CASE NOTES

R. v. BJELKE-PETERSEN AND ANOTHER, EX PARTE PLUNKETT[1]

Crown proceedings — Certiorari — Review of decision by committing magistrate to discharge defendant in private prosecution — Whether possible by way of prerogative relief — Grounds on which relief will be granted

In Brisbane on 29 July 1976 there was a confrontation between students and police during the final stage of a street procession for which a permit had not been issued. That night television news bulletins featured film of the confrontation and showed the striking of a young woman by an identifiable police officer using a baton. The next day a complaint was lodged with the Commissioner of Police, who then undertook to instigate enquiries into the incident. The undertaking was communicated to the Minister for Police and publicized. Four days later, the Queensland Premier, Mr Bjelke-Petersen, held a press conference and stated that as the result of a Cabinet decision no enquiry was to take place. After a twelve month lapse Mr Plunkett (the prosecutor) swore a complaint alleging that Mr Bjelke-Petersen (the defendant) conspired with others 'to prevent the enforcement of the Police Act 1937-1973 (Qld) relating to the investigation of certain complaints that had been made to the Commissioner of Police'.

COMMITTAL PROCEEDINGS

At the conclusion of the committal proceedings Latchford C.S.M. (the second-named defendant) made several findings. He found on the evidence that a complaint had been made to the Commissioner of Police, 'who detailed two of his senior officers to make enquiries and notified his decision to the Minister for Police';[2] he also found that the Commissioner 'subsequently received a direction not to proceed with that enquiry'.[3] The contents of the defendant's press conference were accepted in evidence and quoted in part by Latchford C.S.M. in his decision. In particular, he quoted the defendant's statement:

> Well, Cabinet considered very carefully the report that Mr Hodges [the Minister for Police] brought today on the information that we had and decided that there wouldn't be an enquiry. We decided that if there should be an enquiry it ought to be against those who broke the law and those who defied the police order and the authority of the police . . .[4]

and also the defendant's statement that there was unanimous support in the Cabinet for the decision, which left the Minister for Police and the Commissioner to comply with it.

Having ruled that 'it was the Cabinet which decided there would be no enquiry, not the defendant as an individual',[5] Latchford C.S.M. dismissed the complaint, since he could not be satisfied 'that each or any particular member [of the Cabinet]

[1] [1978] QdR. 305 (F.C.).
[2] Latchford C.S.M.'s decision in *Record of Proceedings: Plunkett v. Bjelke-Petersen*, 259, 261.
[3] *Ibid.*
[4] *Ibid.* 262.
[5] *Ibid.* 266.

committed himself to an agreement in a criminal sense'.[6] In light of the evidence accepted by the magistrate his line of reasoning would appear to contradict a statement of Dixon J. (as he then was) in *Cain v. Doyle*[7] which is applicable *mutatis mutandis* to Ministers acting in Cabinet:

> Except in great matters of State the Crown acts only by its Ministers and servants. If two or more of them knowing the facts agree upon a course of action which constitutes or involves the offence on the part of the Crown, they would then be guilty of conspiracy . . . and it would not matter that they were ignorant of the legal consequences of their decision and were actuated solely by a desire to serve the interests of the Commonwealth.

Having considered various sections of the Police Act 1937-1973 (Qld),[8] Mr Latchford found that the Cabinet decision and directive to the Commissioner were lawful because the 'specific statutory provisions take precedence over the common law'.[9] The implication of this finding is that the Commissioner must obey any direction given him by the Minister in relation to any matter and such direction will always override the common law powers and duties of the Commissioner.

ORDER NISI

The prosecutor sought an order nisi for the writ of certiorari (and ancillary thereto mandamus) from Connolly J. in the Supreme Court of Queensland. The order was granted and made returnable before the Full Court.

In granting the order Connolly J. referred to the many celebrated cases on police independence, common law powers and duties.[10] Like the Privy Council in *Attorney-General (N.S.W.) v. Perpetual Trustee Co. Ltd*[11] he quoted McCardie J. in *Fisher v. Oldham Corporation*[12] with approval:

> Suppose that a police officer arrested a man for a serious felony? Suppose, too, that the watch committee of the borough at once passed a resolution directing that the felon should be released? Of what value would such a resolution be? Not only would it be the plain duty of the police officer to disregard the resolution, but it would also be the duty of the chief constable to consider whether an information should not at once be laid against the members of the watch committee for a conspiracy to obstruct the course of criminal justice.

