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HOUSE OF LORDS

Date: 14th March 1963.

RIDGE (A.P.)

v.

BALDWIN and others

Lord Reid
Lord Evershed
Lord Morris of Borth-y-Gest
Lord Hodson
Lord Devlin

Lord Reid

My Lords,

The Appellant, Mr. Ridge, became Chief Constable of the County Borough of Brighton in 1956, after serving in the Brighton Police Force for some thirty-three years. At a meeting of the Watch Committee, the police authority, on 7th March, 1958, it was resolved that he should be dismissed, and he now maintains that that resolution was void and of no effect because he had no notice of the grounds on which the Committee proposed to act and no opportunity to be heard in his own defence.

The Appellant had been arrested on 25th October, 1957, and subsequently tried on a charge of conspiring with the senior members of his force and others to obstruct the course of justice, and had been suspended from duty on 26th October. He was acquitted on 28th February, but the other two members of the force were convicted and in sentencing them the trial Judge, Donovan, J., made a statement which included grave reflections on the Appellant's conduct. He was then indicted on a charge of corruption and was on 6th March acquitted, no evidence having been offered against him. On this occasion Donovan, J. made a further statement. On the day following that statement the Watch Committee met and summarily dismissed the Appellant. I shall not deal further with these matters because my noble and learned friend, Lord Morris of Borth-y-Gest, intends to do so.

The power of dismissal is contained in section 191 (4) of the Municipal Corporations Act, 1882. So far as I am aware that subsection is the only statutory provision regarding dismissal, and the Respondents purported to act under it. It is in these terms:

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

The Appellant maintains that the Watch Committee ought to have proceeded in accordance with regulations made under the Police Act, 1919, section 4 (1), which authorised the Secretary of State to make regulations as to, *inter alia,* the conditions of service of the members of all police forces in England and Wales. Regulations were duly made, but the Respondents maintain that they do not apply to this case. For the moment I shall assume in their favour that that is so and consider whether the Act of 1882 taken by itself authorised them to do as they did.

The Appellant's case is that in proceeding under the Act of 1882 the Watch Committee were bound to observe what are commonly called the principles of natural justice. Before attempting to reach any decision they were bound to inform him of the grounds on which they proposed to act and give him a fair opportunity of being heard in his own defence. The authorities on the applicability of the principles of natural justice are in some confusion, and so I find it necessary to examine this matter in some detail. The principle *audi alteram partem* goes back many centuries in our law and appears in a multitude of judgments of judges of the highest authority.

In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist. The idea of negligence is equally insusceptible of exact definition, but what a reasonable man would regard as fair procedure in particular circumstances and what he would regard as negligence in particular circumstances are equally capable of serving as tests in law, and natural justice as it has been interpreted in the Courts is much more definite than that. It appears to me that one reason why the authorities on natural justice have been found difficult to reconcile is that insufficient attention has been paid to the great difference between various kinds of cases in which it has been sought to apply the principle. What a Minister ought to do in considering objections to a scheme may be very different from what a Watch Committee ought to do in considering whether to dismiss a Chief Constable. So I shall deal first with cases of dismissal. These appear to fall into three classes, dismissal of a servant by his master, dismissal from an office held during pleasure, and dismissal from an office where there must be something against a man to warrant his dismissal.

The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence: it depends on whether the facts emerging at the trial prove breach of conract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them. The present case does not fall within this class because a Chief Constable is not the servant of the Watch Committee or indeed of anyone else.

Then there are many cases where a man holds an office at pleasure. Apart from judges and others whose tenure of office is governed by statute, all servants and officers of the Crown hold office at pleasure, and this has even been held to apply to a colonial judge (*Terrell* v. *Secretary of State for the Colonies and Another* (1953] 2 Q.B. 482). It has always been held, I think rightly, that such an officer has no right to be heard before he is dismissed, and the reason is clear. As the person having the power of dismissal need not have anything against the officer, he need not give any reason. That was stated as long ago as 1670 in *Rex* v. *Mayor of Stratford,* 1 Lev. 291, where the Corporation dismissed a Town Clerk who held office *durante bene placito.* The leading case on this matter appears to be the *Darlington School* case (1844) 6 Q.B. 682, although that decision was doubted by Lord Hatherley, L.C. in *Dean* v. *Bennett,* 6 Ch. App. 489, and distinguished on narrow grounds in *Willis* v. *Childe,* 13 B. 117. 1 fully accept that where an office is simply held at pleasure the person having power of dismissal cannot be bound to disclose his reasons. No doubt he would in many cases tell the officer and hear his explanation before deciding to dismiss him. But if he is not bound to disclose his reason and does not do so, then, if the Court cannot require him to do so, it cannot determine whether it would be fair to hear the officer's case before taking action. But again that is not this case. In this case the 1882 Act only permits the Watch Committee to take action on the grounds of negligence or unfitness. Let me illustrate the difference by supposing that a Watch Committee who had no complaint against their present Chief Constable heard of a man with quite outstanding qualifications who would like to be appointed. They might think it in the public interest to make the change, but they would have no right to do it. But there could be no legal objection to dismissal of an officer holding office at pleasure in order to put a better man in his place.

So I come to the third class, which includes the present case. There I find an unbroken line of authority to the effect that an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation. An early example is *Bagg's* case (1615) 11 Co. Rep. 93b, though it is more properly deprivation of the privilege of being a burgess of Plymouth. *Rex* v. *Gaskin* (1799) 8 Durn & East 209, arose out of the dismissal of a Parish Clerk, and Lord Kenyon, C.J. referred to *audi alteram partem* as one of the first principles of justice. *Reg.* v. *Smith* (1844) 5 Q.B. 614 was another case of dismissal of a Parish Clerk, and Lord Denman, C.J. held that even personal knowledge of the offence was no substitute for hearing the officer: his explanation might disprove criminal motive or intent and bring forward other facts in mitigation, and in any event delaying to hear him would prevent yielding too hastily to first impressions. *Ex parte Ramshay* (1852) 21 L.J. 238 is important. It dealt with the removal from office of a county court judge, and the form of the legislation which authorised the Lord Chancellor to act is hardly distinguishable from the form of section 191 which confers powers on the Watch Committee. The Lord Chancellor was empowered if he should think fit to remove on the ground of inability or misbehaviour, but Lord Campbell, C.J.

said that this was " only on the implied condition prescribed by the principles of eternal justice". In *Osgood* v. *Nelson,* L.R. 5 H.L. 636, objection was taken to the way in which the Corporation of the City of London had removed the Clerk to the Sheriff's Court, and Lord Hatherley, L.C. said (p. 649):

> " I apprehend, my Lords, that, as has been stated by the learned Baron who has delivered, in the name of the Judges, their unanimous opinion, the Court of Queen's Bench has always considered that it has been open to that Court, as in this case it appears to have considered, to correct any Court, or tribunal, or body of men who may have a power of this description, a power of removing from office, if it should be found that such persons have disregarded any of the essentials of justice in the course of their enquiry, before making that removal, or if it should be found that in the place of reasonable cause those persons have acted obviously upon mere individual caprice".

That citation of authority might seem sufficient, but I had better proceed further. In *Fisher* v. *Jackson* {1891] 2 Ch 84, three vicars had power to remove the Master of an endowed school. But, unlike the *Darlington* case (*cit. sup.)* the trust deed set out the grounds on which he could be removed - briefly, inefficiency or failing to set a good example. So it was held that they could not remove him without affording him an opportunity of being heard in his own defence. Only two other cases of this class were cited in argument, *Cooper* v. *Wilson and Others* [1937] 2 K.B. 309, and *Hogg* v. *Scott* [1947] K.B. 759. Both dealt with the dismissal of police officers and both were complicated by consideration of regulations made under the Police Acts. In the former the majority at least recognised that the principles of natural justice applied, and in deciding the latter Cassels, J., in deciding that a Chief Constable could dismiss without hearing him an officer who had been convicted of felony, appears to have proceeded on a construction of the regulations. Of course, if the regulations authorised him to do that and were *intra vires* in doing so, there would be no more to be said. I do not think it necessary to consider whether the learned judge rightly construed the regulations, for he did not expressly or, I think, by implication question the general principle that a man is not to be dismissed for misconduct without being heard.

Stopping there, I would think that authority was wholly in favour of the Appellant, but the Respondent's argument was mainly based on what has been said in a number of fairly recent cases dealing with different subject matter. Those cases deal with decisions by Ministers, officials and bodies of various kinds which adversely affected property rights or privileges of persons who had had no opportunity or no proper opportunity of presenting their cases before the decisions were given. And it is necessary to examine those cases for another reason. The question which was or ought to have been considered by the Watch Committee on 7th March, 1958, was not a simple question whether or not the Appellant should be dismissed. There were three possible courses open to the Watch Committee - reinstating the Appellant as Chief Constable, dismissing him, or requiring him to resign. The difference between the latter two is that dismissal involved forfeiture of pension rights, whereas requiring him to resign did not. Indeed, it is now clear that the Appellant's real interest in this appeal is to try to save his pension rights.

It may be convenient at this point to deal with an argument that, even if as a general rule a Watch Committee must hear a constable in his own defence before dismissing him, this case was so clear that nothing that the Appellant could have said could have made any difference. It is at least very doubtful whether that could be accepted as an excuse. But even if it could, the Respondents would, in my view, fail on the facts. It may well be that no reasonable body of men could have reinstated the Appellant. But as between the other two courses open to the Watch Committee the case is not so clear. Certainly on the facts as we know them the Watch Committee could reasonably have decided to forfeit the Appellant's pension rights, but I could not hold that they would have acted wrongly or wholly unreasonably if they had in the exercise of their discretion decided to take a more lenient course.

I would start an examination of the authorities dealing with property rights and privileges with *Cooper* v. *Wandsworth Board of Works* (1863) 14 CBNS 180. Where an owner had failed to give proper notice to the Board they had under an Act of 1855 authority to demolish any building he had erected and recover the cost from him. This action was brought against the Board because they had used that power without giving the owner an opportunity of being heard. The Board maintained that their discretion to order demolition was not a judicial discretion and that any appeal should have been to the Metropolitan Board of Works. But the Court decided unanimously in favour of the owner. Erie. C.J. held that the power was subject to a qualification repeatedly recognised that no man is to be deprived of his property without his having an opportunity of being heard and that this had been applied to " many exercises of

power which in common understanding would not be at all a more judicial proceeding than would be the act of the district board in ordering a house to be pulled down ". Willes, J. said that the rule was " of universal application and founded upon the plainest principles of justice , and Byles, J. said that although there are no positive words in a statute requiring that the party shall be heard yet the justice of the common law will supply the omission of the legislature ".

This was followed in Hopkins and Another v. Smethwick Local Board of Health, 24 Q.B.D. 712. Willes, J. said:

> "In condemning a man to have his house pulled down, a judicial act is as much implied as in fining him £5 ; and as the local board is the only tribunal that can make such an order its act must be a judicial act, and the party to be affected should have a notice given him. . . . The judgment of Willes, J. (in Cooper's case) goes far more upon the nature of the thing done by the board than on the phraseology of the Act itself. It deals with the case on principle; from the nature of the thing done it must be a judicial act, and justice requires that the man should be heard".

In the Court of Appeal Lord Esher, M.R. in dismissing an appeal expressly approved the principles laid down in *Cooper's* case.

The principle was applied in different circumstances in *Smith* v. *The Queen,* 3 App Cas 614. That was an action of ejectment on the alleged forfeiture of a Crown lease in Queensland. The Governor was entitled to forfeit the lease if it had been proved to the satisfaction of a Commissioner that the lessee had abandoned or ceased to reside on the land. The Commissioner did not disclose to the lessee the case against him so that he had no opportunity to meet it, and therefore his decision could not stand. The Commissioner was not bound by any rules as to procedure or evidence but he had to conduct his enquiry " according to the requirements of substantial justice ". In *De Verteuil* v. *Knaggs and Another* [1918] AC 557, the Governor of Trinidad was entitled to remove immigrants from an estate "on sufficient ground shewn to his satisfaction ", Lord Parmoor said that "the acting Governor was not called upon to give a decision on an appeal between parties, and it is not suggested that he holds the position of a judge or that the appellant is entitled to insist on the forms used in ordinary judicial procedure , but he had a duty of giving to any person ^ against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice". The duty of an official architect in fixing a building line was stated in somewhat similar terms in *Spackman* v. *Plumstead District Board of Works,* 10 App. Cas. 229.

I shall now turn to a different class of case - deprivation of membership of a professional or social body. In *Wood* v. *Woad,* L.R. 9 Ex. 190, the Committee purported to expel a member of a mutual insurance society without hearing him, and it was held that their action was void and so he was still a member. Kelly, C.B. said of *audi alteram partem:* " This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals". This was expressly approved by Lord Macnaghten giving the judgment of the Board in *Lapointe* v. *L'Association de Bienfaisance et de Retraite de la Police de Montreal* [1906] AC 535. In that case the board of directors of the association had to decide whether to give a pension to a dismissed constable - the very point the Watch Committee had to decide in this case - and it was held that they had to observe " the elementary principles of justice ".

Then there are the club cases, *Fisher* v. *Keane,* 11 Ch. D. 353, and *Dawkins* v. *Antrobus,* 17 Ch. D. 615. In the former Lord Jessel, M.R., said " clubs, or by any other body of persons who decide upon the conduct of ordinary rules by which justice should be administered by committees of of the Committee:

> " They ought not, as I understand it, according to the others, to blast a man's reputation for ever - perhaps to ruin his prospects for life, without giving him an opportunity of either defending or palliating his conduct " (p. 363).

In the latter case it was held that nothing had been done contrary to natural justice. In *Weinberger v. Inglis and Others* [19191 A.C. 606 a member of enemy birth was excluded from

the Stock Exchange, and it was held that the Committee had heard him before acting. Lord Birkenhead, L.C. said :

" If I took the view that the appellant was condemned upon grounds never brought to his notice, I should not assent to the legality of this course, unless compelled by authority" (p. 616).

He said this although the rule under which the Committee acted was in the widest possible terms - that the Committee should each year re-elect such members as they should deem eligible as members of the Stock Exchange.

I shall not at present advert to the various trade union cases because I am deliberately considering the state of the law before difficulties were introduced by statements in various fairly recent cases. It appears to me that if the present case had arisen thirty or forty years ago the Courts would have had no difficulty in deciding this issue in favour of the Appellant on the authorities which I have cited. So far as I am aware none of these authorities has ever been disapproved or even doubted. Yet the Court of Appeal have decided this issue against the Appellant on more recent authorities which apparently justify that result. How has this come about?

At least three things appear to me to have contributed. In the first place there have been many cases where it has been sought to apply the principles of natural justice to the wider duties imposed on Ministers and other organs of government by modern legislation. For reasons which I shall attempt to state in a moment it has been held that those principles have a limited application in such cases and those limitations have tended to be reflected in other decisions on matters to which in principle they do not appear to me to apply. Secondly, again for reasons which I shall attempt to state, those principles have been held to have a limited application in cases arising out of war-time legislation ; and again such limitations have tended to be reflected in other cases. And thirdly, there has I think been a misunderstanding of the judgment of Atkin, L.J. in *Rex* v. *Electricity Commissioners. Ex parte London Electricity Joint Committee Company* (1920), *Limited, and Others* [1924] 1 K.B. 171.

In cases of the kind I have been dealing with the Board of Works or the Governor or the Club Committee was dealing with a single isolated case. It was not deciding, like a judge in a lawsuit, what were the rights of the person before it. But it was deciding how he should be treated - something analogous to a judge's duty in imposing a penalty. No doubt policy would play some part in the decision - but so it might when a judge is imposing a sentence. So it was easy to say that such a body is performing a quasi judicial task in considering and deciding such a matter and to require it to observe the essentials of all proceedings of a judicial character - the principles of natural justice.

Sometimes the functions of a Minister or Department may also be of that character, and then the rules of natural justice can apply in much the same way. But more often their functions are of a very different character. If a Minister is considering whether to make a scheme for, say, an important new road, his primary concern will not be with the damage which its construction will do to the rights of individual owners of land. He will have to consider all manner of questions of public interest and, it may be, a number of alternative schemes. He cannot be prevented from attaching more importance to the fulfilment of his policy than to the fate of individual objectors, and it would be quite wrong for the courts to say that the Minister should or could act in the same kind of way as a board of works deciding whether a house should be pulled down. And there is another important difference. As explained in *Local Government Board* v. *Arlidge* [19151 A.C. 120, a Minister cannot do everything himself. His officers will have to gather and sift all the facts, including objections by individuals, and no individual can complain if the ordinary accepted methods of carrying on public business do not give him as good protection as would be given by the principles of natural justice in a different kind of case.

We do not have a developed system of administrative law - perhaps because until fairly recently we did not need it. So it is not surprising that in dealing with new types of cases the courts have had to grope for solutions, and have found that old powers, rules and procedure are largely inapplicable to cases which they were never designed or intended to deal with. But I see nothing in that to justify our thinking that our old methods are any less applicable today than ever they were to the older types of case. And if there are any dicta in modern authorities which point in that direction, then in my judgment they should not be followed.

And now I must say something regarding war-time legislation. The older authorities clearly shew how the courts engrafted the principles of natural justice on to a host of provisions

authorising administrative interference with private rights. Parliament knew quite well that the courts had an inveterate habit of doing that and must therefore be held to have authorised them to do it unless a particular Act shewed a contrary intention. And such an intention could appear as a reasonable inference as well as from express words. It seems to me to be a reasonable and almost an inevitable inference from the circumstances in which Defence Regulations were made and from their subject-matter that at least in many cases the intention must have been to exclude the principles of natural justice. War-time secrecy alone would often require that, and the need for speed and general pressure of work were other factors. But it was not to be expected that anyone would state in so many words that a temporary abandonment of the rules of natural justice was one of the sacrifices which war conditions required - that would have been almost calculated to create the alarm and despondency against which one of the Regulations was specifically directed. And I would draw the same conclusion from another fact. In many Regulations there was set out an alternative safeguard more practicable in war time - the objective test that the officer must have reasonable cause to believe whatever was the crucial matter. (I leave out of account the very peculiar decision of this House in *Liversidge* v. *Sir John Anderson and Another* [1942] AC 206.) So I would not think that any decision that the rules of natural justice were excluded from war-time legislation should be regarded as of any great weight in dealing with a case such as this case which is of the older type, and which involves the interpretation of an Act passed long before modern modifications of the principles of natural justice became necessary, and at a time when, as Parliament was well aware, the courts habitually applied the principles of natural justice to provisions like section 191 (4) of the 1882 Act.

