(1944) 12 BOM CK 0010

Bombay High Court

Case No: O.C.J. Suit No. 308 of 1941

George Bell		APPELLANT
	Vs	
The Royal Western India Turf Club, Ltd.		RESPONDENT

Date of Decision: Dec. 8, 1944

Citation: (1945) 47 BOMLR 916

Hon'ble Judges: Blagden, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Blagden, J.

After briefly summarising the pleadings the judgment proceeded: It is to be observed that the plaint does not allege that the tribunal was improperly constituted by reason of no adequate or proper notice having been given to those who were entitled to attend and take part in its decision. Where a committee or other body is empowered to act by a certain number of its members as a quorum, it is well established that there is no quorum, and the proceedings of the meeting are invalid, unless notice of the meeting is given to all the members of that committee or other body—a "quorum" in fact means a given number of individuals out of the whole body, all of whom have had notice of the meeting, who have attended the meeting. This at least is the case in the absence of any rule to the contrary, and it is customary for social clubs and similar bodies to provide in their rules that the accidental omission to give notice of any particular meeting shall not of itself invalidate its proceedings. Nothing being alleged against the notice given to the stewards and no application having been made to amend the pleadings until after the evidence was closed and at a late stage in the arguments of learned Counsel I thought it right to refuse such application and consequently no issue about that has been framed or arises.

2. I should, however, say this in passing. The one person, if there now is any person in the world, who could have proved what notice was given to the stewards and what its terms were is a gentleman who is and at all material times was the Secretary of the defendant Club, a Major Gulliland. He was not called. If this issue had arisen I should therefore have been entitled and in the circumstances bound to presume that his evidence on this point would not have assisted the defendants. But I could not have gone further and assumed that it would have assisted the plaintiff. I should have had to assume that Major Gulliland would have said something of this sort, "I am not now in a position to say what notice I gave, or in what terms that notice was couched". If the evidence had rested there, the proper inference for me to draw would have been that Major Gulliland has done his job properly. I ought not to presume, merely because he cannot after the lapse of five years remember how he did his job, that he did it wrongly. The correct inference, therefore, would have been that proper notice was given to the stewards and that they were told the purpose for which their meeting was convened.

3. The plaint also alleges as a grievance the publication by the stewards of a notice of their decision in the Racing Calendar. This publication took place on March 16, 1939, and the plaint, as I say, was admitted on March 6, 1941. Trying to construe the plaint as benevolently as I could I first thought that it included a claim for damages for libel. Considered as a claim in libel the plaint is extremely defective because, amongst other things, it does not set out the precise words complained of. But there is a more serious defect about it than that; it is obviously time-barred, the period of limitation being one year from the date of publication. Accordingly, the plaintiff by his learned Counsel has very wisely not pressed the point that it is capable of being construed as a plaint for libel, and no issue has been framed about the publication in the Racing Calendar. Even if it had been, it would not have assisted the plaintiff because it is clear from the terms of his licence that he consented to this particular publication being made if and when his licence should be withdrawn, and in these circumstances he would have had no cause of action for defamation. See Chapman v. Ellesmere (Lord) [1932] 2 K.B. 431.

4. The following issues were framed:

1. Does the plaint disclose a cause of action against the defendants?

2. Did the defendants'' stewards in revoking the plaintiff''s licence act

(a) in contravention of the Rules of Racing, or

(b) in a manner contrary to natural justice?

3. To what, if any, relief is the plaintiff entitled?

The first issue may be briefly disposed of, It was not strenuously argued by the defendants who, very naturally, desire a decision on the merits rather than on any technicality. The contention of the defendants was, originally, that where a

Committee or a board of stewards or similar body, set up by a larger association of persons, acts judicially or quasi-judicially in the case of a member by expelling him or in that of a licensee by taking away the licence, they are not acting as the agents of the body which set them up, but as an independent tribunal, and that, consequently, any suit lies, if it lies at all, not against the main association but against the individuals who composed the tribunal alleged to have acted wrongly. It is quite true that there are numerous cases in which those individuals have been sued, but in most if not all of them it will be found that the club or other body which they represented was an unincorporated body; there are obvious difficulties in bringing a suit for damages against an unincorporated and fluctuating body of persons. I think I am right in saying, e.g. that the English Jockey Club as well as the Pony Turf Club are both unincorporated bodies of persons which no doubt is the reason why in Chapman v. Ellesmere (Lord)-already cited-the defendants were the distinguished individuals who dealt with the plaintiff''s case and not the Jockey Club itself ; the same applies to Cookson v. Harewood(1932) 2 K.B. 478 (n), reported in a note to Chapman v. (Lord) Eilesmere. There are, however, other cases, both of clubs and professional tribunals, in which the body itself has been made a defendant, e.g. in Young v. Ladies Imperial Club (1920) 2 K.B. 523-a suit for damages by a member against the club itself, being an incorporated body of persons, was brought and succeeded, though it is true that the damages, which were assessed at the sum of one farthing, were probably not an undue strain on the resources of the Ladies'' Imperial Club. The General Medical Council has also more than once figured as defendant to a suit of this nature. In my opinion it follows that, as the defendants are incorporated, a suit will lie against them in respect of the alleged wrong doing of their stewards who for this purpose must be regarded as their agents. The answer to issue 1 is therefore "Yes".
As regards issue No. 2, the facts, as I find them, are as follows:

