RECENT DEVELOPMENTS IN THE LAW

Contributed by students of the Faculty of Law, University of Otago.

ADMINISTRATIVE LAW

1. *Regulation and Prohibition*

Chandler & Co. v. *Onehunga Borough* [1966] N.Z.L.R.397. In following many earlier decisions Richmond J. held that "regulation" does allow "prohibition" over some of the area of control. He held that Ordinance 22 of Regulation 17(2) of the Fourth Schedule of the Town and Country Planning Act 1954 did not purport to prohibit outdoor advertising throughout the area under the Borough's control. "Regulation" as used in the Ordinance means regulation and control by partial prohibition and not by total prohibition throughout the whole of the Borough.

2. *Exercise of Discretion*

New Zealand Breweries Ltd. v. *Taranaki Licensing Committee (No. 2)* [1966] N.Z.L.R.598. Section 183 of the Sale of Liquor Act 1962 provides that every holder of a hotelkeeper's licence shall in respect of the licensed premises be responsible for,

> . . . (b) Providing adequate facilities for the supply of accommodation and meals to travellers in accordance with this Act.

Further under s.126(6)(e) of the Act a Licensing Committee may decline to renew a hotelkeeper's licence if it is satisfied that the licensee has failed to fulfil his responsibilities under any of the provisions of ss.183 and 184 and 195 to 197 of the Act. McGregor J. held that it is a wrong exercise of the Licensing Committee's discretion under s.126(6)(e) to decline to renew a hotelkeeper's licence on the ground of the inadequacy of the accommodation provided, when such inadequacy has been recognised and impliedly sanctioned by the Licensing Committee when dealing with the hotel premises licence in respect of the same premises.

In *McCormack* v. *Wine Cellars (New Zealand) Ltd.* [1966] N.Z.L.R.756, Wilson J. held that a Licensing Committee has no discretion in the grant or refusal of a wineseller's licence except as is expressly allowed by s.157(7) of the Sale of Liquor Act 1962. It must decide any application according to the evidence adduced and such other matters that may be admitted under s.48(1) of the Act.

3. *Certiorari*

Ainge v. *Town and Country Planning Appeal Board* [1966] N.Z.L.R.385. Henry J. in following *Ex parte Stafford Corporation* [1940] 2 K.B.33, stated that the issue of a writ of certiorari is discretionary. Further, that the court in exercising its discretion as to whether or not relief should be allowed is entitled to enquire into the conduct of the applicant (which includes delay in issuing proceedings) and the circumstances of the case. It was held that the writ of certiorari should not issue if there has been unreasonable delay but the delay in the present case was not sufficient to disqualify the plaintiff from relief. *Stravern Services Ltd.* v. *Waimairi County* [1966] N.Z.L.R.996. The

plaintiff in this case claimed a writ of certiorari to remove into the Supreme Court and quash the decision of the Town and Country Planning Appeal Board on the ground that there was an error of law on the face of the record. In deciding what constitutes part of the record Macarthur J. applied *Ex parte Shaw* [1952] 1 K.B.338. He sets out at p.999 what he considers constitutes the record,

> In the light of the foregoing authorities I think that the record in the present case must contain at least the plaintiff's appeal, the reply by the county council and the decision of the Appeal Board; but I think that the record also contains the full text of two documents incorporated by reference. . .

Columbia Films (N.Z.) Ltd. v. *Cinematograph Censorship Board of Appeal* [1966] N.Z.L.R.929. The plaintiff requested the issue of a writ of certiorari to remove into the Supreme Court and quash the decision of the defendant in regard to a certain film. Tompkins J. held that a decision of the censor approving a film for exhibition, subject to a condition as to the class of persons to be allowed to view the film and subject also to certain "cuts" being made in the film, is one decision containing a number of parts. The person submitting the film to the censor has a right of appeal against any of the several parts of such decision but his appeal is an appeal against the decision in its entirety and, therefore, opens the whole decision to review by the Cinematograph Censorship Board of Appeal which may then exercise any of the powers it possesses under s.98(1) of the Act.

[This case was reversed on appeal: [1967] N.Z.L.R.191.—Ed.]

