CA on appeal from QBD before Lord Denning MR; Geoffrey Lan LJ; Eveleigh LJ. 14th July 1978.

THE MASTER OF THE ROLLS:

1. The Leasehold Reform Act, 1967, conferred a great benefit on some tenants. They were tenants who resided in houses which they held on long leases at a low rent. It gave them a right to acquire the freehold on very favourable terms. But it did not apply to large houses. In the London area it only applied to houses of a rateable value of not more than &400. Later on the valuation lists were reviewed, and all rateable values were much increased. By an amendment the Act was extended so as to apply in the London area to houses of a rateable value of not more than £1,500 - see section 118 of the Housing Act, 1974.

2. Now there are many houses in the London area where the tenants have done improvements to the property at their own cost: and the rateable value has been increased on that account. The house might be assessed at over £1,500 just because of the tenant's improvements. Parliament realised that it was very unfair on a tenant that he should be deprived of the benefit of the Leasehold Reform Act simply by reason of improvements which he himself had made. So in the Housing Act 1974 Parliament inserted provisions enabling the tenant in such a case to get the rateable value reduced for the purpose of the Leasehold Reform Act. These provisions are section 118(3) and Schedule 8 of the Act.

3. The procedure is for the tenant to serve a notice on the landlord saying that he made the improvements at his own cost and wants the rateable value reduced. The landlord may agree. But if he disagrees, the matter is referred to the county court judge. He has to determine whether the tenant has a legitimate case for a reduction: but he does not determine the quantum of it. That is to be referred to the valuation officer for him to certify the amount of the reduction.

THE HOUSE AND TEE IMPROVEMENTS

4. The house is No. 1, Vale Close, Maida Vale, London, W.9. It is a good-sized house with three floors. It is owned by the Governors of Harrow School. They let it in 1933 on a long lease for 88 years. So that it is due to expire in the year 2021 A.D. The leaseholder is Mr. Sidney Pearlman, who has occupied it as his residence for over 30 years. When he went there it had an old-fashioned heating system. There was a coal-fired boiler in the kitchen. It supplied hot water for the sinks and baths: and two radiators, one in the hall and the other on the first-floor landing. The rooms in the house were heated by ordinary coal fires.

5. In the year 1960 Mr. Pearlman scrapped that system. He installed a modern full central-heating system. It supplied 18 radiators and towel-rails all over the house. It supplied hot water to baths, sinks, and so forth. It was fired with gas. The boiler was in the kitchen. It was connected with the flue and the chimney. There was asbestos lining inserted right up the chimney. Pipes were laid from the boiler on the ground floor up to the top floor, passing under floors and through ceilings and walls, some of them load-bearing, from room to room right up to a metal tank in the roof space. Holes had to be made in the ceilings and walls and made good afterwards. Each radiator was connected to the walls with brackets. In 1971 Mr. Pearlman had two more radiators installed.

6. That work undoubtedly was a great improvement to the house and went to increase its rateable value. In the latest revaluation the rateable value of the house was £1,597. This was over 51,500 and, as things stood, Mr. Pearlman was unable to claim the benefit of the Leasehold Reform Act, 1967: because that was limited to houses in London of less than £1,500 rateable value. In the circumstances, Mr. Pearlman applied to his landlords asking them to agree to a reduction in the rateable value. He proposed that the rateable value should be reduced to £1,487. He said that, by installing the full central heating system, he had himself made improvements - increasing the rateable value - and that that increase should not count against him for the purposes of the Leasehold Reform Act, 1967.

7. The landlords did not agree. So Mr. Pearlman applied to the county court judge. On 26th November, 1976, the judge refused Mr. Pearlman's request. Mr. Pearlman says that the determination of the judge was wrong in law.

THE LAW

8. In order to qualify for a reduction, the improvement must be an "improvement made by the execution of works amounting to structural alteration, extension or addition".

9. Those are the words of the Housing Act, 1974, Schedule 8, paragraph 1(2). They are simple English words, but they have been interpreted by different judges differently. At any rate, when the judges have had to apply them to the installation of a^ full central heating system. In each house the primary facts have been exactly the same, or near enough the same, but one judge has found one way. Another the other way. One judge has held that the installation is a "structural alteration". Another has found that it is not. It is said, nevertheless, that, being simple English words, we should not interfere. Neither decision can be said to be unreasonable. So let each decision stand. Reliance is placed for this purpose on the speech of Lord Reid in ***Brutus v. Cozens*** (1973) A.C. 854.

