A

THE COMMISSIONER OF INLAND REVENUE

v.

RICHARD SYDNEY SMITH & LAURENCE MAXWELL ROLLS

B [COURT OF APPEAL (Gould V. P., Marsack J. A., Chilwell J. A.) 6 July 1981: 31 July 1981]

Civil Jurisdiction

M. J. Scott & I. V. Helu for the Appellant
C *K. R. Handley Q. C., M. Johnson & K. C. Ramrakha* for the Respondents

Income Tax—Court of Review—plurality of appointments concurrently permissable.

Appeal by the Commissioner of Inland Revenue against the judgment of Mishra J. given on 18 July 1980 in which he dismissed the appellant's application for an
D order of certiorari to quash a decision of Mr D. C. Dunkley and in which he dismised the first ground of the appellant's appeal against that decision. The decision in question was signed by Mr Dunckley on the 31st May 1979. He allowed the appeal of each of the respondents against assessments of the Commissioner for income tax.

E Mr Dunckley was appointed to be the Income Tax Court of Review in June 1975. In February and March 1978 he heard the two income tax appeals which were consolidated. The hearing, was concluded in August 1978. Mr Dunckley left Fiji in November 1978 without delivering his decision. Before his decision was signed and delivered Mr K. A. Stuart was appointed to be the Court of Review with effect from the 12th March 1979.

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The essential question on this appeal is whether Mr Dunkley had jurisdiction to deliver the decision in June 1979. The answer to that question will resolve the issue on this appeal which is whether Mishra J. erred in law in dismissing the application for an order of certiorari, and in dismissing the first ground of the appellant's appeal against Mr Dunckley's decision. The ground advanced in both proceedings in the Supreme Court was that Mr Dunckley had no jurisdiction to deliver his decision.
G Mishra J. held that Mr Dunckley did have jurisdiction.

The findings of fact made by Mishra J. are not in dispute and the relevant part thereof may be summarised.

> "Donald Dunckley did not resign, there was no formal revocation of his
H appointment. He was not on leave and was in the course of preparing judgment which, under the Act were to be sent to the parties by registered mail, thus

dispensing with the requirement of his physical presence at Suva. He had no intention of relinquising his office as Court of Review before the unfinished business had been completed. The Registrar of the Court of Review and the Judicial and Legal Services Commission were both aware of the unfinished business. There was no question of transfer, promotion, death or any other circumstance which would have resulted in the office falling vacant."

Held: There was nothing in the sections of the Act rendering more appointments than one to be the Court of Review out of accord with Legislatures intention. As to an argument related to that intention when the Income Tax Act was passed there was nothing discernible in S.62 which would regard more than one appointment concurrently as expressing a contrary intention within the meaning of the Interpretation Act S.4(2):

Cases referred to:

Frederick v. Chief of Police (1968) 11 W.I.R. 330
Floor v. Davis (1979) 2 All E.R. 677
R. v. Peddle (1907) 26 NZLR 972
Jackson v. Hall (1980) A.C. 854

Appeal dismissed.

CHILWELL. Judge of Appeal:

Judgment

The Commissioner of Inland Revenue has appealed against the judgment of Mishra J. given 18th July 1980 in which he dismissed the appellant's application for an order of certiorari to quash a decision of Mr D. C. Dunckley and in which he dismissed the first ground of the appellant's appeal against that decision. The decision in question was signed by Mr Dunckley on the 31st May 1979 and received by the parties in June 1979. He allowed the appeal of each of the respondents against assessments of the Commissioner for income tax.

Mr Dunckley was appointed to be the Income Tax Court of Review in June 1975. In February and March 1978 he heard the two income tax appeals which were consolidated. The hearing, followed by written submissions, was concluded in August 1978. Mr Dunckley left Fiji in November 1978 without delivering his decision. Before his decision was signed and delivered Mr K. A, Stuart was appointed to be the Court of Review with effect from the 12th March 1979.

The essential question on this appeal is whether Mr Dunckley had jurisdiction to deliver the decision in June 1979. The answer to that question will resolve the issue on this appeal which is whether Mishra J. erred in law in dismissing the application

for an order of certiorari, and in dismissing the first ground of the appellant's appeal against Mr Dunckley's decision. The ground advanced in both proceedings in the Supreme Court was that Mr Dunckley had no jurisdiction to deliver his decision. Mishra J. held that Mr Dunckley did have jurisdiction. Counsel agree that if Mishra J. was wrong it will be a sufficient remedy if this Court restores the said first ground of appeal; that the application for an order for certiorari need not occupy the Court's time.

