Overview | **[1969] 2 AC 147**, | [1969] 1 All ER 208, | [1969] 2 WLR 163, | 113 Sol Jo 55

ANISMINIC LTD. APPELLANT AND FOREIGN COMPENSATION COMMISSION AND ANOTHER RESPONDENTS [1969] 2 A.C. 147

[HOUSE OF LORDS]

Lord Reid, Lord Morris of Borth-y-Gest, Lord Pearce, Lord Wilberforce and Lord Pearson.

1968 Oct. 2, 3, 7, 8, 10, 14, 15, 16, 17, 21, 22, 23; Dec. 17

Crown Practice — Certiorari — Inferior tribunal — Statutory — Foreign Compensation Commission — Determination — Construction of Order in Council — Whether error going to jurisdiction — "No certiorari clause" — Whether certiorari lies — Foreign Compensation Act, 1950 (14 Geo. 6, c. 12), s. 4 (4).

Practice — Declaratory judgment — Certiorari, relation to — Inferior tribunal — Foreign Compensation Commission — Determination — "No certiorari clause" — Construction of Order in Council — Whether error within jurisdiction — Tribunal's power to determine but not to enforce the liability — Whether tribunal party to action for declaration that determination a nullity — Foreign Compensation Act, 1950, s. 4 (4).

Tribunal — Statutory — Control by courts — Declaration — Foreign Compensation Commission — Determination — Construction of Order in Council — Whether error within jurisdiction — Tribunal's power to determine but not to enforce — Whether party to action for declaration — Whether jurisdiction in court to entertain proceedings — Foreign Compensation Act, 1950, s. 4 (4).

Ouster of Jurisdiction of Court — Statute — Determination by statutory commission — Not to "be called in question in any court of law" — Effect — Foreign Compensation Act, 1950, s. 4 (4).

By section 4 (4) of the Foreign Compensation Act, 1950:

> "The determination by the commission of any application made to them under this Act shall not be called in question in any court of law."

By article 4 (1) in Part III of the Foreign Compensation (Egypt) (Determination and Registration of Claims) Order, 1962:

> "The commission shall treat a claim under this Part of the Order as established if the applicant satisfies them of the following matters: - (*a*) that his application relates to property in Egypt which is referred to in Annex E; (*b*) if the property is referred to in paragraph (1) (*a*) or paragraph (2) of Annex E - (i) that the applicant is the person referred to in paragraph (1) (*a*) or in paragraph (2), as the case may be, as the owner of the property or is the successor in title of such person; and (ii) that the person referred to as aforesaid and any person who became successor in title of such person on or before

February 28, 1959, were British nationals on October 31, 1956, and February 28, 1959; (*c*) if the property is referred to in paragraph (1) (b) of Annex E - (i) that the applicant was the owner on October 31, 1956, or, at the option of the applicant, on the date of the sale of the property at any time before February 28, 1959, by the Government of the United Arab Republic under the provisions of Egyptian Proclamation No. 5 of November 1, 1956, or is the successor in title of such owner; and (ii) that the owner on October 31, 1956, or on the date of such sale as the case may be, and any person who became successor in title of such owner on or before February 28, 1959, were British nationals on October 31, 1956 and February 28, 1959."

Before the Suez Incident and on October 31, 1956, the plaintiffs, an English company, owned property in Egypt which was sequestrated, under the provisions of Proclamation No. 5 of 1956, by the Egyptian authorities. In 1957, the plaintiffs sold the sequestrated property to an Egyptian organisation, T.E.D.O. In 1959, the plaintiffs, who were named in Annex E within the meaning of article 1 (2) of the Foreign Compensation (Egypt) (Determination and Registration of Claims) Order, 1962, made an application to the Foreign Compensation Commission claiming that they were persons entitled to participate in the Egyptian Compensation Fund in respect of their sequestrated property. The commission's provisional determination was that they had failed to establish a claim under the Order. The plaintiffs brought this action against the commission for declarations to the effect that the provisional determination was a nullity and that they were entitled to participate in the compensation fund They contended that the commission had misconstrued the Order in finding that T.E.D.O. was their successor in title. The commission contended that, under section 4 (4) of the Foreign Compensation Act, 1950, the court had no jurisdiction to entertain the proceedings.

Held (Lord Morris of Borth-y-Gest dissenting) that the word "determination" in section 4 (4) of the Act of 1950 should not be construed as including everything which purported to be a determination but was not in fact a determination because the commission had misconstrued the provision of the Order defining their jurisdiction. Accordingly, the court was not precluded from inquiring whether or not the order of the commission was a nullity.

---------- ***[1969] 2 A.C. 147 at 149***

Per Lord Wilberforce. Just as it is the duty of the court to attribute autonomy of decision to the tribunal within the designated area, so the counterpart of this autonomy is that the court must ensure that the limits of the area laid down are observed (post, p. **208B**).

Smith v. East Elloe Rural District Council [1956] A.C. 736; [1956] 2 W.L.R. 888; [1956] 1 All E.R. 855, H.L.(E.) distinguished.

Davies v. Price [1958] 1 W.L.R. 434; [1958] 1 All E.R. 671, C.A. disapproved.

Per Lord Morris of Borth-y-Gest. The commission were acting within their jurisdiction when they entertained the application. They did not fail to obey any mandatory injunction of the Order and if in reaching an honest conclusion in regard to a question of construction, they made an error, such an error would be one made while acting within the jurisdiction and in the discharge of their function within it (post, p. **194B-C**).

Held further (Lord Pearson dissenting) that the applicant having satisfied the listed requirements of the Order, it was outside the jurisdiction of the commission to consider whether or not the applicant had a successor in title and in this the commission misconstrued article 4. The expression "successor in title" was inappropriate to denote any person while the original owner was still in existence.

Per Lord Pearce. A successor in title to a person is different from a successor in title to a part of his property (post, p. **203H**).

Held, further, that the appellants were entitled to the declarations sought.

Decision of the Court of Appeal [1968] 2 Q.B. 862; [1967] 3 W.L.R. 382; [1967] 2 All E.R. 986, C.A. reversed.

The following cases were referred to in their Lordships' opinions:

Board of Education v. Rice [1911] A.C. 179, H.L.(E.) on appeal from *Rex v. Board of Education* [1910] 2 K.B. 165, C.A. affirming [1909] 2 K.B. 1045, D.C.

Bradlaugh, Ex parte (1878) 3 Q.B.D. 509, D.C.

Bunbury v. Fuller (1853) 9 Ex. 111.

Campbell v. Brown (1829) 3 Wils. & S. 441, H.L.(Sc.).

Davies v. Price [1958] 1 W.L.R. 434; [1958] 1 All E.R. 671, C.A.

Estate and Trust Agencies (1927) Ltd. v. Singapore Improvement Trust [1937] A.C. 898; [1937] 3 All E.R. 324, P.C.

Maradana Mosque Trustees v. Mahmud [1967] 1 A.C. 13; [1966] 2 W.L.R. 921; [1966] 1 All E.R. 545, P.C.

Reg. v. Bolton (1841) 1 Q.B. 66.

Reg. v. Cotham [1898] 1 Q.B. 802, D.C.

Reg. v. Fulham, Hammersmith and Kensington Rent Tribunal, Ex parte Hierowski [1953] 2 Q.B. 147; [1953] 2 W.L.R. 1028; [1953] 2 All E.R. 4, D.C.

Reg. v. Governor of Brixton Prison, Ex parte Armah [1968] A.C. 192; [1966] 3 W.L.R. 828; [1966] 3 All E.R. 177, H.L.(E.).

Reg. v. Hurst, Ex parte Smith [1960] 2 Q.B. 133; [1960] 2 W.L.R. 961; [1960] 2 All E.R. 385, D.C.

Reg. v. Income Tax Special Purposes Commissioners (1888) 21 Q.B.D. 313, C.A.

Reg. v. Medical Appeal Tribunal, Ex parte Gilmore [1957] 1 Q.B. 574; [1957] 2 W.L.R. 498; [1957] 1 All E.R. 796, C.A.

Reg. v. St. Olave's District Board (1857) 8 E. & B. 529.

---------- ***[1969] 2 A.C. 147 at 150***

Rex v. Cheshire Justices, Ex pa,te Heaver (1912) 108 L.T. 374; 29 T.L.R. 23, D.C.

Rex v. Minister of Health [1939] 1 K.B. 232; [1938] 4 All E.R. 32, C.A.

Rex v. Nat Bell Liquors Lid. [1922] 2 A.C. 128, P.C.

Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw [1951] 1 K.B. 711; [1951] 1 All E.R. 268; [1952] 1 K.B. 338; [1952] 1 All E.R. 122, C.A.

Rex v. Shoreditch Assessment Committee, Ex parte Morgan [1910] 2 K.B. 859, C.A.

Ridge v. Baldwin [1964] A.C. 40; [1963] 2 W.L.R. 935; [1963] 2 All E.R. 66, H.L.(E.).

Rustomjee v. The Queen (1876) 1 Q.B.D. 487, D.C.; (1876) 2 Q.B.D. 69, C.A.

Seereelall Jhuggroo v. Central Arbitration and Control Board [1953] A.C. 151, P.C.

Smith v. East Elloe Rural District Council [1956] A.C. 736; [1956] 2 W.L.R. 888; [1956] 1 All E.R. 855, H.L.(E.).

The following additional cases were cited in argument:

Barnard v. National Dock Labour Board [1953] 2 Q.B. 18; [1953] 2 W.L.R. 995; [1953] 1 All E.R. 1113, C.A.

Brittain v. Kinnaird (1819) 1 Brod. & B. 432.

Dever, Ex parte (1887) 18 Q.B.D. 660, C.A.

Durayappah v. Fernando [1967] 2 A.C. 337; [1967] 3 W.L.R. 289; [1967] 2 All E.R. 152, P.C.

Lind, In re [1915] 2 Ch, 345, C.A.

Padfield v. Minister of Agriculture, Fisheries and Food [1968] A.C. 997; [1968] 2 W.L.R. 924; [1968] 1 All E.R. 694, H.L.(E.).

Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government [1960] A.C. 260; [1959] 3 W.L.R. 346; [1959] 3 All E.R. 1, H.L.(E.).

Reg. v. City of London Licensing Justices, Ex parte Stewart [1954] 1 W.L.R. 1325; [1954] 3 All E.R. 270, D.C.

Reg. v. Farmer [1892] 1 Q.B. 637, C.A.

Rex v. Ludlow, Ex parte Barnsley Corporation [1947] K.B. 634; [1947] 1 All E.R. 880, D.C.

APPEAL from the Court of Appeal (Sellers, Diplock and Russell L.JJ.).

This was an appeal by leave of the Court of Appeal from a decision of that court dated March 22, 1967, allowing an appeal of the respondents, (the defendants in the action), the Foreign Compensation Commission and Cecil Frank Cooper, against a judgment of Browne J.* given in the Queen's Bench Division of the High Court of Justice. By that judgment it was adjudged and declared by Browne J. against the respondents: (i) that the first respondents' provisional determination of May 8, 1963, as explained in the first respondents' letter dated June 12, 1963, in answer to a letter of the solicitors of the appellant company (the plaintiffs in the action), Anisminic Ltd., dated May 16, 1963, and of which the minute of adjudication formed part, was made without or in excess of jurisdiction and was a nullity. (ii) That the first respondents' further provisional determination of June 21, 1963, was a nullity. (iii) That the first respondents were under a statutory duty to treat as established under Part III (article 4) of the

* A note of the judgment of Browne J. appears at p. 223 at the end of this report.

Foreign Compensation (Egypt) (Determination and Registration of Claims) Order, 1962 (S.I. 1962 No. 2187), the appellant company's claim referred to in paragraph 7 of their statement of claim. By his judgment Browne J. ordered that the first respondents should pay the costs of the plaintiffs. By its order the Court of Appeal reversed that order and gave the present respondents their costs in the Court of Appeal and before Browne J.

The Foreign Compensation (Egypt) (Determination and Registration of Claims) Order, 1959 (S.I. 1959 No. 625) was made on April 6, 1959. The Order of 1962 was made on October 2, 1962.

The appellants were an English company incorporated in 1913, and from that date until 1958 their registered name was the Sinai Mining Co. Ltd. Before and on October 31, 1956, they

carried on the business of mining manganese ore in the Sinai Peninsula under mining leases or concessions granted by the Egyptian Government. Their valuation of their property and assets in that area was about £4.5 million. The event's and hostilities known as the Suez Incident began on October 31, 1956.

On November 1, 1956, the Egyptian Government issued a proclamation, Proclamation No. 5 of 1956, by which two general sequestrators and special sequestrators were appointed to take over and manage the assets of British and French nationals. The appellants' property was sequestrated and, after sequestration, the Israeli armed forces destroyed, damaged or removed £532,773 worth of that property.

In April, 1957, the Israeli forces withdrew and, on April 29, 1957, the Egyptian Government, by Decree No. 387 of 1957, granted the Custodian General of property of British, French and Australian nationals authority to sell and to liquidate the establishments and other property subject to sequestration. On that date, the Custodian General and the Chairman of the Economic Board, who was also the representative of a company under formation and to be known as the Sinai Manganese Co. S.A.E., entered into a contract of sale by which the appellants' sequestrated property was sold to the Economic Board, a department of the Egyptian Government. The Economic Board was the same body as the Economic Development Organisation ("T.E.D.O."). As a result of a Presidential decision of May 18, 1957, the proposed new company was brought into existence.

On June 11, 1957, the appellants registered with the Foreign Office in London a claim setting out details of the assets and goodwill of their undertakings in Egypt as at October 31, 1956. The appellants' property included a large quantity of manganese ore and they took steps to dissuade their customers from buying ore from T.E.D.O., thereby embarrassing the Egyptian authorities, with whom they entered into negotiations and, on November 23, 1957, they agreed with T.E.D.O. and the Sequestrator General to sell to T.E.D.O. the whole of their business carried on and situated in Egypt for the sum of £500,000 sterling. The agreement specifically provided that the appellants' assets should not include any claim to which they "might be entitled to assert' against any Government authority other than the Egyptian Government, as a result of loss suffered by, or of damage to or reduction in the value of" their business or assets during the events of October and November, 1956. The appellants also

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agreed to take measures to change their name and did so on January 30, 1958.

By an agreement dated February 28, 1959, between the United Kingdom Government and the Government of the United Arab Republic, the Government of the United Arab Republic agreed to pay to the British Government the sum of £27,500,000 in full and final settlement of claims by United Kingdom nationals for certain property in Egypt, including property subject to the provisions of Proclamation No. 5 and referred to in Annex E to that agreement and in Annex E to the Exchange of Notes dated August 7, 1962, which was supplementary to the agreement of February 28, 1959. The treaty provides for the return to British subjects of their sequestrated property except properties sold between October 30, 1956, and August 2, 1958, listed in Annex E. The sum of £27,500,000 and other moneys provided by the British Government formed the Egyptian Compensation Fund and, pursuant to the Foreign Compensation Act, 1950, and

Orders in Council, the Foreign Compensation Commission (referred to as the commission) were empowered to make provisional determinations as to whether applicants had made out their claims to be entitled to participate in the compensation fund. The appellants' name appeared in Annex E "(Subject to a special arrangement)."

On September 15, 1959, the appellants made an application to the commission claiming that they were entitled to participate in the compensation fund and, on May 8, 1963, the commission provisionally determined that the appellants had failed to establish a claim under the Foreign Compensation (Egypt) (Determination and Registration of Claims) Order, 1962, in respect of their sequestrated property but their claim for certain property damaged by the Israeli armed forces was fit for registration. On June 21, 1963, by a further provisional determination, the commission ordered that their claim for damage should be registered, under article 8 of the Order, in the sum of £532,773. The commission released to the appellants their minutes of adjudication which disclosed, inter alia, that the commission considered that T.E.D.O., who were not British nationals, were the appellants' successors in title.

The appellants brought this action against the respondents, the commission and the legal adviser appointed by them to represent the interests of the compensation fund, for declarations to the effect that the commission's provisional determination was wrong in law and was either invalid or a nullity. The appellants contended, inter alia, that T.E.D.O. was not their successor in title and that they had proved that they were persons entitled to participate in the compensation fund. By their amended defence, the respondents contended, inter alia, that the High Court had no jurisdiction to entertain the proceedings.

R. J. Parker Q.C. and ***F. P. Neill Q.C.*** for the appellant company. Some decisions are good while they stand; others are void ab initio. The decision of the commission is a complete nullity. If it is not a nullity the appellants must fail.

Ridge v. Baldwin [1964] A.C. 40 demonstrates that for a period the courts had forgotten the old rules. There the judge and all the members

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of the Court of Appeal declined to hold the decision of the watch committee bad but Ridge appealed successfully to the House of Lords. But there have been other cases when a wrong decision of the Court of Appeal has stood uncorrected for long periods.

As to the effect when a tribunal has made an order under the Fugitive Offenders Act, 1881, and the alleged offender appeals, see *Armah's case* [1968] A.C. 192.

When a tribunal misconstrues the very statute which confers jurisdiction on it, the question arises whether that renders the decision a nullity in all cases or only in some and what cases.

The word jurisdiction has been and is used in several different senses. There may be "jurisdiction" to embark on an inquiry or the "jurisdiction" may be exceeded in the course of the inquiry, so that there is no "jurisdiction" to make the order.

The cases are confusing. Sometimes a case has been conceded to be authority for a

proposition for which it is not an authority. Sometimes there are parallel lines of authority which never meet. There are decisions on certiorari which ignore decisions on mandamus. There has also been a tendency to treat decisions on one topic as being applicable to other topics within the same subject.

The respondents rely on section 4 (4) of the Foreign Compensation Act, 1950, but such enactments do not bite on nullities, where there is no determination and therefore nothing on which the subsection can operate. Section 4 (4) refers to a real and not to a purported determination which in law has no existence. In such a case there is nothing to be questioned.

Take a case where a tribunal is not properly constituted or where the application is not in accordance with the Act, so that the tribunal has no jurisdiction from the outset, or where the inquiry is not conducted in accordance with statutory form or natural justice, or where the so-called determination was of a kind not authorised by the Act, e.g., sending to prison a defendant who was under age, or where a tribunal, by a misconstruction of a relevant section, has assumed a wider jurisdiction than the law has committed to it. In all such cases the purported determination is a nullity and the section does not then confer a bite.

This section admittedly bites if the tribunal has merely made an error of law or fact, but it cannot misconstrue the very section on which its jurisdiction arises: see *Rex v. Board of Education* [1910] 2 K.B. 165, 178 and *Rex v. Shoreditch Assessment Committee* [1910] 2 K.B. 859, 880.

It is a wrong approach to say that, if there has been a mistake, the executive can correct it, for that would be an abrogation of the court's function. The construction of a statute conferring jurisdiction is always a matter for the court, and misconstruction of it by the relevant tribunal will result in the decision being a nullity, not least when the error is such that the tribunal asked itself a question the determination of which was not committed to it.

In this case the appellants are entitled to succeed in respect of the property as it stood before the Suez incident, ignoring the war damage: or, alternatively, at least in respect of the war-damaged part of it. Browne J. was right in holding that the commission was under a mandatory

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satisfied of everything of which they had to be satisfied in respect of the property which afterwards suffered war damage.

It is accepted that the commission might find difficult subsidiary questions of law and fact arising and that, if they erred in respect of them, they would be protected by section 4 (4) of the Act. But it is otherwise as regards the questions they asked themselves as to their jurisdiction. In respect of them one is entitled to ask whether they have directed their minds to the right statutory questions. They might have said simply: "We reject the claim." But that rejection might have been for any of several reasons, and one must go into their reasons to see whether they were within their jurisdiction.

The commission were concerned, not with the policy of the treaty, but only with seeing whether the persons before it had established the listed matters which gave them a right to have their

claim allowed. One is entitled to see whether they were satisfied on the necessary points. Here, because they went outside the questions submitted to them, their decision was a nullity.

Reg. v. City of London Licensing Justices [1954] 1 W.L.R. 1325 a similar point arose. Mandamus was granted there, but, if there is an existing decision which is a real decision, mandamus will not issue. It is accepted that in that case the word "nullity" was not used and there was no ouster clause, but the justices had no power to adjudicate on the question whether the condition was a condition within the meaning of the relevant section; it was for the court to say what the section meant. So, in the present case, the commission have jurisdiction to deal with the matters committed to them by Parliament, but it is not for them to construe the sections conferring jurisdiction on them. When Parliament gave the executive power to prescribe the matters on which the commission must be satisfied, it did not intend to commit to the commission the power to determine what the prescribed matters were. The court must determine the extent of their jurisdiction. It would not be justifiable to construe the Act and the Order as conferring on the commission a power which would cover even a complete "howler" on their part. Thus, article 4 (1) (*a*) of the Order of 1962 relates to "property in Egypt which is referred to in Annex E" and the commission would go wholly outside their jurisdiction if they allowed a claim relating to property not referred to in Annex E. There is no indication that Parliament intended to confer on the commission a jurisdiction to interpret the Order generally. That would confer on them unlimited power to determine the limits of their own jurisdiction. The Order has, however, narrow and specific confines. Numerous provisions would have been unnecessary if the commission had had power to adjudicate on the limits of the section which gives them their jurisdiction.

The commission wrongly required the appellants to establish that T.E.D.O. was not their successor in title. Where the owner is claiming, that question is not relevant. All claimants must satisfy article 4 (1) (*a*). If a person is claiming as a successor in title he must satisfy the commission that he is a successor in title. But if he is an original owner that question does not come into the matter at all. It was never contemplated that there might be both an original owner and a successor in title at the same time.

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Article 4 (1) (*b*) (ii), relating to successors in title, cannot apply to an original claimant because that would be putting on him the burden of proving that he had no successor in title before the relevant date or that any person whom he cannot establish was not a successor in title was British on the relevant dates. If the original owner proves that he was British at the relevant dates, it cannot be made part of his duty to satisfy the commission on anything that relates to a successor in title. Article 4 (5) of the original Foreign Compensation (Egypt) (Determination and Registration of Claims) Order, 1959, shows that Parliament was only contemplating the straightforward and obvious case of a British national who had died and had a successor.

As to the jurisdiction of the High Court to substitute its opinion for that of the commission, see *Ex parte Bradlaugh* (1878) 3 Q.B.D. 509; *Rex v. Shoreditch Assessment Committee* [1910] 2 K.B. 859; *Reg. v. Fulham, Hammersmith and Kensington Rent Tribunal* [1953] 2 Q.B. 147; and *Maradana Mosque Trustees v. Mahmud* [1967] 1 A.C. 13, 24. The stream of authority on which the appellants rely goes far back. *Seereelall Jhuggroo v. Central Arbitration and Control Board* [1953] A.C. 151 is not a departure from it.

If a decision is a nullity there is, strictly speaking, nothing for certiorari to operate on, whereas by mandamus a tribunal can be ordered to get on with its job. Certiorari has always been the classic way of enabling the superior tribunal to decide whether an inferior tribunal has kept within its jurisdiction, but a declaration does just as well. Thus, if a tribunal was required to take something into consideration and neglected to do so, that would go to jurisdiction. So, too, would the case of a tribunal taking something into consideration which it should not have taken into consideration; that, too, would make the decision a nullity. Here the commission took into consideration matters which they should not have taken into consideration, see *Reg v. Cotham* [1898] 1 Q.B. 802, 805, 807-808 (mandamus); *Rex v. Board of Education* [1909] 2 K.B. 1045; [1910] 2 K.B. 165, 173, 179, 188; *Board of Education v. Rice* [1911] A.C. 179, 182 (mandamus); and *Estate and Trust Agencies (1927) Ltd. v. Singapore Improvement Trust* [1937] A.C. 898, 902, 904, 906, 908.

