RECENT DEVELOPMENTS IN THE LAW

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

ADMINISTRATIVE LAW

1. *Delegation*

Mandeno v. *Wright* [1967] N.Z.L.R. 385. This was an appeal from the Magistrate's Court by way of a case stated on a question of law only. Wild C.J. held that clause 219 (e) of the Rotorua City bylaws which delegates power to the engineer of the local authority to stop building operations if he is satisfied that there is a substantial contravention of the bylaw, but to the extent only that he thinks necessary in each case to satisfy himself that the builder can and will comply with the bylaw, is *intra vires* and reasonable. The appellant argued that by virtue of s. 390(b) of the Municipal Corporations Act 1954 the prohibition could only be imposed by the Council itself and then only by resolution and that therefore a delegation of this nature could not be lawfully made. It was held that this argument was completely met by s. 13 of the Bylaws Act 1910.

2. *Discretion—Irrelevant considerations*

Board of Trustees of the Maradana Mosque v. *Badiuddin Mahmud and Another* [1967] A.C. 13. This was an appeal to the Privy Council from the Supreme Court of Ceylon in which the appellants were seeking a mandate in the nature of a writ of certiorari to quash an order made by the Minister of Education to take over a school being administered in contravention of the Assisted Schools and Training Colleges (Special Provisions) Act 1960. Under that Act before the Minister had jurisdiction to make the order he must be satisfied that "any school . . . is being so administered in contravention of any of the provisions of this Act". In fact that administration complained of had taken place before he made the order. The Judicial Committee held that there was no ground on which the Minister could have been satisfied that the school was being so administered at the time he made the order, therefore he must have asked himself the wrong question or taken into account the wrong facts. His action was therefore held invalid.

3. *Words of a directory nature*

Wilson Rotherey Ltd. v. *Mount Wellington Borough* [1967] N.Z.L.R. 116. Hardie Boys J. held that Regulation 24(5) of the Town and Country Planning Regulations 1960 which requires an appellant to attach to his appeal a plan of the land affected is only directory provided no party has been prejudiced by the omission.

4. *Certiorari*

R. v. *Criminal Injuries Compensation Board, Ex parte Lain* [1967] 3 W.L.R. 348. One of the questions the Court had to determine was whether the Board, which was set up to make *ex gratia* payments to victims of violence was a body of persons having authority "to determine the questions affecting the rights of subjects" and was thus amen-

able to the supervisory jurisdiction of the court by way of certiorari. In holding that it was the Court (Lord Parker C.J., Diplock L.J. and Ashworth J.) said that the statement made by Atkin L.J. in *R.* v. *Electricity Commissioners* [1924] 1 K.B. 171, 205 was not intended to be confined to cases in which the determination affected rights in the sense of enforceable rights. Ashworth J. even went so far as to state that this part of Lord Atkin's statement could be read as if the words "the rights of" were omitted so as to become "affecting subjects". This view clearly supports the wide interpretation of Lord Atkin's statement.

Henderson v. Waipa County [1967] N.Z.L.R. 685. The plaintiffs were seeking the issue of a writ of certiorari to quash a decision of the Town and Country Planning Appeal Board. Richmond J. held that a notice issued under s. 34A of the Town and Country Planning Act 1953 did not contain certain requirements specified by the Act and that it was a nullity. Therefore the Board had no jurisdiction to hear the appeal. But the applicant does not lose his right to certiorari by pursuing the appeal or failing to challenge the validity of the notice.

5. *Licensing*

Nunns v. *Licensing Control Commission* [1967] N.Z.L.R. 730. This was an appeal from a decision of Haslam J. in the Supreme Court. It concerned an application for the removal of a hotel licence to proposed new premises and the consequent request for a poll under s. 141 of the Sale of Liquor Act 1962. The Court of Appeal (Turner, McCarthy and McGregor J.J.) held that where it is proposed to remove a hotel or tavern licence for a distance of less than two miles to proposed new premises on land in a city, the requisite number of qualified electors in terms of s. 141 of the Act residing within the area prescribed by that section are competent to ask for a poll. It was also held that even where it appears that the reason the poll has been asked for is because of an objection to the site the Licensing Commission cannot refuse to exercise its discretion on the ground that objections could have been made to the Town and Country Planning Appeal Board.

6. *Natural Justice*

(i) Officials to whom applicable: *In Re H.K.* (*An Infant*) [1967] 2 W.L.R. 962. Briefly the facts were that an immigration officer refused a Pakistani youth, whom he thought to be over 16 years of age, admission into the United Kingdom and detained him at the London Airport under powers conferred upon him by the Commonwealth Immigrants Act 1962. These proceedings concerned applications for writs of certiorari and habeus corpus based on the ground that the official was performing a function of a judicial nature in determining whether or not to grant the youth permission to enter the country and that he had failed to comply with the *audi alteram partem* principle of natural justice in that he had not given the youth adequate opportunity to make full representations about his age. In his leading judgment Lord Parker C.J. made statements which seem to suggest that even if the official was not performing a function of a judicial nature he was nevertheless still required to act fairly and was required to give the youth adequate opportunity to be heard. But in any case he held that the official had acted fairly and had given the youth an adequate opportunity to be heard. Furthermore he stated that the youth should have applied for a

writ of mandamus to have the official redetermine the decision. The other members of the Court (Salmon L.J. and Blain J.) agreed with this.

This case is important in that it suggests that the principles of natural justice which have always been considered to apply only to officials performing a judicial function apply also to other officials; but it does not say what other officials.

(ii) Audi alteram partem: *Mayor of Jaffna* v. *W. J. Fernando* [1967] 3 W.L.R. 289. This was an appeal to the Privy Council from a decision of the Supreme Court of Ceylon. It concerned a petition for writs of certiorari and quo warranto on the ground of a breach of the *audi alteram partem* principle of natural justice. The judgment of the Judicial Committee delivered by Lord Upjohn is interesting in that he outlined three matters which must always be borne in mind when considering whether the principle should be applied or not. They are: first, what is the nature of the property, the office held, status enjoyed or services to be performed by the complainant of justice. Secondly, in what circumstances or upon what occasions is the person claiming to be entitled to exercise the measure of control entitled to intervene. Thirdly, when a right to intervene is proved what sanctions in fact is the latter to impose upon the other.

(iii) Justice must manifestly be seen to be done: *R.* v. *Consett Justices, Ex parte Postal Bingo Ltd.* [1967] 2 W.L.R. 184. This was an application for a writ of certiorari to quash three convictions by the justices. The general ground for the application was that justice was not manifestly seen to be done in that the decision of the justices did not appear to be a decision of the justices alone but of the justices together with their clerk. The Court unanimously held that although the clerk could advise the justices only on questions of law and not of fact the questions were so entangled in this case that the retirement of the clerk with them throughout was not sufficient to invalidate their decision.

(iv) Error of law apparent on the face of the record: *Henderson* v. *Waipa County, supra.* Section 34A(2) of the Town and Country Planning Act 1953 provides

> Whenever any such objectionable element is or becomes removable or reducible by any means that are reasonably available to the user of the land, that use of the land . . . shall be deemed to be conditional on his removing or reducing that element to such extent as is reasonably practicable.

Richmond J. held that the phrases "any means that are reasonably available" and "to such extent as is reasonably practicable" clearly require consideration to be given to questions of finance and the effect on the user of the land and that in so far as the Town and Country Planning Appeal Board did not consider these questions there was an error of law apparent on the face of the record.

M. A. Burns.

COMMERCIAL LAW

Door to Door Sales Act 1967

This enactment "is aimed not at door to door selling as such, but only at the undesirable practices and pressures that are sometimes applied