Evidence of the respective appointments of Messrs Dunckley and Stuart is to be found in the *Fiji Royal Gazette*. That of Mr Dunckley is dated 30th June 1975 and states in its material parts:

> "In exercise of the powers conferred upon it by section 62 of the Income Tax Act, 1974 the Judicial and Legal Services Commission has appointed Donald Campbell Dunckley to be Income Tax Court of Review with effect from 19th June, 1975."

Mr Stuart's appointment is undated but appeared in the *Gazette* on 30th March 1979. The material parts state:

> "In exercise of the powers conferred upon it by section 102 of the Constitution and subsection (1) of section 62 of the Income Tax Act 1974, the Judicial and Legal Services Commission has appointed Kenneth Albert Stuart to be the Court of Review with effect from the 12th day of March 1979."

By virtue of Section 2(1) of the Interpretation Act, 1967 each appointment is "subsidiary legislation" made in exercise of power in that behalf conferred by Section 62 of the Income Tax Act, 1974 which reads:

> "62.—(1) The Judicial and Legal Services Commission may appoint a person of legal knowledge and experience for the purpose of hearing and determining appeals from the assessment of the Commissioner, and the person so appointed shall hold a court to be called the Court of Review, and the said Court of Review shall for the purpose of hearing and determining the appeals under this Act referred to it have powers and authority similar to those vested in the Supreme Court as if the appeal were an action between the taxpayer and the Commissioner.
>
> (2) Section 102 of the Constitution shall apply to the office of the Court of Review."

We agree with Mr Handley that the essential question is to be resolved by a proper construction of Section 62 and of Mr Stuart's appointment.

The findings of fact made by Mishra J. are not in dispute. We think it appropriate to refer to the following passages in his judgment—

> "Donald Dunckley had not formally resigned and there has been no formal revocation of his appointment."

> "There is no suggestion that Mr Dunckley, as Court of Review, was on leave prior to retirement. He had heard appeals and was in the course of preparing judgments which, under the Income Tax Act were to be sent to the parties by registered mail, thus dispensing with the requirement of his physical presence at Suva. There is nothing also to suggest that Mr Dunckley had any intention of relinquishing his office as Court of Review before the unfinished business

had been completed. The Registrar of the Court of Review and the Judicial and Legal Services Commission were both aware of the unfinished business. There was no question of transfer, promotion, death or any other circumstance which would have resulted in the office falling vacant." A

The findings in the second paragraph were made with Section 41 of the Interpretation Act and Section 131(2) of the Constitution specifically in mind. They state:

"41.—(1) Where the substantive holder of any public office constituted by or under any written law is on leave of absence pending relinquishment by him of such office, or has been instructed by the Government to take up a special duty or is otherwise absent, it shall be lawful for another person to be appointed, substantively to the same public office. B

(2) Where two or more persons are holding the same office by reason of an appointment made in accordance with the last preceding subsection, then, for the purpose of all written law and in respect of every power conferred or duty imposed upon the holder of such office, the person last appointed to the office shall be deemed to be the holder thereof." C

"131.—(2) Where a power is conferred by this Constitution upon any person to make an appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office." D

The facts did not bring Mr Dunckley or Mr Stuart within either of those provisions. Indeed the only authority for Mr Stuart's appointment was Section 62 of the Income Tax Act and that appointment was made within the factual framework as found by Mishra J. We make three further findings of fact, based upon uncontested evidence in the Supreme Court, that when Mr Dunckley left Fiji in November 1978 the decision in question represented the only appeals heard by him which were undetermined, that there were six other appeals which were neither heard nor determined and that these six appeals remained unheard by the time of Mr Stuart's appointment. E F

The Judicial and Legal Services Commission had the power to remove Mr Dunckley from office. See Section 102 of the Constitution and Section 45 of the Interpretation Act. The Commission did not expressly remove Mr Dunckley before or at the time it appointed Mr Stuart; nor had it done so by the time Mishra J. delivered his judgment. The appellant contends that the later appointment of Mr Stuart, by the same Commission which had earlier appointed Mr Dunckley, amounted in law to the removal of Mr Dunckley: in consequence Mr Dunckley lacked jurisdiction to deliver his decision. G

