Privy Council Appeal No. 17 *of* 1958

The University of Ceylon – – – – – – – *Appellant*

v.

E. F. W. Fernando – – – – – – – – *Respondent*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH FEBRUARY 1960

Present at the Hearing

VISCOUNT SIMONDS
LORD TUCKER
LORD JENKINS
LORD MORRIS OF BORTH-Y-GEST
MR. L. M. D. DE SILVA

[*Delivered by* LORD JENKINS]

This appeal arises out of an action brought by the respondent E. F. W. Fernando as plaintiff against the appellant University of Ceylon as defendant for (inter alia) a declaration to the effect that a decision of the Board of Residence and Discipline of the University to suspend the plaintiff (a student of the University) from all University examinations for an indefinite period, and the finding of a Commission of Inquiry set up by the Vice-Chancellor, on which such decision was based, were null and void.

The action was heard in the District Court of Colombo by Kariapper, A.D.J., who by a judgment and decree dated the 31st August, 1954, dismissed it with costs. The plaintiff appealed to the Supreme Court of Colombo and that Court (Weerasooriya and Fernando, J.J.), by a decree dated the 13th December, 1956, giving effect to a judgment delivered on the 28th November, 1956, allowed his appeal, and granted the declaratory relief claimed with costs. From that judgment and decree the University now appeals to this Board. To their Lordships' regret the plaintiff, it may be for financial reasons, has not appeared to support the decision in his favour pronounced by the Supreme Court, and although counsel for the University have done their best to make up for this by presenting the plaintiff's side of the matter as well as their own, their Lordships have felt some anxiety in dealing with this not altogether easy case in the plaintiff's absence.

The circumstances leading up to the plaintiff's suspension from all University examinations, and the unfortunate litigation which has ensued, are as follows.

The examinations procedure of the University is prescribed by its "General Act" No. 1 Chapter VIII Part I, Clause 8 of which Part provides that "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

(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."

These clauses may conveniently be referred to as clause 8 and clause 14 respectively.

The plaintiff, who had been a student in the faculty of science in the University since 1948, presented himself at the end of March, 1952, as an examinee for the final examination in science, section B, Zoology, for the degree of Bachelor of Science, and completed the full examination in both theory and practical work. There were five papers in theory and two in practical work, and the plaintiff sat for Zoology Paper V, the last theoretical paper, on the 4th April, 1952. This paper was in two sections consisting of (1) an essay, and (2) a passage in German and a passage in French, one of which the candidate was required to translate into English with comments thereon, ten marks being allotted for the translation of and comments upon the selected passage, and ninety marks for the essay. The plaintiff chose the passage in German for his translation and comments, for which he was awarded eight marks. He appears to have done well in all his papers and to have attained in the examination as a whole a standard which would normally have been held sufficient to place him in the first class.

After the examination was over, a woman student, Miss Balasingham, who had also been reading Zoology and had taken the examination at the same time as the plaintiff, made to Mr. Sivaprakasapillai, a lecturer in the engineering faculty and Miss Balasingham's brother-in-law, certain allegations concerning the plaintiff which, if true, were only explicable on the footing that the plaintiff had acquired knowledge of the German passage in Zoology Paper V before the examination. These allegations were passed on by Mr. Sivaprakasapillai to Sir Ivor Jennings, the Vice-Chancellor, it would seem in the first instance through Professor Pereira and Mr. Keerthisinghe, the senior lecturer in Zoology, though this is not important.

The Vice-Chancellor took a serious view of Miss Balasingham's allegations, which not only implicated the plaintiff but also suggested the possibility of negligence or misconduct on the part of some member or members of the staff of the University. On this aspect of the matter some embarrassment was caused by the circumstance that Professor Fernando, who was responsible for the German passage in Zoology Paper V, was the plaintiff's uncle. In these circumstances the Vice-Chancellor decided (as their Lordships think quite rightly) that the matter called for action under clause 8.

