Glynn v Keele University and another

CHANCERY DIVISION
PENNYCUICK V-C
8th, 15th, 17th DECEMBER 1970

Natural justice – Hearing – Duty to hear parties – University – Quasi-judicial function – Vice-chancellor – Power to suspend students – Exercise of power quasi-judicial function – Decision to exclude student from residence – No opportunity given to student to be heard – Whether decision breach of rules of natural justice – Whether decision a matter of internal discipline.

Injunction – Discretion – Natural justice – Injunction to restrain breach of rules of natural justice – Failure to give party opportunity to be heard – University – Suspension of student – Student not denying commission of offence – Student suffering no injustice by reason of breach of rules – Refusal of injunction.

Section 6, para 4, of the statutes of the University of Keele provided: 'The Vice-Chancellor may . . . suspend any Student from any class or classes and may exclude any Student from any part of the University or its precincts. He shall report any such suspension or exclusion to the Council and the Senate at their next meeting.' On 19th June 1970, the plaintiff, a student at the university, took part in an incident on the university campus which resulted in the vice-chancellor taking disciplinary action against him. The vice-chancellor, purporting to exercise the disciplinary powers conferred on him by s 6, para 4, of the university's statutes, wrote to the plaintiff by letter dated 1st July. In his letter he referred to the incident of 19th June and to his responsibility for maintaining good order, and continued: '. . . I shall report to the Council at its meeting on the 7th July that you have been fined £10 and excluded from residence in any residential accommodation on the University campus from today's date for the whole of the session of 1970/71 . . . If you wish to address any grievance in connection with the above to the Council . . . you should send it in writing to the Registrar to reach him not later than Tuesday, 7th July.' The plaintiff replied to the registrar by letter dated 3rd July stating that he wished to appeal; but having gone abroad for the long vacation, and having left no forwarding address he did not receive a letter giving him notice that the appeal was to be heard on 2nd September. In the event, the plaintiff did not appear at the hearing of the appeal and so the vice-chancellor's decision stood. On a motion by the plaintiff to restrain the university and the vice-chancellor from implementing the decision, the vice-chancellor stated in his affidavit that he had not given the plaintiff an opportunity of making representations to him before imposing the penalties because of the need for making a decision before those students due to graduate (who had also been involved in the incident of 1st June) ceased to be amenable to the disciplinary jurisdiction of the university on 1st July.

Held – (1) The powers of the vice-chancellor under s 6 (4) of the statutes to suspend a student were so fundamental to the position of a student in the university that they could not be regarded merely as a matter of internal discipline; accordingly the vice-chancellor was acting in a quasi-judicial capacity when he exercised them; so acting he had not complied with the rules of natural justice in that he did not give the plaintiff a chance of being heard before he reached his decision on the infliction of a penalty (see p 96 d and e, post).

Dicta of Lord Upjohn in *Durayappah v Fernando* [1967] 2 All ER at 156 considered.

(ii) However, the plaintiff had suffered no injustice; it was not disputed that he had been involved in the incident of 19th June, the offence was one which merited a severe penalty and the penalty imposed by the vice-chancellor was an intrinsically proper one; the fact that the plaintiff had merely been deprived of a right to make

a plea in mitigation was insufficient to justify setting aside the decision; accordingly an injunction would be refused (see p 97 f and g, post).

Note

For the rules of natural justice with respect to public authorities, see 30 Halsbury's Laws (3rd Edn) 718, 719, para 1368.