10. I am afraid that I cannot accept this argument. As I pointed out in ***Dyson Holdings v. Fox*** [1976] Q.B. 503 at page 510, when an ordinary word comes to be applied to similar facts, in one case after another, it would be intolerable if half of the judges gave one answer and the other half another. No one would know where he stood. No lawyer could advise his client what to do. In such circumstances/ it is the duty of a Court of Appeal to give a definite ruling one way or the other. However simple the words, their interpretation is a matter of law. They have to be applied, in case after case, by lawyers: and it is necessary, in the interests of certainty, that they should always be given the same interpretation, and always applied in the same way: see our two rating cases in 1949, 1 K.B. at pages 396, 471/2; and ***Woodhouse v. Brotherhood (Peter)*** [1972] 2 Q.B. 520 at pages 536/7.

11. Applying the words of Schedule 8 to the house here, I am of opinion that the installation of full central heating to this house was "an improvement made by the execution of works amounting to structural alteration or addition". It involved a good deal of tampering with the structure by making holes in walls and partitions, by lining the chimney with asbestos, and so forth. Much more than is involved in installing fitted cupboards instead of wardrobes, or a modern fireplace instead of old fire-dogs.

12. This is confirmed by the practice of rating authorities. They have always held that, when full central heating is installed the rateable value of the house is increased. So much so that they have a formula for calculating the increase according to the number of rooms that are centrally heated: and the increase dates from the time when the central heating is installed, on the ground that it is a *"structural alteration"* within section 8(4) (b), 79(2)(b) of the General Rates Act, 1967. Stronger still is the fact that when the installation is made after 1st April, 1974, Parliament has expressly said that no increase is to be made in the rateable value by reason of the *"structural alterations"* involved in installing a central heating system, see section 21 (l)(a) of the Local Government Act, 1974.

13. The contrary view was supported by some cases under the Settled Land Acts 1882 and 1890. The point there arose about the early form of heating houses by hot water through pipes. It was held that the tenant for life had to instal it himself out of his income: and that he could not require his trustees to pay it out of capital, see ***Re Gaskell's Settled Estate*** [1894] 1 Ch 485, because it was not a structural alteration, see ***Clarke's Settlement*** [1902] 2 Ch. 327 at page 331; affirmed in this court in ***Blagrave's Settled Estate*** [1903] 1 Ch. 560 at pages 562/3. I find no help in those cases, concerned as they were with a different statute, worded differently, in a different context altogether.

14. My conclusion is, therefore, that in the previous case Judge White was right, and that in the present case Judge Curtis-Raleigh was wrong. The installation of a full central heating system is a "structural alteration or addition" within Schedule 8 of the Housing Act, 1974. But is it possible for this court to correct the decision of Judge Curtis-Raleigh? That brings me to the point of jurisdiction.

JURISDICTION

15. There is an express provision in the Housing Act, 1874 which makes the decision of the county court judge *"final and conclusive It is Schedule 8, paragraph 2(2). It applies, among other matters, to the question whether the improvement is one to which the Schedule applies. If such a question is not agreed, then _ "... the County Court may, on the application of the tenant, determine that matter, and any such determination shall be final and conclusive."*

16. Those words "*final and conclusive"* have been considered by the courts a hundred times. It has been uniformly held that they preclude any appeal to a higher court - in the sense of an appeal proper where the higher court reviews the decision of the lower tribunal and substitutes its own decision for that of the lower tribunal, see ***Westminster Corporation v. Gordon Hotels*** [1907] 1 K.B. 910; (1908) A.C. 142: ***Hall v. Arnold*** [1950] 2 K.B. 543. But those words do not preclude the High Court from correcting the errors of the lower tribunal by means of certiorari - now called judicial review. Notwithstanding that a decision is by a statute made "final and conclusive", certiorari can still issue for excess of jurisdiction, or for error of law on the face of the record, see ***Regina v. Medical Appeal Tribunal [***1957] 1 Q.B. *574* at page 583: or a declaration can be made by the High Court to determine the rights of the parties. It can declare the law by which they are bound, irrespective of what the lower tribunal has done, see the ***Pyx Granite Co.*** case [1960] A.C. 260. It can even consider the point of law by means of a case stated, see ***Tehran! v. Rostron*** [1972] 1 Q.B. 182.

