APPELLATE CIVIL

Before Falshaw and Kapur, JJ.

EAST PUNJAB UNIVERSITY, Solan.—*Defendant-Appellant,*

versus

1952

July 16th

TARLOK NATH, minor, through Shri PARMA NAND, his father, *-Plaintiff-Respondent.*

Regular Second Appeal No. 828 of 1951

East Punjab University Act (VII of 1947)—Sections 20 and 31—Regulations made under—Whether arbitrary,

against law and ultra vires *--Decisions and discretions under the regulations--Whether a suit lies to challenge them—Right of a student against whom action is taken to be heard personally.*

The plaintiff was charged with the theft of question papers but was discharged by the Magistrate. The University took action under regulations 6 and 12 and found him guilty of theft and debarred him from appearing in any examination for 5 years. The plaintiff filed a suit for examination for 5 years. The plaintiff filed a suit for declaration that the order made under Regulation 12 disqualifying him from appearing in the University examination for a period of 5 years was against law, arbitrary and *ultra vires* and for an injunction that the University be restrained from debarring him. The University pleaded that the action taken by the University was legal and binding upon the plaintiff and it could not be questioned in a Civil Court which had no jurisdiction to try such suits. The trial Court decreed the suit and the appellate court affirmed the decree of the trial court. The University filed a second appeal to the High Court.

Held, that—

(i) the statute has given to the University the power to appoint a Committee to go into cases of the type of which the plaintiff complains;

(ii) the discretion is of the Committee and the Vice-Chancellor and if they decide the question in accordance with the requirements of the statute no Court can sit in appeal against their decision;

(iii) no suit lies to challenge the decision of the University to take action against an erring student;

(iv) it is not necessary to give a personal hearing to a student against whom action is intended to be taken and in the very nature of things the Committee cannot hold a trial as it is understood by lawyers nor can they take evidence which lawyers consider to be evidence; and

(v) there is no offending of the concept of natural justice.

English and Indian Case Law reviewed.

Second Appeal from the decree of the Court of Shri Sheo Parshad, Senior Sub-Judge, with enhanced appellate powers, Gurdaspur, dated the 3rd day of August, 1951, affirming that of Shri Basant Lal, Sub-Judge Ist

Class, Gurdaspur, dated the 13th March 1951, decreeing the plaintiff's suit and leaving the parties to bear their own costs.

BADRI DAS and I. D. DUA, for Appellant.

K.L. GOSAIN, for Respondent.

JUDGMENT.

Kapur J. KAPUR, J. This is a reference made by me to a Division Bench on the 16th June 1952.

The facts of the case may be stated as follows :—

The plaintiff Trilok Nath, aged about 15 or 16, was appearing for the Matriculation Examination of the East Punjab University at Pathankot Centre in 1949 His father Parma Nand was at the time the Headmaster of the District Board Middle School at Sujanpore near Pathankot. There was a centre for examination at Sujanpore also, and Shannu Mal, a Headmaster of another school, was the Supervisor of this examination centre. He was at the time residing in the office of the Middle School and Parma Nand was residing in another portion of the school building. On the 28th May 1949, Shannu Mal left Sujanpore to go to Batala as there were one or two holidays. Trilok Nath, who had appeared in four papers in two subjects of the University Examination, came home for the days when he was free from his examination and was residing with his father Parma Nand. On the night between the 28th and 29th there was a theft in the office where Shannu Mal had been residing and had left the question-papers. The shelf of the almirah in which the papers were lying was broken open and covers containing the question-papers were cut by something like a razor blade and one or two papers were extracted from each one of the envelopes. The papers which were extracted were of the following subjects : Mathematics 'A' and 'B', Sanskrit, Urdu, Hindi and Persian. The plaintiff was only interested in Mathematics papers, as he had not offered other subjects for his examination. After the papers were extracted the envelopes were

gummed up and a gum-pot belonging to the school library was found quite close to the envelopes. The theft was discovered next morning, i.e., the 29th and the chaukidar made a report to Parma Nand who rightly advised him to make a report to the police and accompanied Prem Singh, Chaukidar, to the police post for the purpose of making the report. The police from Pathankot Police Station also arrived as they have jurisdiction over this police post and investigation started. Seven boys, who were all candidates for the examination besides the plaintiff Trilok Nath, were interrogated by the police. No clue was found, and on the 31st of May, in the evening Kesar Mal who is an Office Superintendent (Conduct) of the University arrived at Sujanpore and it is stated that he took charge of these boys and he first interrogated Trilok Nath, and it is in evidence that Trilok Nath made a confession to him in writing which is Exhibit D. 1 on the record. Kesar Mal after making some enquiries made a report to the University that there was no leakage of the papers. Before Kesar Mal arrived, an Inspector of Police also had arrived at the scene and one Mr. S. N. Sehgal who was an Inspector of the Examination Centre of Jullundur Circle also came.

Trilok Nath was then arrested and was placed for trial before a Magistrate who held that the confession was made when Trilok Nath was in police custody and therefore the confession, now Exhibit D. 1, was inadmissible in evidence and he also held that there was no other evidence to connect Trilok Nath with the offence, and, therefore, discharged Trilok Nath under section 253 of the Criminal Procedure Code on the 11th July 1949.

Kesar Mal made a report, Exhibit D. 3, to the University in which he set out all the facts. The report is dated the 2nd June 1949. Attached to this report are the statements of various persons who were also examined by Kesar Mal. As the case was one of theft the University referred the matter to a Committee of three persons consisting of Mr Justice Bhandari, a Judge of this Court, Mr C. L. Anand, Principal of the Law College of

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the Punjab University, and Dr Bhupal Singh, Registrar of the University, which was constituted under regulation 6 of Chapter III of Part II of the Regulations. The Committee by a majority of two to one, Mr Justice Bhandari being in the majority held that Trilok Nath was guilty of theft, and as there was no unanimity the matter was referred to the Vice-Chancellor for orders under the regulations. The Vice-Chancellor Mr. Anand Kumar by an order dated the 21st December 1949, Exhibit D. 12, agreed with the majority, and under regulation 13 of Part IV the plaintiff was deprived for five years from taking the examination of the University. I may state here that the father of the plaintiff had made certain representations to the University. In a representation dated the 4th June 1949 he submitted that his son was a bright student and that the confession had been made by him under compulsion. This representation was addressed to the then Vice-Chancellor Mr. G. C. Chatterji. He sent another letter dated the 15th July 1949 addressed to Mr. Chatterji in which he made certain corrections in the language of his previous letter. These letters are Exhibits P. 1 and P. 4. On the 23rd July 1949, Parma Nand wrote another letter. Exhibit P. 7, in which he again stated that his son was a bright boy and might well have secured a scholarship and requested that his son should be declared successful, and along with this he sent a copy of the order of the Magistrate discharging Trilok Nath. The next letter sent by him is of the 2nd August, 1949, Exhibit P. 10, in which he asked that the boy should be declared successful, so that he could sit for Inter-Services Wing Examination. Mr. Badri Das referred to a letter dated the 27th August 1949 sent by the father of the plaintiff in which it was admitted that the father had had on the 13th August an interview with the Vice-Chancellor, Mr. Anand Kumar who had by that time come in place of Mr. Chatterji but no such letter is on the record.