To assist him in satisfying himself of the truth or falsity of the allegations, the Vice-Chancellor set up a Commission of Inquiry, consisting of himself, Professor Mylvaganam, Dean of the Faculty of Science, and Mr. Keuneman, Q.C., a member of the Council of the University, who was to lead the inquiry. This body seems to have met on three occasions, viz., on the 21st May and 3rd June, 1952, and on one other occasion between these two dates. The plaintiff attended on two of these three occasions, viz., on the 21st May and 3rd June. Prior to the

first meeting the Vice-Chancellor wrote to the plaintiff a letter dated the 16th May, 1952, which, omitting formal parts, was in these terms:—

> Dear Mr. Fernando,
>
> An allegation has been made to me in writing that you had acquired knowledge of the content of one or more of the papers set at the Final Examination of Science, Section B, Zoology, before the date of the examination. Since this is a very serious allegation which may affect not only you but also one or more of the members of the University staff, I have consulted Mr. A. E. Keuneman, Q.C., who agrees that the allegation is sufficiently circumstantial to justify a formal enquiry.
>
> I have therefore appointed a commission consisting of Mr. Keuneman, the Dean of the Faculty of Science, and myself, and have asked Mr. Keuneman to take the lead in the enquiry. He has asked that a meeting be held in the Board Room, College House, on Wednesday, 21st May, at 5 p.m., and that you be requested to attend. I should be glad if you would attend on this occasion and would report to Mr. Blok, who is acting as Secretary to the commission.
>
> Yours sincerely,
>
> Sgd. IVOR JENNINGS,
> Vice-Chancellor.

The reference in this letter to "one or more" of the papers set at the final examination appears to have been due to the fact that Miss Balasingham had alleged fore-knowledge on the part of the plaintiff of the contents of another paper besides Zoology Paper V. At the outset of the inquiry the Commission came to the conclusion that there was no substance in this additional charge, which accordingly was not pursued.

In the course of their meetings the Commission questioned (in addition to the plaintiff himself) Miss Balasingham and a number of other persons including Professor Fernando and various lecturers and students, but none of them in the presence or hearing of the plaintiff. The second appearance of the plaintiff before the Commission, that is, his appearance on the 3rd June, was in response to a letter from the Vice-Chancellor inviting him to attend on that day and to bring with him all the exercise books he had used during his course, which he accordingly did. There seems to have been a good deal of discussion regarding one particular book, in which Dr. Cruze (one of the lecturers in Zoology) had corrected drawings of the veinous system of rats, but in the end the Commission decided that it threw no light on the matter.

Miss Balasingham appears to have adhered before the Commission to the story she had originally told to Mr. Sivaprakasapillai, which, to quote from the Report made by them at the conclusion of their inquiry was to this effect:—

> 3. Miss Balasingham states that, owing to Mr. Fernando's behaviour, she suspected that there was something in one of his notebooks which he did not wish the other students to see. On one occasion he left the book on the bench in the Section B laboratory and went out of the room. She seized the opportunity to glance through the book and saw a list of German Words, in some cases with English equivalents. There were about 30 words and she copied nine of them into her own notebook, which she produced. She could remember only one of the words which she had not copied, *Zitronensaft*, a word which appeared almost at the end of the list. This word appears at the end of the German passage in Paper V. The other nine words appear in the passage, and in the order in which they are shown in the list in Miss Balasingham's book, except that the order of the

eighth and ninth words is changed. The passage, with the ten words underlined, was as follows:—

After setting out the German passage, with the crucial words underlined, the Report continues:—

4. This list in Miss Balasingham's book was apparently not shown to anyone until our enquiry began. It was then shown to Mr. Sivaprakasapillai and was produced to us at our request. A large part of our enquiry was necessarily directed towards ascertaining whether the list really was in the notebook before the examination began. In our opinion it was. The following factors are relevant:

(1) Miss Balasingham was able to describe the copying with a wealth of circumstantial detail, of no direct relevance to the story as such, which carried conviction. If the story was invented, it was a remarkably successful invention.

(2) Another student, Miss Y. de Silva, was sitting next to Miss Balasingham on the occasion when the copying is said to have been done. Miss de Silva denies that she saw Miss Balasingham copying, but she admits that Miss Balasingham told her about the list before the examination. Miss de Silva is a second-year student in Zoology, and we believe that she could have told us more. Another student Mr. C. H. Fernando, also admits that Miss Balasingham told him about the list before the examination.

