1956 *Present :* Weerasooriya, J., and T. S. Fernando, J.

E. F. W. FERNANDO, Appellant, *and* THE UNIVERSITY OF CEYLON, Respondent

S. C. 559—D. C. Colombo, 28,909

University of Ceylon—Right of student to sit for examinations—Misconduct of student—Scope of the powers of the Vice-Chancellor and Board of Discipline to investigate and punish— Remedy when the Vice-Chancellor and Board act in excess of jurisdiction—"Judicial act"—Natural justice—Scope of certiorari proceedings— Jurisdiction of District Court—Ceylon University Ordinance, No. 20 of 1942, ss. 6 (b), 32—General Act No. 1, Chapter 8, Part I, ss. 8, 14, 17.

When a purely administrative decision is taken against a party on the basis of an invalid report made by a person who has legal authority to determine judicially or quasi-judicially a question affecting a legal right of that party, the party affected by the administrative decision is entitled to claim relief by way of regular action, notwithstanding the absence of a right of appeal.

The plaintiff, who was a candidate at the final examination in science held by the University of Ceylon, instituted this action against the University claiming that the finding of the Vice-Chancellor (assisted by a committee of inquiry) that the plaintiff had acquired knowledge of the nature or substance of one of the Question Papers before the date of the examination, and the decision of the Board of Residence and Discipline suspending the plaintiff indefinitely from all examinations of the University, be declared null and void. The Vice-Chancellor and the Board of Residence and Discipline had purported to act under sections 8 and 14 respectively of Part I of Chapter 8 of the General Act No. 1 passed under the Ceylon University Ordinance, No. 20 of 1942. Section 8 provides that where the Vice-Chancellor is satisfied that any candidate for an examination has acquired knowledge of the nature or substance of any question or the content of any paper before the date and time of the examination he may suspend the candidate from the examination or remove his name from the pass list, and shall report the matter to the Board of Residence and Discipline for such further action as the Board may decide to take. Section 14 deals with the powers of the Board on such a report being received. One of them is to suspend the candidate indefinitely from any University examination.

The aforementioned committee of inquiry had been appointed by the Vice-Chancellor in order to assist him in his investigation, and consisted of the Vice-Chancellor himself and two other members. At the chief sitting of the committee, the plaintiff was afforded no opportunity at any stage of cross-examining the witnesses who had testified against him, nor was even the gist of their evidence communicated to him. The plaintiff was the last person to be questioned at that sitting. No record of the proceedings was kept by the committee. The plaintiff had not been furnished sufficient particulars of the case he had to meet, nor was he at any time afforded an opportunity of explaining the allegedly suspicious features of a document which was produced at the inquiry.

Held, (i) that the action of the Vice-Chancellor in appointing a committee of inquiry (of which he himself was a member) to assist him in his investigation was not an improper delegation of his functions in contravention of sections 8 and 17 of Part I of Chapter 8 of the General Act No. 1.

(ii) that, subject to the powers conferred on the Vice-Chancellor and the Board of Residence and Discipline under sections 8 and 14 of Part I of Chapter 8 of the General Act No. 1, a student of the University of Ceylon has a legal right

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to sit for any examination held by the University provided he satisfies the qualifying conditions prescribed by the Statutes, Acts and Regulations passed under the Ceylon University Ordinance.

(iii) that, inasmuch as the legal rights of the plaintiff were involved and no question of policy or expediency arose, the Vice-Chancellor was under a duty to act judicially when he investigated the allegation against the plaintiff and reported on it to the Board of Residence and Discipline. The words "where the Vice-Chancellor is satisfied . . . ." in section 8 of Part I of Chapter 8 of the General Act No. 1 did not detract from the duty of the Vice-Chancellor to act judicially or quasi-judicially when proceeding under that section.

In the absence of specific provision in that behalf, the procedure to be followed by bodies which are not strictly judicial bodies vary with the kind of case which they are called upon to investigate. Where the matter to be investigated is an allegation of a grave nature which, if made out, would have serious consequences affecting the legal rights of the person whose conduct is called into question, a more strict procedure than otherwise is to be insisted on. In the present case, having regard to all the circumstances, the question of the truth or falsity of the allegation against the plaintiff could not fairly be determined except by the application of the judicial process or a form of procedure closely analogous to it.

(iv) that the investigation of the Vice-Chancellor was not made in accordance with the principles of natural justice and was not, therefore, valid for the purposes of any action which the Vice-Chancellor could have taken under section 8 of Part I of Chapter 8 of the General Act No. 1.

(v) that the decision which the Board of Residence and Discipline purported to take under section 14 of Part I of Chapter 8 of the General Act No. 1 did not have any legal effect inasmuch as the report made by the Vice-Chancellor without due inquiry (having regard to the duty imposed on him to act judicially) could not be regarded as a valid report for the purpose of enabling the Board of Residence and Discipline to take action.

(vi) that the proper remedy of the plaintiff against the decision of the Board of Residence and Discipline was not by way of *certiorari* proceedings but by way of an action for a declaration that the decision of the Board was null and void.

APPEAL from a judgment of the District Court, Colombo.

N. E. Weerasooria, Q. C., with *Walter Jayawardene* and *Barnes Ratwatte* for the plaintiff-appellant.

N. K. Choksy, Q. C., with *S. J. Kadirgamar*, *J. de Saram* and *Miss M. Seneviratne*, for the defendant-respondent.

Cur. adv. vult.

November 28, 1956. WEERASOORIYA, J.—

This is an appeal by the plaintiff from the judgment and decree of the District Court of Colombo dismissing the action instituted by him against the University of Ceylon, as the defendant. The substantial relief claimed in the action is a declaration that the finding of a committee of inquiry that the plaintiff acquired knowledge of the nature or substance of a passage in German in Zoology Paper V before the date and time of the examination, and the decision of the Board of Residence and Discipline of the University of Ceylon suspending him indefinitely from all examinations of the University be declared null and void.

