Upon Report from the Appellate Committee to whom was referred the Cause In re Racal Communications Limited, That the Committee had heard Counsel on Tuesday the 3rd day of June last upon the Petition and Appeal of Racal Communications Limited of Western Road, Bracknell, Berkshire praying that the matter of the Order set forth in the Schedule thereto, namely an Order of Her Majesty's Court of Appeal of the 31st day of July 1979 might be reviewed before Her Majesty the Queen in Her Court of Parliament and that the said Order might be reversed, varied or altered and that the Petitioners might have the relief prayed for in the Appeal or such other relief in the premises as to Her Majesty the Queen in Her Court of Parliament might seem meet; as also upon the Case of the Director of Public Prosecutions lodged in answer to the said Appeal; and due consideration had this day of what was offered on either side in this Cause:

It is *Ordered* and *Adjudged,* by the Lords Spiritual and Temporal in the Court of Parliament of Her Majesty the Queen assembled, That the said Order of Her Majesty's Court of Appeal of the 31st day of July 1979 complained of in the said Appeal be, and the same is hereby, **Reversed** and that the Order of Mr. Justice Vinelott of the 6th day of April 1979 be, and the same is hereby **Restored:** And it is further *Ordered,* That the Respondent do pay or cause to be paid to the said Appellants the Costs incurred by them in the Court of Appeal and also the Costs incurred by them in respect of the said Appeal to this House, the amount of such last-mentioned Costs to be certified by the Clerk of the Parliaments if not agreed between the parties: And it is also further *Ordered,* That the Cause be, and the same is hereby, remitted back to the Chancery Division of the High Court of Justice to do therein as shall be just and consistent with this Judgment.

House of Lords before Lord Diplock; Lord Salmon; Lord Edmund-Davies; Lord Keith ; Lord Scarman 3rd July 1980

Lord Diplock : MY LORDS,

1. On 2nd April 1979, an application by originating summons was made to Mr. Justice Vinelott in chambers under section 441 of the Companies Act 1948. So far as is relevant for the purposes of this appeal this reads as follows:

> *"441(1) If on an application made—*
>
> *(a) in England, to a judge of the High Court in chambers by the Director of Public Prosecutions, the Board of Trade or a chief officer of police; or*
>
> *(b) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate:*
>
> *there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—*
>
> *(i) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or*
>
> *(ii) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.*
>
> *(2) ....*
>
> *(3) The decision of a judge of the High Court or of any of the Lords Commissioners of Justiciary on an application under this section shall not be appealable."*

2. The application was made by the Director of Public Prosecutions and was made *ex parte*. This was in accordance with the usual practice which has been adopted so as to avoid defeating the evident purpose of the section by giving to the suspected offender an opportunity of disposing of incriminating documents before any order for their inspection or production can be made and served. In the result the company concerned (" Racal "), who are appellants in your Lordships' House, received no notice of the application to Mr. Justice Vinelott, nor of the appeal to the Court of Appeal brought by the Director of Public Prosecutions against the judge's refusal to make the order sought. On 31st July 1979 the Court of Appeal reversed the judge's decision and made an order authorising named persons to inspect " all books, records, correspondence and other papers belonging to or under the control " of Racal, and ordering a director of Racal to produce them to the persons so named. The first time that Racal heard anything about the proceedings was when that order of the Court of Appeal was served upon them; and the first opportunity that Racal has been afforded to advance reasons why the Court of Appeal ought not to have made the order has been before your Lordships' House.

3. The first reason that Racal rely upon is that the Court of Appeal had no jurisdiction to entertain an appeal from a decision of a High Court judge made in the exercise of the statutory jurisdiction conferred upon him by section 441(1) of the Companies Act 1948. Their argument is simplicity itself and can be stated in a single sentence. Subsection (3) provides that his decision shall *not* be appealable. One asks oneself rhetorically: "*What could be plainer than that?"* What principle of statutory interpretation can lead one to suppose that parliament when it said "*not appealable*" really meant "*appealable on some grounds but not on others?"* To give to the phrase *"shall not be appealable"* its ordinary and, linguistically, its only possible meaning, does not lead to results so manifestly absurd or unjust as to drive one to the conclusion that parliament must have intended that, despite the unqualified language used, the judge's decision should be unappealable on some grounds only but appealable to the Court of Appeal on others.

4. The provisions of section 441 form part of the machinery for the investigation of crime preparatory to the commencement of a criminal prosecution and for obtaining evidence for use at an eventual trial if prosecution be

brought. The jurisdiction exercised by the High Court judge is analogous to that exercised by a magistrate in issuing a search warrant for stolen goods or by a circuit judge in issuing a search warrant under section 20C of the Taxes Management Act 1970 as amended. See ***Reg. v. Inland Revenue Commissioners ex parte Rossminster Ltd.*** [1980] 2 WLR 1. The application does not involve and is not made in the course of any *lis inter partes*. It cannot create *res judicata;* if one judge refuses to make the order there is no legal obstacle to the applicant's making the same application to another judge, although in the absence of additional evidence this is unlikely to be successful. Neither the suspected offender nor the company of whose papers inspection is sought is entitled to notice of the application or to be heard upon it, for to permit this would defeat the obvious purpose of the section. The making and execution of the order involves some inroad on the company's rights at common law to refuse disclosure of its papers to anyone except its board and persons authorised by its board; but this is a relatively minor inconvenience to suffer in the public interest in the detection and punishment of crime: particularly as the offences contemplated by the section include, even if they are not confined to, breaches of the law by those concerned in the management of the company and of which the company, its shareholders and creditors are themselves the victims.

