[HOUSE OF LORDS]

INLAND REVENUE COMMISSIONERS . . . APPELLANTS

AND

NATIONAL FEDERATION OF SELF-EMPLOYED AND SMALL BUSINESSES LTD. . . . RESPONDENTS

[On appeal from REG. *v.* INLAND REVENUE COMMISSIONERS, *Ex parte* NATIONAL FEDERATION OF SELF-EMPLOYED AND SMALL BUSINESSES LTD.]

1981 March 10, 11, 12, 16; April 9

Lord Wilberforce, Lord Diplock, Lord Fraser of Tullybelton, Lord Scarman and Lord Roskill

Crown Practice—Mandamus—Inland Revenue Commissioners—Tax amnesty to group of workers—Claim by federation representing taxpayers that revenue acted unlawfully—Application for judicial review—Whether taxpayers having "sufficient interest"—R.S.C., Ord. 53, rr. 1 (2), 3 (5)

Some 6,000 casual workers in Fleet Street were nominated by their trade unions to work for newspapers on specified occasions. They were given call slips and then collected pay dockets to enable them to draw their pay from their employers but a substantial number of them gave false names and addresses so that it was impossible for the Inland Revenue to collect the tax which was due from them. The consequent loss to the revenue was estimated at £1 million a year. In view of the frauds the Inland Revenue after discussions with the employers and the unions, introduced a special arrangement which would ensure that for the future tax would either be deducted at source or be properly assessed and made it clear that, if the arrangement were generally accepted, and subject to certain other conditions, investigation into tax lost in certain previous years would not be carried out. A federation representing the self-employed and small businesses, who contrasted the attitude taken by the revenue to the tax evasions of the Fleet Street casuals with that adopted by the revenue in other cases where tax evasions were suspected, applied for judicial review under R.S.C., Ord. 53, r. 1,[1] and claimed a declaration that the Inland Revenue acted unlawfully in granting the amnesty and an order of mandamus directed to the revenue to assess and collect income-tax from the casual workers.

The Divisional Court granted leave ex parte, but at the hearing inter partes, on the Inland Revenue's objection that the federation had no locus standi, the Divisional Court held that the federation had not "sufficient interest" within R.S.C., Ord. 53, r. 3 (5), to claim the declaration and order sought.

On the federation's appeal which proceeded on the assumption that the Inland Revenue had no power to grant such a tax "amnesty", the Court of Appeal (by a majority) allowed the appeal holding that the body of taxpayers represented by

[1] R.S.C., Ord. 53, r. 1: see post, p. 657A–B. R. 3: see post, p. 657C–D.

the federation could reasonably assert that they had a genuine grievance in the alleged failure of the Inland Revenue to do its duty and the granting of an unlawful tax indulgence to the casual workers, and accordingly they had a "sufficient interest" within the meaning of R.S.C., Ord. 53, r. 3 (5) to apply for judicial review under that order.

On appeal by the Inland Revenue: —

Held, (1) that it was unfortunate that the courts below had taken locus standi as a preliminary issue for whilst there might be simple cases where it was appropriate at the earliest stage to find that the applicant for judicial review had no interest at all, or no sufficient interest to support his application and therefore it was correct at the threshold to refuse leave to apply, in other cases, of which the present was one, that would not be so, and the question of sufficient interest must be taken together with the legal and factual context of the application, for R.S.C., Ord. 53, r. 3 (5) required sufficient interest in the matter to which the application related, and that matter in the present case necessarily included the whole question of the statutory duties of the revenue and the breach or failure of those duties of which the federation complained (post, pp. 629G—630A, B–E, 636B–F, 643G—644A, H—645A, 649B, 653G —654A, 656A, B–D).

(2) That the appeal must be allowed since looking at the matter as a whole, the Divisional Court although justified on the ex parte application in granting leave, ought, at the hearing inter partes, having regard to the nature of "the matter" raised to have found that (*per* Lord Wilberforce, Lord Fraser of Tullybelton and Lord Roskill) the federation merely as a body of taxpayers had shown no sufficient interest in that matter to justify its application for relief (post, pp. 635H—636A, 644H—645A, C–F, 647B, 662G—663B, 664A, D–E); (*per* Lord Diplock) the federation had completely failed to show any conduct of the revenue that was ultra vires or unlawful (post, pp. 643A–B, 644G–H); (*per* Lord Scarman) the federation, having failed to show any grounds for believing that the revenue had failed to do its statutory duty, had not shown an interest sufficient in law to justify any further proceedings by the court on its application (post, pp. 653G—654A, H—655A).

Arsenal Football Club Ltd. v. *Ende* [1979] A.C. 1, H.L.(E.) considered.

Gouriet v. *Union of Post Office Workers* [1978] A.C. 435, H.L.(E.) distinguished.

Reg. v. *Lewisham Union Guardians* [1897] 1 Q.B. 498, D.C. overruled.

Per Lord Wilberforce, Lord Fraser of Tullybelton and Lord Roskill. One taxpayer has no sufficient interest in asking the court to investigate the tax affairs of another taxpayer or to complain that the latter has been under-assessed or over-assessed. And this principle applies equally to groups of taxpayers: an aggregate of individuals each of whom has no interest cannot of itself have an interest. But that is not to say that a case can never arise in which the acts or abstentions of the revenue can be brought before the court, nor that, in a case of sufficient gravity, the court might not be able to hold that another taxpayer or other taxpayers could challenge them (post, pp. 633C–E, 646F—647B, 662G—663A).

Per Lord Diplock. It would be a grave lacuna in our system of public law if a pressure group like the federation,

or even a single public-spirited taxpayer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to indicate the rule of law and get the unlawful conduct stopped. It is not a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are accountable to a court of justice for the lawfulness of what they do, and of that the court is the only judge (post, p. 644E–G).

Per Lord Scarman. A legal duty of fairness is owed by the revenue to the general body of taxpayers. It is, however, subject to the duty of sound management of the tax which statute places upon the revenue (post, pp. 652H—653A).

Decision of the Court of Appeal [1980] Q.B. 407; [1980] 2 W.L.R. 579; [1980] 2 All E.R. 378 reversed.

The following cases are referred to in their Lordships' opinions:

Allen v. *Gulf Oil Refining Ltd.* [1981] 2 W.L.R. 188; [1981] 1 All E.R. 353, H.L.(E.).

Arsenal Football Club Ltd. v. *Ende* [1979] A.C. 1; [1977] 2 W.L.R. 974; [1977] 2 All E.R. 267, H.L.(E.).

Attorney-General ex rel. McWhirter v. *Independent Broadcasting Authority* [1973] Q.B. 629; [1973] 2 W.L.R. 344; [1973] 1 All E.R. 689, C.A.

Burmah Oil Co. Ltd. v. *Governor and Company of the Bank of England* [1980] A.C. 1090; [1979] 3 W.L.R. 722; [1979] 3 All E.R. 700, H.L.(E.).

Congreve v. *Inland Revenue Commissioners* [1948] 1 All E.R. 948, H.L.(E.).

Gouriet v. *Union of Post Office Workers* [1978] A.C. 435; [1977] 3 W.L.R. 300; [1977] 3 All E.R. 70, H.L.(E.).

Income Tax Special Commissioners v. *Linsleys (Established 1894) Ltd.* [1958] A.C. 569; [1958] 2 W.L.R. 292; [1958] 1 All E.R. 343, H.L.(E.).

Latilla v. *Inland Revenue Commissioners* [1943] A.C. 377; [1943] 1 All E.R. 265, H.L.(E.).

Napier, Ex parte (1852) 18 Q.B. 692.

Padfield v. *Minister of Agriculture, Fisheries and Food* [1968] A.C. 997; [1968] 2 W.L.R. 924; [1968] 1 All E.R. 694, H.L.(E.).

Reg. v. *Cotham* [1898] 1 Q.B. 802, D.C.

Reg. v. *Customs and Excise Commissioners, Ex parte Cook* [1970] 1 W.L.R. 450; [1970] 1 All E.R. 1068, D.C.

Reg. v. *Greater London Council, Ex parte Blackburn* [1976] 1 W.L.R. 550; [1976] 3 All E.R. 184, C.A.

Reg. v. *Hereford Corporation, Ex parte Harrower* [1970] 1 W.L.R. 1424; [1970] 3 All E.R. 460, D.C.

Reg. v. *Income Tax Special Commissioners* (1888) 21 Q.B.D. 313, C.A.

Reg. v. *Lewisham Union Guardians* [1897] 1 Q.B. 498, D.C.

Reg. v. *Lords Commissioners of the Treasury* (1872) L.R. 7 Q.B. 387.

Reg. v. *Russell, Ex parte Beaverbrook Newspapers Ltd.* [1969] 1 Q.B. 342; [1968] 3 W.L.R. 999; [1968] 3 All E.R. 695, D.C.

Reg. v. *Thames Magistrates' Court, Ex parte Greenbaum* (1957) 55 L.G.R. 129, C.A.

Rex v. *Askew* (1768) 4 Burr. 2186.

Rex v. *Barker* (1762) 3 Burr. 1265.

Rex v. *Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1951] 1 K.B. 711; [1951] 1 All E.R. 268, D.C.

Stott, Ex parte [1916] 1 K.B. 7, D.C.

Vestey v. *Inland Revenue Commissioners* [1979] Ch. 177; [1978] 2 W.L.R. 136; [1977] 3 All E.R. 1073; [1980] A.C. 1148; [1979] 3 W.L.R. 915; [1979] 3 All E.R. 976, H.L.(E.).

Vestey v. *Inland Revenue Commissioners* (*No.* 2) [1979] Ch. 198; [1978] 3 W.L.R. 693; [1979] 2 All E.R. 225; [1980] A.C. 1148; [1979] 3 W.L.R. 915; [1979] 3 All E.R. 976, H.L.(E.).

The following additional cases were cited in argument:

Attorney-General of the Gambia v. *N'Jie* [1961] A.C. 617; [1961] 2 W.L.R. 845; [1961] 2 All E.R. 504, P.C.

Cutler v. *Wandsworth Stadium Ltd.* [1949] A.C. 398; [1949] 1 All E.R. 544, H.L.(E.).

Forster (*In re*) v. *Forster & Berridge* (1863) 4 B. & S. 187.

Hoffmann-La Roche (F.) & Co. A.G. v. *Secretary of State for Trade and Industry* [1975] A.C. 295; [1974] 3 W.L.R. 104; [1974] 2 All E.R. 1128, H.L.(E.).

Kariapper v. *Wijesinha* [1968] A.C. 717; [1967] 3 W.L.R. 1460; [1967] 3 All E.R. 485, P.C.

Nicol (*D. & J.*) v. *Dundee Harbour Trustees*, 1915 S.C.(H.L.) 7, H.L.(Sc.).

Reg. v. *Commissioner of Police of the Metropolis, Ex parte Blackburn* (*No.* 3) [1973] Q.B. 241; [1973] 2 W.L.R. 43; [1973] 1 All E.R. 324, C.A.

Reg. v. *Inland Revenue Commissioners, Ex parte Rossminster Ltd.* [1980] A.C. 952; [1980] 2 W.L.R. 1; [1979] 3 All E.R. 385; [1980] 1 All E.R. 80, D.C.

Reg. v. *Justices of Surrey* (1870) L.R. 5 Q.B. 466.

Reg. v. *Nicholson* [1899] 2 Q.B. 455, C.A.

Reg. v. *Orton Vicarage Trustees* (1851) 14 Q.B. 139.

Reg. v. *Sharman, Ex parte Denton* [1898] 1 Q.B. 578, D.C.

Rex v. *Bedwellty Urban District Council, Ex parte Price* [1934] 1 K.B. 333, D.C.

Rex v. *Groom, Ex parte Cobbold* [1901] 2 K.B. 157, D.C.

Rex v. *Hanley Revising Barrister* [1912] 3 K.B. 518, D.C.

Rex v. *Manchester Corporation* [1911] 1 K.B. 560, D.C.

Rex v. *Nottingham Old Waterworks Co.* (1837) 6 Ad. & El. 355.

APPEAL from the Court of Appeal.

This was an appeal by the appellants, the Inland Revenue Commissioners, from an order dated February 27, 1980, of the Court of Appeal (Lord Denning M.R. and Ackner L.J.; Lawton L.J. dissenting) allowing an appeal by the respondents, the National Federation of Self-Employed and Small Businesses Ltd., from an order of the Divisional Court (Lord Widgery C.J. and Griffiths J.) dated November 22, 1979, dismissing an application by the respondents for a judicial review in the form of a declaration and mandamus.

A The question at issue in this appeal was whether the respondents had a sufficient interest within the meaning of R.S.C., Ord. 53, r. 5 (3) to apply for a judicial review.

The facts are set out in their Lordships' opinions.

