full share of the cost, in the sum of £84,923.56.

[8] On 30 June 2015 the petitioner wrote to the council stating that he was unable to pay his 25% share of the cost of repairs by the due date. He sought time to pay. This was refused by the council by letter of 2 July 2015. He was given until 10 July 2015 to make payment in order to qualify for the grant. This was described by the council as a more than

generous offer, given the length of time that each owner had been aware that such a bill would be forthcoming. No repayment options were offered. That part of the letter ended with the council confirming that they were aware of the financial circumstances of the petitioner and his family. That was why they had been offered the maximum grant of 75%. The council then reiterated that if payment was not made in full by this date then the petitioner would be liable for his share of the full costs of the work amounting to £84,923.56. The petitioner did not make payment of his share of the cost of repairs by the due date. By letter of 24 July 2015 to the petitioner's solicitors, the council confirmed the terms of the letter of 2 July 2015. As the petitioner had not met the condition of the grant offer, the grant was withdrawn, and the petitioner was liable for his full share of the works.

[9] On 5 August 2015 the petitioner lodged a summary application at Glasgow Sheriff Court appealing the demand for full payment in terms of section 64(1)(d)(i) of the Housing (Scotland) Act 2006. The application seeks to reduce the full cost of the repairs to £21,360.89 (the amount of the petitioner's share of the cost of the repairs after the 75% grant had been deducted). The application records that the pursuer intends to make payment of this sum by instalments of £150 per month. This application is sisted pending determination of this petition for judicial review.

The Application for Judicial Review

[10] The petitioner asserts that the imposition of a term of grant assistance to the effect that unless he made full payment of his 25% share of the cost of repair by the time the final account was issued the offer of a grant would be withdrawn and he would be liable for the full costs of repair was *ultra vires* the council's powers under Part 2 of the Housing (Scotland) Act 2006. This is disputed by the council on its merits; they say it is not *ultra vires*.

A number of other points were taken by the council in its answers to the petition, but these were not insisted upon before the Lord Ordinary and have not been revived before us. The Lord Ordinary accepted the main argument for the council and refused the petition. The petitioner appeals from that decision to this court.

Submissions

[11] For the petitioner, Mr Dailly argued that there was nothing in Part 2 of the Act relating to the provision of grants which allowed the respondent to impose a "pre-payment condition" as a condition of a grant, that "pre-payment condition" (as he called it) being a requirement for payment of the petitioner's share of the cost of repairs by the time the final account was issued, failing compliance with which the grant would be revoked. Part 2 of the Act made reference to certain conditions which could be imposed by a local authority (for example the conditions referred to in section 75 and 82) when issuing a grant or loan for housing repair assistance. The conditions did not include anything in the nature of the condition imposed by the council in the present case. If Parliament had intended to permit a grant to be awarded subject to such a condition then it could have expressly provided for it in the Act. Such a condition was contrary to the policy objective of Part 2 of the Act and was not set out or mentioned in the council's statement of assistance published in terms of section 72. The council had made a decision to award the petitioner a 75% grant for the cost of repairs – this could not be withdrawn by virtue of the imposition of a condition which was *ultra vires* the Act.

[12] Mr MacColl QC, who appeared for the respondent, submitted that the condition of the grant was *intra vires*. Section 71(4) provided that assistance (including by way of a grant) may be provided on such terms as the authority thinks fit. It was permitted in terms of

section 74(4) and 81(1)(d) of the Act. The condition was imposed for a purpose relating to Part 2 of the Act – to encourage people in the position of the petitioner to pay their share of the cost of repairs – and was not for any ulterior purpose. The condition was not so unreasonable that no reasonable local authority could have imposed it: see *Stewart* v *Perth and Kinross Council* 2004 SC (HL) 71 *per* Lord Rodger at paragraph 55. The purpose of the condition was consistent with the guidance for local authorities published by the Scottish Government.

