[HIGH COURT OF AUSTRALIA.]

MEYERS . . . . . APPELLANT;
PLAINTIFF,

AND

CASEY AND OTHERS . . . . . RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *Sept.* 18, 19, 22, 23, 24, 25; *Oct.* 13.

Barton A.C.J., Isaacs, Powers and Rich JJ.

Club—Rules by which person has agreed to be bound—Powers of committee—Disqualification in regard to horse race—Stewards acting without jurisdiction—Appeal to committee—Finality of decision—Estoppel—Expulsion of member—Decision contrary to natural justice—Misconduct disentitling party to relief in Court of equity.

The plaintiff entered and ran his horse in a race which was to be run under certain rules, by which he agreed to be bound. Under those rules stipendiary stewards had power conferred upon them to disqualify an owner for certain specified reasons, not including "suspicious practices," and their decisions were to be final, subject to a right of appeal to the committee of the Victoria Racing Club. The committee were empowered to hear an appeal either on the evidence taken before the stewards, or on fresh evidence, or in any way they might think fit, and to "quash, set aside, alter, vary, increase, or add to the punishment awarded by or confirm the decision of the stewards, or refer the case on appeal back for re-hearing," and "to draw inferences of fact and to give any judgment or decision and make such order as in their opinion the justice of the case requires." It was also provided that the committee's decision should be final. The committee were also given power to disqualify an owner for certain specified reasons, including suspicious practices. The stewards having disqualified the plaintiff and the horse for suspicious practices in connection with the running of the horse in the race, the plaintiff appealed to the committee on the ground, *inter alia*, that he was not guilty of the offence charged. On his appeal he did not challenge the jurisdiction of the stewards to disqualify him as well as the horse for suspicious practices in running it. On

the hearing of the appeal fresh evidence was given in addition to the evidence taken before the stewards, and the committee confirmed the decision of the stewards.

Held, by *Barton* A.C.J. and *Isaacs* and *Rich* JJ. (*Powers* J. dissenting), (1) that the committee had jurisdiction to entertain the appeal, notwithstanding that the decision of the stewards was without jurisdiction; (2) that the plaintiff, having appealed to the committee, was now incompetent to challenge the decision on the ground of want of jurisdiction; (3) that the decision of the committee was also justified as an exercise of their independent power to disqualify for suspicious practices, and therefore (4) that the plaintiff was not entitled to challenge the validity of his disqualification in a Court of law.

By the rules it was provided that one of the effects of disqualification was that no person, while disqualified, should be entitled to attend any race meeting held on any course on which the rules were in force, and that any person while disqualified should be liable to be ejected from any such course if he attempted so to attend.

Held, that the plaintiff, having been disqualified in respect of a race run on the Moonee Valley Racecourse, on which the rules were in force, was not entitled to an injunction restraining the Victoria Racing Club from ejecting him from the Flemington Racecourse.

The principle that a person must come into a Court of equity with clean hands only applies where his alleged misconduct has an immediate and necessary relation to the equity sued for.

The plaintiff brought an action seeking, *inter alia*, to have his disqualification declared invalid and, being a member of the Victoria Racing Club, to restrain the club from expelling him from his membership of the club, on the ground that he was not given an opportunity of defending himself against the charge upon which it was proposed to expel him.

Held, that misconduct by the plaintiff in respect of the running of his horse in the race did not disentitle him to the relief claimed, that relief being independent of such misconduct, and the question of his guilt or innocence of such misconduct not being in issue in the action.

Judgment of the Supreme Court of Victoria (*Hodges* J.) in part reversed.

APPEAL from the Supreme Court of Victoria.

The plaintiff, Frank Samuel Meyers, brought an action in the Supreme Court against Richard Gardiner Casey, chairman of the Victoria Racing Club, for and on behalf of that club and the members thereof; E. W. Ellis, J. H. Davis and S. Griffiths, the stipendiary stewards appointed by the committee of the Victoria Racing Club; and A. V. Hiskens for and on behalf of the Moonee

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Valley Racing Club and the members thereof, by which he claimed:

(*a*) A declaration that the stipendiary stewards appointed by the Victoria Racing Club or the committee thereof have and had no power to disqualify the plaintiff for twelve months or at all for suspicious practices in connection with the running of a horse called Blackpool in the Welter Handicap at the Moonee Valley Racing Club's meeting held on 4th December 1912.

(*b*) A declaration that the decision of the committee of the Victoria Racing Club dismissing the appeal made by the plaintiff to them is invalid and of no force or effect.

(*c*) An injunction restraining the Victoria Racing Club its committee and members and the said stipendiary stewards and each of them and the Moonee Valley Racing Club its committee stewards and members from acting upon or advertising the said disqualification and from hindering or preventing the plaintiff entering upon Flemington Racecourse or enjoying the privileges of membership of the Victoria Racing Club thereon or from entering any other course subject to the rules of the said Victoria Racing Club and from ejecting or attempting to eject the plaintiff from the said Flemington Racecourse or the said other courses.

(*d*) A declaration that the expulsion of the plaintiff from his membership of the Victoria Racing Club and the privileges and advantages thereof is illegal and void.

(*e*) An injunction restraining the Victoria Racing Club its committee and members from excluding the plaintiff from the benefits and advantages of the membership of the said club and from in any way threatening or attempting so to exclude the plaintiff or to expel the plaintiff from the said club.

The material facts are stated in the judgments hereunder.

The action was heard before *Hodges* J., who dismissed it with costs.

From this decision the plaintiff now appealed to the High Court.

McArthur K.C. and *Starke* (with them *Macfarlan*), for the appellant.

Weigall K.C. and *Mann*, for the respondents other than Hiskens.

During argument reference was made to *Dines* v. *Wolfe* (1); *Marryat* v. *Broderick* (2); *Carr* v. *Martinson* (3); *Newcomen* v. *Lynch* (4); *Oliphant on Horses*, 5th ed., pp. 384, 387; *Wright* v. *London General Omnibus Co.* (5); *Cooper* v. *Phibbs* (6); *Earl Beauchamp* v. *Winn* (7); *Andrews* v. *Mitchell* (8); *Jones* v. *Lenthal* (9); *Gartside* v. *Ratcliff* (10); *Harnett* v. *Yeilding* (11); *Lee* v. *Haley* (12); *Lapointe* v. *L'Association de Bienfaisance et de Retraite de la Police de Montréal* (13); *Dawkins* v. *Antrobus* (14); *Sadler* v. *Smith* (15); *Earl of Darnley* v. *London, Chatham and Dover Railway* (16).

Cur. adv. vult.

Oct. 13.

BARTON A.C.J. read the following judgment:—This is an appeal from a decision of *Hodges* J., dismissing an action in which the appellant was plaintiff, and the chairman of the Victoria Racing Club, on behalf of the club, the committee and members; the three stipendiary stewards of the club, and the secretary of the Moonee Valley Racing Club, on behalf of that club, its committee and members, were the defendants.

The plaintiff was at all material times and is now a member of the Victoria Racing Club. The stipendiary stewards disqualified the plaintiff for twelve months for "suspicious practices" in connection with the running of a horse called Blackpool, of which he was the owner, in a race at the Moonee Valley Club's race meeting on 4th December 1912. They also disqualified the horse for the same period. The plaintiff appealed against this decision to the committee of the Victoria Racing Club, who dismissed the appeal, and confirmed the decision of the stipendiary stewards.

The plaintiff claimed: (*a*) A declaration that the stipendiary

(1) L.R. 2 P.C., 280.
(2) 2 M. & W., 369.
(3) 28 L.J.Q.B., 126.
(4) I.R. 10 C.L., 248.
(5) 2 Q.B.D., 271.
(6) L.R. 2 H.L., 149, at p. 170.
(7) L.R. 6 H.L., 223, at p. 234.
(8) (1905) A.C., 78.
(9) 1 Cas. in Ch., 154.
(10) 1 Cas. in Ch., 292, at p. 293 (*a*).
(11) 2 Sch. & Lef., 549, at p. 555.
(12) L.R. 5 Ch., 155.
(13) (1906) A.C., 535.
(14) 17 Ch. D., 615, at p. 630.
(15) L.R. 5 Q.B., 40.
(16) L.R. 2 H.L., 43, at p. 57.

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stewards or the committee had no power to disqualify him for suspicious practices in connection with the running of Blackpool. (*b*) A declaration that the decision of the committee dismissing the appeal was invalid and inoperative. (*c*) An injunction restraining the Victoria Racing Club, the stipendiary stewards, and the Moonee Valley Club from acting on or advertising the disqualification, and from hindering the plaintiff from entering upon the Flemington Racecourse, or enjoying the privileges of his membership of the Victoria Racing Club thereon, or from entering any other course subject to the Rules of the Victoria Racing Club, and from ejecting the plaintiff from Flemington or such other racecourse, &c.

At the meeting of the Moonee Valley Racing Club on 4th December 1912, the plaintiff entered Blackpool for the Welter Plate, it being stipulated on the form of entry that it was made under and subject to the By-laws and Rules of Racing for the time being of the Victoria Racing Club adopted by the Moonee Valley Club, and to the conditions indorsed on the form, which need not be stated. Of the rules of racing thus accepted, a number were cited to us, but I need only refer to a few of them.

With respect to registered meetings (of which this was one) held within a radius of twenty miles of the General Post Office, Melbourne (the Moonee Valley course being within that radius) the committee of the Victoria Racing Club are to appoint not less than three persons to act as stipendiary stewards of such meetings—rule 17. By paragraph (*c*) of that rule, the stewards so appointed are to have, with exceptions not material to this case, the powers, duties and authorities conferred on stewards by the Rules of Racing of the Victoria Racing Club. By rule 19 the stewards are authorized and empowered—"(*d*) To punish, subject to these rules, by fine . . . or suspend or disqualify for any term or at pleasure *any person* found by them to have in any way contravened these rules or to have been guilty of any dishonourable action in any way connected with racing or with any race or sporting event included in the programme of the meeting, or who has, on or off the course, been guilty of any improper conduct . . . in connection with the meeting, and

disqualify for a race or for any term *any horse* used as a medium for the contravention of these rules or for any dishonourable action in connection with the meeting or otherwise, or in the running of which dishonest or improper or suspicious practices shall have been proved to their satisfaction." They are to report all punishments, suspensions or disqualifications to the committee. By rule 33 (*a*), the decisions of the stewards, whether honorary or stipendiary, are to be final in all cases, subject to certain powers as to appeal. By (*b*), the person aggrieved by the decision of the stewards may appeal to the committee of the Victoria Racing Club by lodging in due time (as was done in this case) with the committee a notice in writing of his appeal. By (*c*), 'the committee of the Victoria Racing Club will then hear the appeal either upon the notes of evidence taken by the stewards or upon the case stated by the aggrieved person and the stewards, or they may re-hear the case upon affidavits or statutory declarations, or on *vivâ voce* evidence, or in any way they think fit either in the presence of the parties and stewards or in the absence of them or either of them." By (*d*), "the committee . . . may quash, set aside, alter, vary, increase, or add to the punishment awarded by or confirm the decision of the stewards, or refer the case on appeal back for re-hearing or the decision for re-consideration, and they shall have power to draw inferences of fact and to give any judgment or decision, and make such order as in their opinion the justice of the case requires." By paragraph (*i*), the decision of the committee of the Victoria Racing Club shall be final.

In addition to these appellate powers, the committee of the Victoria Racing Club are granted, by rule 29, authority—(*c*) "To fine, suspend, warn off the course, or disqualify for any term or for life or at pleasure, any person who has in their opinion been proved guilty of improper or suspicious or dishonest practices in connection with racing, or of improper conduct at a race meeting, and to disqualify from winning a race or any place therein or for any term or for life any horse in the running of which dishonest, improper or suspicious practices shall have been proved to their satisfaction." (*d*) "To confirm or adopt and enforce any suspension or disqualification or other punishment imposed by the

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committee or stewards of any race club in any State colony or country." (*f*) "To inquire at any time into the running of any horse upon any course or courses, whether a report concerning the same has been made, or decision arrived at, by any stewards or not, where the running of such horse is, or is alleged to be, inconsistent with any previous or subsequent running of such horse, and fine, suspend, or disqualify any rider, jockey, trainer, nominator, owner, or other person, who on such inquiry may appear to the committee to have been guilty of malpractice or corrupt practice, or in the case of a horse whose rider, jockey, trainer, nominator, or owner may have been so guilty, disqualify such horse."

Blackpool was unsuccessful in his race, and the stipendiary stewards called before them, and there were present at the inquiry, the plaintiff, as the owner, and the trainer and rider respectively of Blackpool. This took place after the race on the same day, and the evidence taken before the stewards is headed: "Inquiry into the running of Blackpool in the Welter Handicap by the V.R.C. Stipendiary Stewards," naming the defendants Ellis, Davis and Griffiths. After taking evidence, which was reported in writing, the stewards committed to writing their decision, "that the owner, rider and trainer of the b.g. Blackpool and the horse be disqualified for a period of twelve months for suspicious practices;" and they informed the plaintiff and the trainer and rider that they had come to the conclusion that the horse "did not try to win." I do not relate any of the evidence taken at this inquiry, because I do not think that this Court has anything to do with it. But it is as well to mention that the inquiry related solely to the running of the horse and the conduct of the plaintiff and his employés in connection therewith.

The stipendiary stewards, in accordance with rule 19 (*d*), reported to the secretary, for the committee, on the 5th December, that they had inquired into the running of Blackpool, and that they had disqualified the plaintiff as owner, the trainer Finn and the rider Foulsham, for a period of twelve months.