Lord Mackay of Clashfern Q.C., Lord Advocate, Patrick Medd Q.C. and *Brian Davenport Q.C.* for the appellants. This appeal concerns the B interest or locus standi of the respondents. For present purposes, the duties laid upon the appellants are to be found in section 1 and section 39 of the Inland Revenue Regulation Act 1890 and sections 1 and 6 of and Schedule 1 to the Taxes Management Act 1970. Information received by the Inland Revenue for tax purposes is confidential subject to the stated exceptions. First, hearings before the general and special com- C missioners are heard in camera unless both parties to the appeal request a public hearing. Whatever the position of the respondents, the duties (if any) which they seek to enforce are clearly duties which are not owed by the appellants to the respondents; the Taxes Acts give no right to one taxpayer to complain of the conduct of the appellants in relation to another taxpayer. If the duties exist, they are owed to the Crown or, at best for the respondents, to the public.

D The relief sought by the respondents is an order of mandamus and a declaration under the procedure for judicial review provided by R.S.C., Ord. 53. *Reg.* v. *Inland Revenue Commissioners Ex parte Rossminster Ltd.* [1980] A.C. 952, 1013B–C, shows that the new R.S.C., Ord. 53 has not altered the basis on which declarations may be sought as part of the process of judicial review. R.S.C., Ord. 53, r. 1 (2) stresses "having E regard to—(*a*) the nature of the matters in respect of which relief may be granted by way of an order of mandamus. . . ." in addition to (*b*) and (*c*). The Order does not widen the power to grant declarations and it is ancillary to the old principles. Its purpose is to make the whole branch of the law relating to the prerogative orders easier to administer: see rr. 3 (10) and 9 (5). There is a great element of discretion in the grant of relief in respect of prerogative orders, but F whether an applicant has a sufficient interest is a more fundamental question. The declaration sought here is in respect of the enforcement of public rights and, therefore, to that extent, the decision in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435 applies. The respondents are seeking to represent the public interest and this they cannot do. A fortiori, in the words of R.S.C., Ord. 53, r. 3 (5), they can have G no "sufficient interest" to bring these proceedings.

Lord Denning M.R. and Ackner L.J. felt free to disregard what this House stated in *Gouriet* because that case was concerned with relator actions and not with judicial review under R.S.C., Ord. 53. But the essence of *Gouriet* was that it was not a relator action; Mr. Gouriet claimed an injunction and a declaration as a private citizen not H at the relation of the Attorney-General. However, the statements of principle in that case were statements of general constitutional principle and apply regardless of whether a plaintiff seeks his declaration under R.S.C., Ord. 15 or Ord. 53. It was only in 1977 that the Rules of the

Supreme Court were amended to permit a plaintiff to seek a declaration or injunction in addition to seeking a prerogative order. If Lord Denning M.R. and Ackner L.J. were correct in holding that the principle stated in *Gouriet* had no application to a claim for judicial review, the change in the High Court procedure in 1977 would have had a substantive effect of major constitutional importance. This it could not have had, nor was such a procedural change intended to have had such an effect. The constitutional principles remain such whatever High Court procedure is followed. A declaration remains a declaration whether sought under R.S.C., Ord. 15 or Ord. 53.

As to mandamus, the correct approach to this question is to be found in *Cutler* v. *Wandsworth Stadium Ltd.* [1949] A.C. 398, 407, 412, 416. It is to consider the statute in question and ascertain whether the statutory duty was enacted for the applicant's benefit and whether he is thereby given a right enabling him to have that duty performed. This approach is to be found in the older cases: see, for example, *Rex* v. *Nottingham Old Waterworks Co.* (1837) 6 Ad. & El. 355; *Reg.* v. *Lords Commissioners of the Treasury* (1872) L.R. 7 Q.B. 387; *Reg.* v. *Income Tax Special Commisioners* (1888) 21 Q.B.D. 313; *Reg.* v. *Lewisham Union Guardians* [1897] 1 Q.B. 498; *Reg.* v. *Cotham* [1898] 1 Q.B. 802; and *Rex* v. *Bedwellty Urban District Council, Ex parte Price* [1934] 1 K.B. 333. For a modern example of the approach adopted in the above cases, see *Kariapper* v. *Wijesinha* [1968] A.C. 717.

There is a fundamental distinction between the Taxing Acts and the Rating Acts. A perusal of the General Rate Act 1967, sections 1 (2), 2 (1), 4 (1), 7 (1), 67 (2), 68 (6), 69 (1), 76 (2) (*a*), 108 (1) shows that the statute is intended to promote fairness and uniformity between one ratepayer and another. Rights are given to a person "aggrieved." As to *Arsenal Football Club Ltd.* v. *Ende* [1979] A.C. 1, the House held that in determining whether the ratepayer was a person aggrieved, the test was not whether it affected his pocket, but whether his interest in the valuation list was unfairly affected. Further, that the ratepayer was not a person aggrieved by reason of the fact that he was a taxpayer, although the rate support grant was derived from money raised by taxation. His interest as a taxpayer was too remote although he was potentially affected by a contribution to the rate fund. This is directly relevant to the present case.

The House has to have regard to the interest with which the statute in question is concerned. Thus, in *Reg.* v. *Hereford Corporation, Ex parte Harrower* [1970] 1 W.L.R. 1424, the applicants had a remedy as ratepayers, but not as competitors, that is, in their capacity as electrical contractors for securing the tender in question. As ratepayers, they had a sufficient locus standi. It is not a matter of discretion. Thus, Lord Parker C.J. decided *Reg.* v. *Customs and Excise Commissioners, Ex parte Cook* [1970] 1 W.L.R. 450, which has similarities to the present case, on locus standi, want of sufficient interest: he reached his conclusion in two stages, whether there was a duty owed to another person and whether there was the necessary interest in the performance of that duty. Lord Parker C.J. referring (see top of p. 623) to the need for a

A specific legal right said, at p. 455, that the applicants had "no such specific right as individuals." Observations made in *Attorney-General of the Gambia* v. *N'Jie* [1961] A.C. 617, 633, 634, are in line with what was stated in *Ende's* case [1979] A.C. 1. *Income Tax Special Commissioners* v. *Linsleys (Established 1894) Ltd.* [1958] A.C. 569 is distinguishable. That case depended on the construction of the statutory provision in question. The majority of the Court of Appeal in the present case B relied strongly upon the earlier decision of that court in *Reg.* v. *Greater London Council, Ex parte Blackburn* [1976] 1 W.L.R. 550, but that case can only be justified after the decision in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435 (if at all) on the basis that Mrs. Blackburn was a ratepayer.

The appellants do not accept, even for the purposes of argument, that C they in any way acted unlawfully in this matter. The Court of Appeal wrongly thought this was conceded. The evidence gives no basis, moreover, for suggesting that the inspector in any way succumbed or might have succumbed to pressure from the trade unions. The appellants' decisions were entirely proper and sensible decisions in the exercise of their statutory functions.

The logical necessity to make an assumption that the act of the D revenue was unlawful tends to show that there is something wrong with the test propounded by the majority of the Court of Appeal. Lawton L.J. dissenting, adverted [1980] Q.B. 407, 427G to the role of the Parliamentary Commissioner to look into cases which do not come within the jurisdiction of the courts. Sections 1 and 4 of and Schedule 2 to the Parliamentary Commissioner Act 1967 show that the Inland E Revenue comes within the purview of the Parliamentary Commissioner. Parliament recognised that there were some injustices that should be dealt with by some person other than the courts: see section 5. Section 5 (2) shows that the wider the ambit of the power of the courts, the narrower the scope for the work of the Parliamentary Commissioner. This is a pertinent question in relation to the present appeal. Undue F liberality in construing the powers of the court will narrow the scope for the work of the Parliamentary Commissioner and this could be very undesirable. If the respondents had invoked this Act, there would have been no difficulty in relation to discovery: see sections 6 and 7. Where injustice has been shown, there is power to bring the result of the Parliamentary Commissioner's investigation before Parliament: see sections 8 to 10. He enjoys absolute privilege. Further, the Act provides G a very convenient method of receiving, but not disclosing, confidential documents and other matters. It provides a remedy for injustice in respect of maladministration. The Crown does not suggest that this Act cuts down the jurisdiction or powers of the court. It provides additional and alternative methods of relief for dealing with injustice arising from maladministration. It provides a much more effective H machinery for dealing with injustices with which Parliament has always been concerned. To summarise the argument in relation to the issue of mandamus: the question arises under R.S.C., Ord. 53, r. 3. Ord. 53, r. 3 (1) is a general provision that an applicant, in order to proceed,

requires leave of the court. It is said that r. 3 (5) gives the court a discretion. But any discretion must depend upon legal criteria for its exercise. Does the applicant have a sufficient interest in relation to the matter to which the application relates? If the answer is yes, then the court may grant leave. The correct approach is: that the court considers the matter to which the application relates. Here, it relates to an application for mandamus directed to the Board of Inland Revenue to assess to income tax the Fleet Street casual printworkers, that is, that there is a duty on the Board of Inland Revenue to assess and collect income tax from such casual workers according to law. That duty, if it exists (which is not conceded), must be a statutory duty. Assuming that the duty exists, the court then has to inquire whether the applicant has an interest which the law recognises in relation to the performance of that duty. That question can only be answered by ascertaining whether the Act setting up the duty recognises the interests of the applicant in the carrying out of that duty. That is a question to be answered by a construction of the statutory provisions as a whole: *Cutler* v. *Wandsworth Stadium Ltd.* [1949] A.C. 398.

So far as the Taxing Acts are concerned, no court has so far pointed to any provision which either expressly, or by implication, recognises an interest in one taxpayer in the assessment or collection of tax from another taxpayer. Accordingly, the preliminary question which arises here has to be answered in the negative. But this approach obviates looking at the matter on the merits. The taxing cases are to be contrasted with the rating cases. There is a tremendous difference between the two. As is shown by *Ende's* case [1979] A.C. 1, the statutory duty is quite different. The whole purpose of preparing the valuation list is to provide a basis for making sure that the rate is fairly divided between the ratepayers. The General Rate Act 1967 recognises a community of interest between the ratepayers who have to contribute to a levy of rates and this factor is utterly absent from the Taxing Acts. If this approach be adopted, the courts will obtain the right answer—an answer reasonably satisfactory in solving the present problem. The Taxing Acts show no recognition, express or implied whatsoever, that one taxpayer is entitled to any knowledge of the tax affairs of another taxpayer. Reliance is placed on *Ende's* case [1979] A.C. 1, in relation to Mr. Ende's contention of his interest as a taxpayer. That interest was held to be too remote. Mr. Ende's position was as remote as is the respondents' interest in the tax affairs of the Fleet Street casual print workers in the present case.

As to *Reg.* v. *Greater London Council, Ex parte Blackburn* [1976] 1 W.L.R. 550, it would follow that if the appellants' argument be accepted in the present case, that *Blackburn's* case was wrongly decided.

Jon Harvey Q.C. and *Stephen Silman* for the respondents. The only question at issue in the present appeal is whether the respondents have a sufficient interest within the meaning of R.S.C., Ord. 53, r. 3 (5), to apply for a judicial review. Attention is drawn at the outset to the *Supreme Court Practice* (1979), vol. I, p. 831, which contains a very useful statement of the whole problem.

Ex parte Stott [1916] 1 K.B. 7, would appear to be the first case in which the expression "sufficient interest" is used as a test for the grant of a prerogative order—certiorari. As to the person aggrieved test: see *Reg.* v. *Justices of Surrey* (1870) L.R. 5 Q.B. 466, 474, also a case of certiorari. It seems that in the nineteenth century no distinction was made between what constituted a sufficient interest and that of a person aggrieved. Lord Mansfield showed the range of the writ of mandamus in *Rex* v. *Barker* (1762) 3 Burr. 1265, 1267, ". . . where in justice and good government there ought . . ." to be a remedy. For the special or sufficient interest test: see also *Reg.* v. *Sharman, Ex parte Denton* [1898] 1 Q.B. 578; *Reg.* v. *Cotham* [1898] 1 Q.B. 802; *Rex* v. *Groom, Ex parte Cobbold* [1901] 2 K.B. 157 and *Rex* v. *Manchester Corporation* [1911] 1 K.B. 560, where the special interest test finds its clearest illustration. That the degree of special interest required by an applicant may be extremely slight is shown by *Reg.* v. *Cotham* [1898] 1 Q.B. 802.