THE "NO CERTIORARI CLAUSE" - SECTION 107

17. But it is said here that those decisions apply only to lower tribunals: and that they do not apply to county courts. It is said that Parliament has taken away certiorari to county courts. This argument is based on Section 107 of the County Courts Act, 1959, which says that: *"Subject to the provisions of any other Act relating to County Courts, no judgment or order of any Judge of County Courts, nor any proceedings brought before him or pending in his Court, shall be removed by appeal, motion, certiorari or otherwise into any other Court whatever, except in the manner and according to the provisions of this Act mentioned".*

18. To my mind that provision has no application to the present case. It applies only to proceedings under the 1959 Act, just as if the words "under this Act" were written into it. Certiorari is taken away in proceedings in which the 1959 Act gives jurisdiction to county courts, such as section 39 (Actions of Contract and Tort); section 48 (Recovery of land); section 52 (Equity Jurisdiction) and section 56 (Admiralty Jurisdiction). In all such matters certiorari does not lie: but instead the statute gives a right of appeal on points of law, see section 108. In so interpreting section 107, I am following the lead of Chief Justice Cockburn in ***Ex parte Bradlaugh*** (1878) 3 Q.B. Division at page 512, where there was a "no certiorari clause". He said: "I entertain very serious doubts whether that provision does not apply only to matters in respect of which jurisdiction is given by that Statute, and not to matters in which jurisdiction is given by subsequent statutes".

19. I am confirmed in this view by reference to section 108 of the Act, which gives an appeal to the Court of Appeal on points of law. It seems to me to be dealing with matters in respect of which the 1959 Act gives jurisdiction to the county court: and not to matters in respect of which jurisdiction is given by subsequent statutes.

20. Moreover, in subsequent Acts giving fresh jurisdiction to the county court (additional to that in the 1959 Act), Parliament has expressly said whether there is to be an appeal (as in the Building Societies Act, 1962, section 72(5), or no appeal (as in the Industrial and Provident Societies Act, 1965, section 42(3) (b). In both those cases it uses the words "final and conclusive" leaving the remedy by certiorari or declaration unimpaired.

21. So I would hold that certiorari lies in the case of a decision by the county court judge under Schedule 8 of the Housing Act 1974 when he goes outside his jurisdiction or there is an error of law on the face of the record.

JURISDICTIONS ERROR

22. But even if section 107 does apply to this case, it only excludes certiorari for error of law on the face of the record. It does not exclude the power of the High Court to issue certiorari for absence of jurisdiction. It has been held that certiorari will issue to a county court judge if he acts without jurisdiction in the matter - see ***Regina v. Hurst*** (1960) 2 Q.B. 133. If he makes a wrong finding on a matter on which his jurisdiction depends, he makes a jurisdictional error: and certiorari will lie to quash his decision - see ***Anisminic v. Foreign Compensation Commission*** [1969] 2 A.C. 223. at page 208 by Lord Wilberforce. But the distinction between an error which entails absence of jurisdiction - and an error made within the jurisdiction - is very fine. So fine indeed that it is rapidly being eroded. Take this very case. When the judge held that the installation of a full central heating system was not a *"structural alteration or addition"* we all think - all three of us - that he went wrong in point of law. He misconstrued those words. That error can be described on the one hand as an error which went to his jurisdiction. In this way:- If he had held that it was a "structural alteration or addition" he would have had jurisdiction to go on and determine the various matters set out in paragraphs (b)(c) and (d) of the Schedule. By holding that it was not a "structural alteration or addition" he deprived himself of jurisdiction to determine those matters. On the other hand, his error can equally well be described as an error made by him within his jurisdiction. It can plausibly be said that he had jurisdiction to inquire into the meaning of the words *"structural alteration or addition";* and that his wrong interpretation of them was only an error within his jurisdiction, and not an error taking him outside it.

23. That illustration could be repeated in nearly all these cases. So fine is the distinction that in truth the High Court has a choice before it whether to interfere with an inferior court on a point of law. If it chooses to interfere, it can formulate its decision in the words: *"The Court below had no jurisdiction to decide this point wrongly as it did"*. If it does not choose to interfere, it can say: "*The Court had jurisdiction to decide it wrongly, and did so"*. Softly be it stated, but that is the reason for the difference between the decision of the Court of Appeal in ***Anisminic*** and the House of Lords.