The plaintiff, the trainer and the jockey, on the 5th December, gave notice of appeal to the committee of the Victoria Racing Club against the decision of the stewards. The plaintiff's notice

describes the decision as "disqualifying me and my racehorse Blackpool for twelve months in connection with the running of that horse in the Welter Handicap." The grounds of his appeal were: (1) that he was not guilty of the charge alleged; (2) that the decision was against the evidence called at the inquiry. The appeal was heard on 13th December. The chairman, the defendant Casey, opened it by saying: "We are here to-day to hear appeals from F. S. Meyers, W. Finn and W. Foulsham against the decision of the stewards of the Moonee Valley Racing Club, who disqualified them and the b.g. Blackpool for twelve months for suspicious practices in connection with the running of the horse in the Welter Handicap at the race meeting on 4th December 1912"; and he continued: "We have before us the evidence taken at the inquiry held at Moonee Valley, and it is for you to bring such evidence or use such arguments as you can to endeavour to induce us to reverse the decision previously given."

On the hearing the committee received declarations from seven persons and a number of letters, as well as oral evidence in addition to that taken by the stewards. The three appellants consented to their cases being taken together. The committee dismissed the appeals and confirmed the decision of the stipendiary stewards.

The first observation that I have to make as to the Rules of Racing, by which the plaintiff, in entering his horse, contracted to abide, is that rule 19 (*d*), under which the stipendiary stewards obviously convicted him of, and disqualified him for, the offence known as suspicious practices, does not give any power to try or punish any person for that offence. It gives power to disqualify a horse in the running of which suspicious practices have been proved, but it does not make such a charge or offence applicable to any person, whether the owner or not; hence, it is quite clear to me that the stewards acted without jurisdiction; and if the matter rested there the plaintiff could successfully claim relief against his disqualification.

Now, there being no power given by the contract to the stewards, as to this charge, to disqualify him, but ample power to disqualify the horse, the plaintiff did not challenge the juris-

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diction of the stewards to deal with his conduct. He appealed to the committee in respect of himself as well as the horse. He was not bound to include himself if he desired to appeal where there was authority given to disqualify, and to seek other redress where there was none. He says: "I . . . appeal . . . to the committee of the Victoria Racing Club against the decision . . . disqualifying me and my racehorse Blackpool," and as one of his grounds of appeal he says: "I am not guilty of the charge alleged," and the only other ground is that the decision was against the evidence. He invoked this tribunal on appeal equally in the two separable parts of the case. He gave the committee authority to decide as to the two without distinction, for he placed the two on precisely the same footing. Under rule 33 (*d*), the powers of the committee are wide enough to enable them to decide whether the stipendiary stewards as their subordinate tribunal had or had not jurisdiction. They were not invited to do so. The power to appeal and the jurisdiction to hear appeals are not in such a case as this to be read according to any nice distinction between strictly appellate and strictly corrective jurisdiction. This is the case, not of a constitution, but of a contract. It is not to be thought of that under rules like these, of contractual effect, there was an intention to exclude an appeal against an actual decision involving an excess or defect of jurisdiction because the rules failed to use terms applicable solely to the corrective jurisdiction of the superior Courts. The committee, then, had jurisdiction to "quash or set aside" the punishment awarded by the decision of the stewards, or on the other hand, to "confirm" it, and they have confirmed it. I think, therefore, that their decision is within rule 33 (*i*), and is final. That was his agreement.

More than this, he wrote by his solicitors, six days after the dismissal of the appeal by the committee, a letter to the secretary which shows that after consulting the solicitors he continued to rely solely on his complaint that he was innocent of the offence charged against him. The letter represents him as feeling "very strongly aggrieved at the decision of your committee in dismissing the appeals and indorsing the decision of the stipendiary stewards," and as contending "that the evidence adduced

at the hearing proved clearly that the stipendiary stewards were wrong in their decision." It was not until the following February, upon the bringing of this action, that he questioned the legality of his disqualification on the ground of jurisdiction. In the case of *Dawkins* v. *Antrobus* (1) the plaintiff sued the trustees and committee of a club claiming a declaration that a resolution purporting to expel him from the club was invalid, and an injunction restraining the defendants from excluding him from the club, and from interfering with him in the enjoyment of the use of the building and property. I do not cite this case with relation to the plaintiff's club membership. But it is applicable to his contract to abide by the racing rules as much as to a member's contract to abide by the rules of a social club. *Brett* L.J. said (2) that in such cases "The only question which a Court can properly consider is whether the members of the club, under such circumstances, have acted *ultra vires* or not, and it seems to me the only questions which a Court can properly entertain for that purpose are, whether anything has been done which is contrary to natural justice, although it is within the rules of a club—in other words, whether the rules of the club are contrary to natural justice; secondly, whether a person who has not condoned the departure from them has been acted against contrary to the rules of the club; and thirdly, whether the decision of the club has been come to *bonâ fide* or not." The first and third of these questions do not arise in the present case. But I am clearly of opinion that the plaintiff fails to answer the test of the second question. He has been acted against contrary to the rules of the club; but he has condoned the departure from them. After accepting the jurisdiction of the stewards, he went on and emphatically accepted the jurisdiction of the committee by resting his appeal on the ground of insufficient evidence alone. He offered that criterion to the committee, and the committee, accepting it, pronounced against him. Then he wrote by his solicitor to the committee's officer, the secretary, complaining of the decision, not as *ultra vires*, but as wrong upon the merits. In my judgment, he has concluded himself.

(1) 17 Ch. D., 615.

(2) 17 Ch. D., 615, at p. 630.

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It was urged that the plaintiff, being unlearned in technical matters, did not appreciate the position so as to know his rights. That is a doctrine which can in no wise be admitted. Moreover, had such an excuse been material it must have failed here, because there is no evidence of want of knowledge, and he persisted in the same attitude, through the agency of his solicitor, even after the committee had rejected his appeal. On the other hand, there is the letter already mentioned, dated 19th December, in which, after consultation between the plaintiff and his solicitors, his complaint was deliberately rested upon the facts alone. The position of the plaintiff here finds a parallel in the position of the appellant in *Dines* v. *Wolfe* (1); see the judgment of the Board, *per* Lord *Chelmsford* (2).

On the question of jurisdiction it was urged upon us for the defendants that they had original powers under rule 29 (*c*), and that it might be taken that they had exercised those powers on the re-hearing. I do not think that contention could have succeeded, because it seems clear that the committee, in dealing with the appeal, did not attempt to exercise any original jurisdiction. The inquiry was only whether the appellants and the horse had been rightly disqualified. They wind up the proceedings by declaring that they refuse the appeal and confirm the decision of the stipendiary stewards. But coming as they did to that conclusion upon the merits, the fact that they possessed power to deal with the matter unchallengeably under rule 29 and disqualify the appellant on this very charge of suspicious practices, brings into sharp relief the narrow technicality upon which he rests his main complaint in the action.

But it is contended for the defendants that the term "suspicious practices" means any kind of wrongdoing on the turf, and notwithstanding the discrimination in the terminology of rule 19 (*d*), it is urged that the "dishonourable action" or the "improper conduct" mentioned in the first branch of that rule could properly be characterized by the stewards in their decision as "suspicious practices." I think the rules make a clear distinction between the several kinds of offences to which they apply. In the second branch of the very rule in question, the

(1) L.R. 2 P.C., 280.

(2) L.R. 2 P.C., 280, at pp. 288, 289.

portion providing for the disqualification of a horse as distinct from a person, the discrimination between "suspicious practices" and other kinds of misconduct is apparent. It appears again in rule 29 (*c*), in which the committee has again original power to deal with persons for, *inter alia*, suspicious practices in connection with racing. Rule 219 deals with "corrupt or fraudulent practice or malpractice in relation to racing." Rule 222 speaks of "fraudulent practice in relation to a particular horse belonging to" a person. Rule 226 (*a*) relates to persons guilty of "dishonest, corrupt, fraudulent, or improper practices on the turf." I mention these instances to show that these distinctions are adopted by those who contract with the committee by way of entering their horses for races under the rules. I think it is for the tribunals of the club to say (subject to appeal to the committee where the stipendiary stewards are the tribunal) whether any case of wrongdoing on the turf comes within any one of the rules, and if so, which one, and the Courts will not interfere unless a decision in that behalf is so entirely out of reason as to be evidence of *mala fides*. If they decide that particular misconduct, such as "pulling" a horse, comes under a particular head of the category, I more than doubt the power of the Court to interfere. On the other hand, if the stipendiary stewards disqualify a person—*e.g.*, the owner—for conduct on his part for which they have authority to disqualify only a horse and not a person, the larger question of jurisdiction is raised, the person complaining has been dealt with beyond the terms of his contract, and it does not preclude him from seeking his redress in the Courts, unless it can be shown either that the defect of authority has been condoned, or that that question is covered by the decision of the domestic tribunal on appeal. In either of these events the person complaining fails, and I think that is the position of the plaintiff here so far as his grievance is in the character of an owner who has entered and run his horse.

His Honor who tried the case dismissed the action on the ground that the plaintiff, in seeking the assistance of equity, did not come into Court with clean hands. I do not think that his case can be met by the application of the maxim. The merits of the plaintiff's conduct were not in issue before his Honor. The

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case raised by the claim and met by the defence was based purely on the asserted illegality of the decision against him. It was not its correctness, but its validity, that was contested in the Supreme Court. Its correctness was assumed for the purpose of the argument, but was not admitted as a fact. The plaintiff could not have been heard to declare his innocence in that proceeding. Evidence as to the turpitude or integrity of his conduct was not admissible on the case made. The evidence on the inquiry and on the appeal was admissible before the Supreme Court solely as part of the proof of the proceedings, and was not before it as proof of any facts deposed to by witnesses on these inquiries. On the case as so far dealt with I think the appellant fails.

But there is another branch of the case to which consideration must be given, and it rests upon the by-laws, which have statutory effect under sec. 13 of the *Victoria Racing Club Act*, independently of the contractual considerations involved in the first branch of the case, except so far as any of them may be imported by reference. The plaintiff in his statement of claim charges that the Victoria Racing Club or the committee threatened to expel (for clearly they have not yet expelled) the plaintiff from his membership of the club, on the ground that he had been disqualified for suspicious practices, and to expel him without notice and without hearing. The defence to these allegations rests upon the by-laws numbered respectively 13, 33, 35 and 36.

After the dismissal of the plaintiff's appeal, namely, on 10th January 1913, the committee of the Victoria Racing Club, at a meeting, passed a resolution which appears thus in the minute book of that date:—"*Re* F. S. Meyers, member of V.R.C., disqualified by Moonee Valley Racing Club for twelve months on 4th December 1912. C. Lort Smith (club's solicitor) present. The committee are satisfied that F. S. Meyers has been guilty of such improper conduct or action in connection with the running of b.g. Blackpool at the Moonee Valley race meeting on 4th December 1912 as the committee consider prejudicial to or subversive of the purposes of the club, and in terms of by-law 13 resolve that he be requested to resign from the club."

No letter was sent asking for the plaintiff's resignation, but the plaintiff relies upon the resolution and certain letters and

interviews between the solicitors as a threat to expel him from the club. The evidence from these sources, taken together, is but slight. But the 18th paragraph of the defence claims the right to exclude the plaintiff from Flemington Racecourse, asserts his liability to be expelled therefrom after having been warned off, and his liability to be called on to resign his membership of the Victoria Racing Club, and for these reasons denies his title to any of the relief claimed. This paragraph, with its assertions of positive right to exclude and expel, seems to me to be sufficient foundation for an injunction if the rights of the plaintiff to continue his membership and to use the racecourse be sustained in law. Now, I do not think that the defendants can rely either on No. 13 or No. 33 of the by-laws. The resolution of 10th January alleges against the plaintiff a specific offence mentioned in by-law 13. But both that defence and the malpractice mentioned in by-law 33 must be proved to the satisfaction of the committee. That is to say, either of them must be made the subject of a specific charge, and the person accused must have the opportunity of defence, before the committee are entitled to conclude that the offence has been proved to their satisfaction. The resolution is a condemnation without trial. It is admitted in answer to interrogatories that the committee gave the plaintiff no notice of the charge or charges of improper conduct or action referred to in the resolution, and that they did not give him a hearing on either of such charges, and the committee certainly cannot come to a conclusion adverse to the plaintiff on the charge embodied in their resolution without such a hearing (in which term I include a fair opportunity to show cause), nor can they take the prior finding of the stipendiary stewards, or their own decision on appeal, as a substitute for such a hearing. The charge was "such improper conduct or action in connection with the running of b.g. Blackpool . . . . as the committee consider prejudicial to or subversive of the purposes of the club." That is not the charge on which the plaintiff as a horse owner already stood convicted.

In *Wood* v. *Woad* (1) Lord Chief Baron *Kelly*, speaking of the committee of a mutual marine association or club, says:—"They

(1) L.R. 9 Ex., 190, at p. 196.

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are bound in the exercise of their functions by the rule expressed in the maxim *audi alteram partem*, that no man shall be condemned to consequences resulting from alleged misconduct unheard and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals." That passage is adopted by *Jessel* M.R. in *Russell* v. *Russell* (1), where it is described as a most admirably-worded judgment"; and by Lord *Macnaghten* in the Privy Council in *Lapointe* v. *L'Association de Bienfaisance et de Retraite de la Police de Montréal* (2).