The Court of Appeal were correct in holding that "a person aggrieved" has a sufficient interest to apply for mandamus. The person aggrieved test has long been recognised as the test in relation to the other prerogative orders: see, for example, *Reg.* v. *Thames Magistrates' Court, Ex parte Greenbaum* (1957) 55 L.G.R. 129. A more restrictive test in relation to mandamus cannot be justified. If, as the respondents contend, a uniform test of sufficient interest now applies to all the prerogative orders, then the court has an ultimate discretion in the question of standing which should be exercised in accordance with the test propounded by Denning L.J. in *Ex parte Greenbaum*, 55 L.G.R. 129, 132, in particular, ". . . that the remedy . . . is not confined to the parties before the lower court. It extends to any person aggrieved, and, furthermore, to any stranger." See also *Reg.* v. *Russell, Ex parte Beaverbrook Newspapers Ltd.* [1969] 1 Q.B. 342.

It has been contended that *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435 is conclusive authority against the respondents' claim for a declaration. But the Court of Appeal correctly drew no distinction as regards standing between the two limbs of the respondents' application. On this point, the respondents' submission may be summarised as follows: (a) the question of standing is a procedural matter capable of alteration by the rules of court; (b) where a declaration is sought by way of judicial review, R.S.C., Ord. 53, r. 1 (2) lays down a new test of standing, namely, that applicable to the prerogative orders; (c) *Gouriet's* case was not concerned with declarations by way of judicial review. A single uniform test of standing now applies to all five remedies that may be obtained by way of a judicial review under R.S.C., Ord. 53.

Fairness and justice are tests to be applied in relation to whether a party is a "person aggrieved": see *Arsenal Football Club Ltd.* v. *Ende* [1979] A.C. 1, 22E–F, 23F et seq., *per* Lord Morris of Borth-y-Gest. It is pertinent to the question of locus standi. A taxpayer is as interested in fairness and justice as is the ratepayer in relation to the valuation list: *Ende's* case [1979] A.C. 1, 17, *per* Lord Wilberforce. The House

should proceed on the basis that the action of the revenue was unlawful. This was a concession made by the Crown before the Divisional Court. The affidavit of Mr. Hoadley, Principal Inspector of Taxes, in charge of the Inland Revenue Special Offices, gives rise to a presumption of unlawfulness, that is, that the revenue were prepared to overlook previous fraudulent evasions of tax because of union pressure. The revenue, in reaching an arrangement with the Fleet Street casuals, have taken into consideration extraneous matters. It is a question of public concern. There is a stark contrast between the attitude adopted by the revenue towards the Fleet Street casuals and that adopted to various members of the respondents' federation. What has happened in this case is the concern of the whole body of taxpayers.

The issue in the present proceedings has come down to a very narrow point in this House: (i) on the assumption that there is a duty on the revenue to assess and collect tax (see the Inland Revenue Regulation Act 1890 and the Taxes Management Act 1970), the respondents concede that the appellants have discretionary powers, but that does not empower the revenue to take into account extraneous matters. (ii) Taxation is to be administered on a basis that is fair and seen to be fair: *Ende's* case [1979] A.C. 1, 17D–E, *per* Lord Wilberforce. There are, therefore, two questions: (i) the duty to assess and collect tax and (ii) to do so fairly as between one taxpayer and another.

There is no logical distinction between the position of a ratepayer who can reasonably assert that he has a genuine grievance if there is unfairness between his assessment and that of others in the same rating area, whether or not his pocket is affected, and the position of a taxpayer who can reasonably assert that his sense of justice or fairness is offended by the unlawful act by the revenue in allowing his fellow taxpayers not to pay their tax. They have each in common the ability reasonably to assert a genuine grievance and that is " a sufficient interest " to give them each a locus standi: [1980] Q.B. 407, 433D–E, *per* Ackner L.J. Further, even as a matter of public interest, there are circumstances in which as a member of the general public, the respondents have a sufficient interest. It is not disputed that the court must consider all the circumstances, including whether Parliament has given any other remedy. The House is invited to proceed on the basis that there has been a breach by the revenue of their duty on two grounds: failure to assess and failure to act fairly. As a matter of principle, fairness is essential. If there is a lack of fairness, then there is nothing more likely to engage the attention of the ordinary citizen if it is shown that a public body which takes money from him has acted unfairly. As to the extra statutory concessions made by the revenue, these are difficult to reconcile with the view that if the person sought to be taxed comes within the letter of the law, then he must be taxed: *Vestey* v. *Inland Revenue Commissioners* [1980] A.C. 1148, 1194, *per* Lord Edmund-Davies.

It is emphasised that the respondents have a sufficient interest. They do not have to establish any detriment to themselves. They do have

a common interest. Like ratepayers, they have an interest in a common fund. In both cases, it is not a real, but only a notional detriment that they suffer if the system is not administered fairly. It is extraordinarily difficult to differentiate between taxpayers and ratepayers. It is conceded that if the federation has an interest, any one member of the federation has an interest. But the question whether one taxpayer of the federation has a sufficient interest goes not to jurisdiction but to the court's discretion. In *Ende's* case [1979] A.C. 1, the test which rejected Mr. Ende as a taxpayer from challenging the valuation list was one of remoteness. But to suggest that a taxpayer is too remote from the tax collector is to strain language. In the present case, there is a duty upon the revenue which includes a duty to act fairly and, in the circumstances, the respondents have a sufficient interest within the decision in *Ende*.

As to the appellant's reliance on the Parliamentary Commissioner Act 1967, this cannot go to the question of jurisdiction. The respondents do not contend that there has been any injustice here. They are asking that the Fleet Street casual workers should be dealt with according to law as they themselves are. The respondents do not come within the language of section 5 of the Act of 1967. *Reg.* v. *Trustees of the Vicarage of Orton* (1851) 14 Q.B. 39 establishes that mandamus will not lie if there is another specific legal or equitable remedy available. This raises the question: is it a specific legal remedy or equitable remedy that is open to a person who applies under section 5, or is it rather the prospect of a person having his case considered by the Parliamentary Commissioner and, if he finds in one's favour, having a report laid before Parliament? The answer is that it is the latter, for even if the Parliamentary Commissioner reports to Parliament, what remedy or relief is then open to the complainant? There now exists the opportunity envisaged by Lord Alverstone C.J. in *Rex* v. *Manchester Corporation* [1911] 1 K.B. 560, to reconsider this whole branch of the law and to lay down a broad principle for its future development without indulging in judicial legislation.

The "busy-body" argument does not avail the revenue. There is nothing to suggest that if the respondents were to succeed with their application this would open the floodgates. The "busy-body" argument did not impress this House in the *Ende's* case [1979] A.C. 1, where the potential number of ratepayers that could be involved was over three million. Taxpayers such as the appellants, with a genuine grievance, should have access to the courts. As to alternative remedies, as has been observed, access to the Parliamentary Commissioner is not such a remedy for it gives the complainant no rights. Further, the Attorney-General is of little help against an emanation of the Crown. R.S.C., Ord. 53, r. 3 (5) provides: "The court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates." The words "it considers that" recognises that the question of standing as well as granting of relief is a matter within the discretion of the court under its inherent power to

control its own procedure: see *Hoffmann-La Roche & Co. A.G.* v. *Secretary of State for Trade and Industry* [1975] A.C. 295, 366A–F, *per* Lord Diplock.

On the question of jurisdiction, if a declaration is granted, it would be outside the circumstances envisaged in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435. But R.S.C., Ord. 53 came into operation after the decision in *Gouriet*. A new situation has, therefore, now arisen and even if mandamus will not lie, the court is empowered to grant a declaration in the circumstances pertaining in the present case. In conclusion, the position of the respondents is correctly stated by Ackner L.J. [1980] Q.B. 407, 433D–E.

Lord Mackay of Clashfern Q.C., Lord Advocate, in reply. The respondents rely, in the main, in relation to locus standi, on cases not of mandamus but of certiorari. They rely principally on *Reg.* v. *Thames Magistrates' Court, Ex parte Greenbaum*, 55 L.G.R. 129, for its statement regarding the role of a stranger to the suit. That case referred to *Reg.* v. *Justices of Surrey*, L.R. 5 Q.B. 466, which in turn referred to *In re Forster* v. *Forster & Berridge* (1863) 4 B. & S. 187. *Forster* was a case where the applicant for the writ before the Court of Queen's Bench had been a co-respondent in a suit for divorce in the matrimonial court and it was held that a stranger, not a party to the suit, can still have an order if the action complained of has given him a grievance. As to *Reg.* v. *Justices of Surrey*, L.R. 5 Q.B. 466, it is plain that the statute in question in that case contemplated the ordinary member of the public having an interest. Therefore, it does not damage the Crown's argument in the present case. As to *Ex parte Stott* [1916] 1 K.B. 7, this is explicable on the grounds that the statute in question did not recognise that the applicant had any interest, that is, as licence holders. In *Reg.* v. *Russell, Ex parte Beaverbrook Newspapers Ltd.* [1969] 1 Q.B. 342, the relevant statute plainly recognised the interest of a newspaper proprietor. As to *Reg.* v. *Thames Magistrates' Court, Ex parte Greenbaum*, 55 L.G.R. 129 itself, it is not disputed that that case was correctly decided because the interest of the other trader was clearly recognised by the relevant statute.

As to the Parliamentary Commissioner Act 1967, the Crown does not suggest that it restricts the jurisdiction of the High Court. But attention is drawn to the Act for the proposition that even if the present case does not come within the ambit of R.S.C., Ord. 53, that does not mean that the law has not provided for the airing of grievances in respect of matters of this kind.

The Taxes Acts do not, in general, recognise the interest of one taxpayer in the assessment and collection of tax of another taxpayer. The inference is against it. The statutes go out of their way in preventing one taxpayer from having knowledge of the tax affairs of another taxpayer. The contrast with rating is startling, for one ratepayer can by statute apply for the alteration of the valuation list in relation to the rate assessment of another ratepayer: see *Arsenal Football Club Ltd.* v. *Ende* [1979] A.C. 1.

The argument relating to mandamus is relevant to the question of

discretion. R.S.C., Ord. 53 contemplates the alternative type of declaration mentioned by Lord Diplock in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435. In conclusion, the common fund referred to in *Ende's* case [1979] A.C. 1, is very different from the type of common fund relevant to the present case.

Their Lordships took time for consideration.

April 9. LORD WILBERFORCE. My Lords, the respondent federation, whose name sufficiently describes its nature, is asking for an order upon the Inland Revenue Commissioners to assess and collect arrears of income tax said to be due by a number of people compendiously described as "Fleet Street casuals." These are workers in the printing industry who, under a practice sanctioned apparently by their unions and their employers, have for some years been engaged in a process of depriving the Inland Revenue of tax due in respect of their casual earnings. This they appear to have done by filling in false or imaginary names on the call slips presented on collecting their pay. The sums involved were very considerable. The Inland Revenue, having become aware of this, made an arrangement, which I explain in more detail later, under which these workers are to register in respect of their casual employment, so that in the future tax can be collected in the normal way. Further, arrears of tax from 1977–1978 are to be paid and current investigations are to proceed, but investigations as to tax lost in earlier years are not to be made. This arrangement, described inaccurately as an "amnesty," the federation wishes to attack. It asserts that the revenue acted unlawfully in not pursuing the claim for the full amount of tax due. It claims that the board exceeded its powers in granting the "amnesty"; alternatively that if it had power to grant it, reasons should be given and that those given cannot be sustained; that the board took into account matters to which it was not entitled to have regard; that the board ought to act fairly as between taxpayers and has not done so; and that the board is under a duty to see that income tax is duly assessed, charged, and collected.

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

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

In the Divisional Court, when the motion for judicial review came before it, the point as to locus standi was treated as a preliminary point. "Before we embark on the case itself," said Lord Widgery C.J., "we have to decide whether the federation has power to bring it at all." After hearing argument, the court decided that it had not. The matter went to the Court of Appeal [1980] Q.B. 407, and again argument was concentrated on the preliminary point, though it, and the judgments, did range over the merits. The Court of Appeal by majority reversed the Divisional Court and made a declaration that the applicants have a sufficient interest to apply for judicial review. On final appeal to this House, the two sides concurred in stating that the only ground for decision was whether the applicants have such sufficient interest.

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

Before proceeding to consideration of these matters, something more needs to be said about the threshold requirement of "sufficient interest." The courts in exercising the power to grant prerogative writs, or, since 1938, prerogative orders, have always reserved the right to be satisfied that the applicant had some genuine locus standi to appear before it. This they expressed in different ways. Sometimes it was said, usually in relation to certiorari, that the applicant must be a person aggrieved; or having a particular grievance (*Reg.* v. *Thames Magistrates' Court, Ex parte Greenbaum* (1957) 55 L.G.R. 129); usually in relation to mandamus, that he must have a specific legal right (*Reg.* v. *Lewisham Union Guardians* [1897] 1 Q.B. 498 and *Reg.* v. *Russell, Ex parte Beaverbrook Newspapers Ltd.* [1969] 1 Q.B. 342); sometimes that he must have a sufficient interest (*Reg.* v. *Cotham* [1898] 1 Q.B. 802, 804 (mandamus), *Ex parte Stott* [1916] 1 K.B. 7 (certiorari)). By 1977, when R.S.C., Ord. 53 was introduced, the courts, guided by Lord Parker C.J., in cases where mandamus was sought, were moving away from the *Lewisham Union* test of specific legal right, to one of sufficient interest. In *Reg.* v. *Russell* Lord Parker had tentatively adhered to the test of legal specific right but in *Reg.* v. *Customs and Excise Commissioners, Ex parte Cook* [1970] 1 W.L.R. 450 he had moved to sufficient interest.