What the court must do is to give the statute its proper interpretation and then see whether what was done was within it. It does not matter whether the reason for the inferior tribunal's action was misconstruction, mistake, bad faith or fraud, whether it asked itself the wrong question or whether it took into account something which was extraneous, the result is a nullity. If the tribunal has misconstrued the statute giving it jurisdiction and has acted on the misconstruction, it follows that it is not within its jurisdiction: see *Ridge v. Baldwin* [1964] A.C. 40, 71, 80; *Armah's case* [1968] A.C. 192, 212, 225, 230, 233, 237-238, 241, 250, 253, 257, 260-61, 263-264; and *Padfield v. Minister of Agriculture, Fisheries and Food* [1968] A.C. 997.

Reg. v. Bolton (1841) 1 Q.B. 66 on which the respondents relied is the start of an unfortunate line of authority. In that case isolated observations can be cited against the appellants, but the whole must be considered in the light of what was before the court. No question of want of jurisdiction or excess of jurisdiction relevant to the present case

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arose there. Nothing of the sort now being discussed was present in the problem. The subject under discussion was weight of evidence.

So, too, in *Rex v. Nat Bell Liquors Ltd*. [1922] 2 A.C. 128, 132, 141, 159, though good law is only relevant to the question of introducing new evidence or dealing with the evidence before the court. The case does not purport to touch the question of acting wrongly in the course of a case which is rightly entertained.

The reasoning in *Rex v. Minister of Health* [1939] 1 K.B. 232 is not satisfactory. It would appear to be a case where the Minister was given a wide scope of policy making.

Davies v. Price [1958] 1 W.L.R. 434 was wrongly decided and is outside the main current of authority. It goes too far and does not fit into the pattern of the authorities. The applicant should have succeeded because the tribunal had directed its mind to the wrong question. Parker L.J. misconstrued the *Nat Bell case* [1922] 2 A.C. 128 and gave it far too wide an ambit: see *Nat Ben case* at pp. 158, 159, and *Rex v. Northumberland Compensation Appeal Tribunal* [1951] 1 K.B. 711, 720, and *Reg. v. Income Tax Special Purposes Commissioners* (1888) 21 Q.B.D. 313, 315-

316, 318, from which it appears that it is for the courts to construe a statute giving jurisdiction to an inferior tribunal.

In *Rex v. Cheshire Justices* (1912) 108 L.T. 374, 376, 377, 378 the justices might have to consider the legal effect of their decision between the three claimants for compensation, and, if they went wrong on that, it was held that mandamus would not lie. But if they had taken into account extraneous matters or had not taken into account relevant matters or had asked themselves the wrong question, the position would have been different.

Bunbury v. Fuller (1853) 9 Ex. 111 is an example of want of jurisdiction. *Brittain v. Kinnaird* (1819) 1 Brod. & B. 432, 437 was distinguished in *Reg. v. Farmer* [1892] 1 Q.B. 637, 638-639, 640-641. When it can be shown affirmatively that magistrates have not asked themselves the right questions mandamus will lie. But in *Brittain's case* (1819) 1 Brod. & B. 432 there was no suggestion that the magistrates had applied the wrong test and, on the face of it, that is a perfectly good case.

When Parliament gives an inferior tribunal jurisdiction to see whether they are satisfied that a particular thing is established, that allows them to inquire into facts and see whether they fit in with what the Act says. But, when the Act may have one of two possible meanings, both cannot apply and it is for the court to say which meaning is right. In the present case "successor in title" in article 4 (1) (*b*) may mean several things and if several different claimants claimed to be a "successor in title," mandamus would issue to obtain the court's ruling as to its proper meaning in the Order. The commission only has jurisdiction to inquire into the facts.

The question for the House of Lords is whether the inquiry which the commission has conducted is the one which Parliament meant it to conduct. The earliest date when anybody could have any claim, legal or moral, against anybody else was February 28, 1959, the date of the agreement between the United Kingdom and the United Arab Republic, because until then nobody knew whether or not the property was going to be

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returned. The agreement created a situation in which the individual knew for the first time that he was not going to get his property back. Before that date there was the hope of a claim against the United Arab Republic. From that date until the date of the first Order, on April 6, 1959, there was a hope of legislation by the British Government or of an exercise of the prerogative, but there were no rights. From then onwards "successor in title" would have to be read, according to the commission, as successor to a claim under the Order. If the commission is right the expression would mean different things in each of the three periods.

But "successor in title" must mean successor to a person and not to a claim. Parliament was looking to a personal successor. The other view would be too complicated for one to suppose that Parliament intended it. One cannot be a successor to property which is not in existence. Successor in title to a claim would be a possible meaning, were it not for the three different periods. The whole thing is hooked onto Annex E which contains a list of people who, if they die, will have successors. If the original owner listed in Annex E is alive, there is no question of a successor in title and the situation is very simple. It is unlikely that Parliament anticipated that persons would assign claims against the United Arab Republic where there was an obvious

hope that the British Government would do something for them, producing a situation where two persons were entitled to make a claim.

As to the jurisdiction point, a very wide form of words could confer an absolute power on a tribunal, for example, the National Service Mobilization Regulations, 1942, of Canada. By regulation 9 (1) the board thereunder is given power to adjudicate on every application for a postponement order and

> "shall undertake and carry out any other duties which may be imposed upon it by these regulations or by the Governor in Council."

By regulation 9 (5):

> "… no decision of a board shall, by means of an injunction, prohibition, mandamus, certiorari, habeas corpus or other process, issuing out of court, be enjoined, restrained, staged, removed, or subjected to review or consideration on any ground, whether arising out of alleged absence of jurisdiction in the board, nullity, defect, or irregularity of the proceedings or any other cause whatsoever, nor shall any such proceedings or decision be questioned, reviewed or reconsidered in any court."

That was a wartime regulation and that is the way the intention, when it exists, should be achieved.

On this point the appellants submit: (1) The commission in making their determination misconstrued the Order of 1962. (2) The misconstruction resulted in the commission asking themselves the wrong questions. (3) Alternatively, it resulted in the commission requiring the appellants to satisfy a condition which they ought not to have been required to satisfy. (4) If the commission had not misconstrued the Order of 1962 they would have treated the appellants' claim as established. (5) Therefore the determination was made without jurisdiction.

---------- ***[1969] 2 A.C. 147 at 158***

To allow the appeal does not involve disregarding section 4 (4) of the Act. The duty of the commission is not to determine claims but to say whether they are satisfied of certain matters.

As to the history of certiorari, see *Judicial Review of Administrative Action* by Professor S. A. de Smith, 2nd ed. (1968), pp. 386 et seq. It was used for many purposes, the court requiring the inferior tribunal to show what it had done, so that it might be examined and, if necessary, quashed after examination.

In exercising its jurisdiction to review, the Court of Session in Scotland adopted the same approach as the English courts: see *Campbell v. Brown* (1829) 3 Wils. & S. 441, 442-448.

The commission were wrong: (1) in going into the question of a successor in title at all, when they had before them a person named in Annex E, (2) in inquiring whether the appellants' claim was one which existed at February 28, 1959, and was settled by the treaty, and (3) in looking for an assignee of a claim against the Egyptian Government which was not what the Act directed them to look for.

If it is found that the commission have done things which they ought not to have done or have omitted things which they should have done, their decision is a nullity.

Sydney Templeman Q.C. and ***Gordon Slynn*** for the respondents. The questions in this appeal are: (1) What determination did the commission have the jurisdiction to make? (2) What, if

anything, did it purport to determine? (3) What is the true meaning and effect of section 4 (4) of the Act? The answers lie within the Act, the Orders and the minute of adjudication.

The following propositions are submitted: (1) The commission had jurisdiction to determine whether or not a claim to participate in the Egyptian Compensation Fund must be treated as established.

(2) It had jurisdiction to determine whether the claim to participate in the fund must be registered.

(3) It determined that a claim by the appellants to participate in the fund in respect of their sequestrated property was not established but that their claim in respect of certain property damaged by the Israeli forces was fit for registration.

(4) The commission had jurisdiction to determine and assess the loss in respect of the registered claim and they assessed it at £532,773.

(5) The determination by the commission of the appellants' application to the commission to participate in the fund cannot be called in question in any court of law.

As to proposition (1), section 3 of the Act of 1950 enables an Order in Council to provide for the determination by the commission of claims to participate in the Egyptian fund. Articles 4 and 6 of the Order of 1962 gave the commission jurisdiction to determine such claims. A claim is determined when the commission decide what to do about it, when the commission adjudicate upon it and come to a decision. Articles 4 and 6 gave the commission jurisdiction to determine that a claim had been established; that jurisdiction must extend to include jurisdiction to determine that a claim had not been established. Articles 4 and 6 as well as conferring jurisdiction, also gave directions to the commission as to how

---------- ***[1969] 2 A.C. 147 at 159***

those instructions by misconstruing the articles or by asking the wrong questions or for some other reason, the commission committed an error within jurisdiction and their determination that the claim had not been established was not a nullity. The commission had jurisdiction to make a wrong determination as well as a right determination. Different considerations might apply if the commission infringed the rules of natural justice or did not act bona fide.

As to proposition (2), article 8 of the Order of 1960 conferred jurisdiction on the commission to determine whether a claim to participate in the Egyptian compensation fund must be registered or not.

As to proposition (3) the provisional determination and the minute of adjudication make it plain that the commission determined that the claim by Anisminic to participate in the Egyptian compensation fund must not be treated as established. The provisional determination and the minute of adjudication equally make it plain that the commission determined that the claim must be registered so far as that claim arose out of certain specific damage. The commission may have been wrong but they had jurisdiction to make those determinations. In order to arrive at their determination, the commission had to construe the April 1957 agreement, the November

1957 agreement and the Order of 1962. If they committed any error of construction it was an error within jurisdiction.

As to proposition (4) it is common ground that the commission had jurisdiction to assess the amount of loss with respect to the registered claim and that they did in fact do so.

a) of the Act of 1950 defines applications as applications to the commission for the purpose of establishing claims. By section 3 (*a*) a claim is a claim to participate in compensation. As a result of the Act of 1950 and the 1962 Order an application under the Act includes an application to the commission for the purpose of establishing a claim to participate in the Egyptian compensation. An application made to the commission for the purpose of establishing a claim to participate in the compensation can be determined by treating the claim as established by registering the claim or by dismissing the application. Section 4 (4) of the Act provides that the determination by the commission of any application made to them under the Act shall not be called in question in any court of law. The commission have determined the application in the present instance by registering part of the claim and dismissing the remainder of the application. The application has been determined and that application cannot be called in question. The appeal fails as a matter of construction of the Act of 1950. The authorities do not deal with an Act which is worded in the same way as the Act of 1950 but on the authorities also the appeal fails.

Normally the court can interfere with the decision of an inferior tribunal (1) when it exceeds or fails to exercise its jurisdiction or when the tribunal has done something which it has no power to do at all and there is a nullity, or (2) when the inferior tribunal has done something which it has power to do, but in the course of exercising its jurisdiction has made an error in law. Whether it is a ease of nullity or error in law the court can interfere either by certiorari or mandamus. In a ease of nullity the

---------- ***[1969] 2 A.C. 147 at 160***

provided there is no ouster clause in the Act conferring jurisdiction and in some cases provided the error of law was on the record. In the case of most tribunals the court can order production of the record: see sections 11 and 12 of the Tribunals and Inquiries Act, 1958.

The appellants' main proposition is that misconstruction by a tribunal of the statute conferring jurisdiction will result in the determination of the tribunal being a nullity. This proposition would abolish the distinction between excess of jurisdiction and error of law within jurisdiction and abolish section 4 (4) of the Act of 1950 and similar ouster sections.

The Order of 1962 bristles with words which must be construed, for example, "British nationals" in article 4 and "successors in title." Every application involves a construction of the statute conferring jurisdiction. There are no pure questions of fact. It is a question of the facts in the light of the words used. It is impossible to make a determination without construing the order. Therefore the main proposition of the appellants means that the court can interfere whether there was excess of jurisdiction or error of law or error of fact.

The appellants' subsidiary propositions are that a determination is a nullity where it is based on an error which led to the tribunal asking a question not permitted to it or led to the tribunal seeking to impose additional burdens on an applicant. But every error of law results in the

tribunal asking a question which it ought not to ask or imposing additional burdens on an applicant whose application is dismissed as a result of an error of law.

When Anisminic made its application, the tribunal was obliged to construe the whole of article 4. It was obliged to construe article 4 in the light of all the facts including the April 1957 agreement and the November 1957 agreement. The commission was exercising its jurisdiction when in the light of the facts before the commission and for the purpose of reaching its determination with regard to the application, the commission construed "successor in title" and "property in Egypt" and every other expression used by the Order of 1962.

b) (i) to make an inquiry whether they were persons referred to in paragraph (1) (*a*) or paragraph (*b*) of Annex E and by article 4 (1) (*b*) (ii) whether any successors in title of the appellants were British nationals on the relevant dates. If nothing had happened to the appellants since the damage occurred the question of a successor in title might not have arisen, but in view of the agreement of November 23, 1957, it did arise, so that the commission were obliged to construe the article in the light of the facts appearing on the application. It is not clear from the article that an original owner never has to prove anything with regard to a successor in title. Thus the question of the "successor in title" arose as part of the inquiry and the commission were not put outside their jurisdiction by construing it. It cannot be the duty of the commission to construe part of the article but not the whole. One cannot divide the jurisdiction to construe it into little bits. The commission are not outside their jurisdiction if they construe the article and

get it wrong, since it is either within their jurisdiction or it is not to construe the article in the light of all the facts which they know.

The authorities as to limitations on the jurisdiction of tribunals fall into several categories:

Category (1). Cases where the tribunal has no jurisdiction to embark on an inquiry and make a determination unless a condition precedent was satisfied. If in the view of the court the condition was not satisfied, then the so-called determination is a nullity: *Reg. v. Income Tax Special Purposes Commissioners* (1888) 21 Q.B.D. 313; *Reg. v. Farmer* [1892] 1 Q.B. 637 and *Rex v. Shoreditch Assessment Committee* [1910] 2 K.B. 859.

Category (2). Where the statute expressly forbids the tribunal to exercise jurisdiction over the subject-matter of the inquiry and determination, e.g., where a tribunal has jurisdiction to fix the rent of a residential tenancy, but not a business tenancy: *Bunbury v. Fuller* (1853) 9 Ex. 111; *Reg. v. Cotham* [1898] 1 Q.B. 802; *Rex v. Fulham, Hammersmith and Kensington Rent Tribunal* [1951] 2 K.B. 1; [1953] 2 Q.B. 147.

Category (3). Where the tribunal had no jurisdiction to make the order it in fact made.

Category (4). Cases in which there have been different reasons for the decisions and in which the distinction between nullity and error in law may not have been considered: *Campbell v. Brown* (1829) 3 Wils. & S. 441; *Ex parte Bradlaugh* (1878) 3 Q.B.D. 509; *Rex v. Cheshire Justices* (1912) 108 L.T. 374; *Estate and Trust Agencies (1927) Ltd. v. Singapore Improvement Trust* [1937] A.C. 898; *Seereelall Jhuggroo v. Central Arbitration and Control Board* [1953] A.C.

151; *Ridge v. Baldwin* [1964] A.C. 40; *Maradana Mosque Trustees v. Mahmud* [1967] 1 A.C. 13. These are difficult cases in that it is sometimes hard to see what the precise point was but it may be possible to build up from them a proposition of general validity that a tribunal has no jurisdiction to make a determination if it has acted in complete disregard of its duties.

Category (5). The tribunal has jurisdiction, so long as it has not disregarded its duties, even if it wrongly determines a question of construction in the course of the inquiry, committing an error in law. This determination is not a nullity. The court cannot intervene on grounds of error of law if there is an ouster clause or its equivalent. In the present case the commission did not wholly disregard its instructions. If it made an error in law, that did not produce a nullity. The cases are all in the respondents' favour: *Brittain v. Kinnaird* (1819) 1 Brod. & B. 432; *Reg. v. Bolton* (1841) 1 Q.B. 66, 71 et seq.; *Reg. v. St. Olave's District Board* (1857) 8 E. & B. 529; *Rex v. Minister of Health* [1939] 1 K.B. 232; *Rex v. Ludlow* [1947] K.B. 634; *Davies v. Price* [1958] 1 W.L.R. 434, 441; *Rex v. Nat Bell Liquors Ltd*. [1922] 2 A.C. 128; *Rex v. Northumberland Compensation Appeal Tribunal* [1951] 1 K.B. 711; [1952] 1 K.B. 338; *Smith v. East Elloe Rural District Council* [1956] A.C. 736, 764-765; *Armah's case* [1968] A.C. 192, 201, 218, 233-234, 237-238. If there was any error in the present case it was of a type covered by these authorities. The present case is distinguishable from the first four categories, and, since it fits into the fifth category, the appeal must fail.

Bunbury v. Fuller (1853) 9 Ex. 111, 140, is distinguishable from the present case. *Ex parte Bradlaugh* (1878) 3 Q.B.D. 509, 511, stands very

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much on its own but its central feature is that the magistrate had not made an order of the type which he was entitled to make. In *Reg. v. Income Tax Special Purposes Commissioners* (1888) 21 Q.B.D. 313 one must distinguish a condition precedent to entering onto the inquiry at all from an error made by the tribunal in conducting the inquiry. What was said at pp. 318-319 is acceptable if it refers to a condition precedent, but not if it would take away the jurisdiction. *Reg. v. Farmer* [1892] 1 Q.B. 637 is a case of a condition precedent to the exercise of the jurisdiction. In *Reg. v. Cotham* [1898] 1 Q.B. 802, the magistrates acted in a case where they had no jurisdiction at all. In *Board of Education v. Rice* [1911] A.C. 179, 180, 182, 184, 185 the Minister was purporting to act in a field in which the legislation had not given jurisdiction. One must distinguish between the inquiry on which the Minister should have embarked and that on which he in fact embarked: see *Rex v. Board of Education* [1910] 2 K.B. 165, 168. That case does not impinge on the present problem, since the government department completely disregarded their directions. *Rex v. Shoreditch Assessment Committee* [1910] 2 K.B. 859 is not helpful in the present type of case. *Rex v. Cheshire Justices* (1912) 108 L.T. 374 is a difficult case, which is not helpful in jurisdiction or error in law.

In the normal case it does not matter whether the fact that the tribunal has disregarded its duties appears on the record or not. The decision can be quashed for error of law or disregard of duty. But a decision cannot be quashed on either ground if Parliament has said that it cannot be questioned. The ouster clause in section 4 (4) of the Act which says that "the determination … shall not be called in question" prevents the court from intervening. One cannot even issue a writ, because that would amount to calling the determination in question. It is different from a provision that the determination shall be final. *Smith v. East Elloe Rural District Council* [1956]

A.C. 736 turned on a similar form of words. Such a phrase does not appear in the category (4) cases. When there is an ouster clause the tribunal cannot be interfered with once it has entered into the inquiry entrusted to it, however much it may abuse its power en route: see the *Nat Bell case* [1922] 2 A.C. 128, 151. A court may wrongly convict by perversity, by misunderstanding the evidence or by misunderstanding a statute, but, if Parliament has said that the conviction cannot be questioned in any court of law, it must stand nevertheless, whether or not the reason appears on the record.

Estate and Trust Agencies (1927) Ltd. v. Singapore Improvement Trust [1937] A.C. 898 is distinguishable from category (5) because there the courts were not prohibited from interfering and there was no ouster clause of the type present in this case. It was not wrongly decided on category (4).

Rex v. Minister of Health [1939] 1 K.B. 232 is indistinguishable from the present case.

In *Rex v. Northumberland Compensation Appeal Tribunal* [1951] 1 K.B. 711, 712-713, 716, 722; [1952] 1 K.B. 338, 344, 346-347, 348, 353-354 the court did not treat the case as one of want of jurisdiction but one of mere error of law. If the contentions of the present appellants were right, the whole argument in that case would have been unnecessary.

In *Seereelall Jhuggroo's case* [1953] A.C. 151 there was an ouster

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clause in a limited form. *Reg. v. Fulham, Hammersmith & Kensington Rent Tribunal* [1953] 2 Q.B. 147, 152 is a category (2) case. *Reg. v. City of London Licensing Justices* [1954] 1 W.L.R. 1325, 1328 is of no great assistance and does not carry the matter much further. It was an example of the use of mandamus instead of certiorari in licensing cases: see *Wade on Administrative Law*, 2nd ed. (1967), p. 148. In the *Maradana Mosque case* [1967] 1 A.C. 13 there was no ouster clause and it does not provide support for the wider proposition of the appellants.

Section 4 (4) of the Act extends to any dismissal of an application based on a bona fide misconstruction of article 4 of the Order, whether on analysis the misconstruction proves to be an error of law within the jurisdiction or in excess of the jurisdiction. Parliament did not intend the commission to be at risk as regarded some errors of construction and not others. The present case is a fortiori *Smith v. East Elloe Rural District Council* [1956] A.C. 737, 747, 750, 754, 756, 764-765, 767, 770, 772.

As to the distinction between void and voidable, a nullity and a nonnullity, see *Ridge v. Baldwin* [1964] A.C. 51, 80, 81, 90-91, 125, 141-142, 155, and *Durayappah v. Fernando* [1967] 2 A.C. 337.

On the assumption that there was an error of construction by the commission, it is submitted: (1) Any misconstruction of article 4 of the Order is an error of law. (2) Section 4 (4) of the Act covers any dismissal of an application based on a bona fide misconstruction of article 4 (3) because that is what the Act plainly says, and it can only have one meaning. (3) Section 4 (4) covers any error based on a bona fide misconstruction of article 4 because the determination, which is on

the face of it valid, stands until it is set aside, and the subsection forbids any attempt to set it aside. It could only be shown to be a nullity by bringing proceedings.

As to the construction of article 4, it is submitted: (1) "successor in title" there means successor to a claim for the return of property or for compensation or for damages. (2) In articles 4 and 6 the claim to which a successor in title succeeds is a claim against the Egyptian Government, and in article 8 it is a claim against any other government. (3) A successor in title to a claim against the Egyptian Government in articles 4 and 6 takes the place of the original owner for the purpose of establishing a claim to the fund. So here the appellants started with a claim against the Egyptian Government for the return of their property or for damages, if it has been damaged. The appellants, by the assignment to T.E.D.O., ceased to be entitled to claim against the Egyptian Government. The successor in title to the claim was T.E.D.O. which, not being a British national, cannot itself put forward the claim.

A claim may be assigned, as can a spes successionis: *In re Lind* [1915] 2 Ch. 345. Once a claim is assigned it ceases to be enforceable by the assignor for his own benefit, though perhaps he can enforce it on behalf of the assignee.

Before the date of the treaty there was no spes against the British Government. The source of the claim is the money paid by the Egyptian Government to the British Government. Before the treaty there was a spes that the Egyptian Government would pay for the property. After the treaty there was a spes that the British Government would pay. After

Egyptian Government had turned into a claim against the British Government, but if, meanwhile, a possible claimant had assigned his right against the Egyptian Government, he could not claim.

R. J. Parker Q.C. in reply. The word "and" in article 4 (1) (*b*) (ii) does not mean that the original owner need say anything about a successor in title. If the original owner is before the commission, the nationality of a successor in title does not concern it. Only when the successor in title is before the commission need his nationality be proved.

The treaty extinguished all rights against Egypt. Article 6 of the Order of 1962 deals with the making of claims in respect of property lost or damaged, and the claimant under it must prove that the loss or injury was the result of Egyptian measures. "Egyptian measures," as defined by article 1 (2), does not include war damage. Article 8 relates to all claims other than Annex E claims. The claimant who is in Annex E is unconcerned with the fate of the property and will be compensated whoever caused the damage.