By-law 13 is one of those in Part I., for regulating matters unconnected with the land, and, *inter alia*, the expulsion of members from the club. In respect of that matter of club membership the committee cannot adduce any by-law under which to protect themselves as matters stand. They cannot expel him except upon just proceedings for that purpose, and if they threaten or attempt to do so the Court, being invoked, will prevent them.

By-law 33, on the other hand, is in Part II., among the by-laws for regulating matters connected with the land, *i.e.*, the Flemington Racecourse, and the admittance thereto and the expulsion therefrom of the public and members respectively. As the plaintiff has had no notice of and no opportunity to answer a charge under this by-law, it affords no protection to the committee in excluding the plaintiff, if they do attempt to exclude him, from the course. But the matter does not end there, for the defendants, though they fail as to by-law 33, rely also on by-laws 35 and 36. These do not relate to any charge yet to be proved, but they deal with the consequences of, *inter alia*, existing disqualification for "suspicious practices in connection with horse-racing," and in cases within them they prohibit the entry and authorize the expulsion of the disqualified person after he has been warned off. In considering these two by-laws, it must be remembered that, for reasons already given, the plaintiff must now be taken to have been duly disqualified.

(1) 14 Ch. D., 471, at p. 478.

(2) (1906) A.C., 535, at p. 539.

Inasmuch as the two by-laws obviously relate to disqualification under the racing rules (they both use the words "in connection with horse-racing"), it is necessary to ascertain what meaning is attached to the word "disqualified" by these rules. Now, by rule 1, the term "disqualified" is said to mean—(*a*) "As regards a person disqualified under these rules or the rules of any principal club, . . . or whose disqualification by any other club has been adopted or confirmed by the committee of the principal club, that he shall not while so disqualified be qualified to subscribe, or enter or run any horse for any race, . . . and any horse of which he is wholly or partly the owner . . . shall not while he is so disqualified be eligible to race on any course where these rules are in force, nor shall such person while so disqualified be . . . entitled to attend any race meeting held on any such course, and he shall be liable to be ejected therefrom if he attempts so to attend."

It appears to me to be of no moment whether the plaintiff's disqualification was "by the committee or stewards of the Victoria Racing Club" (by-law 35); or "by any other racing club or by the committee or stewards or governing body thereof" (by-law 36). He has in either case been disqualified under the rules of a principal club, as defined in rule 1, and if his disqualification were by any club other than the Victoria Racing Club, it has been confirmed by the committee of the principal club.

I think, then, that under these two by-laws the plaintiff fails *quacumque via*. Certainly, he has not been warned off. But under the interpretation in rule 1 and the terms of by-laws 35 and 36, disqualification exposes him to expulsion from the course after having been warned off. An injunction which depended on the absence of such warning could be rendered futile by action under these by-laws or one of them after the simple preliminary of warning the plaintiff off. The Court does not grant an injunction under such circumstances. This applies to the claim for an injunction against exclusion or expulsion from the Flemington course, assuming that to have been threatened. But the plaintiff is entitled in the present position of affairs to be protected from expulsion from his membership of the Victoria Racing Club. In the result, he is entitled to an injunction

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enforcing that protection, and in all other respects his appeal fails.

ISAACS J. read the following judgment:—It is essential to a proper understanding of this case, in which so many points of varied and extensive interest arise, and to the ascertainment of the rights involved, that the nature of the action should be clearly defined.

Meyers, the appellant, sued to establish two distinct claims, one as a member of the Victoria Racing Club, the other as a member of the general public, having rights in respect of the Flemington Racecourse; and unless the separateness of these two claims be borne in mind, there will be confusion in settling them.

As regards his club membership, his pleading allegations were shortly that the club claimed to expel him without warrant under by-law or rule and contrary to natural justice, and these were all pressed in argument. As to disqualification, his allegations in the pleadings that the Rules of Racing and the By-laws have not been complied with were urged, but no argument was advanced on the ground that any want of natural justice was now involved. If it had been, there is no pretence for such contention with respect to the appeal before the committee. As to the proceedings before the stewards, I shall refer to this aspect later. The Victoria Racing Club was formed in 1864, and in 1871, with the consent of the then trustees of the Flemington Racecourse, who held it on certain public trusts for racing purposes, in fact exercised the control and management of the course, although the club had no legal or equitable interest whatever in the land. In the latter year, however, an Act of Parliament (No. 398) was passed, called the *Victoria Racing Club Act* 1871, which vested the ownership of the racecourse in the chairman of the club, for the club upon certain trusts, placing the matter on a statutory basis; and it is plain that, except by virtue of some later Statute, no rights or powers with respect to the land can exist except in accordance with the provisions of the Act: See sec. 10. Besides dealing with the land, the Statute enacted some provisions respecting the club. It was and still remains a members' club—that is, the club is not an entity distinct from its members. They

collectively constitute the club, and are jointly beneficially entitled to the property of the club. They are not incorporated (sec. 42), but by virtue of sec. 3 have for certain purposes a quasi-corporate status, and the club's property is by other sections vested in the chairman for the time being in trust for the club, and as to the racecourse, upon the racing trusts originally existing so far as they are capable of taking effect.

By-law No. 2, which may be referred to in advance, provides: "The club consists of all persons who have been duly elected members, and who have duly paid their subscriptions, pursuant to the by-laws of the club."

Various powers are conferred upon the club and its representatives, and a group of sections, 13 to 20 inclusive, are devoted to the making and enforcement of by-laws. Sec. 13 most comprehensively deals with the subject matter of these by-laws. In order to make clear what I am about to observe, it is desirable to enumerate the subjects covered by the section as regulative by by-laws. They are: (1) the election or admission of members into the club; (2) the expulsion of members from the club; (3) the management of the affairs of the club; (4) regulating all matters concerning or connected with the land; (5) regulating the admission to and expulsion from the land both of members of the club and the public; (6) regulating the rates or charges for admission; (7) the general management of the racecourse, and all races and race meetings. Sec. 24 provides for special tolls and charges.

All by-laws to be of any effect must be in writing, signed by the chairman, sent to the Chief Secretary, published in the *Government Gazette*, and not disallowed by the Governor in Council within one month. The Governor in Council has power to repeal any of the by-laws, thereby maintaining considerable ultimate public control over the land. Penalties are dealt with by sec. 20. By-laws have been duly made in pursuance of these powers, and are in evidence. So far as the appellant's case concerns itself with his club membership and his rights in that capacity, the by-laws are to be consulted. Some club rules are before us, but have not been referred to in argument, and appear to have no bearing on the case. The by-laws, however, make no

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connected or definite provision for the conduct of races or race meetings. These matters are dealt with by what are called the "Rules of Racing," simply framed by the club or its committee. The "Rules of Racing" dated 2nd December 1912 are a code regulating with much detail the conditions upon which persons may, *inter alia*, enter their horses for races, the method of determining disputes, and include procedure provisions which come into consideration in the present case.

These are matters which may be covered by by-laws; and it may at some future time become a serious question—should it ever be raised—whether a mere rule of racing affecting this land, made without the formality and free from the supervision provided by the Act, is consistent with the statutory trusts upon which Parliament vested the land, or whether the club can thereby effectually and validly enact any binding provision or insist on any stipulation with respect to the right of the public, who are the *cestuis que trustent*, to enter the land, or use it for racing purposes. Neither in the Statute nor in any by-law (even if the latter were sufficient for that purpose, which I by no means say), is there any reference to the making of "rules of racing" other than by the strict method of by-law.

These difficulties may possibly cease by reason of some circumstance not now appearing, and in any event, however it may be thought desirable by the Victoria Racing Club to consider their weight and urgency, they do not call for any decision in the present case, because the appellant has not, either by his own personal conduct or his pleadings, raised any question as to the validity of the racing rules. On the contrary, he has based his personal conduct and his legal claim on their effect and operation as binding and effectual terms of agreement between the club and himself, and in this action must stand or fall upon that; I therefore throughout assume their validity.

It will be convenient first to consider his claim as a member of the public. He bases that both on the racing rules and the by-laws. He starts, it is contended on his behalf, with a right of entry to the course, and he says the defendants wrongfully assert the right to eject him from the land. His case is that the defendants' assertion is contrary to the By-laws and the Rules.

The by-laws relied on by the defendants in this regard are 33, 35, 36 and 37. As to 33, it requires, in my opinion, a finding by the committee itself of malpractice or dishonourable conduct, and after proper preliminaries and by proper methods. By-law 35 requires valid disqualification by the committee of the Victoria Racing Club or by the "stewards of the club." We entertain grave doubts, notwithstanding the repeal of by-law 15, and the amendment of by-law 16, whether "stipendiary stewards" of race meetings answer the description of "stewards of the club" within the meaning of the By-laws. See heading to Part 1 of By-laws, and also by-laws 14 and 17. Racing rule 17 still seems to recognize a distinction between the two kind of stewards, though attempting to give similar, and in some cases equal, powers. However, we do not do more, for it is unnecessary to do more, than leave the question open. In any case the stipendiary stewards acted in the present case for the Moonee Valley Club, and not the Victoria Racing Club. By-law 36 refers to other racing clubs; and if the local club acts upon racing rules 16 and 17, and adopts the stipendiary stewards as the stewards of the local club, probably they would answer the description of "stewards" in by-law 36. In this case the stipendiary stewards' decision, if valid, would bring the appellant within the by-law. But I agree that by-laws 35 and 36 do not themselves create a power of disqualification, or enable anyone to disqualify for suspicious practices. They do not state the conditions or methods of disqualification, and I agree with the view presented in the argument that they assume, as a condition of the operation of the by-laws by way of expulsion, that under some existing power found elsewhere disqualification or warning off has validly taken place. But I reserve, for the reasons already stated, my opinion as to whether such power can be validly given except by means of by-law. By-law 37 is apparently wide enough to operate if the committee had acted upon it. But that is not the case. The By-laws, therefore, in this case do not stand in the appellant's way.

Then we come to the Rules of Racing, which we have to regard in this case as it has been shaped, and conducted, as a valid and binding contract between the parties. Meyers, whatever his

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rights as a member of the club might have been, must be taken to have agreed with the club that, in consideration of being allowed to enter his horse for the race, he would be bound to abide by the stipulations contained in the Rules. We then have to construe them. They are a body of provisions which bear on their face an unmistakable determination to empower the club by some organ or another, and by some procedure or another, to finally and conclusively settle all questions relative to the racing to which they apply.

Rule 3 I regard as of extreme importance as indicating the extent of the authority demanded by the club. This is, of course, subject to certain well known principles upon which Courts of law act when their interposition in such cases is invoked, and which are shortly summarized by *Stirling* J. in *Baird* v. *Wells* (1). But to the construction of the rules themselves, rule 3 is a guide. It makes two provisions. The first is: "Any person who takes part in any matter coming within these rules shall be held thereby to consent to be bound by them." The word "matter" is the widest possible expression, and it relates both to substance and to procedure. If this provision stood alone, "consent" would be a perfect answer to any action in a Court for anything done under the Rules, provided, of course, the thing done were strictly within their provisions. If it were not, the plea of consent would fail. But the second provision runs as follows:—"And" (the person who takes part in the matter) "shall not be entitled to appeal to any Court because of anything done under their provisions." If that be read to apply only to matters which, on an absolute construction of the rules, fall strictly within them, it is nugatory, because it is superfluous, and carries the agreement no further than if these words were omitted. They are a species of provision well known to English law, one which has received a definite interpretation. This class of provision is intended to give some extra protection to the party in whose favour they are inserted. In an Act of Parliament they, of course, must be obeyed by the Courts; but in a contract it is contrary to public policy and illegal to attempt to oust the jurisdiction of the Courts. Lord *Chelmsford* L.C. said,

(1) 44 Ch. D., 661, at p. 670.

in *Scott* v. *Liverpool Corporation* (1):—"It would be against the policy of the law to give effect to an agreement that such a right" (a right of action) "should not be enforced through the medium of the ordinary tribunals." But while ineffectual for that purpose, they are very potent to indicate the intention of the parties that full jurisdiction to settle disputes shall be exercised in some way by the club under the rules. The word "appeal" so used in relation to an ordinary Court is significant. In the strict sense there is not and could not be such an appeal. But "appeal" is there used in the sense of "suing" or "challenging" by the ordinary course of legal procedure, the act of the club. It throws considerable light on the same word when used in subsequent rules. And this provision, read in conjunction with them, appears to me to mean that for whatever is done by the club acting *bonâ fide*, and not unreasonably as in pursuance of these rules, there are to be no legal proceedings whatever; in other words, that all matters are to be settled finally by the club through the domestic tribunals erected by the rules, acting to the best of their judgment, honestly and reasonably.

In favour of carrying out this evident intention of the parties, in making their consensual bargain (for it is not a law, and the appellant is only bound because he so chooses), I should, independently of analogy, be prepared to construe the words of rule 3 in this broad manner, and for this reason. The Rules include and primarily apply to the Flemington Racecourse, of which the club are public trustees. The stewards and the committee may be called upon to act promptly at any moment, even during a race meeting, and if—not being lawyers—they are to act without undue fear of consequences, it follows that the only way at once effectual and fair to all concerned, is that they may safely act so long as they do so *bonâ fide* and with a reasonable belief that they are pursuing the provisions of the Rules. The words being susceptible of this more reasonable meaning in a mutual agreement, I think they should receive it. Reference, however, to some analogous provisions in various Acts of Parliament upon which these words are evidently modelled, will support that view.

(1) 3 D. & J., 334, at p. 360.