In accepting a submission as to the similarity between that example and the present case Connolly J. said 'I am of the view that he [the applicant] has a sufficiently arguable case on this point and, indeed, a contrary view would leave the law in a most unsatisfactory state'.[13]

[6] *Ibid.* 267.

[7] (1946) 72 C.L.R. 409, 425.

[8] Latchford C.S.M. considered ss. 6, 14, 15 and 70 of the Queensland Police Act. Ss. 14 and 15 deal with the oath to be taken by police constables.

S. 6(1) states: The Governor in Council may from time to time appoint some fit and proper person to be Commissioner of Police, hereinafter referred to as 'the Commissioner', who shall, subject to the direction of the Minister, be charged with the Superintendence of the Police Force of Queensland.

S. 70 states: Nothing in this Act contained shall be deemed to diminish the duties or restrict or affect the liabilities of members of the Police Force at common law or under any Act now in force or hereafter to be passed.

[9] *Record of Proceedings: Plunkett v. Bjelke-Petersen*, 265.

[10] Order: Connolly J., O.S.C. No. 54 of 1977, 23 December 1977; Reasons for Judgment: *Record of Proceedings: The Queen v. The Honourable Johannes Bjelke-Petersen and J. C. Latchford Esq., Chief Stipendiary Magistrate, Ex parte Mark Oliver Plunkett (Prosecutor)*, 243 ff.; Connolly J. cited: *Enever v. The King* (1906) 3 C.L.R. 969; *Attorney-General (N.S.W.) v. Perpetual Trustee Co. Ltd* [1955] A.C. 457 (P.C.); *R. v. Metropolitan Police Commissioner, Ex parte Blackburn* [1968] 2 Q.B. 118 (C.A.).

[11] [1955] A.C. 457, 459.

[12] [1930] 2 K.B. 364, 372.

[13] *Record of Proceedings: The Queen v. Bjelke Petersen etc.*, 244.

FULL COURT JUDGMENT

The Full Court (Wanstall C.J., with whom Douglas and Matthews JJ. agreed) discharged the order nisi without considering the merits of the case, on the ground that certiorari would not go in the circumstances. Wanstall C.J. impliedly held that certiorari could lie to quash the decision of a committing magistrate, but he went on to hold that such relief was only available if there were an error going to jurisdiction or 'such a non-jurisdictional error of law on the face of the record as would invalidate the proceedings'.[14] It will be argued in this note that the implied finding is correct but the latter holding is wrong because it introduces an additional and more burdensome restriction on the category of non-jurisdictional error for which prerogative relief is available.

Wanstall C.J. held that the errors, if any, made by the magistrate were made 'within the jurisdiction being exercised in the inquiry' and he stated that the prosecutor's case proceeded 'upon a basic misconception as to the nature and limits of the prerogative writs'.[15] The decision raises two important questions, the first being one hitherto unresolved in Australia and the second being one confused in England and Australia by the introduction of legislative enactments which purport to oust a superior court's supervisory powers over some inferior tribunals and by the judicial response to these enactments.

(i) May certiorari issue against committing magistrates?

Even the most recent edition of *Halsbury* states unequivocally that '[c]ertiorari does not lie to remove a decision of justices to commit or refuse to commit a defendant for trial'.[16]

Two Irish cases are cited in support of this proposition, the second[17] simply applying the first, *R. v. The Justices of Roscommon*,[18] in which all four members of the court refused prerogative relief. Sir P. O'Brien C.J. said:[19]

> It [the decision of the magistrates] is not recorded, even in an untechnical sense — it is not intended to be recorded. The fact that the Legislature did not provide for the recording in some shape of the judicial decision of the magistrates, when they determined that a person is to be sent on for trial, shows that it is a matter within their discretion not removable by certiorari.

Holmes J. also followed this line of reasoning. O'Brien J., the third member of the Court, followed another tack and considered the object of such a use of certiorari, thereby determining that it could not issue to a committed defendant because the object of such a use would not be 'to control or correct an inferior tribunal, but to stop the transitus of the case to another tribunal'.[20] It was only Madden J. who refused the relief on the ground that the magistrates had acted within jurisdiction. The reasoning of the majority of judges clearly supports a contrary conclusion for committal proceedings in which the magistrate's order is part of a decision recorded as provided by the legislature, especially when the relief is sought by an aggrieved prosecutor whose object is to correct the inferior tribunal.