On the 21st December 1949 the Vice-Chancellor had made the order Exhibit D. 12 rusticating Trilok Nath for a period of five years. On the

12th January 1950 Trilok Nath made a representation purporting to be under regulation 18 of Chapter V, Part II (Conduct of Examinations), praying for reconsideration of the order of the Vice-Chancellor dated the 23rd December really it is of 21st December. This is Exhibit P. 15. In this it was submitted that the plaintiff had not been given any opportunity to explain his conduct and "to lay down all the facts for your kind consideration, and an *ex parte* order has been passed and he has been hit at the back". In paragraph 8 he submitted that his confession was obtained by police torture. He also asked for an opportunity "to explain his case personally through a proper representative". The plaintiff then sent a notice through a Pleader addressed to the Vice-Chancellor asking that his disqualification be cancelled on the ground that he had been acquitted (really it was a discharge) of the charge of stealing. On the 19th February 1950, the Vice-Chancellor at a meeting of the Syndicate placed these papers before the Syndicate. The record shows that he gave the history of the case and also placed the reply which had been sent to the notice and in which it was stated "that the University had taken action in exercise of their powers under the regulations". This action was approved of by the Syndicate.

On the 17th February 1950, Trilok Nath brought a suit for declaration that the order made under regulation 13 disqualifying him from appearing in the University examination for a period of 5 years was "against law, arbitrary and *ultra vires* and it was done to avoid responsibility of payment of damages" and for an injunction that the University be restrained from debarring the plaintiff from appearing in the Matriculation Examination to be held in 1950. The defence of the University was that the order of the Vice-Chancellor was confirmed by the Syndicate and it was legal and binding upon the plaintiff and it could not be questioned in a civil court which had no jurisdiction to try such suits. Five issues were

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then raised by the learned Judge which were as follows :—

(1) Is the order of the defendant disqualifying the plaintiff from taking the examination of the University for five years from 1949 to 1953, arbitrary, *ultra vires*, illegal, unjust and not binding on the plaintiff ?

(2) Has not this Court jurisdiction to try the suit ?

(3) Was the alleged admission in writing by the plaintiff made under undue influence, torture and threat to dismiss the plaintiff's father from D.B's service: if so, what is its effect ?

(4) If issues 1 and 3 are proved, was the plaintiff guilty of misconduct of the serious nature, warranting disqualifying the plaintiff from taking any University examination for five years by the defendant under law ?

(5) Relief.

The trial Judge held that the University was bound by the decision of the criminal Court, that after the order of discharge of the plaintiff, the University held no fresh enquiry nor was the plaintiff given any opportunity to be heard before any action was taken which was against the fundamental principles of "judicial procedure." He also held that the confession having been held by the criminal Court to be involuntary and inadmissible, it had no evidentiary value and the action of the University was unjustifiable and arbitrary and that even if the confession was admissible, the oral evidence led by the plaintiff showed that it was in fact wrong. He, therefore, decided issue No. 1 in favour of the plaintiff. Under issue No. 3 he again held that Exhibit D. 1, the confession, was inadmissible in evidence as it was not voluntary. On issue No. 4 the finding was also against the defendant and on issue No. 2 the learned Judge held that the Court had jurisdiction because neither the University Act nor the Regulations made thereunder excluded the jurisdiction of the Court and as the University had

acted against the " fundamental principles of judicial procedure " the civil Courts had jurisdiction.

The University took the matter in appeal to the Senior Subordinate Judge who held that the University was not justified in taking any action against the plaintiff as it was the complainant in the criminal Court and was bound by the judgment of the criminal Court, that the decision of the University was against the principles of natural justice, that the confession was not a voluntary one nor was it correct and besides the confession there was no other evidence against the plaintiff and that the jurisdiction of the civil Court was not excluded. The judgment shows that the learned Judge was swayed throughout by the fact that the confession had been excluded by the criminal Court. The University has come up in second appeal to this Court.

Mr Badri Das for the appellant has submitted firstly that the Regulations under which the University was acting have the force of a statute as they are made under the statute. The regulations which were attacked on behalf of the plaintiff were regulation No. 6 of Chapter III of Part II and regulation No. 13 in Part IV of the Regulations.

It is perhaps convenient at this stage to set out the various provisions of the East Punjab University Act, 1947, as amended by the Act of 1948 and the Ordinance of 1949. Section 20 prescribes the constitution of the Syndicate and its powers. Subsection (1) of this section provides that the Executive Government of the University shall be vested in the Syndicate, and subsection (5) gives the Syndicate the power to delegate any of its executive functions to the Vice-Chancellor or to sub-committees or to committees appointed by the Syndicate which may include persons who are not members of the Syndicate or to any other authority or body constituted by the Act or Regulations under the Act Section 21 provides for the appointment of the Registrar, who is the Chief Executive Officer of the Senate and the Syndicate. Section 31 gives the power to the

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Senate to make Regulations and the relevant provisions of this section are as follows :—

"31. Regulations :

(1) The Senate, with the sanction of the Government, may, from time to time, make regulations consistent with this Act to provide for all matters relating to the University.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for :—

(a) * * * *

(b) the proportion in which the various Faculties shall elect their representatives to the Syndicate and the mode in which such election shall be conducted ;

(c) the procedure at meetings of the Senate, Syndicate and Faculties, and the quorum of members to be required for the transaction of business ;

(d) * * * *

(e) * * * *

(f) the appointment of Examiners, and the duties and powers of Examiners in relation to the examinations of the University ;

* * * *

Section 33 describes the powers of Government and the second subsection of this section is as follows :—

"33. (2) The exercise by the Government of any powers conferred under subsection (1) shall not be liable to be called in question in any court of law."

The Regulations are contained in the Calendar of the year 1950-51. Chapter III of Part II deals with the Syndicate and purports to have been made under sections 20(1) (c) and (2) and 31(b) (c) of the Act. Regulation 6 of this Chapter provides for the appointment of a committee to deal with cases of the alleged use of unfair means

in connection with examinations and other matters and is as follows :—

"6. The Syndicate shall appoint annually Standing Committees to deal with cases of the alleged use of unfair means in connection with examinations, of deficiencies in attendances at lectures, and other matters affecting the discipline of students. When such Standing Committee is unanimous its decision shall be final except as given in the proviso below. If the Standing Committee is not unanimous the matter shall be referred to the Vice-Chancellor who shall either decide the matter or refer it to the Syndicate for decision :

Provided that in cases of the alleged use of unfair means in connection with examinations if in the opinion of the Vice-Chancellor facts have been brought to light within 30 days of the receipt of the decision by the candidate which, had they been before the Committee, might have induced them to come to a decision other than the one arrived at, then the Vice-Chancellor may order that such facts be reduced to writing and placed before the Committee. The Committee shall then reconsider the case. A unanimous decision of the Committee shall be final. But in the event of a difference of opinion the case shall be referred to the Vice-Chancellor, who may either finally decide the case himself or refer it to the Syndicate for final decision as he thinks fit."

Part IV contains Regulations in regard to examinations which purport to have been framed under section 31(f) of the Act. Regulations 12 and 13 are the relevant Regulations which are as follows :—

"12. A candidate detected in giving or receiving assistance or found guilty of copying from any paper, book or note,

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or allowing any other candidate to copy his answer book, or using or attempting to use these or any other unfair means, shall, in the case of the following examinations, be disqualified from passing any examination in that year and in the next year :--

(i) Matriculation or School Leaving Certificate Examination ;

(ii) Examinations in Modern Indian Languages ; and

(iii) Proficiency and High Proficiency Examinations in Sanskrit, Arabic and Persian :

and in the case of other examinations, he shall be disqualified from passing any examination in that year and in the following two years.

13. A candidate found guilty of deliberate previous arrangement to cheat in the examination, such as smuggling in another answer book, impersonation or misconduct of a serious nature shall be disqualified for five years, or declared as not a fit and proper person to be admitted to any future examination of the University, according to the seriousness of the offence and the other circumstances of the case ;

* * * *

The first question which has been raised in this case is that the Regulations are *ultra vires* as they go beyond the scope of sections 20 and 31 of the Act. Under section 20(5) the Syndicate has the power of delegating its executive authority to sub-committees, and Regulation 6 of Chapter III, Part II, provides for the appointment of various committees. Nothing has been shown as to why the constitution of the committee is illegal or against the statute. Subsection (5) clearly gives to the Syndicate the power of appointing certain committees, and a committee for the purpose of determining the use of unfair means in examination has been properly appointed under this Regulation.

