Privy Council Appeal No. 96 of 1946

Lennox Arthur Patrick O'Reilly (since deceased) and Others - - - - - - - - - *Appellants*

v.

Cyril Cuthbert Gittens - - - - - - - - *Respondent*

AND

Cyril Cuthbert Gittens - - - - - - - - *Appellant*

v.

Lennox Arthur Patrick O'Reilly (since deceased) and Others - - - - - - - - - - *Respondents*

(Consolidated Appeals)

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH JULY, 1949

Present at the Hearing:

LORD PORTER
LORD SIMONDS
LORD NORMAND
LORD MORTON OF HENRYTON
LORD MACDERMOTT

[*Delivered by* LORD MORTON OF HENRYTON]

This appeal and cross-appeal arise out of an action, brought by Dr. Cyril Cuthbert Gittens (hereafter called the respondent) as plaintiff against the appellants, which succeeded in part and failed in part.

The appellants were at all material times the stewards of the Trinidad Turf Club. That Club is the recognised turf authority in the Colony of Trinidad and Tobago, and exercises 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 trainer's licence which expressly provided as follows:—"This licence is issued subject to the rules, regulations and resolutions of the Trinidad Turf Club for the time being and may be withdrawn or suspended by the Stewards of that Club in their absolute discretion, and such withdrawal or suspension may be published in any local newspaper or newspapers, for any reason which may seem proper to such Stewards, and they should not be bound to state their reasons.".

The respondent entered a horse called "Tommy Boy," owned and trained by himself, in certain races at a meeting held by the Tobago Race Club, under the authority of the Trinidad Turf Club, in the spring of 1944. All entries for the said races were made "subject to the rules and regulations of the Trinidad Turf Club." "Tommy Boy" won the first and fifth races on the second day of the meeting, namely, the 4th March.

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 25th, 27th, and 29th April, 1944, the appellants, acting as stewards of the Trinidad Turf Club, held an inquiry into this matter. The respondent attended the inquiry and was represented by solicitor and counsel. At the hearing the respondent was given a full opportunity to cross-examine, to lead evidence and to put forward his contentions by his counsel. At the beginning of the hearing the respondent by his counsel objected to the presence of the appellants de Nobriga and Liddelow on the ground that they were biased against him. This objection was overruled and all the appellants accordingly sat in the inquiry. At the conclusion of the hearing the appellants issued findings and an Order in the following terms:—

"Turf Club Office. 29th April, 1944.

The Stewards of the Trinidad Turf Club, having investigated the circumstances relating to 'Tommy Boy' find as follows:

i. A drug was administered to 'Tommy Boy' on the Second day of the Tobago Races (4th March, 1944), which was calculated to affect its speed.

ii. The Stewards hold the trainer, Doctor Cyril Gittens, responsible for the safeguarding of the horse.

They Order:—

(*a*) That 'Tommy Boy' be disqualified as from this date from all future racing under the Rules of the Trinidad Turf Club;

(*b*) That the licence of Dr. Cyril Gittens, as trainer be withdrawn;

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

L. A. P. O'REILLY, Steward.
C. A. CHILD.
C. LLOYD TRESTRAIL.
GEORGE DE NOBRIGA.
S. LIDDELOW."

The writ in this action was issued on the 5th May, 1944. By his Statement of Claim delivered on the 16th October, 1944, the respondent claimed:—

"A. A declaration that the defendants acting or purporting to act as stewards of the Trinidad Turf Club had no jurisdiction to entertain the said inquiry or to make any of the said decision or orders thereon or alternatively that they exceeded their jurisdiction by making any decision or order against the plaintiff and/or his racehorse 'Tommy Boy' and/or that the defendants de Nobriga and Liddelow (either or both of them) were disqualified from participating in the said inquiry or in any of the decision or orders thereon and/or that the said tribunal was improperly constituted and/or that the said defendants failed to make any due or proper inquiry and/or that the said decision or orders were and are, contrary to the dictates of natural justice.