24. I would suggest that this distinction should now be discarded The High Court has, and should have, jurisdiction to control the proceedings of Inferior courts and tribunals by way of judicial review. When they go wrong in law, the High Court should have power to put them right. Not only in the instant case to do justice to the complainant. But also so as to secure that all courts and tribunals, when faced with the same point of law, should decide it in the same way. It is intolerable that a citizen's rights in point of law should depend on which judge tries his case, or in what court it is heard. The way to get things right is to hold thus: No court or tribunal has any jurisdiction to make an error of law on which the decision of the case depends. If it makes such an error, it goes outside its jurisdiction and certiorari will lie to correct it. In this case the finding - that the installation of a central heating system was not a "*structural alteration*" - was an error on which the jurisdiction of the county court depended: and, because of that error, the county court judge was quite wrong to dismiss the application outright. He ought to have found that the installation was an "improvement" within section 8, paragraph 2 (2)(a), and gone on to determine the other matters referred to in section 8, paragraph 2(2)(b)(c) and (d).

25. On these grounds I am of opinion that certiorari lies to quash the determination of the county court judge, even though it was made by statute "*final and conclusive"*.

APPEAL

26. In case certiorari does not lie, the tenant submitted that he had a remedy by way of appeal: and he asked to be given leave out of time. He submitted that the words "*final and conclusive*" meant that the determination of the county court judge was final and conclusive on the facts, but not on the law - see ***Tehrani v. Rostron*** [1972] 1 Q.B. 182 at page 187. Accordingly, he submitted that he could appeal under section 108 of the County Courts Act, 1959.

27. I must say that, if I had been of opinion that certiorari did not lie, I would have held that the tenant could have appealed under section 108: because I would never accept a situation where different judges on the same set of facts could come to different conclusions on points of law. I would have held that "*final and conclusive*" excluded appeal on the facts but not on the law. But, as I have already said, I think that section 108, like section 107, is confined to the jurisdiction conferred on county court judges by the 1959 Act itself. Neither section applies to new jurisdiction created under new statutes, such as the Housing Act, 1974, Schedule 8. And it is because neither section applies that I am of opinion that certiorari does lie.

CONCLUSION

28. In my opinion the county court judge made an error of law when he determined that the installation of a full central heating system was not a "*structural alteration or addition"* to the house. His decision was made by the statute "*final and conclusive*". Those words do not exclude remedy by certiorari, that is, by judicial review. I would, therefore, allow the appeal and make an order quashing his decision and declaring that the improvement made by Mr. Pearlman fell within schedule 8, paragraph 2(1) of the Housing Act, 1974: and remitting the matter to the county court to determine the remaining matters.

LORD JUSTICE GEOFFREY LANE:

29. The tenant, Mr. Pearlman, holds from the landlords No. 1 Vale Close, Maida Vale, W.9., under an 88 year lease due to expire in the year 2021. He is anxious to take advantage of the provisions of the Leasehold Reform Act

1967 to acquire the freehold of the house on advantageous terms. The landlords are equally anxious that he should not. By virtue of section 118 of the Housing Act 1974 where the rateable value of houses in the London area is more than g.1,500 the 1967 Act has no application. The rateable value of this house is £1,597. Therefore at first sight it seems that the landlords are safe. However, the Housing Act 1974 Schedule 8 provides machinery whereby the rateable value of a house may for the purposes of the 1967 Act be notionally reduced in circumstances where a tenant has made improvements to the premises "by the execution of works amounting to structural alteration, extension or addition."

30. It is not disputed that Mr. Pearlman carried out extensive works in the house between 1960 and 1971. They consisted of removing the old central heating system which had been fired by a solid fuel boiler serving the hot water system and a couple of radiators and replacing it with a modern small-bore gas-burning system to heat the domestic water and no less than 20 radiators. He proposed to the landlords that these improvements had resulted in an increase in the rateable value and that without them the value would be reduced to .£1,487. The landlords did not agree that this was a relevant improvement, and the matter accordingly went to the county court for decision under the terms of Schedule 8(2): *"... where ... any of the following matters has not been agreed in writing between the landlord and the tenant, that is to say, - (a) whether the improvement ... is an improvement to which this Schedule applies ... the county court may on the application of the tenant determine that matter, and any such determination shall be final and conclusive."*

31. The county court judge determined that the improvements were not "by the execution of works amounting to structural alteration, extension or addition," and Mr. Pearlman now seeks an order from this court that the judge was wrong. He is particularly aggrieved because it seems that in other county courts on basically similar facts the decision has gone in favour of the tenant. There is a lot to be said for the view that the outcome of litigation should not depend upon which particular judge is sitting in the county court on the day of trial, but that cannot be an overriding consideration.

32. There are two issues. First, what is the meaning of the words "works amounting to structural alteration, extension or addition"? Secondly, to what extent do the words of Schedule 8 (2)(a) "such determination shall be final and conclusive" inhibit Mr. Pearlman from obtaining redress from this Court?

