HIGH COURT OF JUSTICE (QUEEN'S BENCH DIVISION, DIVISIONAL COURT)—20 AND 21 NOVEMBER 1979

COURT OF APPEAL—22, 23 AND 24 JANUARY AND 27 FEBRUARY 1980

HOUSE OF LORDS—10, 11, 12 AND 16 MARCH AND 9 APRIL 1981

Commissioners of Inland Revenue *v.* National Federation of Self-Employed and Small Businesses Ltd.[1]

Crown—Policy decision made by Commissioners of Inland Revenue—Claim by Respondent company that Inland Revenue acted unlawfully—Application for judicial review—Whether Respondent company had "sufficient interest"—RSC Order 53 *Rules* 1(2), 3(5).

Of some 6,000 casual workers in Fleet Street, a substantial number had been drawing their pay under false names. The Inland Revenue estimated that about £1,000,000 was being lost, but had no means of identifying the names and addresses of the defaulters. The Inland Revenue decided that action was needed to stop the loss for the future. After discussions with the employers and the unions, the Inland Revenue introduced in March 1979 a special arrangement under regn 50 of the Income Tax (Employments) Regulations 1973 (SI 1973 No 334) which would ensure that for the future tax would either be deducted at source or be properly assessed. The Inland Revenue also made it clear that, if the arrangement were generally accepted and subject to certain other conditions, investigation into tax lost would not be carried out for years before 1977–78, although current investigations into incorrect returns would be unaffected. The Inland Revenue considered that an attempt to collect the whole amount due from hostile workers whose identity was unknown, for a period more than two years in the past, would have been unlikely to produce any substantial sums of money and would have delayed or even frustrated the new special arrangement.

The respondent company ("The Federation") applied by way of judicial review for a declaration that the Inland Revenue had acted unlawfully in not pursuing claims for the full amount of tax due and for an order of mandamus directed to the Inland Revenue to assess and collect income tax due from the casual workers according to the law. The Federation contended that the Inland Revenue had differentiated in its treatment of different groups of taxpayers and had acted not for any reasons of good management but simply in response to trade union pressure.

The Divisional Court granted leave ex parte, and at the hearing *inter partes* directed that there should be treated as a preliminary point the Inland Revenue's objection that the Federation did not have "a sufficient interest in the matter to which the application relates" within RSC Order 53, rule 3(5).

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[1] Reported (QBD) [1980] 2 All ER 378; [1980] STC 261; (CA) [1980] QB 407; [1980] 2 WLR 579; [1980] 2 All ER 378; [1980] STC 261; 124 SJ 189; (HL) [1981] 2 WLR 722; [1981] 2 All ER 93; [1981] STC 260; 125 SJ 325.

The Divisional Court, dismissing the application, held that a taxpayer cannot by legal proceedings monitor the work of the tax authorities and the Federation did not therefore have a "sufficient interest". A

The Court of Appeal (Lawton L.J. dissenting), allowing the Federation's appeal, held that, on the assumption that the Inland Revenue's conduct was unlawful, the Federation could reasonably assert that it had a genuine grievance in relation to that conduct and that the Federation did therefore have a "sufficient interest". B

Held, in the House of Lords, allowing the Inland Revenue's appeal and restoring the order of the Divisional Court, that, upon examination of the statutory duties of the Inland Revenue and the alleged breach of those duties of which the Federation complained, (*per* Lords Wilberforce, Fraser of Tullybelton, Scarman and Roskill) the Federation as a body of taxpayers had shown no sufficient interest to justify its application and (*per* Lord Diplock) the Federation had completely failed to show any conduct of the Inland Revenue that was *ultra vires* or unlawful. C

Per Lords Wilberforce, Fraser of Tullybelton and Roskill: The total confidentiality of assessments and of negotiations between individuals and the Revenue is a vital element in the working of the system. As a matter of general principle one taxpayer has no sufficient interest in asking the court to investigate the affairs of another taxpayer or to complain that the the latter has been under-assessed or over-assessed: indeed, there is a strong public interest that he should not. And this principle applies equally to groups of taxpayers: an aggregate of individuals each of whom has no interest cannot of itself have an interest. D E

The case came before the Divisional Court of the Queen's Bench Division (Lord Widgery L.C.J. and Griffiths J.) on 21 and 22 November 1979 when judgment was given in favour of the Crown, with costs.

Jon Harvey Q.C. and *Stephen Silman* for the Applicant.

Patrick Medd Q.C. and *Brian Davenport* for the Crown. F

The following cases were cited in argument in addition to those referred to in the judgment:—*McKee* v. *Belfast Corporation* [1954] NI 122; *Reg.* v. *Commissioner of Police of the Metropolis* (ex parte *Blackburn*) [1968] 2 QB 118; *Reg.* v. *Paddington Valuation Officer* (ex parte *Peachey Property Corporation Ltd.*) [1966] 1 QB 380; *Vestey* v. *Commissioners of Inland Revenue* 54 TC 503; [1979] Ch 177. G

Lord Widgery L.C.J.—In these proceedings Mr. Harvey moves on behalf of the National Federation of Self-Employed and Small Businesses Ltd. whose registered office is at 32 St. Annes Road West, Lytham St. Annes.

The relief sought in these proceedings is, first, a declaration that the Board of Inland Revenue acted unlawfully in granting an amnesty to casual workers in Fleet Street, and, secondly, an order of mandamus directed to the Board of Inland Revenue to assess and collect income tax from the said casual workers in Fleet Street according to the law. H

A The grounds upon which the relief is claimed are, first, that the Board of Inland Revenue has exceeded its powers in granting an amnesty to the casual workers in Fleet Street; alternatively, secondly, if, as the Board of Inland Revenue claims, it has power to grant the amnesty, the Board of Inland Revenue is bound to give reasons for the exercise thereof and that the reason given on behalf of the Board, namely that this was a reasoned commercial B decision, cannot be sustained. There is a final plea that the Board of Inland Revenue is under a duty to act fairly between taxpayer and taxpayer, and that I may have to deal with later on in this judgment. That being the relief claimed, one must next consider what is the factual background of the case, and it is interesting and unusual.

The Applicant Company, as its name implies, is set up to look after the C interests of small businessmen, self-employed men, small professional men, small businesses on the corner and the like. The application is made because, in the view of the Applicants, those small businessmen are not getting fair treatment from the Inland Revenue in regard to the assessment of their income tax. Attention is drawn to the fact that small businessmen operate in conditions in which their records, books and papers are readily available and they say it is D not in the nature of their employment that they should often, if ever, have a little windfall from the tax collector. They say they have to pay every last penny. If that is so, it is not surprising that they resent the fact if they see a blatant case of a different kind. The alleged blatant case of a different kind arises out of Fleet Street. We are told that in Fleet Street a very large proportion of the workers are casual labourers. Although casual and although E they come irregularly, one gathers that they obtain their wages gross at the end of the day. The system which has been in force for some time assumes that, if they leave their name in drawing their pay, the appropriate tax will eventually get to the collector. But of course in fact many of these chits supposed to give the names of the workmen which are handed in at the end of the day's work have names upon them which are entirely fictitious; M. Mouse, Esq. is F apparently repeatedly found to be there. That being the case, the proportion of wages due for tax which get to the tax collector is very small. The fact that all this has been the subject of a programme, I think, on television, has made people who get no chance of this kind in their own business resent the fact that others get away with it. These proceedings are brought in the hope that, by their force, they can stimulate the Inland Revenue to see that something is done G about Fleet Street. Of course things have been moving even while these proceedings have been pending, and any review of the facts would be incomplete without including the fact that the Revenue has made some kind of deal with the trade unions concerned, and the deal involved some kind of amnesty which has meant that arrears of tax before a certain date have not been collected. Questions may arise in the future as to whether those arrangements H are lawful arrangements because there are cases getting into the books now in which the right of the Revenue to make this kind of arrangement is being challenged. But, for reasons which will appear in a moment, I do not find it necessary to go into that aspect of the matter today.

Those being the very elementary facts upon which this case arises, one must turn next to the Rules of the Supreme Court by which the present I proceedings are regulated. They come in substance by the authority of Order 53 of the Rules of the Supreme Court which introduced a new phrase, I think, in our law, of "judicial review", meaning that the courts review and consider, and, if necessary, set aside, transactions which are contrary

to law. I will read most of the first three rules of Order 53 because all parts of them are important. Rule 1 reads as follows:

> "(1) An application for—(a) an order of mandamus, prohibition or certiorari, or (b) an injunction under section 9 of the Administration of Justice (Miscellaneous Provisions) Act 1938 restraining a person from acting in any office in which he is not entitled to act, shall be made by way of an application for judicial review in accordance with the provisions of this Order. (2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1)(b)) may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to—(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari, (b) the nature of the persons and bodies against whom relief may be granted by way of such an order, and (c) all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review."

That brings in, therefore, in addition to the classic remedies of mandamus, prohibition or certiorari, the possibility of a declaration or an injunction being granted as part of the proceedings for judicial review based on the prerogative orders.

The regulations make it perfectly clear that, in so far as they can be used to grant an injunction or declaration, the relief so granted is to be held to be part of the judicial review. Accordingly the whole of rule 3(5), in my judgment, applies to the whole of the relief claimed here. Rule 3(5) provides: "The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates." I take the view (and I do not think it is disputed by anyone else) that that last sub-rule places on this Court an obligation, when the forms of relief there specified are applied for, to consider whether the applicant has a sufficient interest in the matter. The significance of that is that, over the years when in one way or another the courts have allowed an individual to enforce a public right against a public authority, in all those cases through all the years there have been safeguards to prevent an abuse of such power, safeguards to ensure that only proper cases of public interest are included. Although one cannot apply the old authorities rigidly to this new provision in rule 3, one gets some guidance, I think, as to what sort of interests should be regarded as sufficient by looking at the old cases.

The old cases all show quite consistently that there should be no grant of any of these forms of relief unless the applicant for relief had an ascertainable legal right to enforce. In other words, it was not good enough to come along and say, "I am a member of the public and I want this done". In order to bring proceedings of the kind contemplated, it was necessary to show that the applicant had an interest described in many different ways, sometimes as a special legal right, and occasionally of course "a person aggrieved". We have to begin by asking whether the application Mr. Harvey makes today is an application on behalf of a person with a sufficient interest to pursue the matter further, and, in my judgment, this decision has to be made now. Before we embark upon the case itself, we have to decide whether the applicant has power to bring it at all, and that is why, having heard argument on that point, we are now in a position to give judgment upon it.

A To turn to the earlier cases and see how they dealt with this problem, it is sufficient, I think, by way of example to cite the case of *Reg.* v. *The Guardians of the Lewisham Union* [1897] 1 QB 498. The headnote reads as follows:

> "A metropolitan district board of works applied for a mandamus to the guardians of the poor of the district, commanding them to enforce the provisions of the Vaccination Acts generally in their district, and
> B particularly in certain specified instances. The board of works were the sanitary authority of the district, and charged by the Public Health (London) Act, 1891, with the duty of putting in force the powers vested in them relating to public health and local government, some of which powers relate to and include the prevention of infectious diseases, including small-pox;—*Held,* that the board of works had no legal specific
> C right to enforce the performance by the guardians of their duties under the Vaccination Acts, and therefore were not entitled to a mandamus."

Simple and perhaps not very vivid facts, but enough to show the way in which the courts were considering this problem at the turn of the century. The Metropolitan District Board of Works sent away unsatisfied because the court found that it had no legal specific right to enforce, and therefore, as the law was
D then understood, it had no means of enforcing its wishes.

That situation seems to have prevailed almost up to 1970, and, without I think, leaving aside any particularly important decisions, I can go now to the case of *Reg.* v. *Commissioners of Customs and Excise,* ex parte *Cook* [1970] 1 WLR 450. Here again I think the best way to introduce the case is to read the headnote, which is comparatively short:

E "By section 2 of the Finance Act, 1969, an excise duty was imposed on off-course betting premises. By Schedule 8 to the Act, the duty was payable by an annual sum or two half-yearly instalments. As a result of difficulties encountered by bookmakers in paying the duty, representations were made to the Financial Secretary to the Treasury and on September 11 and 12, 1969, the Commissioners of Customs and Excise
F stated in press notices that officials were authorised to issue licenses on receipt of one month's duty and 11 post-dated cheques with applications for a licence. The procedure was widely adopted by bookmakers and the Horserace Totalisator Board. On application by two bookmakers, who had complied with the Act by paying the tax in two instalments, for orders of mandamus requiring the Commissioners of Customs and Excise
G to enforce the provisions of section 2 of and Schedule 8 to the Act on the ground that because of the arrangement authorised by the Minister the number of their competitors was greater than it would otherwise have been, and that the terms of the statute were not being complied with regarding the payment of duty:—*Held,* refusing the applications, that although there was no statutory authority before the Minister's action,
H yet,since the applicants were not seeking to enforce a specific right or duty owed to them, nor had they any interest over and above that of the community, and the ulterior motive of putting people out of business was not such an interest, they had not shown a degree of interest sufficient to support their applications."

Some may be surprised at that decision. Some may think that the bookmakers
I who had paid up in accordance with the Act had some real sense of grievance when all the rest were allowed to pay by instalments. But the court held there

was no specific legal right vested in the two paying bookmakers. Accordingly, one gets again an example of the necessity which the courts sought in the early days of proving a specific legal right which they sought to enforce. A

I will cite two extracts from this case because it is comparatively recent and certainly important. At page 454 Lord Parker, giving the leading judgment, says this([1]):

> "It is in those circumstances that the applications are made, and Mr. Rees-Davies on their behalf says at the very outset that here is a statute, the law of the land, which just is not being complied with. There has been no amending Act. He says that it is, as he would put it, the word of the Minister which is being used to outweigh the law of the land, and in those circumstances his clients are entitled to an order of mandamus which, without going into the details of how it would have to be framed, is in effect a mandamus to the Commissioners of Customs and Excise to carry out their functions under the Act, and not under the word of any Minister." B C

Then Lord Parker leaves the matter to the following page (page 455) when he says this:

> "Accordingly, so far as I am concerned, the only and real point as I see it in this case is whether it can be said that the applicants have the necessary interest. In regard to mandamus, this has always been dealt with on a very strict basis, and in *Reg.* v. *Lewisham Union Guardians* (1897) 1 Q.B. 498, it was stated by Wright J., who was an authority on these matters, at p. 500: 'Certainly, so long as I have had anything to do with applications for a mandamus I have always understood that the applicant, in order to entitle himself to a mandamus, must first of all show that he has a legal specific right to ask for the interference of the court.' Quite clearly the applicants have no such specific right as individuals. They are not complaining that a licence was not issued to them. They are not complaining that they were not offered the same terms as other bookmakers in regard to monthly payments. They are not seeking to enforce any specific right or, put another way, any specific duty owed to them." D E F

Lord Parker goes on to the next page where his final views on the case are expressed, and he says:

> "Without referring to the authorities, it is sufficient, I think, to refer to a passage, dealing with Crown proceedings, in *Halsbury's Laws of England,* 3rd edn (1955), vol 11, p 105, para 196: 'But the mere fact that a person is interested in the performance of a duty as a member of a class of persons, all of whom may be regarded as equally interested, but himself having no particular ground for claiming performance, or that he has some ulterior purpose to serve, but no immediate interest on his own or any other person's behalf, will not be sufficient grounds for granting a mandamus." G H

Accordingly the application was refused.

In the same report at page 1424 one can see Lord Parker dealing again with this kind of problem. It is the case of *Reg.* v. *Hereford Corporation* ex parte *Harrower and Others*([2]). Here he has a local authority who have a number of flats, who are introducing heating into those flats, and they require estimates

([1]) [1970] 1 WLR 450. ([2]) [1970] 1 WLR 1424.

A from electricians accordingly. Estimates are invited and tenders received, but apparently the local authority had not noticed the fact that their standing orders required a special procedure to be used when sending out tenders, and this procedure was not used, whereupon a number of ratepayers, who were also electricians and might have got the job if things had been done in the proper way, brought proceedings in the High Court against the local authority asking
B for an order compelling the local authority to stand by its standing orders and carry out the procedure as required. On this occasion Lord Parker accepts that the applicants had the necessary status to go ahead, not, he said, as electrical engineers (they were not a sufficient class of prejudiced people sufficient to base his case upon them) but because they were ratepayers and, involved as such, that was sufficient interest and that entitled them to their orders.

C One has reached the point in those authorities so far upon which one can say this. The general trend is to say that the applicant must have a real legal right to enforce, but one notices ratepayers coming forward as being a class recognised as eligible for consideration when complaining about the local council.

I think the next case I can deal with is *Arsenal Football Club Ltd. and*
D *Another* v. *Ende* [1977] 1 QB 100. It is suited to this case because it does contain so many of the matters with which we are directly concerned. The case appears in the books twice, once in the Court of Appeal and once in the House of Lords. I will go to the Court of Appeal first. Here the question revolved around the proper rating assessment for the Arsenal Football Club stadium. It was assessed at the relevant time at about £9,000, and a local ratepayer, who was
E not interested in football, one gathers, thought that was far too low. Not being able to persuade anybody else of the matter, he proceeded to ask for a mandamus to require the local authority to reassess the stadium and produce a proper assessment of rates as he thought it should be. He thought about £60,000 would be right, and the existing value was only about £9,000. The matter was before the Court of Appeal first, and I cite it in that court simply so
F that one can see Lord Denning M.R.'s reaction to the problem. His views are expressed at page 116 in the very last paragraph of his judgment. "*Conclusion.* In my opinion, Mr. Ende is a 'person . . . aggrieved' by the underassessment of the Arsenal Football grounds. He was entitled to bring his grievance before the valuation court and to get the assessment increased to a correct level." Orr and Waller L.JJ. had some observations on this point, but neither of them said
G anything which was inconsistent with Lord Denning.

I can pass on, therefore, to the House of Lords where the case is reported at [1979] AC 1. I have already said enough about the facts of this case, and I will just read the headnote in the House of Lords:

> "The rateable value of a football club's stadium in the London Borough of Islington was shown in the valuation list as £9,250. A
H ratepayer, E, who lived about half-a-mile from the stadium in the adjoining borough of Hackney, in the same precepting area as Islington, managed a house in Islington as agent for a private company. E received the rents from the occupiers of the house, which was rated as a single hereditament, and out of the rents he paid the rates and outgoings for the house. E claimed to be a 'person . . . aggrieved' within section 69(1) of the
I General Rate Act 1967 by the value ascribed in the list to the stadium and proposed that it should be altered to £60,000. The local valuation court

increased the entry for the stadium in the valuation list to £13,900. The Lands Tribunal, on appeals by the club and the valuation officer, held on a preliminary issue that E was not the person who 'receives the rents' of the Islington house within section 24 of the Act of 1967 and so was not a ratepayer in Islington, and that even if he was such a ratepayer, or was a precept payer or taxpayer, he was not a 'person . . . aggrieved' within section 69(1) of the Act of 1967 and accordingly restored the entry of £9,250."

First of all, Lord Wilberforce at page 14 of the report says:

> "Mr. Ende is, of course, also a taxpayer—but I agree with both courts below that this circumstance does not give him a locus standi to make proposals even though taxpayers, in effect, contributed by rate support grant to the borough finances. His interest in this respect is too remote."