In re Lind [1915] 2 Ch. 345, 355, 359, 360, 365-366, 373, relied on by the respondents, only shows that a spes cannot operate until there is property in existence on which it can operate. So here until the treaty no one knew whether or not he would get his property back or whether or not he would get compensation. After the treaty he had a spes of compensation from the British Government. At the date of the assignment there was no such spes, because no fund existed, nor was there an Egyptian spes. The notion that there was a spes at all is not acceptable in this case.

The agreement between the British Government and the United Arab Republic was entered into on its own behalf and on behalf of British nationals. Only the British Government can release its claims. So far as the claimants were concerned, a claim against the United Arab Republic until the treaty was just as remote as a claim against the fund after it.

The question to be considered now is whether Parliament intended that anyone who had accepted compensation from the Egyptian Government should automatically bar themselves from participation in the fund or that they should participate but should account for the compensation they had obtained, as provided by article 10.

Mandamus, prohibition, certiorari and habeas corpus are all writs which will be granted where what the inferior tribunal has done is a nullity. In the absence of an ouster clause, certiorari will also go for an error in law on the face of the record, even if the error is not of such a character as to render the decision a nullity. There has been a tendency to present the problem in the form: (a) Was there an error in law at all? (b) If so, was it a mere error or an error going to the jurisdiction? Mandamus cannot go for a mere error of law, but goes only where the purported decision is a nullity.

The correct approach is to ask: (1) What is the proper construction of the Act? (2) Has the tribunal done or omitted to do anything which on that construction it should not have done or should have done, as the case may be? (3) If so, did the act or omission affect the result, or might it have done so? (4) When the unauthorised act or omission is excluded from consideration, was the tribunal left with only one course open to it?

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(5) If the answers to (2) and (3) are in the affirmative, the decision will be a nullity and one simply goes back to the beginning with, if necessary, an order to hear and determine. (6) If, in addition, the answer to (4) is also in the affirmative, not only will the decision be a nullity, but there will be an order to do, or refrain from doing, the thing in question, as the case may be, or a declaration that the tribunal must do or refrain from doing it.

As to natural justice, what is the basis on which a duty to comply with it rests on the courts? On what basis does non-compliance with the rules of natural justice enable the court to interfere, even if there is an ouster clause? It is because otherwise the decision is not a decision: see *Ridge v. Baldwin* [1964] A.C. 40, 123. The obligation rests on an implied instruction.

If a breach of an implied instruction creates a nullity, it cannot be said that a breach of an express instruction would be less serious. The fact (if it were a fact) that on the wording of the Act it is hard to ascertain whether, and to what extent, the rules of natural justice are excluded and the tribunal had made an honest effort to reach a right result, would not affect the matter. The fact (if it were a fact) that the tribunal, while recognising that the rules were incorporated, wrongly interpreted their requirements, would make no difference. If the misconstruction of an implied instruction would result in a nullity, it cannot be that a misinterpretation of an express instruction would lead to a less serious result: see*Board of Education v. Rice* [1911] A.C. 179, 182. Not every wrong act or omission will lead to the final conclusion being a nullity.

The argument for the respondents involves that section 3 (*b*) of the Act of 1950 would read that provision may be made "for the determination of claims, which excludes all power of control by the court" and that section 4 (4) must be read to refer to "the purported determination by the commission, even if it is not a determination at all. …" But words and phrases must prima facie be given their natural meaning and read in the context of the Act.

But the words of the Order on their plain and ordinary meaning are a straightforward instruction. It is an abuse of language to say that the words "shall treat a claim … as established" is equivalent to "may." The Order gives the commission power to assess the lass and to say whether they are satisfied of certain matters; they can go no further.

The root principle is that if the order, decision or determination is not a determination at all, it is not within the Act and there is nothing on which the ouster clause can bite. One must consider what is a determination and not what is said to be a determination. For example, if one is charged with taking £5 notes out of the country, contrary to law, one is not guilty if they were forged notes. One may be guilty of another offence, but not of the one charged.

Smith v. East Elloe Rural District Council [1956] A.C. 738, 740, 742, 769, 770 was a case where there was an ouster clause, but paragraph 15 (1) of Part IV of Schedule I to the Acquisition of Land (Authorisation Procedure) Act, 1946, gave the subject a special right to resort to the court. That was of importance. None of the authorities cited relate to the court's attitude to ouster clauses. Lord Simonds in his opinion cites no authorities at all. Because no authorities as to ouster clauses were

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4 (4) in an Act which contains no alternative mode of access to the courts. It may be authority for the proposition that, when one is dealing with ministerial process and there is alternative mode of access to the courts, even bad faith by the tribunal may not create a nullity. If it went further than that it could be impliedly overruling a long line of authorities, including House of Lords authorities. The effect of that case is limited as suggested and, even so, is doubtful. If it is not so limited, it was wrongly decided. It would, on the respondents' contentions, involve reading the words of section 4 (4) as "determination or purported determination." There is no principle which enables one to read words into a statute by implication, thereby depriving the subject of access to the courts.

Assuming that the appellant is not driven from the courts by section 4 (4), how does the commission's action fit into the authorities? When a person is claiming in respect of property referred to in Annex E the only matters which he must establish are: (1) that the claim relates to property in Egypt referred to in Annex E, which includes all property sequestrated; (2) that he is the person referred to in Annex E; and (3) that he was a British national at the relevant dates.

The commission have done something they should not have done in asking additional questions and imposing additional requirements over and above those imposed by the articles on their true interpretation. The asking of those additional questions affected the result and, if all those matters wrongly considered are excluded, the only course left is to treat the claim as established.

If, contrary to the appellants' contentions, the original owner is obliged, on the true construction of the Act, to prove that he has no successor in title or that any successor in title is a British national, then a successor in title within the article does not include the assignee of a moral claim against the United Arab Republic. In asking themselves whether the appellants had shown that there was no such assignee, the commission asked themselves a question which they should not have done. That affected the result and, but for that, there would have been only one course open to them, to find the claim established.

Halsbury's Laws of England, 3rd ed., vol. 2 (1953), p. 410, para. 825, and also *Ex parte Dever* (1887) 18 Q.B.D. 660, 665, 670, decided under the Bankruptcy Act, 1884, in which the definition of "property" in section 168 (1) was the same as that in section 167 of the Bankruptcy Act, 1914.

What is the nature of the assignment of a spes? A legatee under a will has only a spes, but he can enter into a contract dealing with it, the effect of which is that the person with whom he has contracts will get an equitable charge, or hope that the assignor will live long enough to take, that the testator will not change his will and that there will be enough money in the estate to pay the legacy. But the hope is the entirely personal hope of the person mentioned in the will, who cannot pass it to a trustee. The assignee has only a hope upon a hope.

In the present case, between 1956 and 1959 no one could have anything more than a hope of compensation for damage suffered in the Suez

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in existence. Parliament dealt with the situation which would arise if the person died or the company went out of existence. The claim must be either by the original owner or, if there was a successor in title, then by him not by both. As long as the original owner was there, there was no room for a successor. No beneficial interest of any kind vests in an assignee until the property comes into existence: *In re Lind* [1915] 2 Ch. 345.

The House of Lords here has the opportunity to say (1) that no, ouster clause will protect a nullity without specific words to that effect, because a nullity is not a determination and (2) that it is for the courts to interpret the statute, by which an inferior tribunal is given jurisdiction, to see whether it acted within it.

Not every error in law can be corrected, but what can be done is to see whether the tribunal asked itself the questions which the statute, truly interpreted, says it should ask.

Sydney Templeman Q.C. Ex parte Dever (1887) 18 Q.B.D. 660 only shows that in bankruptcy a spes does not vest in the trustee in bankruptcy. It was otherwise in the case of an assignee for value: *In re Lind* [1915] 2 Ch. 345.

As to the declaration sought by the appellants on the assumption that the House decides in their favour, they have asked for the wrong remedy. The court had no jurisdiction to grant a declaration, though it may order certiorari. In the Court of Appeal it appeared that Diplock L.J. did not consider a declaration appropriate: [1968] 2 Q.B. 862, 910. See also R.S.C., Ord. 15, r. 16, and Ord. 53. On the view opposite to mine there is no reason why declarations should not

take the place of certiorari and mandamus. If a declaration can be granted here, it is hard to see why certiorari and mandamus should even be used at all. There is no reported case where proceedings have been taken against a tribunal for a declaration.

The jurisdiction to determine belongs to the commission and not to the High Court, and that would be trenched upon if it were held proper to go for a declaration.

R. J. Parker Q.C. The appellants have established all they had to prove, and there was a statutory duty on the commission to treat the claim as established. The appellants are only asking for what they would have got by mandamus if they had gone for that: see *Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government* [1960] A.C. 260, 290 and *Barnard v. National Dock Labour Board* [1953] 2 Q.B. 18, 41.

Their Lordships took time for consideration.

Dec. 17, 1968. LORD REID. My Lords, in 1956 the appellants owned a mining property in Egypt which they claim was worth over £4,000,000. On the outbreak of hostilities in the autumn of that year it was occupied by Israeli forces and damaged to the extent of some £500,000. On November 1, 1956, property in Egypt belonging to British subjects was sequestrated by the Egyptian Government and on April 29, 1957, after the Israeli forces had withdrawn, the Egyptian Government authorised a sale

---------- ***[1969] 2 A.C. 147 at 168***

of the appellants' property and it was sold to an Egyptian organisation referred to in this case as T.E.D.O.

The appellants' property had included a large quantity of manganese ore and steps were taken by them to dissuade their customers from buying ore from T.E.D.O. This seems to have embarrassed the Egyptian authorities, and on November 23, 1957, an agreement was made between the appellants, T.E.D.O. and the Sequestrator General whereby the appellants purported to sell to T.E.D.O. for a price of £500,000 their whole business in Egypt, but this was not to include any claim which the appellants might

> "be entitled to assert against any government authority other than the Egyptian government, as a result of loss suffered by, or of damage to or reduction in the value of"

their business or assets during the events of October and November, 1956.

Beyond the fact that the appellants received the sum of £500,000 the effect of the agreement is not very clear; for their property had already been sold to T.E.D.O. by the sequestrator. Before the agreement was made the appellants had no legal right to sue in Egypt either for the return of their property or for compensation for its loss. But they had some hope or prospect of getting something after relations between the United Kingdom and the United Arab Republic returned to normal. This could have been a direct payment to them by the Egyptian Government: or, if the method was followed which the British Government had adopted in earlier cases, the Egyptian Government might pay a lump sum of compensation to the British Government to cover all claims by British subjects, and then it would be in the discretion of the British Government to determine how any such sum should be distributed among claimants. And similarly with regard to damage done by the Israeli forces there might have been some payment made by the Israeli

Government. It is not disputed that by this agreement the appellants gave up or assigned to T.E.D.O. any claim they might have to receive compensation directly from the Egyptian Government: but I think that they did not give up or assign any claim, hope or prospect they might have to receive something from the British or Israeli Governments.

The next material event was the making of a treaty between the Governments of the United Kingdom and the United Arab Republic on February 28, 1959. That treaty provided for the return to British subjects of their sequestrated property excepting properties sold between October 30, 1956, and August 2, 1958: those excepted properties were listed in Annex E which included the property of "Sinai Mining (subject to a special arrangement)." Sinai Mining was the name of the appellant company before its name was changed to Anisminic. It is not clear what was meant by "subject to a special arrangement." Under the treaty the United Arab Republic paid to the British Government the sum of £27,500,000 in full and final settlement of claims of a kind mentioned in article IV. It is not disputed that at that stage the appellants had no legal right to claim to participate in that sum. The disposal of that sum was in the discretion of the British Government. The most the appellants had was a hope that they would receive some part of it.

This case arises out of the making of an Order in Council: The

---------- ***[1969] 2 A.C. 147 at 169***

Foreign Compensation (Egypt) (Determination and Registration of Claims) Order 1959 (S.I. 1959 No. 625). That Order has now been superseded by a similar Order, S.I. 1962 No. 2187 and I shall refer throughout to this later Order. These Orders were made under powers contained in the Foreign Compensation Act, 1950. That Act set up the respondents, the Foreign Compensation Commission, to deal with compensation payments made by the Governments of Yugoslavia and Czechoslovakia but it also provides for the commission acting should there be future compensation agreements with foreign governments.

The appellants duly submitted a claim under this Order to the respondent commissioner. They also submitted a separate claim in respect of damage done by the Israeli forces. These claims were opposed by the legal officer of the commission and after sundry procedure including a long oral hearing the commission on May 8, 1963, made a provisional determination that:

> "… the above-named applicants, Anisminic Ltd. fail to establish a claim under the Egypt Order aforesaid in respect of the matters referred to in paragraph 2 (*a*) of the amended answer and that the application in respect of such claims be and is hereby dismissed. But that the claim in respect of damage referred to in paragraph 2 (*b*) of the amended answer is fit for registration under article 8 of the said Order in a sum to be hereafter determined."

The claim which was dismissed was the main claim with which this case is concerned, and the claim which was held fit for registration was a claim in respect of the damage done by the Israeli forces.

Browne J. on July 29, 1966, made a declaration that the respondent's provisional determination was a nullity and that the respondents are under a statutory duty to treat the appellants' first claim as established. The Court of Appeal on April 5, 1967, set aside the judgment of Browne J. (post, p. 223) and the appellants now seek to have his judgment restored.

The respondent's first argument was that in any event such a declaration could not competently be made. I agree with your Lordships in rejecting that argument. If the appellants succeed on the merits the declarations made by Browne J. should be restored.

The next argument was that, by reason of the provisions of section 4 (4) of the 1950 Act, the courts are precluded from considering whether the respondent's determination was a nullity, and therefore it must be treated as valid whether or not inquiry would disclose that it was a nullity. Section 4 (4) is in these terms:

> "The determination by the commission of any application made to them under this Act shall not be called in question in any court of law."

The respondent maintains that these are plain words only capable of having one meaning. Here is a determination which is apparently valid: there is nothing on the face of the document to cast any doubt on its validity. If it is a nullity, that could only be established by raising some kind of proceedings in court. But that would be calling the determination in question, and that is expressly prohibited by the statute. The appellants

---------- ***[1969] 2 A.C. 147 at 170***

maintain that that is not the meaning of the words of this provision. They say that "determination" means a real determination and does not include an apparent or purported determination which in the eyes of the law has no existence because it is a nullity. Or, putting it in another way, if you seek to show that a determination is a nullity you are not questioning the purported determination - you are maintaining that it does not exist as a determination. It is one thing to question a determination which does exist: it is quite another thing to say that there is nothing to be questioned.

Let me illustrate the matter by supposing a simple case. A statute provides that a certain order may be made by a person who holds a specified qualification or appointment, and it contains a provision, similar to section 4 (4), that such an order made by such a person shall not be called in question in any court of law. A person aggrieved by an order alleges that it is a forgery or that the person who made the order did not hold that qualification or appointment. Does such a provision require the court to treat that order as a valid order? It is a well established principle that a provision ousting the ordinary jurisdiction of the court must be construed strictly - meaning, I think, that, if such a provision is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the court.

Statutory provisions which seek to limit the ordinary jurisdiction of the court have a long history. No case has been cited in which any other form of words limiting the jurisdiction of the court has been held to protect a nullity. If the draftsman or Parliament had intended to introduce a new kind of ouster clause so as to prevent any inquiry even as to whether the document relied on was a forgery, I would have expected to find something much more specific than the bald statement that a determination shall not be called in question in any court of law. Undoubtedly such a provision protects every determination which is not a nullity. But I do not think that it is necessary or even reasonable to construe the word "determination" as including everything which purports to be a determination but which is in fact no determination at all. And there are no degrees of nullity. There are a number of reasons why the law will hold a purported decision to be a nullity. I do not see how it could be said that such a provision protects some kinds of nullity but not others: if that were intended it would be easy to say so.

The case which gives most difficulty is *Smith v. East Elloe Rural District Council* [1956] A.C 736 where the form of ouster clause was similar to that in the present case. But I cannot regard it as

a very satisfactory case. The plaintiff was aggrieved by a compulsory purchase order. After two unsuccessful actions she tried again after six years. As this case never reached the stage of a statement of claim we do not know whether her case was that the clerk of the council had fraudulently misled the council and the Ministry, or whether it was that the council and the Ministry were parties to the fraud. The result would be quite different, in my view, for it is only if the authority which made the order had itself acted in mala fide that the order would be a nullity. I think that the case which it was intended to present must have been that the fraud was only the fraud of the clerk because almost the whole of the argument was on the question

whether a time limit in the Act applied where fraud was alleged; there was no citation of the authorities on the question whether a clause ousting the jurisdiction of the court applied when nullity was in question, and there was little about this matter in the speeches. I do not therefore regard this case as a binding authority on this question. The other authorities are dealt with in the speeches of my noble and learned friends, and it is unnecessary for me to deal with them in detail. I have come without hesitation to the conclusion that in this case we are not prevented from inquiring whether the order of the commission was a nullity.

It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the inquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly. I understand that some confusion has been caused by my having said in *Reg. v. Governor of Brixton Prison, Ex parte Armah* [1968] A.C. 192, 234 that if a tribunal has jurisdiction to go right it has jurisdiction to go wrong. So it has, if one uses "jurisdiction" in the narrow original sense. If it is entitled to enter on the inquiry and does not do any of those things which I have mentioned in the course of the proceedings, then its decision is equally valid whether it is right or wrong subject only to the power of the court in certain circumstances to correct an error of law. I think that, if these views are correct, the only case cited which was plainly wrongly decided is *Davies v. Price* [1958] 1 W.L.R. 434. But in a number of other cases some of the grounds of judgment are questionable.

I can now turn to the provisions of the Order under which the commission acted, and to the way in which the commission reached their decision. It was said in the Court of Appeal that publication of their reasons was unnecessary and perhaps undesirable. Whether or not they could have been required to publish their reasons, I dissent emphatically from the view that

publication may have been undesirable. In my view, the commission acted with complete propriety, as one would expect looking to its membership.

The meaning of the important parts of this Order is extremely difficult to discover, and, in my view, a main cause of this is the deplorable modern drafting practice of compressing to the point of obscurity provisions which would not be difficult to understand if written out at rather greater length.

---------- ***[1969] 2 A.C. 147 at 172***

The effect of the Order was to confer legal rights on persons who might previously have hoped or expected that in allocating any sums available discretion would be exercised in their favour. We are concerned in this case with article 4 of the Order and more particularly with paragraph (1) (*b*) (ii) of that article. Article 4 is as follows:

> "(1) The Commission shall treat a claim under this Part of the Order as established if the applicant satisfies them of the following matters:- (*a*) that his application relates to property in Egypt which is referred to in Annex E; (*b*) if the property is referred to in paragraph (1) (*a*) or paragraph (2) of Annex E - (i) that the applicant is the person referred to in paragraph (1) (*a*) or in paragraph (2), as the case may be, as the owner of the property or is the successor in title of such person; and (ii) that the person referred to as aforesaid and any person who became successor in title of such person on or before February 28, 1959, were British nationals on October 31, 1956, and February 28, 1959; (*c*) if the property is referred to in paragraph (1) (*b*) of Annex E - (i) that the applicant was the owner on October 31, 1956, or, at the option of the applicant, on the date of the sale of the property at any time before February 28, 1959, by the Government of the United Arab Republic under the provisions of Egyptian Proclamation No. 5 of November 1, 1956, or is the successor in title of such owner; and (ii) that the owner on October 31, 1956, or on the date of such sale, as the case may be, and any person who became successor in title of such owner on or before February 28, 1959, were British nationals on October 31, 1956, and February 28, 1959. (2) For the purposes of sub-paragraph (*b*) (i) of paragraph (1) of this article, any reference in paragraph (2) of Annex E to the estate of a deceased person shall be interpreted as a reference to the persons entitled to such estate under the testamentary dispositions or intestacy of such deceased person. (3) For the purposes of sub-paragraphs (*b*) (ii) and (*c*) (ii) of paragraph (1) of this article, a British national who died, or in the case of a corporation or association ceased to exist, between October 31, 1956, and February 28, 1959, shall be deemed to have been a British national on the latter date and a person who had not been born, or in the case of a corporation or association had not been constituted, on October 31, 1956, shall be deemed to have been a British national on that date if such person became a British national at birth or when constituted, as the case may be; provided that a converted company shall for the purposes of sub-paragraphs (*b*) (ii) and (*c*) (ii) of paragraph (1) of this article be deemed not to have been a British national. (4) If it shall appear to the commission in relation to any Egyptian controlled company referred to in paragraph (1) (*a*) or paragraph (2) of Annex E that under the provisions of any Egyptian measure the shares of any British national in such company have at any time between October 30, 1956, and February 28, 1959, been sold, or purported to be sold, by a sequestrator or by any person acting under his authority without the consent of the holder thereof, the commission may, if they think it just and equitable so to do, and shall if the company is a converted company, hold that such shares

---------- ***[1969] 2 A.C. 147 at 173***

> were property in Egypt referred to in paragraph (1) (*b*) of Annex E and determine any application in relation to the company or to such shares as if the said company had been incorporated in Egypt and named in the said paragraph."

The task of the commission was to receive claims and to determine the rights of each applicant. It is enacted that they shall treat a claim as established if the applicant satisfies them of certain matters. About the first there is no difficulty: the appellants' application does relate to property in Egypt referred to in Annex E. But then the difficulty begins.

Annex E originally only included properties which had been sold during the sequestration, so the person mentioned in Annex E as the owner is the person who owned the property before that sale, and his claim is a claim for compensation for having been deprived of that property.

Normally he will be the applicant. But there is also provision for an application by a "successor in title." The first difficulty is to determine what is meant by "successor in title." Before the Order was made the position was that former owners whose property had been sold during the sequestration had no title to anything. They had no title to the property because it had been sold. And they had no title to compensation. All they had was a hope or expectation that they might receive some compensation. They had no legal rights at all. It is now common ground that "successor in title" cannot mean the person who obtained a title to the property which formerly belonged to the applicant. The person who acquired the property from the sequestrator was generally an Egyptian and he could have no ground for claiming compensation. So "successor in title" must refer to some person who somehow succeeded to the original owner as the person now having the original owner's hope or expectation of receiving compensation. The obvious case would be where the original owner had died. But for the moment I shall leave that problem.

The main difficulty in this case springs from the fact that the draftsman did not state separately what conditions have to be satisfied (1) where the applicant is the original owner and (2) where the applicant claims as the successor in title of the original owner. It is clear that where the applicant is the original owner he must prove that he was a British national on the dates stated. And it is equally clear that where the applicant claims as being the original owner's successor in title he must prove that both he and the original owner were British nationals on those dates, subject to later provisions in the article about persons who had died or had been born within the relevant period. What is left in obscurity is whether the provisions with regard to successors in title have any application at all in cases where the applicant is himself the original owner. If this provision had been split up as it should have been, and the conditions, to be satisfied where the original owner is the applicant had been set out, there could have been no such obscurity.

This is the crucial question in this case. It appears from the commission's reasons that they construed this provision as requiring them to inquire, when the applicant is himself the original owner, whether he had a successor in title. So they made that inquiry in this case and held that T.E.D.O. was the applicant's successor in title. As T.E.D.O. was not

---------- ***[1969] 2 A.C. 147 at 174***

a British national they rejected the appellants' claim. But if, on a true construction of the Order, a claimant who is an original owner does not have to prove anything about successors in title, then the commission made an inquiry which the Order did not empower them to make, and they based their decision on a matter which they had no right to take into account. If one uses the word "jurisdiction" in its wider sense, they went beyond their jurisdiction in considering this matter. It was argued that the whole matter of construing the Order was something remitted to the commission for their decision. I cannot accept that argument. I find nothing in the Order to support it. The Order requires the commission to consider whether they are satisfied with regard to the prescribed matters. That is all they have to do. It cannot be for the commission to determine the limits of its powers. Of course if one party submits to a tribunal that its powers are wider than in fact they are, then the tribunal must deal with that submission. But if they reach a wrong conclusion as to the width of their powers, the court must be able to correct that - not because the tribunal has made an error of law, but because as a result of making an error of law they have dealt with and based their decision on a matter with which, on a true construction of their powers, they had no right to deal. If they base their decision on some matter which is not prescribed for their adjudication, they are doing something which they have no right to do and, if

the view which I expressed earlier is right, their decision is a nullity. So the question is whether on a true construction of the Order the applicants did or did not have to prove anything with regard to successors in title. If the commission were entitled to enter on the inquiry whether the applicants had a successor in title, then their decision as to whether T.E.D.O. was their successor in title would I think be unassailable whether it was right or wrong: it would be a decision on a matter remitted to them for their decision. The question I have to consider is not whether they made a wrong decision but whether they inquired into and decided a matter which they had no right to consider.