Cases referred to in judgment

Buckoke v Greater London Council [1970] 2 All ER 193, [1970] 1 WLR 1092.
Ceylon (University of) v Fernando [1960] 1 All ER 631, [1960] 1 WLR 223, 19 Digest (Repl) 655, **362.*
Durayappah v Fernando [1967] 2 All ER 152, [1967] 2 AC 337, [1967] 3 WLR 289, Digest Supp.
Fry, ex parte [1954] 2 All ER 118, [1954] 1 WLR 730, 118 JP 313, 98 Sol Jo 318, 38 Digest (Repl) 258, *666.*
Nakkuda Ali v M F de S Jayaratne [1951] AC 66, 8 Digest (Repl) 802, *562.*
R v Electricity Comrs, ex parte London Electricity Joint Committee Co (1920) Ltd [1924] 1 KB 171, [1923] All ER Rep 150, 93 LJKB 390, 130 LT 164, 20 Digest (Repl) 202, *3.*
R v Senate of the University of Aston, ex parte Roffey [1969] 2 All ER 964, [1969] 2 QB 538, [1969] 2 WLR 1418, 133 JP 463, Digest Supp.
R v University of Oxford, ex parte Bolchover (1970) The Times, 7th October.
Ridge v Baldwin [1963] 2 All ER 66, [1964] AC 40, [1963] 2 WLR 935, 127 JP 295, 37 Digest (Repl) 195, *32.*

Cases also cited

Death, ex parte (1852) 18 QB 647.
Leary v National Union of Vehicle Builders [1970] 1 All ER 713, [1971] Ch 34.
Leigh v National Union of Railwaymen [1969] 3 All ER 1249, [1970] Ch 326.
Maradana Mosque (Board of Trustees) v Badi-ud-din Mahmud [1966] 1 All ER 545, [1967] AC 313, 1 AC 13.
R v Metropolitan Police Comr, ex parte Parker [1953] 2 All ER 717, [1953] 1 WLR 1150.

Motion

By notice of motion the plaintiff, Simon Vincent Glynn, sought, inter alia, an injunction against the University of Keele and William Alexander Campbell Stewart, the vice-chancellor of the university, restraining them from excluding the plaintiff from residence on the campus of the university for the remainder of the academic year 1970-71 and from impeding in any save a lawful way any application which the plaintiff might make for residence. The facts are set out in the judgment.

S J Sedley for the plaintiff.
Gavin Lightman for the defendants.

Cur adv vult

17th December. **PENNYCUICK V-C** read the following judgment. In this action the plaintiff is Mr Simon Vincent Glynn who is a last year undergraduate at the University of Keele. The first defendant is the University of Keele itself; the second defendant is Mr William Alexander Campbell Stewart, who is the vice-chancellor of that university. I have before me a notice of motion whereby the plaintiff seeks an injunction restraining the defendants from excluding the plaintiff from residence on the campus of the university for the remainder of the current academic year.

The present action, including the motion, arises from an incident on 19th June 1970; on that day a number of undergraduates of the university were standing or sitting naked on the campus of the university, and that incident gave rise to a great deal of [illegible]le, as one would expect. In the present action there was no formal admission by the plaintiff that he was one of the undergraduates concerned; there is, however, evidence of identification, and there is nowhere in his affidavits, or in the speeches

of counsel for him, any real suggestion that he was not one of the naked undergraduates on that occasion. I must plainly proceed to deal with this motion on the footing that he was in fact involved in this incident; in other words no issue of identification is raised. The sequence of events is set out by the vice-chancellor [the second defendant] in para 3 of an affidavit sworn by him on this motion, in which he states:

> 'On my return to Keele on the evening of the 19th June 1970, I received information that certain students had appeared naked in the area of the Students' Union on that day, causing offence to many members and employees of the University, and residents on the campus. I thereupon proceeded with an investigation into the affair, and by the 29th and 30th June 1970 I had received clear and reliable evidence that the incident had indeed occurred and that the offenders included the Plaintiff and certain students due to graduate on the 1st July. Term ended on the 30th June and the Graduation Ceremony was on the 1st July. If a Disciplinary Panel had been convened it could not have met until after the end of term, by which time the graduation students would no longer have been within the disciplinary jurisdiction of the University. In any case if I had invited those against whom the evidence was available to visit me and make any representation it was clear to me that few if any would have been able to come. To expedite the decision and to enable that decision to treat all involved on an equality whether graduating students or not I decided to exercise my disciplinary jurisdiction and to give to the students involved an opportunity to appeal to the Council. The Council was due to hold a meeting on 7th July 1970 at which meeting they could appoint a committee to hear any appeals which might have been lodged. I deliberately limited my punishment to that which may be recommended and inflicted by the Disciplinary Panel under Regulation XXX. Accordingly I wrote the letter to the plaintiff dated 1st July 1970.'

