RECENT DEVELOPMENTS IN THE LAW

A review of significant judicial decisions and legislation contributed by students of the Faculty of Law, University of Otago.

ADMINISTRATIVE LAW

Natural Justice—duty to act fairly

That the rigid barriers formerly drawn between a judicial function and one of an administrative nature in relation to the application of the principles of natural justice are being demolished is evident in two recent English decisions. *R.* v. *Gaming Board of Great Britain, ex parte Benaim* [1970] 2 Q.B. 417 arose out of the provisions of the British Gaming Act 1968 which prohibited all gaming except on premises licensed for that purpose. Before an application for a licence could proceed a certificate of consent had first to be obtained from the Gaming Board. Such consent was sought by the managers of "Crockfords" one of the oldest and most famous clubs in London. The Board, following its normal procedure, invited the applicants to a meeting at which grave doubts concerning the applicants were expressed by Board members, but they were permitted to make further written representations at a later date. None the less the Board refused its consent. In response to inquiries from the applicants the Board itemised its misgivings but refused to say which of them was decisive. It was against this background that the applicants sought to quash the Board's decision on the grounds of failure to observe the principles of natural justice.

Lord Denning M.R., delivering a judgment with which the other members of the Court of Appeal concurred, accepted that the rules of natural justice applied but considered it was not possible to lay down rigid rules as to their scope or extent. But rather he adopted the principle laid down in *Re H.K.* [1967] 2 Q.B. 617, that the Board was required to act fairly and that meant that the applicants must be given a fair opportunity of satisfying the Board of the relevant matters. This the Board had done.

But perhaps more important is the following statement by Lord Denning:

> At one time it was said that the principles [of natural justice] only apply to judicial proceedings and not to administrative proceedings. That heresy was scotched in *Ridge* v. *Baldwin* [1964] A.C. 40. At another time it was said that the principles do not apply to the grant or revocation of licences. That, too, is wrong. *R.* v. *Metropolitan Police Commissioner, ex parte Parker* [1953] 1 W.L.R. 1150 and *Nukkuda Ali* v. *Jayaratne* [1951] A.C. 66 are no longer authority for any such proposition. (*ibid.* 430).

Thus Lord Denning casts further doubt on the correctness of *Nukkuda Ali,* an authority which has troubled New Zealand courts in the past, and to the extent that the principles of natural justice applied, namely that duty to act fairly, found it unnecessary to distinguish the Board's function as judicial or merely administrative.

A somewhat similar approach was adopted by Lord Parker in *R.* v. *Birmingham City Justice, ex parte Chris Foreign Foods Ltd.* [1970]

1 W.L.R. 1428. Here a consignment of sweet potatoes was seized and brought before a Justice of the Peace who had power to condemn them pursuant to the Foods and Drugs Act 1955. It was alleged that the Justice had acted unfairly and failed to observe the principles of natural justice in that at the hearing he had retired in private with two officials saying that he wished to "take advice" from them.

Lord Parker was clearly of the opinion that it was quite unnecessary to decide the exact position of the Justice. Whether he was acting in a judicial, quasi-judicial or purely administrative capacity the Justice was bound to observe those rules of natural justice which had a limited application to such a case as this. And in Lord Parker's opinion those rules of natural justice applicable namely openness, impartiality and fairness were not observed when the Justice retired with the two officials.

Natural Justice—giving of reasons

A further allegation in *R.* v. *Gaming Board, supra,* was that the Board failed to give adequate reasons for its decision. Lord Denning had little difficulty in disposing of this contention being of the opinion that natural justice did not impose such a requirement. His reasoning was thus "Magistrates are not bound to give reasons for their decisions: see *R.* v. *Northumberland Compensation Appeal Tribunal, ex parte Shaw* [1952] 1 K.B. 338 at p. 352. Nor should the Gaming Board be bound" (*ibid.* 431).

It should be noted that some writers have been somewhat critical of this aspect of the judgment.