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With regard to Regulations 12 and 13, which form part of Part IV, Examinations Part, they have been made under section 31. The argument submitted was that they cannot fall under section 31(f) of the Act. The power of making rules has been the subject-matter of controversy in *Keshav Talpade's case* (1), where rule 26 made under section 2 of the Defence of India Act, Act XIX of 1940, was held to be *ultra vires* by the Federal Court of India (*Keshav Talpade* v *King-Emperor*(1). In *King-Emperor* v. *Sibnath Banerji* (2) their Lordships of the Privy Council had occasion to consider the correctness of the judgment of the Federal Court, and their Lordships held that *Keshav Talpade's case* (1) had been wrongly decided. Section 2 of the Defence of India Act was divided into two parts. In the first part the Central Government had been given the power to make rules for the maintenance of public order, etc., and the second part conferred certain powers to make rules in regard to certain matters. The words used there were—

> "Without prejudice to the generality of the powers conferred by sub-s. 1, the rules may provide for, * * * *."

In regard to this Lord Thankerton observed at p. 258 :—

> "In the opinion of their Lordships, the function of sub-s. 2 is merely an illustrative one : the rule-making power is conferred by sub-s. 1, and 'the rules' which are referred to in the opening sentence of sub-s. 2 are the rules which are authorized by, and made under, sub-s. 1 : the provisions of sub-s. 2 are not restrictive of sub-s. 1, as indeed, is expressly stated by the words "without prejudice to the generality of the powers conferred by sub-s. 1".

The words in section 31 (1) are almost identical. As a matter of fact the power given to the University seems to be on a stronger footing because of

(1) 1943 F. C. R. 19
(2) 72 I. A. 241

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the existence of section 33 which gives the Government certain powers and in the second subsection it is stated that the exercise of the powers by the Government is not liable to be called in question in any court of law. Of course that will not take away the power of this Court to interfere under Article 226, but still it shows the extent of the powers which are given to the University and to the Government. In my opinion, therefore, the Regulation 6 contained in Chapter III of Part II and Regulations 12 and 13 contained in Part IV are *intra vires* and are not otherwise. The same view has been taken by another Bench of this Court in *Jagdish Chander Kalra* v. *The Punjab University* (1).

It was submitted on behalf of the University, and was strongly controverted on behalf of the plaintiff, that in regard to matters which fall within the jurisdiction of the University under the statute and the regulations they are the sole judges and the matter cannot be agitated in courts of law. In the case before us the evidence produced shows that the case of the plaintiff was first sent to a committee appointed under Regulation 6 of Chapter III of Part II, which consisted of three gentlemen two of whom are well versed in law and as there was a difference of opinion the matter was referred to the Vice-Chancellor who held the candidate to be guilty. Under the proviso to Regulation 6 (it seems to me wrongly described as Article 18 of Chapter V at least no such regulation was pointed out to me) a further representation was made on behalf of the plaintiff to the Vice-Chancellor on 12th January 1950, and after the notice by a Pleader was sent the matter was placed before the Syndicate who approved of what had been done by the Vice-Chancellor.

It is necessary to first decide what is the extent of the power of Courts to review the findings of the University arrived at through its Syndicate in which vests the executive power of the University. As long back as 1718 the English Courts exercised their powers of review over the decision

(1) C. W. No. 56 of 1952 now reported as 54 P. L. R. 485

of the Vice-Chancellor of Cambridge University. In *R. v. The Chancellor, Masters and Scholars of the University of Cambridge* (1), it was held that a mandamus lies to a university to restore to academical degrees, where it is not returned that there is a visitor, and where the return alleges a suspension or degradation of the complaining party and does not state that he was summoned to attend the proceedings, or made any defence thereto. This is an old case and really is not of much assistance. What happened in this case was that one Richard Bentley was deprived of his academical degrees of Bachelor of Arts and Bachelor and Doctor of Divinity. A writ was issued to the University to show cause why he should not be restored. In their return to the writ the University of Cambridge stated that before the then Vice-Chancellor a member of the University "levied a plaint in debt for £4 6*s*. against the said Richard Bentley, and prayed process against him" which was issued to the beadle to compel Bentley to appear at the next court, and when it was sought to serve the process upon him, Bentley contemptuously took the process out of the hands of the beadle and said that the Vice-Chancellor was not his judge. Thereupon a congregation was summoned who, according to the custom of the University, had to be called for the purpose of examining and determining all matters relating to the University. It was found that Richard Bentley was in contempt as he had not submitted himself to the authority of the University. His degree was taken away and the University submitted that the degree could not be restored to him. When the writ was issued and a return made, Sergeant Cheshyre for Bentley submitted that the return was insufficient and therefore a peremptory mandamus should issue. One of the imperfections in the proceedings pointed out was that no notice had been given to Bentley to come in and defend himself against the contempt and that if he had been asked he might have explained himself and might have put in a good defence to the charge of contempt. Sergeant Comyns, who appeared for the University, submitted that the

(1) 93 E. R 593

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return amounted to this that an action was properly instituted against Bentley who was in contempt for which he was suspended and afterwards upon his non-submission was deprived of his degree. The learned Chief Justice, who delivered the first judgment, was of the opinion that the power of the Vice-Chancellor and the congregation "is only to deprive for a reasonable cause" and that as there was no visitor or any other jurisdiction to examine into the reasonableness of the deprivation the Court had the power to do so, and as the petitioner in that case was remediless it was necessary for the Court to require the University to submit to the Court the record of their proceedings for being examined by "a Superior Court." The learned Chief Justice went on to observe as follows:—

> "I am sure this Court, which is superior to the university, thinks it none; for my own part I can say, it is a consideration of great comfort to me, that if I do err my judgment is not conclusive to the party, but my mistake will be rectified, and so injustice not be done."

It was held by his Lordship that the behaviour of Dr Bentley was very indecent and that if he had treated a process issued by the Court in the same way "we would have laid him by the heels for it," but such a behaviour as his did not warrant a suspension or deprivation. As the evidence for contempt was not sufficient Bentley should not have been deprived of his degree. His Lordship also held that the matter should have been reheard by the congregation and they should have "adjudged all the facts again, and have averred, that the deprivation was for them". There is one passage which may be of interest in this case. His Lordship observed:—

> "The Vice-Chancellor's authority ought to be supported for the sake of keeping peace within the university; but then he must act according to law, which I do not think he had done in this case."

The other three Judges agreed with the learned Chief Justice. It cannot be said that this case is

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an authority which clearly lays down that all acts of a University are subject to review by Court of law. It is true that in that case the Court did issue a mandamus, but the circumstances, as I have shown, were peculiar as it appears that in the opinion of the Court the Vice-Chancellor had not acted in accordance with law and the Court interfered with the action of the University on a matter of contempt which perhaps is not a function of a University to adjudicate upon.

The English Court of Appeal had occasion to discuss the powers of a University in *Reg.* v. *The Principal, Fellows, and Scholars of Hertford College in the University of Oxford* (1). There Tillyard, who was not a member of any specified church, tendered himself for examination as a candidate, and was informed that he might be examined if he desired it, but he must understand that he would not be elected even if he stood at the head of the list. Tillyard did not then sit for the examination and another person, a duly qualified candidate, was elected after examination. Tillyard then applied to the Queen's Bench Division for a mandamus which was granted, but on appeal it was held that there was no refusal to examine Tillyard, and even assuming that Tillyard was refused, a mandamus would not lie commanding the college to examine Tillyard and to proceed to an election. Lord Coleridge, C.J., said at p. 701 :-

> "If, indeed, a man could shew a good ground for believing, as it is quite possible he might, that he had passed the best examination, that he had no moral or social disqualification, but that the college had, nevertheless, refused to elect him from motives wrong, illegal, or corrupt, he would not be without a remedy ; but his remedy would be, not mandamus, but appeal to the visitor. Not mandamus, because a court of law can deal only with the acts not the motives of the actors; and if the electors'

(1) (1877) 3 Q. B. D. 693

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acts were legal, as where a discretion is left to them, and they act within it, mandamus is inapplicable."

