THE REBIRTH OF NATURAL JUSTICE

1

On the 20th of June 1950 Lord Radcliffe, speaking for a Board consisting of himself, Lords Porter and Oaksey, Sir John Beaumont, and Sir Lionel Leach, delivered the judgment of the Judicial Committee of the Privy Council in the case of *Nakkuda Ali* v. *M. F. De S. Jayaratne.*[1] The appellant was a textile dealer in Ceylon, and as such needed a licence from the Controller of Textiles in order to continue his activities. The Controller had originally granted him a licence, but had later cancelled it on the ground that he was unfit to be allowed to continue as a dealer. The appellant then endeavoured to have this decision overturned in the courts of Ceylon by a proceeding in the nature of certiorari. In this he was unsuccessful, both in the local courts and in the Privy Council. And indeed, to judge from the recital of the facts by Lord Radcliffe, he had nothing to complain about. But in the course of delivering the judgment which produced this result, Lord Radcliffe uttered a number of propositions which seemed to overthrow the long-standing rule that a man is entitled to be heard in his own defence before he is penalised, and to open a path whereby licensing authorities of all kinds, in the absence of express statutory provision to the contrary, might exercise their powers in an arbitrary and tyrannical manner free from any judicial supervision. It is scarcely surprising, therefore, that the decision at once drew strong criticism from those who had interested themselves in the problems of administrative and constitutional law.[2]

It is not possible to pretend that Lord Radcliffe's remarks stand alone in the Law Reports. Although the common law has traditionally affirmed throughout many centuries that the King, and thus the whole executive branch of government, is under God and the law, signs were clearly discernible, throughout the nineteen-forties,[3] that the courts were gradually letting slip their control of executive authorities; and indeed it might be said that such signs had appeared much earlier in the twentieth century.[4] The trend itself could be greeted with elation or dismay, according to one's individual predilections. Some might say that the relaxation of judicial control was a desirable democratic development, on the basis that,

1. [1956] A.C. 66.

2. See, for example, H. W. R. Wade, "The Twilight of Natural Justice?", (1951) 67 *L. Q. Rev.* 103; Keir & Lawson, *Cases in Constitutional Law* (4th ed.), 346; S. A. de Smith, *Judicial Review of Administrative Action,* 131-2; R. F. V. Heuston, *Essays in Constitutional Law,* 175 - 6.

3. See, for example, *Liversidge* v. *Anderson,* [1942] A.C. 206; *Franklin* v. *Minister of Town and Country Planning,* [1948] A.C. 87.

4. See, for example, *Local Government Board* v. *Arlidge,* [1915] A.C. 120.

in theory at any rate, the voters, working through their elected legislatures, could ultimately and adequately control the administrative arm, whereas they could not control an irremoveable judiciary. Others might rather deplore the waning of an age-old tradition, and point out that in fact the elected representatives were proving powerless to control the administration. But neither side could deny the existence of a trend — one which perhaps reflected the awareness of the judges that in the long run they might not be able to hold out against the strong demands of an executive which had come to control the legislature in fact if not in theory.

It is fair to say, though, that Lord Radcliffe's remarks did more than echo a trend. They reinforced it and gave it an added impetus. Although the decisions of the Privy Council do not in strictness bind the English courts, the latter in practice showed a tendency to treat the decision in *Nakkuda Ali* as a binding authority.

When, therefore, some eleven and a half years later, Mr. Charles Field Williams Ridge emerged from the Court of Appeal, having heard his appeal dismissed, he might well have had cause to believe that all was lost. He had been the Chief Constable of the County Borough of Brighton, and had been dismissed from that office by the Watch Committee without a hearing. The dismissal was not entirely unwarranted, but none the less the failure to afford him a hearing gave him a good deal more to complain about than Nakkuda Ali had. He had appealed unsuccessfully to the Home Secretary, and had then brought suit against the Watch Committee, claiming a declaration that the purported dismissal was void and of no effect, and damages. The action was tried by Streatfield J., who at the conclusion of a hearing lasting some seven days dismissed the claim. The Court of Appeal, consisting of Holroyd Pearce, Harman and Davies L.JJ., listened to six days of argument, and the following day delivered considered judgments dismissing the appeal.[5] They apparently did not think that the case was one of great difficulty, or that it involved any great principle, for they refused leave to appeal to the House of Lords.

There was, however, a great deal at stake for Mr. Ridge. He had joined the Brighton Police Force in 1925, after serving for a year in the Burnley Police Force, and had risen through all the ranks to the position of Chief Constable. When he was dismissed in 1958, the fruits of over thirty years' long and arduous work were snatched from his grasp; not only was he disgraced, but he lost the pension which he had hoped to enjoy, before many months had passed, in an honourable retirement. It is true that he had been refunded the contributions he had made to the pension fund, but this must have been small consolation. Fortunately, in his hour of need, he had good legal advisers. Perhaps they had read the comment of Professor S. A. de Smith on *Nakkuda Ali* that

> "It would be rash to conclude from the experience of the past few years that the day of the *audi alteram partem* rule in English administrative law is almost done. The time has not yet arrived to think of pronouncing obsequies or writing obituary notices. The comatose must not be assumed to be moribund." [6]

5. Both proceedings are reported in [1936] 1 Q.B. 539; see also [1961] 2 All E.R. 523 (Q.B.D.), [1962] 1 All E.R. 834 (C.A.).

6. De Smith, *Judicial Review of Administrative Action,* 136.

Be this as it may, Mr. Ridge sought leave to appeal from the House of Lords itself, whose Appeal Committee gave him leave a few weeks later.

Some months elapsed while the case was in preparation, and ultimately the case was argued before the House. Once again, the argument required much time (eight days, to be precise), but unlike the courts below, the House was apparently impressed by the strength of the appellant's case, for they deliberated for four months before delivering their decision. Then, on the 14th of March 1963, they gave their opinions allowing the appeal by a majority of four to one.[7]

There can, I think, be little doubt that their Lordships' decision represents an important landmark in the development of administrative law. For the occasion was taken to re-examine the whole matter of the right to a hearing, and to restate some fundamental principles which were in danger of being eroded into useless ruins. No new law was made; but the old law was restated in a clear and forceful manner, and some unnecessary obstacles which had crept into the reasoning of the comparatively recent decisions were ruthlessly eradicated. In fairness to the courts below, it must be said that many of the cases which were cited by their Lordships were not cited in argument to Streatfield J. or the Court of Appeal. At the time of writing, the Appeal Cases report has not reached me, so that I am unable to say whether these additional cases represent the fruits of the industry of Mr. Ridge's counsel or their Lordship's own research.[8] In any event, many of the cases were well-known and easily available, nor were the courts below precluded from using them by any rule of binding precedent.

II

In order to grasp the importance and implications of this great decision, we must first appreciate the salient facts. I have already pointed out that the immediate cause of Mr. Ridge's action was his dismissal by the Watch Committee after more than thirty years' service. But, of course, the story does not begin there. The Watch Committee may have acted swiftly and harshly, but they did not act irrationally — although, as I shall suggest, they did betray an ignorance of certain fundamental constitutional safeguards and principles. But in this, they were not alone.

During the years which followed Mr. Ridge's entry into the Brighton Police Force, he had a steady rise through the ranks.[9] He became a

7. *Ridge* v. *Baldwin,* [1936] 2 All E.R. 66 [1963] 2 W.L.R. 935. Numerologists will notice that the page number of the All England report is the same as that of the Appeal Cases report of *Nakkuda Ali.*
8. At the hearing before Streatfield J., Mr. Stanley Rees Q.C. appeared for the plaintiff. Doubtless as a result of his elevation to the Bench, the case was taken over in the Court of Appeal by Mr. Neil Lawson, Q.C. The argument in the House of Lords was presented by Mr. Desmond Ackner, Q.C. At all three stages Mr. J. L. E. Macmanus was junior counsel.
9. The statement of facts in the text is based on the various statements of facts by the judges in the three courts which dealt with the case, as supplemented by the statement of facts in *Hammersley, Heath, and Bellson,* 42 Cr. App. R. 209 (C.C.A., 1958). There was no dispute between the judges as to the facts, although naturally some judges laid stress on particular matters which were not thought by others to be of much importance.

detective sergeant in 1935, a detective inspector in 1948, detective chief inspector in 1949, detective superintendent in 1950, and deputy chief constable in 1954. When the post of chief constable became vacant early in 1956, he obtained it after an interview with the Watch Committee, in which he was in competition with four other candidates. Altogether, this would seem to be a fine record of service. But during the latter years it began to be clouded. Rumours grew that all was not well with the Brighton Police. It was said that men were being paid not to prosecute in various instances where breaches of the law were known to have occurred, in regard principally to gambling and licensing matters. It was further said that 'tip-offs' were given when raids were about to be made. The rumours gradually crystallised into definite accusations. It was alleged that the police were allowing a known receiver of stolen goods to continue his operations as regards goods stolen outside the Brighton area, in return for his agreement to notify the police when he was offered goods which had been stolen within the area. As a result, when officers from other Forces asked for co-operation from the Brighton men, they failed to get it. The finger was pointed at the Criminal Investigation Department, of which Ridge was a member, and finally detailed investigations were made. In the event, in October 1957 Ridge was charged, together with two other members of the Force, Hammersley and Heath, and two other men, with the offence of conspiracy to obstruct the course of public justice over a period from 1949 to 1957. He and his fellow-members of the Force were at once suspended from duty by the Watch Committee. They were tried in February 1958 before Donovan J. and a jury. The trial lasted for nineteen days, and at the end Ridge was acquitted, but the other police officers were convicted. The jury returned their verdict on February 27, and the next day sentence was passed on the convicted men. Donovan J. explained to them that he had decided to pass a sentence on them which, although severe, was less so than he might otherwise have decided to impose; and he stated his reason for following this course by saying:—

> "I am not going to prolong your ordeal, but there is this also to be said, and it is based not on disputed allegations but on facts admitted in the course of this trial. Those facts establish that neither of you had that professional and moral leadership which both of you should have had and were entitled to expect from the chief constable of Brighton, for if he could contrive, as he did, to go to a suspected briber of the police in private and alone it is small wonder that you, Heath, followed that example in the case of Mrs. Barbiner, and if he could admit, as he did, to his private room a much convicted and hectoring bookmaker and there discuss with him, almost as a colleague, the policy of the police in certain matters, well then, it is small wonder that you, Hammersley, saw little or no wrong in going off on holiday with a local man with a serious criminal record."

