CA on appeal from QBD (The Hon Mr Justice Gray) and on appeal from the Lands Tribunal (HHJ Rich QC) before Mantell LJ; Clarke LJ; Sir Anthony Evans. 4th May 2001.

**LORD JUSTICE CLARKE:**

**Underlying Dispute**

1. There are two appeals before the court which have a somewhat curious history. They arise out of a relationship of landlord and tenant between the parties. The respondent in both appeals is Lionel Goldstein. He was the owner of a reversion to the raised ground floor flat at 27 Belsize Park Gardens in North London, which was let to the appellant in both appeals, namely Ron Conley. I shall refer to the respondent as 'the landlord' and I shall refer to the appellant as 'the tenant', although he was in fact the assignee of the original lease.

2. The lease, which was for 21¾ years less three days, expired on 25th September 1995. In the meantime, on 27th March 1995, the tenant served a notice under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') claiming the grant of a new lease. The tenant proposed a premium of £90,000, whereas the landlord served a counter-notice proposing a substantially greater figure by way of premium. The question of the appropriate premium was referred to a leasehold valuation tribunal ('LVT').

**The LVT and the Lands Tribunal**

3. On 4th July 1996 the LVT determined that the appropriate premium was £143,000. It had no power to order either party to pay the costs and did not do so. Both parties appealed to the Lands Tribunal. The appeals were heard by His Honour Judge Rich QC. As I understand it, during the course of the appeal the parties, who were both represented by counsel, reached an agreement which led to the withdrawal of the cross-appeal. The landlord called two expert witnesses, one of whom had given evidence and indeed conducted the landlord's case before the LVT and the other of whom had not given evidence before the LVT. The tenant called an expert witness who had also given evidence before the LVT. The tenant also had leave to call a second expert, but in the event his evidence was not necessary. On 13th August 1998, Judge Rich allowed the landlord's appeal and held that the total premium payable for the grant of a new lease was £191,212.50. His reasoning is not relevant to the issues which arise on these appeals but can be seen from pages 137 to 144 of the report of his judgment at [1999] 03 EG 137.

4. The parties had reached agreement as to how the costs of the appeal to the Lands Tribunal were to be dealt with. As to costs, Judge Rich said this (at page 144): *"It was accepted between the parties that if the landlord was successful on both issues, as he has been, costs should follow the event. I therefore award the landlord the costs of the appeal and the cross-appeal to be taxed on the High Court scale, if not agreed, but since the tenant is legally aided such costs are not to be enforced without leave of the tribunal."*

   It is a reasonable inference that the agreement which led to the order made by the judge was reached with the assistance and on the advice of counsel.

5. As appears from that passage, the judge at that time thought that the tenant was legally aided before the Lands Tribunal, whereas the true position was that it was the landlord who was legally aided. As a result, the matter came back before the judge on 18th September 1988, when he said this (at page 144):

   *"Additional Note*

   *Since publication of my decision dated 13 August 1998, it has been pointed out to me that it is the landlord and not the tenant which is the legally aided party. Accordingly, my decision as to costs is that I award the landlord the costs of the appeal and cross-appeal, to be taxed on the High Court scale if not agreed. …*

   *The tenant has taken the opportunity created by my error to make submissions as to the appropriateness of this order. The order, however, follows the agreement made by the parties at the end of the hearing, which I have recorded in my decision, and I see no proper grounds for reopening this matter; the agreement in any case seems to me properly to reflect what I would myself have decided."*

6. The order for costs as drawn up ordered "that Appellant be awarded the costs of this appeal and cross-appeal to be taxed on the High Court scale if not agreed". The order was originally dated 20th August 1998, but (in its present form) is stated to have been amended on 18th September 1998 and reamended on 5th November 1999. As I read the order, it created an obligation on the part of the tenant to pay the landlord's costs of the appeal and cross-appeal as taxed.

**Taxation of Costs**

7. On 2nd November 1998 the tenant wrote personally to the registrar taking the point that he was not liable for costs because of the terms of the 1993 Act. The registrar referred the matter to Judge Rich and, no doubt in the light of the judge's response, on 24th November 1998 wrote to the tenant explaining that an order had been made, that the Lands Tribunal was ***functus officio*** and that the landlord was entitled to have his costs taxed in accordance with the order, but that, if both parties agreed, Judge Rich was prepared to consider the question of costs again before a taxation. The landlord did not, however, agree and the tenant was informed that the taxation would proceed. On 28th January 1999 the tenant wrote to the registrar asserting that he was not liable for the costs on the ground that a tenant is not liable under the relevant statute for the landlord's costs "before a leasehold valuation tribunal or anyone acting as a leasehold valuation tribunal". He wrote that he had not asked for the costs to be taxed and that he would not be challenging them or attending at the taxation. He also said that another reason why he would not be attending was that he had not been able to ascertain whether to do so would amount to an admission of liability.

8. The taxation took place on 3rd February 1999 and on the same day the landlord's solicitors wrote to the tenant to tell him that he was liable to pay a total of £40,301.18. On 9th February the tenant replied again saying that he was not liable for the costs because of the terms of the 1993 Act. However, in the light of his decision on the taxation, the registrar issued a certificate dated 9th February 1999 which stated that the costs were allowed at £39,557.57 inclusive of VAT. That certificate appears to have contained a slight error because it was subsequently amended on 18th June 1999 to the sum of £40,301.18, which is the amount referred to in the letter of 3rd February.

**Appeals from Lands Tribunal**

9. In the meantime the tenant took various steps to appeal from the order made by Judge Rich. We do not have all the documents which related to those steps, but it appears that from the outset the tenant expressed a desire to appeal against both the order on the merits and the order on costs. The tenant corresponded both with the registrar of the Lands Tribunal and with the Civil Appeals Office. The position was complicated by the fact that in order to appeal on the merits it was at that time necessary to ask the Lands Tribunal to state a case. It appears that the tenant wrote to the Civil Appeals Office on both 15th September and 7th October 1998 and that the office only replied on 29th December after consulting the Deputy Registrar of Civil Appeals. On 29th December the tenant was informed that the deputy registrar had directed that, if he was appealing the order for costs alone, he would require leave to appeal, but that, if he wished to appeal any substantive part of the decision, he should have asked the Lands Tribunal to state a case. Because of the delay, time for lodging an application for leave to appeal was extended to 25th January 1999.

10. On receipt of the letter dated 29th December the tenant wrote to the Registrar of the Lands Tribunal on 8th January 1999 saying that he had yet to decide whether he would appeal separately with regard to costs, which would raise the question whether section 3(5) of the Lands Tribunal Act 1949 ('the 1949 Act') was overridden by section 60 of the 1993 Act. He also set out in detail the basis of his appeal on the merits and asked the Lands Tribunal to state a case. By a change of the law which came into effect as from 1st January 1999, leave was necessary from either the Lands Tribunal or the Court of Appeal before a case could be stated. The question of leave was referred to Judge Rich who refused it. His decision was communicated to the tenant by letter dated 26th January 1999.

11. In the meantime the tenant was given what may have been somewhat conflicting signals from the Civil Appeals Office on the one hand and the Lands Tribunal on the other. On 19th January the Civil Appeals Office told him that if he wanted to appeal the whole decision he would need to ask the Lands Tribunal to state a case and, if he failed to obtain leave, he could make an application to the Court of Appeal. On 22nd January the Lands Tribunal told him that, if he was refused leave by Judge Rich on the substantive issue and he wanted to pursue an appeal solely on the question of costs, he would have to make a further application, apparently to the Lands Tribunal.

12. After his application to the Lands Tribunal for leave to appeal failed the tenant applied to this court for leave on 14th April 1999. On a fair reading of his application, it seems clear that he was seeking leave to appeal on the merits because he set out detailed arguments in support of that case, but he did not refer to his argument that the Lands Tribunal had had no jurisdiction to order him to pay costs. He swore an affidavit in support of his application, which was both for leave to appeal and for an extension of time. Those applications came before Stuart-Smith and Buxton LJJ on 14th July 1999 and were refused. It is clear that they did not consider any application on behalf of the tenant for leave to appeal against the order for costs.

13. The tenant's state of mind at that time can be seen from the following statement in support of an application for permission to appeal against Judge Rich's order for costs, which he made almost a year later. He said: *"Having had my application for permission to appeal rejected, however, I assumed that I had exhausted all avenues open to me in relation to the Lands Tribunal decision. It is only recently that I have appreciated that it may be better for me to try to revisit the foundation order for costs rather than challenge its enforcement and the Court Service (by letter dated 22 January 1999) told me that this route is open to me."*

    I should perhaps observe that the Court Service did not tell the tenant, either in its letter of 22nd January 1999 or at all, that he could wait for nearly another year after failing in the Court of Appeal on the merits before seeking to challenge the order of Judge Rich as to costs by way of appeal. I shall return to his attempt to do so after considering the landlord's attempts to enforce the order for costs.

**Enforcement of Order for Costs**

14. On 9th June 1999 the landlord applied to the county court for an order under CCR Order 25 rule 12, which continued to have effect under schedule 2 of the CPR. Order 25 rule 12(1) provides as follows: *"This rule applies where any enactment (other than these rules) provides that if a county court so orders, a sum of money is recoverable as if payable under an order of the county court, and in this rule an application for such an order is referred to as an application to enforce an award and 'award' means the award, order, agreement or decision which it is sought to enforce."*

    The remainder of the rule provides that the application is to be made without notice by production of the award and a certificate of the amount outstanding under it and that the order is to be made by 'the court officer'.