The judgment of the learned District Judge sets out the relevant facts of the case, but it would be necessary to refer to some of them again in this judgment. The final examination for the degree of Bachelor of Science of the University of Ceylon at which the plaintiff was a candidate took place in the months of March and April, 1952. The plaintiff offered himself for examination in Zoology as his special subject and Botany as a subsidiary subject in accordance with the provisions of the General Act No. 1 made under the Ceylon University Ordinance, No. 20 of 1942. The examination in Zoology consisted of five papers in theory and three in practical work. There was also one paper in Botany. The examination in the last theory paper in Zoology (Paper V) was held on the 4th April, 1952. P3 is a copy of this paper. It is in two parts, the first consisting of an essay and the second of a passage in French or German one of which had to be translated into English and commented on. The maximum marks for the essay was 90 and for the translation and comments 10, and this allocation was known to the candidates prior to the examination. There is no evidence that out of the 10 marks assigned for the translation and comments a candidate was required to obtain any specified minimum in order to secure a pass, or become eligible for a first or second class (denoted by the letters A and B respectively) in Paper V. The plaintiff actually obtained an A in that paper, having scored a total of 90 marks which included 8 out of the maximum of 10 marks for his translation of, and comments on, the German passage (which was the passage selected by him). On his marks in this and the other papers the plaintiff came an easy first in order of merit among the candidates offering the same subjects at the examination, and in the normal course he would have been entitled to the degree of Bachelor of Science with First Class Honours. Of the witnesses called at the trial Dr. Hilary Crusz, a lecturer in Zoology at the University, who appears to have had opportunities of forming an estimate of the plaintiff's ability, described him as a brilliant student.

One of the candidates at the examination who offered the same subjects as the plaintiff was a Miss Balasingham who is the sister-in-law of Mr. Sivaprakasapillai, a lecturer in the Engineering Faculty of the University. Shortly after the examination in the paper P3 Miss Balasingham appears to have conveyed certain information to Mr. Sivaprakasapillai which he considered it his duty to communicate (though he did not do so immediately) to the Vice-Chancellor of the University, Sir Ivor Jennings. The information related to the possibility of the plaintiff having had prior knowledge of the German passage set for translation and comments in P3. But before that information reached Sir Ivor Jennings he had already received similar information from Mr. Kirthisinghe, the senior lecturer in Zoology, and also the examiner who had marked that part of the answer script submitted by the plaintiff on the German passage in P3.

Under the Ceylon University Ordinance, No. 20 of 1942, the Vice-Chancellor is the principal executive officer of the University and it is his duty to see that the provisions of the Ordinance and of the Statutes, Acts and Regulations made thereunder are duly observed, and he is given such power as he may deem necessary to exercise for that purpose. Section 8 of Part I of Chapter VIII of the General Act No. 1 provides that where the Vice-Chancellor is satisfied that any candidate for an examination

has acquired knowledge of the nature or substance of any question or the content of any paper before the date and time of the examination he may suspend the candidate from the examination or remove his name from the pass list, and shall report the matter to the Board of Residence and Discipline for such further action as the Board may decide to take. Section 14 deals with the powers of the Board on such a report being received. One of them is to suspend the candidate indefinitely from any University examination. It will be noted that the Board is empowered to act on the basis of the report, without making any further inquiry. The Vice-Chancellor is an *ex officio* member of the Board.

The Vice-Chancellor, having considered the information which he received, decided to investigate the matter further and for that purpose he appointed a committee of inquiry consisting of himself, Mr. A. E. Keuneman who is a member of the University Council and Professor Mailvaganam, Dean of the Faculty of Science. Besides other claims that the Vice-Chancellor Sir Ivor Jennings has to eminence it may be stated that he is a Queen's Counsel of the English Bar. Mr. Keuneman is a Queen's Counsel of the Ceylon Bar and a retired Judge of this Court. There can be no doubt that all the gentlemen who comprised the committee were exceptionally suited, by reason of their qualifications and experience, to conduct an inquiry of this nature. That Professor Mailvaganam was a member of the committee was criticised by learned counsel who appeared for the plaintiff at the hearing of the appeal on the ground of his somewhat distant relationship to Miss Balasingham and Mr. Sivaprakasapillai and also that he was a member of the Board of Examiners, as well as of the Scrutinising Committee the functions of which were to modify the questions set for the examinations and if necessary refer them back to the examiners for re-consideration. I am unable to say that there is any substance whatever in this criticism.

On the 16th May, 1952, that is to say, several weeks after the examination in paper P3 had been held (being the last of the papers which the plaintiff was called upon to answer) the Vice-Chancellor wrote to him the letter P4 informing him of an allegation against him that he had acquired prior knowledge of the content of one or more of the papers set for the examination at which the plaintiff had presented himself as a candidate and requesting him to attend at a specified time and place before the committee of inquiry on the 21st May, 1952. The plaintiff has stated in evidence at the trial that when he received this letter he had no idea at all as to the nature of the allegation against him except for what was in the letter, namely, that he had acquired prior knowledge of the content of *one or more* of the examination papers. According to the Vice-Chancellor the letter was so worded because the information coming to him from Miss Balasingham (who, apparently, had been questioned at that stage) suggested the possibility of the plaintiff having acquired prior knowledge of the content of some of the papers in practical work too in addition to knowledge of the German passage in P3. It would seem, however, that between the date of the despatch of the letter and the 21st May the committee of inquiry had decided that the evidence which Miss Balasingham was in a position to adduce was quite insufficient to justify an investigation into that part of her allegation which related to

the plaintiff having acquired prior knowledge of the content of any paper in practical work. It may be assumed that the members of the committee did not consider that this decision reflected in any appreciable degree on the credibility of Miss Balasingham in regard to the evidence that she would give on the question whether the plaintiff had acquired prior knowledge of the German passage in P3. It does not appear, however, that the plaintiff was at any stage informed that the matter to be investigated by the committee was restricted to that allegation alone, and it is highly probable that throughout he was under the impression that the scope of the inquiry was as stated in P4, particularly as he was questioned by the committee about his practical examination as well.

