100/56.

G.P.-S.103675 - 1954-5 - 1,000. U.D.J. 219.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(Appellate Provincial Division).
Provinsiale Afdeling).

Appeal in Civil Case.
Appèl in Siviele Saak.

THE JOCKEY CLUB of S.A. *Appellant,*

versus

DESMOND SYMONS *Respondent.*

Appellant's Attorney Webber Horn & Co. *Respondent's Attorney* Lewis & B.
Prokureur vir Appellant *Prokureur vir Respondent*

Appellant's Advocate *Respondent's Advocate*
Advokaat vir Appellant *Advokaat vir Respondent*

Set down for hearing on
Op die rol geplaas vir verhoor op Monday, 10th Sept., 1956

(D) 10, 11
1, 2, 3,

9.30 a.m. } C.A.V.
2.30 - 3.20 }

Appeal allowed with costs and the judgment of the trial Court altered to one dismissing the application, with costs.

21/9/56

IN THE SUPREME COURT OF SOUTH AFRICA

(Appellate Division)

In the matter between :-

THE JOCKEY CLUB OF SOUTH AFRICA Appellant

and

DESMOND SYMONS Respondent

Coram: Centlivres, C.J., Schreiner, Hoexter, Beyers JJ.A. et Hall, A.J.A.

Heard: 10th. September, 1956. Delivered: 21-9-1956

J U D G M E N T

SCHREINER J.A. :- The respondent on the 30th September 1955 obtained a bookmaker's licence, good for a year, which was issued to him under section 3 of Ordinance 26 of 1925 (Transvaal), as amended. In terms of section 3(5) nothing contained in the Ordinance is to "affect any right "possessed by the Jockey Club of South Africa to prohibit "any bookmaker from carrying on his business." By Regulation 9(5)(g), issued under section 3 bis (3) of the Ordinance, the Committee which considers and determines applications for certificates to obtain bookmakers' licences is forbidden to grant such a certificate to anyone who

"is/.....

"is a 'warned off' person or is under suspension by the "Jockey Club of South Africa." I shall refer in this judgment to the appellant as "the Jockey Club". Bookmakers are not licensed by or in any general contractual relationship with the Jockey Club, but their livelihood depends on their being allowed to carry on business on the racecourses owned by the various racing clubs, which in terms of the rules of the Jockey Club have agreed to observe the instructions and decisions of the Head Executive Stewards, in whose hands rest the business and management of the affairs of the Jockey Club. Bookmakers are mentioned only twice in the rules of the Jockey Club. Rule 71(b) empowers the Race-meeting Stewards to "regulate, "control, take cognisance of, inquire into and adjudicate "upon the conduct" of, among others, bookmakers taking part in their race-meetings. And Rule 161 provides that no lease of a racehorse is to be approved in which a bookmaker or bookmaker's clerk is the proposed lessee. For present purposes these two references to bookmakers are not important and, generally speaking, in relation to the Jockey Club and its rules, bookmakers are members of the public who have a strong financial interest in going upon racecourses but have no greater right than other members

of/.....

of the public to do so.

In the year 1954 the respondent bought, either for himself, or in partnership with one Cowan, a racehorse called Lohar. In order to race a racehorse one must, with irrelevant exceptions, be registered as the holder of racing colours. Cowan was so registered but the respondent was not. In breach of the rules of the Jockey Club Lohar was registered and raced in the name of Cowan without the respondent's interest being disclosed. The respondent sold Lohar in March 1955. After an inquiry into the ownership of Lohar held in October 1955 by the Stipendiary Stewards of the Jockey Club, who themselves imposed a warning off penalty on Cowan, the Head Executive Stewards considered the position of the respondent at a meeting held on the 21st February 1956. The respondent did not attend the meeting but he had been invited to be present.

On the 22nd February 1956 the secretary of the Jockey Club wrote to the respondent informing him that the Head Executive Stewards had on the previous day inquired into the ownership and racing of Lohar. The letter proceeds :- "After careful considera-
"tion of all the information before them, and particularly
"the evidence given by you at the inquiry held by the

"Stipendiary/.....