I will refer in a few minutes to the statutes, ordinances and regulations which govern the university. The letter dated 1st July referred to by the vice-chancellor is in these terms:

> 'Dear Mr. Glynn, You have been identified as having appeared naked in the area of the Students' Union on the 19th, 1970. This incident has offended many members and employees of the University and residents on the campus. It has also offended many people outside the University both locally and nationally. You cannot have been ignorant of the likely consequences of your action. Following upon the general responsibility of the Vice-Chancellor to the Council under Section 6 (3) of the Statutes for the efficiency and good order of the University, I shall report to the Council at its meeting on the 7th July that you have been fined £10 and excluded from residence in any residential accommodation on the University campus from today's date and for the whole of the session of 1970/1. I shall also report that the fine must be paid by the 1st October 1970, or you will not be readmitted to the University at the beginning of next term. If you wish to address any grievance in connection with the above to the Council under Section 19 (24) of the Statutes, you should send it in writing to the Registrar to reach him not later than Tuesday, 7th July.'

The plaintiff wrote a long letter to the registrar of the university for the attention of the council on 3rd July 1970. In that letter he stated that he wished to appeal against the decision of the vice-chancellor. That letter should be read in full:

> 'I wish to appeal against the decision of the Vice-Chancellor under Section 19 (24) of the statutes. I have received a letter from the Vice-Chancellor, in which he informs me that I "have" been identified as having appeared naked . . . I "have" been fined £10, and I "have" been excluded from campus residence for next year. All this has been done without any representation by myself or on

my behalf, and hence I have not even had the opportunity to defend myself which is afforded to those accused of breaking the law of the land. Whilst the Vice-Chancellor may be acting within the *letter* of his statutory powers (which incidentally he assured the Parliamentary Commission he would never use), I do not feel that he has acted within the *spirit* of the Statutes, for I do not believe that any Government would ratify statutes that they believed would be used to entail [sic] the freedom of defence, or the freedom to plead mitigating circumstances, which are extended to subjects under the law of the land. Furthermore, with all due respect, I do not believe that this, my representation in writing to the Council, (after the decision to punish has already been taken by the Vice-Chancellor), can in any way be truly described as a chance to defend myself, as I am not present to answer queries which may arise and any representation on my behalf at this late stage in the proceedings can only be retrospective in spirit. The section of the statute invoked by the Vice-Chancellor is section 6 (3), under which he is responsible to council for the efficiency and good order of the University. It cannot be denied that the threatened withdrawal of £20,000 from the University impinges upon its good order and efficiency. However, this withdrawal of money was not forseen by students and obviously was not forseen even by the Administration, for surely, if the Administration had forseen such a withdrawal of monies, they would have given a formal order, or made formal request to those who were sunbathing to put on their clothes. (WHICH IT SHOULD BE NOTED THEY AT NO TIME DID.) Thus, the assertion by the Vice-Chancellor in his letter, that "you cannot have been ignorant of the likely consequences of your action", is clearly invalid and unfair for by what token can he assume that the students were aware of the "likely consequences" of their actions when it is obvious (from the lack of directive at the time from the administration to the students concerned) that not even the administration were aware of the possible outcome. The implications of the type of retrospective punishment being invoked in this situation are abhorent. To draw a parallel—if a member of this Council while driving home accidentally ran over and killed a pedestrian it could be argued *retrospectively* that that man had killed a pedestrian because he had *driven* home, and thus, to drive home constitutes a blameworthy offence. However, I believe that any rational human being will see that the driver should not be punished for he did not intend to kill the pedestrian and had no way of knowing the outcome of his action. As I have argued earlier, despite the assertion to the contrary by the Vice-Chancellor, the students involved in sunbathing at Keele had no way of knowing that it would lead to a withdrawal of £20,000 from the University. Nor do I believe that in this day and age when nude plays, nudist colonies and health farms flourish, and when we are—one would hope—less inhibited and less restricted by the proven psychologically harmful aftermath of Victorian prudishness, that any student could reasonably be expected to think that such a harmless action could have such repercussions. In conclusion then, may I ask the members of Council to consider my appeal with the open minded rationalism of which I am convinced they are possessed. I would further like to point out that I have a lot more to say on this subject and in all fairness feel sure that the Council members will realise that had I been allowed to be present, I would have been able to clarify the situation far better than I can do in this letter, furthermore as I am not present and there is consequently no feed-back I am unable to answer any queries or objections that I am sure will be raised. In view of this may I beg to appear in person before the council if there is any question of my appeal being rejected. Yours faithfully, Simon V. Glynn. P.S. I am a finalist next year and in view of the travelling involved, the structure of my timetable and the fact that I should have to rely upon Public Transport, I feel that exclusion from campus residence would have an extremely detrimental effect upon my examination performance.'

