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Appeal No. 96 of 1946.

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In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO.

BETWEEN

SIR LENNOX ARTHUR PATRICK O'REILLY, KT.,
 CHARLES ARTHUR CHILD,
 GEORGE DE NOBRIGA,
 CLIFFORD TRESTRAIL, and
 10 SYDNEY LIDDELOW,
 Stewards of the Trinidad Turf Club (Defendants) *Appellants,*

AND

CYRIL CUTHBERT GITTENS (Plaintiff) *Respondent,*

AND BETWEEN

CYRIL CUTHBERT GITTENS (Plaintiff) *Appellant,*

AND

SIR LENNOX ARTHUR PATRICK O'REILLY, KT.,
 CHARLES ARTHUR CHILD,
 GEORGE DE NOBRIGA,
 20 CLIFFORD TRESTRAIL, and
 SYDNEY LIDDELOW,
 Stewards of the Trinidad Turf Club (Defendants) - *Respondents.*
 (CONSOLIDATED APPEALS.)

CASE FOR THE RESPONDENT CYRIL CUTHBERT GITTENS. (Appellant on Cross-Appeal).

1. This is an appeal by the above-named Sir Lennox Arthur Patrick O'Reilly, Kt., Charles Arthur Child, George de Nobriga, Clifford Trestrail and Sydney Liddelw, Stewards of the Trinidad Turf Club (hereinafter called "the Appellants"), against the judgment of the Supreme Court of Trinidad and Tobago (Hallinan, J.) delivered on the 21st June, 1946, in an action in which the above-named Cyril Cuthbert Gittens (hereinafter

RECORD.
 p. 70.

RECORD. called "the Respondent") was Plaintiff and the Appellants were Defendants, whereby it was declared:—

- (1) That the Appellants by their Order of the 29th April, 1944, purported to warn off the Respondent in such a manner as to make him a disqualified person and in so doing acted *ultra vires* the powers conferred upon them by the Trinidad Turf Club and therefore had no authority or jurisdiction to make such Order; and
- (2) That the Appellants' ruling that the Respondent had failed to safeguard his horse and the Order warning him off are contrary to natural justice for the reason that the Appellants adjudged the Respondent by a rule or principle which precluded them from making a proper enquiry. 10

There is also a Cross-appeal by the Respondent.

2. The Appellants are five of the Stewards of the Trinidad Turf Club.

3. The Respondent is a professional trainer of racehorses and the owner and trainer of a racehorse known as "Tommy Boy." He is not a member of the Trinidad Turf Club.

4. The matters in issue between the parties are:— 20

- (1) Whether the Appellants had any power to warn off the Respondent in such a manner as to make him a disqualified person.
- (2) Whether the Appellants acted contrary to natural justice in ruling that the Respondent had failed to safeguard the racehorse known as "Tommy Boy" and in warning the Respondent off.
- (3) Whether the Appellants de Nobriga and Liddelov were disqualified by bias from adjudicating upon an enquiry in which the Respondent was concerned and acted contrary to natural justice in doing so. 30
- (4) Whether, even if the Appellants' discretion in that behalf was absolute, they in fact exercised their discretion in making their order of the 29th April, 1944, and therefore whether such order was valid in any respect at all.

5. The Trinidad Turf Club is the authority responsible for controlling horse-racing in the Colony of Trinidad and Tobago, and the Tobago Race Club is a club recognised by the Trinidad Turf Club.

6. On the 2nd and 4th March, 1944, a race meeting was held in the Island of Tobago by the Tobago Race Club under the sanction of the Trinidad Turf Club. 40

7. It is provided by the Trinidad Turf Club Rules of Racing (*inter alia*) as follows:— RECORD.

“ These Rules apply to all meetings held under the sanction of the Trinidad Turf Club and to all races run at such meetings. p. 76.

“ Interpretation of Words and Phrases.

“ ‘ Stewards ’—Unless otherwise stated, wherever the word ‘ Stewards ’ is used, it means the Steward or Stewards of the meeting or their duly appointed deputy or deputies. p. 77.

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“ 17. The Stewards of the Trinidad Turf Club have power, at their discretion, to grant and to withdraw, licences to officials, trainers, jockeys, grooms, and racecourses, to fix the dates on which all meetings shall be held, to make enquiry into and deal with any matters relating to racing in the Colony. They also have power in cases of emergency or expediency to modify or suspend any rule or Regulation, for such period or periods as they shall think fit, without giving previous notice. p. 79.

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“ 48. Any horse which has been the subject of fraudulent practice may at the discretion of the Stewards of the Trinidad Turf Club, be disqualified for such time and for such races as they shall determine. p. 82.