15. It is to my mind clear that that rule contemplates not a judicial, but an administrative, act whereby an officer of the court looks at the relevant statute, the award and the certificate and in an appropriate case makes an order

that the amount certified is recoverable as if payable under an order of the county court. The order in the instant case, which is dated 15th June 1999, included the following:

*"… on reading an award made in the above matter on the 20th August 1998 and an application filed on the 9th June 1999*

*IT IS ORDERED that the Applicant do recover from the Respondent the sum of £39555.57 … together with £30 for the costs of this application*

*AND IT IS ORDERED THAT if the Respondent do fail to pay the sum of £39555.57 and £30 costs to the applicant forthwith after the date of this order, then the sum remaining unpaid shall be recoverable as if payable under an order of this Court."*

16. The tenant applied to set that order aside and his application came before District Judge Jenkins on 14th July 1999, which appears to be the very day that his application for permission to appeal on the merits was refused by the Court of Appeal. The tenant was (as I understand it) represented by a McKenzie friend, whereas the landlord was represented by a solicitor. The district judge was troubled that there was no enactment which the tenant could rely upon which complied with CCR Order 25 rule 12. He accordingly made an order staying the order of 15th June and also ordered that if no application was received to lift the stay within seven days the order would stand dismissed without the need for a further order. No such application was made, with the result that the order of 15th June stood dismissed, or perhaps more accurately set aside.

17. The only evidence as to what occurred before the district judge is that of the tenant. He says that the district judge considered and rejected section 66 of the Arbitration Act 1996 ('the 1996 Act') as a relevant enactment within the rule and that no other enactment was suggested. There is no reason to reject the tenant's evidence to that effect, although it is not clear how detailed the argument was. In any event, it is common ground that the landlord did not make any attempt to appeal against the decision of the district judge.

18. Instead on 11th November 1999 he issued a claim form in a High Court action against the tenant, in which he claimed the sum of £40,301.18 together with interest and costs to date making a total of £43,387.92. The claim endorsed on the claim form was expressed in simple terms. In short it alleged that on 18th August 1998 the costs of the appeal and cross-appeal to the Lands Tribunal were awarded to the landlord, that those costs were taxed and certified in the sum of £40,301.18, that in the premises the tenant was indebted to the landlord in that sum and that the landlord was further entitled to interest under section 35A of the Supreme Court Act 1981. The landlord's case as set out in that document was thus that the order of the Lands Tribunal gave rise to a debt owed by the tenant to the landlord which the landlord could recover by action.

19. The tenant acknowledged service of the claim form and on 2nd December 1999 the landlord issued an application for summary judgment for the amount claimed, asserting that the tenant had no defence. The application was supported by a short affidavit. The tenant responded by issuing an application dated 10th December 1999 seeking a declaration that the court had no jurisdiction over the subject matter of the claim. That application was supported by evidence from the tenant.

20. Both applications came before Master Rose and were heard at the same time. The landlord was represented by counsel, namely Mr Cowen, who has appeared on this appeal, whereas the tenant was again represented by a McKenzie friend, namely Mrs Crowther. It was submitted to Master Rose that the tenant had an arguable defence on three principal bases. The first was that the Lands Tribunal had no jurisdiction to make an order for costs, although I am bound to say that it is not clear how far this point was pressed in oral argument. As I see it, the argument was advanced, not by way of appeal from the order of Judge Rich, but by saying that if the Lands Tribunal had no jurisdiction to make an order for costs its order could not be enforceable in the High Court.

21. The second basis was that the High Court had no jurisdiction to entertain the claim in any event. It was submitted that there is no statutory machinery which enables a person to whom costs have been awarded in the Lands Tribunal to enforce the order and that it follows that an order for costs cannot therefore be enforced through the High Court. The third basis was that the claim should fail because of the order of District Judge Jenkins. That submission was put in various ways, to which I shall return below.

22. All three bases were rejected by the master, who gave judgment for the landlord on 13th March 2000. As to the jurisdiction of the Lands Tribunal, he held that it had jurisdiction to award costs under section 3(5) of the 1949 Act, which provides as follows: *"Subject to the following provisions of this section, the Lands Tribunal may order that the costs of any proceedings before it incurred by any party shall be paid by any other party and may tax or settle the amount of any costs to be paid under any such order or direct in what manner they are to be so taxed."*

The master said in his judgment that the Lands Tribunal had power to award costs, at which point (according to the note we have) Mrs Crowther said that she was not questioning the power of the Lands Tribunal in this regard. When the matter later came before Gray J on appeal, this point was expressly conceded by Mr Aldridge who was then appearing on behalf of the tenant. I shall return to it below.

23. As to the other two points, the master held that the landlord was entitled to bring an action based on the award of the Lands Tribunal, just as a person in whose favour an arbitration award is made is entitled to bring an action on an award. He held in effect that in those circumstances nothing which occurred before the district judge affected that right and that there was no basis upon which the tenant could defend the action.

24. The tenant appealed to the judge, taking essentially the same points and also arguing that only the county court had jurisdiction by reason of section 90(2) of the 1993 Act. The judge rejected them all and dismissed the appeal on 12th June 2000, although it seems to me that the basis of his decision was somewhat different from that of Master Rose. He held that the effect of rule 32 of the Lands Tribunal Rules 1996 ("the 1996 Rules"), as amended, was to apply section 66 of the 1966 Act and to confer jurisdiction on the High Court to enforce a decision of the Lands Tribunal as if it was an arbitration award. He further held that nothing that had happened in front of the district judge afforded the tenant any defence and that section 90(2) of the 1993 Act did not have the effect of depriving the High Court of jurisdiction. The judge initially granted permission to appeal but revoked it when it was pointed out to him that he had no jurisdiction to grant it.

**These Appeals**

25. The tenant thereafter sought permission to appeal to this court against the order of the judge dismissing his appeal. At that same time he sought permission to appeal out of time against the original decisions on costs made by Judge Rich as long ago as 13th August and 18th September 1998. The tenant's applications were first considered and rejected by Buxton LJ in robust terms on paper on 28th July 2000. They were however renewed orally by Mr Trace on 24th August, in the usual way without notice to the landlord, and were granted by Buxton LJ on that day.

26. He gave permission to appeal from the decision of Gray J because he thought it arguable that the effect of rule 32 of the 1996 Rules was not to apply section 66 of the 1966 Act to a case of this kind and that in those circumstances it was arguable that the High Court had no jurisdiction to enforce an order for costs made by the Lands Tribunal. He gave permission to appeal from the original order of Judge Rich because he took the view that on the appeal from Gray J the question whether the order should have been made in the first place would be a relevant matter.

27. I shall consider first the appeal from the order of Gray J because I agree with Buxton LJ that the question whether there was jurisdiction in the Lands Tribunal to make the order for costs is relevant to that appeal. It is convenient to consider first the jurisdiction of the High Court to enforce orders of the Lands Tribunal, secondly the consequences of the application to the County Court and the order of the district judge, thirdly the jurisdiction of the Lands Tribunal to make orders for costs in a case of this kind and fourthly the question whether any jurisdiction which the High Court would otherwise have had is ousted in this class of case by section 90(2) of the 1993 Act.

***Jurisdiction of High Court***

28. There are, as I see it, two bases upon which the High Court might have jurisdiction to enforce an order of the Lands Tribunal. The first is by statute and the second is by action on the order on the basis that it creates an obligation to pay which is enforceable at common law. I shall consider them in turn.

***Enforcement by Statute***

29. The only statute which has been suggested is section 66 of the 1996 Act, which Mr Cowen submitted is applicable by reason of rule 32 of the 1996 Rules 1996, as amended. Section 66(1) provides as follows:

*"An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect."*

*It is common ground that, unless that section is applied to orders of the Lands Tribunal by some other statutory provision, it does not apply to a case of this kind because this is not a case in which an award was made "pursuant to an arbitration agreement".*

30. In considering Mr Cowen's submission based on rule 32 of the 1996 Rules it is important to note that in addition to the jurisdiction conferred upon it by a number of different statutory provisions, by section 1(5) of the 1949 Act, the Lands Tribunal also has jurisdiction "to act as arbitrator under a reference by consent". Thus the Lands Tribunal sometimes acts as an arbitrator and sometimes does not. The 1996 Rules recognise that distinction. Thus Part VII of the rules is entitled "References by consent" and, by rule 25, applies to proceedings before the Lands Tribunal where it is acting as an arbitrator by consent under section 1(5) of the 1949 Act. In its original form rule 26, which is part of Part VII, applied certain sections of the Arbitration Act 1950 ('the 1950 Act') to such arbitrations in addition to certain further provisions applied by rule 32, which is not part of Part VII and is not restricted to arbitrations conducted by the Lands Tribunal.