The matter has been further complicated by what I believe to be a misunderstanding of a much quoted passage in the judgment of Atkin, L.J. in *Rex* v. *Electricity Commissioners* [19241 1 K.B. 171. He said (at p. 205):

> " The operation of the writs [of prohibition and certiorari] has extended to control the proceedings of bodies which do not claim to be, and would not be recognised as, Courts of Justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

A gloss was put on this by Lord Hewart, C.J. in *Rex* v. *Legislative Committee of the Church Assembly. Ex parte Haynes-Smith* [1928] 1 K.B. 411. There it was sought to prohibit the Assembly from proceeding further with the Prayer Book Measure, 1927. That seems to me to have no resemblance to a question whether a person should be deprived of his rights or privileges, and the case was decided on the ground that this was a deliberative or legislative body and not a judicial body. Salter, J. put it in a few lines (p. 419):

> "The person or body to whom these writs are to go must be a judicial body in this sense that it has power to determine and to decide; and the power carries with it, of necessity, the duty to act judicially. I think that the Church Assembly has no such power, and therefore no such duty."

But Lord Hewart said, having quoted the passage from Lord Justice Atkin's judgment:

> "The question, therefore, which we have to ask ourselves in this case is whether it is true to say in this matter, either of the Church Assembly as a whole, or of the Legislative Committee of the Church Assembly, that it is a body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially. It is to be observed that in the last sentence which I have quoted from the judgment of Atkin, L.J. the word is not ' or ' but ' and '. In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be superadded to that characteristic the further characteristic that the body has the duty to act judicially. The duty to act judicially is an ingredient which, if the test is to be satisfied, must be present. As these writs in the earlier days were issued only to bodies which without any harshness of construction could be called, and naturally would be called Courts, so also today these writs do not issue except to bodies which act or are under the duty to act in a judicial capacity."

I have quoted the whole of this passage because it is typical of what has been said in several subsequent cases. If Lord Hewart meant that it is never enough that a body simply has a duty to determine what the rights of an individual should be, but that there must always be something

more to impose on it a duty to act judicially before it can be found to observe the principles of natural justice, then that appears to me impossible to reconcile with the earlier authorities. I could not reconcile it with what Lord Denman, C.J. said in *Reg.* v. *Smith* or what Lord Campbell, C.J. said in *Ex parte Ramshay,* or what Lord Hatherley, L.C. said in *Osgood* v. *Nelson,* or what was decided in *Cooper* v. *Wandsworth Board of Works* or *Hopkins* v. *Smethwick Local Board of Health,* or what Lord Parmoor said in *De Verteuil* v. *Knaggs,* or what Kelly, C.B. said, with the subsequent approval of Lord Macnaghten, in *Wood v. Woad,* or what Lord Jessel, M.R. said in *Fisher* v. *Keane,* or what Lord Birkenhead, L.C. said in *Weinberger* v. *Inglis,* and that is only a selection of the earlier authorities. And, as I shall try to shew, it cannot be what Lord Justice Atkin meant.

In *Rex* v. *Electricity Commissioners* the Commissioners had a statutory duty to make schemes with regard to electricity districts and to hold local enquiries before making them. They made a draft scheme which in effect allocated duties to one body which the Act required should be allocated to a different kind of body. This was held to be *ultra vires,* and the question was whether prohibition would lie. It was argued that the proceedings of the Commissioners were purely executive and controllable by Parliament alone. Bankes, L.J. said:

> " On principle and on authority it is in my opinion open to this Court to hold, and I consider that it should hold, that powers so far reaching, affecting as they do individuals as well as property, are powers to be exercised judicially, and not ministerially or merely, to use the language of Palles, C.B., as proceedings towards legislation".

So he inferred the judicial element from the nature of the power. And I think that Atkin, L.J. did the same. Immediately after the passage which I said has been misunderstood, he cited a variety of cases and in most of them I can see nothing " superadded " (to use Lord Hewart's word) to the duty itself. Certainly Lord Justice Atkin did not say that anything was superadded. And a later passage in his judgment convinces me that he, like Bankes, L.J., inferred the judicial character of the duty from the nature of the duty itself. Although it is long I am afraid I must quote it. (P. 206):

> " In the present case the Electricity Commissioners have to decide whether they will con- stitute a joint authority in a district in accordance with law, and with what power they will invest that body. The question necessarily involves the withdrawal from existing bodies of undertakers of some of their existing rights, and imposing upon them of new duties, including their subjection to the control of the new body, and new financial obligations. It also provides in the new body a person to whom may be transferred rights of purchase which at present are vested in another authority. The Com- missioners are proposing to create such a new body in violation of 'the Act of Parliament, and are proposing to hold a possibly long and expensive inquiry into the expediency of such a scheme, in respect of which they have the power to compel representatives of the prosecutors to attend and produce papers. I think that in deciding upon the scheme, and in holding the inquiry, they are acting judicially in the sense of the authorities I have cited."

There is not a word in Lord Atkin's judgment to suggest disapproval of the earlier line of authority which I have cited. On the contrary, he goes further than those authorities. I have already stated my view that it is more difficult for the courts to control an exercise of power on a large scale where the treatment to be meted out to a particular individual is only one of many matters to be considered. This was a case of that kind, and, if Lord Atkin was prepared to infer a judicial element from the nature of the power in this case, he could hardly disapprove such an inference when the power relates solely to the treatment of a particular individual.

The authority chiefly relied on by the Court of Appeal in holding that the Watch Committee were not bound to observe the principles of natural justice was *Nakkuda Ali* v. *M. F. De S. Jayaratne* (1951J A.C. 66. In that case the Controller of Textiles in Ceylon made an order cancelling the Appellant's licence to act as a dealer, and the Appellant sought to have that order quashed. The Controller acted under a Defence Regulation which empowered him to cancel a licence " where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer ".

The Privy Council regarded that as " imposing a condition that there must in fact exist such reasonable grounds, known to the Controller, before he can validly exercise the power of cancellation ". But according to their judgment certiorari did not lie, and no other means was suggested whereby the appellant or anyone else in his position could obtain redress even if the

Controller acted without a shred of evidence. It is quite true that the judgment went on, admittedly unnecessarily, to find that the Controller had reasonable grounds and did observe the principles of natural justice, but the result would have been just the same if he had not. This House is not bound by decisions of the Privy Council, and for my own part nothing short of a decision of this House directly in point would induce me to accept the position that, although an enactment expressly requires an official to have reasonable grounds for his decision, our law is so defective that a subject cannot bring up such a decision for review however seriously he may be affected and however obvious it may be that the official acted in breach of his statutory obligation.

The judgment proceeds:

> "But it does not seem to follow necessarily from this that the Controller must be acting judicially in exercising the power. Can one not act reasonably without acting judicially? It is not difficult to think of circumstances in which the Controller might, in any ordinary sense of the word, have reasonable grounds of belief without having ever confronted the licence holder with the information which is the source of his belief. It is a long step in the argument to say that because a man is enjoined that he must not take action unless he has reasonable ground for believing something he can only arrive at that belief by a course of conduct analagous to the judicial process. And yet, unless that proposition is valid, there is really no ground for holding that the Controller is acting judicially or quasi judicially when he acts under this regulation. If he is not under a duty so to act then it would not be according to law that his decision should be amenable to review and, if necessary, to avoidance by the procedure of certiorari."

I would agree that in this and other Defence Regulation cases the Legislature has substituted an obligation not to act without reasonable grounds for the ordinary obligation to afford to the person affected an opportunity to submit his defence. It is not necessary in this case to consider whether by so doing he has deprived the Courts of the power to intervene if the officer acts contrary to his duty. The question in the present case is not whether Parliament substituted a different safeguard for that afforded by natural justice, but whether in the 1882 Act it excluded the safeguard of natural justice and put nothing in its place.

So far there is nothing in the judgment of the Privy Council directly relevant to the present case. It is the next paragraph which causes the difficulty and I must quote the crucial passage. " But the basis of the jurisdiction of the Courts by way of certiorari has been so exhaustively analysed in recent years that individual- instances are now only of importance as illustrating a general principle that is beyond dispute. That principle is most precisely stated in the words of Atkin, L.J. in *Rex* v. *Electricity Commissioners* " - and then follows the passage with which I have already dealt at length. And then there follows the quotation from Lord Hewart which I have already commented on ending with the words - " there must be superadded to that characteristic the further characteristic that the body has the duty to act judicially . And then it is pointed out: It is that characteristic that the Controller lacks in acting under Regulation 62 ".

Of course, if it were right to say that Lord Hewart's gloss on Lord Justice Atkin stated " a general principle that is beyond dispute ", the rest would follow. But I have given my reasons for holding that it does no such thing, and in my judgment the older cases certainly do not " illustrate " any such general principle - they contradict it. No case older than 1911 was cited in *Nakkuda's* case on this question, and this question was only one of several difficult questions which were argued and decided. So I am forced to the conclusion that this part of the judgment in *Nakkttda's* case was given under a serious misapprehension of the effect of the older authorities and therefore cannot be regarded as authoritative.

I would sum up my opinion in this way. Between 1882 and the making of police regulations in 1920 section 191 (4) had to be applied to every kind of case. The Respondents' contention is that, even where there was a doubtful question whether a constable was guilty of a particular act of misconduct, the Watch Committee were under no obligation to hear his defence before dismissing him. In my judgment it is abundantly clear from the authorities I have quoted that at that time the courts would have rejected any such contention. In later cases dealing with different subject- matter opinions have been expressed in wide terms so as to appear to conflict with those earlier authorities. But learned judges who expressed those opinions generally had no power to overrule those authorities, and in any event it is a salutary rule that a judge is not to be assumed to have intended to overrule or disapprove of an authority which has not been cited to him and which he does not even mention. So I would hold that the power of dismissal in the 1882 Act could not then have been exercised and cannot now be exercised until the Watch

Committee have informed the constable of the grounds on which they propose to proceed and have given him a proper opportunity to present his case in defence.

Next comes the question whether the Respondents' failure to follow the rules of natural justice on 7th March was made good by the meeting on 18th March. I do not doubt that if an officer or body realises that it has acted hastily and reconsiders the whole matter afresh after affording to the person affected a proper opportunity to present his case then its later decision will be valid. An example is *De Verteuil's* case. But here the Appellant's solicitor was not fully informed of the charges against the Appellant and the Watch Committee did not annul the decision which they had already published and proceed to make a new decision. In my judgment what was done on that day was a very inadequate substitute for a full rehearing. Even so, three members of the Committee changed their minds and it is impossible to say what the decision of the Committee would have been if there had been a full hearing after disclosure to the Appellant of the whole case against him. I agree with those of your Lordships who hold that this meeting of 18th March cannot affect the result of this appeal.

The other ground on which some of your Lordships prefer to proceed is the Respondents' failure to act in accordance with the police regulations. I have had an opportunity of reading the speech about to be delivered by my noble and learned friend, Lord Morris of Borth-y-Gest, and I agree with his views about this. I will only add that the circumstances in which the 1919 Act was passed, and the consequent regulations were made, shew that the regulations must have been intended to have a very wide application, and I see nothing unreasonable in applying them to this case. Dismissing a Chief Constable who has not been convicted of any criminal offence is not a thing to be done lightly. If the whole of the matters against him are disclosed to him and he refuses to admit some or all of them, it seems to me perfectly proper that there should be such an enquiry as the regulations require. In particular, to exclude this case from the ambit of the regulations because the Watch Committee did not proceed on any report or allegation is a very narrow interpretation of the regulations and it would lead to a strange result. Counsel for the Respondents was constrained to admit - he could not reasonably have done otherwise - that if some busybody had formally reported to the Watch Committee the observations of Donovan, J. and required them to deal with these allegations, then the Watch Committee would have been bound to apply the regulations. But it would be absurd if the substantive rights of the Appellant were to depend on whether or not someone happened to have made a formal report or allegation to the Watch Committee before they proceeded to deal with the case.

Then there was considerable argument whether in the result the Watch Committee's decision is void or merely voidable. Time and again in the cases I have cited it has been stated that a decision given without regard to the principles of natural justice is void, and that was expressly decided in *Wood* v. *Woad.* I see no reason to doubt these authorities. The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case.

Finally, there is the question whether by appealing to the Secretary of State the Appellant is in some way prevented from now asserting the nullity of the Respondents' decision. A person may be prevented from asserting the truth by estoppel, but it is not seriously argued that that doctrine applies here. Then it is said that the Appellant elected to go to the Secretary of State and thereby waived his right to come to the court. That appears to me to be an attempt to set up what is in effect estoppel where the essential elements for estoppel are not present. There are many cases where two remedies are open to an aggrieved person, but there is no general rule that by going to some other tribunal he puts it out of his power thereafter to assert his rights in court; and there was no express waiver because in appealing to the Secretary of State the Appellant reserved his right to maintain that the decision was a nullity.

But then it was argued that this case is special because by statute the decision of the Secretary of State is made final and binding. I need not consider what the result would have been if the Secretary of State had heard the case for the Appellant and then given his own independent decision that the Appellant should be dismissed. But the Secretary of State did not do that. He merely decided " that there was sufficient material on which the Watch Committee could properly exercise their power of dismissal under section 191 (4)". So the only operative decision is that of the Watch Committee, and if it was a nullity, I do not see how this statement by the Secretary of State can make it valid.

Accordingly, in my judgment this appeal must be allowed. There appears

to have been no discussion in the courts below as to remedies which may now be open to the Appellant, and I do not think that this House should do more than declare that the dismissal of

the Appellant is null and void and remit the case to the Queen's Bench Division for further procedure. But it is right to put on record that the Appellant does not seek to be reinstated as Chief Constable: his whole concern is to avoid the serious financial consequences involved in dismissal as against being required or allowed to resign.

Lord Evershed

My Lords,

Upon the difficult problem presented by this appeal I regret to find myself differing from your Lordships; but I have felt myself constrained to agree with the conclusions reached by Streatfeild, J. at the trial and by all the members of the Court of Appeal.

It will be logical for me to deal first with the question whether the Watch Committee of the Brighton Corporation were bound to observe the requirements of what I will compendiously call the Police (Discipline) Regulations of 1952 before purporting to exercise, as regards the Appellant, the jurisdiction now admittedly vested in them by section 191 (4) of the Municipal Corporations Act, 1882 ; for if they were so bound, then, in the absence of such observance, it may be said - and was so contended on the Appellant's part - that the Watch Committee had in truth no jurisdiction to reach their decision for the Appellant's dismissal. By " the Police (Discipline) Regulations of 1952" I refer compendiously to the two Statutory Instruments, namely, (1) The Police (Discipline) Regulations, 1952, Statutory Instrument No. 1705 of 1952, and (2) the Police (Discipline) (Deputy Chief Constables, Assistant Chief Constables and Chief Constables) Regulations 1952, Statutory Instrument No. 1706 of 1952; as respectively amended by the two Regulations, Statutory Instruments 1687 and 1688 of 1954, being Regulations of the same respective titles as those of 1952 already mentioned. The two Instruments of 1952 were both made on the 17th September, 1952, and came into operation on the 1st October, 1952. Similarly the two amending Instruments of 1954 were both made on the 17th December, 1954, and came into operation on the 1st January, 1955. The several Instruments clearly form together a single code. I shall have to make some references to them hereafter and I shall then refer to them respectively as "Statutory Instrument 1705" and "Statutory Instrument 1706", the references being in each case intended to comprehend the amendments made in 1954.

I have been unable to accept the argument that every case of indiscipline or of incapacity of any police officer, whether a Chief Constable or any other member of a police force (save only cases of incapacity arising from mental or physical illness), falls or was intended to fall within the scope of the Regulations. For my part I accept the view propounded by Mr. Faulks (as he then was) which appealed to the learned Judge at the trial, that "discreditable conduct" and "neglect of duty", which constitute the first and fourth headings in the Discipline Code set out in the First Schedule to Statutory Instrument 1705, should be construed as limited to the kinds of conduct specified in those headings, each of which, be it observed, begins with the words " that is to say". In the present case the substance and gravamen of the Appellant's incapacity as chief constable, upon which the Watch Committee proceeded to act, was that expressed by Donovan, J. (as he then was), after presiding at a trial, lasting nineteen days, of the Appellant and others charged with conspiring to obstruct the course of public justice, namely, that the Appellant had not, in that learned and experienced Judge's view, the "professional" or "moral" qualities requisite for one holding the office of Chief Constable. Although, therefore, the Appellant was himself acquitted of the charge, the learned Judge thought it right to treat the Appellant's limitations which he had expressed as justifying remission of the sentences appropriate to be passed upon his two subordinate officers whom the jury had convicted. As I understand the language of Donovan, J. (and as, I doubt not, the Watch Committee also understood it) the Appellant had been shown not to possess a sense of probity or of responsibility sufficient for the office which he held, and so had been unable to provide the essential leadership and example to the police force under his control which his office properly required.

The first of the relevant headings in the Discipline Code, "Discreditable conduct" is thus defined:

> "that is to say, if a member of a police force acts in a disorderly manner or any manner prejudicial to discipline or reasonably likely to bring discredit on the reputation of the force or of the police service."

I will not take time by reciting the more detailed expansion of the second heading, "Neglect of duty", but I cannot (as could not the learned Judge in the first Court) hold that the shortcomings of the Appellant as Chief Constable, described by Donovan, J., fall within either of the

respective headings as expanded by their definitions. I add only that the two headings in question, being part of the Code specified in Statutory Instrument 1705, should be construed with regard to the fact that they were originally intended to apply to members of a police force of lower rank than Chief Constables or Deputy or Assistant Chief Constables, though it is true to say that by Statutory Instrument 1706 they were made applicable also to Chief Constables and Deputy and Assistant Chief Constables.

My Lords, it follows, in my opinion, that the Watch Committee were entitled to exercise their residual powers under section 19) (4) of the Act of 1882 without observance of the Police (Discipline) Regulations. 1 do not forget the terms of paragraph (1) (f) of the Watch Committee's resolution of the 7th March. 1958. It is said that the subject-matter of this paragraph was that mentioned in paragraph (c) of the Watch Committee's answer to the Appellant's appeal to the Secretary of State, namely, the suggestion that the Appellant had given false evidence at the trial before Donovan, J.; and that such a charge was in terms within paragraph (b) of the heading numbered 5 in the Discipline Code, namely, " Falsehood or prevarication, that is to say, if a member of a police force . . . wilfully . . . makes any false . . . statement ". But, assuming the premise, it is nevertheless, in my opinion, still clear that the reference was but to an incident in the trial upon the conclusion of which the Watch Committee were manifestly founding themselves ; and must have been so understood. I cannot think that such an incidental reference can sensibly have the startling result of making the Watch Committee's jurisdiction dependent upon a strict application of the Police (Discipline) Regulation. It follows, if I am right in thinking that the case against the Appellant did not fall under any of the provisions of the Discipline Code, that is, was not brought within the regulations by clause 11 of Statutory Instrument 1706.