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In *Hughes* v. *Buckland* (1) the words were "acting in the execution of this Act," and "anything done in pursuance of this Act." *Pollock* C.B. said (2):—"A party is protected if he acts *bonâ fide*, and in the reasonable belief that he is pursuing the Act of Parliament." So also *per Parke* B. In *Spooner* v. *Juddow* (3) the Judicial Committee had to consider the words "any act done according to the usage and practice of the country, and the regulations of the Governor and Council" of Bombay. Lord *Campbell*, for the Committee, speaking of provisions giving protection in such cases, said (4):—"There can be no rule more firmly established, than that if parties *bonâ fide* and not absurdly believe that they are acting in pursuance of Statutes, and according to law, they are entitled to the special protection which the legislature intended for them, although they have done an illegal act."

In excluding the ordinary Courts from this class of case, there was, of course, no intention of leaving the person without recourse to some tribunal, so far as a tribunal was created by the rules themselves. It follows, therefore, that if the language of the succeeding rules reasonably extends to affording redress by appeal from the stewards to the committee they should be so regarded. This interpretation avoids two extremes. On the one hand it does not expose the racing club, acting as it frequently must with promptness, to liability merely because a Court of law may on a protracted examination perceive some excess; nor, on the other hand, does it permit any *malâ fide* or unreasonable stretch of authority to go without legal remedy. It simply preserves the true intent, and aids the real and practical purpose, of the stipulation. To the extent indicated, but no further, the stewards or the committee, as the case may be, are allowed to be the final interpreters of the rules. This harmonizes all the rules.

In the view I take of this case, it is not strictly necessary to say whether the stewards did in fact exceed their authority in disqualifying the appellant for "suspicious practices." But as so much was said on the subject, and it may be useful, I express my opinion that they did in that regard go beyond their powers. I

(1) 15 M. & W., 346.
(2) 15 M. & W., 346, at p. 353.
(3) 6 Moo. P.C.C., 257.
(4) 6 Moo. P.C.C., 257, at p. 283.

think the rules recognize a distinction between conduct that is (1) dishonest or dishonourable, (2) improper, and (3) suspicious. In construing them for this purpose it is well to bear in mind the words of Lord *Loreburn* L.C. in *Nelson Line (Liverpool) Ltd.* v. *James Nelson & Sons Ltd.* (1), where he observed that there is "only one standard of construction, except where words have acquired a special conventional meaning, namely, what do the words mean on a fair reading, having regard to the whole document?" The burden rests upon those who suggest that some special conventional meaning has displaced the primary meaning of an ordinary English word—to prove it by definite and consistent evidence. It is sufficient to say that no evidence answering that character has been given, and the evidence relied on was properly disregarded by the learned primary Judge. Then what do the words mean in their natural ordinary import, "having," as Lord *Loreburn* says, "regard to the whole document?" We need go no further than to regard the distinction preserved between "dishonest," "improper," and "suspicious" in order to see the intention to prevent the three classes of conduct being considered identical. "Dishonest" involves moral turpitude; "improper" connotes unmistakable impropriety without the lack of integrity; and merely "suspicious" conduct, the least reprehensible class of behaviour struck at, means conduct not simply suspected to have happened but actually proved or admitted to have been followed. When so established, however, if it is in itself ambiguous in character, because it might be innocent or it might be actually improper, according to the purpose and intention of the person whose conduct is in question, then it is merely suspicious.

If this be, as in my opinion it is, the true interpretation of rule 19, it is clear the stewards did in fact exceed the limit marked out for them in finding Meyers guilty of "suspicious conduct," and thereupon disqualifying him. That they *bonâ fide* believed they had that authority no one has questioned, or could properly question. But whether they reasonably so believed is a question of fact which has not been raised or decided, and as to which I am consequently not in a position to express any

(1) (1908) A.C., 16, at p. 20.

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opinion. I say nothing, therefore, as to what Meyers's rights would have been had he not appealed, having regard to the provision that the stewards' decision is stipulated to be "final and conclusive, subject to any right of appeal."

The question on which this case turns is as to the effect of the committee's decision on the appeal. It must be taken that the committee's power to entertain and decide the appeal arose, if at all, by reason of the provisions of rule 33, or by reason of Meyers's actual submission. Does then rule 33 of itself confer the power to entertain an appeal from a decision of the stewards given without authority? For instance, if a man complains to the committee under that rule that the stewards have gone beyond their limits, and thereby wrongly disqualified him, does the rule itself enable him to appeal? It is claimed for the appellant that there is no such jurisdiction in the committee. And I stop there for an instant to emphasize the following point. It is not a question now, in considering the effect of the committee's decision, whether the stewards had authority or not as this Court might think, but whether the committee had authority to entertain the appeal and decide the matter finally as to the fate of the stewards' decision. If they had, then the committee's decision against Meyers, confirming the stewards' decision, and necessarily involving the determination that the stewards had jurisdiction, is final and conclusive; and whatever we might think apart from that determination, we have no power—as between these parties in relation to that matter—to say differently.

Nor is it now a question as to whether the stewards acted wrongly and against natural justice in not formulating the charge before trying the appellant. Strictly speaking, I think they should have done so. Every man is entitled to know what he is charged with. He may know it without being formally indicted, and in this case Meyers, as will appear later, probably did know. But a regular course of proceeding requires a clear intimation of the misconduct alleged. That, however, is no longer material; the subsequent proceedings before the committee have merged both objections in themselves. They are, by reason of the committee's decision, *res judicatæ*, as much as if instead of

the committee it had been the Supreme Court unappealed from, that had so held. That rests on the well known rule that a competent Court or other tribunal has jurisdiction to give a wrong judgment, and if there is no appeal in the strict sense, then its decision, whether right or wrong, must stand, and cannot be questioned in any subsequent proceedings elsewhere.

In order to show how strongly this principle is enforced, I refer to a case decided by the Privy Council in 1900—*Malkarjun bin Shidramappa Pasare* v. *Narhari bin Shivappa* (1). There property mortgaged by a person afterwards deceased was sold under a judicial decree. The law required that, before sale, notice must be given to the mortgagor's legal representative. Notice was not given to him, but to another person, and the real owners challenged the validity of the sale. The Court directing the execution erroneously decided that the person to whom notice was actually given was to be treated as the proper representative though he said he was not. The Privy Council upheld the sale, because the Court was acting within its jurisdiction though it misinterpreted the law, and their Lordships said (2):— "In so doing the Court was exercising its jurisdiction. It made a sad mistake it is true; but a Court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken the decision, however wrong, cannot be disturbed." Here, there is no appeal in the proper sense from the committee to any Court of law. If the committee had jurisdiction to entertain the appeal, its decision cannot be disturbed.

Now, as to whether the committee had that jurisdiction. From what I have already said, and from the wide words of rule 33, I feel no doubt it had, and was intended to have. If, for instance, four honorary stewards, a mere "delegation," so to speak, of the more formal body called the committee, were to convict a man of suspicious conduct and disqualify him, it was certainly not intended, in my opinion, to exclude his right to approach the full committee, the larger body, and ask both for a reversal of the finding and a setting aside of the sentence. And if that is so

(1) L.R, 27 I.A., 216.

(2) L.R. 27 I.A., 216, at p. 235.

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with regard to honorary stewards, it is the same with respect to the stipendiaries.

In my view, the committee have jurisdiction to entertain an appeal—that is, an application to redress or set right any error—whenever the stewards have in fact given a decision disqualifying a man or a horse. The disqualification is the decision; a finding of dishonest or improper or suspicious practices is not the decision, but is the stewards' reason or ground for their decision. If the matter rested there, I should think that the appellant had failed. But his position is still worse. Supposing rule 33 has not the meaning which I attribute to it, still he asserted it had; he claimed to have the right to appeal under it, he followed its procedure, he attempted to obtain a favourable decision under it, and having failed, he cannot, in my opinion, be permitted to assert that the committee's decision was without jurisdiction. I should say that, even if the very restricted meaning were attachable to their finding that they merely "confirmed" the stewards' decision. Even in that case he, having in a purely consensual matter so acted as to demand the exercise of that power and to admit their right to "confirm" the stewards' decision, as well as to reverse it, and having taken his chance of a favourable termination to the end, is not "competent" to challenge the determination on that ground.

But I do not read the committee's judgment so narrowly. An appellate Court confessedly exercising its own opinion on the facts might reverse the judgment appealed from, and "restore" some earlier judgment. But by "restoring" that primary judgment, no one could say the ultimate appellate Court failed to form its own conclusions on the facts leading to the judgment. Here the appellant asked for an independent finding on the facts so as to reverse the decision; he called fresh evidence for the purpose. The committee were engaged on nothing but a new examination of the circumstances, the evidence being partly old and partly new, and they formed an independent view of them, and having arrived for themselves at a certain conclusion, namely, the appellant's culpability, it followed that they agreed with the decision of the stewards, and so they "confirmed" that decision.

It is true no consent of parties can supplement the law of the land so as to give a tribunal any jurisdiction to dispense the King's justice, which the law does not itself confer. The law provides the exact measure of that jurisdiction, and no private arrangement can add to it or take from it. But, dispensing the King's justice is one thing; settling a private dispute so as to bind the parties according to agreement express or implied is another. And even where the Judge of a public Court is invited to act outside his statutory jurisdiction, the parties may be bound. Lord *Watson*, for the Privy Council, in *Ledgard* v. *Bull* (1) said:—"When the Judge has no inherent jurisdiction over the subject matter of a suit, the parties cannot, by their mutual consent, convert it into a proper judicial process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him."

It is not necessary to refer to any other cases, except three, which I select as of the highest authority. The first is one to which attention was directed during the argument—*Dines* v. *Woolfe* (2). There the plaintiff's objection to the stewards' decision was argued in the Privy Council thus: that the stewards' power to give any decision at all had not accrued, because upon the doctrine of *Parr* v. *Winteringham* (3) the race had not been run on the conditions stipulated by the private agreement. Besides dealing with other answers to the plaintiff's points, Lord *Chelmsford* said (4) that, assuming the objection of "no race at all" might otherwise have been made, it was not "competent" to the plaintiff to make it, "considering his conduct after the race." He did not stand on this objection, but insisted on a rule of the Jockey Club, and his right to take advantage of it, by which the stewards were empowered to decide a contention such as he raised. Said the learned Lord (5):—"He remits the question therefore to the committee of the Jockey Club under these particular rules." That concluded him, in other words estopped him from saying the stewards had no jurisdiction to decide the matter.

(1) L.R. 13 I.A., 134, at p. 145.
(2) L.R. 2 P.C., 280.
(3) 28 L.J.Q.B., 123.
(4) L.R. 2 P.C., 280, at p. 288.
(5) L.R. 2 P.C., 280, at p. 289.

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The other cases I have found since the argument. One is *Bickett* v. *Morris* (1). An action was commenced in Scotland by the respondent against the appellant. When the pleadings were closed, the case, according to law, should have been remitted by the Lord Ordinary to the Jury Court for trial. Instead of doing so, he, by consent of both parties, "appointed the proof to be taken by commission," and decided the facts himself in favour of Bickett. Then Morris appealed to the Inner House, the appellate Court, who reversed the Lord Ordinary. From that decision Bickett appealed to the House of Lords, and on behalf of the respondent it was objected by Sir *Roundell Palmer* A.-G. that the appeal was incompetent. He argued that the Court below—that is, the Lord Ordinary—had no right to decide without a jury. He said (2):—"They, therefore, did not act judicially, but as arbitrators." To that Lord *Westbury* replied:—"But you appealed from the Lord Ordinary to the Inner House." In giving judgment, Lord *Chelmsford* L.C. said it was unnecessary to decide whether after consenting to the commission the parties had precluded themselves from appealing to the Inner House. But while leaving that undecided, he proceeded to say this (3):—"The pursuers, having failed before the Lord Ordinary, themselves carried the cause into the Inner House by reclaiming note, thereby asserting their right to appeal from the Lord Ordinary's interlocutor. Having obtained from the Court of Session an interlocutor reversing the interlocutor of the Lord Ordinary, it would be opposed to every notion of propriety and justice if the pursuers could successfully resist the defender's right to question the interlocutor upon the ground of incompetency. By taking the step of appealing to the Inner House, the pursuers, in my opinion, have precluded themselves from objecting that the interlocutor pronounced in their favour is not subject to all the consequences of other interlocutors, and therefore appealable to this House." Lord *Westbury* said (4):—"My Lords, upon the question of competency, it must be understood that the decision of your Lordships proceeds upon its being personally incompetent to the respondents to raise that objection."

(1) L.R. 1 H.L., Sc., 47, at pp. 51-54.
(2) L.R. 1 H.L., Sc., 47, at p. 51.
(3) L.R. 1 H.L., Sc., 47, at p. 53.
(4) L.R. 1 H.L., Sc., 47, at p. 60.

The third case is *Burgess* v. *Morton* (1), where Lord *Watson* held that where proceedings in a special case in the primary Court had proceeded *extra cursum curiæ*, the Court of Appeal were incompetent to entertain an appeal "unless," said the learned Lord, "the appellant unreservedly submitted the determination of the special case, upon its merits, to their jurisdiction."