On the same day Ridge's solicitors wrote to the Watch Committee pointing out that their client had been acquitted of the conspiracy charge and requesting that he accordingly be reinstated. The Watch Committee took no action, however, doubtless because there was at the time another indictment pending against Ridge for corruptly obtaining a gift. On March 6 Ridge pleaded not guilty to that indictment, and the Solicitor-General, who appeared for the Crown, offered no evidence, whereupon the jury on the direction of Donovan J. found Ridge not guilty. As he was leaving the court, he saw that Donovan J. was addressing the Solicitor-General, and he paused near the dock out of courtesy but did

not actually hear what was said. He was soon to learn, however, for the judge's remarks were given wide press coverage. It had appeared during the course of the earlier trial that some members of the Brighton Police, but not Ridge himself, had obstructed enquiries into the theft of £15,000 worth of cigarettes, and Donovan J. was referring to that matter and speaking of the future of the Force and some of its members. He said to the Solicitor-General:—

> "It is not difficult now, however, to foresee the use to which the incidents I have mentioned, and others like them to be found in the case, will or may be put for the purpose of discrediting the officers of that force when they give evidence in future prosecutions, and the results in some cases may be unfortunate. This prospect and this risk will remain until a leader is given to that force who will be a new influence, and who will set a different example from that which has lately obtained. I realise that this is a matter which is about to engage the attention of those persons whose responsibiliy it is, and I have no desire to trespass upon their domain, but since the matter will also affect the administration of justice in the courts I felt it right to make these observations."

The following day the Watch Committee met. Its twelve members unanimously passed a resolution declaring that they had carefully considered the solicitors' application for Ridge's reinstatement, together with (a) the length of Ridge's service, (b) the conspiracy trial, (c) the two statements of Donovan J., (d) the statements made by Ridge at his trial, and (e) certain statements made that day by members of the Committee and by the Town Clerk, and had decided that Ridge had in their opinion been negligent in the discharge of his duty and was unfit for the same; and that they accordingly, in exercise of their powers under section 191 of the Municipal Corporations Act, 1882, dismissed him from his office of Chief Constable forthwith. It was further resolved that Ridge's pension contributions should be refunded to him, and that the text of the resolutions should be conveyed to him and his solicitors, and to the press. Ridge was not invited to this meeting, nor was he sent for; his first intimation of its occurrence came from a letter he received that afternoon informing him of what had been done. It should be added that although the Committee had before them a transcript of Donovan J.'s remarks, they had no transcript of the trial proceedings at this stage.

Immediately Mr. Bosley, Ridge's solicitor, wrote to the Home Secretary giving notice of appeal against the decision, contending that the dismissal was contrary to natural justice and bad in law. Three days later, on March 10, he sent a further letter to the Home Secretary stating that the appeal was without prejudice to Ridge's right to contend that the purported dismissal was bad in law as being contrary to natural justice and not in accordance with the appropriate statutes and regulations. Then on March 12 he sent in a formal notice of appeal specifying some thirty grounds. In this Ridge denied any neglect of duty or unfitness, and pointed out that he had been given no notice of what was alleged against him and no opportunity of being heard. He further said that by lodging the appeal he did not recognise the legality of the Watch Committee's action, that the appeal was without prejudice to his contention that the decision was invalid, and that the notice of appeal was only given within the limited time of ten days from the decision in case it should be held that the Committee's decision was valid.

During the same period Mr. Bosley also wrote to the Watch Committee asking to be allowed to appear before them. He specifically asked what was the case against his client so that he could deal with it, and stated that he would submit that the best way of dealing with the situation would be to allow Ridge to resign and have his pension. He also sent copies of his communications to the Home Secretary and some detailed written observations. The Watch Committee decided that they would meet to consider any representations made orally or in writing on Ridge's behalf, and that these representations need not be limited to the matter of retirement on pension. Mr. Bosley was informed of this, and accordingly on March 18 he appeared before the Committee and addressed them. They received him courteously but in silence. It seems clear that at this stage Mr. Bosley had before him the information contained in the original resolutions of March 7, but no other information as to what was alleged against Ridge. Consequently he did not know what were the statements made by members of the Committee and by the Town Clerk at the Meeting of March 7. Indeed, this has never been completely established, since the Watch Committee members did not give evidence at the trial before Streatfield J. On April 18, however, the Watch Committee sent to the Home Secretary a detailed statement of their contentions in opposition to the appeal. In the course of this they alleged that during the conspiracy trial Ridge had given false evidence to the effect that he had reported certain facts to the deputy town clerk and to the chairman of the Watch Committee, and further that he had reported another matter to his then Chief Constable. It is reasonable to suppose that this evidence was discussed at the meeting of March 7, and that the Town Clerk and the Watch Committee chairman then stated that no such reports had been made.

Mr. Bosley was not informed of the result of his efforts at the conclusion of his address on March 18, but in due course an extract of the minutes of that meeting was sent to him. This disclosed that by a majority of nine to three the Committee, after carefully considering all the material before them, had decided to adhere to their previous decision. Thereafter matters remained in abeyance until July 5, when the Home Secretary, who had decided (as he was empowered to do) that the case could properly be determined by him without hearing oral evidence, made an order dismissing the appeal. The order stated, presumably as the reason for dismissing the appeal, that in the opinion of the Home Secretary there was sufficient material on which the Watch Committee could properly exercise their power of dismissal under the 1882 Act.

Thereupon Mr. Ridge brought his suit against the twelve members of the Watch Committee. Its general nature has already been indicated. In order, however, to appreciate the various arguments which were put at the various stages of the action, it is necessary to state the principal provisions of the statutes and regulations which were drawn into the discussion.

The Municipal Corporations Act, 1882,[10] which re-enacted and repealed a number of earlier statutes, empowered Boroughs and County Boroughs to appoint constables, including a chief constable, and provides

10. 45 & 46 Vic., c. 50.

for the establishment in each Borough or County Borough of a Watch Committee to control the force so appointed. Section 191(4) provides that

> "The watch committee, or any two justices having jurisdiction in the borough, may at any time suspend, and the watch committee may at any time dismiss, any borough constable whom they think negligent in the discharge of his duty or otherwise unfit for the same."

The next step was the passing of the Police Act, 1919.[11] This set up police federations throughout the country, and empowered the Secretary of State to make regulations as to the government, mutual aid, pay, allowances, pensions, clothing, expenses and conditions of service of the members of all police forces within England and Wales. Regulations so made were to be complied with by every police authority. The Act went on to expressly repeal certain earlier provisions, including part of section 197 of the 1882 Act, but there was no mention of any repeal of section 191(4). Regulations were made by the Home Secretary from time to time and ultimately a new set of consolidating Regulations was made in 1952.

Regulation 1 of the Police (Discipline) Regulations, 1952,[12] refers to a list of matters set out in the First Schedule thereto and provides that any member of a police force who does any one of the enumerated acts commits an offence. It is not necessary to refer to the complete list, but mention should be made of the following First Schedule offences:—

1. Discreditable conduct.
4. Neglect of duty.
5. Falsehood or prevarication.
6. Breach of confidence.
7. Corrupt practice.
17. Conviction for a criminal offence.

Each of these offences is followed by a detailed definition setting out its precise scope. We need not consider these Regulations further (although it may be noted that they provide for a full hearing before action is finally taken against an offender), for they do not apply to chief constables, deputy chief constables, or assistant chief constables. The latter are dealt with by the Police (Discipline) (Deputy Chief Constables, Assistant Chief Constables, and Chief Constables) Regulations, 1952.[13] Regulation 1 of these Regulations, as modified by Regulation 18 is as follows:—

> "Where a report or allegation is received from which it appears that a chief constable may have committed an offence, the police authority shall, unless they are satisfied that he has not committed an offence, inform him in writing of the report or allegation and ask him whether or not he admits that he has committed an offence and give him an opportunity, if he so desires, of making to the police authority any oral or written statement he may wish to make concerning the matter."

11. 9 & 10 Geo. 5, c. 46.
12. S.I. 1952 No. 1705.
13. S.I. 1952 No. 1706.

Regulation 2 provides that if the offence is admitted the authority may proceed to impose a penalty without affording the man a hearing. Subsequent Regulations provide that if the offence is not admitted an investigating officer is to be appointed who will formulate an appropriate charge, following notice of which a hearing is to be held by a tribunal which reports to the police authority. On receipt of the tribunal's report the authority may make a decision either to dismiss the case or to impose a punishment (Regulation 11(1)) which in the case of a chief constable may be dismissal, requirement of resignation, or reprimand (Regulation 11(1)(b)). Regulation 15[14] empowers the police authority to suspend the alleged offender pending the formulation of charges and the hearing, and Regulation 21 defines 'offence' by reference back to the Police (Discipline) Regulations, 1952.