Having heard no more, according to his affidavit, the plaintiff went abroad at the end of July. On 10th August a letter was written to the plaintiff giving him notice that the date of his appeal had been fixed for 2nd September. The plaintiff himself did not, according to his own evidence, receive that letter until he came home from abroad considerably after 2nd September. His mother acknowledged the letter and stated her own views. In the event, on the date fixed for hearing the appeal, the plaintiff was not present or represented, and accordingly the decision of the vice-chancellor stood.

The plaintiff has given evidence to the effect that he has been seriously inconvenienced by his exclusion from residence on the campus. I need not, I think, go through the particulars of the matter. It will be sufficient to say that although separate accommodation in the village of Keele was offered to him, he did not find that accommodation acceptable, or perhaps practicable, for one reason or another, and in the event he found lodgings some ten miles away. That involves a daily journey to and from the campus, and unfortunately in November he had an accident which involved his car in being a total write-off, so that the inconvenience is considerably augmented. I should mention that the plaintiff in fact paid the £10 fine in order to get back to his studies. In those circumstances the writ in this action was issued, and notice of motion dated 2nd December was given.

I must now refer to the relevant provisions in the statutes, ordinances and regulations of the university; I can do that quite shortly. The constitution of the university is contained in four documents, namely the charter, then the statutes, then the ordinances, then the regulations. Section 6 of the statutes is headed: 'The Vice-Chancellor' and contains these two paragraphs:

> '3. The Vice-Chancellor shall have a general responsibility to the Council for maintaining and promoting the efficiency and good order of the University.
>
> '4. The Vice-Chancellor may refuse to admit any person as a Student without assigning any reason and may suspend any Student from any class or classes and may exclude any Student from any part of the University or its precincts. He shall report any such suspension or exclusion to the Council and the Senate at their next meeting.'

It will be remembered that the vice-chancellor purported to rely only on para 3 in that section, but I think it is really clear he was also relying on para 4. Ordinance XV contains a provision, in para 2, not substantially different in terms:

> 'The Vice-Chancellor may, at his discretion, suspend any student from attendance at any class or classes or exclude any student from the University or its precincts and shall report every such case to the Council and the Senate at their next meetings.'

Pausing there, there can I think be no doubt that the vice-chancellor on his own initiative and responsibility is entitled to exercise the power of exclusion contained in para 4 of s 6. I was, however, referred to one of the regulations, namely reg XXX. That regulation is headed: 'DISCIPLINE'; it contains these provisions, so far as now material.

> '1 This Regulation is subject to Section 6 of the Statutes under which the ultimate responsibility for disciplinary action lies with the Vice-Chancellor. [Then come a number of provisions dealing with the warden, with which I am not concerned.]
>
> '5 There shall be a University Disciplinary Committee of five members which shall be convened by the Vice-Chancellor to hear and make recommendations to him in all cases of alleged serious offences referred to him, except as provided in paragraph 7. The Committee shall be empowered to recommend to the Vice-Chancellor any penalties including expulsion or temporary exclusion.

[Then come a number of provisions relating to the composition and procedure of the disciplinary committee, and almost at the end come these provisions:]

'13 The student will be informed of his rights to call witnesses, evidence and character witnesses on his behalf, and to be represented by a member of the University willing so to act at any hearing of the Committee.