I also find myself in agreement with all the learned Judges below in thinking that in any event this was not a case of there having been a "report or allegation" to the Watch Committee as contemplated by the Regulations. I have, for my part, been unable to accept Mr. Ackner's argument that any deliberation by the Watch Committee necessarily supposes the presence of a "report or allegation" by someone. I do not attempt any definition of the phrase ; but, in my opinion, the context of the Regulations suggests necessarily something in the nature of an accusation as distinct from a conclusion reached after proper enquiry; and cannot sensibly be said to include a judicial conclusion after the protracted investigation of a trial. If this view be wrong I would ask your Lordships to observe the consequences. If Mr. Ackner's submission be accepted, it must follow (as Mr. Ackner indeed conceded) that the Regulations were or would be equally applicable to any disciplinary action taken by the Watch Committee in regard to Detective Sergeant Heath and Detective Inspector Hammersley, each found guilty at the trial and sentenced to terms of imprisonment. If the argument submitted be correct, it must follow that the Watch Committee's duty must be or have been (notwithstanding the conclusion of their trial) to refer the cases of these two officers to an " Investigating Officer " under Statutory Instrument 1705 who would " report to the chief constable " (sic), the officers having a right of appeal to the Watch Committee. And so, on this view, it was the Watch Committee's duty, as regards the Appellant, under Statutory Instrument 1706 first to instruct a solicitor to formulate the case against him; and then to appoint a tribunal (which might consist of five members of the Watch Committee itself) whose duty it would be to report to the Watch Committee. My Lords, I cannot think it right to accept an argument involving results which appear to me so manifestly absurd. In the present case the conduct of the Appellant had been the subject of a public trial lasting nineteen days; and if the observations of Donovan, J. can sensibly be called a "report" at all they were equivalent to the "report" of the investigating tribunal to the Watch Committee contemplated by Statutory Instrument 1706. In this respect the situation after the conclusion of the trial was to my mind wholly different from that at the time when Mr. Ridge was first charged and when, therefore, as it seems to me, the Watch Committee rightly felt itself bound to act in accordance with the Regulations in ordering Mr. Ridge's suspension. My Lords, any other view, in my opinion, makes the Regulations gravely offend against common sense. I agree, therefore, with the view of the Court of Appeal - and particularly with that of Holroyd Pearce, L.J. (as he then was) - that this was a special and entirely exceptional case, outside the scope of the Regulations, and as a matter of public notoriety, requiring instant action by the Watch Committee. The extent of the public notoriety can fairly be gauged from the letter written by the Appellant's solicitor explaining the remarkable request for his client's rein-statement as Chief Constable by reference to the telephone calls and offers of rewards by newspapers to which he had been incessantly subjected.

I turn accordingly to what have appeared to me to be the most difficult questions raised in this appeal; that is to say, first, whether the exercise of the statutory jurisdiction by the Watch Committee, which in my opinion was vested in them without regard to the Regulations, required the observance by the Watch Committee of what are called the principles of natural

justice; and, second, if so, whether on the facts of this case such principles were in fact observed.

It has been said many times that the exact requirements in any case of the so-called principles of natural justice cannot be precisely defined; that they depend in each case upon the circumstances of that case. According to Sir Frederick Pollock, the meaning of the phrase "natural justice is the ultimate principle of fitness with regard to the nature of man as a rational and social being" ; and he went on to point out that the origin of the principles could be traced to Aristotle and the Roman Jurists. Your Lordships were, therefore, not unnaturally referred to a great many cases, but as I believe that your Lordships agree, it is by no means easy to treat these decisions as entirely uniform and still less easy to be able to extract from them the means of propounding a precise statement of the circumstances or of the cases in which the principles can be invoked before the Courts. I am, however, content to assume that the invocation should not be limited to cases where the body concerned, whether a domestic committee or some body established by a statute, is one which is exercising judicial or quasi-judicial functions strictly so called; but that such invocation may also be had in cases where the body concerned can properly be described as administrative - so long as it can be said, in Sir Frederick Pollock's language, that the invocation is required in order to conform to the ultimate principle of fitness with regard to the nature of man as a rational and social being.

On the other hand, it is (as I venture to think) no less plain now that Parliament may by appropriate language in a statute make it clear that the activity or discretion of the body constituted by the statute is not to be subject to any control or interference by the Courts.

At this stage I venture to make two points. First, since there is no question here of bias or any suggestion that the Watch Committee acted otherwise than entirely in good faith, the only principle of natural justice here involved is that enshrined in the Latin phrase "*audi alteram partem*". Second, I for my part conclude that if the principles of natural justice can properly be invoked in this case and if it should be held that such principles were not observed, then the decision of the Watch Committee was not void but voidable only.

Upon this second question (whether the decision afterwards impugned can be said to be void or voidable only) the cases provide, as I think, no certain answer; nor have I found one in the text-books. Indeed, in the vast majority of circumstances, it does not in the end matter whether the decision challenged is void or only voidable; for if the Court does decide to quash a decision or otherwise set it aside, then the effect is in general the same whether such decision be considered as void or only voidable. For my part, however, I have come to the conclusion that in a case where a body is acting within its jurisdiction but of which the Courts will say that it has failed to do substantial justice in accordance with the principles of natural justice, then the decision is only voidable and cannot properly be described as a nullity.

Though I am in this respect anticipating what later follows, I refer first to the extremely wide and general terms of the relevant subsection of the Act of 1882: " The watch committee. . . . may at any time dismiss any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same ". My Lords, in my opinion it is impossible to accept the suggestion put forward on the Appellant's part that the final words of the subsection, " otherwise unfit for the same ", must be regarded as *ejusdem generis* with what has gone before ; that is to say, that they are intended only to refer to some kind of negligence. I know of no authority in a case of this kind, where the jurisdiction of the body in question is expressed in two alternatives, for supposing that the second of the alternatives does not mean what it says but is somehow limited by the terms of the first alternative. Put in other words, where, may I ask, is the *genus* to be found of which the second part of the alternative is said to be but a part? As I interpret the language used, the second part of the power conferred is, as the language inevitably imports, intended to cover the case of someone who is regarded as unfit for his position for reasons other than negligence.

I observe again that there is, as I think, no question here of the Watch Committee's jurisdiction. If I had taken a different view on the first question, namely, whether the exercise of the jurisdiction had to be subject to compliance with the regulations, then my answer might have been different. Upon that assumption it is unnecessary for me to express any concluded opinion and I do not do so. But, if I am right in thinking that there was here no question of compliance with the regulations, the only question for your Lordships is whether, admitting the jurisdiction of the Watch Committee, it was properly exercised having regard to any application of the principles of natural justice to which the exercise of the jurisdiction was subject. I observe further than the plaintiff in his action seeks a declaration. There was some discussion before your Lordships concerning the office of a declaration as contrasted with that of an order for

certiorari. In my judgment, it must be accepted as tolerably clear that (subject to what follows) the granting of a declaration in a case of this kind must *prima facie* be discretionary: and if that is so it must equally follow that the question whether the decision of the Watch Committee is such that the Court can quash it or otherwise interfere with it involves the conclusion that such decision was voidable and not void. If the decision was a complete nullity (for example, on the ground that the Watch Committee never had any jurisdiction), then no doubt it would follow that the Court would have to say so in some form or other. But this is not, in my judgment, such a case. My Lords, I have in mind upon this matter decisions such as that of the Privy Council in the recent case of *Anna Munthodo* v. *Oilfields Workers' Trade Union* reported in [1961] AC 945, where the plaintiff had been expelled from the Union and the Board thought that the expulsion was wholly invalid. In fact, however, in that case the plaintiff had been charged under one rule but was later expelled under another. It is also to be noted that the case was dealing not with powers conferred by Act of Parliament but with a domestic tribunal; the point submitted (but rejected) was that the appeal which the plaintiff had taken under the rules of the Union constituted an affirmance of the jurisdiction of the Council which had dismissed him. I have also in mind the case of *Wood* v. *Woad,* 9 Ex. Cas. 190. My noble friend, Lord Reid, has stated in his Opinion that in this case the Court of Exchequer Chamber expressly decided that a decision by a body acting in a quasi-judicial capacity which failed to have due regard to the principle of natural justice *audi alteram partem* is void and not merely voidable. With all respect to my noble friend, I am unable to agree with this conclusion.

My Lords, it is, I think, necessary to have in mind what was the nature of the plaintiff's claim in *Wood v. Woad.* The plaintiff alleged that he had been a member of a mutual marine insurance association and, as such member, having paid to the Treasurer the appropriate deposit, had therefore been entitled to recover from the association the amount of loss incurred by him in respect of a particular ship; that in the Committee of the association was vested by its rules the whole power of the management of its affairs and also the power, if they deemed the conduct of any member to be suspicious or that he was for any other reason unworthy of remaining in the association, to exclude such member by appropriate notice from further participation in it; but that the Committee had " wrongfully, collusively and improperly " expelled the plaintiff from the association without any just reason or probable cause; so that the plaintiff had been deprived of his right to the sum of money in respect of the damage done to his ship and that he was accordingly entitled to recover as damages *from the members of the Committee* the amount of such loss. This being the nature of the claim, the Court decided upon demurrer that the plaintiff could have, upon his allegations, no cause of action for damages at law against the members of the Committee. I emphasise the important fact that the claim formulated was for damages at law against the members of the Committee (not all of whom in fact were or need have been members of the association).

##It is clear from the headnote to the case that the learned Barons of the Court of Exchequer Chamber did not arrive for entirely the same reasons at the conclusion that the plaintiff could not succeed in his action. It is true that certain language in the judgment of Kelly, C.B. appears to support the view that in his opinion the Committee's failure to give to the plaintiff any opportunity of answering the charge made by the Committee against him rendered the Committee's decision "void and a nullity". See, for example, the Chief Baron's citation of the decision in *Blisset* v. *Daniel,* 10 Hare 493. But if so, it was, in my judgment, because in the view of the Chief Baron there was " enough ... to show a collusive and unlawful exercise of powers on the part of the committee" (see p. 198 of the Report) - in other words, not a true exercise of the power at all or, at best, an exercise of the power of the exceptional kind to which I later refer in the case of *Osgood* v. *Nelson.* It is essential to have in mind the nature of the plaintiff's claim as formulated by him which the Court of Exchequer Chamber rejected. On the one hand (as Kelly, C.B. pointed out at p. 196 of the Report) if the discretion of the Committee was absolute and if the Committee in fact exercised their power under the rules, the plaintiff could not question it. On the other hand, if, as the plaintiff in his declaration alleged, the Committee's act was collusive and unlawful and therefore ineffective, then the plaintiff remained a member of the association and (whatever might be his rights or remedies in a court of equity) he therefore could have no claim for damages in law against the Committee. "The claim in this action is for damages sustained by reason of the expulsion of the plaintiff from the association; but in law the plaintiff has sustained no damage at all, for whatever rights he may have possessed before he possesses still, as if no act had been done calculated to deprive him of them". (Page 198 of the Report.) Cleasby, B. put his conclusion on somewhat different grounds:

> "Now, we may suppose either that the committee expelled the plaintiff without just cause and without giving him notice, or that they expelled him without just cause but

did give him notice; and the declaration is framed so as to comprehend in the breach both modes of wrongful expulsion." (pp. 199-200.)

After pointing out that by the rules the Committee had absolute discretion, the learned Baron concluded his judgment by saying that the allegation not having made fraud the basis of the claim the declaration sought could not be sustained. Pollock, B's judgment was to the same effect - particularly in respect of the absence of any claim based in terms of fraud. The learned Baron went on to observe that the plaintiff's declaration having alleged that the Committee's actions were a nullity it was not upon this premise possible for him to formulate a cause of action at law against the Committee members.

Finally, Ainphlett, B. posed the matter thus at p. 204 of the Report:

> " Now, according to the allegations in the declaration, the defendants never gave the plaintiff that opportunity, and I cannot entertain a doubt that if this allegation were proved, the plaintiff would, by filing a bill in a court of equity, be restored to the enjoyment of his rights. But if so, what is his damage? He has not ceased to be a member of the society ; he has not lost the rights of a member. He is to recover damages for what? For an attempt to expel."

I have attempted at some length to analyse the reasons for the judgments of the Court of Exchequer Chamber in *Wood* v. *Woad.* It is, as I have more than once observed, of the essence of the matter in that case that the plaintiff was claiming damages personally against the members of the Committee. In such circumstances it is, as I venture to think, clear that the question whether the purported exclusion from the association by the Committee was "void" or "voidable" was not essential nor indeed material to his claim made in the action by the plaintiff for damages against the members of the Committee. Certainly in my judgment it cannot be asserted that the judgments in the case cited, or indeed any of them, support or involve the proposition that where a body, such as the Watch Committee in the present case, is invested by the express terms of a statute with a power of expulsion of any member of the police force and purport in good faith to exercise such power, a failure on their part to observe the principle of natural justice *audi alteram partem* has the result that the decision is not merely voidable by the Court but is wholly void and a nullity.

My Lords, I have, for my part, upon this question, derived the greatest assistance from the case of *Osgood* v. *Nelson,* L.R.5 H.L.636, in which Baron Martin gave to your Lordships' House the opinion of the Judges. The case was concerned with the removal of the Chief Clerk or Registrar of the Sheriffs Court in the City of London. By the Act 15 and 16 Vict. c. LXXVII power had been given to "the Mayor, Aldermen, and Commons, in Common Council assembled . . . for inability or misbehaviour, or for any other cause which may appear reasonable to the Mayor and Council, to remove" a person in the position of the Chief Clerk or Registrar. It was the unanimous opinion of the Judges expressed by Baron Martin that there was no doubt "that the Courts of law in this country would take care that any proceeding of this kind should be conducted in a proper manner" - that is, by giving to the person whose removal was in question every opportunity of defending himself. "If", continued the learned Baron, " your Lordships were satisfied that there was any real substantial miscarriage of justice, . . . your Lordships would not permit this amotion to remain." (See p. 646 of the Report.) Again, "we also think it possible, although there is no necessity for giving any judgment upon it, that if a man was removed from an office of this kind for any frivolous or futile cause . . , you would in all probability be inclined to treat the removal as a nullity " (see p. 649). Lord Hatherley, L.C., in adopting the view so expressed of the Judges, said (at p. 647): "The Court of Queen's Bench has always considered that it has been open to that Court, as in this case it appears to have considered, to *correct* any Court, or tribunal, or body of men who may have a power of this description ... if it should be found that such persons have disregarded any of the essentials of justice".

From these citations I deduce the conclusion that, save in the case where the "tribunal or body of men" have acted upon "frivolous or futile" grounds (in which case the Court may treat not merely the decision but the whole proceeding as a nullity) the power of the Court is to "correct" the decision if, in the Court's view, there "has been real substantial mis-carriage of justice". In other words, I think that, save in the excepted cases (of which the present cannot be said to be one) the right or duty of the Court is to correct, that is, to set aside or otherwise restrain, the impugned decision if satisfied that there has been a "real substantial miscarriage of , justice"; a

view which, if well-founded, must mean that (save in the excepted cases) the decision is voidable and not void.

My Lords, it is perhaps useful and necessary to enquire what in truth is meant by saying that a decision such as that of the Watch Committee in the present case is “void” or “a nullity". Is it thereby intended that, though the proceedings up to the pronouncement of the decision were proper and effective, the decision itself was a nullity? Or is it intended that the whole proceedings *ab initio* were irregular and ineffective so that the decision was similarly and of necessity also of no effect? My Lords, the latter must in my judgment be the true analysis. In the first place, it does not to my mind appear correct or indeed sensible to say that the decision reached was a “nullity” although the proceedings leading up to the decision were in order. Second, I observe, as I have earlier stated, that in cases of this kind it is not the function of the Court to impugn the decision as such - still less to substitute its own - but to examine the steps taken in reaching the decision and to decide whether, in the course of those steps, there was “a real substantial miscarriage of justice”.

In the vast majority of cases it matters not in the result whether the decision is said to be void or voidable but avoided. It is sufficient for the Court to say that the decision cannot stand. In truth, as Sir Frederick Pollock pointed out (see Pollock on Contract, 13th Edition, page 48), the words “void” and “voidable” are imprecise and apt to mislead. And so it is, as I venture to think, that language such as that used by Kelly, C.B. in *Wood v. Woad* ought not to be strictly construed - it was, indeed, for reasons which I have attempted to give, in any case obiter having regard to the nature of the claim in that case.

I do not doubt that in some cases the proper conclusion will be that the entire proceeding of the body or tribunal in question (including therefore its decision) will properly be found to be wholly irregular and ineffective from first to last. The obvious case is where the body or tribunal is shown to have been acting in excess of its jurisdiction. In this category no doubt will fall the class of case mentioned by Martin, B. in *Osgood* v. *Nelson,* where the body concerned has acted upon “a futile or frivolous cause”; for in such case it could truthfully be said that the invocation by the body of its power was a pretence and its proceedings no more than a sham. It may indeed well be that Kelly, C.B. so regarded the performance of the Committee in *Wood v. Woad.* But save in those cases, as I think, upon true analysis the function and duty of the Court is to “correct”, that is to say, to set aside or quash the decision where it is shown that there has been some “real substantial miscarriage of justice” in the steps taken by the body or tribunal in question in arriving at its decision in exercise of the powers vested in it.

My Lords, I do not wish unduly to prolong this Opinion, but upon this highly important matter it seems to me that useful analogy may be found in the practice of the Criminal Courts. Thus, the Court of Criminal Appeal in the exercise of its powers under the Criminal Appeal Act of 1907 may quash a conviction and substitute a verdict of acquittal, and may do so where there has at the trial been what is regarded in effect as a failure to observe the principles of natural justice, for example, where the jury has been told that it must return with its verdict in ten minutes or where the jury was allowed after retirement under the bailiff’s control to depart from the Court for luncheon. In these cases it is essential that there should have been an effective trial at least up to the point when the departure from the principles of natural justice occurred; for otherwise the Appeal Court could not have ordered the prisoner’s acquittal. If in truth the prisoner had never been really tried at all, he would be liable to be tried again for the same offence and the Appeal Court could have issued a *venire de novo.* The second of the examples above given (that is, where the jury had been allowed to leave the Court for luncheon) was involved in the case before the Court of Criminal Appeal of *Rex* v. *Neal* [1949] 2 K.B. 590, and the point with which I am concerned was in terms dealt with by Lord Goddard C.J. at pp. 597 ff. I would also refer your Lordships to the judgment of the Privy Council delivered by Lord Sumner in the case of *Rex* v. *Nat Bell Liquors, Ltd.* [1922] A.C. 128 at pp. 152, 153.

