GEORGE ST. JOHN AND THE VANCOUVER STOCK AND BOND COMPANY LIMITED (PLAINTIFFS) } APPELLANTS;

1935
* May 2, 3.
* June 10.

AND

GEORGE L. FRASER (DEFENDANT).. RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Securities Act—Investigation—Delegation of authority—Nature of proceedings—Whether judicial—Right to cross-examine witnesses—Natural justice—Right to injunction—Section 29 as bar—Security Frauds Prevention Act—B.C. (1930) c. 64, ss. 10, 29.

Authority was delegated by the Attorney-General under section 10 of the *Securities Fraud Prevention Act* to the respondent to conduct investigations to ascertain whether any fraudulent act or any offence against the Act or the regulations has been, was being or was about to be committed by Wayside Consolidated Gold Mines Limited, and for that purpose to examine any person, company or thing whatsoever. During the course of the investigation by the respondent, it became apparent that the Vancouver Stock and Bond Company Limited, one of the appellants, had been an underwriter of the securities of the Wayside Company, and the appellant St. John, who was a shareholder and the business manager of the underwriting company, was called upon and did give evidence. The investigation extended over several months, from the date of the respondent's appointment on August 15, 1934, until October 22, 1934, during which time a great deal of evidence was taken, on which last day the appellants issued a writ against the investigator Fraser for an injunction to restrain him from proceeding further with the investigation in so far as it either directly or indirectly related to the conduct of the appellants and from making any finding or report to the Attorney-General in connection therewith. The appellants' grounds for an injunction were that the respondent Fraser had not given them notice of the examination of witnesses concerning the appellants' relations with the Wayside Consolidated Gold Mines Limited and that he had not afforded them an opportunity of cross-examining such witnesses, as their status and reputation may be affected by such examination. The trial judge maintained a motion to dissolve the *interim* injunction, which judgment was affirmed by the appellate court.

Held, affirming the judgment of the Court of Appeal (49 B.C.R. 502), that the respondent investigator could not be restrained from proceeding with the investigation.

Per Lamont, Cannon and Crocket JJ.—Section 29 of the *Securities Act,* which purports to bar actions and proceedings by way of injunction or other extraordinary remedy, relating to investigations by the Attorney-General or his representative under the provisions of the statute constitutes an insuperable barrier to the appellant's claim.

* PRESENT:—Lamont, Cannon, Crocket and Davis JJ. and Dysart J. *ad hoc.*

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Per Lamont, Cannon and Crocket JJ.—The investigation provided for by the *Securities Act* was not a judicial proceeding in any sense of the term but was intended to be conducted by the investigator in private and no person or company should have the right of cross-examining any witness or witnesses brought before the investigator whether the evidence of such witness or witnesses should affect the status or reputation of such person or company or not. Such investigation is in no sense a judicial proceeding for the trial of any offence but merely an enquiry conducted for the information of the Attorney-General in order that the latter may take such proceedings as he may deem advisable in the circumstances for the protection of the public as shown by the provisions of ss. 11 and 12.

Per Lamont and Davis JJ.—The investigation provisions of the statute dealing generally with the prevention of fraud by stock brokers were part and parcel of the administrative machinery for the attainment of the general purposes of the statute. The investigator was not a court of law nor was he a court in law. While the investigator was bound to act judicially in the sense of being fair and impartial, that is something quite different from the right asserted by the appellants of freedom of cross-examination of all the witnesses.

APPEAL from the judgment of the Court of Appeal for British Columbia (1) maintaining the judgment of the trial judge, Morrison C.J.S.C. (2), and dissolving an *interim* injunction restraining the respondent from proceeding further in connection with the investigation being held by him into the affairs of the Wayside Consolidated Gold Mines Limited pursuant to the authority delegated to him by the Attorney-General under the *Securities Fraud Prevention Act* in so far as the same either directly or indirectly related to the conduct or actions of the appellants, and from making any finding or report to the Attorney-General in connection therewith until judgment in the appellants' action.