Now, I am perfectly alive to the distinction between cases where on the one hand an ordinary Court has jurisdiction over the subject matter, and by consent a deviation takes place from the *cursus curiæ*, and where on the other the Court has no jurisdiction at all over the subject matter, and consent cannot confer any. *Pisani* v. *Attorney-General for Gibraltar* (2) is an instance of the first class; and *Toronto Railway* v. *Toronto Corporation* (3) is an instance of the second. But that distinction does not affect the present case, because I repeat that here the whole jurisdiction, great or small, depends entirely on consent, and can be given at the will of the parties, or when given enlarged; and so *Bickett* v. *Morris* (4) is a direct authority for maintaining the jurisdiction where consent has been given, and *Burgess* v. *Morton* (5) for denying it where no consent appears.

This view is further strengthened by the following consideration, which, even if the committee of the Victoria Racing Club were a statutory tribunal, would still bring this case within the four corners of *Bickett* v. *Morris* (4). It is conceded that rule 29 gives the committee the amplest authority to investigate by way of original jurisdiction, as it may be termed—that is, without the preliminary of any prior adjudication by the stewards—any case of alleged "suspicious practice." Consequently, the committee was a competent tribunal to entertain the charge; it had jurisdiction over the subject matter; it had also jurisdiction over the appellant. Its jurisdiction is unfettered by any condition of appeal, or any other condition but that of natural justice. When, therefore, the appellant requested the committee to decide the matter by way of appeal, he was in effect doing nothing more than selecting a method of procedure, which may have been

(1) (1896) A.C., 136, at p. 142.
(2) L.R. 5 P.C., 516, at pp. 519-525.
(3) (1904) A.C., 809.
(4) L.R. 1 H.L., Sc., 47.
(5) (1896) A.C., 136.

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erroneous, but was nothing more than procedure, for obtaining the decision of the committee on a subject which they had a right in some way to decide, without the formality of the appellant's request. The appellant's objection resolves itself into absolutely a matter of form, having no substance whatever behind it. He has at his own request been dealt with by the committee, a tribunal having confessedly full power to decide the matter and bind him by its decision: but says he in effect, "I came into the committee-room by the wrong door. True, I came in voluntarily, selecting that method of approach; true, also, if I had come by the other door, into the presence of the same tribunal, I should have been bound: but the wrong door makes all the difference." Now, I do not agree with that.

It was urged in the course of the very earnest and able argument advanced on his behalf, that he should not be held bound by his conduct, if contrary to the Rules, unless he is shown to have known the consequences. But this was not mere passivity. He actively demanded the exercise of the committee's appellate functions, and unless he made it clear that he only demanded that exercise subject to his right to question the validity of the whole proceeding in the event of an adverse finding, he must on all ordinary principles of estoppel be bound by the result. By proceeding under rule 33 without qualification, he took it with all its obligations as well as all its rights. And one of its obligations is contained in sub-rule (*i*) in these words—"The decision of the committee of the Victoria Racing Club shall be final."

It is quite clear that the committee were induced to act under rule 33 by the fact of Meyers's appeal. It is clear law that estoppel does not depend on whether Meyers was under any misapprehension as to the consequences of his appeal or not; it depends on whether he thereby represented his intention to abide by the result of his appeal, and by that means induced the committee to hear and determine it. If Meyers had said he disputed the validity of the stewards' decision on the ground of their want of jurisdiction, and proceeded to ignore it as a nullity, the committee could have proceeded straightway on their own motion, to which he would have had no answer. By proceeding as they did at his request, they have been drawn into a position, which, if not

otherwise technically warranted, is one he has placed them or the club in to their prejudice. This brings the case within Lord *Campbell's* words in *Cairncross* v. *Lorimer* (1). That Meyers knew in good time relative to his appeal the fact that the stewards had disqualified him for "suspicious practices" is not open to doubt.

I should conclude that he thoroughly understood, even at the time of the stewards' inquiry, that that was the subject matter, or one of the subject matters, because in his notice of appeal dated next day, his first ground is thus stated:—"That I am not guilty of the charge alleged." He must have understood that some charge was alleged; and what was it? He answers this by his declaration dated 13th December 1912, made for use on the appeal, where he says (par. 11) in speaking of the time of the proceedings before the stewards:—"I was entirely at a loss to understand why the stewards should consider that I was associated with any suspicious or shady act on the turf." Further on he says:—"I complain that the matter was hurried through and not sufficient time given to consider or inquire whether I was the class of man who would be associated with anything of the nature alleged by the stewards." And when the chairman of the committee announced the alleged offence as "suspicious practices," not the least surprise was evinced. On the whole, the probabilities are that the nature of the charge was substantially understood by him at the stewards' inquiry; probably it was definitely known by Meyers on the evening of the race day; with scarcely any doubt he knew it with the rest of the public from the newspapers next morning, which we were told contained the information, and on the face of the proceedings he knew it fully before the committee's investigation commenced. Nevertheless, he proceeded with his appeal. And his appeal might, if he had chosen, have been confined to the disqualification of his horse, as to which the stewards admittedly had jurisdiction. But he deliberately and categorically included in the appeal the decision as to both himself and his horse. The two things are separately stated.

I may quote a few words of two eminent Judges. *Knight*

(1) 3 Macq. H.L., 827, at p. 829.

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Bruce L.J. in *Stafford* v. *Stafford* (1) said :—"Generally, when the facts are known from which a right arises, the right is presumed to be known." *Bayley* J. in *Lewis* v. *Jones* (2) said :—"Every man is supposed to know the legal effect of an instrument which he signs."

In my opinion, therefore, the objection to the disqualification cannot be sustained. And it follows that the disqualification must have its agreed effect, which by the Rules of Racing (rule 1, definition of "disqualification") includes this, that no person while disqualified shall be "entitled to attend any race meeting held on any such course, and he shall be liable to be ejected therefrom if he attempts so to attend."

This appeal, so far as it relates to disqualification and to the land of Flemington Racecourse, consequently fails.

Then we have to consider his claim to club membership. That is dependent on the By-laws, and from what has been said there is nothing to sustain any attempted expulsion from the club, unless by-law 13 is satisfied by the resolution of 10th January 1913. It is certainly not, because justice required proper notice and an opportunity of making a defence, and nothing has been done to waive this. The recent case of *D'Arcy* v. *Adamson* (3) is precisely in point, the facts presenting considerable similarity to those now under discussion. The proceedings here actually taken against him were not in his capacity as member of the club, but as a member of the public, and the questions raised by the 13th by-law require an independent inquiry. It must also be borne in mind that the jurisdiction granted by the by-laws is not consensual, but is acquired by statutory authority independent of consent.

The real defence to this part of the case was that he had not proved any threat or intention to expel him, and therefore no ground existed for an injunction. But that objection cannot be maintained. That he had good grounds for fearing such action, once his disqualification was finally settled, is patent. And so he was not unwise in alleging it in the statement of claim (par. 19). The defendants by par. 18 of the defence set up, in effect, the 13th

(1) 1 DeG. & J., 193, at p. 202. (2) 4 B. & C., 506, at p. 512.
(3) 29 T.L.R., 367.

by-law and the resolution of 10th January 1913, and insist on their right to demand his resignation, which is only the stipulated prelude to expulsion. It is trite law that such an insistence of right to do the thing objected to is ground for an injunction. I so considered it in *Brisbane City Council* v. *Attorney-General for Queensland* (1), where I referred to an English decision—*Shafto* v. *Bolckow, Vaughan & Co.* (2). This view was acted on by the Privy Council on appeal: *Attorney-General for Queensland* v. *Brisbane City Council* (3),

The appellant should therefore succeed as to this, unless barred by what *Hodges* J. has thought imputable to him, namely, want of "clean hands." But the maxim, even where the plaintiff is forced to resort to equity for its assistance, has not an unrestricted application. In the leading case of *Dering* v. *Earl of Winchelsea* (4) Lord Chief Baron *Eyre*, with reference to an objection that the plaintiff had been guilty of misconduct, said:—"It is not laying down any principle to say that his ill conduct disables him from having any relief in this Court. If this can be founded on any principle, it must be, that a man must come into a Court of equity with clean hands; but when this is said, it does not mean a general depravity; it must have an immediate and necessary relation to the equity sued for; it must be a depravity in a legal as well as in a moral sense."

In that case, the Lord Chief Baron thought the plaintiff was the moral author of his own wrong, but not legally, and therefore did not refuse the relief. Now, in attempting to apply the principle as laid down in that case, we find that the rights asserted by the appellant, namely, membership of the club and public right under the by-laws to enter the racecourse, of course exist, if at all, by reason of circumstances wholly independent of the alleged misconduct; the wrong he complains of, namely, his condemnation by an incompetent and unauthorized tribunal in the one case, and a disregard of natural justice in the other, are equally independent of any misconduct by him. It is therefore impossible to say, in the Lord Chief Baron's words, that his

(1) 5 C.L.R., 695, at p. 734.
(2) 34 Ch. D., 725.
(3) (1909) A.C., 582, at p. 596; 8 C.L.R., 767, at p. 778.
(4) 1 Cox, 318, at p. 319.

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alleged misconduct has "an immediate and necessary relation to the equity sued for," or that it was "a depravity in a legal as well as in a moral sense."

It is altogether different from the cases where the right relied on, and which the Court of equity is asked to protect or assist, is itself to some extent brought into existence or induced by some illegal or unconscionable conduct of the plaintiff, so that protection for what he claims involves protection for his own wrong. No Court of equity will aid a man to derive advantage from his own wrong, and this is really the meaning of the maxim. As an illustration, see *Cadman* v. *Horner* (1). Not only these considerations, but one other which should be specially mentioned in justice to the appellant, show that the maxim is not applicable here. That other reason is this: that the issue of whether the appellant was or was not in fact guilty of misconduct is in no way raised for the Court's determination, whereas the misconduct in respect of which the maxim is always applied is equally with all the other matters an issue within the Court's sphere of determination. If the racing tribunals had, or are to be taken to have had, the requisite authority, and to have acted within their powers, the finding of guilt must stand; if not, he has never been tried, and must be considered innocent until he is condemned by the proper tribunal—which was not the Supreme Court, and is not this Court. To the question of his actual guilt or innocence, neither Court can have anything to say, and, in my opinion, whatever has been said in that respect by the primary tribunal ought to be considered as not affecting the appellant, because entirely extra-judicial.

I have preferred to deal with the subject on the broad merits, but the case of *Chapman* v. *Michaelson* (2) shows that where a legal right is relied on, a declaration of right is not now to be regarded as an equitable remedy, and this affords an additional reason for not applying the maxim.

POWERS J. read the following judgment:—This is an appeal from a decision of *Hodges* J. in an action in the Supreme Court, in which, although the learned Judge found that the disqualifica-

(1) 18 Ves., 10.

(2) (1909) 1 Ch., 238.

tion complained of by the plaintiff was illegal, he dismissed the action on the ground that the plaintiff had not come into Court with clean hands, and therefore that he was not entitled to succeed in the action.

The circumstances under which the action was brought by the plaintiff against the defendants, the particulars of the plaintiff's claim, and most of the relevant rules of racing and of the by-laws of the Victoria Racing Club on which the defendants rely in this case, have already been referred to in the judgments of my learned brothers *Barton* and *Isaacs*.

I regret that I cannot concur in some of the conclusions my learned brothers have arrived at. I think the plaintiff is entitled to the declarations and injunctions asked for in the action, and that the defendants are not justified in expelling him from the grounds of the Victoria Racing Club, or from his membership.

I agree with that part of the judgment of the learned Judge who tried the case in the Supreme Court, and who heard the evidence, where he stated :—"Looking at those things all taken together I do not think that I would be justified in arriving at the conclusion that the stewards or the committee found matter or made a determination which would justify the disqualification of the men." His Honor came to that conclusion after hearing the evidence tendered in this action, including that of the solicitor for the plaintiff, the solicitor for the defendants, the shorthand reporter who acted as such at the inquiry held by the stewards, the shorthand reporter of the Victoria Racing Club, two members of the committee of the Victoria Racing Club who were present on the appeal, the three stipendiary stewards who illegally disqualified the plaintiff, experts and sporting journalists called by the defendants to explain the meaning of words used in the racing rules, the assistant-secretary to the Victoria Racing Club, and the secretary to the Moonee Valley Racing Club. His Honor also had before him copies of the reports of the proceedings before the stewards and before the committee. His Honor, without hearing any oral evidence at the trial from the plaintiff, the trainer or the jockey, who were disqualified by the stewards, arrived at the conclusion he did. I do not think this Court should disturb that finding. I may add that I think it was the

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only conclusion he could reasonably come to on the evidence submitted in the case.

I now propose to give the reasons why I arrive at the conclusions mentioned, and then to state the reason why I also hold that the plaintiff is not estopped, and did not waive any right or deprive himself of any right, by appealing under the circumstances he did to the committee, or deprive himself by such appeal of his right to sue in the Courts for redress in this case; and that he is also entitled to relief in this action because the committee acted contrary to the elementary principles of justice on the appeal, and when the resolution of 12th January was passed.

As to the first question—Was the plaintiff legally disqualified by the stipendiary stewards of the Moonee Valley Racing Club for "suspicious practices" in connection with the running of the horse Blackpool on the 4th December last at the Moonee Valley races? The following is a copy of rule 19 (*d*), under which the stipendiary stewards acted:—"To punish, subject to these rules, by fine (to the extent provided by these rules, and where the amount of the fine has not been so fixed to the extent of £50), or suspend or disqualify for any term or at pleasure any person" (1) "found by them to have in any way contravened these rules, or" (2) "to have been guilty of any dishonourable action in any way connected with racing or with any race or sporting event included in the programme of the meeting, or" (3) "who has, on or off the course, been guilty of any improper conduct of any nature or kind whatsoever in connection with the meeting, and disqualify for a race or for any term" (1) "any horse used as a medium for the contravention of these rules or" (2) "for any dishonourable action in connection with the meeting or otherwise, or" (3) "in the running of which dishonest or improper or suspicious practices shall have been proved to their satisfaction. Provided always that they shall report all punishments inflicted, or suspensions or disqualifications made, to the committee within fourteen days of the conclusion of the meeting at which such punishment was inflicted or suspension or disqualification made."