The practical difference between the punishments of dismissal and requirement of resignation appears from the Police Pension Regulations, 1955.[15] These entitle a man who is required to resign to receive the pension which has by that date accrued in his favour, whereas a dismissed man receives only a return of the contributions he has made to the pension fund.

Finally, we must mention the Police (Appeals) Act, 1927,[16] which by section 1 gave Mr. Ridge his right to appeal to the Home Secretary against the decision of the Watch Committee. Section 2 provides that the Home Secretary is to embody his decision on the appeal in an order, and goes on to state:—

> "(3) An order made by the Secretary of State under this section shall as soon as it is made be sent to the appellant and the respondent together with, if an inquiry was held, a copy of the report of the person holding the inquiry, and the order shall be final and binding upon all parties."

It was against this background of facts and statutory provisions that the action fell to be decided.

III

At the hearing before Streatfield J. the plaintiff put his case quite simply. He contended that despite the fact that the Watch Committee had purported to exercise its powers under the 1882 Act, it had not, in point of law, done so. For, he argued, the powers given by that Act had been impliedly repealed by the combined effect of the 1919 Act and the Regulations made thereunder. Those Regulations had not been complied with, for they required a hearing. It followed that the Committee's action was invalid in law and a nullity, and that the plaintiff had never been effectually dismissed.[17] It cannot be denied that this was a difficult

14. As substituted by the Police (Discipline) (Deputy Chief Constables, Assistant Chief Constables, and Chief Constables) Regulations, 1954; S.I. 1954 No. 1688.

15. S.I. 1955 No. 480.

16. 17 & 18 Geo. 5, c. 19.

17. In this account of the various arguments and judgments, I have concentrated on the main points discussed. Several subsidiary points were raised, but I shall not refer to them, as in my view they serve only to obscure the basic arguments.

argument to make successfully. Not only do the courts lean heavily against implying a repeal, but it could not be argued that there was an an implied repeal purely by the terms of the 1919 Act. The further step had to be urged that the Act authorised the making of the Regulations, and that as the latter were validly made under Parliamentary authority they had the effect, when made, of impliedly repealing the 1882 Act. It could, however, be retorted with equal force that a statute which authorises the making of Regulations does not (unless it plainly and unequivocally says so) authorise the making of Regulations inconsistent with the express terms of an earlier statute.[18] If this view were adopted, then the Police (Discipline) Regulations and the companion set applicable to Chief Constables would be invalid if they were in conflict with the 1882 Act. The plaintiff anticipated this line of argument and accordingly urged that the power given by the 1882 Act imported a requirement that the Watch Committee in exercising it should observe the principles of natural justice by giving the accused man a hearing. As this had not been done, once again it was said that their action was a nullity in law.

The defendants met these contentions in several ways. First they urged that the 1919 Act and Regulations had no impliedly repealing effect on the 1882 Act; the two sets of provisions remained in peaceful coexistence.[19] The Regulations were to be observed to the letter if they were appropriate; but in the present instance they were not, because the Watch Committee had never received a "report or allegation" *(cf.* Regulation 1), and hence a condition precedent to the operation of the Regulations did not exist. Thus the Watch Committee had properly exercised their powers under the 1882 Act. But in so doing they were acting in an administrative or executive capacity and not a quasi-judicial one. Hence they were not bound to observe the rules of natural justice. For these latter propositions counsel relied heavily on Lord Radcliffe's judgment in *Nakkuda Ali.* In any event, he urged, there was no failure to afford the plaintiff natural justice, for he had a full hearing at his trial before Donovan J. and had also been heard by the Watch Committee on March 18. Finally, even if the original decision had not been reached in accordance with proper procedure, it was merely voidable and not void. By appealing to the Home Secretary the plaintiff had estopped himself from denying the validity of the decision, and furthermore the Court was shut out from any form of review by the statutory provision that the Home Secretary's decision was to be final and binding on all parties.

In reply to this argument counsel for the plaintiff argued strongly that the Watch Committee's action under the 1882 Act was quasi-judicial in nature and required an observance of the rules of natural justice. He added that it would be unjust to treat the plaintiff as in any way estopped by appealing to the Home Secretary, and pointed out that the Privy Council had twice ruled that a person complaining of action taken against him by a tribunal should exhaust all internal remedies open to him before

18. Cf. Powell v. May, [1946] K.B. 330.

19. This phrase, first used by Mr. Neville Faulks, Q.C., in his argument for the defendants, attracted the approbation of Streatfield J. and the Lords Justices in the Court of Appeal. They refrained, however, from exploring its implications in the light of contemporary international politics.

appearing to the courts for help; on this point he cited *White* v. *Kuzych* [20] and *Annamunthodo* v. *Oilfields Workers' Trade Union.*[21]

In both the Queens Bench Division and the Court of Appeal the judgments deal extensively with the argument as to implied repeal in the light of some earlier decisions in those Courts, none of which seem to have been completely authoritative. As the question was finally settled by the House of Lords in the present suit, I shall not discuss the matter further at the present stage. It is enough to say that both Courts rejected the argument of implied repeal, and agreed that the 1919 Act and Regulations did not operate in this case, either because the allegations did not fall within them (Streatfield J.) or for want of a report or allegation (the Lords Justices in the Court of Appeal). Streatfield J. was of opinion that the 1882 Act required the observance of the principles of natural justice, but he thought that while the Watch Committee could have given Ridge a hearing "if they had desired to be particularly punctilious", they did in fact afford him natural justice in the circumstances, as he had made his case at the criminal trial. Furthermore, he thought that the plaintiff had waived his rights by appealing to the Home Secretary and that the Court was powerless to act in face of a statute which declared that official's decision to be final and binding.

In the Court of Appeal this latter point was regarded as decisive. Holroyd Pearce L.J. referred to it as a waiver by the plaintiff of his rights and Harman L.J. as an election. Davies L.J. preferred to base himself purely on the words of the statute. All three Lords Justices thought that the Privy Council decisions on the matter of exhausting internal remedies were not in point, since they were decisions dealing with the exercise of power by domestic tribunals as opposed to statutory bodies.

On what had, by reason of their ruling on the applicability of the 1919 Act, become the main question, the Lords Justices were largely in agreement. They were all of opinion that the powers given by the 1882 Act were of an administrative or executive nature, and did not require an observance of the rules of natural justice. Heavy reliance was placed by them on *Nakkuda Ali.* Harman L.J. stressed that "there was no *lis* and nothing to decide". The other Lords Justices were apparently moved, not so much by the fact that there was no *lis,* as by the words of the Act, which in their view gave the Watch Committee an almost complete discretion to decide what constituted neglect of duty or unfitness for office. As to whether the plaintiff had received natural justice at the hands of the Committee, Davies L.J. was of the view that he had not, and that the hearing afforded his solicitor on March 18 was not sufficient to cure the defect, since the Committee had already published to the press a decision which purported to be final. Harman L.J. discussed the pros and cons of the matter and summed his view up by saying that he felt great doubt whether the requirements of natural justice had been satisfied, although he thought that the Committee could still have changed their minds on March 18. Holroyd Pearce L.J. thought that any hearing on the issue of unfitness would have been a waste of time, partly because

20. [1951] A.C. 585.

21. [1961] A.C. 945.

of what had been said by Donovan J. and partly because the plaintiff had shown himself "completely irresponsible" by making an application for reinstatement at a time when an indictment for accepting a bribe was still pending against him.

This latter argument seems to be somewhat unfair. It certainly does not appear from the reports of the judgments that the solicitor was instructed by Ridge to write requesting reinstatement. It can of course be said in certain situations that a person is bound by the acts of his attorney, but scarcely for the purpose of attributing the attorney's irresponsibility to the client. In any event, it is far from clear that the request was irresponsible. It will be remembered that at the trial of the second indictment the Solicitor-General chose to offer no evidence, and no doubt he took this course because he realised, in the light of the fact that Ridge had been acquitted on the conspiracy charge, that the second indictment could not be successfully maintained. But a knowledge of the law and an ability to draw appropriate inferences from past events are not a monopoly of the Solicitor-General, and the fact that the second indictment could not be maintained may have been equally obvious to Mr. Bosley. Indeed, for all we know from the reports, the Crown may have indicated to him or to Ridge's counsel what its future action would be as soon as the result of the first trial was known.

Nevertheless, although he thought that there could clearly be no possibility of Ridge's retaining office, Lord Justice Holroyd Pearce was of opinion that he ought to have been given a hearing on the issue whether he should be dismissed or required to resign. He was not persuaded that the hearing on March 18 was sufficient to overcome this defect, and had Ridge not been wrong, in his view, on his other points, he would have set aside the Watch Committee's decision.

When the case reached the House of Lords, it was apparent that there were divergences of view among the judges below as to the various issues which had been argued; and accordingly many earlier cases of great importance, which had not been canvassed below, were examined. By a majority of four to one their Lordships held that Mr. Ridge was entitled to a declaration, and they remitted the matter to the trial judge to frame an appropriate order having regard to the fact that Ridge expressly disclaimed a desire to be reinstated and instead asked merely that the issue of dismissal or enforced resignation should be reopened, with its consequential effect on his pension rights. There was a considerable measure of agreement among the majority, although they approached the case with varying degrees of emphasis. Lords Reid and Hodson addressed themselves mainly to the exercise of the 1882 Act powers while Lords Morris of Borth-y-Gest and Devlin turned their attention mainly to the 1919 Act and Regulations.

