CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 23695/02
by John CLARKE
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 25 August 2005 as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 8 April 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr John Clarke, is a British national who was born in 1950 and lives in Bristol. The respondent Government were represented by Mr Derek Walton, of the Foreign and Commonwealth Office, London.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. The original action

In 1997 the applicant sued a local authority and an insurance company ("the Zurich") in respect of damage caused to property which the applicant had leased from the local authority. He claimed that the authority had failed to look after the property and the surrounding area, and that the insurance company had failed to pay on a policy which covered the damage. The applicant's claims, initially for £29,026, were revised at trial to a total of £71,000. On 31 July 1997, the Zurich made a payment into court of £3,000. The court offices of the Portsmouth and Newcastle-upon-Tyne County Courts forwarded form N243 to the applicant to inform him of the payment in. The forms, which provided for a number of options, had not been filled in. The Newcastle-upon-Tyne County Court gave judgment against the applicant in two judgments of 13 and 14 May 1999. Costs were ordered against the applicant, and leave to appeal was refused. Lord Justice Thorpe refused permission to appeal to the Court of Appeal on 7 April 2000, and he further refused permission to appeal to the House of Lords on 5 May 2000.

2. The bankruptcy proceedings

On 15 November 2000, the Zurich made a statutory demand in respect of the costs awarded against the applicant in the original action. The demand was not met, and on 8 December 2000 a bankruptcy petition was served. The applicant was adjudicated bankrupt on 31 January 2001. An appeal against the bankruptcy order was dismissed on 8 March 2001, and on 9 November 2001 the applicant applied, out of time, for permission to appeal. The application was refused by Lord Justice Chadwick and Sir Swinton Thomas on 9 May 2002 on the ground that the bankruptcy order was made in respect of an unchallengeable judgment debt as to which there was no counter-claim. At the same time, Lord Justice Chadwick gave directions that the three matters involving the applicant and then pending before the Court of Appeal (see below) were to be heard together before 24 June 2002.

On 20 November 2002, at the renewed public examination of the applicant, the applicant was committed to prison for two months for failure to comply with the reasonable requests of the trustee in bankruptcy. He had previously been imprisoned on a warrant for his arrest after he had failed to attend a hearing, and he had also been imprisoned for two weeks for failing to co-operate with the trustee.

The bankruptcy proceedings revealed a number of incidents in which the applicant failed to comply with various obligations. He did not attend

appointments at the Official Receiver's office on 8 February, 16 March, 30 May and 13 June 2001. He also failed to attend for his public examination, as a result of which he was arrested and held in custody between 23 April and 2 May 2002. Thereafter, he failed to provide the Official Receiver with a statement of affairs, as required by the bankruptcy legislation, and he refused to attend the Official Receiver to answer questions. After the dismissal of his appeal against the bankruptcy order on 9 May 2002, the applicant's public examination was resumed before Mr Justice Neuberger on 8 November 2002. The applicant again refused to answer questions and, after an adjournment to allow him more time to comply, the applicant was sentenced to two months in prison on 20 November 2002.

3. The further proceedings brought by the applicant

After the judgment of 14 May 1999 in the initial action, the applicant brought three further sets of proceedings, against the Lord Chancellor's Department (sued as the Portsmouth County Court) in respect of the information contained in Form N243, against the Zurich which, he claimed, had misled him into not accepting the payment into court, and against the Zurich's barrister who, he claimed, had misled him into thinking that he could not withdraw the payment into court at the beginning of the action on 10 May 1999.

In the proceedings against the Lord Chancellor's Department, the applicant's claim was issued on 11 November 1999 and re-issued on 14 January 2000. On 22 June 2000 District Judge Daniel in the Bristol County Court noted that Form N243 stated that:

> "if the defendant does wish to accept the payment in he should do so in writing within 21 days. It then proceeds to give other events and times in brackets. The form, in this respect, is most unsatisfactory and is made worse because none of the various bracketed events are deleted. Indeed, I would not expect the average court clerk to have sufficient knowledge of the rules to know how to complete this part of the form and I imagine that in most cases all options were left open."