The material facts of the case and the questions at issue are stated in the above head-note and in the judgments now reported.

J. W. de B. Farris K.C. for the appellant.

Gordon McG. Sloan K.C. and *G. R. Nicholson* for the respondents.

LAMONT J.—In this case I agree with the conclusions reached by my brothers Crocket and Davis, and for the reasons given by them respectively. I would therefore dismiss the appeal with costs.

(1) (1935) 49 B.C. Rep. 502; [1935] 2 W.W.R. 64.

(2) (1934) 49 B.C. Rep. 274; [1935] 1 W.W.R. 26.

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The judgment of Cannon and Crocket JJ. was delivered by

CROCKET J.—This is an appeal from the judgment of the Court of Appeal for British Columbia (1) dismissing an appeal from a judgment of Morrison, C.J. (2), dissolving an *interim* injunction granted by him restraining the respondent Fraser from proceeding with an investigation which he was making into the affairs of Wayside Consolidated Gold Mines Limited, in pursuance of the instructions of the Attorney-General of British Columbia under the provisions of the *Securities Act,* c. 64, statutes of British Columbia (1930), in so far as the said investigation directly or indirectly related to the conduct or actions of the appellants or either of them, and from making any finding or report to the Attorney-General in connection therewith.

The action, which was merely for the injunction, was commenced on October 22, 1934, against the respondent Fraser only and the *interim* injunction granted on the same day. The Attorney-General was added as a party defendant and joined with Mr. Fraser in a motion which was heard by the learned Chief Justice on October 30, to dissolve the injunction and dismiss the action.

It appears from the affidavits used on the hearing of this motion that the Wayside Consolidated Gold Mines had made a new issue of stock, of which the Vancouver Stock and Bond Company Limited had underwritten a large amount, which it was endeavouring to sell on the market, and that the facts in connection with the issue and sale of this stock was the principal subject-matter of the investigation. The appellant St. John was a shareholder and business manager of the Stock and Bond Company and was examined by Mr. Fraser on August 22, August 30, October 15 and October 18, 1934, the solicitor for the appellants being present at all these examinations and their counsel (Mr. Farris) at the last two. Both the solicitor and the counsel took part in these examinations of their client and Mr. Farris as counsel was afforded the fullest opportunity for argument on his client's behalf. Mr.

(1) (1935) 49 B.C. Rep. 502; [1935] 2 W.W.R. 64.

(2) (1934) 49 B.C. Rep. 274; [1935] 1 W.W.R. 26.

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Fraser had in the meantime examined some other witnesses on matters concerning the appellants' conduct in relation to the sale of the stock without notice to the appellants, whose counsel had no opportunity of cross-examining them. Mr. Fraser alleges in his affidavit that no application was ever made to him by either the solicitor or counsel for the appellants or by Mr. St. John himself and that no request was at any time made to him for any advance notice to be given to them respecting any person or persons whom he proposed to examine or for the privilege of cross-examining any witnesses who had been examined. He states that on October 12 the appellants' counsel requested a copy of the evidence of two particular witnesses which had previously been taken and that he informed him that in view of the fact that the appellant St. John was about to be recalled to give further evidence he would furnish counsel with copies of the transcript of the evidence so requested after Mr. St. John had been further examined, and suggested that counsel could recall him to give any further evidence or explanation that might be desired. He further states that the appellants' counsel agreed that such procedure was satisfactory and that thereafter he furnished him with copies of the evidence requested for his perusal. It was admitted, however, on the argument before us that the Attorney-General had taken the position after Mr. Farris's intervention in the case as counsel that he was not entitled to cross-examine any of the witnesses who had been examined by Mr. Fraser in the course of the investigation and that he, the Attorney-General, had so instructed his investigator.