It is perhaps convenient to take the latter point first. In agreement with the Court of Appeal, the Law Lords were clear that there had been no implied repeal of the earlier Act by the later. The two sets of provisions continued to exist side by side, for they were not co-extensive. The 1882 Act referred to unfitness as well as to negligence, and one can envisage cases of unfitness which do not import any measure of fault or blame on the part of the officer; for example, he might be unfit because

of ill-health. Their Lordships, however, examined the code of offences created by the Regulations and were unable to imagine any type of negligence in the discharge of duty within the 1882 Act which would not also fall within that code. And where a case is covered by the code of offences, they thought that the procedure laid down in the Regulations must be followed. To that extent, the power given by the 1882 Act had become controlled by the later provisions and must be exercised in conformity therewith. Applying this general view to the facts of the case, two things were at once apparent. At least two offences in the code — discreditable conduct and neglect of duty — clearly covered the kind of matter alleged against Ridge. (One could, I would suggest, add falsehood or prevarication, and breach of confidence.) Also, the Watch Committee in their resolution had purported to act on the ground of negligence, and it was therefore inapposite to discuss what would have been the position if they had acted on the ground of unfitness alone.

None of their Lordships, with the exception of the dissenting Lord Evershed, gave any weight to the argument that the Regulations were inapplicable because there had been no report or allegation to the Watch Committee. In their view, the Regulations made the receipt of a report or allegation a condition precedent to action, and if no such report or allegation had been received, then it followed that no action must be taken on any ground covered by the disciplinary code. But their Lordships did not see any great hardship in laying this down, for, as they pointed out, it is difficult to see how the Watch Committee could act unless they had before them a report or allegation from someone. They did not think that the phrase imported the existence of a formal document; rather was it intended to be as wide as possible. And if it were said that the Watch Committee acquired its knowledge from Donovan J.'s remarks or from the public press reports of the trials, then those remarks and press reports constituted the report or allegation. Lord Morris also pointed out that the Committee had apparently acted on information received from one of their number and from the Town Clerk, and those gentlemen must therefore have been furnishing a report or allegation.

This method of construing the Regulations, simple as it is, seems to be absolutely correct. It distinguishes clearly two matters which seem to have been inextricably and unjustifiably mixed up in the lower courts — the knowledge of the Committee as a committee, and the knowledge which its individual members may have possessed. Even if — and this cannot be assumed, and it is in any event a most improbable occurrence — all the members of the Committee have complete individual knowledge of every facet of the matter in question before the Committee meets, still their individual knowledge is a different thing from the knowledge of the Committee.[22]

If this point be kept firmly in mind, it is plain that there can be only three possibilities. The Committee may have acquired some knowledge of an intuitive or Kantian *a priori* kind; or a disciplinary offence may have been committed in their presence at a formal meeting; or they must

22. *Cf.* Dixon J.'s remarks in Fates v. *Vegetable Seeds Committee* (1945), 72 C.L.R. 37, 82 - 3. He is expressly referring to a deliberative assembly, but his remarks would seem, in principle, to be equally applicable to any corporate or composite body.

have received some report or allegation, of however informal a nature, from some source. The first of these cases could scarcely receive cognisance in a court of law. The third requires an observance of the Regulations. As for the second, which is highly unlikely to occur in practice, perhaps a failure to observe the letter of the Regulations might be understandable; but in any event, as we shall see, in such a situation there would still have to be a hearing of some kind.

At all events, the majority was quite unwilling to accept the argument that the Committee was entitled to act on Donovan J.'s remarks without treating them as a report or allegation. It is, however, I think, a little unfortunate that their Lordships did not place this particular matter in its proper constitutional perspective, being content merely to say that the judge's remarks were material to which the Committee could attach great weight at a proper hearing. In the Courts below, the judges went much further than this. They spoke as though once Donovan J. had made his remarks, the Committee had no other course open than to rid themselves of their Chief Constable. And Lord Evershed echoes this view in his dissenting speech in the Lords. Yet surely this is to flout the basic distinctions of our constitutional system. It is quite incorrect to say that a man on trial for crime is defending his conduct to the judge. The constitutional tribunal before which Ridge appeared was a jury, and that jury made no comment on his conduct other than to acquit him. It was not part of the judge's duty or office to comment on his conduct; from a strictly legal standpoint his comments were entitled to no more weight than those of, say, a newspaper reporter who had heard every word of the trial. Of course his position as a judge and an impartial observer lends weight to his comments. But they give them no legal status. Even within the framework of the trial, it is trite law that a judge's views as to the facts which have occurred and as to the morality of the parties do not bind the constitutional tribunal — the jury — and he will fall into error if he suggests otherwise to the jury.

It is proper to point out that Donovan J. himself stated at the conclusion of the second trial that he had no official status in the matter. Yet he contributed to the confusion which later arose that as a judge he was concerned with the effect of the proceedings on the administration of justice. But although a judge is in a loose sense officially concerned with the administration of justice, he is far from being concerned with every phase of that process. It is not his business to institute proceedings or to collect evidence, his responsibility as regards crime begins and ends with seeing that court proceedings are properly and regularly conducted. It is true that Donovan J. was addressing himself to the Solicitor-General, but it is again not that functionary's office to supervise the police, and in any event the judge must have been aware that his remarks would probably be reported, as indeed they were, in the press. He expressed concern that as a result of cross-examination of members of the Brighton Police Force, criminals might be acquitted. With respect, it would seem that cross-examination would normally be utterly irrelevant, and might well be disallowed by a trial judge if and when there was an attempt to indulge in it. Apart from making this point at Ridge's second trial, he apparently suggested, in passing sentence on the men convicted at the first trial, that a police officer is never justified in interviewing in private someone who has accused a man under his command, or in revealing police policy to a man who has been convicted. It may be that

in their particular context Ridge's conduct was undesirable, or at any rate unwise. But to lay down broad general propositions as to how a police officer should conduct his affairs is surely the function rather of an Inspector of Constabulary than a Judge. And it is, I think, a pity that the Law Lords did not comment on this aspect of the matter with a view to preventing a recurrence of such a situation in the future. The Watch Committee can scarcely be blamed for failing to appreciate that the judge's remarks did not bind them in any way to act; they were in error, but their error was shared by a number of judges.[23]

I would stress that this is no mere academic point. Not only does it touch some of our most important constitutional distinctions, but in the instant case the failure to appreciate it markedly affected the treatment received by the plaintiff in the Court of Appeal. Streatfield J. had inclined to the view that the case did not fall within the Regulations because he thought that the matters alleged against Mr. Ridge did not come within any of the defined offences in the disciplinary code. As has already been mentioned, the House of Lords thought that he was wrong on this point. But in the Court of Appeal the case agains the application of the Regulations was rested on the alleged absence of any report or allegation. And it is plain, on reading the judgments in that Court, that the Lords Justices could not bring themselves to think of Donovan J.'s remarks as constituting a report or allegation. This apparent mental blockage seems to have proceeded from a failure on their part to realise that Donovan J. had no greater (or less) status in the matter than any other person.

There was at least one other point in the case, though a minor one, where the views of the dissenting judges were coloured by a failure to distinguish matters within the special competence of the judiciary from matters which rightfully fall within the province of other officials. It was urged in argument that it would be utterly absurd to require the Watch Committee to afford a police officer who had been convicted and was in goal a hearing before dismissing him. The purpose of this was to lay a foundation for the further argument that the Regulations had not covered every type of case in which dismissal for misconduct might be appropriate. Lord Evershed accepted this argument in his dissent, and Streatfield J., who referred to it without disapproval, pointed out that in fact no notice under the Regulations had been served on the two officers who were convicted of conspiracy, that Ridge himself had conceded, when giving evidence before him, that had he been convicted he would not have expected to be served with such a notice. Yet being convicted of a criminal offence was expressly stated by the Home Secretary, in his Regulations, to be a disciplinary offence, and he made

23. A familiar example of the failure of the English judiciary to distinguish their judicial functions from other functions which are outside their province may be seen in their preparation of Rules for the guidance of the police in questioning suspected persons (the Judges' Rules). The legal foundation of these Rules seems to be shaky. From one point of view, it could be said that the task of lying down such rules properly belongs to an Inspector of Constabulary, or to the Home Secretary under the 1919 Police Act. From another point of view, the Rules could be considered to be an advisory opinion on the admissibility of evidence — yet traditionally the Judges do not give advisory opinions of a general nature.

provision in those Regulations for dispensing with personal service of notices and with the personal appearance of the accused man in any case where "owing to the absence of the accused, it is impossible to comply with the procedure prescribed".[24] So far from this being an absurd case which had not been foreseen when the Regulations were made (as one might infer from Lord Evershed's speech), it is a case which had clearly been foreseen and provided for.

To return to the speeches of Lords Morris and Devlin; one they had held that the Regulations applied but had not been complied with, the case became straightforward. Lord Morris relied on a general principle that where a set of rules gives power to take certain action in accordance with a stated procedure, then if the procedure is not followed the purported action is void and a nullity in law;[25] in short, he treated the provisions of the Regulations as being of a mandatory nature. Lord Devlin preferred to ask whether the Regulations had expressly made compliance with any particular procedural requirement a condition precedent to the act of dismissal. He did not think that a compliance with all the procedural requirements was such a condition, as there was no statement to that effect in the Regulations. But he drew attention to the fact that unless the accused man admitted the offence, the Regulations required the setting up by the Watch Committee of a tribunal to hear the case, and further stated that "the decision of the [Watch Committee] on receipt of the report of the tribunal shall be either to dismiss the case or to impose" certain stated punishments.[26] In his view this wording made it clear that receipt of a tribunal's report was a condition precedent to the imposition of the punishment of dismissal, and as there had been no such report, the purported dismissal was a nullity in law.