The claim was nevertheless dismissed on the ground that it had no real prospect of success, as the applicant could not establish that the one error on the form had caused his losses. Leave to appeal was granted by the trial judge, and the appeal was dismissed by His Honour Judge Rutherford QC (a circuit judge) in the Bristol County Court on 10 August 2000. Judge Rutherford summarised the claim as being that the court office had been negligent in that it issued a form that was ambiguous and to a certain extent incorrect, as a result of which the applicant did not accept the payment into court, lost the proceedings, and was ordered to pay costs of £25,000. The judge accepted that the Lord Chancellor's Department owed the applicant a duty of care and that the duty had been breached. He did not, however, accept that the applicant had acted to his detriment as a result of the breach:

on the applicant's own account, he had not accepted the payment into court before the hearing because he relied on a statement of the Zurich's barrister. The applicant applied for leave to appeal by a series of notices. One of the applicant's points on appeal concerned the issue of the participation of the district and circuit judges who sat as single judges in the case. He underlined that they had been recommended for appointment, and were governed and could be dismissed by the Lord Chancellor, who was the defendant in the proceedings. Lord Justice Brooke, determining the application for permission to have a second appeal, granted permission on 13 December 2000, principally on the "point of constitutional importance" concerning the position of circuit and district judges in cases against the Lord Chancellor or his department. Leave to appeal was also granted on a number of subsidiary points.

The appeal before the Court of Appeal was to have been heard on 5 November 2001, the Treasury Solicitor had appointed counsel, and an *amicus curiae* had been appointed. Shortly before the hearing, the Court of Appeal office learned that the applicant had been adjudicated bankrupt on 31 January 2001, and the hearing was adjourned to establish the effect of the bankruptcy on the proceedings. The Official Receiver took the view that the causes of action had vested in him, and that he had no funds to pursue them. He added, in a letter of 28 February 2002, that he was prepared to consider a request to assign the causes of action to the applicant, but in the absence of co-operation from the applicant, was unwilling to do so.

The claim in the second action against the Zurich, in respect of alleged negligent misstatement by the Zurich's representatives during the trial of the initial action, was struck out by a district judge on 22 August 2000. Permission to appeal was refused on 16 November 2000 by a circuit judge. No appeal lay against that refusal by virtue of Section 54(4) of the Access to Justice Act 1999. The applicant's request for a further appeal was discussed in the Court of Appeal on 13 December 2000, when Lord Justice Brooke directed that the request be put before him to determine what direction to give. On receiving the papers, it became apparent that no appeal lay, and Lord Justice Brooke so directed. The applicant was informed on 28 March 2001 and requested an oral hearing. On 31 March 2001 Lord Justice Brooke directed that the hearing should be held together with the hearing in the action against the Lord Chancellor's Department.

The action against the Zurich's barrister was dismissed on 13 December 2000, and the applicant applied for permission to appeal. The application was dealt with by Lord Justice Brooke on 31 March 2001, when he directed that the application should be listed with the action against the Lord Chancellor's Department.

4. The hearing of 30 May 2002 and subsequent developments

On 30 May 2002, pursuant to the directions given on 9 May 2002 in the bankruptcy appeal, Lord Justice Chadwick considered the outstanding issues in relation to the three sets of proceedings before him (those at point 3 above). He outlined the history of the case, and noted the two important points which were raised. The first point was whether the district and county court judges were sufficiently independent of the Lord Chancellor, having regard to the terms of their appointments, to avoid a perception of bias or a violation of Article 6 of the Convention. The second point was whether Section 54 (4) of the Access to Justice Act 1999 was compatible with the Human Rights Act 1998.

Lord Justice Chadwick found that all three actions had vested in the Official Receiver on the applicant's bankruptcy. He did not accept the applicant's claim that where matters of great public importance had been identified, they should always be pursued. He insisted that it was always necessary for someone to be able and willing to pursue them. He noted specifically the applicant's history of non-cooperation with the Official Receiver.

The appeal in the action against the Lord Chancellor's Department was struck out, and the applications in the other two actions were also struck out. The orders were made on the grounds "that the person in whom the causes of action are vested does not wish to pursue that appeal and those applications; and that [the applicant], who does wish to pursue them, has no standing in those proceedings to do so". Lord Justice Chadwick also directed that the applicant "on providing to this court a copy of an assignment of the causes of action by the trustee in bankruptcy to him, may apply in writing to this court, within three months of today, to reinstate the appeal and the applications. ... [I]t seems to me correct, in view of [the applicant's] strong sense of grievance ... to leave open the possibility that, if such an assignment were made in his favour, he should be able to restore the appeal in this court. The period of three months may, itself, be extended on a written application to this court, with a copy to the Official Receiver, setting out the circumstances which suggest that any extension of the period would be likely to serve any purpose."