His Lordship then referred to several other cases which also are cases dealing with Universities. In the case of *Rex.* v. *Warden of All Souls College, Oxford*, (1); a mandamus was refused to a rejected candidate because the correction belonged to the visitor. In the case of *Ex Parte Wrangham* (2), there was an appeal to the Lord Chancellor as visitor of Trinity Hall, Cambridge, on the part of a rejected candidate. Lord Loughborough heard and decided the appeal without question as to his jurisdiction on this point, "though he seems to have doubted at that time whether the Lord Chancellor were the proper minister to exercise the visitatorial power of the Crown". In *Rex.* v. *Master and Fellows of St. Catherine's Hall, Cambridge* (3), there was an application to the King's Bench for a mandamus to the college to declare a particular fellowship vacant, and to proceed to a new election. Lord Kenyon refused the rule on the ground that the Lord Chancellor was the visitor and the jurisdiction over such a matter was with the visitor and not with the courts of law.

In *Thomson* v. *The University of London* (4), the plaintiff filed a bill alleging that before becoming a candidate he had made inquiry of the Registrar of the University, and had been informed by him that the examination would be conducted upon a particular principle and the marks ascertained in the mode upon and in which they were in fact subsequently conducted and ascertained, and that he had become a candidate and paid his examination fee upon that footing, and prayed that the University might be restrained from awarding the gold medal to somebody else. It was held, upon demurrer, that the Court had no jurisdiction to entertain the suit, the matter being one solely within the jurisdiction of the Visitor.

(1) (1667--85) T. Jones 174
(2) (1795) 2 Ves. 609
(3) (1791) 4 T. R. 233
(4) (1864) 33 L. J. (Ch) 625

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Cases which deal with the power of the Courts to review the power of the Inns of Courts to admit students or to call them to the Bar would also be apt in deciding the present case. In those cases it was held that the Courts had no jurisdiction to go into the matter. *R.* v. *The Benchers of Gray's Inn* (1) was a case where an application was made for a mandamus to be directed to the Benchers of Gray's Inn, to compel them to call the prosecutor to the "degree of a barrister at law". After tracing the history of the Inns of Court and discussing various cases, it was held that a mandamus will not lie to compel the Benchers to admit the prosecutor and his only relief was to appeal to 12 Judges as visitors.

In *R.* v. *The Benchers of Lincoln's Inn* (2) Wooller made an application to have his name enrolled as a member of that society. He received a letter from the steward that his application to the society was rejected by the Benchers. He then applied to the society praying that he be heard upon the subject in his own behalf, but he received no reply. He then addressed a petition to twelve Judges, as visitors of the Inns of Court, praying redress, and the clerk to the Lord Chief Justice informed him that the Judges had no power to interfere. He again made a petition to the Benchers of Lincoln's Inn and prayed that an opportunity might be afforded him of being heard upon his former application, or the society should assign their reasons for refusing to admit him as a member. He was informed that his second application had been rejected without assigning any reason. He then applied for a rule, calling upon the society to show cause why a writ of mandamus should not issue. It was held that the Court will not grant a mandamus to compel the Benchers to admit an individual as a member of the society with a view to his qualifying himself to be called to the Bar. Abbott, C.J., relying on the previous case of *R.* v. *The Benchers of Gray's Inn* said at p. 1279 :—

> "It has been argued, that every individual has *prima facie* an inchoate right to be

(1) 99 E. R. 227
(2) 107 E. R. 1277

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a member of the one of these societies, for the purpose of qualifying himself to practise as a barrister. If that proposition were established there would be a sufficient ground for granting a mandamus, but I apprehend that there is no such inchoate right. It might as well be said that every individual had an inchoate right to be admitted a member of a college, in either of the universities, or of the college of Physicians, or any other establishment of that nature. But supposing an individual were desirous to practise medicine in London, this Court would not grant a mandamus to compel the College of Physicians to admit him as one of their members, or as a licentiate. I think, therefore, that in this case we ought not to grant a mandamus".

The other Judges agreed with his Lordship. It may be pointed out that in this case Wooller was not given a hearing by the Benchers.

A case which dealt with the power of a club to expel one of its members may also be referred to. This is *Dawkins* v. *Antrobus* (1). There a member of a club was called upon to explain his conduct, but he refused and the club expelled him. Certain observations made by the various Judges are relevant. Jessel, M. R., said at p. 623 :—

> "Then at the same time I must not forget that committees of this kind do not act, and are not expected to act on strictly legal evidence, nor should I wish them to be confined to anything of the sort".

At p. 624 his Lordship said :—

> "Then I have to consider whether, looking not only at the names and social position of the gentlemen in question, but to their position in the club, and the

(1) 17 Ch. D. 615

discretionary power vested in them, I can set up my own opinion as to whether or not such an act could be considered injurious to the extent of saying that their conduct in certifying the contrary was malicious—that it was so totally devoid of reasonable and probable cause as that I could brand them with the epithet of being either idiots or corrupt. I shall not pretend to go that length, * * *."

On the matter going to the Court of Appeal James. L. J., said at p. 628 :—

> "We have no right to sit as a Court of Appeal upon the decision of the members of a club duly assembled. All we have to consider is whether the notice was or was not given according to the proper rules, whether the meeting was properly convened and whether the meeting, if properly convened, had come to the conclusion that this gentleman ought to be expelled, having before it the fact that the committee had, upon investigation of the matter, come to the conclusion, and expressed the opinion, that his conduct was such as to entitle them to call upon him to resign."

Brett, L. J., at p. 631 only pointed out this that if a member was deprived of his membership without his having an opportunity of being heard it would be a denial of natural justice. Cotton, L. J, at p. 634 said :-

> "We are not here to sit as a Court of Appeal from the decision of the Committee or of the general meeting. We are not here to say whether we should have arrived at such a conclusion or not, and the question whether the decision was erroneous or not can only be taken into consideration in determining whether that decision is so absurd or evidently

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wrong as to afford evidence that the action was not *bona fide*, but was malicious or capricious, or proceeding from something other than a fair and honest exercise of the powers given by the rule".

I may now refer to those cases where Courts have dealt with the powers of the General Council of Medical Education and Registration to remove members from the medical register. The first is *Ex parte La Mert* (1). It was held there that under the statute the General Council of Medical Education and Registration are sole Judges of whether a registered medical practitioner has been guilty of infamous conduct in a professional respect; and the Council having after due inquiry so adjudged, and ordered the name of the medical practitioner to be removed from the register accordingly, the Court could not interfere. Cockburn, C.J., said :—

"* * this Court has no more power to review their decision than they would have, in the present mode of proceeding, of determining whether the facts had justified a conviction for felony or misdemeanour under the first branch of the section".