5. My Lords, I can see no ground for saying that the consequences of denying all appeals from the decision of a High Court judge granting or refusing an order for production and inspection of a company's documents under section 441 are so absurd or unjust that parliament cannot have meant what it so plainly said but must have intended the unappealability to be subject to implied exceptions. On the contrary, there seem to me to be cogent reasons for denying any right of appeal. So on the sole and simple ground that the statute says the judge's decision shall not be appealable I would hold the Court of Appeal had no jurisdiction to entertain an appeal from Mr. Justice Vinelott's decision to refuse the order applied for by the Director of Public Prosecutions and that the order that they purported to make ordering production and inspection of Racal's papers is a nullity and must be set aside.

6. It follows that your Lordships, in your turn, have no jurisdiction to enter upon a consideration of whether or not the judge's decision was right or wrong. Nevertheless to understand the reasoning by which the Court of Appeal reached the conclusion that it was entitled to exercise appellate jurisdiction in the instant case it is necessary to refer briefly to the judge's reasons for refusing to make the order that was applied for. He gave to the expression "*an offence in connection with the management of the company's affairs"* in section 441(1) a construction which the Court of Appeal regarded as too narrow. In the context of the Act he regarded it as confined to offences committed in the course of the internal management of the company and held that the particular offences of which an employee of Racal was suspected did not fall within the section. He also doubted whether the employee fell within the class of " officer of a company " within the meaning of the Companies Act 1948. The ground on which he dismissed the application was therefore one of law. The Court of Appeal were of opinion, rightly or wrongly, that the learned judge had misconstrued the statute and held further that section 441(3) did not render his decision unappealable if it were based on a mistake of law.

7. The question of jurisdiction was disposed of somewhat summarily in the judgments of the Court of Appeal. This is not surprising since the judge himself, on being informed that other judges had taken a different view on the construction of the Act, had given, indeed had volunteered, leave to appeal.

8. At the healing of the appeal which, as I have mentioned, was *ex parte,* the Court of Appeal had the benefit of hearing counsel acting as *amicus curiae,* but apparently he did not address his argument to the question of the jurisdiction of the court to entertain the appeal. So as far as argument is concerned, the point about jurisdiction went by default.

9. The Master of the Rolls, in a passage that is set out in full in the speech of Lord Scarman, referred to two authorities: ***Anisminic Ltd. v. Foreign Compensation Commission*** [1969] 2 A.C. 147 and a passage from his own judgment in ***Pearlman v. Harrow School*** [1979] 1 Q.B. 56 at page 70: *"No court or tribunal has any jurisdiction to make an error of law on which the decision of the case depends."* He described the decision of the learned judge to dismiss the application in the instant case as refusing a jurisdiction which he ought to have entertained. Lord Justice Shaw referred to him as "*renouncing jurisdiction*". Lord Justice Templeman added nothing on the jurisdiction point. He agreed with the two previous judgments.

10. My Lords, this summary way of disposing of the question of jurisdiction appears to me to overlook (1) the distinction between the appellate jurisdiction of the Court of Appeal and the original jurisdiction exercisable only by the High Court (as successor to the old Court of King's Bench) to review decisions of inferior tribunals for error of law, by use of the prerogative writs of *certiorari, prohibition* and *mandamus* which have now been replaced by orders obtainable on application for judicial review; (2) the distinction between courts of law and tribunals or courts exercising administrative functions which, in another of its aspects, has recently been considered by this House in ***Attorney-General v. B.B.C.;*** and (3) the distinction between the High Court and an inferior court of law.

11. The jurisdiction of the Court of Appeal is wholly statutory; it is appellate only. The court has no original jurisdiction. It has no jurisdiction itself to entertain any original application for judicial review; it has appellate jurisdiction over judgments and orders of the High Court made by that court on applications for judicial review. Both the cases referred to in the Court of Appeal's judgment in the instant case were cases of judicial review which started in the High Court and came up on appeal in the ordinary way, to this House in ***Anisminic*** and to the Court of Appeal in *Pearlman.* The judgment in the instant case, however, does not differentiate between appeal and judicial review. On the face of it, it appears to treat the jurisdiction in both kinds of procedure as identical.

This, it may be, reflects a view expressed *obiter* by the Master of the Rolls in *Pearlman* (p. 71). That was a case in which an order of *certiorari* was sought in respect of a determination of a county court judge made in the exercise of his statutory jurisdiction under Schedule 8 of the Housing Act 1974, which provided that his determination should be *"final and conclusive"*. The Master of the Rolls, overruling the Divisional Court, held that *certiorari* would lie but added that if he had come to the contrary conclusion he would have held that "*final and conclusive*" excluded appeal from the county court to the Court of Appeal on questions of fact only but not on questions of law.