B. A declaration that for the reasons aforesaid (or any of them) the said decision and/or orders were, and are, null and void and/or should be set aside.

C. An injunction restraining the defendants (and each of them), as Stewards of the Trinidad Turf Club or otherwise from taking any step or doing any act or thing in respect of the plaintiff and/or his said racehorse 'Tommy Boy' to implement or carry into effect in any manner whatsoever the said decisions and/or orders made by the defendants as aforesaid.

D. Such further and/or other relief as the nature of the case may require."

On the 21st June, 1946, Mr. Justice Hallinan made an Order in the Supreme Court of Trinidad and Tobago granting the respondent (1) a declaration that the appellants by their Order of the 29th April, 1944, purported to warn off the respondent 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; (2) a declaration that the appellants' ruling that the respondent had failed to safeguard his horse and the order warning him off were contrary to natural justice for the reasons that the appellants adjudged the respondent by a rule or principle which precluded them from making a proper inquiry.

The learned judge held that the respondent's claim for an injunction could not be maintained, and that the court could not interfere with the appellants' orders disqualifying the horse "Tommy Boy" from all future racing under the rules of the Trinidad Turf Club, and withdrawing the respondent's licence to train, because the appellants had power under the Trinidad Rules of Racing to disqualify a horse which had been the subject of fraudulent practice and the licence to train could be withdrawn or suspended in the absolute discretion of the stewards. The learned judge did not uphold the respondent's claim that the appellants de Nobriga and Liddelow were disqualified from participating in the inquiry.

At the hearing of this appeal the appellants contended that the action should have been dismissed. The respondent on his cross-appeal did not press his claim for an injunction, but contended that all the declarations claimed in the action should have been granted.

The issues arising for the decision of the Board may therefore be summarised as follows:—

(1) Had the appellants power to "warn off" the respondent and if so did the order warning off the respondent result in his becoming a "disqualified person"?

(2) Was the inquiry null and void because, to quote the order of the learned judge, "the appellants adjudged the respondent by a rule or principle which precluded them from making a proper inquiry"?

(3) Was the inquiry null and void because the appellants de Nobriga and Liddelow, or one of them, were or was disqualified from sitting by reason of bias against the respondent?

(4) Had the learned judge power to grant any declaration in the present case? and

(5) Were the orders of the appellants disqualifying the horse "Tommy Boy," and withdrawing the licence of the respondent as trainer, valid or invalid?

The first question depends upon the true construction and effect of certain rules. At the hearing of the appeal reference was made to five sets of rules; Rules of Racing of the Trinidad Turf Club (hereafter called the Trinidad Rules of Racing), General Rules of the Trinidad Turf Club (hereafter called the Turf Club General Rules), Rules and Orders of the Jockey Club 1890, English Jockey Club Rules of Racing,

1940, and the Rules of the Tobago Race Club. It is necessary at this stage to quote the following rules:—

Trinidad Rules of Racing

"Rule 1. 'Stewards.' Unless otherwise stated, wherever the word 'Stewards' is used, it means the Steward or Stewards of the meeting or their duly appointed deputy or deputies.

Rule 17. The Stewards of the Trinidad Turf Club have power, at their discretion, to grant, and to withdraw, licences to officials, trainers, jockeys, grooms, and racecourses, to fix the dates on which all meetings shall be held, to make enquiry into and deal with any matters relating to racing in the Colony. They also have power in cases of emergency or expediency to modify or to suspend any Rule or Regulation, for such period or periods as they shall think fit, without giving previous notice.