31. The 1996 Rules were subsequently amended to take account of the 1996 Act. Thus paragraphs 8 and 9 of the Lands Tribunal (Amendment) Rules 1997 ('the 1997 Amendment Rules') substituted rules 26 and 32 as follows:

*"Application of Arbitration Act 1996*

*26. Unless otherwise agreed by the parties, the following provisions of the Arbitration Action 1996 shall apply to proceedings under this Part in addition to those set out in rule 32 –*

*(a) section 8 (whether agreement discharged by death of a party);*

*(b) section 9 (stay of legal proceedings);*

*(c) section 10 (reference of interpleader issue to arbitration);*

*(d) section 12 (power of court to extend time for beginning arbitral proceedings, etc);*

*(e) section 23 (revocation of arbitrator's authority);*

*(f) section 57 (correction of award or additional award) in so far as it relates to costs and so that the reference to 'award' shall include a reference to any decision of the Lands Tribunal.*

*26A. …*

32. The following provisions of the Arbitration Act 1996 shall apply to all proceedings as they apply to an arbitration –

*(a) section 47 (awards on different issues, etc), as if the words 'unless otherwise agreed by the parties' were omitted from subsection (1) and so that the reference to 'award' shall include a reference to any decision of the Lands Tribunal;*

*(b) section 49 (interest) subject to any enactment that prescribes a rate of interest;*

*(c) section 57(3) to (7) (correction of award or additional award)."*

32. There was no reference to section 66 of the 1996 Act in the 1997 Amendment Rules, so that before they came into force there was no statutory basis upon which an order of the Lands Tribunal could be enforced either under or by reference to section 66. The section of the 1950 Act which was the equivalent of section 66 and was in effect replaced by it was section 26, but it was not applied to orders of the Lands Tribunal by rules 26 or 32 of the 1996 Rules in their original form. The enforcement provisions of the Arbitration Acts were not employed in order to aid the enforcement of orders of the Lands Tribunal until the coming into force of the Lands Tribunal (Amendment) Rules 1998 ('the 1998 Amendment Rules').

33. Paragraph 4 of the 1998 Amendment Rules provides that after paragraph (c) of rule 32 of the 1996 Rules the following was to be inserted: *"(d) section 66 (enforcement of the award)."*

The effect of that provision was thus to add section 66 to the list of sections of the 1996 Act which "shall apply to all proceedings as they apply to arbitrations". The question which was argued on this appeal (and before Gray J) is whether the effect of the 1996 Rules as amended is to permit section 66 to be used to enforce an order of costs made by the Lands Tribunal. In the course of the argument no-one referred to the provisions of the 1997 or the 1998 Amendment Rules which govern the time when the amendments came into effect. I shall therefore consider first the position on the assumption that the 1996 Rules as amended by both the 1997 and the 1998 Amendment Rules apply to the facts of this case.

34. Mr Cowen submitted that the effect of the addition of section 66 to the list of sections of the 1996 Act set out in rule 32 of the 1996 Rules as amended was and can only have been to enable a person in whose favour an order has been made by the Lands Tribunal to use section 66 to enforce it as if it had been made by an arbitrator pursuant to an arbitration agreement. Mr Trace submitted, on the other hand, that section 66 has no application because it only applies to an "award made by the tribunal pursuant to an arbitration agreement" whereas the order of the Lands Tribunal was not made pursuant to an arbitration agreement.

35. Mr Trace drew our attention to the terms of rule 32(a) as substituted by the 1997 Amendment Rules. In that rule section 47 of the 1996 Act is expressed to apply "as if the words 'unless otherwise agreed by the parties' were omitted from subsection (1) and so that the reference to 'award' shall include a reference to any decision of the Lands Tribunal." Mr Trace pointed to the absence of any similar words of manipulation in rule 32(d) as added by the 1998 Amendment Rules and submitted that, if the draftsman had intended that the words of section 66(1) should be manipulated so as to include awards not made "pursuant to an arbitration agreement", he would have expressly so provided as he did in rule 32(a) in the case of section 47. There is undoubted force in that submission, as can be seen from the judgment of Sir Anthony Evans (which I have seen in draft), but on balance I prefer Mr Cowen's submissions.

36. My reasons are shortly these. As already stated, the 1996 Rules as amended draw a distinction between the sections of the 1996 Act which are made applicable by rule 32 and those which are made applicable by rule 26. Rule 32 applies a limited number of sections which it expressly applies to *"all proceedings as they apply to an arbitration"*. Rule 26, on the other hand, applies a number of further sections "*in addition to those set out in rule 32*" and applies them to "*proceedings under this Part*", which by rule 25 (as stated above) are proceedings before the Lands Tribunal "*where it is acting as arbitrator under a reference by consent under section 1(5)"* of the 1949 Act. It seems to me that the opening words of rule 32 are clear. They apply the sections referred to in the rule to *"all proceedings"* before the Lands Tribunal "*as they apply to an arbitration*"; that is as they would have applied to an arbitration if there had been an arbitration.

37. The significance of the distinction between rules 26 and 32 is that the draftsman of the rules has made specific provision for the application of those sections of the 1996 Act which depend upon the Lands Tribunal exercising its powers to act as arbitrator by agreement on the one hand and those which do not on the other. Section 66 is included under rule 32 and not under rule 26. In these circumstances the draftsman must have intended it to apply to a case like the present, where the Lands Tribunal made an order other than *"pursuant to an arbitration agreement between the parties"*. In my judgment, he intended it to apply to the proceedings before the Lands Tribunal as if to an award made by an arbitrator pursuant to such an agreement.

38. While I see the force of the submission based on the different treatment of section 47 in rule 32(a), I do not think that that different treatment is sufficient to alter what seems to me to be the plain meaning of the statutory language applying section 66 when construed in its context. Indeed it seems to me that the purpose of the new rule 32(d) was to cover just such a case as this, since otherwise (as is common ground) there is no express statutory provision enabling an order of costs of this kind to be enforced. To my mind that was an unfortunate lacuna, which the comparatively new rule 32(d) has filled.

39. The question remains, however, whether rule 32(d) can have any application in this case. The answer to that question depends upon whether that rule applies to the order made by Judge Rich, given the date upon which the

Lands Tribunal proceedings were commenced. It was not submitted during the hearing of the appeal that the answer to the question was no. However, it seemed to us that since the question goes to the jurisdiction of the court, it is a matter which we should consider. The parties were accordingly given an opportunity to make submissions in writing, which they did. Mr Trace submitted that the rule did not apply to proceedings commenced before 1st September 1997 and that the proceedings before the Lands Tribunal were commenced before that date, whereas Mr Cowen submitted that the rule did apply to such proceedings.

40. The 1997 Amendment Rules came into force on 1st September 1997 and by paragraph 12 they provide: *"The substitution of rules 26, 26A and 32 shall only apply to proceedings commenced in the Lands Tribunal on or after the coming into force of these Rules."*

It follows that rule 32(a), (b) and (c) do not apply to proceedings commenced before 1st September 1997. Paragraph 5 of the 1998 Amendment Rules, which of course added rule 32(d), provides that the 1998 Amendment Rules shall apply to proceedings commenced both before and after the date on which they came into force, namely 1st February 1998.

41. Mr Trace submitted that the effect of rule 5 of the 1998 Amendment Rules was simply to add paragraph (d) to the three paragraphs (a), (b) and (c) of rule 32, which had been substituted for the previous five paragraphs (a) to (f) of rule 32 in the original 1996 Rules, and that it follows that rule 32(d) applies to the same proceedings as rules 32(a) to (c). Mr Cowen submitted, on the other hand, that the 1998 Amendment Rules were introduced to make two amendments to the 1996 Rules, that rule 5 shows that they were to have retrospective effect and that there is nothing in it which suggests that it was not intended to apply section 66 of the 1996 Act to any proceedings in the Lands Tribunal whenever they were commenced.

42. I prefer the submissions of Mr Trace on this point. It seems to me that the effect of rule 4 of the 1998 Amendment Rules was simply to add paragraph (d) to rule 32 of the 1996 Rules as substituted by rule 9 of the 1997 Amendment Rules. By rule 12 the 1997 Amendment Rules the substitution of those rules was only to apply to proceedings commenced in the Lands Tribunal on or after the coming into force of the 1997 Amendment Rules, namely 1st September 1997. It follows, as I see it, that the addition of paragraph (d) was to apply section 66 to the same classes of proceedings as paragraphs (a) to (c). I do not think that it can have been intended to apply paragraph (d) to proceedings to which paragraphs (a) to (c) did not apply.

43. The purpose of rule 5 of the 1998 Amendment Rules was simply to make it clear that section 66 applies to proceedings both before and after 1st February 1998. I do not think that it can have intended to apply the section to Lands Tribunal proceedings whenever they were commenced; that is even if they were commenced long before the 1996 Act was enacted. It seems to me to be most unlikely that that was what was intended in circumstances in which the 1998 Amendment Rules simply added section 66 to a list of sections of the 1996 Act which only apply to Lands Tribunal proceedings commenced on and after 1st September 1997.

44. The landlord commenced proceedings in the Lands Tribunal by notice of appeal dated 25th July 1996, which was of course long before 1st September 1997. It follows that section 66 does not apply to any order made in them. 1996. However Judge Rich recorded in his judgment that, by order of the LVT dated 16th February 1998, the tenant was given leave to cross-appeal out of time. It thus appears that the cross-appeal was begun in 1998 and thus after 1st September 1997. In these circumstances, although the order of the Lands Tribunal related to the costs of both the appeal and the cross-appeal, the proceedings which led to the order were essentially commenced before the 1997 Amendment Rules came into force and rule 32(d) does not apply to them. Alternatively it only applies to a comparatively small part of them and it would not in my judgment be appropriate to grant leave to enforce part of the order for costs under section 66(1), even if it were possible.

***Action at Common Law***

45. I have already set out the way in which the claim is pleaded in the claim form. In short the claimant's pleaded case which was accepted by Master Rose is that the order of the Lands Tribunal created a liability on the part of the tenant to pay to the landlord the amount so ordered and that that liability is recoverable by action at common law.