The defendants are a company limited by guarantee, which is the controlling authority for the sport of horse racing in Western India, corresponding to the Jockey Club in England. They have what is called a "reciprocal arrangement for the enforcement of sentences" made with the Jockey Club and numerous other similar bodies in different countries; according to the witness Mr. Reid, whose evidence I accept on this point, the reciprocal arrangements are very nearly world-wide. The result is that a disqualified person-to the exact meaning of which term I shall be referring a little later,�who becomes a disqualified person by reason of the decision of the defendants'' stewards is a disqualified person in most parts of the world where horse racing is carried on, and if he makes his livelihood out of horse racing, he is practically-by which I mean "in practice"-debarred from earning his livelihood in this way almost anywhere on the face of the globe. In effect, the defendants'' stewards have in their hands a giant''s strength and like all persons in that position it is their moral duty to remember that "it is tyrannous to use it like a giant." I am not for a moment suggesting that on any occasion they have forgotten that duty. In

the course of their operations the defendants for many years have been in the habit of issuing licences to trainers, which they are empowered to do by their memorandum and articles of association. As will be seen later from the ruless of racing it would not be practically possible for a person to train horses for reward in Western India if he did not hold a licence for that purpose from the defendants. The plaintiff has for substantially the whole of his working life been concerned in one way or other with horses. He has for a time been foreman of a distinguished firm (in its day) of horse dealers. Apart from that he has ridden and trained race horses for the rest of his working life. For many years prior to the matter now complained of he held a licence as a trainer from the defendants. That state of affairs was once or twice, I think, interrupted of the plaintiff''s own volition and on one occasion it was interrupted otherwise. That occasion has now become ancient history, and I am satisfied that it has absolutely nothing to do with the present case ; therefore the less I say about it the better, and I am not going to say anything more. Over twenty years ago the plaintiff, for a time, trained horses for a Mr. Geddis, who was the Chairman of the board of stewards at the time of their decision now in question. Curiously enough, the plaintiff said nothing about this in his own evidence, but some questions were put to Mr. Geddis in cross-examination in which it was suggested that there was some sort of a row between these two gentlemen at the time the plaintiff''s employment ceased and that their relations have since been strained. The evidence I have about it is entirely one sided because, as I say, the plaintiff said nothing about this. But I have no hesitation in accepting the evidence of Mr. Geddis, whose honesty as a witness is not disputed, when he says that they had not been at any time anything but perfectly friendly acquaintances during the intervening period.

5. The licence which the plaintiff held was expressed to be issued subject to the Rules of Racing of the Royal Western India Turf Club, Ltd. It was an annual licence, but in the ordinary course if the stewards had nothing against Mr. Bell, or any other trainer, it would be renewed from year to year almost as a matter of course. It was expressed to be issued under certain conditions, one of which read as follows:

A trainer''s licence may be withdrawn or suspended by the Stewards of the Royal Western India Turf Club, Ltd., in their absolute discretion; such withdrawal or suspension, or any other sentence may be published in the Racing Calendar of the Royal Western India Turf Club, Ltd., for any reason which may seem proper to the said Stewards and they shall not be bound to state their reasons.

The plaintiff does not dispute that he accepted the licence subject to that condition amongst others and that is the reason I said earlier he could not have complained of the publication in the Racing Calendar even if he had commenced his suit in time to do so, which he did not.

6. The Rules of Racing issued by the defendants are on the whole similar to the rules of racing issued by the English Jockey Club. A good many of them have been cited,

and the more material of them appear to be these. First of all Rule 22, which defines the powers of the stewards of the Club and which reads as follows:

In addition to any other powers conferred upon them, by these Rules the Stewards of the Turf Club have power at their discretion:

To grant and to withdraw licences to officials, trainers, jockeys and others, and to refuse or cancel entries.

I am omitting several powers which are not necessary for this purpose.

To make enquiry into, finally decide and deal with any matters relating to racing, whether or not referred to them by the Stewards of a Meeting or not.

7. I may say in passing that "the stewards of the meeting" means stewards of the club and such persons as may be invited to act with them.

Next,

To warn any person off the Bombay and Poona Race Course or other courses where these Rules are in force, and to authorise the publication in the Racing Calendar of their decisions respecting any of the above matters

and the rule concludes:

And they may at any time remove or modify any disqualification, or remit any penalty.

Rule 23 reads as follows:

In exercising any of the powers conferred upon the Stewards of the Club by these Rules, three shall be a quorum and in the event of a difference of opinion the decision of the majority shall prevail. They may enlist the assistance of any other Club member of the Club and if they think the importance or difficulty of the case requires, may refer it to the Committee, who may, if necessary, call a General Meeting of the Club Members of the Club.

Rule 103 deals with trainers and provides first that

Every trainer for fee or reward of a horse running under these Rules, shall obtain an annual licence from the Stewards of the Club, and on application shall pay a fee of Rs. 50/-, which shall be credited to the Benevolent Fund.

The rest of the clause does not, I think, matter. Clause 2 reads

No person shall train a horse on the Bombay or Poona Race Courses or other Race Courses controlled by the Stewards of the Club, without their written permission. Such permission may be revoked at any time.