"STRUCTURAL ALTERATION"

33. The new central heating system entailed the usual work being carried out. The gas-fired boiler is a substantial affair. It is connected not only to the various radiators and towel-rails, but also, of course, to the cold water supply. It must also be connected to the electrical system (to provide power for the circulating pump and the programming mechanism) and the gas supply. It is also connected to the flue and chimney. The chimney has been lined to prevent damage through condensation. The pipes from the boiler have been run under the ground floor coming up at starting levels to most of the rooms. They pass through holes which have been made specially in the walls, load-bearing and otherwise, and in the floors and ceilings. The piping eventually rises to the roof space where it is connected to the metal header-tank and overflow pipe. It would be impossible to remove the piping. It would be possible to remove the boiler, but only by dismantling it.

34. "Structural" in this context means, I believe, something which involves the fabric of the house as opposed to the provision merely of a piece of equipment. It matters not whether the fabric in question is load-bearing or otherwise, if there is any substantial alteration, extension or addition to the fabric of the house the words of the schedule are satisfied. I have no doubt that the works done here "amount to" such alteration or addition. The system is connected in permanent fashion to the gas, water and electrical installations which are part of the fabric of the house. The walls, floors and ceilings have been drilled with holes to accommodate the piping. The flue is connected in permanent fashion to the chimney (part of the fabric] which has itself been altered by lining. This is not merely the provision of equipment, it amounts to alteration and addition to the structure.

35. I do not derive assistance from decisions such as ***Re. Gaskell's Settled Estates*** (1894) 1 Ch 485 which was made upon different facts and upon the words of the Settled Land Acts 1882 and 1890 which were not the same as the words under consideration here. The learned judge in the present case was, I think, wrong in the conclusion which he reached on this aspect of the case.

HAS THIS COURT ANY POWER TO INTERVENE?

36. By section 107 of the County Courts Act 1959, "*no order of any judge of county courts nor any proceedings brought before him or pending in his court shall be removed by appeal, motion, certiorari or otherwise into any other court whatever except ... according to the provisions in this Act mentioned."* These words are designed to deal with two separate situations. First, a judgment or order which has already been given or made by the court, and secondly any proceedings which have not yet reached the stage of judgment or order. The section removes the remedy of certiorari in either case. Section 115 of the Act provides that: "The High Court ... may order the removal into the High Court, by order of certiorari or otherwise, of any proceedings commenced in a county court, if the High Court ... thinks it desirable that the proceedings should be heard and determined in the High Court." It is clear from the words themselves that that section applies only to the second type of situation, namely where the proceedings have not yet reached judgment or order. Otherwise the matter would already have been *"determined"* by the county court. This conclusion is confirmed by section 117(1): "The grant by the High Court ... of leave to make an application for certiorari ... to a county court shall, if the High Court ... so directs, operate as a stay of the proceedings in question." If completed proceedings were contemplated this section would be meaningless.

37. Thus what the Act has done is to abolish certiorari for error of law on the face of the record as a method of attacking a judgment or order of the county court. It has retained certiorari as a method of removing a pending or uncompleted action from the county court to the High Court. See ***Challis v. Watson*** [1913] 1 K.B. 547 per Mr. Justice Lush at page 549 (a decision on section 126 of the 1888 Act which was in similar terms to section 115) and ***Lee v. Hay's Wharf*** (1940) 2 K.B. 306 (a decision under section 111 of the 1934 Act). The action in the present case is not uncompleted. The judgment has been delivered. Therefore neither of those two forms of certiorari are available to the tenant.

38. Mr. Dawson on behalf of the landlords has conceded however that the Act has not affected the power of the High Court in a,proper case to remove and quash a decision of the county court which was made in excess of that court's jurisdiction. It must follow that the only basis for an order of certiorari would be if the judge had acted in excess of his jurisdiction.

IS THERE AN APPEAL ON A POINT OF LAW?

39. Section 108 of the County Courts Act 1959 gives a general right of appeal to the Court of Appeal on a point of law to any party who is dissatisfied with the judge's determination. Section 109 specifies the circumstances in which there may be an appeal on a question of fact. None of them is applicable here.

40. What then is the effect of the words of Schedule 8, paragraph 2 of the Housing Act - "such determination shall be final and conclusive"? Since there is in any event no appeal on fact, the words of the Schedule can only apply to questions of law and one must therefore conclude that they are effective to bar an appeal on a point of law. There is nothing else to which they can apply.