For the first part of that submission Mr Scott relied upon *R. v. Mann* [1844] Legge's Reports 182, *R. v. Mayor of Canterbury* (1882) 1 Strange 674; 93 E.R. 734, *Willis v. Gipps* (1846) 5 Moore 379; 13 E.R. 536 and *Robarts v. The Mayor of London* (1882) 46 L.J. 623 as establishing the proposition that an appointment to an office held at pleasure as automatically terminated by a later appointment. In addition he cited *R.* H

v. Rogers (1878) 4 V.L.R. 334, *R. v. Peddle* (1907) 26 N.Z.L.R. 972 and *Pallais Parking* A *Station Pty Ltd. v. Shea* (1977) 16 S.A.S.R. 350. For the consequential lack of jurisdiction he relied upon *Jones v. Ricketts* (1964) 7 W.I.R. 62 and *Frederick v. Chief of Police* (1968) 11 W.I.R. 330 decisions of the appellate Courts of Jamaica and Grenada.

The respondents contend that the resolution of the essential question becomes one of construction. Section 62 of the Income Tax Act, they submit, must be read with Section 2(4) of the Interpretation Act which states: B

> "2.—(4) In every written law, except where a contrary intention appears, words and expressions in the singular include the plural and words and expresions in the plural include the singular."

No contrary intention appears, they say, to preclude the appointment of more than one person under Section 62 and, they say, that Mr Stuart's appointment, when pro- C perly construed, did not revoke Mr Dunckley's authority to deliver a decision.

Our reasons for concluding that the essential question is one of construction are that the Court of Review is created by statute as are the appointments to it and the termination thereof and that there is nothing in the authorities cited by Mr Scott which establishes any overriding principle of law with regard to appointments and termination. In *R. v. Mann* the power to remove Justices of the Peace was clear and D the question, one of construction, was whether a later commission of appointment revoked the jurisdiction of the Justices to sit in a particular district which had been granted by an earlier commission. In *Willis v. Gipps* the statutory power to remove a Supreme Court Judge was clear, the document removing him was express and clear and the decision was that his removal was invalid because he had not been heard. In *Roharts v. The Mayor of London* the issue was whether the office of Remembrancer E was for life or at pleasure. It was decided to be the latter. There was no doubt that the will of the Council to remove was clearly expressed by appropriate resolution. The report of *R. v. Mayor of Canterbury* is too brief to be of value except that it establishes that where an officer is at pleasure the choice of another operates to remove the former appointee. The office in question was Recorder. In *R. v. Rogers* it was decided, upon a proper construction of the relevant statutes, that County Court Judges held office at pleasure and were liable to arbitrary dismissal. *Pallais Parking Station Pty* F *Ltd. v. Shea* concerned conflicting appointments by proclamation to the statutory office of "promoter" of certain public works. The issue was resolved as a matter of construction of the relevant statutes and of the proclamations in question. In *R. v. Peddle* it was held that upon a proper construction of the Sheriffs Act 1883 (N.Z.) and the Interpretation Act 1888 (N.Z.) there was power to appoint a sheriff during the absence on leave of the substantive holder of the office.

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Ample dicta may be found in the cited authorities to the effect that an office held at pleasure may be determined by the choice of another without the express removal of the former but, in our judgment, they merely indicate that the choice of another without more raises a strong implication, as a matter of construction, that the will to remove has been sufficiently expressed. In the present case there is no contest about the power to remove; the contest is whether the will of the Judicial and Legal Ser- H vices Commission was sufficiently expressed. If Section 62 of the Income Tax Act does not authorise the appointment of more than one person, if persons may not

hold office concurrently or overlap, then it is inevitable that the construction of Mr Stuart's appointment carries the implication that the will of the Commission was sufficiently expressed. In that event we agree that Mr Dunckley lacked jurisdiction to deliver his decision. We accept as correctly decided the two decisions of the appellate Courts of Jamaica and Grenada cited by Mr Scott. The principle enunciated by A.M. Lewis C.J. in *Frederick v. Chief of Police* applies with equal force to a person appointed to the Fiji Court of Review. A.M. Lewis C.J. said at page 331:

> "The Magistrate's Court, as has often been stated, is a creature of statute. A person who is appointed as magistrate has the powers which are conferred on him by the statute so long as he remains the magistrate. When his appointment is terminated, he becomes, as it is said, functus officio. He is divested of the authority which he had as magistrate."