I only add that, as I apprehend, the same principles apply to an order for certiorari which has been held to be available, but at the direction of the Court, by way of declaration and an injunction in cases of decisions by statutory tribunals where the persons affected would otherwise be without remedy. (See *Barnard* v. *National Dock Labour Board* [1953] 2 QB 18 C.A. following *Andrews* v. *Mitchell* [1905] AC 78.) On the other hand, it has also been held that certiorari will not be granted where the proceedings in the inferior tribunal are not merely voidable but altogether void - for example, where the person purporting to act in a judicial capacity had in truth no authority so to do (see *In re Daws,* 8 Ad. & E. 936).

Finally, I venture to pose to your Lordships the question, what would have been the situation had the Secretary of State allowed Mr. Ridge’s appeal and held that he should be reinstated as

Chief Constable? Would it have been open to the Corporation to refuse to give effect to such decision on the ground that the proceedings or the decision before or by the Watch Committee had been a nullity?

I return accordingly to the first of the above-mentioned points, namely, the question whether the Watch Committee in exercising its powers under the relevant section of the Act of 1882 was in the present circumstances bound to give to the Appellant an opportunity of putting forward his case and arguments before the Committee. I have already said that the terms of the discretion vested in the Watch Committee by the Act of Parliament have seemed to me to be of the widest. They are, as I think, much wider than the phrase appearing in the case to which I shall later refer of *De Verteuil* v. *Knaggs,* where the relevant language was "If it appears to the Governor on sufficient grounds shown to his satisfaction". I also think that the language in the 1882 Act was at least as wide as, if not wider than, the relevant language in the case of *Nakkuda Ali* v. *M.F. De S. Jayaratne* [1951] AC 66, upon which the Court of Appeal considerably relied, namely "where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer". I understand that some of your Lordships feel disposed to say that the decision of the Privy Council in that case ought not to be followed. I must respectfully dissent from that view. It seems to me that on the language of the enactment there in question there was in truth conferred upon the Governor an unfettered discretion. I am aware that it is sometimes said that a different result may be appropriate where there is in question the grant or withdrawal of a licence as distinct from the taking away of some right or proprietary interest. There is no doubt force in this argument and it has been supported by our Court of Criminal Appeal in the case of *Reg.* v. *Metropolitan Police Commissioner. Ex parte Parker* [1953] 1 W.L.R. 1150. At the same time I would observe that though the withdrawal of a licence, which can be described as the removal of a privilege, is in some respects different in character from the taking away of vested rights or proprietary interests, nevertheless the withdrawal of a licence from the person from whom it is withdrawn may in fact mean the destruction of his means of livelihood.

My Lords, if the only question which was here involved was whether the Appellant should have ceased in March, 1958, to be Chief Constable and whether, therefore, the Watch Committee was entitled without more so to decide, I would, for my part, say that there was in the circumstances no call for the Watch Committee to observe the so-called rule *audi alteram partem*. As I have already observed, the Appellant had been subjected to a trial lasting nineteen days, and it was as a result of the evidence in that trial that Donovan, J. (as he then was) expressed the view that the Appellant was in fact no longer fitted to act as Chief Constable. It would seem to me, frankly, somewhat absurd that the Watch Committee should invite the Appellant to state his points again after he had put forward a case before the trial Judge for so long a period. Moreover, as Holroyd Pearce, L.J. (as he then was) pointed out (and as I have earlier noted), there was here a case of extreme urgency. The trial had attracted the greatest possible notoriety, as had also the observations in regard to the Appellant of the trial Judge. In my judgment the Watch Committee had a duty - a duty not only to the Corporation of which they were the Committee but also to the citizens of Brighton - to act and to act at once so as to give effect to what the trial Judge had after so long a hearing in effect determined.

But my difficulty in the present case arises over the question of the Appellant's pension. For assuming it to be right that the Appellant would have to cease to be Chief Constable - and I add in regard to that matter the not unimportant fact that his learned Counsel has not before your Lordships suggested that he should have been retained as Chief Constable - then there were two ways in which his appointment might be determined. First, he might have been required to resign, in which case, though he would have had so to resign, he would under the terms of the Pension Regulations of 1952 have been entitled to receive the pension which by that date had accrued in his favour. The alternative was the Appellant's summary dismissal, which was the course adopted ; though I do observe that in the Watch Committee's minute of 7th March, 1958, it is recorded that they had paid regard to the length of the Appellant's service.

It is undoubtedly a striking fact that the Appellant had at the date when he had been suspended from his office of Chief Constable served some thirty- three and a half years and had risen from the rank of police constable through the various intervening ranks to that of Chief Constable. During this long period of service it does not appear that there had ever been any criticism of his work in the police force. Moreover, in March, 1958, he had attained the age of fifty-eight years and ten months - in other words, he was within fourteen months of the age on which he would have been entitled to retire voluntarily with full pension. In these circumstances I cannot conceal from myself that (unless the words of the statute deny it) there is shown an obvious

case for giving to the Appellant an opportunity to put forward his argument for the first of the two alternatives, namely, that he should be required to resign and not be summarily dismissed.

As I have said, I feel very great difficulty on this matter. I do not wish at all to denigrate the principles of natural justice or of their proper invocation in the Courts. On the other hand, we have, as I have already many times pointed out, the very wide terms of the Act of Parliament here in question, and the body in which was invested this wide discretion was an entirely responsible body. To insist, as I venture to think, on the invocation of these principles whenever anyone is discharged from some office seems to me to involve a danger of usurpation of power on the part of the Courts and under the pretext of having regard to the principles of natural justice to invoke what may often be in truth little more than sentiment; and upon occasions when the Courts, though having necessarily far less knowledge of all the relevant circumstances, may be inclined to think that, had the decision rested with them, they would have decided differently from the body in question. Yet I do observe again that it is not the decision as such which is liable to review ; it is only the circumstances in which the decision was reached, and particularly in such a case as the present the need for giving to the party dismissed an opportunity for putting his case.

I should, therefore, for my part have been inclined to accept the view of the learned Lords Justices in the Court of Appeal. But since, as I understand that your Lordships take a different view and having read the exhaustive opinion of my noble and learned friend, Lord Reid, I will upon this matter express no concluded opinion of my own. I am ready to assume that the Appellant should have been given an opportunity at any rate to put his case for being required to resign rather than being summarily dismissed. If this assumption be made, then the second question arises - Was justice done in all the circumstances of this case?

My Lords, having considered the whole matter with the greatest care of which I am capable, I conclude that justice was here done - or, at least, that there was no “real substantial miscarriage of justice”. I have already observed that in their minutes of the 7th March, 1958, the Watch Committee (against whose good faith no kind of charge is made) stated that they had paid due regard to the length of the Appellant’s service. But at once after the receipt of notice of that resolution the Appellant’s solicitor, Mr. Bosley, asked the Watch Committee to reconsider the matter and to hear observations that might be put forward upon it. In acceding to this request it is to my mind plain that the Watch Committee (and the Corporation) thereupon decided that, notwithstanding their resolution of the 7th March, the matter of the Appellant’s dismissal should be held in suspense - and indeed after they had been informed of the Appellant’s appeal to the Secretary of State they also clearly decided that the operation of their previous resolution should be suspended pending the result of that appeal.

It is clear that on the 12th March the Town Clerk informed the Appellant’s solicitor that the Watch Committee would reconsider their decision with regard to the Appellant’s pension and further told him that a meeting would be held on the 18th March at which the Committee would consider such representations as might then be made by or on behalf of the Appellant “either orally or in writing, or both, as may be preferred”.

Thereupon Mr. Bosley sent to the Town Clerk his written observations dated the same day in which in fourteen numbered paragraphs he set out the heads of his client’s complaints; and in paragraph 15 he asked, first, that the Appellant should be allowed to retire on full pension forthwith. Mr. Bosley also sent to the Town Clerk a copy of his notice of appeal to the Secretary of State, a lengthy document in which every kind of complaint made on the Appellant’s behalf was enumerated, though I would observe that nowhere in that document was any specific claim made that the Appellant's case really was that of his being summarily dismissed instead of being requested to resign with the consequent right to receive his pension. As a result there was a further special meeting of the Watch Committee held on the 18th March. An extract from the minutes of that meeting was duly sent to Mr. Bosley, and from the minute it is clear that the Watch Committee had given to Mr. Bosley the fullest opportunity to make such representations as he should think fit; and it is also recorded that the Committee, having heard all that Mr. Bosley had to say and considered also his written representations and the notice of appeal to the Home Secretary, had decided to adhere to their previous decision; though it is noted that there were three dissentients on this occasion.

My Lords, having regard to all the circumstances, I have formed the view that your Lordships ought not now to say that a sufficient opportunity was not given to the Appellant by himself or through his adviser to put before the Watch Committee such points as he had and in particular to put before the Watch Committee the request that he should be required to resign rather than be summarily dismissed. I therefore respectfully agree upon this matter with the conclusion of

Streatfeild, J. at the trial of the present proceedings and also with what I understand and believe to have been the view of Harman, L.J. as reported at page 735 of (1962] W.L.R. (though the language as there recorded does not contain, as I think from a reading it should have contained, a negative). In reaching this conclusion I have derived support from the case of *De Verteuil* v. *Knaggs* above referred to and reported [1918] AC 557. In that case the Governor of Trinidad had acted in emergency with promptitude but without giving to the person concerned any opportunity for a hearing. In the circumstances it was pointed out by Lord Parmoor (see page 561) that this might well be justified provided that there was opportunity given afterwards when the original decision might be reviewed (see page 562). Similarly, in my view the present case was indeed one of grave emergency calling for the greatest promptitude of action. But for reasons which I have attempted to state I think that assuming in the first place there was any failure to observe the principles of natural justice by giving to the Appellant an opportunity of being heard, this defect was remedied afterwards when the original decision was suspended and an opportunity given to the Appellant or his adviser or both to make to the Watch Committee such representations as they wished.

But if I were wrong upon the point last mentioned, still in my opinion the Appellant fails in the end upon another point, namely, by reason of the consequences of his appeal to the Secretary of State. This matter was also dealt with by the learned Judges of the Court of Appeal who similarly concluded that in any event the appeal to the Secretary of State barred the Appellant from claiming relief now. The case appears then to have been put upon the basis of estoppel or election. For my part I prefer to rest my conclusion simply upon the terms of the relevant section in the Act itself. The Act is the Police (Appeals) Act of 1927 - a date, be it noted, eight years later than the date of the Act (1919) under which were promulgated the Statutory Instruments 1705 and 1706. By section 1 (1) of the Act: “A member of a police force who after the passing of this Act is dismissed . . ." was given the right to appeal to the Secretary of State. It is also by the Act provided that the Secretary of State is not bound to entertain the appeal by way of hearing oral evidence if it appears to him that the case is of such a nature that it can properly be determined without such evidence. This was in fact the course adopted by the Secretary of State in the present circumstances. By his Order of the 5th July, 1958, after reciting that an appeal had been made against the Watch Committee’s decision of the previous March, it is recorded that the Secretary of State “having decided that the case is of such a nature that it can properly be determined without taking oral evidence, hereby order as follows" ; and then, in paragraph (1), occurs the language: "I dismiss the appeal”.

It was not, as I followed the argument, suggested that the Secretary of State was acting otherwise than within the jurisdiction conferred upon him by the Act of Parliament in deciding to dispose of the appeal as he did upon the written material before him and without hearing oral argument. Indeed, section 2 (2) of the Act provides thus:

> “The Secretary of State after considering the notice of appeal and any other documents submitted to him by the appellant and the respondent . . . and the report (if any) of the person or persons holding the inquiry shall by order either -
>
> *(a)* allow the appeal; or
>
> (*b*) dismiss the appeal; or
>
> (c) vary the punishment . . . ”

As it seems to me, the action taken by the Secretary of State was in strict compliance with his powers and duties under the Act and, with all respect to those who may take a contrary view, I cannot see how it can be said that the order of the Secretary of State is *ex facie* unsustainable. What, then, is the result? By section 2, subsection 3, of the Act it is provided that the decision upon such appeal by the Secretary of State is to be “final and bind- ing upon all parties". I agree that if it had been made out that the proceedings of the Watch Committee were a nullity, then the appeal and the result of the appeal might well be regarded equally as a nullity. But for reasons which I have endeavoured to justify it is in my opinion not true to say that the decision of the Watch Committee was a nullity even if there was a failure on their part to obey the rules of natural justice by their omission to give to the Appellant proper opportunity to be heard. Their decision was voidable only. This being so, then the Appellant having invoked his right under the statute to appeal to the Secretary of State must, as I conceive, be bound by the result which Parliament has enjoined: and that result is that after such an appeal the Secretary of State’s decision shall be final and binding as between himself and the Watch Committee. I cannot imagine any language more explicit. Nor does it seem to me that the result can be avoided because both in his original letter to the Secretary of State and in the document stating

his grounds of appeal itself the Appellant's solicitor stated that his invocation of the power to appeal was without prejudice to his right thereafter to maintain that the Watch Committee's decision was in some way "wrong in law". In my judgment the Appellant invoked his right to appeal to the Secretary of State under the Act and, having done so, cannot escape the consequences which, as it seems to me, Parliament has stated in the plainest terms.

It follows, therefore, that, whatever might be the right answers to the difficult questions involved in regard to the application of the rules of natural justice, the Appellant by proceeding as he did under the Police (Appeals) Act, 1927, to appeal to the Secretary of State cannot now say other than that the conclusion of the Secretary of State, which was entirely in accordance with his statutory powers, was a final and binding conclusion which put an end to any right that the Appellant might otherwise have had to invite the Court in the exercise of its discretion to set aside or otherwise interfere with the Watch Committee's decision.

My conclusion, therefore, with all respect to your Lordships who take a different view, is, *first,* that there was in the present case no requirement that the Watch Committee should observe the terms of the Police Discipline Regulations of 1952 and therefore that the jurisdiction lay under section 191 (4) of the Municipal Corporation Act, 1882, with the Watch Committee; that therefore (*second*) the most that could be said against the Watch Committee's decision was that by failing to observe the rules of natural justice it was liable to be challenged and impugned in the Courts; but *(third)* for reasons given, that assuming that there was a failure to comply with the rules of natural justice in the first instance by omitting to give to the Appellant the right to be heard (before the passing of the resolution of the 7th March, 1958), that failure was afterwards remedied; in other words, having regard to the entirely exceptional circumstances that it cannot now be said on the Appellant's part that there was any real or substantial injustice in what was done by the Watch Committee. But, *fourth,* it is my opinion that if in all other respects I am wrong the result of invoking the Act of 1927 by way of appeal to the Secretary of State involved necessarily the result that the Secretary of State's conclusion must be regarded by your Lordships as having finally disposed of all questions between the Appellant and the Watch Committee.

There was also raised upon the appeal before your Lordships a question of the true interpretation of section 220 of the Act of 1882. So far as relevant that section is as follows: -

> " A conviction, order, warrant, or other matter made or done or purporting to be made or done by virtue of this Act shall not be quashed for want of form, and shall not, unless it is an order of the council for payment of money out of the borough fund, be removed by certiorari or otherwise into the High Court."

It was contended on behalf of the Appellant that the terms of the section were only applicable to cases in which the question was as regards purely formal matters. For my part I am not persuaded that this is a right construction of the words which Parliament has used. But I prefer upon this matter not to express any concluded opinion. If the view which I have tried to express and justify were right it would follow that this section would not be a relevant consideration. Further than that, since the point was never taken by the Watch Committee until the course of the argument before your Lordships, it would, as it seems to me, in any event be too late for the Watch Committee to rely upon this section if in other respects they were wrong. I therefore say no more upon this matter.

If the matter rested with me, my Lords, I would dismiss the appeal.

Lord Morris of Borth-y-Gest

My Lords,

The Appellant, who in March, 1958, was nearly fifty-nine years of age, became a constable in the Brighton Borough Police Force in 1925 after a short period of service in another police force. Thereafter he received progressive promotions in the Brighton Police Force. In 1935 he became a detective sergeant and in 1948 a detective inspector. In 1949 he was made Detective Chief Inspector and in 1950 Detective Superintendent. In 1954 he was promoted to be Deputy Chief Constable. In the early part of 1956 there was a vacancy in the office of Chief Constable. The Appellant was an applicant for the appointment. He was one of five candidates who were interviewed by the Watch Committee. The Committee, who had the opportunities for judging of the competence of the Appellant which his prior service afforded them, resolved that subject to the approval of the Secretary of State the Appellant should be appointed. He was so appointed.

Amongst other terms and conditions the appointment was to be "subject to the Police Acts and Regulations".

In October of the following year the Appellant and two police officers and two others were arrested. The allegation was one of conspiracy to obstruct the course of public justice. The Watch Committee (who are the police authority) then took action under the provisions of the Police (Discipline) (Deputy Chief Constables, Assistant Chief Constables and Chief Constables) Regulations, 1952 (S.I. 1952/1706) as amended by S.I. 1954 No. 1688. They decided to suspend him from duty and as notified in a letter dated the 29th October, 1957, they resolved in accordance with Regulation 15 to pay him certain suspension allowances. The opening part of Regulation 15 (1) as amended provides that:

> "Where a report or allegation is received from which it appears " that a deputy chief constable or assistant chief constable of a borough " police force may have committed an offence against discipline or a " criminal offence, the police authority may suspend him from duty " until such time as either -
>
> > *(a)* it is decided that he shall not be charged with an offence " against discipline, or
> >
> > (*b*) the disciplinary proceedings referred to in these Regulations " are concluded."

Though that Regulation refers to a deputy or assistant chief constable it may under certain circumstances be invoiced in the case of a chief constable. This is as a result of Regulation 18 which provides:

> "Where a report or allegation is received from which it appears that a chief constable may have committed an offence, these Regulations " shall apply with the following modifications, adaptations and exceptions: - ....".

The Regulations provided that the expression "offence" had the same meaning as it has in the Police (Discipline) Regulations, 1952. Paragraph 1 (1) of those Regulations provides:

> "A member of a police force commits an offence against discipline (hereafter in these Regulations referred to as 'an offence ') if he commits one or more of the offences set out in the First Schedule hereto (hereafter in these Regulations referred to as the ' Discipline Code ') or such additions thereto as may be made by the police authority for the police force with the consent of the Secretary of State ".

The position in October, 1957, was, therefore, that the Watch Committee suspended the Appellant under Regulation 15 which was applicable on the basis that the Watch Committee had received a report or allegation from which it appeared that the Chief Constable may have committed one or more of the offences set out in the Discipline Code contained in the Police (Discipline) Regulations, 1952. It followed that the suspension would continue either until it was decided that he would not be charged with an offence against discipline or until any disciplinary proceedings were concluded.