On the 21st May, 1952, as notified in P4, the committee of inquiry held its first sitting. Miss Balasingham appears to have been questioned as the first witness. The next to be questioned were Mr. Kirthisinghe and Professor W. Fernando, in that order. Professor Fernando is the head of the Department of Zoology in the University and the maternal uncle of the plaintiff. He came into the inquiry as the German passage in P3 was selected by him as examiner, with the approval of Mr. Kirthisinghe the other examiner, from a book belonging to him which was kept under lock and key in his office. Sir Ivor Jennings stated in evidence at the trial that he was satisfied from his inquiries that the drawer of the table in Professor Fernando's office in which the book was kept had been locked, presumably at all material times. If there was originally any suspicion that Professor Fernando had dishonestly apprised the plaintiff, his nephew, of the German passage that would be set for the examination, all I need say is that there is no evidence pointing in that direction. Sir Ivor Jennings also stated in evidence that there were several possible sources of leakage of the content of an examination paper and that although he and the other members of the committee of inquiry ultimately were satisfied that the nature or substance of the German passage in P3 had become known to the plaintiff prior to the examination, none of them could reach a definite conclusion as to the point at which the leakage occurred.

To resume the narrative as to what took place at the sitting of the committee of inquiry on the 21st May, 1952, the plaintiff was the last person to be questioned at that sitting. In his evidence at the trial he said that his questioning by the committee on that occasion did not last more than half an hour but he admitted that at an early stage he was shown an exercise book, said to belong to Miss Balasingham and containing eight or nine German words, and he was asked whether he had those words in any book of his prior to the examination, which he denied. He also said that from the questions put to him he gathered that Miss Balasingham had alleged that prior to the examination she had copied those words into her book from a book belonging to him. The plaintiff was next given the queston paper P3 with those same eight or nine words (which also occur in the German passage in that paper) underlined and he was asked to translate the passage into English which, he says, he did without difficulty but he was stopped before he had completed the translation. He was next put further questions with regard to his knowledge of German and he replied that he studied German for three years

at the University for the purpose of his course in Zoology. While this three-year study of German turned out to be nothing more than a weekly lecture of an hour's duration at which German passages on different topics in Zoology were given to the students for translation, it may be assumed that the instruction given in this particular branch was considered by the University authorities to be sufficient for the purpose for which it was intended. In the absence of any contra-indication there seems to be no reason, therefore, to think that in this branch of his studies too the plaintiff had not attained a proficiency comparable to that attained by him in the other branches as shown by the marks which he scored in the rest of the examination.

The report of the committee of inquiry, which is the document P11, sets out in an amplified form the allegation made by Miss Balasingham as to how she came to copy the eight or nine German words into her exercise book. According to that report the incident took place some weeks prior to the examination. Miss Balasingham said she suspected from the plaintiff's behaviour that there was something in one of his notebooks which he did not wish the other students to see. On one occasion (apparently in a moment of absent-mindedness quite in contrast to his previous vigilance) he had left the book on a bench in the Zoology research laboratory and had gone out when she seized the opportunity to glance through the book and saw a list of about thirty German words, in some cases with the English equivalents, of which words she copied nine into the exercise book produced by her. Of the other words she later remembered that one was *zitronensaft*. The words which she copied appear in the German passage in P3 in the same order in which she had copied them into her book except for the eighth and ninth words. The report P11 purports to reproduce the whole passage with the ten words underlined. Actually only nine words have been underlined including the word *zitronensaft* which occurs at the end of the passage. The plaintiff stated in evidence that on being questioned by one of the members of the committee as to the meaning of the word *zitronensaft* he gave it as citronella juice whereas the correct rendering appears to be lemon juice. The observation may be permitted that if the object of the plaintiff in having the German words written in his exercise book, as alleged by Miss Balasingham, was to acquaint himself with their English equivalents, it was hardly likely that he would not have been able to give the correct rendering of the word *zitronensaft* when questioned by the committee unless, of course, he tried to make it appear that he was unfamiliar with that word, but in that case it would have been a simple matter to ascertain how he had translated it in the answer script submitted by him at the examination.

Why the plaintiff should have written these German words in an exercise book which he habitually took with him to the Zoology laboratory, or why Miss Balasingham should, several weeks prior to the examination, have copied them into her book, are questions the answers to which do not appear in evidence in the case.

The full particulars of the allegation made by Miss Balasingham, as set out in the report P11, do not seem to have been made known to the plaintiff either at the inquiry on the 21st May or on the only other

occasion when he was questioned, namely, the 3rd June, 1952. The plaintiff was afforded no opportunity at any stage of cross-examining Miss Balasingham, nor was even the gist of her evidence communicated to him. No record of the proceedings was kept by the committee, nor does it appear that any member of it made notes of the evidence adduced. According to Miss Balasingham, another student (Miss de Silva) was sitting next to her when she copied the words from the plaintiff's book. Miss de Silva denies that she saw the copying but admitted that Miss Balasingham had subsequently, but before the examination was held, told her about the list. Miss Balasingham also stated to the committee that immediately after the examination she told some of the other students about the words which she had copied from the plaintiff's book and which she found in the German passage in P3, but only one of those students when questioned by the committee appears to have corroborated her on the point. The substance of the evidence given by those other witnesses who were questioned (which evidence was partly in favour of the plaintiff and partly against him) was not communicated to him. Even with regard to the only specific allegation of Miss Balasingham with which the plaintiff was confronted on the dates on which he was questioned by the committee, namely, that she had copied eight or nine German words from a book in the plaintiff's possession which words occurred in the German passage in P3, no particulars appear to have been furnished to the plaintiff as regards the date, time or place of the incident. To put it shortly, the plaintiff was, several weeks after the examination, questioned about something which is alleged to have taken place several weeks before the examination and all the information given him was that these eight or nine German words from a list which appeared in a book belonging to him had been copied by Miss Balasingham into her book and that those identical words as underlined in the passage shown to him at the inquiry before the committee were to be found in the German passage set for the examination.