"Stipendiary Stewards in October, 1955, they have come to
"the conclusion that during the time that the horse 'Lohar'
"was raced under The Rules of the Jockey Club of South Afric
"in the name and ownership of Mr. A.Cowan it, in fact, was
"owned wholly or in part by you, and that it was so regis-
"tered and raced with your knowledge and consent.

"No horse may be raced under the Rules of the Jockey
"Club of South Africa unless its ownership has been regis-
"tered by the Jockey Club and unless its owner has been
"granted registration of colours by the Head Executive
"Stewards.

"The Head Executive Stewards have found that in per-
"mitting the horse to be registered in the ownership, and
"to be raced in the name, of Mr. A. Cowan you have acted
"contrary to the Rules of the Jockey Club and were guilty
"of a corrupt or fraudulent practice in relation to racing.
"They have, therefore, decided to warn you off all places
"where the Rules of the Jockey Club are in force for a per-
"iod of one year from 22nd February 1956 to 21st February
"1957, both days inclusive. In consequence of this de-
"cision, you will be refused admission to all race-meetings
"held under the Rules of the Jockey Club of South Africa,
"to all racing and training stables, and to all training

"tracks/.....

"tracks and racecourses licensed by the Jockey Club. The "Provincial Secretary, The Transvaal Bookmakers Licensing "Committee and holders of licenses from the Jockey Club "will be informed of this decision. "

The Head Executive Stewards are empowered under Rule 24 inter alia to inquire into and investigate directly or by delegation any matter relating to racing in South Africa and to pass such decision thereon as they may consider expedient; in cases of misconduct or breach of the rules they may inflict, where no express penalty is prescribed, such penalty, including warning off as they may deem expedient; and they may determine in such manner as they think just any case occurring or other matter arising which is not provided for by the rules. Any person who is guilty of a corrupt practice may be warned off all places where the rules are in force and his name may be published in The Racing Calender, issued by the Jockey Club. (Rule 310). Every person is guilty of a corrupt practice who "wilfully fails to register any lease, "partnership.....or other matter by these Rules required "to be registered" (Rule 311(1). Rule 320 A prescribes that "no person who is warned off shall so long as his "period of exclusion continues

"(i)/.....

"(i) be present at any Race-meeting held under these "Rules." There are other disabilities but it is sufficient to say that the respondent is correct in stating that the effect of his ~~having~~ being warned off is that he is prevented from carrying on his lawful occupation of bookmaker and from earning his livelihood thereat, and that he accordingly suffers irreparable damage while the warning off order stands.

Upon receipt of the letter of the 22nd. February 1956 the respondent set down ~~the~~ an application in the Witwatersrand Local Division for an order declaring the warning off order to be null and void and setting it aside. This order was granted by DOWLING J. The Jockey Club now appeals against this decision, the intermediate appeal to the Transvaal Provincial Division having been omitted by consent of the parties given in terms of section 5 of Act 10 of 1911.

The respondent does not dispute that his conduct would amount to a corrupt practice in any one bound by the rules of the Jockey Club, and that as such it would be cognisable by the Head Executive Stewards. Nor does he contend that at any stage of the inquiry which led up to the warning off order the rules of the Jockey Club or

or the principles of natural justice were not observed. The basis of his claim to relief has throughout been that, because he was not licensed by the Jockey Club and because he had no other contractual relations with it, it had no jurisdiction over him and accordingly the warning off was beyond the Jockey Club's powers and for that reason constituted a wrong done to him.

