HOUSE OF LORDS

[1990] UKHL 14

Date: 29 March 90

Before:

Lord Bridge of Harwich
Lord Griffiths
Lord Ackner
Lord Oliver of Aylmerton
Lord Jauncey of Tullichettle

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Between:

LLOYDS BANK PLC (APPELLANTS)

v.

ROSSET AND ANOTHER (RESPONDENTS)

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Judgment

LORD BRIDGE OF HARWICH

My Lords,

The subject matter of this dispute is Vincent Farmhouse, Manston Road, Thanet ("the property"). The property is registered land which the first respondent, Mr. Rosset, contracted to purchase on 23 November 1982 and which was conveyed to him on 17 December 1982. On the same date Mr. Rosset executed a legal charge on the property in favour of the appellant, Lloyds Bank Plc. ("the bank") to secure an overdraft on his current account with the bank. The bank's charge was registered on 7 February 1983. The bank initially agreed to allow Mr. Rosset to borrow up to £15,000, but later raised this limit to £18,000. The limit was in due course exceeded, the bank's demand for repayment was not met and the bank instituted proceedings in the Thanet County Court for possession of the property in July 1984 against both respondents. Mr. and Mrs. Rosset, who had initially occupied the property as their matrimonial home, had by this time parted. Mr. Rosset, who was no longer residing in the property, did not resist the bank's claim. Mrs. Rosset, however, alleged by way of defence to the bank's claim and by way of counterclaim against her husband that she had been entitled, since the date when her husband contracted to purchase the property, to a beneficial interest in the property under a constructive trust which qualified as an overriding interest under section 70(l)(g) of the Land Registration Act 1925 because she was in actual occupation of the property both on 17 December 1982 and 7 February 1983, whichever was the relevant date to be considered in determining the existence of the overriding interest to which she alleged the bank's charge was subject.

At the trial Judge Scarlett found that Mrs. Rosset was entitled as against her husband to a beneficial interest in the property in an amount to be determined at a future hearing. He held that, on the true construction of the Land Registration Act, the proprietor of a legal charge takes subject to overriding interests which are subsisting on the date of creation, as opposed to the date of registration, of the charge. He accordingly asked himself whether Mrs. Rosset was in actual occupation of the property on 17 December 1982 and, finding that she was not, concluded that her equitable interest was not protected as an overriding interest by section 70(l)(g) so as to prevail against the bank's legal charge. He gave judgment for possession in favour of the bank. Mrs. Rosset appealed, but Mr. Rosset has taken no further part in the proceedings.

The Court of Appeal unanimously affirmed the judge's decision that the relevant date on which Mrs. Rosset had to show that she was in actual occupation in order to establish an overriding interest which would prevail against the bank was 17 December 1982, the date of creation of the bank's charge. But they differed on the facts as to whether she was in actual occupation on that date. Purchas and Nicholls L.JJ. held that she was; Mustill L.J. held that she was not. The bank now appeals by leave of your Lordships' House against the majority decision of the Court of Appeal in Mrs. Rosset's favour.

The important question arising under the Land Registration Act as to the relevant date on which to ascertain whether an interest in registered land is protected by actual occupation so as to prevail under section 70(i)(g) against the holder of a legal estate has now been resolved by your Lordships' decision in Abbey National Building Society v. Cann in favour of the view that it is the date when the estate is transferred or created, not the date when it is registered.

The primary ground of the bank's appeal challenges the judge's finding, which was also unanimously affirmed by the Court of Appeal, that Mrs. Rosset had by the date of completion acquired a beneficial interest in the property.

The Rossets were married in 1972. There are two children of the marriage, a daughter born in 1972 and a son born in 1981. From 1976 until the events giving rise to the present dispute, the parties were living in premises which had been built as an extension to a bungalow in Broadstairs which was the home of Mrs. Rosset's parents, Mr. and Mrs. Gardner. Mr. Rosset had borne the cost of building the extension, but it was occupied on the terms of an agreement between the Rossets and the Gardners which provided that, on the Rossets vacating the extension, each should be paid a fixed sum by Mr. and Mrs. Gardner. Mrs. Rosset's father had insisted on his daughter being joined in the agreement in this way.