Despite the dearth of explicit English authority on this question the Queen's Bench Division unquestioningly allowed certiorari to issue against committing magistrates in *R. v. Coleshill Justices, Ex parte Davies*.[21] More recently, in *R. v. Wells St. Stipendiary Magistrate, Ex parte Deakin*,[22] it was assumed in argument before the House of

[14] [1978] QdR. 305, 310 (F.C.).
[15] *Ibid.* 311.
[16] 11 *Halsbury's Laws of England* (4th ed. 1976) 806, para. 1529.
[17] *R. v. Galway County Justices* (1909) 43 Ir.L.T. 185.
[18] [1894] 2 I.R. 158.
[19] *Ibid.* 173.
[20] *Ibid.* 175.
[21] [1971] 1 W.L.R. 1684 (D.C.).
[22] [1979] 2 W.L.R. 665 (H.L. (E.)).

Lords that certiorari would lie to quash the order of a committing magistrate if the order were made subsequent to the wrongful rejection of evidence. This was presumed by Lord Diplock, Viscount Dilhorne (with whom Lord Keith of Kinkel agreed) and Lord Scarman, although they did not find it necessary to grant prerogative relief, having determined the substantive issue and decided that the magistrate had not erred in refusing to admit the evidence. Having stated that the appeal had been conducted 'on the basis that its outcome turned solely upon the correctness of the magistrate's decision on admissibility',[23] Lord Edmund Davies referred to the quotation from *Halsbury* cited above and said he was of the view that certiorari would not lie to quash a committing magistrate's order. The assumption on the part of the other law lords is indicative of the present scope of prerogative relief in English courts.

In Australia however there have been a number of conflicting decisions, which now, according to Mason J. in *Sankey v. Whitlam*, constitute 'a long standing controversy as to the availability of common law prohibition and certiorari to a magistrate hearing committal proceedings'.[24]

In *R. v. Schwarten, Ex parte Wildschut*[25] the Full Court of the Supreme Court of Queensland held that prohibition would issue against a committing magistrate upon application by an aggrieved defendant. Douglas J. (with whom Sheehy A.C.J. and Lucas J. agreed) saw no reason to treat committing magistrates any differently from 'any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially'.[26] While accepting that committing magistrates exercise a ministerial function as distinct from a judicial one, Australian judges have stated that the function is always to be discharged judicially. The *Schwarten* decision has been referred to without disapproval by Gibbs J. in *Amman v. Wegener*,[27] who said 'the actual decision was that prohibition lay to a magistrate conducting preliminary proceedings whether or not he was performing a ministerial function'.

The decision has also been supported in New South Wales by Street C.J. in *Connor v. Sankey*.[28] However the majority in that case continued to follow the leading New South Wales decision on the point, *Ex parte Cousens, Re Blacket*,[29] Reynolds J.A. feeling constrained to do so for the sake of precedent and Moffitt P. being anxious to allow the ordinary processes of the criminal law to run their course without allowing any prospect of the prerogative writs being used to stifle investigation of complaints by magistrates. Moffitt P.'s anxiety would seem to support a contrary conclusion in the case of an aggrieved prosecutor alleging wrongful dismissal of complaints because of an error of law.

The position has not had to be decided by the Victorian Supreme Court because of the special provisions in the Magistrates' Court Act 1971.[30] However, in referring to the common law as it stood in 1907, Smith J. (with whom Winneke C.J. and Gowans J. agreed) in *Phelan v. Allen*[31] pointed out that 'orders committing or refusing to commit had for a very long time been regarded as ministerial, and, therefore, as not subject to judicial supervision'.

In the present case Wanstall C.J. impliedly found that the prerogative writs could

[23] *Ibid.* 676.
[24] (1978) 53 A.L.J.R. 11, 38.
[25] [1965] QdR. 276.
[26] *Ibid.* 284, quoting *R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1920) Ltd* [1924] 1 K.B. 171, 205, *per* Atkin L.J.
[27] (1971) 129 C.L.R. 415, 435 f.
[28] [1976] 2 N.S.W.L.R. 570 (C.A.).
[29] (1946) 47 S.R. (N.S.W.) 145 (F.C.).
[30] See s. 88 and the definition of 'order' in s. 3.
[31] [1970] V.R. 219, 223.

issue against committing magistrates. More recently Mason J. in *Sankey v. Whitlam*[32] has said:

