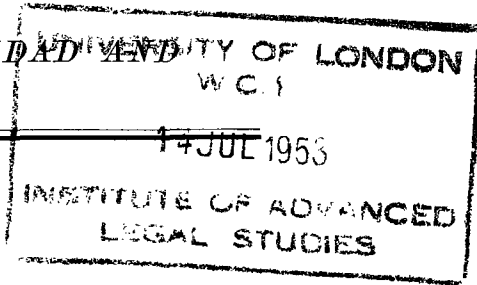


In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO.



BETWEEN

LENNOX ARTHUR PATRICK O'REILLY, Kt.
CHARLES ARTHUR CHILD
GEORGE DE NOBRIGA
10 CLIFFORD TRESTRAIL and
SYDNEY LIDDELOW

Stewards of the Trinidad Turf Club (Defendants)

Appellants

AND

CYRIL CUTHBERT GITTENS (Plaintiff)

Respondent

AND BETWEEN

CYRIL CUTHBERT GITTENS (Plaintiff) -

Appellant

AND

LENNOX ARTHUR PATRICK O'REILLY, Kt.
CHARLES ARTHUR CHILD
20 GEORGE DE NOBRIGA
CLIFFORD TRESTRAIL and
SYDNEY LIDDELOW

Stewards of the Trinidad Turf Club (Defendants)

Respondents.

(Consolidated Appeals.)

Case

for the Appellants on the Appeal and for the Respondents on the Cross Appeal.

RECORD.

1. The Appellants were at material times the Stewards of the Trinidad Turf Club and this appeal arises out of an enquiry held and certain orders made by them in April, 1944, which were challenged by the Respondent a trainer of racehorses by action at law in which he was in part successful.

p. 57.

p. 70.

2. The Appeal is taken by the Defendants in the said action from a judgment of His Honour Mr. Justice Eric Hallinan and an order of the Supreme Court of Trinidad and Tobago dated the 21st day of June, 1946, granting the Plaintiff :—

(A) a Declaration that the Defendants by their order of the 29th April, 1944, purported to warn off the Plaintiff in such a manner as to make him a disqualified person and in so doing acted *ultra vires* the powers conferred upon them by the Trinidad Turf Club and therefore had no authority or jurisdiction to make such order ;

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(B) a Declaration that the Defendants' ruling that the Plaintiff had failed to safeguard his horse and the order warning him off were contrary to natural justice for the reasons that the Defendants adjudged the Plaintiff by a rule or principle which precluded them from making a proper enquiry.

3. By his cross-appeal the Plaintiff asks that the Declaration to be embodied in the order of the Court should be amended so as to be in terms as prayed in his said action against the Defendants namely a Declaration that the decision of the Defendants acting as Stewards of the Trinidad Turf Club on the said 29th day of April 1944 upon an enquiry into the alleged doping of the Plaintiff's racehorse, "Tommy Boy" was and is null and void for the reasons that—

(A) two of the said Stewards were biased ;

(B) the said Stewards had no jurisdiction or alternatively exceeded their jurisdiction ;

(C) the said decision was contrary to the dictates and laws of natural justice.

The Plaintiff further asks that there should be included in the said order of the Court a statement that a reason for granting such Declaration was that two of the Defendants to wit George de Nobriga and Sydney Liddelow when acting as Stewards as aforesaid were biased.

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p. 120.

4. The Appellants were at all material times the Stewards of the Trinidad Turf Club. The said Trinidad Turf Club is the recognised turf authority in the Colony of Trinidad and Tobago exercising its powers and jurisdiction by the Stewards of the Club. The Respondent is a dental surgeon and an owner and trainer of racehorses. At all material times the Respondent held a licence from the Stewards of the Club which expressly provided that the same was issued subject to the Rules, Regulations and Resolutions of the Trinidad Turf Club for the time being and might be withdrawn or suspended by the Stewards of that Club in their absolute discretion, and such withdrawal or suspension might be published in any local newspaper or newspapers, for any reason which might seem proper to such Stewards and they should not be bound to state their reasons.

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5. The facts which gave rise to the Respondent's claim were as follows : The Respondent entered a horse called "Tommy Boy" owned and trained by himself in certain races at a meeting held under the

authority of the Trinidad Turf Club in the Spring of 1944 by the Tobago Race Club. All entries for the said races were made subject to the Rules and Regulations of the Trinidad Turf Club. The said horse won the first and fifth races on the second day of the meeting namely the 4th March.