The next case is *Leeson* v. *General Council of Medical Education and Registration* (2). There the General Council held an inquiry in which they adjudged a medical practitioner to be guilty of infamous conduct in a professional respect, and removed his name from the register of medical practitioners. The removed medical practitioner brought a suit to restrain the General Council from removing his name from the register and from publishing the resolution which had been passed by them. The suit was dismissed and an appeal was taken to the Court of Appeal and it

(1) 33 L. J. (Q. B.) —
(2) 43 Ch. D. 366

affirmed the judgment and refused to interfere with the decision of the Council. Cotton, L. J., said at p. 377 :—

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> "The General Medical Council cannot, strictly speaking, take evidence. They cannot take evidence on oath. They cannot take evidence which we as lawyers have to consider as evidence. They have statements made before them in support of any complaint which is made, and also they have statements made on the other side by the medical man against whom the complaint is made, and if it is once established that the complaint made before them does involve a matter in respect of which they can exercise the jurisdiction given to them by section 29, then I think we ought not to look at the evidence or in any way consider whether they have arrived at a right conclusion".

The next case to be considered is *Maclean* v. *The Workers' Union* (1), where it was held that the Court has no jurisdiction to vary or to set aside the decision of a domestic tribunal if in giving its decision the tribunal has acted honestly in accordance with its own rules and in good faith. At p. 621 Maugham J., said :—

> "It is apparent and it is well settled by authority that the decision of such a tribunal cannot be attacked on the ground that it is against the weight of evidence, since evidence in the proper sense there is none, and since the decisions of the tribunal are not open to any sort of appeal unless the rules provide for one".

In *The Marquis of Aberqavenny* v. *The Bishop of Llandaff* (2), it was held that the Bishop had an absolute discretion as to the mode of ascertaining

(1) (1929) 1 Ch. D. 602
(2) 20 Q. B. D. 460

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the requirements of the parish, and that he was not bound to hold a formal inquiry of a judicial character for that purpose, and therefore his refusal to hear the patron or the clergyman did not invalidate the inquiry which was held. There a benefice became vacant and the patron of this benefice presented a clergyman who could not speak Welsh. The Bishop thereupon commissioned certain persons to hold an inquiry as to whether the parish required a pastor who should know Welsh. This inquiry was held and a report was made to the bishop, but neither the patron nor the clergyman was permitted to be present or to be represented or to produce evidence at the inquiry, and the bishop refused to admit or institute the clergyman. An action was brought by the patron against the bishop in respect of such refusal.

I come now to more recent cases which deal with this matter. In the *Mayor, etc., of Westminister* v. *London and North Western Railway Company* (1), Earl of Halsbury, L. C., observed at p. 427 :—

> "Assuming the thing done to be within the discretion of the local authority, no Court has power to interfere with the mode in which it has exercised it. Where the Legislature has confided the power to a particular body, with a discretion how it is to be used, it is beyond the power of any Court to contest that discretion. Of course, this assumes that the thing done is the thing which the Legislature has authorised."

In *R.* v. *Dunsheath* (2), fifty members of convocation of the university of London served a requisition on the chairman to summon an extraordinary meeting of the convocation to discuss, *inter alia*, the refusal of a school connected with the university to re-employ one of its teachers. This request was refused by the chairman and a

(1) L R. (1905) A.C 426
(2) (1950) All. E.R 741

mandamus was applied for. It was held that the question whether an officer of the university had refused to perform a duty placed on him by the statutes of the university was a domestic matter and, therefore, one essentially for the visitor, and the application was refused. *Thomson* v. *University of London* (1) was relied upon. Reference was also made by the Lord Chief Justice to several other cases which have been mentioned above.

In *Lennox Arthur Patrick O' Reilly* v. *Cyril Cuthbert Gittens* (2), a case from Trinidad, the rule in regard to domestic tribunals was restated by their Lordships of the Privy Council, and Maugham, J's view in *Maclean* v. *The Workers' Union* (3), and the rule in *Leeson* v. *General Council of Medical Education and Registration* (4), were approved of by their Lordships in the following passage at p. 130 :—

> "Their Lordships have set out these passages because they accept the principles thus laid down as being applicable to the case now before them."

And the case which was before them was that the stewards of the Trinidad Turf Club had, after enquiry, "warned off" one of the owners and trainers of race-horses. Their Lordships held that the order made by the Club was within the power of the tribunal of enquiry and the owner who had brought a suit for declaration against that order was not entitled to it. Their Lordships also said that neither the Supreme Court nor the Privy Council was entitled to sit as a Court of Appeal from a decision of a domestic tribunal such as the stewards of the Trinidad Turf Club, and consequently even where there was no evidence to establish the blame or responsibility of the plaintiff in respect of the offence charged and the punishment was severe, these were held to be essentially matters for the domestic tribunal to decide as it thought right, specially because these

(1) 33 L. J. Ch. 625
(2) 54 C. W. N. 124 (P. C.)
(3) (1929) 1 Ch. 602
(4) 43 Ch. D. 366

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did not affect the jurisdiction of the tribunal and because no attack was made upon the honesty or good faith of its members. I may state here that when the matter was before the stewards objection was taken by the plaintiff to the presence of one of the persons sitting in the enquiry on the ground of bias.

In *Nakkuda Ali* v. *Jayaratne* (1), a Controller of Textiles had cancelled the licence issued to Nakkuda Ali on the ground that he had reasonable grounds to believe that the holder was unfit to retain it. In the Regulation there was no procedure laid down that the licence-holder was to have notice of the Controller's intention to revoke the licence, or that there must be any enquiry, public or private, before the Controller could act. It was held that there was nothing to suggest that the Controller must regulate his action by analogy to judicial rules. Therefore he was not amenable to a mandate in the nature of *certiorari* in respect of the action taken.

In *Jayaratne* v. *Bapu Miya* (2), which is also a case of a Controller of Textiles, it was held that the Controller in arriving at his conclusion may have been right or wrong, or may have acted not on mere suspicion but on suspicion which arose reasonably out of the facts that were before him, namely discrepancies in the books and papers of the dealer's firm, which suspicion was not removed by apparently satisfactory explanation of the dealer, but there was nothing to show that the principles of natural justice had been violated. Of course it was held that the decision of the Controller was not a judicial or quasi-judicial act and therefore he was not amenable to a writ of *certiorari*. In the previous case at p. 889 Lord Radcliffe observed :—

> "It is that characteristic that the Controller lacks in acting under Regulation 62. In truth when he cancels a licence he is not determining a question; he is taking executive action to withdraw a

(1) 54 C. W.N. 883 (P.C.)
(2) 54 C. W. N. 893 (P. C.)

> privilege because he believes and has reasonable grounds to believe that the holder is unfit to retain it."

This judgment of Lord Radcliffe has been the subject matter of some criticism in a learned article by Mr H. W. R. Wade in the Law Quarterly Review at p. 103, of the year 1951 sub-nomine "The Twilight of Natural Justice?" This is not the only case where this view has been taken, but in *Franklin*, v. *Minister of Town and Country Planning* (1), popularly called Stevenage case, it was held that under the New Towns Act, 1946, it was not the duty of the Minister to call evidence in support of the order, since the object of the inquiry is to inform his mind and not to consider any issue between him and the objectors. At p. 102 Lord Thankerton observed :—

> "In my opinion, no judicial, or quasi-judicial, duty was imposed on the respondent, and any reference to judicial duty, or bias, is irrelevant in the present case".

Of course when I refer to these judgments I do not mean that the action taken by the University in regard to the petitioner is purely administrative.

