Cases Referred to in Shirley Lewald's Article.

Anlaby v. Praetorius 1888
"And in National Enterprises Corporation v. Mukisa Foods Ltd; Civil Appeal No. 42 of 1997, citing the decision in Anlaby v Praetorius (1888) 20 QBD 764 at 769, Berko J.A. distinguished two instances in which an ex parte judgment may be set aside. In that case, the court held that there is a strong distinction between setting aside a judgment for irregularity, in which case the court has no discretion to refuse to set it aside, and setting it aside where the judgment, though regular, has been obtained through some slip or error on the part of the defendant, in which case the court has discretion to impose terms as a condition for granting the defendant relief...".
http://www.ulii.org/ug/judgment/commercial-court/2011/77

Fry v. Moore 1889
"It was held in Boyle v. Sacker (1889) 39 Ch. D. 249, C.A. and Fry v. Moore (1889) 23 Q.B.D. 395 C.A. that steps taken with knowledge of an irregularity, with a view to defending the case on the merits will waive irregularities in the institution or service of proceedings, since they could only usefully be taken on the basis that the proceedings were valid...".
http://www.malawilii.org/mw/judgment/high-court-general-division/2005/112

Re Pritchard (Deceased) 1963
"In Harkness v. Bell's Asbestos Ltd [1966] 3 All ER 843, Lord Denning MR pointed out that the new rule was introduced to overcome difficulties which arose as a result of the decision in Re Pritchard [1963] 1 All ER 873. In that case Upjohn LJ, with whom Danckwerts LJ expressly concurred, held that where proceedings which ought to have been served had never come to the notice of a defendant, those proceedings were a nullity. Eschewing any attempt to label a defect as an 'irregularity' or 'nullity',Russell LJ in White v. Weston [1968] 2 All ER 842 at 846 was of opinion that where a summons had not been served because it was posted to an address which was not the defendant's residence or business place, the defect was so fundamental as to warrant setting aside the judgment as a matter of right...".
http://www.lawcourts.gov.bb/Lawlibrary/events.asp?id=611

Craig v. Kanssen 1943
"The failure to give notice was not an irregularity which would only make the order of sequestration voidable so as to entitle Cameron to ask the Court to set it aside. It made the order a nullity: Craig v Kanssen is a case the decision in which depended upon an examination of "the distinction between proceedings or orders which are nullities and those in respect of which there has been nothing worse than an irregularity". It was held by the Court of Appeal that failure to serve process where service of process is required renders null and void (as distinct from irregular and voidable) an order made against the party who should have been served. Such an order, Lord Greene MR said, cannot "be treated as a mere irregularity and not as something which is affected by a fundamental vice ... That order is a nullity...".
http://netk.net.au/Australia/Cameron.asp

Pearlman v. Governors of Harrow School.
Pearlman v Keepers and Governors of Harrow School [1979] QB 56 at page 74, which has now become the law in England with its approval in Re Racal Communications Ltd [1980] 3 WLR 181; [1980] 2 All ER 634. The judgment of the Privy Council clearly rules that
.... if the inferior tribunal has merely made an error of law which does not affect its jurisdiction and if its decision is not a nullity for some reason such as breach of the rules of natural justice, then the ouster will be effective. In Pearlman v Keepers and Governors of Harrow School (1979) QB 56, 70, Lord Denning MR suggested that the distinction between an error of law which affected jurisdiction and one which did not should now be 'discarded'. Their Lordships do not accept that suggestion. They consider that the law was correctly applied to the circumstances of that case in the dissenting opinion of Geoffrey Lane LJ when he said at p 74:
.... the only circumstances in which this court can correct what is to my mind the error of the (County Court) judge is if he were acting in excess of his jurisdiction as opposed to merely making an error of law in his judgment by misinterpreting the meaning of 'structural alteration' .... or addition.

http://www.ipsofactoj.com/archive/1981/Part06/arc1981(06)-004.htm
http://www.nadr.co.uk/articles/published/ArbitrationOlderReports/Pearlman%20v%20Harrow%201978.pdf

Smurthwaite v. Hannay 1894
"A considerable number of cases were cited to their Lordships on the question as to what irregularities will render a judgment or order void or only voidable. Anlaby v. Praetorius 1[(1888) 20 Q. B. D. 764.], and Smurthwaite v. Hannay 2[(1894) A. C. 494,] are leading examples of the former, while Fry v. Moore 3[(1889) 23 Q. B. D. 395.] may be said to illustrate the latter. The practical difference between the two is that if the order is void the party whom it purports to affect can ignore it, and he who has obtained it will proceed thereon at his peril, while if it is voidable only the party affected must get it set aside. No court has ever attempted to lay down a decisive test for distinguishing between the two classes of irregularities, nor will their Lordships attempt to do so here, beyond saying that one test that may be applied is to inquire whether the irregularity has caused a failure of natural justice. There is, for instance, an obvious distinction between obtaining judgment on a writ which has never been served and one in which, as in Fry v. Moore (supra) there has been a defect in the, service but the writ had come to the knowledge of the defendant ...".
http://www.lawnet.lk/docs/case_law/nlr/common/html/NLR54V241.htm