46. During the hearing of the appeal Mr Cowen expressed some reluctance to rely on this point, but, as I understood him, he did so in the alternative. Mr Trace submitted in his most recent written submissions that the point is not open to the landlord because of the absence of a respondent's notice in which the point is taken. However, as Mr Cowen has correctly observed, neither the tenant's notice of appeal nor his skeleton argument initially made the point that Judge Rich had no jurisdiction to make the order and it was conceded before Gray J that he did. In these circumstances I can see no injustice in permitting the landlord to argue the point on this appeal, especially since it was the case originally pleaded and was decided in this way by Master Rose.

47. Mr Trace submitted that there is no authority for such a right of recovery at common law and that we should not invent any such common law rule. He further submitted that if Parliament had intended such a right of recovery it would have legislated for it, as in some cases it has done.

48. Mr Trace pointed, for example, to section 4(6) of the Land Compensation Act 1961, which provides, so far as relevant: *"Without prejudice to any other method of recovery, the amount of costs ordered to be paid by a claimant, … shall be recoverable from him summarily as a civil debt."*

Mr Trace submitted that if Parliament had intended to permit recovery of the amount of all orders for costs made by the Lands Tribunal it would have enacted a provision such as that just quoted.

49. I am, however, unable to accept that submission. To my mind it would be contrary to justice and common sense to hold that when Parliament gave the Lands Tribunal express power in section 3(5) of the 1949 Act to "*order that the costs of any proceedings before it incurred by any party shall be paid by any other party*" it did not intend that the amount so ordered should be recovered by some form of legal process. In my judgment, in the absence of express statutory machinery to achieve that result, it must fall to the common law to provide a remedy. I confess that I am surprised that this point does not seem to have been considered by the courts in the past, but there are two areas where the common law has achieved a similar result.

50. It is common ground that an arbitration award can be enforced by an action at common law, or (as it is often described) by an action on the award, although it is fair to say that in order to succeed the claimant must plead and prove both the arbitration agreement and the award: see eg Mustill and Boyd on C*ommercial Arbitration* 2nd edition page 417. The cause of action thus depends in part upon an implied promise by parties to an arbitration agreement to perform a valid award, whereas it is fair to say that any liability to discharge an order for costs made by the Lands Tribunal cannot depend upon any implied promise.

51. To my mind the position is much closer to that of a foreign judgment. In recent years both this court and the House of Lords have, as Dicey & Morris on *The Conflict of Laws*, 13th edition put it at paragraph 14-007, accepted that at common law foreign judgments are enforced on the basis of the principle that a legal obligation arises to satisfy a judgment of a court of competent jurisdiction: see ***Adams v Cape Industries plc*** [1990 Ch 433 at 513 and ***Owens Bank Ltd v Bracco*** [1992] 2 AC 443 at 484. In my judgment the same or a closely analogous principle should be applied here. Thus, where the Lands Tribunal exercises its power to order A to pay B costs, an obligation arises on A to pay B the amount of the costs so ordered and if A fails to discharge that obligation, the obligation can be enforced by action at common law.

52. Moreover, in the absence of an express statutory provision limiting that right, I would hold that the right of action at common law is independent of any other form of statutory enforcement. It has long been so accepted in the case of both foreign judgments and arbitration awards and there is, so far as I am aware, no statutory provision restricting the right of a person in the position of the landlord here from exercising his common law right to proceed by action if it exists, as in my opinion it does.

53. For these reasons I have reached the conclusion that the High Court in principle had jurisdiction to entertain this action in order to enforce the order for costs made by Judge Rich, but that conclusion is subject to what follows.

***Consequences of Application to County Court and of Order of District Judge***

54. Mr Trace submitted that as a result of the landlord's application to the county court and/or of the order of the district judge to which I have already referred the landlord was thereafter not entitled to proceed by action or otherwise in the High Court in order to enforce the order for costs made by Judge Rich. The argument was put in a number of ways as set out in the landlord's skeleton argument as follows. The subject matter of the proceedings is *res judicata* and/or (as it is put in the skeleton argument) cause of action estopped on the ground that District Judge Jenkins, sitting in a court of competent jurisdiction, had made a finding on the merits (whether right or wrong) that the costs order could not be enforced in the absence of an enabling enactment. Alternatively the present claim is an abuse of the process of the court on the ground either that the landlord has already advanced it in the county court or that he should have done so at the same time as he made the application to the county court or when the matter came before the district judge. Mr Trace relied upon the principle in *Henderson v Henderson* (1843) 3 Hare 100, as more recently discussed in *Bradford and* ***Bingley Building Society v Seddon*** [1999] 1 WLR 1482.

55. I am unable to accept those submissions. As already indicated, the only enabling statute suggested is section 66 of the 1996 Act, which in my view would have applied but for the fact that the amended rule 32 of the 1996 Rules was not in force at the time. However, I assume for the purposes of this part of the analysis that section 66 was potentially applicable at the time of the application and that it is an enactment which provides "that if a county court so orders a sum of money is recoverable as if payable under an order of the county court" within the meaning of CCR Order 25 rule 12. On those assumptions I see the force of the argument that the landlord cannot now rely upon section 66 in the High Court, but (assuming the argument to be correct) it does not in my judgment avail the tenant.

56. Section 66(4) of the 1996 Act provides, so far as relevant, as follows: *"Nothing in this section affects the recognition or enforcement of an award under any other enactment or rule of law … or by an action on the award."*

It is plain from that subsection that there is nothing in section 66 which prevents a person in whose favour an award is made from proceeding by way of action at common law in order to obtain a judgment which can then be enforced. Such an action had always been recognised as an entirely different process from an application under the relevant provision of successive Arbitration Acts: see eg ***In Re Boks and Peters, Rushton & Co Ltd*** [1919] 1 KB 491.

57. In my judgment, the position is the same whether or not section 66 applies. If section 66 applies, section 66(4) makes it clear that nothing in the section affects enforcement by an action on the award. In my opinion nothing that occurred in the county court affects the landlord's right to proceed by action if (as I would hold) he has such a right. The same is in my opinion true if section 66 does not apply. The application under CCR Order 25 rule 12

was an attempt to make use of the administrative processes of the county court. If it failed, either because there is no statute which falls within the order, or because the effect of the ruling of the district judge precludes the landlord from contending that there is, I can see no reason why the landlord should not proceed by way of action at common law.

58. For these reasons I would hold that there is no relevant res judicata or cause of action estoppel which prevents this action from proceeding and I would further hold both that it is not an abuse of process and that it does not fall foul of the principle in *Henderson v Henderson*. On the contrary, if Judge Rich had power to make the order which he did and, if that order cannot otherwise be impugned, in my judgment the landlord should be entitled to enforce it. To my mind nothing which happened in the county court makes his attempt to do so by this action unjust.

***Jurisdiction of Lands Tribunal***

59. Section 66(3) of the 1996 Act provides: *"Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award."*

It follows that, if rule 32(d) of the 1996 Rules had been in force and section 66 had been applicable in this case, it would have been a defence for the tenant to show that the Lands Tribunal had no jurisdiction to make the award of costs which it is sought to be enforced.

60. It has always been a defence to an action on either an arbitration award or a foreign judgment that the tribunal had no jurisdiction to make the award or order concerned. In these circumstances it seems to me that it must be a defence to an action at common law brought to enforce an order for costs made by the Lands Tribunal that the Lands Tribunal had no jurisdiction to make it. It follows that the question arises whether Judge Rich had jurisdiction to make the order. Moreover this question arises in the appeal from the order of Gray J as well as in the appeal from the order of Judge Rich.

61. The tenant has argued since shortly after the original order was made that the Lands Tribunal had no jurisdiction to make it. The tenant's argument depends upon a consideration of the 1993 Act, whereas the landlord's argument relies upon section 3(5) of the 1949 Act. That section gives the Lands Tribunal power to order the costs of any proceedings before it be paid by one party to another. Moreover, by rule 52 of the 1996 Rules, subject to two irrelevant provisions, "the costs of and incidental to any proceeding shall be in the discretion" of the Lands Tribunal. Thus on the face of it section 3(5) does indeed give the Lands Tribunal power to make an order for the costs of and incidental to the Lands Tribunal proceedings and is only limited by the words "subject to the following provisions of this section". Since no-one suggests that there are any relevant provisions in the remainder of the section, it would seem to follow that the Lands Tribunal had power to make the order for costs which it did. I turn therefore to the submissions made by Mr Trace on behalf of the tenant.

62. As I see it, Mr Trace's submissions depend upon the true construction of section 91(8) of the 1993 Act, which is in these terms: *"No costs to which a party to any proceedings under or by virtue of this Part before a leasehold valuation tribunal incurs in connection with the proceedings shall be recoverable by order of any court (whether in connection with a transfer under subsection (4) or otherwise)."*

Mr Trace submitted that the costs which Judge Rich ordered the tenant to pay were costs which a party to proceedings before the LVT, namely the landlord, incurred in connection with the proceedings before the LVT and that he therefore had no jurisdiction to order the tenant to pay them because no such costs "shall be recoverable by order of any court", which must include the Lands Tribunal. Mr Cowen submitted, on the other hand, that the costs were not incurred in connection with the proceedings before the LVT, but were and were expressed to be the costs of the appeal and cross-appeal to the Lands Tribunal.