'14 The Committee may call for evidence and witnesses.

'15 The Committee will report its findings to the Vice-Chancellor and make recommendations to him. The Vice-Chancellor shall decide whether or not to adopt the recommendation of the Committee.

'16 A notice containing the decision of the Vice-Chancellor will be sent to: The student concerned . . .

'17 The student will be notified of his right of appeal to the University Council or in the case of a recommendation by the Vice-Chancellor to expel him, that the University Council alone is vested with the power of expulsion.'

That last paragraph refers back to s 19 of the statutes, which is headed 'Powers of the Council' and states:

'Subject to the Charter and the Statutes the Council shall in addition to all other powers vested in it have the following powers . . .

'(23) To expel after a report from the Vice-Chancellor any Student deemed to have been guilty of grave misconduct.

'(24) To consider, adjudicate upon and if thought fit redress any grievance of the Officers of the University, the Academic Staff [and a number of other named persons] and the Students who may for any reason feel aggrieved otherwise than by an act of the Court.'

It was suggested on behalf of the plaintiff that it was obligatory for the vice-chancellor, in the case of this disciplinary action, for the procedures in reg XXX to be gone through, and that in effect they excluded the right of the vice-chancellor to act on his own responsibility under s 6. I think it is clear that this is not so. In the first case reg XXX is expressly made subject to s 6. In the second place the charter itself provides in para 19 as follows:

'The Court, the Council and the Senate respectively may from time to time make Regulations for governing subject to this Our Charter and the Statutes the proceedings of those bodies . . .'

Although the various parts of the entire constitution do not dovetail into one another very well, so far as I can see there is no power to make a regulation which was contrary to one of the provisions of the statutes.

I now come to the question which has been most debated on this motion, and which I find a very difficult one. The question is whether, when the vice-chancellor takes a decision under s 6, he is acting in a quasi-judicial capacity, and if that question is answered in the affirmative, whether there has been some failure of the requirements of natural justice in the present case. The two questions as to what constitutes a quasi-judicial capacity and the duty to comply with the requirements of natural justice, are very closely inter-related.

I was referred to *Ridge v Baldwin*[1], in which Lord Reid made a lengthy and thorough survey of the principles applicable in this connection. I do not think it would be useful to quote from that case for the present purpose. I was also referred on the matter of general principles to *Durayappah v Fernando*[2], in the Privy Council. I will read one passage from the opinion of Lord Upjohn in that case. That paragraph

1 [1963] 2 All ER 66 at 70, [1964] AC 40 at 63

2 [1967] 2 All ER 152, [1967] 2 AC 337

is addressed to the principle of audi alteram partem, but it is, I think, applicable to the allied question whether any given body or person is acting in a quasi-judicial capacity. He said this[3]:

> 'Their lordships were, of course, referred to the recent case of *Ridge* v. *Baldwin*[4], where this principle was very closely and carefully examined. In that case no attempt was made to give an exhaustive classification of the cases where the principle audi alteram partem should be applied. In their lordships' opinion it would be wrong to do so. Outside well-known cases such as dismissal from office, deprivation of property and expulsion from clubs, there is a vast area where the principle can be applied only on most general considerations. For example, as LORD REID when examining[5] *R.* v. *Electricity Comrs., Ex p. London Electricity Joint Committee Co. (1920), Ltd.*[6] pointed out, BANKES, L.J.[7] inferred the judicial element from the nature of the power and ATKIN, L.J.[8] did the same. Pausing there, however, it should not be assumed that their lordships necessarily agree with LORD REID's analysis[5] of that case or with his criticism[9] of *Nakkuda Ali* v. *M. F. de S. Jayaratne*[10]. Outside the well-known classes of cases, no general rule can be laid down as to the application of the general principle in addition to the language of the provision. In their lordships' opinion there are three matters which must always be borne in mind when considering whether the principle should be applied or not. These three matters are: first what is the nature of the property, the office held, status enjoyed or services to be performed by the complainant of injustice. Secondly, in what circumstances or on what occasions is the person claiming to be entitled to exercise the measure of control entitled to intervene. Thirdly, when a right to intervene is proved, what sanctions in fact is the latter entitled to impose on the other. It is only on a consideration of all these matters that the question of the application of the principle can properly be determined.'