Mr. Rosset is a Swiss national. He was working in 1982 as a courier conducting coach parties of tourists on the continent of Europe and was away from home a great deal. Some time before 1982 he became entitled to a substantial sum of money under a trust fund established by his grandmother in Switzerland. In 1982 the Rossets were looking for a new home to be bought with Mr. Rosset's inheritance. It was Mrs. Rosset who first found the property. It had been unoccupied for seven or eight years and required substantial work to render it suitable for occupation. Mrs. Rosset took her husband to see it. He liked it and made an offer to purchase it for the asking price of £57,500. This was accepted on 3 August 1982 subject to contract.

On 25 October 1982 Mr. Rosset opened an account at the Broadstairs branch of the bank. He saw the manager and told him that he was intending to buy the property with money he had inherited in Switzerland. On 2 November Mr. Rosset received a payment of £70,200 from Switzerland of which £59,200 was paid into his account with the bank. On 23 November contracts for the purchase of the property were exchanged. On 14 December Mr. Rosset saw the bank manager and asked to be allowed to overdraw on his current account up to £15,000 to meet the cost of the works of renovation which were needed to be undertaken to the property. The manager asked whether the property was to be acquired in joint names. Mr. Rosset replied that the property was to be acquired in his sole name because his wife and children were living with her parents. The manager agreed the overdraft and Mr. Rosset signed the bank's form of charge which was then sent to Mr. Rosset's solicitor to be dated on completion and registered on behalf of the bank. Completion took place on 17 December with funds drawn from the account which required an initial overdraft of £2,267. Mrs. Rosset knew nothing of the charge to the bank or the overdraft.

Meanwhile Mr. and Mrs. Rosset had been let into possession of the property by the vendors even before the exchange of contracts. The builder employed by them, a Mr. Griffin, commenced work on 7 November 1982. It was originally hoped that the house would be ready for the Rossets to move in before Christmas, but this proved in the event to be impossible. Eventually the Rossets moved in about the middle of February 1983 when the work was substantially complete. By this time Mr. Rosset's overdraft had risen to. over £18,000 and the bank refused to extend further credit. Most of the additional funds drawn from the account had been expended in paying for the renovation works. Both the purchase price of the property and the cost of the works of renovation were paid by Mr. Rosset alone and Mrs. Rosset made no financial contribution to the acquisition of the property.

The case pleaded and carefully particularised by Mrs. Rosset in support of her claim to an equitable interest in the property was that it had been expressly agreed between her and her husband in conversations before November 1982 that the property was to be jointly owned and that in reliance on this agreement she had made a significant contribution in kind to the acquisition of the property by the work she had personally undertaken in the course of the renovation of the property which was sufficient to give rise to a constructive trust in her favour.

There was a conflict of evidence between Mr. and Mrs. Rosset on the vital issue raised by this pleading. The question the judge had to determine was whether he could find that before the contract to acquire the property was concluded they had entered into an agreement, made an arrangement, reached an understanding, or formed a common intention that the beneficial interest in the property would be jointly owned. I do not think it is of importance which of these alternative expressions one uses. Spouses living in amity will not normally think it necessary to formulate or define their respective interests in property in any precise way. The expectation of parties to every happy marriage is that they will share the practical benefits of occupying the matrimonial home whoever owns it. But this is something quite distinct from sharing the beneficial interest in the property asset which the matrimonial home represents. These considerations give rise to special difficulties for judges who are called on to resolve a dispute between spouses who have parted and are at arm's length as to what their common intention or understanding with respect to interests in property was at a time when they were still living as a united family and acquiring a matrimonial home in the expectation of living in it together indefinitely.