Rule 125. Any person who shall:—

(i) Administer or cause to be administered, for the purpose of affecting the speed of a horse, drugs or stimulants internally, by hypodermic, or other method: or

(ii) Corruptly give or offer or promise, directly or indirectly, any bribe in any form to any person having official duties in relation to a race or racehorse, or to any trainer, jockey, or agent, or to any other person having charge of, or access to, any racehorse: or

(iii) Having official duties in relation to a race, or if any trainer, jockey, or agent, or other person, having charge of, or access to, any racehorse, corruptly accept or offer to accept any bribe, in any form: or

(iv) Wilfully enter or cause to be entered or to start for any race a horse which he knows or believes to be disqualified: or

(v) Be guilty of, or shall conspire with any other person for the commission of, or shall connive at any other person being guilty of any other corrupt or fraudulent practice in relation to racing in this or any other country,

shall be warned off by the Stewards and reported forthwith to the Stewards of the Trinidad Turf Club.

When any person is warned off, and as long as his exclusion continues, he is a disqualified person.

Rule 127. A 'disqualified person,' so long as his disqualification lasts, is unable:—

(1) To act as Steward or Official at any recognised meeting;

(2) To act as authorised agent under these Rules;

(3) To subscribe for, or enter, run, train, or ride a horse in any race at any recognised meeting or ride in trials;

(4) Enter any Race Course, Stand, or Enclosure;

(5) Except with permission of the Stewards of the Trinidad Turf Club be employed in any Racing Stable.

Rule 132. The English Jockey Club Rules of Racing for the time being in force shall apply in any case not provided for in these Rules."

Turf Club General Rules

"Rule 17. In addition to the powers conferred on them by the Rules of Racing of the Trinidad Turf Club, the Stewards have a discretionary power to warn any person off any premises belonging to, occupied by, or under the control of the Trinidad Turf Club, and in case of such notice being disregarded, to take legal proceedings against the offenders. In deciding any question the Stewards

may call in any other member to their assistance, or if they think the importance or difficulty of the case requires such a course, to refer it to a General Meeting."

The last-mentioned rule gives the appellants, in the clearest possible terms, a power to warn any person off any premises belonging to, occupied by, or under the control of the Trinidad Turf Club. In their Lordships' view the appellants exercised this power, whether or not they exercised any other power, by their order warning off the respondent "pursuant to the powers vested in the Stewards of the Trinidad Turf Club". It is contended, however, by Counsel for the respondent that this is a "warning off" of a domestic character which merely has the effect of preventing the person so warned off from going upon the premises of the Trinidad Turf Club, and has not the effect of making him a "disqualified person" within the meaning of Rules 125 and 127 of the Trinidad Rules of Racing. They point out, quite correctly, that the respondent was not found guilty of any of the practices mentioned in Rule 125 of the Trinidad Rules of Racing, and they contend that the words "when any person is warned off etc.," at the end of that Rule, apply only to a person who is warned off by the Stewards of the meeting under Rule 125, and have no application to any person who is warned off by the Stewards of the Trinidad Turf Club under any other Rule. Their Lordships cannot accept this contention. It involves the proposition that there are two distinct kinds of warning off, one of which does, and one of which does not have the result of rendering the person warned off a "disqualified person." The phrase "warn off" is a phrase of well-recognised meaning in racing circles, and by reason of certain mutual arrangements, which need not be set out in full but are referred to in Rule 1 of the English Jockey Club Rules of Racing, a person who is warned off the premises of the Trinidad Turf Club is treated as having been warned off the premises of a large number of other clubs all over the world. After a careful consideration of all the relevant rules, their Lordships are unable to give to the words "when any person is warned off" the limited meaning for which the respondent's Counsel contend. In their Lordships' view, any person who is warned off by the Stewards of the Trinidad Turf Club, whether under the Turf Club General Rules or under the Trinidad Rules of Racing, becomes a "disqualified person."