Accordingly, as in that case so in this, if Mr Dunckley's appointment was terminated on 12th March 1979 he was divested of his authority to determine the two appeals which he had heard.

We turn now to the construction of Section 62. We agree with Mishra J. that Section 62, the other relevant provisions of the Income Tax Act and the Rules made under Section 63 all make consistent use of the singular in references to the Court of Review. He also said that in practice only one person at a time has, in the past, been appointed to hold that Court. Does a contrary intention appear so that plurality is excluded?

Section 2(4) of the Interpretation Act has its counterpart in other parts of the Commonwealth. Several authorities were cited and it is from these that we have distilled certain propositions which apply in deciding whether a contrary intention appears. The authorities are *R. v. Peddle* (1907) 26 N.Z.L.R. 972 Court of Appeal; *Sin Poh Amalgamated (H.K.) Ltd. v. Attorney-General* [1965] 1 All E.R. 225 Privy Council from Hong Kong; *Blue Metal Industries Ltd. v. Dilley* [1970] A.C. 827 House of Lords; *No. 20 Cannon Street Ltd. v. Singer & Friedlander Ltd.* [1974] 1 Ch. 229 Megarry J.; *Floor v. Davis* (1979) 2 All E.R. 677 House of Lords. The principles we have distilled are these:

1. The section assists the Legislature to avoid cumbersome and over-elaborate wording.

2. In invoking the section the Court attributes to it the very function which the Legislature intended it to perform.

3. The section is to be invoked unless a contrary intention is clearly shown: it is not the case that an intention that the section should be invoked has to be shown.

4. To discover whether a contrary intention is clearly shown the Court must look at the section in its setting in the legislation and to consider the substance and the tenor of the legislation as a whole. In so doing the following further considerations are relevant:

   (a) The section authorises a process of selective pluralising or selective singularising.
   (b) The Court should assess the extent to which the section is invoked renders the legislation workable or unworkable.
   (c) The Court should assess the extent to which the section if invoked is out of accord with the intention of the Legislature.

A *(d)* If invoking the section is regarded as an amendment to the Bill at the time the Legislature enacted the legislation is there reason to suppose, in the context of the legislation, that the Legislature, if offered the amendment, would have rejected it?

Section 62(2) of the Income Tax Act may at first impression be thought to indicate a contrary intention. It provides:

B 62.—(2) Section 102 of the Constitution shall apply to the office of the Court of Review."

We agree with Mishra J. that this subsection is a drafting device to bring into operation certain powers of the Judicial and Legal Services Commission which would otherwise not apply: it has the effect of placing the Court of Review in Schedule 3 to the Constitution. We agree that the Schedule is of no assistance in determining the issue of singularity or plurality, that it merely lists offices to some of which only one C person may be appointed and to others more than one.

There is a provision in the Income Tax (Court of Review) Rules which appears to be inconsistent with plurality of office and may therefore be indicative of a contrary intention. We refer to Rule 7 which states:

D "7.—(1) Upon the filing of the notice of appeal the Registrar shall cause the appeal to be entered in the books of the Court and shall obtain a direction by the person for the time being appointed to hold the Court as to the day, time and place to be appointed for the hearing of the appeal.

E (2) Unless, on the application of the appellant, it is otherwise directed, the place of the hearing of the appeal shall be at Suva. An appellant may apply at any time to the person for the time being appointed to hold the Court for a direction that the appeal be entered for hearing at any place other than at Suva or, if the appeal has been entered for hearing at Suva, to change the place of hearing. Any such application may be made by motion on not less than four days notice to the Commissioner."

The Rules were made by the Chief Justice in 1966 under power imposed in him by Section 69 of the now repealed Income Tax Ordinance of 1964. The power, which has been re-enacted in Section 63 of the Income Tax Act, is a power to make rules of F court generally for regulating any matters relating to the practice and procedure of the Court of Review. The present section contains a new sentence which did not appear in Section 69 of the 1964 Act:

"Such rules shall be regarded as forming part of this section."