The Report goes on to say:—

"(3) Miss Balasingham's behaviour immediately after the examination was entirely consistent with her story . . ."

and to give reasons for that view.

Satisfied as they were of the truth of Miss Balasingham's story, the Commission of Inquiry at the end of the Report expressed their findings to be to the effect that:—

(1) The plaintiff acquired knowledge of the nature or substance of the German question in Zoology Paper V before the date and time of the examination and must therefore be reported to the Board of Residence and Discipline under clause 8;

(2) There was no evidence as to the manner in which this knowledge came to the plaintiff.

By a letter dated the 21st July, 1952, the Vice-Chancellor informed the plaintiff that the Board of Residence and Discipline had found him guilty of an examination offence in connection with the Final Examination in science held in 1952 and had suspended him indefinitely from all University examinations.

After considerable correspondence between the plaintiff and the Vice-Chancellor in which the plaintiff sought without success a review of the decision of the Board of Residence and Discipline, the plaintiff on the 19th May, 1953, began the present action, in which as already mentioned he failed at first instance but succeeded on appeal.

In his amended plaint dated the 24th July, 1953, the plaintiff alleged that the decision of the Commission of Inquiry was null and void for a number of reasons. He claimed that the decision was contrary to the principles of natural justice on five grounds, two of which consisted of allegations of bias or disqualification against Professor Mylvaganam by reason of his alleged relationship to Miss Balasingham and Mr. Sivaprakasapillai, and the fact that he was a member of the Board of examiners and of the scrutinising committee. The third ground was to the effect that by reason of the first "the maxim that justice should not only be done but also appear to be done" had been violated. The fourth ground comprised the substance of the plaintiff's case and was to the effect that the evidence of the various witnesses who appeared before the Commission of Inquiry including the evidence of Miss Balasingham, was taken in the absence of the plaintiff, who was not aware of what evidence was led against him, and that in the circumstances one of the essential

elements of natural justice was not observed, inasmuch as the plaintiff was not aware of the case he had to meet. The fifth ground was to the effect that the evidence of the various witnesses was not taken entirely before all the three members of the Commission of Inquiry, and that such evidence was acted on by the Commission, and that this circumstance was also a violation of the elementary principles of justice. The plaintiff further alleged that there was no evidence upon which the Commission of Inquiry could reasonably find the charge against the plaintiff proved, that the finding arrived at against the plaintiff was one which had not been arrived at in conformity with clause 8, and that the finding and decision were therefore void and of no effect.

The allegations of bias or disqualification against Professor Mylvaganam as a member of the Commission of Inquiry were rejected in both courts as without substance. The allegation to the effect that there was no evidence upon which the Commission could reasonably find the charge against the plaintiff proved was (so far as open to the Court) clearly ill-founded. The allegation to the effect that the finding was not arrived at in accordance with clause 8 turned on the fact that the Vice-Chancellor appointed two other persons to sit with him as a Commission of Inquiry to investigate the matter, instead of proceeding to investigate it alone. It was held in both Courts that this procedure was not open to objection, inasmuch as this was merely a method, which the Vice-Chancellor was free to adopt if he chose to do so, of satisfying himself of the truth or falsity of the charge, and the Report was a report by him for the purposes of clause 8 although signed by the two other members of the Commission as well as himself. The plaintiff having taken no steps to appeal against the decision of the Court below on these matters of complaint their Lordships need say no more about them.

There remain the complaints to the effect that the evidence including that of Miss Balasingham was taken in the absence of the plaintiff who was not aware of the evidence led against him or of the case he had to meet ; and that the evidence of certain witnesses was taken by the Vice-Chancellor in the absence of the other members of the Commission.

As to these, it is not in dispute that the plaintiff was not present, and was not invited to be present, at the examination of any of the witnesses, or that the Vice-Chancellor did in fact interview two witnesses, namely Professor Fernando and Dr. Cruze, in the absence of the other members of the Commission. Their Lordships may add that it is also admitted that the plaintiff did not at any stage question Miss Balasingham and was never offered an opportunity of doing so.

