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IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY

A No 126/83

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IN THE MATTER of

PART I OF THE JUDICATURE AMENDMENT ACT 1912

BETWEEN

GOLDFINCH
EVANS

GREEN
PRATT
STEVEN
BARNETT and
SLACK

all of Palmerston North, Students

By their Guardian ad litem

MARK RUTHERFORD WADHAM of
Palmerston North, Barrister and
Solicitor

Applicants

A N D

THE ATTORNEY GENERAL for and on
behalf of the MINISTER OF EDUCATION

First Respondent

A N D

THE DIRECTOR GENERAL OF EDUCATION

Second Respondent

A N D

THE BOARD OF GOVERNORS OF THE
PALMERSTON NORTH HIGH SCHOOLS

Third Respondent

A N D

AWATAPU COLLEGE BOARD OF GOVERNORS

Fourth Respondent

Hearing: 26 January 1984

Counsel: Mr H S Lusk, Q C and Mr L H Powell for Applicants
Mr D C McKegg for First and Second Respondents
Mr J H Williams and Mr C P Somerville for Third and Fourth
Respondents

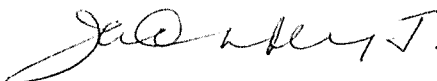
(ORAL) JUDGMENT OF ONGLEY J.

Counsel have indicated to me that the Board has made no Decision on whether

in the existing circumstances it would accept or reject the enrolment of the seven Plaintiffs in the School of their choice, nor is Counsel able to give any indication of what the attitude of the Board will be pending the decision on the question of a Stay of the effect of the judgment given by me last year. That being so, I have come to the conclusion that on Mr Lusk's first application, that^{is}/his application to make an Order in respect of the seven applicants under the original proceedings, must be dismissed. The reason for that is that the judgment in that proceeding was intended to be final, and a perusal of its terms indicates that was my intention at the time. The proceedings, therefore, cannot be revived at this stage. As to Mr Lusk's second application, that is the similar application brought under the same entitulumt, but accepted by Mr Williams as being a valid originating application under the Judicature Amendment Act 1972, I find that on the evidence at present I cannot hold that there has been exercised any statutory power which this Court would have jurisdiction to review. I think that is only fortuitous because at least within a few days the Board would be called upon to exercise that power, one way or the other by accepting or rejecting the application for enrolment by one or all of these Plaintiffs. For that reason although I find the evidence deficient I do not think that application should be dismissed at this stage and it will be adjourned sine die, to be brought on on three days' notice by either party so that it remains there and in the event of anything untoward happening it can be brought on for Hearing. The Respondent Boards are concerned that there may be an avalanche of applications for re-enrolment arising out of my earlier Decision and this Hearing today. There is really no evidence that is likely to happen, but I must concede that it is a possibility and would have results administratively within the District which would be undesirable. For that reason I think that the effect of my earlier judgment should be Stayed. Neither party contests the jurisdiction of the Court to make an Order for Stay in these circumstances, although the judgment

was in the form of a declaration only. I make that Order for Stay; it means that the judgment which I gave as it affects the schools generally will be of no effect until the Appeal against it has been determined in the Court of Appeal. At the same time it would be wrong if these seven young litigants were deprived of the fruits of their judgment in this litigation as it stands at the present time, and although it is appealable they are entitled in my view to benefit from it until the Appeal is disposed of, that will include, of course, the all important day of enrolment at the schools of their choice next week. It will be a condition of the Stay, therefore, that the Respondent Boards accept such applications for enrolment as may be made by any of the seven Plaintiffs to attend the school of his or her choice.

I think I need say at this stage because this matter appears likely to go to Appeal and because I do not have with me my Associate to record these remarks which I have made, I will at a later time commit my reasons for this judgment to writing in some more detail than I have expressed them here, but the judgment will be effective as from today. That is, dismissal of the first application, adjournment of the second application, Stay of proceedings in respect of the judgment given in December last year upon the condition which I have outlined. Costs will be reserved.



Solicitors:

L. H. Powell, Palmerston North, for Applicants
Fitzherbert, Abraham & Co., Palmerston North, for 3rd & 4th Respts
Crown Solicitor's Office, Palmerston North, for 1st & 2nd Respts