It is clear from the report P11 that the finding of the committee of inquiry that the plaintiff had acquired prior knowledge of the nature or substance of the German passage in P3 proceeded almost entirely from an acceptance of Miss Balasingham's evidence. There can be no doubt that on an acceptance of that evidence the Vice-Chancellor would have had ample ground to be satisfied that the plaintiff had improperly acquired that knowledge and to have reported the matter to the Board of Residence and Discipline for further action. It is also clear that the Board of Residence and Discipline in deciding to suspend the plaintiff indefinitely from all examinations of the University acted (as the Board was entitled to do) on the basis of the report of the committee without holding any independent inquiry. In the normal course the matter would have been finally concluded on the Board of Residence and Discipline giving their decision as there is no provison for an appeal from that decision either to any other authority of the University or a Court of law. The case for the plaintiff, however, is that in holding the inquiry the committee collectively or the Vice-Chancellor alone (if he is to be regarded as the person who held the inquiry) was performing a quasi-judicial function and under a duty to conduct it in accordance with the principles

of natural justice and that as these principles were disregarded the plaintiff is entitled to a declaration in these proceedings that the finding of the committee of inquiry or of the Vice-Chancellor, as the case may be, and the decision of the Board of Residence and Discipline are null and void and of no legal effect.

One of the reasons stated in the report P11 for accepting the evidence of Miss Balasingham is that she was able to describe the incident alleged by her "with a wealth of circumstantial detail, of no direct relevance to the story as such, which carried conviction". Although "the wealth of circumstantial detail" given by Miss Balasingham was not directly relevant to her story the committee of inquiry did consider it relevant for the purpose of testing Miss Balasingham's credibility, but nowhere in the report is it stated what this circumstantial detail consisted of nor was it communicated to the plaintiff.

It appears that some time after the first sitting of the committee of inquiry (on the 21st May, 1952) Miss Balasingham was further questioned regarding the exercise book said to belong to the plaintiff and from which she alleged she had copied the German words. She then described that book as one with a blueish cover and of the same size as a University exercise book. The plaintiff was thereupon requested by the Vice-Chancellor, by his letter P5 dated the 28th May, 1952, to appear before the committee again on the 3rd June, 1952, and to bring with him all the exercise books which he had used during his course. The plaintiff duly appeared before the committee on the 3rd June, 1952, and produced only one exercise book. This was a University exercise book which the plaintiff had obtained prior to 1950. Twenty eight of the front pages in the book contained notes on Botany for the first examination in Science while the other back page contained a few more notes on Botany and three impressions of the rubber stamp of the Zoology Department, signed by the plaintiff and one of them bearing the date 7.12.48. Apparently this rubber stamp was available at all times to the students. In the middle of the book were five sheets on the right hand page of each of which was a drawing of the circulatory system of the rat. One of these drawings appeared to have been corrected by Dr. Crusz. The five pages referred to were of the same type of paper as the rest of the book, which also contained the correct number of sheets for a University exercise book. The cover and the pages of the book were in good condition but the binding thread appeared to have torn the cover. The book itself is not an exhibit in this case, and these observations as regards its condition and contents are taken over from the report P11 in which the committee's findings were communicated to the Board of Residence and Discipline. It appears from the same report that at the meeting of the committee at which the plaintiff produced the exercise book, but before he had done so, Miss Balasingham had been questioned whether she could remember anything specific about the book other than the German words and she stated that she thought that it contained a drawing of the arterial system of the rat because she had previously copied that drawing into the same exercise book into which she subsequently had copied the German words. There were in fact in Miss Balasingham's book copies of two of the drawings appearing in the plaintiff's book.

After the plaintiff had produced his book it was shown to Miss Balasingham who was, however, not prepared to assert positively that it was not the book from which she had copied the German words although she had no recollection that it contained any notes in Botany. Dr. Crusz was also questioned as regards the particular drawing in that book which he had corrected and which bore, in what appeared to be in his own handwriting, a remark he had made on the progress shown by the plaintiff as indicated by that drawing. Dr. Crusz stated in evidence at the trial that when he was questioned about that drawing by the Vice-Chancellor he identified it as undoubtedly one corrected by him, not only because it bore his own handwriting but also because he had an independent recollection of the matter. He also stated that the Vice-Chancellor seemed to be taken aback by this reply and that as the latter was sceptical of his assertion he suggested to the Vice-Chancellor that the opinion of a handwriting expert be obtained. No expert opinion was, however, obtained.

The exercise book produced by the plaintiff contained no German words at all, nor (presumably) did it bear any signs of erasures on any of its pages. The real evidence afforded by the book, the evidence of Dr. Crusz, identifying the particular drawing in it which he claimed to have corrected and the reluctance of Miss Balasingham to assert positively that it was not the book from which she copied the German words, were all in favour of the plaintiff. But the members of the committee of inquiry appear to have taken the view that there were circumstances justifying the suspicion that five sheets had been extracted from the middle of the book and five other sheets containing the drawings referred to had been removed from a similar book and interpolated so as to make it appear that this was the only book in plaintiff's possession from which it would have been possible for Miss Balasingham to have copied anything into her book. The main circumstances which influenced the Committee in entertaining this suspicion are (1) that the binding thread appeared to have torn the cover, possibly indicating that the thread had been removed and replaced by means of a stout needle ; (2) that the book opened readily at the centre page and there was a crease in a drawing on one page, suggesting that the book had been placed in a press ; (3) that that there was no explanation as to why the plaintiff should have stamped one of his Botany notebooks with the stamp of the Zoology Department and have signed and dated one of the impressions ; (4) that it was remarkable that although, as stated on an earlier occasion by the plaintiff, he made notes of his lectures in Zoology in files and drawing books, he should have at the end of his course entered in an old Botany exercise book his drawing of the circulatory system of the rat ; and (5) that the particular drawing which had been corrected by Dr. Crusz and bore his handwriting may have been " copied " and was not the original. The committee accordingly concluded that no inference, either favourable or unfavourable to the plaintiff, should be drawn from this book and decided to consider the allegation against the plaintiff only on such other evidence as was available. In my opinion, and with all respect to the members of the committee, most of the matters which raised this cloud of suspicion regarding the book were either too trivial or too speculative to have merited serious consideration.