From this it followed that whether or not the hearing of March 18 was satisfactory, it failed to change the situation. For on that occasion the Watch Committee had merely voted to adhere to their previous decision, and there was, in the eye of the law, no previous decision on which this resolution could operate. For much the same reason, the decision of the Home Secretary dismissing the appeal could not bring the non-existent decision to life.

IV

This method of dealing with the case, though important enough from the plaintiff's point of view, would have made little change in the current pattern of English administrative law. It is to the speeches of Lords Reid and Hodson that we must turn to appreciate the broad impact of the case. It should be added that Lords Morris and Devlin did not dissent from the views of their colleagues, except (in the case of Lord

24. Police (Discipline) Regulations, 1952, Reg. 10(2).

25. In support of his general proposition he cited *Andrews* v. *Mitchell,* [1905] A.C. 78; *Lapointe* v. *L'Association de Bienfaisance et de Retraite de la Police de Montreal,* [1906] A.C. 535; and *Annamunthodo* v. *Oilfields Workers' Trade Union,* [1961] A.C. 945. Of course, countless other cases exemplify the same principle.

26. S.I. 1952 No. 1706, Regs. 5, 11(1).

Devlin) on one matter which will receive mention later; and indeed on some points they expressly stated their agreement with those views.

It will be recalled that in the Court of Appeal, approaching the Watch Committee's action as regulated solely by the 1882 Act, it had been held that the power was an administrative one which could be exercised without observing the requirements of natural justice. It was this ruling that Lords Reid and Hodson addressed themselves to, and they reached precisely the opposite conclusion.

The argument against the requirement of natural justice in the instant case can be put quite simply; (a) the earlier decisions establish that it is not necessary for a person or body exercising a statutory power to observe the principles of natural justice unless that person or body is acting judicially; (b) the Watch Committee was acting in an executive capacity, not judicially; (c) therefore they were not required to observe the principles of natural justice. It is an argument which requires careful examination (which it received at the hands of the two Law Lords), although we need not examine the early cases in any detail. It is, however, necessary to advert to certain difficulties of terminology which have confused the legal position in some of the cases.

Before doing this, it is worth mentioning that, for good measure, it was apparently urged by counsel for the Watch Committee that the phrase "natural justice" is so vague in meaning as to be quite useless for legal purposes. This was a point which had been made most forcefully many years earlier by Lord Shaw of Dunfermline in his speech in *Local Government Board* v. *Arlidge,*[27] where, after mentioning that in the Court of Appeal Hamilton L.J. (as he then was) had referred to the phrase as "sadly lacking in precision", he went on to say:—

> "In so far as the term 'natural justice' means that a result or process should be just, it is a harmless though it may be a high-sounding expression; in so far as it attempts to reflect the old *jus naturale* it is a confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions; and, in so far as it is resorted to for other purposes, it is vacuous."

This view was strongly repudiated by Lords Reid and Hodson. Lord Reid made a point of general applicability when he said, early in his speech:—

> "In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But it would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist. The idea of negligence is equally insusceptible of exact definition but what a reasonable man would regard as fair procedure in particular circumstances and what he would regard as negligence in particular circumstances are equally capable of serving as tests in law. .. ."[28]

It is heartening to read such a pronouncement emanating from the senior Lord of Appeal. The contrary notion, which it so vigorously controverts, has got abroad in many fields in recent years, and has found

27. [1915] A.C. 120, 138.

28. [1963] 2 All E.R., at 71, [1963] 2 W.L.R., at 939 - 40.

its way into legal discussions. Doubtless its popularity has been partly due to a desire by lawyers to keen up to date with some of the more modern schools of philosophy, notably the school of logical positivism. But the wheel is slowly coming full circle. Those who feel the need of philosophical support can note that Lord Reid's remarks would have commanded assent from the noted modern philosopher A. N. Whitehead. Others will find it enough that they embody good sense.

There was no doubt, as his Lordship pointed out, that what was meant in this case by saying that Ridge had not received natural justice at the hands of the Watch Committee was simply that they had failed to give him notice of their proposed course of action and an opportunity to be heard before action was taken against him. The requirement that one should always pay due attention to such matters is summed up in the Latin maxim *audi alteram partem* and this, together with another principle mentioned by Lord Hodson — that a person taking action against another in a situation of this kind should not be biassed, a principle often summed up in the Latin tag *nemo judex in causa sua* — would surely be acceptable to most lawyers as constituting the whole of the requirements of natural justice. In any given instance the details may have to be filled out by considering whether a particular type of interest constitutes bias or whether a particular type of notice or hearing was adequate. But of course in the present case these matters presented no difficulty.

If these be the requirements of natural justice, then in what circumstances does a duty to observe them arise? Over and over again in the cases one finds it said that if a person or body is acting judicially then he is bound to observe these requirements. And the proposition itself, with its corollary that the duty arises *only* in a case where the person or body is acting judicially, was the foundation of the Watch Committee's argument in the instant case. In recent years, however, a misunderstanding as to the true meaning of these propositions has arisen.

It will be recalled that in 1929 Lord Hewart, the then Lord Chief Justice of England, published his book *The New Despotism,,* which violently attacked the growing practice of allocating to special tribunals, or to government departments or ministers, the task of making decisions which had previously been reserved to the courts. The tribunals or departments which made these decisions were said to be acting in a quasi-judicial capacity, and the purpose of so describing them was to indicate that they were performing a task which could be, or perhaps had been in the past, performed quite competently by one of the regular law courts. Lord Hewart's book led to the setting up of a Committee on Ministers' Powers, which made its report in 1932.[29] As a result of Lord Hewart's book this Committee had been expressly directed to enquire into the powers of making delegated legislation or quasi-judicial decisions which were then being exercised by ministers. Naturally enough the Committee, in its Report, essayed a definition of a "quasi-judicial decision"; and having regard to the context of its enquiry, it is not surprising that it performed this task by first pointing out the elements of an ordinary judicial decision and then stating wherein a quasi-judicial decision

29. Cmd. 4060.

diverged from its prototype. In both types of decision, the Committee said, there was to be found a *lis* between two or more opposing parties which had to be decided; and the decision could be regarded as judicial if the *lis* fell to be decided in accordance with existing rules of law, whereas if it fell to be decided in accordance with considerations principally of policy the decision was a quasi-judicial one. Again, naturally enough, the Committee pointed out that it was well established that in reaching a quasi-judicial decision a minister or tribunal was bound to observe the rules of natural justice.

We need not stay to enquire whether the Committee's analysis was adequate. What happened, after it had reported, was that its work influenced the development of the law in two ways which it perhaps had not foreseen. The notion began to grow, and to be stated in the cases coming before the courts, that only if a tribunal was making a quasi-judicial decision was it bound to observe the rules of natural justice; and secondly, that there could not be a quasi-judicial decision unless there was a *lis*.[30] As a result of this process the notion of "acting judicially", which had pervaded the earlier cases, came to be equated with that of "making a quasi-judicial decision", as defined by the Committee on Ministers' Powers. But it is plain from a reading of the earlier cases that many of the bodies which were described therein as "acting judicially" were certainly not "making a quasi-judicial decision" as thus defined. There was nothing resembling a *lis* in *Bagg's* Case,[31] or in *Dr. Bentley's Case,*[32] or in *Cooper* v. *Wandsworth Board of Works,*[33] or in *Spackman* v. *Plumstead Board of Works;*[34] and it is not easy, without stretching the notion of a *lis,* to descry its existence in *Board of Education* v. *Rice*[35] or *R.* v. *Electricity Commissioners.*[36] Yet in all these cases it was accepted that the tribunal was acting judicially, to the extent that it had to observe the requirements of natural justice. Indeed, the essential feature of acting judicially, as it appears in these cases, seems to be that the tribunal is involved in a process of making a decision which affects individual parties, rather than the public at large or a large general group, and which requires the exercise of some discretion. Thus a body of commissioners who are engaged in assessing the amount of a rate are acting judicially, since they have to use their discretion in determining the amount; whereas if they are simply issuing a warrant for the enforcement of a rate they are said to be acting not judicially but ministerially.[37] Again, if the tribunal is engaged in the formulation of rules for future conduct which

30. A well-known instance is *Cooper* v. *Wilson,* [1937] 2 K.B. 309; see especially *per* Scott L.J. at 340 - 341.

31. (1615), 11 Co. Rep. 936, 77 E.R. 1271.

32. *R.* v. *University of Cambridge* (1723). 1 Stra. 557, 93 E.R. 698.

33. (1863), 14 C.B.N.S. 180, 143 E.R. 414.

34. (1885), 10 App. Cas. 229.

35. [1911] A.C. 179.

36. [1924] 1 K.B. 171.

37. *Per* Fletcher Moulton L.J. in *R.* v. *Woodhouse,* [1906] 2 K.B. 501, 535.

apply to a large body of persons, it may be said to be engaged in "proceedings towards legislation" and not to be acting judicially.[38]

From this it will be seen that a tribunal can be "acting judicially" although it is not doing anything which could be properly described as "deciding a *lis*". But the contrary view was postulated long enough to inject a source of confusion into some of the decisions. In *R.* v. *Manchester Legal Aid Committee*[39] the Divisional Court made a brave effort to eradicate the mistake, but unfortunately its words seem to have gone unheeded — perhaps because the merits of that case were so strong as almost to compel the result which the Court arrived at, and thus cast a shadow of doubt over the validity of the reasoning.