There one sees for the first time the idea coming through in the judgment that to be a ratepayer may be enough to qualify to demand a performance of the duties by the local authority, but to be a taxpayer is not enough. Taxpayers are a much larger body and consistently regarded as not being qualified to bring proceedings against the tax authorities to be applied on the topic now under consideration. Lord Morris said the same kind of thing at pages 25–6. He said:

> "The position of a taxpayer remains to be considered. Mr. Ende submitted that both boroughs (Islington and Hackney) were at all material times in beneficial receipt of funds provided by the National Exchequer from taxation customs and excise: that such funds were received for purposes of the rate support grant based upon their respective total rateable values: that he as a taxpayer contributed to the National Exchequer: and that the burden on the exchequer and consequently on him as a taxpayer was heavier than would be the case if all hereditaments were correctly valued. As a taxpayer Mr. Ende is in no different position from all other taxpayers who pay the same amount of tax that he pays. His concern as a taxpayer in regard to the Arsenal Stadium becomes much removed from his concern in regard to that stadium in his capacity as a ratepayer in Islington and in Hackney. The concern of all other taxpayers is also far removed. In these matters there comes a stage at which the law must draw a line and say that a claim is too remote. I think that the line to be drawn must deny a locus standi to one whose only status is that of a taxpayer. I would therefore decide the points of law raised in the case stated in the ways that I have set out."

Then Lord Fraser made an observation at page 35 as follows:

> "Mr. Ende also claims to be aggrieved as a taxpayer because the taxes he pays are used partly to pay support grants to some local authorities. But in my opinion the connection between his payments of tax and any under-assessment of a hereditament is too remote to enable him, in his capacity as a taxpayer, to be considered as a person aggrieved under this Act. Moreover, taxes are assessed and levied on entirely different bases from rates, and there is no room for uniformity between them."

Lord Keith added words to the same effect.

There one has a decision of the House of Lords in which every judge taking part in the decision all the way up had taken the view that a person who was a taxpayer could not on that account alone justify his bringing proceedings against the Inland Revenue authorities to make them perform their duty. He would be considered for present purposes too remote on the facts found. On

A the other hand, the cases show equally well a tendency in the courts to say that a ratepayer may have the right to bring proceedings against his local authority because they are far closer together and there is an element of common interest between them.

I would not today decide exactly what the position of a ratepayer is, but it seems clear to me on these authorities that one cannot shut one's eyes to the B fact that a mere taxpayer is not within the class who would be entitled to bring proceedings under Order 53.

That brings me to the case which I wish last to cite because, in a sense, it is Mr. Harvey's springboard, and he put it very early in his argument. It is the case of *Blackburn*(1) in 1976 dealing with pornography. Mr. Blackburn secured some success in those proceedings in pursuing a claim against the Commis- C sioner of Police to do his job by getting rid of the pornography in the shop windows in London. Mr. Harvey, very rightly, says that that is a case to which the greatest attention should be paid because it shows a new standard, a new approach, which the courts are going to take to this matter; indeed, it went further than any case had gone before. But I am certainly not in a position to say that I take the view that that is right. Indeed, it seems to me that in the present D state of authority all the judicial pronouncements of courts preceding this are against the position of the taxpayer and his claim to monitor the work of the tax authorities. It seems to me we would be entirely wrong to take a view opposite to that taken by the House of Lords in the *Arsenal Football Club* case(2). Without going further in regard to a definition of the various matters which arise under such an order, I think that the short problem before us as to whether E Mr. Harvey's clients have a sufficient interest to proceed must be answered against him. In those circumstances the application will have to be refused.

Griffiths J.—I agree. I would just like to add a word about the *Blackburn* case.

There is a passage in the judgment of Lord Denning M.R. in that case which does appear to adopt an exceptionally liberal approach to applications of F this character. He said this(3):

> "If he has no sufficient interest, no other citizen has. I think he comes within the principle which I stated in *McWhirter's* case [1973] QB 629, 649, which I would recast today so as to read: 'I regard it as a matter of high constitutional principle that, if there is good ground for supposing that a government department or a public authority is transgressing the law, or is G about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts in their discretion can grant whatever remedy is appropriate.'"

The other two Lord Justices in that case base their decision that Mr. and Mrs. Blackburn had a sufficient *locus standi* to apply for the writ upon the H ground that Mrs. Blackburn was a ratepayer, and that the factor is also mentioned by Lord Denning in the course of his judgment. But in so far as

(1) [1976] 3 All ER 184. (2) [1979] AC 1. (3) [1976] 3 All ER 184, at pp 191–2.

Lord Denning M.R. bases himself upon the wider principle recast from *McWhirter's* case(1), that I take to have been specifically disapproved by Lord Wilberforce in the course of his speech in *Gouriet* v. *The Union of Post Office Workers*(2). He said at page 483:

> "In so far as reliance was placed on observations of Lord Denning M.R. (concurred in by Lawton L.J.) in *Attorney-General ex. rel. McWhirter* v. *Independent Broadcasting Authority* [1973] Q.B. 629, 649, these were dicta in proceedings in which ultimately, the Attorney-General consented to relator proceedings. The court in fact held that an individual could not apply for an injunction against a breach of the law except with the fiat of the Attorney-General. Lord Denning M.R. went on to express the opinion obiter that an individual member of the public can apply for an injunction 'if the Attorney-General refuses leave in a proper case, or improperly or unreasonably delays in giving leave, or his machinery works too slowly': see p. 649. There is no authority for this proposition and in my opinion it is contrary to principle."

The very wide test suggested by Lord Denning M.R. is out of line with all the other authority on the subject. If, in this case, these Applicants are entitled to apply for the writ, then so is any one of the other 25,000,000 persons in this country who pay tax. If the court adopted that approach it would be swamped with applications by persons who were aggrieved with the administration. In my judgment, this application fails.

Application dismissed, with costs.

The Applicant's appeal against the above decision came before the Court of Appeal (Lord Denning M.R., Lawton and Ackner L.JJ.) on 22, 23 and 24 January 1980 when judgment was reserved. On 27 February 1980 judgment was given against the Crown, with costs (Lawton L.J. dissenting).

Jon Harvey Q.C. and *Stephen Silman* for the Applicant.

Patrick Medd Q.C. and *Brian Davenport* for the Crown.

The following cases were cited in argument in addition to those cases referred to in the judgment:—*Reg.* (*McKee*) v. *Belfast Corporation* [1954] NI 122; *Reg.* v. *Governor and Company of the Bank of England* [1891] 1 QB 785; *Reg.* v. *Commissioners for Special Purposes of the Income Tax* (1888) 21 QB 313; *Thorson* v. *Attorney-General of Canada* (1974) 43 DLR 1; *Commissioners of Inland Revenue* v. *Rossminster Ltd.* 52 TC 160; [1980] 1 All ER 80; *Rex* v. *Manchester Corporation* [1911] 1 KB 560; *Reg.* v. *Whiteway* (ex parte *Stephenson*) [1961] VR 168; *Reg.* v. *Lords Commissioners of the Treasury* (1872) LR 7 QB 387; *Reg.* v. *Commissioners of Inland Revenue* (In re *Nathan*) [1884] 12 QB 461; *London Passenger Transport Board* v. *Moscrop* [1942] AC 332; *Thorne Rural District Council* v. *Bunting* [1972] Ch 470; *Rex* v. *Barker* (1762) 3 Burr 1265; *Padfield* v. *Minister of Agriculture, Fisheries and Food* [1968] AC 997; *Rex* v. *Benchers of Lincoln's Inn* (1825) 4 B & C 855.

Lord Denning M.R.—The men are called the "Fleet Street Casuals". There are about 6,000 of them. They do casual work for newspapers. They love a bit of humour. When signing their pay dockets, they do not sign their true

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(1) [1973] QB 629. (2) [1978] AC 435.

A names. They use fictitious names and addresses. One favourite is "Mickie Mouse of Sunset Boulevard". Another is "Sir Gordon Richards of Tattenham Corner". But they do not sign in these names merely for fun. They use them for a serious purpose. It is to hide their true identities: so that they should not be discovered by the taxmen. By this means the "Fleet Street Casuals" have defrauded the Revenue of about £1,000,000 a year. The employers did not B know their true names. But the trade unions did. There are three trade unions controlling this newspaper trade: NGA, NATSOPA and SOGAT. Every casual worker has to be a member of one of these trade unions: because they operate a closed shop. Each union has the names and addresses of all its casuals. When a man seeks work, he has to go to the "call office" of the union. He is then given a "call slip" authorising him to go to a particular newspaper for C work. He does his work; receives his pay; signs his pay docket as "Mickey Mouse" or other fictitious name and address; and goes home. This device defeats the Revenue authorities completely. They do not know the true names of these men. The trade unions do. They have a complete list of the men, their names and addresses, and the shifts worked by them. In many ways the trade unions fill the role of the men's employers. But the Revenue authorities have D no access to these lists. They have no power to compel the unions to disclose the true names and addresses. So they cannot assess them to tax on their earnings.

A year or two ago the Revenue authorities found out about these false signatures. So did the B.B.C. They had a programme on "Panorama" exposing these frauds. The Revenue authorities were perplexed. They wondered what was the best way to deal with the problem. They would have liked to have E legislation to deal with it. But in the absence of new legislation, they felt that they had to make a special arrangement with those concerned. It looks as if these casuals threatened to take industrial action if their names were disclosed and they were made to pay up their past taxes. So the Revenue authorities had discussions with the employers and the trade unions. They came to a special arrangement. It was this: the men were to give their true names for *the future* F and pay their future taxes: but they were given an *amnesty* for much of the past. They were to be let off most of the past tax of which they had defrauded the Revenue. The reasons are given in an affidavit by Mr. Hoadley, a principal Inspector of Taxes:

> ". . . I considered that if any solution was to have a real prospect of being effective the agreement of the employers and the co-operation of the G casual printing workers and their union representatives was essential. I feared that if this co-operation could not be achieved, *the employers* would be unlikely to agree to any solution *because of the real possibility of industrial action being taken.* The newspaper industry, as is well known, *is peculiarly vulnerable to industrial action* and the workers have a tradition of independence. Even when the new arrangement which I describe below H was introduced with the approval of the employers and the co-operation of the trade unions, over ten million copies of newspapers were lost from consequential *industrial action.* While the possibility of industrial action would not prevent me from seeking a satisfactory solution to the problem of printing workers in Fleet Street, I considered that any scheme could only be effective for the future if it were introduced by general agreement I rather than against a background of opposition . . . The main factor in my mind throughout this matter was to secure a new system for the future which would be effective to stop the tax loss. I considered that by this means more tax would be collected than if, without first securing the

future, an attempt were made to recover the whole of the past tax which might have been lost. Such an attempt, being made against *a large number of hostile workers* where no records were available to show that they had been in receipt of casual earnings, would have been unlikely to produce any substantial sums of money and would, I consider, have seriously delayed or even permanently frustrated the introduction of the new arrangement."

News of the amnesty was given in the newspapers and on the television. Many were shocked by it. Especially some self-employed and small shopkeepers—good men and true who pay their taxes. They asked themselves: "Why should these 'Fleet Street Casuals'—who have defrauded the Revenue—be given this preferential treatment? Why should they be let off when any one of us (if he did any such thing) would have been pursued to the uttermost farthing?" So these small men, through their Association, 50,000 of them, took legal advice. On it they have taken advantage of a new procedure called "Judicial Review". They have come to the courts and ask for this relief: (i) A declaration that the Board of Inland Revenue acted unlawfully in granting an amnesty to casual workers in Fleet Street, and (ii) an order of mandamus directed to the Board of Inland Revenue to assess and collect income tax from the said casual workers in Fleet Street, according to the law. In support of their case, the self-employed and small shopkeepers sought to get the Board of Inland Revenue to disclose their papers relating to this amnesty: especially as to the negotiations with the unions and the employers. This has been adjourned: because of this preliminary objection: the Board of Inland Revenue object to these proceedings being taken against them. They say that no one has any standing to come to the courts to complain of their actions. No one at all. Not an ordinary citizen. Not even a taxpayer who is aggrieved by them. Not even the 50,000 of them in this Association. Maybe the Attorney-General might do so, but he has never been known to proceed against a government department. The Divisional Court has upheld the contention of the Board of Inland Revenue. The self-employed and small shopkeepers, as taxpayers, appeal to this Court.

This case thus raises a problem which was described a week ago in the New Law Journal for 21 February 1980 as "the major problem in revenue law. *Locus standi.* Who can challenge the legality of a tax concession?".

At first sight the House of Lords in *Gouriet's* case [1978] AC 435 seem to have slammed the door against ordinary citizens coming to the court—except one who has suffered a particular damage. But that decision was concerned only with relator actions. Lord Wilberforce pointed out that it did not apply to the prerogative writs such as mandamus or certiorari. He said (at page 482) that "these are often applied for by individuals and the courts have allowed them liberal access under a generous conception of locus standi". It is these remedies that we are here concerned with. They apply only to public authorities, not to trade unions: so they were not available in *Gouriet's* case.

Now as to these prerogative remedies, it was thought in the 19th century that the applicant must show that he had a "specific legal right" to ask for the interference of the court. So said Tapping on Mandamus in 1828, followed by R. S. Wright J. in *Reg.* v. *The Guardians of the Lewisham Union* [1897] 1 QB 498, at page 500. That was a deplorable decision. The guardians of the poor for Lewisham were obliged by statute to see that everyone was vaccinated against

A smallpox. They failed in their duty. Owing to their default a great number of people were not vaccinated. That put everyone else at risk. Yet no one had any *locus standi* to complain. Not even the local authorities. Nobody was allowed to come to the court—so as to compel the performance of the duty. Similarly, in *Reg.* v. *Commissioners of Customs and Excise,* ex parte *Cook* [1970] 1 WLR 450. Under a statute bookmakers were bound to pay for their licence by two B half-yearly instalments. Yet a minister, by a private concession, allowed some of them to pay monthly. It was held that nobody was allowed to come to the court so as to question the validity of the concession. Not even rival bookmakers could complain. Lord Parker C.J. felt that the result was alarming in "that the word of the Minister is outweighing the law of the land". Yet he felt he must follow the *Lewisham* case(1). The time has come when we must declare C that those cases were wrongly decided. They meant that public authorities could break the law with impunity: for the simple reason that no one had any *locus standi.* It is now clear that all the talk about "specific legal right" was a mistake. There is only one requirement and that is simply that the applicant must have a "sufficient interest in the matter to which the application relates". That was the test recommended in 1975 by the Law Commission in their Report D on Remedies in Administrative Law (Cmnd 6407, para 48) and adopted in the Rules of the Supreme Court, Ord 53, r 3(5). The Rule Committee must have thought that it represented the existing law: else the rule would have been *ultra vires.* I also think it represents the existing law.

This leaves open the question, of course, what is a "sufficient interest"? To that I answer, as many statutes have done in similar situations: Any E "person aggrieved"—by the failure of a public authority to do its duty—has a sufficient interest. He can come to the court and apply for a mandamus to compel it. At one time those words, "person aggrieved", were given a restrictive interpretation, confining it to a person who had a specific legal grievance, see Ex parte *Sidebotham* (1880) 14 Ch D 458, at page 465. But that interpretation was overthrown in *Attorney-General of the Gambia* v. *N'Jie* F [1961] AC 617, at page 634 where I said:

> "The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him: but they do include a person who has a genuine grievance . . ."

because something has been done or omitted to be done contrary to what the G law requires. The most instructive cases on this topic are those in which a ratepayer qualifies as a "person aggrieved". He has a sufficient standing to complain of an error in the valuation list whereby some other person has been rated too little. The complainant may be only one ratepayer out of the 21,000,000 people in the area of Greater London. He may complain that a valuation is too little on the other side of London 20 miles away. He is a "person H aggrieved" even though he is not affected in his pocket in the slightest. Lord Wilberforce put it well when he said in *Arsenal Football Club* v. *Ende*(2) [1977] 2 WLR 974, at page 980 that:

> "Uniformity and fairness have always been proclaimed, and judicially approved, as standards by which to judge the validity of rates. Indeed I believe that many men feel a more acute sense of grievance if they think I they are being treated unfairly in relation to their fellow ratepayers than

(1) [1897] 1 QB 498. (2) [1979] AC 1.

they do about the actual payments they have to make. To produce a sense of justice is an important objective of taxation policy." A

The *locus standi* of a ratepayer is not confined, however, to errors in the valuation list or in rating matters. He has a standing to complain whenever his local authority do something which they ought not to do—or omit to do something which they ought to do. Notable examples are when the Birmingham Corporation granted free travel on their buses to old people, see B *Prescott* v. *Birmingham Corporation* [1955] Ch 210, and when the Hereford Corporation failed to put a contract out to tender as they ought to have done, see *Reg.* v. *Hereford Corporation,* ex parte *Harrower* [1970] 1 WLR 1424, and when the Greater London Council licensed the showing of pornographic films, see *Reg.* v. *Greater London Council* ex parte *Blackburn* [1976] 1 WLR 550.

Mr. Patrick Medd Q.C. submitted to us that ratepayers were a race apart C from other men. The courts for centuries had listened to their grievances whereas they would refuse other people. I see no justification for this submission. In this Court in Mr. Blackburn's case ([1976] 1 WLR 550) the majority of the Court gave relief, not only to Mrs. Blackburn as a ratepayer but also to Mr. Blackburn as a resident and citizen of London. He was offended by the display of pornographic films. Thus bearing out Lord Wilberforce's *dictum* D in *Gouriet's* case [1978] AC 435, at page 483: "A right is none the less a right, or a wrong any the less a wrong, because millons of people have a similar right or may suffer a similar wrong."

On this review of the authorities I would endorse the general principle stated by Professor H. W. R. Wade Q.C. in his Administrative Law, 4th edn, page 608. He says that: E

> "It" (the law) "should recognise that public authorities should be compellable to perform their duties, as a matter of public interest, at the instance of any person genuinely concerned; and in suitable cases, subject always to discretion, the court should be able to award the remedy on the application of a public-spirited citizen who has no other interest than a regard for the due observance of the law." F

Those words were written in relation to mandamus but they apply also to the other prerogative writs such as certiorari or prohibition. They apply also nowadays to declarations and injunctions—where these are sought in situations which are comparable to the prerogative writs, that is, against public authorities who are acting unlawfully. This was recommended by the Law Commission in their Report No. 43. This recommendation is carried into effect G by Ord 53, r 1(2). Although neither mandamus nor an injunction will lie against the Crown, a declaration can be made and will be equally effective. *Was I in error?* In the court below, Griffiths J. took the principle I stated in *McWhirter's* case [1973] QB 629, at page 645 and said that it had been specifically disapproved by Lord Wilberforce in *Gouriet's* case [1978] AC 435, at page 483. But I would point out that the disapproval was only in regard to H relator proceedings. His disapproval did not apply to the proceedings by way of the prerogative writs. To these I would say as I said in *Reg.* v. *Greater London Council* ex parte *Blackburn* [1976] 1 WLR 550, at page 559:

> "I regard it as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way I which offends or injures thousands of Her Majesty's subjects, then any one of those offended or injured can draw it to the attention of the courts of law

A and seek to have the law enforced, and the courts in their discretion can grant whatever remedy is appropriate."

Applied to this case. So I come back to the question: Have these self-employed and small shopkeepers, through their Association, a "sufficient interest" to complain of this amnesty? Have they a genuine grievance? Are they genuinely concerned? Or are they mere busybodies? This matter is to be decided B objectively. A "busybody" is one who meddles officiously in other people's affairs. He convinces himself—subjectively—that there is cause for grievance when there is none. He should be refused. But a man who is genuinely concerned can point—objectively—to something that has gone wrong and should be put right. He should be heard.

