

ON APPEAL
FROM THE SUPREME COURT OF
NEW SOUTH WALES
EQUITY DIVISION
IN PROCEEDINGS 762 OF 1977

FERD DAWSON CALVIN (Plaintiff) Appellant

JOHN HENRY BROWNLOW CARR (First-named Defendant)

JOHN HENRY BROWNLOW CARR, BLAKE RAYMOND PELLY,
DENIS PATRICK ROWE, SIR JOHN WORROKER AUSTIN,
ROBERT ANDREW HOWELL, WILLIAM FRASER GORDON,
JOHN HORACE INGHAM, THOMAS RENDELL STREET, REX JAMES WHITE
(Second-named Defendants)

JAMES JOSEPH MEEHAN, HECTOR JOHN MAHONEY,
DOUGLAS GEORGE McKAY, JACK BARRY HICKMAN,
THOMAS JOSEPH CARLTON, NORMAN SWAIN, BRIAN HILTON KILLIAN
(Third-named Defendants)
Respondents

RECORD OF PROCEEDINGS

PART II

Volume II

SOLICITORS FOR THE APPELLANT

Adrian Twigg & Co.,
160 Castlereagh Street,
Sydney. N.S.W.

By their Agents:

Waterhouse & Co.,
4 St. Pauls Churchyard,
London. EC FORM 8BA U.K.

SOLICITORS FOR THE RESPONDENTS

Stephen Jaques & Stephen,
A.M.P. Building,
Circular Quay. N.S.W.

By their Agents:

Linklaters & Paines,
Barrington House,
59-67 Gresham Street,
London. EC2V 7JA U.K.

ON APPEAL
FROM THE SUPREME COURT OF
NEW SOUTH WALES
EQUITY DIVISION
IN PROCEEDINGS 762 OF 1977

FERD DAWSON CALVIN (Plaintiff) Appellant

JOHN HENRY BROWNLOW CARR (First-named Defendant)

JOHN HENRY BROWNLOW CARR, BLAKE RAYMOND PELLY,
DENIS PATRICK ROWE, SIR JOHN WORROKER AUSTIN,
ROBERT ANDREW HOWELL, WILLIAM FRASER GORDON,
JOHN HORACE INGHAM, THOMAS RENDELL STREET, REX JAMES WHITE
(Second-named Defendants)

JAMES JOSEPH MEEHAN, HECTOR JOHN MAHONEY,
DOUGLAS GEORGE MCKAY, JACK BARRY HICKMAN,
THOMAS JOSEPH CARLTON, NORMAN SWAIN, BRIAN HILTON KILLIAN
(Third-named Defendants)
Respondents

RECORD OF PROCEEDINGS

PART II

Volume II

SOLICITORS FOR THE APPELLANT

Adrian Twigg & Co.,
160 Castlereagh Street,
Sydney. N.S.W.

By their Agents:

Waterhouse & Co.,
4 St. Pauls Churchyard,
London. EC FORM 8BA U.K.

SOLICITORS FOR THE RESPONDENTS

Stephen Jaques & Stephen,
A.M.P. Building,
Circular Quay. N.S.W.

By their Agents:

Linklaters & Paines,
Barrington House,
59-67 Gresham Street,
London. EC2V 7JA U.K.

ON APPEAL
FROM THE SUPREME COURT OF
NEW SOUTH WALES
EQUITY DIVISION
IN PROCEEDINGS 762 OF 1977

FERD DAWSON CALVIN

(Plaintiff) Appellant

JOHN HENRY BROWNLOW CARR

(First-named Defendant)

JOHN HENRY BROWNLOW CARR BLAKE RAYMOND PELLY DENIS PATRICK ROWE
SIR JOHN WORROKER AUSTIN ROBERT ANDREW HOWELL WILLIAM FRASER
GORDON JOHN HORACE INGHAM THOMAS RENDELL STREET REX JAMES WHITE

(Second-named Defendants)

JAMES JOSEPH MEEHAN HECTOR JOHN MAHONEY DOUGLAS GEORGE McKAY
JACK BARRY HICKMAN THOMAS JOSEPH CARLTON NORMAN SWAIN
BRIAN HILTON KILLIAN

(Third-named Defendants)

Respondents

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

PART II

LIST OF EXHIBITS INCLUDED IN THE RECORD

Exhibit Mark	Description	Date	Page
--------------	-------------	------	------

VOLUME II

PLAINTIFF'S EXHIBITS:

"A"	Rules of Racing (In pocket at back of Appeal Book)	1 January,	1975
"B"	Interrogatories directed to Mr. J.H.B. Carr numbered 12 to 16 inclusive and 18-20 inclusive and answers thereto	13 August,	1977 397
"C"	Interrogatories directed to the Third Defendants numbered 1 to 9 inclusive and answers thereto	7 July,	1976 354

Index "A"

Exhibit Mark	Description	Date	Page
	Plaintiff's Exhibits Continued :		
"D"	Transcript of Stewards' Inquiry	13 March,	1976 139
"H"	Part Transcript of Hearing before A.J.C. Committee	9 and 13 April,	1976 207
"K"	Interrogatories directed to Raymond Alexander numbered 12 to 20 inclusive and answers thereto	30 August,	1977 405
"O"	Rules of the A.J.C. Rules 1, 11 and 25	1 October,	1976 395
	<u>DEFENDANTS' EXHIBITS:</u>		
2	Interrogatories directed to the Plaintiff numbered 13, 14 and 17 and answers thereto	21 June,	1976 353

INQUIRY INTO THE RUNNING OF COUNT MAYO (N.Z.)
IN THE EASTLAKES HANDICAP, SECOND DIVISION
AT RANDWICK ON 13TH MARCH, 1976

HELD AT RANDWICK RACECOURSE ON SATURDAY 13TH MARCH, 1976

STEWARDS: Messrs Meehan (Chairman)
Mahoney (Deputy Chairman), McKay,
Hickman, Carlton and Swain

JOCKEY P. CUDDIHY, rider of Count Mayo, was called:

CHAIRMAN: Jockey P. Cuddihy in the Eastlakes Handicap you rode Count Mayo? 10

P. CUDDIHY: Yes.

CHAIRMAN: Who gave you instructions?

P. CUDDIHY: The owner, Mr. Calvin, and the foreman of Mr Cummings.

CHAIRMAN: What instructions were they?

P. CUDDIHY: To jump, and they warned me to watch him early. In New Zealand he knocked a field down at his first run. The other day I rode him in a trial and he hung. He had horses outside him, and he went around all right. They said to watch him. They told me to make sure I did not pull the whip on him. Apparently if you hit him with the whip he runs everywhere. 20

CHAIRMAN: How did he go in the race?

P. CUDDIHY: He jumped all right, but with his head in the air, and for about 50 metres. Once he went about a furlong, he hung. He did not run off, but he hung from there to inside the last furlong. In the last half furlong he started to veer to the outside.

CHAIRMAN: Where did you try to improve your position from the 600 metres to the turn? 30

P. CUDDIHY: If I had let him go he would have run straight off the track. The steward along there would verify that he hung bad along the back. I held him up coming to the turn, trying to get him round the turn. But he still wanted to hang off.

CHAIRMAN: In the straight did you use any vigour?

Exhibit "D"
Stewards' Enquiry

P. CUDDIHY: Only because he was hanging off, I rode him hands and heels. He was not charging off until inside the last half furlong. He was nearly going to win the race. As soon as I started to ride - or I roared at him - he charged out.

MR McKAY: Had you ridden him before?

P. CUDDIHY: In the trial.

MR McKAY: How did he go in the trial?

10

1.

P. CUDDIHY: He raced green. He jumped out of the barrier and raced green until we straightened up. He had horses around him and horses outside him.

MR McKAY: Did he hang out off the track?

P. CUDDIHY: He had horses outside him.

MR McKAY: He didn't want to hang?

P. CUDDIHY: Not with the horses outside. But he hung early in the trial. I got them to check his mouth. They said his teeth were all right.

20

CHAIRMAN: This was the horse's first run in Australia?

P. CUDDIHY: Yes. He had a history of running off in New Zealand. He has run off three times in New Zealand.

MR. MAHONEY: You say that he hung out in the straight?

P. CUDDIHY: Yes.

MR MAHONEY: Did you give any thought to pulling the whip?

P. CUDDIHY: No. They said the last thing is not to hit him with the whip.

MR. MAHONEY: Not ever?

P. CUDDIHY: They said, "If you hit him he will run all over the track". That is what they said in New Zealand. He has been here only fifteen days. In the trial he did not have a hard run.

30

MR MAHONEY: Why didn't someone tell the stewards that he would run all over the track if hit with the whip?
(No response)

Exhibit "D"
Stewards' Enquiry

MR HICKMAN: You were unable to ride him out in the home straight because he would run about?

P. CUDDIHY: When I started riding hands and heels, he darted off.

MR SWAIN: In the last 100 metres you made up ground?

P. CUDDIHY: He ran out.

MR SWAIN: How far out did he run?

P. CUDDIHY: He finished up running out about five or six horses, and even further. 10

MR SWAIN: Despite this, he still made up ground?

P. CUDDIHY: Yes.

MR SWAIN: Do you think he may have won if you had been able to pull the whip and hit him with the whip in the left hand?

P. CUDDIHY: The way he raced, if I had hit him I would say I would have made him worse. As soon as I took the one hand off to pull the whip he would have run straight out. 20

MR SWAIN: Going back to early in the race, you agree that the horse shifted out just after the start?

P. CUDDIHY: Yes.

2.

MR SWAIN: Between the 500 and the 600, would you agree that you raced on the fence?

P. CUDDIHY: No.

MR SWAIN: How far out were you?

P. CUDDIHY: Two off.

MR SWAIN: All the way? 30

P. CUDDIHY: Yes.

MR SWAIN: Did you maintain that straight course all the way down the side?

Exhibit "D"
Stewards' Enquiry

P. CUDDIHY: I was two off the fence just starting the turn. I got out another horse.

MR SWAIN: You say the horse was hanging off that badly that if you had let him go he would have run right off?

P. CUDDIHY: Yes. He was hanging bad.

MR McKAY: Did you tell the trainer after the trial that the horse had hung badly?

P. CUDDIHY: Yes. I got him to check his mouth and teeth. They said that they checked and never found anything wrong. 10

CHAIRMAN: Was it the trainer or owner who told you not to pull the whip?

P. CUDDIHY: The owner and the trainer. The foreman said that the fellow who sold the horse said that he had not had the whip pulled on him over there. The only time he had, he knocked the field down or something.

MR HICKMAN: Why carry the whip?

P. CUDDIHY: I always carry it.

MR HICKMAN: Even though you do not intend to use it? 20

P. CUDDIHY: If he was not hanging off, I probably would have pulled it.

MR HICKMAN: Even though they told you not to?

P. CUDDIHY: The way they were talking, it was because of his hanging. If he was going straight, and if he had not hung at all and it looked like going to get to them with a hit on the backside, I would have.

MR SWAIN: After the horse raced in the barrier trial, did you recommend to the trainer to wear a lugging bit?

P. CUDDIHY: I thought it was his sore mouth. When he jumped out of the barrier he raced with his head up. That was in the trial, the same as today. In the trial he had horses outside him, and they held him together until they straightened up. Down the running he went out. 30

MR. SWAIN: Before the race today did you discuss his mouth with the trainer or his representative?

Exhibit "D"
Stewards' Enquiry

P. CUDDIHY: I said to the foreman Mr Dawson - I rang him and said, "Make sure you do that horse's mouth." He said, "I sent the things off to

3.

South Australia - the tools." He said, "I think it has been done since he was here." He said that he checked it and it had been done. I said, "He hung the other day."

CHAIRMAN: Did the owner or trainer indicate that they would have any money on the horse? 10

P. CUDDIHY: The trainer and the owner said he would back the horse.

CHAIRMAN: When you say the trainer, you mean the trainer's representative?

P. CUDDIHY: Yes.

CHAIRMAN: Mr Dawson?

P. CUDDIHY: Yes.

(P. Cuddihy withdrew)

MR F.D. CALVIN part-owner of Count Mayo: 20
MR R. DAWSON stable foreman of the trainer of Count Mayo
were called:

CHAIRMAN: Mr. Calvin, you are the part-owner of Count Mayo?

MR. CALVIN: Yes.

CHAIRMAN: The stewards are inquiring into its running. Were you there when instructions were given to P. Cuddihy?

MR CALVIN: I gave the instructions myself.

CHAIRMAN: What did you tell him?

MR CALVIN: We felt that the horse was badly underdone and needed the run badly. I told him to take hold of the horse early, and try to let him come home. You could see yourself when the horse pulled up. When he came from New Zealand the horse was not fit. Sykes bled him, he gave him 13 to 15 days off; thirteen easy days. He worked five three-quarter pace; he had a barrier trial on the Tuesday. 30

Exhibit "D"
Stewards' Enquiry.

We said that the only chance of winning was to hold him up early and let him come home. I said, "Make sure you do not use the horse up, because if you do he has no chance to finish on." The agent who sold me the horse, Graham Rogerson - I spoke to him on Monday. We were trying to get the papers through to run him today and in the Magic Night Quality, to qualify for the Golden Slipper. He said "The horse has run off in New Zealand every time he was hit with the whip." I said to Cuddihy, "For God's sake, don't hit him unless you absolutely have to", and not to hit him at all unless it was very desperate. I did not want him to hit him. I thought he would either win or he would need the run. We got the record of the horse in New Zealand. He is beautifully bred and is obviously a top horse. But he is very erratic; that is the problem over there. The first time he started he knocked down a whole field. The time before he won he ran right off on the turn and went almost to the outside fence. The boy hit him on the turn and he went to the outside fence. 10 20

CHAIRMAN: You saw the race today?

MR CALVIN: Yes.

CHAIRMAN: Were you satisfied with the way Cuddihy rode it?

MR CALVIN: He rode him the way I told him to. I could not see exactly what was happening to the horse - whether he got out under pressure or what. He kept veering out, and towards the finish he finished under the judge's box.

- 4 -

CHAIRMAN: He veered out over the last half furlong? 30

MR CALVIN: I told him to hold the horse up early and have the horse come home, and he will come home over the top of those horses in that field. But we were concerned about his fitness. We really did not think the horse could win.

CHAIRMAN: Did you have a bet on the horse?

MR CALVIN: Yes, I did.

CHAIRMAN: You do not have to tell us; you can write it down.

(Mr Calvin noted his bet and handed it to Chairman) 40

Exhibit "D"
Stewards' Enquiry.

CHAIRMAN: Mr Dawson, you were there when the instructions were given? Did you have anything to do with the giving of the instructions?

MR DAWSON: We talked about the horse at great length before the race - about his greenness in New Zealand. Apart from the times he ran in New Zealand, he had had virtually three gallops before the race today. We thought the only chance he would have to win the race would be to be held up early, and then come home the last three furlongs.

10

CHAIRMAN: You saw the race?

MR DAWSON: Yes.

CHAIRMAN: Were you satisfied with Cuddihy's handling of the horse?

MR DAWSON: Yes, I was.

MR MAHONEY: Mr Calvin, did you make any effort to inform the stewards that the horse was not going to be ridden with the whip, unless it was desperate?

20

MR CALVIN: I did not. I did not think you had to, if it is ridden out hands and heels. Do you have to draw the whip and ride to the post if they are underdone?

MR MAHONEY: It makes the stewards suspicious. If a horse is doing something and he is not using the whip, it makes us wonder why.

MR CALVIN: If it was a close finish, he might hit the horse, But I didn't want him to knock the horse about. But at the same time, we wanted to win the race.

MR MAHONEY: You made no effort to let us know?

30

MR CALVIN: I didn't think you had to.

CHAIRMAN: You do not have to, but on the other hand it is a good idea to tell us.

MR CALVIN: The behaviour of the horse in New Zealand worried us. One pressman saw the horse race in New Zealand, and he said the same thing happened. He saw him race. He is a very green horse.

MR MAHONEY: You did not think of using a lugging bit?

Exhibit "D"
Stewards' Enquiry

MR CALVIN: I leave that up to the trainer.

MR MAHONEY: Mr Dawson, you have been looking after this horse in its preparation?

MR DAWSON: Yes.

- 5 -

MR MAHONEY: Are you aware of the deep wound on the inside of the mouth?

MR DAWSON: I never noticed any marks there. 10

MR MAHONEY: Did you note it had a cut in its mouth at all?

MR DAWSON: No.

MR MAHONEY: An old cut?

MR DAWSON: No.

MR MAHONEY: You did not notice it at all?

MR DAWSON: No.

MR MAHONEY: Did you know that it had been cut again today-after the race?

MR DAWSON: No, I never looked at him after the race.

MR MAHONEY: You were not aware of that at all? 20

MR DAWSON: No.

MR CALVIN: I heard about that in New Zealand. They told me that happened in New Zealand, when he got off. He did run off, and apparently the bit got through to his mouth, with an inexperienced kid on him. When he came back he was supposed to have had a cut in his mouth there.

MR MAHONEY: Mr Dawson, Cuddihy rode the horse on the track the other day?

MR DAWSON: Yes.

MR MAHONEY: Did he say the horse tried to hang in the trial? 30

MR DAWSON: I did not talk to him much after the trial.

Exhibit "D"
Stewards' Enquiry.

MR MAHONEY: Why talk to him?

MR DAWSON: I was watching him go round in the barrier trial, and was concerned with the way he was throwing his head before the start.

MR MAHONEY: You had no knowledge that it hung in the trial?

MR DAWSON: No, I did not.

MR MAHONEY: Mr Calvin, you have some knowledge?

10

MR CALVIN: Yes. Going to the barrier the horse threw its head all over the place. He shook it this way and that way.

MR MAHONEY: In the barrier trial?

MR CALVIN: Yes, on Tuesday. We wanted to make sure he would get round the turn, especially on the A grass. We told Cuddihy to make it settle down, and make sure he gets around the turn. After the trials I went to the dressing down sheds. The horse had already gone. That night Cuddihy rang me at home, and said would I get in touch with Dawson and suggest we get the man to go and look at his teeth. He said that there was something wrong with its mouth, and it may be a tooth sticking out inside the jaw. He said that the way he felt going to the barrier, the horse tried to bolt with him, and when he started to pull him up he threw his head.

20

- 6 -

MR MAHONEY: Did Cuddihy say the horse had hung?

MR CALVIN: He did not say whether he hung. I did not ask him. I watched the trial myself. He seemed to go all right. If you had seen the trial, he just went around to have a trip. The main thing was to get him around the turn. He said to me that when he jumped he went very fierce early. I said, "We can't have him do that". He said, "I let him settle down, and once he was settled down, he was all right." We had those teeth checked.

30

MR DAWSON: I could not get his teeth checked.

MR CALVIN: I told him to.

Exhibit "D"
Stewards' Enquiry.

MR DAWSON: We get a lot of trouble getting them done. They are done roughly every month.

MR MAHONEY: Seeing that the horse had a history of hanging out in New Zealand, didn't either of you give any thought to experimenting with a lugging bit?

MR DAWSON: We do it only if we think it is necessary. He never tried to run off on the track. We do not generally like to change bits too much.

10

MR CALVIN: I would say that this horse knows when it is race day. He was an entirely different horse at the trials, he was quiet during the running of the trials, yet I looked at him in the walking ring today and he was sweating and stirry. He said that on the track he won't work, that he won't race with the horses or anything, yet in a race obviously the crowd and everything stirs the horse up. The same thing must have happened in New Zealand.

CHAIRMAN: We asked the veterinary surgeon to look at this horse after the race. His report says: "I examined Count Mayo (N.Z.) at the stewards' request at 1.50 p.m. There appeared to be no abnormality apart from a laceration with bruising inside the left commissure of the mouth."

20

MR CALVIN: What about teeth?

CHAIRMAN: There is nothing about that.

MR CALVIN: I thought he might have a big molar sticking into his jaw. That is why I asked Mr Dawson, and I thought he had done it. As a matter of fact, Cuddihy said to me on Tuesday night - he said to make sure you have the horse's mouth checked before he races on Saturday. (To Mr Dawson) I called you and got you at 6.30 or 7 o'clock. (To Chairman) He said, "I did not do it." Apparently the teeth man was not there when they had them done. I would like to have the horse's mouth checked by one of our experts here. I understand that in New Zealand they are rough on these sort of things, and that could be.

30

MR McKAY: Mr Dawson, when you were told that there was possibly something wrong with the mouth, did you look at it yourself?

40

MR DAWSON: No. If there is any damage to the horse I leave it to the dentist to fix the teeth.

MR McKAY: Surely when told that something is wrong, and

Exhibit "D"
Stewards' Enquiry.

knowing that the horse was racing today, you must have thought it was important enough for you to look yourself? Or to make sure by getting the Vet. to look at it?

- 7 -

MR DAWSON: Our Vets. are reluctant to look at teeth. They won't rasp them.

MR McKAY: You knew the horse was racing today. Why not make some effort to get someone to look at it? 10

MR DAWSON: The bloke who does our teeth is hard to get hold of sometimes on special occasions. He calls around any time. He comes once a month and goes through the lot.

MR McKAY: You were prepared to let the horse run today even though something was wrong with it?

MR DAWSON: I don't think there was a great deal wrong with it.

MR McKAY: You did not look to find out?

MR DAWSON: No, I did not look. 20

MR MAHONEY: Didn't you think it was a lackadaisical approach? We all have to look after the races to see what is wrong with the horses.

CHAIRMAN: That is a fairly substantial bet you have written, Mr Calvin?

MR CALVIN: Yes.

CHAIRMAN: Is that a good bet for you, or a medium bet?

MR CALVIN: I have not been betting that big lately. I have had bigger, but it is a damn good bet for anyone.

MR HICKMAN: Do you think you should have started the horse when you thought he could not win and was underdone? 30

MR CALVIN: How do you get a horse fit? If he is good enough he can win. If you thought it was not fit, why not tell us not to run him? I took the advice of Sykes the Veterinary Surgeon. I had him look at the horse yesterday. A blood count was done. I said to Mr Sykes,

Exhibit "D"
Stewards' Enquiry

"If this horse does not look right, I want to scratch him." He was the veterinary surgeon. He looked at the horse, and he said, "I think he should run a big race." He watched the race with me. He said, "This horse is much bigger with the saddle on than he is without it." That is how it can fool anyone. Mr Sykes is a specialist, but he looked at the horse without the saddle in the stable yesterday, and spoke to me last night. We had a blood count done. I said, "If there is anything wrong with the horse, it is not to run." This horse is worth a lot of money, and he could be a successful sire later on. That was my whole intention of having it. All I want to see is the horse winning races.

10

MR. MCKAY: Mr Dawson, do you keep in touch with Mr Cummings, the trainer?

MR DAWSON: Yes, every day.

MR MCKAY: In regard to the condition of the horses?

MR DAWSON: Yes. At 5 o'clock each fast morning we go through every horse in the stable and discuss it. We also discuss the future races that the horses are being set for. Count Mayo is being got ready for the Sires Produce Stakes. That is why we started him so quickly after coming from New Zealand. As soon as he arrived we had him bled the next day or the day after. As soon as he looked all right and recovered enough from the bleeding operation, we began to work him quickly and put him in a trial.

20

- 8 -

MR MCKAY: Mr Cummings is relying on you for information? He has not seen the horse?

30

MR DAWSON: He has seen the horse.

MR MCKAY: Has he seen it working?

MR DAWSON: Yes, he saw him work on the track one morning - I think the first day.

MR MCKAY: Up to yesterday he relied solely on what you conveyed about the horse? He relied on your judgment?

MR DAWSON: Yes.

CHAIRMAN: The next race is coming up, and we will have to see you after the next race.

(Adjournment)

LATER:

MR CALVIN came to the stewards' room.

MR CALVIN: I had some friends who had a bet on that horse. Would you like me to leave this with you?

CHAIRMAN: Yes, please.

MR CALVIN: John Holloway had \$500 for himself and \$1000 for a Mr Holland. That is an nod bet. Bert Lillie had \$200 on him. 10

(Mr Calvin withdrew)

UPON RESUMING:

MR J. MASON was called:

CHAIRMAN: Mr Mason, we are inquiring into the running of Mr Calvin's horse. He said that you put some money on the horse for him.

MR MASON: He rang me this morning and asked me to put money on for him.

CHAIRMAN: How much? 20

MR MASON: \$6000. I also backed another one - La Stupenda.

CHAIRMAN: Will you give us the names of the bookmakers?

MR MASON: I did not back it here on the course.

CHAIRMAN: Where did you back it?

MR MASON: I sent it to Melbourne, and got them to put it on on the first ring. I knew it would be short. The morning price was 5/2 and 3/1. I thought the way they would be, if they started to bet, it would be even money.

CHAIRMAN: Who in Melbourne did the business for you?

MR MASON: One of Mick Bartley's men. 30

CHAIRMAN: Would you know his name?

MR MASON: It would be Mick's brother.

- 9 -

Exhibit "D"
Stewards' Enquiry.

CHAIRMAN: Melbourne Mick you are speaking of?

MR MASON: Yes.

CHAIRMAN: How much did you send down?

MR MASON: I asked them to put the six on it.

CHAIRMAN: We will have to get the Melbourne bookmakers' sheets now, I suppose.

MR MASON: I asked them to put six on. I did not back it myself. I thought it was too hard a race, with too many queries. Ferd said what to have on it. I thought it would open up even money here, and you would not get a price. I thought down there, before they got the ring through, whatever you got there early would be better. If they had opened up and kept at him, he would start odds on.

10

CHAIRMAN: Did Mr Calvin say what price you might get?

MR MASON: No. But I said. "I reckon you would get 5/2 early." If they took the early price over here, Page and Waterhouse's prices I think from memory were 5/2.

20

CHAIRMAN: Have you done this in the past with Mr Calvin's money?

MR MASON: I have backed a couple of horses for him before.

CHAIRMAN: But in this manner, in Melbourne?

MR MASON: Yes. And I also had a couple of bets and put them on in Brisbane if the races are on.

MR MCKAY: You said that you backed La Stupenda. Was that for Mr Calvin?

MR MASON: No, that was for myself. I took 7/2.

MR MCKAY: Does Mr Calvin know that this money went to Melbourne?

30

MR MASON: Yes. I just spoke to him after the race. I did not see him. I did not know until I was called. I was in the bar. I said that I was not sure what return, but I would guarantee it would be 2/1.

MR MCKAY: Did you speak to him before the race, from the time you arrived on the racecourse until before the race?

Exhibit "D"
Stewards' Enquiry.

MR MASON: Yes, from memory I did.

MR McKAY: Did you tell him then that the money was to be put on in Melbourne?

MR MASON: Yes. I said I had sent some down interstate.

MR McKAY: Some or all?

MR MASON: I said, some. That is all I said.

CHAIRMAN: Is there anything further the stewards want to ask Mr Mason? That is all, Mr Mason. Thank you for coming in. 10

MR MASON: The last one I backed for him interstate was Sticks and Stones.

CHAIRMAN: Thank you very much.

(Mr Mason withdrew)

- 10 -
(Continued on p.10A)

MR CALVIN was recalled.

CHAIRMAN: Mr Calvin, we will ask you some questions regarding who backed the horse for you. What was the name of the man? 20

MR CALVIN: It was Jim Mason. The Press are here.

CHAIRMAN: Yes. We won't mention money at all. We want to know how it was put on.

MR CALVIN: I rang him this morning. He has done a few things for me before. Everyone was tipping the horse to win. I thought it would be very short. I asked him to put it on. He said, "Where will I put it on?" I said, "I don't care. Wherever you can get the best price." I have seen him since. He said to me, "I think we averaged 2/1." That is all he has told me. I have no idea. But he has done business for me before in the past, and he is very reliable that way. 30

CHAIRMAN: Did you see him before the race today?

MR CALVIN: I saw him. But I was coming around to come

Exhibit "D"
Stewards' Enquiry.

into the enclosure, and I did not stop to talk to him. Then I could not find him afterwards. I could not find him until after I came in to see you. All he said to me was. "I think we have averaged 2/1."

MR McKAY: Was that before or after the race?

MR CALVIN: After.

MR MAHONEY: Did you see him before the race at all?

MR CALVIN: It was not necessary for me to see him before the race. I told him that I wanted on, and that was it. The other ones were my friends who came and said how much they had on. The others were the hundreds, and so forth. 10

MR MAHONEY: You were not interested in what you got?

MR CALVIN: It was 10/9. Another friend told me it had been backed interstate early, so I thought it was probably my money that was going on. I did not say anything.

MR MAHONEY: We will call him Mr X: did he indicate after the race where he had put the money on?

MR CALVIN: Interstate. That is all he said to me. He has his own arrangements. These fellows are much bigger than I am, and they put on a lot more money than I do. 20

MR MAHONEY: Prior to the race you would not know whether he was backing the horse interstate or here?

MR CALVIN: No. He told me, "I think I can do better - that is, this morning when I spoke to him - getting the pre-post price. I said, "I think the way the newspapers, broadcasters and so on are tipping the horse, the horse will be even money." He said, "I can do better than that." I let it go at that. 30

MR MAHONEY: Taking into account that you had not spoken to him before the race, for all you knew your money could have gone on at 10/9?

MR CALVIN: Yes. But I saw him after the race - after I came in here. I could not find him. There was a big crowd out there. I still do not know exactly what price. I do not imagine he does - not for sure. He has to average it out, from what the total money is. He might have

- 10A -
(Continued on p.10B)

Exhibit "D"
Stewards' Enquiry.

got 5/2 some place, and 6/4, and he might average 7/4,
which is better than 10/9.

CHAIRMAN: The money went on in Melbourne, he said, So
we will have to check that before we go any further. We
will let you know. That will be all for today thank you,
Mr Calvin.

(Inquiry adjourned to a date to be fixed)

- 10B -
(Continued on p.11)

STEWARDS' INQUIRY.

RANDWICK RACECOURSE, Wednesday, 17th March 1976.

Re running of Count Mayo in Eastlakes Handicap,

at Randwick, Saturday, 13th March 1976.

Messrs. J. MASON and F. CALVIN

appeared before the Stewards.

MR. MEEHAN: Q. Getting back to the backing of the horse in Melbourne: you told us originally that Mr. Mason arranged to put some money on the horse in Melbourne for you.

10

MR. CALVIN: I did not say Melbourne, I said Mr. Mason took the bet for me and agreed to do this.

MR. MEEHAN: Q. Mr. Mason, I think said that he arranged for the money to be put on in Melbourne.

(To Mr. Mason) How did you get the money on in Melbourne?

MR. MASON: I did not elaborate on it. But I rang Mr. Bartley when Mr. Calvin rang me and asked him to place the bet down there. I did not worry any further, except to pay the money over - since the horse was beaten.

20

MR. MEEHAN: Q. Have you had any contact with Mr. Bartley since?

MR. MASON: I have been in contact with Mr. Bartley. He said he is prepared to come in and tell you what happened. Whatever I said that he said to me would not be admissible, but I did discuss it with him. I rang him on Saturday night.

MR. MEEHAN: Q. Did you say what price he got about the horse?

MR. MASON: He said he put some on, when I rang him and took 5 - 2 - It was 3-1 in the morning.

30

MR. MEEHAN: Q. With registered bookmakers?

MR. MASON: I could not make that statement. I really don't know.

Exhibit "D"
Stewards' Enquiry.

MR.MEEHAN: Q. Because the Melbourne stewards have checked the Melbourne bookmakers on our behalf and they cannot find any such bets recorded against the horse at all.

MR.MASON: As I said, I cannot elaborate on what I said to you on Saturday.

MR.MAHONEY: Q. Did Mr. Bartley say whether he put all the money on.

MR.MASON: Not to me.

10

MR.MAHONEY: Q. So you have only his word that it went on.

- 11 -

MR.MASON: It is not a matter of that. I have done with-done business with Mr. Bartley before and asked him to place bets, and if they had won he has paid me and if they have lost I have paid. He has a commission agent and I do not ask him whether he is paid.

MR.MAHONEY: I thought in this case you might have made the inquiry. You have been called as a witness on this occasion, and last Saturday, and I thought you might have discussed with him as to how he placed the money.

20

MR.MASON: I did have a discussion, but I think it would be up to him to tell you that himself.

MR.MEEHAN: Q. Did Mr. Bartley say he got all the money on?

MR.MASON: I would imagine, that that again is something that I cannot comment about.

MR.MEEHAN: Q. Have you paid him any money yourself?

MR.MASON: Yes. I have paid him \$6,000. I paid him the \$6,000 that Mr. Calvin gave me.

30

MR.MEEHAN: Q. When did Mr. Calvin give you the money?

MR.MASON: On Monday.

MR.SWAIN: Q. Does Mr. Bartley live in Melbourne?

MR.MASON: No. He lives at Rose Bay.

Exhibit "D"
Stewards' Enquiry

MR.MEEHAN: Q. He would not be at the races this afternoon?

MR.MASON: No. But I can give you a phone number where you can ring him.

I could not elaborate any further as to what I said on Saturday morning.

MR.MAHONEY: Q. He does not give you a statement of where he put the money on? You did it all verbally?

MR.MASON: No, we did it on the phone, Saturday.

10

MR.MAHONEY: Q. Did he give you a statement through the week?

MR.MASON: No, But at Tattersalls I see him to settle any accounts we have to settle.

MR.MAHONEY: Q. You did not see him on Monday of this week?

MR.MASON: Yes, I saw him this week.

MR.MAHONEY: Q. He still did not report to you how he put the money on?

MR.MASON: No.

20

MR.MEEHAN: Q. If you give us his phone number we will ask him to attend.

MR.MASON: It is 371-6736. That is at Rose Bay. I think it would be in the phone book. It is in Dalley(?) Avenue.

MR. MEEHAN: Q. What is the initial?

MR.MASON: M.W. He is an electrical contractor. It is M.W. Bartley, electrical contractor.

- 12 - Messrs.Calvin & Mason

MR.CALVIN: I was wondering if you gentlemen saw the piece about Mr. Clarton (?) from New Zealand.

30

MR.MEEHAN: Q. Do you want to tender it?

MR.CALVIN: I would like to submit it because it more or less verified what I was trying to say about the horse on Saturday.

Exhibit "D"
Stewards' Enquiry.

MR.MAHONEY: Q. Did anyone contact Mr. Galea prior to the running of the horse?

MR.CALVIN: Yes. I spoke to his son Bruce on the morning of the race. I did not contact Mr. Galea, because he is in hospital with a heat attack. I saw his son afterwards. He did not realise there was any inquiry about the horse's running, but he called me that night or the next morning and said "I have had one thousand dollars on the horse. Dad didn't want to put anything on him because he is too sick, but I put \$1,000 on in cash to help to pay the expenses, the jockey, the stableboys and etc.

10

MR.MAHONEY: Q. How did you speak to him?

MR.CALVIN: By phone.

MR.MAHONEY: Q. What did you tell him about the horse's chances.

MR.CALVIN: He knew about the horse's progress, and he knew on the Tuesday that the horse was under-done, but if it was fit I think you could declare the horse a certainty on the Saturday. "If it was four or five to one it would be terrific each way betting. Knowing how your father used to bet, don't tell him" - he is too sick, with his heart. I was being guided by my own opinion.

20

MR.MAHONEY: Q. Is there anything in your knowledge that Mr.Cummings would know how the horse was to be ridden?

MR.CALVIN: You mean J.B. himself? No. He was in Melbourne looking after horses down there. I discussed the horse with him and he said to ride the horse with hands and heels, because we did not know how he was going to go on account of his New Zealand performances.

30

MR.MAHONEY: Q. When did he suggest this to you?

MR.CALVIN: Thursday or Friday.

MR.MAHONEY: Q. You and Mr. Dawson were responsible for the instructions?

MR.CALVIN: I was responsible for the instructions. I take full responsibility for the instructions. I said that on Saturday.

MR.MEEHAN: Q. Is Mr. Cummings a part owner?

MR.CALVIN: He is going to be. Mr. Galea and I bought the

Exhibit "D"
Stewards' Enquiry

horse in New Zealand and it is registered in our names, but Mr. Cummings is going to take a half of my share, so he will have a quarter share in the horse, but that transaction has not taken place yet.

MR. MAHCNEY: Q. You are waiting on Mr. Galea's signature?

MR. CALVIN: Yes. Mr. Galea is in hospital. He is not supposed to have any visitors. If you were to talk anything about business like that at this stage, he is not interested. 10

MR. MCKAY: Q. Did you watch the race through binoculars on Saturday?

MR. CALVIN: Yes.

- 13 - Messrs. Calvin & Mason.

MR. MCKAY: Q. When the horses turned into the straight were you concerned about how far it was back in the field?

MR. CALVIN: Not necessarily. Looking at the race beforehand I thought that Privet Hedge would be leading with Gentle James, going on well and strongly, would be Grey Ekardos, and we would be running fourth. But we were running fifth. The horse was certainly close enough when we straightened up, and looking at the pictures after that, I would say he was within $1\frac{1}{2}$ lengths on the top of the rise, until he started to veer out, and I think he would have still won if he hadn't veered out. 20

MR. MCKAY: Q. Were you concerned about the jockey not trying to do anything more?

MR. CALVIN: Why should he? He was flat out.

MR. MCKAY: Q. From your observation of the race; at the furlong he had not moved on the horse. 30

MR. CALVIN: From my observation, He was making up ground all the way.

MR. MEEHAN: Q. Where do you say the horse started to veer out on the track.

MR. CALVIN: About a furlong out, it seemed to me. I have only seen the race one time. I missed it on Saturday afternoon. When he started to make up ground on the horse in front of him it was going so well that he almost ran

Exhibit "D"
Stewards' Enquiry.

into him. That is when the horse had to veer out first. I don't know whether that is right, but you have seen the film. Even then he still made up ground and I thought he was going to win, but when he put pressure on him, the horse started to veer out and that was history. But the horse, I thought, was definitely close enough in the straight. You have the false rail out - allowing for this - the horses had to come back to the field.

10

MR.MAHONEY: Q. You were not concerned when the rider was sitting quietly coming to the home turn?

MR.CALVIN: That is what I would be - you have a horse under-done, you cannot do it at both ends. If I said "Take him straight to the front", he would have been no closer and would have run ninth, back with Grey Ekardos.

MR.MAHONEY: Q. I can tell you now that the Stewards are very concerned with the way Cuddihy rode the horse.

MR.CALVIN: I gave him his instructions to hold him. I did not know that the horse had enough brilliance to be up near the lead. I have heard it said in New Zealand they rode him in the lead all the time, but we were mainly concerned to get the horse to settle down. That is the way Mr. Cummings trains all his horses. He loves them to settle down and come home hard in a race - ridden out hands and heels. Martindale won on Saturday, ridden hands and heels like that.

20

MR.MEEHAN: Q. We expect all horses to be ridden out.

MR.CALVIN: I understand that. At the same time you don't do anything for a horse by driving it to the post with a whip if it is unnecessary.

30

MR.SWAIN: Q. Mr. Mason, the bet you put on Count Mayo for Mr. Calvin with Mr. Bartley, is that the only bet you had on this particular day for Mr. Calvin?

- 14 - Messrs. Calvin & Mason.

MR.MASON: That was the only bet on that particular day I had with him.

MR.SWAIN: You say you settled with him at his club on Monday morning?

MR.MASON: No. On Monday - I mentioned Monday afternoon. I did not mention the meeting - I said Monday.

40

Exhibit "D"
Stewards' Enquiry.

MR.SWAIN: Q. How did you settle?

MR.MASON: I paid him by cheque.

MR.SWAIN: Q. How did you pay, Mr. Calvin?

MR.CALVIN: By cash. On the Monday morning. He called past my house and I paid him.

MR.MAHONEY: Q. Does Mr. Bartley travel to Melbourne?

MR.MASON: No. Mr. Bartley is a big T.A.B. investor and would probably invest \$150,000 each weekend, playing the daily double. He would come to the course after the second leg has been run. He bets in Sydney, Melbourne, Brisbane and Canberra, to my knowledge, on the totalisator doubles with such a large amount of money - he could not come for the races.

10

MR.MAHONEY: Q. How would he transfer his money to Melbourne?

MR.MASON: He can contact people in Melbourne. If he has the double with the first leg in for big money, and he is interested in three or four horses, he has to have people down there to be able to cover.

20

MR.MAHONEY: Q. In other words, this Commission has changed hands from Mr. Calvin to you, to Mr. Bartley, and from Mr. Bartley to an agent in Melbourne?

MR.MASON: You asked me that the other day. I do not know who would do that. I have done business with Mr. Bartley for at least ten years and he does not tell me his innermost dealings.

MR.MAHONEY: Q. He has indicated that he can come before us,

30

MR.MASON: Yes.

MR.HICKMAN: Q. Did you have a conversation with Mr. Calvin during the afternoon of Saturday to indicate to him that he had averaged a certain price for the \$6,000?

MR.MASON: I did not indicate for sure what was the average, but when I told Mr. Bartley to place the bet I told him he would have to guarantee Mr. Calvin top odds, and I assumed from what I saw here that 2 - 1 was the top odds and I said "You will at least get that". I think that is what I said on Thursday afternoon. But I am only assuming if

Exhibit "D"
Stewards' Enquiry

they bet 2 - 1 here that would be the top price he would have received for his money.

MR.MEEHAN: Thank you, gentlemen. We will adjourn now and resume a little later in the afternoon.

(Short adjournment).

- 15 - Messrs. Calvin & Mason.

BRUCE GALEA

Appeared before the Stewards.

10

MR.MEEHAN: Q. As you probably know, we are inquiring into the running of the horse Count Mayo on Saturday, and your father - who is part owner of the horse - is in hospital. Did Mr. Calvin have a discussion with you on Saturday morning or Friday afternoon.

MR.GALEA: Yes. I spoke to him on Saturday morning and he informed me that he put some money on the horse. I don't know whether I should disclose the amount - \$6,000 - and he told me for my father. He has been very sick and he cannot bet on horses just now. But he has instructed me that if any of his horses go around I must have a \$1,000 or an equivalent amount on to cover expenses of the stable boys and jockeys. On Mr. Calvin's advice I put \$1,000 on him and I have the ticket here - (Produced). I spoke to Mr. Calvin on the Saturday morning and he told me I should back it.

20

MR.MAHONEY: Q. When you spoke to Mr. Calvin did he suggest to you how the horse was going to be ridden?

MR.GALEA: He told me it was its first run in Australia. I was not interested. I do not bet myself. To me it was good enough for Mr. Calvin to tell me that I should back it, and I backed it.

30

MR.MAHONEY: Q. He did not tell you he was confident of the horse winning?

MR.GALEA: No. It is not my business.

MR.MAHONEY: Q. Did you pass the message on to your father?

MR.GALEA: I rang the hospital and passed the message - he is heavily sedated. He wants me to put money on to

Exhibit "D"
Stewards' Enquiry

cover the expense of the stable, the boys in the stable.

MR. MAHONEY: Q. Are you saying you would have \$1,000 on any horse of his that goes around?

MR. GALEA: I was instructed by him to do that, just to cover - he likes giving the stable boys and others like that - something.

MR. MEEHAN: Thank you, Mr. Galea, for coming in.

MR. GALEA: Do you need me again?

10

MR. MEEHAN: I don't think so.

MR. GALEA: Thank you very much.

(Mr. Galea then withdrew).

(Short adjournment).

TRAINER J.B. CUMMINGS
Appeared before the Stewards:

MR. MEEHAN: Mr. Cummings, you probably know why you are here: we are inquiring into the running of the horse Count Mayo and we have been told that while you are not yet an owner of the horse you are coming into it.

20

MR. CUMMINGS: Yes. Mr. Calvin has offered me half of his share.

MR. MEEHAN: Q. You were not here on Saturday, were you?

- 16 - Mr. Galea ret
Mr. Cummings.

MR. CUMMINGS: No.

MR. MEEHAN: Q. Did Mr. Calvin get in touch with you prior to the race?

MR. CUMMINGS: I spoke to him on Friday and probably on Saturday.

30

MR. MEEHAN: Q. Do you remember what the discussion was?

MR. CUMMINGS: No. The fact that the horse trialed on the previous Tuesday, that was as far as it went, and Cuddihy

Exhibit "D"
Stewards' Enquiry.

rode the horse in the trial and it trialed rather nicely although it did hang out in the trial. But he had horses on his outside to help him to get around the turns here. He had run out previously, before the horse was purchased in Auckland and I think Skelton rode the horse. Prior to buying it, Mr. Sykes examined it and also arranged a meeting with Skelton to get an idea of the horse's worth - and its purchase price - and after the conversation with Skelton I understand that Sykes thought it would be all right here because its track work had been quite O.K. But he drifted out at the gate, at the half mile. I think last Thursday, but apart from that he has got slightly more tractable. 10

MR.MEEHAN: Q. Do you know if the courses in New Zealand are clockwise or anti-clockwise?

MR.CUMMINGS: The same as in Sydney, but it varies - in Wellington.

MR.MEEHAN: Q. Did Mr. Calvin tell you that he was going to back the horse on Saturday or not? 20

MR.CUMMINGS: I understand he was. He has been rather generous with me in the past and if that had won, I understood from what he said he would be again on this occasion.

MR.MEEHAN: Q. You did not have any of your own money on the horse?

MR.CUMMINGS: No. In the case of Mr. Calvin, it is not necessary.

MR.MAHONEY: Q. Did you see the horse race in New Zealand yourself. 30

MR. CUMMINGS: No, I did not.

MR.MAHONEY: Q. For what particular reason did you want to be in the purchase of the horse.

MR.CUMMINGS: Doctor Sullivan, a good friend of mine in Auckland - a pathologist - told me that the horse had a fair potential; it was rather green - had only about five starts and even though it had run off the track it had still got up and it ran second. He said that he thought that when it had racing experience it would be very good. I said that apparently the horse dosen't work with any bigger - or on the track and does not want to do any better than it has to. 40

Exhibit "D"
Stewards' Enquiry.

I explained to Mr. Calvin, after what I was told, that with its class it might make it. It seemed to be the best horse, although it had not worked well on the track, but with its class it could do well if it had any luck during the running.

MR.MAHONEY: Q. In regard to the horse Hanging, were you going partly on the information given to Sykes by Skelton?

MR.CUMMINGS: Yes.

10

MR.MAHONEY: Q. You say that with Cuddihy it did try to hang in the trial?

MR.CUMMINGS: He told him to keep inside a couple of horses then see how he goes, and he hung slightly.

- 17 - Mr.Cummings.

MR.MAHONEY: Q. He did not hang badly enough for you to want to put a lugging bit on the horse?

MR.CUMMINGS: No. He had a bit of a pointed tooth, which causes slight abrasion on the track, but apparently Ron Dawson tried to get the horse dentist to correct this, but we could not get hold of him in time. It has been done since. He had a bit of a cut inside the mouth.

20

MR.MAHONEY: Q. We understood the horse had only the one preparatory trial prior to racing here.

MR.CUMMINGS: He had the preparatory work getting him fit for the barrier trial. I would say there is a fair amount of improvement in the horse.

MR.MAHONEY: Q. In your opinion was he fit enough to win on Saturday.

MR.CUMMINGS: Not on the work we noticed. I expected if he did have the class it would make up for lack of condition. Some of my best horses win first up without a great deal of preparation. While they do not do a lot of very fast track work. Lord Dudley won first up at Moonee Valley in those circumstances.

30

MR.MAHONEY: Q. Did you have any discussions with Mr. Calvin as to what tactics to use?

MR.CUMMINGS: Mr. Calvin engaged Cuddihy and I told him he

Exhibit "D"
Stewards' Enquiry.

would have to keep in touch and ride him out hands and heels. I did not think he was going to have any problems in the race with him being wayward anyway.

MR. MAHONEY: Q. Were you aware that the horse was not going to be ridden with the whip?

MR. CUMMINGS: No. I said to ride him hands and heels, if he is going well - to ride out at his own discretion.

MR. MAHONEY: Q. You did not specifically say not to use the whip on the horse. 10

MR. CUMMINGS: "Only if you are going well"

MR. MAHONEY: Q. Has the horse been ridden with the whip in New Zealand?

MR. CUMMINGS: Skelton did not ride the horse out - when he gave him a slap it went outside rail. It was explained that when Skelton rode the horse next start he rode him hands and heels and won impressively.

MR. MAHONEY: Q. Do you know which way the horses race in New Zealand? 20

MR. CUMMINGS: On this occasion it raced in Auckland, the same way as here. It is the other way to Melbourne - where he is quite good.

MR. MEEHAN: Thank you Mr. Cummings.

MR. CALVIN: I would like to submit these photographs which we had to send home to get. This is a photograph showing three different stages of the race. Previously I think Mr. Swain suggested to me that the horse was too far back. My contention was that he was not. As I said previously, this is the 200 metres - there is Tarlac, which ran third, there is Grey Ekardos a horse which I thought on form would be up near the lead - and here is Privet Hedge. That is the horse I thought would lead Gentle James 30

- 18 - Mr. Cummings.
Mr. Calvin.

altogether. I thought those horses would be up near the lead and he would be able to sit in behind. From what you can see, he is not a length off Tarlac, here is the leader, there is Tarlac - which ran third. The other horse in the centre is some distance away - you can see where he 40

Exhibit "D"
Stewards' Enquiry

is just beginning to go off there. (Indicating on photograph). This is how he ran off, when he has finished, and my contention is that he was close enough - if the horse had gone straight down there (indicating) I would say the horse would have won. I say also that if he had hit him with the whip at all, either left hand or right, the horse would have gone to the outside fence.

MR.MEEHAN: Q. Did you really think the horse would win on Saturday? 10

MR.CALVIN: I was hoping he would. As I said to Mr. Galea when he called me on Friday or Saturday, I said on his work the horse could not win but if he has got the class that I think he has he can win. If the horse had been about four or five to one I would have said you could bet each way forever. But at the price I did not think the horse was good value. But I had to have something on him. We also had the contingency payment on the horse. Everytime he wins a race there is a contingency payment and all I wanted to do was to cover the contingency so I am only going for a win at the price. 20

MR.MEEHAN: Q. Did you find out the price that you got for the horse at Melbourne?

MR.CALVIN: He was 2 - 1. That is all I know. You know these fellows ---

MR.MEEHAN: Q. Before the race.

MR.CALVIN: He had been quoted before the race - he told me you could get 2 - 1 or better, and I honestly thought it was going to start odds on, so if I could get 2 - 1 I am going to take it. 30

MR.MEEHAN: We will now run the film of the race.

(The film of the race was then screened for the parties).

(Short adjournment).

MICHAEL BARTLEY
Appeared before the Stewards.

MR.MEEHAN: You have been called by the stewards at an inquiry into the running and handling of Mr. Calvin's horse, Count Mayo, on Saturday. We have interviewed Mr. Mason who said that he had \$6,000 on the horse and gave you the money to put on. 40

Exhibit "D"
Stewards' Enquiry.

MR.BARTLEY: This is correct.

MR.MEEHAN: Q. How was the money placed?

MR.BARTLEY: It was not placed actually. It was a complicated affair and you will have to listen to the story. Whether you believe it or not, please yourself.

For a start, have you any idea of the extent of my operations?

MR.MEEHAN: I believe you bet quite a bit on the T.A.B. but I do not know.