Shortly afterward the new rule (R.S.C., Ord. 53, r. 3) was drafted with these words.

R.S.C., Ord. 53 was, it is well known, introduced to simplify the procedure of applying for the relief formerly given by prerogative writ or order—so the old technical rules no longer apply. So far as the substantive law is concerned, this remained unchanged: the Administration of Justice (Miscellaneous Provisions) Act 1938 preserved the jurisdiction existing before the Act, and the same preservation is contemplated by legislation now pending. The Order, furthermore, did not remove the requirement to show locus standi. On the contrary, in rule 3, it stated this in the form of a threshold requirement to be found by the court. For all cases the test is expressed as one of sufficient interest in the matter to which the application relates. As to this I would state two negative propositions. First, it does not remove the whole—and vitally important—question of locus standi into the realm of pure discretion. The matter is one for decision, a mixed decision of fact and law, which the court must decide on legal principles. Secondly, the fact that the same words are used to cover all the forms of remedy allowed by the rule does not mean that the test is the same in all cases. When Lord Parker C.J. said that in cases of mandamus the test may well be stricter (sc. than in certiorari)—the *Beaverbrook Newspapers* case [1969] 1 Q.B. 342 and in *Cook's* case [1970] 1 W.L.R. 450, 455F, "on a very strict basis," he was not stating a technical rule—which can now be discarded—but a rule of common sense, reflecting the different character of the relief asked for. It would seem obvious enough that the interest of a person seeking to compel an authority to carry out a duty is different from that of a person complaining that a judicial or administrative body has, to his detriment, exceeded its powers. Whether one calls for a stricter rule than the other may be a linguistic point: they are certainly different and we should be unwise in our enthusiasm for liberation from procedural fetters to discard reasoned authorities which illustrate this. It is hardly necessary to add that recognition of the value of guiding authorities does not mean that the process of judicial review must stand still.

In the present case we are in the area of mandamus—an alleged failure to perform a duty. It was submitted by the Lord Advocate that in such cases we should be guided by the definition of the duty, in this case statutory, and inquire whether expressly, or by implication, this definition indicates—or the contrary—that the complaining applicant is within the scope or ambit of the duty. I think that this is at least a good working rule though perhaps not an exhaustive one.

The Inland Revenue Commissioners are a statutory body. Their duties are, relevantly, defined in the Inland Revenue Regulation Act 1890 and the Taxes Management Act 1970. Section 1 of the Act of 1890 authorises the appointment of commissioners "for the collection and management of inland revenue" and confers on the commissioners "all necessary powers for carrying into execution every Act of Parliament relating to inland revenue." By section 13 the commissioners must "collect and cause to be collected every part of inland revenue

and all money under their care and management and keep distinct accounts thereof." A

Section 1 of the Act of 1970 provides that "Income tax . . . shall be under the care and management of the commissioners." This Act contains the very wide powers of the board and of inspectors of taxes to make assessments upon persons designated by Parliament as liable to pay income tax. With regard to casual employment, there is a procedure laid down by statutory instrument (the Income Tax (Employments) Regulations 1973 (S.I. 1973 No. 334)) by which inspectors of taxes may proceed by way of direct assessment or in accordance with any special arrangements which the Commissioners of Inland Revenue may make for the collection of the tax. As I shall show later it was a "special arrangement" that the commissioners set out to make in the present case. B C

From this summary analysis it is clear that the Inland Revenue Commissioners are not immune from the process of judicial review. They are an administrative body with statutory duties, which the courts, in principle, can supervise. They have indeed done so—see *Reg.* v. *Income Tax Special Commissioners* (1881) 21 Q.B.D. 313 (mandamus) and *Income Tax Special Commissioners* v. *Linsleys (Established 1894) Ltd.* [1958] A.C. 569, where it was not doubted that a mandamus could be issued if the facts had been right. It must follow from these cases and from principle that a taxpayer would not be excluded from seeking judicial review if he could show that the revenue had either failed in its statutory duty toward him or had been guilty of some action which was an abuse of their powers or outside their powers altogether. Such a collateral attack—as contrasted with a direct appeal on law to the courts—would no doubt be rare, but the possibility certainly exists. D E

The position of other taxpayers—other than the taxpayers whose assessment is in question—and their right to challenge the revenue's assessment or non-assessment of that taxpayer, must be judged according to whether, consistently with the legislation, they can be considered as having sufficient interest to complain of what has been done or omitted. I proceed thereto to examine the revenue's duties in that light. F

These duties are expressed in very general terms and it is necessary to take account also of the framework of the income tax legislation. This establishes that the commissioners must assess each individual taxpayer in relation to his circumstances. Such assessments and all information regarding taxpayers' affairs are strictly confidential. There is no list or record of assessments which can be inspected by other taxpayers. Nor is there any common fund of the produce of income tax in which income taxpayers as a whole can be said to have any interest. The produce of income tax, together with that of other inland revenue taxes, is paid into the consolidated fund which is at the disposal of Parliament for any purposes that Parliament thinks fit. G

The position of taxpayers is therefore very different from that of ratepayers. As explained in *Arsenal Football Club Ltd.* v. *Ende* [1979] A.C. 1, the amount of rates assessed upon ratepayers is ascertainable by the public through the valuation list. The produce of rates goes H

into a common fund applicable for the benefit of the ratepayers. Thus any ratepayer has an interest, direct and sufficient, in the rates levied upon other ratepayers; for this reason, his right as a "person aggrieved" to challenge assessments upon them has long been recognised and is so now in section 69 of the General Rate Act 1967. This right was given effect to in the *Arsenal* case.

The structure of the legislation relating to income tax, on the other hand, makes clear that no corresponding right is intended to be conferred upon taxpayers. Not only is there no express or implied provision in the legislation upon which such a right could be claimed, but to allow it would be subversive of the whole system, which involves that the commissioners' duties are to the Crown, and that matters relating to income tax are between the commissioners and the taxpayer concerned. No other person is given any right to make proposals about the tax payable by any individual: he cannot even inquire as to such tax. The total confidentiality of assessments and of negotiations between individuals and the revenue is a vital element in the working of the system. As a matter of general principle I would hold that one taxpayer has no sufficient interest in asking the court to investigate the tax affairs of another taxpayer or to complain that the latter has been under-assessed or over-assessed: indeed, there is a strong public interest that he should not. And this principle applies equally to groups of taxpayers: an aggregate of individuals each of whom has no interest cannot of itself have an interest.

That a case can never arise in which the acts or abstentions of the revenue can be brought before the court I am certainly not prepared to assert, nor that, in a case of sufficient gravity, the court might not be able to hold that another taxpayer or other taxpayers could challenge them. Whether this situation has been reached or not must depend upon an examination, upon evidence, of what breach of duty or illegality is alleged. Upon this, and relating it to the position of the complainant, the court has to make its decision. I find it necessary to state the circumstances in some detail.

The evidence consists of affidavits from Mr. L. F. Payne, vice-president of the federation, Sir William Pile, chairman of the Board of Inland Revenue, and Mr. J. A. P. Hoadley, principal inspector of taxes, in charge of the Inland Revenue Special Offices. These together present a picture of clarity. It is not often that a court on summary proceedings has so much and so relevant information.

Mr. Payne's affidavit sets out very fairly the facts as known to him regarding the employment of the "casuals" and the revenue's actions with regard to the income tax they ought to have paid. He also gives a number of examples of what he claims to be the very different attitude, viz. one of strictness and even severity, taken by the revenue as regards persons represented by the federation. I think that these examples, while explaining the indignation of the federation and its members as regards the state of affairs in Fleet Street, cannot be judged on their merits on the material we have. Even if there were not another side to the taxpayers' presentation (and the revenue suggests there may be) it is not

suggested that, and is impossible to see how, any success in these proceedings would in any tangible way profit, or affect, the persons concerned or others like them.

On the other hand, as I suggested in *Arsenal Football Club Ltd.* v. *Ende* [1979] A.C. 1, a sense of fairness as between one taxpayer or group of taxpayers and another is an important objective, so that a sense of unfairness may be the beginning of a recognisable grievance. I say the beginning, because the income tax legislation contains a large number of anomalies which are naturally not thought to be fair by those disadvantaged.

In this context Mr. Payne also refers to the approach of the revenue adopted in relation to self-employed workers in the construction industry (commonly known as " the lump "), who were found to be evading tax on a large scale. In this case the revenue persuaded Parliament to enact legislation of a stringent character. But I think that this has no relevance for the present issue. Finally, Mr. Payne agrees that the new arrangements made by the Inland Revenue may be effective in securing that tax will be paid in the future on casual earnings. But he complains of the " amnesty " granted as regards arrears before 1977.

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

Mr. Hoadley explains the way in which the special officers came to investigate the problem of casual workers in Fleet Street, and the difficulties of discovering the facts. There is, and I think Mr. Payne agrees, no way in which the names and addresses of the defaulting " casuals " could be obtained, unless their unions were willing to reveal them. Estimating that about £1 million of tax a year were being lost, he decided that action was needed to stop this loss for the future. After reflection he considered that the best way to do so was by way of a special arrangement. In order to make such an arrangement effective, the co-operation of the employers, the workers and the unions was essential. For this purpose he had lengthy discussions in the summer of 1978 with the employers, and the three unions involved, and as a result introduced a special arrangement in March 1979. This provided a method which would ensure that for the future tax would either be deducted at source or would be properly assessed. As regards the past, Mr. Hoadley made it clear to the union representative that, if the

A arrangement were generally accepted, then if a casual worker registered with the inspector before April 6, 1979, and co-operated fully and promptly in settling his tax affairs (including the payment of any outstanding tax), investigation into tax lost would not be carried out for years before 1977–1978, i.e. before April 6, 1977. Investigations into incorrect returns would be unaffected. As I have indicated, to call this an " amnesty " is liable to mislead.

B Mr. Hoadley expressed the conviction that an attempt to collect the whole amount due from hostile workers whose identity was unknown, for a period more than two years in the past, would have been unlikely to produce any substantial sums of money and would have delayed or even frustrated the new arrangement. He denied that he made the arrangement under pressure from the unions: he made his C own decision and told them of it.

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

Finally, Mr. Hoadley dealt very fully and adequately with all Mr. F Payne's other points. His affidavit is very full and candid and I have only summarised the main points.

On the evidence as a whole, I fail to see how any court considering it as such and not confining its attention to an abstract question of locus standi could avoid reaching the conclusion that the Inland Revenue, through Mr. Hoadley, were acting in this matter genuinely in the care and management of the taxes, under the powers entrusted to them. G This has no resemblance to any kind of case where the court ought, at the instance of a taxpayer, to intervene. To do so would involve permitting a taxpayer or a group of taxpayers to call in question the exercise of management powers and involve the court itself in a management exercise. Judicial review under any of its headings does not extend into this area. Finally, if as I think, the case against the revenue H does not, on the evidence, leave the ground, no court, in my opinion, would consider ordering discovery against the revenue in the hope of eliciting some impropriety. Looking at the matter as a whole, I am of opinion that the Divisional Court, while justified on the ex parte

application in granting leave, ought, having regard to the nature of "the matter" raised, to have held that the federation had shown no sufficient interest in that matter to justify its application for relief. I would therefore allow the appeal and order that the originating motion be dismissed.

LORD DIPLOCK. My Lords, this appeal provides the House with its first occasion to consider what changes, if any, to public law in England have been made by the new R.S.C., Ord. 53 which came into effect on January 11, 1978, and provides for applications for judicial review of the legality of action or inaction by persons or bodies exercising governmental powers.

It is, in my view, very much to be regretted that a case of such importance to the development of English public law under this new procedure should have come before this House in the form that it does as a result of what my noble and learned friend, Lord Wilberforce, has described as the unfortunate course that was taken in the courts below when, leave to apply for judicial review having been previously granted ex parte, the application itself came on for hearing. This has had the result of deflecting the Divisional Court and the Court of Appeal from giving consideration to the questions (1) what was the public duty of the Board of Inland Revenue of which it was alleged to be in breach, and (2) what was the nature of the breaches of that duty that were relied upon by the federation. Because of this, the judgment of the Court of Appeal, against which appeal to your Lordships' House is brought, takes the form of an interlocutory judgment declaring that the federation "have a sufficient interest to apply for judicial review herein."