Let me put the grievance of these self-employed and small shopkeepers. C They base themselves on their own position as 50,000 taxpayers out of 50,000,000 people. (That is equivalent, they say, to a ratepayer out of 21,000,000 people.) They say that these 6,000 "Fleet Street Casuals" have been given preferential treatment such as would not be accorded to any other taxpayers. They give examples of the way in which they themselves and other taxpayers are treated. If any of them should trip and fall, the taxmen come D down on them like a ton of bricks. No amnesty for them. When found out, they are made to pay to the uttermost farthing. Why should not these "Fleet Street Casuals" be made to pay up? If their grievance stopped there, I should have doubted whether they had a "sufficient interest". It seems to me that the Revenue authorities should be allowed to negotiate with taxpayers—and come to a settlement with them—without being harassed by complaints from E members of the public generally. It is most undesirable that every Tom, Dick or Harry should be able to call the Revenue to account for their stewardship—or to pry into their neighbour's tax returns. But the grievances of these self-employed and small shopkeepers does not stop there. They draw attention to

> "the sharp contrast between the attitude taken by the Revenue when they became aware of tax evasion on a large scale by the Fleet Street Casuals F and the attitude adopted by them in other cases when they suspect that the full amount of tax for past years had not been paid."

They refer to the passages which I have read from Mr. Hoadley's affidavit in which he points to "the real possibility of industrial action" and "a large number of hostile workers". Drawing on these passages they suggest that the amnesty was forced upon the Revenue authorities by threats of industrial action. If these G unions were to disclose the names of the "Casuals" to the Revenue authorities, the men would go on strike. So also if the Revenue authorities were to seek to enforce payment of the back taxes—the men would go on strike. That would hit the employers very hard. So much so that the employers implored the Revenue authorities not to insist on payment of the back taxes. Under the weight of these pressures, the Revenue authorities agreed to grant an amnesty.

H In these circumstances, had the Revenue authorities any power to grant such an amnesty? The Shorter Oxford Dictionary defines an amnesty as "a general overlooking or pardon of past offences by the ruling authority". I doubt whether it was within the power of the Inland Revenue to grant such an amnesty. By the common law an agreement not to prosecute an offender is itself an unlawful agreement. It is unenforceable and not binding on the parties I to it, see *Williams* v. *Bayley* (1866) LR 1 HL 200, *Jones* v. *Merionethshire Permanent Building Society* (1892) 1 Ch 173. So also it may be unlawful for the

Revenue authorities to grant an amnesty to these offenders or agree not to collect their taxes. Now I have to observe that for the purposes of this preliminary point we must assume that the grant of the amnesty was unlawful. Mr. Medd Q.C. invited us to proceed on the assumption that the Revenue acted unlawfully because they have no dispensing power. The only question, on that assumption, is whether these self-employed and small shopkeepers can complain of such unlawfulness. Have they a "genuine grievance"? They think that the "Fleet Street Casuals" are being given preferential treatment—over and above that afforded to other taxpayers—because they have available the weapon of "industrial action". These self-employed and small shopkeepers have no "industrial action" open to them. They have no industrial muscle. They have no one against whom to strike. One thing I must say. If these self-employed and small shopkeepers cannot complain, there is no one else who can. The unlawful conduct of the Revenue (assuming it is unlawful) will go without remedy. The Revenue authorities will have obtained a dispensing power without it being authorised by Parliament. And that, by a defect in our procedure—because no one has a *locus standi* to complain.

Rather than grant the Revenue such a dispensing power, I would allow the whole body of taxpayers a *locus standi* to complain. Assuredly the Attorney-General will not complain on their behalf. He never does complain against a government department. And as the whole body is too cumbersome, I would allow the body of taxpayers (50,000 of them) represented by the Federation to complain. They have a genuine grievance which finds a parallel in the grievance of the beneficiaries in *Vestey* v. *Inland Revenue Commissioners*[1] [1978] 2 WLR 136 at pages 154–5 where Walton J. said:

> "I conceive it to be in the national interest, in the interest not only of all individual taxpayers—which includes most of the nation—but also in the interests of the revenue authorities themselves, that the tax system should be fair . . . One should be taxed by law, and not be untaxed by concession . . . A tax system which enshrines obvious injustices is brought into disrepute with all taxpayers accordingly, whereas one in which injustices, when discovered, are put right (*and with retrospective effect when necessary*) will command respect and support."

Those eloquent words were quoted and stressed by Lord Wilberforce in 1979 when the case reached the House of Lords[2] [1979] 3 WLR 915 at 926B and 931A. Adapting them here I would say that if the Revenue authorities are found to be exercising a dispensing power—not given to them by Parliament—then it is open to a representative body of taxpayers—representative of the whole—to come to the courts to complain of it: and to seek a declaration as to the rights or wrongs of it. I must confess that, if it were not for the concession made by Mr. Medd Q.C., I should have been disposed to say that, as a matter of discretion, the application should be refused. But once the point emerges—as it does—whether the Revenue authorities have a dispensing power, then it is so important that in the words of Professor Wade: "The Court should be able to award the remedy on the application of a public-spirited citizen who has no other interest than a regard for the due observance of the law."

My conclusion is therefore that these self-employed and small shopkeepers are not mere busybodies. They are not spending their funds on this litigation out of spite or malice. They have a genuine grievance because, as they see it, the "Fleet Street Casuals" are getting out of paying their back taxes: because of their "industrial muscle". They feel that this is unfair and should be

(1) 54 TC 503, at pp 544–5. (2) *Ibid*, at pp 582 and 586.

A put right. They ask the courts to consider their grievance and say whether it is well-founded or not. I think they should be heard. They should not be brushed off as having no sufficient interest. I would allow the appeal accordingly.

Lawton L.J.—Many members of the National Federation of Self-Employed and Small Businesses have an acute sense of grievance over the way the Commissioners of Inland Revenue behave towards their members whose B tax returns do not appear to be in order compared with the way they have behaved towards some 6,000 workers in the printing industry who have not paid for many years tax on their casual earnings; and some of them seem to have engaged in the fraudulent evasion of tax. The full rigour of the law is usually applied to the self-employed and the small businessmen who are suspected of non-disclosure and almost always to those suspected of fraud, yet C the Commissioners decided to waive most of the arrears of unpaid tax owed by the printing workers. The Commissioners are suspected by the National Federation of having given way to trade union pressure and threats of industrial action. The Commissioners, through one of their senior officers, a Mr. Hoadley, have justified what was done, partly by relying on regn 50 of the Income Tax (Employments) Regulations 1973 (SI 1973 No. 334) but primarily D on the pragmatic ground that attempting to collect tax from hostile workers would have been a waste of time and energy as little tax would have been collected and any attempt to get in arrears would have made tax collection from these workers more difficult in the future. They have denied giving way under trade union pressure. If the decision of the Commissioners is ever looked into, it may be found that they were entitled to do what they did and that what they E did was both sensible and lawful. The truth, however, is not likely to be revealed without disclosure of all relevant documents and the cross-examination of those who took part in the negotiation of this remarkable arrangement. The sole problem for consideration in this appeal, however, is whether the National Federation can get the courts to look into what the Commissioners did and adjudge whether they acted lawfully. They submit they F can, the Commissioners submit they cannot.

In my opinion the law as to who can ask the courts to set in motion remedies for public grievances is confused and in need of clarification. In *Reg. v. The Guardians of the Lewisham Union* [1897] 1 QB 498 Wright J., who was regarded as being outstandingly learned about what were then known as prerogative writs, said:

G

> "Certainly, so long as I have had anything to do with applications for a mandamus I have always understood that the applicant, in order to entitle himself to a mandamus, must first of all shew that he has a legal specific right to ask for the interference of the Court . . . This Court would be far exceeding its proper functions if it were to assume jurisdiction to enforce the performance by public bodies of all their statutory duties without H requiring clear evidence that the person who sought its interference had a legal right to insist upon such performance."

During my professional lifetime until 1977 applicants for prerogative orders had to satisfy the Divisional Court that they were aggrieved persons, that is to say that they had suffered some damage or inconvenience over and above that suffered by other citizens. Nowadays the former insistence on an I applicant having "a legal specific right" or being an aggrieved person in the sense I have stated as a necessary qualification for making an application for an order of mandamus is no longer the necessary qualification. Order 53,

rule 3(5), provides that an applicant must have "a sufficient interest in the matter to which the application relates". What do these words mean? In the context of Order 53 they connote a concern in respect of a right or title or the performance of a public duty. Concern alone is not enough. All right minded citizens have a concern for the performance of public duties and other people's rights and titles; but the concern must be of such intensity that it amounts to a "sufficient interest". In my judgment, for an interest to come within Order 53, rule 3(5), there must be a connection with the subject-matter of the application greater than that which citizens generally may have. The present day qualification which an applicant for judicial review (including a mandamus) must have is clearly less restrictive than "a legal specific right" but must be more than a sense of grievance which any citizen might reasonably have against a government department or any statutory body performing public duties.

Ratepayers in an adjoining rating area (see *Arsenal Football Club Ltd.* v. *Smith (Valuation Officer) & anr.* [1979] AC 1) have been adjudged to have a sufficient interest; and a resident in the London urban area was adjudged to have been aggrieved by the way that the Greater London Council performed their statutory duties under the Cinematographic Acts 1909–1952 to justify an application for mandamus (see *Reg.* v. *Greater London Council,* ex parte *Blackburn* [1976] 1 WLR 550). If millions of residents and ratepayers have a sufficient interest to justify an application for mandamus, why should not millions of taxpayers have such an interest too? Herein lies the strength of Mr. Harvey's submission on behalf of the National Federation. He pointed out that the Commissioners' own reports show that there are nearly as many ratepayers in Great Britain as there are income tax payers.

There is, however, a difference between the position of a taxpayer and that of a ratepayer. A taxpayer is assessed for income tax on what he himself earns or enjoys as income. Save that the statutory rules for assessment are supposed to be the same for everybody, the assessment on him is made without reference to anyone else's income and is confidential between him and the Inland Revenue. A ratepayer has an affinity with other ratepayers in the same rating area. The rating authority has to raise the rate and prepare a valuation list showing the properties and persons rated. Every ratepayer has an interest in what every other ratepayer in the rating area pays. If they are rated for less than they should be, he may have to pay more. As Lord Wilberforce pointed out in the *Arsenal Football Club Ltd.* case (*supra*), Parliament ever since 1743 has made provision for appeals by ratepayers aggrieved by "any valuation list" or "the incorrectness or unfairness of any matter in the valuation list" (see [1979] AC 1 at page 15). Income tax payers have no similar interest in what others pay. If individuals, or groups of individuals, having genuine grievances were allowed to apply for orders of mandamus against the Commissioners on the grounds that they were being dealt with unfairly as compared with other named taxpayers, investigation of the complaint would be impossible without breach of confidentiality. Further the Commissioners for a long time, as is well known, have granted individuals and even groups of taxpayers concessions for which there seem to be no statutory authority. They have come to be known as extra-statutory concessions. Some of these concessions have been the subject-matter of critical judicial comment—see the judgment of Walton J. in *Vestey* v. *Inland Revenue Commissioners (No. 2)*(1) [1978] 3 WLR 693 at page 699. Others are generally regarded as sensible. The Commissioners have made no secret of these extra-statutory concessions. All engaged in advising upon tax law know about them. Parliament must know too because some are referred to in the

(1) 54 TC 503, at p 551.

annual reports which the Commissioners make to Parliament. A striking example is provided by the concessions which for some years have been made to contemplative orders of nuns who cannot, because of the decision of the House of Lords in *Gilmour* v. *Coats* [1949] AC 426, be regarded as charities. These particular concessions are referred to in Halsbury's Laws, 3rd edn, vol 20, para 1185 and were mentioned in the Commissioners' ninety-third (1949–50 Cmnd. 8103) and ninety-fifth (1951–52 Cmnd. 8726) Reports. Parliament, despite its tight control over tax raising, has never tried to stop the Commissioners making extra-statutory concessions. If the applicants are right, it is odd that what Parliament has not tried to do, any taxpayer with a genuine concern for the proper and lawful administration of the Inland Revenue can ask the courts to do; but he is never likely to complain about extra-statutory concessions of which he has had the benefit but only about those which others have had. In my judgment the courts should be slow to listen to the barking of the dog in the manger.

It is, I think, pertinent to remember that Parliament has given the courts only a limited jurisdiction over taxation. The taxpayer who is aggrieved about his assessment cannot come direct to the courts but only by way of appeal on a case stated on points of law by General or Special Commissioners. If he is aggrieved about matters other than points of law he can, through his member of Parliament, ask the Parliamentary Commissioner to look into his case. If he is troubled by the way in which the Commissioners are performing their duties, he can bring his concern to the attention of his member of Parliament or to the public generally through the press. All this goes, in my judgment, to show that, in general, taxpayers having grievances about the way the Commissioners perform their duties cannot use the courts through an order of mandamus to put right what is wrong. The courts may be the public's watch-dogs over government departments and public bodies and officers; but, as the House of Lords has emphasised in recent judgments, they cannot themselves extend their jurisdiction.

There may, however, as Mr. Medd accepted in argument, be cases in which a taxpayer has difficulties, special to himself, because of the way in which the Commissioners perform their duties. Extra-statutory concessions granted to the employees of one business might, for example, deprive a rival business of labour if the same concessions were not granted to its employees. I can see no such special difficulties arising out of the facts of this case for the members of the National Federation. They are complaining about the seeming unfairness to themselves and to taxpayers generally of the Commissioners' decision relating to the printing workers. They are not saying, and cannot say, that they are in any worse plight than the general body of taxpayers. Ever since the Middle Ages general complaints about the burden of taxation and the misconduct of tax gatherers have been put before the High Court of Parliament, as it used to be called. The Royal Courts were primarily concerned with the complaints of individuals whose rights had been infringed or who had suffered damage by the abuse or misuse of power.

I have not overlooked the development of the law relating to prerogative orders which has taken place during the past two decades, particularly that which is evidenced by the *Greater London County Council,* ex parte *Blackburn* case[1] which is binding upon me and to which I referred earlier in this

[1] [1968] 2 QB 118.

judgment. It would be presumptious of me to try to justify that decision. I distinguish it from the present case on the ground that the Commissioners are concerned to establish a relationship with individuals. Unlike a local authority they have no duty to control the environment in which people live. I appreciate that the distinction is a fine one. The courts have come a long way since 1960 in allowing grievances against persons performing public duties and exercising statutory powers to be given a hearing in the courts. The common law was alive to the mischief which was likely to arise if public officers could be sued by anyone with a grievance. Appreciation of this likely mischief resulted in the development of the restrictions imposed by the relator procedure. The restrictions of this procedure do not apply to prerogative orders (see the speech of Lord Wilberforce in *Gouriet* v. *Union of Post Office Workers* [1978] AC 435 at page 482 and the submission in that case made by counsel for the Attorney-General—page 446); but there still remains the restriction of "a sufficient interest". A line has to be drawn somewhere. If this application is put on the side of the line where the National Federation want it to be, anyone's genuine concern for good and lawful government, whether at a national or local level, would be a sufficient interest to justify a judicial review. This would entangle the courts with administration in a way which would be inconvenient and unconstitutional. Such is the flexibility of our unwritten constitution that the lack of a remedy in the courts does not mean that justice may not be done elsewhere.

I would dismiss the appeal on the grounds that the applicants have not shown that they have a sufficient interest in the matter to which the application relates.

Ackner L.J.—The appellant's name speaks for itself. The Federation's membership is currently in the region of 50,000 grouped into 350 branches and 38 regions covering the whole of the United Kingdom. Not all the Federation's members are self-employed persons paying income tax under Schedule D. Many are directors of their own companies taxable under P.A.Y.E. The membership is derived from all the various trades in the small business sector of the economy and the professions. The Federation are seeking: (1) a declaration that the Board of Inland Revenue acted unlawfully in granting an amnesty to casual workers in Fleet Street; (2) an order of mandamus directed to the Board of Inland Revenue to assess and collect income tax from the casual workers in Fleet Street according to law.

The short ground for the application is that the Board of Inland Revenue exceeded its powers and therefore acted unlawfully in granting this amnesty. The application is an application for "judicial review" and is made under the relatively new Order 53 of the Rules of the Supreme Court. Under Order 53, rule 1(2), an application for a declaration may be made by way of an application for judicial review and on such an application the court may grant the declaration claimed if it considers that having regard to (*a*) the nature of the matters in respect of which relief may be granted by way of an order of mandamus . . . (*b*) the nature of the persons and bodies against whom the relief may be granted by way of such an order, and (*c*) all the circumstances of the case it would be just and convenient for the declaration to be granted on an application for judicial review. Order 53, rule 3(5) provides: "The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates". As the notes in the Annual Practice correctly state, this new order was introduced to create a uniform, flexible and comprehensive code of procedure for the exercise by the High Court of its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals or other bodies of persons charged with the

A performance of public acts and duties. It eliminates procedural technicalities relating to the machinery of administrative law, mainly by removing procedural differences between the remedies which an applicant was formerly required to select as the most appropriate to his case. Its practical effect, so far as this application is concerned, is to enable the relief in the form of a declaration to be coupled with that of an order for mandamus.

B There is only one issue which we have to decide, a preliminary issue, namely whether the Federation has the necessary *locus standi* to be heard to make this application. We are thus not at this stage concerned with the merits of the allegation that the Board of Inland Revenue had no power to grant a tax amnesty to casual workers in Fleet Street, who had for years paid no tax on the remuneration they received from casual work. We must assume for the purpose C of this preliminary issue that the Revenue had no such power. Thus the sole question is whether the Federation, to quote the words referred to above in Order 53, rule 3(5), has "a sufficient interest in the matter to which the application relates".

The issue between the parties is not only a short, but it is a narrow one. It used to be said that the necessary interest to justify an order for mandamus had D to be dealt with on a very strict basis and the observations of Wright J. in *Reg.* v. *Lewisham Union Guardians* (1897) 1 QB 498 at page 500 were frequently quoted:

> "Certainly, so long as I have had anything to do with applications for a mandamus, I have always understood that the applicant, in order to entitle himself to a mandamus, must first of all show that he has a legal specific E right to ask for the interference of the Court."

Mr. Patrick Medd for the Crown accepts, having regard to subsequent decisions, in particular of this court, that such a test is now far too severe. He drew our attention to *Rex* v. *Manchester Corporation* [1911] 1 KB 560 where Lord Alverstone C.J. referred to the apparent inconsistency of *Reg.* v. *Cotham* (1898) 1 QB 802 where a very slight interest was held to be sufficient to allow F the application, with the decision in the *Lewisham* case. He contends that although the test is now less restrictive, nevertheless, in order for an applicant to have "a sufficient interest" he must have some genuine interest greater than that of the public at large. Mr. Harvey for the Federation contends, adopting a formulation suggested in the course of his submissions, that all he has to show is that his clients can reasonably assert that they have a genuine grievance.

G Let me, by an example, demonstrate how fine can be the difference between the rival contentions. Mr. Medd would accept that if the applicants in this case were competitors for labour with Fleet Street, and because of the indulgence which the Revenue was prepared to show to casual workers in Fleet Street, found it impossible to recruit adequate labour into their undertakings, because no such comparable tax indulgence was available to their casual H employees, they would have "a sufficient interest". They would have some genuine interest greater than that of the public at large. The Federation, however, are not in that position, and accordingly he contends that they have no *locus standi.* If narrow distinctions of this kind are to determine whether a private citizen should be entitled to secure the enforcement of a statutory duty by a public authority who might otherwise violate it with impunity, then the I following contention seems equally permissible. The Federation are not in the

same position as "the public at large", because the members of the Federation are all taxpayers and the public at large are not. I would however be reluctant to decide a question of this importance on such fine distinctions if a commonsense and workable formula can be justified.