I may now refer to some of the Indian cases on which reliance was placed by Mr Badri Das. In *Ram Ugrah Singh* v. *The Benares Hindu University* (2), the plaintiff, who was a candidate for the Previous LL.B. Examination, found that he was not placed in the list of successful candidates. Thereupon he brought a suit for declaration to the effect that he should be declared to have passed the Previous LL.B. Examination and also for an injunction to the University to promote him to the Final LL.B. It was held by Piggott, J., that the civil court could not entertain such a suit. At

(1) 1948 A. C. 87
(2) I. L. R. 47 All. 434

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p. 448 the learned Judge said :—

"When a student enters any University as an under-graduate, and a *fortiori* when a graduate of such University presents himself for a course of post-graduate study he is a member of the "Universitas" or Corporation, and as such he is subject to the authority and discipline of those persons who have been duly placed in the authority in this corporation. If he considers himself to be oppressed by some misuse of authority on the part of a person, or body of persons, set over him, it is open to him to consider whether he cannot obtain redress from higher authorities within the same corporation. The question whether he has or has not passed a certain examination is one in respect of which, by the very act of presenting himself for such examination, he submits himself to the decision of the authorities appointed by the University for the conduct of the same. No Court of law can possibly entertain a claim on his part that he has passed a certain examination when the authorities of the University conducting the examination, and lawfully empowered to adjudicate upon its results, declare him to have failed".

In *Shibani Bose v. Promotha Nath Banerjee* (1), it was held that when the principal of a college is acting under the Regulations or when the Syndicate is confirming the proceedings of the Governing Body of a college, they are not acting judicially or quasi-judicially, but they are merely exercising administrative functions, and it is not obligatory upon them to adopt the regular forms of legal procedure or to give a hearing to the student as in a trial before a Court of Law. It is sufficient if the

(1) A. I. R. 1952, Cal. 238

student gets an opportunity to make representations against the action proposed to be taken against him. Bose, J., said at p. 241 :—

> "So long as persons or bodies entrusted with certain jurisdiction strictly confine themselves within the limits of their jurisdiction the Courts will not interfere. Matters of college discipline are entirely internal affairs of the college concerned. Whether there has been any breach of such discipline or not is a matter for the decision of the College Authorities. Such matters cannot be enquired into by the Court and are outside the purview of the Court. Strong reasons of sense and convenience dictate that these questions should not be brought under the jurisdiction of the Courts of law. There is the Syndicate to supervise the management and administration of the affairs of the educational institutions."

In *Ramani Kanta Bose* v. *Gauhati University* (1), a writ of mandamus was refused.

The power to issue a writ against inferior tribunals was considered in *Messrs. Parry and Company Limited* v. *Commercial Employees Association* (2), where it was held that the High Court would not be justified in issuing a writ of *certiorari* against an order or proceeding of an inferior tribunal vested with powers to exercise judicial or quasi-judicial functions where the inferior tribunal decided a matter which lay entirely within the jurisdiction of the tribunal to decide and where the records of the case did not disclose any error apparent on the face of the proceeding or any irregularity in the procedure which went contrary to the principles of natural justice. The High Court cannot, in such cases, exercise the power of an appellate Court and correct what it considers to be an error in the decision of the

(1) A. I. R. 1951, Assam 163
(2) 1952, S. C. A. 299=1952 S. C. R. 519

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tribunal. In this case a writ of *certiorari* was obtained from the Madras High Court in regard to an order made by the Labour Commissioner, Madras. At p. 306 Mukherjea, J., said :—

> "At the worst, he may have come to an erroneous conclusion, but the conclusion is in respect of a matter which lies entirely within the jurisdiction of the Labour Commissioner to decide and it does not relate to anything collateral, an erroneous decision upon which might affect his jurisdiction."

Continuing his Lordship said :—

> "* * * but no *certiorari* is available to quash a decision passed with jurisdiction by an inferior tribunal on the mere ground that such decision is erroneous."

Reference was also made by his Lordship to *Board of Education* v. *Rice* (1).

In *Rai Brij Raj Krishna* v. *S. K. Shaw* (2), the jurisdiction of a civil Court was held to be excluded in matters relating to Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947. It was held that the Legislature had entrusted the Controller with a jurisdiction, which included the jurisdiction to determine whether there was non-payment of rent or not and to order eviction in the event of non-payment of rent being proved. Therefore, even if a Controller had wrongly decided the question in regard to non-payment of rent, his order could not be questioned in a civil Court. Same rule was laid down in *Veerappa Pillai's case* (3).

A bench of this Court consisting of Harnam Singh, J., and myself took the same view in *U. C. Rekhi's case* (4).

(1) 1911, A. C. 178
(2) 1951, S. C. R. 145
(3) 1952, S. C. A. 287=1952, S. C. R. 583
(4) 52, P. L. R. 267

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For the plaintiff reliance was placed on *Secretary of State for India in Council* v. *Mask & Co.* (1), where the question was whether an order passed in an appeal under the provisions of section 188 of the Sea Customs Act against an assessment of duty by an officer of Customs, an application for revision of which order under section 191 of that Act had been rejected, constituted a final adjudication or whether the civil Courts had jurisdiction to entertain a suit by a person aggrieved by such assessment. The High Court held that the jurisdiction of the civil Court was not excluded in the absence of any provision in the Act to that effect. On appeal it was held by the Privy Council—

(1) that an appellate order passed under section 188 is final so as to exclude the jurisdiction of the civil Courts to entertain a suit by which the merits of the decision are challenged ;

(2) decision of an Assistant Collector of Customs holding the betel-nuts to be assessable as boiled nuts is a decision under section 188 and an appellate order confirmed on revision excludes a civil suit ;

(3) the determination of the question must rest on the terms of the statute which is under consideration and decisions on other statutory provisions are not of material assistance except in so far as general principles of construction are laid down ;

(4) where the statute creates a liability not existing at common-law and gives also a particular remedy for enforcing it * * * * * with respect to that class it has always been held that the party must adopt the form of remedy given by the statute.

(1) I. L. R. (1940) Mad. 599

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Dictum of Willes, J., in *Wolverhampton New Waterworks Company* v. *Hawkesford* (1), which was approved of in the House of Lords in *Neville* v. *London Express Newspaper Ltd.* (2), was referred to. Mr Gosain referred to the following passage in the judgment of Lord Thankerton : –

> "It is settled law that the exclusion of the jurisdiction of the civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well-settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

But this dictum will not be applicable because by the combined effect of sections 20, 31 and 33 of the East Punjab University Act and the Regulations made thereunder, i.e. the regulation 6 of Chapter III of Part II and regulation 13 of Part IV the jurisdiction to decide whether a student is guilty of any delinquency is a matter exclusively for the Committee appointed or by the Vice-Chancellor or by the Syndicate of the University and merely because the University comes to a wrong conclusion or even if the conclusion is against the weight of evidence the decision is final and as was held by their Lordships of the Privy Council themselves in this very case the decision arrived at under the powers conferred by the Act or the regulations made thereunder is final and it excludes the jurisdiction of civil Courts to entertain the suit.

The next case which Mr Gosain referred to was again a case under the Sea Customs Act, namely, *Ganesh Mahadev Jamsaindekar* v. *The Secretary of State for India in Council and another* (3). It was held in this case that as there had

(1) (1859) 6 C. B. 336, at p. 356
(2) (1919) A. C. 368
(3) I. L. R. (1919) 43 Bom. 221

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been no legal adjudication of the matter by the Collector of Customs in accordance with the Sea Customs Act, the Civil Court had jurisdiction. In view of the cases that have already been cited, particularly the *case of Mask & Co.* (1), the rule laid down in this case cannot have any application because what was found in this case was that there was no legal adjudication of the matter.

Reliance was then placed on *Samarendra Prosad Chakravarty* v. *The University of Calcutta* (2), but that case has no application to the facts of this case. The point which was agitated there was that the conduct of the Syndicate and the Vice-Chancellor of the University was tainted with want of good faith and it was held that the Syndicate had acted within the powers given to it by the Statute and the regulations and had not acted *mala fide*.