That means that a person to train horses for reward must have a licence, and if he wants to train horses as an amateur he must get the permission of the stewards.

The rule concludes

A person whose licence to train has been withdrawn on the ground of misconduct is a disqualified person.

8. I now turn to Rule 180, which as far as material reads as follows:

It is divided into several clauses-Clauses (i) to (vii) conclude with the words:

Every person so offending shall be warned off the Bombay and Poona Race Course and other places where these Rules are in force.

Amongst the offences specified are these

(iv) If any person be guilty of any other corrupt or fraudulent practice in relation to racing in this or any other country;

(vii) Any person who shall at any time administer or cause to be administered for the purpose of affecting the speed, stamina, courage, or conduct of a horse any drug or stimulant whatever, or use any electric or galvanic apparatus for any of the purposes aforesaid

Rule 181 provides,

The decision of the Stewards of the Club, on the report of the Stewards or otherwise, that the person has been guilty of any of the offences specified in r, 180, shall be conclusive evidence of his guilt.

And Rule 183 reads-

When a person is a disqualified person under recognised RuleS of Racing" (which, I think, means '' any recognised Rules'' of Racing)" or is warned off the Bombay and Poona. Race Courses or any Course under the Jurisdiction of any Recognised Turf Authorities who have a reciprocal agreement with the English Jockey Club for the mutual enforcement of sentences and so long as his exclusion continues he is a disqualified person,

A disqualified person, so long as his disqualification lasts shall not" (amongst other things) "enter, run, train, or ride a horse in any race at any recognised meeting" or

Except with the permission of the Stewards of the Club enter any Race Course, stand or Enclosure, ride, work or be employed in any Racing Stable.

9. There is obviously a certain amount of overlapping between Rule 183 and the last clause of Rule 103. But the combined effect of these rules seems to be this-A trainer''s licence might be withdrawn for misconduct or otherwise. If it is withdrawn otherwise than for misconduct, or if it is not renewed at the end of the year and no reason is assigned, that trainer is perfectly at liberty to work in connection with racing in Western India otherwise than as a trainer, provided he is qualified to work in any other capacity, and at liberty to apply for a trainer''s licence anywhere else in

the world. If, however, his licence is revoked on the ground of misconduct, he ipso facto becomes a disqualified person under Rule 103. Whether or not he is also warned off the Turf in Western India, the effect is very much the same. He cannot be employed in a racing stable, lie cannot enter any recognised race course, and in fact is completely debarred from earning his living in connection with racing in Western India or anywhere else where there exists the reciprocal arrangement to which I have already referred. I also observe with regard to these rules that there is in my opinion nothing which restricts the word "misconduct" in Rule 103 to the specific offences denned in Rule 180; the word is very general, and in my opinion has purposely been left very general. There is no particular hardship in this. The word is no more vague and no more wide than the expression "infamous conduct in a professional respect" used in relation to the medical profession, or "conduct unbecoming of an officer and a gentleman" used in relation to a Commissioned Officer in one of His Majesty''s services. No doubt the import of such phrases changes and has changed with the change in the behaviour of society; for example, a degree of drunkenness in private life which would have been, as far as one can judge from the literature of the period, almost a social duty during the Regency might well be considered unbecoming of an officer and a gentleman at the present day. But there is no hardship in a person''s submitting himself to so indefinite a code or rules; he will be judged, if he is accused of an offence, by persons well conversant with the conduct of people in his own walk of life and with what it ought to be ; for example, a court-martial in the case of an officer in the fighting services, the General Medical Council in the case of a doctor, and the stewards of the controlling authority of racing in the case of a race horse trainer. I think the stewards are within their right in withdrawing the licence of a trainer charged with any conduct which reasonable men might regard as misconduct in a trainer, provided they honestly entertain the opinion, and arrive at it in a proper way, that he was guilty of that conduct and that it is "misconduct" in connection with racing.

10. The defendant club in addition to appointing five stewards, which is the number prescribed by its articles, has been in the habit, and it is within its powers, of appointing two "stipendiary stewards". As far as the rules of racing go, one might imagine that the position of these gentlemen was simply that they were stewards but, unlike other stewards, were paid for their services; a position similar to that of the Lords of Appeal in Ordinary in the House of Lords; i.e., life peers paid for discharging the high judicial office which they do discharge but having the same rights of voting and so on in the House of Lords in its legislative capacity as ordinary, unpaid, peers of the realm. Such, however, is not the case. If one looks at the memorandum and articles of association of the club, it is clear that the stewards of the club are limited to five in number and that the words "stipendiary stewards" do not, as one might expect, connote a species of the genus "stewards" They are servants or officers of the club, and a word must be said about the nature of their duties. Naturally, they are racing experts, and I accept the evidence which I have,