The position of a ratepayer seems now well-established. He does not have to show some interest greater than other ratepayers in the area administered by the local authority whose failure properly to perform their statutory duty he is attacking. In the case of *Reg.* v. *Paddington Valuation Officer,* ex parte *Peachey Property Corporation Ltd.* [1966] 1 QB 380 the complaint was that the valuation officer had failed to carry out his statutory duties in preparing the list because he failed to take into account the open market rents currently paid in finding the gross "value" as defined in s 68 of the Rating and Valuation Act 1925. In dealing with the question as to whether Peachey Property had a sufficient interest, or, as it was there put, having regard to the terms of the statute, whether they were persons aggrieved so as to be entitled to ask for certiorari or mandamus, Lord Denning M.R. at page 401 said this:

> "Strange as it may seem, owing to the way expenses are borne in the County of London, the rate poundage of Paddington would remain the same even if the assessments of the flats in converted houses were greatly increased . . . But I do not think grievances are to be measured in pounds, shillings and pence. If a ratepayer or other person finds his name included in a valuation list which is invalid, he is entitled to come to the court and apply to have it quashed."

In *Reg.* v. *Hereford Corporation,* ex parte *Harrower* [1970] 1 WLR 1424, the Divisional Court granted an order for mandamus in the following circumstances. The applicants were electrical contractors on the corporation's approved list. They were also ratepayers. They claimed that the procedure adopted by the local authority contravened their own standing order which required them to invite tenders and to give ten days' notice before entering into a contract for the installation of central heating in certain of their flats, and that their failure to do so involved their acting in breach of s 266(2) of the Local Government Act 1933. Lord Parker L.C.J. in giving the judgment of the court said that the mere fact that the applicants were electrical contractors did not of itself give them sufficient right, but that if they were ratepayers that would be sufficient. He said his view was reinforced by the Irish case of *Reg.* (*McKee*) v. *Belfast Corporation* [1954] NI 122 which was another case where there was an application for a mandamus to comply with standing orders. His decision in *Reg.* v. *Commissioners of Customs and Excise,* ex parte *Cook,* also in [1970] 1 WLR 450, is clearly justifiable on the basis that the court's discretion would not have to be exercised in favour of the applicant in such a case, but it is difficult to follow on the basis that the applicant had no interest over and above the interests of the community as a whole. The respondents alleged illegal acts which favoured his business competitors.

Perhaps the strongest of all the cases in favour of the ratepayer is the case of *Reg.* v. *Greater London Council,* ex parte *Blackburn* [1976] 1 WLR 550, where Mr. Blackburn and his wife applied for an order of prohibition to issue against the council to prevent them *inter alia* from exceeding their censorship powers by allowing pornographic films to be shown openly in cinemas in London. When dealing with the issue of *locus standi* Lord Denning M.R. said this:

> "Who then can bring proceedings when a public authority is guilty of the misuse of power? Mr. Blackburn is a citizen of London. His wife is a

A ratepayer. He has children who may be harmed by the exhibition of pornographic films. If he has no sufficient interest, no other citizen has. I think he comes within the principle which I stated in *McWhirter's* case [1973] Q.B. 629, 649, which I would recast today so as to read: 'I regard it as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is trans-
B gressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts in their discretion can grant whatever remedy is appropriate'."

Stephenson L.J. said that he saw no reason why the applicants should not apply
C for prohibition: "They live in the Council's jurisdiction and have locus standi. Mrs. Blackburn as a ratepayer." Bridge L.J. said that he agreed that *Mrs. Blackburn* had sufficient *locus standi* as a ratepayer.

That the case is clearly authority for the proposition that not only Mrs. Blackburn, *quae* ratepayer, but also Mr. Blackburn as a member of the public living in the area where the films were shown, had a sufficient interest.
D Of course, if Mr. Blackburn had lived, for example in Penzance or Newcastle, it might well be contended that he could not reasonably assert that he had a genuine grievance, because he was so remote from where the alleged breach of statutory duty was said to have occurred.

Mr. Medd contends that the part of the judgment which I have set out above, in which Lord Denning recasts the principle which he stated in
E *McWhirter's* case, was disapproved by Lord Wilberforce in his speech in *Gouriet* v. *The Union of Post Office Workers* [1978] AC 435 at page 483. This is undoubtedly correct in so far as Lord Denning M.R.'s observations were directed to relator proceedings. *Gouriet's* case was of course not concerned with the prerogative orders, as to which Lord Wilberforce made this passing observation at page 482H:

F "Attention was drawn to the procedure of applying for prerogative writs. These are often applied for by individuals and the courts have allowed them liberal access under a generous conception of locus standi."

The last case on the position of a ratepayer is that of the *Arsenal Football Club Ltd.* v. *Smith (Valuation Officer) & anr.* [1979] AC 1. In that case, the rateable value of the football club stadium in the London Borough of Islington
G was shown in the valuation list as £9,250. A Mr. Ende, who had all the rights and liabilities of a ratepayer and who lived about a half a mile away from the stadium in the same precepting area claimed to be a "person aggrieved" under s 69(1) of the General Rate Act 1967 by the value described in the list and proposed that it should be altered to £60,000. Arsenal contended that to show that a person is "aggrieved" he must prove that he is demonstrably affected in
H his pocket, rights or interests by the under-valuation of the interest and, as a revaluation even on the scale suggested would not have had the slightest effect on the amount which Mr. Ende, as a ratepayer, would have had to pay, he could not be said to be aggrieved by the under-valuation. Lord Wilberforce in his speech at page 17 said:

"On principle, and on the history of this matter, there is no reason, in
I the absence of express limiting words, for confining grievances to

demonstrable injurious effects. Uniformity and fairness have always been proclaimed, and judicially approved, as standards by which to judge the validity of rates. Indeed I believe that many men feel a more acute sense of grievance if they think they are being treated unfairly in relation to their fellow ratepayers than they do about the actual payments they have to make. To produce a sense of justice is an important objective of taxation policy." A B

I cannot see any logical distinction between the position of a ratepayer who can reasonably assert that he has a genuine grievance if there is unfairness between his assessment and that of others in the same rating area, whether or not his pocket is affected, and the position of a taxpayer who can reasonably assert that his sense of justice or fairness is offended by the unlawful act by the Revenue in allowing his fellow taxpayers not to pay their tax. They have each in common the ability reasonably to assert a genuine grievance and that it seems to me to be "a sufficient interest" to give them each a *locus standi.* In neither case can they be said to be mere busybodies, seeking to interfere with matters that do not concern them. To Mr. Medd's rhetorical question—where do you draw the line?—I would answer, where the assertion of a genuine grievance cannot be said to be a reasonable assertion, i.e. it cannot be justified on reasonable grounds. Since, for the purpose of deciding this preliminary issue, it has been accepted that we should assume that the Revenue acted unlawfully because they have no dispensing power, then the body of taxpayers represented by the Federation can reasonably assert a genuine grievance. C D

I would therefore hold that the Federation has a *locus standi* and should therefore be entitled to have the merits of this dispute decided. I, too, would allow the appeal. E

Appeal allowed, with costs. Leave to appeal to the House of Lords granted.

The Crown's appeal against the above decision came before the House of Lords (Lords Wilberforce, Diplock, Fraser of Tullybelton, Scarman and Roskill) on 10, 11, 12 and 16 March 1981 when judgment was reserved. On 9 April 1981, judgment was given in favour of the Crown, with costs. F

Lord Mackay of Clashfern Q.C., Lord Advocate, *Patrick Medd Q.C.* and *Brian Davenport Q.C.* for the Crown.

Jon Harvey Q.C. and *Stephen Silman* for the Respondent.

The following cases were cited in argument in addition to those referred to in the speeches:—*Commissioners of Inland Revenue* v. *Rossminster Ltd.* 52 TC 160; [1980] 2 WLR 1; *Black-Clawson International Ltd.* v. *Papierwerke Waldorf-Aschaffenburg* [1975] AC 591; *Thorne Rural District Council* v. *Bunting* [1972] Ch 470; *Rex* v. *Mayor, Aldermen and Burgesses of the Borough of Bridgewater* (1837) 6 Ad & E 339; *Rex* v. *Company of Proprietors of the Nottingham Old Waterworks* (1837) 6 Ad & E 355; *Reg.* v. *Commissioners for the Special Purposes of the Income Tax* (1881) 21 QBD 313; *Reg.* v. *Secretary of State for War* [1891] 2 QB 326; *Rex* v. *Manchester Corporation* [1911] 1 KB 560; *Rex* v. *Bedwelty Urban District Council* [1934] 1 KB 333; *Attorney-General of the Gambia* v. *N'jie* [1961] AC 617; *Buxton* v. *Minister of Housing and Local Government* [1961] 1 QB 278; *Reg.* v. *Dorset Quarter Sessions Appeals Committee* [1960] 2 QB 230; Ex parte *Sidebotham* (1880) 14 Ch D 458; *Reg.* v. G H

A *Paddington Valuation Officer,* ex parte *Peachey Property Corporation* [1966] 1 QB 380; *Reg. (McKee)* v. *Belfast Corporation* [1954] NI 122; *Prescott* v. *Birmingham Corporation* [1955] Ch 210; *The State (at the prosecution of Modern Homes (Ireland) Ltd.)* v. *Rt. Hon. The Lord Mayor, Aldermen and Burgesses of Dublin* [1953] IR 202; *Reg.* v. *Commissioner of Police of the Metropolis,* ex parte *Blackburn* [1968] 2 QB 118; *Rex* v. *Lucas* (1808) B 10 East 236; *Cutler* v. *Wandsworth Stadium Ltd.* [1949] AC 398; *Rex* v. *Electricity Commissioners* ex parte *London Electricity Joint Committee Co. (1920), Ltd.* [1924] 1 KB 171; *London Passenger Transport Board* v. *Moscrop* [1942] AC 332; *Rex* v. *Amendt* [1915] 2 KB 276; *Reg.* v. *Justices of Surrey* (1870) LR 5 QB 466; *Reg.* v. *Lord Newborough* (1869) LR 4 QB 585; *Reg.* v. *Brighton Borough Justices,* ex parte *Jarvis* [1954] 1 WLR 203; *Forster* v. *Forster and* C *Berridge* (1863) 4 B & S 187; *Reg.* v. *Sharman,* ex parte *Denton* [1898] 1 QB 578; *Reg.* v. *Bradford-upon-Avon Urban District Council,* ex parte *Bolton* [1964] 1 WLR 1136; *Reg.* v. *Nicholson* [1899] 2 QB 455; *Rex* v. *Groom* ex parte *Cobbold* [1901] 2 QB 157; *Rex* v. *Bedfordshire County Council* ex parte *Sear* [1920] 2 KB 465; *Boyce* v. *Paddington Borough Council* [1903] 1 Ch 109; [1903] 2 Ch 556.

D

Lord Wilberforce—My Lords, the respondent Federation, whose name sufficiently describes its nature, is asking for an order upon the Commissioners of Inland Revenue to assess and collect arrrears of income said to be due by a number of people compendiously described as "Fleet Street casuals". These are workers in the printing industry who, under a practice sanctioned E apparently by their unions and their employers, have for some years been engaged in a process of depriving the Inland Revenue of tax due in respect of their casual earnings. This they appear to have done by filling in false or imaginary names on the call slips presented on collecting their pay. The sums involved were very considerable. The Inland Revenue, having become aware of this, made an arrangement, which I will explain in more detail later, under F which these workers are to register in respect of their casual employment , so that in the future tax can be collected in the normal way. Further, arrears of tax from 1977–78 are to be paid and current investigations are to proceed, but investigations as to tax lost in earlier years are not to be made. This arrangement, described inaccurately as an "amnesty", the Federation wishes to attack. It asserts that the Revenue acted unlawfully in not pursuing the claim for the G full amount of tax due. It claims that the Board exceeded it powers in granting the "amnesty"; alternatively that if it had power to grant it, reasons should be given and that those given cannot be sustained; that the Board took into account matters to which it was not entitled to have regard; that the Board ought to act fairly as between taxpayers and has not done so; and that the Board is under a duty to see that income tax is duly assessed, charged, and collected.

H The proceedings have been brought by the procedure now called "judicial review". There are two claims, the first for a declaration that the Board of Inland Revenue "acted unlawfully" in granting an amnesty to the casual workers; the second, for an order of mandamus to assess and collect income tax from the casual workers according to the law. These two claims rest, for present purposes, upon the same basis, since a declaration is merely an alternative kind I of relief which can only be given if, apart from convenience, the case would

have been one for mandamus. In the Order which introduced the simplified remedies by way of judicial review (RSC Ord 53, dating from 1977), it is laid down (r 3(5)) that: "The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates." The issue which comes before us is presented as one related solely to the question whether the Federation has the "sufficient interest" required.

In the Divisional Court, when the motion for judicial review came before it, the point as to *locus standi* was treated as a preliminary point. "Before we embark on the case itself", said Lord Widgery C.J., "we have to decide whether the Federation has power to bring it at all". After hearing argument, the court decided that it had not. The matter went to the Court of Appeal, and again argument was concentrated on the preliminary point, though it, and the judgments, did range over the merits. The Court of Appeal by majority reversed the Divisional Court and made a declaration that "the applicants have a sufficient interest to apply for Judicial Review". On final appeal to this House, the two sides concurred in stating that the only ground for decision was whether the applicants have such sufficient interest.

I think that it is unfortunate that this course has been taken. There may be simple cases in which it can be seen at the earliest stage that the person applying for judicial review has no interest at all, or no sufficient interest to support the application: then it would be quite correct at the threshold to refuse him leave to apply. The right to do so is an important safeguard against the courts being flooded and public bodies harassed by irresponsible applications. But in other cases this will not be so. In these it will be necessary to consider the powers or the duties in law of those against whom the relief is asked, the position of the applicant in relation to those powers or duties, and to the breach of those said to have been committed. In other words, the question of sufficient interest can not, in such cases, be considered in the abstract, or as an isolated point: it must be taken together with the legal and factual context. The rule requires sufficient interest *in the matter to which the application relates.* This, in the present case, necessarily involves the whole question of the duties of the Inland Revenue and the breaches or failure of those duties of which the respondents complain.

Before proceeding to consideration of these matters, something more needs to be said about the threshold requirement of "sufficient interest". The courts in exercising the power to grant prerogative writs, or since 1938 prerogative orders, have always reserved the right to be satisfied that the applicant had some genuine *locus standi* to appear before it. This they expressed in different ways. Sometimes it was said, usually in relation to certiorari, that the applicant must be a person aggrieved; or having a particular grievance (ex parte *Greenbaum* (1957) 55 Knight's LGR 129); usually in relation to mandamus, that he must have a specific legal right (*Reg.* v. *Guardians of Lewisham Union* [1897] 1 QB 498, *Reg.* v. *Russell* [1969] 1 QB 342); sometimes that he must have a sufficient interest (*Reg.* v. *Cotham* [1898] 1 QB 802, at page 804 (mandamus), ex parte *Stott* [1916] 1 KB 7 (certiorari). By 1977 when RSC Ord 53 was introduced the courts, guided by Lord Parker C.J., in cases where mandamus was sought, were moving away from the *Lewisham Union* test of specific legal right, to one of sufficient interest. In *Reg.* v. *Russell* [1969] 1 QB 342 Lord Parker had tentatively adhered to the test of legal specific right but in *Reg.* v. *Commissioners for Customs and Excise:* ex parte *Cook* [1970] 1 WLR 450, he had moved to sufficient interest. Shortly afterward the new rule (Ord 53, r 3) was drafted with these words.

RSC Ord 53 was, it is well known, introduced to simplify the procedure of applying for the relief formerly given by prerogative writ or order—so the old technical rules no longer apply. So far as the substantive law is concerned, this remained unchanged: the Administration of Justice (Miscellaneous Provisions) Act 1938 preserved the jurisdiction existing before the Act, and the same preservation is contemplated by legislation now pending. The Order, furthermore, did not remove the requirement to show *locus standi.* On the contrary, in rule 3, it stated this in the form of a threshold requirement to be found by the court. For all cases the test is expressed as one of sufficient interest in the matter to which the application relates. As to this I would state two negative propositions. First, it does not remove the whole—and vitally important—question of *locus standi* into the realm of pure discretion. The matter is one for decision, a mixed decision of fact and law, which the court must decide on legal principles. Secondly, the fact that the same words are used to cover all the forms of remedy allowed by the rule does not mean that the test is the same in all cases. When Lord Parker C.J. said that in cases of mandamus the test may well be stricter (sc. than certiorari—*Reg.* v. *Russell* (u.s.) and in ex parte *Cook* (u.s.) "on a very strict basis", he was not stating a technical rule—which can now be discarded—but a rule of common sense, reflecting the different character of the relief asked for. It would seem obvious enough that the interest of a person seeking to compel an authority to carry out a duty is different from that of a person complaining that a judicial or administrative body has, to his detriment, exceeded its powers. Whether one calls for a stricter rule than the other may be a linguistic point: they are certainly different and we should be unwise in our enthusiasm for liberation from procedural fetters to discard reasoned authorities which illustrate this. It is hardly necessary to add that recognition of the value of guiding authorities does not mean that the process of judicial review must stand still.

In the present case we are in the area of mandamus—an alleged failure to perform a duty. It was submitted by the Lord Advocate that in such cases we should be guided by the definition of the duty—in this case statutory—and enquire whether expressly, or by implication, this definition indicates—or the contrary—that the complaining applicant is within the scope or ambit of the duty. I think that this is at least a good working rule though perhaps not an exhaustive one. The Commissioners of Inland Revenue are a statutory body. Their duties are, relevantly, defined in the Inland Revenue Regulation Act 1890 and the Taxes Management Act 1970. Section 1 of the Act of 1890 authorises the appointment of Commissioners "for the collection and management of inland revenue" and confers on the Commissioners "all necessary powers for carrying into execution every Act of Parliament relating to inland revenue". By s 13 the Commissioners must "collect and cause to be collected every part of inland revenue and all money under their care and management and keep distinct accounts thereof". The Act of 1970 provides (s 1) that "income tax . . . shall be under the care and management of the Commissioners". This Act contains the very wide powers of the Board and of inspectors of taxes to make assessments upon persons designated by Parliament as liable to pay income tax. With regard to casual employment, there is a procedure laid down by statutory instrument (SI 1973 No 334) by which inspectors of taxes may proceed by way of direct assessment or in accordance with any special arrangements which the Commissioners of Inland Revenue may make for the collection of the tax. As I shall show later it was a "special arrangement" that the Commissioners set out to make in the present case. From this summary analysis it is clear that the Commissioners of Inland

Revenue are not immune from the process of judicial review. They are an administrative body with statutory duties, which the courts, in principle, can supervise. They have indeed done so—see *Reg.* v. *Special Commissioners* [1888] 21 QB 313 (mandamus) and cf. *Special Commissioners* v. *Linsleys (Established 1894) Ltd.*(1) [1958] AC 569, where it was not doubted that a mandamus could be issued if the facts had been right. It must follow from these cases and from principle that a taxpayer would not be excluded from seeking judicial review if he could show that the Revenue had either failed in its statutory duty toward him or had been guilty of some action which was an abuse of their powers or outside their powers altogether. Such a collateral attack—as contrasted with a direct appeal on law to the courts—would no doubt be rare, but the possibility certainly exists.