The decisions of the Jockey Club in a matter of this kind are effective because the owners of the race-courses, i.e. the racing clubs, are contractually obliged to implement and do implement those decisions by excluding warned off persons from their property. It has not been the respondent's contention that he has a legal right to go upon the property of the racing clubs. The latter it is rightly conceded could for their own reasons refuse him entry. Nor is it asserted that it is a delict honestly to advise, or even to instruct, a property owner not to allow a particular person to go upon his property, though of course in particular circumstances the advice or instruction might be defamatory. But the respondent claims that the action of the Jockey Club in warning him off is not equivalent to the mere giving of advice or an instruction to the racing clubs as to whether they should allow

him/.....

him to go upon their race-courses. As a result of the organisation embodied in its rules, the Jockey Club, it is said, professes to exercise jurisdiction over and to impose penalties upon persons who, like himself, have not, by agreement or otherwise, been brought within that jurisdiction. The contention is that since the racing clubs must observe the decisions of the Jockey Club, the latter, by warning the respondent off, automatically and in effect directly, prevented him from earning his living in a lawful manner. And under the Statutory regulation 9(5)(g) referred to above, he would not be able to obtain another bookmaker's licence during the currency of the warning off order. The Jockey Club's action it was therefore argued, amounted in law to a wrongful invasion of his rights, in respect of which he was entitled to relief.

In upholding the respondent's argument in the court below DOWLING J. took the view that a refusal of admission to racecourses is an impairment of the dignity or personality of the person excluded and hampers him in the exercise of his rights as a citizen and as a licensed bookmaker, and that the Jockey Club can only justify its instigation of such refusal if it has jurisdiction over the person excluded by contract, statute or the like.

On/.....

On appeal a two-fold argument was advanced on behalf of the Jockey Club. It was contended in the first place that the respondent had to show an invasion of a legal right and that he had not done so. He had not alleged that he had a contract with the Jockey Club, which it had broken, nor that he had contracts with the racing clubs which the Jockey Club had induced the latter to break. Consequently, it was contended, he had to show that the Jockey Club had committed a delict against him. There had to be an invasion of one or other of these rights to property, reputation or dignity which are protected by the law of delict. No property rights of the respondent had been infringed. It was not alleged that he had been assaulted or defamed, nor had a desire to harm the respondent, except by way of penalty for what was honestly believed to be misconduct, been suggested - assuming that such an improper motive might support a claim based on some other form of injuria. Even, therefore, if the Jockey Club had not observed its own rules or the principles of natural justice in making its investigations or arriving at its decision the respondent, it was contended, had no right in law to complain, though he had admittedly suffered loss.

The/.....

The second branch of the argument was that, assuming that the respondent had some legal right against the Jockey Club in respect of the warning off, it could not extend beyond a right that a full and fair enquiry in accordance with the rules should be held before he was warned off. Since he had no more right to go upon privately owned race-courses than any other member of the public, he was not entitled to claim that, because he had to earn his living on those race-courses, he could not be excluded therefrom, even though he had done what would justify the Jockey Club, under its rules, in excluding persons who by licence or otherwise were contractually obliged to observe those rules. The respondent right could not, so it was argued, be in a better position than such persons. Upon the facts of the present case, even assuming that the respondent was no more interested in the horse than Cowan was, he could not reasonably be exempt from the warning off to which the latter could be subjected. Not only do the rules clearly contemplate that the Jockey Club should control by such penalties as warning off the behaviour of persons not contractually subject to its jurisdiction, as well as of those who are so subject, but standards of honesty in connection with racing could, it was submitted, only be

maintained/.....

maintained if such powers existed. Since, therefore, there was no attack upon the conduct of the Jockey Club's officials in investigating the matter and deciding to warn off the respondent, he had not, so the argument concluded, shown any ground for obtaining the assistance of the Court.

Counsel for the Jockey Club referred us to the case of Stephen v. Naylor (unreported), in which judgment was given by the Privy Council on the 26th February 1937. This case was distinguished by DOWLING J. on the ground that the decision depended on the existence of certain by-laws made under a Statute. I do not find it necessary to decide whether this ground of distinction was well founded. The similarity in the cases arises from the fact that in Stephen v. Naylor a member of the public, who had been disqualified, i.e. in effect warned off, by the Australian Jockey Club for giving false evidence at an inquiry, claimed that the latter body had no jurisdiction over him because he had not in any way submitted to such jurisdiction. This contention was rejected. LORD ROCHE, who gave the judgment of the Judicial Committee, said on this subject , "It is not a question whether he consented "to any adjudication or submitted to any jurisdiction.

"The/.....