10

MR.BARTLEY: I probably invest some \$5-million a year, which is a minimum of \$100,000 a week, maybe more. I am mainly concerned

- 19 - Mr. Calvin
Mr. Bartley

with the daily double races, I am not concerned with the other races and I don't operate on them - only very very rarely would I have a bet on those other races. Mason sort of rings me every week and we exchange a bit of information and he gives me his idea of what he thinks will win and won't win, and the rest of it. That applies to quite a few people who do give me oil or whatever you can call it. It is normal for him to say to me at any time "Would you put, say, a couple of thousand on this for me, or put \$4,000". I will have three in Melbourne and one in Brisbane - the Brisbane races were not on, of course. I did not take any notice of the bet at all. Not only Saturday, but no day. If it is a doubles race I would be interested in the bet, but in this case I was not interested in the bet to any great extent. I just said "Right".

20

30

Now, for years - not for weeks but for years - I have been able to bet in Brisbane races every Saturday and bet in Melbourne races every Saturday if I want to.

I have got an arrangement where I can contact people very smartly in case I want to do something important myself or something important comes up. I have a man ring me from Melbourne every Saturday and he rings me an hour before the first race is run to see if there is anything doing. And I say to him then that there is or there is not. I said to him that I wanted to have \$6,000 on Bold

40

Exhibit "D"
Stewards' Enquiry.

Mayo at 5-2". The reason for this is that anything I do regarding the horses is always involved with prices. There are two price assessors, and they are available to anybody. You probably know who they are - if you don't, the whole world does. They both assessed the horse at 4 - 1. There are men you can get on. Perhaps you know. It is not as good as it was. You cannot get on at Tasmania much more, but you can get on in Darwin and Sydney.

10

So I rang a friend of mine after I got the bet and said to him - I generally asked him what horses he has laid, and it is useful for me to know if someone is backing something. He said "That was one of the horses I have laid 7-2. I find over the period people who go to the races thinking they are getting 2 - 1 and getting 2's or they would only get 6 - 4 in a lot of cases. So on that theory I said "Do you want to bet me six to two". He said "All right". I said "I will have that for myself".

So when my man came on from Melbourne I thought I was quite safe in asking for 5-2. I had already got 3's. They had already assessed it at four. I said "Put \$6,000 on at 5/2". We have an arrangement that if it is not 5-2 he does not put the money on, but we do not have any conference. I don't have to explain to him that the bet came from Jim Mason or anybody else. He is there, acting for me and he does what I tell him to do. "We will never have any arguments if you do exactly what I tell you to do. Don't take less than what I tell you." That is the arrangement. That is not a rigid rule. Occasionally I will say to him, "Put so-and-so on a horse, regardless. Whatever price it is, just put it on". In this case, it is a normal, ordinary activity, I quoted 5/2. He said "Will I wait for the first teleprinter," I said "No. You stay there till they jump away". I said "At some time in the rate they should or may bet 5-2, and you take it". He came on after the race and told me "You weren't on".

20

30

MR.MAHONEY: Q. When did this conversation saying that you weren't on take place?

MR.BARTLEY: Immediately after the race.

40

MR.MAHONEY: Q. He rang you back?

- 20 - Mr. Bartley

MR.BARTLEY: Yes. And that has happened numerous times, for much more money - for a lot more.

Exhibit "D"
Stewards' Enquiry.

MR.MEEHAN: Q. Did you see Mr. Mason at the club on Monday?

MR.BARTLEY: Yes, I did.

MR.MEEHAN: Did he pay you any money?

MR.BARTLEY: Yes. He gave me six thousand. For instance he would have got paid if it had won. For instance, if a person gave me a bet and this has happened and I just forgot about it completely, that would still be paid. You are not likely to tell anybody you forgot about the bet.

10

MR.MEEHAN: Q. You are saying the money did not go on but you were going to make good?

MR.BARTLEY: I would have automatically paid.

MR.MEEHAN: Q. At five to two.

MR.BARTLEY: Jim Mason asked me to put a daily double on for him one day, and it won, and it cost me \$20,000 - and I have not had one cent on it.

MR.MAHONEY: Q. I take it from what you say there is no written evidence or any record of this bet at all?

20

MR.BARTLEY: I don't write everything down, it is not necessary. As I said, I operate on the daily double - not on any small amount - and I am not even interested in the other races.

MR.MAHONEY: Q. Getting back to Count Mayo, I take it the bet has not been recorded anywhere?

MR.BARTLEY: The only bet would be recorded would be the six thousand to two thousand from my man, but not as a favour - I said "You can bet me if you like. Do you want to lay it? - Yes".

30

MR.MAHONEY: Q. That bet is your own.

MR.BARTLEY: On mine, for six thousand.

MR.MAHONEY: Q. As regards the six thousand dollars, it has not been recorded.

MR.BARTLEY: It cannot be recorded if it did not go on. I do wish it went on.

MR.MAHONEY: Q. If you had said it went on, we would be able to check it.

Exhibit "D"
Stewards' Enquiry.

MR.BARTLEY: You know that the bookies don't put the full bet down for the bet. Quite a few bookies have not bets, not in the book.

MR.MAHONEY: Q. The Bookie is running a big risk, is he not?

MR.BARTLEY: Yes, but people take risks. It could be a risk to the extent of 1,000 or more.

MR.MAHONEY: Q. When you spoke to Mr. Mason on the Monday did you tell him the bet had not been put on? 10

MR.BARTLEY: I told him on the Saturday afternoon after the races.

- 21 - Mr. Bartley.

MR.MAHONEY: Q. What did he say to you in the conversation?

MR.BARTLEY: He said "What price did you get?" I said "As a matter of fact I didn't get any price for it. It never even went on".

MR.MAHONEY: Q. Mr. Calvin, when did you know the money had not been put on the horse? 20

MR.CALVIN: Mr. Mason told me, but he said "You would have got paid at 2-1. That's the price he guaranteed me Saturday morning".

MR.MAHONEY: Q. Mr. Bartley, what price did you guarantee Mr. Mason.

MR.BARTLEY: I never guaranteed him anything. In the past anybody I do business with gets fairly paid. That is why I am here today, and that is why I am answering today.

MR.MAHONEY: Q. So, for example, if you are going to get Mr. Mason 5-2 - he is really going to take 2 - 1? 30

MR.BARTLEY: There was this 6,000 dollars to 2,000 dollars, and if that had been on I would have included that in the bet, and it would have been the best price, and I would give him 2's for four and 3's for two that I had on.

MR.MAHONEY: Q. You would be quite prepared to lose your bet to make it up?

Exhibit "D"
Stewards' Enquiry.

MR.BARTLEY: I just explained to you, with this type of betting - you have no idea the extent of how big I bet. I had invested \$72,000 on the doubles - daily double in one day, so I am not worried about \$6,000 as a bet. I can prove to you if you like it, the extent of my operation on the T.A.B. is no less than 5-million a year. A \$6,000 bet, in my opinion is toilet paper.

MR.MAHONEY: Q. What we are concerned with is the price you were going to bet Mr. Mason. 10

MR.BARTLEY: I would have, I said, actually tried six to two to make inquiries about the best price - two at 3's and the other four at 2's, which was supposed to have been bet.

MR.MAHONEY: Q. You say you have 6,000 to 2,000 yourself and then the horse didn't win and you decided to give it to Mr. Mason?

MR.BARTLEY: Yes. You don't think I was going to let him off that \$6,000, do you? 20

MR.MAHONEY: Q. Even if the bet had not gone on?

MR.BARTLEY: It would not have made any difference, that was the position. I am an official millionaire. You can ring up my accountant and ask him what is the extent of my assets and he will tell you I am a millionaire in assets - not in toilet paper - so that is a lot of money - black or green - any way in assets. I am trying to tell you that this is a toilet paper affair. I am not interested in \$6,000 out of \$3,000 at this stage. I got where I am in dealing not in terms of toilet paper. You are trying to say I would not be able to handle it. I would just throw it in the drawer. 30

MR.MAHONEY: Q. What we are trying to establish is where a record of the bet is.

MR.BARTLEY: You can not record it if I did not put it on.

- 22 - Mr. Bartley.

MR.SWAIN: Q. If Mr. Mason owes you money, how does he settle with you or pay you?

MR.BARTLEY: There is a lot of Peter-pay-Paul, that goes on, because I am not interested in getting settlement if

Exhibit "D"
Stewards' Enquiry

a certain person has got to give me \$10,000 or \$15,000 and I have to give that money to someone else. I say "I owe Bill 15, you give it to him". In a particular case a man had to give me \$35,000 and he transferred the money by paying another man, and that money never changed hands.

MR.SWAIN: Q. You did settle with Mr. Mason.

MR.BARTLEY: Last Monday I did.

10

MR.SWAIN: How did he pay you?

MR.BARTLEY: He gave me 6,000 in a cheque.

MR.MAHONEY: Q. What did Mr. Mason say when he knew that the bet hadn't gone on?

MR.BARTLEY: He knows me. If it had won I would have paid him, it means nothing to me.

You have no idea of what goes on outside this room. I had \$33,000 on a horse we backed at the races, here in Melbourne. It was a Maiden at Seymour, and I put \$4,000 on another horse just to create a market. So I was not dealing in \$6,000. It was \$37,000 of my own.

20

MR.MEEHAN: Q. Mr. Bartley, did Mr. Mason mention this money was from Mr. Calvin, when he rang you?

MR.BARTLEY: I never asked him. He had a bet with me. I am not concerned with who or what. I don't even know Mr. Calvin, only by sight. I have not been to the races for some 10 or 12 years and I could hardly find my way around.

MR.MEEHAN: Thank you, Mr. Bartley, and thank you for coming in.

30

(Witness withdraws).

MR.MEEHAN: Mr. Calvin, is there anything further you wish to say?

MR.CALVIN: I would like to say that if you think it is necessary I would be quite willing to ask - and pay the expenses of having them here - the jockey Skelton and Ray Wallace, come over from New Zealand - if you like to have evidence from them.

MR.MEEHAN: That is up to you. If you want to call these

Exhibit "D"
Stewards' Enquiry.

people as witnesses, that is your prerogative. You can do it if you wish to do so. It is entirely up to you.

MR.CALVIN: I would be quite willing to do it if you think it is necessary after viewing the films.

MR.MEEHAN: It is entirely up to you. If you wish to call them, you are at liberty to call them. You appreciate that we will give you an adjournment for the purpose of their being present.

10

MR.CALVIN: It will be a matter of getting them over here. What we have told you is the truth, and I would like to emphasise the running of the horse.

MR.MEEHAN: That is your prerogative. You can do that if you like. We will give you an adjournment to enable you to call these people.

- 23 - Mr.Bartley. Mr.Calvin.

MR.CALVIN: I have never met Skelton.

MR.MEEHAN: You can call them if you wish to bring them over, that is your prerogative.

20

(Short adjournment).

JOCKEY P. CUDDIHY.
Appeared before the Stewards:

MR.MEEHAN: The stewards asked you questions on Saturday after the race was run, and since then you have seen the film.

JOCKEY CUDDIHY: I think the film showed it was hanging.

MR.MEEHAN: Q. At what part of the race?

JOCKEY CUDDIHY: All the way.

MR.MEEHAN: We cannot agree with you on that score at all, I am sorry.

30

MR.MAHONEY: Q. You say he was hanging. Why did not you flick him with the whip to try to stop him?

JOCKEY CUDDIHY: I did.

Exhibit "D"
Stewards' Enquiry.

MR.MAHONEY: Q. Where was that?

JOCKEY CUDDIHY: Coming into the turn.

MR.MAHONEY: Would you agree you rode the horse very quietly until the furlong?

JOCKEY CUDDIHY: Yes. I rode him hands and heels, and I thought I had them covered and when I did go --

MR.MEEHAN: Q. Surely you could have used your own discretion.

10

JOCKEY CUDDIHY: When the horse was hanging? They said "If you hit him when hanging he will run in"

MR.MEEHAN: Q. The film does not show the horse to be hanging from the home turn, at least.

JOCKEY CUDDIHY: He was - all the way.

MR.SWAIN: Q. When you say he was hanging, for how long was he hanging?

JOCKEY CUDDIHY: A furlong from the start, and then hanging onwards and when I got his head up he was all right.

MR.SWAIN: Q. Would you agree with me that was after the horse shifted out?

20

JOCKEY CUDDIHY: Yes.

MR.SWAIN: Q. Would you agree with me that shortly after you were still able to pull the horse over to the fence.

JOCKEY CUDDIHY: On the film you can see my right leg and my right arm - dragging his head back.

MR.SWAIN: Q. So you were then able to pull the horse from ten horses wide until you are a horse wide without trouble, and yet you say he gave you trouble afterwards and and you could not do anything with him?

30

- 24 - Jockey Cuddihy.

JOCKEY CUDDIHY: While you are sitting there, he is all right, but when you start to ride him hands and heels is when he darted in.

MR.SWAIN: Q. Didn't you think to disobey instructions and give him a push up to see if that would stop him?

Exhibit "D"
Stewards' Enquiry

JOCKEY CUDDIHY: He was tractable but as soon as I had to ride him hard he ducked off.

MR.SWAIN: Q. When did you start to ride him hard, hands and heels?

JOCKEY CUDDIHY: Just inside the furlong, and he was not going to get to them as easily as I first thought.

MR.McKAY: Q. What made you think if you kicked him up a bit coming to the turn, to improve your position you would have hung out more? 10

JOCKEY CUDDIHY: I would have been outside the third horse. Coming to the turn he just got to the horse last in front and I kept off them.

MR.McKAY: Q. How long were you from the turn coming to the leaders?

JOCKEY CUDDIHY: Two or three lengths from the leader.

MR.McKAY: Q. You were at least 6 lengths behind the leaders.

JOCKEY CUDDIHY: I don't think so. 20

MR.McKAY: Q. Did Mr. Dawson, Mr. Cummings' foreman, have anything to do with the instructions you were given, or did you get them from Mr. Calvin?

JOCKEY CUDDIHY: Mr. Calvin did not get down to telling a lot - just told me to watch him "He has behaved erratically before". He said then "Don't pull the whip" - Mr. Calvin had already told me that.

MR.MEEHAN: Q. Was Dawson the foreman repeating instructions to you that Calvin had given to you?

JOCKEY CUDDIHY: Yes, in the sense that he did not have much time, he was walking to the horse. 30

MR.MEEHAN: Q. Did Mr. Calvin say anything about backing the horse?

JOCKEY CUDDIHY: He told me when he first got there he had some money on it.

MR.HICKMAN: Q. Did he say how much he had on it?

JOCKEY CUDDIHY: No.

Exhibit "D"
Stewards' Enquiry

MR.HICKMAN: Q. Did he say whether it was a big bet or a small bet?

JOCKEY CUDDIHY: He said when he got in there he got two to one - "It is now even money" - so apparently I thought he might have had a good bet on it.

MR.SWAIN: Q. Did Mr. Calvin say to you during the time of your instructions that he did not think the horse could win?

10

JOCKEY CUDDIHY: No, he would not have backed it if he did not think it. They did not think it was fully fit, no, but they still thought it would win.

MR.SWAIN: Q. He did not think it was fully fit?

JOCKEY CUDDIHY: From what he was told, he did not think it was fit.

- 24A - Jockey Cuddihy.

MR.SWAIN: Q. Did Smokey Dawson, the foreman, tell you that the horse was not fully fit?

JOCKEY CUDDIHY: He was going on the trial. He said the trial should have made him more fitter, but he worked badly on the Thursday morning.

20

MR.SWAIN: Q. Did you come down and ride him work?

JOCKEY CUDDIHY: No.

MR.SWAIN: Q. Did these people saying these things to you - did that influence the way you rode the horse in the race?

JOCKEY CUDDIHY: Not really. The film showed that he was a little bit under-done.

MR.SWAIN: Q. Did you take this to mean that they did not want him to win.

30

JOCKEY CUDDIHY: No.

MR.MEEHAN: Q. How many rides have you had for Mr. Calvin?

JOCKEY CUDDIHY: Only two; two or three; only a couple.

Exhibit "D"
Stewards' Enquiry.

MR.McKAY: Q. When were you engaged to ride it.

JOCKEY CUDDIHY: Before the trials. If Johnny Duggan was not here.

MR.McKAY: Q. When did you know for certain you would be riding it?

JOCKEY CUDDIHY: When I rode him in the trials, Jockey Duggan told me that morning he was going to Melbourne.

MR.McKAY: Q. Did you discuss the horse with anyone else? 10

JOCKEY CUDDIHY: No.

MR.McKAY: Q. Are you sure of that?

JOCKEY CUDDIHY: Positive.

MR.McKAY: Q. Did anyone else mention the horse to you or ask you what sort of a chance the horse had.

JOCKEY CUDDIHY: No. Only that I was talking to Mr. Calvin, that is the only person.

MR.MAHONEY: Q. When were you talking to him.

JOCKEY CUDDIHY: I spoke to him just after the trial. It was either Tuesday night or the Wednesday night after the trial. 20

MR.MAHONEY: Q. After then you spoke to him?

JOCKEY CUDDIHY: Yes.

MR.MAHONEY: Q. Did you ring him?

JOCKEY CUDDIHY: No. He rang me about him hanging.

MR.MAHONEY: Q. Did he suggest to you then that you weren't going to use the whip on the Saturday.

JOCKEY CUDDIHY: No. That was said a while ago, they just said he was erratic in New Zealand, when one jockey tried to hit him with the whip he ran the other way. 30

- 24B - Jockey Cuddihy.

MR.MEEHAN: Q. You rode him in the trial last Tuesday and said he hung a bit then?

Exhibit "D"
Stewards' Enquiry.

JOCKEY CUDDIHY: Yes.

MR.MEEHAN: Q. Did you suggest to anyone that they use a lugging bit on him?

JOCKEY CUDDIHY: I suggested it should be checked. He was all right while there were horses there, he was not so bad, but when it was coming down at the trial it was different.

MR.SWAIN: Q. Did you ride him at the trial?

10

JOCKEY CUDDIHY: Yes.

MR.SWAIN: Q. You just sat on him?

JOCKEY CUDDIHY: Yes.

MR.SWAIN: Q. And you say he did not hang because of the horse on the outside.

JOCKEY CUDDIHY: I suppose that was the reason.

MR.SWAIN: Q. Did not you think it was unusual for instructions to be given for you not to use the whip on the horse?

JOCKEY CUDDIHY: I did know the horse was erratic in New Zealand and when I rode him in the trial he was erratic.

20

MR.McKAY: Q. Did they tell you not to use the whip in the trial?

JOCKEY CUDDIHY: No. I never had a whip. The only thing they told me was that he was not ready for a hard trial. Mr. Cummings said that.

MR.McKAY: Q. Going back to the mouth, you told Mr. Calvin on the phone about the mouth being sore?

JOCKEY CUDDIHY: Yes.

MR.McKAY: Q. When did you next speak to Mr. Calvin after that?

30

JOCKEY CUDDIHY: Not until that Thursday night acceptances.

MR.McKAY: Did you mention it again then?

JOCKEY CUDDIHY: Yes. I asked him did he do the tooth, because he said Smokey had already rung up to have it done.

Exhibit "D"
Stewards' Enquiry

MR.McKAY: When you got your instructions did you ask them if that had been attended to?

JOCKEY CUDDIHY: Yes. I asked him that. Mr. Calvin told me on the Thursday night.

MR.McKAY: Told you about what?

JOCKEY CUDDIHY: The teeth, they were to be done.

MR.McKAY: Q. When you were given instructions, before getting on the horse did you ask him whether they had been done? 10

JOCKEY CUDDIHY: He said so far as he knew they had been.

MR.McKAY: Q. Who said that?

JOCKEY CUDDIHY: Mr. Calvin. He said that his mouth was not that bad from what he saw - "That mouth is not that bad."

- 24C - Jockey Cuddihy.

MR.MEEHAN: Q. He gave you the impression that the teeth had been done?

JOCKEY CUDDIHY: Yes, so far as I could see. 20

MR.HICKMAN: Q. Was anybody else in the enclosure beside Mr. Calvin and Mr. Dawson.

JOCKEY CUDDIHY: No.

MR.MEEHAN: Q. Is there any witness you wish to call?

JOCKEY CUDDIHY: Only about his erratic behaviour. If I do call anyone I would see if I could get his New Zealand jockey.

MR.MEEHAN: I am telling you now, we take a serious view of the way the horse was handled.

JOCKEY CUDDIHY: What I said about him being erratic is the way I rode him. 30

(Short adjournment)

MR.MEEHAN: (To Messrs. Calvin and Dawson and Jockey

Exhibit "D"
Stewards' Enquiry.

Cuddihy). After hearing all the evidence in this case, the stewards are not satisfied that this horse ran on its merits and we are going to charge the parties - Mr. Calvin, Mr. Dawson and Jockey Cuddihy - under Rules 135 (a) and (c) - (Read).

MR.CALVIN: I would still like to call the two gentlemen from New Zealand if I could. I think they could certainly verify our statement of how the horse raced.

10

MR.MEEHAN: You are entitled to call them, as I told you earlier.

MR.CALVIN: We will ask for both of them if we can, Mr. Wallace and the jockey Skelton.

MR.MEEHAN: Mr. Dawson is there anything you wish to say?

MR.DAWSON: Not at the moment.

MR.MEEHAN: We will adjourn the hearing until you call these witnesses.

MR.CALVIN: We will try to contact these people on the telephone over the weekend.

20

MR.MEEHAN: Very good. If you will let the stewards know when they are available.

MR.CALVIN: I will let you know straight away.

MR.MEEHAN: Then we will adjourn the hearing for the time being.

- 24D - Jockey Cuddihy.

STEWARDS' INQUIRY.

ROSEHILL RACECOURSE, Saturday 21st March, 1976.

Re running of Count Mayo in Eastlakes Handicap

Randwick, Saturday, 13th March, 1976.

W. TODD and W. CAMPBELL
Appeared before the Stewards:

MR.MEEHAN: Q. At the inquiry we asked Mr. Galea a few questions regarding the running of the horse, and he told us that he had \$1,000 on it and produced a betting ticket for \$1,000, bet with you. Did Mr. Galea have the bet? 10

MR.TODD: One of your chaps made the inquiry, but I was not aware of who had the bet.

MR.CAMPBELL: I have seen him with Mr. Galea a few times. He is a very little short chap.

MR.MEEHAN: Q. Mr. Galea did not have the bet?

MR.CAMPBELL: No, the other chap, about 5'4.

MR.MEEHAN: Q. What price did you bet him?

MR.CAMPBELL: 7/4, \$1,750 to \$1,000. I think it opened at 7/4 or 2/1.

MR.MAHONEY: Q. You do not know the name of this gentleman who had the bet with you? 20

MR.CAMPBELL: No. I have seen him with Mr. Galea. He appears nearly every race day.

MR.MAHONEY: Q. You would recognise him again if you saw him.

MR.CAMPBELL: Yes.

MR.MAHONEY: Q. When he had the bet with you was Mr. Bruce Galea in attendance?

MR.CAMPBELL: I did not see him. He just said "\$1,000, Count Mayo" in cash. 30

MR.MAHONEY: Q. Do you recall what the cash was?

MR.CAMPBELL: I would say twenty-dollar-notes.

MR.MAHONEY: Q. And you handed him the ticket?

Exhibit "D"
Stewards' Enquiry

MR.CAMPBELL: Yes.

MR.McKAY: To your knowledge has this man ever backed horses for Mr. Galea before with you?

MR.CAMPBELL: I could not say.

MR.SWAIN: Has Mr. Galea has any similar bets recently on horses with Mr. Todd?

MR.TODD: I could not say. I have been away $3\frac{1}{2}$ weeks prior to this. I had not been working at all.

10

(a)

Since he became ill he has not been in attendance either. So there would be no bets.

MR.MEEHAN: Q. Have you bet Mr. Galea, the father.

MR.TODD: Yes, father and son. The son usually bets in cash, but the father would often have a bet on credit.

MR.MAHONEY: Q. Do you recall whether this gentleman who had this bet has had a bet like that with you before?

MR.CAMPBELL: Yes.

MR.MAHONEY: Q. A thousand dollars on a horse?

20

MR.CAMPBELL: Or \$600 or \$800.

MR.TODD: I don't think there would be any difficulty in recognising him.

MR.CAMPBELL: I am nearly sure he is a friend of Mr. Perc Galea's son. He is generally with him.

MR.MAHONEY: Q. He is not Mr. Fred Walsh. Do you know him?

MR.CAMPBELL: Yes, I know him, he is not him.

MR.MAHONEY: Q. Who is the other gentleman who races horses with him; Mr. Farrell?

30

MR.CAMPBELL: No, it is not him.

Exhibit "D"
Stewards' Enquiry.

MR.MEEHAN: Thank you for coming in, gentlemen.

(Interview closed)

(b) Mr.Campbell/Mr.Todd.

AUSTRALIAN JOCKEY CLUB

SYDNEY, FRIDAY, 26th MARCH, 1976

STEWARDS' ENQUIRY INTO THE RUNNING OF COUNT MAYO (N.Z.)
IN THE EASTLAKES HANDICAP (2nd Divn.) RUN AT RANDWICK
ON 13/3/1976

Mr. Bruce Galea
(appeared before the Stewards)

MR.MEEHAN: We are just calling you in regarding the bet you had with Mr. Todd. Did you bet early or late Mr. Galea.
A. I would say about a quarter hour after betting, the price 10 went off early.

Q. What price was the best price. A. When I first went around the Ring I did see 2/1, it was bet pretty generally, they just went crash bang boom and knocked it off.

Q. Do you often bet with Mr. Todd. A. With Mr. Todd mostly.

MR.MEEHAN: I see, yes.

MR.MAHONEY: Q. Why did you go to Mr. Todd on this particular day. A. Well he had 7/4 up, he was the only one that had 7/4 up.

Q. And do you recall how you made the bet with him. A. 20 I gave him a \$1,000 in 20's.

Q. In \$20 in cash was it. Did you have any conversation with Mr. Todd when you made the bet. A. No, he was very very busy, he was the only one with 7/4 up and they nearly took him off the stand.

MR.MEEHAN: I see, yes, yes, he would be pretty busy there and you just walked up and had the bet with him. A. That is correct.

MR.MEEHAN: I see, yes.

MR.SWAIN: Q. Did you hand money to Mr. Todd or his clerk. 30
A. No, his clerk, his bagman.

MR.MAHONEY: Q. And the ticket was handed to you when the bet was made. A. The chap wrote the ticket and handed it to me.

MR.MEEHAN: Q. I see, just an ordinary betting transaction so far as you are concerned. Now, Mr. Galea, if I was to tell you that Mr. Todd does not remember you having a bet

Exhibit "D"
Stewards' Enquiry.

what would you say to that. A. I don't know about Mr. Todd but at the time I had the bet there must have been a hundred people trying to get on the horse so all I can say is that I had the bet of \$1,000 on him with Mr. Todd, whether he remembers it or not I don't know. I am sure Mr. Todd does not remember everyone who has a bet with him.

MR.MAHONEY: No but this time the clerk remembers it was not you, he recalls who made the bet. A. Well the clerk is entirely wrong, I do not even know Mr. Todd's clerk. 10

Q. The clerk says - I forget his name - that the gentleman that made the bet was a friend of yours, a person he has seen with you at times and he can recognise him again. A. Well Mr. Todd's clerk is entirely wrong because I placed the bet.

- 32 - B. Galea

Q. And you say that was in \$20 notes. A. It was in \$20 notes, 200 in \$20 notes. 20

MR.MEEHAN: Q. I think the only way out of this is to call Mr. Todd and his clerk in Mr. Galea, would you be available later today sometime? A. If it has to be I will be, yes, I live out at Yowie Bay and I have a family business to run, which I was very late getting home this morning, and I am in here now but if needs be I will get back later.

MR.MEEHAN: What about 1 o'clock.

MR.MAHONEY: What about Rosehill, would you be at Rosehill tomorrow A. I do not think we have got a runner tomorrow. 30

MR.MEEHAN: We do not want to inconvenience you if we can help it but if we can do it this afternoon, at 1 o'clock today, how would that suit you. A. Yes, 1 o'clock would be alright.

MR.MEEHAN: Alright if you call in at 1 o'clock we will endeavour to get Mr. Todd and his clerk in at the same time.

MR.MAHONEY: In case Mr. Todd cannot come here today we do not want to bring Mr. Galea in. Could you give us a phone number where we can contact you. A. I am going from here to the hospital and then I was going to go home but I don't want to go back all the way to Yowie Bay and then come in. 40

Exhibit "D"
Stewards' Enquiry.

I will do anything you want me to do as long as we can get it cleared.

MR.MEEHAN: If you wait a few minutes in the waiting room we won't be long, we will try and contact them.

A question to Mr. Hickman first of all. Mr. Hickman, will you tell us what transpired when you went to check the bet made by or on behalf of Mr. Galea. A. Yes, I was given the ticket that was tendered by Mr. Galea to go out and check with Mr. Todd. I asked Mr. Todd did he remember who had the bet he said he was not quite sure but his clerk might. His clerk told me that the bet had been placed by someone connected with Mr. Galea but it had not been Mr. Galea Snr. or Jnr., it was someone he knows but does not know by whom but he would recognise the man. 10

MR.MEEHAN: Q. Mr. Campbell, you are employed by Mr. Todd as a clerk. Do you remember Mr. Galea coming up and having a bet with you. A. Well as I say there was a bit of a rush on and there was a fellow I thought had the bet was always with Bruce, I am not saying it was not Bruce's money but he was always with him and he could have handed the bloke to give me the money just like that. 20

Q. To the best of your knowledge it was not Mr. Galea who had the bet with you. A. No I don't think so. Of course it is a fortnight ago but this bloke is always with Bruce.

Q. Was he a small man or a bigger man than Mr. Galea.
A. A smaller man I think - yes, a smaller man.

Q. (To Mr. Todd) Can you tell us anymore about this.
A. No. I can only repeat that I cannot associate anybody with the bet. It is a simple thing to do, I am writing tickets and more often than not I do not see the person who hands the money whether it be small or large. I write the ticket and they pass them out and that is it, but I hand the ticket out and it is gone in about 2 seconds. 30

MR.MAHONEY: Q. Mr. Campbell, when the Stewards interviewed you on Saturday you were quite certain that Mr. Galea did not have the bet. A. I said I am not sure whether Mr. Galea had the bet, what I am saying is I was not sure, I thought this fellow had the bet and I described him to you. 40

Q. That is true. A. And I said he is always with Mr. Galea.

Q. What I am putting to you is that you were quite certain

Exhibit "D"
Stewards' Enquiry.

that Mr. Galea did not personally hand you the money.
A. Oh no, I wouldn't say that.

- 33 -

Q. You were quite certain it was not Mr. Galea. A. Yes.

Q. You know Mr. Galea well from sight. A. Oh yes, from sight.

Q. He has done a lot of business with your firm over the years. A. Not lately.

10

Q. But over past years. A. Yes.

Q. And you told the Stewards that you are quite certain that Mr. Galea did not hand you the money personally.
A. Yes.

Q. Do you still stick by that statement. A. Well, we have to.

MR.GALEA: Can I say something?

MR.MAHONEY: Just a minute. And you was quite certain on Saturday that you said that you would recognise the man who had the bet and that he was a friend or you had seen him with Mr. Galea on previous occasions. A. Yes.

20

Q. And you would still recognise the man. A. Yes.

MR.MEEHAN: Now, Mr. Galea, you wanted to say something.
A. Yes. When I placed the bet as you can imagine Mr. Todd is a very big bookmaker and when I placed the bet he was the only one betting 7/4 in the ring at the time; it was just like the Charge of the Light Brigade honestly, trying to get on. Now, I am not doubting this gentleman what he said that I did not place the bet because I gave him the money. But if he has looked around to see who has placed the bet and as you can imagine they were working at a pretty hectic rate, if he has looked around and his eyes sighted on someone who sometimes placed that type of money with him well isn't it obvious that he may have understood that it was this gentleman who had the bet and not me. Because I placed the bet and I was standing next to him, the chap he is talking about is a little chap that goes to the races with us all the time and he has asked me as I placed the bet "What are you doing?" and I said "Putting \$1,000 on it for my father" and he said "good as gold by me" and he went away and backed it. Now surely in the confusion of the betting could not that have happened?

30

40

Exhibit "D"
Stewards' Enquiry.

I am not calling this man a liar and he is not calling me a liar, I placed the bet with Mr. Todd and he wrote the ticket and in the space of a second you place the bet and you have got the ticket. We are trying to get down a little bit fine here.

MR. MAHONEY: Q. (To Mr. Todd) When you write the ticket, what is the procedure. A. I give it to the person who has had the bet with me.

10

Q. You do not hand it back to your clerk. A. No, 9 times out of 10 I give it to the person who has had the bet with me. If it is a stranger that has come along and had a big bet naturally you do not hand the ticket straight to him, you hand it to the clerk until the money is counted. It may not have been counted by Mr. Campbell he may have handed it to one of my other clerks to count and then he will hand the ticket out.

Q. Mr. Todd, this bet in question was for a substantial amount, \$1,000, would you agree with that. A. Reasonably substantial.

20

Q. Would you also agree it was early when he bet.
A, Yes it was fairly early because the price at the time was not the going price evident.

Q. If I tell you that originally your ticket numbers for the race started off on a series ticket No.849 and this bet was 851 that would make it the second or third bet on the race. Do you recall it being that early. A. No, I can only recall it being early by the fact of the price of the horse on that ticket. In my memory the horse came in from 7/4 to even money at one stage.

30

Q. And do you recall who you handed the ticket to.
A. No, I cannot recall that.

- 34 -

Q. (To Mr. Campbell) Do you know what happened to the ticket when Mr. Todd wrote the ticket. A. No, I did not take the ticket. If it is at the front I might but the bet came from the back.

Q. Did you count the money on this occasion, the \$1,000.
A. No.

40

Q. You gave it to another clerk. A. Yes, because there was such a rush.

Exhibit "D"
Stewards' Enquiry

MR.MEEHAN: Q. The money was handed to you by this person originally. A. Yes I would say it was.

Q. And you do not remember Mr. Galea having a bet, you feel sure it was another man?

A VOICE: Did you bet in the front or the back?

MR.GALEA: You see that is another thing, it is all confused because I bet in the front, I am not a member of the A.J.C., I do not bet in the back and also I was confused too because I do not think Don was writing the tickets but apparently he was. It has all happened in the heat of the moment. I placed \$1,000 on the horse and I got the receipt and walked away hoping to God that it would win, I mean you do not stop to see who is handing you the ticket at the time. 10

MR.MAHONEY: Q. You are now saying, Mr. Galea, that this man was with you. A. He was with me and I told him to back the horse so the horse was trying for everyone concerned. 20

MR.HICKMAN: Q. Who was he Mr. Galea. A. Stevie Symes, I just said I wish I could bring Stevie in but he lives in the country. He is always with us at the races, he is a very good friend and when I said I had backed it went away and backed it.

MR.MEEHAN: Q. Who did he back it with. A. I haven't the faintest idea.

MR.MAHONEY: Q. Do you think it was strange that when you told him you thought the horse could win that he did not back it with Mr. Todd. A. Well I placed the bet with Mr. Todd and as I said there was a million people around placing a bet on and possibly Don turned the price down so he was probably chasing a better price. 30

MR.McKAY: Q. (To Mr. Campbell) The other day you were very certain that it was the chap who was with Mr. Galea who placed the bet and now you say you did not count the money and you are doubtful whether you actually took the money. What made you say there it was the man with Mr. Galea. A. Well I thought it was the man with Mr. Galea if they come around like that because there are about 20 or 30 around the stand and evidently 7/4 was the best price and they are all trying to get on and when the \$1,000 has gone on it has gone down from 13/4 to 11/8 or 6/4. 40

Q. Did you see that chap you are referring to actually

Exhibit "D"
Stewards' Enquiry.

hand the money to one of Mr. Todd's clerks. A. No, he handed it to me.

Q. You definitely took the money yourself. A. Yes.

MR.TODD: Mr. Campbell is on the front of the stand----

MR.CAMPBELL: There was that much of a rush on - if there was no rush on I count the money.

MR.TODD: (To Mr.Galea) You said it was the top price and it was the third ticket I wrote I think you said.

10

A. Correct.

MR.TODD: Well when you put your price up very often there is a rush for a particular horse, it does not mean to say that is the only one that is going to be backed.

MR.GALEA: I can recall now that I did lean over to the bookie next door because he had 2-1 and it went off.

-35 -

MR.TODD: That was Muir.

MR.GALEA: Yes I was trying to get on and that was the next best price 7/4 bet anywhere because the price seemed to go off from inside, from the members' side.

20

MR.TODD: It went off fast I know that.

MR.MEEHAN: Why would Mr. Campbell come and tell us that was not you that had the bet unless he was sure of what he was talking about.

MR.CAMPBELL: Mr. Meehan, if there is a big rush and you take \$1,000 in and you look around you might see Bruce. Bruce said he was next door to Muir, he could have had it, I was only expressing that it was the fellow who was backing it for Bruce.

30

MR.TODD: It is quite possible as Bruce said that if he was with Muir, who bets next to me, and he leans in and puts the money over the top of you standing with your back to him and Muir on our right he could easily put the money in. I am not an authority on this particular instance because I don't know what happened. In a rush like that it is quite possible - it is not an easy thing for a bagman to remember back a fortnight.

MR.MEEHAN: Mr. Campbell remembered on the day. He told Mr. Hickman what happened as Mr. Hickman told you earlier.

40

Exhibit "D"
Stewards' Enquiry.

MR.TODD: Oh yes.

MR.MAHONEY: This was pretty well straight after the race, Mr. Campbell told Mr. Hickman that Mr. Galea did not have the bet it was one of his associates who had the bet.

MR.GALEA: It was not after the race because I did not hand the ticket in until the next time at Randwick.

MR.MAHONEY: That was on the Wednesday, it was the Wednesday we asked Mr. Campbell, I apologise for that.

10

Q. (To Mr. Campbell) Would not that register with you a big bet like that when it was stable inspired. A. Oh well more than likely when there is a bet like that you know it is going to come in, you know.

Q. Yes, but what I am saying is doesn't it register with you when stable inspired money comes and you say to yourself "Well, that is stable money" so on this day didn't it register with you that this was stable money. A. I never heard of the horse before, I have never had a bet in my life, I only work, I wouldn't know where the horse comes from.

20

MR.GALEA: On those same lines it probably did register because he knew the chap that he said had the bet comes with my family.

MR.MAHONEY: That is what we are saying, Mr. Campbell is quite adamant that the other chap had the bet, Mr. Syme.

MR.GALEA: Well he is stable inspired because he is close to the family isn't he?

MR.MAHONEY: Well did he have the bet?

30

MR.GALEA: He didn't have the bet because I had the bet, he was the first one he has probably seen and he has naturally presumed it. Look, I don't know Mr. Campbell, I know Mr. Todd only from going to the races and being a member of Tattersals club and I am sure they have got no reason to stick up for me and I have no reason to stick up for them, all I am saying is what I have done and that is all I can say.

MR.TODD: The point in dispute is whether Symes has had the bet personally or Mr. Galea has had the bet personally.

40

Exhibit "D"
Stewards' Enquiry

MR.MEEHAN: Yes, that is so.

MR.TODD: Or whether Mr. Galea has had the bet.

MR.MEEHAN: Yes that is right, yes, yes.

MR.TODD: Now from our point of view we have had Mr. Campbell's say so that this man handed the money in. Mr. Galea has bet with me in the past and I would say that if he says he had the money on and it is his actual cash, I would be prepared to take his word because he has got the ticket and you can say "Where did he get the ticket?". But personally if he says he has had the money on with and can associate Muir with putting the money in it is quite possible that Mr. Campbell did not see Mr. Galea, he could have been there in the crowd at the time. 10

MR.MAHONEY: You understand Mr. Todd that it makes a vast difference to the Stewards as to who in fact did have the bet.

MR.TODD: I can see that yes but the bet has been made, hasn't it? 20

MR.MAHONEY: That is true.

MR.MEEHAN: We know a bet has been made but who put the money on?

MR.MAHONEY: It is a vast difference as to who made the bet whether Mr. Symes made it or Mr. Galea.

MR.TODD: Well in effect there is but if Mr. Syme made the bet for Mr. Galea Mr. Galea is in the same position is he not?

MR.MAHONEY: Only that Mr. Galea said he made the bet.

MR.GALEA: Yes, I made the bet. 30

MR.TODD: If Mr. Galea says he made the bet then I will assume that he did make the bet.

MR.GALEA: I thought Mr. Todd was not writing the tickets and Mr. Campbell thought the bet came from the back and it came from the front.

MR.MAHONEY: I do not think he said it came from the back.

MR.GALEA: He just said it about ten minutes ago I think.

Exhibit "D"
Stewards' Enquiry.

MR.CAMPBELL: I hand the tickets out at the front and Mr. Todd hands the tickets out at the back.

MR.MEEHAN: Who did you hand the money to Mr. Galea?
A. I handed it to Mr. Campbell.

MR.CAMPBELL: I have handed it to Peter because there was a hell a rush and I had never heard of the horse before.

MR.GALEA: Steve was there at the time and I said "They think this has an undeniable chance" and I told all my friends that and they all went away and backed it. 10

MR.MAHONEY: When did you decide to back it Mr. Galea?

MR.GALEA: When I rang Mr. Calvin up in the morning. That was my father's money, not mine.

MR.MAHONEY: Q. You did not have anything on it yourself at all?

MR.GALEA: No.

MR.MEEHAN: Anything further from the Stewards?

I do not think we can go any further with this. Thanks for coming in gentlemen. 20

(Withdrew)

AUSTRALIAN JOCKEY CLUB

SYDNEY, FRIDAY, 26th MARCH, 1976

STEWARDS' ENQUIRY INTO THE RUNNING OF COUNT MAYO (N.Z.) IN
THE EASTLAKES HANDICAP (2nd Divn.) RUN AT RANDWICK ON 13/3/76

Mr. F. Calvin
Mr. R. Dowson
Mr. P. Cuddihy

(appeared before the Stewards)

MR.MEEHAN: Continuing the enquiry, Mr. Calvin, we have
some films here from New Zealand, films in relation to all
the horse's starts; we thought you might like to see them. 10

MR.CALVIN: Yes I would, very much. (Films shown)
Have you a Stewards' Report where he ran off?

MR.MEEHAN: Yes (read). Have you a witness to call Mr.
Calvin?

MR.CALVIN: Yes, Mr. Wallace, if we may.

RAYMOND WALLACE
(called before the Stewards)

MR.MEEHAN: You have been called as a witness by Mr.
Calvin regarding this horse's performances in New Zealand. 20
A. Yes, that is right.

MR.CALVIN: Mr. Wallace has brought over some statements
from the Stipendiary Stewards which probably you have.
He has also brought over statements from Jockeys Skelton
and Stacey; he also has a statement of his own which I
would like to have him read; he has various newspaper
cuttings about the horse's behaviour in races which I
would like him to read and some official Stewards' Reports
which I would like you to have.

WITNESS: This is the report that Mr. Polson sent you. 30

MR.MEEHAN: Yes, you may tender that we already have it.

MARKED FOR IDENTIFICATION: m.f.i. 1 Report by Mr. Polson

MR.WALLACE: I got a copy of that from the A.R.C.
This is to introduce Mr. C.G. Tonks our Chief Handicapper
in the Auckland area and also the racing commentator (Read)

MARKED FOR IDENTIFICATION: m.f.i. 2 Report of Mr.
C.G. Tonks.

Exhibit "D"
Stewards' Enquiry.

This is the statement from R.J. Skelton (Read)

MARKED FOR IDENTIFICATION m.f.i. 3 Report in the form of a Declaration made before Mr. Polson)

The next is a statement from Jockey Stacey who rode the horse on only one occasion when he raced very badly and ran to the outside fence.

MARKED FOR IDENTIFICATION: m.f.i. 4 Statement from Jockey Stacey.

10

The next is my own statement taken in front of Mr. Polson (Read)

MARKED FOR IDENTIFICATION: m.f.i. 5 Statement from R. Wallace.

I have also taken the liberty of bringing a few Press cuttings for these races (Produced)

- 25 -

MR.CALVIN: This is where he finished down the outside fence.

MR.WALLACE: I can give you the report from the New Zealand Herald - (read) I have also a cutting from the Official Calendar, "Racing News" (read). I would like to add there was no enquiry over the finishes because there were films taken of the race and the riders were shown what happened.

20

I have a note from Alan Brown, the Racing Editor of the New Zealand Herald (read). The man that got those for me was Rex Nicholas the Racing Journalist for the Northern Star and he has written a letter (read).

MARKED FOR IDENTIFICATION: M.F.I. 6 - Bundle of press cuttings

30

MR.MEEHAN: Q. That is all you have in the way of reports.
A. Yes.

Q. (To Mr. Calvin) Any questions you want to ask him.
A. No, we only want to establish that he is a wayward horse and of course subsequent events proved us right.

Q. (To Mr. Dawson) Any questions you want to ask Mr. Wallace. A. No.

Exhibit "D"
Stewards' Enquiry.

Q. (To Jockey Cuddahee) Anything from you. A. Only what Mr. Swain said the other day when he said he could not be hanging out because I pulled him back to the horses but Mr. Wallace has said that he will come back to horses and I would like Mr. Wallace to say that is right. When you steer him back to horses will he come back to them?

MR.WALLACE: On the evidence I have tendered on several occasions he has been slow out of the barrier and when he does he will definitely go back. When you put pressure on his mouth, he is a little bit hard to handle, once he has settled and is allowed to run along a bit you can bring him back to where you want him but he has a tendency to run out. 10

MR.CALVIN: Actually when the enquiry started the reason was why we rode the horse so far back. I did not speak to you but I did not know Mr. Wallace at this time. I spoke to the Blood Stock Agent and it is my belief that the horse could not do it at both ends so our intention was - have you ever seen Randwick Racecourse? 20

MR.WALLACE: Yes.

MR.CALVIN: There is a rise and it is a killer, it will stop any horse. Our instructions to Cuddahee was to make up ground on the horse and try to have him close enough and not to make a move on him until over the rise and then ride him hands and heels and over the rise he started to ride him along and he ran out. Another jockey in the race raised his arm with the whip to hit his horse and apparently he saw that and started to veer to the outside. Our stipulation was that if Cuddahee had dropped his hands and went to hit him with the whip he would have run out through the outside fence. 30

MR.WALLACE: I would confirm this, you have to keep hold of his head all the time. The day he won at Ellerslie he won by three lengths. I can liken Skelton to a yacht in a stiff breeze, his head is pointing one way and he is going that way and Skelton was like that (indicating) he was over on one side and he said that he dared not move on him. 40

MR.MEEHAN: Q. (To Mr. Wallace) He has always been prominent in his races near the front. A. In his second start he was slow, and in two other races.

Exhibit "D"
Stewards' Enquiry.

Q. He made up his ground quickly. A. It always took him a while to make up his ground.

Q. How long. A. 200 or 300 metres. The only time I instructed Skelton to have him up was the day he got beat and that was the day Mr. Polson questioned Skelton about him being slow out of the barrier and as soon as he got balanced he raced 4 or 5 wide and he turned for home on the outside about 4 horses off the fence but with another horse or two around him on that day. The false rail was up and it was a disappointing effort I found it was better to give him a bit of time to find his mind.

10

MR.MAHONEY: Q. (To Mr. Wallace) On the day he won at Auckland he drew the outside alley do you recall.
A. Yes.

Q. And would you say he was in front after going about a furlong. A. On the day he did everything right.

Q. Led around the turn. A. Yes.

20

Q. And finished by winning the race. A. Yes, that would be true.

Q. Would you say in his previous starts he has always shown exceptional pace. A. No he is not what I would call a pacey horse, he has never run a track record.

Q. Can you recall a race where he was worse than third after going about a furlong. A. Yes, about three races.

MR.MEEHAN: How far back would he be. A. You cannot stumble at the start, veer out and hit another horse and be up with them, I would say he would be 7th or 8th or maybe 9th in a field of 12, two or three behind him.

30

Q. What would you say if the film we had from New Zealand shows it. A. I can only tell you what I have seen.

Q. These films show the horse in a prominent position all the way. A. If you have the film of the Weipa race, which was his first start, he was back in the field that day, he jumped reasonably and went sideways and then went back through the field.

MR.CALVIN: Can you tell actually what position the horse was in from that angle?

40

JOCKEY CUDDAHEE: He was close to the front.

Exhibit "D"
Stewards' Enquiry.

MR.MAHONEY: (To Mr. Wallace) Q. What I am putting to you is in general he showed exceptional pace in his races.
A. No, not exceptional.

MR.CALVIN: That race was run in 1.11½.

MR.WALLACE: At Weipa he jumped sideways and ended up on the fence.

MR.MAHONEY: This horse must have shown some pace to be close to - - -

10

MR.WALLACE: I did not say the horse was no good.

MR.MAHONEY: Q. (To Mr. Wallace) Do you remember the horse making a turn at Weipa and you say this day Skelton pulled the whip on him at no time. A. No, Skelton never hit him with the whip.

Q. What would you say if a film shows Skelton hitting him with the whip. A. I would be very surprised. He ran very wide.

Q. Do you remember Skelton hitting him with the whip.
A. No.

20

Q. Do you recall the horse veering out a little further.
A. Yes.

- 27 -

Q. Going on the Stewards' Report the only time the Stewards were really concerned about the horse was in the Calliope Handicap at Auckland. A. Yes, that is correct.

Q. And on that day Stacey rode him. A. That is right.

Q. Would he be an inexperienced rider. A. No.

Q. Was he an unfashionable rider. A. No, not really.

Q. How would you classify him in comparison with Skelton.
A. No man is Skelton's peer, in Australia or out of Australia. On every occasion that Skelton rode him he was afraid to move on him. Skelton also had the advantage on two occasions of the horse having a hanging bit on him.

30

MR.MEEHAN: Q. (To Mr. Wallace) Did you say having the advantage of a hanging bit. A. Yes, a very severe one.

Exhibit "D"
Stewards' Enquiry.

The first time Skelton rode him he hung on the turn and apart from that he ran fairly well except he jumped out and took time to find his feet. The second time he won at Ellerslie Skelton was on him that day and appeared to do everything right but showed that tendency with Skelton hanging over the side. It was a weak field and he won it

MR.MAHONEY: Q. (To Mr. Wallace) You say you were concerned at the horse's conduct. A. Yes. 10

Q. Was there any reason why you put Stacey on that day.
A. Yes, Skelton was riding elsewhere. Skelton said the bit was too severe on a horse, he said it lugged with him and he just had to sit there.

Q. So you raced him in the lugging bit that day. A. Yes I did but it was his last chance.

Q. Did you know that the horse was being sold to Mr. Calvin.
A. I knew it was being sold but not to Mr. Calvin. The only one I spoke to was Richardson, the man who was negotiating the sale. 20

Q. What did you tell Mr. Richardson. A. What I have told you today.

Q. Did you tell him that the horse needed a lugging bit.
A. No.

Q. Any reason for not telling him that. A. He was going to Bart Cummings and if I was in Bart Cummings' place I would not want people telling me what to do.

Q. Would not you give him the information about racing in a lugging bit. A. If he had wanted the information I would have told him, you can't tell them everything. 30

MR.MEEHAN: It is rather important this lugging bit.

MR.MAHONEY: Q. (To Mr. Wallace) I take it you held back all the horse's habits. A. All I can say is when you are selling something and he has a peculiarity you do not go around yelling "stinking fish"; you do not try to bring to the fore the bad points, you bring to the fore the good points and after the sale I told Richardson what I considered to be appropriate.