On 31 May 2002 the Official Receiver asked the applicant for copies of requests for assignment of the action which the applicant had claimed had been made. He also asked for the applicant's proposals as to an assignment, and added that on receiving them he would consult his solicitors and seek their advice. He noted that he would have to be put in funds, as there were no funds in the estate and no assets of which he was aware which could be used to provide funds.

On 7 June 2002, in reply to two letters of 6 June 2002 from the applicant, the Official Receiver responded in the following terms:

"As requested, I confirm that it is not my intention to pursue these matters further. I do not have access to public funds as Official Receiver, other than in the most limited of capacities, and as you will know ... it is not the view of the Insolvency Service that the matter should be taken forward ...I must also point out, that your failure to co-operate in these proceedings does nothing to advance your arguments, as you seem to be of the opinion that any decision that I take should be made in a vacuum.. . I am of the view that you have not co-operated in any substantive way whatsoever to date...

As far as I am concerned, on no occasion have you made a formal request for the assignment to you of the ... action. ... I should be grateful if you would now forward a copy of the letters to which you refer. The absence of those letters suggests to me that no such letters were ever written by you ... If you wish the matter to proceed, please let me have your remittance for [£1,000 plus VAT for solicitors' costs], and I will instruct them to consider the matter, and advise me ..."

The applicant states that the Official Receiver sought his further committal to prison for failure to answer questions but that the application was refused on 12 June 2003.

B. Relevant domestic law and practice

The following is an extract from the skeleton argument of the amicus curiae appointed for the hearing which was to be held before the Court of Appeal on 5 November 2001 (see above):

"*Appointment*

25) Circuit judges are appointed by the Queen on the recommendation of the Lord Chancellor (see Courts Act 1971 section 16).

26) There is a significant judicial input into the selection of circuit and district judges. The selection process for both District and Circuit Judges involves confidential "soundings" from judges and members of the legal profession, which are not disclosed to candidates (...). More importantly, the selection of candidates for interview is made by a panel which comprises a sitting Circuit Judge, a civil servant and a lay person (...).

27) That said, the final decision as to whom to recommend to the Queen for appointment lies with the Lord Chancellor alone (...). The Lord Chancellor's recommendation is a necessary condition for appointment (Courts Act 1971 section 16).

28) The arrangements for the appointment of a District Judge are similar (...) save that the appointment of District Judges is made by the Lord Chancellor himself pursuant to section 6 of the County Court Act 1984 ....

29) The personal qualities sought in candidates for the posts of District and Circuit Judge include "integrity and independence" which is said to include "independence of mind and moral courage" and "fairness and impartiality" (...).

Pay

30) The salaries of both District and Circuit Judges are, by statute, set at the discretion of the Lord Chancellor, acting with the concurrence of the Treasury (District Judges) or the consent of the Minister for the Civil Service (Circuit Judges).

31) In the case of District Judges, section 6(1) of the County Court Act 1984 provides:

"Subject to the provisions of this section, there shall be a district judge for each district, who shall be appointed by the Lord Chancellor and paid such salary as the Lord Chancellor may, with the concurrence of the Treasury, direct."

32) In the case of Circuit Judges, section 18(1) of the Courts Act 1971 provides:

"Subject to Part II of Schedule 2 to this Act, there shall be paid to each Circuit judge such salary as may be determined by the Lord Chancellor with the consent of the Minister for the Civil Service."

33) Section 18(2) provides, *inter alia*, that salary shall be payable at such intervals, not exceeding three months, as the Treasury may determine (s. 18(2)c) and that such salary may be increased, but not reduced, by a further determination under section 18 (s. 18(2)(d)).

34) Mr Staff [a civil servant from the Lord Chancellor's Department who gave evidence in the case] explains that "in practice" judicial salaries are now settled annually "in the light of recommendations made to the Government by the Senior Salaries Review Body". It does not appear, however, that this Body has any statutory underpinning. Its recommendations are not binding on the Lord Chancellor or the Executive.

Oath

35) As Mr Staff points out (witness statement §§ 13 and 34) both District and Circuit Judges are required to take the oath of allegiance and the judicial oath (see Courts and Legal Services Act 1990 section 76(1), Courts Act 1971 section 22(1))[1].