We have heard interesting arguments whether in the light of *Jackson v. Hall* G [1980] A.C. 854 the Rules can be relied upon as an aid to construction of the Income Tax Act and whether the view expressed by Mellish L.J. In *Re Wier, ex parte Wier* (1871) L.R. 6 Ch. App. 875, 879 is erroneous and whether the law as stated in 36 *Halsbury's Laws of England* 3 Ed paragraph 606 is now correctly expressed without some qualification. We do not find it necessary to determine those questions because of the view we take of the material Rule 7. The Rules relate to the practice and procedure of the Court of Review. Rule 7 was drafted to suit the appointment of H one person to hold the Court. That appears to be attributable to the fact that Section 62 is drafted in singular terms—"the person so appointed shall hold a court to be called the Court of Review". Rule 7 is designed to ensure that it is the person who is to

hear and determine the case rather than the Registrar who appoints the day, time and place for the hearing including the power to nominate a place of hearing other than Suva. Accordingly the draftsman has followed the working of Section 62. If plurality of appointment is within the scope of Section 62 we can see no difficulty in reading "a" for "the" in Rule 7(1) and (2). A

We turn our attention now to the principles we have distilled from the authorities. Items 1, 2 and 3 require no further elaboration. In considering the principles set forth under item 4 we commence by referring to Section 61 of the Income Tax Act. This section provides for the making of an objection in writing to an assessment, for the information required to be provided to the Commissioner and it empowers the Commissioner to consider the objection. He is required to allow or disallow the objection in whole or in part. If the objection is disallowed the Commissioner is obliged to notify the objector that he has a right of appeal. That right is conferred by subsection 6 the material part of which states that the objector may: B C

> "..... appeal to the Court of Review and such appeal shall be heard and determined as hereinafter provided ....."

The obligation to pay the tax in question is not suspended unless the Commissioner so directs:

> "..... pending the decision of the Court of Review ....." D

Then Section 62(1) provides for the appointment of:

> "..... a person of legal knowledge and experience for the purpose of hearing and determining appeals ....., and the person so appointed shall hold a court to be called the Court of Review ....."

The Court of Review is given: E

> "..... powers and authority similar to those vested in the Supreme Court as if the appeal were an action ....."

By Section 63 the Chief Justice is given the power to make:

> "..... rules of court generally for regulating any matters relating to the practice and procedure of the said Court of Review or the fees to be charged and the costs of proceedings therein ....." F

After the hearing of the appeal the Court of Review is required to determine it; it may confirm or amend or increase the assessment. Its decision is to be sent by registered mail to the parties (Section 65). It is empowered to proceed ex parte if the appellant fails to appear (Section 66) and it has the power to award costs (Section 67). Both parties have a right of appeal to the Supreme Court which is required to hear the appeal: G

> **".....upon the papers and evidence referred and upon any further evidence which the appellant or the Commissioner produces under the direction of the said court." (Section 68)**

It is our judgment that the substance and tenor of the relevant sections is the establishment of a Court for the hearing and determination of appeals against the disallowance by the Commissioner of objections to assessments of income tax and the regulation of the practice and procedure of the Court. H

There is nothing in any of the sections other than the use of the singular which renders plural appointments to the Court unworkable or out of accord with the intention of the Legislature. In our opinion plural appointments could make the Court operate more efficiently. Mr Handley gave some examples all of which appear to us to be sensible. He instanced the possible increase in the number and complexity of appeals, the possibility of a sole appointee being disqualified from hearing a particular appeal or appeals, the need for flexibility in cases where an appointee is absent on leave (due to sickness or otherwise) for a substantial period or has other duties which consume his time such as those arising from appointment to other public offices, the desirability of hearings being able to proceed while reserved decisions are being prepared. Many more examples could be given. It is not without significance that Mr Scott made no submissions in support of any disadvantage resulting from plural appointments. We have been unable to think of any.