41. It follows from that reasoning that the only circumstances in which this court can correct what is to my mind the error of the county court judge is if he was acting in excess of his jurisdiction as opposed to merely making an error of law in his judgment by misinterpreting the meaning of "structural alteration or addition."

42. In order to determine the ambit of the words "excess of jurisdiction" one must turn to the decision of the House of Lords in ***Anisminic Ltd. v. Foreign Compensation Commission*** (1969) 2 A.C. 147. The effect of the majority speeches in that case may perhaps be expressed as follows: Where words in a statute purport to oust the jurisdiction of the High Court to review the decision of an inferior tribunal they must be construed strictly. That is to say, if there is more than one way in which they can reasonably be construed the construction which impairs the power of the High Court the least should be selected. A provision to the effect that the determination of a tribunal *"shall not be called in question in any court of law"* does not exclude the power of the High Court to quash a decision which has been reached by the tribunal acting in excess of its jurisdiction. Jurisdiction in this sense has a-wide meaning. It includes any case where the apparent determination of the tribunal turns out on examination to be a nullity, because it cannot properly be called a determination at all. Lord Reid at page 171 said this: "But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account, or it may have based its decision on some matter which under the provisions setting it up it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly."

43. In that case the Foreign Compensation Commission in adjudicating upon the appellants' claim to compensation considered that they were bound by the relevant order to determine whether the appellants had a "successor in title" and if so whether that successor was a British national. Having decided that there was such a successor and that he was not a British national they considered themselves obliged to reject the claim. In fact the order did not require them to make any determination at all about *"successors in title"* or their nationality and the commission was basing its decision *"on some matter which under the provisions setting it up had no right to take into account."* Therefore the apparent or purported determination was a nullity and no determination at all and was not protected by the words of ouster. Lord Wilberforce, expressing similar views in somewhat different terms said this (at page 210)*:"..the cases in which a tribunal has been held to have passes outside its proper limits are not limited to those in which it had no power to enter upon its inquiry or its jurisdiction, or has not satisfied a condition precedent. Certainly such cases exist (for example* ***Ex Parte Bradlaugh*** *(1877-78) L.R. 3 Q.B.D. 509) but they do not exhaust the principle. A tribunal may quite properly validly enter upon its task and in the course of carrying it out may make a decision which is invalid - not merely erroneous. This may be described as 'asking the wrong question' or 'applying the wrong test' -expressions not wholly satisfactory since they do not in themselves distinguish between doing something which is not in the tribunal's area and doing something wrong within that area - a crucial distinction the court has to make."* It is plain that this decision makes the ambit of excess of jurisdiction very wide, but does it embrace what the county court judge did in the present case?

44. For my part I am unable to see what the judge did which went outside the proper area of his inquiry. He seems to have taken the view that the word "structural" qualifies the following words, alteration, extension or addition and does not qualify the part of the house to which the alterations etc. are made. That is to say the words do not mean non-structural alterations or additions to a structure. Assuming he was wrong in that method of interpreting the words of the Schedule, it does not seem to me to be going outside his terms of reference in any way at all, nor

does it contravene any of the precepts suggested by their Lordships which I have already cited. The question is not whether he made a wrong decision, but whether he inquired into and decided a matter which he had no right to consider. See Lord Reid at page 174B.

45. The judge summarised matters in the final passage of his judgment as follows: *"I think in the final analysis it is a matter of first impression tested by argument, analogy and illustration and finally it is a question of fact. There can be little doubt. I do not intend to give any definition at all."* In short what he is saying is that in his view the works executed by Mr. Pearlman did not amount to structural alteration or addition, within the ordinary meaning of those words. I am, I fear, unable to see how that determination, assuming it to be an erroneous determination, can properly be said to be a determination which he was not entitled to make. The judge is considering the words in the Schedule which he ought to consider. He is not embarking on some unauthorised or extraneous or irrelevant exercise. All he has done is to come to what appears to this court to be a wrong conclusion upon a. difficult question. It seems to me that, if this judge is acting outside his jurisdiction, so then is every judge who comes to a wrong decision on a point of law. Accordingly, I take the view that no form of certiorari is available to the tenant. I am fortified in this view of the matter by the fact that Mr. Lionel Read on behalf of the tenant accepted that the judge was acting within his jurisdiction, and added that "the nature of the judge's error was within hia jurisdiction and was in relation to his interpretation and construction of the Schedule." Consequently Mr. Dawson did not feel himself obliged to address us on the ***Anisminic*** line of argument. Indeed for that reason alone I would have been reluctant to allow the appeal I would accordingly dismiss this appeal.