63. In order to evaluate those submissions it is important to construe the section in its context. Chapter II of the 1993 Act, which is in Part I, contains detailed provisions regulating the circumstances in which an individual tenant of a flat may acquire a new lease. Those provisions include the requirements for the service of a notice under section 42 and the obligations of the landlord to grant a new lease in section 56. They also include section 60 which is headed "Costs incurred in connection with new lease to be paid by tenant" and makes detailed provisions in that regard.

64. Section 60(1) provides, so far as relevant, as follows:

*"Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely*

*(a) any investigation reasonably undertaken of the tenant's right to a new lease;*

*(b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;*

*(c) the grant of a new lease under that section;*

*… "*

In this case the "relevant person" is the landlord.

65. Section 60(5) provides: *"A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings."*

The only costs for which the tenant could be liable under section 60 are the costs defined in section 60(1). It follows that the purpose of section 60(5) is to exclude from that liability costs which would satisfy that definition but which are also costs which a party to proceedings before the LVT, namely the landlord, incurs in connection with the proceedings. We are not directly concerned with such costs in this appeal because in this action the landlord does not seek to recover costs under section 60, but under the order for costs made by the Lands Tribunal.

66. I should perhaps note in passing that one particular aspect of this dispute came before His Honour Judge Wakefield in the Central London County Court on 7th August 2000, by which time a new lease had still not been executed. The tenant was represented by counsel and the landlord by a solicitor. The principal question argued before the judge was whether the landlord's costs incurred in the Lands Tribunal (that is the amount in dispute in this action) should be secured on completion of the new lease or whether the landlord should be required to execute the new lease without such security. It was submitted on behalf of the landlord that those costs (which I shall for convenience call *'the Lands Tribunal costs'*) should be paid or secured because by section 56(3)(b) of the 1993 Act the tenant is only entitled to require the execution of a new lease if he tenders or secures *inter alia* "*any sums for which at that date the tenant is liable under section 60*" and that the Lands Tribunal costs were such costs.

67. The landlord's solicitor submitted that the Lands Tribunal costs were recoverable under section 60(1)(b), which is quoted above. It appears that he submitted that the costs defined in section 60(1)(b) were not limited to the costs of and incidental to any valuation of the flat but extended much more widely. The judge rejected that submission (in my view correctly) on the basis that section 60(1)(b) was concerned only with the costs of and incidental to any valuation obtained for the purpose of fixing the premium or other amounts payable by virtue of Schedule 13. Since it was not submitted on behalf of the landlord that the Lands Tribunal costs were recoverable as the costs of and incidental to any such valuation, it followed that the landlord's case as advanced before the judge failed.

68. In the course of his judgment Judge Wakefield said that he thought it clear that section 60(1) did not include costs before the LVT and therefore, necessarily, that it did not include costs before the Lands Tribunal. I do not read that sentence as essential to the judge's decision, but for my part I do not agree with the proposition that costs incurred by a landlord in connection with proceedings before the LVT cannot be costs within the definition in section 60(1). For example, it seems to me that the cost of a valuation may be both within section 60(1)(b) and within section 60(5). Indeed, as stated above, it is my view that the purpose of section 60(5) was to exclude the tenant's liability in respect of costs incurred by the landlord in connection with proceedings before the LVT which would otherwise have been recoverable under section 60(1). I shall return below to an alternative reason advanced by Judge Wakefield which is directly relevant to the question which we have to decide.

69. Chapter VII of the 1993 Act, which is also part of Part I, is entitled "General". It includes section 90, which provides for the jurisdiction of the county court and section 91, which provides for the jurisdiction of the LVT. Section 91 provides, so far as relevant, as follows:

> "*(1) Any jurisdiction expressed to be conferred on a leasehold valuation tribunal by the provisions of this Part … shall be exercised by a rent assessment committee constituted for the purposes of this section; and any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by such a rent assessment committee.*
>
> *(2) Those matters are –*
>
> *(a) the terms of acquisition relating to -*
>
> *…*
>
> *(ii) any new lease is to be granted to a tenant in pursuance of Chapter II*
>
> *…*
>
> *(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter … II and, in the case of costs to which … section 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; …*
>
> *(4) Where in any proceedings before a court there falls for determination any question falling within the jurisdiction of a leasehold valuation tribunal by virtue of … Chapter II or this section, the court –*
>
> *(a) shall by order transfer to such tribunal so much of the proceedings as relate to the determination of that question; and*
>
> *(b) may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any such proceedings pending the determination of that question by the tribunal, as it thinks fit;*
>
> *and accordingly once that question has been so determined the court shall, if it is a question relating to any matter falling to be determined by the court, give effect to the determination in an order of the court.*
>
> *…*
>
> *(8) No costs which a party to any proceedings under or by virtue of this Part before a leasehold valuation tribunal incurs in connection with the proceedings shall be recoverable by order of any court (whether in consequence of a transfer under subsection (4) or otherwise).*
>
> *…*
>
> *(10) Paragraphs 1 to 3 and 7 of Schedule 22 of the Housing Act 1980 (provisions relating to leasehold valuation tribunals constituted for the purposes of Part I of the Leasehold Reform Act 1967) shall apply to a leasehold valuation tribunal constituted for the purposes of this section; …*"

70. Only paragraphs 2 of Schedule 22 of the Housing Act 1980 (as amended) is relevant to this appeal. It provides so far as material:

*" … any person who*

*(a) appears before a tribunal in proceedings to which he was a party; and*

*(b) is dissatisfied with its decision,*

*may, within such time as rules under section 3(6) of the Lands Tribunal Act may specify, appeal to the Lands Tribunal."*

Section 101 of the 1993 Act makes some general provisions for the interpretation of Part I and by subsection (1) provides: *" 'the court' (unless the context otherwise requires) means, by virtue of section 90(1), a county court;"*

Section 90(1) provides that any jurisdiction expressed to be conferred on "the court" by Part I shall be exercised by the county court.

71. Mr Trace submitted that the costs of each party before the Lands Tribunal on an appeal from an LVT are costs incurred "in connection with the proceedings" before the LVT and that they are not therefore recoverable "by order of any court" by reason of section 91(8). He submitted that the section should be given a purposive construction favourable to the tenant because the purpose of this part of the 1993 Act was to confer rights on tenants and it was for that reason that the tenant was not to be liable for costs incurred by the landlord in connection with proceedings before the LVT under both section 60(5) and section 91(8). I accept that submission, but the question for decision is whether Parliament intended to provide that neither the landlord nor the tenant should recover the costs of appeal proceedings before the Lands Tribunal.

72. It is by no means clear that a provision preventing either party from recovering Lands Tribunal costs from the other would favour tenants rather than landlords. If the tenant appealed and succeeded or if the landlord appealed and failed, such a provision would be adverse to the interests of the tenant. The general principle that costs follow the event is intended as a just and balanced approach to the incidence of legal costs. I am not persuaded that such an approach to the costs of parties before the Lands Tribunal on appeal from an LVT would be in any way unjust or contrary to the purpose underlying the 1993 Act. It is of course open to either party to protect his position by making an appropriate sealed offer to settle the appeal – a so-called ***Calderbank*** offer.

73. However that may be, I have reached the conclusion that the draftsman of section 91(8) did not intend to make the costs of and incidental to the appeal before the Lands Tribunal irrecoverable. He provided for an appeal to the Lands Tribunal in the next subsection but one and there is no hint in the language of section 91(10) that he intended to fetter the discretion of the Lands Tribunal in any way. It is in my opinion much more likely than not that if the draftsman had intended to limit the power of the Lands Tribunal as to costs or had intended that any order made by the Lands Tribunal should not be enforceable, he would have said so expressly.

74. The reference to "any court" in section 91(8) seems to me naturally to be a reference to the county court. Thus its purpose is to ensure that in any proceedings in the county court neither party should recover any costs incurred in connection with proceedings before the LVT. There is nothing in the wording of section 91(8) which seems to me to suggest that the draftsman had in mind the costs of an appeal to the Lands Tribunal after the decision of the LVT had been made.

75. It is, of course, well settled that the costs of and incidental to proceedings can include costs incurred before the proceedings begin: see eg ***In re Gibson's Settlement Trusts*** [1981] Ch 179. Equally costs incurred before proceedings before an LVT begin are capable of being costs incurred in connection with those proceedings. See also ***Covent Garden Group Ltd v Naïva*** [1995] 1 EGLR 243, to which we were referred after the end of the argument but which does not seem to me to be of particular assistance. The question is to what extent costs can fairly be said to be incidental to or to be incurred in connection with proceedings before the LVT where they are incurred after the LVT has made its decision.

76. In the course of the argument Sir Anthony Evans drew our attention to two decisions which were concerned with the old special case procedure in the context of arbitrations, namely ***In re Knight and Tabernacle Permanent Building Society*** [1892] 2 QB 613 and ***Sidney v North Eastern Railway*** [1916] 2 KB 760. They show that the costs of a special case were held to be the costs of and incident to the arbitration. Neither case was, however, concerned with an appeal, which is an entirely different process from a special case.

77. Since the hearing of the appeal Sir Anthony Evans has drawn our attention to some further authorities which seem to me to be of assistance and upon which the parties have now made written submissions. They include ***Masson Templier & Co v De Fries*** [1910] 1 KB 535 and ***Wright v Bennett*** [1948] 1 KB 601. In both those cases the question was whether costs which had been incurred for the purposes of the proceedings at first instance were recoverable as the costs of and incident (or incidental) to the proceedings in the Court of Appeal. It was held that they were not. Thus the costs of documents used both at first instance and on appeal were not costs of or incidental to the appeal in circumstances where there was no new expenditure for the purposes of the appeal.