I think it is clear that under that rule, the only one relied on,

the stipendiary stewards can only disqualify the horse "in the running of which suspicious practices shall have been proved to the satisfaction of the stewards"; but they cannot disqualify the men, even if they are guilty of such practices. Men can only be disqualified by the stewards for (*a*) contravention of the rules, or for (*b*) dishonourable actions, or (*c*) improper conduct; and, of course, only where such a charge is made against a person, and that person "shall have been proved guilty" of the charge made. The power to disqualify men for suspicious practices was only conferred on the superior tribunal—the committee—by the rules, and it is only before the committee that such a charge can in the first instance be legally brought under the rules, not on appeal from a tribunal not authorized to hear such a charge at all. By the old rules in force before 2nd December 1912 (see 1910 rules, No. 7), stewards could disqualify men, as well as horses, for suspicious practices, but when the new "Australian Rules of Racing" were approved of, an alteration was made under which stipendiary stewards were not authorized to disqualify men on that ground. This was done when the new system was adopted, by which local clubs, within a radius of twenty miles of Melbourne, had to accept as their stewards, for races on their courses, the stipendiary stewards nominated and paid by the Victoria Racing Club.

This Court need not concern itself with the reason why the rules were altered; but it does not seem unreasonable, in the interests of honest racing, to give the stipendiary stewards—even if they must necessarily be accusers, prosecutors and judges at the same time—power to deal with "horses" in a summary manner, immediately after the race, because of what they see during the race and what is afterwards proved to their satisfaction immediately after the race, and at the same time to refuse to allow them to take away the character of a man, be he owner, trainer or jockey, in that summary way, on the ground of some indefinite suspicious practice, before the person charged has reasonable time and opportunity to defend himself against some definite charge made by his accusers.

Whatever the reason was for making rule 19 (*d*) in its present form, a perusal of the rule itself shows that it does not include

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suspicious practices as one of the grounds for which men can now be disqualified by stewards, while the rule does include that as one ground for disqualifying horses. In the face of such a rule it is hard to understand how any stipendiary stewards could attempt to disqualify any person for "suspicious practices," but they have done so. It is possible that the stipendiary stewards in question, acting in this, their first appeal under the new rules, did not know or remember that the old rule had been repealed two days before, namely, on 2nd December.

I hold that the decision of the learned Judge of the Supreme Court who tried the case, namely, that the plaintiff was not legally disqualified by the stipendiary stewards, was correct. On this point I also agree with my learned brother *Barton*, where, in his judgment, he said (1):—"Rule 19 (*d*), under which the stipendiary stewards obviously convicted him" (the plaintiff) "of, and disqualified him for, the offence known as suspicious practices, does not give any power to try or punish any person for that offence." Later on—"Hence, it is quite clear to me that the stewards acted without jurisdiction" (that is, by disqualifying the plaintiff).

The next question is whether the illegal disqualification of the plaintiff by the stewards was changed into a legal disqualification by the committee's action on the appeal—or whether the decision of the committee, on the appeal, was in itself a legal disqualification by the committee.

Personally, I cannot see how such a conclusion can be maintained in the light of what the committee did on the appeal, and on a reasonable construction of the rules. The committee had power under the rules (quoted) in its original jurisdiction to disqualify persons for suspicious practices, although the stewards had not such a power. Assuming the committee could in its original jurisdiction have legally disqualified the plaintiff, the answer is that the committee did not do so. I agree with my brother *Barton* where he said (2):—"The committee, in dealing with the appeal, did not attempt to exercise any original jurisdiction." Further, no such charge was ever made by or to the committee in the first instance, as provided by the rules, to

(1 *Ante*, p. 97. (2) *Ante*, p. 100.

enable them to do so. Assuming, however, that the committee could, in its appellate jurisdiction, have legally disqualified the plaintiff on appeal, it is equally clear to me that the committee did not disqualify him.

Rule 33 (*d*), already quoted in the judgments just delivered, gives the committee very wide powers indeed on the appeal; but I hold that it must be read with the other rules of racing, and, in my opinion, the rule does not authorize the committee to do what they have done in this case—confirm a disqualification which they knew to be illegal. Without that assumption, rule 19 (*d*), limiting the power of the stewards, in the case of suspicious practices, to horses, is a farce, and cases which are only cognizable by the committee (the superior tribunal) can be decided by the stipendiary stewards. If the parties cannot afford to appeal, the decisions are final; and if the parties do appeal and the decision is confirmed by the committee, who appoints the stewards and pays them, they are also final, although the contract entered into (namely, the rules) contains a provision debarring the stewards from dealing with such charges in the first instance, or at all.

A further fatal objection to the contention that the committee's decision was in fact a disqualification by the committee on appeal, is the fact that, however wide the powers are under rule 33 (*d*), when the committee exercised the limited right of "confirming" the decision only and did not make any other order disqualifying the plaintiff, as a committee or otherwise, then their jurisdiction on appeal ended, and the confirmation only had the effect of validating the decision, so far as the decision was within the jurisdiction of the stewards, applicable only to the Moonee Valley Racing Club and its grounds. The only way the committee could, in my opinion, legally disqualify the plaintiff was by a proceeding brought before it, in the first instance, in its original jurisdiction, or by special consent of the plaintiff. The only tribunal empowered by the rules (the contract between the parties) to hear a charge of suspicious practices is the committee.

If we turn to the report of the proceedings to see what the committee directed their minds to on the appeal, it is clear that the committee did not disqualify the plaintiff. The chairman of the committee on the appeal at the opening told the plaintiff that

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the question the committee intended to consider was whether they were to reverse the decision previously given by the stewards of the Moonee Valley Racing Club, who disqualified the appellants and the horse Blackpool for twelve months for suspicious practices in connection with the running of the horse in the Welter Handicap on the race meeting on 4th December 1912. That was the position put by the chairman at the opening. Again, after reading the notices of appeal, the chairman said:—"We have before us the evidence taken at the inquiry held at Moonee Valley, and it is for you to bring such evidence or use such arguments as you can to endeavour to induce us to reverse the decision previously given. We have had copies of this evidence forwarded to us, and have given same our consideration, and it is no use repeating that evidence at the present moment."

That was the position the committee took during the hearing of the appeal. That was the position the committee took when the evidence was all taken and the decision given:—"All retired. All recalled. The chairman—'We have patiently considered this evidence, and have given you every opportunity to show us any reason why the decision of the stipendiary stewards should be altered.'" Later on he said:—"We have come to the conclusion that we will refuse your appeal. We confirm the decision of the stipendiary stewards, and return your £20 lodged." After protest by the plaintiff and the jockey (Foulsham), the chairman concluded:—"We have come to our decision and recorded it, and that is where it stands. The case is not to be re-opened in any way or form. You may take any steps you think fit."

The committee, therefore, only refused to reverse the decision of the stipendiary stewards, declined to alter it, and formally confirmed it. I am satisfied that the only disqualification was by the stewards. The Victoria Racing Club's own records show this. One of the exhibits is a copy of the entry in the Register of Disqualifications kept by the Victoria Racing Club; it is called an "extract from the Victoria Racing Club Register of Disqualifications." The following appears in that exhibit:—

"Name of person or horse disqualified—F. S. Meyers (b.g. Blackpool), W. Finn, W. Foulsham.

"Whom disqualified by—Moonee Valley Racing Club.

"Date of disqualification—4th December 1912.

"When endorsed—13th December 1912.

"When removed—C.

"Remarks—Twelve months. Suspicious practices. Appeal dismissed."

The words "when endorsed—13th December 1912," admittedly referred to the decision of the committee on the appeal confirming the decision of the stewards. No order of disqualification by the committee appears in the register in the evidence. In the minutes of the committee meeting of 10th January 1913 (another of the exhibits) when the resolution requesting the plaintiff to resign was passed, the matter is headed: "*Re* F. S. Meyers, member of the V.R.C., disqualified by Moonee Valley R.C. for 12 months, on 4th December 1912." In the minutes of the committee meeting held as late as 17th January last, the disqualifications are referred to as the disqualifications by the stipendiary stewards at Moonee Valley on 4th December 1912. No mention is made at any time in the reports of the proceedings of the committee of any disqualification by the committee. The statement of defence does not claim that the disqualification was by the committee on 13th December. On the contrary, the defence only refers to the disqualification by the stewards, on the 4th December last, confirmed by the committee. The disqualification was a legal one, so far as the disqualification of the horse is concerned.

I concur in the conclusion of his Honor the learned Judge of the Supreme Court, arrived at after hearing the evidence (previously referred to), and after seeing the witnesses, and their demeanour under cross-examination. He held that he was not justified in arriving at the conclusion that the stewards or the committee found matter, or made a determination, which would justify the disqualification of the man. I hold that the plaintiff was not legally disqualified by the stewards or by the committee of the Victoria Racing Club.

As to the third question: Assuming the disqualification by the stewards was illegal, is the plaintiff deprived of his right to bring any action for redress under the circumstances of this case—notwithstanding such illegal disqualification—after appealing in the

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first instance to the committee? That is, has the plaintiff, by his conduct, waived his right to proceed in the Courts, or is he estopped from proceeding because he appealed to the committee?

On the question generally of estoppel by appeal, my brother *Isaacs* mentioned many cases directly in point; but I do not remember counsel for the plaintiff arguing that (1) if the plaintiff appealed to the committee on the whole case, including jurisdiction, or if he knowingly appealed solely on his rights on the question of evidence only, to a tribunal that had power to decide the question of jurisdiction on an appeal to it under the rules—or if he had expressly consented to the decision being final—the decision of the committee would not, in ordinary circumstances, be final. It would, of course, be as final as if a plaintiff in the County Court appealed to the Supreme Court, and no objection to the jurisdiction of the inferior Court was raised on the appeal by the plaintiff or by the Court. Nor do I remember counsel for the plaintiff contending that if a defect of jurisdiction is condoned, the matter is not at an end.

It was, however, strongly contended by defendants' counsel that the plaintiff had, by his conduct, condoned the defect of jurisdiction, and in support of that contention *Dines's Case* (1) and other cases were cited. I understood plaintiff's counsel to contend (*inter alia*) that under the special contractual relations between the parties in this case, plaintiff had not condoned the defect; the necessary consent of the committee's jurisdiction on appeal to confirm an illegal disqualification was not given; the plaintiff had not given up any legal rights; excess of jurisdiction was not a ground of appeal under the rules; the submission of the committee, so far as the plaintiff was concerned, was a nullity; the plaintiff, under the circumstances, had only demanded the exercise of the power subject to his right to question the validity of the whole proceeding; the committee acted contrary to the rules, and plaintiff had no knowledge of his rights; the committee had no power on appeal to construe rule 19 (*d*), or make an illegal disqualification legal; the construction of the rules was not in the hands of the Victoria Racing Club; the committee had no power to give jurisdiction to

(1) L.R. 2 P.C., 280.

the stewards, where it was clear it had no jurisdiction, and the committee had only a power in its appellate jurisdiction to deal on the appeal with matters within the powers of the stewards under the rules; express language was necessary to give the power claimed by the committee to a domestic tribunal.

Rule 3 was referred to by my brother *Isaacs* in his judgment as binding the plaintiff, but it expressly states that it refers only to "any person who takes part in any matter coming within these rules." The disqualification by the stewards was clearly not within the rules. Before expressing an opinion on the point whether the plaintiff is deprived of the right by estoppel or waiver, it is only right to consider the facts in this case, to see whether the plaintiff, by his conduct after the decision, has barred his right to proceed, and to see whether the cases quoted by my learned brothers apply. I do not think they do. The inquiry was held on the 4th day of December last—the notice of appeal was given the next day, 5th December.

At this time the only decision the stewards had notified to the plaintiff was the one mentioned at the conclusion of the inquiry, that the horse "did not try to win," and that the stewards had "decided to disqualify all four for twelve months." That was very indefinite, but the horse was evidently included in the four, and the only one declared guilty of anything objectionable, or otherwise. The stewards had power to disqualify the horse. Evidence was given that the disqualification referred to was published in the *Age* newspaper on 5th December as one for "suspicious practices," but no evidence was given to show that the plaintiff saw the announcement before, or after, he gave notice of appeal. Even if he had seen it, he could not be expected to accept a newspaper report as correct, in face of the decision announced personally to him, and to the trainer and the jockey, by the stewards at the close of the official inquiry. When the plaintiff gave the notice of appeal he had every reason to suppose that the stewards had acted within their jurisdiction, and had disqualified him on some unstated ground that they had jurisdiction under the rules to disqualify him for, although no charge of any sort, definite or indefinite, had been made against

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him, personally, by or to the stewards—as far as he knew; and I take it he gave the notice of appeal in that belief.