JOCKEY CUDDAHEE: Mr. Mahoney said the Stewards did not mention him running around except that they do not say anything unless he causes interference. 40

Exhibit "D"
Stewards' Enquiry

MR. MAHONEY: I thought I made it clear that it was on the day he ran out at Calliope.

MR. CALVIN: I spoke to Mr. Richardson on the Monday trying to get the Stud Book Certificate over here in time to get the horse to run and he said "When are you running the horse?" and I said "Saturday if I can get the Certificate in time". He said "Don't forget not to hit him with the whip." I did not get that information until after the sale, if you buy a horse you buy it with faults, all I

10

- 28 -

was told was to be sure not to hit him with the whip as he would run to the outside fence.

MR. WALLACE: He has had five race starts and four times I put different bits on him

MR. MEEHAN: Q. (To Mr. Dawson) You never thought the horse would need a lugging bit otherwise you would have put one on. A. I thought he was a bit green, he tried to run out of the gate at the crossing one morning, I do not think it was too severe but I did not know he had to have a lugging bit.

20

MR. WALLACE: His trackwork would not give any indication of his hanging tendency, only on two occasions did he gallop badly and that was when he was ship sore.

MR. MAHONEY: Q. (To Mr. Wallace) How many winners would Stacey ride in a year. A. Probably 50 to 60 in his apprenticeship.

Q. Is he out of his apprenticeship. A. Just out; he has only been out since March I think, about a month I think.

30

Q. And getting back to Weipa, you would not agree that the horse responded when he was hit with the whip and raced straight from then on. A. I would have to see it to believe it. I know that up until halfway down the straight I do not recall that he was hit with the whip.

Q. What I am suggesting to you is that the horse was getting a little bit wide on the turn and when Skelton waved the whip at him the horse responded and raced straight from then on. A. No, I would not agree with it,

40

Exhibit "D"
Stewards' Enquiry.

he raced there into the straight and everybody moved up as Count Mayo was going up at the same time with them, Count Mayo came over at an angle and he made the turn very awkwardly.

Q. At no stage did you give instructions to the rider not to pull the whip on the horse. A. Apart from the first race I did not give Skelton any instructions for that race but after that I could see that he was going to be a problem and I gave Skelton instructions not to use the whip and Stacey, I did not give much instruction at all, he rode him all his trackwork.

10

Q. If you gave Skelton instructions not to use the whip why would not you give Stacey instructions not to use the whip. A. Because that was easily his worst. Up until then I put it down to greenness.

MR.MEEHAN: Q. You were not unduly concerned then.
A. No.

(Short Adjournment)

20

ON RESUMING:

MR.MEEHAN: Q. (To Mr. Calvin) Anything further you have to tell us. A. With Mr. Wallace?

Q. Anything further you would like to ask Mr. Wallace.
A. No, I think we have pretty well cleared it. The only question was whether Skelton hit the horse with the whip or not; on the film I missed it, I must admit I thought he was waving the whip more, Wallace said he did not believe he hit him with the whip.

MR.WALLACE: In his statement to Mr. Polson he said he did not hit him.

30

MR.CALVIN: Mr. Wallace does not know what has happened to the horse on the track. The horse was going off the track and the horse with an inexperienced strapper and he shied and broke through the fence. I think that is all with Mr. Wallace.

MR.MEEHAN: Q. (To Jockey Cuddahee) Anything you want to ask him. A. No.

Exhibit "D"
Stewards' Enquiry.

Q. (To Mr. Dawson) Anything you want to ask him.
A. No.

MR.CALVIN: I want to make a general statement regarding the horse and the race and so forth. As you gentlemen know I am in the stud business, my business is to breed horses and sell them, breed fillies and race them and win as many races as I can. My horses have started at all sorts of odds, 5/1 on, 13/4 on, 11/4 on, they win if they can, if they cannot that is bad luck. 10

This horse was bought purely on my behalf as a proposition as a stallion later on, the more races the horse wins the more valuable the horse is at stud. I only went into the horse because Mr. Galea asked me to, I did not want to go into the horse, I have enough horses, I have \$3 million in the stud and the horses but Mr. Galea had gone into another horse with me and he likes to win races and he asked me to go in which I did and as you know Mr. Cummings was going to train the horse. 20

When we got him home the idea was to try to get him ready for the Golden Slipper and if he wins we have a very valuable horse and it was on this understanding that I went into the horse. When his racing was finished I would have the opportunity to handle the stud career and it would be ridiculous for me to worry about betting. I have a bet and you gentlemen know I do and I only bet if the value is there and if it is a short price he only runs for the prize money. It would be stupid for me to do anything foolish in a race like this especially when I am trying to qualify him for the Golden Slipper. 30

I have seen Mr. Mahoney often go into the ring to see what horses are in the betting - I have seen him making notes in his book so I presume that is what he was after. The Sydney Betting Ring would be the strongest betting ring in the world and I know the horse opened at 2/1, firmed to 5/4 and finished at 6/4. Friends of mine invested \$84,000 on one horse at 9/4 and it did not firm one quarter point, he started at 9/4. Another time the total invested on the horse was \$68,000 at 6/4 and the horse did not firm a quarter of a point. You would have to put a hell of a lot of money in on this horse, I don't know where it came from but for a horse to firm from 2/1 to 5/4 on there had to be a lot of money go on. I do my betting perfectly legally, as you know money goes on in the morning and will be placed later in the day on the racecourse. Who knows what they do? You give a man a commission and he puts it on, I have even heard they put it on in New Guinea. 40

Exhibit "D"
Stewards' Enquiry

I want to win races, I have never been before you gentlemen before, I have never had one of my horses queried, I thought we were doing the right thing and I thought he would win and I still say that he would have won if he went straight. I think the horses boring out under pressure beat the horse.

I want to say one thing about Cuddahee: he has not ridden for me before but the late Stan Fox used to come to me and say "Why don't you give Cuddahee a ride on one of your horses?" and when Mr. Fox was alive he was riding in practically every race. Mr. Fox always told me that Cuddahee was a boy of the highest integrity and I agree with him completely. I have no doubt the boy did everything possible to win the race on the horse. The only thing I think he may have done wrong was that he may have made his move a little too soon coming up the rise because we had only one chance to win the race that was the last furlong and a half because I knew the horse was underdone.

MR.MEEHAN: Q. You told us that you like to have a bet on your horses when it is value. A. That is right.

Q. Did you think that was good value. A. No, it was a contingency bet because there is still a contingency payment to be made and that is quite a substantial sum and when you win a race you have to look after the stable. I did think the horse could win but I thought the class was too good. If the horse had been each way I would have had a bigger bet on him each way.

- 30 -

Q. (To Mr. Dawson) Anything more you want to say.
A. No.

Q. (To Jockey Cuddahee) Anything further from you.
A. No.

MR.MEEHAN: We will have a further short adjournment.

(The parties withdrew and were recalled)

MR.MEEHAN: The Stewards have given long and careful consideration to this case gentlemen.

P. Cuddahee, we are satisfied you breached the rule and did not allow the horse to run on its merits and we are satisfied that Mr. Calvin and Mr. Dawson were parties.

Exhibit "D"
Stewards' Enquiry.

We have decided to disqualify all the parties for 12 months as from today's date, you have the right of appeal. No action will be taken against the horse.

MR.CALVIN: What about the horses that I have in training?

MR.MEEHAN: They can be trained but they cannot race. You will have to see the Secretary about the horses being trained.

(The parties withdrew)

AUSTRALIAN JOCKEY CLUB

SYDNEY, FRIDAY, 9th APRIL, 1976

APPEALS OF F.D. CALVIN, R. DAWSON and P.H. CUDDIHY AGAINST
DISQUALIFICATION IMPOSED BY THE STEWARDS ARISING OUT OF
THE RUNNING OF COUNT MAYO IN THE EASTLAKES HANDICAP RUN
AT RANDWICK RACECOURSE ON 13th MARCH, 1976

PRESENT: Mr. J.H.B. Carr (Chairman) Mr. B.R.
Pelly, Dr. D.P. Rowe, Dr. T.R. Street,
(Init.) Mr. R.A. Howell, Mr. R.J. White, Mr. W.F. Gordon,
Sir John Austin, Mr. J.H. Ingham. 10

MR. T. FALKINGHAM Q.C. with him MR. T.O'L. REYNOLDS OF
Counsel (instructed by Messrs. Stephen, Jaques and
Stephen) appeared to assist the Committee.
MR. D.A. STAFF Q.C. with him MR. P.G. HELY of Counsel
appeared for the Appellant F.D. Calvin.
MR. M.H. McLELLAND Q.C. with him MR. P.R. CAPELIN appeared
for the Appellant P. Cuddihy.
MR. J.V. COMANS of Messrs. R.D. Meagher, Kinley & Comans
appeared for the Appellant R. Dawson. (Init.)

MR. FALKINGHAM: Before I open, may an order for witnesses 20
who are not actually parties to leave the room?

THE CHAIRMAN: Yes.

MR. FALKINGHAM: May it please you, Mr. Chairman, and mem-
bers of the Committee, these appeals arise out of the dis-
qualification for 12 months of the three appellants follow-
ing an investigation into the running of the 2nd Division
of the Eastlakes Handicap run at Randwick Racecourse on the
13th March this year when the horse Count Mayo - of which
the appellant, Mr. Calvin, was part owner and Mr. Dawson
(Init) was foreman-trainer and ~~ea~~ of which Jockey Cuddihy was the 30
rider - ran fourth in this race in circumstances which
will be the subject of the films to be shortly shown.

I do propose, for the convenience of everybody concerned,
to show the films, if this meets with the Committee's
approval, at the conclusion of my opening and if it is re-
quired to be done again at any particular point in the
evidence I am quite sure that the person who requests it
will be accommodated.

The enquiry commenced on the 13th March at the course and 40
was adjourned to the 17th March and later to the 26th
March in order to accommodate the convenience of the

witness Mr. Wallace who was in New Zealand and who gave evidence as to the propensities of the horse in New Zealand amongst other matters, and his performances.

The evidence of Jockey Cuddihy was, in short, that he had instructions from both Mr. Calvin and Mr. Dawson, you will hear what those instructions were, they included a suggestion that the horse be held up and allowed to come home, he himself expressed some opinions about the horse's propensities, some things he had heard about it, and he gave a description of the running of the race which it may be felt, after 10

1

the films have been seen, does not accord with what actually happened in the race. He said, amongst other things, that he had flicked the whip at the horse and the film does not show this; he described in some detail the horse hanging out until inside the last furlong and we would suggest that when the film is reviewed it will be seen that there was no lugging out so far as around the back was concerned or in the last furlong at all. It is apparent the whip was not applied and the reason given for this was the horse, which was veering, would run right off and out of the race. 20

The precise instructions which Cuddihy says he was given were to watch him, to make sure he did not pull the whip on him and he said "Apparently if you hit him with the whip he runs everywhere". As for the running of the race he said the horse ran with his head in the air and inside the last furlong he hung and in the last half furlong started to veer to the outside. The horse did, in the straight, pursue what appears to be a straight diagonal line to the post and finished fourth behind the winner Gentle James. 30

The witnesses who were called in order thereafter were Messrs. Dawson and Calvin together, a Mr. Mason - who is alleged to have placed a bet for Mr. Calvin on the horse - and those that followed, a bookmaker and his clerk and (Init.) Mr. Galea and there were tendered some performances in New Zealand and evidence of his propensity to hang out. 40

There were, in the respective evidence of Messrs. Dawson and Calvin, a number of contradictions and discrepancies which will be dealt with at greater length a little later. In the evidence of Mr. Mason and Mr. Calvin there were discrepancies as to the bets alleged to have been made, Mr. Calvin said the money was sent to Melbourne to be put on in the first ring. Mr. Bartley was apparently called after Mr. Mason had said he had placed the bet and said that he was speaking to his man in Melbourne and told him to wait to put the bet on.

There are very few points where the evidence of Mr. Mason agrees with the evidence of Mr. Bartley and it will be suggested that Mr. Mason, being examined at the course and not being aware of what Mr. Bartley was likely to say, said that he thought the money was on, he knew nothing to the contrary, he apparently assumed there was a certain price to be obtained.

Mr. Bartley, on the other hand, claimed he rang Mr. Mason on the Saturday afternoon after the races and told him the bet was not on. 10

The bet was \$6,000 and Mr. Calvin when asked about this said at first that he thought the horse could not win but he ought to have something on it and on his own words it was reported as "a damned good bet for anyone". He later, in his evidence, said he thought the horse could win.

The views of Mr. Dawson, whether he thought it could win, did not seem to have been canvassed by anyone very much. The evidence of Cuddihy involves Dawson and there is further evidence from Cuddihy about betting. 20

Mason, according to his evidence, was under the impression that he would get at least 2/1 for the money to be placed in Melbourne. In point of fact Mr. Bartley alleges he put on \$2,000 at 3/1 in the morning for himself he says and being unable to get set, to use the phrase, for the \$6,000 at a price of 5/2 the bet was not on. It is not made plain so far that the price of 5/2 was stipulated to Bartley, his own evidence is that when he spoke to his man in Melbourne he stipulated 5/2 and no lower price with the consequence that the bet was not on and as he himself agreed it was unfortunate it was not on because then there was no record of any bet by Mr. Calvin. 30

The betting sheets are here from Randwick and also the betting sheets on the course at Melbourne that day are also here and none of those sheets show a bet being laid of any consequence for Mr. Calvin or Mr. Mason. The Melbourne sheets will show that the opening

2

price of this horse was 2/1 and in some places 9/4 but there is no record of any bet of any significance with anyone. 40

The explanation, it will be seen, given by Bartley came later in the investigation at a time when possibly, perhaps even probably, he knew that the investigating Stewards had suggested to the various parties that it would be necessary to get the Melbourne sheets and it would appear, if this is the proper construction to be put upon his evidence that he was then in somewhat of a quandary because he had to explain first of all why there was no bet laid or recorded and consequently he would not have been aware that Mr. Mason had not made any allegation to the effect that he knew the bet was not on. 50

Mr. Mason, by nothing he has said in any part of his evidence, has given the impression that he was told, or that it was in any way brought to his knowledge, that the bet was not placed. The fact is that there is no record of the bet having been placed at Randwick Racecourse or anywhere else.

The expressions of opinion as to the merits of the horse vary from party to party here, it seems that there were some misgivings as to its capacity to win but nevertheless a sum of \$6000 was thought to be an appropriate sum to put on it. Certainly the jockey has sought to excuse the running of the horse and his riding, by reference to a trial that was held and in regard to this trial it will be seen that there are a large number of discrepancies. It was suggested that he told Dawson of this propensity but this is not conceded by Dawson. 10

There was, and it appears from the transcript, a further serious discrepancy as to the mode and occasions of payment of the bets which were said to have been laid. Some of the evidence of Mr. Bartley is, in this respect, almost incomprehensible but what he appears to be saying is that he was paid by cheque. Mr. Mason says this on pages 15 and 23 of the transcript. On page 23 Mr. Bartley says, referring to Mr. Mason, he gave the \$6,000 in a cheque. I understand from Mr. Staff that he says that in relation to the evidence on page 15 it is in error and that it should be cash and that the answers should be juxtapositioned. We have made enquiries and on our instructions - 20

MR. COMANS: At this stage Mr. Falkingham has not tendered the transcript. 30

MR. FALKINGHAM: I did not tender it but I understood it was being used without objection. I will tender it at this stage.

MR. McLELLAND: May I simply say this, these three appeals are being heard together and we submit that the evidence of the betting in the transcript has no effect on the position of the jockey.

MR. STAFF: I have no objection to the transcript except as to corrigenda. Mr. Falkingham says there are some errors and he has mentioned some but not all and before it goes on I submit the corrigenda should be available and agreed to. 40

MR. FALKINGHAM: Certainly on page 2 at approximately line 7 an answer by Cuddihy, the word obviously should be "mouth" instead of "mount".

THE CHAIRMAN: That is altered here.

MR. FALKINGHAM: It is not altered in mine. At page 6, about two-thirds of the way down the page Mr. Dawson said "I did not talk to him much after the race" and Mr. Meehan is reported as saying "Why talk to him?" and that should be "Why not talk to him?"

At page 14 a little over two-thirds of the way down the page Mr. Calvin says "I gave him his instructions to hold him" the question before that was asked, we are told, by Mr. Meehan and not Mr. Mahoney.

(Init.)

MR. STAFF: In the next answer it reads "I gave him his instructions to hold him", that should be "hold him up".
3.

10

(4)

MR. FALKINGHAM: I do not think we quarrel with that.

At page 17 at the very bottom of the page Mr. Cummings is asked "You say with Cuddihy it did try to hang in the trial. A. He tried to keep him inside" and that should be "They told him to try and keep him inside a couple of horses".

20

THE CHAIRMAN: Who is the "they"?

MR. FALKINGHAM: "He" in the last sentence, could only be ---

MR. COMANS: I would object to that amendment on this basis that there is evidence of conversations between Mr. Calvin and Mr. Cummings on the phone so you cannot imply that "they" means Dawson.

In asking for the transcript to be admitted I did not want to be technical but I did not want later to have to start ab initio.

30

MR. FALKINGHAM: The next one is at page 21, five questions from the bottom of the page Mr. Bartley is reported as saying "You know the bookies do not put down the full sum, many bookies have nod bets not in the book". Subject to any matters being raised by the Bar Table they are the corrigenda we wish to raise.

MR. STAFF: At page 15 I call attention again to the matters earlier under discussion, the fifth answer of Mr. Mason "I paid him by cash" and the seventh "Mr. Calvin by cheque". When the transcript was issued to us those respective words "cash" and "cheque" had been altered in handwriting so that account reads Mr. Mason had paid him by cheque and Mr. Calvin by cash and those alterations were apparently made in the A.J.C. Office before it was

40

sent to us and we say that they correctly record the evidence and that they should be adopted as a discrepancy.

MR. HOWELL: But the answers were different in each case, one said "cash" and the other said "cheque".

MR. STAFF: Yes.

MR. McLELLAND: On page 4 there is one matter I draw attention to, the top line, the fourth word the "tools" should be "bills", "bills" meaning "accounts".

MR. COMANS: In fairness it would mean "account" because he is asked when the teeth were done and he said he would check it up with Adelaide because the accounts had been sent over there, meaning dentist's accounts. 10

MR. FALKINGHAM: I formally tender the transcript.

EXHIBIT: Exhibit A - Transcript of evidence taken 13th March 1976 and following days.

MR. STAFF: I am reminded that there is another alteration that we suggest should be made and that is on page 4 in the middle of Mr. Calvin's long answer he said "I told him to take hold the horse was not fit". 20

MR. FALKINGHAM: We will have enquiries made Mr. Chairman.

MR. HOWELL: Has this been checked, it is very serious that the answer should be altered in that fashion because it seems to me it reads quite accurately as it is, the horse was fit and he was let up and he had 13 easy days. (Init.)

MR. FALKINGHAM: Yes, the following words seem to indicate that "fit" was the actual word but we will make enquiries.

There was a reference a moment ago from the Bar Table as to the evidence not involving Jockey Cuddihy and to a large extent this is correct. I mention it because Cuddihy did mention betting on page 24A. 30

he was asked by Mr. Hickman "Did Mr. Calvin say anything about backing the horse ... (reading) ... to bet on it". It would not be appropriate at this time to read the voluminous evidence in relation to the various odds talked about but he finally makes the point that he insisted on 5/2 and no less and other witnesses referred to 2/1 and there is evidence of a guarantee of 2/1 and this was made in the presence of Bartley who immediately denied giving any guarantee at all in relation to any bet. Then at page 40

22 Mason said "He guaranteed 2/1"; Bartley said he gave no guarantee at all.

(4A)

MR. FALKINGHAM: (Continuing): They were asked various questions concerning this matter. Mr. Bartley said again that he had had \$6000 to \$2000 on for himself. At a later stage he said that, in the event of the horse winning and not being backed for Mason, he would have paid that over. He was saying that he would have fielded the bet and paid out his own winnings. When pressed later concerning the way in which he had paid out, he referred to giving Mr. Mason, if he had had to pay out, 3/1 for \$2000 and 2/1 for \$4000. That, of course, bears little relationship to the suggestions of 2/1. The odds there are more than 2/1, and they are not 5/2. 10

The Melbourne betting sheets of the bookmakers show that there was 3/1 and 9/4 bet in various quarters.

It has been suggested here by Mr. Bartley that he first of all insisted on 5/2 for his client, the man for whom he was putting it on. He took \$6000 to \$2000 for himself, but he made the point that it does not matter what name he put it on for, he was stipulating that the bet was for himself. 20

He said that he did not get the bet on, and told Mason that on the day of the races. Mason indicates clearly that he did not know how the bet was put on. Indeed, that it was not put on by Mr. Bartley. That would indicate that if the story is a fabrication, it was one which must have occurred to Mr. Bartley after he had been informed that the stewards were calling for the Melbourne betting sheets. Of course, what he was going to say could not be forecast by Mr. Mason on the day of the race when questioned. 30

It is significant in that connection that Mr. Mason said, at p.7 of the transcript, that he got them to put it on in the first ring. Perhaps, to be charitable, one might read the thought for the deed, and read it to mean that he wanted to put it on in the first ring. But that is not what Mr. Bartley says. He said that his instructions were to get 5/2, and wait until they jumped away. 40

MR. HOWELL: The first ring is not a place of betting, but a mode of ringing through prices?

MR. FALKINGHAM: I would say so. Mason says at p.9 that he knew the price would be short; that the morning price was 5/2 or 3/1, and "If they started to bet, it would be even money."

What sort of inquiries were set in train after the original investigation at Randwick one does not know, but the evidence of Mr. Bartley and Mr. Mason on these points is completely contradictory.

So far as the other witnesses are concerned, there were a number called. I refer to Mr. Wallace, who I understand will be here today. All the witnesses who gave evidence have been alerted and are here. Some members at the bar table might feel that some of these witnesses do not carry the matter much further forward, but if they want any one or all of them called, they can ask us and we will put them in the witness box for cross-examination and examination. There are Messrs. Todd, Campbell and Galea. Also, if any particular questions are desired to be put, Mr. Cummings is here. Apparently he was not at the Randwick meeting and was asked some questions concerning his knowledge of the horse's propensities. 10

The significance of the propensities of the horse in New Zealand will not be missed, but we would suggest that the film of the race at Randwick shows that the horse was not ridden out; that it did not lug out; that it was not hit with the whip at any stage; and 20

5. (Mr Falkingham)

that it could have won if the whip had been applied, or could have won if vigorously ridden.

We point to the jockey's description as contrasted with the visual observations of the race, and we point to the various stories told concerning the backing of the horse, none of which hang together. 30

In regard to the horse in New Zealand, there is some evidence, which has not been objected to here. To save the expense of calling certain other people, certain documents have been mentioned. Some are expressions of opinion by various persons as to why the horse lost, and what should be done to cure his performance, and so forth. But it is not without significance. You will see the films. There are four. On one occasion it was ridden by an apprentice called Stacey. It was able to share the lead in the race apparently, although the film is not complete. Officially it was recorded that he ran out in that race. But in the last race in which it ran, ridden by a skilful jockey, Skelton, on the extreme outside at the barrier, it went to the lead, did not hang at all, and won. On the previous occasion when ridden by Skelton, he did not run out and won. He stumbled at the start quite visibly and considerably. 40

In the preceding race, in December, 1975, when ridden

by Skelton, it will be seen that he ran second to a horse described as one of the best in New Zealand, and was struck with the whip by Skelton something like eleven times.

These matters are mentioned because Cuddihy, in excusing his performance on the horse, refers constantly to his knowledge of this propensity to hang, and his fear that the horse would run anywhere if he hit it with the whip. Despite this, he claims that he did flick the horse with the whip, but this is not visible in the film. 10

There are various opinions of the horse's chances of success. Mr. Calvin on p.5 said that he really did not think the horse could win. Despite this, he backed the horse. Cuddihy at p.24A said that he would not have backed it if he did not think it could win. They did not think it was fully fit, but they still thought it would win. Mr. Calvin said that he thought the horse could win.

MR. HOWELL: On page 4 of the transcript he said that the horse was underdone and needed the run badly?

MR. FALKINGHAM: Yes, and at p.5 he said that he really did not think the horse could win. At p.30 Mr. Calvin expressed the view that the horse could win. At the bottom of the page the transcript reads, "Mr. Meehan: You told us you like to have a bet on your horse when it is value ... (reads) ... I would have had a bigger bet on him each way." 20

On p.30, the third long paragraph, he referred to the fact that the horse was being got ready for the Golden Slipper. Mr. Dawson also referred to the horse being prepared for the Sires Produce Stakes. It would seem that this was put forward by the respective parties as a reason for the instructions that were spoken about. It was thought that he would need to qualify for the Golden Slipper by winning this race. But Mr. Dawson makes no mention of this and says that the ultimate object for the horse's training was the Sires Produce Stakes. 30

There were many references by Mr. Calvin about his not being interested in betting, but as he said himself, this was a bet of some size.

We suggest that, if the evidence of the various witnesses, including the stewards, is to be comprehensible, the film of the Sydney race 40

6. (Mr. Falkingham)

should be shown first, that is, if that course commends itself to the Committee. Perhaps at the same time the films of the New Zealand races, with appropriate legends, could be shown.

The horse will be seen in its races in New Zealand to be quite able to take up a prominent position - in fact, go to the lead early in the race. One of the features of this investigation was that it was thought that he could not do this. This evidence was given by one of the purchasers of the horse. Having said that, I would ask that the films be shown.

MR. McLELLAND: I have one observation to make about the New Zealand films. As I understand it, none of them is a film of any complete race. They are extracts. And in some cases they are very small extracts of the complete race. I suggest that it might assist the Committee, when looking at those films, if my friend were to tender beforehand the various statements he has already referred to, which were marked for identification before the stewards, which dealt with those New Zealand races in some detail. I think the Committee might better understand the New Zealand films if they are conversant with those statements. 10

MR. FALKINGHAM: Yes, certainly. We intended to tender everything with the transcript. That is, the evidence given by Mr. Wallace and the documents which consist of various reports, newspaper cuttings and others. We have no objection to tendering any of those, and we have copies for everyone at the bar table. 20

MR. McLELLAND: I do not know whether the Committee intends to take a short adjournment?

CHAIRMAN: It does not matter. We are prepared to sit until midnight. Would you like a short adjournment to look at those papers? 30

MR. McLELLAND: The Committee will be assisted by looking at them first, before seeing the films.

CHAIRMAN: I don't think so. We will see the films.

MR. COMANS: May I have permission for Dawson not to see the film? I make that submission on this basis: I feel I am entitled to do this: Dawson did not see the film during the inquiry. In saying that I make no reflection on the stewards. The film has been available for him to see at all times. But he has not seen the film. He proposes, when he goes in the box, to give a description of the race as he saw it through his own binoculars. He does not want to see the race again today. Somehow or other, when the inquiry was on he was not present when the film was shown, but he has been offered to see it on various occasions. The stewards have been quite fair about it. 40

MR. HOWELL: You have seen it, Mr. Comans?

MR. COMANS: Yes.

MR. FALKINGHAM: I have no objection.

MR. COMANS: I would like him to remain outside.

CHAIRMAN: Very well. If he remains outside, we will see the films now.

(The film of the Eastlakes Handicap, Second Division, on 13/3/76, and the New Zealand films were viewed in the absence of appellant Dawson)

7.

10

UPON RESUMING:

CHAIRMAN: Mr. Falkingham, have you anything else to add now?

MR. FALKINGHAM: No. I propose to call the stewards one by one. They can be cross-examined by any party. As I said earlier, I will make them available, by calling in turn any witnesses required by any member present at the bar table.

JAMES JOSEPH MEEHAN, Chairman of Stewards, Australian Jockey Club, sworn and examined:

20

MR. FALKINGHAM: Q. Mr. Meehan, what is your full name?
--- A. James Joseph Meehan.

Q. You are the Chairman of Stipendiary Stewards?---
A. That is correct.

Q. I think you were in charge of the investigation commencing on 13th March 1976? --- A. Yes.

Q. Into the running of Count Mayo in the Eastlakes Handicap, Second Division, at Randwick on that day?---
A. Yes.

Q. As a result of which charges were laid under Rule 135 of the Rules? --- A. That is correct.

30

Q. You have read the transcript of the evidence tendered here?-- A. Yes.

Q. So far as it concerns matters at which you were present and in relation to questions which you asked, is it, subject to the small matters of correction? -- A. There are a few small ones there.

Q. Otherwise, it is a proper record of what took place?
--- A. Yes.

Q. You saw the race itself? --- A. Yes.

Q. Where were you stationed? --- A. In the official stand at the Randwick Racecourse, practically in line with the winning post in the members' stand.

Q. You heard the description given to you and the other stewards by Jockey Cuddihy of the running of the race?---
A. Yes.

Q. Including the statement that the horse ran with its head in the air for about 50 metres?--- A. Yes. 10

Q. Have you any comment to make on that?--- A. I dispute the fact that he ran with his head in the air for 50 metres.

Q. And that after he went about a furlong he hung? ---
A. I dispute that too.

Q. And that he did not run off, but hung from there to inside the last furlong?--- A. No, I cannot agree with that.

Q. And that in the last furlong he started to veer to the outside? --- A. He drifted off the track approximately the last furlong. 20

Q. It was further said by Cuddihy that the horse had hung badly over the back of the track. Was that your observation? --- A. No.

Q. Did you at any time see Cuddihy flick the whip at the horse or hit it with the whip?--- A. No, I did not.

Q. In your view, at any time during the race did the horse appear as though it would run off the track? ---
A. No. In the last bit it drifted off the track.

8. J.J. Meehan. x.

Q. Or was trying to hang off?--- A. No. 30

Q. Did there appear to you to be any difficulty in Cuddihy getting the horse around the turn?--- A. No, did not appear to be in any trouble to me.

Q. After certain investigations were made relating to betting transactions, were there various people who have been called to give evidence?--- A. Yes.

Q. One of those was a Mr. Bartley?--- A. Yes.

Q. Was this as a result of evidence given by Mr. Mason?
--- A. That is correct.

MR. STAFF: Q. Would you tell us where the other stewards were located?--- A. The Deputy Chairman and I, and Mr. Hickman were in the official box in the members' stand. The other stewards were at various points around the track.

Q. Who was where around the track?--- A. I do not remember where they were. Three of them - Mr. Swain, Mr. Carlton and Mr. McKay - were at various points. I do not remember exactly where they were.

Q. Perhaps you can tell us later on?--- A. Yes. 10

Q. Would you agree that the horse Count Mayo blew up after the race?--- A. I did not notice.

Q. Did you look?--A. No.

Q. I think you would agree - and I am putting this to you in a general way - that a horse can be hanging in a way that is not apparent to an observer?--- A. I don't think I could agree with that.

Q. Was it your view that the observer - and I mean a skilled observer - can always tell immediately a horse shows a tendency to hang? --- A. A horse that is hanging can be noticed, yes. 20

Q. Do you suggest that that would also be able to be seen quite clearly on a film?--- A. It should be, yes.

Q. What I am putting to you is that an experienced rider will know, will feel a horse showing a tendency to hang long before it becomes apparent to a skilled observer?--- A. Showing a tendency to hang?

Q. Yes. --- A. Yes, it could be.

Q. And a skilled and experienced rider can, as it were, partly correct that tendency without the horse showing to an observer any inclination of hanging?--- A. It would depend on how much the horse was hanging. 30

Q. Of course. But wouldn't you agree that a horse can be hanging without it being apparent to the observer?--- A. He would not have to be hanging very much unless someone noticed it.

Q. He could be hanging somewhat?--- A. Slightly, yes; possibly.

Q. Of course, in the present case you discount, or you would deny that there was any possibility of this horse hanging at any point until about half a furlong out?--- 40

A. Yes. He drifted off the track about half a furlong from the finish.

Q. A bit more than drifting?--- A. He did not duck out. That is what I mean.

9. J.J. Meehan.

Q. He travelled in about a 45 degree line?--- A. I would not say he ducked straight out. He drifted out.

Q. Did he pursue a steady course outwards?--- A. Yes, a steady course outwards.

10

Q. And that was immediately after the boy - soon after the boy increased his pressure with his heels?---

A. I did not notice him increase pressure with heels.

Q. Didn't you notice over the last bit that his heels were working much more vigorously than earlier in the race? ---

A. I was looking at his hands more than his heels.

Q. You did not observe his heels?--- A. That is correct.

Q. He had a firm hold on the horse's head?--- A. Yes.

Q. Throughout the race?--- A. Yes.

Q. Were you present throughout the whole of this inquiry? --- A. Yes.

20

Q. Mr. Mahoney left it a couple of times, presumably to go off somewhere else for some purpose? Would you agree with that?--- A. He may have; I would not be sure.

Q. I put it to you that Mr Mahoney left the room while the inquiry was continuing, during the course of Mr Mason's and Mr Bartley's evidence about the betting?---

A. He could have. I would not dispute that. I do not remember him leaving. He can tell you himself.

Q. I put it to you that he left on another occasion also during the inquiry? ---

A. I just do not remember.

30

Q. You would not dispute that?--- A. No, I would not.

Q. We heard Mr Falkingham tell the Committee that Skelton hit the horse eleven times I think in the first race in New Zealand, when he ran second?--- A. I think it was the first race.

Q. That is the one in respect of which we have two segments of the race?--- A. I think that is the film.

Q. Is it your opinion that Skelton on that day hit the horse eleven times with the whip?--- A. I would not say eleven to be exact. Ten or eleven, eight or nine; I would not be sure.

Q. You have made that estimate from watching the film?---
A. Yes.

Q. I put it to you that Skelton on no occasion hit the horse with the whip in that race or any other?--- A. He could have fooled me, sir.

10

Q. You are reasonably familiar with Skelton's riding?---
A. No, I am not. I don't see much of him at all.

Q. Would you deny that what he was doing with the whip was flicking it at the horse, without hitting him?---
A. From my observation of the film, he was definitely hitting the horse with the whip.

Q. What made it appear to you that Skelton was hitting with the whip, rather than waving the whip, away from the horse?--- A. He was hitting the horse with the whip in the left hand.

20

Q. You say, with the left hand?--- A. Yes.

Q. Of course it is plain that he had the whip in the left hand?--- A. Yes.

10. J.J. Meehan.

Q. Don't you know that Skelton simply can't use the whip with the left hand?--- A. I would not know whether he was or not; he was doing something with the whip.

Q. He might well have been doing something without hitting the horse?--- A. I would not know what he was doing unless he was hitting the horse with the whip.

30

Q. He might have been waving the whip, to try to keep the horse on the track?--- A. Usually when trying to use it that way, you use it forward, to the side.

Q. He was waving the whip in a long sweep?--- A. Yes.

Q. There came a time in this inquiry when, at your invitation, Mr. Calvin indicated that he wanted to call some witnesses from New Zealand?--- A. Yes.

Q. I think you told him - quite fairly - that he could have an adjournment-- - A. Yes.

Q. Then you proceeded with the inquiry without further reference to that matter?--- A. Yes.

Q. For a short time?--- A. Yes.

Q. Then you adjourned to enable this evidence to be got from New Zealand, and simply went ahead and charged the parties?--- A. Mr. Calvin was given every opportunity to call the evidence from New Zealand.

10A. J.J. Meehan.

MR.STAFF: Q. Mr. Meehan, what I am putting to you is that having been asked for an adjournment and agreed to give one, without having the benefit of the evidence, you proceeded to charge the parties. A. Which adjournment are you speaking of there?

10

Q. At page 23 if you would look at it first of all about two-thirds of the way down the page after Mr. Bartley left you asked Mr. Calvin "Is there anything further you wish to say?" and Calvin said "I would like to see if you think it is necessary(reading)..... we will give you an adjournment". A. Yes.

20

Q. You then had a short adjournment, asked Cuddihy some questions, you had another short adjournment which is recorded one-third of the way down 24D and you came back from the short adjournment and said "After hearing all the evidence in the case the Stewards are not satisfied that the horse ran on its merits and we are going to charge the parties". A. Yes.

Q. And you did that without giving the adjournment that he asked for. A. If Mr. Calvin had asked for the adjournment. I told him it was up to him, Mr. Calvin never said whether he was going to bring them over.

30

Q. He already said that he would pay their expenses.
A. That is right he would, he never advised the Stewards that he wanted them to come.

Q. Do you seriously say that you thought that Mr. Calvin did not want to bring them over. A. Yes otherwise he would have asked.

MR.HOWELL: It is important that the parties be not prejudiced I agree but where is the prejudice?

MR.STAFF: The failure to have before the Stewards all the evidence which the parties think should be before them

40

MR.HOWELL: They heard all the evidence that the parties wished to call before they formally adjudicated.

MR.STAFF: They heard further evidence after they were charged.

MR.HOWELL: Every piece of evidence that the parties wished to put before them was put before them.

MR.STAFF: Oh yes, I presume it was. This has to be taken with other matters of irregularity that we propose to put. Whether it is thought in the end that they matter is another thing.

Q. Immediately after you had indicated at page 24D that you proposed to charge the parties Mr. Calvin renewed his request to call the gentleman from New Zealand. A. Yes. 10

Q. And you then agreed to adjourn the hearing of the charge to enable that to be done. A. Yes.

Q. I think you then went away and made some enquiries in New Zealand yourself. A. Yes, we rang the New Zealand Racing Conference and asked them for the films. We never made any more enquiries.

Q. Do you say you never questioned anybody about the horse's running in New Zealand. A. I spoke to Mr. Poulson and he mentioned some things and I told him to put it in writing which is in evidence. 20

Q. And you then got the films. A. Yes.

Q. And then continued on with the hearing of the charge subsequently when you received the New Zealand material. A. Yes.

Q. And of course you had before you Mr. Skelton's statement in which he said he never hit the horse with the whip. A. Yes.

Q. Of course, you did not believe that. A. No. 30

Q. You never said during the course of the hearing that you did not

Q. Didn't you think you should have told them that. A. No.

Q. Anyway, you decided to ignore what Skelton said in his evidence. A. No, he was not there to be cross examined, was he?

Q. And you never suggested that he be brought over. A. No.

Q. You saw that Skelton hit the horse numerous times on his first run. A. I am not sure whether it was the first or the second.

Q. It was the first run for the Waipa Race Club. A. I will accept that.

Q. And the fact that the horse was hit many times was a major factor in your decision. A. No.

Q. You did not regard that as of much materiality. A. No.

Q. The fact that the horse was hit eleven or so time was not of much significance. A. No, that was in New Zealand, I was interested in what happened here. 10

Q. I take it you were very interested in the horse's run running in New Zealand. A. No except that he ran in many races in New Zealand.

Q. Did you check the times. A. No.

Q. Or the class of horse. A. No, I believe one of the horses that beat him was one of the best 2-year-olds in New Zealand.

Q. And beat him out of sight. A. I don't know. 20

Q. You were very interested in whether the horse had raced truly or not in New Zealand. A. No not to that extent, no.

Q. And one other matter I would like to ask you about, just to get it clear Mr. Meehan, at page 31 of the transcript near the top indicates that there was a short adjournment, you said you would have a short adjournment. A. Yes.

Q. And then everybody went off and they came back and you said "The Stewards have given long and careful consideration to the case". A. Yes. 30

Q. And you then apparently said you were satisfied there had been a breach of the rule and you imposed the period of punishment. A. Yes.

Q. And you then advised the parties to withdraw. A. The parties withdrew, I did not ask them to go.

Q. And you did not ask them to stay. A. No.

Q. You were finished. A. Yes.

Q. And so far as the parties were concerned the thing was over. A. Yes.

Q. And why did the transcript go on after that. A. Could I refer you to the date on the top of the transcript?

Q. At page 31 of the transcript that was issued to me the convictions were recorded and the punishments recorded and then page 32 is again headed "Friday". A. This was before the decision was given.

Q. It is a very extraordinary thing isn't it? 10

MR.HOWELL: I think it is brought about by having separate shorthand writers.

MR.STAFF: Q. What time of the day was it when you came back and stated the finding and the punishment. A. I think it was in the afternoon, I think we saw Mr. Galea in the morning and this was in the afternoon.

12. xxn. J.J.Meehan.

Q. You do not every often disqualify people do you. A. No.

Q. And you for some time - you were engaged for some time in showing Mr. Calvin and others the films from New Zealand. A. Yes. 20

Q. I suppose statements were tendered that day coming from New Zealand. A. Yes.

Q. And you read them. A. They were read to me.

Q. And that took quite a bit of time. A. It did.

Q. And then you asked some further questions of Mr. Calvin and Mr. Wallace and Mr. Cuddihy. A. Yes.

Q. And you had a couple of adjournments at least in the course of it. A. Yes. 30

Q. Can't you recall when it was approximately that you recorded this conviction and punishment. A. It was in the afternoon I should imagine.

Q. Early afternoon or late afternoon. A. Early afternoon.

Q. When was it that you say you got Mr. Galea and Mr. Todd. A. That would be the Friday morning.

Q. You remember that do you. A. I think it was before lunch anyway.

Q. Were Mr. Calvin and Mr. Cuddihy and Mr. Dawson there when it was taken. A. No.

Q. So this evidence was taken in their absence. A. Yes.

Q. Did you tell them you were hearing it. A. No.

Q. You decided to hear the evidence before the parties were charged. A. I did not think it was relevant to the charge, we were trying to establish whether Mr. Galea backed the horse. 10

Q. And that was because you thought it was relevant to the charge. A. I would not say that.

Q. You did not think it was relevant to the charge.
A. The parties would have been charged whatever the outcome of this evidence.

Q. You had made up your own mind to charge them before you obtained the evidence. A. Yes, they were already charged.

Q. Was that evidence taken as part of the hearing of the charge or wasn't it. A. I would think it was. 20

Q. Why didn't you invite the parties to hear it.
A. Because I did not think it would do the parties any good.

Q. And you heard Mr. Mahoney, at page 37, say "You understand, Mr. Todd, that it makes a vast difference to the Stewards as to who in fact did have the bet". A. Yes, I heard Mr. Mahoney use words to that effect.

Q. And you agreed with him did you. A. Yes I would, yes.

Q. But you did not think the parties ought to know about the evidence. A. I did not think it would have anything to do with the other parties. 30

Q. One thing - I won't keep you much longer - the betting sheets indicate that in Sydney the horse was well backed.
A. Yes.

Q. Indeed he firmed, I think, to 5/4 before easing to 6/4 at the start. A. Yes.

13. xxn. J.J. Meehan

Q. And started a pretty firm 6/4. A. Yes.

Q. So it was obvious that the horse had been well backed.
A. Yes.

Q. Mr. Meehan, I think you indicated to the parties at some stage of the enquiry that you regarded the horse as having been ridden too far back. A. Yes.

Q. And you took the view that the jockey should have made some effort to get the horse into a prominent position early. A. Yes.

Q. What is it you thought it would have been reasonable for the jockey to do. A. I would have let the horse run along a bit rather than restraining from the 600 metres. 10

Q. When you say "restraining" - - - A. Sitting quietly.

Q. He was sitting quietly on the horse, he was not pulling him back. A. No, not restraining him.

Q. He was sitting quietly on the horse and doing nothing to stop the horse from travelling at the pace he was.
A. That is true.

Q. But you thought it would have been reasonable for him to give the horse a full chance to kick up from that stage. A. Yes, from the 700 metres on. 20

Q. Of course he did make some ground from the 600 to the turn. A. He made up a lot of ground after the turn.

Q. But he did make up some ground from the 600 metres to the turn. A. Yes, a little ground.

Q. You would have no complaint about the way he improved from the 600. A. I complained in fact of Cuddihy's ride from the 600 and long before that.

Q. You told us you thought he should have moved before that. A. Yes. 30

Q. In fact he was making considerable ground from the 600 to the turn. A. I would not say "considerable ground".

Q. Quite a bit. A. Some.

Q. After he turned for hom the horse lugged in. A. He lugged in and he pulled him off the heels of the horses in front.

Q. And then the horse shifted two or three horses around the turn. A. I would not say three horses.

Q. Two horses. A. Two at the most.

Q. And he lost ground. A. He had to pull him out.

Q. And he would lose ground, would you agree. A. Yes.

Q. And he was then a bit unbalanced. A. No, I did not notice him unbalanced.

Q. He shifted in and out did he, just after they straightened up. A. How much would you say?

Q. About two horses, a horse and a half perhaps. A. I would say a horse.

10

Q. Anyway, you would agree a horse. A. Yes.

Q. And then he travelled a fairly straight course for 120 or 130 metres. A. Yes.

Q. When he started to veer off. A. Yes.

14. xxn. J.J. Meehan

Q. We know that you thought the jockey should have made ground from the 700 to the 600. A. Yes.

Q. What else do you say he should have done to improve the horse's chances. A. He should have ridden the horse out in the straight.

20

Q. In what manner. A. Hands and heels, he told me he was not supposed to carry a whip.

Q. So you have complained about him not using the whip. A. Well, when jockeys carry one you expect them to use it or give them a slap. There is nothing in the rules to say he must pull the whip but we expect them to ride them out hands and heels.

Q. You know that he did very little work since he came over here. A. Not according to the trainer's representative.

30

Q. But you would know what work the horse did wouldn't you. A. No. I do not know what they do on the track.

Q. Don't you get a report about the work they do. A. No.

Q. Mr. Cummings did not say he was fit. A. Mr. Sykes passed him as fit.

Q. I did not ask you that. A. No, I don't think Mr. Cummings said that.

Q. He told you that he was underdone did he. A. Did he?

Q. Well, didn't he. A. I don't think he said that did he? We did not ask Mr. Cummings many questions at all.

Q. He was asked at page 18 "In your opinion was he fit enough to win on Saturday", and Mr. Cummings said "not on the work we noticed. I expected.....(read)". He was saying there that the horse was underdone. A. He did not say that in so many words.

Q. Was not that the impression you got from the answers I have read to you. 10

MR.HOWELL: If you look down a little further, still on page 18, Cummings said "Mr. Calvin enagaged Cuddihy..... (reads)..... with him being wayward" that was the trainer's view. He does not say the horse was underdone at any stage.

MR.STAFF: Q. On what he said it could not be any clearer indication if the horse was unfit. That is what you understood wasn't it. A. No.

Q. What did you understand by "not on the work we noticed" what did it mean to you. A. I am damned if I know what it meant to me or meant to anyone. 20

Q. May I take it that the fact that the horse gets a long way back in a race on an occasion when you know that on other occasions he has been able to be with the lead, is not something that you regard as necessarily suspicious. A. No, sometimes the trainers tell us this in advance how they are going to have the horse ridden.

Q. Whether they do or whether they do not, you do not regard it as a necessarily suspicious event. A. No. 30

Q. And indeed there was in that very Eastlakes Handicap an outstanding example of that. A. Are you speaking of Count Mayo?

Q. No, I am speaking of Grey Ekardos and he raced in his previous race with the lead and in this race he was five lengths behind Count Mayo to the turn home and then he flashed home and run third. A. That is so.

Q. And you did not regard that as being necessarily suspicious in the horse's running. A. No.

(15)

Q. So you would not have regarded, amongst other things, that Count Mayo got back in this race, as suspicious.

A. Count Mayo missed the start slightly and Cuddihy just sat on the horse and the Stewards expected him to improve his position from the 600 or 700 metres, he was too far out of it.

Q. Did you expect the boy on Grey Ekardos to do the same thing. A. I was not watching Grey Ekardos I was watching Cuddihy.

10

Q. Any reason why you watched Cuddihy in particular.

A. Yes, he missed the start.

Q. And he shifted out and Cuddihy brought him back to the fence. A. Close to the fence.

Q. And made up quite a bit of ground to get up alongside Tarlac in the first 150 or 200 metres. A. He has run along, yes.

Q. And then he has settled down in midfield. A. Yes.

Q. With Tarlac alongside him. A. Yes.

Q. And neither the boy on Tarlac or Count Mayo made much ground until they got to the 600. A. I would say the boy on Tarlac was doing much more than Cuddihy from the 800 to the 600.

20

Q. And what about up to the 800. A. I don't know about that.

Q. Until the time they settled down to come to about the 600. A. Very well, we will put it that way.

(Short Adjournment)

16.

UPON RESUMING AFTER SHORT ADJOURNMENT:

30

MR. McLELLAND: Mr. Meehan, the fact is, is it, that Cuddihy the jockey was present at your inquiry only on the two occasions when he himself gave evidence, and on one occasion when the film was shown?--- A. That would be right.

Q. It would be true, too, that he was not invited to attend the inquiry on any other occasion?--- A. He was there when the parties were there all the time.

Q. Could you clarify that? I think you said that he was

not there except when he was giving evidence, and when a film was shown?--- A. I see what you mean. We questioned the parties separately? Is that what you mean?

Q. All I seek to establish is that in the room where you were conducting your inquiry the only times Cuddihy was in the room was on the two occasions he himself gave evidence?
--- A. Yes.

Q. And on one occasion when the film was shown?--- A. Yes.

Q. You agree with that?--- A. Yes, that would be right. 10

Q. My other question was that he was not invited to be present there on any other occasion during the inquiry?
--- A. I do not know to which other occasions you are referring.

Q. I am sorry. Perhaps I am not making myself clear. When Mr. Calvin, for instance, was giving his evidence?---
A. Cuddihy would not be there then.

Q. He was not invited to be there?--- A. No.

Q. The same applies to the occasions when all the other witnesses were giving their evidence?--- A. They were all questioned individually, yes. 20

Q. Could you clarify for everybody, with some precision, just what complaints you had about the way Cuddihy rode that race? Would you itemise them, because it would be very helpful?--- A. I can say this: that Cuddihy missed the start on the horse. He let the horse run along. He did not at any stage of the race endeavour to improve his position.

Q. Is that all?--- A. Yes, that is all.

Q. Can we deal with those one by one. He missed the start?
--- A. Yes. 30

Q. I suggest to you that the situation at the start was that he jumped all right, but then veered quite dramatically, and had to be pulled back into the straight line. Would you agree?--- A. He veered out after the start.

Q. Did he jump well enough?--- A. Yes.

Q. Then he veered out?--- A. I don't think he jumped with the field. He might have missed it slightly.

Q. But it was not a bad jump?--- A. No, did not lose

that much ground at the start; but didn't jump with the rest of the field.

MR.HOWELL: He would have come out about a neck behind the others?--- A. Something like that. Approximately that.

MR.McLELLAND: Q. He veered out quite suddenly?---
A. Yes. He went out on the track. Whether he veered out or was pulled out it is hard to say.

17. J.J. Meehan

10

Q. Are you suggesting that he was pulled out?--- A. It is hard to say whether he was pulled out or veered out of his own accord.

Q. Are you suggesting that that is a complaint you have to make about Cuddihy's riding?--- A. No, my only complaint about Cuddihy's riding was that he never endeavoured at any stage of the race to improve his position.

Q. I am sorry. I want to get it straight, please. I thought you said that your first ground of complaint was that he missed the start?--- A. Yes, slightly.

20

Q. Is that a ground of complaint, or is it not?---
A. Yes, it is.

Q. When you say he missed the start, do you mean that he missed the jump, or he did something shortly after the start that you have a complaint to make about?--- A. He missed the start and did not endeavour to improve his position.