The whole question involved in this appeal is as to whether the respondent Fraser could properly be restrained from proceeding with the investigation and making a report or finding to the Attorney-General on the ground that he had not given notice to the appellants of the examination of witnesses concerning the appellants' relations with the Wayside Consolidated Gold Mines Limited and their conduct regarding the sale of the stock referred to and that he had not afforded them an opportunity of cross-examining such witnesses. The solution of this question is to be found, in my judgment, only in the provisions of the statute. See the observations of Lords Thankerton and Macmillan in *Hearts of Oak Assurance Co.* v. *Attorney-*

General (1). See also *In re The Grosvenor and West End Terminus Hotel Co. Ltd.* (2), and *O'Connor* v. *Waldron* (3).

Unless by virtue of other provisions of the statute it can properly be held that the investigation was a judicial or quasi-judicial proceeding and that the opportunity of cross-examining any witness examined by the investigator on matters affecting the appellants' status or reputation was such an essential requirement in the conduct of the investigation as went to the investigator's jurisdiction to proceed with it, section 29 clearly constitutes an insuperable barrier to the appellants' claim, as held by Mr. Justice McPhillips. This section is as follows:

> No action whatever, and no proceedings by way of injunction, mandamus, prohibition, or other extraordinary remedy, shall lie or be instituted against any person, whether in his public or private capacity, or against any company in respect of any act or omission in connection with the administration or carrying out of the provisions of this Act or the regulations where such person is the Attorney-General or his representative, or the Registrar, or where such persons or company was proceeding under the written or verbal direction or consent of any one of them, or under an order of the Supreme Court or a Judge thereof made under the provisions of this Act.

As to whether the affording to all persons, whose status and reputation may be affected, of the opportunity to cross-examine any and every witness brought before the investigator is such an essential requirement as goes to the investigator's jurisdiction, depends on the nature and purpose of the investigation as evidenced by the provisions of the entire statute.

Upon a careful consideration of all the sections referred to on the argument and the entire statute, I have come to the conclusion that the only reasonable inference to be drawn therefrom is that the Legislature never intended that notice should be given to any and every person, whose status or reputation might be affected thereby, of the examination of any other witness or witnesses and that any and all such persons should be afforded the privilege of cross-examining any such witness or witnesses. The whole tenor of the statute in my judgment points quite the other way. While section 10 provides that the Attorney-General may delegate authority to any person to examine

(1) [1932] A.C. 392 at 396 and 401.

(2) (1897) 13 T.L.R. 309.

(3) [1935] A.C. 76.

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any person, company, property or thing whatsoever at any time in order to ascertain whether any fraudulent act or any offence against this Act or the regulations has been, is being or is about to be committed,

and no doubt contemplates a report to the Attorney-General, where the investigation is conducted by a person named and authorized by him, the person so authorized is given no power to make any adjudication which is under any of the provisions of the statute in any sense binding upon the Attorney-General or upon anyone else. While it may be said to contemplate a finding upon the question as to whether any fraudulent act or any offence against the statute or the regulations has been, is being or is about to be committed, such finding, I think, is intended only for the purpose of communicating to the Attorney-General the opinion he has formed as the result of the examination he has made, precisely as in the case of the inspector's report to the commissioner in *Hearts of Oak Assurance Co.* v. *The Attorney-General* (1), as pointed out by Lord Macmillan.

That the investigation is in no sense a judicial proceeding for the trial of any offence but merely an enquiry conducted for the information of the Attorney General in order that the latter may take such proceedings as he may deem advisable in the circumstances for the protection of the public is shown clearly by the provisions of ss. 11 and 12. If the Attorney-General as a result of his representative's investigation was of opinion that the appellant St. John was concerned in any fraudulent act or offence against the statute or the regulations which had been, was being or was about to be committed, he as the responsible minister designated to administer the Act might suspend his privileges as a registered broker for any period not exceeding ten days. If he considered such a suspension inadequate he might apply to the Supreme Court or a Judge thereof for an order restraining him or any broker concerned in such fraudulent act or offence against the statute from trading in any security whatever absolutely or for such period of time as should seem just, or for an order restraining either or both the appellants from trading in the security with reference to which any fraudulent act or offence had been or was about to be committed, or from trading in any security whatever. And he might in any case give notice