It would appear from the evidence that some at least of the appellants considered that the respondent was warned off under Rule 17 of the Trinidad Rules of Racing, and not under Rule 17 of the Turf Club General Rules. Counsel for the appellants contended that the appellants had power to impose a sentence of warning off under either of these rules. They relied upon the power given by the former rule "to make enquiry into and deal with any matters relating to racing in the Colony." They pointed out that it was unlikely that the Stewards of a meeting would be given power to warn off under Rule 125 of the Trinidad Rules of Racing, but that the superior body, the Stewards of the Trinidad Turf Club, should have no such power under Rule 17 of the same Rules. Surely, said they, the power just quoted from Rule 17 must include a power to impose such a well-known sentence as warning off. Their Lordships think that there is much force in this argument, but they have found it unnecessary to arrive at a conclusion upon it, as they are satisfied, for the reasons already stated, that under Rule 17 of the Turf Club General Rules the appellants had power to impose a sentence of warning off resulting in the respondent becoming a disqualified person within Rule 127 of the Trinidad Rules of Racing. The result is that in their Lordships' view the first of the five questions already stated should be answered in the affirmative.

In considering the second question it is important to bear in mind that neither the learned judge nor their Lordships' Board is entitled to sit as a court of appeal from the decisions of a domestic tribunal such as the Stewards of the Trinidad Turf Club. The jurisdiction of the courts in regard to tribunals of a domestic nature has been discussed in many cases but their Lordships think that the observations which apply most directly

to the present case are those contained in the judgment of Maugham J., as he then was, in the case of *Maclean* v. *The Workers' Union* (1929 1 Ch. 602). The Tribunal in that case was the executive committee of the Union and Maugham J. observed (at page 620 med.):—

> "At the outset it may be expedient to point out that the question will not be whether the Court considers that the conduct of the defendants or their executive committee was fair and just; but the very different question whether the case is one in which the Court has power to interfere.
>
> The jurisdiction of the Courts in regard to domestic tribunals—a phrase which may conveniently be used to include the committees or the councils or the members of trade unions, of members' clubs, and of professional bodies established by statute or Royal Charter while acting in a quasi-judicial capacity—is clearly of a limited nature. Parenthetically I may observe that I am not confident that precisely the same principles will apply in all these cases: for it may be that a body entrusted with important duties by an Act of Parliament is not in the same position as, for example, the executive committee in the present case. Speaking generally, it is useful to bear in mind the very wide differences between the principles applicable to Courts of justice and those applicable to domestic tribunals. In the former the accused is entitled to be tried by the judge according to the evidence legally adduced and has a right to be represented by a skilled legal advocate. All the procedure of a modern trial, including the examination and cross-examination of the witnesses and the summing-up, if any, is based on these two circumstances. A domestic tribunal is in general a tribunal composed of laymen. It has no power to administer an oath and, a circumstance which is perhaps of greater importance, no party has the power to compel the attendance of witnesses. It is not bound by the rules of evidence; it is indeed probably ignorant of them. It may act, and it sometimes must act, on mere hearsay, and in many cases the members present or some of them (like an English jury in ancient days) are themselves both the witnesses and the judges. Before such a tribunal counsel have no right of audience and there are no effective means for testing by cross-examination the truth of the statements that may be made. The members of the tribunal may have been discussing the matter for weeks with persons not present at the hearing, and there is no one even to warn them of the danger of acting on preconceived views.
>
> It is apparent and it is well settled by authority that the decision of such a tribunal cannot be attacked on the ground that it is against the weight of evidence, since evidence in the proper sense there is none, and since the decisions of the tribunal are not open to any sort of appeal unless the rules provide for one."

Maugham J. then quoted from the judgment of Bowen L.J., in *Leeson* v. *General Council of Medical Education and Registration* (43 Ch. D. 366):

> "'There must be due inquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived at if he has had a full opportunity of being heard."

And observed:—

> "To my mind that statement of the case *mutatis mutandis* is applicable, apart from any special rule, to all such cases as I am considering, and it follows exactly the same lines as the well known decision of the Court of Appeal in the case of *Dawkins* v. *Antrobus* (1881 17 Ch. D. 615)."

Their Lordships have set out these passages because they accept the principles thus laid down as being applicable to the case now before them. Applying them, they are unable to reach a conclusion that the proceedings at the court of inquiry can be set aside on the grounds stated by the learned judge.