78. Those cases were therefore considering a different problem from that with which we are concerned because they were concerned with whether costs incurred at first instance were also costs of or incidental to an appeal, whereas we are considering the reverse situation, namely whether the costs of the appeal are also costs incurred in connection with the proceedings at first instance. They are, however, in my opinion of assistance to this extent. In the course of his judgment in ***Wright v Bennett*** Somervell LJ considered the reasoning of Vaughan Williams and Farwell LJJ in ***Masson Templier & Co v Fries.*** In doing so he drew a clear distinction between the two proceedings,

noting (at p 605) that Vaughan Williams LJ was dealing with "*two separate and distinct proceedings*". As he put it, the hearing before the Divisional Court was a proceeding and the appeal to this court was a proceeding. He then read what was then RSC Order 65 rule 1, which provided that *"the costs of and incident to all proceedings in the Supreme Court … shall be in the discretion of the court or judge"* and said (at p 606): *"The wording of the rule, coupled with the decision to which I have just referred, shows that one has to treat proceedings below as a separate proceeding, for this purpose from proceedings here. It seems to me that Mr Salmon has a strong case for saying that these costs were incurred in respect of the proceeding below and, therefore, cannot be recovered under the order of the Court of Appeal as to costs."*

79. Those cases thus show that proceedings at first instance and in this court are ordinarily treated as separate proceedings and in my judgment they support the conclusion that the costs of and incidental to one are not ordinarily treated as the costs of and incidental to the other. The costs of a party in this court would not ordinarily be regarded as the costs of and/or incidental to the costs at first instance. Equally I do not think that the costs of an appeal would ordinarily be regarded as costs incurred in connection with the proceedings at first instance.

80. I have reached the conclusion that the same is true of the costs of and incidental to an appeal from the LVT to the Lands Tribunal. Such costs would not ordinarily be regarded either as costs of or incidental to or as costs incurred in connection with the proceedings before the LVT. The costs incurred before the Lands Tribunal have no connection with the LVT except that the proceedings before the Lands Tribunal are an appeal from the LVT. The cases referred to above seem to me to support the proposition that the costs of an appeal are treated as costs incurred separately from those incurred at first instance and vice versa.

81. In all these circumstances my conclusion is that section 91(8) does not deprive the Lands Tribunal of its jurisdiction to make the order which Judge Rich in fact made because the costs of and incidental to the proceedings before the Lands Tribunal within the meaning of rule 52 of the 1996 Rules cannot (or cannot ordinarily) be fairly described as costs incurred in connection with proceedings before the LVT.

82. I should add that I would reach that conclusion even on the assumption that the expression "by order of any court" in section 91(8) is in principle wide enough to include an order of the Lands Tribunal, but I am bound to say that it seems to me that in its context the expression "any court" is not apt to include the Lands Tribunal. It also seems to me that that conclusion is strengthened by the definition of "the court" in section 101(1) of the 1993 Act.

83. It follows from the above conclusions that it was open to the parties to agree that Judge Rich should make an order that costs follow the event and that there is no basis upon which that agreement can be impugned on the ground that parties cannot by agreement confer jurisdiction on a court which it does not otherwise have.

84. It does not of course follow that the landlord may not have included in his bill of costs items which he should not have or which were not recoverable for one reason or another, including perhaps items of cost which were incurred in connection with the proceedings before the LVT and thus not recoverable because of section 91(8). The amount of costs does indeed seem startling, but for good or ill the tenant chose not to attend the taxation and he has not sought to challenge the taxation as opposed to the original order.

85. As I understand it, costs orders have in practice been made by the Lands Tribunal without objection of the kind advanced here (see eg ***Speedwell Estates Ltd v Harris*** [1990] 2 EGLR 211, ***Windsor Life Assurance Co Ltd v Austin*** [1996] 2 EGLR 169, ***Maryland Estates Ltd v 63 Perham Road Ltd*** [1997] 2 EGLR 198, ***Becker Properties Ltd v Garden Court NW8 Property Co Ltd*** [1998] 1 EGLR 121, ***Kemp v Myers,*** unreported, 2nd November 1998 and ***Visible Information Packaged Systems v Squarepoint (London) Ltd,*** unreported, 16th February 2000. The general principle adopted in those cases was that costs should follow the event, subject to particular circumstances such as an appropriate sealed offer: see also in this regard *Hague* on *Leasehold Reform* 3rd edition page 295 and the recent decision of this court in ***Phyllis Trading Ltd v 86 Lordship Road Ltd*** given on 19th February this year, where (although the matter was not in issue) there was no suggestion that the Lands Tribunal lacked jurisdiction to make the order for costs.

86. It is fair to say that in none of the cases was the order objected to on the grounds of lack of jurisdiction, but in ***Vignaud v Keepers and Governors of the Possessions etc of the Free Grammar School of John Lyon*** [1996] 2 EGLR 179 Judge Rich made an order for costs rejecting a similar argument to that advanced here but put on the basis that the Lands Tribunal should not exercise its discretion in this class of case. The significance of the cases is thus simply that it has not occurred to those experienced in the field that the Lands Tribunal has no jurisdiction to make an order for the costs of an appeal in this class of case. For the reasons which I have tried to give, I am of the opinion that there is nothing in the 1993 Act to deprive the Lands Tribunal of that jurisdiction.

87. I should, however, refer in this connection to a passage in the judgment of Judge Wakefield to which I referred earlier. He said: *"In any event I would accept the argument of Miss Purkiss, counsel for the claimant, that even if costs of proceedings before the leasehold valuation tribunal would have been recoverable but for subsection (5), the effect of that subsection is to exclude the costs both before the valuation tribunal and before the Lands Tribunal. It seems to me that the reference in subsection (5) to "proceedings before a leasehold valuation tribunal" is a reference to proceedings started in the leasehold valuation tribunal, including the costs of any appeal. Of course, the hearing of the appeal will not be in the leasehold valuation tribunal, it will be in the Lands Tribunal, but they are the same proceedings. The draftsman has therefore made it abundantly clear by subsection (5), if it was not already abundantly clear, that the costs of proceedings begun in the leasehold valuation tribunal, even when they go to the Lands Tribunal, are to be excluded from costs recoverable under section 60(1) and, therefore, under 56(3)."*

88. As discussed above, Judge Wakefield was considering the construction of section 60 of the 1993 Act and had already held that the Lands Tribunal costs were not costs within section 60(1) on the ground that the costs were not the costs of or incidental to any valuation of the flat. The above passage was therefore *obiter*, but it contains a conclusion with which I respectfully disagree. For the reasons which I gave earlier, it is in my opinion wrong and contrary to the reasoning in ***Wright v Bennett*** to hold that the proceedings before the LVT and the proceedings before the Lands Tribunal were the same proceedings. It follows that I cannot accept the basis of that part of the judge's reasoning and I adhere to the view that the costs of the appeal to the Lands Tribunal are not costs incurred in connection with the proceedings before the LVT.

89. I would only add this. Mr Trace felt constrained to accept that a contrary conclusion would logically lead to the conclusion that the costs of the proceedings before Master Rose, Gray J and this court would all be costs in connection with the proceedings before the LVT. The fact that he felt bound to make that concession seems to me to be a further pointer to the conclusion expressed above that the jurisdiction of the Lands Tribunal is not fettered by the 1993 Act in the way suggested.

***Section 90(2) of the 1993 Act***

90. Mr Trace submitted that the High Court has no jurisdiction to entertain this action by reason of section 90(2) of the 1993 Act. Section 90(1) and (2) provide as follows:

> *"(1) Any jurisdiction expressed to be conferred on the court by this Part shall be exercised by a county court.*
>
> *(2) There shall also be brought in a county court any proceedings for determining any question arising under or by virtue of any provision of Chapter I or II or this Chapter which is not a question falling within its jurisdiction by virtue of subsection (1) or one falling within the jurisdiction of a leasehold valuation tribunal by virtue of section 91."*

Mr Trace submitted that the questions raised in this action, and in particular questions of construction of sections 60 and 91 of the 1993 Act are "questions arising under or by virtue of any provision" of the relevant parts of the Act and that they must therefore be determined by the county court.

91. The judge rejected that submission on the basis that the questions contemplated by section 90(2) were questions such as the validity of notices, residence conditions and the like and that they were not intended to include questions relating to the enforcement orders for costs. I have reached the conclusion that the judge's decision on this point was correct.

92. The first main question raised was the jurisdiction of the High Court to enforce an order of the Lands Tribunal. That involved a consideration of two questions, namely whether the High Court has jurisdiction either by statute or at common law. The first of those questions involved a consideration of the true construction of the 1996 Rules and the amendments to them and of section 66 of the 1996 Act. The second question involved a consideration of the general question whether an action at common law lies based on an order for costs made by the Lands Tribunal. None of those questions can fairly be said to be questions arising under or by virtue of any relevant provision of the 1993 Act.

93. The second main question involved a consideration of the effect of the application to the county court under CCR Order 25 rule 12 and of the consequences of the events which took place before District Judge Jenkins. None of the aspects of that consideration involved a consideration of any question of the kind referred to in section 90(2).