Q. That "not endeavouring to improve his position" is a subsequent ground for complaint?--- A. Yes.

30

Q. I want to find out, just for information purposes, what you mean by your complaint that Cuddihy missed the start?--- A. When he missed the start slightly he veered out on the track, and he pulled him back in again. But he lost ground in doing that.

Q. You suggest that was Cuddihy's fault?--- A. Yes.

Q. You told us a little while ago that you were not able to say whether or not it was Cuddihy's fault?--- A. Who told you that?

Q. I think you did. Isn't that right?--- A. I am damned if I know what I said. I know he missed the start, veered

out, pulled him back on the track again, and lost ground in doing it.

Q. You say that that fact in itself demonstrates that Cuddihy deliberately rode badly?--- A. Yes, of course he did, yes.

Q. That fact, without anything else?--- A. No, the whole race I am referring to now.

Q. I think you told the Committee earlier that you didn't know - that you didn't notice that the horse had his head in the air for the first 50 metres?--- A. That is right.

10

Q. I suppose we can all see that on the film?--- A. 50 metres is a fair way.

Q. Did you notice the horse's head in the air at all? --- A. I noticed the head in the air for a few metres.

Q. It is a question of how long that continued?--- A. Yes.

Q. The second basis of your complaint is that he let him run along?--- A. Yes.

Q. Wouldn't you agree, after he had recovered from his unbalancing near the start, Cuddihy then quite dramatically improved his position and got into a good position?--- A. Cuddihy did nothing to improve his position. The horse went along all right, but I didn't see Cuddihy making any endeavour to improve his position.

20

Q. Your complaint in that respect is not what happened to the horse, but the fact that whatever happened you do not think Cuddihy caused it to happen?--- A. That is right.

18. J.J. Meehan.

Q. Could you tell us why you formed that view?--- A. It was obvious, after seeing the film.

30

Q. Please assume that it is not obvious to some of us. Would you be more specific?--- A. I think I told you earlier that Cuddihy did not endeavour at any stage of the race to improve his position on the horse.

Q. At that stage of the race - ?--- A. Where are you speaking of now?

Q. When the horse was improving its position after it had been checked at the start?--- A. Yes.

Q. What was it that Cuddihy should have then been doing that you say he was not doing?--- A. He should have been letting the horse run along. He should have shown more vigour on the horse to get it in a reasonable position.

Q. Don't you agree that at that stage the horse did get itself into a reasonable position?--- A. No, I do not agree with that at all.

Q. What you are saying, in effect, is that that recovery, at this stage of the race, was not good enough for that stage of the race?--- A. That is true. 10

Q. The third matter you mentioned was that you doubted that at any stage of the race -

MR.HOWELL: He did not make any attempt to ride his horse out.

MR.McLELLAND: endeavour to improve his position, I think he said. That was the third matter?--- A. Yes.

Q. Would you agree with this statement: that at the 200 metres this horse was in a winning position?--- A. He was in a winning position there, yes. 200 metres from the finish you are referring to? 20

Q. Yes.--- A. Yes.

Q. He was in a winning position at 200 metres?--- A. Yes, had he ridden him along he possibly would have been a lot closer to the winner.

Q. Please agree or disagree with the proposition. At the 200 metres this horse was in a winning position?--- A. Yes.

Q. There is one thing I omitted to ask: Count Mayo was top weight in this race?--- A. Yes. 30

Q. Carrying $56\frac{1}{2}$ kilos?--- A. Yes.

Q. It follows from the fact that in your view he was in a winning position 200 metres from the finish that what happened between that time and the finish was critical as to whether he was going to win the race or not?--- A. Yes.

Q. Would you agree that this horse at no stage during the race was on the rails?--- A. Yes.

Q. And practically the whole of the race had no other horse outside him?--- A. That is correct.

Q. In answer to some questions from Mr. Staff, you indicated that, although you for the majority of the race observed no hanging out by this horse, nevertheless there could be some slight degree of hanging out and there could be a tendency to hang out which would not be observable

19. J.J. Meehan

from someone in your position on the stand?--- A. That is right.

Q. I would like to ask you a couple of general questions from your experience, unrelated to any specific race. If a horse is hanging out or showing a tendency to do so, or shifting about, would you agree it is the jockey's first duty to straighten the horse up, to ensure that he runs a straight course?--- A. Yes, providing he is not causing any interference to horses on the inside or outside. 10

Q. Yes. And that is why it is his duty, so that he won't cause interference by shifting about?--- A. That is right.

Q. Indeed, are you aware of Cuddihy's racing record? --- A. Yes. 20

Q. You would be aware that several times he has been suspended for shifting ground in the straight?--- A. Yes.

Q. And in particular, on at least two occasions, shifting ground, when riding with the whip in the straight?--- A. Yes.

Q. The obvious method to control a horse that shows a tendency to shift around or hang out is to keep fairly tight control of the reins and keep the head straight? --- A. Yes. If a horse is hanging or running about, yes. 30

Q. If a horse does start hanging, or is showing a tendency, and the jockey does employ that method of keeping him straight, it is possible, if the hanging tendency becomes pronounced, that the bit would exert a fair degree of pressure on the left side of the horse's mouth? If the horse is hanging outwards?--- A. Yes. It depends on how much pressure he has put on it.

MR.HOWELL: If he is hanging outwards, the pressure would be the other way?--- A. On the inside, on the off-side.

MR.McLELLAND: Q. He would be pulling from the right hand side, but the end of the bit would be causing pressure on the lefthand side of the mouth?--- A. Yes, the near side. 40

Q. The bit would be being pulled through the mouth side-ways?--- A. Yes.

Q. The pressure would be on the side towards which the horse was trying to go, because the rein would be pulling the other way, and the bit would be being pulled through the other way?--- A. Yes.

CHAIRMAN: I don't think that is altogether correct?

WITNESS: I cannot follow the question too well. The horse is lugging out?

10

MR.McLELLAND: Q. Mr. Meehan has answered the question in the way it appeared was correct. I don't want the Committee to be baffled by it.

CHAIRMAN: No, I don't think we are baffled.

MR.McLELLAND: I am sure you are not, Mr. Chairman. By way of explanation, I simply say, that the proposition is that if you have something being pulled towards the right, and you have an encumbrance which stops it going through the horse's mouth on the left, being the bit, that will cause pressure against the lefthand side of the horse's mouth.

20

CHAIRMAN: The ring.

MR.McLELLAND: Yes, the ring will press against the outside of the

20. J.J. Meehan.

horse's mouth. (To witness) That is what you intended to convey?--- A. Yes.

MR. McLELLAND: Is that clear, Mr. Chairman?

CHAIRMAN: Yes.

MR.McLELLAND: Q. If that pressure is sustained, and is fairly hard, it could possibly cause an injury to the part of the mouth where the lips join?--- A. The commissure?

30

Q. Yes. Do you agree--- A. Yes, if there was enough pressure, sure, it could, I suppose.

MR.HOWELL: Q. I suppose that would be readily observable from the position of the jockey's hands?--- A. Yes.

MR.McLELLAND: There was a veterinary report obtained immediately after the race?--- A. Yes.

Q. It is referred to on p.6 of the transcript. Mr. Mahoney put some questions to Mr. Dawson and asked him "Are you aware of the deep wound on the inside of the mouth?" He then asked him, "Did you notice it had a cut in its mouth at all?" There is a reference to an old cut. In the ninth question he said. "Did you know it had been cut again today after the race? Mr. Dawson said that he did not know. The fact is, Mr. Meehan, that this particular fresh wound was a laceration inside the left commissure of the mouth?
--- A. Yes. I think I have the Vet's report here.

10

Q. Will you check it, please, because it is very important?
--- A. Bruising.

Q. May I show the witness a document? Did you have a copy of the Vet's report?--- A. I have the original here.

Q. Don't you agree it was said to be a laceration with bruising inside the left commissure of the mouth?--- A. Yes, that is right.

MR.HOWELL: Q. Whose report is that?--- A. Mr. McFadden, the vet.

20

MR.McLELLAND: I assume that is in evidence. It was probably among the documents. I think it should be if it is not.

MR.HOWELL: I don't think it is among the documents.

MR.McLELLAND: May I tender the original of that report?

CHAIRMAN: Yes.

(Original of Mr. McFadden's Veterinary report submitted)

MR.McLELLAND: Q. Would it be true that Mr. McFadden's report, which has just been tendered, was not shown to Jockey Cuddihy during the inquiry?--- A. I think I read it out at the hearing. If you go through the evidence, you will see I read it out at the hearing.

30

Q. To Cuddihy?--- A. Yes, I think so.

Q. Could you find the part of the evidence?--- A. Yes. Here it is. Page 7.

Q. You read it out to Mr. Calvin?--- A. I don't know whether Cuddihy was there or not.

Q. You have already said that he was not there?---

A. All right, then he was not there.

21. J.J. Meehan.

Q. My question to you was; you didn't show that report to Cuddihy?--- A. No, I evidently did not.

Q. Dealing with the last 150 metres of the race, I think you told Mr. Staff that the main thing you observed was that Cuddihy was not using his hands? --- A. That is correct.

10

Q. You also told Mr. Staff that you were not watching his heels?--- A. Not particularly. I was watching his hands. I expected some movement from his hands.

Q. Were you aware that Cuddihy wore spurs?--- A. No, I was not. But he probably did. He usually does.

MR.COMANS: Q. You observed this horse in the saddling enclosure?--- A. Yes, I noticed him with the others.

Q. He was the favourite in the race?--- A. Yes.

Q. Would you take particular notice of him?--- A. Not particular notice.

20

Q. Did you consider he looked fit?--- A. Yes, he looked all right to me.

Q. Summing up your evidence, it is that on the turn he was about eight lengths from the leader?--- A. Yes.

Q. And without any apparent effort coming up the rise, and until they came over the rise, without any effort, he was about two lengths from the leader? That is the effect of your evidence?--- A. Two lengths from the leader at the rise?

Q. Yes.--- A. I think a bit more than that.

30

Q. What I am putting to you is that inside the distance you consider he was in a winning position?--- A. About 100 metres from the finish, I would say.

Q. So you don't put it down to the fact that this horse was beaten in any way due to lack of condition?--- A. No.

Q. You think the trainer had him fit and well enough if he was good enough to win?--- A. I consider that, yes.

Q. Another thing - and I do not want any presumptions

unless you actually heard it. Did you hear Mr. Calvin give the instructions to the jockey?--- A. No.

Q. Do you presume that the trainer was present when Mr. Calvin gave the instructions to the jockey?--- A. I think he was, because I think I asked him that.

Q. Could you show me where you asked him that? That is, that Mr. Dawson was present? The question is, was Mr. Dawson present when Mr. Calvin gave the instructions to Cuddihy?--- A. The answer is in the evidence, when I asked Cuddihy. I said, "Who gave the instructions?" He said, "The owner Mr. Calvin, and the foreman Mr. Dawson". 10

Q. That is what you are relying on? On what Cuddihy said, and not what you saw or heard?--- A. Yes. I didn't see it at all.

Q. It might have affected your judgment quite a bit in respect of Dawson if you knew that he was not present when the instructions were given?--- A. I guess it would have, I suppose. 20

22. J.J. Meehan.

MR.HOWELL: This is something that troubled me a little, reading this evidence. I am not just satisfied that Dawson was there when the instructions were given. At p.24A one gets the impression that he came on the scene rather late?

MR.COMANS: I was coming to that.

MR.HOWELL: Yes, he said that he didn't have much time. He was walking to the horse.

MR.COMANS: Q. My question to you was this: that you were influenced in your decision by the fact that you thought Dawson had silently acquiesced to the instructions given to Cuddihy?--- A. Yes. 30

MR.FALKINGHAM: Q. Is Cuddihy an experienced rider?--- A. Yes.

Q. Is he normally a vigorous rider?--- A. Yes.

CHAIRMAN: Are there any queries from the Committee to Mr. Meehan?

MR.HOWELL: Q. In the last couple of hundred metres you said this horse drifted off the track?--- A. The last fifty I would say.

Q. Did you observe any attempt by the jockey to straighten him up?--- A. No, I did not.

Q. We have had some corrections made to the transcript this morning. There was one at p.15 about how certain moneys changed hands. We are now told apparently that Mr. Mason paid Mr. Bartley by cheque, and that Mr. Calvin paid Mr. Mason in cash. Have you investigated any bank account to see whether there was a cheque drawn or debits made?--- A. No.

10

(The witness withdrew)

23/25. J.J.Meehan.

JOHN MAHONEY
(Sworn)

MR.FALKINGHAM: Q. What is your full name. A. John Mahoney.

Q. And you are Deputy Chairman of Stipendiary Stewards. A. Yes.

Q. And you were on duty at Randwick Racecourse on the 13th March last. A. Yes.

20

Q. And you gave some evidence and asked questions at an enquiry held into the running of Count Mayo. A. Yes.

Q. Speaking for yourself, is the transcript substantially correct, with the exception of a few minor amendments. A. Yes.

Q. At what part of the course were you on duty. A. I was situated past the winning post, past the official stand.

Q. You were with the Chairman were you. A. That is correct.

Q. You heard of course, Jockey Cuddihy's explanation as to what the instructions were. A. Yes.

30

Q. And as to how the race was run. A. Yes.

Q. If I take the latter part first, he said he jumped away but with his head in the air for about 50 metres. Did you observe that part of the race. A. Not particularly, no.

Q. After going a furlong he said he hung. Did you see any hanging in the first furlong. A. No, I did not see any hanging at any stage.

Q. He hung off until the last furlong. A. I did not see any.

Q. In the last furlong he started to veer to the outside.
A. I saw him drift out towards the finish.

Q. When you say "drift out" did he hang out. A. Yes.

Q. Did he lunge out or run out. A. Not in my opinion.

Q. What description would you describe the course he took, was it a straight line. A. From my observation he just drifted out gradually.

10

Q. Diagonally. A. Yes, on a diagonal course.

Q. At the time this happened were you able to observe the way in which Cuddihy was riding the horse. A. You are talking about the way he drifted out?

Q. Yes. A. Yes, he was riding him out.

Q. Did you see him move his hands on him. A. Not to any great extent.

Q. Did you see him attempt to straighten the horse.
A. I did not see it.

Q. Have you had experience with Cuddihy as a rider.
A. Yes.

20

Q. Is he a competent rider. A. Normally competent.

Q. Is he a vigorous rider. A. Yes.

Q. There is something said about him flicking the whip at the horse near the turn. A. I did not observe it.

Q. Did you see him riding it out with the whip at any part of the race. A. No.

26.

Q. Did you see the horse hanging at all. A. I did not observe it hanging at all.

30

CROSS EXAMINATION

MR.STAFF: Q. Did you form an opinion as to what caused the horse to shift out near the last 500 metres or so.
A. No. The only opinion I formed was that the horse was being allowed to drift out.

Q. If the jockey had straightened him he would have been likely to lose more ground. A. No.

Q. As much ground. A. I think it was immaterial the ground he lost by moving out.

Q. I put it to you that he lost, by shifting out, probably nearly as much as he was beaten by. A. No, I cannot agree with that.

Q. He shifted six horses didn't he. A. According to Pythagoras if a horse shifts out from the rails and finishes under the Judges' Box he loses about half a length. 10

Q. You may be a scholar of Pythagoras but I am not. What is the merit in straightening the horse. A. If he had been straightened he might have shown more speed.

Q. He might have gone further off. A. I cannot say.

Q. You cannot say one way or the other whether he would have shown more speed or run further off. A. In my opinion he would have shown more speed.

Q. According to Pythagoras he would not have saved ground by being straightened. A. No, it was infinitesimal, the ground. 20

Q. So straightening him would not have had anything to do with the result. A. Straightening him with the whip he would have.

Q. That is according to your belief of the horse. A. Yes.

Q. But it would not matter whether he travelled a straight course or a crooked course. A. I do not think he covered any excessive ground. 30

Q. By reason of veering out. A. Drifting out.

Q. And you do not think he would have covered any more ground or lost ground if he had been straightened. A. No.

Q. So straightening him without using the whip, for instance, would be irrelevant. A. Yes.

Q. There was no risk of interference by allowing him to shift or drift. A. No, there was no horse on the outside of him.

Q. And of course jockeys, if they have a horse on

the outside of them and they are drifting off, jockeys rarely bother to straighten them. A. Generally they do.

Q. Is that a serious answer. A. It depends on whether the jockey - whether there is a horse finishing outside of him.

Q. Finishing in the middle of the track in a field of 12, he would be pretty sure that there was nothing finishing on outside him. A. No, he would not be sure.

Q. This horse was wide on the track. A. Yes. 10

Q. Much wider than anything else on the track. A. At that stage, yes.

27.

Q. And he got another six horses off the track at the finish. A. I would not say that wide.

Q. Look, he went out of the film. A. Because they are filming the inside horses.

Q. He got out of the film because it is rare for a horse to finish that wide out. A. I would not say rare.

Q. How many films do you see where a horse runs out of the film. A. One every day. 20

Q. So there are horses in the finish that run out of the film once every day. A. You said earlier a horse that finished outside the film now you are saying horses in the finish, most of them can be considered in the finish.

Q. And the reason why you see horses outside on the track is because they are being pulled up when they past the post. A. They might be making a run on the outside.

Q. In an ordinary field, and in general. A. What is "ordinary field"? 30

Q. If you don't know what an ordinary field is it is pointless continuing the discussion. During the course of this enquiry you left it on two occasions and it continued in your absence on two occasions I put to you. A. I just cannot recall that - how do you mean?

Q. I mean you went from the room presumably for some purpose or another and the enquiry continued while you were absent and at some later point of time you came back into the room. A. Yes, I rang Mr. Bartley on one occasion.

Q. And on another occasion you went out for five or ten minutes. A. I would not say that long.

Q. Five minutes. A. It would not be any longer.

Q. And during that time Mr. Mason was interrogated about his bets. A. I was not present when Mr. Mason was first interrogated.

MR. McLELLAND: Q. You said in answer to Mr. Staff that a jockey would not necessarily know if there was any horse outside him even if he was moving fairly wide. A. Yes.

Q. So that even in such circumstances you would agree that it would be the jockey's duty to do what he could to keep the horse straight. A. You are saying if a horse is coming outside him? 10

Q. No, lets assume a horse in the situation of Count Mayo in the last 100 metres of this race. As I understand what you said it was this, the horse was moving out. A. Drifting out, yes.

Q. There is no reason why Cuddihy would have necessarily known that there was no horse outside him or behind him. A. At that stage that is correct. 20

Q. So it was Cuddihy's duty to keep the horse from moving too much in that race. A. It is a habit instilled in riders to stop riding and straighten their mounts up.

Q. And it is a good habit too. A. I think so, yes.

Q. In fact Stewards frequently tell junior jockeys to do just that. A. That is true.

Q. In other words to stop riding and straighten their mounts before they start riding again. A. That is right.

Q. And Cuddihy was in that sort of a situation in this race. A. Cuddihy's horse was shifting out, he did not appear to me to be worrying about it. 30

28.

Q. Whether he was worrying about it or not, his horse was in the situation we are talking about. A. Yes.

Q. You, I think, expressed your opinion that at that stage of the race Count Mayo would have shown more speed if hit with the whip. A. To Mr. Staff, yes.

Q. And what I want to ask you is this, would you regard it as a very relevant fact in forming an opinion of that nature of what the propensities of a particular horse were in relation to being hit with a whip. A. How he would improve?

Q. Would you not think it relevant to an opinion whether a horse would have shown more speed being hit by a whip, wouldn't you think it relevant to know the propensities of a horse in question in reaction to the whip. A. No, not necessarily. 10

Q. I assume you suggest that it is not relevant - - -
A. There was nothing brought before the Stewards to say whether the horse had responded to the whip or not before.

Q. I am not asking you whether the horse had responded to the whip but I am asking you whether or not it was relevant in forming an opinion as to its reaction to the whip, as to what its particular propensities would be in being hit with the whip. A. There is only one way to find out, by being hit with the whip. 20

Q. True. And would not you consider if one were considering a hypothetical situation and considering what would happen in that situation it would be interesting to know what happened to the horse when hit with the whip on previous occasions. A. Not necessarily.

Q. Why not. A. He should be pulling the whip on the horse and hitting him with the whip and what-----

Q. Irrespective of what happened on a previous occasion.
A. Yes, of course. This horse did not react against the whip to our knowledge. 30

Q. If it had reacted against it it would have been different. A. No not necessarily, why carry the whip?

Q. Please try and remove yourself from the particular enquiry you attended into the running of this horse and just talk generally for the moment. What I am trying to put to you is a fairly simple proposition if we were trying to offset what would happen when hit with a whip it would be interesting and relevant to know what had happened to that horse when hit with the whip. A. It would have been interesting to know. 40

Q. And relevant. A. Not relevant, you asked me what my opinion was of what would happen if horses were hit with the whip and that was my opinion.

Q. Did you know the history of this horse when you conducted the enquiry. A. No.

Q. If the fact had been that every time this horse had raced in New Zealand, I am not suggesting that this is the fact, don't misunderstand me, but if the fact had been that every time the horse had raced in New Zealand it was hit with the whip and it ran off the track, your opinion would have been influenced by that fact.

A. That could have some bearing, yes.

10

Q. So that you would agree then, in speaking generally, that the previous history of a particular horse in relation to the whip is relevant when one is judging a subsequent situation where the use of the whip or not is in issue. A. To some degree, yes.

Q. You also, in answer to Mr. Staff, said that in your view Cuddihy in the last 150 metres or so took no steps to straighten the horse. A. I did not observe him, no.

29.

Q. Are you saying categorically that he took no steps or that you did not notice any. A. I am saying I did not observe him to take any steps to straighten the horse.

20

Q. Would you be prepared to go further and say he definitely did not take steps. A. No, I would not be prepared to go further.

Q. Perhaps you will tell the Committee what are the various steps that a rider can take to straighten a horse in that situation. A. Depending whether he is hanging in or out, pulling on the near side or offside rein, slapping him down the shoulder with the whip - 9 times out of 10 it works - or if he is hanging out pull on the offside rein and if hanging in pull on the nearside rein.

30

Q. Bringing his head back from pointing outwards to pointing straight. - or trying to do that. A. I do not think it matters particularly where the horse's head is, but to straighten him up.

Q. The purpose of pulling on the rein is to pull the horse's head around to the right direction. A. That is true.

Q. And the other way is to pull his head around.

40

A. Yes.

Q. They are two methods, are there any more. A. No, not that I know of.

Q. I think you said in those parts of the race where you had a clear look at it you did not see him hanging out.

A. I never observed him hanging.

Q. You are in the official stand just on the winning post. A. Yes.

Q. Would you agree that it would be quite difficult for you to observe any hanging out which occurred say at the 1,000 or 800 metres in that region. A. Along the back of the course, yes.

10

Q. So you really were not in a position to observe any hanging out there that occurred, nor to disagree.

A. At this stage, no.

MR.COMANS: No questions.

MR.FALKINGHAM: Nothing in reply.

SIR JOHN AUSTIN: There is only a half length disparity running from the top of the straight to the outside of the winning post but I do not think that is quite the point, I think there would be a difference if the horse ran parallel to the rail and then ran out because then you would be covering the two legs of a triangle instead of a straight line; any two sides of a triangle are together greater than the third and there would be a marked difference. I suggest that the Stewards should check that up; there could be a difference and I am not very sure of that.

20

MR.WHITE: This horse at the 150 metre mark was at least six horses out. A. Possibly that, yes.

Q. And he finished up 10 or 12 horses out. A. He finished out further.

30

Q. The width of six horses - you allow in the stalls about 2 ft. something so it is only about 12 ft. he came out so it would not make any difference, isn't that right.

A. As I stated I do not think the horse's drifting out made any difference at all inasmuch as him losing ground.

(The witness withdrew)

(Luncheon Adjournment)

30.

UPON RESUMING AT 2 P.M.:

CHAIRMAN: We will resume the appeal hearing.

MR. FALKINGHAM: Before calling the next witness, I have told all of the members of the bar present here that any person who has been called already as a witness in the prior proceedings has been required to be here and is available here to be called. After discussion between us, it seems that there are three or four witnesses who, in the opinion of everyone present at the bar table, would not carry the case much further one way or the other. Subject to the Committee's requirements in this regard, it was thought that the matter could be somewhat shortened by simply relying on their evidence as it is. But if any member of the Committee thinks otherwise, perhaps either one or all should be required to stay. Mr. Campbell, Mr. Todd, Mr. Galea and Mr. Cummings are here. If any member of the Committee thinks one or all of them should stay for a while or to the termination of the proceedings, that can be done. But we would not want it thought that we have denied to any of the parties the opportunity to cross-examine anyone at all. 10 20

I propose to call, one by one, the stewards; then Mr. Mason; then Mr. Bartley. I understand the wish of all the representatives here is that their clients be called in turn and they call their own evidence. Towards that end, I have been informed that Mr. Wallace will be called by Mr. McLelland.

MR. STAFF: No, I will call him.

MR. FALKINGHAM: I will not be calling him. I will call Mr. Mason and Mr. Bartley. Perhaps the members of the Committee might indicate to us their wishes as the matter proceeds, and it would save a long time and four separate cross-examinations of four witnesses. 30

MR. HOWELL: As far as Mr. Todd and Mr. Campbell are concerned, I do not see any problem. I can envisage a problem, in view of some cross-examination of the Chief Steward here this morning, in relation to Mr. Galea, because it seems to be suggested that some of the parties were not given adequate notice of what he had to say. If that position is disallowed, I do not see why Mr. Galea should not remain. It is a matter for counsel at the bar table to make their own conclusion about this, but certainly as far as Todd and Campbell are concerned, I do not think they carry the matter very far. 40

MR. STAFF: Since I put the matter to the Chief Steward this morning, what I ~~thought~~ to discover was whether the Galea-Campbell-Todd evidence took place after the parties were convicted and invited to leave, or whether it took place before. It seems to be from the Chief Steward's evidence that it took place before, but in the absence of 50

the parties, and without any notice to the parties. If those facts are established, I do not want any more.

MR. HOWELL: Do you complain about it?

MR. STAFF: Yes, we will. We will be complaining that inquiries cannot be regularly conducted in that way. I think you should keep Mr. Galea and Mr. Cummings here.

CHAIRMAN: Mr. Cummings is the trainer, and I think he should be kept here. Probably you could do that, Mr. Falkingham?

10

MR. FALKINGHAM: Yes. Mr. Hickman is not available. I understand that he is on leave.

31.

THOMAS JOSEPH CARLTON, Steward, Australian Jockey Club,
sworn and examined:

MR. FALKINGHAM: Q. What is your full name?--- A. Thomas Joseph Carlton.

Q. You are a Stipendiary Steward?--- A. Yes.

Q. You were on duty on 13th March this year at the Randwick Racecourse?---A. Yes.

20

Q. And you were present during part I think of the inquiry before the stewards?--- A. Yes.

Q. As to the part of the proceedings at which you were present, you have read the transcript?--- A. Yes.

Q. With the exception of certain minor amendments, is the transcript recorded as you remember it being given?--- A. Yes.

Q. Where were you stationed on that particular Saturday? --- A. At the 600 metres.

Q. You were present and heard the description of the race given by Jockey Cuddihy?--- A. Yes, I was.

30

Q. He said that he jumped all right, with his head in the air, and for about 50 metres. Could you observe that part of the race?--- A. It was head on and a good distance away from me. But I did see the horse with his head in the air.

Q. Was it for 50 metres?--- A. It would be almost 50, I suppose.

Q. When giving evidence, Jockey Cuddihy said, "Once he

went about a furlong, he hung. He did not run off, but he hung from there to inside the last furlong." Did you see the horse hang?--- A. I did not see him hang.

Q. Coming to the 600 metres?--- A. No, I did not.

Q. Did you have him in your view as he came towards you?
---A. Yes.

Q. And as he went past?--- A. Yes.

Q. And as they went away from you?--- A. Yes.

Q. Did he hang at all during that time?--- A. I did not see him hang. 10

Q. Could you see what was happening in the last furlong and a half of the race?--- A. Not really. They race away from me. From the turn home, not a good view.

Q. Is there any other steward along the back?--- A. Yes, Mr. Swain was on the same stand as I was, and Mr. McKay just inside the 1000 metres.

Q. It was said that he hung badly along the back. Was that your observation?--- A. No, it was not.

Q. Did he hang at all?--- A. I did not see him hang. 20

Q. Did you see the jockey using the whip at any time?
---A. No.

Q. Could you see the horse at the entrance of the straight?--- A. Yes.

Q. Did he touch the horse with the whip there?--- A. I did not see him.

32. T.J. Carlton.

Q. Were you watching it?--- A. Yes.

MR. HOWELL: Q. He was riding with his whip in the left hand?--- A. Yes. 30

MR. STAFF: Q. When the horse went past you where he was travelling within your ready observation, the jockey had a good hold on his head?--- A. He was sitting quietly on the horse.

Q. And he was holding the horse together?--- A. He was sitting quietly on the horse.

Q. And had a good firm hold on the reins?--- A. I would not say very firm. A nice hold.

Q. Just letting the horse run along, holding his position?
---A. He was about, I would say, fifth, at the time.

Q. And not excessively out of his ground?--- A. It was a short race, and he was a fair way from the lead.

Q. The leaders had gone very fast early?

MR. PELLY: Mr. Staff, I think you are leading him?

MR. HOWELL: He is cross-examining.

MR. STAFF: I am cross-examining, which I think is my right.

WITNESS: No different from usual. The field was strung out reasonably. 10

Q. And the false rail was six metres out all the way from the start?--- A. Yes.

Q. And they ran 1.11 $\frac{1}{2}$?--A. Yes.

Q. Which is pretty smart time?--- A. It was about the same time as the other races.

Q. Blue and Gold ran 1.11.4 in the earlier heat?---
A. I am not certain of his time.

Q. There was a third race that day for two-year-olds, over the same distance. They ran a bit slower time?--- 20
A. They were all round that. I am not exactly certain.

MR. HOWELL: I think it 11.4, 11.5, and 11.2.

MR. STAFF: Q. Blue and Gold ran 1.11.4, and Gentle James ran 11.5? Would you agree with that?--- A. I am not exactly certain of the times.

Q. Of Two Cities ran 1.11.7?--- A. There is little difference in the times.

Q. But with the false rail out as far as it was, and all the way from the start, it was pretty smart time for two-year-olds on that track?--- A. Fairly good time, yes. 30

Q. I put it to you that the leaders, Tatt's Toss, Gentle James and Privet Hedge, had gone pretty fast early?---
A. Yes, Gentle James was going very easy on the outside of Tatt's Toss.

Q. And Tatt's Toss and Privet Hedge were with him early?
--A. Yes.

Q. And they had skipped away from the rest of the field?

---A. I would say so. They were about six lengths in front.
33. T.J. Carlton.

Q. They had left other quick beginners like Grey Ekardos away in the rear when they went past you?--- A. Grey Ekardos would be about four lengths behind Count Mayo.

Q. And he had been able to race prominently in most of the other races he had contested?--- A. He has raced prominently in, I would say, weaker fields.

Q. He had led and been running second, and finished second in 900 and 1000 metre races?--- A. Yes. 10

Q. Yet he could not get within four lengths even of Count Mayo?--- A. He was not pushed along that early I would not think.

Q. Would you agree that in the course of the inquiry, and early in the inquiry, Mr. Calvin said that he had not thought the horse was fit? In effect, that it was underdone? Is that right?--- A. He thought it needed a run.

Q. Your interpretation of what he was saying was that the horse was underdone?--- A. Yes. 20

Q. Indeed, Mr. Hickman asked him some questions on that basis?--- A. Yes.

Q. When the transcript records Mr. Calvin as having said that the horse was fit, that is an error in the transcript, to your account?

CHAIRMAN: What page?

MR. STAFF: The one I referred to this morning. Page 4. In the middle of the page. Mr. Calvin's long statement.

CHAIRMAN: That is, when he came from New Zealand the horse was fit"? 30

MR. STAFF: Yes. I am seeking Mr. Carlton's assent to that.

MR. HOWELL: I don't think the Committee has to proceed in unreality. What was it? Fit or not? What does the transcript say?

MR. STAFF: We say it was not fit.

MR. HOWELL: Mr. Calvin said it was badly underdone and needed the run badly?

MR. STAFF: I was seeking Mr. Carlton's assent to that. My friend has led that the transcript is accurate. If he was fit when he came from New Zealand, it is difficult to see how he would be badly underdone 15 days later. I am seeking to establish that what Mr. Calvin said in fact was that the horse was not fit when he came from New Zealand, and that he was badly underdone at the time of the race.

MR. FALKINGHAM: Inquiries are being made. Apparently the person who took the transcript at this point has destroyed the notes, but is available to be called to give evidence; and is coming. Perhaps, in the interests of brevity, this part of the cross-examination could be deferred. I would have no objection to Mr. Staff taking it up again later with this witness. But we will be calling the man who took the transcript.

10

MR. STAFF: I submit that this gentleman can give just as good evidence as the shorthand writer who has no notes to refresh his memory. Mr. Carlton's recollection may be just as helpful, even more so. If the shorthand writer says, "I cannot remember; I do not recall whether I left anything out or not," we are no further ahead. What I wanted to get from Mr. Carlton what his recollection of the evidence was. May I proceed?

20

34. T.J. Carlton.

CHAIRMAN: Yes.

MR. STAFF: Q. Do you recall Mr. Calvin saying at an early stage of the inquiry that when the horse came from New Zealand he was not fit? --- A. I do not particularly recall him saying it, but I have read it in the evidence. I could not recall on that day him saying it.

30

Q. At any rate, he certainly said a number of times that in his opinion at the time the horse started in the race here he was underdone, and well underdone?--- A. That was his opinion?

Q. Yes.--- A. Yes.

Q. And he never expressed any other view inconsistent with it?--- a. Again, I would have to refer to the transcript.

35. T.J. Carlton.

40

MR. STAFF: Q. May I draw your attention to page 8, would you look at page 8 in the middle of the page Mr. Hickman is reported as saying "Do you think you should have started the horse when you knew he was not done" do you remember him saying that. A. I do not particularly remember him saying it.

Q. But you accept that he did. A. I accept the evidence.

Q. Mr. Hickman in the course of this enquiry went off and interrogated on his own, away from the Stewards' Room and away from the parties, various people about betting. A. I think it was during the adjournment of the enquiry. Mr. Hickman checked a bet.

Q. He did a bit more than that didn't he Mr. Carlton, he went off to check with Mr. Campbell and Mr. Todd about Mr. Galea's bet didn't he. A. Yes. 10

Q. And he, so far as you are aware, made some enquiries of those gentlemen before they were ever called to the Stewards' enquiry. A. I don't know what his conversation was with them.

Q. Would you look at the page numbered 33, you see in the middle of the page, just above the middle of the page, Mr. Meehan said to someone or other "If you will wait a few minutes in the waiting room we will try and contact someone". Following that apparently Mr. Meehan said something to Mr. Hickman. Was that Mr. Meehan or who said that, do you know. A. I presume it was Mr. Meehan. 20

Q. He said to Mr. Hickman "Will you tell us what transpired when you went to check the bet?" A. Yes.

Q. And then the answer was, I suppose, Mr. Hickman's. A. Mr. Hickman has given a statement of what he ~~is~~ has asked. (Init.)

Q. That is Mr. Hickman's answer is it. A. I believe so.

MR. HOWELL: I think on any fair reading of it it would be attributed to Mr. Hickman.

MR. STAFF: I would have thought so. 30

Q. And then Mr. Hickman spoke of a conversation he had with Mr. Todd and his clerk. A. Yes.

Q. And that was a conversation that took place outside the enquiry. A. Yes.

MR. McLELLAND: Q. You would accept that a jockey riding a horse could feel in the horse a tendency to hang without that necessarily being observable by somebody who was looking. A. If such was the case he would not be hanging very badly.

Q. He could still be hanging without that being observable. A. I would not call it "hanging" it would be on one rein. 40

Q. No, a tendency to hang. A. Certainly no more than a tendency, I can go that far.

Q. Thank you, that is all I was asking you. You said he was riding with the whip in his hand. A. Yes.

Q. Do you recall if that was a dark blue whip. A. I cannot recall.

Q. You have seen the film of course. A. Yes.

Q. It is very difficult, if not impossible, to see the colour of the whip at all against the colour of the horse and I suggest to you it was a dark blue colour. A. I cannot determine the colour but the whip is certainly visible from the film. 10

Q. Is it. A. Yes.

36.

Q. Can you tell us whether from your observation the whip is visible in the film from the turn. A. I cannot say from the turn but just after they straightened it could be seen for some time.

Q. After they straightened but the critical period is around the turn. A. I just cannot say whether it was at that stage. 20

Q. Did you observe that the horse moved out at the 1,000 metres slightly. A. I think just before that he shifted out slightly and went back in.
(Init.)

Q. And then again moved out slightly at the 800 metres. A. I don't think so.

Q. At the crossing. A. I don't think so, he had gone back in then and was behind them. 30

MR. COMANS: No questions.

MR. FALKINGHAM: No questions.

MR. WHITE: Q. This was a 1,200 metre race. A. Yes.

Q. Mr. Staff has given the impression with the false rail out that it was smart time. Is there any difference on the running rail or with the false rail out in the distance. A. From my knowledge the barriers are moved to run the correct distance.

(The witness withdrew)

NORMAN SWAIN
(Sworn)

MR. FALKINGHAM: Q. You were a Stipendiary Steward on duty at Randwick on 13th March last. A. That is right, I was.

Q. Where were you stationed. A. On the Stewards' Stand near the 600 metres.

Q. You were in company with Mr. Carlton were you. A. That is correct.

Q. Did you have a good view of the horses approaching you from the 1,200 metre barrier. A. I did. 10

Q. Were you present when Jockey Cuddihy gave a description of the race. A. I was.

Q. His opening remarks were that he jumped alright with his head in the air. Did you see his head in the air.
A. The horse at that stage was about 600 metres away and I did notice the horse move outwards just after the start.

Q. Can you say how long he had his head in the air or if he had it in the air. A. I think I said in evidence that his head was in the air after he moved out. 20

Q. Did you see the horse hang after a furlong. A. No I did not see it.

Q. He said "he hung from there until inside the furlong" did you see that. A. No.

Q. Did he hang at all. A. I did not observe him hanging.

Q. As he went past you was he hanging. A. No.

Q. When he was going away from you was he hanging. A. I did not observe it.

Q. Could you see him in the last furlong. A. Not clearly, no. 30

37. xn. N. Swain

Q. Were you present during part of the taking of the evidence. A. I was present throughout.

Q. You have read the transcript have you. A. Yes - not recently, a week or so back.

Q. And you yourself asked some questions. A. Yes I did.

Q. Does the transcript you read properly record what took place. A. As far as I can recollect, yes.

CROSS EXAMINATION

MR. STAFF: Q. In your experience with the false rail out horses customarily run slower times than when they are racing on the fence don't they. A. Yes, that could be said, yes.

Q. And that is partly due to the state of the surface further out in the track, the difference in the going further out on the track and partly due to the sharper bend. A. I would not like to say what it is due to. 10

Q. But in your experience it does happen. A. It can happen.

Q. More often than not. A. I don't know any statistics on it.

Q. You would, I think agree, that the horse Count Mayo shifted out quite sharply after he jumped. A. He did move out.

Q. And quite sharply. A. As I said I was 600 metres away and I did see him move out. 20

Q. And you would not be watching him particularly at that time. A. No that it ~~all~~. I watched him because he moved out. (Init.) why

MR. HOWELL: Q. Did he collide with any other horses when he jumped. A. I did not see him, ge. no. (Init.)

MR. STAFF: Q. Anyway Cuddihy gradually brought him over near the fence. A. Near the fence.

Q. I think at the time you thought he had got over on the fence. A. I did ask him in evidence did he move over to the fence. 30

Q. And I think you suggested to him that between the 500 and 600 he raced on the fence. A. I put that to him.

Q. But that was not the position. A. No, he did race outside of Tarlac.

Q. And he appeared to you to be going comfortably outside Tarlac from the time he got over, from one or two off the fence. A. That is right, yes.

MR. McLELLAND: Q. Would you accept that a horse might be felt by a jockey to have a tendency to hang during a race

and that might not be observable by someone looking on.
A. It is possible that a horse might hang very slightly and not be noticed.

MR. COMANS: No questions.

MR. FALKINGHAM: No questions.

(The witness withdrew)

DOUGLAS MCKAY
(Sworn)

MR. FALKINGHAM: Q. You are a Stipendiary Steward and you were on duty at Randwick Racecourse on 13 March last. 10
A. That is correct.

Q. And you were present at the enquiry into the running of Count Mayo in the Eastlakes Handicap, 2nd Division.
A. Yes.

38. xn. D. McKay

Q. Where were you stationed that day. A. At the 900 metres.

Q. Were you alone. A. Yes.

Q. Did you have a good view of the start. A. A very good view of the start. 20

Q. You were present, I think, when Jockey Cuddihy gave his version of the race. A. That is correct.

Q. He said he jumped alright with his head in the air.
A. I saw the horse jump and from my observation Cuddihy had a tight hold of the horse from the time he left the barrier.

Q. Was it correct that he had his head in the air for 50 metres. A. For about 50 metres, once he got a good hold on his head I suppose. 30

Q. Was he hanging at all. A. No.

Q. He said he did not run off but hung from there until the last furlong, did you see that. A. As he passed me he got about two horses off the fence and the horse was not hanging at that stage. From then on I had a rear view of the horse and he appeared to me to be going perfectly straight down to the 600 metres and he was not hanging at that stage.

Q. Did you see the horse hanging at all. A. No.

Q. Did you see the jockey apply or flick the whip at any time. A. No.

Q. At what point did you last have a good view of the field. A. Shortly after they passed the furlong post they passed out of my view behind the Totalisator buildings in the Flat.

Q. You were present at the enquiry and heard the questions that were asked of various people. A. Yes.

Q. And you have read the transcript. A. Yes. 10

Q. And from your point of view is that evidence correct. A. Yes.

MR. STAFF: No questions.

MR. McLELLAND: No questions.

MR. COMANS: No questions.

MR. HOWELL: Q. Did you get the impression that Dawson was present when he gave the instructions or not. A. Yes.

Q. Why, because Cuddihy said so. A. No, I think Dawson said he ~~give~~ instructions too, as well as Mr. Calvin. (Init.) gave 20

MR. COMANS: Q. What he said in fact was that they had had a long discussion before the race. Did you interpret that as being a long discussion in the mounting yard or on the telephone. A. It may have been either.

Q. And you did not follow it up by asking. A. No.

Q. You just assumed it was something. A. That is right.

Q. You assumed it was in the mounting yard. A. That is right.

Q. Would it surprise you to know that Dawson was not present when the instructions were given. A. It would surprise me. 30

Q. Look at the transcript at page 24A "When Mr. Dawson, Mr. Cummings' foreman ... (reads) ... he was walking to the horse". I will put it to you now from your observations that Dawson joined Calvin

39 xn. D. McKay

and Cuddihy just as they were called to mount. A. I cannot say how long he was with him Mr. Comans.

Q. Do you know whether he was with him or not. A. From my interpretation of the conversation.

Q. From your interpretation of a conversation before the race and you took it to be in the mounting yard, you did not bother to find out where that took place, and you come along and make a guess today. A. I assumed that he was there.

Q. And do you know what an assumption is - it is defined as a foolish expectation. A. I would not agree with that. 10

(The witness withdrew)

JAMES JOHN MASON
(Sworn)

MR. FALKINGHAM: Q. What is your full name. A. James John Mason.

Q. And your address. A. Horace Street, St. Ives.

Q. And your occupation. A. I am in real estate.

Q. You gave evidence at the hearing of the enquiry into the running of Count Mayo on the 13th March last and at a subsequent hearing. A. Yes. 20

Q. And you answered certain questions. A. Yes.

Q. And you have come here today to answer any questions put to you from the Bar Table or the Committee. A. Yes, that is right.

CROSS EXAMINATION

MR. STAFF: Q. Mr. Mason, at page 15 of the transcript you were asked this question, having said that you have settled with Mr. Bartley you said at the top of page 15 that you settled with Mr. Calvin on the Monday morning. A. That is right. 30

39A

MR. STAFF: Q. What is your recollection as to the time you settled with Mr. Bartley?--- A. I settled with him on the Monday afternoon.

Q. How?--- A. I gave him a cheque.

Q. Have you the cheque with you?--- A. Yes. I went to the bank and got the cheque.

I tender it. The bank has asked to give it back?--A. Yes.

They did not have a photostat machine. They gave me the cheque and asked me to bring it back.

Q. The Committee might look at it, and then we will give it back to Mr. Mason?

(Cheque tendered)

CHAIRMAN: We can get this photostatted if you like. The Committee will look at it, and also the bar table.

(Cheque examined by Committee and counsel)

MR. HOWELL: I am not clear, Mr. Falkingham, whether you accept the amendments made to the transcripts on p.15. That is, where you changed "cash" to "cheque" and "cheque" to "cash"? 10

MR. FALKINGHAM: As I said earlier, we have been having inquiries made. The person who took the transcript I understand will be available to be called here. I am told that inquiries have been made, and they show that it would not be possible to get this information today, not without a great deal of trouble. But we will set these things in train. It means a telephone call to a person's home and his wife. We will do that now, and report back any progress. 20

MR. HOWELL: Q. This cheque is cashed in the same bank as it was drawn?--- A. That is quite probable. It is right opposite Tattersall's Club.

Q. What did you do? Just so that I can understand the position?--- A. We settle on the Monday. The horse raced on the Saturday.

Q. Yes, 13th March?--- A. Yes.

Q. You drew the cheque on the Ides of March?--- A. On Monday I drew the cheque. Then I had to come in and give further evidence on the Wednesday. That is when I told them about the cheque. 30

Q. What did you do with the cheque?--- A. Paid it to Mr. Bartley on the Monday afternoon.

Q. He cashed it at your bank?--- A. That is quite probable. Yes, that could probably be quite probable.

Q. What time Monday afternoon?--- A. Was it cashed Monday afternoon?

Q. You answer us?--- A. I cannot tell you when Mr. Bartley cashed the cheque. 40

Q. The answer is, you do not know?--- A. Yes. I presume from what you are just telling me, he cashed it at the bank on the same day; or the next day.

Q. It is a cash cheque?--- A. It was cashed on the 16th I think?

Q. Yes--- A. That is the next day. I gave it to him on the Monday.

40. J. Mason.

Q. It is drawn on your business account?--- A. Yes, that is all right. 10

Q. You put punting through the business?--- A. Yes, I put some punting through the business.

SIR JOHN AUSTIN: Q. Is it your custom to make these cheques out to cash rather than to Bartley?--- A. Not necessarily. But it varies. I have given cheques on that account to bookmakers.

MR. HOWELL: Q. Why wouldn't you give him the cash?--- A. Because on that Monday I had lost that week, and I had to settle with different people on the morning. I used the cash up that I got from Mr. Calvin. I had some cash. A couple of bookies did not turn up to settle, that I wanted to see on the Wednesday. I gave him a cheque. He never objects to cheques. 20

Q. You put in bank cheques of \$6000?--- A. No, not for \$6000.

Q. There is a notation on the back of the cheque that seems to suggest you did?--- A. I am sorry. I may have done some banking that day. I cannot recall exactly what the banking was, but I may have banked that day other moneys. It is a month ago. I am not sure what my banking situation was on that day. I could tell you by looking at my deposit book. 30

Q. When did you get this cheque?--- A. Yesterday afternoon. I picked it up at the bank yesterday afternoon.

Q. I suppose there would be a debit go through the account?--- A. There would have been a debit on the account on the 16th.

MR. PELLY: Q. On the cheque it is made out in figures, and then you read the words "Six thousand"?--- A. Yes. 40

Q. The figures are six dollars, and someone has written six thousand in different ink on the top. Who did that?--- A. I did not notice. Could I have another look? All the

writing with the felt (~~7~~) pen is mine. I write with a felt (~~7~~) pen. (Init.)

Q. Someone has written over the top with a different pen, and different ink, six thousand?

MR. HOWELL: After the words "or bearer"?--- A. I will have a look. (Witness examined cheque). I am afraid I do not understand what you mean.

Q. I do not understand it?--- A. It says "Cash"; the sum of six thousand dollars. Then it has "6" and "000". 10

Q. 6,000. It has "6", and written over the top in figures is "6,000"?--- A. You are being more exact than my bankers.

Q. Who wrote that over?--- A. That would be the teller, I would imagine.

Q. Who would like to be positive, like I am? You are saying the teller wrote it?--- A. I would presume so. I only handed it to Mr. Bartley, and it is history from there on.

chairman: In the meantime we will get this photostatted, back and front. 20

WITNESS: If you wish, I can get the bank statement.

MR. HOWELL: Q. I think you will be given every opportunity to do that?--- A. Would you like me to get it for you?

Q. No. You will be given every opportunity to do it?--- A. Certainly.

41. J. Mason.

MR. STAFF: May I ask a question?

CHAIRMAN: Yes.

MR. STAFF: Q. Would you look at the writing on the back - \$6000, \$5000 - V/Chqs. There are some other figures. Whose handwriting is that?--- A. I can only presume it is someone at the bank. 30

Q. That is not your handwriting?--- A. No, my writing is felt pen.

Q. When you handed the cheque over, was there any writing on the back?--- A. No, I would say no from memory; no; definitely not.

CHAIRMAN: It will be photostatted and given back to Mr. Mason.

MR. McLELLAND: I have no questions.

MR. COMANS: I have no questions.

MR. GORDON: Q. At p.15 you replied to a question at the bottom of that page, and you said, "I did not indicate for sure what was the average, but when I told Mr. Bartley to place the bet I told him he would have to guarantee Mr. Calvin odds, and I assumed from what I saw here 2-1 was the top odds and I said, 'You will at least get that.' I think that is what I said on Thursday afternoon." What Thursday afternoon?--- A. I do not know, I am sorry. 10

Q. The race was on the Saturday. This inquiry was on a Wednesday. How does Thursday get into it? (no response)

MR. FALKINGHAM: Q. Mr. Mason, when you made arrangements for this \$6000 to be put on, did you want it on at the earliest price in Melbourne?--- A. Yes, I wanted the best possible price, and we thought the first price would be the best price. 20

Q. Did you indicate that to Mr. Bartley?--A. Yes, I told him that.

Q. To get it on as early as possible?--- A. I more or less left it to his discretion. I said, to get the top odds.

MR. HOWELL: Q. You told him the first ring?--- A. Yes, put it on before the ring came through from the Sydney ring, thinking it would be better before the first ring.

Q. That is the s.p. price?--- A. The opening quote, I would say. 30

Q. S.p.?--- A. No, I thought s.p. was starting price, and that is the final price.

Q. You know what s.p. is?--- A. Yes, after the horses finish.

Q. You are a former policeman?--- A. Yes, but I asked him to put it on on the first ring.

Q. The first ring meant s.p. odds?--- A. I would not say that that is the correct term.

Q. Will you tell me please, so that I can understand you perfectly, what the first ring means, if it does not mean 40

the first ring of off-course odds?---A.The first ring of the teleprinter.

Q. How does Mr. Bartley get access to the teleprinter?---

A. He has one of his men on the course, and he can bet with the bookmakers before the teleprinter prices come through.

Q. You are saying that Mr. Bartley has access to the on-course teleprinter

42. J. Mason.

10

for the purpose of his private betting?--- A. No, I would not think so.