> In this conflict of authority my preference is for the view that prohibition will lie to a committing magistrate to correct for want or excess of jurisdiction. Although it has been said that committal proceedings are ministerial . . ., it should now be recognized affirmatively that a magistrate hearing committal proceedings has, within the meaning of Atkin L.J.'s observations in *R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1920) Ltd* [1924] 1 K.B. 171 at 205, authority to determine questions affecting the rights of subjects and that he has a duty to act judicially. It is his function to determine whether there is a prima facie case against the defendant sufficient to warrant his being put upon trial. That determination is one which materially affects the defendant because it exposes him to trial upon indictment and to a deprivation of his liberty pending trial. There can be no doubt that in arriving at his decision the magistrate is bound to act judicially in the sense that he must observe certain standards of fairness appropriate to be applied by a judicial officer. It would be quite unacceptable to say that a committing magistrate is not under a duty to act judicially or that he is entirely free from supervision by a superior court, even when acting without jurisdiction or in excess of his jurisdiction.

Mason J. was addressing himself to prohibition upon application by an aggrieved defendant; his statement of general principle would seem to extend to certiorari upon application by an aggrieved private prosecutor, who has the right to have his prosecution determined according to law.[33] Though the matter has not been finally determined, Wanstall C.J.'s implicit finding is based on sound principle and supported by good Australian authority.

(ii) What are the grounds for awarding certiorari?

It is clear that the prerogative writs afford superior courts a jurisdiction over inferior tribunals which is not one of general review but one of supervision. The Privy Council stated in *R. v. Nat Bell Liquors Ltd*[34] that

> supervision goes to two points: one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise.

Naturally cases concerned only with prohibition have had little to say about the second point but it has always been of relevance for certiorari and its application is traceable back to the seventeenth century when Holt C.J. said in *Ricelip Parish v. Henden Parish*:[35]

> Where the justices of the peace give a special reason for their settlement, and the conclusion which they make in point of law will not warrant the premises, there we will rectify their judgment; but if they have given no reason at all, then we would not have travelled into the fact.

Nevertheless, the application was rare and this aspect of a superior court's jurisdiction seemed to lie dormant, or, as one commentator says, in a 'cataleptic trance',[36] for many years until it was clearly resurrected in *R. v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw*,[37] where Singleton L.J. said: '[e]rror [of law] on the face of the proceedings has always been recognized as one of the grounds for the issue of an order of certiorari'.[38] After *Ex parte Shaw* legislatures introduced ouster clauses for many tribunals so that their determinations should be final and 'not called in question in any court of law'.[39]

[32] (1978) 53 A.L.J.R. 11, 39.
[33] See also *ibid.* 37, *per* Stephen J.
[34] [1922] 2 A.C. 128, 156.
[35] (1698) 5 Mod. 416, 417; 87 E.R. 739, 740 (K.B.).
[36] de Smith S. A., *Judicial Review of Administrative Action* (3rd ed. 1973) 361.
[37] [1951] 1 K.B. 711; [1952] 1 K.B. 338 (C.A.).
[38] [1952] 1 K.B. 338, 341.
[39] The ouster clause in question *e.g.* in *Anisminic Ltd v. Foreign Compensation Commission* [1969] 2 A.C. 147 (H.L. (E.)) was Foreign Compensation Act 1950

The reaction of English courts to ouster clauses culminated in the House of Lords decision in *Anisminic Ltd v. Foreign Compensation Commission*,[40] where it was decided that ouster clauses cannot preclude superior courts from exercising their supervisory power to ensure that inferior tribunals have acted within jurisdiction. This much is incontrovertible; however the majority went on to adopt a very broad view of what constitutes a 'jurisdictional error', so that the decision 'comes perilously close to saying that there is jurisdiction if the decision is right but none if it is wrong'.[41]

Recently, the Court of Appeal in *Pearlman v. The Harrow School*[42] has expanded upon the broad view espoused by the majority in *Anisminic* and decided that an ouster clause in effect still permits prerogative relief for an error of law on the face of the record. Eveleigh L.J. held that a decision which was based on an error of law, including such an error on the face of the record, is a nullity, whereas Lord Denning M.R. stated:[43]

> The way to get things right is to hold thus: no court or tribunal has any jurisdiction to make an error of law on which the decision of the case depends. If it makes such an error, it goes outside its jurisdiction and certiorari will lie to correct it.