The position of other taxpayers—other than the taxpayers whose assessment is in question—and their right to challenge the Revenue's assessment or non-assessment of that taxpayer, must be judged according to whether, consistently with the legislation, they can be considered as having sufficient interest to complain of what has been done or omitted. I proceed thereto to examine the Revenue's duties in that light. These duties are expressed in very general terms and it is necessary to take account also of the framework of the income tax legislation. This establishes that the Commissioners must assess each individual taxpayer in relation to his circumstances. Such assessments and all information regarding taxpayers' affairs are strictly confidential. There is no list or record of assessments which can be inspected by other taxpayers. Nor is there any common fund of the produce of income tax in which income taxpayers as a whole can be said to have any interest. The produce of income tax, together with that of other inland revenue taxes, is paid into the Consolidated Fund which is at the disposal of Parliament for any purposes that Parliament thinks fit. The position of taxpayers is therefore very different from that of ratepayers. As explained in *Arsenal Football Club Ltd.* v. *Ende* [1979] AC 1, the amount of rates assessed upon ratepayers is ascertainable by the public through the valuation list. The produce of rates goes into a common fund applicable for the benefit of the ratepayers. Thus any ratepayer has an interest, direct and sufficient, in the rates levied upon other ratepayers; for this reason, his right as a "person aggrieved" to challenge assessments upon them has long been recognised and is so now in the General Rate Act 1967, s 69. This right was given effect to in *Ende's* case (u.s.).

The structure of the legislation relating to income tax, on the other hand, makes clear that no corresponding right is intended to be conferred upon taxpayers. Not only is there no express or implied provision in the legislation upon which such a right could be claimed, but to allow it would be subversive of the whole system, which involves that the Commissioners' duties are to the Crown, and that matters relating to income tax are between the Commissioners and the taxpayer concerned. No other person is given any right to make proposals about the tax payable by any individual: he cannot even enquire as to such tax. The total confidentiality of assessments and of negotiations between individuals and the Revenue is a vital element in the working of the system. As a matter of general principle I would hold that one taxpayer has no sufficient interest in asking the court to investigate the tax affairs of another taxpayer or to complain that the latter has been under-assessed or over-assessed: indeed, there is a strong public interest that he should not. And this principle applies equally to groups of taxpayers: an aggregate of individuals each of whom has no interest cannot of itself have an interest. That a case can never arise in which the

(1) 37 TC 677.

A acts or abstentions of the Revenue can be brought before the court I am certainly not prepared to assert, nor that, in a case of sufficient gravity, the court might not be able to hold that another taxpayer or other taxpayers could challenge them. Whether this situation has been reached or not must depend upon an examination, upon evidence, of what breach of duty or illegality is alleged. Upon this, and relating it to the position of the complainant, the court B has to make its decision. I find it necessary to state the circumstances in some detail.

The evidence consists of affidavits from Mr. L. F. Payne, Vice-President of the Federation, Sir William Pile, Chairman of the Board of Inland Revenue, and Mr. J. A. P. Hoadley, Principal Inspector of Taxes, in charge of the Inland Revenue Special Offices. These together present a picture of clarity. It is not C often that a court on summary proceedings has so much and so relevant information.

Mr. Payne's affidavit sets out very fairly the facts as known to him regarding the employment of the "casuals" and the Revenue's actions with regard to the income tax they ought to have paid. He also gives a number of examples of what he claims to be the very different attitude, viz. one of D strictness and even severity, taken by the Revenue as regards persons represented by the Federation. I think that these examples while explaining the indignation of the Federation and its members as regards the state of affairs in Fleet Street, cannot be judged on their merits on the material we have. Even if there were not another side to the taxpayers' presentation (and the Revenue suggests there may be) it is not suggested that, and is impossible to see now, any E success in these proceedings would in any tangible way profit, or affect, the persons concerned or others like them. On the other hand, as I suggested in *Ende's* case(1), a sense of fairness as between one taxpayer or group of taxpayers and another is an important objective, so that a sense of unfairness may be the beginning of a recognisable grievance. I say the beginning, because the income tax legislation contains a large number of anomalies which are F naturally not thought to be fair by those disadvantaged. In this context Mr. Payne also refers to the approach of the Revenue adopted in relation to self-employed workers in the construction industry (commonly known as "the lump"), who were found to be evading tax on a large scale. In this case the Revenue persuaded Parliament to enact legislation of a stringent character. But I think that this has no relevance for the present issue. Finally, Mr. Payne G agrees that the new arrangements made by the Inland Revenue may be effective in securing that tax will be paid in the future on casual earnings. But he complains of the "amnesty" granted as regards arrears before 1977.

Sir William Pile gives a general description of the scope and nature of the duties of the Inland Revenue with regard to the assessment and collection of taxes. He draws attention to the large number of potential taxpayers (about H 25,000,000) the huge sums involved, and the limitations on the Board's manpower. His evidence is that it is impossible for the Board to collect all the tax that is due, and that decisions have to be taken by way of "care and management" of the taxes to collect as much as is practicable, by cost-effective methods. He denies any discrimination as between self-employed and other taxpayers. Such differences as exist are ascribable to difference of law and of I fact. The cases cited by Mr. Payne are in his opinion contentious. As regards the

(1) [1979] AC 1.

"casuals", the Board approved the proposals made by Mr. Hoadley and considered that it had good and sufficient justification for doing so. This was clearly a "management" decision. A

Mr. Hoadley explains the way in which the special offices came to investigate the problem of casual workers in Fleet Street, and the difficulties of discovering the facts. There is, and I think Mr. Payne agrees, no way in which the names and addresses of the defaulting "casuals" could be obtained, unless their unions were willing to reveal them. Estimating that about £1,000,000 of tax a year were being lost, he decided that action was needed to stop this loss for the future. After reflection he considered that the best way to do so was by way of a special arrangement. In order to make such an arrangement effective, the co-operation of the employers, the workers and the unions was essential. For this purpose he had lengthy discussions in the summer of 1978 with the employers, and the three unions involved, and as a result introduced a special arrangement in March 1979. This provided a method which would ensure that for the future tax would either be deducted at source or would be properly assessed. As regards the past, Mr. Hoadley made it clear to the union representative that, if the arrangement were generally accepted, then if a casual worker registered with the inspector before 6 April 1979 and co-operated fully and promptly in settling his tax affairs (including the payment of any outstanding tax) investigation into tax lost would not be carried out for years before 1977–78, i.e. before 6 April 1977. Investigations into incorrect returns would be unaffected. As I have indicated, to call this an "amnesty" is liable to mislead. Mr. Hoadley expressed the conviction that an attempt to collect the whole amount due from hostile workers whose identity was unknown, for a period more than two years in the past, would have been unlikely to produce any substantial sums of money and would have delayed or even frustrated the new arrangement. He denied that he made the arrangement under pressure from the unions: he made his own decision and told them of it. B C D E

In the Court of Appeal a good deal was made of the possibility of industrial action. But for this element, I think that Lord Denning M.R. would come to the conclusion that the Federation had no sufficient interest in the affairs of the "casuals". But he was impressed with the possibility that the Revenue had taken their decision because of threats of industrial action, and consequent pressure by employers. After carefully examining the evidence, I reach the conclusion that it does not support the argument. It was dealt with quite frankly by Mr. Hoadley. He knew, of course, that the newspaper industry is vulnerable to strikes. He said that the possibility of industrial action would not prevent him from seeking a settlement. But he would not get one without co-operation from the casuals and the unions, and if the latter did not co-operate nor would the employers. I think that all this was part of the process of obtaining the arrangement, and that it cannot be said that these very real considerations were outside what a person seeking, in the best interest of the Revenue, to obtain an agreement could properly take into account. Finally, Mr. Hoadley dealt very fully and adequately with all Mr. Payne's other points. His affidavit is very full and candid and I have only summarised the main points. F G H

On the evidence as a whole, I fail to see how any court considering it as such and not confining its attention to an abstract question of *locus standi* could avoid reaching the conclusion that the Inland Revenue, through Mr. Hoadley, were acting in this matter genuinely in the care and management of the taxes, under the powers entrusted to them. This has no resemblance to any kind of case where the court ought, at the instance of a taxpayer, to intervene. To do so would involve permitting a taxpayer or a group of taxpayers to call in question I

A the exercise of management powers and involve the court itself in a management exercise. Judicial review under any of its headings does not extend into this area. Finally, if as I think, the case against the Revenue does not, on the evidence, leave the ground, no court, in my opinion, would consider ordering discovery against the Revenue in the hope of eliciting some impropriety. Looking at the matter as a whole, I am of opinion that the
B Divisional Court, while justified on the *ex parte* application in granting leave, ought, having regard to the nature of "the matter" raised, to have held that the Federation had shown no sufficient interest in that matter to justify its application for relief. I would therefore allow the appeal and order that the originating motion be dismissed.

Lord Diplock—My Lords, this appeal provides the House with its first
C occasion to consider what changes, if any, to public law in England have been made by the new Order 53 of the Rules of the Supreme Court which came into effect on 11 January 1978, and provides for applications for judicial review of the legality of action or inaction by persons or bodies exercising governmental powers. It is, in my view, very much to be regretted that a case of such importance to the development of English public law under this new procedure
D should have come before this House in the form that it does as a result of what my noble and learned friend, Lord Wilberforce, has described as the unfortunate course that was taken in the courts below when, leave to apply for judicial review having been previously granted *ex parte,* the application itself came on for hearing. This has had the result of deflecting the Divisional Court and the Court of Appeal from giving consideration to the questions (1) what
E was the public duty of the Board of Inland Revenue of which it was alleged to be in breach, and (2), what was the nature of the breaches that were relied upon by the Federation. Because of this, the judgment of the Court of Appeal against which appeal to your Lordships' House is brought takes the form of an interlocutory judgment declaring that the Federation "have a sufficient interest to apply for judicial review herein". As my noble and learned friend has
F pointed out, these two omitted questions need to be answered in the instant case before it is possible to say whether the Federation have "a sufficient interest in the matter to which the application relates", since, until they are answered, that matter cannot be identified. This is likely also to be the case in most applications for judicial review that are not on the face of them frivolous or vexatious. Your Lordships have accordingly heard full argument on both
G these questions.

As respects the statutory powers and duties of the Board of Inland Revenue, these are described and dealt with in several of your Lordships' speeches. It would be wearisome if I were to repeat what already has been, and later will be, better said by others. All that I need say here is that the Board are charged by statute with the care, management and collection on behalf of the
H Crown of income tax, corporation tax and capital gains tax. In the exercise of these functions the Board have a wide managerial discretion as to the best means of obtaining for the national exchequer from the taxes committed to their charge, the highest net return that is practicable having regard to the staff available to them and the cost of collection. The Board and the inspectors and collectors who act under their directions are under a statutory duty of
I confidentiality with respect to information about individual taxpayers' affairs that has been obtained in the course of their duties in making assessments and collecting the taxes; and this imposes a limitation on their managerial discretion. I do not doubt, however, and I do not understand any of your Lordships to doubt, that if it were established that the Board were proposing to

exercise or to refrain from exercising its powers not for reasons of "good management" but for some extraneous or ulterior reason, that action or inaction of the Board would be *ultra vires* and would be a proper matter for judicial review if it were brought to the attention of the court by an applicant with "a sufficient interest" in having the Board compelled to observe the law. As respects what were alleged to be breaches of its statutory duty by the Board on which the Federation relied, the evidence as to the way in which the Board and its Inspector in charge of the negotiations dealt with the problem of the Fleet Street casuals and as to the reasons why they acted as they did, is set out in all necessary detail in Lord Wilberforce's speech. All this evidence was before the Divisional Court and the Court of Appeal had they chosen to look at it. It is enough for me to say that I agree with my noble and learned friend that no court considering this evidence could avoid reaching the conclusion that the Board and its Inspector were acting solely for "good management" reasons and in the lawful exercise of the discretion which the statutes confer on them.

For my part, I should prefer to allow the appeal and dismiss the Federation's application under Order 53, not upon the specific ground of no sufficient interest but upon the more general ground that it has not been shown that in the matter of which complaint was made, the treatment of the tax liabilities of the Fleet Street casuals, the Board did anything that was *ultra vires* or unlawful. They acted in the bona fide exercise of the wide managerial discretion conferred on them by statute. Since judicial review is available only as a remedy for conduct of a public officer or authority which is *ultra vires* or unlawful, but not for acts done lawfully in the exercise of an administrative discretion which are complained of only as being unfair or unwise, there is a sense in which it may be said that the Federation had not a sufficient interest in the matter to which their application related; but this is not a helpful statement; it would be equally true of anyone, including the Attorney-General, who sought to complain. It would be very much to be regretted if, in consequence of the unfortunate form in which the instant appeal came before this House, anything that is said by your Lordships today were to be understood as suggesting that the new Order 53, rule 3(5) has the effect of reviving any of those technical rules of *locus standi* to obtain the various forms of prerogative writs that were applied by the judges up to and during the first half of the present century, but which have been so greatly liberalised by judicial decision over the last thirty years. It is for this reason that I venture to state how, in my view, Order 53 would have applied to the Federation's application if, instead of their *locus standi* being considered in isolation, the proper course had been followed at the hearing of the application in the Divisional Court.

My Lords, Order 53 was made by the Rules Committee under the powers conferred upon them by s 99 of the Judicature Act 1925 and s 10 of the Administration of Justice (Miscellaneous Provisions) Act 1938. Rules of court made under these sections are concerned with procedure and practice only; they cannot alter substantive law, nor can they extend the jurisdiction of the High Court. But in the field of public law where the court has a discretion whether or not to make an order preventing conduct by a public officer or authority that has been shown to be *ultra vires* or unlawful, the question of what qualifications an applicant must show before the court will entertain his application for a particular kind of order against a particular class of public officer or authority seems to me to be one of practice rather than of jurisdiction. It has been consistently so treated by the courts over the past thirty years. Before the new Order 53 was substituted for its predecessor, the private citizen who sought redress against a person or authority for acting unlawfully or *ultra vires* in the purported exercise of statutory powers, had to choose from a

number of different procedures that which was the most appropriate to furnish him the redress that he sought. The major differences in procedure including *locus standi* to apply for the relief sought, were between the remedies by way of declaration or injunction obtainable by a civil action brought to enforce public law and the remedies by way of the prerogative orders of mandamus, prohibition or certiorari which lay in public law alone; but even between the three public law remedies there were minor procedural differences, and the *locus standi* to apply for them was not quite the same for each, although the divergencies were in process of diminishing. Your Lordships can take judicial notice of the fact that the main purpose of the new Order 53 was to sweep away these procedural differences including, in particular, differences as to *locus standi;* to substitute for them a single simplified procedure for obtaining all forms of relief, and to leave to the court a wide discretion as to what interlocutory directions, including orders for discovery, were appropriate to the particular case.

In the instant case, in the Divisional Court and Court of Appeal alike, the argument for the Board was put upon the footing that notwithstanding this unification of procedure for obtaining the various remedies available in public law, including those which had been available in private law only, the new Order 53 had left unchanged the basis on which an applicant was recognised as having *locus standi* to apply for each individual form of relief sought. In the instant case these were: a declaration and an order of mandamus. As respects the claim for a declaration considerable reliance was placed upon the recent decision of this House in *Gouriet* v. *Union of Post Office Workers* [1978] AC 435, which held that a private citizen, except as relator in an action brought by the Attorney-General, has no *locus standi* in private law as plaintiff in a civil action to obtain either an injunction to restrain another private citizen (*in casu* a trade union) from committing a public wrong by breaking the criminal law, or a declaration that his conduct is unlawful, unless the plaintiff can show that some legal or equitable right of his own has been infringed or that he will sustain some special damage over and above that suffered by the general public. This decision is, in my view, irrelevant to any question that your Lordships have to decide today. The defendant trade union in deciding to instruct its members to take unlawful industrial action was not exercising any governmental powers; it was acting as a private citizen and could only be sued as such in a civil action under private law. It was not amenable to any remedy in public law. Lord Wilberforce and I were at pains to draw this distinction.

In contrast to this, judicial review is a remedy that lies exclusively in public law. In my view the language of rule 1(2) and rule (3) of the new Order 53 shows an intention that upon an application for judicial review the court should have jurisdiction to grant a declaration or an injunction as an alternative to making one of the prerogative orders, whenever in its discretion it thinks that it is just and convenient to do so; and that this jurisdiction should be exerciseable in any case in which the applicant would previously have had *locus standi* to apply for any of the prerogative orders. The matters specified in paras (a) and (b) of rule 1(2) as matters to which the court must have regard, make this plain. So if, before the new Order 53 came into force, the court would have had jurisdiction to grant to the applicant any of the prerogative orders it may now grant him a declaration or injunction instead, notwithstanding that the applicant would have no *locus standi* to claim the declaration or injunction under private law in a civil action against the respondent to the application, because he could not show that any legal right of his own was threatened or infringed. So I turn first

to consider what constituted *locus standi* to apply for one or other of the prerogative orders immediately before the new Order 53 came into force. A

In the earlier cases a more restrictive rule for *locus standi* was applied to applications for the writ of mandamus than for writs of prohibition or certiorari; and since mandamus was the prerogative order sought by the Federation in the instant case, your Lordships have been referred to many of them; reliance being placed in particular upon the brief extempore judgment of B Wright J. delivered at the end of the last century in *Reg.* v. *Guardians of Lewisham Union* [1897] 1 QB 498. He there said that an applicant for a mandamus: "must first of all show that he has a legal specific right to ask for the interference of the court". The law has not stood still since 1897. By 1977 this was no longer correct, and I have no hesitation in saying that it is inconceivable that mandamus would have been refused in the circumstances of that case if it C had come before a Divisional Court at any time during the last twenty years.

The rules as to "standing" for the purposes of applying for prerogative orders, like most of English public law, are not to be found in any statute. They were made by judges, by judges they can be changed; and so they have been over the years to meet the need to preserve the integrity of the rule of law despite changes in the social structure, methods of government and the extent D to which the activities of private citizens are controlled by governmental authorities, that have been taking place continuously, sometimes slowly, sometimes swiftly, since the rules were originally propounded. Those changes have been particularly rapid since World War II. Any judicial statements on matters of public law if made before 1950 are likely to be a misleading guide to what the law is today. E

In 1951, the decision of the Divisional Court in *Reg.* v. *Northumberland Compensation Tribunal* [1951] 1 QB 711 resurrected error of law upon the face of the award as a ground for granting certiorari. Parliament by the Tribunals and Inquiries Act 1958 followed this up by requiring reasons to be given for many administrative decisions that had previously been cloaked in silence; and the years that followed between then and 1977 witnessed a dramatic F liberalisation of access to the courts for the purpose of obtaining prerogative orders against persons and authorities exercising governmental powers. This involved a virtual abandonment of the former restrictive rules as to the *locus standi* of persons seeking such orders. The process of liberalisation of access to the courts and the progressive discarding of technical limitations upon *locus standi* is too well known to call for detailed citation of the cases by which it may G be demonstrated. They are referred to and discussed in the fourth edition of Professor H. W. R. Wade's "Administrative Law", (published in 1977) at pages 543–46 (prohibition and certiorari) and pages 610–12 (mandamus). The author points out there that although lip-service continued to be paid to a difference in standing required to entitle an applicant to mandamus on the one hand and prohibition or certiorari on the other, in practice the courts found H some way of treating the *locus standi* for all three remedies as being the same. A striking example of this is to be found in *Reg.* v. *Hereford Corporation* ex parte *Harrower* [1970] 1 WLR 1424, where the applicants were treated as having *locus standi* in their capacity as ratepayers though their real interest in the matter was as electrical contractors only. For my part I need only refer to *Reg.* v. *Greater London Council* ex parte *Blackburn* [1976] 1 WLR 550. In that I case Mr. Blackburn who lived in London with his wife who was a ratepayer, applied successfully for an order of prohibition against the council to stop them acting in breach of their statutory duty to prevent the exhibition of pornographic films within their administrative area. Mrs. Blackburn was also a

party to the application. Lord Denning M.R. and Stephenson L.J. were of opinion that both Mr. and Mrs. Blackburn had *locus standi* to make the application: Mr. Blackburn because he lived within the administrative area of the council and had children who might be harmed by seeing pornographic films and Mrs. Blackburn not only as a parent but also on the additional ground that she was a ratepayer. Bridge L.J. relied only on Mrs. Blackburn's status as a ratepayer; a class of persons to whom for historical reasons the court of King's Bench afforded generous access to control *ultra vires* activities of the public bodies to whose expenses they contributed. But now that local government franchise is not limited to ratepayers, this distinction between the two applicants strikes me as carrying technicality to the limits of absurdity having regard to the subject-matter of the application in the *Blackburn* case(1). I agree in substance with what Lord Denning M.R. there said, though in language more eloquent than it would be my normal style to use:

> "I regard it as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts *in their discretion* can grant whatever remedy is appropriate." (The italics in this quotation are my own.)