Q. How does he get the teleprinter prices?--- A. He tells his man to place the wager on the course.

MR. FALKINGHAM: Q. What you wanted was to have the wager placed on the course in Melbourne at the first price that was bet?--- A. That is right.

Q. Have you ever inquired what the first price was in Melbourne?--- A. Yes, I found out. I found out afterwards that day that 7/4 was the best price bet.

20

Q. The best price bet in Melbourne?--- A. Yes, I think so; 7/4.

q. You are not at all sure?--- A. That was all I was told.

Q. What?-- A. That 7/4 was the best price offered.

Q. At any time?--- A. Actually, all I asked was, "What was the best price they bet in Melbourne?" Someone said, "7/4".

Q. You had a conversation with Mr. Bartley during the week following the Randwick meeting on 13th March?--- A. Yes, I spoke to him on the Monday.

30

Q. You were asked a question before the stewards, at p.12, "You did not see him on Monday of this week?", and you answered, "Yes, I saw him this week." You were then asked, "He still did not report to you how he put the money on?" and you answered, "No."? That is right?

Q. Is that true?--- A. Yes, when the horse was beaten -. As a matter of fact, on the Monday I was busy and rushed, and did not have a long discussion with him.

Q. When did you see him on the Monday?--- A. It was after lunch. From memory, round about between 2 and 3.

40

Q. He did not tell you how he put the money on?--- A. He said that he had a few bob on in the morning.

Q. Did he tell you how much?--- A. No.

Q. Did he tell you what price he got?--- A. No.

MR. HOWELL: Q. Did he tell you he had not put your \$6000 on?--- A. No, he did not tell me that.

Q. Does that come as a surprise to you? To have that question put to you?--- A. Now?

Q. Yes.--- A. No.

10

Q. You have heard the suggestion before that he did not put the money on?--- A. I did not hear his evidence that he gave to the stewards, but I read the evidence in the paper the next day.

Q. Did that surprise you?--- A. Yes, it did actually. I thought he thought, like everyone else, that the horse would probably win, and I thought he would be keen to back it for himself.

Q. If he says that he told you on the Saturday night that the money was not put on at all, that is not what he told you?--- A. No, he did not tell me that on Saturday night.

20

Q. You gave him \$6000 not knowing you were not on?--- A. If it had won, he would have paid.

43. J. Mason.

MR. FALKINGHAM: Q. What would he have paid?--- A. He would have returned for top odds paid down there.

Q. You mean that your arrangement with him was that, even if the man in Melbourne got 7/4, and 3/1 was bet, he would have to pay you 3/1?--- A. No, the top odds bet. I told Mr. Calvin that he would be returned the top odds bet. I was anticipating, from what I saw in the Sydney ring, 2/1, that he would get at least 2/1 there.

30

Q. You were saying that you would get the top odds bet?--- A. Yes.

Q. Whether he got those odds or not? That is absurd, isn't it?--- A. I don't think so. I think he would have got the top odds bet.

Q. Do you think he would have got the top odds if he waited until the jump in Melbourne?--- A. That I do not

40

know. It is quote possible. The horse could have blown in the market.

Q. But you did not expect that? You thought it would be better on the first ring?--- A. I thought it would be on the first ring, yes. That is what I informed Mr. Bartley when I asked him to place the commission. I think I said to him, "This will be a hot horse, with plenty of money on it. You had better get back the first ring before the tele-printer comes over."

10

Q. If I told you that in Melbourne 3/1 and 9/4 was bet early, does that surprise you?--- A. Yes, it does.

Q. If so, what odds would you expect to get if the horse had won?--- A. I would have expected to get 9/4.

Q. Or 3/1?--- A. Yes.

Q. Why did you assume 2/1 would be the price?--- A. I did not assume that in the morning. I only assumed that at the races, because that is what they bet in the Randwick ring.

Q. If you could get 2/1 at Randwick, where is the advantage of expecting to get 2/1 in Melbourne?--- A. You answered that by saying 3/1 and 9/4.

20

Q. You did not know that?--- A. Only I was told 7/4 was the best bet. But you confirmed that they bet better prices in Melbourne than here.

Q. But you did not know that?--- A. No.

Q. How did you form the conclusion at Randwick on 13th March that 2/1 would be the likely price?--- A. Only because that is what all the bookmakers quoted it - 2/1. I said, "You will get at least 2/1."

30

Q. Why?--- A. I anticipated the horse would be a better price. When I walked on the course the doubles bookmakers were at a higher quote.

Q. What if they had backed it in Melbourne on the first call?--- A. That is never sure. That is always likely to happen. Anything is possible.

Q. You spoke to Mr. Bartley after giving evidence on the 13th March?--- A. Yes, I spoke to him on the Monday.

Q. Did you speak to him about the evidence you had given?--- A. Yes, I definitely would have discussed it. I discussed it with him, but not to any great degree, because I did not think there was anything to make of anything.

40

Q. You say that even on the Monday he did not tell you that the bet was not on?--- A. I did not go into his whys and wherefores.

44. J. Mason.

Q. I am not asking you what you did. Even on the Monday he did not tell you the bet was not on?--- A. No, he did not tell me on the Monday that he had not placed the wager on the course.

Q. When you gave your evidence at Randwick on 13th March you had no notion what he was going to say when asked?--- 10
A. No, no idea what he was going to tell the stewards.

Q. Can you think of any reason why he would say, if it were not true, that he had not put a bet on for you?---
A. No. I cannot understand why. He had no reason to tell any untruths or anything like that.

Q. Is it perhaps because you did not discuss that aspect of the matter with him?-- A. Possibly I did not.

Q. If you had had a chance to talk to him about that, you would have suggested to him what to say?--- A. No, I would not have. If the bet was not placed, the bet was not placed. 20

Q. The two things cannot be true, can they? It cannot be true that he spoke to you on one occasion and told you you were on, and on another occasion told someone else you were not? Both facts could not be correct?--- A. On the Monday there was nothing to discuss. The horse was beaten and he just had to take out his money.

Q. Whether he put it on or not?-- A. As far as I was concerned, we were on. 30

Q. You said before the inquiry, at p.10, in answer to a question about two or three down, asked by Mr. McKay, "Does Mr. Calvin know that this money went to Melbourne?" You said, "Yes. I just spoke to him after the race." Did you mean after Count Mayo's race?--- A. I spoke to him before and after. I spoke to him a couple of times during the day.

Q. I only asked about afterwards?--- A. Yes, I did speak to him after the race.

Q. Were you referring to Count Mayo's race when you said about the money going to Melbourne?--- A. Yes, but after the race what I said to him - no, I think I discussed it before the race with him. I would have discussed it before and after the race. I could not say any set time. It could have been during the race or anything. I was talking to him throughout the day. 40

Q. The question was, "Does Mr. Calvin know that this money went to Melbourne?" and your reply was, "Yes. I just spoke to him after the race. I did not see him." What does that mean? You spoke to him, but did not see him? You went on to say "I did not know until I was called. I was in the bar. I said that I was not sure what return, but I would guarantee it would be 2/1." ?--- A. I remember what happened. That did not happen that way. They were calling me. I did not hear them. A steward came out and said, "They want to see you." A couple of people said, "They have been calling you for five or ten minutes." I remember going in. I remember saying to Ferd, "I can assure you, I reckon you are a moral to get 2/1. They bet 2/1. At least 2/1 down there." I may have said that before the race or during the race.

10

Q. Before or during?--- A. During the betting on that race.

Q. You were asked this question: "Did you tell him then that the money was to be put on in Melbourne?" You answered, "Yes. I said I had sent some down interstate." ?--- A. Yes, that is right.

20

Q. How much did you send interstate?--- A. I asked Mr. Bartley to send \$6000 interstate.

45. J. Mason.

MR. HOWELL: Q. That was all?--- A. I think I would have told them I asked to put the \$6000 on. I do not know how good your shorthand writers are.

MR. FALKINGHAM: Q. I will ask that question. Mr. McKay then asked you, "Some or all?" Your reply was, "I said, 'some'. That is all I said." ?--- A. I asked Mr. Bartley to put \$6000 on. I think from memory that day we had a meeting in Brisbane and Melbourne, and the Brisbane meeting was washed out. So it all had to go on in Melbourne. I think I even mentioned that to them.

30

Q. To whom?--- A. The stewards.

Q. You were telling Mr. Calvin, according to this evidence, that you would guarantee it would be 2/1?--- A. Yes.

Q. How would you do that?--A. I just - it is a sort of open guarantee. I might have said "a moral" or "sure to get 2/1 - at least 2/1." That sort of thing.

40

Q. You said this because you saw 2/1 at Randwick?--- A. Yes. But you just told me since that it was 3/1 and 9/4. So he could have done better.

Q. But you state that that was not put on at all?---

A. Yes, I have found out since.

Q. But you stood to gain, according to you, your odds of 7/4, although he was not on?--- A. I would have been on. I was going to be paid, the same as Mr. Bartley got paid. I asked the bet to be placed on the course in Melbourne.

Q. Were you annoyed when you found out the bet was not put on at all?--- A. I was concerned, when I did find out, that the bet was not placed on the course, yes, I was concerned.

10

Q. Did you discuss with Mr. Bartley the fact that the Chairman of Stipendiary Stewards had said to you, at p.10 of the transcript, "We will have to get the Melbourne betting sheets"? Did you discuss that with Mr. Bartley?---

A. Not from memory, I cannot remember. I don't think I did.

Q. That would be an important matter in your mind?---

A. I did not even remember him saying that to me at the time. I probably did. I don't remember saying that.

20

Q. You are saying that you cannot remember the Chairman telling you that they were going to get the Melbourne bookmakers' sheets?--- A. I cannot remember that we discussed it then or the Wednesday.

Q. I am talking about where the Chairman, at p.10, said to you, "I suppose we will have to get the Melbourne bookmakers' sheets now". You realise that these sheets --- A. Would you rephrase that? You said, "I suppose we will have to get them"?

Q. At p.10, fifth question from the top; this was on 13th March. The Chairman said, "How much did you send down?" You replied, "I asked them to put the six on it". The Chairman then said, "We will have to get the Melbourne bookmakers' sheets now, I suppose." Do you remember him saying that to you?--- A. Yes, I think so. I didn't take all that much notice there.

30

Q. Did you tell Mr. Bartley he said that to you?---

A. No, I don't think I did. I may have discussed it with him later in the week. I cannot remember just off-hand.

40

46. J. Mason.

Q. You cannot remember whether you told Mr. Bartley that the stewards were going to look at the Melbourne bookmakers' sheets?--- A. No, I can't remember on the Monday everything that was discussed. It was in the club. It was crowded;

other people were there, and it was not opportune.

Q. But it was a matter of the greatest importance?---

A. I did not think so at the time.

Q. Don't you appreciate that if there had been a recorded bet or bets on Melbourne bookmakers' sheets which would show your \$6000 had been put on - don't you appreciate that?

---A. Yes, I appreciate that.

Q. You don't think it is important?--- A. I thought at the time the bets would have been put on. On the Saturday I thought they would have been put on. 10

Q. There having been no bet put on at all in Melbourne, you realise that Mr. Bartley has given an explanation for that?--- A. Only what I read in the paper.

Q. You know what the explanation is?--- A. He said something about he could not get the price he wanted or something.

Q. You know he said that he told his man to wait until the jump?--- A. No, I did not know that.

Q. According to you, that is not what you wanted?--- 20

A. That is right. That is not what I wanted.

Q. You wanted the reverse situation?--- A. Yes, that is right.

Q. You didn't think that of any importance?--- A. I finally found it out.

Q. I think you said you read the transcript?--- A. No, I said I read the newspapers. I have not seen the transcript.

Q. Have you read any part of the transcript?--- A. Only what I read in the newspaper. 30

Q. It was intended to put this money on on the course in Melbourne?--- A. It was my intention.

Q. Is that what Mr. Bartley said he would arrange for you?--- A. Yes.

Q. To put it on on the course?--- A. Yes, that is right.

Q. You asked for the early price?--- A. I asked for the price they bet before the teleprinter service came over.

Q. Before the teleprinter price came through?---

A. Yes.

Q. In regard to this cheque you produced, it has a signature on the back. Whose writing is that?--- A. I presume the bank teller. I am not sure. It looks like "Coors".

Q. Do you know anyone by that name?--- A. No, I do not. I do not know the name of the teller in the bank. I don't see why the teller would sign his name.

Q. Do you say you got \$6000 from Mr. Calvin?--- A. Yes.

Q. To reimburse you for this cheque?--- A. He gave me the money in the morning to pay Mr. Bartley. 10

Q. The morning of what?--- A. Monday morning.
47. J. Mason.

Q. Did you put it in the bank?--- A. No, I did not put that in the bank.

Q. You did not put the \$6000 in the bank?--- A. Did not put the 6000 in cash in the bank. I used it to settle with other moneys with other bookmakers I had wagered with during the week.

Q. It would have been just as easy to give Mr. Bartley the six thousand cash?--- A. It could have been, I suppose. Not really. I did not want to write two or three small cheques. 20

Q. Did you make any deposits in the bank on the Monday?-- A. Probably. I would have to check my bank statement to see.

Q. Did you make any large deposits?--- A. It is a month ago. My memory is not that exact. Down in my car I have my bank deposit book I think, in the boot of the car. I could only tell by looking at that.

Q. Did you have a lot of cash on your person when you left Mr. Calvin's house on the Monday?--- A. I had his six thousand. 30

Q. Is that all?--- a. Look, I cannot tell you for sure. I don't know exactly to the penny how much money I have on me now.

Q. Any large sum?--- A. I may have. But I would not have been the target for any hold-up man; not that much.

SIR JOHN AUSTIN: Q. I can think of six thousand reasons why you could have been?--- A. I don't remember. It is a month ago. 40

MR. FALKINGHAM: Q. You didn't put the six thousand in the bank that you got from Mr. Calvin?--- A. No.

Q. You carried that in cash?--- A. Yes.

Q. Then you drew a cheque to cash and gave it to Mr. Bartley?--- A. Yes.

Q. You cannot recollect whether you banked any other money to your credit on that day?--- A. I cannot recall whether I banked any money to my credit that day, but it is quite possible. But sometimes when Mr. Bartley does not come in to the settling until late, it is awkward carrying \$6000 in cash around on your person. It is a bit baulky. Also, I settle with most bookmakers in the morning at Tattersalls Club; then go and have lunch; then generally meet Mr. Bartley after lunch. Taking that six thousand with me to lunch and around the place is a bit cumbersome. I would use that six thousand to settle in the morning, and write him a cheque in the afternoon. That is the reason why I wrote him a cheque and not other people in the morning. I didn't want to carry it round in my pocket. 10 20

Q. Do you remember that you did bank any moneys to your credit on the same day? You don't remember?--- A. I could go and find out in three minutes, by looking in my bank deposit book. But is that relevant to anything?

Q. You don't think it is?--- A. You are doing a credit check on me? That is what I think it sounds like.

MR. HOWELL: Q. In one sense, yes, that would be true?--- A. I can write a cheque for six thousand on my bank and it can be paid, I assure you. 30

Q. But this cheque would not have been deposited to your credit. It would have gone against you, as a debit.

MR. FALKINGHAM: You understand that?--- A. I cannot see the purpose of it. That is all. I just cannot see why I have written a cheque

48. J. Mason.

for six thousand and the bank paid it - why I should not write a cheque for six thousand again this afternoon or Monday morning.

Q. You have said at various times - you mention various odds that were expected, like 2/1, 5/2, and so on?--- A. I do not remember mentioning 5/2. 40

Q. At p.10, after the Chairman of Stipendiary Stewards

told you that they would have to get the Melbourne bookmakers' sheets, a short time after that he said, "Did Mr. Calvin say what price you might get?" Your reply was, "No. But I said 'I reckon you would get 5/2 early.' If they took the early price over there, Page and Waterhouse's prices I think from memory were 5/2."?-- A. I think they were 2/1 from memory.

Q. There is the admission of 5/2. Then you told ~~me~~ you would guarantee it would be 2/1. Was it 2/1?--- A. Yes. I cannot remember saying the 5/2. I can remember the 2/1. 10

Q. Is there any truth in this? When Mr. Calvin rang you and said to put the money on, and you said, "Where will I put it on?" - is that true?--- A. Mr. Calvin and I speak most race mornings.

Q. Is that true? Did you ask him where you would put the money on?--- A. I reckon I might have suggested it. I am not sure. He may have suggested it. I think I might have suggested that.

(Continued on page 53)
49/52. J. Mason.

20

MR. FALKINGHAM: Q. Did he say to you "I don't care, wherever you can get the best price"? A. Yes, that sounds the sort of conversation we would have had.

Q. Is it true that you saw him later and you told him that you thought you averaged 2/1. A. No, that would not be right, when I spoke to him later I said "I reckon you are a moral to get at least 2/1".

Q. And you did see Calvin before the races at Randwick didn't you. A. Yes, I saw him throughout the day.

Q. And did you tell him before the race that you thought you would average 2/1. A. I do not think that I would say anything definite to him, all I would have said to him was that "I reckon - I am sure you will get at least 2/1". 30

Q. Did you tell him you were putting the money on in Melbourne before the race started. A. Yes, he knew that.

Q. You told him that. A. Yes.

Q. Did you tell him you were putting all the money on in Melbourne. A. Yes I think from memory when we were discussing it in the morning we were talking about Brisbane but the Brisbane races were called off. 40

Q. I am not talking about the Brisbane races. Did you tell Calvin before the third race at Randwick on 13th

March that you were putting the money on in Melbourne.

A. That I was having the money placed for him in Melbourne.

Q. You told him that. A. Yes.

Q. Before the race. A. Yes, before the race was run I would have told him that.

MR. COMANS: Q. Mr. Mason, you are a professional punter.

A. No I am not, I am working in real estate.

Q. Well, you would be a quasi professional punter. 10

A. Well put it this way, it is a hobby that takes up a fair amount of time.

Q. And it is an advantage to you in your hobby if someone gives you a commission to place on a horse because it gives you an inside knowledge, doesn't it. A. For that one yes I suppose so.

Q. Not a question of "for that one" if a man comes along to you who owns a horse and says "Look Mr. Mason" - or "Jim" - "I want \$6,000 on Snodgrass" that would give you an idea that Snodgrass was on the job wouldn't it. 20

A. Definitely.

Q. And that is to your advantage. A. Definitely.

Q. And this was given to you on the Saturday morning.

A. That is correct.

Q. And you said this "He thought like everybody else that the horse would win". A. Yes - well, I thought it would win.

Q. And did Mr. Calvin think it would win. A. Yes, he told me that he thought it would win, he told me he was going to win the Golden Slipper with it. 30

Q. When you spoke to Mr. Bartley you said it was a "hot horse". A. Yes I said "if they think his horse would win the Golden Slipper it would not have much trouble getting away with this field".

Q. So the general impression conveyed to you on the Saturday morning was that the horse was a good thing.

A. Yes.

MR. HOWELL: Q. He did not say it was underdone and could not win. A. It was going to improve with the run. 40

Q. It was a hot word around, using your own word, in the morning. A. Yes, that is correct.

Q. When he gave you the \$6,000 to put on did he tell you it was badly underdone. A. No I think he said "Whatever it does today it is going to improve", but he asked me what my opinion of the race and the field was like and I remember saying "It is a pretty poor field" or something like that and he said "If this thing is going to win the Golden Slipper it will get away with this mob".

10

Q. He did not tell you it would run badly. A. No.

Q. You were at Randwick on this particular day, 13th March. A. Yes.

Q. Would you agree with the statement that the Sydney betting ring is one of the strongest in the world. A. You would have to think - I suppose Sydney and Melbourne would be, yes.

Q. And you could put \$80,000 or \$90,000 on a horse in Sydney and you would not move the price one quarter of a point. A. I would not like to say that.

20

Q. But you would have no trouble getting on \$6,000 on a horse in Sydney betting. A. No.
(Init.)

Q. It would be like ~~be~~ falling off a log, you would get it on straight away. A. I would say there are two bookmakers who would take a wager of \$6,000 - no, I would say, depending on the price of the horse concerned, probably only one bookmaker in Sydney prepared to take an ordinary wager of \$6,000.

Q. What do you mean by "an ordinary wager". A. Well, if a horse is even money or 2/1 or 6/4 I think there would probably be two bookmakers who would take \$6,000.

30

Q. This horse was 2/1 or 6/4 so there ought to have been two bookmakers. A. Yes but if you are discussing it in the morning it is not 2/1 or 6/4. In the morning paper I cannot remember what price it was but it was longer than that.

Q. Where did you back La Stupenda. A. I backed La Stupenda myself.

Q. You got 7/2 for it. A. I backed it on the course.

40

Q. How much did you have on. A. I cannot tell you exactly.

Q. Where did you settle. A. Tattersals Club.

Q. Who did you bet with. A. I don't know, I can find out, I just don't know from memory. I have credit with all the bookmakers on the course so it could have been anybody, you know.

Q. You did not give that to Mr. Bartley. A. No I did not, no.

(The witness withdrew)

MICHAEL BARTLEY
(Sworn)

10

MR. STAFF: I would ask that on this occasion, and with any more witnesses, Counsel assisting the Commission cross examine the witness fully initially rather than wait until everybody else is finished and the Committee has asked questions and then perform his main task. It is quite an irregular procedure for Counsel assisting the Committee to reserve the bulk of his cross examination questions until even the Committee have finished asking questions and I would ask that that course be followed.

MR. HOWELL: Do you want the previous witness recalled to ask questions?

20

MR. STAFF: No I don't, he is not my witness, he was not called by me but I am protesting about the general course of procedure

54 M. Bartley

that Mr. Falkingham has followed and I ask that it not be permitted in future.

THE CHAIRMAN: That is a matter for the Committee.

MR. FALKINGHAM: Subject to a ruling by the Committee I propose to follow the same course. These witnesses are not the property of any particular person here and Mr. Bartley appeared at the other enquiry because of certain things that were said and he was summoned here and he is liable to cross examination, I would submit by anybody.

30

Q. What is your full name. A. Michael Bartley.

Q. Where do you live. A. Rose Bay.

Q. What is your occupation. A. Electrical contractor.

Q. You gave evidence at the adjourned hearing of the enquiry before the Stipendiary Stewards in this matter.

A. That is right.

40

Q. And you have come here today for the same purpose have you not. A. That is right.

Q. And for the purpose of answering any questions put to you by anybody here present entitled to ask questions.

A. Yes.

MR. STAFF: No questions.

MR. McLELLAND: No questions.

MR. COMANS: No questions.

MR. FALKINGHAM: I will ask some questions.

10

MR. STAFF: I would submit that the Committee not permit this procedure.

MR. HOWELL: And why not?

MR. STAFF: It is the function of a Counsel assisting the Committee or Commission, or anything else, as a matter of established regular practice, to ask all the questions he (Init) has to ask initially when the witness is sworn before anyone else, representing parties, does so. That is a practice that has invariably been followed in Royal Commissions. In any appeals I have attended here it has (Init) been invariably followed by Counsel assisting the Committee and in every form of tribunal that I have had any experience of it has been the invariable practice followed as a matter of fairness to the parties concerned, it is a fundamental matter of fairness in the conduct of the proceedings and we would submit it should not be permitted that Counsel assisting the Committee, who is in the position of a Prosecutor.---

20

MR. HOWELL: No, ~~it is~~ that certainly is not the position. (Init)

30

MR. STAFF: If he is not he should lead all the evidence.

MR. HOWELL: In other words you are complaining about the treatment you are getting today.

MR. STAFF: I am complaining about my learned friend's practice, what he is now seeking to do, not what he did (Init) this morning, ~~and should~~ he was performing in the (Init.) usual manner of calling a witness and asking the questions he wanted to, allowing the parties to cross examine and then ask any questions he wanted in re-examination, that is the regular procedure. All I am complaining about is a departure that has now taken place with the last witness and which he seeks to have occur again and I am asking that the Committee simply direct that it should not be done that way.

40

MR. FALKINGHAM: May I be heard on this application?

THE CHAIRMAN: Yes.

55

MR. FALKINGHAM: This witness was called at the enquiry by the Stewards because of the evidence given which involved Mr. Mason and which in turn involved this witness and he came, voluntarily apparently, and was prepared to answer questions. It would be quite absurd, I would suggest, for me in the role of a person assisting this enquiry to be limited to asking the witness non leading questions, to ask him questions which would not suggest the answer would be the only way of suppressing the truth, it would be obviously necessary to cross examine him. 10

My friend objects now that this course is to be followed not because I am going as by lots. Because of his own conduct a moment ago I am the only one questioning and if it has any validity one should start again, I should go first and then he could cross examine. If it is felt that I should ask questions in cross examination and the other three members of the Bar ~~have-not-asked~~ questions I will follow that course. then ask (Init.) 20

SIR JOHN AUSTIN: That would be the fairest thing to do at this stage, we want everyone to be heard and heard fairly.

MR. FALKINGHAM: I do not want anyone to be deprived from giving evidence fairly. All the witnesses, whether they are called or not, are here available.

MR. HOWELL: Under the Act we are charged to administer - and I think it is Section 32 - it says this Committee shall sit as a Royal Commission and it shall sit and deal with the matters before it not in accordance with strict legal (Init)preceden~~ce~~ts but so that the real justice and merits of the case eventuate. That course this Committee has always adopted and we wish to adopt it now. 30

If you want to go back to square 1 with this witness I personally see no objection and your friends at the Bar Table can have adequate recourse to him and I suggest, Mr. Chairman, that we might do this.

THE CHAIRMAN: I would like to discuss this more fully with my Committee, we will have a brief adjournment and then come back again. 40

56

UPON RESUMING AFTER SHORT ADJOURNMENT:

CHAIRMAN: Mr. Staff, the Committee have given due consideration to your request. We will carry on as usual, and ask Mr. Falkingham to address the Committee. Then we will go down the line. We won't stifle anyone who wants to ask questions. We are here to get to the truth. As far as the Committee is concerned, that is the way it will be.

S MR. K. BARTLEY, evidence continued.

MR. FALKINGHAM: Q. Mr. Bartley, you spoke to Mr. Mason on the Saturday night, of the day Count Mayo ran in the Eastlakes Handicap?--- A. I just did not quite get that? 10

Q. Did you speak to Mr. Mason on the Saturday night?---
A. Yes.

Q. The day of the race?--- A. Yes, that is right.

Q. Did you tell him that you had put some of his money on?--- A. I could not recollect that. He said to me, "There has been some trouble out there today." I said, "Yes, trouble, but what has happened?" He said, "They have got them up." He said, "What did you do with that bet?" 20

Q. He said what?--- A. They have got them up.

Q. He said, "What did you do with that bet?"?--- A. I said to him that I had asked my friend in Melbourne to put \$4000 on it.

Q. \$4000?--- A. I already had two on myself.

Q. Was that two too intended to be for Mr. Mason?---
A. It was going to be included.

Q. For Mr. Mason?--- A. If he gave me six thousand to put it on, two and four is six.

Q. Yes, but were you going to put that two thousand and four more?--- A. In my opinion it was for Mr. Mason. Put it this way: I was going to earn out of it. 30

Q. Why did you tell the man with whom you put the bet that you would have that for yourself?--- A. I started off with the intentions of having it for myself; it didn't work out that way.

Q. You changed your mind?--- A. No, it was changed for me.

Q. By the horse losing?--A. No.

Q. What changed your mind?--- A. A friend of mine came out after the race and said, "We did not get on".

Q. He came out where after the race?-- A. In Melbourne. This is a normal procedure.

Q. Were you in Sydney on this day?--- A. Yes.

Q. You put \$2000 on at 3/1 for yourself?--- A. Yes. I started out to put it on for myself.

Q. When did you change your mind?--- A. I never ever changed my mind.

10

MR. HOWELL: Q. How did you get the six on?--- A. I cannot hear you?

Q. How did you put the six on? You didn't change your mind? What about

57. R. Bartley.

the six?--- A. I don't want to get out of gear again. I won't talk in those terms. But when Mr. Mason gave me the bet it meant nothing to me at all. The result is that I then start sounding out what its chances were. I asked a friend of mine what price it was. He said that he had gone off at the 7/2. I said, "Do you want to lay me six to two?" He said, "Yes, you can have six to two." That means now I have 2000 on, and I have nothing to worry about.

20

Q. That is the money you say you put on for yourself?---

A. I started off for myself, but it was not going to finish up that way. He has to be paid for the bet, and it does not matter what I do with the money.

Q. Was this friend of yours in Sydney or Melbourne?---

A. In Melbourne.

Q. Was he the same man who came up later?--A. Yes, exactly the same man.

30

Q. When he came up the second time, you told the stewards at the inquiry that you said to him, "Put six thousand on at 5/2"?--- A. No, I didn't. I said, four..

Q. At p.20 of the transcript- ?--- A. It is possible I could have said six.

Q. Does that mean you intended to put six thousand at 5/2 for Mr. Mason, and keep the two thousand you put on at 3/1 for yourself?--- A. That is right.

Q. Mr. Mason asked you to put a bet on - the six thousand -

40

on the first ring?--- A. No, I don't know whether what he said about rings, or first rings. Why I don't know that, I probably was not taking much notice of him.

Q. Just answer my questions. Others will ask you questions. Do you remember that?--- A. I don't remember what he said.

Q. Did you talk to Mr. Mason when this court adjourned a little while ago?--- A. Yes.

Q. Did you go for a walk with him?--- A. Yes. 10

Q. Did you discuss the evidence he has just given?--- A. Yes.

Q. Did he tell you it had been said here at the Stipendiary Stewards' inquiry, that the Chairman remarked that they were going to look at the Melbourne betting sheets?--- a. He didn't say anything to me, either, about Melbourne betting sheets.

Q. Did he tell you about Melbourne betting sheets after the Saturday meeting on the 13th?--- A. Never said anything about it. 20

Q. Did he mention anything?--- A. He did after the Stewards' inquiry at the Randwick Racecourse.

Q. When you went there?--- A. Yes.

Q. You knew, of course, that the money had not been put on at all?--- A. Get back to this bet. I have had hundreds of bets that have never been put on at all. Hundreds. All because I request a certain price, and when that price is not available, the money does not go on, whether it is on Autumn Prince(?) or Billy the Black.

Q. Never mind Billy the Black. We are concerned about putting a bet on as the horses jumped?--- A. Who said I put it on as they jumped? 30

Q. Do you remember giving evidence before the inquiry?--- A. I vaguely remember it.

58. R. Bartley.

Q. Can you remember what was said about the manner in which the bet was to be put on?--- A. Yes, I will tell you how it was to be put on.

Q. Can you remember what was said?--- A. I will tell you. Whether it corresponds or not, I will take odds to that. 40

Q. I will read it to you. Do you remember saying this? That your man from Melbourne said, "Will I wait for the first teleprinter?" and you said, "No. You stay there till they jump away"--- A. That is right.

Q. Is that what you said?--- A. Yes, that is right.

Q. Did you mean he should back the horse at the last moment?--- A. No. I meant whenever the price was available. Stay there. He can't be on the course and off the course at the same time. He can't be two miles away and telephone, and put in a ring in Melbourne and talk to me on the phone. He has to stay there until the horses left the barrier.

10

Q. That is what you meant by, jump away?--- A. Yes, you have got it right.

Q. What was the point in asking him to wait until they jumped away, as against waiting for the first teleprinter? -- A. I will tell you. On numerous occasions I have asked him to have a bet for me and take a certain price, and he came out and told me I was not on; and later they have bet the price I have requested, and if he had stayed there he would have been on.

20

Q. You wanted him to wait until the horses were ready to jump?--- A. Yes, that is right.

Q. If you did that, wouldn't the price be s.p. Sydney?-- A. What are you talking about, starting price? You don't get starting price.

Q. No, but you know when you are at the races in Melbourne you get prices over the wire that are being bet in Sydney?--- A. You are kidding, aren't you?

30

Q. You don't know that?--- A. What is supposed to be bet in Sydney?

Q. You think that you get a lower price?--- A. It is a trick of nature if you ever get over with some particular horses.

Q. What is the point of waiting to the last moment?--- A. To give him every possible chance to get on.

Q. What about every possible chance to get the lowest price?--- A. He won't take the lowest price. He will not slaughter the money.

40

Q. And your unfortunate backer does not have the money on at all?--- A. That is right.

Q. He takes the risk on that?--- A. No, I take the risk.

Q. How were you going to pay it if it won?--- A. I would have paid it according to how things went. I would have sorted out what was the best price available, plus the six to two I had on. I would have put that into it. Someone says that they bet 2/1. That would be eight to four and six to two, which would be fourteen to six.

Q. How would you get the best price available? Would it be 5/2?--- A. For the same reason I am here today and a very wealthy man. I have been fair dinkum with everyone I have done business with. 10

59. R. Bartley.

Q. When you said to the man in Melbourne to put six thousand on at 5/2, you didn't mean, "You can't put it on at the very best price"?--- A. No. I meant 5/2 or better. There would be no argument about 3/1 or 11/4.

Q. Did Mr. Mason ask you to get 5/2?--- A. He did not ask me. He said, "Would you get me top odds?" I said I would get the best price. 20

Q. Suppose 5/4 was the odds?--- A. People generally expect 7/2. I was specific, to get 3/1. I know the procedure at the races. I didn't think 5/2 fair odds.

Q. He was told outright to get 3/1. Were you surprised that some bookmakers bet more than 3/1?--- A. A couple of crumbs.

Q. Did a couple of crumbs bet 9/4?--- A. We would have asked 9/4. We were asked 5/2 or better.

Q. You have no recollection of Mr. Mason asking you to take the first price put up on the first ring? You say that you have no recollection of the man who asked you to put the bet on - Mr. Mason - telling you to get on on the first ring, have you?--- A. I never obey any instructions that anyone gives me. 30

Q. You do not?--- A. No. I would not be taking any instructions off him, for a start.

Q. You knew what he wanted?--- A. All I know is he wants the bet. You leave it with me. What I do with it is my business. I do not want to be telling him what to do.

Q. Where is the advantage to you in putting on this bet? ---A. As you know I am a fairly big operator in doubles. It is an advantage to me to be friendly with everyone I can, 40

and help them as much as I can, to get help in return.

Q. Even if you have to pay the money out of your own pocket?--- A. You do not want me to start that other routine again?

Q. No--- a. Wouldn't even know it was -

Q. Just a minute. I am not concerned with toilet paper or rubbish today. If you put a bet on for a man and pay him at the odds you get, that is one thing. If you do not put it on and it wins and you pay out of your own pocket, it would mean that you wanted to field this bet?--- 10
A. It was not intentional for me to field it in the first place.

Q. There being no record at all of this bet anywhere, you would have to go and say that it did not get on?--- A. How did I know that the stewards had inquired in Melbourne? And I don't know this until after Wednesday, and Mason told me.

Q. After Wednesday?--- A. That is in the Stewards' room, before I knew they had inquired about this bet operation in Melbourne. I am not going to be chased. Do you think I lose sleep over something I am not even concerned about? 20

Q. I would not know about that, but at the inquiry did you have a conversation with Mr. Mason about what was said?--- A. We have talked to one another every day for three years.

Q. You say you cannot remember whether he told you that the Stewards had said they were going to investigate the Melbourne betting sheets?--- A. He did tell me. He told me on the Saturday after the Stewards' inquiry at Randwick. 30
60 R. Bartley.

Q. You knew then that the Melbourne sheets would show any bets put on in Melbourne?--- A. That is correct.

Q. You have explained to us what you meant when you said you were going to pay the bet. That there would be \$3000 at 3/1 and \$4000 at 2/1. Would you have done that?---
A. Certainly.

Q. You would have done that without knowing the odds in Melbourne?--- A. More or less. I was not going to get anything out of it. I was not going to be on it. I might as well give them the top price for the money. What is the good of keeping something for myself? 40

Q. If the horse had won you would have settled up the

bet with Mr. Mason by giving him your six thousand to two thousand?--A. Correct.

Q. And also giving him -?--- A. Eight thousand to four thousand.

Q. Four thousand at 2/1?--- A. Yes, the price it was supposed to be bet at Randwick. But you would have to be Austin Robinson to get it.

Q. Would you do that without even knowing the price in Melbourne?--- A. I had talked to my friend in Melbourne and knew we were not on. I lost no sleep about that from there on.

10

Q. I asked you whether you knew?--- A. Do you want me to get to the point? He would be getting fourteen thousand, and that is it.

Q. Would you listen to the question?--- A. Yes, go on.

Q. He would have got fourteen thousand to six thousand?--
A. I would have been man enough, as someone said, to give him fourteen to six.

Q. Giving him your own bet, and one at odds of 2/1?---
A. It is not my own bet. They total six thousand. He is to get the odds to six thousand. It is now not my own bet.

20

Q. You would have done this without any knowledge of what the best price or the worst price was in Melbourne?---
A. How would I know what the best price in Melbourne was? I assume that my man could not get 5/2 - that 5/2 was not bet.

Q. You said you knew that 3/1 was bet?--- A. As far as I knew they never offered 5/2.

Q. Who told you?--- A. My man.

30

Q. What was the worst price in Melbourne?--- A. I did not ask him that. It is not necessary.

Q. The money you were going to pay out was to come partly from the wager you would have won, and partly from money out of your own pocket?--- A. He would have got 14 to six.

Q. And you would have done this because you had defied the orders he gave you when he put the bet on?--- A. I would have done it because it is what I have always done. Once someone gives me a bet, I pay irrespective of whether the horse wins or not.

40

Q. Mr. Mason says he gave you specific instructions to

put it on the first ring. Is that correct?--- A. I would not be taking any notice of what he said. If he said it, I would still take no notice.

Q. You do not know whether he said it or not?--- A. It would not register with me.

61. R. Bartley.

Q. You do not care what he said?--- A. Would not care what he said.

MR. STAFF: I have no questions.

10

MR. McLELLAND: I have no questions.

MR. COMANS: I have no questions.

MR. HOWELL: Q. How did Mr. Mason settle with you?---
A. I do not go to the city, but I generally roll up at City Tatts round about 3 or 4 o'clock.

Q. He didn't settle with you at all?--- A. He gave me a cheque when I came into City Tatts.

q. When?--- A. On the Monday afternoon.

Q. What did you do with it?--- A. I then - Peter to pay Paul - paid it out to someone else.

20

Q. I am not too much concerned about Peter and Paul. I am concerned with Mr. Bartley. What did you do with it? --- A. I gave it to someone else.

Q. To whom?--- A. Is it necessary for me to tell you?

Q. Yes.--- A. Why?

Q. Because I want to know?--- A. Ted Coombs.

Q. What is he?--- A. I could not answer that, because I do not know. To the best of my ability, he is supposed to be well off; owns property, and fools around. Whatever he does, I do not know.

30

Q. He fools around?--- A. Yes.

Q. How did it happen that you gave him the cheque for \$6000?--- A. I had to give him more than that.

Q. How much more than that did you have to give him?---
A. Eight.

Q. So that you never negotiated this cheque at all?---

A. It was a cash cheque, and I used it as cash. It was not made out to me.

Q. You gave it to Mr. Coombs?--- A. Yes.

Q. You personally did not do anything with it?--- A. That is right.

Q. When was that done?--- A. It was done on Monday.

Q. At the settling at City Tatts?--- A. In City Tatts on the Monday.

MR. WHITE: Mr. Bartley, you were asked to put \$6000 on a certain horse at Randwick?--- A. Yes. 10

Q. You put on \$2000 at 3/1 in Melbourne?--- A. Yes.

Q. You put that on?--- A. No, did not put that on in Melbourne. With a local chap.

Q. A local chap, 3/1?--- A. Yes.

Q. \$4000 of this man's money you did not put on?---
A. Yes.

Q. Yet if the horse had won at Randwick, you were willing to pay out?--- A. That is right.

62. R. Bartley. 20

Q. Doesn't that make you an s.p. bookmaker?--- A. No, it does not. For the simple reason he was going to get paid at the price that was available; at the 2/1 that was supposed to be available at Randwick, because they were supposed to bet. It started I think at 6/4, and he was not going to get paid at 6/4.

Q. The second question is: all bets must be paid to the Inland Revenue - the Treasury. There is a tax on bets?---
A. Yes.

Q. So there was to be no tax on this?--- A. Are we in a taxation inquiry, or are we talking about Count Mayo? I would like to say something but you can't get anywhere. I can't get through to people that 6000 paid to me is absolutely of no consequence. I have handled much larger sums than six thousand. \$6000 - God strike me - 30

MR. STAFF: I would like to ask a question. Mr. Bartley might be shown the photo copy of the back of the cheque. As to whose name appears as an endorsement on the back of the cheque. (original cheque shown to witness).

Q. Would you look at the back. You see what appears to

be a signature - "G.S. Coombs"?--- A. Yes, I would say it looks like Ted Coombs.

Q. "E.S." it is suggested. Can you say what the initials are? Is it "G" or "E"?--- A. I am sorry, I am no handwriting expert. I could not tell you what that is.

Q. It looks like Mr. Coombs?--- A. I can see a couple of "O's" there. It looks like Mr. Coombs to me.

Q. Mr. Coombs to whom you gave that, do you know his handwriting?--- A. No.

10

Q. Do you see some numbers - six thousand, five thousand? Do you know whose handwriting that is?--- A. No.

DR. ROWE: Q. Do you get many requests to put money on horses for people?--- A. Yes. As far as I can remember, I have been in Sydney 30 years this year, and for thirty years I have been doing this sort of thing.

Q. Some of these bets you cannot get on, as with this one?--- A. Some of them I have even forgotten about, and paid.

Q. Doesn't that make you almost an illegal bookmaker?--- A. If you like to call it that, you can. But I have never been charged. No one has ever suggested I am an illegal bookmaker.

20

Q. But you are not worried about that?--- A. No, I am not worried about that.

Q. That is all I wanted to ask you.

CHAIRMAN: Are there any more questions? If not, thank you very much.

(The witness withdrew)

MR. FALKINGHAM: We have made inquiries regarding the record of proceedings and the transcript. It seems that the record is transcribed by a shorthand writer, and typed up with the original and one copy only. The copy is retained by the shorthand writer, who is not here today I understand. The original is brought to the AJC for photographing. If any alterations were made when the original came to this office, it would I suggest be apparent in the original transcript. I call for that. It should be in the custody of the Committee. (Transcript handed to Mr. Falkingham) If it will help, I will tender this.

30

40

63. R. Bartley. ret.

MR. STAFF: This is not the original. It is a photo copy.

MR. FALKINGHAM: It appears to be not an original. I understand now that the transcript of the second day is an original. The relevant portion at p.15, about which there was discussion, appears to us to be original. To Mr. Staff it appears not to be. I tender it.

MR. STAFF: We object. First, on the basis that it is not identified as the original. It may bear some appearance of being an original, and some perhaps of having been a carbon or a photo copy. I do not know. All we are told is what Mr. Falkingham told us, that it is supposed to be an original; that someone told him it was an original. 10

MR. FALKINGHAM: And we saw that it came from the custody of the Committee. It is not from us.

MR. McLELLAND: Could I ask what is sought to be proved by this tender? I have not followed what Mr. Falkingham is trying to do.

MR. FALKINGHAM: This arises from Mr. Staff's suggestion earlier in the day that on the copy he got there had been an alteration on p.15, and that the words "check" and "cash" had been juxtaposed in the copy. 20

CHAIRMAN: We all had that, and Mr. Staff complained about it.

MR. FALKINGHAM: If the Committee had one altered in the same way as Mr. Staff's copy, I did not know about that.

MR. WHITE: Mine is not altered.

MR. FALKINGHAM: Our copy did not have the ~~words altered~~ words altered or juxtaposed. I have been handed another carbon copy, where the same appears. It would not be upon us to satisfy Mr. Staff's curiosity. It may be someone in the solicitor's office who altered it, or altered because it was thought to be wrong. We are only tendering the original of the transcript as a transcript. It seems to us that if a mistake was made, that is one thing. That is a mistake in the evidence. But there is no evidence that there was a mistake in the transcription. 30

SIR JOHN AUSTIN: The important one was on page 4, in regard to the word "not". That is, whether it said that the horse was fit or not fit? 40

MR. WHITE: Didn't we thrash this out this morning? Mr. Mason paid by cheque; we have seen the cheque. My copy is noted here "Cheque in". And Mr. Calvin paid Mr. Mason by cash. It says "cheque" in my copy. But I have altered

my copy this morning. I thought we had thrashed that out.

CHAIRMAN: At p.4 also, in Mr. Calvin's evidence, four lines down, where it says, "When he came from New Zealand the horse was not fit."

MR. WHITE: We agreed that that be altered.

SIR JOHN AUSTIN: We did not.

CHAIRMAN: We agreed to change it. It was changed?

SIR JOHN AUSTIN: No. The sense seems to be that it was not fit. 10

MR. COMANS: My client will give evidence on oath as to the condition of the horse.

64.

CHAIRMAN: Mr. Falkingham, would you proceed.

MR. FALKINGHAM: Perhaps this is an appropriate time to tender, first of all, the Randwick betting sheets for that day, 13th March; and the Melbourne bookmakers' sheets, being those bookmakers who bet on Sydney. I think they have all been inspected by the various parties. 20

CHAIRMAN: Have you looked at them?

MR. COMANS: They have been made available to us, yes.

MR. STAFF: Perhaps, if it is convenient to the Committee, my friend might agree that the biggest bet recorded in Melbourne was \$300 to \$100 - the biggest bet at 3/1.

MR. FALKINGHAM: Yes.

MR. HOWELL: I don't understand the relevance of the tender. It seems to be conceded that no money went on on the course?

MR. FALKINGHAM: The relevance of the tender is as to the conflict of evidence as to what the price available was in Melbourne, and the evidence of Mr. Bartley on that score. 30

MR. HOWELL: Very well.

MR. FALKINGHAM: I refer to the conflict between Mr. Mason and Mr. Bartley. I tender also a copy of the racing record of Jockey Cuddihy. This arises out of a question asked by Mr. McLelland.

MR. McLELLAND: I have no objection. This is an accurate

record so far as we are concerned. The last item, under the heading Queensland, it does not state the offence. It was, in fact, careless riding. Perhaps that could be written in.

CHAIRMAN: Yes.

(Sydney and Melbourne betting sheets, and record of Jockey P. Cuddihy tendered)

CHAIRMAN: I think we can proceed, Mr. Falkingham.

MR. FALKINGHAM: I understand that - from one of the counsel - it is not intended to call Mr. Wallace, who gave evidence before. For that reason I shall not put him in the box now. The only other two persons asked to appear are Mr. Cummings and Mr. Galea. If anyone wants them called, or wants to ask any questions, I shall call them one by one. Perhaps it would be better to call them in any case. 10

MR. McLELLAND: I do not ask.

MR. COMANS: I do not ask.

MR. STAFF: I do not ask.

MR. FALKINGHAM: Unless any member of the Committee wishes to ask a question, none of us here has any questions to ask of these two witnesses. 20

CHAIRMAN: I would rather think some of the Committee would like Mr. Cummings called.
65.

JAMES BARTHOLOMEW CUMMINGS, horse trainer, sworn and examined:

MR. FALKINGHAM: Q. What is your full name?--- A. James Bartholomew Cummings.

Q. Your address is 24 Russell Street, Glenelg North, South Australia?--- A. Yes. 30

Q. You gave evidence at the hearing of the inquiry by the Stipendiary Stewards in this matter. Have you read the transcript of your evidence?--- A. I never received one.

Q. Was the evidence you gave on that occasion true and correct?--- A. Yes.

Q. There are only one or two matters I wish to refer to. At p.18 of the transcript, you said in the middle of the page, "I did not think he was going to have any problems in

the race with him being wayward anyway." Is that correct?
--- A. He trialled on the previous Tuesday. He trialled quite well. It was an impressive trial. On what I was told of the trial, I expected him to run quite well.

Q. You were asked a question by Mr. Mahoney, who said "You did not specifically say not to use the whip on the horse?" and you replied "Only if you are going well." What does that mean?--- A. A lot of horses I have trained in the past have won by riding hands and heels, and if they are going strongly to the post it is not necessary to hit them with the whip. But if they have not reached the front, I expect the jockey to do so. 10

Q. You mean, to use the whip?--- A. Yes.

MR. STAFF: I don't think I have any questions.

MR. McLELLAND: Mr. Cummings, in your evidence before the Stewards, at p.17, you dealt with the trial. You were talking about a discussion with Mr. Calvin on the Friday and probably on the Saturday. You were asked, "Do you remember what that discussion was?" and you said, "No. The fact that the horse trialled on the previous Tuesday, that was as far as it went, and Cuddihy rode the horse in the trial and it trialled rather nicely although it did hang out in the trial. But he had horses on his outside to help him get around the turns here. He had run out previously, before the horse was purchased in New Zealand, and I think Skelton rode the horse." You went on with further details. Do you recall giving that evidence?--- A. That is right. 20

Q. It is true then that before the race on Saturday you had discussed with Mr. Calvin the performance in the trial on the previous Tuesday?--- A. That is correct. 30

Q. And part of that discussion concerned the fact that in the trial the horse did hang out, but it had horses outside it, which prevented it running off the track?--- A. It was in the field in the trial, yes.

Q. But there is no doubt, is there, that the tendency to hang out in the trial was discussed before the race on the Saturday?--- A. He ran off the track I understand prior to purchasing the horse in New Zealand. 40

Q. I will come to that, but I want to establish clearly that you and Mr. Calvin had, prior to the race on Saturday, discussed the trial on the previous Tuesday, and that part of that discussion dealt with the fact that the horse did hang out in the trial. That is what you said here in the Stewards' inquiry?--- A. Yes.

Q. That is correct, isn't it?-- A. Yes.

Q. Going to what you knew about the horse's performance in New Zealand,

66. J.B. Cummings.

before the race on Saturday you were aware that the horse had shown certain waywardness in New Zealand, before it was purchased?--- A. Yes, I did.

Q. Were you aware that the only time it had been whipped in New Zealand it had run off the track?--- A. No, I was not aware of that. 10

Q. You mentioned in your evidence before the stewards you were aware that Skelton had ridden the horse in New Zealand? --- A. Before purchasing the horse, or agreeing to buy it Dr Percy Sykes went over to examine the horse, and while he was there he met a good friend of mine, Dr John Sullivan, who in the presence of Percy Sykes rang Skelton up and got the full record of the horse's racing performances as he knew it. He had ridden the horse I think on two occasions, and it did come up, the fact that it ran off the track on one occasion, I think when an apprentice boy rode the horse. They then examined the horse and passed him. 20

Q. To summarise it, would it be fair to say that before the race on that Saturday you were under the belief that the horse's history in New Zealand had shown it to be to some degree erratic?--- A. It was not real tractable; put it that way.

Q. On p.18 - and I appreciate that you have not got this transcript - you were asked by Mr. Mahoney. "Did you have any discussions with Mr. Calvin as to what tactics to use?" Then you answered, "Mr. Calvin engaged Cuddihy and I told him he would have to keep in touch and ride him out hands and heels." Then you added, "I did not think he was going to have any problems in the race with him being wayward anyway." Can you tell us why you told Mr. Calvin that the jockey would have to ride him out hands and heels?--- A. That was discussed with them two or three times during that week, and if it is possible to ride it out hands and heels, it would be desirable to do so, because the horse could react under pressure. In this case the horse was not able to win without the whip, and as it is obvious; and I think under the circumstances it should have been used. 30 40

Q. That is your judgment now, is it?--- A. In retrospect, yes.

Q. It is much easier to make judgments after the event than before?---- A. Quite so.

Q. You will agree before the race you had expressed the view that the horse ought to be ridden out hands and heels? Is that correct?--- A. If possible, yes.