Mr Gosain then referred to two Full Bench decisions of the Lahore High Court in *Lachhman Singh* v. *Natha Singh* (3) and *K. L. Gauba* v. *The Punjab Cotton Press Company, Limited* (4). In the former what was held was that a special tribunal should act within its powers and so long as it does so, its orders whether right or wrong cannot be challenged except in the manner and to the extent prescribed in the Statute and the Courts of ordinary jurisdiction cannot question them, but if the actions are in excess or in contravention of the powers conferred they are *ultra vires* and are subject to control of the Courts. Almost similar rule was laid down by Dalip Singh, J., in the other Full Bench case. Reference in the former case was made to the *Colonial Bank of Australia and John Turner* v. *Robert Willan* (5), where it was pointed out that where an order of a quasi-judicial authority is objected to in a Court of law it has to be seen whether the objection relates to defective jurisdiction founded on the character and constitution of the tribunal, the

(1) I. L. R. 1940, Mad. 599
(2) 55 C. W. N. 443
(3) I. L. R. 1941, Lah. 71
(4) I. L. R. 1941, Lah. 524
(5) (1874) L. R. 5, P. C. 417

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nature of the subject-matter of the enquiry or the absence of some preliminary proceedings which were necessary to give jurisdiction to it. If any of these things is established the order is *coram non judice* and of no effect. If, however, "the objection rests solely on the ground that the tribunal has erroneously found a fact which it was competent to try the objection cannot be entertained".

In any case, the Supreme Court have now, in *Messrs. Parry and Company, Limited* v. *Commercial Employees Association* (1), and in *Rai Brij Raj Krishna* v. *S. K. Shaw* (2), *in Veerappa Pillai* v. *Raman & Co.* (3), defined the limits of the powers of civil Courts which must govern the law in India in preference to every other case. In the connected case—Civil Writ No. 40 of 1952—reference was made to a judgment of the Calcutta High Court in *Dipa Pal* v. *University of Calcutta* (4). It is not necessary to deal with this case at any great length because I have given my reasons as to why I come to an opposite conclusion.

The Court of Appeal of England in *Lee* v. *Showmen's Guild of Great Britain* (5), again considered the power of interference by Courts in the decisions of domestic tribunals. There the plaintiff and one S., both showmen and members of the defendant Guild, applied to Bradford Corporation for a site on the fair ground for the Bradford Moor Fair. The plaintiff was allotted the best position which was claimed by S. The rules of the Guild provided for imposition of fines on any member who broke the rules, and if the fine was not paid within a month the member was deemed to have ceased to be a member of the Guild. The plaintiff was held by the Committee of the Guild to be guilty of "unfair competition" within rule 15(c) and fined him, and because the fine was not paid it resolved that he had ceased to be a member. The

(1) 1952, S. C. A. 299
(2) 1951, S. C. R. 145
(3) 1952, S. C. A. 287
(4) 56 C. W. N. 278
(5) (1952) I. A. E. R. 1175

plaintiff brought a suit for declaration that the decision of the Committee was *ultra vires* and void. The Court of Appeal held that the Court had jurisdiction to examine any decision of the Committee which involved a question of law and interpretation of rules and held that the Committee had misconstrued rule 15(c). Observations made by Denning, L.J., are in conflict with the rule laid down in some of the cases which I have quoted above. But it may be pointed out that the learned Lord Justice did not refer to the judgment of their Lordships of the Privy Council in *Lennox Arthur Patrick O'Reilly* v. *Cyril Cuthbert Gittens* (1), a case which I have quoted above, and in my opinion the judgment of the Court of Appeal should not and cannot be preferred to that of the Privy Council by Courts in India.

A review of all these cases leads to the conclusion that if the Regulations under which the University acted were *intra vires* and the University did act in accordance with those Regulations, then this Court has no jurisdiction to interfere with the decision which was arrived at by the University. I may here say that not only no case of *mala fides* has been made out, on the other hand the University has acted with a certain amount of circumspection. The plaintiff's case was referred to a Committee consisting of three persons constituted under Regulation 6 of Chapter III of Part II who after waiting for the decision of the criminal Court gave their opinion though by a majority of 2 to 1 against the plaintiff. The matter was then referred to the Vice-Chancellor who agreed with the majority opinion and order under Regulation 13 of Part IV was passed. When a further representation was made under proviso to Regulation 6 of Chapter III of Part II the matter was placed before the Syndicate who after considering the whole matter including the Pleader's notice on behalf of the plaintiff upheld the opinion of the Vice-Chancellor. To say that the Vice-Chancellor and the Syndicate acted arbitrarily or their act was *mala fide* would be nothing short of travesty of language.

(1) 54 C. W. N. 124 (P. C.)

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It was then submitted on behalf of the plaintiff that the action of the University is against the concept of natural justice. I cannot see how any principle of natural justice has been transgressed in this case. The argument of Mr Gosain was this that the representations of the plaintiff were not considered by the Committee of three or by the Vice-Chancellor but this is merely an assertion without any basis. No witness has been produced and no document placed on the file which bears out this and it remains nothing but an assertion. In the first appellate Court the position was that after the order of discharge no further evidence was available on which the University Committee could act and a further argument was advanced that the plaintiff or his representative were not given a personal hearing. As was held in the English cases referred to above evidence as it is understood by lawyers cannot be taken by such Committees. As to the right of the plaintiff to have personal hearing before any action could be taken I cannot agree with counsel because there is no provision in the Regulation or in the Act enjoining upon the University to give a personal hearing to any erring candidate before any action could be taken, and if that is so, I fail to see how the non-appearance of the plaintiff will invalidate a decision which is otherwise valid.

Lord Shaw of Dunfermline in *Local Government Board* v. *Arlidge* (1), described the words "natural justice" as vacuous. His Lordship observed at p. 138 as follows :—

> "The words 'natural justice' occur in arguments and sometimes in judicial pronouncements in such cases. My Lords, when a central administrative board deals with an appeal from a local authority it must do its best to act justly, and to reach just ends by just means. If a statute prescribes the

(1) 1915, A. C. 120

> means it must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated; and lawyer-like methods may find especial favour from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation. And the assumption that the methods of natural justice are ex-necessitate those of Courts of justice is wholly unfounded. This is expressly applicable to steps of procedure or forms of pleading. In so far as the term "Natural justice" means that a result or process should be just, it is 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."

Quite recently the Bombay High Court had occasion to deal with this matter in the *Province of Bombay* v. *Madhukar Ganpat Nerlekar* (1). There the District Superintendent of Police held a departmental inquiry against a Sub-Inspector of Police and recommended his dismissal and the Sub-Inspector was dismissed by the Inspector-General of Police. A suit was filed against the Government by the Sub-Inspector who contended that the order of dismissal was void as the plaintiff had not been given a reasonable opportunity of showing cause against the order, and it was held that the order was good, that in the rules there was no provision for any notice to show cause and the absence of such notice did not make the dismissal invalid. It was also held that so long as a domestic tribunal acts honestly, in good

(1) 53 Bom. L. R. 754

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faith, with a sense of responsibility and in consonance with its own rules its decision cannot be questioned on the ground of breach of rules of natural justice. At p. 768 it was observed in this judgment :—

> "If there is no breach of any rules framed under the Police Act it will be safe to assume that there has been compliance with the rules of natural justice."