that the stewards rely on them for advice on technical matters connected with racing of which they, the honorary stewards, very likely do not possess the necessary knowledge. One of them who gave evidence before me, Mr. Reid, agreed with the suggestion put to him by Mr. Vimadalal in cross-examination that it is a part of their duty" to ferret out mal practices", and he agreed that the stipendiary stewards were "in a sense, the eyes and ears of the stewards." It appears that they are expected to bring to the attention of the stewards anything that may come to their knowledge or notice in connection with racing in the area controlled by the defendant club which might call for an enquiry and punitive action by the stewards. In the course of their duties it seems that they sometimes hold a more or less informal enquiry themselves, take and record statements from any persons who can give, or say that they could give, useful information, and report the result of their enquiry to the stewards. It is in this sort of sense that the expression "they are the eyes and ears of the stewards" has to be interpreted. It seems also that it is their part of the duty to attend at any enquiry conducted by the stewards and, at all events in serious matters, one or other of them acts at such enquiries a part not dissimilar to that of the prosecutor in a criminal Court. It has been said very many times that counsel prosecuting in a criminal case is in a different position from counsel appearing for a party in a civil case and should regard himself rather as a minister of justice than the advocate of a cause; it is not his duty to obtain a conviction by any means, but merely to see that the whole of the evidence is placed fairly before the tribunal which has to decide the case. Mutatis mutandis, the same thing no doubt applies, possibly to a lesser extent, to a person who has to discharge functions corresponding to those of a prosecutor before a domestic tribunal. There may be degrees of divergence from the model course which would vitiate the decision of such a body.

11. After discussing the facts in the case, including the details of the enquiry against. the plaintiff and certain matters including one called "the who''s who enquiry" and another called "the search," the judgment continued:

12. Sir Jamshedji Kanga for the defendants objected in law to my taking into consideration anything that happened after the conclusion of the enquiry. I ruled against him, and I must now explain why. One of the factors to be considered under the head whether natural justice has been observed or not is whether the body which decided the question were actuated by malice or some improper motive. In considering such a question the subsequent conduct of those concerned or any of them may be most material. The question of malice or no malice arises perhaps most frequently in suits for libel or slander whether the defence set up is qualified privilege, and I have always understood that the jury is entitled in such cases to take into account the whole subsequent behaviour of the defendant down to and even at the trial. I know of no better authority for this than the case of Ley v. Hamilton, which though it went to the House of Lords is, I believe, no where reported. The material facts of that case, which I came to know of because of some subsequent

proceedings in which I was concerned as counsel, were as follows:

Ley (the plaintiff), Hamilton (the defendant), and two friends of the defendant had been in partnership. The firm was dissolved by the retirement of the defendant and its business was continued by the other partners as, of course, a new firm. A few days after his retirement the defendant received information about the plaintiff which (if it were true) meant that no sensible person would trust him. The defendant apparently thought it is his moral duty-and many people would agree with him-to pass on his information to his two friends, and this he did by letter. One of them left the letter lying about in the premises of the new firm and so it came to the eyes of the plaintiff, who with commendable promptitude comnnenced a suit for libel.

13. The defendant pleaded, and pleaded only, that the publication was made without malice on a privileged occasion. At the trial before the late Lord Hewart C.J. and a special jury the plaintiff gave evidence mainly confined to his own good character and the learned Chief Justice ruled that there was some evidence of malice to go to the jury. The defendant then gave evidence and the first question he was asked in cross-examination was:

Would you like to make any apology for the untrue statements you have made about the plaintiff

The deadly nature of this question is obvious. If the answer is "Yes" it can be followed up with the question "Why have you never clone so before?" and whatever the answer to that it provides useful evidence of malice. If the answer is "No", again that can be pointed to as evidence of malice. It is not surprising that the question was objected to as one which assumed the falsity of the publication, and put that assumption into the mouth of the witness, when its truth or falsity was not even in issue. The objection was somewhat brusquely overruled, and the witness''s answer must have exceeded the cross-examiner''s wildest hopes. It was:

If they are untrue-yes.

This, of course, was followed by the question

But you do not say they are true, do you?

to which the luckless defendant replied somewhat as follows:

Certainly I do, now you ask me. I have received a lot more information since this suit started.

This provided admirable material for the plaintiffs counsel to make a final speech stressing the defendant''s malice and inviting the jury to award vindictive damages, which they did. I forget the figure, but it was astonishingly large. Judgment going for the plaintiff, the defendant appealed. The Court of Appeal held that there was no evidence of malice apart from the defendant''s evidence, that the first question in his cross-examination was unfair and should not have been allowed, and that

anyhow the damages were excessive. I cannot remember if they ordered judgment to be entered for the defendant or a new trial-presumably the former. From that decision the plaintiff appealed to the House of Lords, who decided in the contrary sense to the Court of Appeal on the question whether there was a case for the defendant to answer, and-somewhat surprisingly-that the plaintiff''s line of cross-examination was perfectly fair and proper, and that the damages were not, in the circumstances, a penny too large. The long battle thus ended in a great victory for the plaintiff. The case does most clearly show that when there is a question of malice, everything relative to the matters in question, even down to the very conduct of the defendant at the trial, may be material, and it is in that spirit that I approach the subsequent events in this case. Evidence of events subsequent to the stewards'' decision was, I note, also considered in Chapman v. Ellesmere (Lord) (supra). The material subsequent events here are these:- After stating the subsequent events, including certain letters written on the plaintiff''s behalf and requesting the restitution of his license, the judgment continued.

