RECENT CASES

BANKS v. TRANSPORT REGULATION BOARD (VICTORIA)[1]

Certiorari

The problem of determining whether or not certiorari lies in respect of executive decisions continues to occupy the attention of the courts. All the indications are that certiorari will continue to be the subject of time, energy and judicial observation.[2]

In this case the High Court held (McTiernan J. dissenting) that on the particular facts a taxi-cab licensing board could not revoke a metropolitan taxi-cab licence. It took Barwick C.J. some 8,000 words to reach this conclusion. As is the normal pattern in the High Court the remaining four judges added their individual judgments amounting to some 6,500 words. The Court restricted itself to a consideration of the particular regulations and the particular circumstances. There were no sweeping, radical dicta on the general problem of intervention by the judiciary in the administrative process. Nevertheless, certain points of consequence emerge.

First, the judgment of Lord Reid in *Ridge v. Baldwin*[3] is now part and parcel of Australian law.[4] Any lingering doubts that there may have been have now been resolved. In consequence the licensing board in deciding whether to revoke a licence was 'bound to act judicially' and its proceedings were 'subject to the prerogative writs'.[5]

Secondly, Lord Goddard C.J.'s description of a taxi-cab licence in *R. v. Metropolitan Police Commissioner; ex parte Parker*[6] as nothing

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1 (1968-69) 119 C.L.R. 222; [1968] A.L.R. 445; 42 A.L.J.R. 64.

2 In recent years the High Court has considered certiorari in R. v. District Court; ex parte White, (1966-67) 116 C.L.R. 644; [1967] A.L.R. 161; 40 A.L.J.R. 337 (in relation to national service and conscientious beliefs); R. v. District Court; ex parte Thompson, [1968] A.L.R. 509; 42 A.L.J.R. 173 (whether reasons need be given for refusing to grant exemption from national service); and R. v. White, [1964] A.L.R. 365; 37 A.L.J.R. 297 (certiorari in relation to an administrative tribunal maintaining discipline of the Commonwealth Public Service).

3 [1964] A.C. 40.

4 (1968-69) 119 C.L.R. 222, 233.

5 Id. at 234.

6 [1953] 1 W.L.R. 1150, 1154.

but a permission which the licensor can withdraw without stating why he withdraws his permission, is not part of Australian law.[7]

Thirdly, the decision of the Privy Council in *Nakkuda Ali v. Jayaratne*[8] is 'no more than a decision as to the true meaning of the *Defence (Control of Textiles) Regulations* 1945 of Ceylon'.[9] At most the 'decision would bind this Court in the case of a statutory provision made in wartime in like terms and with respect to a comparable subject matter'.[10]

Fourthly, although (i) the regulations 'contemplated that there should be an effective review by the Governor in Council of the Board's decision', and (ii) 'certiorari will not go to the Governor in Council', certiorari did lie to quash the decision of the Board.[11]

And fifthly, as the Board had made a void (not voidable) decision, the approval of the Governor in Council of a void decision was ineffective; the approval did not justify the refusal of the writ.[12]

The decision is one that administrative lawyers will applaud. The Court has seen fit to protect the rights of an individual against an over-zealous statutory body. Nevertheless it must have been a close run thing. The regulations having provided for a review by the Governor in Council it was by no means a foregone conclusion that the High Court would hold that it was entitled to subject the Board's decision to a second review. The case must be seen as evidence of an increasing willingness of the judiciary to subject the Executive to judicial scrutiny.

D.B.

CRIMINAL PROCEDURE; JOINDER OF ACCUSED

After a few centuries of experience in conducting criminal trials in accordance with the principles of English law it seems remarkable that the law reports of many jurisdictions continue to contain so many points of procedure. In the South and East African law reports, for example, there would appear to be more cases on points of procedure than any other single topic. The fact is, however, that new or uncertain situations do arise. Thus in recent months particular points

7 (1968-69) 119 C.L.R. 222, 231.
8 [1951] A.C. 66.
9 (1968-69) 119 C.L.R. 222, 233.
10 Ibid.
11 Id. at 240-242.
12 Id. at 242.