On the other hand it is not in dispute that the plaintiff was interviewed and questioned at length about the matter by the three members of the Commission on the 21st May and 3rd June, 1952.

Before the learned Judge and in the Supreme Court it was argued for the University that the Vice-Chancellor's functions under clause 8 were administrative and not of the kind described, for want of a better term, as " quasi-judicial " and accordingly that the Vice-Chancellor's action in the matter was not open to review by the Court. It was however argued further that if contrary to this contention the Vice-Chancellor's functions under clause 8 were quasi-judicial, the Vice-Chancellor's letter of the 16th May, 1952, coupled with the information given to the plaintiff at the two interviews, sufficiently apprised him of the nature of the complaint, that he was at these interviews given sufficient opportunity to state his case in rebuttal of it, and accordingly that there had been no such breach of the so-called principles of natural justice as was necessary to warrant the intervention of the Court in such a case.

The learned Trial Judge was of opinion that the functions of the Vice-Chancellor in the matter were administrative and not judicial, and consequently that the Court had no jurisdiction to interfere, but went on to hold that if he was wrong in this, and such functions were of a quasi-judicial character, the principles of natural justice had been sufficiently complied with by the Commission.

The Supreme Court took the opposite view, holding that the Vice-Chancellor's functions were not administrative but quasi-judicial, and that the mode of inquiry adopted had violated the principles of natural justice, with the result that the Court could and ought to declare the Report of the Commission of Inquiry, and the consequential decision of the Board of Residence and Discipline under clause 14, to be null and void.

At the hearing before their Lordships Mr. Dingle Foot, for the University, disclaimed the contention that the Vice-Chancellor's functions under clause 8 were administrative and not quasi-judicial, but submitted that on the footing that these functions were quasi-judicial the claims of natural justice had been fully satisfied.

Accordingly (apart from a subsidiary question as to the jurisdiction of the courts in Ceylon to grant declaratory relief in such a case) the present appeal resolves itself into the question whether this inquiry was conducted with due regard to the rights accorded by the principles of natural justice to the plaintiff as the person against whom it was directed.

These rights have been defined in varying language in a large number of cases covering a wide field. Their Lordships do not propose to review these authorities at length, but would observe that the question whether the requirements of natural justice have been met by the procedure adopted in any given case must depend to a great extent on the facts and circumstances of the case in point. As Tucker L.J. (as he then was) said in *Russell* v. *Duke of Norfolk* [1949] 1 A.E.R. 109 at p. 118:—"There are in my view no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject matter that is being dealt with, and so forth." In the earlier case of *General Medical Council* v. *Spackman* [1943] A.C. 627 Lord Atkin (at page 638) expressed a similar view in these words: "some analogy exists, no doubt, between the various procedures of this and other not strictly judicial bodies, but I cannot think that the procedure which may be very just in deciding whether to close a school or an insanitary house is necessarily right in deciding a charge of misconduct against a professional man. I would, therefore, demur to any suggestion that the words of Lord Loreburn L.C. in *Board of Education* v. *Rice*" ([1911] A.C. 179, 182) "afford a complete guide to the General Medical Council in the exercise of their duties."

With these reservations as to the utility of general definitions in this branch of the law, it appears to their Lordships that Lord Loreburn's much quoted statement in *Board of Education* v. *Rice* (supra) still affords as good a general definition as any of the nature of and limits upon the requirements of natural justice in this kind of case. Its effect is conveniently stated in this passage from the speech of Lord Haldane in the case of *L.G.B.* v. *Aldridge* [1915] A.C. 120 at page 132, where he cites it with approval in the following words:—

> "I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In *Board of Education* v. *Rice* [1911] A.C. 179 he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view."

From the many other citations which might be made, their Lordships would select the following succinct statement from the judgment of this Board in the case of *De Verteuil* v. *Knaggs* [1918] A.C. 557 at p. 560:—

> "Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice."

The last general statement as to the requirements of natural justice to which their Lordships would refer is that of Mr. Justice Harman (as he then was) in the case of *Byrne* v. *Kinematograph Renters Society Ltd.* [1958] 1 W.L.R. 762 at page 784, of which their Lordships would express their approval. The learned Judge said this:—

> "What then are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not myself think that there really is anything more."