In December, 1957, the Appellant was committed for trial. An indictment dated the 7th January, 1958, charged him with the offence of conspiracy to obstruct the course of public justice. The particulars alleged that he conspired with the four other accused and with other persons unknown to obstruct the course of public justice in that the Appellant and the two police officers accused should act contrary to their public duty as police officers in relation to the administration of the law. The conspiracy was alleged to have been between the 1st January, 1949, and the 18th October, 1957. The trial began on the 3rd February, 1958, and after a hearing which lasted for some nineteen days the Appellant was acquitted. That was on the 27th February, 1958. On the 28th February his solicitors by letter requested the Watch Committee to remove his suspension and to reinstate him. On that day two police officers who had been convicted by the jury were sentenced, and in passing sentence the learned judge made certain observations in regard to the Appellant. A second indictment had been preferred against the Appellant. The charge was that "being a person serving under the Crown" he corruptly obtained a gift of £20 from a named person as a reward for showing favour to such person in relation to the affairs of the Crown. The Appellant stood his trial on that indictment on the 6th March, 1958. He pleaded "Not Guilty". The prosecution offered no evidence. On the direction of the

learned Judge the Appellant was found not guilty. After the Appellant had left the dock the learned Judge made certain observations in regard to the Appellant.

On the following day, the 7th March, 1958, there was a meeting of the Watch Committee. The Appellant had not been invited to attend and was not sent for. He received a letter the same afternoon telling him that he had been summarily dismissed. He was informed of certain resolutions which the Watch Committee had passed. Information as to those resolutions was given to the Press.

The resolutions which were passed by the Watch Committee as recorded in their minutes were as follows: -

> " RESOLVED (unanimously): -
>
> (1) The Committee after carefully considering
>
> (a) the request by Mr. Ridge's Solicitors that Mr. Ridge's suspension be removed and Mr. Ridge be reinstated in his office as Chief Constable,
>
> (b) the length of Mr. Ridge's period of service in the Brighton Police Force,
>
> (c) the trial of Mr. Ridge, Detective Inspector J. R. Hammersley and Detective Sergeant T. E. Heath, two senior members of the Criminal Investigation Department of the Brighton Police Force and others on a charge of conspiring to obstruct the course of public justice and the conviction of Hammersley and Heath and another,
>
> (d) the Statements of Mr. Justice Donovan on the 28th February, 1958 and the 6th March, 1958,
>
> (e) the statements made by Mr. Ridge in evidence at his trial, and
>
> (f) certain statements made to-day by members of the Com- mittee and the Town Clerk,
>
> decide that Mr. Charles Feild William Ridge has in the opinion of the Committee been negligent in the discharge of his duty and is unfit for the same and the Committee in exercise of the powers conferred upon them by Section 191 of the Municipal Corporations Act, 1882, accordingly hereby dismiss him from his office as Chief Constable of Brighton forthwith.
>
> (2) That in accordance with the provisions of Regulation 7 of the Police Regulations, 1955 the amount of Mr. Ridge's aggregate pension contributions be paid to him.
>
> (3) That the Town Clerk be requested to arrange the foregoing resolutions to be conveyed to Mr. C. F. W. Ridge and to Messrs. Bosley and Co.
>
> (4) That resolutions (1) and (2) be made available to the Press at a conference to be held at 2.45 p.m. this day and the Chairman and the Town Clerk be requested to inform the Press that no other statement will be made or questions answered in amplification thereof.
>
> (5) That no statements or disclosures be made by members of the Committee concerning the matter other than the foregoing resolutions."

Your Lordships were informed that the transcripts of the proceedings at the criminal trial were not available for the Watch Committee on the 7th March but that there was a transcript of the statements which had been made by the learned Judge on the 28th February and the 6th March.

Section 191 (4) of the Municipal Corporations Aot, 1882, is in the following terms: -

> "The watch committee, or any two justices having jurisdiction in the borough, may at any time suspend, and the watch committee may at any time dismiss, any borough

constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same."

By section 4 (1) of the Police Act, 1919, it was provided:

> "It shall be lawful for the Secretary of State to make regulations as to the government, mutual aid, pay, allowances, pensions, clothing, expenses and conditions of service of the members of all police forces within England and Wales, and every police authority shall comply with the regulations so made."

At the material times the following Regulations made by the Secretary of State pursuant to that power were in force: -

> (a) Police Regulations 1952 S.I. 1704 ;
>
> (b) Police (Discipline) Regulations 1952 S.I. 1705, as amended by S.I. 1687; and
>
> (c) Police (Discipline) (Deputy Chief Constables, Assistant Chief Constables and Chief Constables) Regulations 1952 S.I. 1706, as amended by S.I. 1688 of 1954.

The Regulations S.I. 1705 show that a member of a police force commits an offence against discipline if he commits any of the offences which are set out in the Discipline Code contained in the First Schedule to the Regulations. The Regulations contain detailed provisions as to the procedure which must be followed "where a report or allegation is received from which it appears that a member of a police force may have committed an offence". Chief constables, deputy chief constables and assistant chief constables are governed by the Regulations S.I. 1706 in fact made on the same day as those in S.I. 1705. These officers are also subject to the "Discipline Code" and the Regulations (S.I. 1706) contain detailed provisions as to the procedure which must be followed where a report or allegation is received from which it appears that a chief constable may have committed an offence, that is, an offence contained in the Discipline Code (see Regulation 18).

Amongst the many offences included in the Discipline Code are the following: -

> " 1. *Discreditable conduct,* that is to say, if a member of a police force acts in a disorderly manner or any manner prejudicial to dis- cipline or reasonably likely to bring discredit on the reputation of the force or of the police service.
>
> ....
>
> 4. *Neglect of duty,* that is to say, if a member of a police force -
>
> > (a) neglects, or without good and sufficient cause omits, promptly and diligently to attend to or carry out anything which is his duty as a constable,
> >
> > ....
>
> 5. *Falsehood or prevarication,* that is to say, if a member of a police force -
>
> > ....
> >
> > (*b*) wilfully or negligently makes any false, misleading or inaccurate statement,
>
> ....
>
> 17. *Conviction for a criminal offence,* that is to say, if a member of a police force has been found guilty by a court of law of a criminal offence."

If there is a report or allegation from which it appears that a chief constable may have committed an offence against the Discipline Code, then the police authority must "unless they are satisfied that he has not committed an offence inform him in writing of the report or allegation and ask him whether or not he admits that he has committed an offence and give him an opportunity, if he so desires, of making to the police authority any oral or written statement he may wish to make concerning the matter ". Regulation 2 (of S.I. 1952 No. 1706) as applied to chief constables by Regulation 18 provides that if the chief constable "admits that he has committed an offence the police authority may impose a punishment in accordance with

Regulation 11 of these Regulations without the case being heard in accordance with the following provisions of these Regulations". The power to punish for an offence without a hearing was therefore made conditional upon there being an admission of an offence. Thereafter if the police authority are not satisfied with the statement of a chief constable who does not admit that he has committed an offence the police authority must instruct a solicitor to enter on a discipline form the offence with which the chief constable is charged and must give such particulars as will leave the chief constable "in no doubt as to the precise nature of the alleged offence". That having been done, a chief constable must be supplied with (a) a copy of the discipline form, *(*b) a copy of the report or allegation on which the charge is founded and any reports thereon notwithstanding that they may be confidential, (c) a copy of any statement relating to the charge made by any witness to be called in support of the charge together with the witness's name and address, and *(*d) a copy of any statement relating to the charge made by any person other than a witness to be called in support of the charge, to the police authority or to anybody on their behalf, together with the person's name and address. Thereafter there must be a hearing by a tribunal (which could consist of a person selected from a list of nominated persons and assisted on matters pertaining to the police by an assessor, or could consist of not more than five members of the police authority). The regulations lay down the procedure for the hearing and provide that after the hearing the tribunal must submit a report to the police authority and send a copy of it to the accused chief constable. The report must contain *(inter alia*) a statement as to the facts found or admitted, as to the charges found to be proved, and as to any recommendation as to any punishment. Then the police authority must come to a decision. That will be only "on receipt of the report of the tribunal". They may decide to dismiss the case: alternatively they may decide to impose any one of the following punishments: (i) dismissal, (ii) requirement to resign either forthwith or on such date as may be specified in the decision as an alternative to dismissal, (iii) reprimand. (See Regulation 11.)

By the Police Pensions Act 1948 it was provided that regulations to be made by the Secretary of State were to make provision as to the pensions to be paid whether as of right or otherwise and also "as to the times at which and the circumstances in which members of police forces are or may be required to retire otherwise than on the ground of misconduct". The Police Pensions Regulations 1955 (S.I. 1955 No. 480) contain the following provisions: -

> "1. - (1) Subject to the provisions of these Regulations, every man or woman who is a regular policeman, that is to say, a member of a home police force who is not an auxiliary policeman and a member of an overseas corps who is a reversionary member of a home police force, shall, on retiring from the force of which he is a member, be entitled to an award under these Regulations.
>
> ....
>
> 3. - (1) Subject to the provisions of these Regulations, where a regular policeman who is entitled to reckon twenty-five years' pensionable service retires from a police force, the award shall be an ordinary pension.
>
> ....
>
> 7. - (2) Where a member of a police force is dismissed the police authority shall pay an amount equal to the amount of his aggregate pension contributions to such one of those persons hereinafter described as, in their discretion, they may think fit or, if in their discretion they think fit, shall distribute that amount among such of those persons in such shares and in such manner as in their discretion they may think fit.
>
> ....
>
> 52. If a police authority determine that the retention in the force of a regular policeman who if required to retire is entitled to receive a pension of an amount not less than two-thirds of his average pensionable pay would not be in the general interests of efficiency, he may be required to retire on such date as the police authority determine."

It is to be observed that section 191 (4) of the Act of 1882 gives to the Watch Committee a power of suspension. As I have already mentioned, a power to suspend a chief constable is also given to the police authority by the Regulations S.I. 1952 No. 1706 as amended. The case has proceeded on the basis that the Watch Committee suspended the Appellant in October, 1957, under the powers given to them by those Regulations. At the trial of the action the Appellant gave evidence that after his arrest on the 25th October, 1957, the Town Clerk came to see him on the same day and said that he had been suspended from duty, and the Appellant's

recollection was that the Town Clerk added “under Police Regulations” or “ in accord “with Police Regulations”. The Appellant’s recollection as to this was not challenged in cross-examination. The suspension allowances which thereafter were paid to the Appellant were payable because on the 28th October, 1957, the Watch Committee resolved that in accordance with Regulation 15 of the Regulations such allowances should be paid. It is not suggested by the Appellant that there was any irregularity in his suspension. The power to suspend arose because the Watch Committee must have received a report or allegation from which it appeared that the Appellant may have committed some offence against discipline (that is, some offence against the Discipline Code).

It seems very probable that the Watch Committee received an oral report that the Appellant had been arrested on criminal charges, and it is abundantly clear that if he were guilty of criminal charges he would have committed one or more of the offences set out in the Discipline Code. Quite apart from various other offences he would have been guilty of the offence under paragraph 17 of the Code as set out above.

After the Appellant was acquitted of all criminal charges there were various courses which were open to the Watch Committee. They could have decided not to charge the Appellant with any “offence against discipline”. In that event his suspension would have ceased. They could have decided to charge him with some offence or offences against discipline. In that event the suspension would have continued. That would be on the basis that there was some report or allegation that the Appellant may have committed an offence against discipline. The Appellant would then have had the right to be informed of and to make a personal explanation concerning any such report or allegation, and the procedure laid down in the Regulations would have had to be followed. Had there been disciplinary proceedings the Appellant would have had all the opportunities to defend himself which the Regulations give. If any charges were found to be proved and if the case were not dismissed, then there might have been dismissal or a requirement to resign in lieu of dismissal or a reprimand. Another course which was open to the Watch Committee was to consider (pursuant to Regulation 52 of the Police Pensions Regulations, 1955 - S.I. 1955 No. 480) whether the Appellant was one who if required to retire was entitled to receive a pension of an amount not less than two-thirds of his average pensionable pay and if so to consider whether the retention of the Appellant in the force “ would not be in the general interests of efficiency ” and to decide whether to require the Appellant to retire.

The documents show what the Watch Committee did. The documents further show their reasons for doing what they did. What they did was summarily to dismiss the Appellant without any prior communication of any sort to him and without inviting any submission from him. They purported to exercise powers given by section 191 (4). It is beyond dispute that the procedure of the Regulations was in no way operated. The issue that is raised is, therefore, whether the powers given by section 191 (4) may be invoked without paying any regard to the provisions contained in Regulations S.I. 1952 - No. 1706. The further issue that is raised is whether such powers may also be invoked without paying regard to those principles which are conveniently referred to as the principles of natural justice. I propose to deal with these issues separately.

The powers given by section 191 (4) are impressive. There is, firstly, a power to suspend. It may well be that different considerations apply to suspensions as compared to dismissals. It may well be that a power to suspend if exercised by a Watch Committee in good faith may have to be exercised without any hearing and without any procedural requirements. That does not have to be decided in the present case. The power to dismiss (given by the section to a Watch Committee but not to justices) relates to any borough constable (which term includes a chief constable) whom the Watch Committee “think negligent in the discharge of his duty, or otherwise unfit for the same”. My Lords, I consider that in the context the word “otherwise” denotes that there may be dismissal of a constable if the Watch Committee considers that he is unfit for the discharge of his duties even though he may not have been negligent in their discharge. In the section it seems to me that the words “unfit for the same” were designed to cover situations where even apart from any misconduct or lack of care and even apart from any physical or health condition a constable was thought to be unfit for the discharge of his duty.

It was not contended before your Lordships that section 191 (4) has been impliedly repealed. Having regard to section I, subsection *4>, of the Police Act, 1946, and paragraph 3 (2) in the Second Schedule of such Act, that would have been a difficult contention to advance. But though the powers given by section 191 (4) are still exercisable, I consider, in agreement with the Court of Appeal, that the effect of the Police Act, 1919, is that the powers given by section

191 (4) must be exercised in accordance with any Regulations made under the Police Act, 1919, which are applicable.

Pearce, L.J. (as he then was) said that in cases coming within the Regulations the statutory power of the Watch Committee must be used in accordance with the Regulations and that in such cases the Watch Committee must act judicially or quasi-judicially. Harman, L.J. said that in cases to which the Regulations are applicable the power to dismiss given by section 191 (4) is controlled. Davies, L.J. likewise agreed that the power is controlled by the Regulations. These conclusions followed and were in accord with the judgment of Greer, L.J. in *Cooper* v. *Wilson and Others* [1937J 2 K.B. 309. In that case Greer, L.J. while rejecting a suggestion that the power to make Regulations under section 4, subsection (1) of the Police Act, 1919, had impliedly repealed section 191 (4) of the Act of 1882, said: "The Regulations, in my judgment, must be read as applying to the way in which the Watch Committee are to exercise their powers in a borough . . . "

It may well be that the various Police Regulations and Police Pensions Regulations were designed to cover all the circumstances and situations with which police authorities are likely to be faced, and in practice I would think that police authorities would invariably wish to follow the spirit as well as the letter of the carefully devised procedures which the Regulations lay down. As a matter of construction, however, I am not prepared to say every power is controlled by the Regulations: they do not appear to make provisions in regard to the power to dismiss a constable who is thought by the Watch Committee to be unfit for the discharge of his duties. If, however, a constable is thought to have been negligent in the discharge of his duties and so guilty of an offence under section 4 of the Discipline Code, or if he is thought to have been guilty of some other offence, then the provisions of the Regulations would be applicable.

The action of the Watch Committee in summarily dismissing the Appellant was stated to be for two reasons. In the first place they decided that the Appellant had been negligent in the discharge of his duty. In the second place they decided that he was unfit for the discharge of his duty. Had they been merely of the opinion that the Appellant had become unfit for the discharge of his duty but had not been in any way negligent in the discharge of his duty it would seem to be inherently unlikely that they would have exercised a power of summary dismissal. They had appointed the Appellant in 1956 after he had been successively promoted in the period of years after 1925 when he first joined the Brighton Borough Police Force. He was nearing the time when he could have retired on a pension. If the Watch Committee thought that there were reasons why his retention in the force would not be in the general interests of efficiency they could have required him to retire (see Regulation 52 of The Police Pensions Regulations, 1955). If the Watch Committee had thought that there was no element of misconduct and no suggestion of negligence in the discharge of duty, then, assuming that the power given by section 191 (4) to dismiss where there is unfitness for duty is a power which is not governed by and has not been affected by Regulations which have been made, then on such hypothesis I do not suppose that summary dismissal would have been contemplated. In fact, there was a decision that the Appellant had been negligent in the discharge of his duty. There was, therefore, a finding of misconduct although there had not been a charge and although there had not been a hearing. A member of a police force is guilty of an offence if he "neglects or without good and sufficient cause omits promptly and diligently to attend to or carry out anything which is his duty as a constable". I do not think that it can be open to doubt that if someone is found to have been "negligent in the discharge of his duty" he is found to have been guilty of the offence defined by these words. The Watch Committee, therefore, found the Appellant guilty of this offence and summarily dismissed him for it. They found him guilty without giving him particulars and without charging him and without giving him any opportunity to defend himself. They made no attempt to pay heed to the Regulations. The explanation of this that is advanced is that they were not obliged to do so because they had not received any report or allegation from which it appeared that the Appellant might have committed an offence. I find this a most surprising suggestion. If they had not received any report or allegation to the effect that he might have committed an offence, then why did they suddenly decide that he had committed an offence? How could they find him guilty of being negligent in the discharge of his duty without some suggestion or some information which amounted to a report or allegation to that effect? Indeed, it is difficult to understand how the Committee could ever act in a disciplinary matter without first having some report or some allegation that an offence may have been committed. The minutes of the meeting record that they carefully considered the trial of the Appellant and the other accused. The trial had lasted some nineteen days. The transcript of the evidence was not before the Committee on the 7th March. If the Committee had acquired knowledge that in the proceedings at the trial there was some material which might lead to the

view that the Appellant had been negligent in the discharge of his duty, then they were treating that material as a report or allegation.

The minutes further record that the Committee considered the statements made by the learned Judge on the 28th February and the 6th March. They had transcripts before them of what the learned Judge had said. The statements made by the learned Judge manifestly called for the most careful consideration by the Watch Committee, who would obviously pay the greatest heed to them. One of the statements, besides commenting on the failure of the Appellant to give proper leadership raised two specific matters, namely, (1) that the Appellant had contrived to go to a suspected briber of the police in private (that was a reference to a man named Leach), and (2) that the Appellant had admitted "a much convicted and hectoring bookmaker" to his private room and had discussed with him the policy of the police in certain matters (that was a reference to a man named Page). My Lords, I find it impossible to say that in considering those statements the Committee had not received and were not considering a report or allegation to the effect that the Appellant might have been guilty of an offence. The learned Judge on the 6th March had said in terms that he realised that the matter of the leadership of the Brighton Police Force was "about to engage the attention of those persons whose responsibility it is". No words used by the learned Judge, however, could or did in any way suggest that the matter was to be dealt with in disregard of the requirements of the law.