(1) [1932] A.C. 392, at 401, 402.

of any fraudulent act to which the appellants or either of them was a party, to the public by advertisement or otherwise or to any individual by letter or otherwise as in his discretion he should deem advisable. It is the Attorney-General and not his investigator, when he authorizes another to make the investigation for him, who determines under s. 11 (*c*) whether notice of the fraudulent act shall in any case be given to the public by advertisement or otherwise or to any individual by letter or otherwise. It cannot well be supposed that this provision of the statute contemplates his giving any such notice unless he upon a consideration of the investigator's report himself fully agrees with his investigator that a fraudulent act has actually been, was being or was about to be committed.

If there could be any well founded doubt as to the right or privilege of cross-examination contended for being excluded by the nature and purpose of the investigation in the light of the passage I have already quoted from section 10 and of the provisions of section 11 to which I have referred, subsection 4 of section 10, it seems to me, concludes the question. This reads as follows:

> Disclosure by any person other than the Attorney-General, his representative, or the registrar, without the consent of any one of them, of any information or evidence obtained or the name of any witness examined or sought to be examined under subsection (1) shall constitute an offence.

Looking at this subsection in the light of the other provisions to which I have alluded, I find it quite impossible to avoid the conclusion, not only that the investigation provided for was not a judicial proceeding in any sense of the term but that it was intended to be conducted by the investigator in private and that no person or company should have the right of cross-examining any witness or witnesses brought before the investigator whether the evidence of such witness or witnesses should affect the status or reputation of such person or company or not. The case is one which does not fall within the principle stated in *Bonanza Creek Hydraulic Concession* v. *The King* (1); *Smith* v. *The King* (2); *Wood* v. *Woad* (3); *Errington* v. *Minister of Health* (4), nor any of the other cases relied upon by the appellants.

(1) (1908) 40 Can. S.C.R. 281.
(2) (1878) 3 App. Cas. 614.
(2) (1874) 9 L.R. Ex. 190
(4) [1935] 1 K.B. 249.

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The appeal should be dismissed with costs.

DAVIS J.—The Attorney-General of British Columbia, under section 10 of the *Securities Frauds Prevention Act* (c. 64 of the statutes of British Columbia, 1930) delegated his authority to the defendant Fraser, a solicitor of the city of Vancouver, to examine into the affairs of Wayside Consolidated Gold Mines Limited in order to ascertain whether any fraudulent act or any offence against the Act or the regulations had been or was about to be committed. Subsection (1) afforded the representative of the Attorney-General

> the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath and to produce documents, records, and things as is vested in the Supreme Court or a Judge thereof for the trial of civil cases.

It may be observed in passing that the words of the section are "may examine * * * in order to ascertain." By subsection (2) when the Attorney-General or his representative is about to examine or is examining any person or company under this section, the Attorney-General may appoint an accountant or other expert to examine documents, properties, records and matters, and to report thereon. By subsection (3) the failure without reasonable excuse of any person summoned for examination to appear or his refusal to give evidence or to answer any question or to produce anything where the evidence, answer or production can be required under the section of the statute, is made an offence and shall also be *prima facie* evidence upon which

> (*a*) The Attorney-General or his representative may base an affirmative finding concerning any fraudulent act to which he may deem it relevant; or
>
> (*b*) The Supreme Court or a Judge thereof may grant an interim or permanent injunction; or
>
> (*c*) A magistrate may base a conviction for an offence against this Act or the regulations.

That the investigation is intended to be a secret investigation is made plain by subsection (4):

> (4) Disclosure by any person other than the Attorney-General, his representative, or the Registrar, without the consent of any one of them, of any information or evidence obtained or the name of any witness examined or sought to be examined under subsection (1) shall constitute an offence.