Turning now to the actual terms in which the Vice-Chancellor is invested with the quasi-judicial function here in question, it is to be observed that all that clause 8 provides is that where the Vice-Chancellor is satisfied that any candidate 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 "the Vice-Chancellor . . . shall report the matter to the Board of Residence and Discipline . . ." The clause is silent as to the procedure to be followed by the Vice-Chancellor in satisfying himself of the truth or falsity of a given allegation. If the clause contained any special directions in regard to the steps to be taken by the Vice-Chancellor in the process of satisfying himself he would, of course, be bound to follow those directions. But as no special form of procedure is prescribed it is for him to determine the procedure to be followed as he thinks best, but, to adapt to the present case the language of the judgment of this Board in *De Verteuil* v. *Knaggs* (supra) at page 560, subject to the obvious implication that some form of inquiry must be made, such as will enable him fairly to determine whether he should hold himself satisfied that the charge in question has been made out.

As was said by Lord Shaw of Dunfermline in *L.G.B.* v. *Aldridge* (supra) at page 138, of the authority there concerned it "must do its best to act justly and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means." In the present case no shadow of doubt is cast upon the honesty and *bona fides* of the Vice-Chancellor or of those who sat with him in the Commission of Inquiry.

So far as the plaintiff is concerned it appears to their Lordships that he must be taken to have agreed, when he became a member of the University, to be bound by the statutes of the University, including clause 8, and in the event of clause 8 being put in operation against him could not insist on the adoption by the Vice-Chancellor of any particular procedure beyond what the clause expressly or by necessary implication requires. In the absence of any express requirement he is thrown back on the necessary implication that the Vice-Chancellor's procedure will be such as to satisfy the requirements indicated in the passages from *De Verteuil* v. *Knaggs*, *L.G.B.* v. *Aldridge*, and *Byrne* v. *Kinematograph Renters Society Ltd.*, to which their Lordships have just referred, and thus to comply with those elementary and essential principles of "fairness" which must as a matter of necessary implication be treated as applicable in the discharge of the Vice-Chancellor's admittedly quasi judicial functions under clause 8, or in other words, with the principles of natural justice.

The question then is whether the Vice-Chancellor did in the course he took satisfy those principles.

The plaintiff's contention to the effect that he was not adequately informed of the case he had to meet and was not given any adequate opportunity of meeting it, and that the course taken by the Vice-Chancellor or the Commission of Inquiry in these respects failed to satisfy the requirements of natural justice, depended almost entirely on the admitted fact that Miss Balasingham and the other witnesses were not questioned in the presence and hearing of the plaintiff, who consequently was not able to question them on the statements they made. The further admitted fact that two witnesses were questioned by the Vice-Chancellor alone and not by all three members of the Commission does not, their Lordships think, add anything to this basic complaint.

But this did not in their Lordships' view in itself involve any violation of the requirements of natural justice. To adapt Lord Loreburn's words in *Board of Education* v. *Rice* (supra), the Vice-Chancellor was not bound to treat the matter as if it was a trial, had not power to administer an oath, and need not examine witnesses, but could obtain information in any way he thought best.

It seems to their Lordships to follow that inasmuch as the Vice-Chancellor, when the alleged offence under clause 8 was brought to his notice, was not bound to treat the matter as a trial but could obtain information about it in any way he thought best, it was open to him if he thought fit to question witnesses without inviting the plaintiff to be present.

But, while there was no objection to the Vice-Chancellor informing himself in this way, it was undoubtedly necessary that before any decision to report the plaintiff was reached he should have complied with the vital condition postulated by Lord Loreburn, which adapted to the present case may be stated as being to the effect that a fair opportunity must have been given to the plaintiff to correct or contradict any relevant statement to his prejudice.

The University's contention is that this condition, which resolves itself into the two requirements that the plaintiff should be adequately informed of the case he had to meet, and given an adequate opportunity of meeting it, was complied with in its first branch by the letter of the 16th May, 1952, and what plaintiff was told at the first interview on the 21st May, 1952, and in its second branch by what passed at that interview and at the second interview on 3rd June.

