

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

UNIVERSITY OF LONDON
W.C.I.

7 FEB 1961

INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN :

THE UNIVERSITY OF CEYLON (Defendant) Appellant

- and -

E. F. W. FERNANDO ... (Plaintiff) Respondent

50394

CASE FOR THE APPELLANT

RECORD

- 10 1. This is an appeal from a judgment dated 28th November, 1956, of the Supreme Court of Ceylon (Weerasooriya J. and T.S. Fernando J.) allowing an appeal from a judgment dated 31st August, 1954, of the District Court of Colombo (Kariapper A.D.J.) which dismissed the Respondent's claim for a declaration (and other relief) that the Appellant University had wrongfully suspended the Respondent, a student of the Appellant University, from all examinations. p.194
- 20 2. The appeal involves questions of the extent to which the Courts can inquire into the disciplinary agencies and decisions of the Appellant University and of the extent to which such agencies are obliged to follow judicial procedures. p.171
- 3. The facts giving rise to this appeal so far as material to be herein stated are as follows.
- 30 4. The Respondent at all relevant times was a student in the Faculty of Science of the Appellant University. In March 1952, he presented himself as an examinee for the Final examination in Science for the Degree of Bachelor of Science. One of the papers, Zoology Paper 5, in that examination contained a passage in the German language which candidates were required to translate.

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p.276 5. After the Respondent had sat for the said Paper, an allegation was made to the Vice-Chancellor of the Appellant University, Sir Ivor Jennings, Q.C., that the Respondent had had prior knowledge of the content of the passage to be translated. By the 'General Act' No. 1 Chapter VIII Part I Clause 8, under which the Appellant University is constituted, "where the Vice-Chancellor is satisfied that any candidate for an examination has acquired knowledge of the nature or substance of any question or the content of any paper before the date and time of the examination, or has attempted or conspired to obtain such knowledge, the Vice-Chancellor may suspend the Candidate from the examination or remove his name from any pass list, and shall report the matter to the Board of Residence and Discipline for such further action as the Board may decide to Take." By Clause 14, "Where any matter is reported to the Board of Residence and Discipline under this Part, the Board may

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- p.279
- (1) Remove the name of the candidate from any pass list; or
 - (2) Suspend the candidate from any University examination for such period as the Board may decide or indefinitely; or
 - (3) order that the candidate be suspended from the University for such period as the Board may decide, or indefinitely; or
 - (4) do all or any of these acts."
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6. In order to assist him in deciding what steps he should take under Clause 8 above the Vice-Chancellor asked Mr. A. E. Keuneman Q.C., a member of the University Council and Professor Mylvaganam, Dean of the Faculty of Science to help him inquire into the aforesaid allegation. It was the contention of the Respondent that the three constituted a Commission of Inquiry which was obliged to act judicially. It was the contention of the Appellant that Clause 8 imposed upon the Vice-Chancellor no obligation to act judicially, and that he cannot have acquired such an obligation merely by asking two other persons to assist him in making up his mind.

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10 7. Assuming that the Respondent's contention is correct and that the so-called Commission of Inquiry was obliged to act judicially, the Respondent contends that it failed so to act on several grounds, the chief being that it violated the principles of natural justice in five respects. All such grounds were rejected by the District Court of Colombo, and the Supreme Court of Ceylon agreed with the District Court, save that the Supreme Court considered that the Respondent had not been informed with sufficient precision of the charge against him and in particular that he was not given the opportunity of confronting and cross-examining a hostile witness, a Miss Balasingham.

20 8. The gist of Miss Balasingham's story was that she, a fellow student of the Respondent, had prior to the examination seen in a notebook belonging to the Respondent a list of about thirty German words, of which she had managed to copy out nine words into an exercise book produced by her. The words which she copied appeared in the German passage in the examination paper in substantially the same order as she copied them.

30 9. The subject-matter of the inquiry was first brought to the Respondents' attention by a letter from the Vice-Chancellor's dated the 16th May 1952. This refers to an allegation in writing "that you had acquired knowledge of the content of one or more of the papers set out at the Final Examination in Science, Section B Zoology, before the date of the examination". At his first appearance before the Vice-Chancellor and his two assistants on 21st May 1952, the Respondent was at an early stage asked by Mr. Keuneman whether he had seen the Zoology paper containing the German passage before the examination. He was not told in detail what any of the persons previously interviewed had said about the matter. He was, however, told by Mr. Keuneman that Miss Balasingham had said that she knew that he had had 8 or 10 German words in his exercise book before the examination, and he was shown Miss Balasingham's exercise book containing the German words. He was then asked:

p.235
p.29
p.24-5
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40 "Did you have these 8 or 10 German words that were in Miss Balasingham's book in any of your books?" He replied that he did not have any such words in any exercise book of his.