12. My Lords, with great respect, I think that this dictum on which counsel for the respondent strongly relied is wrong; but in any event it has no application to the instant case. The expression with which your Lordships are concerned instead of being *"final and conclusive*" is *"not appealable*", which perhaps makes the point even clearer, but I agree with counsel for the respondent that there is no relevant distinction between the two. The general jurisdiction of the Court of Appeal to hear and determine appeals from any order of the High Court is conferred by section 27(1) of the Supreme Court of Judicature Act 1925, but this is subject to the restrictions specified in section 31(1) of which the relevant provision is: *" No appeal shall lie ... (d) from the decision of the High Court or of any judge thereof where it is provided by any Act that the decision of any court or judge, the jurisdiction of which or of whom is now vested in the High Court, is to be final."*

13. There is no room here for distinguishing between appeals on matters of fact and appeals on matters of law. I would, therefore, conclude that even if Mr. Justice Vinelott's decision were open to attack on judicial review, the Court of Appeal would have had no original jurisdiction to entertain it.

14. I turn next to the question of the availability of judicial review instead of appeal as a means of correcting mistakes of law made by a court of law as distinct from an administrative tribunal or other administrative authority, however described when it is exercising *quasi* judicial functions. In ***Anisminic*** this House was concerned only with decisions of administrative tribunals. Nothing I say is intended to detract from the breadth of the scope of application to administrative tribunals of the principles laid down in that case. It is a legal landmark; it has made possible the rapid development in England of a rational and comprehensive system of administrative law on the foundation of the concept of *ultra vires*. It proceeds on the presumption that where parliament confers on an administrative tribunal or authority, as distinct from a court of law, power to decide particular questions defined by the Act conferring the power, parliament intends to confine that power to answering the question as it has been so defined: and if there has been any doubt as to what that question is, this is a matter for courts of law to resolve in fulfilment of their constitutional role as interpreters of the written law and expounders of the common law and rules of equity. So if the administrative tribunal or authority have asked themselves the wrong question and answered that, they have done something that the Act does not empower them to do and their decision is a nullity. Parliament can, of course, if it so desires, confer upon administrative tribunals or authorities power to decide questions of law as well as questions of fact or of administrative policy; but this requires clear words, for the presumption is that where a decision-making power is conferred on a tribunal or authority that is not a court of law, parliament did not intend to do so. The break-through made by ***Anisminic*** was that, as respects administrative tribunals and authorities, the old distinction between errors of law that went to jurisdiction and errors of law that did not, was for practical purposes abolished. Any error of law that could be shown to have been made by them in the course of reaching their decision on matters of fact or of administrative policy would result in their having asked themselves the wrong question with the result that the decision they reached would be a nullity. The Tribunals and Inquiries Act 1971, which requires most administrative tribunals from which there is not a statutory right of appeal to the Supreme Court on questions of law, to give written reasons for their decisions, now supplemented by the provisions for discovery in applications for judicial review under Order 53 of the Rules of the Supreme Court, facilitates the detection of errors of law by those tribunals and by administrative authorities, generally.

15. But there is no similar presumption that where a decision-making power is conferred by statute upon a court of law, parliament did not intend to confer upon it power to decide questions of law as well as questions of fact. Whether it did or not and, in the case of inferior courts, what limits are imposed on the kinds of questions of law they are empowered to decide, depends upon the construction of the statute unencumbered by any such presumption. In the case of inferior courts where the decision of the court is made final and conclusive by the statute, this may involve the survival of those subtle distinctions formerly drawn between errors of law which go to jurisdiction and errors of law which do not that did so much to confuse English administrative law before ***Anisminic;*** but upon any application for judicial review of a decision of an inferior court in a matter which involves, as so many do, interrelated questions of law, fact and degree the superior court conducting the review should not be astute to hold that parliament did not intend the inferior court to have jurisdiction to decide for itself the meaning of ordinary words used in the statute to define the question which it has to decide. This, in my view, is the error into which the majority of the Court of Appeal fell in *Pearlman*. The question for decision by the county court judge under Schedule 8 para. 1(2) of the Housing Act 1974 was whether the installation of central heating in a particular dwelling-house amounted to *"structural alteration, extension or addition"*. If the meaning of ordinary words when used in a statute becomes a question of law, here was a typical question of mixed law, fact and degree which only a scholiast would think it appropriate to dissect into two separate questions, one, for decision by the superior court, viz. the meaning of those words—a question which must entail considerations of degree; and the other for decision by the county court, viz. the application of the words to the particular installation—a question which also entails considerations of degree. The county court judge had not ventured upon any definition

of the words *"structural alteration, extension or addition "*. So there was really no material on which to hold that he had got the meaning wrong rather than its application to the facts. Nevertheless the majority of the Court of Appeal in *Pearlman* held that parliament had indeed intended that such a dissection should be made and since they would not have come to the same conclusion themselves on the facts of the case they inferred that the judge's error was one of interpretation of the words *"structural alteration, extension or addition "*. This was in the face of a powerful dissent by Lord Justice Geoffrey Lane. Notwithstanding that on the facts of the case he too would have reached a different conclusion from that of the county court judge, he was of opinion that the statute conferred upon the judge jurisdiction to decide finally and conclusively a question which did involve interrelated questions of law, fact and degree, and that the Supreme Court had no jurisdiction to interfere with his decision by way of judicial review. For my part, I find the reasoning in his minority judgment conclusive.