The context of educational societies involves a special factor which is not present in other contexts, namely the relation of tutor and pupil; i e the society is charged with the supervision and upbringing of the pupil under tuition, be the society a university or college or a school. Where this relationship exists it is quite plain that on the one hand in certain circumstances the body or individual acting on behalf of the society must be regarded as acting in a quasi-judicial capacity—expulsion from the society is the obvious example. On the other hand, there exists a wide range of circumstances in which the body or individual is concerned to impose penalties by way of domestic discipline. In these circumstances it seems to me that the body or individual is not acting in a quasi-judicial capacity at all but in a magisterial capacity, i e in the performance of the rights and duties vested in the society as to the upbringing and supervision of the members of the society. No doubt there is a moral obligation to act fairly, but this moral obligation does not, I think, lie within the purview of the court in its control over quasi-judicial acts. Indeed, in the case of a schoolboy punishment the contrary could hardly be argued.

I was referred in connection with educational societies to two cases, namely *University of Ceylon v Fernando*[11] in the Privy Council and *R v Senate of the University of Aston, ex parte Roffey*[12]. Those cases, although they contain many valuable statements,

3 [1967] 2 All ER at 156, [1967] 2 AC at 349
4 [1963] 2 All ER 66, [1964] AC 40
5 [1963] 2 All ER at 78, [1964] AC at 76
6 [1924] 1 KB 171, [1923] All ER Rep 150
7 [1924] 1 KB at 198, [1923] All ER Rep at 157
8 [1924] 1 KB at 206, 207, [1923] All ER Rep at 161, 162
9 [1963] 2 All ER at 79, [1964] AC at 77
10 [1951] AC 66
11 [1960] 1 All ER 631, [1960] 1 WLR 223
12 [1969] 2 All ER 964, [1969] 2 QB 538

do not take one very far in deciding the present question. In the earlier case it was admitted that the body concerned was acting in a quasi-judicial capacity. The later case was concerned with an act which, although not in form expulsion, was tantamount to expulsion from the society.

I turn now to the present case. The vice-chancellor has, under the provisions which I have read, no power of expulsion. That power is vested in the council alone. On the other hand, the powers which he has under s 6 are of an extremely far-reaching character. He may, under para 4 in s 6, suspend any student from any class or classes, and may exclude any student from any part of the university or its precincts. Those powers, although they do not amount to expulsion, amount in terms to suspension and also amount in substance to something very like expulsion. If a student is excluded from the university it is hard to see how he can carry on his studies at the university.

I have found considerable difficulty in making up my mind as to which side of the line those powers fall. When the vice-chancellor exercises those powers should he be regarded as acting in a quasi-judicial capacity, or should he be regarded as acting merely in what I have called a magisterial capacity? On the best consideration I can give it—but let me say at once it is by no means the end of the matter—I have come to the conclusion that those powers are so fundamental to the position of a student in the university that the vice-chancellor must be considered as acting in a quasi-judicial capacity when he exercises them; I do not think it would be right to treat those powers as merely matters of internal discipline.

Having reached that conclusion, I must next decide whether, in exercising his powers in the present case, the vice-chancellor complied with the requirements of natural justice. I regret that I must answer that question without hesitation in the negative. It seems to me that once one accepts that the vice-chancellor was acting in a quasi-judicial capacity, he was clearly bound to give the plaintiff an opportunity of being heard before he reached his decision on the infliction of a penalty, and if so what penalty. In fact he did not do so. I have already read his account of what happened. It seems to me that having by 29th and 30th June received clear and reliable evidence that the incident had indeed occurred and that the offenders included the plaintiff, he ought certainly as a matter of natural justice to have sent for the plaintiff before he left Keele, and given him an opportunity to present his own case. With all respect to the vice-chancellor I think that he failed in his duty by omitting to send for the plaintiff and, instead, by writing him a letter merely announcing his decision.