6. In accordance with a practice recently instituted by the Stewards of the Trinidad Turf Club, swabs of the saliva of each winner were taken on the course. After examination the Government Analyst reported on the 18th April 1944 to the Trinidad Turf Club that the swabs taken from "Tommy Boy" contained evidence of the presence of heroin. On the 10 25th, 27th, and 29th of April, 1944, the Appellants acting as Stewards of the Trinidad Turf Club held an inquiry at which the Respondent attended and was represented by Counsel. After a hearing at which the Respondent was given a full opportunity to cross-examine, to lead evidence and to make his defence, the Appellants found in the following terms :—

(1) A drug was administered to "Tommy Boy" on the second day of the Tobago Spring Races which was calculated to affect his speed.

20 (2) The Stewards held the trainer Dr. Cyril C. Gittens responsible for the safeguarding of the horse. They ordered :—

(A) That "Tommy Boy" be disqualified from all future racing under the rules of the Trinidad Turf Club ;

(B) That the licence of Dr. Cyril C. Gittens as Trainer be withdrawn ;

(C) That Dr. Cyril C. Gittens be warned off pursuant to the powers vested in the Stewards of the Trinidad Turf Club.

7. At the outset of the said inquiry the Respondent by his Counsel objected to the presence of the Appellants de Nobriga and Liddelow as being biased against him. This objection was overruled and all the 30 Appellants accordingly took part in the inquiry.

8. The Writ of Summons in this action was issued on the 5th May 1944. By his Statement of Claim delivered on the 18th October 1944 the Respondent alleged :—

(A) that the findings and orders set forth in paragraph 6 hereof were null and void for want of jurisdiction or power in the Appellants to make the same ;

40 (B) that if the Appellants had such jurisdiction or power then the said findings and orders were vitiated by reason of their failure as a tribunal to disqualify the Appellants de Nobriga and Liddelow on the ground of bias and/or on the ground that the Appellant Liddelow as owner of a horse which had been placed second in one of the two races won by "Tommy Boy" had an interest in the matters under inquiry ;

(C) that the said finding and orders were arrived at against the dictates of natural justice in that nothing had been brought before the tribunal to justify their said decision.

p. 8.

p. 113.

p. 76.

p. 120.

9. By their Defence delivered on the 29th January 1945 the Appellants pleaded that their jurisdiction and powers were derived from the Rules of the Trinidad Turf Club and the Rules of Racing; that the licence to train issued to the Respondent under the Rules of Racing was by virtue of the said Rules subject to the express condition set out in paragraph 4 hereof; that the entry of "Tommy Boy" in the Tobago Races was subject to the Rules and Regulations of the Trinidad Turf Club; that the Respondent had in the premises submitted himself to the jurisdiction of the Trinidad Turf Club and of the Stewards thereof and to the Rules and Regulations and Resolutions of the Club and to the Rules of Racing and to the decision of the Stewards of the Club in any matter relating to racing in the Colony of Trinidad and Tobago; that the Appellants de Nobriga and Liddelow were not disqualified by reason of interest, bias, partiality or prejudice and that in any case the Respondent's Counsel had waived any objection to these Appellants; and that, in the premises, the Appellants were properly constituted as Stewards to adjudicate at the said inquiry. The Appellants pleaded further that their adjudication accorded with the principles of natural justice. 10

p. 11.

10. By his Reply delivered on the 14th February 1945 the Respondent 20 denied that his objection to the Appellants de Nobriga and Liddelow had been waived.

p. 57.

p. 70.

11. At the trial the Respondent did not challenge the honesty or bona fides of the Appellants. The Appellants contended, *inter alia*, that in warning off the Respondent they did not infringe any contractual or proprietary right of the Respondent and that therefore he had no right of action. The Appellants further contended that as they owed no duty to the Respondent the Court could not interfere with their findings and orders. On 21st June 1946 His Honour Mr. Justice Eric Hallinan delivered a judgment in which he rejected the Appellants' said contentions 30 and granted the Respondent the declarations set out in paragraph 2 hereof.

12. The learned Judge held that the Respondent's claim for an injunction could not be maintained and that the Court could not interfere with such of the Appellants' orders as disqualified the horse "Tommy Boy" from all future racing under the rules of the Trinidad Turf Club, or withdrew the Respondent's licence to train, inasmuch as the Appellants had power under the Rules of Racing to disqualify a horse which had been the subject of fraudulent practice and inasmuch as the licence to train was issued at the absolute discretion of the Stewards. 40

13. On the question of the jurisdiction of the Court to grant the Respondent a declaration, the learned Judge held that the Court had a discretionary power to grant a declaration in any case in which the question it was asked to determine was a question of legal right or obligation and the Plaintiff was interested in the subject-matter of the declaration; that the existence or not of an authority alleged to be delegated by written rules was a question of legal right; that, alternatively, the Respondent had a contractual right to be adjudged by the Appellants

only in accordance with rules made by the Trinidad Turf Club ; and that, accordingly, the Court had power to grant a declaration. The learned Judge held further that the Court had power to grant a declaration because the Appellants constituted a quasi-judicial tribunal and owed the Respondent a contractual duty with regard to the proceedings and findings of the inquiry held by them.