Natural Justice—right to legal representation

In the wake of *Pett* v. *Greyhound Racing Association Ltd. (No. 1)* [1969] 1 Q.B. 125 the English Court of Appeal in *Enderby Town Football Club* v. *Football Association Ltd.* [1970] 3 W.L.R. 1021 have again been concerned with the question of legal representation before a domestic tribunal.

The Enderby Football Club having been fined and censured by their local county Association appealed to the Football Association itself. That body rejected the club's claim to be represented by a lawyer, taking its stand on one of its rules which purported to exclude legal representation at the hearing of an appeal. Was such a rule valid? Lord Denning observed: "Such a stipulation is I think clearly valid as long as it is construed as directory and not imperative; for that leaves it open to the tribunal to permit legal representation in an exceptional case where the justice of the case so requires" (*ibid.,* 1027). It was thus a matter for the discretion of the tribunal but such discretion must be properly exercised so that in a proper case legal representation would be allowed.

Such a proper case in Lord Denning's opinion was that which arose in *Pett's* case, *supra,* (reviewed in Vol. 2 No. 1 Otago Law Review 74). Subsequently, however, Lyell J. refused to follow this decision (see *Pett* v. *Greyhound Racing Association Ltd. (No. 2)* [1970] 1 Q.B. 46). It is to be noted that before the appeal from the judgment of Lyell J. could be heard the parties themselves came to an agreement whereby Mr Pett was permitted legal representation (see [1970] 1 Q.B. 67). So that the point at issue was never finally judicially resolved.

Contracts Binding on the Crown

A strong indication that our Courts will allow a civil servant to successfully bring an action against the Crown in respect of past salary owing to him under the terms of his contract of appointment arises from the Privy Council decision of *Kodeeswaran* v. *Attorney-General of Ceylon* [1970] 2 W.L.R. 456. Prior to this in *Lucas* v. *Lucas* [1943] P. 68 Pilcher J. had reached a contrary conclusion based on Lord Blackburn's judgment in the Scottish decision of *Mulvenna* v. *The Admiralty* 1926 S.C. 842. There Lord Blackburn on the basis of the well known cases which establish that the Crown has power to determine the employment of a public servant at will held that a civil servant had no claim to arrears of salary.

Their Lordships however in *Kodeeswaran's* case, *supra,* were of the opinion that Lord Blackburn's reasoning was defective and his conclusion was contrary to authority and wrong. Instead they relied on a decision in Ceylon where a civil servant had been held able to sue for his salary.

Two points arise. Firstly their Lordships stressed that they were only deciding the question in so far as the common law of Ceylon was concerned. But it was recognised in England prior to *Lucas* v. *Lucas, supra,* that a civil servant could sue for arrears in salary. Secondly, although not expressly disapproving *Lucas* v. *Lucas, supra,* they did disapprove Lord Blackburn's reasoning in *Mulvenna's case, supra,* which had served as the basis of the decision in *Lucas* v. *Lucas, supra.*

Thus it may well be that in England and New Zealand a civil servant can now bring an action for salary owing under the terms of his contract of appointment.

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COMMERCIAL LAW

Hire Purchase

Hire Purchase and Credit Sales Stabilisation Regulations 1957

The requirements of the Hire Purchase and Credit Sales Stabilisation Regulations 1957 (reprinted S.R. 1967/192) have since their enactment been rigidly enforced by the Courts. They have looked at the course of the dealings between the parties to ensure that there is actual compliance with the Regulations and not merely apparent compliance. This was made clear in the years immediately after the Regulations were originally made in 1955 in such cases as *Luhrs* v. *Baird Investments Ltd.* [1958] N.Z.L.R. 663 and *Stenning* v. *Radio and Domestic Finance Ltd.* [1961] N.Z.L.R. 7. In both these cases it was held that agreements which did not comply with the Regulations were void not merely *inter partes* but also in the hands of an assignee for value without notice of the illegality; in fact in both of these cases the hirer who was a party to the illegality of the agreement succeeded by virtue of this illegality in his claim against the finance company to which the agreement had been assigned although the finance company had no knowledge of the illegality.

In *Central Districts Finance Company Ltd.* v. *Cotton* [1965] N.Z.L.R. 373 Tompkins J. attempted to give business efficacy to an agreement