The next step in the matter is the appeal to the council under s 19 of the statute. It is unfortunate that the plaintiff failed to make the necessary arrangements to enable him to attend a meeting of the council if and when convened, but I do not think it is possible to reach the conclusion that in this respect he has been deprived of his right of appeal. He chose to go abroad either without leaving an address or, if he did leave an address, without coming home in time for the hearing, and I think so far as that is concerned one must treat the decision of the council as effective. I would add that a different position might well have arisen if on his return home the plaintiff had applied for a fresh hearing before the council and his request had been refused.

I now have to reach the second decision in this case which I have found of considerable difficulty. It is not, I think, in doubt that in deciding whether to grant an injunction the court has a judicial discretion, and that that judicial discretion is comparable to the judicial discretion exercised in the Queen's Bench Division when an application is made to quash a decision of a quasi-judicial body. On that matter of discretion I was referred to the judgment of Singleton LJ in *Ex parte Fry*[13], and to a very recent decision in the Queen's Bench Divisional Court, *R v University of Oxford ex parte Bolchover*[14], in which the university had expelled a post-graduate member

13 [1954] 2 All ER 118 at 121, 122, [1954] 1 WLR 730 at 736
14 (1970) The Times, 7th October

and he applied for an order of certiorari to quash the decision. In a very short judgment Lord Parker CJ said this:

> 'The Court has carefully considered the papers in this case, and of course, all that you have so ably urged, but at the end of the day we remain unconvinced that the conduct of the hearing before the Proctors offended against such rules of natural justice as were applicable in the circumstances. To put it more simply, they are not satisfied that that hearing was unfair. [So far the judgment has no application here, because I have held that there was a failure of natural justice. Then come these most important words:] But it is only right to add that even if the Court felt there might be something to be enquired into, nevertheless as a matter of discretion they would, having regard to the appeal, refuse you leave. In the result leave is refused.'

So in that passage Lord Parker CJ stated plainly that the court has a discretion whether to set aside by way of certiorari a decision of a quasi-judicial body even where there has been a failure in natural justice. In another recent case, *Buckoke v Greater London Council*[15] Plowman J, after quoting *Ex parte Fry*[16] said:

> 'In my judgment the ratio decidendi of that case is just as applicable to a claim for an injunction as to a claim for an order of certiorari; both are discretionary remedies.'

I have, again after considerable hesitation, reached the conclusion that in this case I ought to exercise my discretion by not granting an injuction. I recognise that this particular discretion should be very sparingly exercised in that sense where there has been some failure in natural justice. On the other hand, it certainly should be exercised in that sense in an appropriate case, and I think this is such a case. There is no question of fact involved as I have already said. I must plainly proceed on the footing that the plaintiff was one of the individuals concerned. There is no doubt that the offence was one of a kind which merited a severe penalty according to any standards current even today. I have no doubt that the sentence of exclusion of residence in the campus was a proper penalty in respect of that offence. Nor has the plaintiff in his evidence put forward any specific justification for what he did. So the position would have been that if the vice-chancellor had accorded him a hearing before making his decision, all that he, or any one on his behalf could have done would have been to put forward some general plea by way of mitigation. I do not disregard the importance of such a plea in an appropriate case, but I do not think the mere fact that he was deprived of throwing himself on the mercy of the vice-chancellor in that particular way is sufficient to justify setting aside a decision which was intrinsically a perfectly proper one.

In all the circumstances, I have come to the conclusion that the plaintiff has suffered no injustice, and that I ought not to accede to the present motion.

Motion dismissed.

Solicitors: *Clinton Davis, Simons & Co* (for the plaintiff); *Sharpe, Pritchard & Co*, agents for *L K Robinson*, Stoke-on-Trent (for the defendants).

Richard J Soper Esq Barrister.

15 [1970] 2 All ER 193 at 197, [1970] 1 WLR 1092 at 1097
16 [1954] 2 All ER 118, [1954] 1 WLR 730