Q. And you were of the opinion, from the information you had obtained from New Zealand, that it was not a tractable horse, to use your expression?--- A. Quite right.

Q. Also, at the top of that page, or at the bottom of p. 17, Mr. Mahoney had asked you in relation to the trial, "You say that with Cuddihy it did not try to hang in the trial?" You replied, "He told him to keep him inside a couple of horses to see how he goes, and he hung slightly." Do you recall giving that evidence?--- A. Yes. 10

Q. Then Mr. Mahoney said, "He did not hang badly enough for you to want to put a lugging bit on the horse?" You replied, "No. He had a bit of a pointed tooth, which causes slight abrasion on the track, but apparently Ron Dawson tried to get the horse dentist to correct this, but we could not get hold of him in time. It has been done since. He had a bit of a cut inside the mouth." Where did you get that information about the pointed tooth, and the cut inside the mouth?--- A. That was related to me on the Sunday morning after the race. 20

67. J.B. Cummings.

MR.COMANS: Q. You confer daily with Dawson on the telephone?--- A. Yes.

Q. I suggest to you that Dawson was giving you quite favourable impressions of this horse?--- A. That is right.

Q. But he mentioned to you two horses - Holiday Waggon, which is by the same sire, and Tontonan - and he told you that he is a similar type of worker to them - a lazy horse on the track, but does it very easy?--- A. Well, he told me he is a very lazy worker. I think it was myself who told him he was of a similar type in track work. 30

Q. And Dawson had a discussion with you after acceptances for the race, and he told you he thought it had drawn the easier Division, as it had missed Blue and Gold?---

A. Either Ron Dawson or Fred Calvin mentioned that.

Q. Dawson said he rang you and told you that?--- A. If he said that, it was Dawson who told me. 40

Q. And that he gave you a further discussion, and how easy it ran over five furlongs that morning?--- A. That is right. I think he also mentioned that it veered out at the gap, which some horses can do, at the half mile.

Q. You told him then, on what he had told you, and the class of the horses, and the class of the race, that it should be a good thing?--- A. I said, "If it is fit enough, it should be able to account for those. Otherwise it is not worth the money."

DR. ROWE: Did you say, "If it was fit enough"?--- A. If it was fit enough, and settled in here; and if it could not beat that field, it was not worth the money paid for it.

10

MR. INGHAM: Q. In the trial, could you visibly see the horse hang?--- A. I was not there.

MR. WHITE: Q. You are licensed in three States?--- A. Yes.

Q. This race was on 13th March?--- A. Yes.

Q. When did you go to Melbourne?--- A. I could not remember that.

Q. The day before?--- A. I was there probably twelve days before, and saw the horse work on a slow morning at Randwick.

20

Q. The previous week?--- A. It would probably be in the second week before the race.

Q. When was your last conversation with the owner, or foreman and the jockey? Did you have a conversation with those three men on the 13th?--- A. What day was the 13th?

Q. The race day?--- A. I spoke to Dawson on the morning. - I think Mr. Calvin - I know on the Friday and the Thursday; the Saturday morning I am not sure.

MR. HOWELL: Q. This horse is a lazy worker on the track? A. Yes.

30

Q. But nevertheless you said here this afternoon that he ran a very impressive trial?--- A. Yes, he trialled much better than he did in his track work.

Q. And you expected that, having regard to the two Divisions drawn, that this colt would run a very good race?---

A. Yes. If you valued

68. J.B. Cummings.

the horse entirely on his appearance and track work, obviously he was a very expensive horse, and not worth the money. But when you examined his pedigree he obviously

would have a lot of class and be worth it. In the past I have found the best horses to have are very poor track workers. Usually work very poor in their track work. To compare this horse with the other quality horses, he would be very hard to judge in his track work. I compared him with other good horses in my stable over the years.

Q. Of course, you would be impressed by the fact that he ran, according to you, an impressive trial the Tuesday before the race day?--- A. I was told what Cuddihy told Ron Dawson, and what Ron Dawson saw himself. 10

Q. Have you watched the film of the race?--- A. Yes.

Q. It was your view that the horse certainly should have been ridden out hands and heels?--- A. When I saw the film -

Q. Was your view before the race that he should have been ridden hands and heels?--- A. Yes.

Q. There was no reason, so far as his waywardness was concerned, that would prevent him being ridden in that way?--- A. No. If he could win hands and heels, I would imagine that would be the right way to ride him. 20

Q. And, having seen the film, you take the view, as you said this afternoon, that you expected he should have been ridden with the whip?--- A. I was concerned with the way he rode the horse, until I was told - until I heard what Cuddihy had to say. It was obvious to me that he was concerned with the horse's performance in New Zealand. On that I gave him the benefit of the doubt.

DR.STREET: How long before 13th March were you in Sydney? --- A. I would say twelve days. 30

MR.COMANS: Q. A lot has been said about track work. Do you recall Taj Rossi?--- A. Yes, I trained it.

Q. Do you remember it being beaten in a Tuesday track gallop by a hurdler?--- A. Yes.

Q. What race did it win on the following Saturday?--- A. The AJC Derby, and beat Leica Lover.

MR.GORDON: Q. You had heard about the horse's erratic behaviour in New Zealand, but that did not deter you recommending, or being a party to the purchase of the horse? You thought you could control it once you got it here, apparently?--- A. My play is to improve them, if possible. That horse was privately sold; it was never submitted in the yearling sale. If it had been, I would 40

have for sure tried to purchase the horse. I know that in New Zealand they are allowed to race there twice and after that they can be sold without paying taxation on the sale. Because of that reason this one was raced two or three occasions with that in mind, so I was told. Also, the mare was a champion mare, and I would be very surprised if it could not be improved. With that in mind, I took the risk, or recommended my clients to.

(The witness withdrew)

69. J.B. Cummings. ret.

10

MR.FALKINGHAM: That is the case we have to present at this stage.

MR.STAFF: I gather from my friend's statement that he does not propose to call Mr. Hickman, the other steward?

MR.FALKINGHAM: Yes. Is it desired to have an adjournment for this purpose?

MR.STAFF: We cannot do anything about it. We will have to proceed. Is it convenient that I proceed with our case now?

20

CHAIRMAN: Yes.

MR.STAFF: Because of the hour I propose to call first the two New Zealand witnesses, hopefully letting them get away so that they can get back to New Zealand tomorrow morning, and not kept here. While they are giving evidence, I will ask Mr. Calvin to wait outside.

CHAIRMAN: Yes.

JOHN ANTHONY POULSEN, Senior Stipendiary Steward, New Zealand, sworn and examined:
70. J.A. Poulsen.

30

MR.FALKINGHAM: We are now told that the matter that Mr. Staff referred to earlier, the question of the transcript, has been cured, or will be cured, by production of the original note book which Mr. Nolan has got. I understand his wife is ill and it would not take very long to put him in the box and to read from it.

THE CHAIRMAN: Very well, if that can be done, by all means.

JOHN PATRICK NOLAN
(Sworn)

MR.FALKINGHAM: Q. What is your full name. A. John Patrick Nolan.

90. xn. J.P. Nolan.

Q. Where do you live. A. 31 Flower Street, Maroubra.

Q. Were you present on the 17th March at the adjourned hearing of the Stewards enquiry into this matter.

A. Yes.

Q. Did you take down in a notebook the evidence given by persons, among others being Mr. Mason. A. Yes.

10

Q. I want to refer you to page 15 of the transcript and to certain questions asked by Mr. Swain of Mr. Mason. Have you a copy of the transcript there. A. No I have not. (Original transcript handed to witness).

Q. Would you look at page 15 of the transcript and pick it up, if you will, from the point -----

MR.McLELLAND: If there is any dispute about it should not be read from his notes and not the transcript?

MR.FALKINGHAM: Q. Would you look at your notes and it is not far from a short adjournment where Mr. Mason was excused. Could you go back from there and find the last questions asked by Mr. Swain of Mr. Mason and Mr. Calvin, the last ones before that adjournment. A. Yes I think I have them, about four questions altogether.

20

Q. There is one by Mr. Mason where he says "No, Mr. Bartley is a big T.A.B. investor" go back about five or six questions before that and read them out if you will, questions and answers. A. "Mr. Swain Q. You say you settle with him at his club on Monday morning. A. No, I mentioned Monday afternoon. I did not mention the meeting, I said Monday.

30

"MR.SWAIN: Q. How did you settle. A. I paid him by cash.

MR.SWAIN: Q. How did you pay, Mr. Calvin?

MR.CALVIN: A. By cheque Monday morning, he called past my house and I paid him".

and the next question is by Mr. Mahoney.

MR.FALKINGHAM: Q. And is the book you have in your hand the book from which you made that transcript of evidence. A. Yes, that is my notebook.

MR.FALKINGHAM: I tender the notebook. Would you mind marking the question you have read out. A. I have marked them on the side in a bracket.

MR.FALKINGHAM: I tender the notebook.

MR.STAFF: We might get someone who can read shorthand just to check, I am not capable of it. It maybe that the outlines are correct. Perhaps Mr. Nolan might be able to-----

MR.STAFF: Q. Could you write the outlines for "cash" and "cheque" for us. A. Yes. (witness writes) 10

Q. Mr. Nolan, I take it you would concede that occasionally you make errors in taking notes of this character. A. I would have to concede that.

Q. Indeed you made one on page 15 just before the short adjournment didn't you. A. I don't know.

MR.STAFF: Might Mr. Nolan be shown his book?

Q. Just before the short adjournment there is an answer by Mr. Mason which is quite a wrong answer, do you see that. A. Yes. 20

Q. Have you got recorded in your notebook "I think that is what I said on Thursday afternoon". A. I have not got the word "What".

91. xn J.P. Nolan.

Q. Are you aware that the reproduction of the transcript is quite different it is "I think that is what I said on Thursday afternoon". That is quite different from your note. A. I haven't the "what" in my note, that is the only difference.

Q. That makes a difference in what was said. A. If it was punctuated differently it would make a difference to the sense but I have included the word "what" because I probably did not pick it up in actual writing. 30

Q. I am not seeking to be critical but you think what the witness has said is what you reproduced although you have not got it in your note. A. With the exception of the word "what".

Q. You concede that with the way it is punctuated you get a different sense from what is written in shorthand. A. I think I would have to put the word "what" in otherwise it would not make sense whichever way you have it punctuated. 40

Q. And have you done that from time to time in the transcript to make sense. A. Sometimes it is necessary to put in the small words, they are the bread and butter of the sentence.

Q. Just back from where Mr. Swain asks the questions you read your shorthand as being "no, I mentioned on Monday afternoon". In the transcript it is "no, on Monday I mentioned the Monday afternoon". A. No, I have "no, I mentioned the Monday afternoon". 10

Q. Did you put the extra words in to make it clear. I am sorry, that is a false start, you have not got "on Monday" in your shorthand. A. No I have not. That, and I am not passing the blame onto somebody else, that would be the typist mishearing my dictation on the tape recorder.

Q. You dictated your shorthand onto a tape recorder. A. Yes. 20

Q. Which you then got typed up by some stenographer. A. That is right.

Q. I want to show you this copy of the transcript, you see the answer "cash" and "cheque" written in handwriting above it and the answer by Mr. Calvin a couple of lines lower down "By cheque" typed and "cash" written over it. A. Yes, I see that.

Q. Do you know who made those handwritten alterations. A. No.

Q. Do you recognise the handwriting. A. No. 30

Q. Have you any recollection of dictating that part of your note independently of your notebook I mean. A. No, I cannot specifically remember that identical part.

Q. Well, is it possible that your shorthand note when it was reproduced was thought to contain an error that is in respect of the words "cash" and "cheque". A. No I would not think so Mr. Staff.

MR.FALKINGHAM: I will tender this document, the outlines of "cash" and "cheque" in shorthand.

DR.ROWE: On page 4 you were going to ask something about something that appeared there. 40

MR.FALKINGHAM: I think it was a different shorthand writer.

Q. Did you take the evidence on the 13th March, the first few pages. A. No, my transcript started on page 11.

(The witness withdrew)

92. xn. J.P. Nolan.

MICHAEL HALE

(Sworn)

93. xn. M. Hale.

RAYMOND JOHN WALLACE

(Sworn)

95. xn. R.J. Wallace.

10

FERD DAWSON CALVIN

(Sworn)

101. xn. F.D. Calvin.

KEITH GEORGE ROBBINS

(Sworn)

MR.STAFF: Q. Your name is Keith George Robbins. A. Yes.

Q. Where do you live. A. 62 Hatfield Street, Blakehurst.

Q. What is your occupation. A. Turf Editor of the Sunday and Daily Telegraph.

20

Q. Were you present at the Stewards' Enquiry into the Count Mayo matter. A. On the second day at Randwick I was present.

Q. Were you present when some questions were asked of Mr. Mason and Mr. Calvin about betting. A. On the Wednesday afternoon I was, not on the Saturday.

Q. Did you take notes of the evidence given that day.
A. I took some notes.

112. xxn. K.G. Robbins.

Q. Have you those notes available. A. No. I have not.

30

Q. Have you a recollection of what was said by Mr. Mason and Mr. Calvin about the manner in which they settled.
A. A mental recollection.

Q. Did you write a story in your paper about that part of the evidence, A. I did not use the words of Mr. Mason or Mr. Calvin. I checked tonight and had my librarian read

the story to me and then the story I said Mr. Bartley said that Mr. Mason had paid him by cheque.

Q. Did you make any comment about Mr. Calvin's statement.

A. No, I did not use that.

Q. Have you an independent recollection as to what was said at that time, as to the way in which Mr. Bartley was paid. A. Who by, Mr. Mason?

Q. Mr. Mason. A. My recollection is that Mr. Mason said at the enquiry that he had paid Mr. Bartley by cheque.

10

Q. And what is your recollection of how Mr. Calvin paid Mr. Mason. A. My recollection is that Mr. Mason said he went to Mr. Calvin's home on the Monday morning and received \$6,000 in cash.

CROSS EXAMINATION

MR.FALKINGHAM: Q. Do you say your notes are gone.

A. I did not keep the notes.

Q. That is neither the longhand or the shorthand.

A. Correct.

Q. And you have a distinct recollection of hearing this or is this the best you can do. A. I think it would be the truth and it is a very distinct recollection. It is very vivid in my memory.

20

(The witness withdrew)

113. xn. P.W. Cuddihy.

MR.McLELLAND: I do not propose to call any further evidence.

MR.COMANS: I will be putting appellant Dawson in the box.

RONALD THOMAS DAWSON, stable foreman, sworn and examined:
129. R.T. Dawson.

30

MR.COMANS: That is the case for Dawson.

MR.FALKINGHAM: I have no further evidence.

MR.STAFF: I have nothing further.

MR. McLELLAND: I have nothing further.

MR.STAFF: After many hours, you gentlemen now have to come to the task of deciding these appeals, as the Act

says, upon the real merits and justice of the case, having heard them, and not being bound by strict legal precedent. You have to decide the appeals- and the only one I am really interested in is that of Mr. Calvin- according to the general law; that means, basically, upon the evidence that has been presented to you.

We submit, first, that there is no evidence upon which this committee could find that Mr. Calvin was a party to the horse not running on its merits within the meaning of rule 135(c). Of course, we would as well submit that there is no evidence that the horse did not run on its merits within the meaning of rule 135(a). 10

Being a party to something, of course, means that a person has been a participant in an arrangement designed to be a breach of rule 135(a). There must therefore be evidence upon which this Committee could find that Mr. Calvin agreed, or was a party to, an arrangement, at least with Cuddihy - and whether or not with anybody else - that this horse should not be permitted to run on its merits. 20

The only evidence in this case which ties Mr. Calvin to the running of this horse is the evidence of the instructions that were given. Those instructions, in substance, were that the horse should be held up early, and allowed to come home, being hoped it is said that its class will let it come home over the top of the others. That is the only evidence, we submit, that there is of any arrangement between Calvin and Cuddihy.

There is, of course, I suppose, the additional fact that the arrangement, if it can be so called, or the instruction, involved that the whip should not be used unless it was desperate. The qualification, of course, itself indicates that the whip shall be used if it was desperate; and that is, if there were a chance of winning and the whip might pull it off. 30

If those instructions are accepted as being the instructions given by Mr. Calvin, we submit that they provide no evidence whatever of any corrupt intention. Indeed, they would indicate - and tend to deny - no corrupt intention on Mr. Calvin's part; because no-one could say that those instructions in the circumstances were designed to convey to anyone an intention that the horse should not win or not be given a chance to win. 40

Remembering that, the offence with which these parties are charged is one involving deliberate intention, there are other offences with which riders and others can be charged, which cover negligence, incompetence, errors of judgment, and things like that. I will come to that later.

In relation to the charge upon which Mr. Calvin has been found guilty by the stewards, the rule plainly requires that the deliberate intention - a corrupt arrangement - should have been made, and it is only in that way that the owner, Mr. Calvin, could have been a party to a breach of rule 135(a). 10

160. Mr. Staff.

Perhaps it would be convenient before going further to point to the fact that rule 135(b) for instance, by contrast with rule 135(a), creates an alternative offence, namely, that the rider of every horse shall take every reasonable and permissible measure throughout the race to ensure that the horse is given full opportunity to win or obtain the best possible place in the field. 20

There is the contrast: if the horse is not running on its merits, it is one thing. If the rider, fails to take all reasonable and permissible measures during the race to ensure that the horse is given full opportunity to win, that is another. But they are alternative and different offences. The first involves deliberate and corrupt intention: the second involves, by contrast, negligence or a failure to take a reasonable step in the running, without deliberation. That is, without corrupt intent. It may be because of incompetence or because of something else; it may be sheer inattention or lack of attention to detail. Indeed, in one sense I think one of the complaints that was made by one of the stewards was that the jockey in this case failed to take up as forward a position as he would have thought reasonable. That, of course, may have been a breach of rule 135(b). But the Committee is not concerned with that; nor is the offence charged against Mr. Calvin. 30

I draw attention to the two different situations because, in a case such as this where there is no evidence at all - and certainly no direct evidence - of a bargain or a deal - call it what you may - between Cuddihy and Calvin that the horse should not be run on its merits, one has to look, if you ever get to the point of thinking that the ride itself demonstrates some 40

deficiencies or some shortfall from what one would have regarded as ideal, one has to look at what the possible alternative explanations are. If there be a reasonable doubt, then the parties are entitled to it, whether they have demonstrated to your satisfaction their innocence or whether they have not.

If there be a reasonable doubt on the evidence, if there be a reasonable alternative explanation of one account or another, or more than one reasonable alternative explanation than a corrupt bargain, then Mr. Calvin is entitled to have this Committee's acquittal. We submit that in the circumstances there are any number of explanations.

10

I have put to you that, first and primarily, there is no evidence on which you could find against Mr. Calvin any corrupt intention, or intention to be a party to a corrupt bargain with Cuddihy. I point out that Mr. Calvin denies categorically, and has done time after time, any such intention. Jockey Cuddihy has denied it. You might say, "What else would one expect when they are here seeking to have this appeal upheld?" If they did not deny it, I suppose they would not be here.

20

No doubt Mr. Falkingham may suggest to you that you should not believe their denials. Our primary submission is that there is no reason whatever to disbelieve Mr. Calvin's denial. You have seen him, and you have seen the way he gave his evidence. You know his participation in the industry. You have heard of his lack of motivation. He told you of his lack of motivation. He told you of his lack of motivation, and of his desire to win races. We know he has had a fair share of success in the industry and on the racetrack. The very extent of his participation in the industry and his involvement, not just in racing but in breeding on a very substantial scale, is a very strong reason why he would not want to take any risks in the running of his horses and any risk of being barred from the racecourse. There is a very strong financial motivation against him being involved in an offence such as the one suggested.

30

40

161. Mr. Staff.

His motivation - or lack of it - is a matter that is and always has been said by the law to be an important element in weighing the guilt or innocence of a man - just as one has to take into account all the other possibilities.

Therefore, first we say to you that you decide this matter on the evidence. It is only on the evidence, without resort to prejudice, dislikes or likes, and any of the other human emotions which you put aside when you come to sit on an appeal such as this, and which are apt to influence decisions in other places. This is a decision to be made on the evidence that is brought before you, and without regard to other peripheral matters, or matters with which Mr. Calvin has no contact.

10

We submit to you that there is nothing shown in Mr. Calvin's evidence, nor in the cross-examination of Mr. Calvin, which would suggest that his evidence here on Friday on oath should be disbelieved. Some of my learned friends made the point of discrepancies here and there - to a statement which may seem to suggest one thing on one occasion and another on another. They say that that shows you cannot rely on him.

One must be careful in accrediting this to anyone, particularly in circumstances of stress of an unusual nature. We can all make mistakes. Particularly when he finds himself charged, an innocent man might overdo his case, and exaggerate his explanation, perhaps wittingly or unwittingly. That is a matter which may be relevant if it be said to you that Mr. Calvin has over-emphasized how short of fitness this horse was. But, in substance, when his evidence is looked at, one finds, along with Mr. Cummings and Mr. Dawson in the end, that they all thought this horse was short of race fitness; they were all doubtful about his fitness.

20

30

Mr. Calvin said when he saw him after he was saddled in the mounting paddock that he was surprised. He had seen him previously, but when he looked at him under saddle, as one sometimes does, he was of the opinion that he was bigger than he thought, and he remarked upon it in the company of Mr. Sykes and McFadden two well-known vets.

For all these reasons, and having heard the evidence, we submit that there is no reason in the world that this Committee should disbelieve Mr. Calvin's evidence that he thought and hoped that this horse would win; that he thought he was short of fitness; that he thought his class would pull him through. He hoped it would win, and certainly did not make a bargain with Cuddihy to stop it winning.

40

There is no reason why Mr. Calvin's evidence that he bet \$6000 on the horse should be disregarded. You all know - I suppose we all do know - that people at times - some consistently and some sometimes, and some not at other times - employ other people to bet for them. Some do it consistently; some do it intermittently; some do their own betting one day and not another. This is no unusual occurrence.

We submit that, whatever view the Committee might take of the activity of others, that provides no reason for disbelieving Mr. Calvin, knowing Mr. Mason in the past to have been trustworthy in relation to the placing of commissions, he used him. He used him just as so many people many years ago used that famous commission agent whose name is endowed by one race that is run each year at I think at Rosehill - Mr. Theo Marks. Commission agents have been known since the sport began, and will be known in future. They have been called commission agents, though rarely I might imagine do they get paid commission. It is somewhat akin to the description of bookmakers used by those who engage in the profession in England - turf accountants. The descriptions are traditional, although maybe once

162. Mr. Staff.

commission agents were paid commission, although it appears to be a long time since they were paid commission in the normal sense of that word.

The fact that Mr. Calvin thought it appropriate to use Mr. Mason's services - as he and Mr. Mason told you had happened before - on this occasion is of itself no reason whatsoever for disbelieving him.

The way in which Mr. Mason and Mr. Bartley dealt with the wager, or supposed wager, subsequently, we submit provides no evidence against Mr. Calvin. He had no part in it, and what other people do cannot be evidence that is admissible or of any relevance against another party, unless it be charged that they were in cahoots too. Nothing of that sort happened here.

For those reasons, if Mr. Calvin be accepted on those matters, that is the end of the matter so far as his appeal is concerned, whatever might be thought of Cuddihy's ride or Cuddihy's conduct on the horse. Because, unless Mr. Calvin is disbelieved when he says

that there was no bargain with Cuddihy that this horse should not run on its merits, he is entitled to have his appeal upheld. For the reasons I have put, there are no grounds for disbelieving him, and thus his appeal should be upheld.

But if it be assumed that you find Mr. Calvin's evidence in part or in whole unsatisfactory, and you disbelieve him, then you might ask, "What is the evidence against him?"

10

The great jurist we are fortunate to have as the Chief Justice of the High Court of Australia, Sir Garfield Barwick, recently restated the principle that to disbelieve a man's evidence on particular matters provides no evidence of the contrary against him; that is, if you disbelieve Mr. Calvin's denials, that fact provides no evidence that the contrary of his denial is true.

No doubt my friend will seek to say, "Disbelieve him, and there your task is over - or nearly so." But I draw your attention to a recent statement of the basic principles of the law by Sir Garfield Barwick in a case called Steinberg v. Commissioner of Taxation. I have a number of copies of that decision and have marked the short passage in which Sir Garfield Barwick states the fundamental principles. I shall hand a copy to each member of the Committee. The statement is in the passage against which the two ink lines are drawn. His Honour said: "In the second place there was in my opinion no evidence that the purpose of acquiring the land....the facts in this case certainly do not arise".

20

30

There you will see the question was: did this man buy the land for resale at a profit? He said that he did not; he said that he bought it for another purpose. The trial judge said that he did not believe him. One might then have been forgiven for believing, if he did not believe him, that he must have bought it for resale at a profit, and that is all there was. However, the Chief Justice said that disbelief does not afford evidence of the contrary of what is disbelieved, leaving one particular case aside.

40

That is the fundamental principle and the basis upon which you gentlemen will approach the determination of this appeal; and it only arises if you come to a

situation in which you do not accept Mr. Calvin's denial of the charge.

So that, having reached that stage, what is there? In regard to the riding instructions, if you disbelieve what Mr. Calvin and Cuddihy said they were, there is no evidence of what they were; and without evidence one cannot find that Mr. Calvin was a party to the way the horse was ridden. It was either ridden in accordance
163. Mr. Staff.

10

with the instructions Mr. Calvin gave, and if his instructions in the way they are stated are disbelieved, there is no evidence as to what instructions were given, and there is nothing on which one can find any corrupt intention or direction on his part given to Cuddihy. Without it he must be given an acquittal in these proceedings.

If one goes back to the riding instructions, one sees that Mr. Calvin at the stewards' inquiry immediately acknowledged the instructions as his, and took responsibility for them. But they differed not much from what in the end Dawson this morning told you was the way he wanted it ridden - hold him up, and come home the last three furlongs. That is what he talked about with Mr. Calvin, he says, on Thursday morning. That is, if you believe that or not. But that is another matter. That is, hold the horse up and come home. Nowhere is there a suggestion that anyone ever suggested this horse should be hunted along early or made to race early, or should be up with the leaders early.

20

30

Perhaps the reason is not far to seek. Here was a two-year old by Battle Waggon, out of a New Zealand Oaks winner. It was a horse which anyone might have expected, even if he had a lot of pace, ultimately would stay; a horse that people would have normally thought they would want to give a chance to stay. In the stable the horse was in, what is there, one might ask, unusual in an instruction or a desire to see the horse ridden a bit patiently - back in the field a bit, held up early and coming home? That is consistent with the way very many of Mr. Cummings' horses normally race. We will submit that it is precisely what one expect that Mr. Cummings, and owners with any knowledge of racing, with a horse bred that way, would be wanting it to do in its races; that is, not to be racing up near the lead in two-year old races, and teaching it perhaps that that is the only

40

way to race. At any rate, we submit that there is nothing unusual to which one can point in an instruction such as that.

It is perhaps interesting to observe that among the stewards' evidence we have Mr. Meehan, who does not really in the end complain about the horse having gone back as far as he did. His complaint is that Cuddihy, to his mind, did not ride the horse along at any stage of the race.

10

(Continued on page 167)

164/166. Mr. Staff

MR.STAFF: Mr. Mahoney on the other hand, has no complaint, he says, except that the horse was not hit with the whip in the last bit, he does not complain at all about the way the horse was ridden earlier except that it was allowed to run along at its own pace and it was not hit with the whip in the last few furlongs. You gentlemen will remember that his complaint was that the horse was not struck with the whip because he believed if it was it would go faster over the last bit.

20

Here you find the Stewards the only two who gave evidence of complaint about the horses running, in disagreement about what the complaint is, they both complain but they have a completely different complaint because Mr. Meehan says he did not complain as a matter of any significance of the failure to use the whip so there we have disagreement even amongst themselves.

Then we have Mr. Poulson's evidence. Mr. Poulson, gentlemen, who has a great deal of experience - and by what I say of Mr. Poulson I am not being critical of the A.J.C. Stewards one bit, they do a very fine job - but Mr. Poulson had one advantage in assessing this horse in this race, he had known this horse from the time it was first broken in, he had seen it in work and every racecourse appearance it had made in New Zealand and he had seen what he said were propensities, he had seen what he said was the way to ride this colt and the only satisfactory way to ride this horse at this stage of development, to keep a firm hold of his head and he told you gentlemen that if you let his head go he was likely to run off the course and he was a horse, under pressure, likely to run off.

30

40

Gentlemen, he saw the film for the first time and by his

review of that film demonstrated his professional approach, if ever demonstration was needed he talked on the observation of the film and taking into account the horse's runs in New Zealand, his observation of the film and his expertise over 28 years he said he thought Cuddihy rode the horse well, he thought it was a good ride and give him every possible chance.

Gentlemen, there may be two views but who can say with any reasonable satisfaction - indeed who can say without a reasonable element of doubt - that Mr. Poulson is wrong in a way which points to this horse being pulled up in its races and this is what you gentlemen have to do for this appeal to be dismissed. 10

Here is this gentleman, against whose integrity nothing was suggested, nor could be; a gentleman who came here with the approval and knowledge of the New Zealand Racing Conference, a gentleman who has been around horses for goodness knows how many years and who has been with racing for 28 years and has been observing films for almost as long and indeed, let me say, no cross examination was directed at him to suggest any error or that he was not telling the truth as he say and why would this gentleman come here to tell you gentlemen untruths? He obviously believes what he told you, he spoke with the authority of an expert, of a professional of 28 years' standing and whether you agree with him or not is not the point, the point in the end, we submit, is can you say in the light of his evidence there is no reasonable doubt that this horse was not permitted to run on its merits. We say, gentlemen, that there is no way in the world - without disbelieving Mr. Poulson and believing that he came here to tell a pack of lies - that you gentlemen could come to that conclusion. 20 30

I do not propose to traverse the evidence in detail, you have all seen the transcript before the Stewards and heard evidence for many many hours and given great attention to it and it would be thoroughly discourteous of me to take undue time traversing the evidence. But may I remind you gentlemen of a few things: firstly the instructions given by Calvin to Cuddihy were given in the light of some knowledge of the horse's erratic running in New Zealand and I say "erratic" to adopt one of Mr. Poulson's expressions but certainly his evidence, and the evidence of Mr. Wallace, who had no reason to come here to tell lies nor were any reasons advanced or 40

confirmed, and he spoke of the erratic behaviour and the tendency of the horse to veer to the left that Mr. Poulson spoke of.

167.

The instructions that were given were given by Mr. Calvin with some knowledge of the erratic behaviour but without the detailed knowledge that you gentlemen now have and indeed that the Stewards here had not had an opportunity of having. He spoke of being told by Rogerson about the horse's running off the track in New Zealand when ridden by Stacey. And first Mr. Cummings said the horse had hung in a barrier trial although not badly. With that knowledge of the horse's tendency, and we would submit without knowledge, or doubt of the real fitness of the horse, one might have thought that the instruction "hold him up and let him come home; don't hit him with the whip unless you are really desperate" were instructions at least as likely to bring a successful ride as any other instructions that could be given. I suppose the tendency is to say "jump him out, hunt him up early and be running second or third and then hit him with the whip once you come over the rise". Those instructions might have won the race but no one can say, with respect, if I may ask rhetorically, that they were more likely to win with the horse on that particular day than the instructions that were given. Mr. Poulson said no, the way he was ridden gave him the best chance. Mr. Mahoney said a hit with the whip in the last few yards and he would have won the race. But Mr. Mahoney did not have the detailed knowledge of his running in New Zealand. Why would he have become tractible in a race if he had in fact run in this fashion in New Zealand? One might really doubt whether the parties would ever - this is after Mr. Poulson's evidence, the details of it and the observation of the films, have been charged.

No valid criticism can be made of the instructions that were given and it does not matter for these purposes that those instructions might have been unduly cautious or perhaps overdone by the rider. We all know that at times jockeys overdo their instructions; we all know, I suppose, at times people can be unduly cautious about their instructions; Mr. Calvin perhaps having heard of the erratic behaviour of the horse having run off once in New Zealand when struck with the whip, may very well have taken a very cautious view in giving his instructions not to hit him with the whip. But that is a far cry from being a party to a corrupt arrangement the nature of which emphasises the serious nature of the task that confronts you gentlemen today because a corrupt arrangement

charged against Mr. Calvin involves that he intended to defraud the public, the Australian Jockey Club and everybody else and I suppose his partner, Mr. Perc Galea, because this horse to his knowledge was a hot favourite this day, well backed by the public and to give an instruction that it be not permitted to win is what is really a criminal offence.

You gentlemen must evaluate the evidence and must look for real evidence, not what may be thought to be mere suspicions derived from the way the horse ran and I say that to you gentlemen because again I cannot emphasise too much our proposition that no valid criticism, no justifiable criticism of the nature of the instructions the only instruction of which there is evidence, can really be made. 10

It may be that Mr. Calvin was unduly cautious, it may be that he committed an error of judgement, it may be that the boy could have been a bit closer without prejudicing the horse's chances and it may be that the boy became desperate and was free to use the whip because on all hands the instruction included the instruction, as it were, to use the whip if it is desperate, maybe the boy failed to realise it was desperate 20 or 30 metres out but that provides no evidence against Mr. Calvin. He did not say "Do not use the whip under any circumstances". 20

It may be, as another possible explanation, that it was a matter of hard condition that beat this horse and nothing else and Mr. Cummings said he thought the horse's class would carry him through if he were fit enough and Mr. Cummings' reservation was "If he were fit enough". 30

Mr. Dawson in the end, although he did not want to admit it, said that he had conveyed the doubts to Mr. Cummings and we submit that there could be no doubt that there were doubts in the minds of the - it is significant that not one of the Stewards bothered to look at this horse's condition when he came back to scale and if there is a criticism to be made of the A.J.C. Stewards in this case that is it. Admitting the fine job they do, on this occasion we say if they had in mind to charge the parties as they did they should have 40

168.

checked the horse's condition when he came back to scale,

Mr. Meehan and Mr. Mahoney cannot say the horse had blown up or not, because they did not look.

If you are going to charge parties with this virtually criminal offence should not the first thing to be done be to ascertain how the horse pulled up after the race and everyone knows it can simply be done by observing the horse when it comes back to scale and yet it was not done, that is the vital piece of evidence which could have set aside the question of the horse's fitness if we had known and to support that there is a gap in the area of the very vital material because this horse was close enough to win a furlong and a half out and we would submit that the probability is quite high that it was when he ran out of condition that he started also to drift off the track.

10

But those are only possibilities we are talking about. Is it an area of doubt? If it is then the appellant, we submit, is entitled to the benefit of that doubt.

Now it may also have been that Mr. Calvin and Mr. Cuddihy overdid in their minds the risk of using the whip. It may be that you gentlemen can properly reach that conclusion if there were not the risks involved that they thought there were. But if that be all that does not go far enough to establish the charge, all it does is to establish that they were unduly cautious, that they made an error of judgement, that they assessed the reason incorrectly and who can really know what the reason involved is. Mr. Poulson thought there was a very real risk. Can you gentlemen say that he and Calvin and Cuddihy were all so demonstrably wrong that there was no reasonable doubt left. We would submit not.

20

30

It is easy enough with hindsight to say that the horse might have been ridden in a different way, might have been a bit closer earlier or would have won if he had been given a couple of slaps on the backside, that is simply a personal judgement that one or other of you gentlemen may be able to make but it has to be stronger than that before this case really gets off the ground.

Under those circumstances finally in our submission it is impossible to find that Mr. Calvin was a party, either by reason of the instructions which he gave or by reason of his acknowledgement that the ride was in accordance with his instruction.

40

It will no doubt be submitted to you gentlemen that Mr. Calvin's motivation was to get a better price or a different price to be able to back the horse on another day in the expectation of it being fitter to win or more certain to win. If that be so, gentlemen, if one examines that it is a pretty thin old suggestion I put to you gentlemen, a pretty thin suggestion that a jockey and a trainer obeyed instructions to get beaten, to let him get up where he did and at the finish to let him finish fourth in the fashion he did, it is pretty unlikely that he would have ridden the horse that way, one would think that they would be unlikely to get a better price on another day than they were likely to get that day and on the other hand when one looks at Mr. Calvin's involvement in the industry and in racing generally - and in this horse - why would he act as he did when this amount of money had been bet?

10

Gentlemen, it is of course, a complete answer for Mr. Calvin to the charge if Cuddihy justifies his ride, if Cuddihy gave this horse a chance to win, if he did not in fact prevent him from running on his merits, then Mr. Calvin succeeds also because unless Cuddihy prevented this horse running on its merits again there can be no offence against Calvin being a party to it not being run on its merits.

20

I do not, however, propose to deal in any detail with Cuddihy's ride than I have already put to you, that is Mr. McLelland's task, and I am sure you don't want to hear us twice on this subject matter, you have listened to me patiently for some time and I propose to move on but I would like to make a few short observations about that matter.

30

169.

We would submit that the only inference that can be drawn from the character of the ride itself is one of three, if one starts with the assumption that the ride was less than ideal or less than what one might reasonably expect of a jockey of Cuddihy's experience. If he fell short of what would ordinarily be expected then it is explicable on any one of three grounds; there is the fact of a corrupt promisi having been made; it is explicable on the ground that the jockey made an error of judgement or more than one error of judgement - which has happened more than once on a racecourse and will happen again no doubt; it is explicable on the ground of incompetence in the particular circumstances and that

40

has happened before today and found to have happened and no doubt will happen again; and it is explicable also on the ground that within the meaning of Rule 135(b) Cuddihy failed to take all the necessary precautions throughout the race to make sure that the horse is given an opportunity to win.

Insofar as the Stewards have expressed their views, Mr. Meehan's view is that he did not improve throughout the race and he should have. That may well be a failure to take reasonable and permissible measures to ensure that the horse had every opportunity to win. Mr. Meehan has said that he should have hit the horse just in the last little bit with the whip. Again that may be a failure to take a reasonable and proper measure to ensure that the horse was permitted to win. But it is just as explicable on that ground as either by real or any corrupt bargain, you must find something more than the failure to take those measures and we submit it is simply not here.

Gentlemen, before concluding, there are just three other subject matters to which I want to make some reference, indeed I feel I must make some reference. First of all Mr. Mason, the criticism of the form of Mr. Mason's cheque "6,000" and it is suggested that that means \$6,000

MR.PELLY: That is acceptable.

MR.STAFF: Thank you Mr. Pelly I will say no more than that.

Then there was some criticism that Mr. Mason's cheque was cashed at the same bank as where it was drawn and all I can say is where else would it be cashed? If someone wants to cash a cheque drawn on a bank you would normally cash it there, it was not a bank cheque and certainly unless he went to his own bank where he is known he could not cash it at another bank unless it was first certified and there is no criticism of that and still it seems to have been suggested that because it was drawn on Mr. Mason's business account it was odd and perhaps one might accept that. But examination of Mr. Mason's cheque book produced later in the day indicates that payment to Terry Page and other bookmakers in amounts which seem to be fairly obviously amounts which might be settlement of bets, so obviously this is not the only occasion when Mr. Mason used his business account to settle a debt.

Then, gentlemen, Mr. Dawson: I don't want to say very much to you gentlemen about Mr. Dawson but there was an obvious attempt made this morning by Mr. Dawson, no doubt thinking it would aid his own defence, to cast doubt upon the evidence and that is why I thought it was necessary to cross examine him somewhat strongly in the way in which, among other circumstances, I certainly would not have done. This boy set out to suggest to you gentlemen this morning that there was no doubt about this horse's fitness, that he was fit to win and that was always his view and you saw just how honest that view was and then he told you the story about wanting to put Duggan on Sticks and Stones in the Galaxy whilst Mr. Calvin wanted Banks. That was suggested to be something detrimental to Mr. Calvin but what it is was not spelled out and you gentlemen saw what that story was, it was obviously a story thought up off the top of someone's head, for Duggan to ride at a weight that he could not possibly have done. Finally, however, Mr. Dawson's real view came out; he told you that he knew everything would be alright, that he did not bother to check with Mr. Calvin or Cuddihy because he knew everything was alright, he agreed the horse was ridden in the way he would have wanted it ridden, namely hold it up and come home the last three. I will say

170.

no more about that, you have in mind all his evidence and I submit that you gentlemen would not let any of the attempt to create prejudice for the other appellants to succeed.

Finally there is one submission of the law which I must put to you gentlemen and I will do it very shortly.

It is our submission that there was in the Stewards' Enquiry, and I put this as in no way being critical of the Stewards, they have undoubtedly conducted this enquiry in the way they have conducted enquiries from time immemorial, but it is our submission that the procedures employed are such as to cause a denial of natural justice, there was a failure to observe the rules of natural justice by the Stewards; first of all by having regard to the general procedure which for many years has been used in Stewards' enquiries, they act as private detective - first of all I should say they act as observers and in that capacity as potential witnesses, they act as private detectives collecting material from third parties, they act as the interrogators and then

act as prosecutors by then charging the persons and then they act as judges and to perform all those functions and then to sit as a judge is a breach of the laws of natural justice which should exist.

One of the judges, Mr. Mahoney, was absent while some of the evidence was given, that in itself has been said over and over again to be a fundamental denial of natural justice, you simply cannot sit as a judge unless you hear the evidence.

10

Mr. Hickman went off collecting evidence from bookmakers and bookmakers' clerks and interrogated them outside the enquiry and then sat as a judge when he came back. You cannot do that and comply with the rules of natural justice; they promised them an adjournment but charged them before giving the adjournment and we submit again that is a denial of natural justice and finally they heard the evidence, and a good deal of evidence, in the absence of the parties even after they charged the parties. You simply cannot dispense justice behind closed doors, taking evidence without ever telling the parties what it was or even that it was taken and the courts simply won't permit it.

20

For those reasons we submit there are, and have been in more recent times, a string of instances in which these rules of natural justice have been enforced by the Courts against tribunals such as this one - the Greyhound Racing Control Board and the Trotting Clubs have all, in more recent times, been looked at by the Courts and not so long ago the High Court held that the mere presence of the person who had instigated the complaint, his mere presence in the deliberations of those sitting as judges was enough to constitute a denial of natural justice.

30

MR.HOWELL: You are thinking of Stolley are you?

MR.STAFF: Yes. It does not need to be one of the judges but to have present one of the complainants who instituted the charges is an invalidating factor. For all those reasons we submit that Mr. Calvin's appeal should be upheld.

(Luncheon Adjournment)

40

ON RESUMING AT 2,00 p.m.

MR.McLELLAND: Mr. Staff has already adverted to the

fact that this Committee is sitting and exercising the responsibility imposed upon it by the Australian Jockey Club Act. He further referred to a couple of sections of the provision and there is one I wish to mention merely by way of emphasis and the Committee will recall that the section provides that such an appeal as this is in the nature of a re-hearing. That is a very important provision, it means that this Committee, each member of the Committee, is obliged as a matter of responsibility to the appellants that come before it to make an independent judgement on the evidence which is before the Committee

10

171.

and that evidence, of course, includes the record of proceedings before the Stewards but is by no means bound to it and in this case it of course goes very much beyond it. I want to make that point at the outset because as I think Mr. Staff mentioned by implication this Committee has had before it evidence which, one might speculate, if it had been before the Stewards would have meant that we would not be here today.

20

Before I go to that evidence I want to mention briefly the record of the Stewards' Enquiry because after all that is part of the material before the Committee and I want to say first of all that I do respectfully adopt what Mr. Staff has said about the procedures adopted by the Stewards at their enquiry and I do that without any criticism of the Stewards on this occasion for reasons which Mr. Staff indicated.

30

There is one aspect of the Stewards' procedures which Mr. Staff did not advert to which I think may be of help to you gentlemen, if I mention it, and that is this that not only do parties who are involved in the Stewards' Enquiry not know what evidence is given by other people called before the Stewards - that is one thing - but they do not know what is in the minds of the individual Stewards themselves because the Stewards do not give evidence before themselves, having seen a race, having their own ideas of what goes on, and that can lead to problems and if one takes time to study the record in these proceedings one sees how, unless by accident in the form of a question it becomes apparent what a particular Steward saw in a race it remains unknown. Take this, for example; it is abundantly clear now, one would have thought, that at no stage during this race did Count Mayo run on the fence, the horse was always one away from the fence and always had one horse on the inside - I would think that

40

concept was established beyond doubt. But when one looks at the transcript of the evidence one sees that Mr. Swain at page 3 of the transcript, the very first question that appears on that page, there is questioning Cuddihy "Between the 500 and 600 would you agree that you raced on the fence" and Cuddihy denies that naturally enough but it indicates how a Steward can form an opinion during the running of the race and one does not know what effect that sort of mistake or misobservation has on the result.

10

Another case occurred on Friday here in the evidence. You will recall that Cuddihy said on page 1 "He jumped alright and put his head in the air for about 50 metres". I think one of the first questions Mr. Falkingham put to Mr. Meehan on Friday was that statement of Cuddihy's and Mr. Meehan said "I dispute that the horse had his head in the air". When Mr. Carlton was called, he being on the stand at the 600 metres - Mr. Meehan and Mahoney were in the box at the finish - Mr. Carlton said "Yes, I saw the horse with its head in the air for about 50 metres" and Mr. Swain said that he saw the horse move out and Mr. McKay, who said he had a good view of the start, said he had his head in the air for about 50 metres. Now, Mr. Meehan apparently did not see that but he is a long way from the start and apparently he did not see it. Without any suggestion of deliberate misreading of the race, in the minds of the Stewards impressions are formed which may turn out not to be accurate and that is one example of it again.

20

Finally on this aspect, the Committee will recall that one of the complaints that Mr. Meehan expressed about the the riding was that the horse was not ridden out hands and heels in the straight. In cross examination I put to him that indeed it would be very difficult to say that the jockey was not using his heels vigorously and Mr. Meehan's reply to that was "I was looking more at his hands than his heels" in other words, Mr. Meehan was concentrating on the jockey's hands at that time, did not particularly notice his heels, and it was on that observation that he founded the view that the jockey was not riding the horse out hands and heels. When one looks at the film it is quite clear in the last furlong of the race the jockey was vigorously using his heels and if one counts the vigorous thrust of the left heel one could count, I would say, at least 20 times the vigorous thrust of the left heel. I am seeking to demonstrate that you gentlemen must look to the evidence before you, rather than simply overseeing what happened before the Stewards, and it

30

40

is an independent judgement of what you gentlemen see and observe in the witnesses that come before you that must be decided.

As I mentioned earlier, the fact is in this appeal - I don't know, it may be unusual - this Committee has had a great deal of evidence which was not before the Stewards and not only a great deal of evidence in quantity but extremely significant evidence. One of the high points of that evidence was the testimony given by Mr. Poulson that Mr. Staff has already referred to. 10

Mr. Poulson's evidence can be divided into two separate aspects, he gave evidence on facts, things he had observed himself in New Zealand and he gave evidence of his opinions. It is completely clear that Poulson is a man who is a highly skilled observer of horses and races; he is a man who demonstrated an amazing grasp of detail, he is a man who demonstrated his ability to read a race from a film, to analyse not only in detail but backed up with sound reasons what has happened in a horse race. It would be unthinkable that his reliability or his credibility could be attacked, and indeed of course, it was not attacked, and his evidence has been before you in all the detail of which he gave it unassailed by attack. 20

The facts that he testified to are really unchallengeable in this hearing, and unchallenged. His opinions are entitled to the greatest respect, they are shown to be solidly based and they have not been shaken, or sought to be shaken in any substantial way at all. It may well be suggested by others, perhaps, that they are opinions with which everyone would not agree but be that as it may they are opinions honestly held and backed up by sound reasons and they are opinions based on facts which really were not known to anyone else who has expressed an opinion on this race, facts which Poulson was in an extraordinarily good position to know and have observed himself. 30

Not only was there his evidence but there was the evidence of Mr. Wallace, the previous trainer of this horse and Mr. Wallace's evidence, again unattacked, corroborated in every important detail what everyone has said about this horse in New Zealand and those people have come a long way and they have had no possible motive in misleading you, nothing against their integrity, no one has suggested anything and added to that you have before you written statements from the two jockeys from New Zealand, Skelton and Stacey, which again corroborate in important details 40

what has been said by Poulson and Wallace in this room; you have not been taken to the statements of the jockeys but they are in the material before you, they were tendered by Mr. Falkingham in the early stages of this appeal and I would comment further to you because they do corroborate what has already been said.

Skelton said that he rode Count Mayo in four of his five starts and rode him work - "he always.....outside of the track" - now, this is Skelton, the most experienced New Zealand jockey. He said he confirmed this when he ran to the outside and Murray Stacey hit him behind the saddle. He said "I have always kept a good hold of his head.....pressure him unduly". 10

MR.HOWELL: And then he says "I regard this colt as having considerable ability".

MR.McLELLAND: That is correct and indeed it has. Then Stacey's statement, he says "I have worked with Count Mayo ever since he entered the stable.....due to shin-soreness". Then he deals with the Calliope Handicap "Slow to begin.....only beaten by a head". Then there is the statement by Mr. Wallace, a fairly lengthy statement, I won't read it because I took Mr. Wallace through the relevant parts when he was here and the Committee will remember his evidence backed up to the hilt what Mr. Poulson said. It showed that the horse in New Zealand tended to be unbalanced for a while and secondly this persistent inclination to run to the left. 20

173.

Just while I am on this New Zealand material, the Committee will recall that Mr. Falkingham put to both Poulson and Wallace these little potted notes from the newspapers, one does not know the reason why they were prepared but presumably to give a rundown on the horse but it is quite clear after the evidence of Poulson and Wallace in relation to them that in respect of relevance to this appeal and this Committee they are not very accurate statements of the material parts of the races and it would appear from the questions that Mr. Falkingham put about them it may be that the Stewards placed too great a reliance on this material. Those matters were put to Poulson and Wallace. 30 40

Finally, on the New Zealand material, one of the things that Mr. Poulson freely admitted in cross examination was that looking at a film of the race is not as good as looking at the film itself, a proposition with which it is

difficult to disagree but the film of the New Zealand races suffered in two ways in relation to the Stewards' Enquiry hearing; firstly, unfortunately, through nobody's fault, they were only bits of the races, small bits at that, and the most significant parts of the races were not on film and secondly it would appear that an interpretation placed on the arm action of Skelton in one of those races was quite mistaken and both Poulson and Wallace were quite firm in their evidence about that arm action which Mr. Falkingham, in his opening, described as hitting the horse and which unexplained might seem to be inconsistent with what the horse would do under the whip. That is the New Zealand material and what arises from the evidence, particularly of Poulson supported as it is by all that other evidence I have referred to, are two things. The first is that the instructions which Cuddihy says were given to him in this race were entirely appropriate to this horse; and the second thing is that the way Cuddihy rode the race, as appears from the film before you, was the best way to ride this horse at this stage. Those two things appear with crystal clarity, they are there are they are supported, I would suggest, by the evidence as a whole which you have heard but it is impossible to disregard that evidence. As Mr. Staff said really the ultimate question for this Committee is whether it has been established beyond reasonable doubt that these appellants committed these offences. It could not be so established without either-rejecting this evidence of Poulson and the other evidence which supports it or just ignoring it. Neither of those causes can properly be taken, the Committee cannot reject it, there is no basis on which it could be rejected and of course it just cannot be ignored, it is there and it is highly significant. It is our submission that once that evidence is submitted there really is no case against them and that ought to be the end of the appeal.