Since Mr. Rosset was providing the whole purchase price of the property and the whole cost of its renovation, Mrs. Rosset would, I think, in any event have encountered formidable difficulty in establishing her claim to joint benficial ownership. The claim as pleaded and as presented in evidence was, by necessary implication, to an equal share in the equity. But to sustain this it was necessary to show that it was Mr. Rosset's intention to make an immediate gift to his wife of half the value of a property acquired for £57,500 and improved at a further cost of some £15,000. What made it doubly difficult for Mrs. Rosset to establish her case was the circumstance, which was never in dispute, that Mr. Rosset's uncle, who was trustee of his Swiss inheritance, would not release the funds for the purchase of the property except on terms that it was to be acquired in Mr. Rosset's sole name. If Mr. and Mrs. Rosset had ever thought about it, they must have realised that the creation of a trust giving Mrs. Rosset a half share, or indeed any other substantial share, in the beneficial ownership of the property would have been nothing less than a subterfuge to circumvent the stipulation which the Swiss trustee insisted on as a condition of releasing the funds to enable the property to be acquired.

In these circumstances, it would have required very cogent evidence to establish that it was the Rossets' common intention to defeat the evident purpose of the Swiss trustee's restriction by acquiring the property in Mr. Rosset's name alone but to treat it nevertheless as beneficially owned jointly by both spouses. I doubt whether the evidence would have sustained a finding to that effect. But the judge made no such finding. On the contrary, his judgment on this point amounts to a clear rejection of Mrs. Rosset's pleaded case. He said:

> "The decision to transfer the property into the name of the first defendant alone was a disappointment to the second defendant, but I am satisfied that she genuinely believed that the first defendant would hold the property in his name as something which was a joint venture, to be shared between them as the family home and that the reason for it being held by the first defendant alone was to ensure that the first defendant's uncle would sanction the export of trust funds from Switzerland to England for the purchase. As so often happens the defendants did not pursue their discussion to the extent of defining precisely what their respective interests in the property should be. It was settled that the property should be transferred into the name of the first defendant alone to achieve the provision of funds from Switzerland, but in the period from August 1982 to the 23 November 1982 when the contracts were exchanged, the defendants did not decide whether the second defendant should have any interest in the property. On one occasion the second defendant heard the first defendant say to her parents that he had put the house in their joint names, but she knew that he could not do that and treated what he said as an expression of what he would like to do. In these circumstances I am satisfied that the outcome of the discussions between the parties as to the name into which the property should be transferred did not exclude the possibility that the second defendant should have a beneficial interest in the property."

I have emphasised the critical finding in this passage from the judgment.

Even if there had been the clearest oral agreement between Mr. and Mrs. Rosset that Mr. Rosset was to hold the property in trust for them both as tenants in common, this would, of course, have been ineffective since a valid declaration of trust by way of gift of a beneficial interest in land is required by section 53(1) of the Law of Property Act 1925 to be in writing. But if Mrs. Rosset had, as pleaded, altered her position in reliance on the agreement this could have given rise to an enforceable interest in her favour by way either of a constructive trust or of a proprietary estoppel.

Having rejected the contention that there had been any concluded agreement, arrangement or any common intention formed before contracts for the purchase of the property were exchanged on 23 November 1982 that Mrs. Rosset should have any beneficial interest, the judge concentrated his attention on Mrs. Rosset's activities in connection with the renovation works as a possible basis from which to infer such a common intention. He described what she did up to the date of completion as follows:

> "Up to 17 December 1982 the second defendant's contribution to the venture was: (1) to urge on the builders and to attempt to co-ordinate their work, until her husband insisted that he alone should give instructions; (2) to go to builders' merchants and obtain material required by the builders . . . and to deliver the materials to the site. This was of some importance because Mr. Griffin and his employees did not know the Thanet area; (3) to assist her husband in planning the renovation and decoration of the house. In this, she had some skill over and above that acquired by most housewives. She was a skilled painter and decorator who enjoyed wallpapering and decorating, and, as her husband acknowledged, she had good ideas about this work. In connection with this, she advised on the position of electric plugs and radiators and planned the design of the large breakfast room and the small kitchen of the house; (4) to carry out the wallpapering of Natasha's bedroom and her own bedroom, after preparing the surfaces of the walls and clearing up the rooms concerned before the papering began; (5) to begin the preparation of the surfaces of the walls of her son's bedroom, the Den, the upstairs lavatory and the downstairs washroom for papering. All this wallpapering was completed after 17 December 1982 but by 31 December 1982; (6) to assist in arranging the insurance of the house by the Minster Insurance Co. Ltd. home cover policy, in force from 3 November 1982; (7) to assist in arranging a crime prevention survey on 23 November 1982; (8) to assist in arranging the installation of burglar alarms described in a specification dated 3 December 1982."