It is true that no evidence was given indicating that the respondent either administered a drug to "Tommy Boy" or had any knowledge that a drug was being administered. It was he himself who had suggested, some time before, that the saliva of winners of races should be tested, and he knew that the winners on the first day's racing at the Tobago spring meeting had had their saliva examined. He had trained and raced horses with success for many years and it is difficult to believe that he could have so directly imperilled his position merely in order to win another race. In fact, it appears from the evidence given by the appellants at the trial that they were all prepared to believe that the respondent had nothing to do with the administration of the drug. Thus no moral blame was attached to the respondent, and his punishment was no doubt severe. Counsel for the respondent contended that the rule of absolute responsibility of a trainer, applied in *Chapman* v. *Ellesmere* (1932 2 K.B. 431), should not have been applied strictly in the present case, having regard to the fact that the trainer was to some extent deprived of the supervision of his horse by the following rule, which had been introduced by the then Stewards of the Trinidad Turf Club in 1934 and appears in the official programme for the 1944 spring meeting of the Tobago Race Club.

> "(6) Horses intending to start in a race must be in the Paddock at least one hour and in the saddling stalls 30 minutes before the time appointed for the race."

The learned judge attached great importance to this rule. He said in his judgment, "There is no doubt in my mind that the new practice did weaken the responsibility of the trainer" and he stated his conclusion as follows:—"By the adoption of what was in the circumstances an unreasonable and arbitrary rule"—here the learned Judge is referring to the rule applied in *Chapman's* case—"the defendants in effect deprived the plaintiff of a proper opportunity to make his defence. In my opinion the application of this inflexible rule was contrary to natural justice and on this ground alone this Court can and should make a declaration in the plaintiff's favour."

No doubt it was open to the appellants to take a more lenient view of the respondent's responsibility in the present case. They might have thought that, in all the circumstances, and having regard to the rule introduced in 1934, he should not have been held responsible for the unfortunate incident which took place in regard to "Tommy Boy." All these matters however are essentially matters for the domestic tribunal to decide as it thinks right. Provided that the tribunal does not exceed its jurisdiction and acts honestly and in good faith, the court cannot intervene, even if it thinks that the penalty is severe or that a very strict standard has been applied. The matters dealt with in the judgment of Hallinan J. under this head do not affect the jurisdiction of the tribunal, and no attack has been made upon the honesty or good faith of its members. Moreover their Lordships cannot agree with the observations of Hallinan J., already quoted, that "by the adoption of what was in the circumstances an unreasonable and arbitrary rule, the defendants in effect deprived the plaintiff of a proper opportunity to make his defence." From the notes of the inquiry which appear in the record it is plain that counsel for the respondent had every opportunity of putting the respondent's case and he in fact argued at some length that the rule in *Chapman's* case should not have been applied, and that the respondent should not have been penalised unless it was found that he was actually implicated in the "doping." For these reasons the second question must be answered in the negative.

Their Lordships now turn to the question of bias.

It is convenient to quote at this stage certain observations of Maugham J. in *Maclean's* case, which, in their Lordships' view, apply *mutatis mutandis* to the present case:—

> "A person who joins an association governed by rules under which he may be expelled, e.g., such rules as in the present case exist in

rules 45 and 46, has in my judgment no legal right of redress if he be expelled according to the rules, however unfair and unjust the rules or the action of the expelling tribunal may be, provided that it acts in good faith. It is impossible to doubt that, if the rules postulate an inquiry, the accused must be given a reasonable opportunity of being heard. The phrase, 'the principles of natural justice,' can only mean in this connection the principles of fair play so deeply rooted in the minds of modern Englishmen that a provision for an inquiry necessarily imports that the accused should be given his chance of defence and explanation. On that point there is no difficulty. Nor do I doubt that in most cases it is a reasonable inference from the rules that if there is anything of the nature of a *lis* between two persons, neither of them should sit on the tribunal. But when it is sought to lay down elaborate rules, taken from decisions as to Courts of law, and to apply them in such a case as the present, I think it is prudent to remember that these more or less artificial principles have no application except so far as they can be derived from a fair construction of the rules, and that the implication can only be made if it is clear that the parties, who are laymen and not lawyers, must have intended it."