10

20

30

Gentlemen, I want to deal briefly - and I do not want to try your patience any more than is necessary with the exigencies of the case - just to deal with other points in the evidence and points which appear to be of particular significance and the first thing is to refer you to the evidence of the trainer Cummings.

40

His evidence in the record before the Stewards is about page 17 and you will recall, gentlemen, that Cuddihy has given evidence before you that in this barrier trial on Tuesday this horse was hanging but because it had horses outside it it did not run off the track and appeared under control.

MR.McLELLAND (continuing): I am not sure what will be suggested about this, but the evidence of Mr. Cummings indicates clearly that that is no fabrication. Near the top of p.17 Mr. Cummings is deposing to a conversation with Mr. Calvin on Friday or Saturday - at least before the race in question - that the horse was trialed on the previous Tuesday; that Cuddihy rode it in the trial and it trialed rather nicely although it hung out in the trials. But, he said, the horse had other horses on his outside to get him round the turns. Then he deals with New Zealand aspects of the matter. 10

It is clear that the question of the horse hanging out in the trials was discussed before this race. That is no fabrication after the event; the evidence of Cummings demonstrates that.

At the bottom of that page Mr. Mahoney asked a couple of questions about the trial. He asked, "You say that with Cuddihy it tried to hang in the trial?" Mr. Cummings replied, "They told him to keep him inside a couple of horses to see how he goes, and he hung slightly". 20

Then there is the reference to the pointed tooth, and so on; I have already cross-examined about that. I do not need to remind the committee of that evidence about the tooth. I have indicated in cross-examination Mr. Cummings' evidence about the horse not being in good condition and that class might give him a win. I will not go to that again.

It is interesting to see, about halfway downpage 18, a discussion that Mr. Cummings said he had with Mr. Calvin, about how the horse was to be ridden. He said, "I told him he would have to keep in touch and ride him out hands and heels. I did not think he was going to have any problems in the race with him being wayward anyway." Then Mr. Mahoney asked, "Were you aware that the horse was not going to be ridden with the whip?" He replied, "No. I said to ride him hands and heels, if he is going well - to ride out at his own discretion." I am not sure what that means, but it is clear that Mr.Cummings said, "Ride this horse out hands and heels". As I understand it, that means without the whip. 30 40

MR.HOWELL: Doesn't he clear it up in the next couple of questions?

MR. McLELLAND: I am not sure it does clear it up. It may. Mr. Mahoney asked, "You did not specifically say not to use the whip on the horse?" Mr. Cummings replied, "Only if you are going well."

I am not sure what this is meant to be or to indicate. It is a little ambiguous. I do not know what inference should be drawn from that statement, but I am seeking to make the point that hands and heels was in the mind of Mr. Cummings, and that is consistent with the instructions given in this race. 10

There is another aspect of Mr. Cummings' evidence that you may think is important. I will draw it to your attention. That is, his evidence on Friday here. He said, "Having heard Cuddihy's side of the story, and the history of the performance of the horse in New Zealand, I gave him the benefit of the doubt." Mr. Cummings gave Cuddihy the benefit of the doubt about this race. If ever there was a man who should have been up in arms if he thought this horse had been pulled, it was Mr. Cummings; yet Mr. Cummings, having heard Cuddihy's side of the story, and having made himself much more familiar than he had been previously with the history of the horse in New Zealand, he was prepared to give Cuddihy the benefit of the doubt. 20

175. Mr. McLelland

If there is a doubt, your duty is to give him the benefit of that doubt. I am not suggesting for a moment that simply because Mr. Cummings did you should, but it is significant perhaps that Mr. Cummings, against whom nothing has been suggested in this appeal, should have taken that view and that course with this jockey. 30

Another significant piece of evidence, and one the significance of which was not appreciated until Friday, was the condition of the horse's mouth after the race. You will recall that Mr. Meehan, in saying that he had not observed any hanging by this horse, said something like this - I have not an exact note - "If this horse had been hanging badly one would have expected some sort of injury to that part of the mouth where the two lips join on the lefthand side." There was some discussion about left or right. I think ultimately it became clear that Mr. Meehan was saying, "If you try to pull a horse's head around from the right, the ring in the bit on the left is likely to cause some injury to the mouth on the lefthand side as it was pulled across the mouth." 40

It was at that point that I referred him to the veterinarian's certificate, which the stewards had obtained immediately after the race. It bears the time 1.50. It is in evidence.

MR.HOWELL: It is at page 7 of the transcript.

MR.McLELLAND: Yes, at the middle of page 7. It said, "I examined Count Mayo at the stewards' request at 1.50pm." We do not know why he was asked to examine the horse. He may have been asked to see whether anything was wrong with it, which was observable. His report went on, "There appeared to be no abnormality apart from a laceration with bruising inside the left commissure of the mouth." That is the very place one would have expected an injury if this hanging had taken place. 10

It does not appear that the significance of that was appreciated at the time. Yet it is entirely corroborative of Cuddihy's evidence about the horse's tendencies and behaviour during the race, and Cuddihy's desire to keep a firm hold on his head to get it round. Cuddihy did not know about that certificate at the time; it was not shown to him. But there it is - the veterinary surgeon gave the very evidence that corroborates what Cuddihy said. The significance of it does not appear to have become clear until here on Friday. But when you look at it, it is a very important piece of evidence in the case. 20

Going to the race itself, I have dealt with the fact that the testimony of three stewards corroborates Cuddihy's version, that the horse had its head in the air for about 50 metres after the start. As we all know, it veered out fairly suddenly, and then came back again shortly after the start. That was clearly observable on the film. Also, it is common ground that at that point, or shortly after, Cuddihy pulled up to take a position in the field, running about fifth or sixth - a position which he regarded as a reasonable position having regard to the fact that the leaders had set a very fast pace at the commencement of the race, and were still going fast. 30

The evidence then is that between the 600 and the 400 metres the horse improved its position. Apart from the film, the evidence does not make clear precisely how much. Unquestionably the horse improved its position in that part of the race. 40

There is evidence that at the 1000 metres - I think Mr. Carlton may have said this - the horse did move out to some extent. Cuddihy says that throughout that period the horse was showing him, Cuddihy, a tendency to want to hang. All the stewards who were there would say, and rightly so, that they did not observe

176. Mr. McLelland

that but it must be conceded on all sides that that could well have happened without its being obvious to the stewards who were there. So far as the stewards who were in the stand were concerned, it would have been impossible for them to observe any hanging tendency at that part of the race.

10

Mr. Poulson, having seen the film, said that in his view at the 400 metres this horse was in a handy position.

This brings me to the question of the whip. I do not know whether this has really any significance or not. Cuddihy says he did give the horse a couple of gentle slaps on the shoulder somewhere between the 600 and the 400 metres. You cannot see it on the film. I think Mr. Howell suggested you could see one of them. I could not pick it up on the film.

20

MR.HOWELL: On the turn.

MR.McLELLAND: That is not surprising. It was a dark whip, which he had in his left hand on the horse's shoulder. The sort of action he was describing was not the sort that would be visible. Certainly it was not like hitting the horse with the whip; it is an action I would have thought that would have little or no significance in this appeal, but it explains Cuddihy's evidence before the stewards, that he did to some degree use the whip during the race. That is when it was, and that was the nature of the use.

30

I only mention that because that occurred between the 600 and the 400 metres. When you reflect on it, the left shoulder of the horse as it got well past the 600 and well towards the 400 metres; It would be on the outside of the track and out of the range of vision of any of those stewards.

At any rate, Mr. Poulsen said that up to that point of time the horse had been ridden well and intelligently, and in accordance with what he believed was the way that horse should be ridden.

40

You then come up the rise. I do not think there is any particular criticism directed at Cuddihy over that part of the race. It seems to be conceded on all sides that at the 200 metres this horse was in a winning position. Mr. Meehan said so. I think others of the stewards probably said so. No one has suggested otherwise. I think even Mr. Dawson, for what his evidence is worth - and I do not suggest it is worth a great deal - said that he thought the horse would bolt in at this stage of the race. 10

I pause there to suggest this to you: if Cuddihy had really tried to stop this horse winning the race, surely the way he rode the race to the point was not the way to do it? One would have thought, if one were trying to stop a horse, one would have buried it near the fence somewhere behind a whole lot of other horses. But there is no suggestion of anything like that. That would have been a much easier way, one would think, if one were trying to pull a horse up, to do it. 20

One then has the last furlong or so of the race. There can be no question that the horse veered out. Whether it was a drift or a hang, or what it was, the horse moved out fairly dramatically in that part of the race.

The criticism appears to be that Cuddihy did not then use the whip on the horse. That is the criticism that has to be answered.

177. Mr. McLelland.

Put yourselves into Cuddihy's position. He had been instructed not to use the whip, except perhaps in an emergency. He had been told that the horse when hit with the whip in New Zealand had run all over the place. Whether that is an exaggeration or not, that is what he believed and had been told. He, having carried out some personal investigation into other races the horse had had in New Zealand, had been told that. That is what he believed. He knew that this was a horse on which it was necessary to hold its head. At least he knew that, if he were to whip the horse, he would have to let go its head. You cannot whip a horse and keep a tight hold on its head. He knew from his own observations that it was moving out. He knew the horse was not going straight. He knew from his training, and the fact that he had been told on innumerable occasions in the past by the stewards, that when a horse is moving across the track, it is the 30 40

first duty of a jockey to straighten the horse and keep it straight.

I am not saying that all these things flashed vividly through his mind in a split second. But that was his conditioning. He knew that he had been suspended more than once in the past for using the whip in the straight, and thereby causing a horse not to go straight. If you look at Cuddihy's racing record, you can pick up those occasions; they are explicitly stated. Cuddihy's record verifies what Cuddihy said. He was suspended at Rosehill on 28th June, 1969, for allowing his horse to shift ground outwards over the last furlong. The same sort of thing at Hawkesbury on 20th May, 1971, for shifting ground outwards. Then on 17th March, 1973, for allowing Favoured to shift ground outwards when hit with the whip. On 25th January, 1974, he was suspended for allowing Star Struck to shift ground at the 100 metres. Similarly in Queensland in June, 1975. That does not appear here.

10

Mr. Mahoney in his evidence said that it is the first duty of a jockey, if a horse is shifting, to straighten it up. He said that there are two ways of straightening a horse - one with the reins and the other with the whip.

20

Can Cuddihy be blamed for not using the whip in this situation to straighten this horse? That is, knowing what he did about the horse, and knowing it was veering out at the end of this race, and not knowing what was behind him? Surely it is going a little far to say that he should be deemed guilty because he did not let go the reins, let the horse's head go, and use the whip vigorously at that stage of the race?

30

That would be unreal. If that is the criticism directed at Cuddihy for his riding in this race, it is criticism that does not stand up.

I do not accept Mr. Staff's suggestion, which he put as a possibility - that Cuddihy's riding in this race might have been careless or incompetent, or whatever it was.

MR.HOWELL: You cannot, can you?

MR. McLELLAND: I do not. I maintain that Cuddihy's riding in this race was impeccable. I suggest that what

40

Mr. Poulsen said about it is true - that this race was ridden by Cuddihy as well as it could be ridden, having regard to this horse and what was known about it.

I suggest that, if this Committee had to make up its mind on the bare question of whether this race was ridden by Cuddihy as well as it could have been ridden, I submit that the Committee would answer that in the affirmative. But, of course, that is not the Committee's task. Its task is to decide whether there is any reasonable doubt about the matter. I submit that question answers itself. 10

178. Mr. McLelland

I draw attention to the fact that Cuddihy was wearing spurs. He did not have to wear spurs. If you were going to pull up a horse, I suppose spurs would not be much help to you, particularly if you were going to use the vigour with your heels as Cuddihy obviously did in the last furlong of this race. There could be no question of that; it stands out on the film. If you look at the last furlong of the film, and look at his left leg, there cannot be the slightest question about the vigour in which he used his heels in that part of the race. 20

Mr. Staff dealt with the fitness of the horse. I do not propose to deal with that. In regard to the betting transactions between Mr. Mason and Bartley. I submit it is fairly remote from the issues in this case when one tries to analyse it. But, for what it is worth, I suggest to you that however extraordinary one finds Mr. Bartley's evidence - and one can almost be forgiven for regarding it as something out of Damon Runyon in some respects - Bartley had no-motivation to come here and tell lies to the Committee about his activities. Why should he have told this Committee about his betting activities? What possible motivation could he have for coming along and telling the Committee these things which provoked - rightly or wrongly - criticism from the Committee. When I say rightly or wrongly, I am not suggesting it is wrong by any means, but why would Mr. Bartley come here and allow himself to be subjected to criticism and tell lies about the betting transaction with Mr. Mason? 30 40

I suggest that that evidence, if it be relevant at all, has a ring of truth about it. It is evidence that is believable, and supported as it is by this \$6000 cheque. The cheque has a bank stamp on it. It has a computer

mark on it on the back. Obviously it was presented at the bank on the day after, 16th March. It was met and there is no sign of it not being paid. If the Committee comes to some conclusion about that evidence, there is really little basis on which a conclusion adverse to Cuddihy can be reached. When you consider it, it appears to establish that this bet was transmitted from Mason to Bartley. The fact that it did not get any further is little to the point. But it corroborates Mr. Calvin's version of the transaction. 10

There are two final matters. You will forgive me, I hope, when I emphasize the gravity of your responsibility as regards Cuddihy. To uphold Cuddihy's disqualification in this matter is to take away from him the only means of livelihood for which he has had any training. It is not just twelve months' disqualification. A jockey just cannot turn himself off and on again after twelve months. If Cuddihy were not permitted to earn his living as a jockey for twelve months, he would have to earn in some other way. He is trained for nothing. He would have to get a labouring job. It would be impossible for him to get back to racing after he had had twelve months doing something else. 20

That is the way it is. I want to make the point that it is not a mathematical calculation of twelve months. If you uphold this disqualification, it really could amount to a lifetime sentence so far as Cuddihy is concerned in his activities as a jockey. It is not only that: also you would be destroying the financial underpinning of his family. You have heard about his family set-up. 30

I do not say these things and ask you to feel sorry for him; I say them to emphasize the gravity of your responsibility in relation to an appeal such as this. It emphasizes that what would be the rule of commonsense is the rule of law; that is, if you do have a doubt based in any reasonable grounds, you must not convict. The rule of commonsense corresponds with the rule which the law imposes. 179. Mr. McLelland

It would be intolerable if it were otherwise when one has regard to the gravity of the consequence to a person in Cuddihy's situation. 40

The second matter is this; it summarizes what we put before the Committee in relation to the evidence. The

submission is that the evidence that has emerged in this appeal tends so strongly to establishing Cuddihy's innocence of this charge brought against him that it would not be possible or reasonable for a finding to be made that there was no serious doubt about the matter. It follows as a matter of commonsense and as a matter of law that there is only one finding the Committee can come to, and that is that the appeal must be upheld. That is a strong submission. It is a submission which could not be responsibly made except in a rare case, and this is that rare case. It is a submission that I make sincerely and responsibly and I ask you to accept it. 10

MR.COMANS: Mr. Chairman and gentlemen of the Committee: I have been sent in last to bat with the instructions to get my runs quickly. After the gates opened in this race there was only one person who could prevent the horse running on its merits; that would be Jockey Cuddihy. But the stewards went a step further than that; they said not only did Cuddihy not allow it to run on its merits, but he did so at the instigation of Mr. Calvin and Mr. Dawson. That is a conspiracy - in this case a conspiracy to do a lawful act, the running of a race, by unlawful means. 20

In a conspiracy you always look for overt acts; that means, outward acts.

I am not going to traverse across the Tasman and back to here. This race took one minute 11.5 seconds to run, and we have been going for about 14 or 15 hours. But I say to you that the first thing you must consider is whether this conspiracy was arrived at before the Saturday or on the Saturday. For that reason I propose to deal with the fitness of the horse, the relationship of Dawson and Calvin, and the relationship of Dawson and Cuddihy. 30

In regard to the fitness of the horse, it ran in a barrier trial on the Tuesday. The evidence has not been contradicted that Cuddihy thought he had a very good horse underneath him. On the Thursday he was sent over a five furlongs, or 1000 metres, gallop and evidently impressed the newspapers. Five of them out of seven in the Herald picked it to win, and one of the others picked it for a place. 40

On the Friday it was examined by Mr. Sykes, who took a blood count at the instigation of Mr. Calvin. He said that this horse was fit to run a big race. Dawson relayed the evidence on to Mr. Cummings.

I will go off for a little here. A lot has been said about Mr. Cummings' evidence. I am not here to defend him; I am here to defend Dawson. You may come to the conclusion that Mr. Cummings is like the rainbow, which comes out after the storm, and after all the sensational evidence about a conspiracy, which Dawson said he knew nothing about, except that Mr. Calvin told him the horse was inclined to run greenly. He did not know about the hitting with the whip or anything else. But, keeping to the evidence, Mr. Calvin said that it was underdone and not ready to win - or it was underdone.

10

Where do you find the truth? You find the truth in tiny little instances. It jumped out of the mouth of Mr. Mason on Friday. Mr. Mason then said that when he received the commission of \$6000 from Mr. Calvin - I took it down - "He thought like everybody else that the horse would win." Mason went on to say, "I told Bartley it was a hot horse. Back it before the first ring." Does that make you think

20

180. Mr. Comans

that on the Saturday morning they did not think the horse was fit?

Mr. Meehan, the chief steward, has been around a long while. Mr. Mahoney has been around for a long while. Mr. Meehan said that the horse looked very fit and Mr. Mahoney went further and said that in his opinion it was "fit enough to win the race".

I am emphasizing the question of fitness because, if the conspiracy took place before the Saturday, you are wise and intelligent enough to know that there a dozen ways the trainer could have had it on the Saturday so that it would blow up. But there is no need for you to go into that. If the conspiracy took place, it would have taken place on the Saturday. No one suggests that my client did not have the horse at its top. He said that it was fit and well enough to win that race.

30

(Continued on page 183)

181/182 Mr. Comans

MR.COMANS: A lot of noise has been made about the teeth, gentlemen, it was suddenly thrown away on Friday and the "D" bit became the big thing, the teeth that were the big enquiry went overboard.

40

Let us get to our relationship with Calvin. Had you ever seen a better relationship of master and servant than that which existed between Calvin and Dawson. My learned friend said he is a little amazed about me bringing up Sticks & Stones and it was a sort of little girl throwing a cent into the ring. I brought up Sticks & Stones to show you the relationship normally, that Dawson suggested Sticks & Stones not start in the Challenge, that Duggan be taken off and Banks put on. What weight did he ride in the Newmarket, dead on 49, not a pound over or a pound less and I have seen George Moore 8.7 at Canterbury on Wednesday and 9.1 at Randwick on the Saturday. They are talking about Duggan being 49 and not able to get his weight down.

10

Dawson said "I will be starting him in a barrier trial, Cuddihy will be riding him. I will be starting him on Saturday 13th, Cuddihy will be riding him". Dawson tells you on oath that he heard nothing else about anyone but Cuddihy riding it.

Is Dawson the type of man that Calvin would be entering into a conspiracy with to say "We are not going to let this horse win on Saturday"? Calvin checked up with Cummings every time. On the evidence it was "Calvin said to Cummings" and "Cummings said to Calvin no question of Dawson having anything to say. Dawson, I put to you gentlemen, was a straight conduit from Calvin to the horse.

20

Now, let us look at the relationship between Cuddihy and Dawson. He said he is not a regular rider for him but hardly knows him. Is Dawson likely to go up to Cuddihy and say "Look" - knowing he is Calvin's jockey and that Calvin selected him - is Dawson likely to say to him "We will pull this up on the boss". Charles Lamb said "It is a beautiful thing to see children believing in Santa Claus but it is pathetic to see adults believing in Santa Claus". If any of these things were to take place they took place before the Saturday because the uncontradicted evidence here today is that on the Saturday a "nodding" took place between Dawson and Calvin. Cuddihy goes a little bit further, Cuddihy said "we had quite a little bit of conversation, he adopted all the Calvin had told me and told me not to use the whip".

30

40

Now gentlemen, have a look at page 24A, it is in the tiny little things where you find where the truth lies. Mr. Meehan asked Cuddihy if the foreman had repeated the

instructions Calvin had given and Cuddihy said "Yes in a sense that he did not have much time, he was walking to the horse". All those instructions that Calvin was giving were given to Cuddihy as they walked to the horse and, gentlemen, the most important thing of all, Cuddihy said Dawson said "Don't hit it with the whip". Now, Cummings had not said that, he alleges that Dawson said it. Dawson says "Why would I say that gentlemen, it is hit on the track with the whip every time it is taken out" and I only let you gentlemen have the facts from Dawson, I did not ask him for an opinion.

10

Mr. Falkingham asked him for an opinion, what he thought would happen if he hit it with the whip and I only gave you the facts as they were given to me. It is going to be a poor time in the community when any person, whether he is poor or rich, cannot put his faith in his lawyer or his doctor that they won't, without fear or apology, present the case as they are instructed and I presented to you today the case as I received my instructions from Dawson.

20

There was a lot said about "Why didn't you give an answer". If a client comes in and sees you on the morning and he is going to be charged by the police in the afternoon what would you say? - "Say nothing". This man had already been charged and there was nothing underhand about it I said "Look, if you go under have your appeal in your pocket and stick \$50 with it and you can work your horses on the track tomorrow". Nothing unusual in that.

183.

30

Gentlemen, I am batting last and I am going to be very brief but any way you look at this evidence at all Cuddihy has been tackled about saying that he agreed with what Cuddihy said but he qualified it by saying that he was going to talk to him after the races but the enquiry started. He said that he had some things he wanted to talk about. You have heard three men charged with conspiracy, of the three of them charge who do you think is the outsider? I have not heard a word said by Mr. Staff or Mr. McLelland in favour of my client, evidently he is considered the outsider or is it because he came along this afternoon and showed himself to be a man of moral fibre? Is that a sin?

40

I submit that you will uphold Dawson's appeal.

MR.FALKINGHAM: It is agreed, as has been said, that there

is no burden of proof on the appellants in this case, or anyone of them, and that they are entitled to the benefit of any reasonable doubt in relation to any of the matters that they have put to you as being relevant.

Various arguments have been put on behalf of Messrs. Calvin and Cuddihy which are almost the exact opposite, in a sense, to those put on behalf of the appellant Dawson.

It has been suggested that there was a denial of natural justice in the first hearing. It is not easy to follow on what this is based but it has not been suggested here today from the Bar Table, nor was it suggested on Friday, that there has been in these proceedings any injustice or any inconvenience - indeed, it will be remembered that no objection was taken by us to hearsay evidence of the most remote type because it was felt if they wanted to give their evidence in that way interruption would only put them off; there is evidence being tendered in the form of documents from New Zealand, it has been said by Mr. McLelland that we put them in but they came from Mr. Wallace, a witness for Mr. Calvin, but it was thought that they should all go in with the transcript and some of them would not make sense without the film or vice versa. There has been no objection here to the documents or viewing of the film and we submit that every opportunity has been given to call any evidence. Indeed, one party has gone to a lot of trouble to bring witnesses from New Zealand. If there ever was any substance in the suggestion that there was any denial of natural justice it can be put out of everybody's mind because it is not suggested here and this is a re-hearing.

I ought perhaps deal with two questions later with which Mr. Staff concerned himself and it is that one which is not a matter that affects this case. All of the transcript in this case has been admitted by consent all of it, including films, documents and statements which are not even sworn. Mr. Staff cited an authority from which he said "Disbelief does not afford evidence of the contrary of what is believed" and Sir Samuel Griffith went on to say of course "Leaving on one side a doubtful case of two mutually exclusive.....(reads).....that is not raised".

In this case it may be that there are two mutually exclusive possibilities, one that it was not allowed to run on its merits and one that it was. However, leaving aside that question this is only one topic and we have to deal with the evidence as a whole. Evidence from Dawson's side and

Cuddihy's and Calvin's side, evidence said to be from expert witnesses - it is not for me to comment unduly on the character of the evidence called but if I can deal with some of the last matters raised first, it is suggested that the betting transactions are remote from this case. This is a somewhat fanciful proposition and I will come back to that. It is suggested that Mr. Bartley has no motivation to come here and say something that is not true. There are two answers to that, the first is he was called here and the second is to be found at page 10 of the evidence where at the first enquiry Mr. Mason, having said at the top of page 10, line 4, "I asked them to put the 6 on it" and the Chairman said "We will have to get the Melbourne bookmakers' sheets I suppose" and there was the warning signal, the Melbourne sheets could not show a bet that was not put on and some explanation had to be given.

10

184.

I say this in answer to what Mr. McLelland said as to Mr. Bartley's motivation. We have his word for it that he only does these things, to put bets on, to do a good turn for someone and he may be doing someone a good turn here.

20

As to Mr. Poulson, it is not his veracity that is attacked, his expertise came under fire, some of the remarks he made it may be that they were made more in the nature of advocacy than evidence, for example when it was suggested to him that the times at Waipa was faster he volunteered that the course was shorter than it should be and when it was pointed out that the horse that won the race was probably the best two-year-old in New Zealand he said "Not now" and his remarks were, for some reason, exculpatory of Mr. Calvin.

30

It is difficult to understand how anyone could view a film once and become so expert in the film but this is what he did. It was said during his evidence by one of the Committee "Has this any probative value?" that is a matter for the Committee. The testamentary value of the witnesses called from New Zealand, who is speaking of his evaluation of a film shown here which he saw for the first time may be that it is not very great but however that is a matter for the Committee.

40

It has been said on behalf of Mr. Calvin by Mr. Staff, and in reference to Mr. Dawson, saying that he has sought to throw doubt on the evidence of Calvin and Cuddihy, and it is difficult to know how he could do when, throughout the

enquiry, he was in conflict with Cuddihy and Calvin and I will deal with that later.

The procedures before the Stewards are done hurriedly and these proceedings have been most leisurely, if there has been any opportunity missed to call a witness, and there is no evidence of that here, there is one witness called who has not been mentioned by any Counsel it appears that what he had reported to his master was that the horse had been collided with by a pony that belonged to T.J. Smith. He said that is what he told his master and that was put by Mr. Comans who appeared for the foreman. Perhaps that evidence is not to be taken seriously in any case because no one has suggested, Mr. Poulson, Mr. Wallace or anyone else, that the horse when it raced in New Zealand was a rogue. Mr. Poulson has not been attacked and it is not the duty of anyone appearing here to attack anyone but to say that his evidence was not probed in any way was not accurate because the potted form was put to him as accurate and he said it was not - in four cases out of five it was an inaccurate reading of the race. The relevant portions of the film are not here because it was said in each and every case that either the horse took up a position in or near the front or on the pace. Those films have been seen by everyone and if our observation is inaccurate that is a matter for the Committee - the Committee who has seen the films.

10

20

When one comes to an analysis of all the evidence there are perhaps three headings under which this evidence is brought, one is on what were the instructions, who gave them: the second one was "How was the race run?" and the third one is "What credibility, if any, is to be given to the witness who gave evidence relating to the betting". Both Mr. McLelland and Mr. Staff wiped their hands of this as something which was not their concern but a matter between Mason and Bartley. This, of course, ignores completely the fact that when questioned at the preliminary hearing Mr. Calvin said that he had the bet on, he gave the instructions apparently to Mr. Mason, Mr. Mason in turn gave the instructions to Mr. Bartley. There seems to have been a curious reticence concerning the odds which were to be obtained, I won't read all the details, they will be all fresh in your mind, they range between 3/1 and 2/1 and all sorts of figures but the figure said to have been obtained ultimately was 5/2.

30

40

Jockey Cuddihy said he was told at one time "I got 5/2 apparently he said he got 3/1 for himself and no one else got anything, the bet was not on," Mr. Calvin said at page 10A "Did you see him before

the race at all.....(reading).....I could not do better than that" and so on and he let it go at that. It must be remembered that Mr. Mason and Mr. Calvin were interviewed separately and on the page before Mr. Mason was asked "Did you tell him that the money was to be put on.....(reading).....that was all I said". At the top of the same page he said he had asked Mr. Bartley to put the 6 on and that is when Mr. Meehan said they would have to get the Melbourne sheets.

10

It may be said that this was a mistake, what Mr. Mason said, but those questions were asked on the day of the race before there was any opportunity of gathering any other facts which may tend to throw any light on the matter or support the story. Thereafter it appeared that Mr. Mason was claiming, at page 11, that he spoke to Mr. Bartley on the Saturday night, Mr. Meehan asked him did he say what price he got about the horse and he said "He said he put some at 3/1 and some at 5/2" and he did not know whether it was with registered bookmakers or not.

20

It is all very well to say that disbelief of one fact does not signify acceptance of the other, those events were fresh in their minds at the time and Mr. Mason said twice that he had spoken to Mr. Bartley on the telephone that night and on two occasions he said the bets had been put on. Mr. Bartley said that he had told him on the Saturday night that the bet was not on.

Then we have this situation, there was no bet recorded because there was none put on. We were then treated to a dissertation by Mr. Bartley as to how he bet. He said that he deviated from the instructions of Mr. Mason and he gave instructions to wait until the horses were ready to jump. Things may be otherwise in Melbourne nowadays, I don't know, but one would imagine if they waited for the horses to jump the price they would get would be the ultimate starting price or near enough to it which at that stage was half the final quote which was 5/2. Mr. Bartley claimed he took money for himself at 3/1 and stipulated to the bookmaker that it was for himself. Later he said he had no need to tell the bookmaker who he was putting the money on for because it was none of his business. Why did he say that? The first bet was his bet. It would be straining the credulity to believe that Mr. Bartley made his own decision as to putting the bet on or not or through his agent and that the bet was not on if he had those instructions.

30

40

Something had to be said between 13th March 1976 and the adjourned hearing, something had to be said about a bet because those people were well aware that if they said a bet was put on it would be checked. Mr. Staff did say that there was a large amount of money put on this horse at Randwick and that is so but there is no evidence to say that a \$1,000 bet was placed on this horse by anyone having association with the stable. It would not be evidence of the honest running of the horse, it would only be evidence of the fact that some unfortunate person lost their money on it. Betting is a subject in this matter which has been almost totally ignored. How does Mr. Calvin, who said he had the bet, and the reason he said he had the bet was that he wanted to have a bet on it although he did not think it could win, there has been a sharp division of opinion here in this case as to the horse's fitness, if we accept the evidence. The trainer thought the horse was fit and well muscled, apparently Mr. Cummings thought so (page 18) it is not correct that Mr. Cummings confined his evidence to what appeared on page 18, here he was asked questions about the whip and he made it quite clear if the horse was going well enough he would expect the whip to be used. We have seen on the New Zealand films the use of the whip and it is a matter for the Committee as to what their visual interpretation was.

Mr. Poulson was keen to explain to us the seeming ineffectiveness of Skelton with the whip and there is little doubt that when the whip was applied and the strokes counted, they were 10 or 11, during the running of that film whilst it was shown. In the film the horse

186.

ran kindly and did not deviate from its course and there is no evidence of the horse running out.

So far as the film of the Randwick race is concerned this is more a matter of observation for the Committee, you have all seen the film several times, some said it veered out, some say shifted out, Cuddihy kept saying, when asked "Did it lug out?" he kept saying "It moved out" etc. etc. etc.

186A

MR.FALKINGHAM: (continuing): If the film shows, in the opinion of the Committee, that the horse lugged out, as against drifting out, then there is some colour of support for what Cuddihy says was the reason for not using the whip. He has made it plain in his evidence, on page 3, where he

said, "The way they were talking, it was because of his hanging. If he was going straight, and if he had not hung at all and it looked like going to get to them with a hit on the backside, I would have." He was saying there that he would have used the whip. He does not say - nor does he imply - that if he hit the horse on the backside with the whip it would run into the fence or run out. He said, "If it had not hung, and looked like getting to them."

10

You gentlemen have seen the film. You could be as good judges as anyone else of whether or not the horse was going well enough to have a chance of winning at the furlong post, and whether it was being ridden with the hands as vigorously as might be, and as to whether the whip was applied.

Cuddihy did not say directly - and would not say - that the horse was lugging out at the furlong; no doubt because the film might well show otherwise.

It has been suggested here that there is no evidence that the horse was not allowed to do its best. Mr. McLelland put it concisely, by asking the rhetorical question, "Where is the evidence?" It is a matter of assessment and observation in large measure, and both these matters are peculiarly matters for the attention of the Committee.

20

There is no doubt that the horse dwelt in the early stages. There is little doubt it got out of its ground. It made up some ground. Near the entrance of the straight it got over the heels of another horse, and was taken out. There is no doubt on the evidence, and it is true, that the horse down the running veered out - drifted out. It is for the Committee to say whether the film demonstrates a lugging such as to prevent the application of the whip or more vigorous riding in the straight.

30

These matters are not solved by reference to some person who was called as an expert, because already we have the evidence of other experts. It is a matter of weighing the evidence of all the persons who gave evidence here before coming to a decision.

40

Mr. Poulsen may well be an expert in his own field,

but Mr. Poulsen, as I have said, went to great pains to contradict the form which the parties were so anxious to have in evidence on a prior occasion. The fact that it does not suit them here is not sufficient justification for one of their witnesses withdrawing his support for them - if he ever did support them. But, incredibly, Mr. Poulsen claimed that the vast majority of the descriptions were wrong. Here again it is a matter for your observation and assessment of that evidence.

10

Perhaps one could address for a lengthy period on the evidence relating to betting, but that hardly seems necessary. The evidence of Mason is so much at odds with that of Bartley, it is so much at odds with that of Calvin, that one has to begin to wonder where the truth lies - if it lies in the mouths of any one of these three witnesses. There are conflicts galore, not only as to the price to be obtained, but also in regard to the manner in which the bet was to be taken - whether it was to be the last or the first call - whether there was a discretion.

20

One wonders what possible motive one could have for wanting to change instructions, and what motive anyone would have for wanting to put a bet on in Melbourne when it could have been

187. Mr. Falkingham

laid at Randwick in the first place, particularly when we are told that the price that could be obtained was one that inevitably must be the shortest of all.

That is a matter for the Committee, but the comment must be made that that seems to be the only possible escape from the dilemma created by the examination of the Melbourne betting sheets, which show no bets of substance in this race - and certainly no bet of \$6000. The fact of the matter is that in Melbourne the opening price was in some quarters three/one and in others nine/four. Apparently they were never prices available at Randwick, and must have been better than even the first call.

30

Cuddihy is at odds with Dawson when he talks about the trial. Cuddihy's explanation to the stewards for the horse's failure to be more vigorously ridden is that he thought the horse would react unfavourably to the whip. He heard a story about it knocking down a field in New Zealand. He said that in the trial the horse hung out,

40

and that he told Dawson this. Dawson has not come along today to deny this. At page 6 he said that he had no knowledge of this; Dawson goes further and says that the gallops he saw were good ones, and that the whip was used by the boy who rode the horse. These are all matters of dispute now. It may be a case of a rift in the loot somewhere; or it may be simply that in some respects Dawson has been compelled to say what he said the first time; it may be that he is telling the truth and the others are not or vice versa. They cannot all be telling the truth. 10

It is idle to say that, because they are all disbelieved, some other factor must be accepted. It is perhaps equally absurd to suggest that the Committee must blind itself to the series of improbable stories told both in relation to the horse's condition and the betting that took place.

Mr. Calvin's instructions were, if one believes them, clear. He said, from first to last, that he gave instructions and accepts responsibility for them. Mr. Staff says that, there being no other evidence, you must accept that. I must tell you that that is not so. You may accept it or you may not. If you had to accept everything said in this case, one would accept a whole series of contradictory matters. The fact that he said it does not make it any better evidence than something perhaps that Dawson said, and vice versa. 20

Mr. Calvin said that he wanted to qualify the horse for the Golden Slipper. Dawson said then, and repeated it today, that it was being prepared for the Sires Produce Stakes. Mr. Calvin said the Golden Slipper and Dawson said the Sires Produce Stakes. 30

Mr. Calvin says that Cuddihy rode the way he told him to. He said that it was doubtful whether the horse could win, but he had a bit on it - \$6000. He said that Cuddihy did not say the horse hung in the trial. At page 7 of the transcript Cuddihy said that he told Dawson. One must make what one can of those things.

Cuddihy was seen on the afternoon of the race. Whether he gave this version in the hope of providing some kind of excuse for the horse's running, or whether it is a fact, is a matter for the Committee to determine. We 40

can only assist by saying that one must try to assess the credibility of each party as they come along.

Calvin says of the trial that he was not told. Cuddihy says that he told the foreman trainer. Calvin is in conflict with Mason at various points. I can briefly refer you to some of them. He says that he did not talk to him before the race. This might not seem a matter of much significance until you remember what it

188. Mr. Falkingham

10

was that was supposed to be said. Mason says otherwise at page 10. He says that he told him he sent some money interstate. Mason says he told Calvin that he would get 2/1. He said that he assumed that happened because the horse was even money then. Calvin said it was not necessary to see Mason before the race. He said that before the race he did not know whether he was backing it interstate or here. Mason says the opposite. This was done on the day of the race, and it is not a question of recollection.

20

He said that he did not know the horse had enough brilliance to be near the lead. When I questioned him on that subject, I asked him about the New Zealand form. He said that he knew nothing of it. If indeed the horse had performed as described in those documents, and had been near or with the lead, one would have expected perhaps that Mr. Calvin would know something of it.

He is conflict again with Mr. Mason as to what was said on the course relating to betting. Mr. Mason said that he would guarantee it would be 2/1. Mr. Calvin had no idea what it would be. Mr. Bartley said that he stipulated 5/2, and Mr. Mason said that when he rang him on the Saturday night, far from being told that the bet was not on, he was told that some of it was on at 5/2. Who is telling the truth?

30

Mr. Staff and Mr. McLelland say - and adopt each other's arguments - that they are not concerned about these matters because they occurred between other people. But is that a realistic view when the name of Mason was brought into the case by Mr. Calvin, and Bartley was brought in by Mr. Mason. So it would appear that a failure to call these witnesses would have resulted in a complete blank being drawn so far as betting is concerned.

40

Calvin says that Mason told him Bartley had guaranteed 2/1. At page 22 of the transcript Mr. Bartley was present, and immediately denied it. He said that he did not guarantee any price at all. The point of that perhaps is that the bet, you might think, was not put on at all, and was never intended to be put on. But if it is thought otherwise, the cheque, it is said, provides corroborative evidence of the life of the wager.

When you recollect that on 13th March, on page 10 of the transcript, there was a distinct warning sounded that the Melbourne sheets would be looked at, it is not hard to understand why the cheque to cash is payable on the Monday morning. But there is no explanation. On the cheque butt the name Ted appears, and in the corner are the words "Mick Bartley", then there is the date and "\$6000". Then, in other writing, and other ink, in thicker ink is "Cash". It is dated 15.3.76. There are the words "Mick Bartley" and in thick writing under that, "Ted. 6000" in lighter writing and then underneath that "Cash" in thicker writing again. 10 20

That has not been explained, but we know from Bartley - if it is true - that he negotiated the cheque to Mr. Coombs, who apparently endorsed it, and it was cashed somewhere.

When Mason was asked by me why he had not used the cash, he said that he used it to discharge other obligations and paying other bets.

They are matters for the Committee, and they are matters of credibility. They cannot all be true. There are some that are so obviously ridiculous that no-one could believe them. Others could well be true. That is a matter for the Committee to judge. 30

189. Mr. Falkingham

Calvin's version of backing the horse is that, although he thought it could not win, he said at one stage that he thought he had better have something on it. At other times he said that he thought it would win. His instructions were to make sure that the jockey did not use the whip.

It is true, as Mr. McLelland says, that much of the strength of the allegations made by the stewards rests on the fact that the whip was not used and the hands were not fully used. If it is the opinion of the Committee that 40

that has been made out, it is open to the Committee to dismiss the appeals. On the other hand, if it is felt that there is a reasonable doubt as to what happened, after viewing all the films and hearing all the evidence, each appellant is entitled to the benefit of that doubt.

It is perhaps not without significance that today Mr. Dawson said that he was surprised when the whip was not used, because he thought the horse had a winning chance a short distance from the post, and he thought the whip should have been used. Mr. Cummings, in answer to my question, said something of the same sort - not that it be used in this race, but if a horse is in a winning position and approaching the line, the whip should be used. He added to some evidence given earlier. At page 18 he volunteered something when Mr. Mahoney asked him a question. Mr. Mahoney asked, "Did you have any discussions with Mr. Calvin as to what tactics to use?" Mr. Cummings replied, "Mr. Calvin engaged Cuddihy and I told him he would have to keep in touch and ride him out hands and heels. I did not think he was going to have any problems in the race with him being wayward anyway." He volunteered that. Mr. Mahoney then asked him, "Were you aware that the horse was not going to be ridden with the whip?" And he replied, "No. I said to ride him hands and heels, if he is going well - to ride out at his own discretion." Mr. Mahoney then asked, "You did not specifically say not to use the whip on the horse?" Mr. Cummings replied, "Only if you are going well."

10

20

I asked him here whether he would expect that the whip should be used with the horse going well and in a winning position, and he said "Yes."

30

This is the evidence of the head trainer, and it accords with the evidence of Mr. Dawson. It does not accord with the expressions of opinion of Mr. Poulsen. But, Mr. Poulsen's evidence would have to be considered in the light of the stewards' observations on the day of the race - a matter which has been treated rather scantily here in addresses. The respective observations of the stewards are not without significance; they must be considered. Then there is the film, which has been viewed by everybody here; that is, the film of the actual race.

40

A comparison can be drawn between that film and the evidence of the stewards - or a contrast can be made. It is a question of fact, to be resolved by the Committee, whether or not in the final analysis the horse was ridden

towards the end of the straight, down the running, with a view to winning the race or with a view to not winning the race.

The fact that the whip was not used may or may not be of significance. If it is believed that Cuddihy did not use the whip because he thought that if it were used the horse would behave in a wayward fashion, he is entitled to the benefit of any doubt that arises from that. If it is thought that by using his hands fully, or releasing his hands, the horse would have run off further - if you believe that that is genuinely what he thought - he is entitled to that also. 10

190. Mr. Falkingham

Mr. Poulson, after viewing the film in that regard, said that he held it up very well. Of course, that is one of the bases of the stewards' complaint. That is, that he held it up rather too well.

It was pointed out to Cuddihy in the examination at the first hearing that he was giving away a lot of ground into the straight. There was some dispute as to how much, but the film shows a considerable amount of ground. It might well be thought that in the final stages of the race there was simply not enough room left for the horse to win - not enough distance for the horse to go. 20

Generally, when you approach a crime of this kind, one is not to be deterred or put off by consideration of personalities or of mannerisms. It is true that all witnesses when they give evidence are obviously nervous. They are untrained at giving evidence, obviously. They are apt to say things which perhaps they might not mean. Small misunderstandings occur. These things must all be taken into consideration and duly weighed, and if there is any doubt arising out of it, the benefit of it must be given to each of the appellants, so far as they separately are concerned. 30

Dawson came here and told a version which his solicitor has put in his address very forcibly, and which is diametrically opposed in many respects to that given by Calvin and Cuddihy. Mr. Calvin has given a version which is not only opposed to that given by Dawson, but conflicts in many respects with the version given by Mr. Mason. Cuddihy has given a version, so far as betting is concerned, with conflicts with everybody. 40

So far as winning the race is concerned, Cuddihy seems to be pinning his faith to the comment that the horse was moving out at the finish. If it is thought that the horse could not have won in any event, by reason of this change of course, that perhaps would be the end of the matter. If it was thought that the horse was being allowed to do its best, and this is the best it could do, that would be the end of the matter involving Calvin and Cuddihy. If, on the other hand, it is thought that the horse was deliberately prevented from doing its best, one has to weigh seriously not only the intentions of Cuddihy but also those of Calvin and Dawson.

10

Calvin associates himself with a lot of what Dawson says in this regard, and vice versa. Mr. Dawson has been at pains to explain that he did not arrive until late in the enclosure, and when he did hardly anything was said to him, and he wished the jockey good luck. Mr. Calvin gave a version of his instructions which you may or may not accept. In any case, he says his instructions were obeyed, and he accepts full responsibility for them.

20

There is nothing more to be said perhaps about the evidence, except that in every case credibility is a very important matter, and one must consider the sworn evidence given on two separate occasions by the witnesses who were called twice. I am referring to the main witnesses - the appellants, Mason, Bartley and Wallace.

MR.HOWELL: Only one was sworn.

MR.FALKINGHAM: Wallace was the only one sworn. In any case, Wallace's evidence as admitted by consent. They were not concerned. The evidence was not in answer to questions. Mr. Wallace's evidence, and the others is merely by consent between all the parties here.

30

The last matter is this: there was some criticism of the stewards for not examining the condition of the horse. I take this to mean that the condition as regards fitness. The horse was examined

191. Mr. Falkingham

by the veterinary surgeon and his report is in as an exhibit. It is a short report, and states, "I examined Count Mayo at the stewards' request at 1.50 p.m. There appeared to be no abnormality apart from a laceration with

bruising inside the left commissure of the mouth." It was signed by Mr. McFadden, and it would be perhaps unnecessary for the stewards then to conduct some sort of independent examination of the horse.

But you may ask yourselves this: does anything turn on this when one has Mr. Dawson's evidence - if that is acceptable - that the horse was well-muscled, well-conditioned and fit in his opinion to run a very good race? This is one important matter on which there has been disagreement from start to finish.

10

Mr. Calvin says - and you may well accept what he says - that the horse was not considered fit to win; although he said on another occasion that he thought it would win, and he backed it. The foreman, who says that he did not back the horse at all, says that he thought the horse was fit to win. Mr. Cummings, if you read his evidence and what he said here, apparently thought the horse could win if properly ridden. The jockey, if one accepts his evidence, thought the horse did not win because of its waywardness and because of its condition; and he thought also that, if he rode the horse in any other way than that in which he rode it, the horse would in some way have misbehaved. The reason he said that was, according to him on p. 3 of the transcript, that he was told by the foreman, Mr. Dawson, that "The fellow who sold the horse said that he had not had the whip pulled on him over there. The only time he had, he knocked the field down or something." Mr. Dawson this morning categorically denied any such conversation.

20

30

There it is. It is certainly not easy to reconcile that kind of evidence with what Mr. Dawson said.

Mr. Staff and Mr. McLelland suggest that Dawson has decided to go on his own, as it were. If that were so, one would perhaps expect him to deny this conversation, and stick to the story that he thought the horse was fit to win. But if you accept him, you cannot accept Cuddihy's evidence, because he is quite obviously there giving an excuse which, if Dawson is to be believed, is a pure invention. Either Cuddihy is telling the truth and Dawson is not, or Dawson is telling the truth and Cuddihy is not. It is as simple as that; these are two mutually exclusive propositions. It is not a question of saying, "Because you disbelieve one thing you must believe something else". Here it is almost axiomatic that, if you disbelieve the

40

story told by Cuddihy to the stewards, that he feared something would happen if the whip was pulled, and disbelieve that the conversation between Cuddihy and Dawson had taken place, it would follow that the excuse given by Cuddihy is a false one. If you accept the opposite, you would have to come to the conclusion that what Dawson has said was untrue.

Mr. McLelland says: why would Mr. Poulsen come here and say these things? One might ask: why would Dawson want to be at odds with the other two? What merit is there in any argument - what gain is there - for him to suggest that what the jockey says did not happen? It would suit his case, would it not, if the cause he was pleading was that they were afraid of the whip being used? All he had to say was, "We didn't want the horse to run about", or, "We were satisfied without the whip being used at all." He not only said that he did not say that; he goes further, and gives evidence that the whip was copiously used in track gallops. 192. Mr. Falkingham

10
20

I put that as a summary of what the arguments here have been. It has been very well said that the real merits and justice of the case are what has to be decided here. It is perfectly obvious now, after this lengthy hearing, that the positions of Calvin and Cuddihy on the one hand, and Dawson on the other hand are diametrically opposite. One could not accept in its totality the evidence of Dawson if you accept the evidence of Calvin. One could not accept it even partially if one accepted the evidence of Cuddihy. It will be for you to decide whether each of them is telling the truth - which seems impossible. It is for you to decide whether one or more are telling the truth as against the others, and whether one could accept as explanatory or exculpatory the evidence of Mr. Wallace, Mr. Poulsen, Mr. Bartley, Mr. Mason and the stable boy who was called to give evidence about the propensities of the horse.

30

MR.COMANS: There is just one thing that arises out of what Mr. Falkingham just said. He mentioned that betting was not raised by the bar table. I thought I made it very clear, frequently, that my client had not had a bet on the race. I thought it would be accepted that he had no association with Mr. Mason or Mr. Bartley.

40

CHAIRMAN: Thank you. Gentlemen, if you will retire we will give the matter consideration.

(Short Adjournment)

UPON RESUMING:

CHAIRMAN: Gentlemen, the Committee has given full consideration to the evidence and the submissions by learned counsel in these appeals, and has decided to dismiss the appeal of Messrs. F. Calvin and P. Cuddihy, and to uphold the appeal of R. Dawson.

MR.STAFF: Might I ask this: I do not know what the practice of the Committee is, but might I ask that the transcript of the proceedings be preserved?

10

CHAIRMAN: Yes, it is always preserved.

MR.STAFF: I did not know.

(Proceedings concluded)
193.

F. CALVIN'S INTERROGATORIES

Interrogatory No. 13

Answer

Do you admit that you have agreed to be bound by the Rules of Racing in force from time to time in so far as your racing activities are concerned?

Yes.

F. CALVIN'S INTERROGATORIES

Interrogatory No. 14

Answer

10

Do you admit that the Stewards (being the Third Defendants) have the power to enquire into the running of a race.

Yes, to the extent that the Rules of Racing validly so provide.

F. CALVIN'S INTERROGATORIES

Interrogatory No. 17

Answer

Did you on the hearing of the appeal before the A.J.C. Committee (being the Second Defendants) rely on the alleged breach of natural justice before the Stewards (being the Third Defendants) as a ground of appeal?

20

Exhibit 2 -
Interrogatory No. 13, 14 & 17
and Answer.

STEWARDS' INTERROGATORIES

Interrogatory No. 1

as to paragraph 2 of the Defence

(a) Did you at any time contemplate making a charge against the Plaintiff and if so:

(i) At approximately what time of what day did you first contemplate making any such charge against the Plaintiff?

(ii) What was the charge the subject of your contemplation?

(b) Did you at any time inform the Plaintiff that a charge would be made against him and if so:

(i) At approximately what time of what day did you so inform the Plaintiff?

J.J. Meehan's Answer

(a) (i) The first time I contemplated (in the sense that I considered that it was more likely than not) that the other Third Defendants and myself (leaving aside Mr. B. H. Killian) or a majority thereof would make a charge against the Plaintiff was not until Jockey Cuddihy had given evidence after the last race on 17th March, 1976.

(a) (ii) A charge under Rule 135 of the Rules of Racing.

(b) I, as the Chairman of the Stewards, informed the Plaintiff that the Stewards were going to charge him (and two others) in the terms appearing on Page 24D of the Transcript of the Stewards Enquiry at

Exhibit "C" -
Interrogatory No. 1
and Answer.