The fact that he appealed against the decision of the stewards in "disqualifying him and his racehorse" in that light, cannot, in my opinion, be held to waive any rights he held, or to give the committee jurisdiction to make an illegal decision a legal one. I do not see how the plaintiff could have been expected to object to the jurisdiction of the stewards (even if he knew that the new rules were in force), as he had at the time no official information that he had been disqualified on any charge that the stewards had not jurisdiction to disqualify him for. All he knew was that he was not guilty of any offence he could be disqualified for under the rules, and that the stewards had not informed him of any definite act they considered him guilty of. That was the position when the plaintiff gave notice of appeal. But it is said that, whether he did or did not know what the real decision of the stewards was before he gave notice of appeal, he did know it before the appeal was proceeded with, because just before the appeal was heard he was supplied with what purported to be a correct copy of the report of the proceedings before the stewards at the inquiry—namely, a copy of Ex. F.

The plaintiff was supplied with a copy of Ex. F. at that time, but it was admitted on the argument before this Court that Ex. F. is not, and was not, a correct report, because the decision given by the stewards after the parties left was inserted in the body of the proceedings as if it had been given before the plaintiff left, and as if discussion followed thereon. It was also admitted that the correct copy appears in Ex. No. 2, a copy of which was not supplied to the plaintiff at any time. The plaintiff therefore knew the copy he was supplied with was not a true report of the proceedings before the stewards, and he told the committee so at the hearing of the appeal. Even if it had been a correct report of the proceedings, I do not see that the plaintiff prejudiced his rights in proceeding with the appeal, because, as the stewards had given the decision they did, the disqualification of the horse was legal, being within their powers under the rules. The plaintiff also knew that that disqualification ought not to have been made if the stewards had only found as they said they had,

"that the horse did not try to win." He knew that he would have to clear himself, and the trainer and the jockey, on the appeal, before he could expect to succeed on his appeal against the disqualification of the horse. I cannot, therefore, see that the plaintiff in any way consented to anything being decided on appeal, except the disqualification which the stewards legally made under the rules. The same remarks apply to his position after the chairman announced (1) that the appeal they were to hear was against the decision of the stewards who dis-disqualified them and the b.g. Blackpool for twelve months, for suspicious practices, &c.; and (2) that it was for the plaintiff to endeavour to induce the committee to reverse the decision of the stewards.

There was no doubt that the stewards could, under the rules, disqualify the horse, and if the plaintiff wished to get rid of that disqualification, the only way he could do so was by continuing his appeal to the committee. I do not see how, in continuing the appeal under such circumstances, he impliedly agreed to allow the committee to decide the question whether his disqualification was to be continued, even if it was illegal. He had to submit to the disqualification of the horse, which he strongly objected to, or proceed with the appeal. It was not shown whether plaintiff knew the new rule was in force at all. The rules are only intended to bind persons to submit to punishment imposed by persons authorized by the rules to impose them; and parties entering horses cannot be taken, when appealing, unless by express agreement, to submit the question whether any legal disqualification is to be treated as if it was valid. The committee had no express power under the rules, on appeal, to legalize an illegal disqualification. The stewards and the committee are bound to abide by the rules as well as the plaintiff.

Approaching the cases quoted in the judgments delivered on this part of the case, in the light of the facts mentioned, I find the racing cases quoted by counsel—including all those referred to in *Dines* v. *Wolfe* (1) (the principal one relied on by the defendants)—go to show that, as the stewards had in this case power to decide under the rules whether the horse should be

(1) L.R. 2 P.C., 280.

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disqualified if suspicious practices were proved to their satisfaction, their decision is final, and the Court ought not to interfere with it; but the cases also show that where the stewards have no power to disqualify under the rules, such a disqualification is invalid, and a plaintiff has a right to proceed in the Courts. Nearly all the racing cases quoted during the argument referred to dealt with the right to "stakes," and not to cases of disqualification entailing expulsion from grounds and expulsion from membership. In all the cases quoted it appears to me that the decision of the stewards, committees and umpires were upheld, only when the rules specially authorized them to do the acts they did, or the parties by the agreements expressly authorized them to decide the specific acts complained of. In all other cases, if the act done was not, under the rules, within the powers of the stewards or the officers, or if authority had not been expressly given to them to decide the question, the Courts supported the the plaintiff's claim.

In the following cases the Court upheld the decision of the stewards, because the specific act they did was authorized by the rules, or by an express agreement authorizing them to do the specific act in question:—*Ellis* v. *Hopper* (1); *Parr* v. *Wintering-ham* (2); *Benbow* v. *Jones* (3); *Dines* v. *Wolfe* (4) (I propose to refer specially to this case); *Newcomen* v. *Lynch* (5) (in this case it was expressly stated that the stewards had not exceeded their jurisdiction); *Smith* v. *Littledale* (6); *Evans* v. *Pratt* (7); *Evans* v. *Summers* (8).

In the following cases the Court decided in favour of the plaintiff, because the stewards, or other officers in connection with racing, had no jurisdiction to decide the act complained of, and no express consent to the stewards to decide the particular question had been given by the plaintiff:—*Walmsley* v. *Matthews* (9); *Carr* v. *Martinson* (10) (in this case the plaintiff succeeded because the question decided was not within the jurisdiction of the person who decided it); *Sadler* v. *Smith* (11) (where it was

(1) 28 L.J. Ex., 1.
(2) 28 L.J.Q.B., 123.
(3) 14 M. & W., 193; 14 L.J. Ex., 257.
(4) L.R. 2 P.C. 280.
(5) I.R. 10 C.L., 248.
(6) 15 W.R., 69.
(7) 4 Scott N.R., 378.
(8) 35 J.P., 761.
(9) 3 Scott N.R., 584.
(10) 28 L.J.Q.B., 126.
(11) 39 L.J.Q.B., 17.

held the jurisdiction of the referee never attached, and plaintiff was entitled to recover); *Weller* v. *Deakins* (1); *Daintree* v. *Hutchinson* (2).

In *Dines* v. *Wolfe* (3) it was held by the Judicial Committee on the construction of the agreement and the rules of the Jockey Club which it referred to, that the finding of the jury was wrong, and that a new trial was properly granted. That case has been referred to by my learned brothers to support the view they take that the appeal to the committee by the plaintiff bars his right to take proceedings in the Courts, and that he is bound by the decision of the committee. I do not see anything in the case that enables me to take that view. The plaintiff in *Dines's Case* (3) agreed to run a match with his horse Kyogle with Mr. Doyle's Traveller, distance three miles, one event, weight for age, the match to be run under the Australian Jockey Club Rules. The race was run on 16th April. No objection was made to Traveller until after he won the race. The plaintiff then wrote to the stewards (letter dated 16th April), protesting against Traveller being declared the winner, on the ground that he started as a four-year-old, when he was a five-year old. He also enclosed £5. Under the Australian Jockey Club Rules that was a question the stewards had power to decide, and they decided it after hearing evidence adduced by both parties. The plaintiff brought an action to recover the amount of the stake, £1,000, paid over by the stakeholder to the defendant as owner of Traveller. The jury returned a verdict for plaintiff. The Court granted a new trial. The plaintiff appealed to the Privy Council, and the Privy Council dismissed the appeal. In delivering the judgment, Lord *Chelmsford* said (4):—"Now, if the race were actually run, it is quite clear that the plaintiff cannot be entitled to recover back his stakes. The plaintiff, however, says that the race was the subject of an agreement, and that the race was not run according to that agreement." Later on his Lordship said (5):—"The plaintiff agreed to run the race according to the rules; . . . the agreement incorporates the rules of the Jockey Club." Counsel for defendants attached

(1) 2 C. & P., 618.
(2) 10 M. & W., 85.
(3) L.R. 2 P.C., 280.
(4) L.R. 2 P.C., 280, at p. 286.
(5) L.R. 2 P.C., 280, at p. 288.

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great weight to the following words used by his Lordship (1):—"But assuming that an objection might have existed" (on the ground that the stakeholder of the club did not hold the stakes), "can it be contended on the part of the plaintiff, considering his conduct after the race, that it was competent to him to make such an objection to Doyle being entitled to the amount of the money which depended upon the race." The conduct referred to after the race is dealt with in the judgment, and amounted to writing the letter of protest and attending to support the protest. His Lordship (2) took the letter to amount to an acknowledgment "that the race was run under the rules of the Jockey Club . . . He" (the plaintiff) "remits the question therefore to the committee of the Jockey Club under these particular rules;" that is, the question whether the horse was a four-year-old or a five-year-old—a question clearly within the power of the stewards to decide under the rules quoted. As his Lordship said (2):—"But, by the 68th rule, the stewards are to judge of the evidence which is sufficient to satisfy their minds upon the subject referred to them," namely, the age of the horse.

I cannot, therefore, see how *Dines's Case* (3) applies, for the decision in that case rests on the fact that the plaintiff, by agreement before the race, agreed to the stewards deciding the question of age, and by his conduct after the race, namely, by the letter of protest, he confirmed that agreement; and, under the rules of the Jockey Club, the stewards had authority to decide the question remitted to them, and it was decided by them.

I hold that, even if the stewards had power under the rules to disqualify the plaintiff, he would still be entitled to sue in the Courts for redress, on the ground that the stewards acted contrary to the substantial principles of justice in disqualifying him (See statement of claim, par. 16, and particulars under par. 16). When the stewards are necessarily detectors, accusers, prosecutors and judges, it is necessary for them, in my opinion, before they exercise their power to punish anyone, to comply with their own rules; and also to let the person on his trial know the specific charge he has to meet—not a general charge only of "suspicious

(1) L.R. 2 P.C., 280, at p. 288. (2) L.R. 2 P.C., 280, at p. 289.
(3) L.R. 2 P.C., 280.

practices," "dishonest" or "dishonourable conduct," and, if it is a contravention of the rules of racing, not for "contravention of the rules" but the particular rule it is alleged he has contravened. It is not, however, necessary to go into that question fully, as the members of this Court hold that the decision by the stewards was illegal.

I have also come to the conclusion that, even if the committee had power under its appellate jurisdiction to disqualify the plaintiff for suspicious practices on the appeal in question, and they did disqualify him, the plaintiff is still entitled to sue in the Courts for redress, on the grounds (1) that the committee on the appeal acted contrary to the substantial principles of justice (see statement of claim, par. 17); and (2) the committee acted in the same way in passing the resolution of 10th January last, without hearing the plaintiff (see pars. 19 and 20 of the statement of claim).

As to the appeal, the committee acted contrary to the substantial principles of justice. The proceedings show that the committee did not make any inquiry (*a*) whether the stipendiary stewards acted within the authority given to them by the rules; (*b*) whether they had notified the persons before them at the inquiry of the matters alleged against them; and (*c*) they confirmed a disqualification they knew to be illegal under the rules. It was also clear, from the report of the proceedings at the inquiry before the committee on the appeal, that the stewards had acted on matters within their own knowledge, without bringing such matters under the notice of the plaintiff at the inquiry when he was disqualified. Further, the committee, if it did disqualify the plaintiff under any power to do so as a committee, acted contrary to the substantial principles of justice in deciding that the plaintiff was proved to have been guilty, and convicting him, after refusing to let him know what specific act he was being tried for before them.

Under the Rules of Racing it is clear that no person can be punished by the stewards, or by the committee, without a definite charge being made against him, and an opportunity given to him to disprove that charge. The rules under which the stewards have power to punish persons use the words "found by

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them to have been guilty," or "shall have been proved to their satisfaction." In rule 29, where the committee is given original jurisdiction to impose punishment, the words used are "any person who has in their opinion been proved guilty." The committee refused to tell the plaintiff what "specific offence" or "wrongdoing" the stipendiary stewards had found him guilty of, or what act or wrongdoing he would have to convince them he was not guilty of, before they would refuse to confirm the decision of the stewards. To tell him that the charge was one of "suspicious practices" was equivalent to telling an accused person in a criminal Court that he was guilty of a misdemeanour, or of a felony, without letting him know what the act complained of really was. The evidence shows, and counsel for the defendants admitted it, that "suspicious practices" is a general term only, and includes "any wrongdoing on the turf."

On the appeal itself the plaintiff was informed by the chairman at the opening:—"We are here to-day to hear appeals from F. S. Meyers, W. Finn and W. Foulsham against the decision of the stewards of the Moonee Valley Racing Club, who disqualified them and the b.g. Blackpool for twelve months for suspicious practices in connection with the running of the horse in the Welter Handicap at the race meeting on 4th December 1912." (The chairman then read notices of appeal of three appellants.) "We have before us the evidence taken at the inquiry held at Moonee Valley, and it is for you to bring such evidence or use such arguments as you can to endeavour to induce us to reverse the decision previously given." No information was given by the committee as to the particular act plaintiff was to disprove; all he knew on the appeal was that he was disqualified for "suspicious practices," a term admittedly including "any wrongdoing on the turf." The plaintiff did not know at any time during the hearing of the appeal, what specific charge he had to answer. He said:—"I can only say that I am absolutely guiltless of anything dishonourable on the turf." Just before the committee retired to consider the matter the plaintiff said:—"I cannot see where I have done wrong—where I have failed." When the committee returned he was informed by them that no reason had been shown why the stewards' decision should be altered, and the stewards' decision

was to be confirmed by the committee. The plaintiff asked first:—"In what way have I failed?" To which he received no answer. He then said:—"Of what am I guilty?" In reply, the chairman referred him to the charges the stipendiary stewards found him guilty of. The plaintiff said:—"I never heard the charges read out." The chairman replied:—"You know all about them. I read it out at the start of the evidence." What the chairman read out was only that the appeal was against the disqualification by the stewards for suspicious practices.