As to what took place at the two interviews, the learned trial Judge accepted the evidence of the Vice-Chancellor in preference to that of the plaintiff. The Vice-Chancellor's evidence, and indeed the plaintiff's own admission, make it abundantly plain that at the outset of the first interview the plaintiff was told that Miss Balasingham had made this charge against him and the nature of the charge was explained to him in detail.

To quote from the Vice-Chancellor's evidence:

Q. Did you have with you the book into which those words had been copied?

A. Yes, we had it in the first meeting.

Q. Was it shown to the plaintiff?

A. Yes, it was shown to him at the third meeting. No, I am sorry it was shown to him at the first meeting.

Q. And was he questioned in regard to those words?

A. Yes, he was shown a marked copy of the German question paper with the ten words underlined—the nine words which appeared in Miss Balasingham's book plus the other word which Miss Balasingham said she remembered to have seen in the plaintiff's book, namely Zitronensaft.

Q. According to Miss Balasingham that was the word she omitted?

A. That was one of the last words she had omitted.

Q. As far as the book was concerned there were 9 words in it?

A. Yes.

Q. Those nine words were underlined in the paper?

A. Yes.

Q. Was the plaintiff shown that paper and the book?

A. Yes, his attention was drawn to the fact that the words appearing in the book were the same as those words underlined 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. His answer was " no ".

Q. Then what further steps did you take?

A. We asked him more questions about the kind of note books he used for his lecture courses. We also asked him why he found those questions so easy. Professor Mylvaganam asked him to translate the passage in German which was in the question paper, and then we followed up to find out from him what explanation he could give, if there was any explanation, with regard to the notes that he had made.

The reference here " to the notes which the plaintiff had made " must their Lordships think mean the notes which according to Miss Balasingham's story he had made.

From the plaintiff's evidence their Lordships would quote the following : —

A. He, " that is Mr. Keuneman ", said " We have evidence that you have come to know this question before the examination."

Q. Tell us to the best of your recollection, at what stage of his questioning did he make that statement to you?

A. I cannot understand that question.

Q. How long after Mr. Keuneman had put that paper into your hands and started questioning you, did he make that statement to you?

A. After about five minutes.

Q. Then would it be right to say that it was at the early stage of the inquiry that they told you that?

A. Yes.

Q. Then would you recollect any other questions that he put to you?

A. He asked me " Did you have these 8 or 10 German words that were in Miss Balasingham's book in any of your books before the examination? "

Q. In other words he made it plain to you that according to information which they had Miss Balasingham is supposed to have had these words in her book?

A. No answer.

(To Court : What did you understand when Mr. Keuneman put that question to you?

A. I could not understand anything in particular.)

Q. Did you understand anything in general from that observation of Mr. Keuneman?

A. Yes.

Q. What did you understand in general?

A. I felt that she had reported that I have had these words in one of my books before the examination.

Q. So that, Mr. Fernando, within a few minutes of the inquiry starting you were made aware that some allegations had been made against you by Miss Balasingham?

A. Yes.

Their Lordships are satisfied that there is no substance in the complaint made by the plaintiff to the effect that the reference in the letter of 16th May, 1952, to " one or more of the papers set at the final examination " left him under the impression that some additional charge was being made against him, the precise nature of which was not sufficiently explained. Apart from the fact that (according to the plaintiff) Mr. Keuneman asked him towards the end of the first day " how he had fared in his practical examination? " nothing was said to suggest that the commission was in any way concerned with anything other than the German Translation. It must therefore have been clear to the plaintiff (as the fact was) that the only charge which was being pursued related exclusively to that matter.

Their Lordships are accordingly satisfied that the plaintiff was adequately informed of the case he had to meet.