As my noble and learned friend has pointed out, these two omitted questions need to be answered in the instant case before it is possible to say whether the federation have "a sufficient interest in the matter to which the application relates," since, until they are answered, that matter cannot be identified. This is likely also to be the case in most applications for judicial review that are not on the face of them frivolous or vexatious. Your Lordships have accordingly heard full argument on both these questions.

As respects the statutory powers and duties of the Board of Inland Revenue, these are described and dealt with in several of your Lordships' speeches. It would be wearisome if I were to repeat what already has been, and later will be, better said by others. All that I need say here is that the board are charged by statute with the care, management and collection on behalf of the Crown of income tax, corporation tax and capital gains tax. In the exercise of these functions the board have a wide managerial discretion as to the best means of obtaining for the national exchequer from the taxes committed to their charge, the highest net return that is practicable having regard to the staff available to them and the cost of collection. The board and the inspectors and collectors who act under their directions are under a statutory duty of confidentiality with respect to information about individual taxpayers' affairs that has been obtained in the course of their duties in making

assessments and collecting the taxes; and this imposes a limitation on their managerial discretion. I do not doubt, however, and I do not understand any of your Lordships to doubt, that if it were established that the board were proposing to exercise or to refrain from exercising its powers not for reasons of "good management" but for some extraneous or ulterior reason, that action or inaction of the board would be ultra vires and would be a proper matter for judicial review if it were brought to the attention of the court by an applicant with "a sufficient interest" in having the board compelled to observe the law.

As respects what were alleged to be breaches of its statutory duty by the board on which the federation relied, the evidence as to the way in which the board and its inspector in charge of the negotiations dealt with the problem of the Fleet Street casuals and as to the reasons why they acted as they did, is set out in all necessary detail in Lord Wilberforce's speech. All this evidence was before the Divisional Court and the Court of Appeal had they chosen to look at it. It is enough for me to say that I agree with my noble and learned friend that no court considering this evidence could avoid reaching the conclusion that the board and its inspector were acting solely for "good management" reasons and in the lawful exercise of the discretion which the statutes confer on them.

For my part, I should prefer to allow the appeal and dismiss the federation's application under R.S.C., Ord. 53, not upon the specific ground of no sufficient interest but upon the more general ground that it has not been shown that in the matter of which complaint was made, the treatment of the tax liabilities of the Fleet Street casuals, the board did anything that was ultra vires or unlawful. They acted in the bona fide exercise of the wide managerial discretion conferred on them by statute. Since judicial review is available only as a remedy for conduct of a public officer or authority which is ultra vires or unlawful, but not for acts done lawfully in the exercise of an administrative discretion which are complained of only as being unfair or unwise, there is a sense in which it may be said that the federation had not a sufficient interest in the matter to which their application related; but this is not a helpful statement; it would be equally true of anyone, including the Attorney-General, who sought to complain.

It would be very much to be regretted if, in consequence of the unfortunate form in which the instant appeal came before this House, anything that is said by your Lordships today were to be understood as suggesting that the new Ord. 53, r. 3 (5) has the effect of reviving any of those technical rules of locus standi to obtain the various forms of prerogative writs that were applied by the judges up to and during the first half of the present century, but which have been so greatly liberalised by judicial decision over the last 30 years. It is for this reason that I venture to state how, in my view, Order 53 would have applied to the federation's application if, instead of their locus standi being considered in isolation, the proper course had been followed at the hearing of the application in the Divisional Court.

My Lords, Order 53 was made by the Rules Committee under the

powers conferred upon them by section 99 of the Supreme Court of Judicature (Consolidation) Act 1925 and section 10 of the Administration of Justice (Miscellaneous Provisions) Act 1938. Rules of court made under these sections are concerned with procedure and practice only; they cannot alter substantive law, nor can they extend the jurisdiction of the High Court. But in the field of public law where the court has a discretion whether or not to make an order preventing conduct by a public officer or authority that has been shown to be ultra vires or unlawful, the question of what qualifications an applicant must show before the court will entertain his application for a particular kind of order against a particular class of public officer or authority seems to me to be one of practice rather than of jurisdiction. It has been consistently so treated by the courts over the past 30 years.

Before the new Order 53 was substituted for its predecessor, the private citizen who sought redress against a person or authority for acting unlawfully or ultra vires in the purported exercise of statutory powers, had to choose from a number of different procedures that which was the most appropriate to furnish him the redress that he sought. The major differences in procedure including locus standi to apply for the relief sought, were between the remedies by way of declaration or injunction obtainable by a civil action brought to enforce public law and the remedies by way of the prerogative orders of mandamus, prohibition or certiorari which lay in public law alone; but even between the three public law remedies there were minor procedural differences, and the locus standi to apply for them was not quite the same for each, although the divergencies were in process of diminishing.

Your Lordships can take judicial notice of the fact that the main purpose of the new Order 53 was to sweep away these procedural differences including, in particular, differences as to locus standi; to substitute for them a single simplified procedure for obtaining all forms of relief, and to leave to the court a wide discretion as to what interlocutory directions, including orders for discovery, were appropriate to the particular case.

In the instant case, in the Divisional Court and Court of Appeal alike, the argument for the board was put upon the footing that notwithstanding this unification of procedure for obtaining the various remedies available in public law, including those which had been available in private law only, the new Order 53 had left unchanged the basis on which an applicant was recognised as having locus standi to apply for each individual form of relief sought. In the instant case these were a declaration and an order of mandamus.

As respects the claim for a declaration considerable reliance was placed upon the recent decision of this House in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435, which held that a private citizen, except as relator in an action brought by the Attorney-General, had no locus standi in private law as plaintiff in a civil action to obtain either an injunction to restrain another private citizen (in casu a trade union) from committing a public wrong by breaking the criminal law, or a declaration that his conduct is unlawful, unless the plaintiff can show that some

A legal or equitable right of his own has been infringed or that he will sustain some special damage over and above that suffered by the general public. This decision is, in my view, irrelevant to any question that your Lordships have to decide today. The defendant trade union in deciding to instruct its members to take unlawful industrial action was not exercising any governmental powers; it was acting as a private citizen and could only be sued as such in a civil action under private B law. It was not amenable to any remedy in public law. Lord Wilberforce and I were at pains to draw this distinction in our speeches in *Gouriet's* case [1978] A.C. 435.

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

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

In the earlier cases a more restrictive rule for locus standi was applied to applications for the writ of mandamus than for writs of prohibition or certiorari; and since mandamus was the prerogative order sought by F the federation in the instant case, your Lordships have been referred to many of them; reliance being placed in particular upon the brief extempore judgment of Wright J. delivered at the end of the last century in *Reg.* v. *Lewisham Union Guardians* [1897] 1 Q.B. 498. He said, at p. 500, that an applicant for a mandamus "must first of all show that he has a legal specific right to ask for the interference of G the court." The law has not stood still since 1897. By 1977 this was no longer correct, and I have no hesitation in saying that it is inconceivable that mandamus would have been refused in the circumstances of that case if it had come before a Divisional Court at any time during the last 20 years.

The rules as to "standing" for the purpose of applying for prerogaH tive orders, like most of English public law, are not to be found in any statute. They were made by judges, by judges they can be changed; and so they have been over the years to meet the need to preserve the integrity of the rule of law despite changes in the social structure,

methods of government and the extent to which the activities of private citizens are controlled by governmental authorities, that have been taking place continuously, sometimes slowly, sometimes swiftly, since the rules were originally propounded. Those changes have been particularly rapid since World War II. Any judicial statements on matters of public law if made before 1950 are likely to be a misleading guide to what the law is today.

In 1951, the decision of the Divisional Court in *Reg.* v. *Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1951] 1 Q.B. 711 resurrected error of law upon the face of the record as a ground for granting certiorari. Parliament by the Tribunals and Inquiries Act 1958 followed this up by requiring reasons to be given for many administrative decisions that had previously been cloaked in silence; and the years that followed between then and 1977 witnessed a dramatic liberalisation of access to the courts for the purpose of obtaining prerogative orders against persons and authorities exercising governmental powers. This involved a virtual abandonment of the former restrictive rules as to the locus standi of persons seeking such orders. The process of liberalisation of access to the courts and the progressive discarding of technical limitations upon locus standi is too well known to call for detailed citation of the cases by which it may be demonstrated. They are referred to and discussed in *Wade, Administrative Law*, 4th ed. (1977), pp. 543–546 (prohibition and certiorari) and pp. 610–612 (mandamus). The author points out there that although lip-service continued to be paid to a difference in standing required to entitle an applicant to mandamus on the one hand and prohibition or certiorari on the other, in practice the courts found some way of treating the locus standi for all three remedies as being the same. A striking example of this is to be found in *Reg.* v. *Hereford Corporation, Ex parte Harrower* [1970] 1 W.L.R. 1424, where the applicants were treated as having locus standi in their capacity as ratepayers though their real interest in the matter was as electrical contractors only. For my part I need only refer to *Reg.* v. *Greater London Council, Ex parte Blackburn* [1976] 1 W.L.R. 550. In that case Mr. Blackburn who lived in London with his wife who was a ratepayer, applied successfully for an order of prohibition against the council to stop them acting in breach of their statutory duty to prevent the exhibition of pornographic films within their administrative area. Mrs. Blackburn was also a party to the application. Lord Denning M.R. and Stephenson L.J. were of opinion that both Mr. and Mrs. Blackburn had locus standi to make the application: Mr. Blackburn because he lived within the administrative area of the council and had children who might be harmed by seeing pornographic films and Mrs. Blackburn not only as a parent but also on the additional ground that she was a ratepayer. Bridge L.J. relied only on Mrs. Blackburn's status as a ratepayer; a class of persons to whom for historical reasons the court of King's Bench afforded generous access to control ultra vires activities of the public bodies to whose expenses they contributed. But now that local government franchise is not limited to ratepayers, this distinction between the two applicants strikes

A me as carrying technicality to the limits of absurdity having regard to the subject matter of the application in the *Blackburn* case. I agree in substance with what Lord Denning M.R. said, at p. 559, though in language more eloquent than it would be my normal style to use:

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

C The reference here is to flagrant and serious breaches of the law by persons and authorities exercising governmental functions which are continuing unchecked. To revert to technical restrictions on locus standi to prevent this that were current 30 years or more would be to reverse that progress towards a comprehensive system of administrative law that I regard as having been the greatest achievement of the English courts in my judicial lifetime.

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

those complaining of failure of public officers to perform their duties. He was held, however, not to be a person aggrieved in his capacity as a taxpayer despite the fact that any shortfall in the rate yield due to the undervaluation of the hereditament would be made up from central funds to which all taxpayers in Great Britain contribute. A line, it was said, has to be drawn somewhere, and his interest as a taxpayer was too remote to qualify him as a person aggrieved by a single entry in the valuation list for rating purposes of a London borough.

My Lords, the expression "person aggrieved" is of common occurrence in statutes and, in its various statutory contexts, has been the subject of considerable judicial exegesis. In the past, however, it had also sometimes been used by judges to describe those persons who had locus standi to apply for the former prerogative writs or, since 1938, prerogative orders. It was on this somewhat frail ground that it was argued that the distinction drawn in the *Arsenal* case [1979] A.C. 1 between Mr. Ende's grievance as a ratepayer and his grievance as a taxpayer was relevant to the question whether the federation as representing taxpayers was entitled to locus standi in the instant case. However this may have been before the new Order 53 was made, the draftsman of that order avoided using the expression "a person aggrieved," although it lay ready to his hand. He chose instead to get away from any formula that might be thought to have acquired, through judicial exposition, a particular meaning as a term of legal art. The expression that he used in rule 3 (5) had cropped up sporadically in judgments relating to prerogative writs and orders and consisted of ordinary English words which, on the face of them, leave the court an unfettered discretion to decide what in its own good judgment it considers to be "a sufficient interest" on the part of an applicant in the particular circumstances of the case before it. For my part I would not strain to give them any narrower meaning.

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

The need for leave to start proceedings for remedies in public law is not new. It applied previously to applications for prerogative orders, though not to civil actions for injunctions or declarations. Its purpose

is to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived.

My Lords, I understand that all your Lordships are agreed that upon the material that was before the Divisional Court upon the ex parte application by the federation for leave to apply for judicial review of the so-called "amnesty" extended to the Fleet Street casuals, the court was justified in exercising its discretion in favour of granting the leave sought. The only evidence that was before the court was the affidavit of Mr. Payne, the contents of which have been summarised by my noble and learned friend, Lord Wilberforce. It made out a prima facie case, albeit a somewhat flimsy one, that the revenue had differentiated between three classes of defaulting taxpayers: (1) the Fleet Street casuals, all of whom were members of powerful trade unions; (2) owners of small businesses, who were not members of trade unions and on whose behalf the federation purported to be acting; and (3) perhaps more significantly, self-employed workers in the construction industry popularly referred to as "the lump" to whom powerful trade unions were bitterly opposed. In the absence of any other explanation, the leniency with which tax defaulters in the first class had been treated as contrasted with the severity with which those in the two latter classes were pursued, gave rise, it was suggested by the federation, to reasonable suspicion that the revenue had granted the amnesty not for any reasons of good management, but simply in response to trade union pressure.