It was, nevertheless, entirely within the competence of the committee to have entertained the suspicion that the exercise book produced by the plaintiff was a fabrication provided it was arrived at fairly and in good faith. Regarding the good faith of the members of the committee there can be no question. But it seems to me that what is disquieting about this part of the committee's investigation is that the plaintiff was at no time afforded an opportunity of explaining the allegedly suspicious features about this book. His explanation of these features, given after the report P11 and the final decision of the Board of Residence and Discipline had been communicated to him, is contained in paragraphs (*f*) to (*n*) of his letter P14 to the Vice-Chancellor. That on the ground of these suspicious features the committee should have decided to ignore the evidence relating to this book could not have been otherwise than detrimental to the plaintiff since if that evidence had been taken into consideration in the light of the plaintiff's explanation (had he been given an opportunity of tendering it in the course of the committee's inquiry) it may well have turned the scales in his favour.

Having considered the various matters to which I have drawn attention in this somewhat detailed summary of the proceedings before the committee of inquiry I have little hesitation in forming the opinion that, irrespective of the question whether the committee of inquiry or the Vice-Chancellor were performing a quasi-judicial or purely administrative function in holding the inquiry, the procedure adopted was unfair to the plaintiff in that it deprived him of a reasonable opportunity of testing the truth of the case against him or of presenting his defence and explaining various matters in regard to which adverse inferences were drawn against him. In my view it is no answer in justification of that procedure to say that the plaintiff at no time asked for an opportunity of cross-examining Miss Balasingham or to be given fuller particulars of the case he had to meet. It must be remembered that the plaintiff appeared before the committee of inquiry in the position of an accused without being represented by counsel or a friend, and it is hardly to be expected that in the circumstances he would have made these requests which, reasonable as they would have been, may have induced in him the apprehension that they could be misconstrued by the committee and have prejudiced his case.

Mr. Choksy on behalf of the defendant submitted that it would not be safe to assume that the extent and sufficiency of the proceedings before the committee of inquiry are fully reflected in the evidence adduced in this case, and that if this Court, acting on such an assumption, were to arrive at an adverse finding against the defendant in respect of those proceedings, it would virtually be condemning the defendant without having given the defendant an opportunity of placing the full facts before the court. There is, however, nothing in the cross-examination of the plaintiff or the evidence of Sir Ivor Jennings to suggest that all the material facts connected with the proceedings of the committee of inquiry had not been elicited at the trial. It is also to be noted that a substantial part of the plaintiff's case was that the findings of the committee of inquiry were null and void on the ground, *inter alia*, that they were contrary to the principles of natural justice. A specific issue incorporating

that ground was raised at the trial, and the cross-examination of the plaintiff and the evidence of Sir Ivor Jennings were, no doubt, mainly directed towards rebutting this part of the plaintiff's case. If there was other evidence material to the case which was available to the defendant, such evidence should, in my opinion, have been adduced at the trial and in the circumstances it cannot fairly be urged that the defendant had no opportunity of placing all the facts before the Court.

Two submissions made by learned counsel for the plaintiff at the hearing before us may be dealt with at this stage. The first of these was that the action of the Vice-Chancellor in appointing a committee of inquiry to investigate the allegation against the plaintiff amounted to an improper delegation of his functions and was illegal since under Section 8 in Part I of Chapter VIII of the General Act No. 1 the person to be satisfied is the Vice-Chancellor himself and no other, and he could not have delegated his functions under that section except in accordance with the specific provision which has been made in that behalf. Section 17 of the same Part and Chapter in which section 8 occurs provides that the Vice-Chancellor may delegate his functions under section 8 to the Dean of a Faculty. It was open, therefore, for the Vice-Chancellor to have delegated to Professor Mailvaganam, but not to Mr. Keuneman, the function of inquiring into the allegation against the plaintiff. The evidence given by Sir Ivor Jennings at the trial makes it clear, however, that he did not intend the appointment of the committee of inquiry to be a delegation of his functions, and that his object was only to have the assistance of the other two gentlemen in the elucidation of what he considered to be a serious allegation reflecting on the reputation of the University itself. This evidence has been accepted by the trial Judge. The very fact that Sir Ivor Jennings himself was a member of the committee of inquiry is inconsistent with a delegation. There is no procedure laid down in section 8 as to how the Vice-Chancellor should act in satisfying himself in regard to any of the matters dealt with therein. The submission that there was an improper delegation of the Vice-Chancellor's functions cannot, therefore, be accepted. The other submission was that the findings of the committee of inquiry, as set out in the concluding part of P11, represented the findings of the collective body and cannot be regarded as findings arrived at by the Vice-Chancellor. But the evidence of Sir Ivor Jennings is that as a result of the proceedings before the committee he was personally satisfied that the nature or substance of the German passage in P3 had become known to the plaintiff prior to the examination and that he drafted a report expressing his views and sent it to the other two members of the committee and they agreed with him. This evidence, too, has been accepted by the trial Judge. While it is possible that before the draft report was sent to the other two members Sir Ivor Jennings had discussed the matter with them and ascertained their tentative views and was to some extent influenced by those views in arriving at the findings against the plaintiff, I do not think that it alters the position that each member of the committee, including the Vice-Chancellor, was individually satisfied that the plaintiff had obtained prior knowledge of the nature or substance of the German passage in P3. This submission too must, therefore, be rejected.

I now come to the principal point on which this appeal was pressed, namely, that in the circumstances of this case the Vice-Chancellor, in holding an inquiry into the allegation against the plaintiff the truth of which allegation had necessarily to be decided on the evidence of witnesses (though not evidence in the strictly legal sense), was performing a quasi-judicial function and that such inquiry had to be conducted in accordance with the principles of natural justice. In the determination of this point much assistance is derived from some of the judgments in English and local cases in which the powers of the Courts have been invoked to quash by writ of *certiorari* the decisions of various administrative bodies. It was stated by the Privy Concil in the case of *Nakkuda Ali v. Jayaratne*[1] that in the exercise of the powers granted under section 42 of the Courts Ordinance in regard to the issue of prerogative writs the Supreme Court should be guided by the relevant rules of English common law. The circumstances as to when the English Courts would issue these writs have been laid down in the oft-quoted passage from the judgment of Lord Atkin in the well-known case of *Rex v Electricity Commissioners. Ex Parte London Electricity Joint Committee*[2] which reads as follows: "whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs".