“ 74. Every trainer of a horse running under these Rules, must obtain an annual licence from the Stewards of the Trinidad Turf Club, and pay a yearly subscription of Five dollars to the Jockey Accident Fund. p. 84.

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“ (1) No person whose licence to train has been withdrawn or refused on the ground of misconduct will be permitted to take employment in any racing stable or be allowed in any weighing room or paddock.

CORRUPT PRACTICES AND DISQUALIFICATION OF PERSONS. p. 88.

“ 125. Any person who shall:—

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

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

“ (iii) Having official duties in relation to a race, or, if any trainer, jockey, or agent, or other person, having charge of, or

RECORD.

access to, any racehorse, corruptly accept or offer to accept any bribe, in any form, or

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

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

shall be warned off by the Stewards and reported forthwith to the Stewards of the Trinidad Turf Club. When any person is warned off, and as long as his exclusion continues, he is a disqualified person.” 10

p. 89.

“ 127. ‘ A disqualified person ’ so long as his disqualification lasts, is unable:—

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

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

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

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

“ (5) Except with permission of the Stewards of the Trinidad Turf Club be employed in any Racing Stable. 20

p. 89.

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

8. The Respondent entered his said horse “ Tommy Boy ” for the said race meeting and the said horse was the winner of two races run on the 4th March, 1944.

9. After the said races swabs were taken from the said horse “ Tommy Boy,” and the Government Analyst found that the said swabs contained traces of heroin. 30

10. On the 21st April, 1944, the Appellants held an enquiry at which the Respondent appeared with Counsel.

p. 146.

11. At the close of the said enquiry on the 29th April, 1944, the Appellants made the following ruling and order:—

“ 1. A drug was administered to ‘ Tommy Boy ’ on the second day of the Tobago Spring Races (4th March, 1944), which was calculated to affect his speed.

“ 2. The stewards hold the Trainer, Dr. Cyril C. Gittens responsible for the safeguarding of the horse:— 40

“ They order:

“ (a) That ‘ Tommy Boy ’ be disqualified as from this date from all future racing under the rules of the Trinidad Turf Club.

“ (b) That the licence of Dr. Cyril C. Gittens, as Trainer, be withdrawn.

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

12. On the 5th May, 1944, the Respondent issued a writ claiming:— p. 1.

10 A. A declaration that the decision of the Defendants acting as Stewards of the Trinidad Turf Club on the 29th day of April, 1944, upon an enquiry into the alleged doping of the Plaintiff’s racehorse “ Tommy Boy ” was and is null and void for the reasons that:—

(a) two of the said Stewards were biased; and/or

(b) the said Stewards had no jurisdiction, or, alternatively exceeded their jurisdiction; and/or

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

20 B. An injunction restraining the Defendants and each of them, as Stewards of the Trinidad Turf Club from taking any action in respect of the Plaintiff or of the Plaintiff’s racehorse “ Tommy Boy ” or otherwise, to implement or carry into effect in any manner whatsoever the said decision or any part thereof.

C. Such further and other relief as the nature of the case may require.

13. The action was tried before Hallinan, J., between the 24th April, 1946, and the 14th May, 1946, and on the 21st June, 1946, the learned Judge delivered judgment in favour of the Respondent. The learned Judge held that the Respondent’s claim for an injunction could not be allowed and that the withdrawal of the Respondent’s licence as a trainer did not involve the exercise of a quasi-judicial function. As regards the rest of the Order of the 29th April, 1944, the learned Judge held that the Appellants in making the Order were acting in a quasi-judicial capacity. p. 59. p. 60. p. 60.

14. It was admitted by the Appellants at the trial that they had no power to warn off the Respondent under Rule 125, but they contended that they had power to do so under Rule 17 or alternatively under Rule 17 of the General Rules of the Trinidad Turf Club, which is as follows:— p. 62.

40 “ 17. In addition to the powers conferred on them by the Rules of Racing of the Trinidad Turf Club the Stewards have a discretionary power to warn any person off any premises belonging to, occupied by, or under the control of the Trinidad Turf Club, and in case of such notice being disregarded, to take legal proceedings. p. 115.