Removal

36) District Judges may be removed from office by the Lord Chancellor pursuant to section 11(4)-(6) of the County Courts Act 1984 which provide:

> "(4) A person appointed to an office to which subsection (1) applies shall hold that office during good behaviour.
>
> (5) The power to remove such a person from his office on account of misbehaviour[2] shall be exercisable by the Lord Chancellor.

[1] For the form of Judicial Oath, see the Promissory Oaths Act 1868, s 4 at DES 1 page 192.
[2] For examples of misbehaviour or potential misbehaviour, see DES1 pages 32-33, 56-57 and 140-141.

(6) The Lord Chancellor may also remove such a person from his office on account of inability to perform the duties of his office."

37) Circuit Judges may be removed from office by the Lord Chancellor pursuant to section 17 of the Courts Act 1971. That provides:

"The Lord Chancellor may, if he thinks fit, remove a Circuit judge from office on the ground of incapacity or misbehaviour."

....

84) It is submitted that the most troubling aspect in this case, from an Article 6 point of view, is the limited judicial role in supervising the exercise of the Lord Chancellor's statutory power to remove county court judges.

....

95) It does not necessarily follow that the present arrangements are not Article 6 compliant. On the face of it, the passages from *Clancy* (§§ 49 and 50 above), *Spear* (§ 55) and *Campbell* and *Fell* (§ 56) are of significant assistance to the Respondent in the present case. *Spear* (a recent case presided over by Laws LJ ...) is of particular assistance to the Respondent, albeit that it is not a decision of the Court of Appeal. It is right to note, however, that the passage quote above from *Campbell* and *Fell* has been construed narrowly by the Court of Session. See, in particular, the illuminating discussion of this passage by Lord Reed at page 236 of *Starrs*.

96) The Respondent's best defence to the Appellant's best point on Article 6 is that, in practice, removal almost never occurs and when it does it poses no threat to the independence and impartiality of the judiciary.

97) It is submitted that some caution is needed when seeking to place weight on the absence of many actual cases of removal of County Court judges ... in support of a conclusion as to their independence and impartiality in Convention terms. In theory, the need never to invoke the power to dismiss is just as consistent with a judiciary wholly bent to the will of the Lord Chancellor as it is with a fully independent and impartial judiciary with which no Lord Chancellor dares to interfere.

98) It is not, however, suggested that the former is the case. Indeed, to hold such a view might well cogently be said to display just the sort of "neurotic distrust" which the Court cautioned against in *Spear*.

....

102) It is submitted that the answer to the question of whether the county court judges in the present case were not Article 6 compliant is not obvious. The case is more borderline than *Findlay, Starrs* or *Scanfuture* in one direction and than *Spear* and *Clancy* in the other.

103) On balance, it is respectfully submitted that the combination of

a) the apparent long tradition of invoking the removal power in only the most unusual circumstances, and

b) the availability of a relatively intense judicial review[3] is sufficient to render the present system Article 6 compliant, albeit, as emphasized above, a more obviously Article 6 compliant regime is available and desirable."

COMPLAINTS

The applicant complains about the initial proceedings and about the subsequent proceedings. Referring to Article 6 of the Convention, he contends that the position of judges in the lower courts generally, and the judges in his case in particular, is incompatible with Convention standards. He also contends that the Official Receiver should have pursued the actions in which these issues are raised on his behalf.

He also makes a series of additional complaints about the proceedings, including that the proceedings against the Lord Chancellor's Department, the Zurich and the Zurich's barrister should not have been dealt with separately.

THE LAW

1. The applicant contends that the proceedings which he brought against the Lord Chancellor's Department did not comply with Article 6 of the Convention. His principal complaint is that, although Lord Justice Brooke found that the question of the independence and impartiality of district and circuit judges involved a "point of constitutional importance", that point was never answered in the proceedings, with the result that the applicant's complaint about the judges' independence and impartiality is still outstanding.

Article 6 provides, so far as relevant, as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

The Government submit that the applicant has failed to exhaust domestic remedies as to these proceedings because even if – which the Government do not accept – the Official Receiver refused to assign the action to the applicant, the applicant failed to apply to the domestic court under Section 303 of the Insolvency Act 1986 to reverse, vary or modify that decision of the Official Receiver's.