I have great difficulty in seeing how in the circumstances there could be a successor in title of a person who is still in existence. This provision is dealing with the period before the Order was made when the original owner had no title to anything: he had nothing but a hope that some day somehow he might get some compensation. The rest of the article makes it clear that the phrase (though inaccurate) must apply to a person who can be regarded as having inherited in some way the hope which a deceased original owner had that he would get some compensation. But "successor in title" must I think mean some person who could come forward and make a claim in his own right. There can only be a successor in title where the title of its original possessor has passed to another person, his successor, so that the original possessor of the title can no longer make a claim, but his successor can make the claim which the original possessor of the title could have made if his title had not passed to his successor. The "successor" of a deceased person can do that. But how could any "successor" do that while the original owner is still in existence? One can imagine the improbable case of the original owner agreeing with someone that, for a consideration immediately paid to him, he would pay over to the other party

---------- ***[1969] 2 A.C. 147 at 175***

any compensation which he might ultimately receive. But that would not create a "successor in title" in any true sense. And I can think of no other way in which the original owner could transfer inter vivos his expectation of receiving compensation. If there were anything in the rest of the Order to indicate that such a case was intended to be covered, we might have to attribute to the phrase "successor in title" some unusual and inaccurate meaning which would cover it. But there is nothing of that kind. In themselves the words "successor in title" are, in my opinion, inappropriate in the circumstances of this Order to denote any person while the original owner is still in existence, and I think it most improbable that they were ever intended to denote any such person. There is no necessity to stretch them to cover any such person. I would therefore hold that the words "and any person who became successor in title to such person" in article 4 (1) (*b*) (ii) have no application to a case where the applicant is the original owner. It follows that the commission rejected the appellants' claim on a ground which they had no right to take into account and that their decision was a nullity. I would allow this appeal.

LORD MORRIS OF BORTH-Y-GEST. My Lords, the appellants made claims to participate in the compensation received from the United Arab Republic. Pursuant to the authority given by the Foreign Compensation Act, 1950, Orders in Council were made providing for the determination of such claims by the Foreign Compensation Commission. The application of the appellants was the subject of an oral hearing which took four days. At the hearing the applicants were represented by counsel. In due course the commission, in provisional determinations, gave their decision. The applicants thereupon brought an action claiming that the determinations of the commission were wrong in law or invalid. But the Act provides that the determination by the

commission of any application made to them "shall not be called in question in any court of law." For many days in successive stages of these proceedings the applicants have done nothing else. They have presented the arguments which they unsuccessfully advanced before the commission. The commission had been properly constituted and had been presided over by its appointed chairman - an eminent Queen's Counsel. How, then, have the appellants justified this somewhat startling procedure?

As the facts which comprise the background to this litigation are so carefully narrated in the judgment of the learned judge I need only refer to them in summary form. At the time of the events at Suez, in October, 1956, the appellants (then called the Sinai Mining Co. Ltd.) were carrying out operations for the extraction of manganese ore in the Sinai Peninsula. They had mining leases or concessions granted to them by the Egyptian Government. Their undertaking was valued at about £4,400,000. A proclamation was passed (Proclamation No. 5) which resulted in the undertaking being placed under sequestration. That was on November 1, 1956. The company lost possession and control of their undertaking and it became illegal under Egyptian law for them to dispose of or deal with their undertaking in the absence of ministerial consent. There followed a period within which Israeli forces caused serious damage (to the extent of £532,773) to the property. Those forces withdrew in or about April, 1957.

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In that month (on April 29) the United Arab Republic passed Decree No. 387. By that decree authority was given to the Custodian General of the property of British, French and Australian subjects to sell and liquidate the property of certain persons including the appellant company who were subject to Proclamation No. 5. On April 29, 1957, an agreement was made (called a contract of sale) between the Custodian General of British Property and the chairman of the Economic Board, which organisation was a department of the Egyptian Government. It has been referred to as T.E.D.O. What the agreement purported to do was to sell all the assets of the appellant company to the chairman, who acted both as chairman of T.E.D.O. and also as the representative of a company which was being formed and which was called the Sinai Manganese Co. S.A.E. As the result of a Presidential decision of May 18, 1957, the proposed new company was brought into existence.

It was hardly to be expected that the appellants would accept or acquiesce in the expropriation of their property. Nor was it likely that they would be inactive in the protection of their rights and in the assertion of any claims that they could advance. Though they may have been without remedy in the Egyptian courts they took various steps to assert their rights. On June 11, 1957, they registered with the Foreign Office in London a claim setting out details of the assets and goodwill of their undertaking in Egypt as at October 31, 1956. In the further endeavour to protect their interests they instructed their agents to write to all their former customers. That was done by means of a circular letter dated July 9, 1957. The letter made it very plain that the appellants in no way recognised the assumption of control by the sequestrator of their assets. The letter recorded that the appellants were advised that

> "the action of the Egyptian Government must be regarded as a breach of international law which is incapable of giving rise to any valid legal effects."

There was an emphatic warning that the appellants disputed the right of any person or any company to deal in any way with their ores and would regard "as a violation of its legal rights any transaction of any kind whatsoever involving the said ores" and would take in any country

any steps that it might consider necessary to assert or protect their rights. No more resolute and complete assertion of their claims and their rights could be imagined. Nor were their efforts unproductive of result. Though on September 4, 1957, the Minister of Industry in Egypt issued an Order (Order 426 of 1957) purporting to cancel the appellants' 16 mining leases and though the newly formed company, the Sinai Manganese Co. S.A.E., issued in Egypt a writ in respect of the circular letter of July 9, when the appellants decided, as they did, that they would negotiate with the Egyptian authorities, they found them ready to come to terms. The result was that an agreement was concluded on November 23, 1957. The parties to it were the appellants, the new company (the Sinai Manganese Co. S.A.E.), T.E.D.O. and the Sequestrator General. The appellants agreed to sell and T.E.D.O. agreed to buy "the whole business" of the appellants "as carried on and situate in Egypt." The sequestrator consented to and acquiesced in the sale. The business was deemed to include all the assets

---------- ***[1969] 2 A.C. 147 at 177***

of the appellants situate in Egypt and all their liabilities in Egypt arising out of or in connection with the conduct of its business in Egypt including any sums payable to employees. From the assets there was, however, excluded any claim which the appellants could assert against any government other than the Egyptian Government as a result of loss or reduction in value of their business consequent on the events of October and November, 1956. "The price of the said sale" was £500,000. There were terms of payment. The appellants did in due course receive the whole of the purchase price. The appellants agreed that they would change their name They did so and became Anisminic Ltd.

At the date of that agreement negotiations were in progress between Her Majesty's Government and the United Arab Republic. Though this cannot be a matter affecting the legal issues in this litigation, it may be said as a matter of history that when the appellants made their agreement they believed, as the learned judge found,

> "that they were doing better for themselves than Her Majesty's Government was likely to do for them, and that they did not expect to get any additional compensation out of any future international governmental agreement."

It must, however, be clear that if they could qualify to establish a claim under any later Order in Council they would not be debarred by the fact that it was their firm calculation that their best policy would be to fend for themselves. By way of anticipation in the narrative, it may be said that, when the agreement was in due course considered by the commission, they held that the terms of the agreement made it quite clear that the subject-matter of the sale was the whole business of the appellants in Egypt and that included in it was "any claim of the applicant against the Egyptian Government" resulting from the events of October-November, 1956. It was "an assignment of all claims for compensation" that the appellants might have against the United Arab Republic in respect of "the business and its assets including cancellation of the mining concessions." The commission held that the appellants, being fully aware of the cancellation of their leases and of the damage to their business and of the purported sale of it,

> "sold and intended to sell to T.E.D.O. all claims arising thereout together with the goodwill of the company."

They held, as was, of course, undeniable, that T.E.D.O. was not at any time a British national.

Some 15 months after the appellants made their agreement of November 23, 1957, an agreement was made between H.M. Government and the Government of the United Arab Republic. It was an agreement in relation to financial and commercial relations and British property in Egypt. It was made on February 28, 1959. The agreement or treaty cannot easily be

summarised, but one part of it provided for the return of British property by the United Arab Republic. From that provision there was, however, an exclusion of property which had been sold between October 30, 1956, and August 2, 1958, under the provisions of Proclamation No. 5: such property was referred to in what was called Annex E. (The

---------- *[1969] 2 A.C. 147 at 178*

terms of Annex E were altered (by agreement) in August, 1962.) An important provision of the treaty was that the Government of the United Arab Republic would pay a sum of £27,500,000 to the United Kingdom Government in full and final settlement of certain "claims" which included "all claims in respect of the property" which had been excluded from the requirement to return property. The exclusion, as above stated, was of the property sold under Proclamation No. 5 and referred to in Annex E. In Annex E the name of the appellants appeared. In its amended form Annex E referred to the properties in the United Arab Republic "of any United Kingdom nationals appearing on the following list": in the list was the entry "The Sinai Mining Co. Ltd., 1 Sh. El Bustan, Cairo (subject to a special arrangement)." In the treaty there were various definitions of "property," "British property," "United Kingdom nationals" and "owners."

It is clear that merely because of the conclusion of the treaty and the receipt of £27,500,000 by H.M. Government the appellants could not assert any rights against H.M. Government. *(Rustomjee v. The Queen* (1876) 1 Q.B.D. 487; (1876) 2 Q.B.D. 69.) What H.M. Government did was to have recourse to the provisions of the Foreign Compensation Act, 1950. Accordingly, an Order in Council was made on April 6, 1959 (S.I. 1959 No. 625). It recited the authority given by the Act to make provision for the "determination" by the Foreign Compensation Commission of "claims to participate in compensation received under agreements with foreign governments." It recited the treaty of February 28, 1959, and recited that it was

> "expedient that provision should be made with regard to sums received from the Government of the United Arab Republic and for the registration, assessment and determination of claims in respect of British property in Egypt."

The Order proceeded to give directions to the commission. The appellants made claims (on September 15, 1959). They were willing to accept that if they established their claim and if their loss was being assessed, the commission should regard the £500,000 as being "compensation or recoupment" which the appellants had received. The legal officer (on July 14, 1961) filed an answer and an oral hearing began in March, 1962. I need not refer to any pleading matters, because a new Order in Council (S.I. 1962 No. 2187) was made on October 2, 1962, under which certain important changes were made. After pleading amendments the oral hearing of the appellants' claim was begun again on April 1, 1963. Part III of the new Order in Council was in particular relevant and applicable as regards the appellants' claim. All of its provisions as well as the other Parts of the Order demanded consideration by the commission. Here I set out merely the opening paragraphs:

> "PART III
>
> "CLAIMS IN RESPECT OF PROPERTY REFERRED TO IN
>
> ANNEX E
>
> "4. (1) The commission shall treat a claim under this Part of the Order as established if the applicant satisfies them of the following

---------- *[1969] 2 A.C. 147 at 179*

matters: - (*a*) that his application relates to property in Egypt which is referred to in Annex E; (*b*) if the property is referred to in paragraph (1) (*a*) or paragraph (2) of Annex E - (i) that the applicant is the person referred to in paragraph (1) (*a*) or in paragraph (2), as the case may be, as the owner of the property or is the successor in title of such person; and (ii) that the person referred to as aforesaid and any person who became successor in title of such person on or before February 28, 1959, were British nationals on October 31, 1956, and February 28, 1959; (*c*) if the property is referred to in paragraph (1) (*b*) of Annex E - (i) that the applicant was the owner on October 31, 1956, or, at the option of the applicant, on the date of the sale of the property at any time before February 28, 1959, by the Government of the United Arab Republic under the provisions of Egyptian Proclamation No. 5 of November 1, 1956, or is the successor in title of such owner; and (ii) that the owner on October 31, 1956, or on the date of such sale, as the case may be, and any person who became successor in title of such owner on or before February 28, 1959, were British nationals on October 31, 1956, and February 28, 1959. (2) For the purposes of sub-paragraph (*b*) (i) of paragraph (1) of this article, any reference in paragraph (2) of Annex E to the estate of a deceased person shall be interpreted as a reference to the persons entitled to such estate under the testamentary dispositions or intestacy of such deceased person."

The decision of the commission (on May 8, 1963) was that the appellants had failed to establish their main claim (which was dismissed) but that their claim in reference to damage done to their property arising out of the military action of Israeli armed forces was fit for registration under article 8 of the Order in Council in the sum (which they assessed) of £532,773.

In the reasoned document (called minutes of adjudication) which was later made available the reasons of the commission were amply recorded. If this were an appeal from their decision much argument might result. As, however, the document is being looked at for the limited purpose of ascertaining whether the commission exceeded the bounds of their jurisdiction, it must suffice to see what it was that they decided. Very shortly stated it is, I think, clear that what was decided was that as the appellants had sold their property to T.E.D.O. and as T.E.D.O. was not a British national and as T.E.D.O. was the "successor in title" or assignee of the appellants the commission had not been satisfied of the matters referred to in article 4, with the result that they could not treat the main claim as established. As, however, there had been no successor in title of the appellants in regard to their claim concerning loss which was not the result of Egyptian measures (that is, the loss caused by Israeli forces) that claim should be registered under article 8 of the Order in Council.

The commission recorded the nature of what was contended before them namely:

"Mr. Parker stated that the present hearing was in fact limited to the question of entitlement, as it might appear at first sight that the sole question for determination was whether, by virtue of the agreement of

---------- ***[1969] 2 A.C. 147 at 180***

November, 1957, the Economic Development Organisation, which was one of the other parties to that agreement, became the applicant company's successor in title within the meaning of the Orders; as, if it did, it was not a British national, and it would have become successor in title between the two vital dates, which would defeat the claim. In a sense, he stated, that was the only question, but he submitted that it involved the consideration of basically four issues: First, as the applicant company claim as original owner and not by succession, is the question of successor in title relevant? Secondly, if it is relevant, did the agreement of November 23, 1957, constitute T.E.D.O. the applicant company's successor in title within the meaning of the Order, to anything in respect of which a claim would otherwise lie? Thirdly, if it did, did it so constitute T.E.D.O. the applicant company's successor in title to the whole of that which otherwise would have been the subject of a good claim? And, finally, if not, in respect of what can the applicant company still claim?"

Numerous questions arose in regard to the construction and effect of the November, 1957, agreement as well as questions of construction in regard to the Order in Council and as to the matters of which the commission had to be satisfied. The commission held that the expression "successor in title" throughout the Order in Council referred not to the property which had been

"Egyptianised, lost, injured or damaged but to the claim." They held that the recitals to the Orders in Council showed that the "claims" which they had to consider were claims to participate in the fund which, as the treaty of February, 1959, showed, was a fund which was in settlement (*inter alia*) of all "claims" in respect of (shortly stated) the properties which did not have to be returned and which were denoted in Annex E. On a construction of the November, 1957, agreement (and the appellants have accepted that its construction was entirely the function of the commission and is not to be challenged) the commission were satisfied that it

> "operated as an assignment of all claims for compensation that the applicant might have against the U.A.R. in respect of the business and its assets, including cancellation of the mining concessions."

The applicants, they held, being fully aware of such cancellation and of the damage to and purported sale of their business had "sold and intended to sell to T.E.D.O. all claims arising thereout together with the goodwill of the company." As T.E.D.O. was not a British national but

> "as it became in the view of the commission the successor in title of the applicant to the claim against the U.A.R. and any consequent claim to participate in compensation provided to meet that claim the applicant was unable to succeed under article 4 or article 6 in establishing any claim arising out of a claim against the U.A.R."

That was the decision of the commission whose determination of any application made to them "shall not be called in question in any court of law."

This is not a case in which there has been any sort of suggestion of irregularity either of conduct or procedure on the part of the commission.

---------- ***[1969] 2 A.C. 147 at 181***

It has not been said that anything took place which disqualified the commission from making a determination. No occasion arises, therefore, to refer to decisions which have pointed to the consequences of failing to obey or of defying the rules of natural justice: nor to decisions relating to bias in a tribunal: nor to decisions in cases where bad faith has been alleged: nor to decisions in cases where a tribunal has not been properly constituted. If a case arose where bad faith was alleged the difficult case of *Smith v. East Elloe Rural District Council* [1956] A.C. 736 would need consideration: but the present case can, in my view, be approached without any examination of or reliance upon that case.

The provisions of section 4 (4) of the Act do not, in my view, operate to debar any inquiry that may be necessary to decide whether the commission has acted within its authority or jurisdiction. The provisions do operate to debar contentions that the commission while acting within its jurisdiction has come to wrong or erroneous conclusions. There would be no difficulty in pursuing, and in adducing evidence in support of, an allegation such as an allegation that those who heard a claim had never been appointed or that those who had been appointed had by some irregular conduct disqualified themselves from adjudicating or continuing to adjudicate. There would be no difficulty in raising any matter that goes to the right or power of the commission to adjudicate (see *Reg. v. Bolton* (1841) 1 Q.B. 66). What is forbidden is to question the correctness of a decision or determination which it was within the area of their jurisdiction to make.

It is, of course, clear that no appeal is given from a determination of the commission. When Parliament sets up a tribunal and refers matters to it, it becomes a question of policy as to whether to provide for an appeal. Sometimes that is thought to be appropriate. Thus, where (by the Indemnity Act, 1920), provision was made for the assessment by the War Compensation Court of certain claims for compensation for acts done in pursuance of prerogative powers it

was enacted that though the decision of the tribunal (presided over by a judge) was to be final there could be an appeal by a party aggieved by a direction or determination of the tribunal on any point of law. Sometimes, on the other hand, it is not thought appropriate to provide for an appeal. In reference to the Foreign Compensation Tribunal it was presumably thought that the advantages of securing finality of decision outweighed any disadvantages that might possibly result from having no appeal procedure. It was presumably thought that there was every prospect that right determinations would be reached if those appointed to reach them were persons in whom there could be every confidence.

I return, then, to the question as to how the appellants can justify the calling in question by them of the determination of the commission. The answer is that they boldly say that what looks like a determination was in fact no determination but was a mere nullity. That which, they say, should be disregarded as being null and void, is a determination explained in a carefully reasoned document nearly ten pages in length which is signed by the chairman of the commission. There is no question here of a sham or spurious or merely purported determination. Why, then, is it said to be null and void? The answer given is that it contains errors in law which

have caused the commission to exceed their jurisdiction. When analysed this really means that it is contended that when the commission considered the meaning of certain words in article 4 of the Order in Council they gave them a wrong construction with the consequence that they had no jurisdiction to disallow the claim of the applicants.

It is not suggested that the commission were not acting within their jurisdiction when they entertained the application of the appellants and gave it their consideration nor when they heard argument and submissions for four days in regard to it. The moment when it is said that they strayed outside their allotted jurisdiction must, therefore, have been at the moment when they gave their "determination."

The control which is exercised by the High Court over inferior tribunals (a categorising but not a derogatory description) is of a supervisory but not of an appellate nature. It enables the High Court to correct errors of law if they are revealed on the face of the record. The control cannot, however, be exercised if there is some provision (such as a "no certiorari" clause) which prohibits removal to the High Court. But it is well settled that even such a clause is of no avail if the inferior tribunal acts without jurisdiction or exceeds the limit of its jurisdiction.

In all cases similar to the present one it becomes necessary, therefore, to ascertain what was the question submitted for the determination of a tribunal. What were its terms of reference? What was its remit? What were the questions left to it or sent to it for its decision? What were the limits of its duties and powers? Were there any conditions precedent which had to be satisfied before its functions began? If there were, was it or was it not left to the tribunal itself to decide whether or not the conditions precedent were satisfied? If Parliament has enacted that provided a certain situation exists then a tribunal may have certain powers, it is clear that the tribunal will not have those powers unless the situation exists. The decided cases illustrate the infinite variety of the situations which may exist and the variations of statutory wording which have called for consideration. Most of the cases depend, therefore, upon an examination of their

own particular facts and of particular sets of words. It is, however, abundantly clear that questions of law as well as of fact can be remitted for the determination of a tribunal

If a tribunal while acting within its jurisdiction makes an error of law which it reveals on the face of its recorded determination, then the court, in the exercise of its supervisory function, may correct the error unless there is some provision preventing a review by a court of law. If a particular issue is left to a tribunal to decide, then even where it is shown (in cases where it is possible to show) that in deciding the issue left to it the tribunal has come to a wrong conclusion, that does not involve that the tribunal has gone outside its jurisdiction. It follows that if any errors of law are made in deciding matters which are left to a tribunal for its decision such errors will be errors within jurisdiction. If issues of law as well as of fact are referred to a tribunal for its determination, then its determination cannot be asserted to be wrong if Parliament has enacted that the determination is not to be called in question in any court of law.

In a passage in his speech in *Reg. v. Governor of Brixton Prison. Ex*

---------- ***[1969] 2 A.C. 147 at 183***

parte Armah [1968] A.C. 192, 234, my noble and learned friend, Lord Reid, thus stated the matter:

> "If a magistrate or any other tribunal has jurisdiction to enter on the inquiry and to decide a particular issue, and there is no irregularity in the procedure, he does not destroy his jurisdiction by reaching a wrong decision. If he has jurisdiction to go right he has jurisdiction to go wrong. Neither an error in fact nor an error in law will destroy his jurisdiction."

To the same effect were words spoken by Denning L.J. (as my noble and learned friend then was) in *Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1952] 1 K.B. 338, 346:

> "No one has ever doubted that the Court of King's Bench can intervene to prevent a statutory tribunal from exceeding the jurisdiction which Parliament has conferred on it: but it is quite another thing to say that the King's Bench can intervene when a tribunal makes a mistake of law. A tribunal may often decide a point of law wrongly whilst keeping well within its jurisdiction."

In the *Northumberland case* the whole argument proceeded on the basis that the error or errors of law were within jurisdiction. The judgments would have been unnecessary if it could have been asserted that error of construction was tantamount to excess of jurisdiction.

In speaking of the supervisory jurisdiction of the superior court Lord Sumner in his speech in *Rex v. Nat Bell Liquors Ltd*. [1922] 2 A.C. 128, 156 said:

> "Its jurisdiction is to see that the inferior court has not exceeded its own, and for that very reason it is bound not to interfere in what has been done within that jurisdiction, for in so doing it would itself, in turn, transgress the limits within which its own jurisdiction of supervision, not of review, is confined. That supervision goes to two points: one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise."

If, therefore, a tribunal while within the area of its jurisdiction committed some error of law and if such error was made apparent in the determination itself (or, as it is often expressed, on the face of the record) then the superior court could correct that error unless it was forbidden to do so. It would be so forbidden if the determination was "not to be called in question in any court of law." If so forbidden it could not then even hear argument which suggested that error of law had been made. It could, however, still consider whether the determination was within "the area of the inferior jurisdiction."

So the question is raised whether in the present case the commission went out of bounds. Did it

wander outside its designated area? Did it outstep the confines of the territory of its inquiry? Did it digress away from its allotted task? Was there some preliminary inquiry upon the correct determination of which its later jurisdiction was dependent?