14. The defendants, I think rightly, have accepted the position that there was an implied contract between the plaintiff and the defendants that the licence which the defendants had granted the plaintiff should not be revoked for misconduct except after an investigation which should be conducted according to the rules of racing and which should be in accordance with natural justice. I have already held that the investigation was in accordance with the rules of racing. Now, I have to ask myself why, if at all, the proceedings against the plaintiff were not in accordance with natural justice, and the first ground advanced for saying that is that the plaintiff was given inadequate notice of the hearing of the charge against him. He received the notice, according to himself, and there is nothing to contradict him, somewhere about 6 or 7 p.m., and he was required to attend a stewards'' meeting at 8 a.m., the next morning, and (as I indicated in going through the evidence) that notice which he received did not tell him for what purpose he was required to attend the meeting. The shortness of the notice that was given to him might have been highly material if in fact he had not been able to attend. Supposing that he did not turn up at the stewards'' meeting the next morning at 8 a.m., and that the stewards had proceeded against him in his absence, I think it might well have been that their proceedings were not in accordance with natural justice. But does mere shortness of the notice, in itself, vitiate those proceedings, regard being had to the fact that he did turn up? I do not think it does. The rules of racing do not prescribe any particular length of notice and the mere shortness of notice is not, I think, itself fatal. It is true that (regard being had to the fact that the intervening hours between the receipt of the notice and the hearing were not the usual business hours) it might be that he was unable to arrange to see his legal advisers, had he desired to obtain legal advice, but then what legal advice could he have usefully obtained? All that the notice told him was that he was required to attend a meeting of the stewards. He would be a wise solicitor or counsel who on that could give him advice as to the best

way he should conduct himself irrespective of whether it turned out that he was to be a witness or an accused, and irrespective of what the charge against him was. The most that any one could have advised him was this, "If you are charged with anything, ask for particulars and ask for time". And even then that advice might have been useless because the charge might have been one of so trivial a character that the plaintiff would have been prepared there and then to admit it, or it might have been one'' which he was in a position there and then, at an inquiry, to refute utterly and entirely, in which case, naturally, he would desire to get the matter disposed of at once. I do not think, therefore, that the mere shortness of the notice is itself a matter which makes the proceedings contrary to natural justice.

15. A more formidable point is made by Mr. Vimadalal in that the plaintiff had no notice at all of the charge before the hearing and indeed it was only after Major Nabi Khan had opened his case-if I may so term it-that he was given any particulars of the charge against him-for example, as to the time and place where he was supposed to have committed the alleged offence. Without looking at authorities for the moment, I should have thought that the mere absence of notice of the charge before the hearing was not, in itself, incompatible with natural justice in a domestic tribunal. After all, what is the first domestic tribunal that most educated people come up against in their lives? It is the Head Master of their preparatory school. Well,, it is a long time ago now, but it is my recollection that when one was told to visit that gentleman in his study one did not know the nature or particulars of the charge against one. Whether one suspected what it was depended on the innocence or otherwise of one''s conscience. The mischievous boy might guess which of the possible six or more charges against him had been found out. An abnormally well behaved boy might be perfectly certain that there was nothing against him. But in any case I venture to think that very few schoolboys after they have grown up look back on their school days as a time when natural justice was not administered. The usual criticism by a former schoolboy of his school master, as far as my experience goes, is "He was a beast, but a just beast". However, it must be admitted, of course, that proceedings which are intended to take away for a substantial time a man''s livelihood are rather-indeed a great deal-more serious than those directed to temporarily taking away a schoolboy''s comfort, and what is natural justice in one case is not necessarily the same in the other. However, if one examines the authorities (and there are quite a number of them) on the question of notice to a person accused before a domestic tribunal, or its absence, I think it will generally if not always be found that the point arises either where the rules of the club'' or other institution expressly require a special length or a particular form of notice, or where a domestic tribunal has in fact proceeded in the absence of the accused. In cases where the rules expressly require some particular form of notice, the question is; one of construing the rules. Where there is no particular provision and the accused-if I may use that expression for want of a better-has not turned up at the hearing, and the committee or other tribunal has proceeded in his absence, then, of