Discussion and Decision

[13] Section 71 is the first of a number of sections in Part 2 of the Act. Part 2 is headed "Scheme of assistance for housing purposes". Section 71 is headed "Assistance for housing purposes" and provides, so far as material, as follows:

> "**71 Assistance for housing purposes**
>
> (1) A local authority may provide or arrange for the provision of assistance to a person in connection with—
>
> (a) the acquisition or sale (or the proposed acquisition or sale) of a house, or
>
> (b) work (including demolition work) on any land or in any premises for any of the purposes mentioned in subsection (2).
>
> (2) Those purposes are—
>
> (a) provision of one or more houses by the conversion of a house or other premises,
>
> (b) construction of a house,
>
> (c) improvement, repair or maintenance of a house,
>
> (da) demolishing a house,
>
> (d) bringing any house into, or keeping any house in, a reasonable state of repair,
>
> (e) adaptation of a house for a disabled person to make it suitable for the accommodation, welfare or employment of that person,
>
> (f) reinstatement of any house adapted for the purpose set out in paragraph (e),
>
> (g) provision, in relation to a house, of means of escape from fire and other fire precautions.

(3) Such assistance may, in particular, be in the form of—
(a) the provision of advice, training or other services and facilities,
(b) the provision of information relating to housing,
(c) making available the services of staff of the local authority,
(d) guaranteeing or joining in guaranteeing the payment of the principal of, and interest on, money borrowed by the person (including money borrowed by the issue of loan capital) or of interest on share capital issued by the person,
(e) payments in respect of any expenses incurred in connection with the opening of a maintenance account,
(f) acquiring, holding, managing and disposing of land or premises,
(g) grants,
(h) standard loans,
(i) subsidised loans.

(4) Assistance may be provided on such terms as the authority thinks fit (subject to any provision about such terms made by or under this Part). …"

The section goes on to allow Scottish Ministers to make Regulations making further provision for the procedure to be followed by local authorities and concerning the terms which may be imposed by the local authority under sub-section (4), but to date no relevant Regulations have been made.

[14] The argument before us focused particularly on the terms of sub-section (4), and we do not think it would be helpful for us to set out in detail the terms of other sections which were relied upon to a greater or lesser extent in argument. Mr MacColl argued that that provision gave a very wide discretion to the council as to the terms it could impose. He sought to find support for this argument in sections 74 and 81, but these sections deal with the mechanics of grant applications and notification of decisions and, in our view, provide no assistance on the width of the discretion. Mr Dailly, for his part, sought to make something of section 73(1) of the Act, which provides that the local authority must provide assistance to the owner of a house in respect of work in the house which the owner is required by a work notice to carry out; however, such assistance can be provided in any of

the ways identified in section 71(3) and need not be by way of grant or any financial assistance. He also pointed to certain other provisions of Part 2 which identified particular conditions which might be imposed and the consequences of breach (section 83 when read with sections 86 and 87 is the clearest example of this); and, separately, he sought to suggest that grants were treated differently from loans in this part of the Act, loans being the subject of more detailed treatment, the absence of which in relation to grants suggested a limit on the type of condition which could legitimately be attached to the provision of a grant once the eligibility criteria were met. We are not persuaded that the existence of certain specific terms in other sections says anything about the width of the discretion under section 71(4); and such distinction as there may be in the treatment of loans and grants within Part 2 of the Act does not seem to us to assist in answering the question of what terms might permissibly be imposed on the award of a grant.

[15] Ultimately, despite the careful arguments addressed to us on these matters, we do not consider that the answer to the question in this case is to be found in a textual or comparative analysis of section 71 as it is placed amongst the other provisions within Part 2 of the Act. Rather, so it seems to us, the focus must be on whether, looking at the Act as a whole and the purposes for which the grant is given, the condition attached to the grant was for a purpose connected with the grant rather than for some ulterior purpose or, to put it another way, whether the condition fairly and reasonably relates to the grant: see e.g. *per* Lord Rodger in *Stewart* v *Perth and Kinross Council* 2004 SC (HL) 71 at paragraph 55.