By section 11 of the statute,

> 11. If the Attorney-General or his representative upon investigation finds that any fraudulent act, or that any offence against this Act or the

regulations, has been, is being, or is about to be committed, the Attorney-General:

(a) May, where a registered broker, company or salesman is in his opinion concerned therein, order that the broker, company, or salesman and any other registered broker, company or salesman connected with the same organization be suspended from registration for any period not exceeding ten days; or

(b) May, where he considers a suspension for ten days inadequate, or where any unregistered person or company is in his opinion concerned in such fraudulent act or in such offence, proceed under the provisions of section 12, or otherwise under this Act or the regulations; and

(c) May in any case give notice of the fraudulent act to the public by advertisement or otherwise, or to any individual by letter or otherwise, whenever he deems it advisable.

During the course of the investigation by the defendant Fraser into the affairs of Wayside Consolidated Gold Mines Limited, it became apparent that the Vancouver Stock & Bond Company, Ltd., one of the plaintiffs in this action, had been an underwriter of the securities of the Wayside Company and the plaintiff St. John, who was a shareholder and the business manager of the underwriting company, was called upon and did give evidence. The investigation conducted by the defendant Fraser extended over several months, during which time a great deal of evidence was taken by him. His appointment was made on August 15, 1934, and proceeding thereunder continued until October 22, 1934, on which day the underwriting company, the Vancouver Stock & Bond Company, Ltd., and its business manager St. John, apprehending that the investigator Fraser might report to the Attorney-General adversely to them or either of them, issued a writ of summons in the Supreme Court of British Columbia against the investigator Fraser. The claim as endorsed upon the writ is as follows:

The plaintiffs' claim is for an injunction to restrain the defendant from proceeding further in connection with the investigation being held by him into the Wayside Consolidated Gold Mines, Limited, pursuant to the authority delegated to him by the Attorney-General under the provisions of the *Securities Act;* and to restrain him from making any finding or report to the Attorney-General in connection therewith in so far as the same, either directly or indirectly, relates to the conduct or action of the plaintiffs, or either of them.

On the day the writ was issued the learned Chief Justice of the Supreme Court of British Columbia granted an *ex parte* injunction against the defendant Fraser enjoining and restraining him from proceeding further in connection with the investigation being held by him into the affairs

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of the Wayside Consolidated Gold Mines, Ltd., pursuant to the authority delegated to him by the Attorney-General under the provisions of the statute,

in so far as the same either directly or indirectly relates to the conduct or actions of the plaintiffs, or either of them, and from making any finding or report to the Attorney-General in connection therewith until judgment in this action, or until further order.

Leave was granted to the defendant to apply to dissolve this injunction upon two days' notice to the plaintiffs.

Subsequently, on October 26, 1934, the Attorney-General was, upon his own application and by order of the Court, added as a party defendant in the action. The plaintiffs did not amend their writ and no claim is made in the action against the Attorney-General. Then, on October 30, 1934, the learned Chief Justice who had granted the *ex parte* injunction dissolved the same on the application of the defendants, and all parties to the action having agreed to turn the motion into one for final judgment, the action was dismissed with costs. From this judgment the plaintiffs appealed to the Court of Appeal for British Columbia and on March 12, 1935, the appeal was dismissed, Mr. Justice Martin and Mr. Justice J. A. Macdonald dissenting (1). Subsequently the plaintiffs applied for and were granted leave by the Court of Appeal to appeal to this Court.

The Attorney-General sought to take advantage of section 29 of the statute, which purports to bar actions and proceedings relating to investigations by the Attorney-General or his representative under the provisions of the statute. Section 29 reads as follows:

29. No action whatever, and no proceedings by way of injunction, mandamus, prohibition, or other extraordinary remedy, shall lie or be instituted against any person, whether in his public or private capacity, or against any company in respect of any act or omission in connection with the administration or carrying out of the provisions of this Act or the regulations where such person is the Attorney-General or his representative, or the Registrar, or where such person or company was proceeding under the written or verbal direction or consent of any one of them, or under an order of the Supreme Court or a Judge thereof made under the provisions of this Act.

The validity of the statute was not attacked and there was no suggestion that the defendant Fraser was not properly authorized to make the investigation into the affairs of the Wayside Consolidated Gold Mines, Ltd., or

(1) (1935) 49 B.C. Rep. 502; [1935] 2 W.W.R. 64.