16. There is in my view, however, also an obvious distinction between jurisdiction conferred by a statute on a court of law of limited jurisdiction to decide a defined question finally and conclusively or unappealably, and a similar jurisdiction conferred on the High Court or a judge of the High Court acting in his judicial capacity. The High Court is not a court of limited jurisdiction and its constitutional role includes the interpretation of written laws. There is thus no room for the inference that parliament did not intend the High Court or the judge of the High Court acting in his judicial capacity to be entitled and, indeed, required to construe the words of the statute by which the question submitted to his decision was defined. There is simply no room for error going to his jurisdiction, nor, as is conceded by counsel for the respondent, is there any room for judicial review. Judicial review is available as a remedy for mistakes of law made by inferior courts and tribunals only. Mistakes of law made by judges of the High Court acting in their judicial capacity as such can be corrected only by means of appeal to an appellate court; and if, as in the instant case, the statute provides that the judge's decision shall not be appealable, they cannot be corrected at all.

17. My Lords, to describe Mr. Justice Vinelott's decision to dismiss the Director of Public Prosecution's application under section 441(1) as a refusal or renunciation of jurisdiction seems to me to involve a misuse of the word "*jurisdiction*". His jurisdiction was to decide whether upon the material placed before him the application should be granted or refused. In deciding that it should be refused, he was exercising his jurisdiction just as much as if he had decided that it should be granted.

18. For all these reasons, I do not think that any sufficient grounds have been shown why this appeal ought not to be allowed for the very simple reason with which I started: that the words of the statute *"shall not be appealable"* mean what they say.

Lord Salmon my lords,

19. Section 441(1) of the Companies Act 1948 which has been set out verbatim in the speech of my noble and learned friend, Lord Diplock, in my view, means, amongst other things, that if an *ex parte* application is made to a judge of the High Court by the Director of Public Prosecutions, the Board of Trade or a chief officer of police, and the judge is satisfied (a) that there is reasonable cause to believe that a crime has been committed by an officer of a company to defraud any members of the public, e.g. a customer of the company, and (b) that evidence of the crime is to be found in the company's books or papers, the judge may make an order authorising inspection of the relevant books and papers for the purpose of obtaining evidence of the alleged offence.

20. There can, in my view, be no doubt that this statutory power makes almost as big an inroad into the general principle of the common law which preserves the liberty of the individual as does, for example, section 20C of the Taxes Management Act 1970: see ***Reg. v. Inland Revenue Commissioners ex parte Rossminster Ltd.*** [1980] 2 W.L.R. 1. Parliament, however, was clearly satisfied (1) that this statutory power was necessary for the protection of those who might be defrauded by the company and (2) that the liberty of the individual would be protected by the High Court judge who would never make an order under the section unless he was satisfied that justice demanded it.

21. I am not at all surprised that section 441(3) laid down that "*The decision*" of a judge of the High Court... on an application under this section shall "*not be appealable*." After all, section 441(1) was making available exceptional powers to the D.P.P., the Board of Trade and chief officers of police providing that the High Court judge was satisfied that there was reasonable cause for the exercise of those, powers. If he was not so satisfied and refused the application, Parliament, in my respectful view, rightly considered that that should be an end of the matter and that therefore there should be no appeal. No doubt, theoretically another *ex parte* application could be made to another High Court judge but with little, if any, hope of success. Equally, if the judge was satisfied and granted the application, there could be no appeal by the company concerned or by its officers. Otherwise, the relevant books and papers would probably have disappeared long before the appeal had been heard.

22. These, in my view, are the reasons lying behind subsection (3) of section 441, but the reasons for this subsection are perhaps otiose, for its meaning is so pellucidly clear. It means what it says namely that the decision of a judge of the High Court on an application under section 441(1) "*shall not be appealable "*.

23. The Court of Appeal came to the conclusion that the learned judge's construction of section 441(1) was too narrow. If that conclusion is correct, as it may be, it follows that the learned judge misconstrued that section and had therefore erred in law. This however is, in my view, entirely irrelevant. Section 441(3) does not end with the

words " except on a point of law ". And it is obvious that there can be no justification for adding those words to that subsection.

24. The Court of Appeal, however, relied strongly on the decision of your Lordships' House in ***Anisminic Ltd. v. Foreign Compensation Commission*** [1969] 2 A.C. 147. That decision, however, was not, in my respectful view, in any way relevant to the present appeal. It has no application to any decision or order made at first instance in the High Court of Justice. It is confined to decisions made by commissioners, tribunals or inferior courts of justice which can now be reviewed by the High Court of Justice just as the decisions of inferior courts used to be reviewed by the old court of King's Bench under the prerogative writs. If and when any such review is made by the High Court, it can be appealed to the Court of Appeal and thence, by leave, to your Lordships' House.