These recent English developments would appear to re-establish in substance the scope for certiorari set down in *Ex parte Shaw*, whether the tribunal in question be covered by an ouster clause or not. To achieve this result, it seems that English courts have all but discarded the distinction drawn by the Privy Council in *R. v. Nat Bell Liquors Ltd.*[44]

The distinction is still applied in Australian courts, although as Aickin J. pointed out in *In re Judges of The Federal Court of Australia and McDowell Pacific Ltd, Ex parte Pilkington A.C.I. (Operations) Pty Ltd*,[45] it is one 'not always easy to apply'. Wanstall C.J. drew a distinction between jurisdictional and non-jurisdictional error in the present case and held that the only non-jurisdictional error which allowed prerogative relief was one on the face of the record[46] 'as would invalidate the

(U.K.), s. 4(4), which stated: 'The determination by the Commission of any application made to them under this Act shall not be called in question in any court of law.'

[40] [1969] 2 A.C. 147 (H.L. (E.)).

[41] Wade H. W. R., 'Constitutional and Administrative Aspects of the Anisminic Decision' (1969) 85 *Law Quarterly Review* 198, 211.

[42] [1979] Q.B. 56.

[43] *Ibid.* 70.

[44] [1922] 2 A.C. 128.

[45] (1979) 53 A.L.J.R. 230, 236.

[46] In the present case Wanstall C.J. assumed that the recorded decision of the magistrate was part of the record. This assumption is in accordance with authority: 1 *Halsbury's Laws of England* (4th ed. 1977) 107, para. 84 states that '[t]he meaning of the record for this purpose has not been authoritatively determined, but it may be taken to include the decision itself, such reasons, if any, as are given for the decision, and any other material or instrument identified therein with a sufficient degree of particularity for it to be construed as forming part of the record.' In *R. v. Tennant, Ex parte Woods* [1962] QdR. 241, 257, Wanstall J. (as he then was) said: 'I am content to treat the document containing the adjudication and the reasons as part of the record of the tribunal below.'

Whitmore H. and Aronson M. I., *Review of Administrative Action* (1978) 418 f. state that all authorities are consistent with the view that the reasons of the tribunal which accompany the making of the order are part of the record, except *R. v. District Court of Queensland, Ex parte Thompson* (1968) 118 C.L.R. 488, *per* McTiernan and Menzies JJ.; Barwick C.J., Kitto and Taylor JJ. not deciding this point. The reasoning of McTiernan and Menzies JJ. does not seem to affect the present argument because there is here no special statutory provision requiring the Magistrates Court to record the order of the Court as distinct from the Court's decision (*ibid.* 495 f., *per* McTiernan J.; 501, *per* Menzies J.). It should be noted that a magistrate's order dismissing a charge for an indictable offence is not an 'order' as defined by the Justices Acts 1886-1979 (Qld), s. 4.

proceedings'.[47] It is submitted that Wanstall C.J. should have addressed himself simply to the question: 'Is there an error of law on the face of the record on which the decision of the magistrate depended?' His Honour referred to several decisions, including *Anisminic* and *Connor v. Sankey*, as well as his own decision in *R. v. Tennan, Ex parte Woods*;[48] however the authorities quoted by his Honour, including his own previous decision, clearly support the proposition that a non-jurisdictional error, though not invalidating the *proceedings*, may still 'invalidate' the *decision* insofar as the decision is based on an error of law on the face of the record, thereby making it subject to prerogative relief. In *Ex parte Woods* his Honour said the decision of the Divisional Court and the Court of Appeal in *Ex parte Shaw* 'drew attention to the availability of certiorari to correct an error of law on the face of the record, error not going to the jurisdiction of the inferior court'.[49] He went on to say,[50] however, that

> [i]f the [*Ex parte Shaw*] decision is not to be allowed to give rise to a spate of applications for certiorari to correct any kind of patent error of law no matter how immaterial to the actual decision, it is necessary to restrict the apparent generality of some of its dicta.

His Honour restricted those dicta by defining the scope of remediable error in this way: 'the error must be such that the supervising court is able to say that the *order* is invalid'.[51] His Honour then quoted (with approval) a dictum of Lord Cairns in *Walsall Overseers v. London and North-Western Railway Co.*:[52]

> If the Court of Quarter Sessions stated upon the face of the order by way of recital, that the facts were so and so, and the grounds of its decision were such as were so stated, then the order became upon the face of it, a speaking order; and if that which was stated upon the face of the order, in the opinion of any party, *was not such as to warrant the order*, then that party might . . . ask the court of Queen's Bench to remove it by certiorari.