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that he was acting at any time beyond his jurisdiction except in the sense advanced by counsel for the appellants that he declined to permit counsel for the appellants before him to cross-examine at large all the witnesses whose evidence he had taken or might thereafter take. I cannot agree that this is a want of jurisdiction that takes the plaintiffs out of the rigour of the prohibitory section of the statute. Section 29 was obviously intended to prevent just such an action as this for an injunction to restrain the investigation from continuing, and the wisdom or fairness of such prohibitory legislation is not a matter with which we are concerned, for it is clearly within the competence of the legislature. While it is fundamental that a subject cannot without express words or necessary intendment be deprived of the protection of the Courts, the Courts must not interfere with competent legislation or attempt to so whittle away the obvious intention of the legislature as to destroy the effectiveness of its enactment. I do not find it necessary, however, to examine the precise scope of this section of the statute, preferring to deal with this appeal as if the action properly lay.

Assuming then in favour of the appellants that the prohibitory section does not apply in this case, the real issue on the merits is whether or not the plaintiffs were entitled as of right to be afforded freedom of cross-examination of each and every witness called by the investigator. Counsel for the appellants says that such a right is founded upon what he terms "natural justice," "essential justice" or "British justice." Such phrases are rather loose and vague terms. The rights of the parties must be determined upon the basis of what they are entitled to according to law. A decision in accordance with the law is justice.

Lord Shaw of Dunfermline said in *Local Government Board* v. *Arlidge* (1):

> In so far as the term "natural justice" means that a result or process should be just it is a harmless though it may be a high-sounding expression; in so far as it attempts to reflect the old *jus naturale* it is a confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions * * *

The Attorney-General contends that the provisions of the statute were only intended to afford to him the right of an investigation into the facts, upon the report of which

(1) [1915] A.C. 120, at 138.

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it became his duty as a member of the Executive to form his own opinion and to exercise such if any of the powers as are given to him by section 11 of the statute, and that if during the investigation every witness called was entitled to have his own counsel cross-examine all the other witnesses, the enquiry would become utterly ineffective, prolonged in duration and costly in administration. The Attorney-General stresses the secrecy provision of the statute, subsection (4) of section 10, as indicating in itself the very nature of the investigation.

It is not suggested by counsel for the appellants that the investigator is a court of law or even a tribunal having similar attributes to a court of law, but it is contended that the investigator is not a purely administrative body but what counsel calls " a quasi-judicial tribunal." Broadly speaking, there are only two divisions—judicial and administrative—though within those two broad divisions there have been tribunals with certain features common to both which have given rise to a somewhat loose, perhaps almost unavoidable, terminology in an effort to again subdivide the two broad classes of tribunals. Fundamentally, the investigator in this case was an administrative officer, and the machinery set up by the statute was administrative for the purpose of enquiring as to whether or not fraudulent practices had been or were being carried on in connection with the sale of the securities of the Wayside Company. The investigation provisions of the statute dealing generally with the prevention of fraud by stock brokers were part and parcel of the administrative machinery for the attainment of the general purposes of the statute. The investigator was not a court of law nor was he a court in law, but to say that he was an administrative body, as distinct from a judicial tribunal, does not mean that persons appearing before him were not entitled to any rights. An administrative tribunal must act to a certain extent in a judicial manner, but that does not mean that it must act in every detail in its procedure the same as a court of law adjudicating upon a *lis inter partes*. It means that the tribunal, while exercising administrative functions, must act " judicially " in the sense that it must act fairly and impartially. In *O'Connor* v. *Waldron* (1),

(1) [1935] A.C. 76, at 82.

Lord Atkin refers to cases where tribunals, such as a military court of enquiry or an investigation by an ecclesiastical commission, had attributes similar to those of a court of justice.

> On the other hand (he continues) the fact that a tribunal may be exercising merely administrative functions though in so doing it must act judicially, is well established, and appears clearly from the *Royal Aquarium* case (1).