[16] Both Mr Dailly and Mr MacColl accepted this as an accurate statement of the approach to be taken in the absence of more pertinent statutory guidance. Mr MacColl submitted that the condition in the present case satisfied that test because it was an essential aspect of the provision of financial assistance for housing purposes that owners of properties

who were in receipt of such assistance should be encouraged to play their part and take a financial stake in the repair and renovation works to their properties. Imposing as a condition of the award of a grant a condition that the owner of the property would pay his share of the cost of repairs by a particular date, which failing the grant would not be forthcoming, acted as an inducement to that owner to pay his share promptly and in full. Mr MacColl accepted the suggestion from the bench that the pre-condition could be viewed as a stick with which to force the home owner to comply with his obligations, but he submitted that there was nothing wrong with that. For his part, Mr Dailly, for the petitioner, submitted that the condition was *ultra vires*, being imposed not for purposes connected with the grant but as a means of coercing the home owner into complying with his obligation to pay his own share of the repair costs, a threat that if his share was not paid in full and on time the grant would be removed and he would be liable for 100% of the costs. Adopting the characterisation already mentioned, he submitted that the pre-condition was no more than a stick with which to beat the home owner into compliance and went well beyond any legitimate purpose.

[17] Before considering these arguments in detail, it is convenient to deal with a number of points which arose in argument before us which help frame the discussion but ultimately are not critical.

[18] There was some discussion of the basis upon which the repair and renovation work was carried out. The work was specified in a work notice under section 30 of the Act. It was carried out by contractors instructed and paid by the council. There is no dispute about that. But it was not clear on the documents whether the work was carried out by the council on behalf of the owners of the flats, who were willing to do the work but had not yet come up with a satisfactory proposal (described in argument as a "hybrid" situation), or whether

these were "statutory repairs" done by the council pursuant to its enforcement powers under section 35 of the Act, which allow the council to do such work in the event of an owner failing to comply with a work notice. It was mooted in argument that the regime for the availability of grants and other assistance might not apply where the work was carried out by the council pursuant to its statutory enforcement powers. However, Mr MacColl, for the council, while submitting that the council had acted pursuant to its statutory powers under section 35, a submission with which Mr Dailly agreed, expressly accepted that Part 2 of the Act, and the regime set out therein for the provision of assistance for housing purposes, applied just as much to the case of the work being done by the council pursuant to its powers of enforcement as it did to when the work was carried out voluntarily by owners. So there is no need to take this point further.

[19] Mr MacColl pointed out that the council had a statutory right to recover from the owners of the flats within the building the expenses incurred by it in carrying out the work authorised by section 35. Section 59(1) of the Act makes this plain. Subject, therefore, to the question of grants under Part 2 of the Act, the council was entitled to recover the repair and renovation costs in full from the owners of the flats on a pro rata basis. It could claim payment immediately or it could agree to defer payment or take it by instalments. That was not in dispute; it provides part of the context in which the scheme for the provision of grants must be understood. (We should note in passing that section 172 of the Act provides that the council may take a charge over the property in respect of any sums due to it under section 59(1). If it does so, then it must divide the "repayable amount" into equal annual instalments payable over a period of between 5 and 30 years. But, as Mr MacColl submitted, without demur from Mr Dailly, a council is not obliged to go down this route and the council did not seek to do so in this case.)

[20] The nomenclature of "grant" and "loan", two of the forms of assistance mentioned in section 71 of the Act, does not fit easily into the situation prevailing in this case, where the council undertakes the repair and renovation work initially at its own expense but with the right to demand payment from the owner(s) of the building. But there is no difficulty in understanding the substance of those concepts as applied to such a situation. Having carried out the work and incurred the expenditure involved in the repairs, the council can claim the full amount from the owner(s) of the building. But if it awards an owner a grant of, say, 50% of his share of that expenditure, it will provide this grant not by paying money over to the owner but rather by waiving its entitlement to recover from him some 50% of the expenditure, with the result that the owner only pays one half from his own resources (the balance being covered by the "grant"). If the council awards a grant of 75% to an owner, it provides that grant by waiving its entitlement to recover 75% of the expenditure, so that the owner only pays 25% from his own resources. (We are not here concerned with the case of a loan, but the same principle applies: a loan of 75% would involve the council deferring re-payment by the owner of 75% of the expenditure, the terms and period of the deferment and the timing of the deferred payments being such as the council and the owner may agree on a case by case basis.)