There was another, and perhaps even greater, source of confusion in the cases from 1924 onwards. This arose from Atkin L.J.'s famous dictum, in *R.* v. *Electricity Commissioners*[40] that "wherever 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" the writs of prohibition and certiorari. This has been expounded, and treated, almost as if it were a statutory provision, to be given a literal interpretation. As a result two glosses came to be placed on it— (1) that the element of "acting judicially" had to be found separately from the element of "determining questions" and (2) that if the question to be determined affected a "privilege" and not a "right" there could be no question of the body having to act judicially. The first of these glosses was clearly stated by Lord Hewart C.J. in *R.* v. *Legislative Committee, of the Church Assembly*[41] and was reiterated by Lord Radcliffe in *Nakkuda Ali;* and in the latter case Lord Radcliffe stated the second gloss quite clearly when he observed of the Controller that "in truth when he cancels a licence he is not determining a question; he is taking executive action to withdraw a privilege".[42] Not many years later this latter point was again taken up by Lord Goddard C.J. and made the basis of his decision in the *Cab Driver's Licence* Case.[43]

It would seem, however, that neither of these glosses is compatible with what Atkin L.J. said, if one reads his dictum in its proper context. Indeed, the whole history of this unfortunate matter is one of courts and counsel seizing on isolated sentences appearing in judgments and making these sentences, wrenched out of context, bear a totally different meaning from what was apparently their original purpose. There can rarely, if ever, have been a better example of the necessity of reading a judge's remarks *secundum subjectam materiam.*

38. *Per* Bankes L.J. in *R.* v. *Electricity Commissioners,* [1924] 1 K.B. 171, 198.

39. [1952] 2 Q.B. 413.

40. [1924] 1 K.B. 171, 205.

41. [1928] 1 K.B. 411.

42. [1952] A.C., at 78.

43. *R.* v. *Metropolitan Police Commissioner, Ex parte Parker,* [1953] 1 W.L.R. 1150.

The true scope of the dictum can best be appreciated by going back to the decision of the House of Lords in *Re Clifford and O'Sullivan.*[44] It will be recalled that in that case the appellants sought a writ of prohibition directed to a 'military court', which had been set up under a proclamation of martial law by the military authorities operating in Ireland in 1920. In answer to their claim it was urged that the writ could be issued only to persons or bodies which possess a jurisdiction derived either from statute or the common law; and that the 'military court' did not fit this description. The House of Lords accepted this view and made it the foundation of their decision. But in the course of delivering his leading speech in the House, Viscount Cave discussed the history of prohibition and began by describing it as "a judicial writ, issuing out of a court of superior jurisdiction and directed to an inferior court for the purpose of preventing the inferior from usurping a jurisdiction with which it was not legally vested, or, in other words, to compel courts entrusted with judicial duties to keep within the limits of their jurisdiction".[45] He went on to argue that the cases showed that a prohibition could not lie to a 'pretended court'; and he did not consider — nor was it in any way necessary for him to do so in the case at hand — exactly what was meant by the word 'court' in the definition which he had quoted.

Nevertheless, when writs of prohibition and certiorari were sought against the Electricity Commissioners several years later, his remarks were taken out of their context and made the foundation of an argument that since the Electricity Commissioners were not a 'court' they could not be controlled by either of the writs. The three members of the Court of Appeal (Bankes, Atkin, and Younger L.JJ.) all delivered judgments rejecting this argument and pointing out, with varying degrees of reference to earlier cases, that the writs had in the past been directed to many bodies which could in no sense be described as 'courts', although they were acting judicially in the broad sense described above. It was in this context that Atkin L.J. uttered his famous dictum, as an attempt to sum up the results of these earlier cases in which the writs had been issued to such bodies as the Poor Law Commissioners, the Tithe Commissioners, the Board of Education, and so forth. He was not attempting an exhaustive and carefully-worded definition which would serve for all future purposes, but rather summing up, in a general phrase, his reasons for rejecting an argument designed to narrow the scope of the two writs.

Perhaps the most important feature of the decision in *Ridge* v. *Baldwin* is that it has finally dispelled — or at least we may hope it has — these confusions. They are discussed and dealt with in the two splendid speeches delivered by Lords Reid and Hodson. Lord Hodson, while not recapitulating the earlier authorities which his colleagues Lords Reid and Morris had discussed, thought that two matters emerged clearly from them. First of all, the presence or absence of a *lis* between opposing parties would not provide a decisive answer to the question whether the tribunal was bound to observe the requirements of natural justice; although, he added, if there were such a *lis* this would involve the necessity for the application of those principles. Secondly he pointed out — and

44. [1921] 2 A.C. 570.

45. [1921] 2 A.C., at 582; he was citing a description given by Short and Mellor, *Practice of the Crown Office* (2nd ed.), 252.

this is really a corollary to his first proposition, as the above history has indicated — that the problem could not be resolved by asking whether the tribunal was acting in an executive or administrative capacity, as if that were the antithesis of saying that it was bound to act judicially.

Lord Reid confined himself mainly to the argument that the requirement of "acting judicially" must be super-added (by the relevant legislation) to the authority to make the decision or carry out the function. He pointed out that in a long list of cases extending over three centuries or more, the courts had frequently derived a duty to observe the requirements of natural justice from the nature of the function which was being exercised. And he went on to give it as his opinion that indeed Atkin L.J. had in *R.* v. *Electricity Commissioners* himself inferred the need to so act from the nature of the function conferred upon the Commissioners. This latter demonstration could perhaps be challenged, for it seems that the legislation under which the Commissioners were acting did in fact expressly require them to afford a hearing to the interested parties before making their decision. But Lord Reid might with equal force have pointed out that Atkin L.J.'s statement cannot really bear the interpretation placed upon it by Lords Hewart C.J. and Radcliffe, since in the sentence with which he followed his dictum — and which he introduced by the connective "thus", indicating that the sentence is intended to illustrate his general proposition — Atkin L.J. cited with approval two decisions[46] in neither of which was there any trace of a super-added requirement that the tribunal should act judicially.

Having thus disposed of these obstacles and confusions, the way was clear for a decision whether the task of dismissing a Chief Constable on the ground of neglect of duty or unfitness necessarily involved a requirement that he first be given a hearing. In point of fact since the Watch Committee had purported to act on both these grounds, it was sufficient for their Lordships to decide whether a dismissal on the ground of neglect of duty necessarily involved a hearing. And they had no doubt that it did. Lord Reid carefully examined what he described as "cases of dismissal" and pointed out that they fell into three main classes —

(i) dismissal of a servant by his master;

(ii) dismissal from an office held during pleasure; and

(iii) dismissal from an office where there must be something against a man to warrant his dismissal.

He pointed out that dismissal of a servant by his master is a matter which lies solely in the sphere of contract and that there thus cannot be a reason for the law to impose any requirement of a hearing. As he said, the master can terminate the contract at any time for any reason or for no reason at all and the only requirement of the law is that if he does so in a manner not permitted by the contract he must pay damages for the breach; in deciding such a question it would only be relevant to enquire whether there had been a prior hearing if the contract provided, either expressly or by implication, for a hearing to be given. As for the case Where an office is held at pleasure, clearly there could be no requirement

46. *R.* v. *Inhabitants in Glamorganshire* (1700), 1 Ld. Raym. 580, 91 E.R. 1287, *R.* v. *Poor Law Commissioners* (1837), 6 A. & E. 1, 112 E.R. 1.

of a hearing, since there is no issue of any kind to be decided by the person who exercises the power to dismiss.

Ridge's case, however, came within the third category. The terms of the Municipal Corporations Act, 1882, expressly provided that the Chief Constable could not be dismissed by the Watch Committee unless they had something against him — that is to say, unless they were alleging that he had neglected his duty or was unfit for it. It is true, as Lord Evershed pointed out, that the section did not impose a purely objective test of negligence or unfitness, but on the contrary referred to the dismissal of persons "whom they [the Watch Committee] think" negligent or unfit. Lord Evershed regarded this phrase as giving the Watch Committee an uncontrolled discretion. But it is difficult to reconcile his opinion on this point with his likening of the power given by the 1882 Act to that conferred on the Controller in *Nakkuda Ali;* for it will be recalled that in the latter case the Privy Council was at pains to point out that the discretion vested in the Controller was very far from being uncontrolled and purely subjective.

Lord Reid had no serious doubts as to what the answer in *Ridge's Case* should be. He pointed out — and he was fully supported in this by Lords Morris and Hodson — that an unbroken line of cases had held that where dismissal is predicated on there being something against a man, then that man cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation. (Lord Devlin, who preferred to rest his decision on the construction of the 1919 Act and the Regulations, did not deal with this point, although he was at pains to state that he did not dissent from the view that a decision under the 1882 Act was not purely administrative.)

Once this main point was decided the remaining issues in the case were resolved without great difficulty. None of their Lordships who constituted the majority was prepared to attach any importance at all to the argument that the case was so plain that there was no point in giving Mr. Ridge a hearing. On the contrary, as they pointed out, there are some clear decisions in which the courts have held that a hearing must be given so as to afford accused men an opportunity of making an explanation, even though the person making the decision is already fully acquainted, by reason of his own personal knowledge, with the observable facts.[47]

If, then, the failure to give a hearing vitiated the decision of March 7 did the proceedings of March 18 cure the defect? There was clear authority, which no one was disposed to question, for the proposition that in a case of emergency action might be taken without giving the person concerned a hearing, provided that he is subsequently given a proper hearing in which there is a possibility that the emergency decision may be reversed; *De Verteuil* v. *Knaggs.*[48] But while this proposition was not questioned by their Lordships, those in the majority were of opinion that it had no application to the facts of the instant case, for in

47. For example, *Capel* v. *Child* (1832), 2 C. & J. 558, 149 E.R. 235.

48. [1918] A.C. 557.

their view the proceedings of March 18 did not constitute a proper hearing. They pointed out that Mr. Ridge's solicitor was at that hearing still unacquainted with the details of the charges made against his client and was thus unaware of the case which he had to meet. And they stressed that a hearing cannot be regarded as adequate unless the person who is afforded it is given adequate notice of the matters alleged against him so that he can prepare his answer. It seems difficult to quarrel with this analysis, although Lord Evershed managed to do so in his dissent. But he was content to rely upon the Watch Committee's statement, as recorded in their minutes of the proceedings of March 18, that the solicitor had been given "the fullest opportunity to make such representations as he should think fit"; and he did not stay to enquire whether this opportunity could have been much use to an advocate from whom there had been concealed the details of the matters about which he was being given the opportunity to make representations.