LORD JUSTICE EVELEIGH:

46. By Schedule 8 paragraph 2(2) the county court judge is given a trenchant power. His determination on certain matters is made final and conclusive. That finality will affect not only the immediate parties but also their successors. His determination will be virtually decisive in many cases of the wider question namely whether or not the tenant has the right to buy the freehold and, should that question come before the High Court in an action by the tenant claiming that right, the determination of the county court judge affecting as it does the vital factor of rateable value will be binding upon that court. Apart from paragraph 2(2) of Schedule 8 the county court judge would have no say in the matter at all. The simple determination could not come within the exercise of his general jurisdiction as a judge of the county court. By Schedule 8 he is given arbitral power. Parliament would look upon it in another light also. It has imposed upon him a duty. That duty is to answer certain questions which the law is asking. Insofar as he answers them his determination is binding. If he answers some other question he is wasting everybody's time. He is not performing his duty. He is not exercising any power granted to him by Parliament. His decision is ultra vires. It is a nullity. Because his jurisdiction extends to answering a different question only, the determination which he has made will be outside his jurisdiction.

47. I believe that this is the approach to the question indicated by ***Anisminic v. Foreign Compensation Commission*** (1969) 2 A.C. 147 at page 234- I do not regard that decision as being in any way revolutionary. It has been said that the power of the court by certiorari to control errors of law has lain dormant for over a hundred years. This assertion is more pertinent in relation to an error on the face of the record made within the jurisdiction or intra vires. It is not true of certiorari used to ensure that the tribunal does not exceed its jurisdictions! power.

48. In the 4th edition of Wade on Administrative Law at page 232 we read: *"... the rule that a determination which is ultra vires may always be challenged in the High Court. This is no more than the corollary of the main principle of jurisdictional control, which ordains that no tribunal can give itself jurisdiction which it does not possess."* In other words a tribunal cannot give itself power to decide a question that Parliament has not empowered it to answer. The absurdity of allowing the tribunal so to do is all the more apparent when Parliament has made the answer of the tribunal binding upon other courts. That the answer to a question which has not been asked should be binding upon a court as the answer to a totally different question which Parliament requires to be asked is utterly absurd.

49. In ***Bunbury v. Fuller*** (1853) 9 Exchequer 111 Mr. Justice Coleridge said: *"Now it is a general rule, that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limits to its jurisdiction depends; and however its decision may be final on all particulars, making up together that subject matter which, if true is within its jurisdiction, and, however necessary in many cases it may be for it to make a preliminary enquiry, whether some collateral matter be or be not within the limits, yet, upon this preliminary question, his decision must always be open to enquiry in the superior court." In the present case before the tribunal could embark upon its enquiry it was necessary for it to decide the meaning of the question it was required to answer. This was a collateral matter. It had nothing to do with the merits of the case. It was indeed "a point collateral to the merits of the case upon which the limits to its jurisdiction depend."*

50. It is not for the county court judge to decide, i.e. to lay down, what structural alteration, etc. means although of course he has to comprehend what it means before he can answer the question he is empowered to decide under Schedule 8, section 2 (2). Parliament determines what structural alteration means. If the county court judge proceeds to answer the question having wrongly comprehended its meaning his decision is a nullity.

51. Fundamentally it is necessary to ask if the *"... tribunal has jurisdiction to enter on the enquiry and to decide a particular issue ..."* see Lord Reid in ***R. v. Governor of Brixton Prison , ex parte Armah*** [1968] A.C. 192 at page 234. The fundamental question which the court is entitled to and must decide is whether the county court judge was entitled to enter on the enquiry he in fact made. He had to ask whether the work was "Works amounting to structural alteration extension or addition." If in his mind those words meant X and by using those words Parliament meant Y the county court judge was answering a question he was not asked.