On the merits of the complaint, the Government suggest that Article 6 may not apply to the proceedings because the applicant's claim did not

[3] The fact of the long tradition would, perhaps, heighten the intensity of the court's review of any case which did arise.

amount to a genuine or serious dispute capable of engaging his rights under Article 6. They submit that in any event, the courts which determined the proceedings against the Lord Chancellor's Department complied with the requirements of Article 6. In particular, they contend that circuit and district judges are sufficiently independent and impartial to hear any complaints against the Lord Chancellor or the Lord Chancellor's Department. In the alternative, they claim that any defect could be cured on appeal.

The applicant maintains his claims.

The Court notes at the outset that the proceedings at issue concerned a claim by the applicant that, in providing him with an inadequately or incorrectly completed form N243 in his action against the Zurich, the Lord Chancellor's Department failed to meet its duty of care to the applicant. It is true that Judge Rutherford found that, even on the applicant's own account, there was no suggestion that he had suffered any loss as a result of relying on that breach. It was perhaps therefore inevitable that he would lose the proceedings. However, far from being dependent on the outcome of proceedings, Article 6 applies where there is a dispute of a "genuine and serious nature" as to a civil right or obligation (*Z and Others v. the United Kingdom* [GC], no. 29392/95, § 87, ECHR 2001-V). The Court considers that the applicant's action, even if misconceived and bound to fail, amounted to a genuine claim that there had been a breach of duty by the Lord Chancellor's Department. It follows that Article 6 applies to the proceedings in the present case.

The central issue in the present case – and the issue which the domestic courts in the event never finally addressed – is whether the applicant's claim was determined by a tribunal which was "independent and impartial" within the meaning of Article 6 of the Convention. In particular, the question is whether the district and circuit judges who determined the action at first and second instance (District Judge Daniel and Judge Rutherford respectively) were "independent and impartial", given that the action was against the Lord Chancellor's Department, and they had both been appointed by the Lord Chancellor.

The Court recalls that in order to establish whether a tribunal can be considered as "independent", regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence. What is at stake is the confidence which such tribunals must inspire in the public.

As to the question of "impartiality", there are two aspects to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect.

The concepts of independence and objective impartiality are closely linked and the Court will consider them together as they relate to the present case (see *Cooper v. the United Kingdom* [GC], no. 48843/99, § 104, ECHR 2003-XII). The Court will consider these elements in turn.

District Judge Daniel, who heard the applicant's action at first instance, was appointed by the Lord Chancellor in 1993 after a procedure involving a period during which he sat as a deputy judge, a competitive interview before a board that included a serving District Judge, and consultations among judges and members of the legal profession which were not disclosed to the candidates. The judicial oath which he took included an undertaking to administer justice impartially. His appointment was for a full-time position, and continued until retirement age, with salaries and pensions paid pursuant to statute. He could only be removed on grounds of incapacity or misbehaviour, and before any power of removal could be exercised, the Lord Chancellor would have been required to give reasons, and the decision could have been subjected to judicial review. The Court accepts that the manner of appointment of District Judge Daniel and his term of office were compatible with the requirements of Article 6.

The position of Judge Rutherford, the circuit judge who heard the applicant's appeal, was similar. His appointment in June 1995 was by the Queen on the advice of the Lord Chancellor, and followed an open, competitive process which again included a period as an Assistant Recorder, consultations with judges and members of the legal profession, and an interview. In Judge Rutherford's case, the panel comprised a circuit judge, a civil servant from the Lord Chancellor's Department and lay person. He took the same oath as District Judge Daniel. His appointment was full-time and until retirement, and salaries were fixed by statute. He could only be removed on grounds of misbehaviour or incapacity, and a removal could have been challenged if taken for extraneous reasons. The Court accepts that the manner of appointment and the term of office of Judge Rutherford, too, were compatible with Article 6 § 1 of the Convention.

As to guarantees against outside pressures, the Court notes the Government's submission – uncontested by the applicant – that there is no hierarchical or organisational connection between the judges and the Lord Chancellor's Department. Further, there is no suggestion that pressure is actually put on district or circuit judges to decide cases one way rather than another. Given the judicial oath that both judges had taken and the absence of any indication of any – or any risk of any – outside pressures, the Court sees no reason for concern in this respect.

The Court underlines that there is no claim in the case that either District Judge Daniel or Judge Rutherford was animated by personal prejudice or bias ("subjective impartiality").