94. The third main question involved the jurisdiction of the Lands Tribunal to make orders for costs on appeal from the LVT in this class of case. Again, although the resolution of that question involved a question of construction of section 91(8) I do not think that it can fairly be held that these were "proceedings for determining any question arising under or by virtue of any provision of Chapter I or II or this Chapter". The proceedings were not brought in order to have such a point determined. They were brought in order to enforce the order made by the Lands Tribunal and the question of construction of section 91(8) arose incidentally as a result of a point taken by the tenant by way of defence. They were not therefore to my mind the kind of proceedings which section 90(2) contemplated must be brought in the county court.

**Conclusions**

95. My conclusions may be summarised in this way. The High Court in principle has jurisdiction to enforce an award for costs made by the Lands Tribunal, either by granting leave under section 66 of the 1996 Act, which applies by reason of rule 32(d) of the 1996 Rules as amended, or by entertaining an action at common law. However, only the action at common law is available on the facts of this case because rule 32(d) had not yet come in force at the relevant time. Nothing that occurred before District Judge Jenkins or in consequence of the order made under CCR Order 25 rule 12 affords the tenant any defence. The Lands Tribunal had jurisdiction to make the order for costs in this case because the costs of and incidental to the proceedings before the Lands Tribunal incurred by the landlord were not costs in connection with the proceedings before the LVT. These proceedings were not within the exclusive jurisdiction of the county court under section 90(2) of the 1993 Act.

96. It follows that I would dismiss the tenant's appeal from the order of Gray J dismissing his appeal from the order of Master Rose. Given my conclusion that Judge Rich had jurisdiction to make the order for costs which he did, the tenant's appeal from the order of Judge Rich cannot succeed and must be dismissed. It is therefore unnecessary to consider a number of other points relied upon by Mr Cowen on behalf of the landlord based on the tenant's failure to take the jurisdiction point earlier and I shall not do so.

97. I have some sympathy for the tenant because of the very large amount of the costs as taxed. However, as I said earlier, the tenant did not appear at the taxation and he has not challenged the taxation, as opposed to the original order. In these circumstances I do not see how we can afford him any relief on quantum, especially since, as both Mantell LJ and Sir Anthony Evans observe, that is not a matter which is before us. In short, through counsel the tenant agreed to the order made by Judge Rich and, given that the Lands Tribunal had jurisdiction to make the order, I have reached the conclusion that this appeal must be dismissed. For these reasons I would dismiss both appeals.

**SIR ANTHONY EVANS:**

98. In this action, the landlord seeks to enforce a costs order made by the Lands Tribunal (His Honour Judge Rich Q.C.) in his favour, following proceedings between the landlord and his tenant by way of appeal from a decision of the Leasehold Valuation Tribunal ("the LVT").

99. The tenant had exercised his right to claim the grant of a new lease under the Leasehold Enfranchisement etc. Act 1993. Their dispute was concerned with the amount of the premium that he should pay. He proposed a payment of £90,000. The LVT determined that the appropriate figure was £143,000. The Lands Tribunal, on appeal by the landlord, increased this still further to £191,212.50.The tenant was ordered to pay the costs of the appeal.

100. Two issues of general importance arise on this appeal. First, does the Lands Tribunal have jurisdiction to make a costs order, when the proceedings before it are an appeal from the LVT? The tenant, who is the appellant, says not. Secondly, if the costs order was validly made, can the High Court enforce the order by giving judgment for the amount of costs when they have been assessed? Here, Gray J. gave summary judgment in the landlord`s favour on 12 June 2000. The tenant appeals against this judgment also.

101. There is in addition a number of subsidiary points arising from what Lord Justice Clarke rightly calls the somewhat curious history of this case.

102. The first appeal, therefore, against the costs order made by the Lands Tribunal, is primarily concerned with jurisdiction. The second, against the summary judgment, is concerned with enforcement.

**Jurisdiction of the Lands Tribunal**

103. Section 3(5) of the Lands Tribunal Act 1949 permits a costs order to be made –

*"3(5) .....the Lands Tribunal may order that the costs of any proceedings before it incurred by any party shall be paid by any other party and may .....direct in what manner [such costs] are to be taxed.*

But the tenant relies on section 91(8) of the 1993 Act, which provides -

*"91(8) No costs which a party to any proceedings under or by virtue of this Part before a leasehold valuation tribunal incurs in connection with the proceedings shall be recoverable by order of any court (whether in consequence of a transfer under sub-section (4) or otherwise)."*

104. This provision reflects a similar one in section 60(5) of the same Act. Section 60(1) makes the tenant who gives a notice under section 42 of the Act liable for certain specified costs "incurred by any relevant person" (sc. the landlord) "in pursuance of" the notice, but section 60(5) affirms what is clearly assumed to be the tenant`s exemption from liability for costs incurred by any other party in connection with proceedings before the LVT –

*"60(5) A tenant shall not be liable <u>under this section</u> [emphasis supplied] for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings."*

105. An appeal to the Lands Tribunal from a decision of the LVT lies under section 91(10) of the 1993 Act, though by a circuitous route which incorporates, among others, paragraph 5 of Schedule 22 to the Housing Act 1980. Thus, the appeal in question lies "*under or by virtue of*" Part 1 of the Act, in which section 91(8) also appears. The issue is whether the tenant`s exemption from liability for the landlord`s costs incurred "*in connection with the proceedings*" (quoted from Section 91(8)) extends to the costs of the appeal to the Lands Tribunal, as well as those of the proceedings before the LVT itself.

106. The policy of the Act is clear. The tenant is not to be held liable for any of the landlord`s costs of or in connection with the LVT proceedings, if proceedings take place. His liability is limited to the non-contentious items (valuation etc.) listed in section 60(1), and even that liability is narrowly construed in order to give effect to the powerful exemption contained in section 60(5) : see ***Covent Garden Group Ltd. v. Naiva*** [1995] 1 EGLR 243 (C.A.). Mr. Trace Q.C. for the appellant rightly submits that this statutory protection may be largely ineffective if the tenant is potentially liable for the costs of an appeal to the Lands Tribunal.

107. His argument gains support from the wide meaning that should be given to the words "in connection with", and I have considerable sympathy with it. But I agree with Clarke L.J. that the appeal to the Lands Tribunal has to be regarded as separate proceedings from the proceedings before the LVT. The authorities to which he has referred show that the scope of words such as "*costs incidental to*" has to be determined by asking the question, "incidental to what?" Similarly, "*in connection with the proceedings*" makes it necessary to ask, what proceedings are referred to? In my judgment, they are the proceedings before the LVT. An appeal to the Lands Tribunal must be regarded as different proceedings, notwithstanding that they are parts of the same statutory scheme. Therefore, costs of or in connection with the appeal are not incurred in connection with the proceedings from which the appeal arises.

108. It is important to note, however, that the same authorities show that the words *"incidental to*" have the effect of extending rather than restricting the ambit of the costs order (***In re Gibson`s Settlement Trusts*** [1981] Ch. 179 per

Megarry V.C. at 184F). This affects the scope of any costs order which the Lands Tribunal may make, because the power given by section 3(5) of the 1949 Act is limited to costs "of" the proceedings before it. I shall return to this point below.

109. I therefore agree with Clarke L.J. that the appeal against Judge Rich`s costs order in the Lands Tribunal must be dismissed, for the reasons he gives.

**Enforcement:**

110. We have not been referred to any statutory provision, whether in primary or subordinate legislation, which specifies how a costs order made by the Lands Tribunal may be enforced, apart from section 66 of the Arbitration Act to which separate attention must be given. There is no provision in the Lands Tribunal Act 1949 analogous to section 4(6) of the Land Compensation Act 1961, under which the amount of a costs order may be recovered summarily as a civil debt. In the present case, the District Judge was undoubtedly correct to hold that the administrative machinery invoked by the landlord`s first (unsuccessful) application to the County Court could not be used.

111. In ***Wootton v. Central Land Board*** [1957]1 WLR 424 a costs order made by the Lands Tribunal was set aside by the Court of Appeal (Lord Evershed MR, Denning and Romer LJJ), and the Court with the agreement of leading counsel proceeded to make its own order in substitution for it. Noone suggested that the Land Tribunal`s order could not be enforced.

112. How it may be enforced in the absence of express statutory provision therefore depends, as Clarke LJ has observed, on general principles of law. I agree with him that the party against whom the costs order is made is under an implied statutory obligation to pay the amount which is assessed in accordance with the order, and that the obligation may be enforced by action at law, analogous to (though not identical with) the remedy available to a party who seeks to enforce the judgment of a competent foreign court.

113. In my judgment, however, the claimant cannot rely upon the arbitration cases, where the courts have enforced awards made by an arbitral tribunal, validly appointed and within the jurisdiction which the parties gave to it. Unless there is a binding arbitration agreement, no question of enforcement can arise, and the authorities rest firmly on the existence of the agreement and the parties` undertakings, implied if not express, to comply with a valid award made against them.

***Arbitration Act 1996. section 66***

114. The issue here is whether Rule 4 of The Lands Tribunal (Amendment) Rules 1998 had the effect of making all decisions of the Lands Tribunal enforceable as though they were arbitration awards, regardless of the date when they were made.

115. It has to be observed at the outset that, if that was the draftsman`s intention, then the amendment to the 1996 Rules (as already amended in 1997) was somewhat simplistic, and no thought seems to have been given to the genuine doubts and queries that have been identified by the arguments which we have heard.

116. I agree with Clarke LJ that on any view of the matter the 1998 amendment has no effect in relation to proceedings that were begun in the Lands Tribunal before 1 September 1997, that being the date when The Lands Tribunal (Amendment) Rules 1997 came into force (see Rules 1 and 12). Strictly, therefore, the extent to which section 66 applies to decisions of the Lands Tribunal does not arise in the present case, where the landlord`s appeal was earlier than that date. But I should express my views shortly upon it, because regretfully I have reached a different conclusion from Clarke LJ.