In the *Royal Aquarium* case (1) "judicial" in relation to administrative bodies is used in the sense that they are bound to act fairly and impartially.

In this case the defendant Fraser has sworn in his affidavit filed on the plaintiffs' motion for an injunction, and it is in no way denied,

> 4. That during the course of my said examination I gave the fullest opportunity to the plaintiffs and each of them to appear before me and state all such relevant facts and information as they might desire to advance or to give an explanation or explanations to me, either through the plaintiff St. John, or their counsel, as they or either of them might deem expedient. The said St. John was examined and gave evidence before me at length on the 22nd and 30th days of August and the 15th and 18th days of October, A.D. 1934, and his evidence given before me comprises some 953 folios of the official transcript.
>
> 5. That I further permitted the solicitor and counsel for the plaintiffs to be present and take part in the examination of the plaintiff St. John and extended to the plaintiffs' counsel fullest opportunity for argument on his clients' behalf, which opportunity was taken full advantage of and argument was submitted by plaintiffs' counsel on their behalf to the extent of some 340 folios of the official transcript.

Moreover, it is admitted that the plaintiff St. John was recalled at the conclusion of the hearing of the witnesses by the defendant Fraser and afforded full opportunity to give any explanation he desired to give. His counsel had been furnished with a copy of all the evidence that he had requested. The only objection taken by the appellants, and it was very strenuously and earnestly pressed upon us in a very able argument by their counsel Mr. Farris, was that it was against natural justice that the plaintiffs should have been denied the right they claim of cross-examining every witness who was heard by the investigator. The right was asserted as a right to which every witness against whom a finding might possibly be made was entitled. I do not think that any such right exists at common law. The investigation was primarily an administrative function under the statute, and while the investigator was bound

(1) [1892] 1 Q.B. 431.

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to act judicially in the sense of being fair and impartial, that, it seems to me, is something quite different from the right asserted by the appellants of freedom of cross-examination of all the witnesses. It is natural, as Lord Shaw said in the *Arlidge* case (1), that lawyers should favour lawyer-like methods but it is not for the judiciary to impose its own methods on administrative or executive officers.

Undoubtedly in the early days of administrative tribunals the courts took the position that the procedure to be followed by these tribunals should be the same as that of a court of law. In 1889 Field J. in *Parsons* v. *Lakenheath School Board* (2), said,

> They have been entrusted with judicial duties, and should, I think, perform those duties in the ordinary judicial way.

But with the increasing number of statutes which delegated power to administrative bodies, we find Lord Loreburn in *Board of Education* v. *Rice* (3) saying:

> They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view.

In the *Arlidge* case (4), a majority of the Court of Appeal decided that because Arlidge, after three full opportunities to present his case, was not permitted to see the report which the inspector remitted to the department for its consideration, he had been deprived of natural justice. The House of Lords emphatically denied this proposition, holding in effect, to quote Lord Haldane at p. 132, "What the procedure is to be in detail must depend on the nature of the tribunal." The *Arlidge* case (4) was followed by the Judicial Committee in *Wilson* v. *Esquimalt and Nanaimo Ry.* (5), the judgment being delivered by the present Chief Justice of this Court.

The only claim in the action is for relief by way of an injunction against the investigator Fraser to restrain him from proceeding with his investigation. Apart altogether from the formidable objection to the action raised by the prohibitory section of the statute (section 29), I cannot accept the contention of the appellants of the existence of the right which they have asserted in the action.

(1) [1915] A.C. 120, at 138.
(2) (1889) 58 L.J.Q.B. 371, at 372.
(3) [1911] A.C. 179, at 182.
(4) [1915] A.C. 120.
(5) [1922] 1 A.B. 202.

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The appeal therefore should be dismissed with costs.

DYSART J. *ad hoc*—I agree in the result.

Appeal dismissed with costs.

Solicitor for the appellants: *Stuart Hugh Gilmour.*

Solicitors for the respondent: *McCrossen, Campbell & Meredith.*