The final test is to go back in time to 1974, to imagine that the Income Tax Act 1974 is a Bill before the House and to imagine an amendment prepared in terms of Section 2(4) of the Interpretation Act 1967. Is there reason to suppose that the Legislature, having regard to the substance and tenor of Sections 61 to 68 of the Bill, would have rejected the amendment? Mr Handly provided the appropriate wording of an amended section incorporating nothing more than Section 2(4) of the Interpretation Act would allow. We reproduce his draft with the suggested amendments underlined—

> "62(1) The Judicial and Legal Services Commission may appoint a person *or persons* of legal knowledge and experience for the purpose of hearing and determining appeals from the assessment of the Commissioner and the person *or persons* so appointed shall hold a Court *or Courts* to be called the Court of Review, and the said Court of Review shall for the purpose of hearing and determining the apeals under this Act referred to it have powers and authority similar to those vested in the Supreme Court as if the appeal were an action between the tax-payer and the Commissioner."

We cannot think of any reason why such an amendment would have been rejected, except perhaps the desirability of Parliament retaining control over the number of appointees but Parliament saw fit to vest control in the Judicial and Legal Services Commission and that appears to us to be sufficient reason to suppose that Parliament would not have rejected the amendment on that ground.

For the foregoing reasons we conclude that on a proper construction of Section 62 of the Income Tax Act there can be more than one person appointed to hold a Court or Courts to be called the Court of Review.

The next question is: on a proper construction of Mr Stuart's appointment was Mr Dunckley's authority to deliver his decision revoked? When the two appointments are read together they appear to be in conflict. Mr Dunckley was appointed Income Tax Court of Review. Then with effect from 12th March 1979 Mr Stuart was appointed "to be the Court of Review". It is significant that the Judicial and Legal Services Commission did not remove Mr Dunckley from office nor did he resign. The question is whether MrStuart's appointment impliedly removed Mr Dunckley from office or impliedly revoked his authority to deliver his decision. The general principles of the law relating to repeal of legislation by implication are summarised in 36 *Halsbury's Laws of England* 3 Ed. paragraph 709 as follows:

"709. *General principles.* Repeal by implication is not favoured by the courts for it is to be presumed that Parliament would not intend to effect so important a matter as the repeal of a law without expressing its intention to do so. If, however, provisions are enacted which cannot be reconciled with those of an existing statute, the only inference possible is that Parliament, unless if failed to address its mind to the question, intended that the provisions of the existing statute should cease to have effect, and an intention so evinced is as effective as one expressed in terms. The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together. If it is reasonably possible so to construe the provisions as to give effect to both, that must be done; and their reconciliation must in particular be attempted if the later statute provides for its construction as one with the earlier, thereby indicating that Parliament regarded them as compatible, or if the repeals expressly effected by the later statute are so detailed that failure to include the earlier provision amongst them must be regarded as such an indication."

In addition the Court is entitled to have regard to the state of things existing at the time the legislation was passed, and to the evil which, as appears from its provisions, the legislation was designed to remedy. *Halsbury* op.cit paragraph 620. For Parliament in the passage cited from *Halsbury* we substitute the Judicial and Legal Services Commission. The state of things existing at the time of Mr Stuart's appointment is portrayed in the findings of fact appearing earlier in this judgment. The evil which, as appears from the appointment, the appointment was designed to remedy was to appoint a person for the purpose of hearing and determining appeals.

Is is reasonably possible to construe the two appointments so as to give effect to both? We think it is. As at the 12th March 1979 there were appeals to be heard and determined. Mr Stuart's appointment gave him jurisdiction to hear and determine them. He could not determine the two outstanding appeals of the respondents because he had not heard them. When Mr Dunckley's heard those appeals he had jurisdiction to hear and determine them. It does no violence to the language employed in Mr Stuart's appointment to say that Mr Dunckley's appointment continued for the purpose of enabling him to discharge his statutory obligation to determine the two appeals in terms of the jurisdiction vested in him by his appointment. We have attempted, we think properly, the reconciliation of the two appointments which leads us to the same conclusion as Mishra J. that Mr Stuart's appointment did not revoke Mr Dunckley's authority to deliver his decision. The answer to the essential question is that Mr Dunckley had jurisdiction to deliver his decision in June 1979. Accordingly we find that Mishra J. did not err in law in dismissing the application for an order of certiorari and in dismissing the first ground of the appellant's appeal against Mr Dunckley's decision.

For the reasons given the appeal to this Court is dismissed with costs to the respondents.

Appeal dismissed.