10

20

Exhibit "C" -
Interrogatory No. 1
and Answer.

(ii) What was the charge of
which you so informed
the Plaintiff?

about 5.00 p.m. on the 17th
March, 1976.

H.J. Mahoney's Answer

(a) (i) The first time I
contemplated (in the sense
that I considered that it
was more likely than not) 10

that the other Third
Defendants and myself
(leaving aside

Mr. B.H. Killian) or a
majority thereof would
make a charge against the
Plaintiff was not until
Jockey Cuddihy had given
evidence after the last
race on 17th March, 1976. 20

(a) (ii) A charge under
Rule 135 of the Rules of
Racing.

(b) No, but the Defendant
Meehan so informed the
Plaintiff in the terms
appearing on Page 24D of
the Transcript. This was

Exhibit "C" -
Interrogatory No. 1
and Answer.

Exhibit "C" -
Interrogatory No. 1
and Answer.

at about 5.00 p.m. on 17th
March, 1976.

D.G. MCKAY'S ANSWER

(a) (i) The first time I
contemplated (in the sense
that I considered it was
more likely than not) that 10
the other Third Defendants
and myself (leaving aside
Mr. B.H. Killian) or a
majority thereof would
make a charge against the
Plaintiff was not until
Jockey Cuddihy had given
evidence after the last
race on 17th March, 1976.

(a) (ii) A charge under 20
Rule 135 of the Rules of
Racing.

(b) No but the Defendant
Meehan so informed the
Plaintiff in the terms
appearing on Page 24D of
the Transcript. This was

Exhibit "C" -
Interrogatory No. 1
and Answer.

Exhibit "C" -
Interrogatory No. 1
and Answer.

at about 5.00 p.m. on 17th
March, 1976.

J.B. Hickman's Answer

(a) (i) The first time I
contemplated (in the sense
that I considered that it
was more likely than not) 10

that the other Third
Defendants and myself

(leaving aside

Mr. B. H. Killian) or a

majority thereof would

make a charge against the

Plaintiff was not until

Jockey Cuddihy had given

evidence after the last

race on 17th March, 1976. 20

(a) (ii) A charge under
Rule 135 of the Rules of
Racing.

Exhibit "C" -
Interrogatory No. 1
and Answer

Exhibit "C" -
Interrogatory No. 1
and Answer

T.J. Carlton's Answer

(a)(i) The first time I contemplated (in the sense that I considered that it was more likely than not) that the other Third

Defendants and myself 10

(leaving aside

Mr. B.H. Killian) or a

majority thereof would

make a charge against the

Plaintiff was not until

Jockey Cuddihy had given

evidence after the last

race on 17th March, 1976.

(a)(ii) A charge under

Rule 135 of the Rules of 20

Racing.

(b) No but the Defendant

Meehan so informed the

Exhibit "C" -
Interrogatory No. 1
and Answer

Exhibit "C" -
Interrogatory No. 1
and Answer.

Plaintiff in the terms
appearing on Page 24D of
the Transcript. This was
at about 5.00 p.m. on 17th
March, 1976.

N. Swain's Answer

(a)(i) The first time I 10
contemplated (in the sense
that I considered it was
more likely than not) that
the other Third Defendants
and myself (leaving aside
Mr. B.H. Killian) or a
majority thereof would
make a charge against the
Plaintiff was not until
Jockey Cuddihy had given 20
evidence after the last
race on 17th March, 1976.

(a)(ii) A charge under
Rule 135 of the Rules of
Racing.

(b) No but the Defendant
Meehan so informed the
Plaintiff in the terms

Exhibit "C" -
Interrogatory No. 1
and Answer.

Exhibit "C" -
Interrogatory No. 1
and Answer

appearing on Page 24D of
the Transcript. This was
at about 5.00 p.m. on 17th
March, 1976.

B.H. Killian's Answer

I was not involved in the
enquiry into the running of 10
Count Mayo on 13th March,
1976 and took no part in
the matter.

STEWARDS' INTERROGATORIES

Interrogatory No. 2 as to
paragraph 3 of the Defence

- (a) What evidence or infor-
mation was taken or ob-
tained in relation to
the enquiry operated by
the Stewards at any time
after it was opened,
orally or in writing, in
the absence of the
Plaintiff, and when and
in what manner respect-
ively?
- (b) Did you at any time make
or cause any person to
make the Plaintiff aware

J.J. Meehan's Answer

(a) Before the Plaintiff
was charged, evidence was
taken in his absence from
Cuddihy and Mason on 13th
March, 1976 and from Galea 20
and Cuddihy on 17th March,
1976. After he was
charged, evidence was taken
in his absence from Galea,
Todd and Campbell. The
Sydney and Melbourne book-
makers' sheets were also
received in his absence.
I also had a brief

Exhibit "C" -
Interrogatory No. 1 & 2
and Answer

of the nature, substance or effect of the evidence so taken and information so obtained and if so, when, where and in what manner did you make or cause the Plaintiff to be made so aware?

Exhibit "C" -
Interrogatory No. 2
and Answer.

telephone conversation with Mr. Poulson whilst Mr. Hickman interviewed Todd and Campbell whose evidence appears in the Transcript.

(b) Only to the extent revealed in the Transcript of the Stewards Enquiry. 10

H.J. Mahoney's Answer

(a) Before the Plaintiff was charged, evidence was taken in his absence from Cuddihy and Mason on 13th March, 1976 and from Galea and Cuddihy on 17th March, 1976. After he was 20

charged, evidence was taken in his absence from Galea, Todd and Campbell. The Sydney and Melbourne bookmakers' sheets were also received in his absence. To get the Melbourne bookmakers sheets I rang the

Exhibit "C" -
Interrogatory No. 2
and Answer.

Exhibit "C" -
Interrogatory No. 2
and Answer

V.R.C. Stewards whilst
Mr. Meehan had a brief
telephone conversation with
Mr. Poulson. In addition
Mr. Hickman interviewed
Todd and Campbell whose
evidence appears in the 10
Transcript.

(b) Only to the extent re-
vealed in the Transcript
of the Stewards Enquiry.

D.G. McKay's Answer

(a) Before the Plaintiff
was charged, evidence was
taken in his absence from
Cuddihy and Mason on 13th
March, 1976 and from Galea 20
and Cuddihy on 17th March,
1976. After he was
charged, evidence was taken
in his absence from Galea,
Todd and Campbell. The
Sydney and Melbourne book-
makers' sheets were also
received in his absence.

Exhibit "C" -
Interrogatory No. 2
and Answer.

Exhibit "C" -
Interrogatory No. 2
and Answer

To get the Melbourne book-
makers' sheets Mr. Mahoney
rang the V.R.C. Stewards
whilst Mr. Meehan had a
brief telephone conversation
with Mr. Poulson. In
addition Mr. Hickman inter- 10
viewed Todd and Campbell
whose evidence appears in
the transcript.

(b) Only to the extent re-
vealed in the Transcript
of the Stewards Enquiry.

J.B. Hickman's Answer

(a) Before the Plaintiff
was charged, evidence was
taken in his absence from 20
Cuddihy and Mason on 13th
March, 1976 and from Galea
and Cuddihy on 17th March,
1976. After he was
charged, evidence was taken
in his absence from Galea,
Todd and Campbell. The
Sydney and Melbourne

Exhibit "C" -
Interrogatory No. 2
and Answer

Exhibit "C" -
Interrogatory No. 2
and Answer.

bookmakers' sheets were
also received in his ab-
sence. To get the
Melbourne bookmakers'
sheets Mr. Mahoney rang
the V.R.C. Stewards whilst
Mr. Meehan had a brief 10
telephone conversation with
Mr. Poulson. In addition
I interviewed Todd and
Campbell whose evidence
appears in the transcript.

(b) Only to the extent re-
vealed in the Transcript
of the Stewards Enquiry.

T.J. Carlton's Answer

(a) Before the Plaintiff 20
was charged, evidence was
taken in his absence from
Cuddihy and Mason on 13th
March, 1976 and from Galea
and Cuddihy on 17th March,
1976. After he was
charged, evidence was
taken in his absence from

Exhibit "C" -
Interrogatory No. 2
and Answer.

Exhibit "C" -
Interrogatory No. 2
and Answer.

Galea, Todd and Campbell.
The Sydney and Melbourne
bookmakers' sheets were
also received in his
absence. To get the
Melbourne bookmakers sheets
Mr. Mahoney rang the V.R.C. 10
Stewards whilst
Mr. Meehan had a brief
telephone conversation
with Mr. Poulson. In
addition Mr. Hickman inter-
viewed Todd and Campbell
whose evidence appears in
the transcript.

(b) Only to the extent re-
vealed in the Transcript 20
of the Stewards Enquiry.

N. Swain's Answer

Before the Plaintiff was
charged, evidence was taken
in his absence from Cuddihy
and Mason on 13th March,
1976 and from Galea and
Cuddihy on 17th March,

Exhibit "C" -
Interrogatory No. 2
and Answer.

Exhibit "C" -
Interrogatory No. 2
and Answer

1976. After he was
charged, evidence was
taken in his absence from
Galea, Todd and Campbell.
The Sydney and Melbourne
bookmakers' sheets were
also received in his ab- 10
sence. To get the
Melbourne bookmakers
sheets Mr. Mahoney rang the
V.R.C. Stewards whilst
Mr. Meehan also had a
brief telephone conversat-
ion with Mr. Poulson. In
addition Mr. Hickman inter-
viewed Todd and Campbell
whose evidence appears in 20
the transcript.

(b) Only to the extent re-
vealed in the Transcript
of the Stewards Enquiry.

B.H. Killian's Answer

See my answer to the first
interrogatory.

Exhibit "C" -
Interrogatory No. 2
and Answer

STEWARDS' INTERROGATORIES

Interrogatory No. 3 as to paragraph 4 of the Defence

- (a) Did you inform the Plaintiff as to the grounds on which or the respects in which you or the other Third Defendants or any of them claimed that "Count Mayo" was not run on its merits and if so, when, and where did you so inform the Plaintiff and what was the information which you gave to him?
- (b) Did you inform the Plaintiff as to the grounds on which or the respects in which any other persons claimed that "Count Mayo" was not run on its merits and if so, when, and where did you so inform the Plaintiff and what was the information

J.J. Meehan's Answer

- (a) Yes, in so far as it appears in the Transcript of evidence.
- (b) Only to the extent revealed in the Transcript of the Stewards enquiry but to the extent to which it is revealed, the information was limited to the grounds on which and the respects in which the other Third Defendants (apart from Mr. Killian) claimed that Count Mayo was not run on its merits.
- (c) After he was charged on 17th March, 1976 he was granted an adjournment to call evidence from New Zealand and on the hearing on 26th March, 1976 he was given two further opportunities to present evidence or make submissions - these appear on Pages 29 and 31

Exhibit "C" -
Interrogatory No. 3
and Answer

Exhibit "C" -
Interrogatory No. 3
and Answer.

which you gave to him?

of the Transcript of the
Stewards Enquiry.

- (c) What opportunity was
given to the Plaintiff
to answer any claim that
"Count Mayo" was not run
on its merits? If an
invitation was given to
the Plaintiff for that
purpose who gave the in-
vitation and when and
where?

H.J. Mahoney's Answer

(a) Yes, in so far as it
appears in the Transcript
of evidence.

(b) Only to the extent re- 10
vealed in the Transcript
of the Stewards Enquiry
but to the extent to which
it is revealed, the infor-
mation was limited to the
grounds on which and the
respects in which the
other Third Defendants
(apart from Mr. Killian)
claimed that Count Mayo 20
was not run on its merits.

(c) After he was charged
on 17th March, 1976 he was
granted an adjournment to
call evidence from New
Zealand and on the hearing
on 26th March, 1976 he was
given two further

Exhibit "C" -
Interrogatory No. 3
and Answer.

Exhibit "C" -
Interrogatory No. 3
and Answer.

opportunities to present
evidence or make sub-
missions - these appear
on Page 29 of the Trans-
cript of the Stewards En-
quiry.

D.G. McKay's Answers

10

(a) Yes, in so far as it
appears in the transcript
of evidence.

(b) Only to the extent
revealed in the Transcript
of the Stewards Enquiry
but to the extent to which
it is revealed, the infor-
mation was limited to the
grounds on which and the

20

respects in which the
other Third Defendants
(apart from Mr. Killian)
claimed that Count Mayo
was not run on its merits.

(c) After he was charged
on 17th March, 1976 he was
granted an adjournment to

Exhibit "C" -
Interrogatory No. 3
and Answer.

Exhibit "C"-
Interrogatory No. 3
and Answer.

call evidence from New
Zealand and on the hearing
on 26th March, 1976 he was
given two further opportuni-
ties to present evidence
or make submissions -
these appear on Page 29
and 31 of the transcript
of the Stewards Enquiry.

10

J.B. Hickman's Answers

(a) Yes, in so far as it
appears in the Transcript
of evidence.

(b) Only to the extent re-
vealed in the Transcript
of the Stewards Enquiry
but to the extent to which
it is revealed, the infor-
mation was limited to the
grounds on which and the
respects in which the
other Third Defendants
(apart from Mr. Killian)
claimed that Count Mayo
was not run on its merits.

20

Exhibit "C"-
Interrogatory No. 3
and Answer.

Exhibit "C" -
Interrogatory No. 3
and Answer.

(c) After he was charged
on 17th March, 1976 he was
granted an adjournment to
call evidence from New
Zealand and on the hearing
on 26th March, 1976 he was
given two further 10
opportunities to present
evidence or make sub-
missions - these appear on
Pages 29 and 31 of the
Transcript of the Stewards
Enquiry.

T.J. Carlton's Answers

(a) Yes, in so far as it
appears in the Transcript
of evidence. 20

(b) Only to the extent re-
vealed in the Transcript
of the Stewards Enquiry
but to the extent to which
it is revealed, the infor-
mation was limited to the
grounds on which and the
respects in which the

Exhibit "C" -
Interrogatory No. 3
and Answer.

Exhibit "C" -
Interrogatory No. 3
and Answer.

other Third Defendants
(apart from Mr. Killian)
claimed that Count Mayo
was not run on its merits.
(c) After he was charged
on 17th March, 1976 he was
granted an adjournment to 10
call evidence from New
Zealand and on the hearing
on 26th March, 1976 he was
given two further opportu-
nities to present evidence
or make submissions -
these appear on Page 29
and 31 of the transcript
of the Stewards Enquiry.

N. Swain's Answers 20

(a) Yes, in so far as it
appears in the Transcript
of evidence.
(b) Only to the extent re-
vealed in the Transcript
of the Stewards Enquiry
but to the extent to which
it is revealed, the

Exhibit "C" -
Interrogatory No. 3
and Answer.

Exhibit "C" -
Interrogatory No. 3
and Answer.

information was limited to
the grounds on which and
the respects in which the
other Third Defendants
(apart from Mr. Killian)
claimed that Count Mayo
was not run on its merits. 10

(c) After he was charged
on 17th March, 1976 he was
granted an adjournment to
call evidence from New
Zealand and on the hearing
on 26th March, 1976 he was
given two further opportuni-
ties to present evidence
or make submissions - these
appear on Page 29 and 31 of 20
of the Transcript of the
Stewards Enquiry.

B.H. Killian's Answers

See my answer to the first
interrogatory.

Exhibit "C" -
Interrogatory No. 3
and Answer.

STEWARDS' INTERROGATORIES

Interrogatory No. 4 as to paragraph 7 of the Defence
Were you absent from the

enquiry at any time and

if so:

- (a) On what day and for what period of time were you so absent?
- (b) Who read to you the transcript of evidence taken in your absence?
- (c) Identify the evidence so read to you.
- (d) What decision did you make concerning such evidence?

J.J. Meehan's Answer

No.

H.J. Mahoney's Answer

(a)(b)(c) On 13th March, 1976 I was absent for a brief period (about 5 minutes) of Mr. Mason's evidence; the transcript of that evidence was read back to me by the shorthand writer Mr. Martin later that day; subsequently on 17th March, 1976 I had to leave the hearing for a few minutes but before the hearing resumed on 26th March, 1976 I read the transcript of the evidence taken in my absence.

10

20

(d) I object to answering the interrogatory on the grounds that it is vexatious, oppressive and irrelevant.

Exhibit "C" -
Interrogatory No. 4
and Answer.

Exhibit "C" -
Interrogatory No. 4
and Answer.

D.G. McKay's Answers

(a)(b)(c) I was absent
from the Enquiry when
evidence was taken from
Mr. Bruce Galea on the
morning of 26th March,
1976; however, I heard a 10
tape recording of that
evidence.

(d) I object to answering
this interrogatory on the
grounds that it is vexat-
ious, oppressive and
irrelevant.

J.B. Hickman's Answers

(a)(b)(c) On 13th March,
1976 I was absent for a 20
brief period (about 5
minutes) of Mr. Mason's
evidence but the trans-
cript of the evidence was
read back to me by the
shorthand writer,
Mr. Martin, later that
day.

Exhibit "C" -
Interrogatory No. 4
and Answer.

Exhibit "C" -
Interrogatory No. 4
and Answer.

(d) I object to answering
this interrogatory on the
grounds that it is vexat-
ious, oppressive and
irrelevant.

T.J. Carlton's Answers

No.

10

N. Swain's Answers

No.

B.H. Killian's Answers

See my answer to the
first interrogatory.

STEWARDS' INTERROGATORIES

Interrogatory No. 5 as to paragraph 8 of the Defence
Did you interview a witness or witnesses in the absence of the other Third Defendants or discuss matters relevant to the subject of the enquiry opened by the Stewards in their absence and if so:

- (a) Identify the witnesses or persons so interviewed or with whom such discussions were held.
- (b) When and where did the interviews or discussions and each of them occur?
- (c) Was the Plaintiff informed that such interviews or discussions or any of them had occurred and if so, what was the Plaintiff told and when?

J.J. Meehan's Answer

No.

H.J. Mahoney's Answer

No.

D.G. McKay's Answer

No.

J.B. Hickman's Answer

(a)(b)(c) I interviewed Messrs. Todd and Campbell at Rosehill Racecourse on 17th March, 1976; I am not aware that the Plaintiff was informed that such interviews had occurred. 10

T.J. Carlton's Answer

No.

N. Swain's Answer

No.

B.H. Killian's Answer

See my answer to the first interrogatory. 20

Exhibit "C" -
Interrogatory No. 5
and Answer

STEWARDS' INTERROGATORIES

Interrogatory No. 6

Did you have any discussion with any of the other Third Defendants (i.e. the Stewards) as to the running of the race before the Plaintiff was charged and if so:

- (i) Specify the occasion or occasions when any such discussions occurred?
- (ii) With whom did the discussion or discussions occur, and where?
- (iii) Did you express in the course of the discussion or discussions what you observed concerning the running of Count Mayo and if so, what observation did you so express?
- (iv) Did you express in the course of the discussion or discussions any opinion concerning the running of

J.J. Meehan's Answer

Yes but I cannot recall the precise occasions except that I told Mr. Mahoney immediately after the race that I was not satisfied with Count Mayo's performance and that I would hold an enquiry (this conversation 10 was in the Stewards' box in the Members Grandstand); the other discussions were all of a round table nature with the rest of the other Third Defendants (apart from Mr. Killian) and were all within the precincts of the Stewards' Rooms at Randwick. I expressed my 20 observations concerning the running of Count Mayo and although I cannot recall precisely what I said, it is my recollection that I mentioned all or most of the observations I gave

Exhibit "C" -
Interrogatory No. 6
and Answer

Exhibit "C" -
Interrogatory No. 6
and Answer.

Count Mayo and if so,
what opinion did you
so express?

during the course of my
evidence to the Committee
of the Australian Jockey
Club on 9th April 1976;
and I also discussed the
observations of the other
Stewards and queried them
on certain aspects; it is
also my recollection that
I expressed my opinion
concerning the running of
Count Mayo and although I
cannot remember precisely
what I said from re-
collection it was something
to the effect that I was
not happy with the way
Cuddihy rode the horse and
that I was not satisfied
at that stage that Count
Mayo had been allowed to
run on its merits.

10

20

Exhibit "C" -
Interrogatory No. 6
and Answer.

Exhibit "C" -
Interrogatory No. 6
and Answer.

H.J. Mahoney's Answer

Yes but I cannot recall
the precise occasions apart
from a conversation I had
with Mr. Meehan immediately
after the race in the
Stewards' box in the Mem- 10
bers' Grandstand at Rand-
wick; I said that from my
view Cuddihy had not ridden
the horse in his usual
vigorous manner. The
other discussions were all
in the precincts of the
Stewards' Rooms at Randwick
and were of a round table
nature with the rest of the 20
Third Defendants (apart
from Mr. Killian); I ex-
pressed my observations
concerning the running of
Count Mayo and although I
cannot recall precisely
what I said I mentioned all
or most of the observations

Exhibit "C" -
Interrogatory No. 6
and Answer.

Exhibit "C" -
Interrogatory No. 6
and Answer.

I gave during the course
of my evidence to the
Committee of the Australian
Jockey Club on 9th April
1976; I also discussed the
observations of the other
Stewards and I queried 10
certain aspects as well as
making a comment on the
veterinary surgeon's re-
port which indicated no
apparent abnormality ex-
cept for a laceration to
part of Count Mayo's
mouth; I also expressed
my opinion at that stage
that Count Mayo had not 20
been allowed to run on
its merits.

D.G. McKay's Answer

Yes but I cannot recall
the precise occasions; the
discussions were of a
round table nature with
the rest of the other

Exhibit "C" -
Interrogatory No. 6
and Answer.

Exhibit "C" -
Interrogatory No. 6
and Answer

Third Defendants (apart
from Mr. Killian) and took
place in the Stewards'
Rooms at Randwick; in the
course of the discussions
I expressed my observations
concerning the running of 10
Count Mayo and although
I cannot recall precisely
what I said, from recoll-
ection I mentioned all or
most of the observations I
gave during the course of
my evidence to the Commit-
tee of the Australian
Jockey Club on 9th April
1976; I also expressed 20
my opinion concerning the
running of Count Mayo and
although I cannot recall
precisely what I said,
from recollection I said
something to the effect
that I was not happy with
the way Cuddihy rode the

Exhibit "C" -
Interrogatory No. 6
and Answer

Exhibit "C" -
Interrogatory No. 6
and Answer.

horse, that he had not
tried to improve his
position and that I was
not satisfied at that
stage that Count Mayo had
been allowed to run on its
merits.

10

J.B. Hickman's Answer

Yes but I cannot recall
the precise occasions;
the discussions were of a
round table nature with
the rest of the other
Third Defendants (apart
from Mr. Killian) and
took place in the Stewards
Rooms at Randwick before
the parties were charged;
in the course of the dis-
cussions I expressed my
observations concerning
the running of Count Mayo
and although I cannot re-
call precisely what I
said, from recollection I

20

Exhibit "C" -
Interrogatory No. 6
and Answer.

Exhibit "C" -
Interrogatory No. 6
and Answer.

mentioned -

(i) that Cuddihy had a
good hold of the horse's
head in the home straight
but he did not appear to
try to improve his position
although he was a fair way 10
from the leaders over the
rise.

(ii) that the horse appear-
ed to shift in slightly
soon after straightening
and then moved out ten or
twelve horses in the last
50 yards.

I also expressed my
thoughts at that stage con- 20
cerning the running of
Count Mayo and although I
cannot recall precisely
what I said, from re-
collection I said some-
thing to the effect that
I was not happy with the
way Cuddihy rode the horse

Exhibit "C" -
Interrogatory No. 6
and Answer.

Exhibit "C" -
Interrogatory No. 6
and Answer.

and that I was concerned
that Count Mayo had not
been allowed to run on its
merits.

T.J. Carlton's Answer

Yes but I cannot recall
the precise occasions; the 10
discussions were of a round
table nature with the rest
of the other Third Defend-
ants (apart from
Mr. Killian) and took
place in the Stewards'
Rooms at Randwick; in the
course of the discussions
I expressed my observations
concerning the running of 20
Count Mayo and although I
cannot recall precisely
what I said from re-
collection I mentioned all
or most of the observations
I gave during the course
of my evidence to the
Committee of the

Exhibit "C" -
Interrogatory No. 6
and Answer.

Exhibit "C" -
Interrogatory No. 6
and Answer

Australian Jockey Club on
9th April 1976; I also ex-
pressed my opinion concern-
ing the running of Count
Mayo and although I cannot
recall precisely what I said,
from recollection I said 10
something to the effect that
I was not happy with the way
Cuddihy rode the horse and
that I was not satisfied at
that stage that Count Mayo
had been allowed to run on
its merits.

N. Swain's Answer

Yes but I cannot recall
the precise occasions; the 20
discussions were of a
round table nature with
the rest of the other
Third Defendants (apart
from Mr. Killian) and
took place in the Stewards'
Rooms at Randwick; in the
course of the discussions

Exhibit "C" -
Interrogatory No. 6
and Answer

Exhibit "C" -
Interrogatory No. 6
and Answer.

I expressed my observations concerning the running of Count Mayo and although I cannot recall precisely what I said, from recollection I mentioned all or most of the observations I gave during the course of my evidence to the Committee of the Australian Jockey Club on 9th April 1976; I also expressed my opinion concerning the running of Count Mayo and although I cannot recall precisely what I said, from recollection I said something to the effect that I was not happy with the way Cuddihy rode the horse and that I was not satisfied at that stage that Count Mayo had been allowed to run on its merits.

Exhibit "C" -
Interrogatory No. 6
and Answer.

STEWARDS' INTERROGATORIES

Interrogatory No. 7 as to paragraph 9 of the Defence

- (a) How was opportunity given to the Plaintiff to make submissions or call evidence on the question of punishment?
- (b) Was the Plaintiff given any invitation to make such submissions or call such evidence and if so, when and by whom?

J.J. Meehan's Answers

(a)(b) He was given an opportunity when he was charged - this appears on Page 24D of the Transcript and later he was given further opportunities to do so - these appear on Pages 29 and 31 of the Transcript and when he was found guilty there was nothing to stop him making a submission on punishment.

10

H.J. Mahoney's Answers

(a)(b) He was given an opportunity when he was charged - this appears on Page 24D of the Transcript and later he was given further opportunities to do so - these appear on Pages 29 and 31 of the Transcript and when he was found guilty there was nothing to stop him making a submission on punishment.

20

Exhibit "C" -
Interrogatory No. 7
and Answer

Exhibit "C" -
Interrogatory No. 7
and Answer.

D.G. McKay's Answers

(a)(b) He was given an
opportunity when he was
charged - this appears on
Page 24D of the Transcript
and later he was given
further opportunities to 10
do so - these appear on
Paged 29 and 31 of the
Transcript and when he was
found guilty there was
nothing to stop him making
a submission on punishment.

J.B. Hickman's Answer

(a)(b) He was given an
opportunity when he was
charged - this appears on 20
Page 24D of the Transcript
and later he was given
further opportunities to
do so - these appear on
Pages 29 and 31 of the
Transcript and when he
was found guilty there
was nothing to stop him

Exhibit "C" -
Interrogatory No. 7
and Answer.

Exhibit "C" -
Interrogatory No. 7
and Answer.

making a submission on
punishment.

T.J. Carlton's Answer

(a)(b) He was given an
opportunity when he was
charged - this appears on
Page 24D of the Transcript 10
and later he was given
further opportunities to
do so - these appear on
Pages 29 and 31 of the
Transcript and when he
was found guilty there was
nothing to stop him making
a submission on punishment.

N. Swain's Answer

He was given an opportunity 20
when he was charged - this
appears on page 24D of the
Transcript and later he
was given further opportuni-
ties to do so - these
appear on Pages 29 and 31
of the Transcript and
when he was found guilty

Exhibit "C" -
Interrogatory No. 7
and Answer.

Exhibit "C" -
Interrogatory No. 7
and Answer

there was nothing to stop
him making a submission on
punishment.

B.H. Killian's Answer

See my answer to the first
interrogatory.

STEWARDS INTERROGATORIES

10

Interrogatory No. 8

Did you inform the Plain-
tiff at any time:

- (a) before opening the en-
quiry.
- (b) during the progress of
the enquiry.
- (c) before charging the
Plaintiff, or
- (d) after the Plaintiff was
charged and prior to
termination of the en-
quiry,

as to any observation you made
concerning the running of the
race and if so:

- (i) Specify on which of the
foregoing occasion or

J.J. Meehan's Answer

- (a) No.
- (b)(c)(d) Yes - through my
questions to the Plaintiff
at various stages of the
Enquiry - they were all
oral questions and are re-
corded in the Transcript.

H.J. Mahoney's Answer

- (a) No
- (b)(c)(d) Yes - through my
questions to the Plaintiff
at various stages of the
Enquiry - they were all
oral questions and are
recorded in the Transcript.

20

D.G. McKay's Answer

- (a) No

Exhibit "C" -
Interrogatory No. 7 & 8
and Answer

Exhibit "C" -
Interrogatory No. 8
and Answer

occasions any such obser-
vation was so expressed;
(ii) What information did you
give to the Plaintiff
concerning such obser-
vation on any such
occasion or occasions?

(b)(c)(d) Yes - through
my questions to the Plain-
tiff at various stages of
the Enquiry - they were
all oral question and are
recorded in the Transcript.

J.B. Hickman's Answer

10

(a) No.

(b)(c)(d) Yes - through
my questions to the Plain-
tiff at various stages of
the Enquiry they were all
oral questions and are re-
corded in the Transcript.

T.J. Carlton's Answer

No.

N. Swain's Answer

20

(a) No

(b)(c)(d) Yes - through my
questions to the Plaintiff
at various stages of the
Enquiry - they were all
oral questions and are re-
corded in the Transcript.

Exhibit "C" -
Interrogatory No. 8
and Answer

Exhibit "C" -
Interrogatory No. 8
and Answer.

B.H. Killian's Answer

See my answer to the first
interrogatory.

STEWARDS INTERROGATORIES

Interrogatory No. 9

Did you inform the Plaintiff
at any time:

- (a) before opening the en-
quiry,
- (b) during the progress of
the enquiry,
- (c) before charging the
Plaintiff, or
- (d) after the Plaintiff was
charged and prior to
termination of the en-
quiry,

as to the opinion you formed
concerning the running of the
race and if so:

- (i) Specify on which of the
foregoing occasion or
occasions any such opinion
was so expressed;
- (ii) What information did you

J.J. Meehan's Answer

- (a) No.
- (b)(c)(d) No - except in 10
so far as it appears in
the Transcript of Evidence.

H.J. Mahoney's Answer

- (a) No.
- (b)(c)(d) No - except in
so far as it appears in
the Transcript of Evidence.

D.G. McKay's Answer

- (a) No.
- (b)(c)(d) No - except in 20
so far as it appears in
the Transcript of Evidence.

J.B. Hickman's Answer

- (a) No.
- (b)(c)(d) No - except in
so far as it appears in
the Transcript of Evidence.

Exhibit "C" -
Interrogatory No. 8 & 9
and Answer.

Exhibit "C" -
Interrogatory No. 9
and Answer.

give to the Plaintiff
concerning any such
opinion on any such
occasion or occasions?

T.J. Carlton's Answer

(a) No.

(b)(c)(d) No - except in
so far as it appears in
the Transcript of
Evidence.

N. Swain's Answer

10

(a) No.

(b)(c)(d) No - except in
so far as it appears in
the Transcript of Evidence.

B.H. Killian's Answer

See my answer to the first
interrogatory.

MANAGEMENT

25. The affairs and general business of the Club shall be managed by a Committee consisting of ten members, who shall be elected at Annual Meetings in the manner and for the term of office hereinafter provided.

Committee

39.

J.H.B. CARR'S INTERROGATORIES

Interrogatory No. 12 as to paragraph 2 of the Defence

(a) Did the Third Defendants

at any time contemplate making a charge against the Plaintiff and if so:

(i) At approximately what time of what day did they first contemplate making any such charge against the Plaintiff?

(ii) What was the charge the subject of their contemplation?

(b) Did the Third Defendants at any time inform the Plaintiff that a charge would be made against him and if so:

(i) At approximately what time of what day did they so inform the Plaintiff?

(ii) What was the charge of which they so informed the Plaintiff?

Answer

(a) and (b)

I do not have any personal knowledge of the answer to these Interrogatories but from enquiries conducted on my behalf, the answer to Question 12 is the same as the answer to Question 1 in each of the Interrogatories sworn and filed on behalf of the Third Defendants.

10

20

Exhibit "B" -
Interrogatory No. 12
and Answer

J.H.B. CARR'S INTERROGATORIES

Interrogatory No. 13 as to
paragraph 3 of the Defence

(a) What evidence or information was taken or obtained in relation to the enquiry opened by the Stewards at any time after it was opened orally or in writing in the absence of the Plaintiff, and when and in what manner respectively?

(b) Did the Third Defendants at any time make or cause any person to make the Plaintiff aware of the nature, substance or effect of the evidence so taken and information so obtained and if so, when, where and in what manner did they make or cause the Plaintiff to be made so aware?

Answer

(a) and (b)

I do not have any personal knowledge of the answer to these Interrogatories but from enquiries conducted on my behalf, the answer to Question 13 is the same as the answer to Question 2 in each of the Interrogatories sworn and filed on behalf of the Third Defendants.

10

20

Exhibit "B" -
Interrogatory No. 13
and Answer

J.H.B. CARR'S INTERROGATORIES

Interrogatory No. 14 as to
paragraph 4 of the Defence
(a) Did the Third Defendants

inform the Plaintiff as
to the grounds on which
or the respects in which
the Third Defendants or
any of them claimed that
"Count Mayo" was not run
on its merits and if so,
when, and where did they
so inform the Plaintiff
and what was the infor-
mation which they gave
him?

(b) Did the Third Defendants
inform the Plaintiff as
to the grounds on which
or the respects in
which any other person
claimed that "Count Mayo"
was not run on its merits
and if so, when, and
where did they so inform
the Plaintiff and what
was the information which
they gave to him?

Answer

(a), (b) and (c)

I do not have any personal
knowledge of the answer to
this Interrogatory but from
enquiries conducted on my
behalf, the answer to
Question 14 is the same as
the answer to Question 3
in each of the Interrog-
atories sworn and filed on
behalf of the Third
Defendants.

10

20

Exhibit "B" -
Interrogatory No. 14
and Answer

(c) What opportunity was given to the plaintiff to answer any claim that "Count Mayo" was not on its merits? If an invitation was given to the Plaintiff for that purpose, who gave the invitation and when and where?

10

J.H.B. CARR'S INTERROGATORIES

Interrogatory No. 15 as to paragraph 7 of the Defence
Were the Third Defendants absent from the enquiry at any time and if so:

- (a) On what day and for what period of time were they so absent?
- (b) Who read to them the transcript of evidence taken in their absence?
- (c) Identify the evidence so read to them.

Answer

(a), (b), (c) and (d)

I do not have any personal knowledge of the answer to this Interrogatory but from enquiries conducted on my behalf, the answer to Question 15 is the same as the answer to Question 4 in each of the Interrogatories sworn and filed on behalf of the Third Defendants.

20

Exhibit "B" -
Interrogatory No. 15
and Answer

- (d) What decision did they
make concerning such
evidence?

J.H.B. CARR'S INTERROGATORIES

Interrogatory No. 16 as to
paragraph 8 of the Defence
Did any of the Third Defend-
ants interview a witness or
witnesses in the absence of
the other Third Defendants or
discuss matters relevant to
the subject of the enquiry
opened by them in their
absence and if so:

- (a) Identify the witnesses
or persons so interviewed
or with whom such dis-
cussions were had;
- (b) When and where did the
interviews or discussions
and each of them occur?
- (c) Was the Plaintiff inform-
ed that such interviews
or discussions or any of
them had occurred and if

Answer

(a), (b) and (c)

10

I do not have any personal
knowledge of the answer to
this Interrogatory but
from enquiries conducted
on my behalf, the answer
to Question 16 is the same
as the answer to Question
5 in each of the Interrog-
atories sworn and filed on
behalf of the Third
Defendants.

20

so, what was the

Plaintiff told and when?

J.H.B. CARR'S INTERROGATORIES

Interrogatory No. 18 as to
paragraph 9 of the Defence

(a) How was opportunity given

to the Plaintiff to make
submissions or call
evidence on the question
of punishment?

(b) Was the Plaintiff given
any invitation to make
such submissions or call
such evidence and if so,
when and by whom?

Answer

(a) and (b)

I do not have any personal
knowledge of the answer to
these Interrogatories but
from enquiries conducted
on my behalf, the answer
to Question 18 is the same
answer as the answer to
Question 7 in each of the
Interrogatories sworn and
filed on behalf of the
Third Defendants.

10

20

J.H.B. CARR'S INTERROGATORIES

Interrogatory No. 19

Did any of the Third Defend-
ants inform the Plaintiff at
any time:

- (a) before opening the en-
quiry,
(b) during the progress of
the enquiry,

Answer

(a), (b), (c) and (d)

I do not have any personal
knowledge of the answer to
these Interrogatories but
from enquiries conducted
on my behalf, the answer
to Question 19 is the same

Exhibit "B"
Interrogatory No. 16, 18 & 19
and Answer

Exhibit "B" -
Interrogatory No. 19
and Answer.

(c) before charging the
Plaintiff, or

(d) after the Plaintiff was
charged and prior to
termination of the
enquiry?

answer as the answer to
Question 8 in each of the
Interrogatories sworn and
filed on behalf of the
Third Defendants.

as to any observation he or
they made concerning the run-
ning of the race and if so:

10

(i) Specify on which of the
foregoing occasion or
occasions any such
observation was so ex-
pressed and who made the
same?

(ii) What information did he
or they give to the
Plaintiff concerning
such observation on any
such occasion or
occasions?

20

J.H.B. CARR'S INTERROGATORIES

Interrogatory No. 20

Did the Third Defendants inform the Plaintiff at any time:

- (a) before opening the enquiry,
- (b) during the progress of the enquiry.
- (c) before charging the Plaintiff, or
- (d) after the Plaintiff was charged and prior to termination of the enquiry,

as to any opinion they formed concerning the running of the race and if so:

- (i) Specify on which of the foregoing occasion or occasions any such opinion was so expressed;
- (ii) What information did they give of the Plaintiff concerning any such opinion on any such occasion or occasions?

Answer

(a), (b), (c) and (d)

I do not have any personal knowledge of the answer to these Interrogatories but from enquiries conducted on my behalf, the answer to Question 20 is the same answer as the answer to Question 9 in each of the Interrogatories sworn and filed on behalf of the Third Defendants.

10

20

Exhibit "B" -
Interrogatory No. 20
and Answer.

R.B. ALEXANDER'S INTERROGATORIES

Interrogatory No. 12

Answer

As to paragraph 2 of the Defence:

(a) I do not have any personal knowledge of the

(a) Did the Third Defendants at any time contemplate making a charge against the Plaintiff and if so:

answer to this interrogatory but from enquiries which I have caused to be made, the answer is

(i) At approximately what time of what day did they first contemplate making any such charge against the Plaintiff?

yes and the first time the Third Defendants

10

(leaving aside Mr. Killian who was not present) contemplated (in the sense that it was considered more likely than not) that they or a

(ii) What was the charge the subject of their contemplation?

majority of them would make a charge against the Plaintiff was not until

(b) Did the Third Defendants at any time inform the Plaintiff that a charge would be made against him and if so:

Jockey Cuddihy had given evidence after the last race on 17th March 1976;

20

the charge which was subject to their contemplation was a charge under Rule 135(a) of the Rules of Racing.

(i) At approximately what time of what day did they so inform the Plaintiff?

Exhibit "K" -
Interrogatory No. 12
and Answer.

Exhibit "K" -
Interrogatory No. 12
and Answer

(ii) What was the charge of which they so informed the Plaintiff?

(b) I do not have any personal knowledge of the answer to this interrogatory but from enquiries which I have caused to be made, the answer is yes; the Plaintiff was so informed at about 5.00 p.m. on 17th March 1976 in the terms appearing on page 24D of the Transcript.

10

R.B. ALEXANDER'S INTERROGATORIES

Interrogatory No. 13 as to paragraph 3 of the Defence

(a) What evidence or information was taken or obtained in relation to the enquiry opened by the Stewards at any time after it was opened orally or in writing in the absence of the Plaintiff, and when and in what manner respectively?

Answer

(a) I do not have any personal knowledge of the answer to this interrogatory but from enquiries which I have caused to be made, the answer is that before the Plaintiff was charged, evidence was taken in his absence from Cuddihy and Mason on 13th March, 1976 and from Galea on 17th March, 1976;

20

Exhibit "K" -
Interrogatory No. 12 & 13
and Answer

Exhibit "K" -
Interrogatory No. 13
and Answer

(b) Did the Third Defendants at any time make or cause any person to make the Plaintiff aware of the nature, substance or effect of the evidence so taken and information so obtained and if so, when, where, and in what manner did they make or cause the Plaintiff to be made so aware?

After he was charged evidence was taken in his absence from Galea, Todd and Campbell. On the question of what information was obtained in his absence, the answer is that a veterinary report was obtained from Mr. McFadden on 13th March, 1976. The Sydney and Melbourne bookmakers sheets were also received in his absence. To get the Melbourne bookmakers' sheets, Mr. Mahoney rang the V.R.C. Stewards whilst Mr. Meehan had a brief telephone conversation with Mr. Poulsen. In addition Mr. Hickman interviewed Todd and Campbell whose evidence appears in the Transcript. 10 20

(b) I do not have any personal knowledge of the answer to this interrogatory

Exhibit "K" -
Interrogatory No.13
and Answer

Exhibit "K" -
Interrogatory No. 13
and Answer

but from enquiries which I
have caused to be made, the
answer is no except as to
what appears in the Trans-
cript of the Stewards En-
quiry.

R.B. ALEXANDER'S INTERROGATORIES

10

Interrogatory No. 14 as to
paragraph 4 of the Defence

Answer

(a) Did the Third Defendants
inform the Plaintiff as
to the grounds on which
or the respects in which
the Third Defendants or
any of them claimed that
"Count Mayo" was not run
on its merits and if so,
when, and where did they
so inform the Plaintiff
and what was the infor-
mation which they gave
to him?

(a) I do not have any per-
sonal knowledge of the an-
swer to this interrogatory
but from enquiries which
I have caused to be made,
the answer is yes in so
far as it appears in the
Transcript of the Stewards
Enquiry.

20

(b) Did the Third Defendants
inform the Plaintiff as
to the grounds on which
or the respects in which

(b) I do not have any per-
sonal knowledge of the an-
swer to this interrogatory
but from enquiries which I
have caused to be made,
the answer is only to the
extent revealed in the
Transcript of the Stewards

Exhibit "K" -
Interrogatory 13 & 14
and Answer

Exhibit "K" -
Interrogatory No. 14
and Answer.

any other person claimed that "Count Mayo" was not run on its merits and if so, when, and where did they so inform the Plaintiff and what was the information which they gave to him?

- (c) What opportunity was given to the Plaintiff to answer any claim that "Count Mayo" was not run on its merits? If an invitation was given to the Plaintiff for that purpose, who gave the invitation and when and where?

Enquiry but to the extent to which it is revealed, the information was limited to the grounds on which and the respects in which the Third Defendants (apart from Mr. Killian) claimed that "Count Mayo" was not run on its merits.

10

(c) I do not have any personal knowledge of the answer to this Interrogatory but from enquiries which I have caused to be made, the answer is that after the Plaintiff was charged on 17th March, 1976 he was granted an adjournment to call evidence from New Zealand and on the hearing on 26th March, 1976 he was given two further opportunities to present evidence or make submissions - these

20

Exhibit "K" -
Interrogatory No. 14
and Answer.

Exhibit "K" -
Interrogatory No. 14
and Answer

appear on Pages 29 and 31
of the Transcript of the
Stewards Enquiry.

R.B. ALEXANDER'S INTERROGATORIES

Interrogatory No. 15 as to
paragraph 7 of the Defence
Were the Third Defendants ab-

Answer

(a), (b) and (c)

10

sent from the enquiry at any
time and if so:

I do not have any personal
knowledge of the answer to

(a) On what day and for what
period of time were they
so absent?

this interrogatory but from
enquiries which I have
caused to be made the an-

(b) Who read to them the
transcript of evidence
taken in their absence?

swer is that Mr. Mahoney
and Mr. Hickman were ab-
sent for a brief period

(c) Identify the evidence so
read to them.

on 13th March, 1976 whilst
Mr. Mason was giving evi-

20

dence; the Transcript of
that evidence was read
back to them by the short-
hand writer Mr. Martin,
later that day; subsequent-
ly on 17th March, 1976
Mr. Mahoney had to leave
the hearing for a few min-
utes but before the

Exhibit "K" -
Interrogatory No. 14 & 15
and Answer

Exhibit "K" -
Interrogatory No. 15
and Answer.

hearing resumed on 26th
March he read the trans-
cript of the evidence taken
in his absence; Mr McKay
was absent from the en-
quiry when evidence was
taken from Mr. Bruce Galea 10
on the morning of 27th
March, 1976; however he
heard a tape recording
of that evidence.

R.B. ALEXANDER'S INTERROGATORIES

Interrogatory No. 16 as to
paragraph 8 of the Defence
Did any of the Third Defend-
ants interview a witness or
witnesses in the absence of
the other Third Defendants or
discuss matters relevant to
the subject of the enquiry
opened by them in their ab-
sence and if so:

(a) Identify the witnesses
or persons so inter-
viewed or with whom
such discussions were

Answer

(a), (b) and (c)
I do not have any personal
knowledge of the answer to 20
this interrogatory but
from enquiries which I
have caused to be made,
the answer is that
Mr. Hickman interviewed
Mr. Todd and Mr. Campbell
at Randwick on 17th March,
1976; I am not aware that
the Plaintiff was

Exhibit "K" -
Interrogatory No. 15 & 16
and Answer

Exhibit "K" -
Interrogatory No. 16
and Answer.

had;

(b) When and where did the
interviews or discussion
and each of them occur?

(c) Was the Plaintiff in-
formed that such inter-
views or discussion or
any of them had occurred
and if so, what was the
Plaintiff told and when?

informed that such inter-
views had occurred.

Exhibit "K" -
Interrogatory No. 16
and Answer.

R.B. ALEXANDER'S INTERROGATORIES

Interrogatory No. 17

Answer

Did any of the Third Defendants have any discussion with any of the other Third Defendants as to the running of "Count Mayo" before the Plaintiff was charged and if so:

I do not have any personal knowledge of the answer to this interrogatory but from enquiries which I have caused to be made the answer is yes but they are unable to recall the precise occasions apart from

(i) Specify on which of the foregoing occasion or occasions any such discussion occurred?

a conversation which Mr. Meehan had with Mr. Mahoney immediately

(ii) With whom did the discussion or discussions occur, and where?

after the race in the Stewards Box in the Members Grandstand at

(iii) Did any of them express in the course of the discussion or discussions what he observed concerning the running of "Count Mayo" and if so, what observation did he so express?

Randwick; but it is their recollection that they were round table discussions between all the Third Defendants (apart from Mr. Killian) and that they took place in the precincts of the Stewards

(iv) Did any of them express in the course of the discussion or the

Rooms at Randwick; all or most of them (apart from Mr. Killian expressed

Exhibit "K" -
Interrogatory No. 17
and Answer.

Exhibit "K" -
Interrogatory No. 17
and Answer.

discussions any opinion concerning the running of "Count Mayo" and if so, what opinion did he so express?

their observations of the running of "Count Mayo" and to the best of their recollection they mentioned all or most of the matters which appear in the Transcript of the evidence they (apart from Mr. Hickman) gave before the Committee of the Australian Jockey Club on 9th April, 1976; in Mr. Hickman's case it is his recollection that he mentioned that

(i) Cuddihy had a good hold of the horse's head in the home straight but he did not appear to try to improve his position although he was a fair way from the leaders over the rise.

(ii) The horse appeared to shift in slightly soon after straightening and

Exhibit "K" -
Interrogatory No. 17
and Answer.

Exhibit "K" -
Interrogatory No. 17
and Answer

then moved out ten or
twelve horses in the last
50 yards. they also ex-
pressed their opinions and
thoughts concerning the
running of "Count Mayo"
and whilst not all of them 10
cannot recall what they
said precisely in this re-
gard the said opinions
and thought were something
to the effect that for
various reasons they were
not happy with the running
of "Count Mayo" and that
they were not satisfied at
that stage that it had 20
been allowed to run on its
merits.

Exhibit "K" -
Interrogatory No. 17
and Answer

R.B. ALEXANDER'S INTERROGATORIES

Interrogatory No. 18 as to
paragraph 9 of the Defence

- (a) How was opportunity
given to the Plaintiff
to make submissions or
call evidence on the
question of punishment?
- (b) Was the Plaintiff given
an invitation to make
such submissions or
call such evidence and
if so, when and by whom?

Answer

(a) and (b)

I do not have any personal
knowledge of the answer to
this interrogatory but from
enquiries which I have
caused to be made, the
answer is that he was
given any opportunity when
he was charged - this
appears on Page 24D of the
Transcript; and later he
was given further partic-
ulars to do so - these
appear on Pages 29 and 31
of the Transcript and when
he was found guilty there
was nothing to stop him
making a submission of
punishment; he was present
and he was impliedly in-
vited to do so.

10

20

Exhibit "K" -
Interrogatory No. 18
and Answer

R.B. ALEXANDER'S INTERROGATORIES

Interrogatory No. 19

Answer

Did any of the Third Defendants inform the Plaintiff at any time:

(a) I do not have any personal knowledge of the answer to this interrogatory

(a) before opening the enquiry,

but from enquiries which I

(b) during the progress of the enquiry,

have caused to be made, the answer is no.

(c) before charging the Plaintiff, or

(b)(c)(d) I do not have any personal knowledge of

10

(d) after the Plaintiff was charged and prior to termination of the enquiry,

the answer to this interrogatory but from enquiries which I have

as to any observation he or they made concerning the running of the race and if so:

caused to be made, the answer is yes - through the Third Defendants

(i) Specify on which of the foregoing occasion or occasions any such observation was so expressed and who made the same?

questions to the Plaintiff at various stages of the enquiry - they were all oral questions and are recorded in the Trans-

20

(ii) What information did he or they give to the Plaintiff concerning such observation on any such occasion or occasions?

cript.

Exhibit "K" -
Interrogatory No. 19
and Answer.

R.B. ALEXANDER'S INTERROGATORIES

Interrogatory No. 20

Answer

Did the Third Defendants inform the Plaintiff at any time:

(a) I do not have any personal knowledge of the answer to this

(a) before opening the enquiry,

interrogatory but from enquiries which I have

(b) during the progress of the enquiry,

caused to be made, the answer is no.

(c) before charging the Plaintiff, or

(b)(c)(d) I do not have any personal knowledge of

10

(d) after the Plaintiff was charged and prior to termination of the enquiry,

the answer to this interrogatory but from enquiries which I have caused to be made, the

as to any opinion they formed concerning the running of the race and if so:

answer is no except in so far as it appears in the Transcript of Evidence.

(i) Specify on which of the foregoing occasion or occasions any such opinion was so expressed;

(ii) What information did they give to the Plaintiff concerning any such opinion on any such occasion or occasions?

Exhibit "K" -
Interrogatory No. 20
and Answer