For the reasons which I will endeavour to explain it seems to me that at

---------- ***[1969] 2 A.C. 147 at 184***

no time did the commission stray from the direct path which it was required to tread. Under article 4 of the Order in Council the commission was under a positive duty to treat a claim under Part III as established if the applicant satisfied them of certain matters. If they had stated that they were satisfied of those matters but had then declined to treat a claim as established, there would have been a situation very different from that now under consideration and one in which the court could clearly act. So also if they had stated that they were not satisfied of the matters but had nevertheless treated the claim as established. They would have had no right to treat the claim as established unless they were satisfied of the matters. The present is a case in which, faithfully following the wording of article 4, they stated that they were not satisfied of the matters and, therefore, did not treat the claim as established. In stating why they were not satisfied of the matters they have set out the processes of their reasoning. The more that reasoning is examined the more apparent does it, in my view, become that the members of the commission applied their minds very carefully to a consideration of the matters about which the applicant had to satisfy "them." To no one else were the matters remitted but to "them." It was for them to be satisfied and not for anyone else. The words of article 4 state their terms of reference. In those terms were certain words and certain phrases. The commission could not possibly discharge their duty without considering those words and phrases and without reaching a decision as to their meaning. The commission could not burk that task. It seems to me that the words which stated that it was for the commission to be satisfied of certain matters, and defined those matters, inevitably involved that any necessary interpretation of words within the compass of those matters was for the commission. They could not come to a conclusion as to whether they were satisfied as to the specified matters unless and until they gave meaning to the words which they had to follow. Unless such a phrase as "successor in title" was defined in the Order - and it was not - it was an inescapable duty of the commission to consider and to decide what the phrase signified. Doubtless they heard ample argument before forming a view. The same applies in regard to many other words and sequences of words in article 4. But the forming of views as to these matters lay in the direct path of the commission's duties. They were duties that could not be shirked. They were central to the exercise of their jurisdiction. When their fully reasoned statement of their conclusions (which in this case can be regarded as a part of their "determination") is studied it becomes possible for someone to contend that an alternative construction of article 4 should be preferred to that which was thought correct by the commission. But this calling in question cannot, in my view, take place in any court of law. Parliament has forbidden it.

The most careful and valuable judgment of the learned judge contained detailed references to most of the decided cases and acknowledgment was made in the Court of Appeal of the help derived from considering his survey. The learned judge said that the commission had no jurisdiction to consider under article 4 (1) any other question than those which subparagraphs (*a*) and (*b*) of that article on their true construction required them to consider and that if satisfied

of those matters they were under a statutory duty to treat the claim as established and had no jurisdiction to do anything else. That is entirely correct. Nor have the commission

---------- *[1969] 2 A.C. 147 at 185*

done anything else. They were obliged to consider what was the true construction of sub-paragraphs (*a*) and (*b*): they came to conclusions: they followed those conclusions. All that was inevitably left to them for them to decide.

Before returning to this aspect of the matter I must refer to some of the decisions relied upon by the appellants. I do so only because a comprehensive and careful argument was addressed to your Lordships directed to the submission that the decided cases support the view that the determination of the commission can in this case be challenged. In my view, they point to exactly the contrary view. When examined the cases seem to me to reveal a consistent line of authority to the effect that provisions such as the provision in section 4 (*4*) of the Act of 1950 will not avail to bar recourse to the courts if a tribunal has acted without or in excess of jurisdiction, but will bar such recourse if the tribunal has kept within and travelled within its jurisdiction, even if in so doing it has erred in law and even if such error of law is revealed on "the face" of the tribunal's determination.

In *Reg. v. St. Olave's District Board* (1857) 8 E. & B. 529 a question arose whether someone had been an officer of certain commissioners (whose functions by statute came to an end) and so had become entitled to compensation. He applied for it to the district board. They rejected his claim. He appealed to the Metropolitan Board of Works who allowed it. In respect of their decision there was a "no certiorari" clause. A rule was obtained to quash the order of the metropolitan board and affidavits were filed in support of a contention that the person concerned had ceased to be an officer before the Act came into operation which determined the commissioners' functions. In showing cause against the rule it was submitted that the question whether the person was an officer was the very point that the metropolitan board had on appeal to decide. In support of the rule it was submitted that the facts were not disputed on the appeal and that the decision "was entirely on a mistake of law." To that submission Lord Campbell C.J. replied, ibid., 533: "Supposing it to be so the court of appeal were to decide both on law and fact." The Court held that the certiorari ought not to have been granted and the rule to quash the order of the metropolitan board was discharged. Lord Campbell C.J. said that it was not a case in which the jurisdiction of the board depended on a preliminary point and that if they thought that the person was de jure an officer and entitled to compensation their order was not removable.

In his judgment in *Reg. v. Cotham* [1898] 1 Q.B. 802, 808, Kennedy J. noted the distinction between, on the one hand, disregarding the provisions of a statute and considering matters which ought not to be considered and, on the other hand, what he called "a mere misconstruction of an Act of Parliament." This perhaps illustrates the clear distinction which exists between an error when in the exercise of jurisdiction and an error in deciding whether jurisdiction can be assumed: in the latter case an error may have the consequence that jurisdiction was lacking and was wrongly assumed and the result would be that any purported decision would have no validity.

---------- *[1969] 2 A.C. 147 at 186*

In *Rex v. Cheshire Justices, Ex parte Heaver* (1912) 108 L.T. 374 the compensation authority, after the renewal of a licence of a public-house had been refused, had to decide how compensation was to be divided amongst the persons interested in the licensed premises. The lessees of the premises had been held (by the High Court after a case stated) to be entitled to be treated as persons interested in the premises. There was a proviso in the lease that if the renewal of the licence was refused the lease should cease and determine. By reason of the refusal of renewal the lease came to an end seven years before what would have been its ordinary expiration. The lessees claimed to participate by reference to the loss they sustained in consequence of not having the lease for its full term. The compensation authority awarded them a sum which was so small that there were strong grounds for thinking that the authority had proceeded upon a wrong basis. Upon applications by the lessees for certiorari and mandamus it was held that certiorari would not be granted because the order made was good on its face and that mandamus would not be granted because the authority had not declined jurisdiction and because, whether they were right or wrong in their decision upon any question of law arising on the construction of a proviso in the lease or on the facts, the court could not interfere by mandamus as there would at most be an erroneous decision on matters within their jurisdiction. Channel J. said, ibid., 379:

> "If there was an error in deciding a point of law which came before them for their decision in the course of their duty, we cannot set it right."

In *Rex v. Minister of Health* [1939] 1 K.B. 232 there was a question whether a claimant was entitled to a pension (a superannuation allowance). It was said that under the relevant legislation he could only get a pension if he had served for a certain number of years. That he had not done. It was said, however, that under one section of the legislation he would be entitled to receive a pension although he had not served for the stated period. There was a provision that in the case of any dispute as to the right of an officer to receive a pension (or as to its amount) such dispute was to be determined by the Secretary of State whose decision was to be final. The dispute was referred by the claimant to the Secretary of State. He decided that the claimant was entitled. One view was that if on a correct interpretation of the law no one *could* be granted a pension who lacked the requisite years of service, then there could be no dispute which the Minister had jurisdiction to entertain and that consequently the provision as to the finality of his decision would be no bar to an application for certiorari. A rule nisi for a writ of certiorari was discharged by the Divisional Court and an appeal from their decision was dismissed. The Court of Appeal held that the construction of the sections of the legislation came within the jurisdiction of the Minister with the result that even if he made a mistake of law in construing the sections his decision could not be challenged. Certiorari would not lie because if there were any mistakes of law (which the court rather doubted but as to which the court did not have to pronounce) they were mistakes of law within jurisdiction. Greer L.J. said, ibid., 245:

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> "… if the Minister has wrongly construed the section, still he has not acted without jurisdiction, because a mere misconstruction of this section would not entitle the committee to say that the order was made without jurisdiction."

Greer L.J. referred with approval to the following passage in paragraph 1493 in volume 9 of *Halsbury's Laws of England*, 2nd ed. (1933).

> "Where the proceedings are regular upon their face and the magistrates had jurisdiction, the superior court will not grant the writ of certiorari on the ground that the court below has misconceived a point of law. When the court below has jurisdiction to decide a matter, it cannot be deemed to exceed or abuse its jurisdiction, merely because it incidentally misconstrues a

> statute, or admits illegal evidence, or rejects legal evidence, or misdirects itself as to the weight of the evidence, or convicts without evidence." (See now 3rd ed., (1955), vol. 11, p. 62).

Slesser L.J. said that at the highest it could not be said that the Minister had done anything more than to arrive at an erroneous decision.

The reasoning of that case is very much applicable in the present one. The Minister in that case could not determine the dispute which arose without coming to a conclusion as to the construction of the sections of the Act which were the subject of rival contentions. So here the commission had to be satisfied by an applicant that his application related to "property." Property included all rights or interests of any kind in property. The commission might have to decide whether someone had an "interest" in property. Questions of law might arise. The commission had to decide whether an application related to property "in Egypt." Questions of law might arise - apart from questions of geography - as to whether rights or interests were in Egypt. The commission had to decide if an application related to property in Egypt whether such property was referred to in Annex E. What were referred to in Annex E were "the properties in the United Arab Republic of any United Kingdom nationals appearing on" the list which followed. For the meaning of "United Kingdom nationals" the commission would presumably have to look to Annex A of the Treaty of February 28, 1959. The commission then had to decide whether an applicant was one of the United Kingdom nationals referred to in the appropriate part of Annex E "as the owner of the property." Stated more fully the duty of the commission was a duty to decide whether an applicant satisfied them (inter alia) that he "is the person referred to in paragraph (1) (*a*) or in paragraph (2), as the case may be, as the owner of the property or is the successor in title of such person." In this case there has been much concentration on the question whether the commission correctly decided that the phrase "successor in title" included an assignee. But this was but one of very many matters which might receive determination by the commission. A perusal of the Orders in Council shows that they bristle with words and phrases needing construction. For my part I cannot accept that if, in regard to any one of the many points in respect of which interpretation and construction became necessary a view can be formed that the commission made an error, the

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consequence follows that their determination became a nullity as being made in excess of jurisdiction.

If the commission decided that an assignee was a "successor in title" they would have to be satisfied

> "that the person referred to as aforesaid and any person who became successor in title of such person on or before February 28, 1959, were British nationals on October 31, 1956, and February 28, 1959."

If the commission decided that the word "and" meant "and" (which I would not be disposed to regard as being very irrational) they might have to decide some question as to whether an assignment made someone a successor in title on or before the stated date and they might have to decide as to whether the "person referred to" and the "successor in title" were British nationals on each one of two dates. The term "British nationals" is elaborately defined. Is it to be said if the commission decided that someone was not a British national and refused to treat a claim as established that it could be sought to show that the person was a British national after all and that the commission exceeded their jurisdiction in refusing the claim? The first part of the definition of "British nationals" has only to be recited to illustrate how varied and perplexing

might be the points of construction as well as of law and of fact that might have to be decided, namely:

> "(*a*) citizens of the United Kingdom and Colonies, citizens of Rhodesia and Nyasaland, citizens of Southern Rhodesia, British subjects without citizenship, and British protected persons belonging to any of the territories for whose international relations the Government of the United Kingdom were on February 28, 1959, responsible."

Problems far more elusive and perplexing could arise in regard to these words than those relating to the meaning of the phrase "successor in title." Many of the United Kingdom nationals referred to in Annex E were, however, corporations. One part of the definition of "British nationals" which they would have to satisfy reads:

> "corporations and unincorporated associations constituted under the laws in force in the United Kingdom of Great Britain and Northern Ireland or in any territory for whose international relations the government of the United Kingdom were on February 28, 1959, responsible."

In an application of these words many difficult points both of law and of construction and of fact could arise. All these points are comparable in character with the particular points relating to successor in title which have been the focus of attention in this particular case. Many other illustrations could be given in regard to issues of law as well as of fact which might inescapably present themselves for the determination of the commission. Thus paragraph 4 of article 4 begins with the words:

> "If it shall appear to the commission in relation to any Egyptian controlled company …":

"Egyptian controlled company" is defined: the definition picks up the definition of a British national: the paragraph proceeds to lay down how

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the commission may hold if the shares of a British national in such a company had been sold by a sequestrator and how the commission must hold if the Egyptian controlled company was a "converted company" within the definition of those words. Shortly stated, a converted company is an Egyptian controlled company which at certain times was authorised under the laws of the Republic of Egypt or of the United Arab Republic to continue its activities as an Egyptian or United Arab Republic corporation limited by shares. If the commission in steering a course through the elaborations of these and many other complicated provisions made some error of construction or of law which caused the result that they were not satisfied of certain matters and consequently did not treat a claim as established - which they would have done but for some error - I cannot think that it would be right to say that they exceeded their jurisdiction or acted without jurisdiction so that their determination was a nullity. The argument for the appellants involves that if in various cases that may arise before the commission there is some misconstruction of some words in the Order in Council then any resultant decision is a mere nullity.

The claim of the applicants had to be determined by the commission and the applicants were under the obligation of satisfying the commission as to certain stated matters. They could not decide whether or not they were satisfied until they had construed the relevant parts of the Order in Council. When they were hearing argument as to the meaning of those relevant parts they were not acting without jurisdiction. They were at the very heart of their duty, their task and their jurisdiction. It cannot be that their necessary duty of deciding as to the meaning would be or could be followed by the result that if they took one view they would be within jurisdiction and if they took another view that they would be without. If at the moment of decision they were inevitably within their jurisdiction because they were doing what they had to do, I cannot think

that a later view of someone else, if it differed from theirs, could involve that they trespassed from within their jurisdiction at the moment of decision.

It is sometimes the case that the jurisdiction of a tribunal is made dependent upon or subject to some condition. Parliament may enact that if a certain state of affairs exists then there will be jurisdiction. If in such case it appears that the state of affairs did not exist, then it follows that there would be no jurisdiction. Sometimes, however, a tribunal might undertake the task of considering whether the state of affairs existed. If it made error in that task such error would be in regard to a matter preliminary to the existence of jurisdiction. It would not be an error within the limited jurisdiction intended to be conferred. An illustration of this appeared in 1853 in *Bunbury v. Fuller* (1853) 9 Ex. 111. A section of an Act of Parliament imposed a restraint on the jurisdiction of tithe commissioners in the case of lands in respect of which the tithes had already been perpetually commuted or statutorily extinguished. The tithe commissioners had, therefore, no jurisdiction over such lands. Coleridge J. said (ibid., 140):

> "Now it is a general rule, that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends; and however its decision may be final on all particulars, making up

> together that subject-matter which, if true, is within its jurisdiction, and, however necessary in many cases it may be for it to make a preliminary inquiry, whether some collateral matter be or be not within the limits, yet upon this preliminary question, its decision must always be open to inquiry in the superior court."

The learned judge instanced the case of a judge having a jurisdiction limited to a particular hundred before whom a matter was brought as having arisen within it: if the party charged contended that it arose in another hundred, then there would be a collateral matter which was independent of the merits of the claim:

> "… on its being presented, the judge must not immediately forbear to proceed, but must inquire into its truth or falsehood, and for the time decide it, and either proceed or not with the principal subject-matter according as he finds on that point; but this decision must be open to question, and if he has improperly either forborne or proceeded on the main matter in consequence of an error, on this the Court of Queen's Bench will issue its mandamus or prohibition to correct his mistake."

In his judgment in *Reg. v. Commissioners for Special Purposes of the Income Tax* (1888) 21 Q.B.D. 313, 319, Lord Esher M.R. pointed out that while it is generally correct to say that a tribunal cannot give itself jurisdiction by a wrong decision on the facts there may be cases in which the legislature endows a tribunal with jurisdiction, provided that a certain state of facts exists and further endows it with jurisdiction to decide, without any appeal from their decision, whether or not that state of affairs does or did exist, that is, to decide whether a condition precedent was satisfied for the further exercise of jurisdiction:

> "The legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of affairs exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more."

In the present case there was no question of the commission being endowed with jurisdiction only conditionally. The Order in Council made it mandatory that a certain result should follow after the commission came to certain conclusions as to matters remitted to them for their decision. Their jurisdiction and the area and range of it is clear and specific. No condition precedent has to be satisfied before their jurisdiction in regard to a claim begins. An obligation results if in the exercise of their jurisdiction they come to certain conclusions. If a claimant satisfied "them" of certain matters then they were obliged to treat a claim as established. The clear directive to them (which defined the area of their jurisdiction) was that they should address themselves to the question: Has the applicant satisfied us that his application relates to property

in Egypt which is referred to in Annex E and (taking the case of property referred to in paragraph (1) (*a*) or paragraph (2) of Annex E) that the applicant is the person referred to as the owner of the property or is the successor in title of such person and that the person referred to as aforesaid and any person who became successor in title of such person on or before February 28, 1959, were British

nationals on October 31, 1956, and February 28, 1959? There was no condition to be satisfied before their jurisdiction to deal with that question arose. The tribunal decided that the applicant had not satisfied them. The circumstances that the commission have helpfully and quite voluntarily (see sections 11 and 12 of the Tribunals and Inquiries Act, 1958) made available the careful processes of reasoning which guided them to decision has but served to emphasise that they were within their allotted area. That availability may have made criticism of their reasoning possible but it has not made it lawful.

Some of the cases reviewed by the learned judge were those in which it was manifest that a condition precedent for the exercise of a jurisdiction had not been satisfied. Such a case was *Ex parte Bradlaugh* (1878) 3 Q.B.D. 509. A statutory provision gave jurisdiction to a magistrate to order the destruction of books subject to two conditions, namely, first that the publication must be obscene and, secondly, that it must in the magistrate's judgment be such as was a misdemeanour and proper to be prosecuted as such. An order for the destruction of books on the stated ground that the magistrate was satisfied that they were obscene was, therefore, manifestly made without or in excess of jurisdiction. As Cockburn C.J. said (ibid., 512):

> "The order, therefore, does not state the existence of matter that is essential to the jurisdiction."

Even on the assumption that a "no certiorari" section was applicable a rule for certiorari was made absolute.

> "This is an objection founded upon an absence of jurisdiction appearing on the face of the order; and I am clearly of opinion that the section does not apply when the application for the certiorari is on the ground that the inferior tribunal has exceeded the limits of its jurisdiction" (*per* Cockburn C.J., ibid., 512-513).

The statutory provision was definite. The relevant part read:

> "… and if … the magistrate or justices shall be satisfied that such articles, or any of them, are of the character stated in the warrant and that such or any of them have been kept for any of the purposes aforesaid, it shall be lawful for the said magistrate or justices, and he or they are hereby required to order the articles so seized, … to be destroyed …"

The reference to being kept for the purposes aforesaid was a reference to keeping articles for the purpose of sale or distribution or being otherwise published for the purposes of gain, which articles were of such a character and description that their publication would be a misdemeanour and proper to be prosecuted as such. Mellor J. said (ibid., 513), that it was well established that a provision "taking away the certiorari" does not apply where there is an absence of jurisdiction. He said that the order for destruction omitted to state:

> "that the magistrate who made it was satisfied that the books ordered to be destroyed were the proper subject of a prosecution, and therefore the order on the face of it shows an absence of jurisdiction."

The case was really a very plain one and it refers to the undisputed

and well-recognised proposition that a "no certiorari" provision will not apply where there is an absence of jurisdiction. The decision has, however, no other bearing upon the present case for

there is here no room for any suggestion that the commission failed to satisfy any condition precedent or failed to state the existence of any matter essential to their jurisdiction.

In *Rex v. Shoreditch Assessment Committee, Ex parte Morgan* [1910] 2 K.B. 859 a ratepayer claimed that the value of his hereditament had been reduced in value. Pursuant to section 47 of the Valuation (Metropolis) Act, 1869, he addressed a written requisition to the overseers. The section provided that:

> "If in the course of any year the value of any hereditament is increased by the addition of … any building, or is from any cause increased or reduced in value … (1) The overseers of the parish … on the written requisition of … any ratepayer … shall, send to the assessment committee a provisional list containing the gross and rateable value as so increased or reduced of such hereditament."

The section further provided that a person sending a requisition had to send a copy of it to the clerk to the assessment committee. The section further provided that if within fourteen days after the service of the requisition on the overseers they made default in sending the provisional list, then the clerk to the assessment committee was required forthwith to summon the assessment committee

> "and the assessment committee shall appoint a person to make such provisional list, in the same manner as is in this Act provided in the case of the overseers failing to transmit a valuation list."

After the ratepayer had addressed his written requisition to the overseers they failed, as required, to send a provisional list to the assessment committee. Because of the default of the overseers the assessment committee was summoned. The assessment committee instead of appointing a person to make a provisional list proceeded to consider the matter themselves and after hearing the ratepayer's representative passed a resolution that they found as a question of fact that the premises had not been reduced in value during the year so as to warrant the committee appointing a person to make a provisional list. It was held that the ratepayer was entitled to a mandamus commanding the assessment committee to appoint a person to make a provisional list. Provided that there was prima facie evidence of a reduction in value, as it was held that there was, then it seemed plain on the wording of the section that the assessment committee were under obligation to "appoint a person to make such provisional list." As Cozens-Hardy M.R. put it (ibid., 875):

> "The ascertainment of the fact of reduction cannot be a condition precedent to the putting in force of the machinery by which it may be ascertained whether in truth there has been any reduction in value."

The consideration of statutory wording in that case seems to me to have little relation to the problems arising in the present case.

Nor do I find anything in *Reg. v. Fulham, Hammersmith and Kensington Rent Tribunal, Ex parte Hierowski* [1953] 2 Q.B. 147 (on which the appellants relied) which runs counter to the stream of authority. A rent

had been determined and registered by a rent tribunal. A statutory provision gave power to reconsider the rent "on the ground of change of circumstances." Where no change of circumstances was alleged it was not unnaturally held that there was no jurisdiction to inquire whether a proper rent had been determined on the previous occasion.

In the submissions on behalf of the appellants a phrase much used was that the commission had asked themselves wrong questions. The phrase can be employed when consideration is being given to a question whether a tribunal has correctly decided some point of construction. If,

however, the point of construction is fairly and squarely within the jurisdiction of the tribunal for them to decide, then a suggestion that a wrong question has been posed is no more than a means of deploying an argument: and if construction has been left to the tribunal the argument is unavailing. The phrase is, however, valuable and relevant in cases where it can be suggested that some condition precedent has not been satisfied or where jurisdiction is related to the existence of some state of affairs. Thus in the *Bradlaugh case* (1878) 3 Q.B.D. 509, it could properly be said that a wrong question had been asked. In the *Fulham* case [1953] 2 Q.B. 147, the basis for the start of an inquiry did not exist. So in some cases a tribunal may reveal that by asking some wrong question it fails to bring itself within the area of the demarcation of its jurisdiction. In *Maradana Mosque Trustees v. Mahmud* [1967] 1 A.C. 13, P.C., one part of the decision was that the rules of natural justice had been violated. The other part of the decision, relevant for present purposes, was that where statutory authority was given to a Minister to act if he was satisfied that a school is being administered in a certain way he was not given authority to act because he was satisfied that the school *had been* administered in that way. It could be said that the Minister had asked himself the wrong question: so he had, but the relevant result was that he never brought himself within the area of his jurisdiction.

I do not find it necessary to deal fully with *Davies v. Price* [1958] 1 W.L.R. 434 or with the actual decision in that case, but I see no reason for thinking that what was expressed by Parker L.J. (with the concurrence of Lord Evershed M.R. and Sellers L.J.) was out of line with the current of authority: it was there held that even if the Agricultural Land Tribunal had misconstrued a statute that did not mean that they had exceeded their jurisdiction -

> "they clearly had jurisdiction to decide whether to give or withhold consent, and if they misconstrued the statute or acted on no evidence, they merely erred in law" (ibid., 441).

If affidavits "showed that they must have misconstrued the statute, that is not a question of want of jurisdiction …" (ibid., 442).