As to the adequacy of the opportunity of meeting the case alleged against him afforded by the two interviews, the plaintiff in his evidence complained that the interviews were not fairly conducted in the respects that he was plied with questions which he was not given a chance of answering fully and was prevented from saying all he wanted to say. The learned trial Judge rejected these complaints and accepted the Vice-Chancellor's evidence to the effect that the two interviews were fairly conducted. Their Lordships see no reason for dissenting from this finding. To quote again from the Vice-Chancellor's evidence he said on this aspect of the case:—" A. . . . He " (that is the plaintiff) " was given every opportunity at the inquiry." In fact we wanted him to talk but he would not do it. We told him that certain allegations had been made against him by Miss Balasingham. My job was to find out whether this allegation was justified or not and we were anxious for him to place his version:

Q. And did he state his story?

A. Yes.

Q. He says that he was not given a chance of answering questions fully. Is that true?

A. That is quite untrue.

Their Lordships are therefore satisfied that the interviews, so far as they went, were fairly conducted and gave the plaintiff an adequate opportunity of stating his case. But it remains to consider whether in the course they took the interviews must be held to have fallen short of the requirements of natural justice on the ground that the plaintiff was given no opportunity of questioning Miss Balasingham. She was the one essential witness against the plaintiff and the charge in the end resolved itself into a matter of her word against his. In their Lordships' view this might have been a more formidable objection if the plantiff had asked to be allowed to question Miss Balasingham and his request had been refused. But he never made any such request, although he had ample time to consider his position in the period of ten days or so between the two interviews. There is no ground for supposing that if the plaintiff had made such a request it would not have been granted. It therefore appears to their Lordships that the only complaint which could be made against the Commission on this score was that they failed to volunteer the suggestion that the plaintiff might wish to question Miss Balasingham or in other words to tender her unasked for cross-examination by the plaintiff. Their Lordships cannot regard this omission, or *a fortiori* the like omission with respect to other witnesses, as sufficient to invalidate the proceedings of the Commission as failing to comply with the requirements of natural justice in the circumstances of the present case.

Counsel for the University very properly referred their Lordships to passages in the case of *Osgood* v. *Nelson* L.R. 5 H.L. 636 and in other authorities which tend at first sight to state the requirements of natural justice more favourably to the party charged than do the authorities

to which their Lordships have so far referred ; see in particular the references to cross-examination in *Osgood* v. *Nelson* (supra) at pages 646, 660. But their Lordships are satisfied that when the facts and circumstances of these cases are looked into they contain nothing to justify the conclusion that the requirements of natural justice were not sufficiently observed on the facts and in the circumstances of the case now before them.

In conclusion their Lordships would observe that they are at a loss to understand how the Supreme Court, while apparently accepting the trial Judge's favourable assessment of the reliability of the evidence of the Vice-Chancellor, found it possible to reach the conclusion that not even the gist of Miss Balasingham's evidence was communicated to the plaintiff. Their Lordships would also venture the criticism that the Supreme Court tended to regard the case much as if it involved an appeal from or rehearing of a trial held before the Commission rather than an invocation of the limited jurisdiction of the Court to restrain the abuse of quasi-judicial proceedings, where the sole issue is whether the result, be it right or wrong, was arrived at with due regard to the principles of natural justice.

The plaintiff might have fared better if the charge against him had been tried in accordance with the more meticulous procedure of a Court of law, which would have included as of course the tendering of Miss Balasingham for cross-examination. But that is not the question. The question is whether on the facts and in the circumstances of this particular case the mode of procedure adopted by the Vice-Chancellor, in *bona fide* exercise of the wide discretion as to procedure reposed in him under clause 8, sufficiently complied with the requirements of natural justice. In their Lordships' opinion it has not been shown to have fallen short of those requirements.

Their Lordships' conclusion on the merits of the case makes it unnecessary for them to consider the University's submission to the effect that the Court had no jurisdiction to grant the declaratory relief sought by the plaintiff.

For these reasons their Lordships are of opinion that this appeal should be allowed, the Decree of the Supreme Court of Ceylon dated the 13th December, 1956, set aside and the Decree of the District Court of Colombo dated the 31st August, 1954, restored, and they will humbly advise Her Majesty accordingly.

The plaintiff must pay the costs of the present appeal and also the costs of the action in the District Court and of the appeal to the Supreme Court.

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In the Privy Council

THE UNIVERSITY OF CEYLON

v.

E. F. W. FERNANDO

DELIVERED BY LORD JENKINS

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