On this part of his case, counsel did not lay any stress on the position of the appellant de Nobriga, but he relied very strongly on certain observations of the learned judge in regard to the appellant Liddelow. These observations are of such importance that they must be set out at some length. After summarising the evidence in regard to the previous unfriendly relations between the respondent on the one hand and the appellants de Nobriga and Liddelow on the other, the judge continued:

"The allegations of bias against the defendants de Nobriga and Liddelow may be summed up shortly. The plaintiff has for many years been on bad terms with both defendants: he hates them and they dislike him. I do not consider that the defendant de Nobriga would allow this dislike consciously to bias his judgment against the plaintiff: his dislike of the plaintiff was not sufficient to disqualify him from sitting on the Enquiry. At the same time far from trying to avoid the delicate position of adjudicating upon someone he disliked—a feeling which he knew was more than reciprocated—he assisted in the adjudication at Arima and he sat on the Enquiry. The comment of the Privy Council upon similar facts in the case of *Thompson* v. *British Medical Association* (N.S.W. Branch) (1924) A.C. 764 at p. 781 is appropriate here:

> 'In their Lordships' view persons called upon to discharge judicial or quasi-judicial duties can never have it too often impressed upon them how undesirable it is that they should attempt to discharge those duties under conditions which throw suspicion, however undeservedly, on their motives and action.'

In the case of the defendant Liddelow, the prejudice went much further. There is, in my opinion, a grave suspicion that he was not an impartial judge. I can say without hesitation that his bias should have disabled him from sitting on the Enquiry and were the Enquiry a judicial proceeding and not merely quasi-judicial, his presence on the tribunal would have invalidated the proceedings. But the question here is whether his presence prevented the Enquiry from being a proper enquiry and therefore contrary to natural justice. It is unreasonable to expect that the standard of impartiality and detachment in a domestic tribunal's members should be as impeccable as in Courts of Law, and therefore I consider that the oft repeated maxim that justice must not only be done but appear to be done, should not be applied too rigorously in the case of domestic tribunals. In this I follow the conclusion reached by Maugham J. in *Maclean* v. *The Workers' Union*. I think the test should be whether the presence of prejudiced persons inject such an element of bias into the tribunal as to give rise to a reasonable suspicion that the trial was not a fair

one. In the circumstances of the present case, I do not consider that the presence of the defendant, Liddelow, on the Tribunal was sufficient to give rise to such a suspicion."