course, natural justice, apart from express rules, requires that he should have been told why he was required to attend. If he is merely told "You have got to come to a certain place at a certain time" he may not bother to come, whereas had he been told that he must attend at such and such a time at such and such a place on which the Committee would consider whether it should expel him or not, he might: have made it convenient to come. Unless the seriousness of the proceedings have been brought home to him by the notice, the proceedings in his absence would, generally, be contrary to natural justice. It must be borne in mind that in several cases such as for example Young v. Ladies Imperial Club, Ltd. (supra) the decision was made with reference to a rule which expressly required the meeting to be a meeting "specially summoned for that purpose," and it was held on the construction of those rules that a statement of the object of the meeting as "to report on and discuss the matter concerning Mrs." or "Miss" (whichever the plaintiff was) "Young and Mrs. L." was not a sufficient statement of its object to make the meeting one "specially summoned for that purpose". Several of the leading cases on this particular point were decisions of that very great lawyer Sir George (afterwards Lord) Jessel M. Rule and it is quite true that in some of them such as Labouchere v. Earl of Wharncliffie (1879) 13 Ch. 346, he has used expressions which taken by themselves suggest that in all cases it is essential that the person charged before the tribunal should be informed, beforehand, that he is being charged and what the charge against him is. Perhaps for this purpose a better example of that is the same learned Judge''s decision in Fisher v. Keane (1878) 11 Ch. 353. At page 362 quoting Lord Hatherley in a previous case, which I will refer in a moment, he said that a committee, acting under such a rule as this, are bound to act, as Lord Hatherley said, according to the ordinary principles of justice, and "are not to convict a man of a grave offence which shall warrant his expulsion from the club, without fair, adequate, and sufficient notice, and an opportunity of meeting the accusations brought against him." Reading those words as Mr. Vimadalal contends they should be read, two distinct things are necessary, (first) that in all cases notice not merely of the meeting where it is proposed to try him but of the charge against him must be given to the person accused and that he should be given an opportunity of answering the charge, and it was, if I may say so, forcibly and ably argued, that a reasonable and sufficient interval of time must elapse between those two things. It is, however, a method of using authority which is very apt to mislead to take a particular sentence from a judgment of however eminent a judge and, without regard to the facts before him, to seek to apply it rigidly to other facts which may not have been present to his mind at the time he made that pronouncement. Especially is this so in the case of an unccnsidered judgment, which the judgment in Fisher v. Keane was. It is therefore necessary to notice what the facts in that case were. It is a fairly well known case, being that of the Army and Navy Club, Pall Mall; the plaintiff brought a suit claiming a declaration and an injunction against the defendants (members of the committee) from interfering with his enjoyment by him, as a member of the club, of the use and benefit of the club and the buildings

and property thereof. It appears that the plaintiff, a member of that club, dined there (rather too well), and after dinner adjourned to the billiard room where he engaged in a game of pool, one of the players being a guest of another member of the club, and also a friend of the plaintiff. The guest, finding that the game did not proceed as rapidly as he desired, said to the plaintiff, "Get on, I want to get home: you are drunk." Whereupon the plaintiff answered, "I don''t think I would say such a thing to you at your club" which seems not an unreasonable reply. The guest replied, "You are drunk," whereupon the plaintiff retorted, "You are a damned liar," or "It is a damned lie." The game was stopped, there was a row, and the conduct of the plaintiff was reported by a member of the club to the general committee, which held its weekly meeting on the afternoon of the following day for the transaction of the ordinary business of the club. Thereupon, though no notice of what was intended to be done whatsoever was given to the plaintiff, nor was he asked, nor was any opportunity offered him, to explain or palliate his conduct, the committee passed a resolution-purporting to suspend the plaintiff. In fact, on the morning immediately after the occurrence he had written a letter of apology to the guest, couched in the fullest terms of regret, a step which, it seems to me was extremely generous on his part. The letter itself was not received by the guest until the following day, but immediately on its receipt he wrote to the committee stating that he was perfectly satisfied with the plaintiff''s apology, and hoped they would not take serious notice of the matter. The plaintiff, moreover, sent a letter of apology to the member whose guest he had insulted. The following resolution was communicated to the plaintiff by a letter dated March 15 and signed by the Chairman of the Committee:

Sir,-It having been brought to the notice of the committee that you last night, being in a state of intoxication, made use of insulting language to the guest of a member of the club, which fact has been substantiated by the evidence of two gentlemen who were present, and by your own confession in a letter addressed to Captain B..., they feel compelled to put in force Rule vii, and suspend you from the use of the Army and Navy Club from this day.

Of course, it was an outrageous case of acting against natural justice, nor had the committee observed the provisions of the rule under which the Chairman claimed it was acting, and I am not surprised that Lord Jessel expressed his astonishment that English gentlemen should behave in such a way. It was in reference to those facts that these words were used and I am not at all sure that Lord Jessel meant that in each and every case the notice of the charge must precede the hearing by an appreciable time. If he did, and if that is a correct statement of the law, it appears to me that it would be impossible legally to run a race meeting in the manner in which such meetings in fact are run: which ordinarily involves deciding any objection to the riding of a horse in any one race before the start of the next one. The case referred to in which Lord Hatherley made his pronouncement is Dean v. Bennett (1870) 6 C. A. 489. There again it is perfectly true that there are dicta which support Mr.

Vimadalal''s proposition. Vice Chancellor James, from whom an appeal was taken to the Lord Chancellor, is reported at p. 492 as having said-

It appears to me that, if a meeting was summoned for the purpose of bringing charges, those charges) ought to have been communicated to Mi. Bennett before the meeting was called, so that he might have an opportunity of knowing what he was to meet" and later on he says (p. 493) ;

Now I hold that that second notice was perfectly insufficient and invalid in point of law, because, it being a notice to confirm resolutions, there was no way in which the congregation could be informed of the resolutions, and the only mode by which that notice could have been properly given was a notice stating the resolutions which had been passed, and convening a meeting for the purpose of considering those resolutions.

These words were spoken in reference to the deed of settlement of a Baptist Church which expressly provided a particular procedure for getting rid of the minister, and I think that what Vice Chancellor James had in mind was the construction of that deed rather than laying down a general proposition applicable to each and every domestic tribunal; Lord Hatherley agreed with the Vice Chancellor and again his judgment is largely founded on the express provision of that particular deed. I do not think they lay down, any general proposition applicable to any and every case.