25. The jurisdiction of the Court of Appeal is defined by statute. It has no jurisdiction to make a judicial review of a decision of the High Court. Its power is to hear and determine an appeal from any decision or order made by the High Court, and this power which is conferred solely by section 27(1) of the Supreme Court of Judicature Act 1925 is restricted by section 31(1) of the Act of 1925 which provides that " No appeal shall lie ... (d) from the decision of the High Court or of any judge thereof where it is provided by any Act that the decision of any court or judge, the jurisdiction of which or of whom is now vested in the High Court, is to be final." In my view, it is obvious that this restriction applies equally to all decisions whether they are decisions relating to issues of fact or of law. Section 441(3) of the Companies Act 1948 which provides that the decision of the High Court judge on an application under section 441(1) shall not be appealable is a typical example of " any Act" referred to in section 31(1) of the Act of 1925 which provides that the decision of the High Court judge is to be final.

26. My Lords, for the reasons which I have stated, I would allow the appeal.

Lord Edmund Davies MY LORDS,

27. The determining issue in this appeal relates to the jurisdiction of the Court of Appeal to entertain an appeal against the decision of a High Court judge in a matter declared by statute to be not appealable.

28. The facts may be shortly stated. Racal Communications Ltd. (" Racal") repair communications equipment under contract for the Ministry of Defence at cost plus a fixed percentage of profit. Suspicion was aroused that during the period 1975 to 1978 Racal improperly obtained sums totalling £200,000 approximately by inflating the cost item in the estimates they submitted to the Ministry, thus extracting profit percentages above those to which they were contractually entitled. It was further suspected that this dishonest practice had originated in instructions given to employees by the head of Racal's quotations department. The institution of criminal proceedings being contemplated, the Director of Public Prosecutions understandably desired to have sight of the Company's records. So on April 2, 1979 he commenced *ex parte* proceedings in Chambers by originating summons under R.S.C. Order 102 rule 2 in the Chancery Division for an order pursuant to section 441(1) of the Companies Act 1948. That subsection is in the following terms:

" If on an application made -
(a) in England, to a judge of the High Court in chambers by the Director of Public Prosecutions, the Board of Trade or a chief officer of police; or
(b) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate;

there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—

(i) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or
(ii) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named."

29. The order sought was that a detective inspector and a member of the Ministry of Defence staff be at liberty to inspect the appellant company's records and that these be produced for inspection by a named director of the company.

30. Dismissing the application, Vinelott J. held that the words in section 441(1) *" has.. . committed an offence in connection with the management of the company's affairs "* were inappropriate to describe the alleged misconduct of members of the Racal staff. He also expressed doubt that the evidence adduced was sufficient to give rise to *"a reasonable belief that the fraud was perpetrated by an officer of the company "* as that term was defined in section 455. But he "willingly" granted the Director of Public Prosecutions leave to appeal to the Court of Appeal, and this was done notwithstanding the provision in subsection (3) of section 441 that " The decision of a judge of the " *High Court ... on an application under this section shall not be appealable* ", to which no attention was apparently paid.

31. But it was certainly not overlooked in the *ex parte* proceedings before the Court of Appeal on July 31. Naturally enough, the issue of jurisdiction was not raised by the Director of Public Prosecutions' Notice of Appeal and Racal had no opportunity of raising it, for they had no knowledge of the proceedings until the order of the Court of Appeal was served upon them on August 30. But Lord Denning M.R. rightly regarded it as "The first question which arises.. .", and he prefaced his observations by saying of Vinelott, J.'s decision : *"Having come to that limited construction of the words ' an offence ' in connection with the management of the company's affairs', he refused any*

jurisdiction in the matter and declined to make the order which the Director of Public Prosecutions sought." (Emphasis added here and in all subsequent quotations.)

32. As this primary issue was dealt with very briefly in the unanimous, extemporary and unreported judgments of all three members of the Court of Appeal, it is desirable to quote verbatim the way in which the Master of the Rolls dealt with the ouster clause. He said: *" In my opinion [section 441(3)] is not a bar to the appeal to this court. There are many cases now which show that if a judge misconstrues a statute by giving himself jurisdiction when he has none or by refusing jurisdiction when he has it, then he makes an error which goes to the jurisdiction; and there is an appeal to this court, no matter how wide the words which seem to exclude it."*

33. After citing as supporting authorities ***Anisminic Ltd. v. Foreign Compensation Commission*** [1969] 2 A.C. 147 and *Pearlman v. Keepers and Governors of Harrow School* [1979] 1 Q.B. 56, Lord Denning continued: *" It seems to me that in this case, if the judge made an error of law in construing the words of the section—if he construed the words ' an ' offence', etc., too narrowly—then he made an error of law which made him refuse jurisdiction when he ought to have entertained it. So the appeal can be entertained here in this court."*

34. Shaw L.J. said that the appeal was "*against [the judge's] refusal to make any order. . . because he renounced jurisdiction, holding that the terms of the section did not bring the matter properly before him* ". And Templeman L.J., without more, expressed himself as *"... quite satisfied that we have jurisdiction to consider this appeal ".*

35. My Lords, I have to say with profound respect that I am unable to follow this approach. If anything is clear, it is that, so far from " r*enouncing* " jurisdiction, Vinelott J. emphatically exercised it. He may or may not have come to a wrong conclusion regarding the ambit of the "offence" referred to in section 441(1) and as to the proper interpretation of *"an officer of a company* ". The Court of Appeal unanimously held that he did, and this House is not presently concerned to decide those matters one way or another. But these were unquestionably issues which the learned judge had to try, and try them he did. How, therefore it can be said that he "renounced " jurisdiction is something which I have been unable to comprehend.