As to an appearance of independence and the requirement of impartiality, the Court recalls that tribunals must be independent of the executive and of

the parties (*Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, § 95). The supervisory functions exercised by the Swedish Chancellor of Justice over the courts were found not to affect the independence and independence of the Swedish courts (see *Roy E. Gasper v. Sweden*, no. 18781/91, Commission decision of 7 July 1998, Decisions and Reports (DR) 94-A, p. 5).

The applicant brought his action against that part of the executive (the Lord Chancellor's Department) which provides executive services to the Lord Chancellor. It is perhaps understandable, given the Lord Chancellor's involvement in the appointment of judges, and his ultimate responsibility for his department, that the applicant sees a lack of independence or impartiality in the judges who dealt with his case. In reality, however, any civil action must be determined by judges, with the result that where an action is brought against judges, or against the administrative apparatus of the courts, the action will necessarily be determined by a judge who has a certain involvement with other judges or the courts' administration. As the Court put it in the case of *Campbell and Fell*, the mere fact that members of boards of visitors were appointed by the Home Secretary, who was himself responsible for the administration of prisons, did not establish that the members were not independent of the executive:

> "to hold otherwise would mean that judges appointed by or on the advice of a Minister having responsibilities in the field of administration of courts were also not "independent" ..."

(Campbell and Fell v. the United Kingdom, judgment of 28 June 1984, Series A no. 80, § 79).

The question to be determined in such a case is whether any elements in the case give rise to an objective appearance of lack of independence, or of impartiality.

It is true that circuit and district judges could be removed by the Lord Chancellor. In this respect the Court first reiterates that any exercise by the Lord Chancellor of his powers to remove would be subject to judicial review. The degree of scrutiny that would have been applied is unclear – it would either have been on the basis that the Lord Chancellor only had power to dismiss where there had actually been misconduct on the part of a judge, or it would have been on the basis that the degree of scrutiny depends on the importance of what is at stake. In either event, however, the reviewing court would have been able to determine whether the power to dismiss had been properly exercised.

The Court considers that an objective observer would also bear in mind that – until the present case – there had been no cases in which complaint was made that the Lord Chancellor's power of removal affected the impartiality or independence of circuit or district judges, and further that there have been practically no instances of removal of district or circuit

judges. The evidence is that no district judge has been removed by the Lord Chancellor in living memory, and only one circuit judge has been removed (after conviction for offences of dishonesty) since the office was created over 30 years ago.

Overall, the Court is of the view that an objective observer would have no cause for concern about the removability of a judge in the circumstances of the present case, and that the district and circuit judges who dealt with the case complied with the requirements of Article 6 as to independence and impartiality.

In the light of this finding, the Court is not required to consider whether any lacunae in judicial protection at first or second instance could be rectified by the subsequent proceedings, nor is it required to determine the Government's plea that this part of the application is inadmissible for non-exhaustion of domestic remedies.

Finally, the Court must deal with the applicant's complaint that he did not receive an answer from the domestic courts to his contention that judges Daniel and Rutherford did not comply with the requirements of Article 6. The Court has just found that those two judges did satisfy the "independence" and "impartiality" tests of the Convention, such that the question of whether the subsequent jurisdictions could remedy any defects does not arise. As to the proceedings which followed the proceedings in the County Court, the Court notes that the domestic courts went to great lengths to deal fairly with the applicant and his various complaints. In particular, Lord Justice Chadwick, having struck out the applicant's applications and appeal because the causes of action had vested in the Official Receiver, nevertheless went on to give the applicant the possibility of having the cases re-instated if he could obtain an assignment of the causes of action from the Official Receiver. The onus was clearly on the applicant to obtain the assignment if the case was to be re-instated, and he failed to do so. In the light of the applicant's behaviour in the bankruptcy proceedings, it cannot be said that the Official Receiver's *de facto* refusal of the assignment was unreasonable, or that it disproportionately affected the applicant's access to the appeal courts in the three actions which were being considered.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be dismissed pursuant to Article 35 § 4.

2. The applicant made a series of other complaints about the proceedings, again referring to Article 6 of the Convention. The Government made unsolicited comments on some of these complaints.

The Court has considered these complaints as they are made and, to the extent that they are within its competence and have been substantiated, finds that they disclose no violation of the Convention.

It follows that the remainder of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it too must be dismissed pursuant to Article 35 § 4.

For these reasons, the Court by a majority

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Josep CASADEVALL
President