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p.25 The Respondent said that he understood at an early stage of the inquiry that it was being suggested that he had got information about the German passage before the examination. The Vice-Chancellor, in his evidence, said that the Respondent's "attention was drawn to the fact the words appearing in the book were the same as those appearing in the paper. He was asked whether it was true that Miss Balasingham had copied those words into her book from his book and whether in fact this book was his note book. He said 'No'". Other questions were put to him in regard to the allegation that he had prior knowledge of this passage. Mr. Keuneman also asked him towards the end of the interview a question about how he fared in another examination test, the practical examination. The Respondent alleged and alleges that, as a result of this latter question, he was in doubt as to the scope of the charge against him.

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10. On the following morning, the Respondent handed over all books in which he had written German to the Vice-Chancellor, as he had been asked to do. On 3rd June 1952, the Respondent was again interviewed by the Vice-Chancellor and his two assistants, again separately from other persons previously interviewed. Again he was not told in detail what those other persons had said. The Respondent produced, as he had been requested to do an exercise book used by him during his Zoology course and was asked various questions about it. He alleged that he was hectorred and bullied at this interview, but such allegations were strongly denied by the Vice-Chancellor, who gave evidence before the District Court.

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pp.243-9 11. Shortly after this interview, the Vice-Chancellor reported to the Board of Residence and Discipline that the plaintiff had acquired prior knowledge of the nature and substance of the German question in Zoology Paper V. Both Mr. Keuneman and Professor Mylvagnam agreed with this finding and signed the report. The said Board subsequently suspended the Respondent indefinitely from all University examinations, such decision being communicated to the Respondent on or about 18th July 1952.

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p.237

p.2-4 12. After two fruitless appeals to the said

Board, the Respondent by an Amended Complaint dated the 24th July, 1953, commenced the present suit claiming (1) a declaration that the finding of the Commission of Inquiry and the decision of the Board of Residence and Discipline were null and void and (2) an order quashing the said finding and decision on the grounds:-

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- (a) that the decision of the commission of inquiry was contrary to the principles of natural justice in five particulars
 - (b) that there was no evidence upon which the commission of inquiry could reasonably find the charge proved
 - (c) that the finding had not been arrived at in conformity with the procedure laid down in Chapter VIII of the General Act.

13. By their Answer dated the 6th November, 1953, the Appellant University opposed the claim on the grounds:-

pp 5-6

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- (a) that the plaint disclosed no cause of action and that the Court was without jurisdiction
 - (b) that all the correct procedures had in any case been followed
 - (c) that the Court could not decree any of the reliefs claimed.

14. Kariapper A.D.J. heard the action and gave judgment for the Appellant with costs on 31st August 1954. He held that the Vice-Chancellor was exercising an administrative and not a judicial function, and that therefore, on the authority of Nakkudi Ali v M.F. de S. Jayaratne [1951] A.C. 66., the Court had no jurisdiction to review or to avoid his decision or that of the Board. He further held, assuming that there was a duty to act judicially, that the Vice-Chancellor sufficiently complied with that duty in that (a) he did not delegate his functions (b) the principles of natural justice were observed, in particular in that the Respondent had sufficient notice of the charge against him and that natural justice did not require he should confront and cross-examine hostile witnesses (see Maclean v Workers' Union [1929] 1 Ch. 602) and (a) there was evidence upon

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p.180.1.23

p.180.1.42
p.184.1.30

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RECORD

- p.185 l.26 which the Vice-Chancellor could arrive at his opinion. He held, further, assuming that he was wrong on the previous two points, that the District Court had no jurisdiction, since the Civil Procedure Code of Ceylon did not confer upon it, the right to make the declaration and order sought, in that the said Code only permits declarations relating to "a right or status".
- p.194 15. The Supreme Court heard (Weerasooriya J. and T.S. Fernando J.) the Respondent's appeal on 9th and 10th August and 17th, 18th, 20th, 21st and 24th September 1956 and gave judgment on 28th November 1956. The Supreme Court agreed with the decision of the District Court on all points save (a) that it considered that the Vice-Chancellor had a duty to act judicially, since what was in issue was the withdrawal from the Respondent not of a privilege (as in Nakkuda Ali v. Jayaratne (supra) but of a legal right (as in Labouchere v. The Earl of Wharncliffe (1879) 11 Ch. D. 353) and (b) that the Vice-Chancellor infringed the rules of natural justice in that the Respondent was not given sufficient particulars of the charge against him (being under the impression that the inquiry was not restricted to the German passage in the Zoology Paper 5), that the Respondent should have had the opportunity to confront and cross-examine witnesses, especially Miss Balasingham, not "even the gist of her evidence (being) communicated to him", and that the Respondent should have had a greater opportunity of explaining the suspicious features about the exercise book produced by him on 3rd June 1952. The Supreme Court agreed, however with the District Court, that there was no question but that all three members of the committee of inquiry acted in good faith. 10
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- p.213 l.30
- p.205.l.7
- p.200 l.20
- p.204 l.37
- p.216 l.8 16. On the issue of jurisdiction, the Supreme Court held that the District Court had the power to grant the relief claimed, since the remedy by way of certiorari was not open to him in infringing the purely administrative decision of the Board of Residence and Discipline.
- p.233 17. On 30th August 1957, the Supreme Court gave to the Appellant final leave to appeal to