In the present case it is not disputed that in inquiring into the allegation against the plaintiff the Vice-Chancellor purported to do so on the basis that he was clothed with legal authority in that behalf (as indeed he was). But Mr. Choksy strenuously contended that in regard to the action taken by the Vice-Chancellor and the Board of Residence and Discipline no legal rights were involved, either of the plaintiff or any other person. His position was that no student of the University could claim a legal right to be allowed to sit for any University examination and that, on the contrary, the matter was entirely within the discretion of the appropriate authorities of the University.

Section 6 (*b*) of the Ceylon University Ordinance, No. 20 of 1942, empowers the University to hold examinations for the purpose of ascertaining the persons who have acquired proficiency in different branches of study, and section 32 provides that the conduct of such examinations shall be prescribed by Statutes, Acts and Regulations made under the Ordinance. Chapter V of the General Act No. I deals with the conditions under which a student becomes eligible to sit for examinations for first degrees, while Chapter VIII of the same Act deals with examinations procedure. Under section 10 in Part II of Chapter V a candidate for the final examination in science is required to have passed or been exempted from the first examination and to have followed to the satisfaction of the Vice-Chancellor for at least two years the courses prescribed by regulations made by the Senate in the subjects in which the candidate presents himself for examination. Presumably, when the plaintiff presented himself for the examination to which this case relates he had fulfilled the

[1] *(1950) 51 N. L. R. 457.* [2] *(1924) 1 K. B. 171 at 205.*

conditions imposed under section 10. But even where those conditions had been fulfilled by a candidate, section 8 of Part I of Chapter VIII empowers the Vice-Chancellor to suspend him from the examination, while under section 14 of the same part the Board of Residence and Discipline may suspend him indefinitely from any University examination. It seems to me, therefore, that even though a right to sit for a particular examination is not conferred in specific terms on a student of the University, it is implicit in the provisions to which I have referred that such a right exists subject, however, to the powers conferred on the Vice-Chancellor and the Board of Residence and Discipline under sections 8 and 14 respectively of Part I of Chapter VIII of the General Act No. 1. It would follow, then, that if, as may be presumed, the plaintiff had fulfilled the conditions imposed under section 10 of Part II of Chapter V of the General Act No. 1, he acquired a right to sit not only for the examination held in March and April, 1952, in the subjects which he offered but also any future final examination in science in the same subjects which may be held by the University authorities, and such a right could only be taken away by appropriate action under the provisions of the above-mentioned sections 8 and 14.

In my opinion, therefore, the present case would fall within the ambit of the observations of Lord Atkin which I have already quoted, provided, of course, there was imposed on the Vice-Chancellor, or on the Board of Residence and Discipline, in respect of the action taken against the plaintiff, a duty to act judicially, and the question whether there was such a duty I shall now proceed to consider.

On this question the argument in appeal followed the usual pattern in such cases, and numerous decisions of the English and Ceylon Courts were cited to us. Having regard, however, to the importance to either side of the issues involved, no criticism can be made of learned counsel for having taken up several days of hearing in a detailed scrutiny of these decisions, but as stated by Lord Radcliffe in delivering the judgment of the Privy Council in *Nakkuda Ali v. Jayaratne* (*supra*), "the basis of the jurisdiction of the Courts by way of *certiorari* has been so exhaustively analysed in recent years that individual instances are now only of importance as illustrating a general principle that is beyond dispute," and he added that the general principle is most precisely stated in the passage quoted earlier by me from the judgment of Lord Atkin in *Rex v. Electricity Commissioners* (*supra*).

Mr. Choksy laid great stress on the words "where the Vice-Chancellor is satisfied . . . . ." in section 8 of Part I of Chapter VIII of the General Act No. 1 as indicating that, inasmuch as the Vice-Chancellor is the person to be satisfied, no duty to act judicially is imposed, and he submitted that this view is confirmed by the absence of provision requiring an inquiry of any kind to be held by the Vice-Chancellor, or giving a right of appeal to the candidate adversely affected from any order made by the Vice-Chancellor under this section. He also pointed out that such order cannot be set aside even by the Board of Residence and Discipline,

empowered though the Board be to deal further with the matter in the manner specified in section 14 on receiving the Vice-Chancellor's report in terms of section 8.

The effect of language similar to that occurring in section 8 was considered in *Weeraratne v. Poulier* [1] by Dias, J., who came to the conclusion that no duty to act judicially was imposed. That case, however, dealt with the revocation of an authority granted to a dealer in certain controlled commodities under the Food Control (Special Provisions) Regulations, 1943. The regulations do not appear to have conferred a right in any dealer either to obtain the authority which had been revoked or to continue to enjoy the status of an authorised dealer once that authority had been granted. In *Dankoluwa Estates Co., Ltd. v. The Tea Controller* [2] the question whether words of a similar nature implied a duty to act judicially was also answered by Soertsz, J., in the negative. But the decision did not turn on the wording alone but on other considerations as well. In *Point of Ayr Collieries Ltd. v. Lloyd-George* [3] and *Robinson and Others v. The Minister of Town and Country Planning* [4] the effect of equivalent phraseology was considered and the Court held that there was no duty imposed to act judicially. In both these cases the making of the orders which were the subject matter of the proceedings had been entrusted by the legislature to a Minister of State who in arriving at his decision was, it would seem, entitled to take into account questions of policy and expediency and they are, therefore, to be distinguished from the present case. It is also to be observed that in *Nakkuda Ali v. Jayaratne* (*supra*) the judgment emphasised that there is no general principle that phraseology such as under consideration excluded an objective test and their Lordships took the view that the words "Where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer", in the particular regulation the interpretation of which arose in that case, imposed a condition that there must in fact have existed such reasonable grounds, known to the Controller, before he could validly exercise the power of cancellation of a licence issued to the dealer. Notwithstanding this interpretation, Mr. Choksy relied on the ultimate finding in that case, that the Controller was under no duty to act judicially or quasi-judicially when applying the regulation, as supporting his submission that the Vice-Chancellor too is not required to act in a similar way when proceeding under section 8. But, as I understand the grounds for that finding, they were that when the Controller revoked a licence granted to a dealer he was only taking executive action to withdraw a privilege and not determining any question involving the legal rights of the dealer; and that there was nothing in the bare words of the regulation itself from which a duty to act judicially could be inferred. I have already stated why in the present case I consider that legal rights of the plaintiff were involved in the action taken by the Vice-Chancellor as well as the Board of Residence and Discipline. Moreover, when one looks at the reasons as set out in the letter P4 and in the evidence of the Vice-Chancellor for appointing a committee of inquiry it is apparent that the matter was not one which could have been disposed