Without further elaborate citation it is sufficient to refer again to the speech of Lord Sumner in *Rex v. Nat Bell Liquors Ltd*. [1922] 2 A.C. 128, in which he distinguished between a usurpation of a jurisdiction which someone has not got and the wrong exercise of a jurisdiction which someone has got. He used the illustration of a justice who convicted without evidence. He would be doing something that he ought not to do but he would be doing it as a judge:

---------- ***[1969] 2 A.C. 147 at 194***

> "To say that there is no jurisdiction to convict without evidence is the same thing as saying that there is jurisdiction if the decision is right, and none if it is wrong; or that jurisdiction at the outset of a case continues so long as the decision stands, but that, if it is set aside, the real conclusion is that there never was any jurisdiction at all" (ibid., 152).

In the present case the commission could be controlled if being "satisfied" of the matters referred to "them" they failed to obey the mandatory direction of the Order in Council. But in deciding whether or not they were satisfied of the matters they were working within the confines of their denoted delegated and remitted jurisdiction. In the exercise of it very many questions of construction were inevitably bound to arise. At no time was the commission more centrally within their jurisdiction than when they were grappling with those problems. If anyone could assert that in reaching honest conclusions in regard to the questions of construction they made any error, such error would, in my view, be an error while acting within their jurisdiction and while acting in the discharge of their function within it.

In agreement with Sellers, Diplock and Russell L.JJ. I consider that the commission acted

entirely within their designated area of jurisdiction. I do not think that their decision or determination is to be jettisoned as being a nullity.

I would dismiss the appeal.

LORD PEARCE. My Lords, the courts have a general jurisdiction over the administration of justice in this country. From time to time Parliament sets up special tribunals to deal with special matters and gives them jurisdiction to decide these matters without any appeal to the courts. When this happens the courts cannot hear appeals from such a tribunal or substitute their own views on any matters which have been specifically committed by Parliament to the tribunal.

Such tribunals must, however, confine themselves within the powers specially committed to them on a true construction of the relevant Acts of Parliament. It would lead to an absurd situation if a tribunal, having been given a circumscribed area of inquiry, carved out from the general jurisdiction of the courts, were entitled of its own motion to extend that area by misconstruing the limits of its mandate to inquire and decide as set out in the Act of Parliament.

If, for instance, Parliament were to carve out an area of inquiry within which an inferior domestic tribunal could give certain relief to wives against their husbands, it would not lie within the power of that tribunal to extend the area of inquiry and decision, that is, jurisdiction, thus committed to it by construing "wives" as including all women who have, without marriage, cohabitated with a man for a substantial period, or by misconstruing the limits of that into which they were to inquire. It would equally not be within the power of that tribunal to reduce the area committed to it by construing "wives" as excluding all those who, though married, have not been recently co-habiting with their husbands. Again, if it is instructed to give relief wherever on inquiry it finds that two stated conditions are satisfied, it cannot alter or restrict its jurisdiction by adding a

---------- ***[1969] 2 A.C. 147 at 195***

third condition which has to be satisfied before it will give relief. It is, therefore, for the courts to decide the true construction of the statute which defines the area of a tribunal's jurisdiction. This is the only logical way of dealing with the situation and it is the way in which the courts have acted in a supervisory capacity.

Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity.

Further, it is assumed, unless special provisions provide otherwise, that the tribunal will make its inquiry and decision according to the law of the land. For that reason the courts will intervene when it is manifest from the record that the tribunal, though keeping within its mandated area of

jurisdiction, comes to an erroneous decision through an error of law. In such a case the courts have intervened to correct the error.

The courts have, however, always been careful to distinguish their intervention whether on excess of jurisdiction or error of law from an appellate function. Their jurisdiction over inferior tribunals is supervision, not review.

> "That supervision goes to two points: one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise" *(Rex v. Nat Bell Liquors Ltd*. [1922] 2 A.C. 128, 156).

It is simply an enforcement of Parliament's mandate to the tribunal. If the tribunal is intended on a true construction of the Act to inquire into and finally decide questions within a certain area, the courts' supervisory duty is to see that it makes the authorised inquiry according to natural justice and arrives at a decision whether right or wrong. They will intervene if the tribunal asks itself the wrong questions (that is, questions other than those which Parliament directed it to ask itself). But if it directs itself to the right inquiry, asking the right questions, they will not intervene merely because it has or may have come to the wrong answer, provided that this is an answer that lies within its jurisdiction.

It is convenient to set out the matter in broad outline because there has been evolution over the centuries and there have been many technicalities. There have also been many border-line cases. And the courts have at times taken a more robust line to see that the law is carried out and justice administered by inferior tribunals, and at times taken a more cautious and reluctant line in their anxiety not to seem to encroach or to assume an appellate function which they have not got.

Thus an historical survey of the ancient remedies by which the courts have exercised their supervisory jurisdiction by prerogative writs is not very

helpful. By writ of certiorari they have called the decision of an inferior tribunal into the court of the King's Bench Division and examined it and quashed it if it is due to an error of law which can be seen on the face of the record. And, having quashed, the courts can by writ of mandamus direct the tribunal to do its duty according to law, or by writ of prohibition forbid the tribunal to do that which is not in accordance with the law. Where a decision is found to be in excess of or without jurisdiction, there is strictly no need to quash it, since it is a nullity, before issuing a writ of prohibition or mandamus. But on these technical matters the courts have not always been wholly consistent. And it has been argued that certain decisions may have a temporary validity until quashed and only then become a true nullity. These technical matters are not of importance until one comes to consider the effect of what have been referred to as "ouster" or "no certiorari" clauses in Acts of Parliament and in particular the article to that effect in the present case.

In 1883 the courts were given wide discretionary powers to make declarations. In recent years, partly owing to the technical difficulties which have formerly beset the procedure with regard to prerogative writs, there has been an increasing tendency for the courts simply to make declarations without issuing prerogative writs. Pursuant to that practice a declaration was claimed and given in the present case.

There is no need to deal with all the many cases on this subject which have been referred to by counsel and have been carefully, and in my opinion, correctly, analysed in the judgment of Browne J. with which I agree. The principles set out above are established by the following cases.

In *Bunbury v. Fuller* (1853) 9 Exch. 111, 140 Coleridge J. in holding that the decision of an assistant tithe commissioner was not in the circumstances "final and conclusive" within the relevant Act said:

> "Now it is a general rule, that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends; and however its decision may be final on all particulars, making up together the subject matter which, if true, is within its jurisdiction, and however necessary in many cases it may be for it to make a preliminary inquiry, whether some collateral matter be or be not within the limits, yet upon this preliminary question, its decision must always be open to inquiry in the superior court."

In *Reg. v. Commissioners for Special Purposes of the Income Tax* (1888) 21 Q.B.D. 313 Lord Esher M.R. made it clear that it was for the courts to construe the statute which gave jurisdiction to the inferior tribunal. He construed the section in respect of which the commissioners were inquiring and left the facts to them. He said (ibid., 319):

> "This view of the section involves the result that the question, whether the party claiming has so satisfied the terms of the section, must be the subject of inquiry with reference to the particular circumstances in each case. … They have to determine the question, and they must determine it … according to the rule I have laid down."

And later:

---------- ***[1969] 2 A.C. 147 at 197***

> "When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more."

In *Rex v. Board of Education* [1909] 2 K.B. 1045 the Divisional Court quashed a decision of the board on the ground that they

> "… have not only not decided the question submitted to them, but have raised and made an order upon a matter never submitted to them, … or, in other words, they have given themselves jurisdiction to determine the question in favour of the local authority by changing the question submitted to them into the one which we have quoted. …" (Lord Alverstone C.J., ibid., 1061.)

In *Rex v. Shoreditch Assessment Committee, Ex parte Morgan* [1910] 2 K.B. 859 the Court of Appeal issued a mandamus because the committee had misconceived its duties. Farwell L.J. there said (ibid., 880):

> "No tribunal of inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such jurisdiction: such question is always subject to review by the High Court, which does not permit the inferior tribunal either to usurp a jurisdiction which it does not possess, whether at all or to the extent claimed, or to refuse to exercise a jurisdiction which it has and ought to exercise. Subjection in this respect to the High Court is a necessary and inseparable incident to all tribunals of limited jurisdiction; for the existence of the limit necessitates an authority to determine and enforce it: it is a contradiction in terms to create a tribunal with limited jurisdiction and unlimited power to determine such limit at its own will and pleasure - such a tribunal would be autocratic, not limited - and it is immaterial whether the decision of the inferior tribunal on the question of the existence or non-existence of its own jurisdiction is founded on law or fact."

Again in *Board of Education v. Rice* [1911] A.C. 179, H.L.(E.) this House quashed the board's decision and issued a mandamus on the ground that it had not determined the question committed to it by Parliament. Lord Loreburn L.C. there said (ibid., 182):

> "The board is in the nature of the arbitral tribunal, and a court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the court is satisfied either that the board have not acted judicially in the way I have described, or have

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[1969] 2 A.C. 147 at 198

> not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari."

In *Estate and Trust Agencies (1927) Ltd. v. Singapore Improvement Trust* [1937] A.C. 898 the Privy Council issued a writ of prohibition, holding that a housing authority had made a declaration beyond its statutory powers because it had in effect asked itself the wrong question:

> "In other words, the respondents were applying a wrong and an inadmissible test in making the declaration and in deciding to submit it to the Governor in Council. They were therefore acting beyond their powers, and the declaration is not enforceable" (ibid., 917).

In *Seereelall Jhuggroo v. Central Arbitration and Control Board* [1953] A.C. 151, P.C., the Privy Council declined to interfere. The arbitration board had a discretion to decide the amount of payment to planters of sugar cane in Mauritius but there was a statutory fetter that they

> "shall be guided by the principle that the average amount of sugar which planters might expect to receive for their canes would be not less than two-thirds of the amount of sugar canes which a ton of such delivered at the factory may normally be expected to yield."

Lord Porter, giving the judgment there, said (ibid., 162-163):

> "If, then, the board, in coming to its determination, had neglected or rejected that consideration," (that is, the guidance by the principle) "it might well have been held to have exceeded its jurisdiction in taking it to be unfettered, whereas it was subject to a limitation of outlook but not confined to a particular proportion. Whether they used a correct discretion or not is, of course, irrelevant in a case where certiorari is claimed. As long as they take into consideration only matters within their jurisdiction, the resultant decision, right or wrong, is for them and for them only."

He concluded (ibid., 163) that

> "… the board was not precluded from taking the matters complained of into consideration, and it follows that the board did not exceed its powers and that the Supreme Court were right in refusing to grant certiorari or mandamus."

The judgment makes it clear that an inferior tribunal which properly embarks on an inquiry may go outside its jurisdiction if, in the course of that inquiry, it rejects a consideration which it was told to have in mind. It would then in effect be directing itself to an inquiry other than that which was laid on it by Parliament. *Reg. v. Fulham, Hammersmith and Kensington Rent Tribunal, Ex parte Hierowski* [1953] 2 Q.B. 147 is another case where a tribunal embarked properly on an inquiry within its jurisdiction, but at the end of it made an order in excess of jurisdiction which was held to be a nullity though it was an order of the kind which it was entitled to make in a proper case.

In the case of the *Maradana Mosque* [1967] 1 A.C. 13 the Privy Council held that the Minister of Education in Ceylon acted without or in excess of jurisdiction in that he asked himself the wrong question in deciding whether to make an order.

[1969] 2 A.C. 147 at 199

All these cases give firm support for the principles outlined above.

The case of *Rex v. Minister of Health* [1939] 1 K.B. 232 might seem to give difficulty. The Minister had been given the duty to decide the right to superannuation of a servant and he

decided that the servant had such a right. The court thought that probably the Minister construed the relevant section right, but it held that in any event it had not been shown that he acted outside his jurisdiction. It may be that the court was saying rightly that when it appears more probable that a Minister has not misconstrued anything, there is no ground for certiorari. But it seems possible that the court was saying (which I found difficult) that on the construction of the particular words giving jurisdiction to the Minister, he was given power to construe the regulations as well as investigate the facts. I do not find the reasoning in the case very satisfactory.

The case of *Davies v. Price* [1958] 1 W.L.R. 434 seems to be out of accord with the main line of authority. The inquiry under review was in effect directed to the wrong question and therefore the applicant should have succeeded. In my opinion, the case was wrongly decided.

Many of the cases cited turn on the difficult question of how far, if at all, the court could take cognisance of an error that was not manifest on the record. That problem did not arise in cases of excess or lack of jurisdiction since there the court for obvious reasons did not confine itself to the record. It looked into all relevant circumstances to see whether jurisdiction did or did not exist. Therefore the problem does not occur here. Indeed, it has to a great extent been eliminated by the Tribunals and Inquiries Act, 1958, under which so many tribunals now have to give reasons. Although the defendant commission is not compelled to do so, it very properly disclosed its reasons in a thoughtful minute of adjudication which has in fact been relied on in the particulars of the defence.

The above principles may, however, be affected by the existence (as here) of an ouster or no certiorari clause. The words of section 4 (4) of the Foreign Compensation Act, 1950, are:

> "The determination by the commission of any application made to them under this Act shall not be called in question in any court of law."

It has been argued that your Lordships should construe "determination" as meaning anything which is on its face a determination of the commission including even a purported determination which has no jurisdiction. It would seem that on such an argument the court must accept and could not even inquire whether a purported determination was a forged or inaccurate order which did not represent that which the commission had really decided. Moreover, it would mean that however far the commission ranged outside its jurisdiction or that which it was required to do, or however far it departed from natural justice its determination could not be questioned. A more reasonable and logical construction is that by "determination" Parliament meant a real determination, not a purported determination. On the assumption, however, that either meaning is a possible construction and that therefore the word "determination" is ambiguous, the latter meaning would accord with a long-established line of cases which adopted that construction.

---------- ***[1969] 2 A.C. 147 at 200***

One must assume that Parliament in 1950 had cognisance of these in adopting the words used in section 4 (4).

In 1829 in *Campbell v. Brown* (1829) 3 Wils. & S. 441 this House upheld a decision of the Lord Ordinary that although by the statute 43 Geo. III, c. 54, s. 21, the judgment of the Presbytery is declared to be final without appeal or review by the court, civil or ecclesiastical, yet if the proceedings upon which judgment was pronounced were contrary to law or if that court

exceeded the powers committed to it by statute, they may be reversed and set aside by the court. Lord Lyndhurst L.C., in dealing with the argument that the court's power was ousted by the statute, said (ibid., 445):

> "But I apprehend, that (particularly from the circumstance of the appeal being taken away) a jurisdiction is given in this case to the Court of Session, not to review the judgment on the merits, but to take care that the Court of Presbytery shall keep within the line of its duty, and conform to the provisions of the Act of Parliament. There is in the Court of Session in Scotland, that superintending authority over inferior jurisdictions, which is requisite in all countries, for the purpose of confining those inferior jurisdictions within the bounds of their duty; and the only question here is, whether this case is of such a nature and description as to justify the calling into action that authority of the superior court? Cases were cited at the Bar, and mentioned in the printed papers now on your Lordships' table, in which the Court of Session has exercised a superintending authority over inferior jurisdictions, when they have been guilty of excess of their jurisdiction, or have acted inconsistently with the authority with which they were invested."

In *Bradlaugh's case* (1878) 3 Q.B.D. 509 there was an ouster clause, but Cockburn C.J. said at p. 513:

> "I am clearly of the opinion that the section does not apply when the application for the certiorari is on the ground that the inferior tribunal has exceeded the limits of its jurisdiction."

Mellor J. said:

> "It is well established that the provision taking away the certiorari does not apply where there was an absence of jurisdiction. The consequence of holding otherwise would be that a metropolitan magistrate could make any order he pleased without question."

This case has been treated as a leading authority that "no certiorari" clauses do not oust the courts where there is an absence of jurisdiction (Lord Parker C.J. in *Reg. v. Hurst, Ex parte Smith* [1960] 2 Q.B. 133, 142) or an excess of jurisdiction (Denning L.J. in *Reg. v. Medical Appeal Tribunal, Ex parte Gilmore* [1957] 1 Q.B. 574, 586). Had Parliament intended to make a departure in 1950 from the more reasonable construction previously given for so many decades to no certiorari clauses, it must have made the matter more clear.

In my opinion, the subsequent case of *Smith v. East Elloe Rural District Council* [1956] A.C. 736 does not compel your Lordships to decide otherwise. If it seemed to do so, I would think it necessary to reconsider the

case in the light of the powerful dissenting opinions of my noble and learned friends, Lord Reid and Lord Somervell. It might possibly be said that it related to an administrative or executive decision, not a judicial decision, and somewhat different considerations might have applied, certainly none of the authorities relating to absence or excess of jurisdiction were cited to the House. I agree with Browne J. that it is not a compelling authority in the present case. Again, the fact that this commission was expressly exempted from the provisions of section 11 of the Tribunals and Inquiries Act passed in 1958, though no doubt a tribute to the high standard of the commission and the fact that its chairman was a lawyer of distinction, cannot have any bearing on the construction of the Foreign Compensation Act, 1950.

If, therefore, the commission by misconstruing the Order in Council which gave them their jurisdiction and laid down the precise limit of their duty to inquire and determine, exceeded or departed from their mandate, their determination was without jurisdiction and Browne J. was right in making the order appealed from.

The Foreign Compensation Act, 1950, gave wide powers to provide by Orders in Council for the determination by the commission of claims to compensation payable by foreign governments

under future agreements (see section 3 (*a*), (*b*) and (*c*)). Subsection (*c*) embodied the powers under section 2 (2) (*a*) for defining the persons who are to be qualified to make claims and the powers under 2 (2) (*b*) for prescribing the matters which have to be established to the satisfaction of the commission. Thus it provided for the giving of wide or narrow powers. Pursuant to that Act the Order in Council which deals with the present claim gave a wide power to determine the amount of compensation. But with regard to the establishment of the claims under article 4 it gave narrow powers. It gave no general discretion at all. If the applicant satisfies them of certain listed matters, the commission shall treat the claim as established. The only listed matters so far as relevant to the present claim were, the appellants argue, (1) the fact that the property referred to in Annex E was in Egypt; (2) the identity of the claimant as referred to in Annex E; and (3) the nationality of the claimant on certain dates. There is no dispute that on these matters they satisfied the commission. Therefore, on the appellants' argument, the commission had a mandatory duty to treat their claim as established. If their construction of article 4 is correct, the appellants are right in this contention. There was no discretion in the commission, no jurisdiction to put further hurdles, other than those listed, in the path of the appellants' claim or to embark on inquiries other than those which the Order in Council directed. The commission, on the other hand, construed the Order as giving them jurisdiction to inquire and be satisfied on two further points; since they were not satisfied on these they rejected the claim. If *their* construction is correct, they were entitled to do so and have not exceeded their jurisdiction.

The substance of the point is this. Once the claimants proved their identity as persons mentioned in Annex E of the Anglo-Egyptian Treaty and their nationality, did they also have to prove on a true construction of the Order that they had no successor in title, successor in title meaning for this purpose successor to the claim against Egypt (later transmuted

---------- ***[1969] 2 A.C. 147 at 202***

by the treaty into a claim to participate in the compensation)? If so, did they have to prove further that any such successor also fulfilled the nationality qualifications? If the claimants had to prove those additional things, admittedly their claim fails. If they did not, then the inquiry made was not the limited inquiry directed by Parliament.

Substantially the whole of the Order is concerned with the treaty between the British and Egyptian Governments of 1959 and the whole of article 4 is concerned with Annex E of the treaty.

After Suez the Egyptians had sequestrated the properties of British subjects, including the appellants, and barred their access to Egyptian courts of law. Later, certain of those properties, including the appellants' mines and property, had been sold by the sequestrator to an Egyptian authority, T.E.D.O. Finally a treaty was made between the British and Egyptian Governments whereby, inter alia, the property of certain persons listed in Annex E of the treaty was retained by the Egyptians on payment of £27,500,000 compensation. Other property was returned. The negotiation of compensation for Annex E property was not directly based on a calculation of separate amounts for each property but on a general consideration of all the claims. But it is obvious that in the bargaining which preceded the agreement the argument must have ranged over many of the particular items of which the global arrangement was composed.

Before the treaty was signed the appellants had managed to secure some compensation (amounting to about one-eighth of the value of their property) from the Egyptians. They achieved this by establishing a nuisance value. They wrote round to American and European customers pointing out that the Egyptians had unlawfully supplanted them in their mining business. From the Egyptian point of view this was bad for business. The appellants' mining leases were cancelled and threats of legal action were made against them by the Egyptians. The appellants persisted, however, until an agreement was made whereby, in effect, they received £500,000 for their nuisance value (the mines had been worth about £4,000,000 or upwards). They agreed to abandon their name of Sinai Mining Co. Ltd. The form of the agreement was a sale by them to T.E.D.O. of their assets in Egypt, but by Egyptian law the property had already been validly sold to T.E.D.O. by the sequestrator and, therefore, the appellants had no property to sell. The Foreign Office was kept informed of these matters contemporaneously. One may presume that in the bargaining over Annex E the Egyptian representatives tried to claim that the appellants' property had been sold to them by the appellants and, therefore, did not call for any compensation. One may also presume that the British representatives rejected this purported sale at one-eighth of the value of the property seized while accepting, of course, that credit must be given for the £500,000. I accept the learned judge's view that by extracting the £500,000 from the Egyptians by their own efforts the appellants did "nothing but good to the other claimants for compensation," since the appellants would of course have to give credit for it in their present claim.

Be that as it may, the appellants (under their former name) were included in Annex E and there were added the words "(special arrangement)." I read these words as an indication that there were special considerations

---------- ***[1969] 2 A.C. 147 at 203***

in respect of this company, *i.e*., the fact that credit must be given by them for £500,000 already received.

It is to be noted that Annex E refers to:

> "The properties in the United Arab Republic of any United Kingdom nationals appearing On the following list."

It is a list of persons not properties. And by Annex A (4) "'owners' shall include any successor of the owner." It would be necessary to provide for a successor in case one of the named persons had died or in case one of the undertakings had been dissolved. If assignments of property as opposed to universal successions had been contemplated, I would expect the words "in respect of such property" to be inserted. In my opinion, the mind of the draftsman was addressed to the normal necessity of providing for universal successors and not to the unlikely event of assignment of some rights (if any) to the sequestrated property by the owners after the sequestration.

When one comes to the Order, article 4 is headed: "Claims in respect of property referred to in Annex E." It sets out to distribute the compensation to the persons there listed. The applicant must first prove (4 (1) (*a*)) that his application relates to property in Egypt which is referred to in Annex E. Next he must prove (4 (1) (*b*)) that he is the person referred to in Annex E or is the successor in title of such person and (4 (1) (*b*) (ii)) that he

> "and any person who became successor in title of such owner on or before February 28, 1959, were British nationals on October 31, 1956, and February 28, 1959."

Article 4 (3) reads:

> "For the purposes of sub-paragraphs (*b*) (ii) and (*c*) (ii) of paragraph (1) of this article, a British national who died, or in the case of a corporation or association ceased to exist" between the relevant dates "shall be deemed to have been a British national on the latter date and a person who had not been born, or in the case of a corporation or association had not been constituted," on the earlier date "shall be deemed to have been a British national on that date if such person became a British national at birth or when constituted, as the case may be."

The tenor of the article and in particular the reference to unborn children shows that the draftsman is directing his mind, primarily at least, to universal successors.

In my view, therefore, the treaty was originally concerned to obtain compensation for listed persons in respect of their property in Egypt, provided they were British nationals. In case any human persons had died or corporations had ceased their universal successors were included as alternatives to the listed persons, provided the successor was also a British national. Later the Order in Council was concerned likewise to give compensation to the listed persons or, if they had ceased to exist, to their successors. As long, therefore, as the listed persons survived, their successors would not be relevant, since there would not be any. A successor in title of a person is different from a successor in title to a part of his property.