These same circumstances arose in the present case: the magistrate did state on the face of the order that the facts were so and so; the magistrate did state the grounds of his decision; in the opinion of the prosecutor, the order made by the magistrate was not warranted, because of his errors of law. Therefore the errors of law alleged by the prosecutor were of the restricted kind which would allow prerogative relief.

By diverting his attention from the invalidity of the order or decision to the invalidity of the proceedings Wanstall C.J. precluded any consideration of the relevant question which the Court should have determined. He said that any mistakes made by the magistrate were 'not mistakes going to the existence of jurisdiction but mistakes made in the exercise of jurisdiction which do not justify intervention by prerogative writs'.[53]

There is no category of error known to the law as non-jurisdictional error invalidating the *proceedings* (as distinct from the order or decision), for any error which invalidates proceedings must be jurisdictional *ipso facto*. Thus, Wanstall C.J. has effectively restricted prerogative relief to jurisdictional errors, not in the contemporary English sense but in the old restrictive sense such that an error of law on the face of the record which is fundamental to an inferior tribunal's decision is not capable of supervision by superior courts unless the tribunal's proceedings are invalid. This new and more burdensome restriction is contrary to all English and Australian authority since *Ex parte Shaw*.

[47] [1978] QdR. 305, 310 (emphasis supplied).
[48] [1962] QdR. 241 (F.C.).
[49] *Ibid.* 256.
[50] *Ibid.* 258.
[51] *Ibid.*
[52] (1878) 4 App. Cas. 30, 40 (his Honour's italics), quoted [1962] QdR. 241, 258 f.
[53] [1978] QdR. 305, 312.

REFUSAL OF SPECIAL LEAVE

Despite the uncertainty of the law applicable in Australia as to the first question and the novelty of the restriction introduced by Wanstall C.J. in addressing himself to the second question, which has become more confused because of the divergent approaches of English and Australian courts, the High Court refused the applicant special leave to appeal against the decision of the Full Court. Leave was refused in May 1978, which was after the High Court had heard argument in *Sankey v. Whitlam* but prior to the handing down of the decision in that case, in which Mason J. stated his views on this 'long standing controversy'.[54]

CONCLUSION

The decision of the Full Court of the Supreme Court of Queensland on the second question would seem to run counter to the recent English judicial statements and to be contrary to much Australian authority. The proliferation of tribunals which affect citizens' rights and the increasing political role of the police forces in this country highlight the significance of a further restriction on prerogative relief by a State Supreme Court in a case such as this. In the federal sphere, judicial review is to be expanded by the Administrative Decisions (Judicial Review) Act 1977 (Cth); in the State sphere however, while the alleged errors of law by a magistrate in a case such as this remain 'arguable' but not capable of supervision by a superior court, the State's constitutional edifice is in danger of further erosion.

FRANK BRENNAN*

PATEL v. UNIVERSITY OF BRADFORD SENATE

University — Visitor's jurisdiction — Action for declaration to secure re-admission of student — Whether court having jurisdiction — Matters and persons within university visitor's exclusive jurisdiction

This recent decision of Megarry V.-C., which has since been affirmed by the Court of Appeal,[1] resurrects the largely forgotten role of the visitor and places it at the centre of modern university life as the locus for the settlement of all internal disputes. This note outlines the decision and examines its applicability to Australian universities.

I A DISGRUNTLED STUDENT GOES TO COURT

The case arose in not uncommon circumstances: Patel (P), having failed his annual *and* supplementary examinations in first year computer science, was required to withdraw from his course. He applied for immediate re-admission in the new academic year, but after a review of his record and a consideration of his representations his application was refused. Thereupon P commenced proceedings against the university, seeking declarations that he had been unlawfully excluded from the university and was entitled to enter its grounds, an injunction and damages. The defendant university submitted that the court had no jurisdiction to hear the matter, the issues being within the exclusive jurisdiction of the visitor to the university.

Determination of this contention by the university was 'the one real point' in the case[2] and was resolved in a strikingly clear and comprehensive manner. His Lordship's

[54] (1979) 53 A.L.J.R. 11, 58.

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[1] [1978] 1 W.L.R. 1488; [1979] 1 W.L.R. 1066 (C.A.). Beyond affirming the correctness of Megarry V.-C.'s decision, the decision of the Court of Appeal adds nothing to his discussion of the issues in the case.

[2] [1978] 1 W.L.R. 1488, 1490.