16. Again, my predecessor the late Sir Patrick Blackwell, in a case in this Court Ramji v. Noranji (1934) 37 Bom. L.R. 261, suggested that previous notice to the accused not only of the fact that he will be tried but of the charge on which he will be tried is necessary. That was a caste case, but the principles of law which apply to clubs are applicable. Again, however, his views are obiter, and I hold, with the utmost respect, that the cases he relied on, such as Young''s case (already cited), do not bear out that extreme proposition. Most of them will be found either to turn on a particular rule, or to be cases in which the tribunal has proceeded in the absence of the accused, or both. In any event there is, to say the least, considerable force in the argument for the defendants here that by not asking for any adjournment, but proceeding with his evidence, the plaintiff must be held, if not to have waived his right to notice-that is not, perhaps, the right word to use for it-at any rate to have acquiesced in the tribunal''s proceeding to hear his case then and there, for better for worse.

17. As to that, there are some defects in the procedure of domestic as of public tribunals which are incurable by submission or waiver or otherwise.

18. In Labouchere v. Earl of Wharncliffe (supra) the rules relating to expulsion of a member of the Beefsteak Club required three weeks notice to the member charged and to the members of the tribunal. The plaintiff, the famous editor of "Truth" and one of the greatest litigants of his day was declared to be expelled by a meeting summoned for that purpose by a notice which was one day short of three weeks. He

had attended the meeting and, after making some protest, (it does not clearly appear what the protest was), defended himself on the merits. His suit, claiming substantially the relief usually claimed in such cases, came up before Lord Jessel and succeeded. Nor does that seem to me surprising-the body assembled on a short notice was not the proper body to try the plaintiff. It should have been a body summoned by proper notice. There may have been members who were unable to come but who would have attended if given good notice. In fact, the whole proceedings were "coram non judice," and were aptly compared in the argument before me to a "no ball" at cricket, which the batsman is entitled to hit as hard as he can and knock as many runs off as possible: but if he misses it, and it hits his middle stump, he is still entitled to insist that it is a "no ball" and that he is not out. But where, as here, there is no rule expressly requiring any particular notice to be given to him or to the tribunal, I cannot think that a party can be allowed to conduct his case, before a tribunal properly constituted, to its conclusion, and then, when he has been unsuccessful, to say. "I ought to have had notice of the charge before the hearing began, and particulars of the charge." That seems to me very like sitting on the fence, or blowing hot and cold at the same time. [Here the judgment dealt with the contention that the plaintiff did not get a fair hearing before the tribunal, and went on:

19. Then the next count of indictment is that the stewards were biased. I am asked to consider in that connection the cumulative effect of the "Who''s Who" enquiry, the search, and the events alleged to have happened over twenty years ago between the plaintiff and Mr. Geddis about Mr. Geddis''s horses. I think the way it is put is that it was a tribunal more prone to believe evidence against the plaintiff than it would otherwise have been.

20. Well, now, as far as the facts go I do not think that that was the case at all. I have already indicated that individual stewards were the more careful to try Mr. Bell fairly and to form their opinion properly because of the previous incidents. But, apart from that, what is the "bias" in this connection? Lord Maugham in Maclean v. The Workers Union [1929] 1 Ch. 602 says in effect that it must be something tending to make the mind to go one way rather than another, and improperly tending to do so. If a member of a club should quarrel with every single member of the committee, he has no right, when, the question of his expulsion arises, to insist that an entirely new committee should be elected to try his case, and it must be borne in mind that in every club, and even in every profession, the tribunal is to a certain extent interested in the result of such proceedings. That is not, in itself, "bias" for this purpose. It may be possible-one hopes that it will always be possible-that every litigant in a Court of law will have his case heard before somebody who is in every possible sense impartial when he begins to hear it. In relation to a domestic tribunal that is not always possible and never will be. In a social club, for example, those of the committee who know him cannot help having an opinion of the member whose conduct they are asked to investigate, and, as just pointed out, every member of the

club (including the committee) has some pecuniary interest in the question whether a member shall or shall not be expelled. Does that in itself amount to bias? No. The most that is proved against the stewards here is that they were aware of the previous incidents and I am satisfied that that did not influence them improperly against the plaintiff....

21. Now the stipendiary stewards were not exactly in the position of prosecuting counsel: perhaps they were more nearly in the position of a police-officer who has investigated a case, and is himself prosecuting, than anything else. They were, as I have explained in my judgment, not really stewards at all. They were servants, albeit senior and responsible servants, of the club. Apart from authority, I think that is a very important point. It might lead to a reasonable suspicion of improper influence if an independent person or a person not subordinate in service remains in the room; but would it necessarily lead to a reasonable suspicion of improper influence where the person who remains in the room is, if I may use the expression without offence, in an inferior position to the members of the tribunal-where he is a servant of the club and the gentlemen deliberating were honorary stewards? The question presents itself in this form. As a matter of fact, I am satisfied that the presence of these gentlemen in the room did not influence the stewards in the slightest degree; but it might have done so. Does the mere fact that it might have done so, and therefore might lead to a reasonable suspicion that justice was not being done, vitiate the decision of a domestic as opposed to a public tribunal? I may note here in passing that it is not a matter to which the plaintiff himself attached very much importance. When asked what his grievances were, this was the one he mentioned last. He only mentioned that in answer to a question put by me, which reminded him directly that he had that grievance. However, there it is. If as a matter of law the mere presence of a person in a position somewhat analogous to that of a prosecutor in the room with a domestic tribunal during its private deliberations vitiates its'' decision, the plaintiff is entitled to the benefit of it. It is perfectly clear that in the case of a Court of law that which happened in this case would undoubtedly have vitiated the result, if unfavourable to the plaintiff.