The minutes of the Watch Committee further record that the Committee considered "certain statements made today by members of the Committee and the Town Clerk". If those were statements that might lead members to conclude that the Appellant had been negligent in the discharge of his duty, then they must have been reports or allegations from which it appeared that the Appellant might have committed either the offence of neglect of duty or some other offence. As no evidence was called on behalf of the Watch Committee at the trial of the action it was not possible to ask any member of the Watch Committee what these statements were. There is, however, material from which their nature may be reasonably inferred. In circumstances to which reference must later be made the solicitors for the Appellant gave notice of appeal to the Secretary of State against his dismissal, while stating that the appeal was without prejudice to the Appellant's rights to contend that the purported notice of dismissal was bad in law as being contrary to natural justice and not in accordance with the appropriate statutes and regulations. Thereafter in a written statement submitted by the Watch Committee to the Secretary of State the facts and contentions on which reliance was placed included the following: -

> "(c) In the course of the said trial the Appellant gave false evidence in respect of two matters of material importance, namely (i) that he had reported to the Deputy Town Clerk and also to the Chairman of the Watch Committee the facts relating to an interview between Alder- man Cullen and one Page, and (ii) that he had reported to the then Chief Constable the facts relating to an interview which he (the Appellant) had had with one Mrs. Cherryman.
>
> (d) The Appellant failed to investigate and to take any action whatsoever in respect of complaints of a serious nature made by the said Mrs. Cherryman as to the manner in which the Astor Club was conducted and as to the trustworthiness of the Brighton Criminal Investigation Department.
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> (e) Following a report of an attempt to bribe a police officer, the Appellant went to the house of the man concerned, namely Harry Leach, and there interviewed him privately and alone.
>
> (f) The Appellant permitted a man with a criminal record, namely the said Page, to interview him in his private room and to discuss with him matters of police policy.
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> ....
>
> (i) The Respondents contend that, having regard to the facts and matters aforesaid, the Appellant has *both* been negligent in the dis- charge of his duties and is also unfit for the same and that, therefore, they were entitled to dismiss him pursuant to the provisions of section 191 of the Municipal Corporations Act, 1882."

It is, in my judgment, a reasonable inference that the statements made at the meeting of the Watch Committee covered the matters set out under (c). If someone made the serious suggestion that the Appellant had at his criminal trial given false evidence on material matters

that was surely a report or allegation from which it appeared that the Appellant might have committed an offence. There would have been an offence under paragraph 5 of the Code.

The Watch Committee were under a statutory obligation (see Police Act, 1919, section 4 (1)) to comply with the Regulations made under the Act. They dismissed the Appellant after finding that he had been negligent in the discharge of his duty. That was a finding of guilt of the offence of neglecting or omitting diligently to attend to or to carry out his duty. Yet they had preferred no charge against the Appellant and gave him no notice. They gave him no opportunity to defend himself or to be heard. Though their good faith is in no way impugned, they completely disregarded the Regulations and did not begin to comply with them.

My Lords, I cannot think that any decision so reached can have any validity, and unless later events have made it valid it ought not to be allowed to stand. Had the Regulations been applied but if there had been some minor procedural failure different considerations might have applied. There was, however, no kind of compliance with them. In my judgment, once there was a report or allegation from which it appeared that a chief constable may have committed an offence it was a condition precedent to any dismissal based on a finding of guilt of such offence that the Regulations should in essentials have been put into operation. They included and incorporated the principles of natural justice which, as Harman, L.J. said, is only fair play in action. It is well established that the essential requirements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet - see *Kanda* v. *Government of Malaya* [19621 A.C. 322, 337. My Lords, here is something which is basic to our system: the importance of upholding it far transcends the significance of any particular case.

The circumstances existing in March, 1958, made it, in my judgment, particularly necessary, quite apart from its being a matter of legal obligation, that before considering whether the Appellant had been negligent in the discharge of his duty the procedure of the Regulations should be observed. The Appellant had after a long trial been acquitted of criminal charges. There had been much publicity. He had not been on trial on charges of neglect of duty or of unfitness for duty. If any facts had emerged which, while insufficient to support the charges at the criminal trial, had seemed to the Watch Committee to suggest that the Appellant had been negligent in the discharge of his duty, it would have been so easy to state them. If at the criminal trial any admission had been made or evidence given which seemed to support the view that there had been negligence - how simple it would have been to state it. If some facts were clear and plain - so that denials would have been unlikely or explanations difficult - then the opportunity to make a statement might have shown a course ahead. But if, on the other hand, facts could be explained and if conduct could be defended and if charges of neglect or of unfitness could be repelled, was the Appellant to be denied a hearing? It is to be noted that whatever suggestion or charge might be formulated in regard to the “Leach” matter raised questions as to the desirability or propriety of a visit that had taken place as far back as 1954, which was some time before the Appellant was appointed to be Chief Constable. The Appellant’s case was that he had told his then Chief Constable in advance of his proposed visit to Leach. His case further was that neither in respect of the “Leach” matter nor in respect of the “Page” matter was there any impropriety in his conduct or actions. On the charges brought against him in a court of law and upon which he was tried he was found not guilty. If a new charge of neglect of duty was to be brought against him, was he not even to be told about it or asked about it? Was he to have no chance of dealing with matters which may have influenced the Committee? Were the safeguards of a criminal trial, of which the law is a jealous protector, to find no reflection in the days that followed an acquittal?

My Lords, before further considering the result of disregarding the Regulations, it becomes necessary to mention certain events that followed the dismissal. The solicitor for the Appellant addressed a letter to the Secretary of State on the 7th March, 1958, in which he contended that the dismissal was contrary to natural justice and bad in law and gave notice of appeal. The letter pointed out that the notice of dismissal had merely recited a general finding of negligence and unfitness without specifying any details. The Police (Appeals) Act, 1927, as amended by the Police (Appeals) Act, 1943, by section 1 (1) provides -

> “ A member of a police force who after the passing of this Act is punished by dismissal, by being required to resign as an alternative to dismissal, by reduction in rank, or by reduction in rate of pay, may appeal to a Secretary of State in accordance with this Act

and the rules made thereunder, if he gives notice of appeal in the pre- scribed manner and within the prescribed time."

The Police (Appeals) Rules, 1943 (S.I. 1943 No. 473), which apply to all appeals by a member of a police force, provide that notice of appeal must be sent " within ten days from the date when the appellant received on the misconduct form the notification of the decision against which he desires to appeal ". The solicitor for the Appellant followed his letter of the 7th March with another dated the 10th March in which he stated that the appeal was without prejudice to the Appellant's rights to contend that the purported dismissal was bad in law as being contrary to natural justice and not in accordance with the appropriate statutes and regulations. In his notice of appeal which was dated the 12th March he set out some thirty grounds of appeal. While denying any neglect or any unfitness, he set out that he had been give no notice of what was alleged against him and no opportunity of being heard. He further set out that by lodging his appeal he did not recognise the legality of the Watch Committee's decision and that his appeal was without prejudice to his contentions that the Watch Committee's decision was invalid, and he stated that his notice of appeal was only given within the limited time in case it should be held that the Watch Committee's procedure was valid. In due course a written statement dated the 18th April, 1958, was submitted to the Secretary of State on behalf of the Respondents: it set out the facts and contentions on which the Respondents relied in opposing the appeal.

Following upon the dismissal of the Appellant his solicitor made a request to appear before the Watch Committee. He wished to be informed about the case against his client so as to be able to deal with it, and furthermore he wished to submit that the best way of dealing with the situation would be to allow his client to resign and to have his pension. A copy of the Appellant's written statement to the Secretary of State and in addition some written observations were sent to the Watch Committee. In those observations it was submitted that the Appellant should be allowed to retire on full pension forthwith. The Committee decided to meet on the 18th March and stated that they would consider any representations which were then made by or on behalf of the Appellant either orally or in writing and that such representations need not be limited to the matter of the pension. The Appellant's solicitor attended and addressed the Watch Committee. In the course of his address he stated that before being dismissed the Appellant had been given no notice of what was charged against him or of being heard. The solicitor was received with courtesy but in silence. It seems, however, to be beyond dispute that he was given no further particulars of the case against the Appellant than appeared in the letter of the 7th March. The Respondents' later submissions to the Secretary of State which were dated the 18th April were, of course, not then available. The result of the meeting of the 18th March was that the Watch Committee by a majority resolved to adhere to their previous decision: nine members voted in favour of such resolution and three members voted against it.

The written statement (dated the 18th April, 1958) submitted to the Secretary of State by the Respondents set out their contentions and they included the paragraphs to which I have already referred. The Secretary of State decided that the case could be determined without taking oral evidence (see Police (Appeals) Act, 1927, section 2) and on the 5th July, 1958, he dismissed the appeal. He came to the conclusion "that there was sufficient material on which the Watch Committee could properly exercise their power of dismissal under Section 191 (4)". He did not take into account, as no evidence in support of them was before him, certain allegations upon which the Respondents relied, namely (i) that the Appellant did not report to the Deputy Town Clerk and to the Chairman of the Watch Committee the facts relating to an interview between Alderman Cullen and one Page; (ii) that the Appellant did not report to the then Chief Constable the facts relating to an interview which the Appellant had with one Mrs. Cherryman; and (iii) that the Appellant in giving evidence at his trial that he had so reported those matters gave false evidence.

My Lords, in my judgment, inasmuch as the decision of the Watch Committee was that the Appellant had committed an offence or offences against the Discipline Code and inasmuch as the decision was arrived at in complete disregard of the Regulations it must be regarded as void and of no effect. The power to dismiss for an offence was a power that could only be exercised if the procedure of the Regulations was set in motion. A purported dismissal in complete disregard of them cannot be recognised as having any validity. In *Andrews and Others* v. *Mitchell* [1905] AC 78 a member of a friendly society who had been duly summoned before the arbitration committee for a breach of the rules was in his absence expelled from the society by a resolution of the committee upon a different charge, that is, of fraud and disgraceful conduct, of which no written notice had been given to him as required by the rules. By one of the general laws of the friendly society any member proved guilty of fraud or any conduct or offence calculated to bring disgrace upon the order before any recognised arbitration committee,

provided a charge had been preferred against him as required by the general laws with regard to arbitrations, might be expelled or suffer some less penalty. It was held that the decision of the committee was null and void. In his speech Lord Halsbury, L.C. said that "there are some principles of justice which it is impossible to disregard". He pointed out that while there was a rule which justified expulsion it justified expulsion upon the express proviso that the charge had been made as provided by the rules. He added: "In this case the charge never was made as provided by the rules; and if you have no power given under the rules to expel a member except upon a charge made and tried according to the rules, you have no power to expel in a case like this." He described the summoning of a member pursuant to the rules and giving him time to consider what he had to do and giving him the charge against him in writing as "matters of substance, and not mere matters of form ". He concluded that the arbitration committee "had no jurisdiction" to entertain the matter. Lord Davey said:

> " It is not contended by Mr. Lawrence that this charge was made properly according to the rules, but he regarded that as a mere informality which might be set right. But it was an informality which went to the root of the jurisdiction, and the omission to follow the directions of the rules for preferring charges had the unfortunate effect of making the resolution which was come to for the expulsion of the respondent, in my opinion, altogether null and void."

My Lords, if the Regulations were applicable in this case, as in my judgment they were, Regulation 2 of S.I. 1706 to which I have referred above only gives a power to impose punishment without a hearing if a condition is satisfied, namely, if there is an admission of the commission of an offence. In the present case there was no such admission and the Watch Committee therefore lacked power to impose punishment for an offence without a hearing: in purporting to dismiss the Appellant they acted without jurisdiction and their decision was a nullity.

In *Lapointe v. L'Association de Bienfaisance et de Retraite de la Police de Montreal* [1906] AC 535, the appellant, who was a member of the respondent benevolent and pension society, had been obliged to resign from the police force. Under those circumstances he became entitled according to the rules to have his case for a gratuity or pension considered by the board of directors and his right to such gratuity or pension determined by a majority of the board. The board in fact acted in a most extraordinary manner. In delivering the judgment of the Privy Council Lord Macnaghten said :

> "They first appointed a committee of four from their own body to investigate the reason of Lapointe's resignation. There would have been no objection to this course if the committee had been deputed to consider and report whether or not there was a prima facie case for inquiry. But what the committee did was to listen to all sorts of stories about Lapointe's past history, and rake up everything that was against him during his connection with the force. Then, without telling Lapointe what the charges against him were, or giving him any opportunity of defending himself, they advised the board that the pension should be refused. Thereupon the board abnegated their judicial duties altogether. They summoned a general meeting of the members, and submitted a question, which they were bound to determine themselves, to a popular vote. The meeting was held on April 26, 1892, when by a large majority of the members present it was resolved that Lapointe's name should not be entered on the pension roll of the society.
>
> The whole of these proceedings were irregular, contrary to the rules of the society, and above all contrary to the elementary principles of justice. And the position of the board was certainly not improved by a formal resolution stating solemnly, what was contrary to the truth, that after having inquired into the facts and circumstances which brought about Lapointe's resignation, and having deliberated upon his claim, the board ' decides that the pension on which he claims be refused, seeing that he was obliged to tender his resignation'."

Lord Macnaghten said that it was obvious that the so-called determination of the board was void and of no effect and the order which they humbly advised included a declaration and determination as required by the rules and that the proceedings were null and void.

In *Annamunthodo* v. *Oilfields Workers' Trade Union* [1961] AC 945, it was held in the Privy Council that a decision of the General Council of the Trade Union was vitiated because it convicted the Appellant of an offence against the rules with which he had never been charged,

and it was held that it should be declared that the purported expulsion of the Appellant was invalid and that an order should be made to set it aside.

My Lords, so here should it, in my judgment, be declared that the purported termination on the 7th March, 1958, of the Appellant's appointment was void unless it be that later events debar the Appellant from obtaining this relief. If they do not, then the effect of such a declaration will be that the Respondents will have to consider what action to take and in any course that they follow they must act according to law.

The Appellant, through his Counsel, has stated that he has no intention of applying for reinstatement but would be content to retire (as from March, 1958), with his pension. I apprehend that in all the circumstances it would not be appropriate for your Lordships to do more than to declare that the purported termination on the 7th March, 1958, of the Appellant's appointment was void. Included in the other claims of the Appellant in his action is a claim for his salary as from the 7th March, 1958. It would not seem appropriate at the present stage to deal with the Appellant's claim for salary and it would not be for your Lordships to decide any question as to a pension.

The question next arises whether the events subsequent to the 7th March form any bar to the Appellant's claim. I have already referred to the meeting of the 18th March. That occasion afforded an opportunity for the Respondents to tell the Appellant and his solicitor what were the allegations that he had to meet. The documents which the solicitor sent to the Watch Committee emphasised the point that the Appellant had been given no notice of them: mention was also made of the fact that the Appellant did not know what were the statements made by members of the Watch Committee referred to in the letter of 7th March. He most certainly had no hint that it was being said of him that he had given some false evidence. The Appellant's case is that he never had the chance - which he would have welcomed - of refuting that suggestion before the Watch Committee and the chance of calling such evidence as he might desire to call to deal with the suggestion. The oral request for information made by the solicitor met with no response. Even though the Respondents had communicated their previous decision to the Press a full inquiry might still have been possible, but the Respondents neither took the opportunity then to begin compliance with the Regulations nor even, in default of that, to give information to the Appellant as to the case that he had to meet. In the result, in my judgment, nothing occurred on the 18th March to give validity to what the Respondents had purported to do on the 7th March. Nor in my view did the action of the Appellant in appealing to the Secretary of State have any such effect. If the decision of the 7th March was a nullity and void the fact that the Appellant appealed made no difference. The decision of the 7th March remained a nullity. The Appellant made it as plain as possible that he was adhering to and was in no way abandoning his submission that the decision of the 7th March had no validity. In these circumstances the provision in section 2, subsection (3), of the Police (Appeals) Act, 1927, that the decision of the Secretary of State upon an appeal is to be "final and binding upon all parties" cannot produce the result that validity is given to that which is a nullity.

The Respondents referred to section 220 of the Act of 1882. That section was not pleaded and was not mentioned in the Respondents' case, but it was argued that it could be relied upon in support of the contention that the Court could not declare against the validity of the decision of the Watch Committee. I deal with the point because if it had validity it would go to jurisdiction. I would not regard the complaints of the Appellant as covered by the words "want of form", nor would I regard the words "removed by certiorari or otherwise" as apt to exclude the claims made in this action. Furthermore, it would clearly be contrary to the intention of section 11 (1) of the Tribunals and Inquiries Act, 1958, if its effect upon section 220 could be construed as having the result that the Court could make an order of certiorari but could not entertain an action for a declaration.

In view of the opinions which I have expressed as to the applicability of the Regulations and as to the consequences of disregarding them I propose only to deal briefly with the question whether, had there been no Regulations, the police authority would have been bound to have regard to the principles of natural justice. In my view, the Regulations incorporate those principles, but had there not been any and had the police authority in the exercise of powers given them by section 191 (4) contemplated dismissing the Appellant on the ground of neglect of duty, they would in my view have been under obligation to give him an opportunity to be heard and would have had to consider anything that he might say. I cannot think that the dismissal of the Appellant should be regarded as an executive or administrative Act if based upon a suggestion of neglect of duty: before it could be decided that there had been neglect of duty it would be a prerequisite that the question should be considered in a judicial spirit. In

order to give the Appellant an opportunity to defend himself against a charge of neglect of duty he would have to be told what the alleged neglect of duty was.

In a case in which a Consistory Court had made an order requiring a vicar to pay certain expenses and costs but had given him no opportunity of being heard in his defence, a writ of prohibition directed to the Chancellor was issued (see *Rex* v. *North. Ex parte Oakey* [1927] 1 K.B. 491), and Scrutton L.J. (at page 502) said:

> "In my view an order that anyone shall pay the cost of restoring work which has been obliterated without a faculty is in the nature of a penalty for an ecclesiastical offence, and one of the most fundamental principles of English law is that if you are going to impose on a person a penalty for an offence, you must first clearly inform him that an application to that effect is going to be made against him, so that he may know what he is charged with and have an opportunity of attending to meet it."

The proceedings in the Consistory Court were therefore "without jurisdiction" and prohibition lay. The application of the "fundamental" principle, however, is not limited to proceedings in Courts or to cases where penalties for offences are being imposed. The conduct of James Bagg (see *James Bagg's* case, 11 Co. Ref. 93b), was hardly commendable, but it was held that it did not give good cause for his disfranchisement. In any case he had not been heard and the Court said - "And although they have lawful authority either by charter or prescription to remove anyone from the freedom, and that they have just cause to remove him: yet it appears by the return, that they have proceeded against him without hearing him answer to what was objected, or that he was not reasonably warned, such removal is void, and shall not bind the party." Such a removal was "against justice and right."