The complaint made by the federation was not of preferential treatment of individual taxpayers but of all taxpayers falling within a particular class comprising 4,000 to 5,000 members whose unpaid taxes, recovery of which up to April 1977 was to be abandoned, were of the order of £1,000,000 a year. Consideration of the federation's complaint would not involve any departure from the board's statutory duty to preserve the confidentiality of information obtained by its inspectors and collectors about individual taxpayers' affairs, since ex hypothesi the members of this class of taxpayers had made no returns and had not provided any information about their affairs.

My Lords, at the threshold stage, for the federation to make out a prima facie case of reasonable suspicion that the board in showing a discriminatory leniency to a substantial class of taxpayers had done so for ulterior reasons extraneous to good management, and thereby deprived the national exchequer of considerable sums of money, constituted what was in my view reason enough for the Divisional Court to consider that the federation or, for that matter, any taxpayer, had a sufficient interest to apply to have the question whether the board was acting ultra vires reviewed by the court. The whole purpose of requiring that leave should first be obtained to make the application for

judicial review would be defeated if the court were to go into the matter in any depth at that stage. If, on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for that relief. The discretion that the court is exercising at this stage is not the same as that which it is called upon to exercise when all the evidence is in and the matter has been fully argued at the hearing of the application.

The analyses to which, on the invitation of the Lord Advocate, the relevant legislation has been subjected by some of your Lordships, and particularly the requirement of confidentiality which would be broken if one taxpayer could complain that another taxpayer was being treated by the revenue more favourably than himself, mean that occasions will be very rare on which an individual taxpayer (or pressure group of taxpayers) will be able to show a sufficient interest to justify an application for judicial review of the way in which the revenue has dealt with the tax affairs of any taxpayer other than the applicant himself.

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

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

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

LORD FRASER OF TULLYBELTON. My Lords, I agree with all my noble and learned friends that this appeal should be allowed. I agree

A with the reasoning of Lord Wilberforce and Lord Roskill but I wish to explain my reasons in my own words.

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

But the question whether the respondents have a sufficient interest to make the application at all is a separate, and logically prior, question which has to be answered affirmatively before any question on the merits arises. Refusal of the application on its merits therefore implies D that the prior question has been answered affirmatively. I recognise that in some cases, perhaps in many, it may be impracticable to decide whether an applicant has a sufficient interest or not, without having evidence from both parties as to the matter to which the application relates, and that, in such cases, the court before whom the matter comes in the first instance cannot refuse leave to the applicant at the ex parte E stage, under rule 3 (5). The court which grants leave at that stage will do so on the footing that it makes a provisional finding of sufficient interest, subject to revisal later on, and it is therefore not necessarily to be criticised merely because the final decision is that the applicant did not have sufficient interest. But where, after seeing the evidence of both parties, the proper conclusion is that the applicant did not have a sufficient interest to make the application, the decision ought to be F made on that ground. The present appeal is, in my view, such a case and I would therefore dismiss the appeal on that ground. When it is also shown, as in this case, that the application would fail on its merits, it is desirable for that to be stated by the court which first considers the matter in order to avoid unnecessary appeals on the preliminary point.

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

The new Order 53, introduced in 1977, no doubt had the effect of

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

The correct approach in such a case is, in my opinion, to look at the statute under which the duty arises, and to see whether it gives any express or implied right to persons in the position of the applicant to complain of the alleged unlawful act or omission. On that approach it is easy to see that a ratepayer would have a sufficient interest to complain of unlawfulness by the authorities responsible for collecting the rates. Even if the General Rate Act 1967 had not expressly given him a right to propose alteration in the valuation list if he is aggrieved by an entry therein, he would have an interest in the accuracy of the list which is the basis for allocating the total burden of rates between himself and other ratepayers in the area. The list is public and is open for inspection by any person. The position of the taxpayer is entirely different. The figures on which other taxpayers have been assessed are not normally within his knowledge and the Inland Revenue Commissioners and their officials are obliged to keep these matters strictly confidential: see section 1 (1) and section 39 of the Inland Revenue Regulation Act 1890 and sections 1 and 6 of and Schedule 1 to the Taxes Management Act 1970. The distinction between a ratepayer and a taxpayer that was drawn in *Arsenal Football Club Ltd.* v. *Ende* [1979] A.C. 1 for the purposes of defining a person aggrieved under the General Rate Act 1967 is also relevant to the present matter.

The respondents are a body with some 50,000 members, but their counsel conceded, rightly in my opinion, that if they had a sufficient interest to obtain judicial review, then any individual taxpayer, or at least any payer of income tax, must also have such an interest. I can see no justification for treating payers of income tax as having any separate interest in the matter now complained of from that of persons who pay other taxes. All taxpayers contribute to the general fund of revenue and the sense of grievance which the respondents claim to feel because of the difference between the appellants' treatment of the Fleet Street casuals and their treatment of private traders might be felt just as strongly by any honest taxpayer who pays the full amount of taxes of any kind to which he is properly liable. But if the class of persons

with a sufficient interest is to include all taxpayers it must include practically every individual in the country who has his own income, because there must be few individuals, however frugal their requirements, who do not pay some indirect taxes including V.A.T. It would, I think, be extravagant to suggest that every taxpayer who believes that the Inland Revenue or the Customs and Excise Commissioners are giving an unlawful preference to another taxpayer, and who feels aggrieved thereby, has a sufficient interest to obtain judicial review under R.S.C., Ord. 53. It may be that, if he was relying upon some exceptionally grave or widespread illegality, he could succeed in establishing a sufficient interest, but such cases would be very rare indeed and this is not one of them.

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

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

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

The new procedure is more flexible than that which it supersedes. An applicant for relief will no longer be defeated merely because he has chosen to apply for the wrong remedy. Not only has the court a complete discretion to select and grant the appropriate remedy: but it now may grant remedies which were not previously available. Rule

1 (2) enables the court to grant a declaration or injunction instead of, or in addition to, a prerogative order, where to do so would be just and convenient. This is a procedural innovation of great consequence: but it neither extends nor diminishes the substantive law. For the two remedies (borrowed from the private law) are put in harness with the prerogative remedies. They may be granted only in circumstances in which one or other of the prerogative orders can issue. I so interpret R.S.C., Ord 53, r. 1 (2) because to do otherwise would be to condemn the rule as ultra vires.

The appeal is said by both parties to turn on the meaning to be attributed to R.S.C., Ord. 53, r. 3 (5), which has been described as the heart of the Order. It is in these terms: "The court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates." There is, my Lords, no harm in so describing the issue, so long as it is remembered that the right to apply for a prerogative order is a matter of law, not to be modified or abridged by rule of court. The right has always been, and remains today, available only at the discretion of the High Court, which has to be exercised upon the facts of the particular case and according to principles developed by the judges. The case law, as it has developed and continues to develop in the hands of the judges, determines the nature of the interest an applicant must show to obtain leave to apply. The rule, however, presents no problems of construction. Its terms are wide enough to reflect the modern law without distorting or abridging the discretion of the judges: and it draws attention to a feature of the law, which has been overlooked in the present case. The sufficiency of the applicant's interests has to be judged in relation to the subject matter of his application. This relationship has always been of importance in the law. It is well illustrated by the history of the development of the prerogative writs, notably the difference of approach to mandamus and certiorari, and it remains a factor of importance in the exercise of the discretion today.

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

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

A appeal, holding, as Lord Denning M.R. put it, that the federation and its members "are not mere busybodies" but "have a genuine grievance" [1980] Q.B. 407, 425. Ackner L.J., after remarking that it had been *assumed* (by counsel's concession limited to the argument on the preliminary issue) that the board acted unlawfully, held at p. 433 that "the body of taxpayers represented by the federation can reasonably assert a genuine grievance."

B As others of your Lordships have already commented, the decision to take locus standi as a preliminary issue was a mistake and has led to unfortunate results. The matter to which the application relates, namely, the legality of the policy decision taken by the revenue to refrain from collecting tax from the Fleet Street casuals, was never considered by the Divisional Court and was dealt with by concession in C the Court of Appeal. Yet there were available at both hearings very full affidavits from which the circumstances in which the policy decision, which is challenged, was taken, and the revenue's explanation, clearly emerge.

In your Lordships' House the Lord Advocate, who now appears for the appellants, the Inland Revenue Commissioners, has withdrawn the concession. He was right to do so. He has put at the forefront of D his argument a reasoned analysis of the statutory duties of the revenue, and has invited the House to hold that the statutory code neither recognises nor imposes upon the revenue a duty such as the federation alleges to the general body, or any group of taxpayers.

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

I pass now to the two critical issues: (1) the character of the duty upon the revenue and the persons to whom it is owed. Is it legal, political, or merely moral? (2) The nature of the interest which the

applicant has to show. It is an integral part of the Lord Advocate's argument that the existence of the duty is a significant factor in determining the sufficiency of an applicant's interest.

The duty

Mandamus is the most elusive of the prerogative writs and orders. The nature of the interest an applicant must show, the nature of the duty which it is available to enforce, and the persons or bodies to whom it may issue have varied from time to time in its development. It is, of course, a judicial remedy: it is equally clear that it is a remedy to compel performance of a public legal duty, that it does not go to the Crown itself, and that it is available only if the applicant shows a sufficient interest. In Appendix 1 to *Judicial Review of Administrative Action*, 3rd ed. (1973), the late Professor S. A. de Smith, discussing the historical origins of the prerogative writs, commented at p. 515 that: "Through the writ of mandamus the King's Bench compelled the carrying-out of ministerial duties incumbent upon both administrative and judicial bodies." Lord Mansfield C.J. clearly developed a very liberal view as to its availability. ". . . it ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one": see *Rex* v. *Barker* (1762) 3 Burr. 1265, 1267. But it does not lie to compel performance of a moral duty: *Ex parte Napier* (1852) 18 Q.B. 692. Nor may it be used to enforce a duty owed exclusively to the Crown: *Reg.* v. *Lords Commissioners of the Treasury* (1872) L.R. 7 Q.B. 387. It has, however, been recognised by the judges as a remedy for certain forms of abuse of discretion, upon the principle that the improper or capricious exercise of discretion is a failure to exercise the discretion which the law has required to be exercised: see Lord Mansfield C.J. in *Rex* v. *Askew* (1768) 4 Burr. 2186, 2188–2189, and, in modern times, *Padfield* v. *Minister of Agriculture, Fisheries and Food* [1968] A.C. 997. The Lord Advocate accepted, as I understand his argument, this broad approach. But he strenuously submitted that the law imposed no such public legal duty as that for which the federation contends. He submitted that one must examine what he appropriately described as "the statutory code" to determine whether a duty owed to the applicant is expressly or impliedly recognised by the law. If this be an invitation to consider the relevant statutory provisions against a general background of legal principle developed by the judges, I accept it. For this is the common law approach to statute law.

First, then, "the statutory code." It is to be found in the Inland Revenue Regulation Act 1890 and the Taxes Management Act 1970. Commissioners are appointed "for the collection and management of inland revenue": section 1 (1) of the Inland Revenue Regulation Act 1890. They "shall collect and cause to be collected every part of inland revenue": section 13 (1). "Inland revenue" means the revenue and taxes "placed under the care and management of the commissioners": section 39. The Taxes Management Act 1970 places income tax under their care and management and for that purpose confers upon

them and inspectors of tax very considerable discretion in the exercise of their powers. It also imposes upon them the very significant duty of confidence in investigating, and dealing with, the affairs of the individual taxpayer. Indeed, the Lord Advocate relied on the existence of this duty as an indication that the statute imposed no duty owed to a taxpayer (or the general body of taxpayers) in respect of the collection of taxes due from another taxpayer: and he made particular reference to sections 1 and 6 of and Schedule 1 to the Act. He rightly observed that in the daily discharge of their duties inspectors are constantly required to balance the duty to collect "every part" of due tax against the duty of good management. This conflict of duties can be resolved only by good managerial decisions, some of which will inevitably mean that not all the tax known to be due will be collected.

Upon this analysis of the statutes the Lord Advocate submitted that the law neither imposes nor recognises a duty owed to an individual taxpayer or a group of taxpayers to collect from other taxpayers all the tax due from them. He supported his submission by a reference to *Reg.* v. *Lords Commissioners of the Treasury,* L.R. 7 Q.B. 387 and he emphasised that Parliament, and, since 1967, the Parliamentary Commissioner, exist to redress the sort of grievance asserted by the federation in this case. His ultimate characterisation of the revenue's failure in this case, if it was a failure, was "maladministration," not breach of any public duty owed at law to the general body of taxpayers.