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T.E.D.O. were never strictly a successor in title of the appellants who, no doubt, being a British company, had some assets other than those in Egypt; and these did not pass to T.E.D.O. Successor in title in the context means universal successor. There are difficulties that might arise under such a construction in certain unlikely circumstances, but I do not think that these were in the contemplation of the draftsman, since he did not envisage that a successor in title would exist while the original person or corporation on the list existed. Such a construction would enable one to give a clear, simple meaning to the words. I appreciate that one would not expect the "and" in 4 (1) (*b*) (ii). But this is due to the unfortunate compression of the subsection. Since the unattractive composite and/or was denied to him, the draftsman had to choose between the two words, neither of which alone would import the right meaning for both situations, namely, where the original claimant was claiming and where the successor was doing so. In the latter case only must two things be proved, namely, that both the successor and the person in Annex E were British. The mere presence of the word "and" in this highly compressed subsection would not justify turning the section from an otherwise clear meaning in accordance with the apparent general intention into a devious and complicated meaning out of accord with it.

The other construction which reads a successor in title as an assignee of or successor to some particular thing creates various difficulties. First, one must write in words that show to what he was successor in title. This is not a straightforward matter of implication. There might be some justification for writing in the words "to the said property" since "property" is the matter with which 4 (1) (*a*) and 4 (1) (*b*) are concerned and almost immediately precedes the words "successor in title." If one does that, however, one reduces the article to absurdity, since the assignee of the property of nearly all the listed persons was T.E.D.O. which was not a British national. Therefore, almost every claimant who was intended to benefit must fail. To avoid this obvious absurdity, therefore, one must write in further words to the effect that "successor in title to the property does not include any person taking by virtue of the sequestration." In my view,

such a rewriting of the article is not permissible if any reasonable meaning can be given to the words as they stand.

Alternatively one must write in the words "to such claim" taking the word (rather dubiously) from the heading and first line of article 4 (1). But there was no such claim in existence when the appellants made the purported sale to T.E.D.O. The matters upon which the appellants made a claim, viz., Annex E and the payment under it, did not exist. Moreover, any claim (which then could only be a moral claim) against the British government was expressly excluded from the purported sale to T.E.D.O., and there was never any successor in title in respect of such a claim. Then, is one to write further into the article "any claim against the Egyptian government"? I see no reason to do so. That would lead to great complication since such claims were not enforceable, and there is no clear indication what happened to such claims when the British government accepted compensation. Thus, there is no relevance in claims against the Egyptian government, as opposed to the moral claims against both governments. And the claim had vanished by the time of the Order.

---------- ***[1969] 2 A.C. 147 at 205***

Nor do I think that the purported sale to T.E.D.O. can be read as an assignment of claims in respect of confiscation. There cannot surely be implied the assignment of a claim against the Egyptian government in respect of the confiscation of the business, since the whole agreement was a denial that it had been confiscated. The agreement of "sale" was a document based on the seller still owning the business. It was made on the assumption that there had been no expropriation of the business and there could be no claim in respect of it. It would be absurd for T.E.D.O. to acquire as owners a claim in respect of that which had made them owners. As one would expect, therefore, the only claims referred to in the "sale" agreement were claims in respect to "damage to or reduction in value of" the business. This is quite different from a claim for total expropriation; it refers presumably to war damage. By Egyptian law (which applied to the "sale" agreement) there was no claim for the expropriation. In my view, it is impossible to torture the "sale" agreement into some implication that thereby the appellants impliedly assigned a claim against Egypt (inconsistent with the basis of the document) for expropriation of the business. This, however, would be an error within the jurisdiction and would not create a nullity. Therefore, in view of the ouster clause it would not be a ground for interference in this case.

I do not accede to any argument that a spes or moral claim came into this matter; nor do I see why, if so, it should be a spes against the Egyptian government rather than a spes against the British government. The appellants had a moral claim against both the Egyptian and British governments, the effect of whose policies had brought this loss upon them. Additionally the British government had a duty to protect the interests of the appellants. But assignments of moral claims or hopes were not within the contemplation of the purported sale or of article 4. Moreover, if the appellants *had* assigned any claims, it would be an equitable assignment. The appellants would still have their legal right to pursue any claim, but a court of equity would compel them to pay the fruits to an assignee.

In my opinion, the respondents' construction of article 4 necessitates an unjustifiable writing in of words and leads to quite needless complexity and difficulty. The appellants' construction, however, gives a more direct interpretation which is in accordance with the general intention shown by the treaty and the Order in Council. These did not envisage the extraordinarily unlikely

events of persons in Annex E selling tenuous claims against either or both of the governments concerned. A fortiori I do not think that the British government was concerning itself with subtle and complicated preventions of a benefit to a non-British person who might conceivably have bought up such a claim, or with defeating both a sufferer and his mortgagee if the sufferer should mortgage the fruits of his claim to a non-British person or the sufferer if he should sell part of it.

The purported sale of the appellants' property only arose from their ingenious use of their nuisance value. That was known to the British government and was adequately covered by article 10 which directed the commission when assessing the loss to have regard to and record separately any compensation or recoupment in respect of that loss. It is not impossible that the article was originally inspired by the knowledge of the appellants' bargain with T.E.D.O. And if it had been intended to exclude the appellants,

---------- ***[1969] 2 A.C. 147 at 206***

though listed in Annex E, from compensation, it would have been easy to say so.

I therefore prefer the learned judge's construction of article 4 as being simpler, more literal and more in accordance with the general intention of the Order in Council and the treaty with which it is concerned.

It has been suggested that the appellants have no merits. I do not think that merits come into this matter. The appellants have just so much merits as a person has when, through no fault of his own, he has been deprived of property worth £4,000,000 and has received by his own efforts £500,000 in compensation. True, the appellants thought at one time they would get no more. And if they now share in the compensation they will get in toto (after giving credit for the half million pounds) somewhat more than they would have done had they brought in nothing by their own efforts, since the larger claims are scaled down to make the money go round. Whether this is unfair as against another claimant who lost four million pounds and brought nothing into the contra account by his own efforts is a matter of opinion. So, too, is the fairness of those with smaller losses getting a larger proportion than the appellants with their larger loss. All these are part of a sensible rough and ready attempt to ration the compensation when there is not enough to go round. No doubt in many cases it works rather unfairly. It would certainly seem a little hard if the appellants were wholly debarred from the fund merely because they secured £500,000 by their own efforts.

It was argued that the declaration should not have been made, because this was not an apt form of relief. I do not accept that argument. It was also argued that the form of the declaration went too far. But these are matters in which the learned judge has a wide experience and it appears that Mr. Bridge (as he then was) who then appeared for the respondents and also has a wide experience did not argue about the form of the declaration (while of course resisting the making of any such order at all). I think it would be wrong for your Lordships to embark now on such an argument.

I would therefore allow the appeal and restore the order of Browne J.

LORD WILBERFORCE. My Lords, the appellant, Anisminic Ltd. (an English company) claims

the right to participate in the Egyptian compensation fund composed of £27.5 million made available to Her Majesty's government under a treaty with the United Arab Republic of February 28, 1959, and any money added to this sum by subsequent Parliamentary authority. The Foreign Compensation Commission has by "provisional determination" rejected this claim, and we have to decide whether, in doing so, it has made a determination which, in the words of section 4 (4) of the Foreign Compensation Act, cannot be called in question in the courts. The commission has also admitted to registration a claim by the appellants in respect of war damage but it is agreed that this claim does not arise if the first claim is established.

I must first say something as to the legal framework of this appeal: for though, in my opinion, the solution of this case is to be looked for in the thickets of subsidiary legislation, it is useful to be clear as to the general character of the argument. I do not think that it is difficult to

describe this and I shall endeavour to do so, initially at least, in nontechnical terms, avoiding for the moment such words as "jurisdiction," "error" and "nullity" which create many problems.

The Foreign Compensation Commission is one of many tribunals set up to deal with matters of a specialised character, in the interest of economy, speed, and expertise. It has acquired a unique status, since it alone has been excepted from the provisions of section 11 of the Tribunals and Inquiries Act, 1958. It is now well established that specialised tribunals may, depending on their nature and on the subject-matter, have the power to decide questions of law, and the position may be reached, as the result of statutory provision, that even if they make what the courts might regard as decisions wrong in law, these are to stand. The Foreign Compensation Commission is certainly within this category; its functions are predominantly judicial; it is a permanent body, composed of lawyers, with a learned chairman, and there is every ground, having regard to the number and the complexity of the cases with which it must deal, for giving a wide measure of finality to its decisions. There is no reason for giving a restrictive interpretation to section 4 (4) which provides that its "determinations" are not to be "called in question" in courts of law.

In every case, whatever the character of a tribunal, however wide the range of questions remitted to it, however great the permissible margin of mistake, the essential point remains that the tribunal has a derived authority, derived, that is, from statute: at some point, and to be found from a consideration of the legislation, the field within which it operates is marked out and limited. There is always an area, narrow or wide, which is the tribunal's area; a residual area, wide or narrow, in which the legislature has previously expressed its will and into which the tribunal may not enter. Equally, though this is not something that arises in the present case, there are certain fundamental assumptions, which without explicit restatement in every case, necessarily underlie the remission of power to decide such as (I do not attempt more than a general reference, since the strength and shade of these matters will depend upon the nature of the tribunal and the kind of question it has to decide) the requirement that a decision must be made in accordance with principles of natural justice and good faith. The principle that failure to fulfil these assumptions may be equivalent to a departure from the remitted area must be taken to follow from the decision of this House in *Ridge v. Baldwin* [1964] A.C. 40. Although, in theory perhaps, it may be possible for Parliament to set up a tribunal which has full and autonomous powers to fix its own area of operation, that has, so far, not been done in this country. The

question, what is the tribunal's proper area, is one which it has always been permissible to ask and to answer, and it must follow that examination of its extent is not precluded by a clause conferring conclusiveness, finality, or unquestionability upon its decisions. These clauses in their nature can only relate to decisions given within the field of operation entrusted to the tribunal. They may, according to the width and emphasis of their formulation, help to ascertain the extent of that field, to narrow it or to enlarge it, but unless one is to deny the statutory origin of the tribunal and of its powers, they cannot preclude examination of that extent.

It is sometimes said, the argument was presented in these terms, that the

preclusive clause does not operate on decisions outside the permitted field because they are a nullity. There are dangers in the use of this word if it draws with it the difficult distinction between what is void and what is voidable, and I certainly do not wish to be taken to recognise that this distinction exists or to analyse it if it does. But it may be convenient so long as it is used to describe a decision made outside the permitted field, in other words, as a word of description rather than as in itself a touchstone.

The courts, when they decide that a "decision" is a "nullity," are not disregarding the preclusive clause. For, just as it is their duty to attribute autonomy of decision of action to the tribunal within the designated area, so, as the counterpart of this autonomy, they must ensure that the limits of that area which have been laid down are observed (see the formulation of Lord Sumner in *Rex v. Nat Bell Liquors Ltd*. [1922] 2 A.C. 128, 156). In each task they are carrying out the intention of the legislature, and it would be misdescription to state it in terms of a struggle between the courts and the executive. What would be the purpose of defining by statute the limit of a tribunal's powers if, by means of a clause inserted in the instrument of definition, those limits could safely be passed?

After the admirable analysis of the authorities made by Browne J. in his judgment (available in the record in this House) no elaborate discussion of authority is needed in order to support this view of the courts' powers. I extract some well-known pronouncements which have stood the test of time. One may find difficulty in some of the cases in following the reasoning by which the conclusion has been reached that a particular area of decision was or was not remitted to the tribunal concerned. Some of these are complicated by the procedural refinements of the prerogative writs: in others perhaps the apparent merits or demerits of the decision may have led the courts into strained distinctions between facts which the tribunal might legitimately find and others (called "jurisdictional") which it might not. But the principle is now becoming reasonably clear.

The separate but complementary responsibilities of court and tribunal were very clearly stated by Lord Esher M.R. in *Reg. v. Commissioners for Special Purposes of the Income Tax* (1888) 21 Q.B.D. 313, 319, in these words:

> "When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction."

That the ascertainment of the proper limits of the tribunal's power of decision is a task for the court was stated by Farwell L.J. in *Rex v. Shoreditch Assessment Committee, Ex parte Morgan* [1910] 2 K.B. 859, 880 in language which, though perhaps vulnerable to logical analysis, has proved its value as guidance to the courts:

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> "Subjection in this respect to the High Court is a necessary and inseparable incident for all tribunals of limited jurisdiction; for the existence of the limit necessitates an authority to determine and enforce it: it is a contradiction in terms to create a tribunal with limited jurisdiction and unlimited power to determine such limit at its own will and pleasure - such a tribunal would be autocratic, not limited - and it is immaterial whether the decision of the inferior tribunal on the question of the existence or non-existence of its own jurisdictions is founded on law or fact."

Denning L.J. added his authority to this in *Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1952] 1 K.B. 338, 346 in the words:

> "No one has ever doubted that the Court of King's Bench can intervene to prevent a statutory tribunal from exceeding the jurisdiction which Parliament has conferred on it, but it is quite another thing to say that the King's Bench can intervene when a tribunal makes a mistake of law. A tribunal may often decide a point of law wrongly whilst keeping well within its jurisdiction."

These passages at least answer one of the respondents' main arguments, to some extent accepted by the members of the Court of Appeal, which is that *because* the commission has (admittedly) been given power, indeed required, to decide some questions of law, arising out of the construction of the relevant Order in Council, it must necessarily have power to decide those questions which relate to the delimitation of its powers; or conversely that if the court has power to review the latter, it must also have power to review the former. But the one does not follow from the other: there is no reason why the Order in Council should not (as a matter of construction to be decided by the court) limit the tribunal's powers and at the same time (by the same process of construction) confer upon the tribunal power, in the exercise of its permitted task, to decide other questions of law, including questions of construction of the Order. I shall endeavour to show that this is what the Order has done.

The extent of the interpretatory power conferred upon the tribunal may sometimes be difficult to ascertain and argument may be possible whether this or that question of construction has been left to the tribunal, that is, is within the tribunal's field, or whether, because it pertains to the delimitation of the tribunal's area by the legislature, it is reserved for decision by the courts. Sometimes it will be possible to form a conclusion from the form and subject-matter of the legislation. In one case it may be seen that the legislature, while stating general objectives, is prepared to concede a wide area to the authority it establishes: this will often be the case where the decision involves a degree of policy-making rather than fact-finding, especially if the authority is a department of government or the Minister at its head. I think that we have reached a stage in our administrative law when we can view this question quite objectively, without any necessary predisposition towards one that questions of law, or questions of construction, are necessarily for the courts. In the kind of case I have mentioned there is no need to make this assumption. In another type of case it may be apparent that Parliament is itself directly

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and closely concerned with the definition and delimitation of certain matters of comparative detail and has marked by its language the intention that these shall accurately be observed. If *Rex v. Minister of Health* [1939] 1 K.B. 232 was rightly decided, it must be because it was a

case of the former type. The dispute related to a superannuation allowance and the statute provided that "any dispute" should be determined by the Minister. The basis of the decision is not very clearly expressed but can, I think, be taken to be that, as the context and subject-matter showed, the Minister had a field of decision extending to the construction of the superannuation provisions of the Act. The present case, by contrast, as examination of the relevant Order in Council will show, is clearly of the latter category.

I do not think it desirable to discuss further in detail the many decisions in the reports in this field. But two points may perhaps be made. First, the cases in which a tribunal has been held to have passed outside its proper limits are not limited to those in which it had no power to enter upon its inquiry or its jurisdiction, or has not satisfied a condition precedent. Certainly such cases exist (for example *Ex parte Bradlaugh* (1878) 3 Q.B.D. 509) but they do not exhaust the principle. A tribunal may quite properly validly enter upon its task and in the course of carrying it out may make a decision which is invalid - not merely erroneous. This may be described as "asking the wrong question" or "applying the wrong test" - expressions not wholly satisfactory since they do not, in themselves, distinguish between doing something which is not in the tribunal's area and doing something wrong within that area - a crucial distinction which the court has to make. Cases held to be of the former kind (whether, on their facts, correctly or not does not affect the principle) are *Estate and Trust Agencies (1927) Ltd. v. Singapore Improvement Trust* [1937] A.C. 898, 915-917; *Seereelall Jhuggroo v. Central Arbitration and Control Board* [1953] A.C. 151, 161

> ("whether [the board] took into consideration matters outside the ambit of its jurisdiction and beyond the matters which it was entitled to consider");

Reg. v. Fulham, Hammersmith and Kensington Rent Tribunal, Ex parte Hierowski [1953] 2 Q.B. 147. The present case, in my opinion, and it is at this point that I respectfully differ from the Court of Appeal, is of this kind. Secondly, I find myself obliged to state that I cannot regard *Smith v. East Elloe Rural District Council* [1956] A.C. 736 as a reliable solvent of this appeal, or of any case where similar questions arise. The preclusive clause was indeed very similar to the present but, however inevitable the particular decision may have been, it was given on too narrow a basis to assist us here. I agree with my noble and learned friends, Lord Reid and Lord Pearce, on this matter. I am also unable to accept the correctness of *Davies v. Price* [1958] 1 W.L.R. 434, if relied on as a decision that, in giving consent on a ground which was not one of those stated by the statute, the tribunal was acting (though wrongly) within its powers.

I proceed now to consider the relevant statutory provisions. The Foreign Compensation Act, 1950, was passed in order to provide, immediately, for the constitution of the commission and for the distribution

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by it of compensation under agreements entered into with Yugoslavia and Czechoslovakia. It also provided a framework for the eventual distribution of any compensation which might be received from other governments. This was done by section 3, which was as follows:

> "If His Majesty's Government in the United Kingdom enter into or contemplate an agreement with the government of any foreign country providing for the payment of compensation by the latter government, His Majesty may by Order in Council make provision for all or any of the following matters, that is to say:- (*a*) for the registration by the commission of claims to participate in such compensation, and for the making of reports by the commission with respect to such claims; (*b*) for the determination of such claims by the commission; (*c*) for any matters arising in relation to such claims for which, in relation to the claims mentioned in the last preceding section, provision may be made under that section; (*d*) for the distribution by the

> commission of any sums paid to them by His Majesty's Government in the United Kingdom, being sums received under the agreement; (*e*) for any supplementary and incidental matters for which provision appears to His Majesty to be necessary or expedient."

The reference in paragraph (*c*) to section 2 enabled the Order in Council to make provision

> "(*a*) for defining the persons who are to be qualified, in respect of nationality or status, to make applications to the commission for the purpose of establishing such claims as aforesaid, and for imposing any other conditions to be fulfilled before such claims can be entertained; (*b*) for prescribing the matters which have to be established to the satisfaction of the commission by persons making such applications;"

This shows very clearly that as and when machinery should be set up enabling the commission to deal with compensation under future agreements, this should be within fixed and determined limits which the legislature itself would lay down: thus Parliament might (under section 2 (2) (*a*)) define qualified persons and impose conditions, and (under section 2 (2) (*b*)) prescribe matters to be established to the commission's satisfaction. There could be no doubt that if, so far as such power was exercised and such definitions, conditions and prescribed matters were laid down, these would be architectural directions binding the commission, so that if it departed from them, it would be acting beyond its powers. Moreover, when one compares the terminology of section 4 (4) "the determination by the commission of any application made to them under this Act …" with that of section 3 (*b*) "the determination of claims …" and appreciates that the power to determine claims is to be subject to such limits (as to definitions, conditions or prescribed matters) as might be approved by Parliament, the conclusion must follow that the preclusive clause can have no application except to a determination made within the limits, whatever they turn out to be, fixed by Parliament. The respondents' argument that the commission has only to make a self-styled

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"determination" in order to enjoy automatic protection is thus at once seen to be unsustainable.

Equally open to objection is another argument of the respondents which I mention because it obtained some approval in the Court of Appeal. That is that this fund was derived from a foreign power under a treaty, so that, in accordance with well-known principles (see *Rustomjee v. The Queen* (1876) 1 Q.B.D. 487; (1876) 2 Q.B.D. 69) no subject had any legal claim to any part of it. The distribution of the fund was solely a matter for the executive and it would be inconsistent with this situation to recognise any right of an aggrieved person to bring any claim before the court. I cannot follow this argument. Of course it would have been open to Parliament, or the executive, to provide that the distribution of this fund should be carried out entirely according to the unreviewable discretion of the commission or any other person, and if they had done so it would have been futile for any claimant to try to bring the court into the matter. The question is whether this is what has been done, or whether, on the contrary, Parliament, while leaving it to the commission to decide whether specified qualifications have been satisfied in individual cases, has itself laid down those qualifications, or some of them, in terms which admit of no departure. It is at least certain that Parliament was concerned that the fund should, in principle, go to British nationals only and the whole question is whether it has also decided, or left to the commission, an incidental question connected with that of nationality.

I turn now to the Order in Council in order to see to what extent the circumscribing power has been exercised. This, up to a point, is extremely clear. Article 4 opens with the words: "The commission shall treat a claim … as established if the applicant satisfies them of the following matters." More imperative words could not be devised. The word "shall" serves, and no word

could serve better, to indicate those matters which have been decided and laid down by the legislature, as part of its policy and within which the commission is to make its determination. The commission's own sphere of operation (ample enough) is conveyed by the words "satisfies them," by subsequent references such as "the commission may" by their duty to "assess … as seems just and equitable," by "if it shall appear to the commission" and similar words. So, whatever difficulties there may in some cases be in ascertaining what is left to the tribunal, on the one hand, and what is reserved from them, on the other, do not exist here: the demarcation is plainly made.

The next step, and the really difficult one, is to ascertain exactly where the limits of the commission's powers have been set. These must be found from an examination and construction of (relevantly) article 4 (1) (*a*) and (*b*). The historical antecedents of this article, including the relevant provisions of the agreement of February 28, 1959, have been fully set out in your Lordships' opinions, and provisions of the Order in Council have been analysed both there and by Browne J. in his judgment. I forbear from repeating this analysis, as to which I am in agreement with my noble and learned friends, Lord Reid and Lord Pearce, as well as with the learned judge.

I would summarise the considerations which persuade me that the learned judge's conclusions were correct as follows:

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1. The use of words. Throughout article 4 the words are "successor in title of such person"; never is there any reference to the property or any property. The first reference, in Annex A of the treaty of February 28, 1959, was to "successors of such person." If a particular successor, by assignment, to a particular property had been meant, one would have expected a clearer reference. I recognise that there are difficulties in the way of an interpretation which refers to successorship on death and it may well be that these references are not accurately thought out. But the Order is dealing with property abroad, in which some foreign nationals may be interested, and I do not think that such inaccuracy as there is should determine the broader question which concerns us. We must accept that the Order uses "successors" as *including* successors on death and the question is whether in addition the word includes assignees.

2. The difficulty of working out any conception of assignment. It is clear that, if any assignments are included, those particular assignments which took place when Annex E properties were sold by Egyptian sequestrators under Proclamation No. 5 cannot be included: to include them would stultify the whole article. But neither is there any warrant for treating such assignments as non-existent, nor, if they are not so treated, is it easy to give any meaning to assignment. It was at one time thought that the article contemplated assignments which would have taken effect if no sale by sequestration had occurred; in the end this was, rightly in my view, given up. But if these sales are not disregarded, the difficulty of stating what kind of assignment is meant becomes very great. It becomes necessary to wrestle with the concept of a spes restitutionis against the United Arab Republic, converted, after February 28, 1959, into a spes of compensation against the United Kingdom government, transmuted again after April, 1959 (the first Order in

Council), into a hope of sharing in the fund. Perhaps this, with all its difficulties, can be worked out, but the difficulties add to the objections against this interpretation.