36. The most that can properly be said is that, in exercising his undoubted jurisdiction to interpret the wording of section 441(1), the learned trial judge may have fallen into error. The question that arises, accordingly, is whether an error of law made within his jurisdiction by a High Court judge can properly be the subject-matter of consideration by the Court of Appeal, notwithstanding that section 441(3) provided that such decision " shall not be appealable ".

37. Before turning to some of the case-law in relation to ouster clauses, it is essential to have in mind the limits of jurisdiction of the High Court and of the Court of Appeal. The former is governed by sections 18 to 25 of the Supreme Court of Judicature (Consolidation) Act 1925, the latter by sections 26 to 28 thereof. What is beyond doubt is that the Court of Appeal has no original jurisdiction and that in relation to High Court decisions it has no jurisdiction beyond those prescribed in section 27. And even that is restricted by section 31(1), which provides that *"No appeal shall lie... (d) from the decision of the High Court or of any judge thereof where it is provided by any Act that the decision of any court or judge, the jurisdiction of which or of whom is now vested in the High Court, is to be final ".* If the proper view of the action taken by the Court of Appeal in the instant case is that they purported to exercise on their own behalf that jurisdiction which they concluded Vinelott J. had "renounced ", they were in effect conducting a judicial review of a High Court decision. But it has to be said that they had no power to do that. The Court of Appeal is a member of the Supreme Court of Judicature, but *" it is not a member of the High Court "* (*per* Scrutton, L.J. in ***In re Carroll*** [1931] 1 K.B. 105, at 107), and all applications for judicial review must be made to a Divisional Court of the Queen's Bench Division and in the manner prescribed by R.S.C... Order 53, r. 3.

38. How, then, came it about that in the instant case the Court of Appeal entertained the matter? It has been urged for the respondent that in doing so they were merely exercising their statutory appellate jurisdiction. But it is difficult to see how that can be so, for, so far from putting right the factual or legal mistakes of the trial judge, they quashed it as a nullity and substituted an original decision of their own.

39. And if, as the respondent urged, they were acting merely as an appellate court, what of the ouster contained in section 441(3)—not to mention section 31(1) of the Supreme Court of Judicature Act 1925, the latter of which, incidentally, was not referred to below? As we have seen, Lord Denning M.R. founded himself on the decision of your Lordships' House in ***Anisminic*** *(ante),* as expounded by him in *Pearlman (ante),* and I turn to consider those cases, stressing at the outset that in neither of them was the starting-point a decision of the High Court.

40. ***Anisminic*** arose from the fact that the statute creating the Foreign Compensation Commission enacted that, " The determination by the Commission of any application made to them under this Act shall not be called in question in any court of law ". The Commission rejected the company's claim to participate in a compensation fund and, when the company sought a declaration of entitlement in the High Court, they pleaded that the statute operated to deprive the High Court of jurisdiction to entertain the proceedings. Browne J. rejected the Commission's objection, but the Court of Appeal upheld it ([1967] 3 W.L.R. 382). Your Lordships' House finally held that the word *"determination"* in the ouster clause should not be construed as including everything which purported to be a determination, but which in fact was nothing of the kind because the Commission had misconstrued the provisions of the order defining their jurisdiction. They had in truth acted without jurisdiction in making their determination and the company were accordingly entitled to the declaration sought.

41. *Pearlman* was an appeal from the Divisional Court's refusal to grant certiorari in relation to a decision of a county court judge regarding the interpretation of the phrase *"structural alteration*" in the Housing Act, 1974. Schedule 8, paragraph 2(2) of that Act provided that the determination of the county court judge " shall be final and conclusive ", and section 107 of the County Courts Act 1959 provides that, " No judgment or order of any judge of county " courts . . . shall be removed by appeal, motion, certiorari or otherwise into "*any other court whatever*". Counsel for the tenant accepted in the Court of Appeal that the judge had acted *within* his jurisdiction, but contended that in so acting he had misconstrued the statute (see [1979] 1 Q.B. at 60H-61A). He submitted that section 107 " did not take away the common law right of the High Court to remove by certiorari into the High Court any case in the county court where the county court judge has gone wrong in law. Certiorari lies not only where the inferior tribunal has exceeded its jurisdiction but where an error of law appears on the face of the record ". Upholding that submission, the Court of Appeal by a majority reversed the Divisional Court. Lord Denning, M.R. said (at p. 69G): *" ... 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 ... [The judge's] error can be described on the one hand as an error which went to his jurisdiction ... By holding that it was not a ' structural alteration ... 'or addition' he deprived himself of jurisdiction to determine those matters. On the other hand,... it can plausibly be said that he had jurisdiction to inquire into the meaning of the words ... and that his wrong interpretation of them was only an error within his jurisdiction, and not an error taking him outside it. . . . . I would suggest that this distinction should now be disregarded. 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... 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.... I am of opinion that certiorari lies to quash the determination of the judge, even though it was made by statute ' final and conclusive ' ".*

42. In his dissenting judgment, Geoffrey Lane L.J., as he then was, quoted from the county court judge's judgment, and commented (at 76C): *" The judge is considering the words . . . 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."*

43. My Lords, like the Judicial Committee of the Privy Council in a recent unreported decision to which I was a party (***South East Asia Fire Bricks* V, *Non-Metallic Mineral Products Union & Others*, P.C. Appeal No. *7*** of 1977, delivered on 23rd June 1980), I have to say respectfully that the existing law is, in my judgment, to be found in the dissenting judgment of Geoffrey Lane J. in *Pearlman* and that the majority view was erroneous.