Later the judge said:

> "I am satisfied that in 1982 the common intention expressed by the defendants in conversation between themselves was that Vincent Farmhouse should be purchased in the name of the first defendant alone, because funds would not be made available from the first defendant's family trust in Switzerland unless the purchase was made only in his name. In addition, however, it was their common intention that the renovation of the house should be a joint venture, after which the house was to become a family home to be shared by the defendants and their children."
>
> I pause to observe that neither a common intention by spouses that a house is to be renovated as a "joint venture" nor a common intention that the house is to be shared by parents and children as the family home throws any light on their intentions with respect to the beneficial ownership of the property.

Reverting to Mrs. Rosset's activity in connection with the renovation of the property the judge said:

> "It is plain that she made every effort to make the house fit for occupation before Christmas 1982 and spent all the time she could at Vincent Farmhouse in between taking Natasha to school and fetching her from school. . . . Obviously the extent of the work which the defendant did in preparation, clearing up before painting and decorating, and the painting and decorating itself, was valuable. ... In the result, having considered: (1) the semi-derelict condition of Vincent Farmhouse in November 1982, (2) the absence of the first defendant abroad for 10 days in November and early December 1982, (3) the second defendant's special skills in painting and decorating over and above those of the average housewife and her indirect contribution to reducing the cost of renovation of the farmhouse by carrying out certain painting and decorating herself, (4) the time she spent at the farmhouse from 4 November 1982 attempting to coordinate the work of the builders and her work in ordering and delivering materials to the site for the builders, and (5) the conversations between the parties concerning into whose name the property was to be transferred and the nature of the joint venture and the purpose of purchasing Vincent Farmhouse;
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> I am satisfied that prior to 17 December 1982 there was a common intention between the defendants that the second defendant should have a beneficial interest in the property under a constructive trust and that she did act to her detriment on the faith of such a common intention. Some, but not all, of her work at the farmhouse prior to 17 December 1982 falls into the category of work upon which she could not reasonably have been expected to embark unless she was to have an interest in the house, namely the work to which she brought the special skills of painting and decorating and her work in ordering and delivering materials to the site for the builders in attempting to co-ordinate her work. These actions by the second defendant must have reduced the cost of renovating the farmhouse and thus indirectly contributed to the acquisition of the property, albeit to a small extent."

At the very end of his judgment the judge pointed out that he had made no finding as to the extent of Mrs. Rosset's beneficial interest in the property. He indicated that he would hear counsel as to what directions should be given for the determination of this issue at a later date. He concluded his judgment with the sentence:

> "An area which the court would wish to explore is the extent to which the qualifying conduct of the second defendant reduced the cost of the renovation of the farmhouse and its buildings."

It is clear from these passages in the judgment that the judge based his inference of a common intention that Mrs. Rosset should have a beneficial interest in the property under a constructive trust essentially on what Mrs. Rosset did in and about assisting in the renovation of the property between the beginning of November 1982 and the date of completion on 17 December 1982. Yet by itself this activity, it seems to me, could not possibly justify any such inference. It was common ground that Mrs. Rosset was extremely anxious that the new matrimonial home should be ready for occupation before Christmas if possible. In these circumstances it would seem the most natural thing in the world for any wife, in the absence of her husband abroad, to spend all the time she could spare and to employ any skills she might have, such as the ability to decorate a room, in doing all she could to accelerate progress of the work quite irrespective of any expectation she might have of enjoying a beneficial interest in the property. The judge's view that some of this work was work "upon which she could not reasonably have been expected to embark unless she was to have an interest in the house" seems to me, with respect, quite untenable. The impression that the judge may have thought that the share of the equity to which he held Mrs. Rosset to be entitled had been "earned" by her work in connection with the renovation is emphasised by his reference in the concluding sentence of his judgment to the extent to which her "qualifying contribution" reduced the cost of the renovation.