[21] In the present case, therefore, the effect of awarding the petitioner a grant of 75% would, without more, be to leave the petitioner with an obligation to pay the council 25% of the cost of the repair work. That 25% would be payable on demand or at such other time or by such instalments as might be agreed. The important thing is that the petitioner or other flat owner would be under a legal obligation to make that re-payment, and the council could bring legal proceedings against him if he did not pay. There is no question of the petitioner or flat owner being relieved of that obligation.

[22] However, the issue here arises from the fact that the condition attached to the award of the grant in the present case went further than that. It not only required payment in full by the petitioner of his 25% share of the expense of the repair work to be made not later than the time the final account for the works was issued, usually some 6 months or so after the works themselves had been completed, a deadline which gave him somewhere between one and a half to two years, perhaps a bit longer depending on how long the repairs took, from the award of the grant in which to raise his share of the cost of the work. It also made the award of the grant conditional upon him making that payment of his 25% share of the costs in full by that date; so that, if he failed to pay the whole of his 25% share by that date, he would be liable to pay not just 25% but 100% of the costs of the work attributable to his flat. On the figures in play here, the total repair and renovation costs attributable to the petitioner's flat amounts to £84,923.56 and the petitioner's 25% share was £21,360.89 (the arithmetical difference is to do with certain administrative expenses); so that a failure to pay £21,360.89 in full by the due date would make him liable immediately to pay a further £63,562.67.

[23] It might at first glance seem counter-intuitive that an individual who has been means-tested and found to be eligible for an enhanced grant of 75% of the costs of the work should have the availability of that grant made subject to a condition with which he would almost certainly find it difficult, if not impossible, to comply; and that in circumstances where the consequence of his likely non-compliance would be that he came under an obligation to pay the <u>full</u> repair cost which the means testing had shown that he was clearly unable to pay. However, we put this to one side for present purposes. We have little information as to the petitioner's financial situation. According to his grant application form, he was on income support and lived with his partner and four children. This was the

information on the basis of which the extra grant was awarded. However, the fact that he was found entitled to an additional 25% grant (on top of the 50% grant awarded without means testing) tells one, at least as a matter of logic, no more than that he was thought to be unable without a grant to pay this particular slice. It says nothing about his likely ability or inability to meet his own remaining 25% of the repair costs. In any event, the point was not picked up and developed by Mr Dailly in argument, and we say no more about it.

[24] So we turn to consider whether the pre-condition can be said to be for a purpose connected with the grant rather than for some ulterior purpose or, which comes to the same thing, whether the condition fairly and reasonably relates to the grant. In our opinion it does not. The grant, if made, is made for housing purposes. In a case such as the present it is made because owners of buildings, or of flats within buildings, do not have the means to carry out and pay for the repair and renovation works which the council, on the basis of its own expert advice, considers necessary. We could understand conditions being imposed which sought to regulate the quality of the works to be undertaken, or required certification by the council before grant monies were released, or something of that sort. There might be any number of detailed conditions relating to the availability or application of the moneys advanced by way of grant. But the condition here relates to payment by the petitioner of his own money, not grant money. It relates to payment by the petitioner to the council of sums spent by the council on the repairs, sums which are not and have never been covered by the grant. It is seeking to use the promise of a grant, and the threat of its withdrawal, as a stick with which to force the petitioner into compliance with his obligations as regards the expenditure not covered by the grant. In our opinion this goes well beyond what is legitimate.

[25] It was submitted that a condition such as this was consistent with the policy underlying the Act, which is to ensure that owners of such properties make a contribution of their own to the cost of those repairs. No doubt the thinking behind this is to leave owners of such properties with a stake in the properties, encouraging them to keep them in good repair; and to leave them with the understanding that failure to maintain such properties will lead to further repair and work being done in the future, in part at their expense. But that is achieved, if it is achieved at all, by making the owners liable for part of the cost of repairs. The pre-condition imposed by the council goes much further than this. It may be intended as a kind of sword of Damocles, hanging over the owner of the property to encourage him to pay the sum due from him for his share of the cost of the repairs. But, if activated, the effect goes much wider than enforcing payment of the sums already due; it takes away the whole of his grant. The grant itself, and the threat to withhold it if the non-grant part of the cost is not paid in full and on time, is being used as a lever, a stick, to encourage payment by the owner of the part of the repair cost which he already is under an obligation to pay. This is not a condition which is attached to the grant for the purposes of the grant – to make sure that it is properly applied, that the work is carried out satisfactorily, or whatever. It is attached to the grant for the purpose of ensuring payment of other sums which are and have always been the responsibility of the owner of the property.