So also did the Courts come to the aid of Dr. Bentley and granted a peremptory mandamus to restore him to his degrees. (*The King* v. *University of Cambridge,* 1 Strange 557). Though the Court was roundly critical of Dr. Bentley's behaviour, they considered that even if he had been guilty of a contempt to the Vice-Chancellor's Court that Court had no power to deprive him of his degrees: but they held that in any event he could not be deprived without notice. The words of Fortescue, J. were emphatic: -

> "Besides, the objection for want of notice can never be got over. The laws of God and man both give the party an opportunity to make his defence, if he has any."

In *Wood* v. *Woad,* L.R. 9 Exch. 190, Kelly C.B. in speaking (at page 196) of the " rule expressed in the maxim *audi alteram partem* " said "This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals."

The relationship between the Watch Committee and the Appellant was not that of master and servant. Nor was the Appellant one who held an office at pleasure with the consequence that he could be required at pleasure to relinquish it. He was in a different position from someone possessing a licence to do various acts. The Appellant held an office from which the Watch Committee could at any time dismiss him if they thought he had been negligent in the discharge of his duty. The Watch Committee did not, however, have an unfettered or unrestricted discretion. If it be assumed that no Regulations had been made, then the fact that section 191 (4) is silent as to any procedure for a hearing does not involve that there could be a dismissal without a hearing. The "justice of the common law" would require it, for, as Byles, J. said in *Cooper* v. *The Wandsworth Board of Works* (1863) 14 CB (NS) 180, 194,

> "A long course of decisions, beginning with *Dr. Bentley's* case, and ending with some very recent cases, establish that although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

In that case it was held that although section 76 of the Metropolis Local Management Act, 1855, empowered the District Board to alter or demolish a house where the builder had neglected to give notice of his intention to build seven days before proceeding to lay or dig the foundation, yet the District Board were not empowered to demolish the building without first giving the party guilty of the omission an opportunity of being heard. Erie, C.J. at page 189 said: -

> " It has been said that the principle that no man shall be deprived of his property without an opportunity of being heard is limited to a judicial proceeding, and that a

> district board ordering a house to be pulled down cannot be said to be doing a judicial act. I do not quite agree with that; neither do I undertake to rest my judgment solely upon the ground that the district board is a court exercising judicial discretion upon the point: but the law, I think, has been applied to many exercises of power which in common understanding would not be at all more a judicial proceeding than would be the act of the district board in ordering a house to be pulled down".

So Willes, J. at page 190 said: -

> "I apprehend that a tribunal which is by law invested with power to affect the property of one of Her Majesty's subjects is bound to give such subject an opportunity of being heard before it proceeds: and that that rule is of universal application, and founded upon the plainest principles of justice."

So also in *Spackman* v. *Plumstead Board of Works,* L.R. 10 A.C. 229, Lord Selborne, L.C. (at page 240) said:

> " No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word: but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter, and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. These would be no decision within the meaning of the statute if there were any- thing of that sort done contrary to the essence of justice."

Lord Selborne was there speaking of the decision of an architect (under section 75 of the Metropolis Local Management Act, 1862) as to the general line of buildings in a road. If the principles to which he adverts apply where property rights are in issue, surely they must at least apply with equal effect where the issue is whether there has been misconduct which merits dismissal from an office. It is to be remembered also that in the case of the Appellant his summary dismissal involved the loss of valuable pension rights. Property rights were at stake in *Local Government Board* v. *Arlidge* [1915] A.C. 120. Lord Haldane there (page 132) expressed his approval of the view indicated by Lord Loreburn in *Board of Education* v. *Rice* [1911] AC 179, that an administrative body to which the decision of a question in dispute between parties has been entrusted must act in good faith and listen fairly to both sides. Lord Parmoor (see page 142) said that whether in that case the order of the Local Government Board was to be regarded as of an administrative or of a quasi-judicial character if the order affected the rights and property of the respondent he was entitled to have the matter determined "in a judicial spirit, in accordance with the principles of substantial justice." A right to be heard before property rights were affected was upheld in the circumstances applying in *Cooper* v. *Wandsworth Board of Works,* 14 CB (NS) 180, in *Hopkins* v. *Smethwick,* L.R. 24 Q.B.l 712, and in *Urban Housing Co. Ltd.* v. *Oxford City Council,* [1940] Ch. 70. Similarly a right to be heard in regard to removal from an office was recognised in *Osgood* v. *Nelson,* L.R., 5 Eng. & Irish Appeals 636, in *Ex parte Ramshay,* 21 L.J. 238, and in *Rex* v. *Gaskin,* 8 Durn. & East 209. So also it has been recognised that expulsion from a club must not take place in disregard either of the rules of the club or of the rules of natural justice. (The cases of *Fisher* v. *Keane,* L.R. 11 Ch. D. 353, and *Dawkins* v. *Antrobus,* L.R. 17 Ch. D. 615, may be mentioned as typical examples.)

Being of the view that even if there had been no applicable Regulations a decision to dismiss the Appellant for neglect of duty ought only to have been taken in the exercise of a quasi-judicial function which demanded an observance of the rules of natural justice - I entertain no doubt that such rules were not observed. Before the 7th March there was neither notice of what was alleged nor opportunity to deal with what was alleged. It was contended that the criminal trial had been the Appellant's opportunity. My Lords, I cannot think that such a contention is valid. The trial was concerned with specific charges. In respect of them the Appellant was found not guilty. If there were other charges or charges of a different nature which were not submitted to the jury but which the Watch Committee proposed to consider, then it was for the Watch Committee to formulate them and only to reach decision in regard to them after hearing and considering what the Appellant or any witnesses of his had to say. For the reasons that I have already given the hearing of the 18th March did not remedy the previous defects. The consequence, in my view, is that there was an abnegation of the quasi-judicial duties involved in the function of the Watch Committee with the result that their decision must be regarded as of no effect and invalid and so can be declared by the Court to be void. (See *Bagg's* case

(supra), The King v. *University of Cambridge (supra), Wood* v. *Woad,* L.R. 9 Exch. Cas. 190, *Fisher* v. *Keane,* L.R. 11 Ch. D. 353.)

It was submitted that the decision of the Watch Committee was voidable but not void. But this involves the enquiry as to the sense in which the word "voidable", a word deriving from the law of contract, is in this connection used. If the Appellant had bowed to the decision of the Watch Committee and had not asserted that it was void, then no occasion to use either word would have arisen. When the Appellant in fact at once repudiated and challenged the decision, so claiming that it was invalid, and when in fact the Watch Committee adhered to their decision, so claiming that it was valid, only the Court could decide who was right. If in that situation it was laid that the decision was voidable, that was only to say that the decision of the Court was awaited. But if and when the Court decides that the Appellant was right, the Court is deciding that the decision of the Watch Committee was invalid and of no effect and null and void. The word "voidable" is therefore apposite in the sense that it became necessary for the Appellant to take his stand : he was obliged to take action, for unless he did the view of the Watch Committee, who were in authority, would prevail. In that sense the decision of the Watch Committee could be said to be voidable. The Appellant could, I think, have applied for an order of certiorari: he was not saying that those who purported to dismiss him were not the Watch Committee; he was recognising that they had a power and jurisdiction to dismiss, but he was saying that whether the Regulations applied or whether they did not the Committee could only exercise their power and jurisdiction after hearing his reply to what was said against him. In these circumstances he could, I think, have applied for an order of certiorari (though considerations of convenience would probably have pointed against pursuing such a course) or he could have asked for a declaration. In either proceeding the question of acquiescence by him might be raised or the question whether by some binding election he had barred himself from taking proceedings in Court or whether in some way he was estopped. It seems to me that he made it abundantly clear that by his appeal to the Secretary of State he was not in any way abandoning his right to contend that the decision of the Watch Committee was invalid. An appeal to the Secretary of State raises a question whether a decision which as a decision has validity should or should not on the facts and on the merits be upheld. The question raised and reserved by the Appellant was the fundamental point that the purported decision of the Watch Committee was no decision. It would not have been unreasonable if the Secretary of State had asked that that point should first be adjudicated. But in the events which happened I cannot think that the careful steps which were taken to protect the Appellants position ought to be held to have in fact compromised it. Compare *Annamunthodo* v. *Oilfields Workers' Trade Union* [1961] AC 945. The Appellant never abandoned his point, and in my view nothing done by him or by the Secretary of State gave validity to a decision which is now shown to have had none.

My Lords, it was submitted to your Lordships that the decision of the Watch Committee should be upheld as having been the only reasonable decision. I consider this to be an entirely erroneous submission. Since no charges have been formulated it is impossible to assess their weight or the weight of the answering evidence of the Appellant and others. When the Appellant was in the witness box in the present action he was questioned as to what witnesses he would have wished to call in order to deal with the "Leach" and the "Page" matters. As charges in respect of those matters were not formulated, I cannot think that it was appropriate to elicit the names of certain witnesses whom the Appellant might have decided to call and then without hearing or being able to hear such witnesses to seek to discount their value and effectiveness and then to seek to draw a vague and artificial conclusion that if matters had been regularly done and if the Appellant had been heard and if his witnesses had been heard a result adverse to him would have followed. All the defects and all the unfairness of the original irregularity are inherent in any such approach. The suggested conclusion must fail because it is based upon a perpetuation of the very defects which vitiate the dismissal of the Appellant and also because the process involves endowing the Court with a function that belongs elsewhere.

I do not find it necessary to express any concluded opinion as to whether, if there was no suggestion of having been negligent in the discharge of duty, a decision to dismiss on the ground of being "unfit" for the discharge of duty could be taken without giving an opportunity

to be heard. Clearly it would be desirable and reasonable to give such an opportunity even though the alleged unfitness did not involve misconduct.

For the reasons that I have given I would allow the appeal.

Lord Hodson

My Lords,

I have reached the conclusion apart from the application of the Police Act of 1919 and the Regulations which followed, that this appeal should succeed upon the ground that the Appellant was entitled to and did not receive natural justice at the hands of -the Watch Committee of Brighton when he was dismissed on the 7th March, 1958. Streatfeild, J. who heard the Appellant's suit at first instance, held that the power given to the Watch Committee by the Municipal Corporations Act, 1882, section 191 (4), at any time to dismiss any borough constable, whom they think negligent in the discharge of his duty or otherwise unfit for the same was a power which had to be exercised in accordance with the principles of natural justice, but that the Watch Committee had acted in that manner. The Court of Appeal took a different view and held that the Watch Committee were not bound in taking the executive action of dismissing their Chief Constable to hold an enquiry of a judicial or quasi-judicial nature (per Pearce, L.J.). Harman, L.J. was of opinion that the Watch Committee were acting in exercise of their administrative functions just as they were when they made the appointment under section 191 (1) of the Act and that the principles of natural justice did not come into the case. He pointed out that the defendants were not deciding a question between two opposing parties and that there was no lis and nothing to decide. Davies, L.J. said that the exercise by the Watch Committee of their powers under section 191 (4) of the Act of 1882 was not a quasi-judicial but an executive one, emphasising the words "whom they think" as being very strong indeed and much stronger than the sort of words to be found in most of the authorities cited to the Court such as "on sufficient grounds shown to his satisfaction" *(De Verteuil* v. *Knaggs* (19181 A.C. 557).

I should add that Streatfeild, J. although holding that the principles of natural justice should *prima facie* have been applied, held that in this case the Appellant had at the Old Bailey, for the purposes of his trial for all the world as well as the Watch Committee to hear, convicted himself of unfitness to hold the office of Chief Constable. He concluded that on the evidence which he had himself given at the Old Bailey there was no need for the Watch Committee to do other than they in fact did, whatever also they might have done to be on the safe side. It would be unrealistic to suppose that the Watch Committee had not a good idea of what took place at the criminal trial although they were not provided with a transcript of the evidence until after they had reached their conclusion, but in my opinion it will not do to say that the case was so plain there was no need for the Appellant to be heard and therefore the claims of natural justice were satisfied.

What the Watch Committee had before them was primarily the observations of Donovan, J. who in the course of sentencing the two police officers who were convicted, the Appellant having been acquitted, gave as a ground for the moderation of his sentences on these two men the extenuating circumstances that in his opinion they had not had the leadership to which they were entitled. I think it is clear from the learned Judge's observations at that time and at the conclusion of the trial that he intended that what he said should be brought to the notice of the Watch Committee to act upon as they thought fit. The Watch Committee no doubt felt it necessary to act promptly, but there was nothing in the learned Judge's observations which would suggest that the Appellant could be dealt with on the basis that any charges had been proved against him and that no further hearing was required.

I do not find that the answer put by counsel for the Watch Committee to your Lordships that the case was an plain as a pikestaff is an answer to the demand for natural justice. The case on natural justice does not rest on the events of the 7th March, 1958, alone, for the Appellant was given a further opportunity on the 18th March, 1958, to address the Watch Committee, and of this he availed himself by his solicitor who appeared and was allowed to address the Committee without restriction. 1 agree with Pearce, L.J. that at that stage the defendants could have reopened the matter, and indeed three out of the twelve were in favour of so doing, cf. *De Verteuil* v. *Knaggs,* but the position was then that the Watch Committee had given their decision that the Appellant be dismissed not only on the ground of unfitness but also on the grounds which included not only negligence in discharge of his duty but unspecified matters which were said to be " certain statements made today by members of the Committee and the Town Clerk". It was not until 5th April, when the Watch Committee communicated with the Home Secretary

prior to the Appellant's appeal to the Minister that it emerged that these statements had reference to allegations of perjury against the Appellant.

On the 18th March Mr. Bosley was given not only a full but a courteous hearing by the Watch Committee but received no indication of the nature of the charges which his client had to answer, notwithstanding his repeated statements that he did not know what they were. It is plain therefore, that if there were a failure on the 7th March to give justice to the Appellant this was not cured on the 18th March when the Watch Committee confirmed their previous decision. At this hearing it was made plain by Mr. Bosley that his client was not seeking reinstatement but only his pension rights of which he had been deprived by his dismissal. This position is maintained by the Appellant through his counsel before your Lordships.

I should not delay further before referring to the terms of the statute of 1882 itself, for it is upon the construction of that statute that the answer to the question posed before your Lordships depends.

It is quite true that upon its terms there is a power to dismiss any borough constable (and this applies to the Appellant) whom they think negligent in the discharge of his duty or otherwise unfit for the same. I entirely accept the reasoning underlying the judgments of the Lords Justices that if a statute gives an unfettered power to dismiss at pleasure without more that is an end of the matter.

The topic is, however, not as simple as would seem. A large number of authorities were cited to your Lordships beginning with *Bagg's* case, 11 Coke 93, and extending to the present day. I will not travel over the field of the authorities which I am bound to say are not easy to reconcile with one another, for if I did I should surely omit some which might be thought to be of equal or greater importance that those I mentioned, but certain matters seem to me clearly to emerge. One is that the absence *of* a lis or dispute between opposing parties is not a decisive feature although no doubt the presence of a lis would involve the necessity for the applications of the principles of natural justice. Secondly, the answer in a given case is not provided by the statement that the giver of the decision is acting in an executive or administrative capacity as if that was the antithesis of a judicial capacity. The cases seem to me to show that persons acting in a capacity which is not on the face of it judicial but rather executive or administrative have been held by the courts to be subject to the principles of natural justice. Perhaps the most striking example is to be found in the old case of *Capel* v. *Child, 2* C. & J. 558, which is referred to at length by North, J. in *Fisher* v. *Jackson* (1891] 2 Ch 84 at page 95. The facts were these. By section 50 of the Act of 57 Geo. Ill c. 99, it was provided:

> " That whenever it shall appear to the satisfaction of any bishop, either of his own knowledge, or upon proof by affidavit laid before him, that, by reason of the number of churches or chapels belonging to any benefice locally situate within his diocese, or the distance of such churches or chapels from each other, and the distance of the residence of the spiritual person serving the same from such churches or chapels, or any or either of them, or the negligence of the spiritual person holding the same, that the ecclesiastical duties of such benefice are inadequately performed ",

then, to put it shortly, the bishop may appoint a curate "to perform or to assist in performing such duties", and may throw the burden of the stipend of that curate upon the person the insufficiency of whose performance of the duties has led to the necessity of the appointment.

The Bishop of London on the 18th January, 1880, served a requisition on the plaintiff by virtue of the Act of Parliament above mentioned reciting that of his own knowledge the ecclesiastical duties of the vicarage and parish church of Watford were inadequately performed by reason of the plaintiff's negligence and requiring him to nominate a fit person with a stipend to assist in performing those duties. The plaintiff did not appoint a curate and the bishop did so, assigning to him a stipend. The stipend remained unpaid, and the plaintiff was accordingly summoned before the bishop. The plaintiff did not attend and the plaintiff was monished to pay the stipend. He then appeared for the first time and alleged that he had not had a proper opportunity of being heard upon the original application.

Lord Lyndhurst, C.B. used this language:

> "Here is a new jurisdiction given - a new authority given: a power is given to the bishop to pronounce a judgment; and, according to every principle of law and equity, such judgment could not be pronounced, or, if pronounced, could not for a moment be sustained, unless the party in the first instance had the opportunity of being heard

> in his defence, which in this case he had not; and not only no charge is made against him which he had an opportunity of meeting, but he has not been summoned that he might meet any charge."

Baron Bayley said:

> " Upon the general principles of law, it would have been essential, if the bishop had proceeded by way of affidavit, to have given the opposite party an opportunity of being heard. When the bishop proceeds on his own knowledge, I am of opinion also that it cannot possibly, and within the meaning of this Act, appear to the satisfaction of the bishop, and of his own knowledge, unless he gives the party an opportunity of being heard, in answer to that which the bishop states on his own knowledge to be the foundation on which he proceeds . . . . It would be quite sufficient if the bishop were to call the party before him, and to state to him the grounds on which he thought the duties were inadequately per- formed, by reason of his negligence; and he should have asked whether he had or had not any grounds on which he could answer that charge; but, is it not a common principle in every case which has in itself the character of a judicial proceeding, that the party against whom the judgment is to operate should have an opportunity of being heard? "

It is true that emphasis is laid on the judicial character of the proceedings in the view of both learned Judges, but it is not clear to me that it could not be said in that case that the bishop was acting administratively. The situation under the Act under which the bishop was exercising his powers was not unlike that of the Watch Committee here exercising powers under another Act, and it so happens that the charge involved, that of negligence, was the same in each case.

The matter which, to my mind, is relevant in this case is that where the power to be exercised involves a charge made against the person who is dismissed, by that I mean a charge of misconduct, the principles of natural justice have to be observed before the power is exercised.