In America the judicial control over administrative findings is exercised through the concept of "due process" clause (vide *St. Joseph Stock Yards Company* v. *United States of Amercia*) (1). In England the same thing has been endeavoured to be achieved through the concept of "natural justice", but this has been rejected by the House of Lords in *Local Government Board* v. *Arlidge* (2), in a passage which I have quoted above. No doubt in subsequent decisions it has been attempted to re-assert this principle, but how far it has been re-established is not quite clear. Lord Radcliffe in *Nakkuda Ali* v. *Jayaratne* (3), and in *Jayaratne* v. *Bapu Miya* (4), seems to have brought about the 'twilight' of this principle. In the Privy Council cases from Ceylon, which I have mentioned, the Judicial Committee had decided that the cancellation of the licence was not judicial but executive action, so that it could not be brought up for review by *certiorari* and, even if this were not so, that the Controller had acted in accordance with natural justice and had ample material before him to justify his conclusion. In *Nakkuda Ali's case* the complaint of the dealer was that the Controller's action in cancelling his licence was quasi-judicial and was subject to review of the Court if he did not give the dealer an opportunity of defending himself as required by the primary rule of natural justice. The Judicial Committee denied that right to make his defence as that had no application to so executive a matter as the

(1) 228 U. S. 28 at p. 73
(2) 1915, A. C. 120
(3) 54 C. W. N. 883
(4) 54 C. W. N. 893

cancellation of a trading licence. In the Law Quarterly Review of January 1951 at p. 103 these judgments of their Lordships have been the subject-matter of some adverse criticism. The article ends as follows :—

> "The objector's own right to be heard is the same whether he is opposing one administrative body or two ; although in the latter case he has the advantage of hearing his primary opponents present their arguments, which he can then try to refute. If opposed by one agency only, he may never know what the arguments against him are. But this is a poor reason for depriving him of his right to make objections at all."

I may, however, add that in American Administrative Law there is still "insistence upon conformity to the basic judicial standards of notice and hearing. Such "fair and open hearing" in connection with administrative adjudications is one of the rudimentary requirements of fair play"* * *.

Schwartz on American Administrative Law, page 70 ; per Hughes, C.J., in *Morgan* v. *U.S.* (1).

In my opinion, it would be better to confine ourselves to English precedents on this question because the American due process clause has not been adopted in India and Indian Courts have so far been following the decisions of English Courts and no occasion has arisen for departing from that practice.

I cannot see how any question of offending against the concept of natural justice arises in the present case. The plaintiff's case was considered after the representation of Parma Nand by the committee in accordance with the regulations and the matter was then decided by the Vice-Chancellor to whom the representations were addressed. Not only this a further representation was made by the

(1) (1937) 304 U. S. 1

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petitioner which was again considered by the Vice-Chancellor and the Syndicate and they still came to the same conclusion. In this connection it would be appropriate to refer to a judgment of the Court of Appeal in *Leeson* v. *General Council of Medical Education and Registration* (1), which I have cited in an earlier part of this judgment. This case shows that a body such as the University must proceed on an inquiry conducted through its committees and they cannot be expected to take evidence as is done in the case of Courts. All they can do is to get statements of various persons for and against a complaint, and after considering them it is for them to give their honest and *bona fide* opinion and once they do that in my opinion it is not challengeable in a Court of law.

I am therefore of the opinion that—

(i) the statute has given to the University the power to appoint a Committee to go into cases of the type of which the plaintiff complains ;

(ii) the discretion is of the Committee and the Vice-Chancellor and if they decide the question in accordance with the requirements of the statute no Court can sit in appeal against their decision ;

(iii) no suit lies to challenge the decision of the University to take action against an erring student ;

(iv) it is not necessary to give a personal hearing to a student against whom action is intended to be taken and in the very nature of things the Committee cannot hold a trial as it is understood by lawyers nor can they take evidence which lawyers consider to be evidence (43 Ch. D. 366, 377) ; and

(v) there is no offending of the concept of natural justice.

(1) 43 Ch. D. 366

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It is necessary for me to state here again that there is no proof on the record excepting vague suggestions that the Committee of three or the Syndicate did not consider the representations made by the plaintiff when they gave their final decision in regard to the plaintiff. No question was put to any of the witnesses who appeared that these representations were not considered by them, and it would be presumptuous on the part of any one to think that the representations which had been addressed to the Vice-Chancellor Mr G. C. Chatterji were not considered by him or his successor did not take them into consideration when he gave his decision in December 1949. The whole matter was before them when they considered the plaintiff's case, and the final order of the Syndicate, dated the 19th February 1950, Exhibit D. 13, to which I have already made a reference, shows that the whole case was put by the Vice-Chancellor before the Syndicate and they approved of everything which had been done by the Vice-Chancellor. I cannot believe that a Committee consisting of such persons as a Judge of this Court, the Principal of the Law College and the Registrar of the University would decide a matter without directing their minds to anything which the plaintiff or his father had submitted. It is unfortunate that without there being any proof on the record that the plaintiff's representations were not considered by the University the Courts below came to the conclusion that they were not considered by the University Committee or the Vice-Chancellor or the Syndicate. Judges have to decide on evidence on the record, and if there is no evidence in support of their findings, or if their judgments are swayed by irrelevant considerations or on an erroneous view of the law of evidence in regard to admissibility of judgments, their findings naturally are vitiated, and that is what has happened in this case. The learned Judges of the Courts below have not directed their minds carefully to the evidence on the record which has been ignored or misread.

Mr Badri Das submitted that the Senior Subordinate Judge has not considered the evidence

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which has been led by the parties at all. This complaint seems to be justified. The evidence of P.W. 4 and P.W. 6, which the learned Judge relied upon, seems to be inconsistent with the statement of the plaintiff himself. According to P.W. 4 the plaintiff was beaten on a *pagdandi* about 150 or 175 yards from the Police Station. According to P.W. 6 the beating was done at a place 600 or 700 yards from the Police Station and P.W. 4 stated that two Police Officers and Kesar Mal, D.W. 4, were standing near the boy when this beating was given by the Police. The plaintiff himself has stated nothing in regard to his having been taken to a place so far away from the Police Station. On the other hand his statement was that he was beaten in one of the rooms of the Police Station. I am fully conscious of the fact that this is a second appeal and the Court of first appeal is the final Court of fact, but it appears to me that the learned Judge has not considered the evidence which was produced in the trial Court. According to the statement of the plaintiff himself and of Mukhtar Singh, P.W. 7, the father Parma Nand and the Secretary of the Congress Committee had also joined the investigation. It appears to me to be rather improbable, if not impossible, that under those circumstances the boy could be maltreated and tortured in the manner it is now stated. Again according to the plaintiff Kesar Mal threatened him that his father would be dismissed if he did not confess the guilt. Kesar Mal was in the witness-box and he was never asked if he gave this threat and he has denied the giving of any threat. In my opinion, the finding of the learned Judge in regard to the voluntary nature of the confession is vitiated by the fact of his not considering the evidence on the file and misreading it. It is significant that Gopal Das, P.W. 5, who according to the plaintiff joined the investigation, raised no voice against the torture of a young student. On the other hand, he sent a report to the newspapers as to the theft and as to the arrest of the thief and his confession. According to the plaintiff this gentleman was the Secretary of the Local Congress and I cannot believe that this man would not have taken the earliest opportunity of making a

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complaint with regard to the torture if that story had been true. Further the threat by Kesar Mal to the plaintiff in regard to the latter's father is not mentioned in any of the letters which the father wrote to the Vice-Chancellor. I am therefore of the opinion that the learned Judge's finding in regard to the confession cannot be sustained.

Unfortunately the case has not been conducted with that amount of care and legal acumen that one should have expected in a case of this kind. But even then it was the duty of the learned Judges of the Courts below to carefully consider the evidence before giving any findings. It appears to me that if the Courts below had not been swayed by the judgment of the criminal Court discharging the accused they would not have given the findings they have given in regard to the confession of the plaintiff.

It was finally submitted by Mr Gosain that Regulation 13 is not applicable to the facts of this case but Regulation 12 applies. I am unable to agree with this submission. In the first place, it is for the University to see which regulation applies, and even if I could go into the matter I cannot accept the contention of Mr Gosain.

I am therefore of the opinion that the judgments of the Courts below were erroneous and I would allow this appeal, set aside the judgment and decree of the Courts below and dismiss the plaintiff's suit, but I direct that the parties should bear their own costs throughout.

FALSHAW, J. I agree. Falshaw J.