[26] In those circumstances we consider that the pre-condition goes much further than is justified in terms of the Act. It is *ultra vires* the council.

[27] We should add that we were referred in the course of argument to Statutory Guidance issued by the Scottish Ministers under section 94 of the Act. Without intending any disrespect to those framing the Guidance, the passages to which we were referred seemed largely concerned with issues of construction of the Act, which is ultimately a matter

for this court. We derived little assistance from the document. We were also shown passages from a document entitled "Private Housing: Statement of Assistance" issued by Glasgow City Council in June 2012 setting out its vision and strategy and identifying its priorities for giving assistance. That emphasises that funding under Part 2 of the Act is a limited resource. We do not find this surprising, and it supports the policy objective that owners of properties in need of repair ought to contribute to the cost of such repairs. We have already recognised that this is a legitimate consideration, but it does not persuade us that it makes a pre-condition of the type imposed in this case legitimate.

[28] Mr MacColl had one final argument. Even if the pre-condition was *ultra vires*, it did not follow that the court should simply delete it and require the grant to be paid. He suggested that if it had known that it could not impose that type of pre-condition the council might well have decided not to award the grant. We do not regard this as a realistic proposition. The scheme of assistance is an integral part of the council's policy of requiring repair work to be carried out to housing in the private sector. Broader questions would come into play if the service of a work notice under section 30 had the effect, in the absence of grants being made available, that owners of properties in the private sector were liable for the full cost of repairs which they could not afford. But we do not need to consider such matters in detail. In any event, the argument comes much too late. There is no hint in the answers to the petition of any suggestion that the absence of such a power would have led to a re-assessment of the council's policies in this regard. It must be assumed that the same policy would have prevailed, and that the petitioner would still have received his (means-tested) 75% grant. To put it another way, we consider that the offending condition can be severed from the rest of the grant arrangement.

Disposal

[29] For these reasons, we shall allow the reclaiming motion and recall the interlocutor of the Lord Ordinary. We are conscious that we are differing from the Lord Ordinary on grounds that did not feature substantially in his consideration of the case. The Lord Ordinary's reasoning broadly reflected the argument for the council, particularly the policy arguments referred to in paragraph [25] above. Our approach focuses rather on the question whether the condition attached to the grant is for a purpose connected with the grant rather than for some ulterior purpose; in other words, whether it fairly and reasonably relates to the grant. The difference in our approach properly reflects the differences in the way in which the argument was presented to us.

[30] The remedy sought in the petition focuses on the council's letter of 24 July 2015 confirming the withdrawal of the offer of the grant in light of the petitioner's own failure to pay his 25% by the due date. We consider that the better course is to focus instead on the award of the 75% grant confirmed in the council's letter of 21 November 2012 and the condition attached thereto at that time. It seems to us that our decision would be adequately reflected in the grant of declarator in the following terms, namely:

> "that the condition sought to be attached by the respondent, in its letter to the petitioner of 21 November 2012, to the award of a grant to the petitioner of 75% of his share of the costs of the repairs to 196 Langside Road, Glasgow, namely that "Failure by you to pay your share by the time the final account is agreed will result in your grant level being removed and you will be liable for the full 100% share of your costs" is *ultra vires* the respondent; and that the respondent is not entitled on that account to withdraw its offer of the grant."

That should, we think, be sufficient for the parties. However, since the precise form of remedy was not the subject of much discussion before us, we propose to allow parties a short period within which to consider this and notify the clerk of court of any submissions which they might wish to make in respect of the remedy to be granted. If nothing is heard

on this question from either party within a period of 14 days from the issue of this Opinion we shall proceed to issue an interlocutor in terms of the above declarator. If, however, either party gives notice of a desire to be heard on the question, we shall arrange for the case to be put out By Order to enable that to be done.

[31] We shall reserve all questions of expenses.