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

p. 64. 15. The learned Judge held that the Appellants had no power to make that part of the Order of the 29th April, 1944, which warned off the Respondent.

p. 64. 16. The learned Judge further held that the part of the Order of the 29th April, 1944, which disqualified "Tommy Boy" was not *ultra vires* Rule 48 of the Rules of Racing, but that the Appellants owed a duty to the Respondent to hold a proper enquiry according to the principles of natural justice. 10

17. The learned Judge held that the Appellants had not held a proper enquiry according to the principles of natural justice because they acted upon the former rigid rule laid down in *Chapman v. Ellesmere* (1932) 2 K. B. 431, that a trainer is directly responsible for the care of his horse at all times, and omitted to take into consideration the following rule applicable to the said meeting introduced in 1934:—

p. 68. "6. Horses intended to start in a race must be in the Paddock at least 1 hour and in the saddling stalls 30 minutes before the time appointed for the race," 20

and the facts that no person is allowed to approach a horse in the Paddock or in the saddling stalls without the permission of the official in charge of these places or his assistants and that any person who obtains such permission visits the horse in the presence of an official. The learned Judge said:—

p. 69. "In 1934 the Trinidad Turf Club instituted a practice which might reasonably induce any trainer to relax his vigilance. Then in 1944 he finds too late that the standard of absolute responsibility remains unaltered. In other words the Plaintiff was tried under the original rigid rule for an offence alleged to have been committed while the rule was modified by the conduct of the very people who are his judges. If the Defendants had recognised that the practice since 1934 had modified the rigid rule, then it could have been open to the Plaintiff to show that if any dereliction of duty occurred, it was on the part of the Club Officials or their assistants rather than his part. In short, by the adoption of what was in the circumstances an unreasonable and arbitrary rule, the Defendants in effect deprived the Plaintiff of a proper opportunity to make his defence." 30 40

p. 67. 18. The learned Judge found that the Respondent had for many years been on bad terms with the Appellants de Nobriga and Liddelow and that he hated them and they disliked him. The learned Judge

further had a grave suspicion that the Appellant Liddelow was not an impartial judge and said:— RECORD.

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

The Respondent submits that the reasoning of Maugham, J., in *Maclean v. The Workers’ Union* (1929) 1 Ch. 602, does not apply to this case. This case is one of personal bias and dislike against the Respondent and not merely one of bias in favour of another party to the dispute.

19. The learned judge held that the Appellants had power under Rule 48 of the Rules of Racing to disqualify the racehorse known as “Tommy Boy,” and that they had power to withdraw the Respondent’s licence as a trainer under Rule 74 of the Rules of Racing and under the terms endorsed on the said licence.

30 It was admitted in evidence by the Appellants that they made their order solely on the basis of the original rigid rule that the Respondent as trainer was directly responsible for the care of his horse at all times.

The learned judge held, as stated above, that in Tobago the practice since 1934 had modified the rigid rule.

Accordingly the Respondent submits that what the Appellants admit to have been the sole basis for the exercise of their discretion and for the making of their order was entirely misconceived, and that accordingly the Appellants did not address their minds to the question and exercised no discretion whatever in making their said order.

40 20. On the 15th October, 1946, leave to appeal was granted by the Supreme Court.

21. The Respondent humbly submits that the Judgment and Order of Hallinan, J., so far as they were in favour of the Respondent were correct and should be affirmed, but that the declarations ought to have been granted in respect of the whole of the Appellants’ order of the

p. 64.
ll. 2—11.

p. 36,
ll. 36—39.
p. 36, l. 49.
p. 37, l. 2.
p. 47,
ll. 5—11.
p. 55,
ll. 39—41.

p. 73.

RECORD. 29th April, 1944, and that the reasons for granting the declarations ought to have included the reason that two of the Appellants were biased against the Respondent for the following, amongst other,

REASONS:—

1. Because the Appellants had no power to warn off the Respondent in such a manner as to make him a disqualified person.
2. Because the Appellants applied the wrong rule with regard to the Respondent's responsibility for the care of his horse. 10
3. Because the Appellants in making their said order did not address their minds to the question and exercised no discretion, but acted in a wholly arbitrary manner.
4. Because the Appellants acted contrary to natural justice.
5. Because the Appellants de Nobriga and Liddelow were disqualified by bias from adjudicating upon the enquiry.
6. Because the reasoning of Maugham, J., in *Macleane v. The Workers' Union* does not apply to the present case, which is one of personal bias against the Respondent.
7. Because there is no difference between the standard of 20 impartiality and detachment required of persons in the position of the Appellants and that required of a Judge in a Court of law.
8. Because the judgment of Hallinan, J., so far as it was in favour of the Respondent was right.

DAVID MAXWELL FYFE,
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In the Privy Council.

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BETWEEN
SIR LENNOX ARTHUR
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PATRICK O'REILLY, Kt.,
AND OTHERS - *Respondents.*
(CONSOLIDATED APPEALS.)

**Case for the Respondent Cyril
Cuthbert Gittens.**
(Appellant on Cross-Appeal)

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