the Privy Council.

18. The Appellant contended and contends that the District Court of Colombo had no jurisdiction to try the suit in that what was sought to be impugned was a purely administrative act by the Vice-Chancellor. The Supreme Court drew a contrary conclusion from the great importance of the matter to the Respondent and from the fact that in its view the Respondent had a legal right to proceed to a degree if he passed the necessary examinations. The Appellants will contend that the nature of the function and duty of the Vice-Chancellor must be gathered from the wording of Clause 8 of Part I of Section VIII of the General Act, and that upon the authorities the words "where the Vice-Chancellor is satisfied..." indicate an administrative function, even if (which is not admitted) the legal rights of a citizen are at stake. The courts do not enquire into the disciplinary procedures of bodies such as Universities, such tasks being left to the Visitors or those clothed by Statute with visitorial duties.

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19. The Appellant further or alternatively contended and contends that, the Vice-Chancellor in no way adopted a wrong or insufficient procedure for satisfying himself under the said Clause 8. It is not an essential of such procedures or of the requirements of natural justice that the Respondent should be given the opportunity of confronting or cross-examining witnesses, since bodies or "tribunals" of this kind can gather their information whencesoever they please. At the beginning of his first interview, the Respondent knew, on his own admission and upon the testimony of the Vice-Chancellor, the substance of the charge against him, namely that he had acquired prior knowledge of the German passage in the Zoology Paper 5 and in particular that he had, prior to sitting for the examination, written into one of his exercise books 8 or 10 of the words appearing in that passage. The Appellant contended and contends that this is a sufficient satisfaction of the requirement of natural justice.

20. The Appellant further or alternatively contended and contends that the District Court was not empowered to order the relief prayed for in the plaint and granted on appeal by the

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Supreme Court, since the District Court may only make the decrees laid down in Section 217 of the Civil Procedure Code. No power to quash the proceedings or decisions of bodies such as the Board of Residence and Discipline of the Appellant therein appears. Furthermore, the only power to make declarations is limited to a power "to declare a right or status". The declaration prayed for declares neither a right nor a status. The Appellant contended and contends that the Respondent should have proceeded, if at all, by way of certiorari in the Supreme Court, though it does not admit that such remedy was or is open to him. 10

21. The Appellant therefore humbly submits that this appeal should be allowed and that the order of the Supreme Court of Ceylon should be reversed and that the order of the District Court should be restored for the following amongst other 20

REASONS

- (1) Because the District Court had no jurisdiction to review the decision of the Board of Residence and Discipline or of the Vice-Chancellor.
- (2) Because the learned trial Judge held that the Respondent knew the nature of the allegations or charges against him and the name of his accuser and the nature of the case he had to meet and there was ample evidence to support this finding. 30
- (3) Because the Supreme Court erred in setting aside the aforesaid finding of the trial Judge (which was a finding of fact) and substituting therefor their own view of the facts.
- (4) Because the Respondent was informed of the nature of the charge which he had to meet and the substance of the case against him and was given a full opportunity of making his answer. 40
- (5) Because the procedure adopted by the Vice-Chancellor was in no way contrary to the principles of natural justice and the Supreme Court erred in holding otherwise.

- (6) Because the Supreme Court erred in holding that the principles of natural justice required that the Respondent should have had an opportunity to cross-examine Miss Balasingham.
- (7) Because the District Court had no power to grant the relief claimed in the plaint and granted by the Supreme Court of Appeal.
- 10 (8) Because if, contrary to the Appellant's contention, the Vice-Chancellor was under a duty to act judicially because the Respondent should have proceeded by way of certiorari and the Supreme Court erred in granting a declaration

DINGLE FOOT

C. FLETCHER-COOKE

No. 17 of 1958

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF
CEYLON

THE UNIVERSITY OF CEYLON
(Defendant) Appellant

and

E. F. W. FERNANDO
(Plaintiff) Respondent

CASE FOR THE APPELLANT

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