The reference here is to flagrant and serious breaches of the law by persons and authorities exercising governmental functions which are continuing unchecked. To revert to technical restrictions on *locus standi* to prevent this that were current thirty years ago or more would be to reverse that progress towards a comprehensive system of administrative law that I regard as having been the greatest achievement of the English courts in my judicial lifetime.

The reliance by Bridge L.J. in *Reg.* v. *Greater London Council* ex parte *Blackburn* upon Mrs. Blackburn's status as a ratepayer to give her *locus standi* reflects a special relationship between ratepayers and the rate-levying authority and between one ratepayer and another, which is of ancient origin and antedates by centuries the first imposition of taxes upon income. This led the Board in the instant case to seek to rely upon the decision of this House in *Arsenal Football Club Ltd.* v. *Ende* [1979] AC 1 as authority for a proposition of law that a taxpayer lacked a sufficient interest in what the Board did in dealing with the tax affairs of other taxpayers to clothe the court with jurisdiction to entertain his application for an order of mandamus, however flagrantly the Board, in its dealing with those other taxpayers, had flouted the law. So, it was contended, no question of discretion could arise. The *Arsenal Stadium* case had been decided before the new Order 53 had been made; but, in any event, it was not concerned with an application for a prerogative order, it turned on whether a ratepayer who complained that the value for the hereditament of another ratepayer published in the valuation list was too low, was a "person aggrieved" by that low valuation within the meaning of s 69 of the General Rate Act 1967, notwithstanding that, since the raising of the valuation of the hereditament could have no effect upon the amount of rates payable by the objecting ratepayer, no financial interest of his own was affected. The question before this House was one of statutory construction only. It was held that the objecting ratepayer was a "person aggrieved", not

(1) [1976] 1 WLR 550.

only in his capacity as a ratepayer in the same London Borough as that in which the hereditament that was the subject of his complaint was situated but also as a ratepayer of another London Borough within the precepting area of the G.L.C. The case is thus illustrative of the liberal attitude of the courts in granting access to legal remedies for those complaining of failure of public officers to perform their duties. He was held, however, not to be a person aggrieved in his capacity as a taxpayer despite the fact that any shortfall in the rate yield due to the undervaluation of the hereditament would be made up from central funds to which all taxpayers in Great Britain contribute. A line, it was said, has to be drawn somewhere, and his interest as a taxpayer was too remote to qualify him as a person aggrieved by a single entry in the valuation list for rating purposes of a London Borough.

My Lords, the expression "person aggrieved" is of common occurrence in statutes and, in its various statutory contexts, has been the subject of considerable judicial exegesis. In the past, however, it had also sometimes been used by judges to describe those persons who had *locus standi* to apply for the former prerogative writs or, since 1938, prerogative orders. It was on this somewhat frail ground that it was argued that the distinction drawn in the *Arsenal Stadium* case(1) between Mr. Ende's grievance as a ratepayer and his grievance as a taxpayer was relevant to the question whether the Federation as representing taxpayers was entitled to *locus standi* in the instant case. However this may have been before the new Order 53 was made, the draftsman of that order avoided using the expression "a person aggrieved", although it lay ready to his hand. He chose instead to get away from any formula that might be thought to have acquired, through judicial exposition, a particular meaning as a term of legal art. The expression that he used in rule 3(5) had cropped up sporadically in judgments relating to prerogative writs and orders and consisted of ordinary English words which, on the face of them, leave to the court an unfettered discretion to decide what in its own good judgment it considers to be "a sufficient interest" on the part of an applicant in the particular circumstances of the case before it. For my part I would not strain to give them any narrower meaning.

The procedure under the new Order 53 involves two stages: (1) the application for leave to apply for judicial review, and (2) if leave is granted, the hearing of the application itself. The former, or "threshold", stage is regulated by rule 3. The application for leave to apply for judicial review is made initially *ex parte,* but may be adjourned for the persons or bodies against whom relief is sought to be represented. This did not happen in the instant case. Rule 3(5) specifically requires the court to consider at this stage whether "it considers that the applicant has a sufficient interest in the matter to which the application relates". So this is a "threshold" question in the sense that the court must direct its mind to it and form a *prima facie* view about it upon the material that is available at the first stage. The *prima facie* view so formed, if favourable to the applicant, may alter on further consideration in the light of further evidence that may be before the court at the second stage, the hearing of the application for judicial review itself.

The need for leave to start proceedings for remedies in public law is not new. It applied previously to applications for prerogative orders, though not to civil actions for injunctions or declarations. Its purpose is to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived.

(1) [1979] AC 1.

My Lords, I understand that all your Lordships are agreed that upon the material that was before the Divisional Court upon the *ex parte* application by the Federation for leave to apply for judicial review of the so-called "amnesty" extended to the Fleet Street casuals, the Court was justified in exercising its discretion in favour of granting the leave sought. The only evidence that was before the Court was the affidavit of Mr. Payne, the contents of which have been summarised by my noble and learned friend Lord Wilberforce. It made out a *prima facie* case, albeit a somewhat flimsy one, that the Revenue had differentiated between three classes of defaulting taxpayers, (1) the Fleet Street casuals, all of whom were members of powerful trade unions, (2) owners of small businesses, who were not members of trade unions and on whose behalf the Federation purported to be acting, and (3) perhaps more significantly, self-employed workers in the construction industry popularly referred to as "the lump" to whom powerful trade unions were bitterly opposed. In the absence of any other explanation, the leniency with which tax defaulters in the first class had been treated as contrasted with the severity with which those in the two latter classes were pursued, gave rise, it was suggested by the Federation, to reasonable suspicion that the Revenue had granted the amnesty not for any reasons of good management, but simply in response to trade union pressure. The complaint made by the Federation was not of preferential treatment of individual taxpayers but of all taxpayers falling within a particular class comprising 4,000 to 5,000 members whose unpaid taxes, recovery of which up to April 1977 was to be abandoned, were of the order of £1,000,000 a year. Consideration of the Federation's complaint would not involve any departure from the Board's statutory duty to preserve the confidentiality of information obtained by its inspectors and collectors about individual taxpayers' affairs, since *ex hypothesi* the members of this class of taxpayers had made no returns and had not provided any information about their affairs.

My Lords, at the threshold stage, for the Federation to make out a *prima facie* of reasonable suspicion that the Board in showing a discriminatory leniency to a substantial class of taxpayers had done so for ulterior reasons extraneous to good management, and thereby deprived the national exchequer of considerable sums of money, constituted what was in my view reason enough for the Divisional Court to consider that the Federation or, for that matter, any taxpayer, had a sufficient interest to apply to have the question whether the Board was acting *ultra vires* reviewed by the court. The whole purpose of requiring that leave should first be obtained to make the application for judicial review would be defeated if the court were to go into the matter in any depth at that stage. If, on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for that relief. The discretion that the court is exercising at this stage is not the same as that which it is called upon to exercise when all the evidence is in and the matter has been fully argued at the hearing of the application. The analysis to which, on the invitation of the Lord Advocate, the relevant legislation has been subjected by some of your Lordships, and particularly the requirement of confidentiality which would be broken if one taxpayer could complain that another taxpayer was being treated by the Revenue more favourably than himself, means that occasions will be very rare on which an individual taxpayer (or pressure group of taxpayers) will be able to show a sufficient interest to justify an application for judicial review of the way in which the Revenue has dealt with the tax affairs of any taxpayer other the applicant himself. Rare though they may be,

however, if, in the instant case, what at the threshold stage was suspicion only had been proved at the hearing of the application for judicial review to have been true in fact (instead of being utterly destroyed), I would have held that this was a matter in which the Federation had a sufficient interest in obtaining an appropriate order, whether by way of declaration or mandamus, to require performance by the Board of statutory duties which for reasons shown to be *ultra vires* it was failing to perform.

It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the Federation, or even a single public-spirited taxpayer, were prevented by outdated technical rules of *locus standi* from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped. The Attorney-General, although he occasionally applies for prerogative orders against public authorities that do not form part of central government, in practice never does so against government departments. It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a court of justice for the unlawfulness of what they do, and of that the court is the only judge.

I would allow this appeal upon the ground upon which, in my view, the Divisional Court should have dismissed it when the application came to be heard, instead of singling out the lack of a sufficient interest on the part of the Federation, viz. that the Federation completely failed to show any conduct by the Board that was *ultra vires* or unlawful.

Lord Fraser of Tullybelton—My Lords, I agree with all my noble and learned friends that this appeal should be allowed. I agree with the reasoning of Lord Wilberforce and Lord Roskill but I wish to explain my reasons in my own words.

The application by the respondents in the appeal for judicial review under RSC Order 53 was refused by the Divisional Court on the ground that the applicants did not have a "sufficient interest" in the matter to which the application related, as required by rule 3 of that order. The decision of the Divisional Court was reversed by the Court of Appeal, by majority. Some of my noble and learned friends who heard the appeal consider that the appeal should be allowed and the application refused on the wider ground that it has no prospect of success on the merits. I agree that it does not, because the relief sought is a judicial review in the form of a declaration that the appellants "acted unlawfully" and an order of mandamus that they assess and collect income tax "according to the law", but for the reasons explained by my noble and learned friend Lord Wilberforce, it is clear that the appellants did not act unlawfully. So the application cannot succeed on its merits.

But the question whether the respondents have a sufficient interest to make the application at all is a separate, and logically prior, question which has to be answered affirmatively before any question on the merits arises. Refusal of the application on its merits therefore implies that the prior question has been answered affirmatively. I recognise that in some cases, perhaps in many, it may be impracticable to decide whether an applicant has a sufficient interest or not, without having evidence from both parties as to the matter to which the application relates, and that, in such cases, the court before whom the matter

comes in the first instance cannot refuse leave to the applicant at the *ex parte* stage, under rule 3(5). The court which grants leave at that stage will do so on the footing that it makes a provisional finding of sufficient interest, subject to revisal later on, and it is therefore not necessarily to be criticised merely because the final decision is that the applicant did not have sufficient interest. But where, after seeing the evidence of both parties, the proper conclusion is that the applicant did not have a sufficient interest to make the application, the decision ought to be made on that ground. The present appeal is, in my view, such a case and I would therefore dismiss the appeal on that ground. When it is also shown, as in this case, that the application would fail on its merits, it is desirable for that to be stated by the court which first considers the matter in order to avoid universary appeals on the preliminary point.

The rules of court give no guidance as to what is a sufficient interest for this purpose. I respectfully accept from my noble and learned friends who are so much more familiar than I am with the history of the prerogative orders that little assistance as to the sufficiency of the interest can be derived from the older cases. But while the standard of sufficiency has been relaxed in recent years, the need to have an interest has remained and the fact that rule 3 of Order 53 requires a sufficient interest undoubtedly shows that not every applicant is entitled to judicial review as of right.

The new Order 53, introduced in 1977, no doubt had the effect of removing technical and procedural differences between the prerogative orders, and of introducing a remedy by way of declaration or injunction in suitable cases, but I do not think it can have had the effect of throwing over all the older law and of leaving the grant of judicial review in the uncontrolled discretion of the court. On what principle, then, is the sufficiency of interest to be judged? All are agreed that a direct financial or legal interest is not now required, and that the requirement of a legal specific interest laid down in *Reg.* v. *Lewisham Guardians* [1897] 1 QB 488 is no longer applicable. There is also general agreement that a mere busybody does not have a sufficient interest. The difficulty is, in between those extremes, to distinguish between the desire of the busybody to interfere in other people's affairs and the interest of the person affected by or having a reasonable concern with the matter to which the application relates. In the present case that matter is an alleged failure by the appellants to perform the duty imposed upon them by statute.

The correct approach in such a case is, in my opinion, to look at the statute under which the duty arises, and to see whether it gives any express or implied right to persons in the position of the applicant to complain of the alleged unlawful act or omission. On that approach it is easy to see that a ratepayer would have a sufficient interest to complain of unlawfulness by the authorities responsible for collecting the rates. Even if the General Rate Act 1967 had not expressly given him a right to propose alteration in the Valuation List if he is aggrieved by any entry therein, he would have an interest in the accuracy of the list which is the basis for allocating the total burden of rates between himself and other ratepayers in the area. The list is public and is open for inspection by any person. The position of the taxpayer is entirely different. The figures on which other taxpayers have been assessed are not normally within his knowledge and the Commissioners of Inland Revenue and their officials are obliged to keep these matters strictly confidential, see Inland Revenue Regulation Act 1890, s 1(1) and s 39 and the Taxes Management Act 1970, s 1, s 6 and Sch 1. The distinction between a ratepayer and a taxpayer that was

drawn in *Arsenal Football Club Ltd.* v. *Ende* [1979] AC 1 for the purposes of defining a person aggrieved under the General Rate Act 1967 is also relevant to the present matter.

The respondents are a body with some 50,000 members, but their Counsel conceded, rightly in my opinion, that if they had a sufficient interest to obtain judicial review, then any individual taxpayer, or at least any payer of income tax, must also have such an interest. I can see no justification for treating payers of income tax as having any separate interest in the matter now complained of from that of persons who pay other taxes. All taxpayers contribute to the general fund of revenue and the sense of grievance which the respondents claim to feel because of the difference between the appellants' treatment of the Fleet Street casuals and their treatment of private traders might be felt just as strongly by any honest taxpayer who pays the full amount of taxes of any kind to which he is properly liable. But if the class of persons with a sufficient interest is to include all taxpayers it must include practically every individual in the country who has his own income, because there must be few individuals, however frugal their requirements, who do not pay some indirect taxes including VAT. It would, I think, be extravagant to suggest that every taxpayer who believes that the Inland Revenue or the Commissioners of Customs and Excise are giving an unlawful preference to another taxpayer, and who feels aggrieved thereby, has a sufficient interest to obtain judicial review under Order 53. It may be that, if he was relying upon some exceptionally grave or widespread illegality, he could succeed in establishing a sufficient interest but such cases would be very rare indeed, and this is not one of them.

For these reasons I would allow the appeal on the ground that the respondents have no sufficient interest in the matters complained of.

Lord Scarman—My Lords, the National Federation of Self-Employed and Small Businesses Ltd. are applicants for judicial review. The Federation seek a declaration and an order of mandamus. They are asking the Court to declare illegal a policy decision by the Revenue not to collect back tax from the casual printers of Fleet Street and to order the Revenue to collect the tax. The decision was taken by the Revenue pursuant to a special arrangement under which the Revenue agreed not to seek to collect the tax of past years if the casuals would comply with arrangements facilitating the collection of tax for future years. The details of the arrangement are fully set out in the affidavit evidence. The Federation allege that the special arrangement—"amnesty" is what they understandably but inaccurately call it—when contrasted with the Revenue's relentless pursuit of Federation members who are suspected of not paying their taxes is a breach of the Revenue's duty to treat taxpayers fairly, that the duty is owed to the general body of taxpayers, and that the Federation and its members have a genuine grievance which entitle them to seek the assistance of the Court. The Revenue denies the existence of any such duty owed to the Federation, its members, or the general body of taxpayers, though it acknowledges the importance, as a matter of policy, of treating taxpayers fairly. The Revenue denies, therefore, that the Federation (or its members) have a sufficient interest in the matter to entitle them to relief by way of judicial review. Put shortly, if there is no legal duty, there can be no interest which a court can protect.

The application for judicial review was introduced by rule of court in 1977. The new RSC Order 53 is a procedural reform of great importance in the field of public law, but it does not—indeed, cannot—either extend or diminish the substantive law. Its function is limited to ensuring "*ubi jus, ibi remedium*".

A The new procedure is more flexible than that which it supersedes. An applicant for relief will no longer be defeated merely because he has chosen to apply for the wrong remedy. Not only has the court a complete discretion to select and grant the appropriate remedy: but it now may grant remedies which were not previously available. Rule 1(2) enables the court to grant a declaration or injunction instead of, or in addition to, a prerogative order B where to do so would be just and convenient. This is a procedural innovation of great consequence: but it neither extends nor diminishes the substantative law. For the two remedies (borrowed from the private law) are put in harness with the prerogative remedies. They may be granted only in circumstances in which one or other of the prerogative orders can issue. I so interpret Order 53, r 1(2) because to do otherwise would be to condemn the rule as *ultra vires*.

C The appeal is said by both parties to turn on the meaning to be attributed to Order 53 rule 3(5), which has been described as the heart of the Order. It is in these terms:

> "(5) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates."

D There is, my Lords, no harm in so describing the issue, so long as it is remembered that the right to apply for a prerogative order is a matter of law, not to be modified or abridged by rule of court. The right has always been, and remains to-day, available only at the discretion of the High Court which has to be exercised upon the facts of the particular case and according to principles developed by the judges. The case law, as it has developed and continues to E develop in the hands of the judges, determines the nature of the interest an applicant must show to obtain leave to apply. The rule, however, presents no problems of construction. Its terms are wide enough to reflect the modern law without distorting or abridging the discretion of the judges: and it draws attention to a feature of the law, which has been overlooked in the present case. The sufficiency of the applicant's interest has to be judged in relation to the F subject-matter of his application. This relationship has always been of importance in the law. It is well illustrated by the history of the development of the prerogative writs, notably the difference of approach to mandamus and certiorari and it remains a factor of importance in the exercise of the discretion to-day.

I, therefore, accept that one may properly describe the question for the G House's decision as being whether the Federation has shown that it has a sufficient interest in the matter to which its application relates to apply for a declaration and an order of mandamus directed to requiring the Commissioners of Inland Revenue to fulfil their public duty. The question is far from easy to answer, raising some complicated issues as to the rights of the private citizen to invoke the aid of the courts in compelling the performance of public H duty or in righting public wrongs:—rights whose scope and effect derive not from RSC Order 53 but from the common law developed by the judges.

The Federation obtained leave *ex parte* to apply for judicial review. They then sought an order for discovery of documents from the Master; but no order was made pending the hearing, *inter partes*, of a preliminary issue on the *locus standi* point. The Divisional Court decided the preliminary issue against the I Federation, basing itself on dicta to be found in the speeches in *Arsenal Football Club Ltd.* v. *Ende* [1979] AC 1. The Court of Appeal, by a majority,

allowed the Federation's appeal, holding, as Lord Denning M.R. put it, that the Federation and its members "are not mere busybodies" but "have a genuine grievance"(1) [1980] 2 All ER 378 at page 392. Ackner L.J., after remarking that it had been *assumed* (by Counsel's concession limited to the argument on the preliminary issue) that the Board acted unlawfully, held that "the body of taxpayers represented by the Federation can reasonably assert a genuine grievance", *supra,* page 399.