[1] *(1947) 48 N. L. R. 441.*
[2] *(1941) 42 N. L. R. 197.*
[3] *(1943) 2 A. E. R. 546.*
[4] *(1947) 1 A. E. R. 851.*

of by executive action alone. The allegation, he said, was an extremely serious one which affected not only the plaintiff but also the reputation of the University and " a formal inquiry " was necessary so that the public may be satisfied and because if there had been a leakage from the University it was his duty to report it to the University Council for disciplinary action. Mr. Weerasooria who appeared for the plaintiff stated from the Bar, and it was not contradicted by learned counsel for the defendant, that as long as the order of suspension against the plaintiff stood he would be precluded from continuing his academic career not only at the University of Ceylon but also at any other university.

As observed by Lord Atkin in *General Medical Council v. Spackman*,[1] in the absence of specific provision in that behalf, the procedure to be followed by bodies which are not strictly judicial bodies would necessarily vary with the kind of case which they are called upon to investigate. His observations imply that where the matter to be investigated is an allegation of a grave nature which, if made out, would have serious consequences affecting the legal rights of the person whose conduct is called into question, a more strict procedure than otherwise is to be insisted on. In the present case, having regard to all the circumstances, it seems to me that the question of the truth or falsity of the allegation against the plaintiff could not fairly be determined except by the application of the judicial process or a form of procedure closely analogous to it. To adopt the dictum of Parker, J., in *Rex v. Manchester Legal Aid Committee. Ex Parte Brand and Co., Ltd.*,[2] the Vice-Chancellor or the committee of inquiry had to decide the matter " solely on the facts of the particular case, solely on the evidence before them and apart from any extraneous considerations. In other words, they must act judicially . . . . " Parker, J., also pointed out in that case that " the duty to act judicially may arise in widely different circumstances which it would be impossible, and indeed, inadvisable, to attempt to define exhaustively ".

Mr. Weerasooria drew our attention to two decisions of long standing authority where it has been held that even purely domestic tribunals such as committees of clubs, which under the rules have the power to expel a member on the ground of misconduct, are under a duty to act judicially in the exercise of such power. In *Fisher v. Keane*[3], although the decision proceeded on the failure of the committee of a club to follow the rules governing the expulsion of a member, Jessel M. R. observed that a committee functioning on such an occasion must act according to the ordinary principles of justice and should not convict a man of a grave offence which shall warrant his expulsion from the club without fair, adequate and sufficient notice and an opportunity of meeting the accusations brought against him. In the leading case of *Labouchere v. The Earl of Wharncliffe*[4] power was given under the rules to the committee of a club to take certain action towards the expulsion of a member if " in the opinion of the committee " such action was called for. It was clearly stated by the Court that although it had nothing to do with the

[1] *(1943) A. C. 627 at 638.*
[2] *(1952) 1 A. E. R. 480 at 490.*
[3] *(1879) 11 Ch. D. 353.*
[4] *(1879) 13 Ch. D. 346.*

question whether the judgment of the committee, having the facts fully before them, might be right or wrong, it was, nevertheless, concerned whether the accused had been given fair notice and due inquiry had been made. No authority was cited to us where the correctness of these decisions was questioned. It seems to me that these decisions do indicate that the committee of a club function as a quasi-judicial tribunal when proceeding under the rules against a member of the club for alleged misconduct.

Two other cases cited by Mr. Weerasooria show to what extent the Courts in England have gone in holding that decisions of purely administrative bodies come within the range of the jurisdiction of the Court in *certiorari*. These are *Rex v. Boycott and others. Ex parte Keasley* [1], and *The King v. Postmaster-General. Ex parte Carmichael* [2]. In the latter case Lord Hewart C.J. expressed the opinion that the certificate of a medical officer, issued under certain statutory provisions and relating to the question whether the person to whom the certificate referred was suffering from a particular disability or not, was of the nature of a judicial act and a fit subject for *certiorari*. But it is not necessary, I think, that for the purpose of the present case I need to rely on these cases.

While neither the Vice-Chancellor nor the Board of Residence and Discipline can be regarded as purely domestic tribunals they would, nevertheless, be statutory bodies inasmuch as they are constituted under the provisions of the Ceylon University Ordinance, No. 20 of 1942. But I do not see any reason why the same considerations should not be applicable to statutory bodies as well when functioning in similar circumstances as domestic tribunals.

In the present case an inquiry was necessary in order to decide on the truth of the allegation against the plaintiff. The legal rights of the plaintiff were involved. No question of policy or expediency arose. I would hold, therefore, that the Vice-Chancellor was under a duty to act judicially when he investigated the allegation and reported on it to the Board of Residence and Discipline. In my opinion the learned trial Judge came to a wrong conclusion on this question. I also hold, for the reasons already stated by me, that the investigation of the Vice-Chancellor was not made in accordance with the principles of natural justice and is not, therefore, valid for the purposes of any action which the Vice-Chancellor could have taken under section 8 of Part I of Chapter VIII of the General Act No. 1.