Firman v. Ellis 1978

Peacock v. Bell and Kendal 1667
"The rule for jurisdiction is, that nothing shall be intended to be out of the jurisdiction of the superior Court, but that which specially appears to be so; and on the contrary, nothing shall be intended to be within the jurisdiction of an inferior Court but that which is so expressly alleged...". Per Cur., Peacock v. Bell and Kendall (1667), 1 Saund. 74 a.»
http://en.wikiquote.org/wiki/Jurisdiction

Isaacs v. Robinson 1984
"In the present circumstances where the judgment can be regarded as a nullity the party aggrieved by the judgment can have it set aside ex debito justitiae at any time it comes to its attention. Counsel for the Appellant cited the cases of Mac foy v United Africa Co Ltd (1961) 3 AU ER 1169 and Isaac v Robertson (1984) 3 All ER 140 as authorities for this proposition.
(Ex debito justitiæ. – As due to justice)
http://www.gov.gm/judiciary/images/Judgement/honjustice_kalaile/ruling%20james%20monday%20vs%20francis%20a%20mboge%20and%20ors.pdf
MacFoy v. United Africa Company Ltd 1961.
Lord Dennings' dictum in
MACFOY v. UNITED AFRICA CO. LTD (1961) 3 ALL E.R., to wit :
" If an act is void, then it is in law a nullity. It is not only bad, but is incurably bad. There is no need for an order of court to set it aside. It is automatically null and void without ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."
http://www.superiorcourts.org.na/supreme/docs/judgments/Civil/Swart-Brand.pdf

Wandsworth London Borough Council -v- Winder; HL 1985
Rent demands were made by a local authority landlord on one of its tenants. The local authority, using its powers under the Act, resolved to increase rents generally. The tenant refused to pay the increased element of the rent. He argued that the resolutions and notices of increase were ultra vires and void, on the grounds that they were Wednesbury unreasonable, and counterclaiming for a declaration to that effect. The tenant proposed adducing some evidence to support his case of unreasonableness. The local authority sought to strike out the defence and counterclaim as an abuse of process, on the grounds that the tenant should be debarred from challenging the conduct of the local authority other than by application for judicial review under RSC, Ord 53.
Held: Mr Winder was entitled as of right to challenge the local authority's decision by way of defence in the proceedings which it had brought against him. The decision was based on 'the ordinary rights of private citizens to defend themselves against unfounded claims.'
As a matter of construction of the relevant legislation, those rights had not been swept away by the procedural reforms introducing the new RSC Ord 53. Where the issue of a private law right depending on a prior public law decision is raised as a defence to a claim, then the point does not

have to be dealt with by judicial review.
Lord Fraser of Tullybelton said: 'It would in my opinion be a very strange use of language to describe the respondent's behaviour in relation to this litigation as an abuse or misuse by him of the process of the court. He did not select the procedure to be adopted. He is merely seeking to defend proceedings brought against him by the appellants. In so doing he is seeking only to exercise the ordinary right of any individual to defend an action against him on the ground that he is not liable for the whole sum claimed by the plaintiff. Moreover he puts forward his defence as a matter of right, whereas in an application for judicial review, success would require an exercise of the court's discretion in his favour. Apart from the provisions of Order 53 and section 31 of the Supreme Court Act 1981, he would certainly be entitled to defend the action on the ground that the plaintiff's claim arises from a resolution which (on his view) is invalid: see for example Cannock Chase District Council v. Kelly [1978] 1 WLR 1, which was decided in July 1977, a few months before Order 53 came into force (as it did in December 1977). I find it impossible to accept that the right to challenge the decision of a local authority in course of defending an action for non-payment can have been swept away by Order 53, which was directed to introducing a procedural reform. As my noble and learned friend Lord Scarman said in Reg. v. Inland Revenue Commissioners, Ex parte Federation of Self Employed and Small Businesses Ltd. [1982] AC 617, 647G '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." Lord Wilberforce spoke to the same effect at p. 631A. Nor, in my opinion, did section 31 of the Supreme Court Act 1981 which refers only to 'an application' for judicial review have the effect of limiting the rights of a defendant sub silentio.'
Court: HL
Date: 01-Jan-1985
Judges: Lord Fraser of Tullybelton
Statutes: Housing Act 1957,
Links: Bailii,
References: [1985] AC 461, [1984] UKHL 2, [1984] 3 All ER 83, [1984] 3 WLR 563
Cases Cited:
Associated Provincial Picture Houses Ltd -v- Wednesbury Corporation, CA, Cited, ([1947] 2 All ER 680, [1948] 1 KB 223, 1947 WL 10584, (1948) 92 SJ 26, [1948] LJR 190, [1948] 45 LGR 635, (1948) 112 JP 55, 63 TLR 623, Bailii, [1947] EWCA Civ 1)
Pyx Granite Ltd -v- Ministry of Housing and Local Government, HL, Approved, ([1960] AC 260, [1959] 3 All ER 1)