At first sight this passage, and especially the words "There is, in my opinion, a grave suspicion that he was not an impartial judge" might appear to mean that Mr. Liddelow, sitting as a member of the tribunal, did not honestly apply his mind to arriving at the proper conclusion on the evidence; in other words that he did not act honestly in the discharge of his judicial duty. If that were the meaning of the words just quoted, their Lordships would be of opinion that the decisions of the tribunal could not stand. They think, however, that a consideration of the judgment as a whole makes it clear that this could not have been the learned judge's meaning. He had already said "In the present case the plaintiff does not challenge the honesty or *bona fides* of the defendants" and after the passage in question he said "I have no doubt the stewards are persons of great integrity and experience. They have striven to keep the sport of racing clean and to protect the racing public. Perhaps it was these very qualities which led them to judge the plaintiff by a rule that it might be both salutary and fair to enforce if the practice before 1934 had remained unaltered or if trainers since 1934 had been expressly warned of their absolute liability." Further, if the learned judge had thought that Mr. Liddelow had not honestly discharged his judicial functions as a member of the Tribunal he could hardly have said "In the circumstances of the present case, I do not consider that the presence of the defendant, Liddelow, on the Tribunal was sufficient to give rise to such a suspicion," i.e., the suspicion that the trial was not a fair one. Reading the judgment as a whole their Lordships are satisfied that when the learned judge used the phrase "a grave suspicion that he was not an impartial judge" he meant merely that Mr. Liddelow started the proceedings with a dislike for the respondent and a consequent prejudice against him. They do not understand the learned judge as finding that Mr. Liddelow did not honestly try to arrive at the proper conclusion on the evidence. This being so, their Lordships think that the appellants, sitting as a tribunal, discharged the obligation which lay upon them to act honestly and in good faith. It may be that it would have been wiser, and in better taste, if Mr. Liddelow had refrained from sitting at the inquiry, having regard to the previous relations between the respondent and himself, but their Lordships cannot find that his presence as one of the tribunal rendered its conclusions null and void. They think that the standard to be applied in the present case is the standard laid down by Maugham J. in *Maclean's* case, and they do not think it would serve any useful purpose to discuss the many other cases cited in argument in which standards have been laid down, in varying terms, for tribunals of various kinds. In the present case the respondent, from the start of his career as a trainer and owner, submitted himself to the jurisdiction of certain individuals, namely, the Stewards for the time being of the Trinidad Turf Club. No doubt these Stewards would have some personal acquaintanceship with persons who owned and trained racehorses in Trinidad and Tobago, and they would have been more than human if they had not been in more friendly relations with some trainers and owners than with others. Yet in submitting himself to the "rules of the Trinidad Turf Club for the time being," the respondent agreed, in effect, that the appellants should be his judges in the circumstances which arose in 1944. He cannot now complain of their decision against him unless he can establish one of the grounds of objection stated in *Maclean's* case; and this he has failed to do.

Having arrived at the conclusion that the proceedings of the stewards cannot be treated as being null and void on any of the three grounds already discussed, their Lordships can deal very briefly with the fourth and fifth issues. As to the fourth issue, if there had been any reason for holding that the proceedings were null and void, it would have been necessary to consider whether the present case was one in which a declaratory judgment or order could properly be made under Order XXV,

Rule 5, of the Rules of the Supreme Court. This question does not, however, arise, having regard to the conclusions already arrived at on the first three issues.

As to the fifth issue, which forms the subject of the cross-appeal, as the proceedings at the inquiry are in no way invalid their Lordships agree with the learned judge in thinking that he could not interfere either with the disqualification of "Tommy Boy" or with the withdrawal of the respondent's licence. Rule 48 of the Trinidad Rules of Racing provides:

> "Any horse which has been the subject of fraudulent practice may at the discretion of the Stewards of the Trinidad Turf Club, be disqualified for such time and for such races as they shall determine."

There is no doubt that the unfortunate horse in question had been the subject of a fraudulent practice, namely the administration to him of a drug with the intention of increasing his speed. This fact gave the Stewards a discretion to disqualify the horse, notwithstanding that his owner and trainer was not shown to have been in any way a party to the fraudulent practice in question. As to the withdrawal of the respondent's licence, the terms of the licence gave the Stewards absolute discretion to withdraw or suspend it. This discretion they exercised at the inquiry. Their Lordships need not consider whether an inquiry was necessary before the licence was withdrawn, as an inquiry was in fact held. Nor need they consider whether proof of bad faith could affect the validity of the withdrawal, as bad faith is not suggested in the present case. In these circumstances the questions debated in the recent case of *Russell* v. *Duke of Norfolk and others*, 1949, 1 A.E.R. 109, do not arise for decision in the present case.

For the reasons stated their Lordships are of opinion that the respondent's action should have been dismissed by Hallinan J. They will humbly advise His Majesty that this appeal should be allowed and the cross-appeal dismissed and that the respondent's action against the appellants should be dismissed. The respondent must pay the costs of the appellants of the action, the appeal and the cross-appeal.

(65559) Wt. 8084—42 100 8/49 D.L. G. 338

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Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1949