On any view the monetary value of Mrs. Rosset's work expressed as a contribution to a property acquired at a cost exceeding £70,000 must have been so trifling as to be almost de minimis. I should myself have had considerable doubt whether Mrs. Rosset's contribution to the work of renovation was sufficient to support a claim to a constructive trust in the absence of writing to satisfy the requirements of section 51 of the Law of Property Act even if her husband's intention to make a gift to her of half or any other share in the equity of the property had been clearly established or if he had clearly represented to her that that was what he intended. But here the conversations with her husband on which Mrs. Rosset relied, all of which took place before November 1982, were incapable of lending support to the conclusion of a constructive trust in the light of the judge's finding that by that date there had been no decision that she was to have any interest in the property. The finding that the discussions "did not exclude the possibility" that she should have an interest does not seem to me to add anything of significance.

These considerations lead me to the conclusion that the judge's finding that Mr. Rosset held the property as constructive trustee for himself his wife cannot be supported and it is on this short ground that I would allow the appeal. In the course of the argument your Lordships had the benefit of elaborate submissions as to the test to be applied to determine the circumstances in which the sole legal proprietor of a dwelling house can properly be held to have become a constructive trustee of a share in the beneficial interest in the house for the benefit of the partner with whom he or she has cohabited in the house as their shared home. Having in this case reached a conclusion on the facts which, although at variance with the views of the courts below, does not seem to depend on any nice legal distinction and with which, I understand, all your Lordships agree, I cannot help doubting whether it would contribute anything to the illumination of the law if I were to attempt an elaborate and exhaustive analysis of the relevant law to add to the many already to be found in the authorities to which our attention was directed in the course of the argument. I do, however, draw attention to one critical distinction which any judge required to resolve a dispute between former partners as to the beneficial interest in the home they formerly shared should always have in the forefront of his mind.

The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel.

In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do.

The leading cases in your Lordships' House are Pettitt v. Pettitt [1970] AC 777 and Gissing v. Gissing [1971] AC 886. Both demonstrate situations in the second category to which I have referred and their Lordships discuss at great length the difficulties to which these situations give rise. The effect of these two decisions is very helpfully analysed in the judgment of Lord MacDermott L.C.J. in McFarlane v. McFarlane [1972] N.I. 79.

Outstanding examples on the other hand of cases giving rise to situations in the first category are Eves v. Eves [1975] 1 WLR 1338 and Grant v. Edwards [1986] Ch 638. In both these cases, where the parties who had cohabited were unmarried, the female partner had been clearly led by the male partner to believe, when they set up home together, that the property would belong to them jointly. In Eves the male partner had told the female partner that the only reason why the property was to be acquired in his name alone was because she was under 21 and that, but for her age, he would have had the house put into their joint names. He admitted in evidence that this was simply an "excuse." Similarly in Grant v. Edwards the female partner was told by the male partner that the only reason for not acquiring the property in joint names was because she was involved in divorce proceedings and that, if the property were acquired jointly, this might operate to her prejudice in those proceedings. As Nourse L.J. put it, at p. 649:

> "Just as in Eves v. Eves [1975] 1 WLR 1338, these facts appear to me to raise a clear inference that there was an understanding between the plaintiff and the defendant, or a common intention, that the plaintiff was to have some sort of proprietary interest in the house; otherwise no excuse for not putting her name on to the title would have been needed."

The subsequent conduct of the female partner in each of these cases, which the court rightly held sufficient to give rise to a constructive trust or proprietary estoppel supporting her claim to an interest in the property, fell far short of such conduct as would by itself have supported the claim in the absence of an express representation by the male partner that she was to have such an interest. It is significant to note that the share to which the female partners in Eves and Grant v. Edwards were held entitled were one quarter and one half respectively. In no sense could these shares have been regarded as proportionate to what the judge in the instant case described as a "qualifying contribution" in terms of the indirect contributions to the acquisition or enhancement of the value of the houses made by the female partners.

I cannot help thinking that the judge in the instant case would not have fallen into error if he had kept clearly in mind the distinction between the effect of evidence on the one hand which was capable of establishing an express agreement or an express representation that Mrs. Rosset was to have an interest in the property and evidence on the other hand of conduct alone as a basis for an inference of the necessary common intention.