While I reject his conclusion, I accept much, but not all, of his submission. The analysis of the statutory provisions is clearly correct. They establish a complex of duties and discretionary powers imposed and conferred in the interest of good management upon those whose duty it is to collect the income tax. But I do not accept that the principle of fairness in dealing with the affairs of taxpayers is a mere matter of desirable policy or moral obligation. Nor do I accept that the duty to collect "every part of inland revenue" is a duty owed exclusively to the Crown. Notwithstanding *Reg.* v. *Lords Commissioners of the Treasury,* I am persuaded that the modern case law recognises a legal duty owed by the revenue to the general body of the taxpayers to treat taxpayers fairly; to use their discretionary powers so that, subject to the requirements of good management, discrimination between one group of taxpayers and another does not arise; to ensure that there are no favourites and no sacrificial victims. The duty has to be considered as one of several arising within the complex comprised in the care and management of a tax, every part of which it is their duty, if they can, to collect.

Authority for this view is plentiful, albeit only persuasive in character. Viscount Simon L.C. in *Latilla* v. *Inland Revenue Commissioners* [1943] A.C. 377, 381, discussing the evil of tax avoidance schemes, commented that: "one result of such methods, if they succeed, is . . . to increase, pro tanto, the load of tax on the shoulders of the great body of good citizens . . ." In the *Arsenal* case [1979] A.C. 1, 17F Lord Wilberforce commented—admittedly in the context of rates but in terms which cannot rationally exclude a taxpayer—that: "To produce a sense of justice is an

important objective of taxation policy." In *Vestey* v. *Inland Revenue Commissioners* [1979] Ch. 177, 197, Walton J. said that it is in "the interest not only of all individual taxpayers . . . but also in the interests of the revenue . . . that the tax system should be fair." In *Vestey* v. *Inland Revenue Commissioners* (*No. 2*) [1979] Ch. 198, 204, Walton J. said:

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

In the same case, when it reached the House [1980] A.C. 1148, Lord Edmund-Davies, speaking of the House's decision in *Congreve* v. *Inland Revenue Commissioners* [1948] 1 All E.R. 948, said, at p. 1196:

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

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

If it be urged that the House took a different view in the *Arsenal Football Club* case [1979] A.C. 1, I would reply that the view there expressed, in so far as it concerned whether the revenue owed a legal duty to the general body of taxpayers, was obiter. The case should, perhaps, be considered more in the context of an applicant's interest than in that of the nature of the duty placed upon the public authority: for it turned on the meaning to be attributed to a person "aggrieved" in section 69 of the General Rate Act 1967.

It is, however, not decisive of either issue: and, for the reasons given by Ackner L.J. in the Court of Appeal, I would refuse to introduce into the public law the fine distinction, which the House in that case considered to exist, between the duty of a rating authority and the duty of a taxing authority. I am, therefore, of the opinion that a legal duty

of fairness is owed by the revenue to the general body of taxpayers. It is, however, subject to the duty of sound management of the tax which the statute places upon the revenue.

The interest

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

My Lords, I will not weary the House with citation of many authorities. Suffice it to refer to the judgment of Lord Parker C.J. in *Reg.* v. *Thames Magistrates' Court, Ex parte Greenbaum*, 55 L.G.R. 129, a case of certiorari; and to words of Lord Wilberforce in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435, 482, where he stated the modern position in relation to prerogative orders: "These are often applied for by individuals and the courts have allowed them liberal access under a generous conception of locus standi." The one legal principle, which is implicit in the case law and accurately reflected in the rule of court, is that in determining the sufficiency of an applicant's interest it is necessary to consider the matter to which the application relates. It is wrong in law, as I understand the cases, for the court to attempt an assessment of the sufficiency of an applicant's interest without regard to the matter of his complaint. If he fails to show, when he applies for leave, a prima facie case, or reasonable grounds for believing that there has been a failure of public duty, the court would be in error if it granted leave. The curb represented by the need for an applicant to show, when he seeks leave to apply, that he has such a case is an essential protection against abuse of legal process. It enables the court to prevent abuse by busybodies, cranks, and other mischief-makers. I do not see any further purpose served by the requirement for leave.

But, that being said, the discretion belongs to the court: and, as my noble and learned friend, Lord Diplock, has already made clear, it is the function of the judges to determine the way in which it is to be exercised:

Accordingly I think that the Divisional Court was right to grant leave ex parte. Mr. Payne's affidavit of March 20, 1979, revealed a prima facie case of failure by the Inland Revenue to discharge its duty to act fairly between taxpayer and taxpayer. But by the time the application reached the Divisional Court for a hearing, inter partes, of the preliminary issue, two very full affidavits had been filed by the revenue explaining the " management " reasons for the decision not to seek to collect the unpaid tax from the Fleet Street casuals. At this stage the matters of fact and degree upon which depends the exercise of the discretion whether to allow the application to proceed or not became clear. It was now possible to form a view as to the existence or otherwise of a case meriting examination by the court. And it was abundantly plain upon the evidence that the applicant could show no such case. But the Court of Appeal, misled into thinking that, at that stage and notwithstanding the evidence available, locus standi was to be dealt with as a preliminary issue, assumed illegality (where in my judgment none was shown) and, upon that assumption, held that the applicant had sufficient interest. Were the assumption justified, which on the evidence it was not, I would agree with the reasoning of Lord Denning M.R. and Ackner L.J. I think the majority of the Court of Appeal, in formulating a test of genuine grievance reasonably asserted, were doing no more than giving effect to the general principle which Lord Mansfield C.J. had stated in the early days on the remedy. Any more stringent test would, as *Wade, Administrative Law*, 4th ed., p. 612 observes, open up " a serious gap in the system of public law."

Lastly, I wish to comment shortly upon the duty of confidence owed by the revenue to every taxpayer and the right to discovery. The duty of confidence can co-exist with the duty of fairness owed to the general body of taxpayers. It is, however, of great importance when discovery is sought by an applicant, as happened in this case. Upon general principles, discovery should not be ordered unless and until the court is satisfied that the evidence reveals reasonable grounds for believing that there has been a breach of public duty: and it should be limited strictly to documents relevant to the issue which emerges from the affidavits. The revenue in any event will have the right in respect of certain classes of document to plead " public interest immunity," of which in a proper case the court will be the arbiter: *Burmah Oil Co. Ltd.* v. *Governor and Company of the Bank of England* [1980] A.C. 1090. In the present case, had the federation shown a sufficient interest, I doubt whether any legitimate objection could have been taken to discovery of documents relevant to the making of the special arrangement. Such documents would be unlikely to contain any information about the affairs of any Fleet Street casual who had succeeded by various devices in avoiding his identity being discovered by the searches of the revenue. But, be that as it may, discovery can safely be left to the discretion of the court guided by the law as I believe it to be.

The federation, having failed to show any grounds for believing that the revenue has failed to do its statutory duty, have not, in my view, shown an interest sufficient in law to justify any further proceedings by

the court on its application. Had they shown reasonable grounds for believing that the failure to collect tax from the Fleet Street casuals was an abuse of the revenue's managerial discretion or that there was a case to that effect which merited investigation and examination by the court, I would have agreed with the Court of Appeal that they had shown a sufficient interest for the grant of leave to proceed further with their application. I would, therefore, allow the appeal.

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

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

When the ex parte application was heard, the only evidence before the Divisional Court was an affidavit from Mr. Payne, a vice-president of the respondents. But on the hearing inter partes the Divisional Court also had long affidavits from Sir William Pile, then chairman of the appellants, and Mr. Hoadley, a principal inspector of taxes. Mr. Hoadley had been personally responsible for the negotiations which led to the so-called "amnesty" of which the respondents sought to complain. After these affidavits had been sworn and before that hearing inter partes the respondents had taken out a summons for discovery against the appellants. By agreement, this summons was treated as a summons for the discovery of specific documents. On November 5, 1979, Master Sir Jack Jacob Q.C. dismissed that summons for the reasons given in a judgment of which your Lordships have a note. An appeal to the Divisional Court from that dismissal was adjourned by agreement pending the final determination of these proceedings.

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

My Lords, your Lordships' House has often protested about the taking of short-cuts in legal proceedings, most recently in *Allen* v. *Gulf Oil Refining Ltd.* [1981] 2 W.L.R. 188. The number of cases in which it is legitimate to take such short-cuts is small and in my opinion the present was not such a case. Indeed, many of the difficulties which were canvassed at length in arguments before your Lordships' House would have been avoided had this particular short-cut not been taken. With profound respect to the Divisional Court, this course was especially inappropriate where the grant or refusal of the remedy sought by way of judicial review is, in the ultimate analysis, discretionary, and the exercise of that discretion and the determination of the sufficiency or otherwise of the applicants' interest will depend, not upon one single factor—it is not simply a point of law to be determined in the abstract or upon assumed facts—but upon the due appraisal of many different factors revealed by the evidence produced by the parties, few if any of which will be able to be wholly isolated from the others.

My Lords, much time was spent in the courts below and in argument before your Lordships' House with citation of well-known cases, some of now respectable antiquity in which prerogative orders or formerly prerogative writs have been allowed to issue or have been refused. With all respect to the authority of the judges by whom those cases were decided, such decisions are today of little assistance for two reasons. First, in the last 30 years—no doubt because of the growth of central and local government intervention in the affairs of the ordinary citizen since the Second World War, and the consequent increase in the number of administrative bodies charged by Parliament with the performance of public duties—the use of prerogative orders to check usurpation of power by such bodies to the disadvantage of the ordinary citizen, or to insist upon due performance by such bodies of their statutory duties and to maintain due adherence to the laws enacted by Parliament, has greatly increased. The former and stricter rules determining when such orders, or formerly the prerogative writs, might or might not issue, have been greatly relaxed. It is unnecessary in the present appeal to trace through a whole series of decisions which demonstrates that change in legal policy. The change is well known as are the decisions.

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

A "1.—(1) An application for—(*a*) an order of mandamus, prohibition or certiorari . . . shall be made by way of an application for judicial review in accordance with the provisions of this Order. (2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1) (*b*)) may be made by way of an application for judicial review, and on such an application the court may grant the declaration or injunction claimed if it considers that, B having regard to—(*a*) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari, (*b*) the nature of the persons and bodies against whom relief may be granted by way of such an order, and (*c*) all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial C review. 2. On an application for judicial review any relief mentioned in rule 1 (1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter. 3.—(1) No application for judicial review shall be made unless the leave of the court has been obtained in accordance with this rule. (2) An application for leave must be made ex parte to a Divisional Court of the Queen's Bench D Division, except . . . (5) The court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates."

My Lords, I would make these comments upon Order 53 at this juncture. First, the changes thereby effected though seemingly changes in procedure and thus made as part of the Rules of the Supreme Court, E were and were intended to be far-reaching. They were designed to stop the technical procedural arguments which had too often arisen and thus marred the true administration of justice, whether a particular applicant had pursued his claim for relief correctly, whether he should have sought mandamus rather than certiorari, or certiorari rather than mandamus, whether an injunction or prohibition, or prohibition rather than an F injunction or whether relief by way of declaration should have been sought rather than relief by way of prerogative order. All these, and the like technical niceties, were to be things of the past. All relevant relief could be claimed under the general head of "judicial review," and the form of judicial review sought or granted (if at all) was to be entirely flexible according to the needs of the particular case. The claims for relief could be cumulative or alternative under rule 2 as might be most G appropriate.

Secondly, relief by way of declaration, or injunction, was made a form of judicial review to be granted in an appropriate case having regard to the factors mentioned in rule 1 (2). Thirdly, Order 53 took effect on January 11, 1978, some six months after the decision of your Lordships' House in *Gouriet* v. *Union of Post Office Workers* [1978] A.C. 435, on H July 26, 1977, an authority much relied upon by the learned Lord Advocate on behalf of the appellants in support of his submissions regarding the circumstances in which declarations might be granted. But *Gouriet's* case was a relator action and was not concerned with

prerogative orders or judicial review, and the relevant observations of your Lordships must be read in the light of that fact and of the subsequent enactment of Order 53.

My Lords, I venture to draw attention to the passage in the speech of my noble and learned friend, Lord Wilberforce [1978] A.C. 435, 482–483, where he stated that the courts had granted individuals more liberal access in the case of application for prerogative writs and orders, and had adopted a more generous concept of locus standi in those cases, for the individual was then seeking to enforce a public right, and to invite the court to control by use of the prerogative power alleged abuse of authority or jurisdiction.

Fourthly, as already stated, the discretionary nature of the remedy of judicial review is emphasised by the fact that rule 3 (1) denies the individual the right to apply for judicial review unless leave so to apply has first been obtained ex parte. Fifthly, the court is enjoined by rule 3 (5) not to grant leave unless the applicant has a " sufficient interest " in the matter to which the application relates, plain words of limitation upon an applicant's right to relief.

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

My Lords, the all important phrase in rule 3 (5) is " sufficient interest." Learned counsel were agreed that this phrase had not been used in any previous relevant enactment. My Lords, careful review of the earlier authorities in which learned counsel for both parties engaged, reveals that many different phrases have been used in different cases to describe the required standing of a particular applicant for what is now described as judicial review before the courts would entertain his application. He might be " a party " to the relevant proceedings. He might be " a person aggrieved." He might be " a person with a particular grievance." He might be a " stranger." All those, and some other phrases, will be found in the cases. None is exhaustive or indeed definitive and indeed in this field it would be, I think, impossible to find a phrase which was exhaustive or definitive of the class of person entitled to apply for judicial review. No doubt it was for this reason that the Rules Committee of the Supreme Court in 1977 selected the phrase " sufficient interest " as one which could sufficiently embrace all classes of those who might apply, and yet permit sufficient flexibility in any particular case to determine whether or not " sufficient interest " was in fact shown. So far as the researches of counsel went, the origin of this phrase appears to lie in an interlocutory observation made by the court in *Reg.* v. *Cotham* [1898] 1 Q.B. 802 at 804, and in its use by Avory J. in his judgment in *Ex parte Stott* [1916] 1 K.B. 7, 9.

Your Lordships' attention was drawn to note 14/21 to Order 53 of *The Supreme Court Practice* (1979), which your Lordships were told bore

A the authority of Master Sir Jack Jacob, Q.C. The learned editor stated that that which was a "sufficient interest"

> ". . . appears to be a mixed question of fact and law; a question of fact and degree and the relationship between the applicant and the matter to which the application relates, having regard to all the circumstances of the case."

B With this admirably concise statement, I respectfully agree.

The learned Lord Advocate founded his main submission upon section 1 of the Inland Revenue Regulation Act 1890 which still remains upon the statute book and sections 1 and 6 of and Schedule 1 to the Taxes Management Act 1970. Those statutory provisions, he claimed, defined the relevant duties of the appellants. They established not only the C appellants' duties, but also their strict obligation of confidentiality as between the appellants and each individual taxpayer, subject only to the exceptions for which the statutes made express provision. The subject matter of the present application was the alleged liability of others to pay income tax and averred a duty upon the appellants to assess and collect tax upon the Fleet Street casual workers identified as a class but not individually. But, the learned Lord Advocate submitted, the duties of D the appellants, as circumscribed by these statutes, precluded the possibility of any other individual taxpayer, or the respondents as a representative group of other taxpayers, from having any "sufficient interest" in the performance by the appellants of their statutory duties, vis-à-vis the Fleet Street casual workers, so that there was no jurisdiction to grant the respondents the relief which they sought. The learned Lord Advocate E sought to distinguish the rating cases, such as *Arsenal Football Club Ltd.* v. *Ende* [1979] A.C. 1, on the ground that in rating law there was a statutory duty to publish a valuation list containing specific valuations and correct any valuations in that list which might be shown to be wrong. Thus there was, under the rating legislation, a community of interest between ratepayers which did not exist as between taxpayers. Reliance was also placed upon the fact that Mr. Ende's attempt to prove his locus F standi as a taxpayer as well as a ratepayer failed on the ground that the former interest was too remote. Nowhere in the two statutes to which your Lordships were referred was there any express provision which recognised any interest by one taxpayer in the affairs of another taxpayer, or in the assessment and collection of tax on and from such other taxpayer. Unless there was a relevant duty cast by statute on the G appellants in which the respondents could show a "sufficient interest," there could be no jurisdiction to make an order for judicial review, there being no relevant relationship on the part of the respondents to the subject matter of their application.

My Lords, at an early stage of his submissions, the learned Lord Advocate accepted that the question raised in the instant appeal involved H the performance by the appellants of a public duty. In my opinion that concession (if concession be the right word) was clearly properly made. But once it is made, I find it difficult to see how it can be said that there is no jurisdiction of the court to allow relief against the appellants by way

of a judicial review. The appellants are, and must as a public body charged with the performance of a public duty of crucial importance be, amenable to the general law and liable to possible correction if their statutory powers are exceeded, or their statutory duties are not lawfully discharged. But to say that, and to accept that there is jurisdiction to grant relief against the appellants in a proper case, is a very different matter from saying that in the instant case relief should be granted to the respondents as being possessed of that " sufficient interest " which is a condition precedent to their obtaining the relief which they seek.

Mr. Harvey, for the respondents, contended that not only was there jurisdiction to grant the relief sought but that his clients had a " sufficient interest " to be granted that relief because once it was accepted that the appellants were a statutory body charged with the performance of a public duty, any member of the public had a right to come to the court and complain that that duty had not been performed in some relevant respect, and that this right of that member of the public did not depend upon the precise nature of the obligation cast by the statute upon the appellants. More narrowly, Mr. Harvey argued that an individual taxpayer had as much interest in the performance by the appellants of their statutory duty as the ratepayer in the *Arsenal* case [1979] A.C. 1, and was not too remote from the appellants in seeking to insist upon performance of their duty in accordance with the law, a submission which found favour in the Court of Appeal with Ackner L.J. Ultimately Mr. Harvey did not go so far as to assert that the appellants' statutory duty required them in every case to exact every penny which might be lawfully exigible from each individual taxpayer, but he asserted that there was already some evidence in the present case, and that after discovery against the appellants there might well be further evidence, that in granting the so-called " amnesty " and in agreeing to forego collection of past arrears of tax from the Fleet Street casual workers, the appellants had been moved by impermissible influences such as fears of industrial action in Fleet Street, and thus had failed to perform the statutory duties with which they were charged in accordance with the law. Hence, he argued that the relief sought should be granted. These casual workers, it was said, had defrauded the general body of taxpayers, and it was the right of the respondents as the representatives of a substantial body of taxpayers who like others were adversely affected by these frauds by the casual workers not only escaping the normal consequences of such fraud but positively gaining as a result of the " amnesty," to complain and to seek strict enforcement of the appellants' statutory duty to assess and collect the tax due from these casual workers.

My Lords, Lord Denning M.R. was willing to accept the wider of these propositions founded upon what he had previously said in *Attorney-General ex rel. McWhirter* v. *Independent Broadcasting Authority* [1973] Q.B. 629, 646, and again in a revised form in *Blackburn's* case [1976] 1 W.L.R. 550, 559. He accepted that my noble and learned friend, Lord Wilberforce, had expressly disapproved the former passage in his speech in *Gouriet's* case [1978] A.C. 435, 483 but

A claimed that that disapproval was limited to relator actions such as *Gouriet's* case was. My Lords, with profound respect, I cannot agree. Though my noble and learned friend's disapproval was, of course, made in the context of a relator action, the view of the learned Lord Denning M.R., if applied to all applications for judicial review, would extend the individual's right of application for that relief far beyond any acceptable limit, and would give a meaning so wide to a "sufficient interest" in B R.S.C., Ord. 53, r. 3 (5) that they would in practice cease to be, as they were clearly intended to be, words of limitation upon that right of application.

More powerful support for Mr. Harvey's narrower submission is to be found in the judgment of Ackner L.J. The learned Lord Justice found it impossible to distinguish between the position of a ratepayer who was C entitled to the relief sought as, for example, in the *Arsenal* case [1979] A.C. 1, and a taxpayer who, it was said, was not entitled to the like relief. The test, according to the learned Lord Justice, was whether the assertion of the grievance could be justified on reasonable grounds.

Both the learned Lord Denning M.R. and Ackner L.J. proceeded on the basis that it should be assumed (Lord Denning went so far as to say that it was a matter of concession) that the appellants had acted D unlawfully because they had no dispensing power. My Lords, there was certainly some confusion in the Court of Appeal as to what was conceded or what was to be assumed, a confusion not resolved before your Lordships' House. But whatever may have been assumed or conceded, or thought to have been assumed or conceded in the Court of Appeal, the learned Lord Advocate was not prepared to invite the making of any E assumption or to make any concession before your Lordships' House, and I think he was right to adopt this attitude. For my part, I decline in a matter of this kind to make any assumption of any kind, let alone an assumption of illegality on the part of the appellants. This appeal must be determined on the totality of the evidence as it was before the Divisional Court and the Court of Appeal. No question of any dispensing power is involved. The appellants were in no way arrogating to F themselves a right not to comply with their statutory obligations under the statutes to which I have referred. On the contrary, their whole case was that they had made a sensible arrangement in the overall performance of their statutory duties in connection with taxes management, an arrangement made in the best interests of everyone directly involved and, indeed, of persons indirectly involved, such as other taxpayers, for the G agreement reached would be likely to lead ultimately to a greater collection of revenue than if the agreement had not been reached or "amnesty" granted.

My Lords, with profound respect to both courts below I do not think that either approached this application for judicial review on a correct basis in point of law. In my opinion the Divisional Court was H wrong for the reasons I have given for refusing relief for they dealt with the relevant issue as a matter of jurisdiction and not as one of overall discretion. I also think that the majority of the Court of Appeal was wrong in granting the relief claimed either on the wider

ground the learned Lord Denning M.R. preferred or on the narrower ground which appealed to Ackner L.J.

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

The next matter is to consider the complaint made and the relief sought. It is clear that the respondents are seeking to intervene in the affairs of individual taxpayers, the Fleet Street casual workers, and to require the appellants to assess and collect tax from them which the appellants have clearly agreed not to do. Theoretically, but one trusts only theoretically, it is possible to envisage a case when because of some grossly improper pressure or motive the appellants have failed to perform their statutory duty as respects a particular taxpayer or class of taxpayer. In such a case, which emphatically is not the present, judicial review might be available to other taxpayers. But it would require to be a most extreme case for I am clearly of the view, having regard to

the nature of the appellants' statutory duty and the degree of confidentiality enjoined by statute which attaches to their performance, that in general it is not open to individual taxpayers or to a group of taxpayers to seek to interfere between the appellants and other taxpayers, whether those other taxpayers are honest or dishonest men, and that the court should, by refusing relief by way of judicial review, firmly discourage such attempted interference by other taxpayers. It follows that, in my view, taking all those matters into account, it cannot be said that the respondents had a "sufficient interest" to justify their seeking the relief claimed by way of judicial review.

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

I ought, however, to deal with the further question whether even if (contrary to my opinion) the respondents could show a "sufficient interest" there is anything in the evidence as a whole allowing the respondents to interfere by way of obtaining an order of judicial review. I have already considered the scope of the appellants' duties and the nature of the complaint which they make. It is at this point that the answer to this complaint becomes relevant and ought to have been, but was not, considered by the Divisional Court. To my mind it is clear beyond argument when one reads the affidavits of Sir William Pile and Mr. Hoadley that what was done was a matter of taxes management, and I can see no shadow of dereliction of duty by the appellants, or any suggestion of improper or unlawful conduct on their part. On the contrary, what they did seems to me to have been a matter of administrative common sense. Instead of wasting public time and money in seeking to collect taxes from persons whose names were unknown and whose ability to pay was therefore equally unknown, they made an arrangement which enabled taxes not hitherto able to be collected or in fact collected, collectable in the future at a cost to the general body of

taxpayers of foregoing the collection of that which in reality could never have been collected.

In my view the Divisional Court ought in the exercise of its discretion to have dismissed this application, not for want of jurisdiction to grant it, but because, on the evidence as a whole, first no "sufficient interest" was shown and, secondly, because in any event the application could not possibly succeed. Since that court did not exercise its discretion, and since the majority of the Court of Appeal was, in my view, wrong in law in making the declaration which was there granted and therefore did not exercise the discretion vested in that court, I think it open to your Lordships' House to exercise the discretion which ought to have been exercised in the first instance by the Divisional Court. On that basis I would dismiss the application for judicial review thus reaching the same result as did Lawton L.J. in his dissenting judgment in the Court of Appeal.

I would only add that Mr. Harvey urged that something advantageous to his clients might emerge upon discovery. He submitted that your Lordships ought not to dispose of this appeal on the basis of the affidavit evidence alone. My Lords, the respondents started these proceedings on the basis of an affidavit which was fully answered by the two affidavits to which I have just referred. With all respects to Mr. Harvey's argument I can see no reason to allow the respondents what I am afraid I must necessarily regard as a fishing expedition in the hope of obtaining on discovery something which might counter that which appears so clearly from the affidavits filed on behalf of the appellants.

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

Appeal allowed with costs in House of Lords and in Court of Appeal.

Solicitors: *Solicitors of Inland Revenue; Beachcroft Hyman Isaacs.*

J. A. G.