RECENT DEVELOPMENTS IN THE LAW

A review of significant judicial decisions and legislation contributed by students of the Faculty of Law, University of Otago.

ADMINISTRATIVE LAW

Certiorari — natural justice

A teacher sought to have a writ of certiorari restored by the Privy Council in *Furnell* v. *Whangarei High Schools Board* [1973] 2 N.Z.L.R. 705. He had been suspended by the defendant board pending the final determination of a complaint against him, and he alleged that the decision to suspend had been made contrary to the principles of natural justice since no opportunity was provided for him to answer the complaint before the suspension.

The Judicial Committee held by a majority that the principles of natural justice were not applicable to the decision to suspend. There would appear to be two reasons expressed by Lord Morris of Borth-y-Gest in the majority judgment for this conclusion: first the legislature had enacted a comprehensive code of procedure in the Education Act 1964 and the Secondary and Technical Institute Teachers Disciplinary Regulations 1969 to which the requirements of natural justice should not be added, and secondly that the principles of natural justice are not applicable to a preliminary decision to suspend pending a full enquiry and determination because such a decision does not condemn or criticise.

Certiorari — error of law on the face of the record

Error of law on the face of the record was the ground upon which the New Zealand Supreme Court issued a writ of certiorari in *Manukau City Corporation* v. *Hattaway* [1973] 2 N.Z.L.R. 751. The error of law was contained in the reasons of the Magistrate for his decision on application for particulars. Mahon J. held that the transcript of the reasons for such a decision formed part of the record. The fact that the error of law did not nullify the whole of the proceedings was held to be irrelevant.

Certiorari — discovery of fresh evidence

Lord Denning M.R. in *R.* v. *West Sussex Quarter Sessions, Ex parte Johnson Trust Ltd* [1973] 3 W.L.R. 149 attempted to establish a new ground for the issue of the writ of certiorari. The applicant sought to quash an order of the Justices refusing an application for a declaration that no right of way on foot existed over the property in question on the grounds that fresh

evidence had been discovered subsequent to the decision which would have had an important influence on the result. His Lordship was of the opinion that the discovery of new evidence could warrant the issue of certiorari, although not in this case since the evidence could have been obtained with due diligence before the trial, and in any event would not affect the result.

The majority of the English Court of Appeal, Orr L. J. and Lawton L. J., disagreed with the principle enunciated by Lord Denning, and held that the remedy of certiorari was not available to quash the decision of an inferior tribunal solely on the grounds that fresh evidence which might have affected the result had been discovered. It was thought that the remedy of certiorari should only issue in circumstances where the proceedings before the inferior tribunal were in some way irregular or defective. The fact that if other evidence had been adduced, the tribunal might have come to a different conclusion, was not such an irregularity or defect in proceedings.

Mandamus — locus standi

The principle that an applicant for a writ of mandamus to compel the performance of a public duty must show the breach of a duty owed to himself was recently reaffirmed by the New Zealand Supreme Court in *Environmental Defence Society Inc.* v. *Agricultural Chemicals Board* [1973] 2 N.Z.L.R. 758. The plaintiff society in its attempt to compel the defendant board to exercise its powers under ss. 19 and 20 Agricultural Chemicals Act 1959 with respect to the chemical 2, 4, 5-T was unable to show that it had the required *locus standi.* The Environmental Defence Society could not show that the defendant board owed them a duty and that this duty had been breached. Haslam J. added that no grounds existed for the issue of the writ in any event since in his opinion, the Board was exercising its discretion according to law.

Injunction — locus standi

Locus standi was also discussed in a recent English decision, *Attorney-General ex rel. McWhirter* v. *Independent Broadcasting Authority* [1973] 2 W.L.R. 344, this time with regard to an application for an injunction. A member of the public was seeking to prevent the showing of an allegedly indecent film on television and the English Court of Appeal had to decide whether or not he had the requisite *locus standi* to come to the courts seeking an injunction. The Court held that where there was a breach or a threatened breach of the law affecting the public generally, a member of the public with his interests no more adversely affected than those of other members of that section of the community to which he belonged, could not apply for an injunction unless a relator action was brought in the name of the Attorney-General. This had not been done so the plaintiff failed with his application.

Lord Denning M. R. and Lawton L. J. added, as obiter dicta, that should the Attorney-General refuse leave in a proper case, or be unreasonably slow in giving such leave, then a

citizen with an interest could himself apply to the court for a declaration or even an injunction, with the Attorney-General, if necessary, joined as a defendant.

Mandamus — servant of the crown

The New Zealand Government Printer is a servant of the Crown and not an agent of statute. It was held by the New Zealand Supreme Court (Wild C. J.) in *Victoria University of Wellington Students Association Incorporated* v. *Shearer (Government Printer)* [1973] 2 N.Z.L.R. 21 that mandamus will not lie against such a servant of the Crown. Mandamus was sought by the plaintiff to compel the Government Printer to print and supply copies of the whole text of the Judicature Act 1908 including the Second Schedule which contains the Supreme Court Code of Civil Procedure.

B. V. Harris.

COMMERCIAL LAW

Hire Purchase Regulations

Although "hiring agreements" entered into after 1971 must conform with the Economic Stabilisation (Motorcar Hiring) Regulations 1971, it is now clear that such agreements entered into before that time are not necessarily illegal. This was made clear by the Court of Appeal in *Carroll* v. *Credit Services Investments Ltd.* [1973] 1 N.Z.L.R. 246, when it held that a leasing agreement (entered into prior to 1971) which contained an express convenant from the lessee that he would not purchase the vehicle at the end of the leasing period would only become illegal under Regulation 8 Hire Purchase and Credit Sales Regulations 1957 if there was extrinsic evidence which established a mutual agreement or undertaking which negates the effect of the covenant that the lessee will not buy. Even if there is such an agreement, it would seem from the decision of McMullan J. in *Robert Northe Carriers Ltd.* v. *Cord Motors* [1973] N.Z.L.J. 157, that this agreement is separate from the leasing agreement inasmuch as an assignment of the leasing agreement will be held to be valid between the assignee and the lessee, notwithstanding the fact that the original leasing agreement has been made illegal by the agreement of the parties that the lessee will be able to buy, unless the assignee is also a party to the illegal agreement.

Illegal Contracts Act 1970

In *Slobbe* v. *Combined Taxis* [1973] 2 N.Z.L.R. 651, the Court of Appeal upheld the decision of Wild C.J. (noted 3 Otago L.R. 101-2). It is interesting to note, however, that the Court of Appeal were careful not to endorse the Chief Justice's distinction between contracts which are void or illegal because they are