117. The history of the relationship between the Lands Tribunal Act 1949 and Regulations made under it with the Arbitration Acts of 1950 and 1996 is relevant, not only to the specific point as to the date of application which arises in the present case, but also in my judgment to the more general question as to the extent to which the power of enforcing arbitration awards applies to decisions of the Lands Tribunal.

118. Two features of the 1949 Act must be noted. First, the Lands Tribunal had express statutory power to act as arbitrator under a reference by consent (section 1(5)). By definition, therefore, the consensual basis for such a reference would always exist. Secondly, and perhaps in order to emphasise that the arbitral jurisdiction is part statutory, part consensual, section 3(8) reads -

> *"3(8) Where the Lands Tribunal acts as arbitrator, the Arbitration Acts 1889 to 1934, shall apply only in so far as they are applied by rules made under this section."*

119. By the time of the Lands Tribunal Rules 1975, the earlier Arbitration Acts had been superseded for this purpose by the Arbitration Act 1950, and rule 38 of the 1975 Rules provided as follows -

> *"38. Sections .....and 26 of the Arbitration Act 1950 shall apply to all proceedings as they apply to an arbitration unless a contrary intention is expressed in the arbitration agreement, and, where the Tribunal is acting as arbitrator under a reference by consent, sections .....shall also apply."*

120. Section 26 of the Arbitration Act 1950 dealt with Enforcement of the Award, and by sub-section (1) the High Court might give leave to enforce in the same manner as a judgment or order of the Court, an *"Award on an arbitration agreement"*.

121. These provisions therefore gave rise to a difficulty of interpretation. The power to apply the Arbitration Acts was limited by section 3(8) to cases where the Lands Tribunal acts as arbitrator, yet the terms of Rule 38 were such

that a distinction was drawn between such cases and "all proceedings" and it seemed that the sections first listed in the Rule applied in all cases. But even if section 26 was applied in all cases, there was only an "award on an arbitration agreement" when the Lands Tribunal had acted as arbitrator.

122. I am not aware of any authority where these difficulties were explored, and it is unnecessary to consider whether they were. The Land Tribunal Rules 1975 were replaced by the Land Tribunal Rules 1996, which came into force on 1 May 1996 when the Arbitration Act 1950 was still in force. I shall call these "the 1996 Rules". Later, section 26 of the Arbitration Act 1950 was replaced by section 66 of the Arbitration Act 1996.

123. The scheme of the 1996 Rules included Part VII, headed `References by Consent', and Part VIII, `General Procedure`. Rule 26, headed `Application of Arbitration Act 1950', applied certain sections of that Act unless the contrary intention was expressed in the arbitration agreement. Rule 32, under the same heading, applied certain other provisions "to all proceedings as they apply to an arbitration". Neither of these Rules applied section 26 of the 1950 Act to any Land Tribunal proceedings, nor made any other provision for enforcement of its decisions.

124. Then the Arbitration Act 1996 came into force on 1 January 1997, and amendments were made to the 1996 Rules. Rule 26 was replaced by Rules 26 and 26A, and Rule 32 was substituted in a new form -

*"32. The following provisions of the Arbitration Act 1996 shall apply to all proceedings as they apply to an arbitration –*

*(a) section 47(awards on different issues, etc.), as if the words `unless otherwise agreed by the parties' were omitted from subsection (1) and so that the reference to `award' shall include a reference to any decision of the Lands Tribunal;*

*(b) section 49(interest) subject to any enactment that prescribes a rate of interest;*

*(c) section 57(3) to (7) (correction of award or additional award)."*

125. There was no reference to section 66 of the 1996 Act nor to enforcement of decisions or awards of the Lands Tribunal. The wording of Rule 32(a) shows that the draftsman was aware of the fact that decisions of the Lands Tribunal, except where the Tribunal was acting as arbitrator, would or might not be regarded as `awards` for the purposes of the Arbitration Acts without express statutory provision to that effect. On the other hand, no such definition was included in sub-Rule (c), where it might clearly be expected to appear, given the cautious drafting of sub-Rule (a). So clearly, that one wonders whether the concluding words of sub-section (a) were misplaced in the published form, and were intended to appear after sub-section (c).

126. However that may be, the object of the further amendment in 1998 was to re-introduce the reference to the relevant (enforcement) section of the Arbitration Acts, which had been absent since 1996, and for the first time to refer expressly to "enforcement". Rule 4 of the 1998 Rules reads –

*"4. After paragraph (c) of rule 32 of the 1996 Rules insert the following –*

*(d) section 66 (enforcement of the award)".*

127. If the intention was to permit enforcement of all decisions of the Lands Tribunal as if they were `awards' for the purposes of section 66, the opportunity to make this clear and to resolve the existing ambiguity as to the scope of paragraph (c) was overlooked. On the other hand, it is a permissible inference, in my view, that the draftsman was aware of the need to specify that all decisions should be regarded as `awards`, if that was his intention, yet he chose not to do so.

128. The issue therefore raises a question as to the extent to which the Courts should rectify the drafting of a statutory regulation in order to give effect to what other provisions of the Rules - here, the distinction drawn between `all cases` and those where the Tribunal acts as arbitrator - might be supposed to suggest was the draftsman`s intention. If that approach is adopted here, the effect is to introduce a statutory scheme for the enforcement of Lands Tribunal decisions which was not entirely clear under the 1975 Rules, was not thought necessary in 1996 and was either overlooked or not thought necessary in 1997.

129. I do not believe that this is an over-literal view. There was good reason for enabling Lands Tribunal arbitration awards to be enforced as other arbitration awards are, and thus for including some reference to section 66 in the Lands Tribunal Rules. In my judgment, it is not for the courts to extend the scope of the provision so that all Land Tribunal decisions become capable of summary enforcement as if they are arbitration awards, which they are not.

130. If we are correct in holding that the decisions can be enforced by action, where the party against whom the decision is made can raise defences as to jurisdiction and other challenges to the validity of the order which the Land tribunal has made, then there is insufficient justification in my view for giving the Rules a meaning which they do not clearly bear.

131. For these reasons, I do not think that section 66 assists the landlord in the present case.

**High Court or County Court**

132. These proceedings have raised for determination by the Court "*a question arising under or by virtue of*" section 91(8) of the 1993 Act, which forms part of Part I of the Act. The case therefore appears to fall within section 90(2), which provides that such proceedings "*shall be brought in the County Court*".

133. We have not heard any argument as to the effect, if there is any, of the Civil Procedure Rules on the statutory allocation of proceedings to the County Court rather than the High Court. Mr. Trace`s submission is that section 90(2) requires the proceedings to be brought in the County Court.

134. I agree with Clarke L.J.`s conclusion that the sub-section does not deprive the High Court of jurisdiction to hear this case. The action is brought to enforce the costs order made by the Lands Tribunal under section 3(5) of the 1949 Act. Section 90(2) does not prevent the claimant from bringing that action in the High Court. The defendant raises an issue under the 1993 Act, but this does not mean that the action has been brought for the purpose of deciding that issue. Section 90(2) in my judgment does not deprive the High Court of jurisdiction to hear and determine an action which was properly brought before it.

**Conclusion**

135. I agree with Clarke L.J. that the appeals must be dismissed. I also agree with his reasons for doing so, save where I have respectfully indicated above a contrary view.

136. The landlord`s costs of the proceedings before the Lands Tribunal were assessed at an amount in excess of £40,000. I find this a surprising, even an alarming figure. The tenant chose not to appear before the Costs Judge because he intended to challenge the costs order and he feared that by appearing he might be taken to have assented to it. Though he could have safeguarded himself by reserving his position, I find it entirely understandable that he did not appreciate this in the circumstances in which he found himself.

137. This appeal has been decided in the landlord`s favour because the authorities show that the words *"of and in connection with*" do not have a sufficiently wide meaning to include the costs of other proceedings, even those of an appeal from the original decision. But they also show that the costs "of" proceedings are or may be more restricted than costs incurred "*in connection with*" or *"incidental to*" the same proceedings. The former is the only order which Section 3(5) permitted the Lands Tribunal to make. On the other hand, Rule 52 of the 1996 Rules, which Clarke LJ has quoted in paragraph 61 of his judgment, purports to extend this to include "the costs of and incidental to" any proceedings in the Lands Tribunal. These matters have not been raised before us, and I say no more about them.

**LORD JUSTICE MANTELL:**

138. I agree with Clarke LJ and Sir Anthony Evans that, for the reasons they give, the Lands Tribunal had jurisdiction to make an order for costs which was capable of enforcement at common law in the High Court. Accordingly, I also agree that both appeals should stand dismissed.

139. As to the difficult question of statutory construction, I find it quite unnecessary to offer an opinion. As to quantum, although I too am surprised at the amount of costs ordered to be paid, that is not something with which this court is seized.

**ORDER:** Appeal dismissed with 60% of the costs of both appeals. Application for permission to appeal to the House of Lords refused; application for assessment to be made within seven days; if granted, stay to continue until determination. (Order does not form part of approved Judgment)

Mr Anthony Trace QC and Mr James Aldridge (acting pro bono) represented the Appellant.
Mr Gary Cowen (instructed by Messrs Tibber Beauchamp-Ward) represented the Respondent.