In any case, it may be questioned whether the matter was one of emergency in the sense postulated by *De Verteuil* v. *Knaggs*. Lord Evershed certainly expressed his view that it was, but he seems to have been unduly impressed by the notion that once Donovan J. had uttered his remarks at Ridge's trials they were sufficient to call for immediate action. I have already pointed out the underlying fallacy in this line of reasoning; and it should now be added that if this was an administrative matter — as Lord Evershed and the Lords Justices of Appeal seem to have thought — then surely the administrators might be considered better judges of the question of emergency than the courts. If this be granted, it is plain that the administrators felt no great sense of urgency. Mr. Ridge formulated his grounds of appeal against dismissal within ten days of the decision, as he was required to do by the relevant Regulations. But the Watch Committee did not formulate their reasons in answer to Ridge until the middle of April — almost a month later. And the Home Secretary, having received all the documents, spent the next two-and-a-half months considering them before he made up his mind to dismiss the appeal. This all seems to show that no great sense of urgency was felt. And surely this was the correct approach. After all, Ridge had been under suspension for some months when these questions arose, and until they were finally decided his suspension would continue. No doubt it was desirable that the whole matter should be resolved as soon as reasonably possible, but this is a far cry from saying that there was a situation of emergency. In *De Verteuil* v. *Knaggs* it would seem, from the statement of facts, that the Governor took his emergency action because he considered that life or limb might be threatened. This is not to say that emergencies will only arise in cases of a similar kind. There may be quite different kinds of emergencies — as, for example, where bad food has to be condemned and disposed of at once, so as to avoid the possibility of disease. But these are true emergencies and should not be confused with sham ones.

Since there had been no proper hearing, what effect did this have upon the decision to dismiss Mr. Ridge? Lords Reid, Morris and Hodson were all of the opinion that where it is a common law requirement to afford a hearing and no hearing is given, then the action taken without complying with this requirement is void and a nullity in law. For this

proposition they cited several cases, notably *Wood* v. *Woad.*[49] Lord Evershed, however, was of the opinion that such a decision was not void, but merely voidable, and in this he was supported by Lord Devlin (the latter, however, was of the opinion that the decision in the instant case was void for lack of compliance with a condition precedent imposed by the Regulations). Lord Evershed subjected *Wood v. Woad* to an exhaustive analysis for the purpose of showing that it did not bear the construction placed on it by Lord Reid and that in truth it left the matter in some doubt; and in support of his own proposition as to voidability he cited the decision of the House of Lords in *Osgood* v. *Nelson.*[50] It is not necessary for our present purpose to analyse again these cases; although it may be pointed out that Lord Evershed's exegesis of *Osgood* v. *Nelson* seems to have been possible only because he omitted from his citations certain phrases and sentences which others might regard as crucial to a proper reading of the case. But, as Lord Morris pointed out, it is misleading to import into this discussion the distinction between voidness and voidability which is derived from the law of contract and which is of importance where titles and rights of third parties are concerned. In situations such as the present one the matter lies entirely between the two contending parties; and if the dismissing authority, when the defect is pointed out to them, nevertheless refuse to rescind their decision, then it becomes necessary for the dismissed man to take a stand. If he acquiesces in the view of the authority no further question can arise. If he does not acquiesce he will be forced to go to the courts for redress. It is certainly possible to describe this position as one pointing to voidability rather than to voidness, but to describe it either way does not seem to get the matter much further.

The reason for raising the point was that the Watch Committee had argued that when the Home Secretary dismissed Ridge's appeal his action operated to cure all prior defects. They based their argument partly on the fact that the Act giving the right of appeal stated that the Home Secretary's decision should be final and binding. None of the majority was, however, prepared to give these words the wide effect contended for them. In fact, courts normally construe such phrases as meaning no more than that they cannot reopen the facts of the transaction and re-hear the case from the beginning; and as in the present instance nobody was asking them to do this, the statutory words do not seem to have much relevance. The other contention of the Watch Committee was that in appealing to the Home Secretary Ridge had recognised the validity of the original decision. It was in opposition to this latter argument that Ridge's counsel urged that since the decision was a nullity there was nothing to be recognised or in any way confirmed by the Home Secretary.

The true answer to the Watch Committee's contention, however, seems to be that given by Lords Reid and Morris. The Watch Committee's argument was in effect an attempt to set up against Ridge something in the nature of an estoppel; an alternative way of describing it, which found somewhat greater favour in the Court of Appeal, is to use such words as 'waiver' or 'acquiescence'. But it is almost impossible to see how such an argument could be set up when throughout the course of his appeal to the Home Secretary Mr. Ridge was at pains to state, at

49. (1874), L.R. 9 Exch. 190.

50. (1872), L.R. 5 H.L. 636.

every stage, that in his view the original decision was totally invalid and that his appeal was taken without prejudice to his rights to argue its invalidity in the courts. What the situation would have been if he had failed to do this it was not necessary to decide. Their Lordships gave no consideration to the point, nor did they attempt to anticipate what their decision might be in a case where the Home Secretary made an investigation of the facts *de novo* and gave a decision based on that investigation.

V

The foregoing account has, I fear, been somewhat lengthy; but the importance of the case is such that it demands a careful analysis, and this should have emerged from the preceding pages. It will readily be seen from what has been said that not only the actual decision itself, but the general manner of approach adopted by the majority in the House of Lords, has gone a long way to restoring the concept of natural justice to the position of eminence which it once held in our jurisprudence. It may be hoped, with some confidence, that this attitude will be adopted by other courts in future cases and that we shall not see a repetition of such decisions as *Nakkuda Ali.* The latter case was not expressly overruled (nor, as a pure matter of authority, could it have been) ; but it was referred to in scathing terms by Lord Reid, and it is accordingly unlikely to be followed in future by English courts. In other jurisdictions, where it is still a binding precedent, the question will arise whether it can be distinguished. And here Lord Reid offered a helpful suggestion. He pointed out that there may be cases in which the legislature, in empowering a person or tribunal to perform some function which would normally bind him to observe the rules of natural justice, may substitute for that obligation another obligation, such as that he or it should not act without reasonable grounds. And he added that the legislature might well be thought to have followed this course in those cases where it had been acting in wartime. For, as he said, wartime secrecy alone would often require that the principles of natural justice should be excluded and the need for speed and the general pressure of work during such a period of emergency would be additional pointers to a possible exclusion. Nor could it be expected that the legislature would expressly state that the obligation to afford a hearing was being excluded, since such a statement would be almost calculated to create the alarm and despondency which it would be seeking to prevent. *Nakkuda Ali* was a case which arose under wartime Defence Regulations and it will thus in future be possible to distinguish it upon this ground. It may be added that Lord Reid did not suggest that courts should normally look for the possibility that natural justice had been excluded, and indeed his language suggests that he would regard the Defence Regulations cases as the only ones in which courts should adopt this method of interpretation.

There are, however, several other questions which are left open by the decision. Two minor ones are (i) would it ever be possible for a Watch Committee to exercise its powers under the 1882 Act without observing the requirements of natural justice?,[51] and (ii) what is the true

51. At the time of writing there is pending before the United Kingdom Parliament a Police Bill which, *inter alia,* repeals sec. 191(4) of the 1882 Act and gives the Watch Committee a new power. It is expressly stated that before the power can be exercised the accused man must be given an opportunity to make representations.

relationship between the right to appeal to the courts and the right to pursue an administrative appeal? There is also a much more important question which is left open, namely, what (if anything) is left of the suggestion that the requirements of natural justice must be observed if the tribunal is determining a question affecting a right, but not if it is determining a question affecting a privilege? The remainder of this article will be concerned with an examination of these three questions.

It was not necessary to decide the first of them, but the problem was adverted to in several of the speeches. Lord Reid expressly stated his view that the power of dismissal under the 1882 Act could not be exercised until the Watch Committee had informed the constable of the grounds on which they proposed to proceed and had given him a proper opportunity to present his case in defence. The context, however, suggests that he was directing his mind mainly, if not exclusively, to cases where the power was to be exercised on the basis of some act of alleged misconduct. Lord Morris, however, pointed out that the reference in the Act to unfitness, and the use of the qualifying word "otherwise" to introduce that reference, suggested that the power was intended to cover situations where there was unfitness apart from misconduct or lack of care, and perhaps even apart from any physical or health condition. In view of his extended interpretation of the power he was unwilling to express a final opinion whether a hearing must be given if there were no suggestion of negligence and the dismissal were based purely on unfitness. He added, however, that it would be desirable and reasonable to give a man an opportunity to be heard even in such a case. In somewhat similar vein, Lord Hodson pointed out that since there was a power now to require an officer to resign it was unthinkable that the power of dismissal would be exercised if there were no suggestion of misconduct; and since he was of the view that there must be a hearing if there were such a suggestion it would seem to follow that in his view the power to dismiss under the 1882 Act could never be exercised without giving a hearing.