As others of your Lordships have already commented, the decision to take *locus standi* as a preliminary issue was a mistake and has led to unfortunate results. The matter to which the application relates, namely, the legality of the policy decision taken by the Revenue to refrain from collecting tax from the Fleet Street casuals, was never considered by the Divisional Court and was dealt with by concession in the Court of Appeal. Yet there were available at both hearings very full affidavits from which the circumstances in which the policy decision, which is challenged, was taken, and the Revenue's explanation, clearly emerge. In your Lordships' House the Lord Advocate, who now appears for the appellants, the Commissioners of Inland Revenue, has withdrawn the concession. He was right to do so. He has put at the forefront of his argument a reasoned analysis of the statutory duties of the Revenue, and has invited the House to hold that the statutory code neither recognises nor imposes upon the Revenue a duty such as the Federation alleges to the general body, or any group of taxpayers.

Before I consider this submission, it is necessary to deal with a subsidiary point taken by the Lord Advocate. He submitted that, notwithstanding the language of Order 53, rule 1(2) the Court has no jurisdiction to grant to a private citizen a declaration save in respect of a private right or wrong: and he relied on the House's decision in *Gouriet* v. *Union of Post Office Workers* [1978] AC 435. Declaration is, of course, a remedy developed by the judges in the field of private law. *Gouriet's* case is authority for the proposition that a citizen may not issue a writ claiming a declaration or other relief against another for the redress of a public wrong unless he can persuade the Attorney-General, on his "relation", to bring the action. The case has nothing to do with the prerogative jurisdiction of the High Court; and it was decided before the introduction of the new Order 53, at a time when a declaration could not be obtained by a private citizen unless he could show (as in a claim for injunction) that a private right of his was threatened or infringed. The new Order has made the remedy available as an alternative, or an addition, to a prerogative order. Its availability has, therefore, been extended, but only in the field of public law where a prerogative order may be granted. I have already given my reasons for the view that this extension is purely a matter of procedural law, and so within the rule-making powers of the Rules Committee. I therefore reject this submission of the Lord Advocate.

I pass now to the two critical issues: (1) the character of the duty upon the Revenue and the persons to whom it is owed; is it legal, political, or merely moral? (2) the nature of the interest which the applicant has to show. It is an integral part of the Lord Advocate's argument that the existence of the duty is a significant factor in determining the sufficiency of an applicant's interest.

(1) Page 148 *ante*.

A *The Duty.* Mandamus is the most elusive of the prerogative writs and orders. The nature of the interest an applicant must show, the nature of the duty which it is available to enforce, and the persons or bodies to whom it may issue have varied from time to time in its development. It is, of course, a judicial remedy: it is equally clear that it is a remedy to compel performance of a public legal duty, that it does not go to the Crown itself, and that it is available only if B the applicant shows a sufficient interest. In appendix 1 to Judicial Review of Administrative Action (3rd edn 1973) the late Professor S. A. de Smith, discussing the historical origins of the prerogative writs, commented (page 515) that:

> "Through the writ of mandamus the King's Bench compelled the carrying-out of ministerial duties incumbent upon both administrative C and judicial bodies."

Lord Mansfield clearly developed a very liberal view as to its availability. "It ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one": *Reg.* v. *Barker* [1972] 3 Burr 1265, at page 1267. But it does not lie to compel performance of a moral duty: Ex parte *Napier* [1852] 18 QB 692. Nor may it be D used to enforce a duty owed exclusively to the Crown: *Reg.* v. *Commissioners of the Treasury* [1872] LR 7 QB 387. It has, however, been recognised by the judges as a remedy for certain forms of abuse of discretion, upon the principle that the improper or capricious exercise of discretion is a failure to exercise the discretion which the law has required to be exercised: see Lord Mansfield C.J. in *Reg.* v. *Askew* [1768] 4 Burr 2186 at pages 2188–9, and, in E modern times, *Padfield* v. *Minister of Agriculture, Fisheries, and Food* [1968] AC 997. The Lord Advocate accepted, as I understand his argument, this broad approach. But he strenuously submitted that the law imposed no such public legal duty as that for which the Federation contends. He submitted that one must examine what he appropriately described as "the statutory code" to determine whether a duty owed to the applicant is expressly or impliedly F recognised by the law. If this be an invitation to consider the relevant statutory provisions against a general background of legal principle developed by the judges, I accept it. For this is the common law approach to statute law.

First, then, "the statutory code". It is to be found in the Inland Revenue Regulation Act 1890 and the Taxes Management Act 1970. Commissioners are appointed "for collection and management of inland revenue": s 1(1), G Inland Revenue Regulation Act 1890. They "shall collect and cause to be collected every part of inland revenue": s 13(1). "Inland revenue" means the revenue and taxes "placed under the care and management of the Commissioners": s 39. The Taxes Management Act 1970 places income tax under their care and management and for that purpose confers upon them and inspectors of tax very considerable discretion in the exercise of their powers. It also H imposes upon them the very significant duty of confidence in investigating, and dealing with, the affairs of the individual taxpayer. Indeed, the Lord Advocate relied on the existence of this duty as an indication that the statute imposed no duty owed to a taxpayer (or the general body of taxpayers) in respect of the collection of taxes due from another taxpayer: and he made particular reference to ss 1 and 6 and Sch 1 to the Act. He rightly observed that in the daily I discharge of their duties inspectors are constantly required to balance the duty to collect "every part" of due tax against the duty of good management. This

conflict of duties can be resolved only by good managerial decisions, some of which will inevitably mean that not all the tax known to be due will be collected. A

Upon this analysis of the statutes the Lord Advocate submitted that the law neither imposes nor recognises a duty owed to an individual taxpayer or a group of taxpayers to collect from other taxpayers all the tax due from them. He supported his submission by a reference to *Reg.* v. *Commissioners of the Treasury*(1); and he emphasised that Parliament, and, since 1967, the Parliamentary Commissioner, exist to redress the sort of grievance asserted by the Federation in this case. His ultimate characterisation of the Revenue's failure in this case, if it was a failure, was "maladministration", not breach of any public duty owed at law to the general body of taxpayers. While I reject his conclusion, I accept much, but not all, of his submission. The analysis of the statutory provisions is clearly correct. They establish a complex of duties and discretionary powers imposed and conferred in the interest of good management upon those whose duty it is to collect the income tax. But I do not accept that the principle of fairness in dealing with the affairs of taxpayers is a mere matter of desirable policy or moral obligation. Nor do I accept that the duty to collect "every part of inland revenue" is a duty owed exclusively to the Crown. Notwithstanding the 1872 *Treasury* case (*supra*), I am persuaded that the modern case law recognises a legal duty owed by the Revenue to the general body of the taxpayers to treat taxpayers fairly; to use their discretionary powers so that, subject to the requirements of good management, discrimination between one group of taxpayers and another does not arise; to ensure that there are no favourites and no sacrificial victims. The duty has to be considered as one of several arising within the complex comprised in the care and management of a tax, every part of which it is their duty, if they can, to collect. Authority for this view is plentiful, albeit only persuasive in character. Viscount Simon L.C. in *Latilla* v. *Commissioners of Inland Revenue*(2) [1943] AC 377 at page 381, discussing the evil of tax avoidance schemes, commented that: "one result of such methods, if they succeed, is . . . to increase, *pro tanto,* the load of tax on the shoulders of the great body of good citizens". In the *Arsenal* case(3), *loc.cit.* at page 17F Lord Wilberforce commented—admittedly in the context of rates but in terms which cannot rationally exclude a taxpayer—that: "To produce a sense of justice is an important objective of taxation policy." In *Vestey* v. *Commissioners of Inland Revenue (No. 2)*(4) [1979] Ch 177, Walton J. said at page 197 that it is in "the interest not only of all individual taxpayers . . . but also in the interests of the Revenue, . . . that the tax system should be fair"; and at page 204B(5):

B C D E F G

> "even if, contrary to my views, extra-statutory concessions are permissible and do form part of our tax code, nevertheless they do represent a published code, which applies indifferently to all those who fall, or who can bring themselves, within its scope." H

In the same case, when it reached the House, Lord Edmund-Davies, [1980] AC 1148 at page 1196(6), speaking of the House's decision in *Congreve* v. *Commissioners of Inland Revenue*(7) [1948] 1 All ER 948, said:

> "But if it be permitted to stand, we have the deplorable situation that the Inland Revenue Commissioners can *capriciously* select which of several beneficiaries they are going to tax . . .". (Emphasis supplied.) I

(1) [1872] LR 7 QB 387. (2) 25 TC 107, at p 117. (3) [1979] AC 1.
(4) 54 TC 503, at p 544. (5) *Ibid*, at p 552. (6) *Ibid*, at p 601. (7) 30 TC 163.

A The duty of fairness as between one taxpayer and another is clearly recognised in these (and other passages) in the modern case law. Is it a mere moral duty, a matter for policy but not a rule of law? If it be so, I do not understand why distinguished judges allow themselves to discuss the topic: they are concerned with law, not policy. And is it acceptable for the courts to leave matters of right and wrong, which give rise to genuine grievance and are B justiciable in the sense that they may be decided and an effective remedy provided by the courts, to the mercy of policy? Are we in the twilight world of "maladministration" where only Parliament and the Ombudsman may enter, or upon the commanding heights of the law? The courts have a role, long established, in the public law. They are available to the citizen who has a genuine grievance if he can show that it is one in respect of which prerogative C relief is appropriate. I would not be a party to the retreat of the courts from this field of public law merely because the duties imposed upon the Revenue are complex and call for management decisions in which discretion must play a significant role.

If it be urged the the House took a different view in the *Arsenal Football Club* case(1) *supra,* I would reply that the view there expressed, in so far as it D concerned whether the Revenue owed a legal duty to the general body of taxpayers, was *obiter.* The case should, perhaps, be considered more in the context of an applicant's interest than in that of the nature of the duty placed upon the public authority: for it turned on the meaning to be attributed to a person "aggrieved" in s 69 of the General Rate Act 1967. It is, however, not decisive of either issue: and, for the reasons given by Ackner L.J. in the Court E of Appeal, I would refuse to introduce into the public law the fine distinction, which the House in that case considered to exist, between the duty of a rating authority and the duty of a taxing authority. I am, therefore, of the opinion that a legal duty of fairness is owed by the Revenue to the general body of taxpayers. It is, however, subject to the duty of sound management of the tax which the statute places upon the Revenue.

F *The Interest.* The sufficiency of the interest is, as I understand all your Lordships agree, a mixed question of law and fact. The legal element in the mixture is less than the matters of fact and degree: but it is important, as setting the limits within which, and the principles by which, the discretion is to be exercised. At one time heresy ruled the day. The decision of the Divisional Court in *Reg.* v. *Lewisham Union Guardians* [1897] 1 QB 498 was accepted as G establishing that an applicant must establish "a legal specific right to ask for the interference of the court" by order of mandamus: per Wright J. at page 500. I agree with the Master of the Rolls in thinking this was a deplorable decision. It was at total variance with the view of Lord Mansfield. Yet its influence has lingered on, and is evident even in the decision of the Divisional Court in this case. But the tide of the developing law has now swept beyond it, as the Court H of Appeal's decision in *Reg.* v. *Greater London Council,* ex parte *Blackburn* [1976] 1 WLR 550 illustrates. In the present case the House can put down a marker buoy warning legal navigators of the danger of the decision. As Professor Wade pointed out, Adminstrative Law, 4th edn 1977 at page 610, if the *Lewisham* case were correct, mandamus would lose its public law character, being no more than a remedy for a private wrong.

(1) [1979] AC 1.

My Lords, I will not weary the House with citation of many authorities. Suffice it to refer to the judgment of Lord Parker C.J. in *Reg.* v. *Thames Magistrates' Court,* ex parte *Greenbaum,* Knight's L.G. R. 129, a case of certiorari; and to words of Lord Wilberforce in *Gouriet* v. *Union of Post Office Workers* [1978] AC 435 at page 482, where he stated the modern position in relation to prerogative orders: "These are often applied for by individuals and the courts have allowed them liberal access under a generous conception of *locus standi.*"

The one legal principle, which is implicit in the case and accurately reflected in the rule of court, is that in determining the sufficiency of an applicant's interest it is necessary to consider the matter to which the application relates. It is wrong in law, as I understand the cases, for the court to attempt an assessment of the sufficiency of an applicant's interest without regard to the matter of his complaint. If he fails to show, when he applies for leave, a *prima facie* case, or reasonable grounds for believing that there has been a failure of public duty, the court would be in error if it granted leave. The curb represented by the need for an applicant to show, when he seeks leave to apply, that he has such a case is an essential protection against abuse of legal process. It enables the court to prevent abuse by busybodies, cranks, and other mischief-makers. I do not see any further purpose served by the requirement for leave.

But, that being said, the discretion belongs to the court: and, as my noble and learned friend Lord Diplock has already made clear, it is the function of the judges to determine the way in which it is to be exercised. Accordingly I think that the Divisional Court was right to grant leave *ex parte.* Mr. Payne's affidavit of 20 March 1979 revealed a *prima facie* case of failure by the Inland Revenue to discharge its duty to act fairly between taxpayer and taxpayer. But by the time the application reached the Divisional Court for a hearing, *inter partes,* of the preliminary issue, two very full affidavits had been filed by the Revenue explaining the "management" reasons for the decision not to seek to collect the unpaid tax from the Fleet Street casuals. At this stage the matters of fact and degree upon which depends the exercise of the discretion whether to allow the application to proceed or not became clear. It was now possible to form a view as to the existence or otherwise of a case meriting examination by the court. And it was abundantly plain upon the evidence that the applicant could show no such case. But the Court of Appeal, misled into thinking that, at that stage and notwithstanding the evidence available, *locus standi* was to be dealt with as a preliminary issue, assumed illegality (where in my judgment none was shown) and, upon that assumption, held that the applicant had sufficient interest. Were the assumption justified, which on the evidence it was not, I would agree with the reasoning of Lord Denning M.R. and Ackner L.J. I think the majority of the Court of Appeal, in formulating a test of genuine grievance reasonably asserted, were doing no more than giving effect to the general principle which Lord Mansfield had stated in the early days on the remedy. Any more stringent test would, as Professor Wade, *op.cit.* page 612 observes, open up "a serious gap in the system of public law".

Lastly, I wish to comment shortly upon the duty of confidence owed by the Revenue to every taxpayer and the right to discovery. The duty of confidence can co-exist with the duty of fairness owed to the general body of taxpayers. It is, however, of great importance when discovery is sought by an applicant, as happened in this case. Upon general principles, discovery should not be ordered unless and until the court is satisfied that the evidence reveals

reasonable grounds for believing that there has been a breach of public duty: and it should be limited strictly to documents relevant to the issue which emerges from the affidavits. The Revenue in any event will have the right in respect of certain classes of document to plead "public interest immunity", of which in a proper case the court will be the arbiter: *Burmah Oil Co. Ltd.* v. *Governor and Company of The Bank of England* [1980] AC 1090. In the present case, had the Federation shown a sufficient interest, I doubt whether any legitimate objection could have been taken to discovery of documents relevant to the making of the special arrangement. Such documents would be unlikely to contain any information about the affairs of any Fleet Street casual who had succeeded by various devices in avoiding his identity being discovered by the searches of the Revenue. But, be that as it may, discovery can safely be left to the discretion of the court guided by the law as I believe it to be.

The Federation, having failed to show any grounds for believing that the Revenue has failed to do its statutory duty, have not, in my view, shown an interest sufficient in law to justify any further proceedings by the court on its application. Had they shown reasonable grounds for believing that the failure to collect tax from the Fleet Street casuals was an abuse of the Revenue's managerial discretion or that there was a case to that effect which merited investigation and examination by the court, I would have agreed with the Court of Appeal that they had shown a sufficient interest for the grant of leave to proceed further with their application. I would, therefore, allow the appeal.

Lord Roskill—My Lords, the appellants, the Commissioners of Inland Revenue, seek the reversal of an order dated 27 February 1980 made by the Court of Appeal (Lord Denning M.R. and Ackner L.J.—Lawton L.J. dissenting) declaring that the respondents, the National Federation of Self-Employed and Small Businesses Ltd. had a "sufficient interest" to apply for judicial review in these proceedings against the appellants. In making that declaration the Court of Appeal reversed an order of the Divisional Court (Lord Widgery C.J. and Griffiths J.) dated 22 November 1979 refusing an application for judicial review against the appellants, on the ground that the respondents had no such "sufficient interest".

My Lords, these proceedings were begun by the respondents who, on 22 March 1979, applied *ex parte* for leave to apply for an order for judicial review by way of mandamus and a declaration against the appellants. The *ex parte* application was made in due form under Order 53 of the Rules of the Supreme Court. The original statement lodged in support of the application claimed first, a declaration that the appellants had exceeded their powers in granting what was called an "amnesty" to casual workers in Fleet Street, and secondly, an order of mandamus directing the appellants to assess and collect income tax from those casual workers in Fleet Street "according to law". A subsequent amended statement substituted for the original declaration sought a declaration that the appellants acted unlawfully in granting that "amnesty". On that *ex parte* application leave was granted. The hearing *inter partes* took place on 21 and 22 November 1979, when, as I have already stated, the respondents' application was refused for want of "sufficient interest".

When the *ex parte* application was heard, the only evidence before the Divisional Court was an affidavit from a Mr. Payne, a vice-president of the respondents. But on the hearing *inter partes* the Divisional Court also had long

affidavits from Sir William Pile, then Chairman of the appellants, and a Mr. Hoadley, a Principal Inspector of Taxes. Mr. Hoadley had been personally responsible for the negotiations which led to the so-called "amnesty" of which the respondents sought to complain. After these affidavits had been sworn and before that hearing *inter partes* the respondents had taken out a summons for discovery against the appellants. By agreement, this summons was treated as a summons for the discovery of specific documents. On 5 November 1979 Master Sir Jack Jacob Q.C. dismissed that summons for the reasons given in a judgment of which your Lordships have a note. An appeal to the Divisional Court from that dismissal was adjourned by agreement pending the final determination of these proceedings.

My Lords, when the matter came before the Divisional Court *inter partes* it was apparently agreed that the question whether or not the respondents had a "sufficient interest" to bring these proceedings at all should be dealt with as a preliminary point. See the judgment of Lord Widgery C.J. reported in [1980] 2 All ER 378 at page 382(1). When the respondents appealed to the Court of Appeal that preliminary point was the only issue before that court as it had been before the Divisional Court. Moreover, in their printed case, the appellants averred that this was the only issue to be determined by your Lordships' House, the appellants contending that, as a matter of law, the respondents had no "sufficient interest".

My Lords, your Lordships' House has often protested about the taking of short-cuts in legal proceedings, most recently in *Allen* v. *Gulf Oil Refining Ltd.* [1981] 1 All ER 353. The number of cases in which it is legitimate to take such short-cuts is small and in my opinion the present was not such a case. Indeed, many of the difficulties which were canvassed at length in arguments before your Lordships' House would have been avoided had this particular short-cut not been taken. With profound respect to the Divisional Court, this course was especially inappropriate where the grant or refusal of the remedy sought by way of judicial review is, in the ultimate analysis, discretionary, and the exercise of that discretion and the determination of the sufficiency or otherwise of the applicants' interest will depend, not upon one single factor—it is not simply a point of law to be determined in the abstract or upon assumed facts—but upon the due appraisal of many different factors revealed by the evidence produced by the parties, few if any of which will be able to be wholly isolated from the others.