If Mrs. Rosset had become entitled to a beneficial interest in the property prior to completion it might have been necessary to examine a variant of the question regarding priorities which your Lordships have just considered in Abbey National Building Society v. Cann and, subject to that question, to decide whether, as a matter of fact, she was in "actual occupation" of the property on 17 December 1982. Since these questions have now become academic, I do not think any useful purpose would be served by going into them.

For the reasons I have indicated I would allow the appeal, set aside the order of the Court of Appeal and, as between Mrs. Rosset and the bank, restore the order of the trial judge.

LORD GRIFFITHS

My Lords,

I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Bridge of Harwich. I agree with it and, for the reasons he gives, I would allow the appeal.

LORD ACKNER

My Lords,

I have had the advantage of reading in draft the speech delivered by my noble and learned friend Lord Bridge of Harwich. I agree with it and would allow the appeal for the reasons which he has given.

LORD OLIVER OF AYLMERTON

My Lords,

I have had the advantage of reading in draft the speech delivered by my noble and learned friend Lord Bridge of Harwich. I agree with it and would allow the appeal for the reasons which he has given.

LORD JAUNCEY OF TULLICHETTLE

My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Bridge of Harwich. I agree with it, and for the reasons which he has given I too would allow the appeal.

Lloyds Bank plc (Appellants) **v.** Rosset **and others**

(Respondents)

JUDGMENT

Die Jovis 29° Martii 1990

Upon Report from the Appellate Committee to whom was referred the Cause Lloyds Bank plc against Rosset and another, That the Committee had heard Counsel on Monday the 12th, Tuesday the 13th, Wednesday the 14th and Thursday the 15th days of February last, upon the Petition and Appeal of Lloyds Bank plc of 71, Lombard Street, London EC3P 3BS praying that the matter of the Order set forth in the Schedule thereto, namely an Order of Her Majesty's Court of Appeal of the 13th day of May 1988, as amended on the 15th day of June 1988, might be reviewed before Her Majesty the Queen in Her Court of Parliament and that the said Order might be reversed, varied or altered or that the Petitioners might have such other relief in the premises as to Her Majesty the Queen in Her Court of Parliament might seem meet; as upon the case of the Second Respondent Diana Irene Rosset lodged in answer to the said Appeal; and due consideration had this day of what was offered on either side in this Cause:

It is Ordered and Adjudged, by the Lords Spiritual and Temporal in the Court of Parliament of Her Majesty the Queen assembled, That the said Order of Her Majesty's Court of Appeal of the 13th day of May 1988, as amended on the 15th day of June 1988, complained of in the said Appeal be, and the same is hereby, **Set Aside,** save as to costs, and that the Order of His Honour Judge Scarlett of the 22nd day of May 1987 as between the Appellants and the Second Respondent be, and the same is hereby **Restored:** And it is further Ordered, That the Appellants do pay or cause to be paid to the said Second Respondent the Costs incurred by her in respect of the said Appeal to this House, the amount of such last-mentioned Costs to be certified by the Clerk of the Parliaments if not agreed between the parties: And it is also further Ordered, That the Cause be, and the same is hereby, remitted back to the Queen's Bench Division of the High Court of Justice to do therein as shall be just and consistent with this Judgment.

Die Martis 8 Maii 1990

Upon further Report from the Appellate Committee to whom was again referred the Cause Lloyds Bank plc against Rosset and others, That the Committee had heard Counsel on Thursday the 3rd day of May last on a question of Costs:

It is Ordered, by the Lords Spiritual and Temporal in the Court of Parliament of Her Majesty the Queen assembled, That so much of the Order of the 29th day of March last which provided for the payment of Costs in this House be, and the same is hereby, **Vacated:** And it is further Ordered, That the Appellants do pay or cause to be paid to the said Second Respondent the Costs incurred by her in respect of the said Appeal to this House without prejudice to the rights of the Appellants against the First Respondent, the amount thereof to be certified by the Clerk of the Parliaments if not agreed between the parties.

Cler: Parliamentor: