[COURT OF APPEAL] A

SINFIELD AND OTHERS *v.* LONDON TRANSPORT EXECUTIVE

1970 March 16, 17; 24 Russell, Sachs and Cross L.JJ.

Metropolis—Passenger transport—Bus services—Withdrawal and variation of services—Consent of traffic commissioner obtained —London Passenger Transport Board replaced by London Transport Executive—Consultation with local councils required for variation of routes—Whether executive obliged to consult —Whether entitlement to make variation "rights" vesting in executive—Transport (London) Act, 1969 (*c.* 35), *ss.* 16 (1), 23 (3).[1] B

Following the opening of the Victoria Line in March, 1969, the London Passenger Transport Board ("L.P.T.B.") in October, 1969, decided to make some changes in certain bus services the routes of which passed through the Camden London Borough Council area. It was proposed to withdraw certain services and to vary others, and that those changes should become effective on January 24, 1970. The L.P.T.B. obtained the consent of the Metropolitan Traffic Commissioner, as they were then required by law to do, on December 24, 1969. On January 1, 1970, the Transport (London) Act, 1969, came into force, which brought into being the London Transport Executive ("L.T.E.") in place of the L.P.T.B. It provided by section 23 (3) that where it was proposed to vary a London bus service which has been continuously operated since before January 1, 1970, the L.T.E. should in certain circumstances consult with, inter alios, any borough council within whose area the route was situated. The L.T.E. did not consult with the Camden London Borough Council, but adhered to the board's original intention to make the alterations. The first four plaintiffs, all of whom were individuals resident in the borough affected by the changes, moved for an interlocutory order to reinstate the original services. The fifth plaintiff, the Camden London Borough Council, was subsequently joined as it was questioned whether the first four plaintiffs had any locus standi. Plowman J. refused to make the order. The first four plaintiffs discontinued and the fifth plaintiff appealed. On an agreement that the appeal be treated as trial of the action, the L.T.E. contended, inter alia, that they were entitled to make the altera- C D E F

[1] Transport (London) Act, 1969, s. 16: "(1) Subject to the provisions of this Act, on the appointed day for the purpose of this section (in this Act referred to as 'the vesting date') all property, rights and liabilities of the London Board shall be transferred to, and by virtue of this Act vest in, the executive." G

S. 23: "(3) Where it is proposed—(*a*) to provide a bus service which is to be operated wholly or in part as a London bus service and which has not been provided continuously since immediately before the vesting date, . . .; or (*b*) to vary a bus service which is being, and has at all times since before the vesting date been, operated as aforesaid, then, before deciding on, . . . or on any variation affecting, the route of that service or a terminal point, at which passengers may or may not be taken up or set down, or place at which, or street by the use of which, vehicles used for that service may turn at a terminal point, the executive shall, so far as the service is or is to be provided in Greater London, consult with the council, with the commissioner or commissioners of police concerned, with any of the councils of the London boroughs or the Common Council within whose area that route, point, place or street is situated, and with any other person whom it appears proper to the executive for them to consult." H

tions without consultation as they were merely implementing a decision of their predecessors which the L.P.T.B. had a right to make, and that that right passed to them under section 16 (1) of the Act: —

Held, dismissing the appeal and the action, that the L.P.T.B. having received the approval of the Metropolitan Transport Commissioner on December 24, 1969, were entitled to make the alterations; that that entitlement was a "right" within the meaning of section 16 (1) of the Act which vested on January 1, 1970, in the L.T.E.

Per curiam. Objection to withdrawal or variation of a bus service based on the convenience of the travelling public does not come within the scope of section 23 (3) and is not a matter for consultation under that section (post, pp. 557E, 559G–H, 560A).

The following case is referred to in the judgment of Russell L.J.:

Smith v. *London Transport Executive* [1951] A.C. 555; [1951] 1 All E.R. 667, H.L.(E.).

The following additional cases were cited in argument:

Bradbury v. *Enfield London Borough Council* [1967] 1 W.L.R. 1311; [1967] 3 All E.R. 434, C.A.

Grant v. *National Coal Board* [1956] A.C. 649; [1956] 2 W.L.R. 752; [1956] 1 All E.R. 682, H.L.(Sc.).

INTERLOCUTORY APPEAL from Plowman J. treated as trial of action.

In March, 1969, the underground railway Victoria Line was opened. Consequent upon that, the London Passenger Transport Board ("L.P.T.B."), who were responsible for the operation of the public transport services in London, on October 29, 1969, decided to effect changes in respect of five bus services the routes of which passed through the Camden London Borough Council area. It was proposed to withdraw services Nos. 163 and 239, and to vary services Nos. 63, 134 and 214, and that those changes, subject to the consent of the Metropolitan Traffic Commissioner, should become effective on January 24, 1970. Application was made to the Metropolitan Traffic Commissioner on November 14, 1969, and that consent was granted on December 24, 1969. On January 1, 1970, the Transport (London) Act, 1969, came into force and from that date the board ceased to exist and the London Transport Executive ("L.T.E.") came into being. Section 23 (3) of the Act provided that where it was proposed to vary a bus service which was in being and had been continuously operated since before January 1, 1970, the L.T.E. should, in certain circumstances, consult with, inter alios, any of the councils of the London boroughs within whose area the route was situated. The L.T.E. did not consult with the Camden London Borough Council. Mrs. Sinfield, Mr. Robinson, Mr. Cook and Mrs. Campbell Beck, the first four plaintiffs, all of whom were resident in the Borough of Camden and were bus users affected by the variations proposed, moved for an interlocutory order to reinstate the original services. The Camden Borough Council, the fifth plaintiff, was subsequently joined as a co-plaintiff as it was questioned whether the first four plaintiffs had any locus standi. The plaintiffs contended that the L.T.E. were required by section 23 (3) of the Transport (London) Act,

1969, to consult with the council before taking such action and had acted illegally. Plowman J. held that it was not a proper case for a mandatory interlocutory injunction and refused to make the order. The first four plaintiffs discontinued and the fifth plaintiff appealed. It was agreed to treat the hearing of the appeal as the trial of the action.

Further relevant facts are stated in the judgment of Russell L.J.

Andrew Rankin Q.C. and *Gerald Levy* for the appellant council. The L.T.E. came into existence on January 1, 1970, by virtue of the Transport (London) Act, 1969. On January 24, 1970, they made alterations in respect of five bus services, the routes of which passed through the Camden London Borough Council area. Two services were withdrawn and three were varied. Section 23 (3) of the Transport (London) Act, 1969, required that they consult with the council before effecting the alterations and they did not do so. The L.T.E. should be restrained from varying these bus services as they have acted illegally in making the alterations without prior consultation and they should be required to reinstate the services until such time as they shall have consulted with the council in compliance with section 23 (3) of the Act. It must be deemed that the L.T.E. took a decision to make the changes because they put the changes into effect: see *Bradbury* v. *Enfield London Borough Council* [1967] 1 W.L.R. 1311. The judge took the view that the complete withdrawal of a service may be made without consultation but that consultation was necessary in the case of proposed variations to a service, but held that it was not a proper case for a mandatory injunction. Withdrawal is only an extreme form of variation. It was argued that section 23 (3) concerned only road safety considerations but the section should be given a much wider interpretation.

H. E. Francis Q.C. and *D. A. Thomas* for the L.T.E. The language of section 23 (3) of the Act does not apply to the facts of the present case. That section envisages a proposal made after the vesting date, but in the present case the proposals made by the L.P.T.B. were made before the vesting date. The L.T.E. merely stepped into the shoes of the L.P.T.B. to implement the proposals.

Secondly, the L.P.T.B. having received the approval of the metropolitan traffic commissioner on December 24, 1969, were entitled to make the alterations. On January 1, 1970, the L.T.E. replaced the L.P.T.B. and by section 16 (1) of the Transport (London) Act, 1969, that entitlement became vested in the L.T.E.: see *Smith* v. *London Transport Executive* [1951] A.C. 555.

Thirdly, the appellant's complaint concerns the level or quality of service and this is not a matter for consultation under section 23 (3), which concerns only traffic considerations. Section 23 (3) does not refer to complete withdrawal of a service but deals only with variations affecting the route, or a terminal point at which passengers may be taken up or set down, or place at which vehicles may turn at a terminal point. The indication is that the section is concerned only with traffic considerations but not concerned with withdrawal of a service which does not affect traffic. The appellant council cannot avail itself of any breach of statutory duty for a collateral purpose: see *Grant* v. *National Coal Board* [1956]

A.C. 649. Inconvenience caused to users is outside the scope of section 23 (3) and not a matter for consultation under that section.

Fourthly, even if it be held that the L.T.E. was in breach of duty in regard to the three varied routes, the judge was right and a mandatory injunction ought not to be granted, because (a) the metropolitan traffic commissioner by consenting to the variations considered that there was no objection to them on the ground of traffic considerations; (b) the appellant council made no complaint against the alterations on the basis of traffic considerations; (c) the council are only entitled to be consulted on traffic considerations; (d) the final decision rests with the L.T.E. in any event; (e) no useful purpose would be served by granting the injunctions; and (f) it would not be practicable for the L.T.E. to restore the services before at least six weeks.

Andrew Rankin Q.C. in reply. If the court finds that there should have been consultation and there was not, then the court should mark its disapproval of the lawbreaker by granting the injunctions. The Transport (London) Act, 1969, received the Royal Assent on July 25, 1969, and the L.P.T.B. therefore knew at the time they took their decision to make the alterations that section 23 (3) would become operative before their decision could be carried into effect. There was no duty on the L.T.E. who were the successors to the L.P.T.B. to implement the decision of the L.P.T.B. The right inherited by the L.T.E. was incomplete and therefore section 16 (1) is not applicable. The right of the L.T.E. to effect the alterations was subject to consultation with the council. The respondent's argument that any consultation required by section 23 (3) must be confined to traffic considerations only is too narrow a construction of that section. The object of the section is to give the council, and others, an opportunity to make representations on any relevant matters affecting their interests before changes are brought into operation.

Cur. adv. vult.

March 24, 1970. The following judgments were read.

RUSSELL L.J. On January 24, 1970, the London Transport Executive withdrew bus services nos. 163 and 239, and varied in relevant respects services nos. 63, 134 and 214. Before doing so, the executive had not had any consultation with the Camden London Borough Council through whose borough these routes passed. The council, having joined as a co-plaintiff with the individual original plaintiffs (who have now discontinued), moved for an interlocutory order on the executive to reinstate the withdrawn services and reintroduce the varied services without variations, asserting that the executive were required by statute (the Transport (London) Act, 1969) to consult with, inter alios, the council before taking such action, and had acted illegally. Plowman J. held that in any event it was not a proper case for a mandatory interlocutory injunction, and expressed tentative obiter views on matters of construction. The council appeals, and both the council and the executive invite us to treat the hearing of the appeal as the trial of the action, and this we are prepared to do.

Prior to January 1, 1970, a body called the London Passenger Transport Board was the body empowered by statute (I speak in general terms) to run the ordinary London omnibuses. It was not required for this

purpose to have any road service licence; but in order to operate a service over any route it was necessary to obtain the approval of the Metropolitan Traffic Commissioner. I refer to parts of section 141 of the Road Traffic Act, 1960. Under subsection (1), after saying that within the London special area a road service licence was not required by the British Transport Commission or an executive, which meant in that case the London Passenger Transport Board, within the London special area, it went on to provide:

> " but it shall not be lawful for the commission or an executive to use a vehicle as a stage carriage or express carriage on a road within the London special area except on a route approved by the traffic commissioner for the Metropolitan Traffic Area (in this section referred to as the ' metropolitan commissioner ') ";

and subsection (2), so far as now material, provided:

> " The metropolitan commissioner, in approving a route, may define it by reference to the streets or parts of streets which may be traversed and to the terminal points, if such points are within the London special area, and may attach to his approval conditions for securing that—(*a*) no vehicles, except vehicles of such class or description, or vehicles used for such purposes, as may be specified in the condition, shall be used on that route; (*b*) passengers shall not be taken up or shall not be set down except at or between specified points, or shall not be taken up or shall not be set down between specified points; and (*c*) vehicles on reaching the end of the approved route shall turn at such places, or by using such streets or parts of streets, as may be specified."

Subsection (3) required that

> " The metropolitan commissioner before approving a route, or a part of a route, which lies within the metropolitan police district, or within the City of London, shall consult with the commissioner of police."

The London Passenger Transport Board, as a consequence of the impact of the new Victoria Underground Line on the pattern of public transport passenger travel, decided in 1969 that it would adopt the alterations to the bus services of which complaint is now made, subject, of course, to the approval of the changed routes by the traffic commissioner. Such alterations involve a great deal of preliminary study, planning and arrangements, including extensive changes in duty rosters, reorganisation at various garages, and discussions with trade unions. Time is also required after approval by the traffic commissioner to give adequate advance notice to the travelling public.

In November, 1969, application for route approval was made by the board to the traffic commissioner. On December 24, 1969, the necessary approval was given without condition. At that moment the board became entitled in law without any fetter to make the alterations to the bus services proposed: only the practical need to give adequate warning to the public stood in the way, a factor which no doubt loomed large in the board's original intention to make the alterations on January 24, 1970, a date that was adhered to by the executive.

By the Act of 1969, the London Transport Executive was brought into being, and upon it was conferred with effect from the vesting day (January 1, 1970) the general power and duty to run the London bus services. I speak in general terms but for present purposes with, I hope, sufficient accuracy. The board ceased to exist. Section 141 of the Act of 1960 requiring route approval no longer operated. Section 23 (3) of the Act of 1969, however, required in certain circumstances consultations. It enacts that where it is proposed to provide a bus service in London which has not been provided continuously since immediately before January 1, 1970, then before deciding on the route of that service, or a terminal point, or a pick-up or set-down point, or a point at which or a street by the use of which buses may turn round at a terminal point, the executive shall consult with certain bodies or persons. They are (a) the Greater London Council (so far as the service is to be provided in Greater London), (b) the commissioner or commissioners of police concerned, (c) any borough council within whose area the route, point, place or street is situated. The section imposes in similar terms an obligation to consult where it is proposed to vary a London bus service which is being operated and has continuously since before January 1, 1970, been operated. (We were not shown any provision for consultation on a proposal to vary a bus service newly provided since January 1, 1970, but the case does not touch that point).

The contention of the Camden Borough Council is that this section imposed upon the executive an obligation to consult with the council before deciding upon and, therefore, before introducing the alterations to the bus services already mentioned, and, as is accepted, there was no consultation and the proposed variations relevantly affect the Camden area and the proposed withdrawals are of services passing through that area.

In my judgment, there is a short answer to the council's contention; and it is to be found in section 16 (1) of the Act of 1969, which is in the following terms:

> " Subject to the provisions of this Act, on the appointed day for the purposes of this section (in this Act referred to as ' the vesting date ') all property, rights and liabilities of the London Board shall be transferred to, and by virtue of this Act vest in, the executive."

I have already referred to the fact that the board became on December 24, 1969, entitled by statute to make the alteration to the bus services now complained of. It seems to me that the board had the right to do this, and I see no reason to construe " rights " in the subsection in some restricted sense which excludes this particular right, or to hold that the transferred right in the hands of the executive is subjected by section 23 (3) to the requirements of consultation. Any other view would, it seems to me, be contrary to the plain and ordinary meaning of the word " rights." Moreover, the view that section 23 (3), in a statute enacted in June, 1969, requires consultation before decision on matters decided upon and relevantly approved before January 1, 1970, would have had a most undesirable tendency to produce a " mark time " attitude in the board. The same result may be achievable by a more general consideration

of section 23 (3) alone. It speaks of decisions not being made without consultation, and it is argued that it cannot apply to decisions made before January 1, 1970, which have become (by approval) unqualified, in the context of a statute by which in effect the undertaking of the board is intended to be taken over as a going concern by the executive. I think there is legal merit in that argument, but need not rely upon it. My view of the scope of section 16 (1) is much fortified by the views expressed in *Smith* v. *London Transport Executive* [1951] A.C. 555, where the defendant was a different and earlier entity with the same name which replaced another different London Passenger Transport Board. It seems to me to follow a fortiori from the views expressed in that case that the ability of the board in this case to introduce the alterations to bus services now complained of would pass to the executive as one of the " rights " of the board under section 16 (1). Plowman J. expressed obiter a view of the applicability of section 16 (1) contrary to my view, but *Smith* v. *London Transport Executive* was not cited to him.

What I have said suffices to produce the result that this action should be dismissed. But we were invited to express a view, albeit obiter, on the scope of section 23 (3) for the guidance of the executive and of relevant councils. The point arose in this manner: The objection of the original plaintiffs and of the council to the alterations in the services was and is nothing to do with the proper regulation of vehicular traffic in the streets—referred to in argument as pure traffic considerations. The complaints are that they do not provide, or do diminish, a proper service to those members of the public who wish to travel by public transport. They are objections founded not on traffic considerations but on convenience to public transport passengers. The executive contended that such latter consideration was not within the scope of the section: that the only complaint of the council was related to that consideration: and that therefore the council had no standing to bring this action which, if merely grounded in ultra vires, required the intervention, at least by relation, of the Attorney-General.

In my opinion, the executive's contention is sound. It is first to be observed that the Act of 1969 contains machinery in section 14 through which complaints such as are now made may through a users' consultative body reach, in the form of recommendations, the Greater London Council, which may give directions to the executive. Provision was made in earlier legislation, we were told, for this kind of complaint to be ventilated, and it is to be contrasted with section 141 of the Act of 1960 which was concerned with pure traffic considerations. The coincidence between matters mentioned in section 141 of the Act of 1960 and in section 23 (3) of the Act of 1969 suggests that the latter is equally dealing with pure traffic considerations. I refer to the route, the points, the place and the street. It was argued that the introduction of consultation with borough councils—which are concerned with the general welfare of the inhabitants—must be because a wider field than pure traffic consideration is envisaged by section 23 (3). Why, it was asked, bring them in when the relevant police commissioner can take care of the traffic consideration? But then it might equally be said why bring the traffic commissioner into section 141 of the Act of 1960 on top of the police commissioner? Moreover, the borough councils are much concerned in pure traffic considerations. They are highway

authorities: they control parking and parking meters: they are concerned with traffic safety and traffic flow and in that connection with the route proposed and the positioning of bus stops. An argument for the wider construction of the subsection was based on the concluding provision that the executive may consult " with any other person whom it appears proper to the executive for them to consult ": but there may well be such persons to be properly consulted on pure traffic considerations; for example, the proprietors of a large store or other premises on the route with delivery problems.

But the point which I find conclusive in this matter is that in my opinion the subsection does not require consultation before *withdrawing* a bus service. Withdrawal of a bus service is the act most likely to give rise to complaints of inconvenience or expense to the travelling public—indeed, the principal outcry in the present case has been caused by the withdrawal of two services—and I find it inconceivable that, if Parliament had intended by the subsection complaints of a diminished or less convenient service to the travelling public to be the subject of consultations, withdrawal of a service would not have been brought in, and indeed in terms brought in. Equally it is to be observed that withdrawal of a service is the one act that cannot possibly give rise to traffic problems or involve in its proposal traffic considerations. It was argued that withdrawal was within the subsection as being a 100 per cent. variation; and reliance was placed on the words " any variation *affecting* the route." But the language of the subsection is plainly considering a bus service which, when varied, will continue as a bus service. The word " affecting " is attributable to the fact that reference to the route is followed by reference to the terminal points, etc., etc.

In my opinion, the impact of a proposed provision or variation or withdrawal of a bus service on the convenience of the public travelling thereby is not a matter for consultation under section 23 (3). Provision is made elsewhere for such matters. Section 5 (1) lays on the executive the general duty, in accordance with principles from time to time laid down or approved by the Greater London Council, with due regard to the efficiency, etc., to provide or secure the provision of such public passenger transport services as best meet the needs for the time being of Greater London: though section 5 (6) provides that that requirement does not impose any duty or liability enforceable by proceedings before any court. It is through the users' consultative body under section 14 that such grievances as may exist must be aired under the statute.

As I have said, these expressions of opinion on the scope of the proper subject-matter of consultation under section 23 (3) are obiter dicta, and ordinarily I would have hesitated to express any view for that reason. But, having been invited by the parties to do so, and this aspect of the case having been fully argued, and having come to a clear conclusion, I do so in the hope that the expression of opinion will serve a useful purpose. In the result, I would dismiss the action.

SACHS L.J. I agree that on December 24, 1969, the old board on receiving the approval of the Metropolitan Traffic Commissioner became fully entitled to make the relevant alterations in the bus service; that such

entitlement was a "right" within the meaning of section 16 (1) of the Act of 1969; and that this right vested on January 1, 1970, in the London Transport Executive. Any other interpretation of section 16 (1) would incidentally have led to a blight on the activities of the old board in that it would in many cases not have been practicable to go ahead in any normal way between July 25, 1969 (when the Act of 1969 received the Royal Assent) and January 1, 1970, with proposals for alterations in bus routes. On this short ground the executive are thus entitled to have the appeal dismissed—contrary to the obiter view expressed on this point at first instance.

I would only add that I reject the submission put forward by Mr. Francis that proposals of the old board which did not obtain approval under section 141 of the old Act by January 1, 1970, are not affected by section 23 (3) of the Act of 1969.

I now turn to the point on which we were asked by both counsel to express an obiter view. My considerable hesitation in so doing is increased by being conscious that the Greater London Council is not represented, nor is the City of Westminster, nor is any borough council affected other than the appellant. Having, however, been persuaded to join my brethren in conforming to the request I do so rather in the hope that, for reasons which will appear later, it may not have too settling an effect.

It is apposite first to mention that Mr. Francis emphasised not once but several times that whatever be the true construction of section 23 (3) and whatever order this court might make, it was in the end the executive and no one else who would make the decision. If that was intended to intimate that the executive merely looked on consultations as being an opportunity for those consulted to make ineffective representations, it would represent an approach that, to put it mildly, cannot be supported. Consultations can be of very real value in enabling points of view to be put forward which can be met by modifications of a scheme and sometimes even by its withdrawal. I start accordingly from the viewpoint that any right to be consulted is something that is indeed valuable and should be implemented by giving those who have the right an opportunity to be heard at the formative stage of proposals—before the mind of the executive becomes unduly fixed.

Such a right to be consulted is something which one would have expected to find in the provisions of the Act of 1969 so that the Greater London Council and the other councils would have an opportunity to make appropriate representations before changes in bus services were brought into operation. Moreover, it would seem essential to them that such consultation should be on a broad basis so as to enable them to deal with any important question that touched either their interests or those who lived in their area.

It follows that only with reluctance would one so interpret the provisions of section 23 (3) as to confine any consultation to what have been described as "traffic conditions," i.e., the flow of traffic, when these are in the main a matter for the Commissioner of Police. In that event, there is no provision whatsoever for consultation with anyone concerned with the interests of users whilst fresh proposals are at a formative stage. The voice of such users will in practice only be heard by virtue of secton 14

when the changes have come into operation—and everyone familiar with administrative process knows how much more difficult it is to get a decision reversed or modified once it has come into effect.

A no less important effect of the interpretation thus put forward on behalf of the executive is that the councils would literally have no right at all to be heard on matters which may concern their own vital interests. The provision of, or failure to provide, proper transport facilities may seriously affect a council in more than one way. For instance, a new route may render noisy a previously quiet residential district and reduce the rateable values there: lack of transport can affect the ability of a borough to attract trade or commerce: indeed, transport facilities or the lack of them can do much to change the character of a neighbourhood. It seems clearly right and in accordance with the normal policy of the legislature in such matters that councils should be able to make heard the various interests of themselves in their corporate capacities and of their ratepayers. Of the latter only those who fall within the ambit of section 14 can at best complain when it is too late to avoid the tendency of those in a big organisation to sit comfortably back on a fait accompli and point to the undesirability of another change—rehearsing (as was done in the present case) a catalogue of administrative difficulties.

There are, moreover, weighty arguments to be put forward in favour of the broader interpretation on the basis of the wording of section 23 itself. The words "any variation affecting, the route" are wide; some words (perhaps "the service") may well have been omitted in error from the curiously ungrammatical phraseology just before the comma that precedes "the route"; the words imposing a duty to consult are nowhere preceded or followed by some limiting phrase such as "in so far as traffic conditions are concerned"; there is the reference to "any other person" to which Russell L.J. has referred; and above all there is the first impression of width of consultation that the section must give to layman, legislator and lawyer alike.

It is thus with real reluctance that I feel impelled towards the narrower view of the relevant section, for which Russell L.J. has cited the reasons. Most cogent of the points that emerged was the concession of Mr. Rankin that reductions in the frequency of services do not come within section 23, coupled with the fact that withdrawals of services are not mentioned in it. (But for that coupling it would at least be arguable that a "variation" would include in the context of such a section a "withdrawal.") Moreover, there is the fact that the general effect of section 23 of the Act of 1969 is in essence so very much the same as that of section 141 of the older Act, which was solely concerned with traffic conditions.

Accordingly, if I had to express a final view on section 23 (3), despite having considerable difficulty in assuming that the legislature intended to give only such a limited right of consultation to the council, I would feel even greater difficulty in differing from the more confident view of my brethren on a matter of strict construction. In thus dealing obiter with this point, I have in mind that one of two effects may follow. The Greater London Council or one of the other councils may, if it is thought fit, seek the application of the leapfrog procedure so as to obtain a decision of the

House of Lords in some other proceeding. Alternatively, it may perhaps seem apposite for them to seek an amendment to the Act of 1969. A

I agree that the action must be dismissed.

CROSS L.J. I agree with the judgment of Russell L.J. and have nothing to add.

Appeal and action dismissed with costs.

B

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R. W. L-S.

C

In re REMNANT'S SETTLEMENT TRUSTS HOOPER AND ANOTHER *v.* WENHASTON AND OTHERS

[1970 R. No. 733]

1970 April 8 Pennycuick J.

D

Trusts—Variation—Act of 1958—*Will—Forfeiture if beneficiary practising Roman Catholicism on benefit arising—Proposal to delete forfeiture provisions and to provide for accelerated trusts for beneficiaries—Whether application under the Act proper—Variation of Trusts Act*, 1958 (6 & 7 *Eliz.* 2, *c.* 53), *s.* 1 (1).

By clause 10 of his will dated December 19, 1966, the testator provided that if at the time of the death of his E daughter, D, any child of hers should be

> "(a) over the age of 30 years and at that time practising Roman Catholicism such child shall forfeit all right to the whole or any share of the capital and income of" D's fund "(b) under the age of 30 years but over the age of 22 years and at that time or at any time thereafter before attaining the age 30 years be practising Roman Catholicism F such child shall thenceforth forfeit all right to the whole or any share of the capital and income of" D's fund "(c) under the age of 22 years and shall at any time after attaining the age of 22 years be practising Roman Catholicism such child shall thenceforth forfeit all right to the whole or any share of the capital and income of" D's fund.

Clause 11 contained similar forfeiture provisions in respect of G the fund of the testator's other daughter, M. By clause 12 the testator provided that a grandchild of his should be deemed to be practising Roman Catholicism

> "if he or she shall (a) be a member of the Roman Catholic faith of (b) have attended a Roman Catholic Church for worship at least once within the previous year or (c) be married to or living as man and wife with a member of the Roman Catholic faith." H

M's second husband was a Roman Catholic and she herself had become one. M's two elder daughters from her first marriage were baptised as Protestants but attended a Roman