3. As a matter of policy, one starts with Her Majesty's Government's claim under the treaty, which was to recover British property, and with the receipt of money to compensate for the retention of Annex E property; then, on the one hand, it is perfectly comprehensible that the requirement should be imposed that either the claimant, being an original owner, should be a British national, or that, if he is dead and someone else claims in his place, that person should also be a British national. It can be seen from Annex E that many, if not most, of the claimants were resident if not domiciled in Egypt. On the other hand, there seems no obvious reason why a British national who has disposed of, or charged, any rights he might have in respect of his property should recover if he has done so in favour of a British subject, but should not do so if he has done so in favour of a non-British subject. As between such a person and the other claimants on the fund, that person has just as good a claim, provided that he does not recover twice. And, in order to prevent this, there is article 10.

4. Article 10 provides that in assessing any loss the commission shall have regard to any compensation or recoupment in respect of that loss which the applicant has received from any other source. This was accepted by Browne J. as a strong argument in favour of the "successor on death"

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argument. I think this was right. It seems very appropriately to fit such a case as the applicant's where, whether by "assignment" or not, the original owner has succeeded in obtaining some "recoupment" for loss of his property. Compensation or recoupment is hardly likely to be made without some assignment of rights; and, in the conditions prevailing before 1959, it does not seem probable that any assignment would be possible to a British national, or indeed otherwise than to a national of the United Arab Republic.

These considerations, cumulatively, are, in my opinion, compelling. There remains, of course, the drafting of article 4 (1) (*b*) (ii) "that the person referred to *and* any person who became successor in title," which does appear to suggest that a situation may exist where a successor in title is relevant even if the claim is made by the original owner. But I think that this is not decisive: it is merely the result of unfortunate telescopic drafting. The draftsman ought to have dealt separately with the two cases saying (i) if a claim is made by the person referred to as aforesaid that he was a British national. … (ii) if a claim is made by the successor in title of such person and such person succeeded before February 28, 1959, that both he and the person referred to as aforesaid were British nationals. We are well used to doing, by interpretation, this kind of work on the draftsman's behalf, and I think we can do so here.

In my opinion, therefore, article 4 should be read as if it imposed three conditions only on satisfaction of which the applicant was entitled, under statutory direction, to have his claim admitted, namely - (*a*) that his application relates to property in Egypt referred to in Annex E; (*b*) that he was the person referred to in Annex E paragraph (1) (*a*) as the owner of the property; (*c*) that he was a British national at the specified dates. As, ex concessis, all these conditions were

fulfilled to the satisfaction of the commission, the appellants' claim was in law established; the commission by seeking to impose another condition, not warranted by the Order, was acting outside its remitted powers and made no determination of that which alone it could determine. Indeed one might almost say, conversely, that having been satisfied of the three conditions, the commission has, in law, however it described its actions, determined the claim to have been established.

I should mention, in justice to the respondents' argument, that a contention was put forward to the effect that, even if the commission had acted outside its power in the respect suggested, its decision could be upheld on other grounds. I need only say of this that it too involved introducing considerations not laid down in the Order in Council and for the same reasons could not be accepted. Finally there is the question of remedy. Once it is established that the commission, basing its decision on an interpretation of the Order in Council which cannot be maintained, has made a determination beyond its powers, it appears to me to be clear that the court had power to declare this and the correct interpretation of the Order in Council by declaration. Indeed this remedy is in every respect the most suitable in the circumstances of the case. No objection to the actual form of the declaration was taken before Browne J. In my opinion the appeal should be allowed and the order of Browne J. restored.

---------- ***[1969] 2 A.C. 147 at 215***

LORD PEARSON. My Lords, I have had the advantage of reading in advance the opinions of my noble and learned friends, Lord Reid, Lord Pearce and Lord Wilberforce. As to the general nature of the court's supervisory function (as distinct from any appellate function) in relation to decisions of tribunals I agree with what they have said and have nothing to add. I agree with them also that what has been called the "ouster provision" in section 3 (4) of the Foreign Compensation Act, 1950, does not exclude the court's intervention in a case where there is a merely purported determination given in excess of jurisdiction. Also in relation to the present case I would join with my noble and learned friends to this extent, that if the appellants' contentions as to the true construction of the relevant Order in Council are upheld, it must follow that the commission have acted in excess of jurisdiction and the court should intervene in the exercise of its supervisory function. According to the appellants' contentions, the commission were satisfied of the only matters of which on the true construction of the Order in Council the appellants as applicants had to satisfy them, and so the appellants were entitled to a determination in their favour; but the commission, misconstruing the Order in Council, erroneously thought that there were further matters of which the appellants had to satisfy them, and so the commission embarked upon an irrelevant inquiry and (in the familiar phrase) asked themselves the wrong question and gave a purported determination which was outside the area of their jurisdiction. If that is the right view of what the commission have done, there has been excess of jurisdiction.

I am, however, not able to agree that the commission misunderstood the Order in Council, or made any error affecting their jurisdiction. The questions of construction arise with regard to the provisions of article 4 (1) (*b*) of the relevant Order in Council, which is the Foreign Compensation (Egypt) (Determination and Registration of Claims) Order, 1962. In order to supply the necessary background to these provisions it is necessary to make some reference to the outline of the history and to certain provisions of previous instruments.

On November 1, 1956, soon after the commencement of the "Suez Incident" the Egyptian Government issued Proclamation No. 5 of 1956. and thereby they sequestrated the assets in Egypt of British and French subjects, including the appellants' manganese mine in the Sinai Peninsula. The mine was in the territory which came to be occupied by Israeli forces. In April, 1957, after the Israeli forces had withdrawn, the Egyptian Minister of Finance and Economy, acting under article 9 of the proclamation, authorised the Custodian General of the property of British, French and Australian subjects to sell and liquidate the establishments and other property of persons set out in a list, in which the appellants were included. On April 29, 1957, there was a contract of sale, to which the first party was the Custodian General and the second party was Alsayed Hassan Ibrahim "in his capacity as the Chairman of the Economic Board and representative of the Sinai Manganese Co. S.A.E. (under formation)." The appellants were not a party. By the contract, all assets belonging to the appellants were sold by the first party to the second party at a price to be determined by a committee, and it was provided by clause 5 that

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"all title to the assets sold hereunder shall be assigned to and taken over by the purchaser immediately this contract is signed by the parties hereto."

Presumably the sale by that contract was valid under Egyptian law, but in July, 1957, the appellants through agents wrote letters to customers of the manganese mine stating that the sequestrator had no authority whatever to act on behalf of the company or to deal in any way with its assets, whether in Egypt or elsewhere, and that the company regarded as a violation of its legal rights any transaction involving ores from the mine and would take in any country any steps which it might consider necessary to assert or protect these rights. On the other side the Egyptian Minister of Industry in September, 1957, promulgated an order whereby the mining leases previously granted to the appellants were cancelled

> "as from the date the said company's property was liquidated and the assets thereof were sold to the Economic Board on April 29, 1957."

Also the newly-formed Egyptian company, the Sinai Manganese Co. S.A.E., issued a writ against the appellants' agents and others. Then there were discussions and an agreement was made on November 23, 1957. The parties to this November agreement were (1) the appellants, (2) the Egyptian company, Sinai Manganese Co. S.A.E., (3) the Economic Development Organisation, called T.E.D.O., which, I think, is the same as the "Economic Board" represented by Mr. Ibrahim in the April agreement, (4) the Sequestrator General of British property in Egypt, who may be the same as the Custodian General referred to in the April agreement. By clause 1A the appellants agreed to sell and T.E.D.O. agreed to buy the whole business of the first party as carried on and situate in Egypt, and the Sequestrator General consented to and acquiesced in the sale. By clause 1B (i) (*a*) the business was deemed to include all the assets of the appellants situate in Egypt. By clause 1B (ii):

> "The said assets of the first party shall not include any claim which the first party may be entitled to assert against any governmental authority other than the Egyptian Government, as a result of loss suffered by, or of damage to or reduction in the value of the business or assets of the first party during or following on the events of October and November, 1956."

The price was £500,000 sterling, payable out of the proceeds of sales of ore other than local sales in Egypt. Clause 12B included a provision that:

> "This agreement … shall in no respect be deemed a waiver of the claims or rights of the first party save to the extent that it expressly so provides."

This November agreement is in some respects a puzzling document. The appellants' property had already been sold by the April agreement to a person representing T.E.D.O. and the Egyptian company, Sinai Manganese Company S.A.E. How then could the appellants now sell it and how could T.E.D.O. buy it? I think this November agreement can only be explained by reference to the assertions which the appellants' agents had been making to customers of the manganese mine. The possible weakness of the April

---------- ***[1969] 2 A.C. 147 at 217***

agreement (though it would be a weakness in international law or politics or morals rather than in Egyptian law) was that the appellants were not a party to it and refused to accept the authority of the sequestrator to act on their behalf. The object of the November agreement was to clarify the position. The appellants were a party to the November agreement and by it they sold or purported to sell their property to T.E.D.O. at an agreed price. After that they would be precluded (whether legally or politically or morally) from asserting any right or title to the property. Also clause 1 of the November agreement can be construed as involving a sale by the appellants to T.E.D.O. of any claims which the appellants might have against the Egyptian Government in respect of the sequestration and expropriation of their property. By this clause the appellants sold to T.E.D.O. their whole business as carried on and situate in Egypt, and the business was deemed to include all their assets situate in Egypt, and paragraph B (ii) of the clause can be regarded as showing that any such claims of the appellants against the Egyptian Government would constitute assets of the business situate in Egypt and would pass under this contract of sale in T.E.D.O. That is a possible view.

On February 28, 1959, a treaty or agreement was made between the Government of the United Kingdom and the Government of the United Arab Republic concerning financial and commercial relations and British property in Egypt. The first three paragraphs of article III provided that:

> "The Government of the United Arab Republic shall: (*a*) on the date of the signature of the present agreement terminate the application of all measures of sequestration taken by the government of the United Arab Republic against British property between October 30, 1956, and the date of signature of the present agreement. … (*b*) return all British property (or the proceeds of any such property sold between October 30, 1956, and the date of the signature of the present agreement) to the owners thereof in accordance with the provisions of Annex B to the present agreement. … (*c*) be entitled to exclude from the provisions of paragraph (*b*) of this article property sold between October 30, 1956, and August 2, 1958, under the provisions of Proclamation No. 5 of November 1, 1956, and referred to in Annex E to the present agreement. …"

Paragraph 1 of Article IV provided that:

> "The Government of the United Arab Republic shall pay to the United Kingdom Government the sum of £27,500,000 sterling in full and final settlement of the following: (*a*) all claims in respect of the property referred to in paragraph (*c*) of article III of the present agreement; (*b*) all claims in respect of injury or damage to property suffered prior to the date of the signature of the present agreement as a result of the measures referred to in paragraph (*a*) of article III of the present agreement."

Article I and Annex A provided certain definitions:

> "(2) 'British property' shall mean the property in Egypt of United Kingdom nationals. … (3) 'United Kingdom nationals' are (i) physical persons who at the date of the signature of the present agreement are

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> citizens of the United Kingdom and Colonies … (ii) corporations and associations incorporated or constituted under the laws in force in the United Kingdom … or in any territory for whose international relations the United Kingdom Government are, at the date of the signature of the present agreement, responsible provided that the persons, corporations and associations concerned were equally United Kingdom nationals on October 31, 1956. (4) 'Owners' shall mean United Kingdom nationals who on any date between October 30, 1956, and the date of the signature of the present agreement,

> were entitled to the property, rights or interests in question, to the extent to which they were so entitled, and shall include any successors of the owners provided such successors are United Kingdom nationals as defined in paragraph (3) of this annex."

Paragraph (1) of Annex E had a heading which included the words

> "The properties in the United Arab Republic of any United Kingdom nationals … appearing on the following list: …"

and the list included "Sinai Mining (subject to a special arrangement)."

It is important to note that the requirements in respect of nationality were stringent. To qualify as an "owner" an individual had to be a United Kingdom national, and he was not a United Kingdom national unless he was a citizen both on October 30, 1956, and on February 28, 1959. A person who was a successor of an owner qualified as an owner, but to be a successor he must have been a citizen both on October 30, 1956, and on February 28, 1959. There were similar requirements for corporations.

In April, 1959, the Foreign Compensation (Egypt) (Determination and Registration of Claims) Order, 1959, was made. The first recital referred to the Foreign Compensation Act, 1950, and the second recital referred to the provision in the treaty of February 28, 1959, for payment by the Government of the United Arab Republic to the United Kingdom Government of the sum of £27,500,000 "in full and final settlement of the claims referred to in paragraph (1) of article IV of the agreement." The third recital was:

> "And whereas it is expedient that provision should be made with regard to sums received from the Government of the United Arab Republic and for the registration, assessment and determination of claims in respect of British property in Egypt."

There was in article 1 a definition of "British nationals." Article 4 was as follows:

> "The commission shall treat a claim under this Part of the Order as established if the applicant satisfies them of the following matters:- (1) that his application relates to property in Egypt which was sold between October 30, 1956, and August 2, 1958, under the provisions of Egyptian Proclamation No. 5 of November 1, 1956; (2) that the property at the time of such sale was owned by a British national; (3) that the property is referred to in Annex E to the agreement; (4) that he was the owner at the time of such sale or is the successor in title of such owner; and (5) that the owner at the time of such sale and his successor in title, if any, were British nationals on

---------- ***[1969] 2 A.C. 147 at 219***

> October 31, 1956, and February 28, 1959. For the purposes of this paragraph, a British national who died, or in the case of a corporation or association ceased to exist, between October 31, 1956, and February 28, 1959, shall be deemed to have been a British national on the latter date."

This Order in Council of 1959 is only a predecessor of the Order in Council of 1962, under which the appellants applied, but it has interesting features. First, as to the meaning of the word "claim." The claims referred to were until the treaty was made outstanding claims against the Egyptian Government (the Government of the United Arab Republic) for restitution or compensation. Under the treaty the Egyptian Government paid to the United Kingdom Government a sum in full and final settlement of these claims. That was an international transaction between governments. The claims probably had no validity by the law of Egypt, the country in which the expropriated or damaged property was situate. They were claims of a political character, presented by the United Kingdom Government in diplomatic negotiations and settled by the payment made by the Egyptian Government to the United Kingdom Government. When the payment had been made there was a fund available for compensating the claimants, and the Order in Council was providing for the registration, assessment and determination of "claims." The claims would now be claims to participate in the distribution of the fund, but they

would be derived from, rooted in and identifiable with the previous claims against the Egyptian Government.

Secondly, the nationality requirements of this Order in Council of 1959 were stringent and evidently based largely on the nationality requirements of the treaty. The property must have been owned by a British national at the time of the sale which took place between October 30, 1956, and February 28, 1959, under the proclamation. The claimant must be the person who was the owner at the time of such sale or his successor in title. Both the owner and the successor in title, if any, must have been British nationals both on October 31, 1956, and on February 28, 1959. I see no reason for doubting that this last-mentioned requirement contained in paragraph 5 of article 4, is to be read literally as requiring that both of them must have been British nationals on both of the specified dates. It was because of this requirement that the deeming provision in the second sentence of paragraph 5 had to be inserted. Suppose the person who was the owner at the time of the sale had (being an individual) died or (being a corporation) ceased to exist before February 28, 1959, and his successor in title was the claimant. The owner still had to have British nationality on February 28, 1959, and it had to be fictitiously conferred on him by the deeming provision.

Thirdly, there is not in the language of paragraph (5) any indication that if the owner is making the claim and has a successor in title the owner is relieved from the need to prove that both he and the successor in title were British nationals on the two specified dates.

Fourthly, it is noted that the property referred to in this article was property in Egypt which was sold between October 30, 1956, and August 2, 1958. This is evidently a reference to the sales by the

Sequestrator General (Custodian General) under the proclamation, and one of these sales was the April agreement. The successor in title could not be a successor in title to the ownership of the property. He could only be a successor in title to the former owner's claim for restitution or compensation.

The Order in Council of 1959 was amended by an Order in Council of 1960, one of the objects of which (as appears from the explanatory note) was to facilitate the establishment of claims under article 4 of the Order of 1959 in cases in which the applicants had been unable to obtain formal evidence of the sale or of the date of sale of their properties under the proclamation. It would be sufficient to show a sale or a deprivation of possession and enjoyment of the property. But the stringent nationality requirements were continued in a slightly different form. The applicant had to show:

> "(*b*) that the property at the time of such sale or deprivation was owned by a British national …; (*d*) that the applicant was the owner at the time of such sale or deprivation or is the successor in title of such owner; and (*e*) that the owner at the time of such sale or deprivation and any person who became successor in title of such owner on or before February 28, 1959, were British nationals on October 31, 1956, and February 28, 1959."

Again there seems to be no reason for reading the nationality requirements otherwise than literally. Both of them had to have British nationality on both of the dates. There is another point of interest in sub-paragraph (*e*). A person could have become successor in title on or before February 28, 1959, and therefore at a time when the property had been sold, so that the owner had lost his ownership and had nothing left but a claim against the Egyptian Government for

restitution or compensation. If the claim had no validity in Egyptian law, and was merely political and not legal in character and could be described as only a "spes," nevertheless a person could within the meaning of the Order in Council become a successor in title to the claim. It was something the title to which could pass from one person to another.

In August, 1962, by an exchange of notes between the United Kingdom Government and the Egyptian Government (the Government of the United Arab Republic) a new and partly different Annex E was substituted for the Annex E which was originally incorporated in the treaty: The heading now omitted any reference to a sale under the proclamation, but referred to "the properties of any United Kingdom nationals appearing on the following list. …" The appellants were still included in the list and after their name there were still the words "(subject to a special arrangement)." This must have been a reference to the November agreement, but there was nothing to show what the effect of the special arrangement was intended to be.

Then in October 1962 the Order in Council of 1962, which is the crucial Order in Council under which the appellants made their application, was made in substitution for the Order in Council of 1959 as amended. I think it is sufficient to set out the following portions of article 4:

> "(1) The commission shall treat a claim under this Part of the Order

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> as established if the applicant satisfies them of the following matters:- (*a*) that his application relates to property in Egypt which is referred to in Annex E; (*b*) if the property is referred to in paragraph (1) (*a*) or paragraph (2) of Annex E - (i) that the applicant is the person referred to in paragraph (1) (*a*) or in paragraph (2), as the case may be, as the owner of the property or is the successor in title of such person; and (ii) that the person referred to as aforesaid and any person who became successor in title of such person on or before February 28, 1959, were British nationals on October 31, 1956, and February 28, 1959 … (2) For the purposes of sub-paragraph (*b*) (i) of paragraph (1) of this article, any reference in paragraph (2) of Annex E to the estate of a deceased person shall be interpreted as a reference to the persons entitled to such estate under the testamentary dispositions or intestacy of such deceased person. (3) For the purposes of subparagraphs (*b*) (ii) and (*c*) (ii) of paragraph (1) of this article, a British national who died, or in the case of a corporation or association ceased to exist, between October 31, 1956, and February 28, 1959, shall be deemed to have been a British national on the latter date, and a person who had not been born, or in the case of a corporation or association had not been constituted on October 31, 1956, shall be deemed to have been a British national on that date if such person became a British national at birth or when constituted, as the case may be. …"

It seems to me that the provisions of sub-paragraph (b) can and should be read quite literally as meaning what they appear to say. "Successor in title" means a person, whether an individual or a corporation, to whom the claim for restitution or compensation (being all that was left of the owner's interest in the property) has passed by any mode, whether by testamentary disposition or by devolution on intestacy or by assignment or otherwise. By "assignment" I mean a transfer of the beneficial interest. The applicant may be the initial owner claiming on his own behalf, or the initial owner claiming for the benefit of a successor in title, or he may be the successor in title. The applicant, whoever he may be, has to prove that both the initial owner and any person who became successor in title on or before February 28, 1959, were British nationals on October 31, 1956, and February 28, 1959. It was natural to require that the claim should have been British held on October 31, 1956, just before the Egyptian measures of sequestration began, and on February 28, 1959, the date of the treaty. The stringent requirement that each of them must have been a British national on both of the dates (so that an initial owner would have to remain a British national after he had parted with the beneficial interest in the claim and a successor in title would need to have been a British national before he acquired any interest in the claim), though prima facie surprising, was entirely natural because it was following the

requirements of the treaty under which the compensation money for meeting such claims had been paid.

Paragraph (2) of the article shows that in a case where there has been a passing of the property on death the successor in title is the holder of the beneficial interest and not the executor or administrator.

Paragraph (3) contains the "deeming" provisions which are necessitated

by the stringent nationality requirements. If the owner (being an individual) has died or (being a corporation) has gone out of existence in the period between the two dates, he or it can only be *deemed* to have been a British national on the latter date. And, conversely, if he or it had been born or come into existence between the two dates, he or it can only be *deemed* to have been a British national on the earlier date.

As the provisions of sub-paragraph (*b*) can be understood literally, without any artificial limitation or distortion of the grammatical sense of the words, and the resulting effects are not unreasonable or unnatural, I think the provision should be so understood.

The rival theory is beset with difficulties. It involves reading "successor in title" as meaning only a universal successor. There is no warrant for this limitation in the provisions of the article, and the words "in title" naturally refer to the title to some property, in this case at the material times a claim. The phrase "successor in title" is not apt in relation to a universal successor, and indeed the concept of a universal successor is unfamiliar in English law and would need to be specially indicated in some way, if it was intended. Moreover it seems to me that theory breaks down in the case of testamentary dispositions, which are expressly contemplated by paragraph (2). It is not only possible but usual for testamentary dispositions to divide the testator's estate into several portions allotted to different beneficiaries. In that case there is no universal successor, and, if the theory is right, there is nobody qualified to claim under the article: the testator cannot claim because he is dead, and the beneficiary to whom the claim is given by the will cannot claim because he is not a successor in title in the sense of universal successor. Similarly in the case of a corporation going into liquidation and being dissolved, the concept of a universal successor is inappropriate and unworkable. The liquidator sells the assets and conveys or delivers or assigns them to the purchaser or purchasers. The succession must be effected by means of the sale and conveyance or delivery or assignment - by act of parties and not by operation of law. If there are several purchasers, none of them is a universal successor, and again nobody can claim under the article if the theory is right.

Moreover, the theory requires a departure from the natural meaning of sub-paragraph (*b*) (ii). It has to be regarded as a compressed or telescoped provision. As the learned judge, Browne J., said:

> "At any given moment there can only be in existence either the original owner or his successor in title but not both."

If there is a successor in title, he is the only possible claimant, having wholly displaced the original owner. He has to prove both his own British nationality and the British nationality of the initial owner, but can only do this under the deeming provisions as the initial owner must have died or ceased to exist in order to let in the universal successor. If the initial owner still exists, he

is the only possible claimant and he has to prove only his own British nationality on the two dates. If he has sold his beneficial interest in the claim to X, he does not have to say anything about that, because that is only a transfer of a particular interest and not a universal succession. Thus a claim which is beneficially a foreign-held claim at the date of the treaty is admitted to participation in the fund. All these results

seem to me inconsistent with the probable intention appearing from the provisions of the article.

I would say therefore that the commission construed the article correctly and did not ask themselves any wrong question or exceed their jurisdiction in any way.

Having so construed the article, the commission had to make a decision as to the effect of the November agreement. They decided that by that agreement the claim passed to T.E.D.O., and so was at the date of the treaty foreign-held and therefore it was excluded by the provisions of article 4 (*b*) (ii) from participation in the fund. The decision as to the effect of the November agreement, whether right or wrong, was plainly within their jurisdiction, and therefore by virtue of section 4 (4) of the Foreign Compensation Act, 1950, it cannot be called in question in any court.

I would dismiss the appeal.

Appeal allowed.

Solicitors: Linklaters & Paines; Treasury Solicitor.

F. C.

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