44. Turning to the present case, I hold that the effect of section 441(3) could not be clearer in depriving the Court of Appeal of jurisdiction. Learned counsel for the respondent submitted that its operation is restricted to questions of fact; alternatively that, if it does extend to issues of law, they must be such legal issues as do not go to jurisdiction; and that Vinelott J. was wrong on an issue of law which went directly to jurisdiction. But I see no reason why one should read into section 441(3) the qualification sought to be introduced by learned counsel. Nor was I able to follow why, echoing Eveleigh L.J. in *Pearlman (ante,* at 79EF), he submitted that Vinelott J. " asked himself the "*wrong question*". If the learned judge was to arrive at a determination at all he *had* to construe section 441(1) and, in particular, the phrase *" an offence in connection with the management of the company's affairs"*. That exercise was certainly within his jurisdiction and, even if he arrived at a wrong conclusion, he did not exceed it. And, in the law as I believe it is, and not in the law as the learned Master of the Rolls considers it should be, the only way of dealing with any error of law within the jurisdiction of Vinelott J., sitting in the High Court, was by way of appeal. But, since the words of ouster in section 441(3) barred an appeal to the Court of Appeal, they had no jurisdiction to consider the matter at all.

45. Out of respect for the very clear submissions of learned counsel for the respondent, I should add that I have not overlooked his citation of cases dealing with the prohibition in section 31(1) of the Supreme Court of Judicature (Consolidation) Act, 1925, against appeals from High Court orders as to costs without the leave of the judge making the order. But as to these I do not desire to add to the observations of my noble and learned friend, Lord Scarman, which I have had the advantage of reading in draft and with which I am in respectful agreement.

46. In the result, I hold that this appeal must be allowed on the grounds that, if the proceedings before the Court of Appeal were by way of a judicial review of the High Court decision of Vinelott J., they had no jurisdiction to conduct it; alternatively, if the proceedings were (as all three members said) by way of an appeal from that decision, this was barred by section 441(3) of the Companies Act, 1948.

Lord Keith of Kinkel : my lords,

47. I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Diplock. I agree with it, and accordingly I too would allow the appeal.

Lord Scarman MY LORDS,

48. Were it not for the decision of the Court of Appeal, reported in [1980] 1 All.E.R. 284, allowing the appeal, I would have thought this case too plain for argument. Parliament has enacted that the decision of a judge of the High Court upon an application under section 441 of the Companies Act 1948 " *shall not be appealable*": section

441(3). The Court of Appeal has allowed this appeal. How can their decision be justified in the face of the unambiguous prohibition imposed by Parliament?

49. In holding that they had jurisdiction notwithstanding the plain language of the subsection, the Court of Appeal relied on the principle enunciated by this House in ***Anisminic Ltd. v. Foreign Compensation Commission*** [1969] 2 A.C. 147. Lord Denning put it thus at p. 286: - *" Section 441(3) provides: 'The decision of a judge of the High Court. . . ' on an application under this section shall not be appealable.' In my opinion, that subsection is not a bar to the appeal to this court. There are many cases now which show that if a judge misconstrues a statute by giving himself jurisdiction when he has none or by refusing jurisdiction when he has it, then he makes an error which goes to the jurisdiction: and there is an appeal to this court, no matter how wide the words which seem to exclude it. For authority in this regard I need only refer to Anisminic Ltd. v. Foreign Compensation Commission, and especially to what was said by Lord Reid, by Lord Pearce and by Lord Wilberforce, to which I would add a few words of my own in the later case of Pearlman v. Keepers and Governors of Harrow School... 'no ' court. . . has any jurisdiction to make an error of law on which the ' decision of the case depends.' It seems to me that in this case, if the judge made an error of law in construing the words of the section, if he construed the words ' an offence ' etc. too narrowly, then he made an error of law which made him refuse jurisdiction when he ought to have entertained it. So the appeal can be entertained here in this court."*

50. Shaw L.J. took the view that the judge, by refusing to make an order "renounced jurisdiction" - something which he clearly thought could be corrected by the Court of Appeal notwithstanding the words of Parliament. Templeman L.J. agreed with the Master of the Rolls and with the Lord Justice.