As to the second question, the way in which the majority dealt with the case made it quite unnecessary for them to express any general view. The only member of the House to refer to *Annamunthodo* v. *Oilfields Workers' Trade Union*[52] (which had loomed large in the Courts below) was Lord Morris, and then merely as an incidental reference which is not relevant to our discussion. There is nothing, therefore, in the speeches in the House of Lords which deals with the view expressed in the Court of Appeal that the rule requiring an exhaustion of internal remedies is one applicable only to domestic tribunals. Yet it is difficult to see why that view should prevail. There is surely no special quality about domestic, as opposed to statutory, tribunals which calls for the application of such a rule to the one but not to the other. In the United States it has long been a settled rule[53] that a person who wishes to complain to the courts about the action of a statutory administrative tribunal must normally first exhaust all the internal remedies open to him. Indeed, this rule has on occasion been driven to extremes and been held to bar

52. [1961] A.C. 945.

53. For a full discussion of the rule see K. C. Davis. *Administrative Law Treatise,* Vol. 3, ch. 20.

resort to the courts before internal remedies have been used, even though it is plain that there is no real dispute as to the facts and that the sole point of disagreement is one purely of law which will eventually reach the courts.[54] On the whole, however, the rule has worked well and there is much to be said for the development of a similar rule in English law. It can even be said that there is a precedent for such a rule; for it is difficult to find any other basis for the decision of the Court of Appeal in *Ex parte Fry.*[55]

The final question is the really difficult one; and we can only await the development of the law in future cases to ascertain its eventual resolution. It is true that *Ridge* v. *Baldwin* makes it quite plain that normally a tribunal or official will not be able to take action to deprive a man of his office on the grounds that a statutory condition requiring something against him has been satisfied, unless the requirements of natural justice have been observed. The only exception to this recognized by Lord Reid is, as mentioned above, the case where, under a Defence Regulation, the safeguard of natural justice has been replaced by some other safeguard which will enable the man to raise his claim in court if he feels that he has been unjustly dealt with. Lord Reid also mentioned that certain other decisions of ministers or tribunals may involve a very different type of question which will not call for the observance of these requirements. He instanced the case of a minister considering whether to make a scheme for an important new road, and pointed out that his primary concern would be with various questions of public interest, and perhaps a number of alternative schemes, but not with the damage which the construction of the road would do to the rights of individual landowners. In such cases it would not always be necessary to afford the individuals a hearing, since their claims are merely a subsidiary aspect of the case.

As, however, the right to continue in such an office as that of Chief Constable has traditionally been considered by the common law as a type of property, there is still room for the argument that in cases where the official's decision affects 'privileges' and not 'rights' there need be no hearing. It is true that Lord Reid spoke in a most scathing manner of the decision in *Nakkuda Ali,* but Lord Evershed in his dissenting speech expressly stated his agreement with that decision, and Lord Hodson retreated "to the last refuge of one confronted with as difficult a problem as this" and said that each case depends on its own facts. Lord Devlin did not advert to the matter; and Lord Morris also made no express reference to it, but the general tenor of his remarks indicates that he was of much the same mind as Lord Reid.

One difficulty with the distinction between 'rights' and 'privileges' is that the cases which have used it have never set out clearly the basis on which it is being made. Students of jurisprudence have been made familiar with the distinction by the works of such writers as Hohfeld.[56] It will be recalled that Hohfeld endeavoured to make a clear distinction

54. For example, St. *Lukes Hospital* v. *Labor Relations Commission,* 320 Mass. 467, 70 N.E. 2d. 10 (1946).

55. [1954] 2 All E.R. 118.

56. See his article "Fundamental Legal Conceptions", (1919) 28 *Yale L.J.* 721.

between 'rights', 'privileges', 'powers' and 'immunities', and later writers have followed up and developed this distinction. The terms all describe different relations which may exist legally between two or more persons; and the basic distinction between a 'right' and a 'privilege' is that a 'privilege' entitles a man to perform some act without hindrance by the law, although other persons may not be entitled to do the same thing, whereas a 'right' involves a claim on his part to require some other person to perform, or abstain from, some act affecting his interest. The distinction is no doubt a valuable one for many purposes, and there are many contexts in which confusion can occur if it is not observed. But it is difficult to see precisely why or how it should or can be usefully applied in the field of law at present under discussion. Indeed, much may depend upon the point of view from which the legal relationship is being analysed. Suppose that — as in *Nakkuda Ali* — it is enacted that a man may trade in textiles if he has a licence from a Controller, and that his licence can be withdrawn by the Controller only if certain conditions are satisfied. Doubtless from the point of view of his relationship with the world at large the trader may be said to possess only a 'privilege' in the shape of his licence; but as between himself and the Controller it would seem that he has a 'right' to demand that the licence should not be withdrawn unless the statutory conditions are satisfied.

This does not seem to take us much further. But I would respectfully suggest that in those cases where a distinction has been drawn between a 'right' and a 'privilege' the judges are using this terminology to advert to a quite different matter. There is a long line of cases, discussed by Lord Morris in his speech in *Ridge v. Baldwin,* holding that a tribunal may not deprive a man of his property on some stated ground without first giving him an opportunity to be heard. *Cooper v. Wandsworth Board of Works*[57] is one of the best known of these cases. There are also some cases which discuss the precise legal position of a man who has a licence to enter upon the land of another, and which distinguish between one who has a mere personal licence and one who has a licence coupled with an interest.[58] Generally speaking, the position of the former is much more precarious than that of the latter, since a mere personal licence can normally be withdrawn at will (unless there is a contract to the contrary which is supported by either consideration or the use of a seal). It can easily be understood, therefore, that a person who has a mere personal licence and whose remedies, in the case of withdrawal, lie solely in contract (if he has any remedies at all) is sometimes said not to possess property, whereas a man who has a leasehold interest or a fee simple does possess property. It is thus not too difficult a step for a court to say, by analogy to these cases, that if an administrative process involves the grant or withdrawal of a personal licence to carry on some occupation or activity then it is not governed by the principle which requires an observance of the requirements of natural justice where property rights are to be affected. And it would seem that in making his statement that the Controller in *Nakkuda Ali* was taking executive action to withdraw a 'privilege' and not determining a question affecting 'rights'

57. (1863), 14 C.B.N.S. 180. 143 E.R. 414.

58. See, for example, *Wood* v. *Leadbitter* (1845) 13 M. & W. 838, 153 E.R. 351.

Lord Radcliffe must have had in mind a distinction of this kind.[59] It is not truly one between 'right' and 'privilege' in a Hohfeldian sense, but rather one between what has traditionally been classed as property and what has not.

Nevertheless, it is a distinction which does not have to be made and which, it is submitted, ought not to be. Surely the reason underlying the cases dealing with property 'rights' is based not on some abstract juristic analysis of those rights but on the practical consideration that property rights are assumed to be of value to their owner and that to deprive him of them involves in effect inflicting a penalty on him. This links these cases with the other line of cases, including *Ridge* v. *Baldwin* itself, in which it is laid down that a man cannot be deprived of his office without being heard because this would be to penalize him.

It does not, however, by any means follow that, because a licence personal to its holder is not property in a traditional sense, it can be withdrawn without in any way penalizing the holder. It is true that if, under the statutory provisions setting up the licensing function, the licence is one which can be withdrawn at the mere whim of an official, then its holder's position may be considered so precarious that the licence is in the eyes of the law a thing of no value. But where the licence can only be withdrawn if certain conditions are first satisfied then the holder will normally be able to look forward to continued enjoyment of it; and it may easily be regarded as valuable property in his hands. Of course it is not at valuable as transferable property, but there is no reason why a court should fail to recognize that it possesses some value and to treat it as akin to a proprietary right. This step was taken by Napier J. in *James* v. *Pope;*[60] and it apparently did not cause him any difficulty nor does there seem to be any reason why it should trouble other judges.

If this analysis is correct then it would seem that the decision in *Nakkuda Ali* could not be supported except on the basis that the discretion of the Controller to withdraw the licence was unfettered. And although Lord Evershed analysed the decision thus in his speech in *Ridge v. Baldwin* that analysis does not seem consistent with the earlier part of Lord Radcliffe's judgment in *Nakkuda Ali,* in which he was at pains to distinguish the decision in *Liversidge* v. *Anderson*[61] from the case with which he was dealing. It is also submitted that what has been described above as the correct mode of approach will only be obscured if attempts are made in the future to continue to cast it in terms of 'rights' or 'privileges'.

These, however, are matters which only the future can decide. For the moment we can only applaud the decision in *Ridge* v. *Baldwin* and hope that the spirit which pervades it will be found in the decisions which are yet to come. Some of the more recent cases which have been discussed in these pages, and which received strong criticism at the hands

59. Lord Goddard C.J. expressly drew this parallel in *R.* v. *Metropolitan Police Commissioner, Ex parte Parker,* [1953] 1 W.L.R. 1150.

60. [1931] S.A.S.R. 441.

61. [1942] A.C. 206; referred to, by Lord Reid in *Ridge* v. *Baldwin,* as a "very peculiar decision of this House".

of their Lordships, reflect a tendency to the view that the increased complexity of modern administration demands an abandonment of the old rules which were applied to administrative bodies in certain types of case. Adverting to this, Lord Reid pointed out in his speech that of course some of the old powers, rules and procedures are largely inapplicable to cases which they were never designed or intended to deal with. He went on to say, however, that he saw nothing in that fact to justify one thinking that the old methods are any less applicable today than ever they were to the older types of case. And he added that any dicta in modern authorities pointing to the latter conclusion should not be followed. Words such as these have on previous occasions fallen from the lips of the Law Lords, but they have not always been heeded. Let us hope that in this instance there will be no repetition of that situation and that as a result of this decision the concept of natural justice will be reborn.

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