4. *Waiver*

Reckitt and Colman (New Zealand) Ltd. v. *Taxation Board of Review* [1966] N.Z.L.R.1032. A writ of mandamus was sought directing the respondents to state a case for the Supreme Court in respect of the plaintiff's appeal against the decision of the appellant. Moller J. held that the plaintiff's action failed and the Court of Appeal (North P., Turner and McCarthy JJ.) dismissed the appeal. Section 29 of the Inland Revenue Department Amendment Act 1960 states,

> In the case of such an appeal the appellant shall, within thirty days after the determination appealed from, file with the Board a notice of appeal. . .

The Court of Appeal held that the Commissioner of Inland Revenue does not have the power to waive the provisions of s.29 in respect of the time within which notice of appeal must be given.

5. *Natural Justice*

Jeffs v. *New Zealand Dairy Production and Marketing Board* [1966] N.Z.L.R.73. This was an appeal from the decision of Hardie Boys J. ([1965] N.Z.L.R.522) dismissing the appellant's application for a writ of certiorari to quash a zoning order made by the respondent. The Court of Appeal (North P., McCarthy and McGregor JJ.) held first that the power to make and vary zoning orders previously vested in the New Zealand Dairy Board passed to the respondent by virtue of the provisions of s.71 of the Dairy Production and Marketing Act 1961, secondly, that the Board was not disqualified on the grounds of financial interest due to its having made loans to one of the companies affected by the zoning order, and thirdly, that the Board did not act *ultra vires* in delegating to a committee the task of hearing the evidence and submissions of interested parties and reporting to the Board. Fourthly, the Court decided (North P. dissenting) that once such a committee has been appointed the Board may come to its final decision

without disclosing the report of the committee, such a decision to be valid however, must be more than the mere automatic confirmation of the committee's report but it is not necessary that members of the Board should read or hear all the evidence and submissions placed before the committee. The Court of Appeal, therefore, reaffirmed the decision of Hardie Boys J. at first instance.

On appeal to the Privy Council ([1966] 3 All E.R.863) the Judicial Committee held, first, that the decision of the Court of Appeal as regards the effect of the respondents' pecuniary interest was correct. Secondly, they decided that the respondent Board did not allow improper delegation of its judicial function in allowing the appointed committee to hear evidence and submissions, but it was the duty of the Board in acting judicially to "hear" interested parties. Whether this is done by hearing the parties orally or by receiving written statements or by appointing a committee to record all the evidence is merely a matter of procedure. (see *Ex Parte Arlidge* [1914] 1 K.B.191; *Osgood* v. *Nelson* (1872) L.R. 5 H.L. 636.) However, this was not the situation in the present case as the report of the committee appointed by the respondent did not state what the evidence was. The respondent Board, therefore, reached its decision in ignorance of the evidence. The Judicial Committee stated (at p.870),

> The Board thus failed to hear the interested parties as it was under an obligation to do in order to discharge its duty to act judicially in the determination of zoning applications.

A writ of certiorari was ordered to be issued.

It is clear from the decision of the Privy Council and from the dissenting judgment of North P. in the Court of Appeal (approved by the Privy Council) that delegation to a person or committee of the task of "sifting" the evidence and submissions of interested parties is a breach of the *audi alterem partem* principle.

J. W. Hansen.

COMPANY LAW

I. *Bell Houses Ltd.* v. *City Wall Properties Ltd.* [1966] 2 Q.B. 656. The plaintiff company (appellant in the Court of Appeal) had, as its principal business, the development of housing estates. It entered into a contract to introduce the defendants to a financier who would provide £1 million short term credit. The plaintiff company claimed £20,000 as commission for this service but the defendant company refused to pay, claiming that the alleged contract was void as *ultra vires* the plaintiff company. The relevant provision of the objects clause in the plaintiff company's Memorandum of Association were as follows:

(a) To carry on the trade or business of general, civil and engineering contractors and in particular . . . to construct . . . either by the company or other parties . . . houses;
(b) To acquire by purchase . . . any lands.
(c) To carry on any other trade or business whatever which can, in the opinion of the board of directors be advantageously carried on by the company in connection with or as ancilliary to any of the above business or the general business of the company. . .
(q) To . . . turn to account . . . and in any other manner deal with or dispose of . . . any of the property or assets for the time being of the company for such consideration as the company may think fit. . .
(u) To do all such other things as are incidental or conducive to the above objects or any of them.