51. In ***Anisminic's*** case, this House had to consider the effect of a statutory provision excluding appeal from a determination of a statutory tribunal. The statute, the Foreign Compensation Act 1950, defined the jurisdiction of the tribunal, the Foreign Compensation Commission, and provided by section 4(4), that: *" ... the determination by the commission of any application made to them under this Act shall not be called in question in any court of law."*

52. The House held that the subsection did not oust the supervisory jurisdiction of the courts, whose duty remained to ensure that the limits set by statute to the area designated for the commission's determination were observed. In the course of his speech, Lord Wilberforce laid emphasis on the distinction between the separate responsibilities of court and tribunal: pp. 208-209. In so doing, he was making the point previously made by Viscount Simonds in ***Pyx Granite v. Ministry of Housing and Local Government*** [1960] A.C. 260 at p. 286, where he said: *" It is a principle not by any means to be whittled down that the subject's recourse to Her Majesty's courts for the determination of his rights is not to be excluded except by clear words."*

53. The question in ***Anisminic's*** case was whether the subsection excluded recourse to the courts to determine whether an inferior tribunal had exceeded the limits set by Parliament to its jurisdiction; and the House decided that it did not. In the present case the Court of Appeal has sought to construe section 441(3) of the Companies Act, which declares a decision of the High Court to be not appealable, in the same way as a provision excluding appeal from a statutory tribunal. But the High Court is not an inferior tribunal. It is one of Her Majesty's courts of law. It is a superior court of record. It was not, in the past, subject to control by prerogative writ or order, nor today is it subject to the judicial review which has taken their place. It has inherited the jurisdiction of the superior common law courts of first instance. The Court of Appeal has no original supervisory jurisdiction over the High Court comparable with the High Court's long established supervisory jurisdiction over inferior tribunals. Indeed, the Court of Appeal's jurisdiction over the High Court is itself the creature of statute. My Lords, I am not prepared to invoke the ***Anisminic*** principle as an aid to the construction of a provision excluding appeal from the High Court to the Court of Appeal. The analogy sought to be drawn between the appellate jurisdiction of the Court of Appeal over the High Court and the supervisory jurisdiction of the High Court over inferior tribunals is false, based as it is upon a comparison of incomparables.

54. The question, therefore, is a straightforward problem of statutory interpretation: and it presents no difficulties. The Court of Appeal has a general jurisdiction conferred on it by statute to hear and determine appeals from a judgment or order of the High Court: Supreme Court of Judicature (Consolidation) Act 1925, section 27(1), (the 1925 Act). In other words, judgments or orders of the High Court are appealable to the Court of Appeal. Section 441(3) of the Companies Act provides that the decision of a judge of the High Court on an application under the section is not appealable. Nothing could be clearer. Moreover, the unappealability of a decision under the section makes sense. Applications may be and usually are, made *ex parte:* R.S.C. Order 102 r. 3. An order, if made, authorises a step in a criminal investigation which would otherwise be unlawful in the absence of the consent of the company concerned. But it decides no issue; nothing other than the authority to inspect and the requirement to produce documents ensues. There is no *res judicata,* no ruling *inter partes*. There is here nothing comparable with a determination of a tribunal or the final judgment of a court. Further, to allow an appeal process to be imposed in a situation to which the section applies would be to endanger the object of the section. For in many cases the appeal process would offer fraudulent and unscrupulous persons the opportunity to render fruitless the order which the appellant seeks.

55. In support of his submission that the subsection does not exclude appeal upon a point of jurisdiction, Mr. Auld Q.C. for the respondent relied on the costs cases. Section 31(l)(h) of the 1925 Act provides that no appeal shall lie, without the leave of the court or judge making the order, from an order of the High Court as to costs only which by law are left to the discretion of the court. In *Donald Campbell & Co. Ltd. v. Pollak* [1927] A.C. 732 this House ruled that the Court of Appeal could, without such leave, interfere if the judge had acted arbitrarily, and not judicially or had exercised his discretion against a successful party on grounds wholly unconnected with the case,

or without any materials at all. Later applications of the rule are to be found in ***Jones v. McKie*** [1964] 1 W.L.R. 960 and ***Hellyer v. Sheriff of Yorkshire*** [1974] 2 A11.E.R. 712.

56. I do not find these cases helpful in construing section 441(3) of the Companies Act. They proceed upon a view of the true construction of section 31(l)(h) of the 1925 Act which was not discussed, though it was necessarily implicit, in the judgments delivered in the cases. Clearly it is possible to interpret the sub-paragraph as limiting the ouster of appeal to cases in which the judge had exercised his discretion judicially: and I think this was the view of the judges in those cases. It was certainly open to question, as Lord Dunedin said in **Pollak's** case, whether this view was sound. In the course of his speech (p. 757), he made the comment: *"The position under the Judicature Act of the Court of Appeal is very peculiar. When an appeal conies to them as to costs awarded by the discretion of a judge, they cannot exercise their discretion instead of his unless leave to appeal from his order as to costs has been given by him. By a long series of decisions the Court of Appeal has held that that does not prevent them upsetting what the judge has done if they can find that he had no proper materials on which his discretion was exercised."*

57. Russell L.J. in *Jones'* case also put upon the sub-paragraph the same construction : for he said (p. 969) that the Court of Appeal would *"entertain and allow an appeal on the footing that it cannot be said that any relevant discretion was exercised at all* ". And he expressed the same view, with which the other members of the court agreed, in ***Hellyer's*** case (p. 718f). These cases depend upon the particular wording of the sub-paragraph and offer, I think, no guidance as to the meaning of section 441(3).

58. For these reasons I would allow the appeal.