Cited By:
Manchester City Council -v- Cochrane and Cochrane, CA, Cited, (Times 12-Jan-99, Gazette 03-Feb-99, Bailii, [1998] EWCA Civ 1967, (1999) 31 HLR 810, [1999] 1 WLR 809)
Boddington -v- British Transport Police, HL, Cited, (Times 03-Apr-98,House of Lords, Bailii, [1998] UKHL 13, [1999] 2 AC 143, [1998] 2 All ER 203, [1998] 2 WLR 639)
Roy -v- Kensington & Chelsea and Westminster Family Practitioner Committee, HL, Cited, (Gazette 06-May-92, [1992] 1 AC 624, [1992] 7 CL 474, [1992] 2 WLR 239, Bailii, [1991] UKHL 8)
Kay and Another -v- London Borough of Lambeth and others; Leeds City Council -v- Price and others and others, HL, Cited, (Bailii, [2006] UKHL 10, Times 10-Mar-06, [2006] 2 WLR 570, [2006] 2 AC 465)
Doran -v- Liverpool City Council, CA, Cited, (Bailii, [2009] EWCA Civ 146, [2009] 1 WLR 2365)

Valentines Homes & Construction Ltd, Regina (on The Application of) -v- HM Revenue and Customs, CA, Cited, (Bailii, [2010] EWCA Civ 345)
Coombes, Regina (on The Application of) -v- Secretary of State for Communities & Local Government and Another, Admn, Cited, (Bailii, [2010] EWHC 666 (Admin), Times, [2010] 2 All ER 940, [2010] 11 EG 120, [2010] BLGR 514)
North Somerset District Council -v- Honda Motor Europe Ltd and Others, QBD, Cited, (Bailii, [2010] EWHC 1505 (QB), [2010] RA 285)
Manchester City Council -v- Pinnock, SC, Cited, (Bailii, [2010] UKSC 45, UKSC 2009/0180, SC Summary, SC, [2010] WLR (D) 278, WLRD, [2011] HLR 7, [2011] 1 All ER 285, [2010] 3 WLR 1441, [2011] PTSR 61, [2010] BLGR 909, [2010] 45 EG 93, [2010] NPC 109, Bailii Summ)
Lumba (WL) -v- Secretary of State for The Home Department, SC, Cited, (Bailii, [2011] UKSC 12, Bailii Summary, SC, UKSC 2010/0062, UKSC 2010/0063, SC Summary)
Manchester City Council -v- Pinnock, SC, Cited, (Bailii, [2011] UKSC 6, [2011] 2 All ER 586, [2011] NPC 16, [2011] 2 WLR 220, UKSC 2009/0180, SC Summary, SC)
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http://swarb.co.uk/wandsworth-london-borough-council-v-winder-hl-1985/

Wiseman v. Wiseman 1953
“21. In Wiseman v Wiseman [1953] 1 All ER 601 – Lord Denning confirmed that:
The issue of natural justice does not arise in a void order because it is void whether it causes a failure of natural justice or not; (ii) a claimant or defendant should not be allowed to abuse the process of court by failing to comply with a statutory procedure and yet keep the benefit of it and for that reason also a void act is void even if it affects the rights of an innocent third party...”.

http://freetheplanet.net/articles/263/a-v-parking-bandits

R. v. Clarke and McDaid 2008

Reversal re Signatures:
There is no longer any requirement for the draft to be signed by the 'proper officer' of the court in order to convert it into the indictment.
Section 2 of the 1933 Act was amended by section 116 Coroners and Justice Act 2009 to remove the former requirement for signature. This amendment reversed the effect of R v Clarke and McDaid [2007] UKHL 8 that an unsigned indictment was a nullity.
Rule 14.1 Criminal Procedure Rules 2010 still requires the officer of the court to sign and add the date of receipt on the indictment (unless the Crown Court directs otherwise) but this is for the purposes of court administration rather than anything that can affect the validity of the indictment.
(See: Amendments below)

Grand Juries. http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080206/clarke-1.htm

Belinger v. Belinger 2003
http://www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd030410/bellin-3.htm

Crane v. Director of Public Prosecutions 1921
52
In Crane v. D.P.P. [1921] 2 A.C. 299 at 332 (H.L.), a venire de novo case, Lord Sumner explained that: “Acquittal implies that a true legal trial has been had. Here there has legally been none at all, but only a semblance of one, a mistrial, which does not count.”
http://www.jsijournal.ie/html/Volume%205%20No.%202/5%5B2%5D_Coffey_Raising%20the%20Pleas%20in%20Bar.pdf