The only information the plaintiff, therefore, could get on the appeal was simply the fact that the stipendiary stewards had found him guilty of suspicious practices, a general term amounting to some wrongdoing on the turf, without any information as to the definite act or acts the stewards found him guilty of or what he had to disprove before the committee. Every man is entitled to know the charges he has to meet before the committee can disqualify him. Under the rules he has to be proved to have been guilty. If the committee did disqualify him, they did so contrary to the elementary principles of justice.

As the plaintiff was illegally disqualified by the stewards, can the defendants, because that decision was confirmed by the committee on appeal, expel the plaintiff from the grounds of the Victoria Racing Club?

Under the *Victoria Racing Club Act* and statutory by-laws the plaintiff is entitled as a member to enter the grounds of the club, subject to the by-laws of that club, and he cannot be expelled therefrom unless in accordance with such by-laws. The plaintiff, if he has been legally disqualified under the rules of any club, and the committee of the Victoria Racing Club adopts or confirms that disqualification, is not entitled to attend any race meeting or enter on the grounds of the club after it legally adopts or affirms that disqualification: See rule 1, term "disqualified." Under by-law 35 of the Victoria Racing Club persons disqualified by the committee or stewards of a club for suspicious practices, &c., may be expelled from the lands of the club after having been warned off; and under sec. 36, persons, if disqualified by any other racing club, or by the committee or stewards or governing body thereof for suspicious practices, &c., may be

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expelled from the said land after having been warned off. Such disqualification must, in my opinion, be one legally made under and in accordance with the rules, but as the disqualification in this case was by a club racing under Victoria Racing Club rules, and the committee of the Victoria Racing Club knew the disqualification was illegal because made by the stewards, they cannot take advantage of the illegal disqualification, and expel the plaintiff from the grounds. Another reason why the defendants cannot expel the plaintiff from the grounds is that in their statement of defence they rely on the disqualification of the plaintiff by the stewards (not by the committee), and that disqualification has been held by the Supreme Court and by this Court to be illegal.

I hold, for the reasons mentioned, that the defendants are not entitled to expel the plaintiff from the grounds of the Victoria Racing Club, or from the membership of the club under pars. 11, 12 and 17 of the statement of defence under which the right to take that action is claimed in the first instance.

6. Assuming that plaintiff was disqualified by the decision of the committee confirming the stewards' decision (as the majority of the members of this Court apparently hold that he was), can the committee expel the plaintiff (*a*) from the grounds of the Victoria Racing Club ?

If the plaintiff was legally disqualified, there is a power undoubtedly under the rules when the disqualification is confirmed and adopted to expel even a member from the Victoria Racing Club grounds ; but in this case I do not think the defendants can succeed in their defence, because, in my opinion, the stewards and the committee acted contrary to the elementary principles of justice when they disqualified the plaintiff. I therefore think that, even if the committee had the power to disqualify him, and did so, the plaintiff is entitled to the injunction preventing the defendants from expelling him from the grounds of the Victoria Racing Club for the reasons I have mentioned.

Can the defendants expel the plaintiff (*a*) from the grounds of the Victoria Racing Club, and/or (*b*) from his membership of the Victoria Racing Club, on the grounds set out in par. 18 of the statement of defence ? The right claimed by the defendants

under par. 18 of the statement of defence is based on procedure and action taken by the committee so contrary to the elementary principles of justice that I have no hesitation is saying they cannot do so. The following is a copy of paragraph 18 of the statement of defence :—" Upon the hearing of the said appeal it was proved to the satisfaction of the committee that the plaintiff had been guilty of such improper conduct as the committee considered prejudicial to or subversive of the purposes of the club and that he had been guilty of malpractice in connection with racing and by reason of the premises in this paragraph mentioned the plaintiff under the by-laws of the club has no longer any right to enter or remain upon the said racecourse and is liable to be expelled therefrom after having been warned off by the committee or stewards of the club and has become liable to be called upon to resign his membership of the said club and the plaintiff is therefore not entitled to any of the relief claimed in this action."

The following is a copy of a resolution of the committee of the Victoria Racing Club passed on 10th January 1913 :—(Ex. R.) "*Re* F. S. Meyers, member of V.R.C., disqualified by Moonee Valley R.C. for 12 months, on 4th December 1912. C. Lort Smith (club's solicitor) present.—The committee are satisfied that F. S. Meyers has been guilty of such improper conduct or action in connection with the running of b.g. Blackpool at the Moonee Valley race meeting on 4th December 1912 as the committee consider prejudicial to or subversive of the purposes of the club, and in terms of by-law 13 resolve that he be requested to resign from the club."

It is hard to understand how the committee of the Victoria Racing Club could act so contrary to the principles of justice as to find the plaintiff guilty on 10th January last of charges they knew had never been made against him by the committee, or by the stewards, and especially without some notice being given to him, so as to allow him an opportunity of being heard in his defence. They knew that on the hearing of the appeal the only charge that had been considered was one of suspicious practices, whatever that was. They knew that that was the only question that they directed their minds to on the appeal. In any case, it

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was the only question they directed the attention of the plaintiff to. And yet in par. 18 it is stated that upon the hearing of that appeal (when another charge was being considered) it was proved to the satisfaction of the committee that the plaintiff had been guilty of other charges (to which his attention had not been directed at all), namely, such improper conduct as the committee considered prejudicial to or subversive of the purposes of the club, and also that he had been guilty of malpractice in connection with racing. The learned Chief Justice of this Court, in the case of *Scott Fell* v. *Lloyd* (1), commented very strongly on a somewhat similar proceeding, namely, the conviction of a man—on a charge his attention had not been directed to—at the hearing of a different charge. The learned Chief Justice said:—"This was the only charge of misdemeanour made against him in the report. . . . He" (the bankrupt) "was cross-examined at great length with a view, I suppose, of proving that he was guilty of that misdemeanour. Then, when the evidence was closed, counsel for the bankrupt addressed the Registrar, and counsel for the Official Assignee then made a speech in reply, and in the course of that speech accused the bankrupt, for the first time, of several other misdemeanours which, it was said, could be gathered from his cross-examination. When I heard that stated in the opening of this appeal, it struck me as something very strange. A man who is cross-examined in the witness-box on a particular issue before the Court, has his mind directed to that issue, and to the facts relevant to it. Facts are elicited in his cross-examination which, it is said afterwards, are relevant to an entirely different issue, and which, if unexplained, would suggest that he was guilty of some other offence. I said during the argument of counsel that I hope that that is not the practice of the Supreme Court of New South Wales in Bankruptcy. There is nothing more unfair than to accuse a man of one piece of misconduct and to examine him upon that, and then, when his mind has been directed to that subject, to pick out from what he has said some statement which, if not explained, and which there was no reason to explain under the circumstances, would tend to suggest that he had been guilty of some other offence to which his mind was not directed. I am not suggesting that, if out of

(1) 13 C.L.R., 230, at p. 236.

the cross-examination of a bankrupt any facts appeared which tended to show that he really had been guilty of offences which should result in his being deprived of his certificate, the Court ought not to investigate the facts and deal with them. But before doing so the bankrupt ought to have fair information, and be fairly informed of that with which he is charged, and have an opportunity of answering it."

In this case the act constituting the improper conduct, or the malpractice the plaintiff was found guilty of, is not stated. In this case the report of the proceedings at the appeal shows conclusively that neither of the charges mentioned was made on appeal, and yet the conviction is based on what was proved upon the hearing of the appeal, on another charge. The defendants claim that, because the plaintiff was proved guilty of the charges mentioned under the circumstances, he (the plaintiff) has no longer any right to enter, or remain upon the racecourse of the Victoria Racing Club, and that he is liable to be expelled therefrom; and also, after having been warned off the course, that he is liable to be called upon to resign his membership of the Victoria Racing Club. Not only do the club claim what I have stated, but on 10th January last the committee resolved that the plaintiff be requested to resign his membership of the club.

Under statutory by-law 13, if the committee think fit to request a member to resign, and he fails to comply with the request, the committee may expel such member. In such a case he would be deprived of his rights as member in the valuable properties of the club, the privileges of a member, including attendance at the races, and his right to vote as a member. Before, however, the defendants can legally do what they propose to do under by-law 13, the member must be proved to the satisfaction of "the committee to have made default in payment of any stake or bet, or to have been guilty of such improper conduct or action as the committee may consider prejudicial to or subversive of the purposes or authority of the club." The proof, of course, in such a case must be after a definite charge and a hearing.

All the cases dealing with the expulsion of members from clubs are clear on this point, and I now only refer to the following

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leading cases:—*Labouchere* v. *Earl of Wharncliffe* (1). The words in the rules of the club in the case mentioned were: "In case the conduct of any member either in or out of the club shall in the opinion of the committee, after inquiry, be injurious to the welfare and interests of the club, the committee of the club shall call upon him to resign," &c. It was held, on the facts of the case, that the committee had acted without full inquiry, and without giving the plaintiff notice of any definite charge, &c., and that the plaintiff was entitled to an injunction. *Jessel* M.R., in delivering judgment, said (2):—"What ought the committee of a club to do when the conduct of one of its members has been impugned? They ought to see what that conduct has been, and what excuse or reason can be given by the member for it; and they ought to give notice to that member that his conduct is about to be inquired into, and afford him an opportunity of stating his case to them." Later on he said (3):—"I am even now unable to see what the exact nature of the charge was against Mr. Labouchere." See also *Fisher* v. *Keane* (4).

In *Wood* v. *Woad* (5), Lord Chief Baron *Kelly*, speaking of the committee of a club, said:—"They are bound in the exercise of their functions by the rule expressed in the maxim *audi alteram partem*, that no man shall be condemned to consequences resulting from alleged misconduct unheard and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matter involving civil consequences to individuals."

That passage is adopted by *Jessel* M.R. in *Russell* v. *Russell* (6), and by Lord *Macnaghten* in the Privy Council in *Lapointe* v. *L'Association de Bienfaisance et de Retraite de la Police de Montréal* (7). In the case last mentioned, Lord *Macnaghten*, in delivering the judgment of their Lordships, said (8):—"Then, without telling Lapointe what the charges against him were, or giving him an opportunity of defending himself, they advised the board that the pension should be refused." Later on (7), he

(1) 13 Ch. D., 346.
(2) 13 Ch. D., 346, at p. 350.
(3) 13 Ch. D., 346, at p. 351.
(4) 11 Ch. D., 353.
(5) L.R. 9 Ex., 190, at p. 196.
(6) 14 Ch. D., 471, at p. 478.
(7) (1906) A.C., 535, at p. 539.
(8) (1906) A.C., 535, at p. 538.

said :—"The whole of these proceedings were irregular, contrary to the rules of the society, and above all contrary to the elementary principles of justice."

I hold for the reasons mentioned that the defendants cannot expel the plaintiff from the grounds of the Victoria Racing Club or from his membership of the Victoria Racing Club on the grounds set out in par. 18 of the statement of claim.

Question 8.—Did the defendants threaten to expel the plaintiff from the grounds and the membership of the Victoria Racing Club? I agree with what my brother *Barton* said in his judgment on this question (1) :—"No letter was sent asking for the plaintiff's resignation, but the plaintiff relies upon the resolution and certain letters and interviews between the solicitors as a threat to expel him from the club. The evidence from these sources, taken together, is but slight. But the 18th paragraph of the defence claims the right to exclude the plaintiff from Flemington Racecourse, asserts his liability to be expelled therefrom after having been warned off, and his liability to be called on to resign his membership of the Victoria Racing Club, and for these reasons denies his title to any of the relief claimed. This paragraph, with its assertions of positive right to exclude and expel, seems to me to be sufficient foundation for an injunction if the rights of the plaintiff to continue his membership and to use the racecourse be sustained in law."

Question 9.—Even if the disqualification was illegal, and the act and threats of the committee unauthorized, is the plaintiff still barred from succeeding in this action, on the only ground on which the learned Judge who heard the case held he was not entitled to judgment—namely, on the ground that he did not come into Court with "clean hands?" That is, does the principle apply in such a case as this? If so, was there evidence to warrant such a finding?

I agree with my learned brothers *Barton* and *Isaacs* that the principle referred to does not apply in this case—and for the reasons stated by them in delivering their judgments. Even if it did apply, the acts referred to by his Honor, in my opinion, may be quite consistent with innocence, when the defendant has an

(1) *Ante*, p. 102.

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opportunity of meeting them. At present the rule that in a British Court of justice a man is to be deemed innocent until proved to be guilty, prevents the principle referred to by the learned Judge of the Supreme Court applying in this case, when, as my brother *Barton* says (1):—"The merits of the plaintiff's conduct were not in issue before his Honor;" and (2) "The plaintiff could not have been heard to declare his innocence in that proceeding."

I hold that the plaintiff is entitled to the declarations and injunctions asked for in the statement of claim.

RICH J. I have read the judgment of my brother *Isaacs*, and agree with it.

Order appealed from varied by granting an injunction restraining the respondents Casey and the Victoria Racing Club and the members thereof from proceeding by reason of anything done under by-law 13 *or the resolution of their committee of* 10*th January last past to exclude or attempt to exclude the appellant from membership of such club, or from the benefits and advantages of such membership, or to expel or attempt to expel him from such club. Order appealed from, save as above mentioned, affirmed. Appellant to pay the respondent Casey his costs of action and of this appeal, save the costs occasioned exclusively by the claim in respect of exclusion or expulsion from the said club, such last mentioned costs to be paid by the respondent Casey to the appellant.*

Solicitors, for the appellant, *Gillott & Moir.*

Solicitors, for ths respondents, *Nunn, Smith & Jeffreson.*

B. L.

(1) *Ante*, p. 101. (2) *Ante*, p. 102.