My Lords, much time was spent in the courts below and in argument before your Lordships' House with citation of well-known cases, some of now respectable antiquity in which prerogative orders or formerly prerogative writs have been allowed to issue or have been refused. With all respect to the authority of the judges by whom those cases were decided, such decisions are to-day of little assistance for two reasons. First, in the last thirty years—no doubt because of the growth of central local government intervention in the affairs of the ordinary citizen since the second World War, and the consequent increase in the number of administrative bodies charged by Parliament with the performance of public duties—the use of prerogative orders to check usurpation of power by such bodies to the disadvantage of the ordinary citizen, or to insist upon due performance by such bodies of their statutory duties and to maintain due adherence to the laws enacted by Parliament, has greatly increased. The former and stricter rules determining when such orders, or formerly the prerogative writs, might or might not issue, have been greatly relaxed. It is unnecessary in the present appeal to trace through a whole series of decisions which demonstrates that change in legal policy. The change is well known as are the decisions.

(1) Page 136 *ante*.

A Secondly, since those cases were decided and following the change in legal policy to which I have just referred, Order 53 was introduced into the Rules of the Supreme Court in 1977. For ease of reference I set out the most relevant parts of certain of the Rules of that Order.

"1.—(1) An application for —(*a*)an order of mandamus, prohibition or certiorari, or (*b*) . . . shall be made by way of an application for judicial B review in accordance with the provisions of this Order. (2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1)(*b*)) may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to—(*a*) the nature of the matters in respect of which relief may be granted by way of an order of C mandamus, prohibition or certiorari, (*b*) the nature of the persons and bodies against whom relief may be granted by way of such an order, and (*c*) all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

2. On an application for judicial review any relief mentioned in rule D 1(2) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

3.—(1) No application for judicial review shall be made unless the leave of the Court had been obtained in accordance with this rule. (2) An application for leave must be made *ex parte* to a Divisional Court of the E Queen's Bench Division, except . . . (5) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates."

My Lords, I would make these comments upon Order 53 at this juncture. First, the changes thereby effected though seemingly changes in procedure and thus made as part of the Rules of the Supreme Court, were and were intended to F be far-reaching. They were designed to stop the technical procedural arguments which had too often arisen and thus marred the true administration of justice, whether a particular applicant had pursued his claim for relief correctly, whether he should have sought mandamus rather than certiorari, or certiorari rather than mandamus, whether an injunction or prohibition, or prohibition rather than an injunction or whether relief by way of declaration G should have been sought rather than relief by way of prerogative order. All these, and the like technical niceties, were to be things of the past. All relevant relief could be claimed under the general head of "judicial review", and the form of judicial review sought or granted (if at all) was to be entirely flexible according to the needs of the particular case. The claims for relief could be cumulative or alternative under rule 2 as might be most appropriate. Secondly, H relief by way of declaration, or injunction, was made a form of judicial review to be granted in an appropriate case having regard to the factors mentioned in rule 1(2). Thirdly, Order 53 took effect on 11 January 1978, some six months after the decision of your Lordships' House in *Gouriet* v. *H.M. Attorney-General* [1978] AC 435, on 26 July 1977, an authority much relied upon by the learned Lord Advocate on behalf of the appellants in support of his I submissions regarding the circumstances in which declarations might be granted. But *Gouriet's* case was a relator action and was not concerned with prerogative orders or judicial review, and the relevant observations of your Lordships must be read in the light of that fact and of the subsequent enactment

of Order 53. My Lords, I venture to draw attention to the passage in the speech of my noble and learned friend, Lord Wilberforce, at pages 482–3, where he stated that the courts had granted individuals more liberal access in the case of application for prerogative writs and orders, and had adopted a more generous concept of *locus standi* in those cases, for the individual was then seeking to enforce a public right, and to invite the court to control by use of the prerogative power alleged abuse of authority or jurisdiction. Fourthly, as already stated, the discretionary nature of the remedy of judicial review is emphasised by the fact that rule 3(1) denies the individual the right to apply for judicial review unless leave so to apply has first been obtained *ex parte*. Fifthly, the court is enjoined by rule 3(5) not to grant leave unless the applicant has a "sufficient interest" in the matter to which the application relates, plain words of limitation upon an applicant's right to relief.

In my opinion it is now clear that the solution to the present appeal must lie in the proper application of the principles now enshrined in Order 53, in the light of modern judicial policy to which I have already referred, to the facts of the present case without excessive regard to the fetters seemingly previously imposed by judicial decisions in earlier times and long before that modern policy was evolved or Order 53 was enacted.

My Lords, the all important phrase in rule 3(5) is "sufficient interest". Learned Counsel were agreed that this phrase had not been used in any previous relevant enactment. My Lords, careful review of the earlier authorities in which learned Counsel for both parties engaged, reveals that many different phrases have been used in different cases to describe the required standing of a particular applicant for what is now described as judicial review before the courts would entertain his application. He might be "a party" to the relevant proceedings. He might be "a person aggrieved". He might be "a person with a particular grievance". He might be a "stranger". All those, and some other phrases, will be found in the cases. None is exhaustive or indeed definitive and indeed in this field it would be, I think, impossible to find a phrase which was exhaustive or definitive of the class of person entitled to apply for judicial review. No doubt it was for this reason that the Rules Committee of the Supreme Court in 1977 selected the phrase "sufficient interest" as one which could sufficiently embrace all classes of those who might apply, and yet permit sufficient flexibility in any particular case to determine whether or not "sufficient interest" was in fact shown. So far as the researches of Counsel went, the origin of this phrase appears to lie in an interlocutory observation made by the Court in *Reg.* v. *Cotham* [1898] 1 QB 802 at page 804, and in its use by Avory L.J. in his judgment in ex parte *Stott* [1916] 1 KB 7. Your Lordships' attention was drawn to a note to Order 53 at page 831 of the 1979 Annual Practice, which your Lordships were told bore the authority of Master Sir Jack Jacob Q.C. The learned editor stated that that which was a "sufficient interest" "appears to be a mixed question of fact and law; a question of fact and degree and the relationship between the applicant and the matter to which the application relates, having regard to all the circumstances of the case". With this admirably concise statement, I respectfully agree.

The learned Lord Advocate founded his main submission upon s 1 of the Inland Revenue Act 1890 which still remains upon the statute book and ss 1 and 6 and Sch 1 to the Taxes Management Act 1970. Those statutory provisions, he claimed, defined the relevant duties of the appellants. They established not only the appellants' duties, but also their strict obligation of confidentiality as between the appellants and each individual taxpayer, subject only to the exceptions for which the statutes made express provision. The subject-matter

of the present application was the alleged liability of others to pay income tax and averred a duty upon the appellants to assess and collect tax upon the Fleet Street casual workers identified as a class but not individually. But, the learned Lord Advocate submitted, the duties of the appellants, as circumscribed by these statutes, precluded the possiblity of any other individual taxpayer, or the respondents as a representative group of other taxpayers, from having any "sufficient interest" in the performance by the appellants of their statutory duties, *vis-à-vis* the Fleet Street casual workers, so that there was no jurisdiction to grant the respondents the relief which they sought. The learned Lord Advocate sought to distinguish the rating cases, such as *Arsenal Football Club Ltd.* v. *Ende* [1979] AC 1, on the ground that in rating law there was a statutory duty to publish a valuation list containing specific valuations and correct any valuations in that list which might be shown to be wrong. Thus there was, under the rating legislation, a community of interest between ratepayers which did not exist as between taxpayers. Reliance was also placed upon the fact that Mr. Ende's attempt to prove his *locus standi* as a taxpayer as well as a ratepayer failed on the ground that the former interest was too remote. Nowhere in the two statutes to which your Lordships were referred was there any express provision which recognised any interest by one taxpayer in the affairs of another taxpayer, or in the assessment and collection of tax on and from such other taxpayer. Unless there was a relevant duty cast by statute on the appellants in which the respondents could show a "sufficient interest", there could be no jurisdiction to make an order for judicial review, there being no relevant relationship on the part of the respondents to the subject-matter of their application.

My Lords, at an early stage of his submissions, the learned Lord Advocate accepted that the question raised in the instant appeal involved the performance by the appellants of a public duty. In my opinion that concession (if concession be the right word) was clearly properly made. But once it is made, I find it difficult to see how it can be said that there is no jurisdiction of the court to allow relief against the appellants by way of a judicial review. The appellants are, and must as a public body charged with the performance of a public duty of crucial importance be, amenable to the general law and liable to possible correction if their statutory powers are exceeded, or their statutory duties are not lawfully discharged. But to say that, and to accept that there is jurisdiction to grant relief against the appellants in a proper case, is a very different matter from saying that in the instance case relief should be granted to the respondents as being possessed of that "sufficient interest" which is a condition precedent to their obtaining the relief which they seek.

Mr. Harvey Q.C., for the respondents, contended that not only was there jurisdiction to grant the relief sought but that his clients had a "sufficient interest" to be granted that relief because once it was accepted that the appellants were a statutory body charged with the performance of a public duty, any member of the public had a right to come to the court and complain that that duty had not been performed in some relevant respect, and that this right of that member of the public did not depend upon the precise nature of the obligation cast by the statute upon the appellants. More narrowly, Mr. Harvey argued that an individual taxpayer had as much interest in the performance by the appellants of their statutory duty as the ratepayer in *Ende's* case, and was not too remote from the appellants in seeking to insist upon performance of their duty in accordance with the law, a submission which found favour in the Court of Appeal with Ackner L.J. Ultimately Mr. Harvey did not go so far as to assert that the appellants' statutory duty required them in every case to exact

every penny which might be lawfully exigible from each individual taxpayer, but he asserted that there was already some evidence in the present case, and that after discovery against the appellants there might well be further evidence, that in granting the so-called "amnesty" and in agreeing to forego collection of past arrears of tax from the Fleet Street casual workers, the appellants had been moved by impermissible influences such as fears of industrial action in Fleet Street, and thus had failed to perform the statutory duties with which they were charged in accordance with the law. Hence, he argued that the relief sought should be granted. These casual workers, it was said, had defrauded the general body of taxpayers, and it was the right of the respondents as the representatives of a substantial body of taxpayers who like others were adversely affected by these frauds by the casual workers not only escaping the normal consequences of such fraud but positively gaining as a result of the "amnesty", to complain and to seek strict enforcement of the appellants' statutory duty to assess and collect the tax due from these casual workers.

My Lords, the learned Lord Denning M.R. was willing to accept the wider of these propositions founded upon what he had previously said in *McWhirter's* case [1973] QB 629 at page 646, and again in a revised form in *Blackburn's* case [1976] 1 WLR 550 at page 559. He accepted that my noble and learned friend, Lord Wilberforce, had expressly disapproved the former passage in his speech in *Gouriet's* case [1978] AC 435 at page 483 but claimed that that disapproval was limited to relator actions such as *Gouriet's* case was. My Lords, with profound respect I cannot agree. Though my noble and learned friend's disapproval was, of course, made in the context of a relator action, the view of the learned Lord Denning M.R., if applied to all applications for judicial review, would extend the individual's right of application for that relief far beyond any acceptable limit, and would give a meaning so wide to a "sufficent interest" in Order 53, rule 3(5) that they would in practice cease to be, as they were clearly intended to be, words of limitation upon that right of application. More powerful support for Mr. Harvey's narrower submission is to be found in the judgment of Ackner L.J. The learned Lord Justice found it impossible to distinguish between the position of a ratepayer who was entitled to the relief sought as, for example, in *Ende's* case(1), and a taxpayer who, it was said, was not entitled to the like relief. The test, according to the learned Lord Justice, was whether the assertion of the grievance could be justified on reasonable grounds. Both the learned Lord Denning M.R. and Ackner L.J. proceeded on the basis that it should be assumed (Lord Denning M.R. went so far as to say that it was a matter of concession) that the appellants had acted unlawfully because they had no dispensing powers. My Lords, there was certainly some confusion in the Court of Appeal as to what was conceded or what was to be assumed, a confusion solved before your Lordships' House. But whatever may have been assumed or conceded, or thought to have been assumed or conceded in the Court of Appeal, the learned Lord Advocate was not prepared to invite the making of any assumption or to make any concession before your Lordships' House, and I think he was right to adopt this attitude. For my part, I decline in a matter of this kind to make any assumption of any kind, let alone an assumption of illegality on the part of the appellants. This appeal must be determined on the totality of the evidence as it was before the Divisional Court and the Court of Appeal. No question of any dispensing power is involved. The appellants were in no way arrogating to themselves a right or inviting assumption of an arrogation to themselves of a right not to comply with their statutory obligations under the statutes to which I have referred. On the contrary, their whole case was that they made a sensible arrangement in the overall performance of their statutory duties in connection with taxes management, an

(1) [1979] AC 1.

A arrangement made in the best interests of everyone directly involved and, indeed, of persons indirectly involved, such as other taxpayers, for the agreement reached would be likely to lead ultimately to a greater collection of revenue than if the agreement had not been reached or "amnesty" granted.

My Lords, with profound respect to both courts below I do not think that either approached this application for judicial review on a correct basis in point
B of law. In my opinion the Divisional Court was wrong for the reasons I have given for refusing relief for they dealt with the relevant issue as a matter of jurisdiction and not as one of overall discretion. I also think that the majority of the Court of Appeal was wrong in granting the relief claimed either on the wider ground the learned Lord Denning M.R. preferred or on the narrower ground which appealed to Ackner L.J.

C My Lords, I hope I yield to no one in stressing the importance that relief by way of judicial review should be freely available in whatever form may be appropriate in a particular case, and it is today especially important not to cut down by judicial decision the scope of Order 53 in creating modern procedure for applications for judicial review. I emphasise in particular that relief by way of declaration is expressly made a form of judicial review additional to or
D alternative to relief by way of prerogative order or injunction. The court has a general discretion which, if any, relief shall be granted and many of the old decisions restricting the circumstances in which declarations may be granted to establish legal rights seem to me to be no longer in point. On the other hand, it is equally important that the courts do not by use or misuse of the weapon of judicial review cross that clear boundary between what is administration,
E whether it be good or bad administration, and what is an unlawful performance of the statutory duty by a body charged with the performance of that duty. If the body against which an order of judicial review is sought is for some reason not amenable to such an order, then clearly there is no jurisdiction to allow the order to go. But once that body is admitted to be, as the appellants are admitted to be, a statutory body charged with the performance of a public duty, then it is
F clear that there is jurisdiction to grant an order of judicial review in a proper case; and to the extent that the learned Lord Advocate contended otherwise, I reject his argument. But the arguments that he advanced on jurisdiction which I have rejected become highly relevant when the question of "sufficient interest" arises. The first question must be to enquire what is the relevant duty of the statutory body against which the order is sought, of the performance or non-
G performance of which complaint is sought to be made. For that I turn to the sections of the statutes upon which the learned Lord Advocate relied. The appellants are responsible for the overall management of the relevant part of the taxation system of this country, and for the assessment and collection of taxes from those who are, by law, liable to pay them. Such assessment and collection is a confidential matter between the appellants and each individual
H taxpayer. Such confidence is allowed to be broken only in those exceptional circumstances for which the statute makes express provision.

The next matter is to consider the complaint made and the relief sought. It is clear that the respondents are seeking to intervene in the affairs of individual taxpayers, the Fleet Street casual workers, and to require the appellants to assess and collect tax from them which the appellants have clearly
I agreed not to do. Theoretically, but one trusts only theoretically, it is possible to envisage a case when because of some grossly improper pressure or motive the appellants have failed to perform their statutory duty as respects a particular

taxpayer or class of taxpayer. In such a case, which emphatically is not the present, judicial review might be available to other taxpayers. But it would require to be a most extreme case for I am clearly of the view, having regard to the nature of the appellants' statutory duty and the degree of confidentiality enjoined by statute which attaches to their performance, that in general it is not open to individual taxpayers or to a group of taxpayers to seek to interfere between the appellants and other taxpayers, whether those other taxpayers are honest or dishonest men, and that the court should, by refusing relief by way of judicial review, firmly discourage such attempted interference by other taxpayers. It follows that, in my view, taking all those matters into account, it cannot be said that the respondents had a "sufficient interest" to justify their seeking the relief claimed by way of judicial review.

I have already said that the court must not cross that boundary between administration whether good or bad which is lawful, and what is unlawful performance of a statutory duty. Much time was spent upon considering the relevance of the Parliamentary Commissioner Act 1967. My Lords, I shall spend no time upon its provisions, for it deals with the injustices caused by maladministration. The remedy thereby accorded to the individual citizen may be very effective in a proper case, but the existence of that remedy seems to me irrelevant to the question now under consideration which depends not upon allegations of maladministration leading to injustice, but upon allegations of illegality in the performance of statutory duties. I doubt whether in considering whether legal redress by way of judicial review should be granted, it is in any way relevant to consider the existence of this other mode of redress of other grievances. Certainly, as at present advised, I do not consider the existence of this other mode of redress can narrow the field in which judicial review if otherwise proper is available. The latter is a remedy available from Her Majesty's courts for the purpose of redressing legal wrongs. The former has a wholly different origin and is designed to redress administrative wrongs, not remediable in the courts.

I ought, however, to deal with the further question whether even if (contrary to my opinion) the respondents could show a "sufficient interest" there is anything in the evidence as a whole allowing the respondents to interfere by way of obtaining an order of judicial review. I have already considered the scope of the appellants' duties and the nature of the complaint which they make. It is at this point that the answer to this complaint becomes relevant and ought to have been, but was not, considered by the Divisional Court. To my mind it is clear beyond argument when one reads the affidavits of Sir William Pile and Mr. Hoadley that what was done was a matter of taxes management, and I can see no shadow of dereliction of duty by the appellants, or any suggestion of improper or unlawful conduct on their part. On the contrary, what they did seems to me to have been a matter of administrative common sense. Instead of wasting public time and money in seeking to collect taxes from persons whose names were unknown and whose ability to pay was therefore equally unknown, they made an arrangement which enabled taxes not hitherto able to be collected or in fact collected, collectable in the future at a cost to the general body of taxpayers of foregoing the collection of that which in reality could never have been collected.

In my view the Divisional Court ought in the exercise of its discretion to have dismissed this application, not for want of jurisdiction to grant it, but because, on the evidence as a whole, first no "sufficient interest" was shown and, secondly, because in any event the application could not possibly succeed. Since that court did not exercise its discretion, and since the majority of the

A Court of Appeal was, in my view, wrong in law in making the declaration which was there granted and therefore did not exercise the discretion vested in that court, I think it open to your Lordships' House to exercise the discretion which ought to have been exercised in the first instance by the Divisional Court. On that basis I would dismiss the application for judicial review thus reaching the same result as did Lawton L.J. in his dissenting judgment in the Court of
B Appeal. I would only add that Mr. Harvey urged that something advantageous to his clients might emerge upon discovery. He submitted that your Lordships ought not to dispose of this appeal on the basis of the affidavit evidence alone. My Lords, the respondents started these proceedings on the basis of an affidavit which was fully answered by the two affidavits to which I have just referred. With all respect to Mr. Harvey's argument I can see no reason to allow the
C respondents what I am afraid I must necessarily regard as a fishing expedition in the hope of obtaining on discovery something which might counter that which appears so clearly from the affidavits filed on behalf of the appellants.

My Lords, since preparing this speech, I have had the advantage of reading in draft the speeches of my noble and learned friends, Lord Wilberforce and Lord Fraser of Tullybelton. I am in full agreement with what both my noble and
D learned friends have said.

Appeal allowed with costs.

[Solicitors:—Solicitor of Inland Revenue; Beachcroft, Hyman Isaacs.]