14. The learned Judge's reasons for holding that there was privity of contract between the Appellants and the Respondent were :—

10 (A) that the Trinidad Turf Club was the recognized Turf Authority for the Colony and controlled racing in the Colony ;

(B) that all race meetings were held under its Rules of Racing and in these Rules it claimed and exercised jurisdiction over such persons as owners, trainers and grooms ;

(C) that the Stewards of the Trinidad Turf Club impliedly represented to every Gentleman of the Turf that they would act according to their rules ; and

(D) that a person who took part in a race meeting in the Colony did so on that understanding.

20 The learned Judge found support for his view in the decision in *Doyle v. Griffin* [1937] 1 R. 93.

15. The learned Judge held that the Rules of Racing conferred no power on the Appellants to warn off the Respondent and that inasmuch as the Appellants had, by their acts, intended to warn off the Respondent in such a manner as to make him a disqualified person, they could not rely on the limited power of warning off conferred by the Rules of the Trinidad Turf Club.

30 16. On the question whether the Appellants' findings and orders of 29th April, 1944, were contrary to natural justice, the learned Judge held that the dislike of the Appellant de Nobriga for the Respondent was not sufficient to disqualify the said Appellant from sitting on the inquiry and that though the Appellant Liddelow was prejudiced against the Respondent, the said Liddelow's presence on the tribunal did not give rise to a reasonable suspicion that the trial was not a fair one. But the learned Judge held that the Appellants' findings and orders in respect of the Respondent were contrary to natural justice, in that the Appellants had applied an inflexible rule that a trainer was responsible in all circumstances for his horse and in that they had failed to take into consideration the regulation of the Trinidad Turf Club that horses intending to start in a race must be in the paddock at least an hour before the time appointed p. 129.

40 for the race and that no person was allowed to approach a horse in the paddock without the permission and supervision of an official ; that the rule applied by the Appellants to determine the extent of the Respondent's responsibility for his horse was, in the circumstances, unreasonable and arbitrary ; and that the Appellants had in effect deprived the Respondent of a proper opportunity to make his defence.

17. The Appellants humbly submit that this appeal should be allowed and the cross-appeal dismissed for the following among other

REASONS

- (1) BECAUSE the learned Judge was wrong in law in holding that he had power to grant the declaration set out in paragraph 1 hereof to the Respondent.
- (2) BECAUSE the Respondent had no proprietary interest or any other right cognizable at law with which he could complain that the Appellants had interfered.
- (3) BECAUSE the Respondent failed to establish any cause of action in law. 10
- (4) BECAUSE there was no contractual relationship subsisting between the Respondent and the Appellants as Stewards of the Trinidad Turf Club and because the learned Judge was wrong in holding that the Respondent had any contractual right against the Appellants or that the Appellants owed the Respondent any duty founded on contract.
- (5) BECAUSE the learned Judge misconstrued the Rules of Racing of the Trinidad Turf Club. 20
- (6) BECAUSE the Appellants were not under any obligation to hold any inquiry before taking the action complained of by the Respondent.
- (7) BECAUSE in any event the proceedings at the inquiry accorded with the principles of natural justice.
- (8) BECAUSE it being conceded that the Appellants' proceedings at the inquiry were honest and bona fide they were not open to review by a Court of Law.
- (9) BECAUSE the Appellants were entitled in any event to disqualify the Respondent's horse, to withdraw the Respondent's licence to train and to warn him off at their discretion. 30
- (10) BECAUSE the question of the Respondent's responsibility for his horse was a question for the Appellants and the learned Judge was not entitled to substitute his opinion for that of the Appellants.
- (11) BECAUSE the decision of the learned Judge in favour of the Appellants on the allegations of bias against the Appellants de Nobriga and Liddelow proceeded upon a careful view of all the relevant evidence, was peculiarly a matter for the Court of first instance, and was right and ought not now to be disturbed. 40

WALTER MONCKTON.

RICHARD ELWES.

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AND

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(Plaintiff) *Respondent*

AND BETWEEN

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(Plaintiff) *Appellant*

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Case

for the Appellants on the Appeal and for the
Respondents on the Cross Appeal.

J. N. MASON & Co.
41-44 TEMPLE CHAMBERS,
TEMPLE AVENUE, E.O.A.