With regard to the Board of Residence and Discipline, the position would appear, however, to be different. Even in the circumstances of this case no inquiry into the allegation against the plaintiff need have been made by the Board in taking action under section 14 of Part I of Chapter VIII of the General Act No. 1, as all that the section requires is that there should be before the Board a report (in this instance from the Vice-Chancellor). The Board was under no duty even to inquire on

[1] (1939) 2 *K. B. D. 651.* [2] (1928) 1 *K. B. D. 291.*

what material the Vice-Chancellor arrived at any finding contained in the *report. In any event, they* were entitled to assume that the report had been made after due inquiry. The decision taken by the Board under section 14 in this particular case cannot be regarded as anything more than a purely administrative or executive one. In arriving at that decision there was no duty imposed on the Board, therefore, to act judicially, although different considerations might have arisen had the Board too decided to hold an independent inquiry into the allegation against the plaintiff. This view does not, however, conclude the matter.

Mr. Choksy conceded that even though the acts of the Board of Residence and Discipline under section 14 be of a purely administrative or executive nature, they could, nevertheless, be set aside by the Courts in appropriate proceedings where they are shown to have been performed without jurisdiction or in excess of jurisdiction as, for example, where the conditions prescribed for the performance of the acts had not been satisfied. The principle on which the Courts will intervene in a purely administrative decision has been explained in *Lee v. The Showmen's Guild of Great Britain* [1]. See also, *In re Bracegirdle.* [2] When one looks at section 14, it is clear that the only condition precedent for the Board taking any action under it is that there should be a valid report before the Board. If in the present case the Board acted without any report at all, or on a report purporting to be by the Vice-Chancellor but which subsequently turned out not to have been made by him, the decision of the Board, however *bona fide* arrived at, cannot be supported as having any legal effect. So also a report made by the Vice-Chancellor but without due inquiry (having regard to the duty imposed on him to act judicially) cannot be regarded as a valid report for the purpose of enabling the Board to take action under section 14.

Had the present proceedings been by way of *certiorari* the plaintiff would undoubtedly have been entitled (assuming that the conclusions reached by me are sound) to an order quashing the report of the Vice-Chancellor. But Mr. Choksy contended that this action was wholly misconceived and that it is not open to the District Court, nor equally to this Court sitting in appeal, to grant the relief asked for in the prayer in the plaint. His argument on the point was twofold : firstly, that such relief as the plaintiff claims can be obtained only on an application in the first instance to this Court by way of *certiorari* and, secondly, that as no right of appeal has been granted from the finding of the Vice-Chancellor or the decision of the Board of Residence and Discipline under sections 8 and 14 respectively of Part I of Chapter VIII of the General Act No. 1, the District Court has no jurisdiction, in any event, to entertain such an action as this.

In England the jurisdiction to issue writs of *certiorari* is exclusively in the Queen's Bench Division. But there are numerous instances where the validity of orders, for the quashing of which a writ of *certiorari* would

[1] *(1952) 2 Q. B. D. 329.* [2] *(1937) 39 N. L. R. 193.*

have issued, has been successfully challenged by proceedings for a declaration and injunction instituted in the Queen's Bench Division or the Chancery Division. Two such instances are *Fisher v. Keane* (*supra*) and *Labouchere v. The Earl of Wharncliffe* (*supra*), both being cases where an injunction was applied for in the Chancery Division to restrain the committees of certain clubs, which had made orders of expulsion of the plaintiffs from the clubs on the ground of misconduct, from interfering with the plaintiffs' enjoyment of the use and benefit of the clubs. Both actions were brought on the basis that the orders of expulsion were null and void, and the injunctions applied for were granted. If I am right in the view expressed earlier by me as to the effect of the decisions in those cases, the orders which were impugned could have been quashed by writ of *certiorari*, but it does not seem to have been even argued that the alternative remedy of an injunction was not available to the plaintiffs. In *Barnard and Others v. National Dock Labour Board and Others* [1], which was an action filed in the Queen's Bench Division for a declaration that an order of suspension made by a statutory board was unlawful, the point was specifically taken that the only way in which the decisions of the board could be questioned was by writ of *certiorari*. The Court of Appeal rejected this contention and granted the declaration. It should be stated, however, that in that case the Court took the view that proceedings by way of *certiorari* would not have been open to the plaintiffs as the illegality which vitiated the decision of the Board came to light long after the time for the writ had run.

In the present case, too, it would seem that against the purely administrative or executive decision (as held by me) of the Board of Residence and Discipline suspending the plaintiff indefinitely from all University examinations, the remedy of *certiorari* is not available to him. If, therefore, any legal remedy be open to him at all it would be by way of an action for a declaration that the decision of the Board is null and void. Plaintiff's substantial grievance arises out of this decision. With regard to Mr. Choksy's submission that even this remedy is not available to the plaintiff inasmuch as no appeal from the decision of the Board lies, the point was considered in *Barnard and Others v. National Dock Labour Board and Others* (*supra*), the decision in which is against Mr. Choksy. The judgment of Lord Justice Denning in that case as well as the authorities cited by him clearly show that, particularly where the remedy by *certiorari* may not be available, the Courts will intervene by declaration and injunction notwithstanding the absence of a right of appeal. Moreover, if, for the reasons stated by me, the report P11 is not a valid report, the decision of the Board in acting on it would be in excess of the jurisdiction conferred on the Board under section 14; and it is well settled law that a non-appealable order made without, or in excess of, jurisdiction has not the conclusive effect which the legislature may have intended when it withheld the right of appeal.

On the basis that the decision of the Board is invalid, a cause of action as defined in section 5 of the Civil Procedure Code would clearly have

[1] *(1953) 2 Q. B. D. 18.*

accrued to the plaintiff to obtain the declaration claimed in these proceedings and in my opinion the learned trial Judge was wrong when he held that the District Court had no jurisdiction to entertain this action.

The judgment and decree appealed from are set aside and decree will be entered declaring that—

(i) the finding of the committee of inquiry contained in the report P11

and (ii) the decision of the Board of Residence and Discipline suspending the plaintiff indefinitely from all University examinations

are null and void and of no legal effect. The plaintiff will be entitled to his costs both here and in the Court below.

T. S. FERNANDO, J.—I agree.

Appeal allowed.