52. It is clear to my mind that the reason why two judges on identical facts gave different answers to the question was because one understood it to mean one thing and the other understood it to mean another. The facts of the cases permitted of no other explanation. In the case before this court we can discover how the judge understood the question. He has delivered a judgment in which he explains his approach to the words *"Works amounting to structural alteration extension or addition."* In my opinion he wrongly understood the meaning of those words. He therefore did not answer the question he was asked. In ***Anisminic*** Lord Pearce at page 194 said: *"It would lead to an absurd situation if a tribunal, having been given a circumscribed area of enquiry, carved out from the general jurisdiction of the courts, were entitled of its own motion to extend that area by misconstruing the limits of its mandate to enquire and decide as set out in the Act of Parliament. If for instance Parliament were to carve out an area of enquiry within which an inferior domestic tribunal could give certain relief to wives against their husbands, it would not lie within the power of that tribunal to extend the area of enquiry and decision, that is jurisdiction, thus committed to it by construing wives as including all women who without marriage cohabited with a man for a substantial period ... "*

53. By the use of certiorari the courts ensure that the right question is answered and that the answer to the wrong question is not accepted. The courts thus ensure that a decision is arrived at in accordance with Parliament's intention. At page 195 Lord Pearce said: *"It is simply an enforcement of Parliament's mandate to the tribunal. If the tribunal is intended on a true construction of the Act to enquire into and finally decide questions within a certain area, the court's supervisory duty is to see that it makes the authorised enquiry according to natural justice and arrives at a decision whether right or wrong. They will intervene if the tribunal asks itself the wrong questions (that is, questions other than those which Parliament directed it to ask itself)."* There are several passages in the speeches of their Lordships to the same effect namely that if the tribunal answers the wrong question its determination is a nullity.

54. One must therefore seek to determine what was the question which the county court judge was required to ask. The judge had to ask himself whether the improvement specified in the notice was "An improvement to which this schedule applies." He could only answer that question if he knew what it was to which the schedule applied. Paragraph 2 of Schedule 8 reads: *"This schedule applies to any improvement made by the execution of works amounting to structural alterations extension or addition."* In my opinion structural means appertaining to the fabric of a building so as to be a part of the complex whole. In the case of ***Pickering v. Phillimore*** His Honour Judge White said: *"A house is a 'complex unity' particularly a modern house. Structural implies concern with the constituent or material parts of that unity. What are the constituent or material parts? In my judgment in any ordinary sense they involve more than simply the load bearing elements for example the four walls the roof and the foundations. The constituent parts are more complex than that."* He then suggested a definition of structural as being *"Appertaining to the basic fabric and parts of the house as distinguished from its decorations and fittings."* The learned judge said that it would be wrong to describe the central heating system as mainly fittings for throughout the house the system became built into it and became part of it in a layman's sense.

55. In my opinion Judge White has the right conception of what Parliament meant by structural. In the case before this court the learned county court judge perhaps wisely did not attempt a definition. There is much to be said for that approach. Alternative definitions often take the matter no further. However when a word has more than one meaning the court has to make up its mind which meaning it will adopt and it is helpful if it says so not as an alternative definition but as an explanation of what Parliament meant by the words in question. However the learned judge did reject the meaning adopted by Judge White. From this it follows that he was proceeding upon some other meaning of the word and consequently asked himself the wrong question.

56. I agree with the judgments just delivered that the central heating in this case comes within the wording of the schedule. In the course of argument there was some conjecture as to why the expression used was *"Work amounting to ..."* In my opinion it is because we have to look at the final result. That which is achieved must amount to a structural alteration extension or addition. Work that simply involves structural alteration will not necessarily come within the definition. I have had some difficulty in persuading myself that there is no appeal on a point of law from the decision of the county court judge. I have been inclined to treat his determination as final and conclusive only on questions of fact. Paragraph 2(2) of Schedule 8 lists matters for the judge's determination and I regard them all as questions of fact. It may well be, however, that as the decision was a nullity the court must say that there is nothing to appeal against. Therefore, I regard the remedy of certiorari as more appropriate to the present situation. I agree with the judgments just delivered that the County Court Act does not exclude certiorari in the kind of case which goes to jurisdiction. I would also add that for myself I did not understand counsel for the appellant or the applicant to say that the judge was acting within his jurisdiction in the sense with which the ***Anisminic*** case deals. He seemed to be taking the view that, because this was a judge and not a tribunal, different considerations applied. He was wrong in that, and I think he realised this when he came to reply when he developed the argument more fully. In any event, certiorari is a matter for the court to decide where necessary, and I therefore agree with my Lord the Master of the Rolls that certiorari should go in this case.

(Order: Appeal allowed by majority. Costs here and below. Leave to appeal to the House of Lords granted)

MR. L. READ, Q.C. and MR. M. HORTON (instructed by Messrs. Enever Freeman & Co., Solicitors, Ruislip) appeared on behalf of the Appellant.
MR. A. DAWSON, Q.C. and MR. J. HARPER (instructed by Messrs. Fladgate & Co., Solicitors, London) appeared on behalf of the Respondents.