One of the difficulties felt in applying principles of natural justice is that there is a certain vagueness in the term and, as Tucker, L.J. said in *Russell* v. *Duke of Norfolk and Others [1949]* 1 All E.R. 109 at p. 118:

> "There are .... no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

If it be said that this makes natural justice so vague as to be inapplicable, I would not agree. No one, I think, disputes that three features of natural justice stand out - (1) the right to be heard by an unbiassed tribunal, (2) the right to have notice of charges of misconduct, (3) the right to be heard in answer to those charges. The first does not arise in the case before your Lordships, but the two last most certainly do, and the proceedings before the Watch Committee, therefore, in my opinion, cannot be allowed to stand.

I have reached this conclusion on the construction of the statute with some hesitation, not only because of the different view taken by the Court of Appeal but also because of that taken by my noble and learned friend, Lord Evershed, who also feels notwithstanding their findings of fault made against the Appellant the Watch Committee had a perfect right to act as they did. In one respect, no doubt, the Watch Committee were given an absolute discretion to act as they might think, that is to say, I agree that their residual power to dismiss for unfitness may well be unfettered. I do not accept the contention of the Appellant that unfitness is to be construed *ejusdem generis* with negligence: indeed I think it is the antithesis of negligence and covers cases where there is no fault in the accepted sense of the word in the officer dismissed. A man may be unfit because he is stupid, vacillating, unable to meet a crisis or generally to command others, but I do not see this as the subject-matter of a charge. As I have indicated, it is not clear to me that Donovan, J. necessarily had anything more in mind than absence of the qualities necessary for leadership when he made the observations he did, but the Watch Committee went outside unfitness and made findings of negligence and inferentially of perjury without giving the Appellant any notice or opportunity of being heard. Even if the residual power to dismiss for unfitness remains unimpaired, one could not conceive any Watch Committee exercising this power and at the same time leaving the dismissed officer without a pension. This would only be expected where charges as here were made against him. I cannot see that the general words of the statute are, in the light of the authorities as I understand them, wide enough to cover a case of this character where allegations of misconduct are involved resulting in the loss of an office

and an element of punishment for offences committed. There is imposed a clog on the discretion in that it cannot be exercised arbitrarily without regard to natural justice. I am aware that what I have said may not be thought to be in line with those cases where wide words have been held sufficient to cover the exercise of an arbitrary power, as in the matter of issue and withdrawal of licences where no question of punishment arises, cf. *Nakkuda Ali* v. *M. C. De S. Jayaratne* [1951] AC 66, and *Reg.* v. *Metropolitan Police Commissioner* [1953] 1 W.L.R. 1150. I may be that I must retreat to the last refuge of one confronted with as difficult a problem as this, namely, that each case depends on its own facts and that here the deprivation of a pension without a hearing is on the face of it a denial of justice which cannot be justified upon the language of the section under consideration.

I have little to add to what has already been said about the application of the Police Regulations of 1927. It was not contended before your Lordships that the Act of 1882 had been repealed by the Act of 1919 or any Regulation made thereunder, but it was contended, in my opinion rightly, that where a report or allegation against a police officer has been made the Regulations apply and govern the form of the inquiry which must follow. Here there were no formulated charges, no tribunal appointed for the purpose of hearing the charged and reporting to the police authority a statement of the charges found to be proved.

The learned Judge at the trial and all the members of the Court of Appeal were of opinion that the Regulations did not apply because no report or allegation was received from which it appeared that the Appellant had committed an offence. My noble and learned friend, Lord Evershed, indeed, is of the same opinion. With all respect, I cannot agree. It is plain that the action taken by the Watch Committee followed directly from the observations of Donovan, J. after the trial at the Old Bailey which were intended for the ears of the appropriate authority and did in fact reach the Watch Committee before it dismissed the Appellant on March 7th. The Appellant had been acquitted of the offence with which he had been charged at the criminal trial, but on a fair reading of those observations, which were severely critical of the Appellant, it cannot, I think, be 6aid that it did not appear from them that the Appellant had committed an offence under the Regulations. I need only read two of the offences named in the Discipline Code set out in the First Schedule to the Regulations:

> " 1. *Discreditable conduct,* that is to say, if a member of a police force acts in . . . any manner prejudicial to discipline or reasonably likely to bring discredit on the reputation of the force or of the police service.
>
> 4. *Neglect of duty,* that is to say, if a member of a police force . . . neglects, or without good and sufficient cause omits promptly and diligently to attend to or carry out anything which is his duty as a constable".

It is difficult to see how any action would be taken in any event in respect of breaches of the Police Discipline Code without a report or allegation of some kind being made, and I am quite unable to accept the submission that something different, perhaps of a formal nature or some complaint from an extra-judicial source, is necessary before there can be said to be a report or allegation. Streatfeild, J. accepted the submission of counsel for the Watch Committee that their action arose not as a result of any report or allegation but from the knowledge which was common to them and the country as a whole that the Appellant was unfit for office.

I am unable to accept that this was the position. The Watch Committee did not act solely on the ground that the Appellant was unfit for office irrespective of any offence he might have committed, as their finding shows. They found him guilty of offences which were founded on a report or allegation which they had received from the learned Judge who had presided at the trial and certain statements made by members of the Committee and the Town Clerk. I have not taken into account any other reports or allegations, for whatever the Watch Committee may have known personally about the trial they did not have a transcript of the evidence, it now appears, until after they had given their decision on the 7th March. There is, I should add, no substance in the point taken that the reference to a copy of the report or allegation on which the charge is based contained in Regulation 4 of No. 1705 of 1952 shows that there must be a written report or allegation *ab initio.* No doubt an oral allegation will have to be reduced to writing, but it may well originate as an oral statement, as it did in this case, before the transcript of the observations of Donovan, J. was sent to the Watch Committee.

Once the position is reached that the Police Regulations apply, as, in my opinion, they did, it is clear that no attempt was made by the Watch Committee to follow the Regulations. These have been set out in detail by my noble and learned friend, Lord Morris of Borth-y-Gest, whose judgment I have had the opportunity of reading and with which I respectfully agree. As he says,

and the Court of Appeal would have taken the same view if they had regarded the Police Regulations as applicable, the Watch Committee disregarded the Regulations and did not begin to comply with them.

On both grounds, therefore, failure to comply with the requirements of natural justice and failure to oomply with the Police Regulations, I would hold that the decision of the Watch Committee to dismiss the Appellant taken on the 7th March, 1958, was invalid.

That is not an end of the matter, for the Appellant did not let matters rest but appealed to the Home Secretary as he was entitled to do under the Police (Appeals) Act, 1927, from the dismissal under section 191 of the Act of 1882. Thus it is said, since the decision of the Home Secretary by virtue of the Police (Appeals) Act was final the Appellant had waived his right to bring an action in the Courts alleging that invalidity. I doubt whether any question of waiver arises, but I appreciate the force of the opinion expressed by my noble and learned friend, Lord Evershed, that if Parliament has stated that the appeal is final that is an end of the matter and the Appellant cannot, as it were, start again and by an action for a declaration seek to undermine the decision from which he has unsuccessfully appealed. The answer to this point is, I think, and here again I find myself in disagreement with the Court of Appeal as well as with my noble and learned friend, Lord Evershed, that the decision of the 7th March, 1958, taken by the Watch Committee was at all times a nullity and nothing that was done thereafter by way of appeal could give it validity.

In all the cases where the Courts have held that the principles of natural justice have been flouted I can find none where the language does not indicate the opinion held that the decision impugned was void. It is true that the distinction between void and voidable is not drawn explicitly in the cases, but the language used shows that where there is a want of jurisdiction as opposed to a failure to follow a procedural requirement the result is a nullity. This was, indeed, decided by the Court of Exchequer in *Wood v. Woad* (1879) L.R. 9 Ex. 190, where, as here, there was a failure to give a hearing.

In *Spackman* v. *Plumstead Board of Works,* L.R. 10 A.C. 229, referring to another statute Lord Selborne said:

> " There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice ".

I would apply this language whether the Municipal Corporations Act, 1882, or the Police Regulations are to be considered. In either case the Watch Committee in failing to give a hearing to the Appellant acted without jurisdiction.

I would allow the appeal accordingly.

Lord Devlin

My Lords,

I am satisfied that section 191 (4) of the Municipal Corporations Act, 1882, is wide enough to permit the dismissal of a constable on the grounds of unfitness in the sense of inadequacy as well as on the grounds of negligence or misconduct. The way in which this power may be used has, since 1919, been controlled as to "conditions of service" by Regulations made by the Home Secretary under section 4 (1) of the Police Act, 1919, which requires that "every police authority shall comply with the regulations so made". The Police Discipline Regulations 1952 Nos. 1705 and 1706 create a number of disciplinary offences contained in a Discipline Code and provide in detail for the way in which a charge of such an offence is to be investigated and determined before a decision to dismiss is taken. I do not find it necessary to determine whether before 1919 the power to dismiss for neglect of duty could be exercised administratively and without any sort of judicial enquiry. Nor do I need to decide whether or not the power to dismiss for inadequacy is purely administrative. I am satisfied that in all matters to which the Regulations apply the power to dismiss must be exercised in accordance with them.

It is argued that the regulations do not apply in the present case for two reasons. It is said in the first place that the Disciplinary Code is expressed in phraseology unsuited to the activities of chief constables, and in particular does not cover the gravamen of the charge against the Appellant as indicated by Donovan J., which was that he was revealed by his conduct as a bad example to and a bad influence on the Brighton constabulary. Undoubtedly the Code appears to be drafted with the lower ranks in mind. But by S.R. & O. 1706 it is expressly made applicable

to chief constables, and it must be construed accordingly. It contains a number of specific offences which a chief constable could hardly commit, but also a number which he certainly could. There are specific matters put against the Appellant in this case which I think certainly fall under the head of “discreditable conduct”, if not also of “neglect of duty". In my judgment, the Disciplinary Code should be regarded as a compendium covering all misconduct and neglect of duty in the case of all ranks from chief constable downwards. I find it impossible to believe that there was intended to be a residue of neglect to be dealt with at large and in relation to which the offender is deprived of the protection afforded by the Regulations. If a case of inefficiency or inadequacy can be made without proof of misconduct or neglect, the Regulations do not apply; but if the case involves an allegation (and I use that word as will be seen hereafter in its widest sense) of a disciplinary offence the procedure laid down by the Regulations must be followed.

This, in my opinion, is the result of the impact of the 1919 Act on the earlier one of 1882. This division of the power under the 1882 Act is in practice less inconvenient than it might sound. In and before 1919 there was a power, such as is now contained in the Police Pensions Act, 1948, section 1 (1) (c), to provide by regulation for cases in which policemen “may be required to retire otherwise than on the ground of misconduct”. It is difficult to believe that the power of summary dismissal would now be exercised in any case in which no fault is alleged, so that in practice the power under section 191 (4) has become a controlled one.

Legally, however, the power remains and can be used. It is unnecessary to consider whether or not it could have been used in this case because one of the grounds given for the Appellant’s dismissal was “neglect of duty". The Watch Committee ought not to have reached a decision on this ground without following the Regulations, unless it can be said (and this is the second point to be considered) that the Regulations are by their own terms inapplicable on the facts of this case. It is argued that Article 2 requires that before the procedure laid down can be instituted “a report or allegation must be made", and that where, as in the present case, a matter comes to the knowledge of the Watch Committee as one of public notoriety, the Regulations do not apply. I need not elaborate on the extraordinary results - my noble and learned friends, Lord Reid and Lord Morris of Borth-y-Gest, have mentioned them - which as it seems to me would follow if the protection against dismissal depends on whether or not the supposed misdemeanours of a police officer have been reported in the Press. Such a construction ought not to be put on Article 2 unless the language compels it, and in my opinion the language of the Article does not. I think that the word “ allegation ” is to be given a wide meaning. The main object of Article 2, as is shown by the introductory words italicised in S.R. & O. 1706, is not to provide for some formal initiation of proceedings, equivalent to a writ of summons or an information, but to ensure that an officer is told of any allegation made against him so that nothing is done behind his back. I do not see how the Watch Committee can deal with any disciplinary matter unless an allegation of some sort is made, even if it be only by one of their own number; and I think it fair to assume that the word is chosen as the widest one that could be thought of to comprehend every way in which such proceedings could be started.

It is not disputed that if the Regulations are applicable, as I think they are, they were not complied with. On this basis two further questions arise. The first is whether it is open to the House to question the decision of the Watch Committee on this ground, and here I agree entirely with the conclusion reached by my noble and learned friend, Lord Morris of Borth-y-Gest, that it is. The second is, what is the effect of non-compliance upon the decision. It is argued for the Appellant that the effect is to avoid *ab initio* the decision of the Committee. That must mean that the Committee had no statutory authority to make any decision at all. If they had, then, although the decision they made might be a bad one and one that could be quashed by the Court by virtue of its supervisory jurisdiction over the proceedings of inferior tribunals, it would not be void *ab initio* but would be good until quashed. To make it void *ab initio* there must be some condition precedent to the conferment of authority on the Committee which has not been fulfilled. It is argued that compliance with the Regulations is a condition precedent. It is not expressly made so, and I am not prepared to make the implication. I am very reluctant to imply such a condition where none is expressed, for the utter avoidance of a decision of this sort is a very grave matter. All that has been done on the face of it falls to the ground. Even if the Appellant were satisfied with it, it could be impugned by any third party. The Court would have no discretion to quash or not to quash. It can only declare to be a nullity that which in law has never been done at all.

I see no reason, therefore, why I should do more than read the Regulations into the Act of 1882, not as a condition precedent to the power to dismiss but simply as rules that the Committee is required to observe. I do not hold that compliance with all the rules is by implication a condition precedent to the power to dismiss under section 191 (4). But if one of the Regulations

itself imposes expressly a condition precedent, it is another matter. I am driven to the conclusion that Article 11 (1) does. Article 5 provides that the case shall be heard by a tribunal appointed by the police authority and Article 11 (1) provides that "the decision of the police "authority on receipt of the report of the tribunal shall be either to dismiss the case or to impose" various punishments, including dismissal. I cannot regard the power of dismissal under Article 11 (1) as something distinct from the power of dismissal under section 191 (4), and I think that the effect of Article 11 (1) is to make the power to dismiss conditional upon the receipt of the report. I do not say that any defect in a report would invalidate a dismissal. But where as here there has been no report at all and no enquiry to substantiate one, I think that the statutory authority to dismiss never was created so that the act of dismissal was a nullity. If it was a nullity it is not seriously argued that any subsequent proceedings before the Secretary of State could bring it to life. The result in my opinion is that your Lordships should allow the appeal and declare the dismissal to be void.

My Lords, I cannot say that I regard this result as altogether satisfactory.

It is not that I regard the Watch Committee's decision as inevitably right or as one that can be faulted only on the ground that justice has not appeared to be done. The Appellant has not seriously complained about being put out of office; and since he has told your Lordships that he will not seek to be reinstated, it is permissible for me to say that I think the decision on that point to have been inevitable. But he could, instead of being dismissed, have been compelled to retire and thus saved some or all of his pension rights. That is an issue of substance deserving of careful consideration. What is unfortunate about the result is that it means that during the whole time taken up in the elucidation of this difficult point of law, the Appellant has legally been in office and entitled to the appropriate emoluments. That would be so, I suppose, even if he had been in profitable employment elsewhere, for his claim would be for salary and not for damages for wrongful dismissal. Whatever course is now taken, the Appellant is likely to reap a substantial benefit from the fact that the Committee fell into the pardonable error (pardonable if only because their view of the law was the same as that taken by all the Lords Justices in the Court of Appeal) that they were entitled to deal with this matter administratively and in their unfettered discretion.

It can be said with much force that all this is the result of ousting the ordinary jurisdiction of the Courts. If the statute was drafted so as to make a dismissal, as the common law does in contracts of service, effective whether rightful or wrongful and to give compensation for wrongful dismissal, the issue would have been tried by an ordinary court of law and the Appellant would have got no more and no less than his deserts. But the statute gives the judicial power to a committee or tribunal. If the object of that were to make one side a judge in its own cause, I should not be sad to see it miscarry. But the object here is the creation of a special code, stricter in some respects at least than the ordinary obligations of a contract of service, and of an independent tribunal to aid in its administration.

Such tribunals must always be subject to the supervisory jurisdiction of the High Court. But it does not by any means follow that a defect of natural justice sufficiently grave to be a ground for quashing the resulting decision inevitably leads, as in the present case, to a declaration that the decision is void *ab initio.* It is necessary always to bear in mind the distinction so clearly drawn by Lord Sumner in *Rex* v. *Nat Bell Liquors, Ltd.* [1922] 2 AC 128 at page 151 between a wrong exercise of a jurisdiction which a judge has and a usurpation of a jurisdiction which he has not. If there is no jurisdiction, the decision is a nullity whether the Court quashes or not. If there is jurisdiction but there has been a miscarriage of natural justice, the decision stands good until quashed. The occurrence of a miscarriage does not require the Court to quash if it is satisfied that justice can be done in some other way. The Court in a case like the present, for example, if the decision had been voidable and not void, might have left the Appellant to his remedy in damages, if any. Your Lordships heard some argument about whether the Court could, if it exercised its discretion to quash, do so on terms which would in effect have put the parties back into the position in which they would have been if the proper procedure had been followed from the outset. I need not say more than that I should be prepared to listen to such a contention in an appropriate case and I should certainly be glad if the Court had the power to do justice in that sort of way when reviewing the decisions of inferior tribunals.

In the view that I take of this case there is not much that I can usefully say about the principles of natural justice and their application to the procedure under section 191 (4). Whether or not they are to be applied to any statutory procedure depends upon an implication to be drawn from the statute itself; and the question whether such an implication should be drawn in this case cannot be answered without a consideration of the Police Act, 1919, and the Regulations made thereunder, from which section 191 (4) cannot be divorced. Since the Regulations themselves

prescribe the rules of justice that are to be followed, it seems to me that there is nothing to be gained by seeking to ascertain what the position would be if the Discipline Code did not apply.

There are three points, however, on which I desire to comment. First, I express no dissent from the view that if section 191 (4) stood alone the decision to be made under it is not purely administrative. Secondly, I do most emphatically dissent from the view that natural justice did not require the Watch Committee to hear the Appellant because, as it was said, he had had a full opportunity of putting his case before the trial Judge. The Appellant was not and could not have been compelled to put any case at all before the trial Judge; he was there to answer an indictment on trial by jury. It would be quite wrong if an accused was to be embarrassed in the conduct of his defence on a criminal charge by the reflection that if he did not also satisfy the trial Judge about the propriety of his actions in other respects, it might thereafter be the worse for him. Thirdly, if there was apart from the Regulations a miscarriage of justice in this case (and I think on the whole that there was), I agree with the opinion of my noble and learned friend. Lord Evershed, for the reasons which he has given that the miscarriage rendered the Committee's decision voidable and not null and void *ab initio.*

I agree with the order proposed by my noble and learned friend on the Woolsack

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