"The Club properly undertook to regulate racing within its "territorial limits and properly announced the rules by "which it would regulate it and properly also to satisfy "the claims of justice gave an opportunity to any one whose "conduct called for enquiry in connection with racing within "those limits to attend and proffer explanations . Dis- "qualification is a well known and a legitimate and indeed "a necessary safeguard to be adopted to secure the absence "from the race course of persons who have been found guilty "of conduct gravely detrimental to the interests of racing. "The exercise of such a jurisdiction may as to some matters "and things such as licensing, arise out of consent, but "in others such as the present it seems no more to depend "upon consent than does the disqualification of a horse. "A horse is disqualified because improper things are done "with it. The respondent was disqualified because he im- "peded by lying the course of a necessary and proper en- "quiry and he has to suffer not because he consented to be "bound by the rules, but because he permitted himself so to "act as to bring his actions within their purview." These remarks certainly lend strong support to the argument that the present respondent could not rely simply upon a lack of

jurisdiction/.....

jurisdiction over him.

Counsel for the respondent referred us to the recent case of Davis v. Carew-Pole (1956 1 W.L.R. 833) where PILCHER J. granted a declaration that a decision of the stewards of the National Hunt Committee declaring him disqualified under National Hunt Rules was ultra vires and void, with supplementary relief. The National Hunt Committee apparently occupies the same position within its particular sphere as does the Jockey Club in its. The plaintiff, Davis, was a livery stable keeper and held no licence to train horses under National Hunt Rules. He trained certain horses that ran in races conducted under those rules, under which, accordingly, he became liable to be declared a disqualified person. After an inquiry the stewards made such a declaration. The plaintiff contended that the inquiry was not conducted in accordance with natural justice and that the stewards had not complied with the provisions of the rules. PILCHER J. held that the plaintiff had not proved a departure from natural justice but he found that in certain respects the rules had not been observed. The learned judge dealt with an argument advanced on behalf of the defendant committee that as no tort had been alleged and no contract proved the plaintiff

had/.....

had no remedy "even if it turned out that the defendants "had done him a grievous wrong." In rejecting this argument PILCHER J. said that it could only have provided a defence to a claim for damages - the plaintiff had made no such claim but had withdrawn it. In holding that the argument was no answer to claims for a declaration and an injunction the learned judge relied upon the case of Abbott v. Sullivan (1952 1 K.B. 189), where the majority of the English Court of Appeal held that the plaintiff, who had suffered loss through the ultra vires acts of the members of a committee with whom he had no contract, was entitled to relief by way of declaration but not to damages, since for a damages claim a breach of contract or a tort would have had to be proved. DENNING L.J. dissented, holding that the plaintiff was entitled also to damages. PILCHER J. quoted from the dissenting judgment a passage which included the following interesting remarks, "I should be "sorry to think that, if a wrong has been done, the plain- "tiff is to go without a remedy simply because no one can "find a peg to hang it on. We should then be going back "to the days when a man's rights depended on whether he "could fit them into a prescribed form of action; whereas "in these days the principle to be applied is that where

"there/.....

"there is a right there should be a remedy." It is unnecessary to express any opinion on the question whether our law would in such a case recognise a distinction between a claim for damages and claims for other forms of relief or on the approach suggested in the dissenting judgment. I have found difficulty in fixing the precise ground on which PILCHER J. proceeded, but it is at all events clear that the plaintiff, Davis, would not have succeeded had he not shown that the stewards had infringed the rules in carrying out their inquiry.

It is not necessary for the decision of this appeal to express an opinion upon the validity of the first branch of the argument advanced on behalf of the Jockey Club. It is sufficient to say that the respondent's contention that there was a wrong done to him in law, merely because he was warned off without having consented to the Jockey Club's jurisdiction, is without foundation. At the most he could claim that he was entitled to a full, fair enquiry in accordance with the rules, and he does not dispute that such an inquiry took place.

The appeal is allowed with costs and the judgment of the Witwatersrand Local Division is

altered/.....

altered to one dismissing the application with costs.

Centlivres C.J.,
Hoexter, J.A.
Beyers, J.A.
Hall, A.J.A.
} Concur

20.9.56