22. On that the English authorities are perfectly clear and I do not wish to say anything which in any way diminishes their authority in this country. I need only perhaps refer to the well-known statement of Lord Hewart C.J. in Rex v. Sussex Justices ; Ex parte McCarthy [1924] 1 K.B. 256 (p. 259):

But while that is so, a long line of cases shows that it is hot merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

Probably as Mr. Justice Avory was right when he pointed out in the subsequent and similar decisions in Rex v. Essex Justices: Perkins, Ex parte [1927] 2 K.B. 475 (p. 488):

I think that in that sentence the words) be seen'' must be a misprint for the word ''seem''.

Justice would not "seem" to be done when a person who has acted as a prosecutor retires with the jury or retires with the magistrates; when they go out before their decision, or in the case of a tribunal which does not retire for that purpose, if he is not turned out with the others who ought not to be present at its deliberations. Once again, however, one comes back to Lord Shaw''s statement that the assumption that the methods of natural justice are ex necessitate those of Courts of Justice is wholly unfounded, There is some reason to differentiate between private and public tribunals. One of the reasons why justice should seem to be done by Courts of justice is in order that the public may have confidence in those institutions which, after all, do their job in the public light of day. A domestic tribunal does not do its job in public, and it matters to only a small section of the public whether it appears to do justice. The important thing is that it should do justice. Again, in the case of a club committee the members can usually elect a new committee if its methods do not inspire their confidence. But the good people of Sussex or Essex cannot appoint for themselves new Justices of the Peace however much they may desire to do so.

23. It is perfectly clear from all the cases cited that a domestic tribunal is not bound fry the ordinary rules of evidence, with which its members may well be unacquainted; nor is it bound to follow the procedure of the Courts of law or anything like it; and since the two House of Lords cases, viz. Board of Education v. Rice [1911] A.C. 179 and Arlidge''s case already referred to, it has now become law that it is not even bound to hear the parties, but may reach its decision even by correspondence. At first view, at all events, it is clear from the later decision that it is not bound to act in a way that "the man in the street" or as Lord Bowen called him "the man on the Clapham omnibus" would necessarily regard as just.

24. In Local Government Board v. Arlidge [1915] A.C. 120 the Local Government Board proceeded to dismiss Mr. Arlidge''s appeal on the strength of a report of their own local Inspector which they would not allow Mr. Arlidge to see. That strikes any one, especially a lawyer, at first view, as most unfair. I think, however, Sir Jamshedji Kanga''s argument about this is well founded. It appears from passages in Lord Shaw''s and Lord Haldane''s speeches and a passage towards the end of Lord Moulton''s speech that, in making that decision about the Local Government Inspector''s report, the House was not really making a pronouncement on the subject of natural justice but was making a pronouncement on the construction of the Housing and Town Planning Act of 1909 and the rules made thereunder. Though it requires a bit of close reading to see it, that is the real truth about the matter, as appears very clearly from the dissenting judgment of Lord Justice Hamilton in the Court of Appeal with which their Lordships agreed.

25. It has been suggested by no less an authority than Lord Atkin in the recent case of General Medical Council v. Spackman [1934] A.C. 627 that the procedure which might be very just in deciding whether to close a school or an insanitary house is not necessarily right in deciding a charge of infamous conduct against a professional man, which suggests as Mr. Vimadalal would have me decide that domestic tribunals can be divided into three classes:- first, those which are administrative, secondly, those which are professional (like the: stewards in this case), and, thirdly, those which are purely social. I dare say there may be more categories and should myself have thought that they might more usefully be divided, first, into statutory and contractual tribunals. In the absence of express rules, one would expect to find that the former should conform more closely to legal procedure than the latter, and how very far even they may deviate therefrom is clearly shown by Arlidge''s case, in that Mr. Arlidge was never heard in person or by his advocate. However that may be, the suggestion that a different standard may have to be applied to professional as opposed to other tribunals does not seem to have received acceptance from the other noble and learned Lords, particularly Lord Wright and the Lord Chancellor. They appear to me to regard the principles laid down in Rice''s and Arlidge''s cases as still applicable, mutatis mutandis, to all domestic tribunals.

26. Really the most important authority cited for the plaintiff, is the opinion of two members of the Court of Appeal in Cooper v. Wilson [1937] 2 K.B. 309. In that case a police constable whom his chief constable had purported to dismiss appealed to the Watch Committee. The procedure in such cases is very similar to an appeal on facts to Quarter Sessions in England, in which, once the notice of appeal is admitted or proved, the burden is on the respondents to prove their case all over again. It is really in the nature of a re-hearing. In this particular case, therefore, the chief constable, who attended the meeting of the Watch Committee, did so in two capacities-as respondent to the appeal and as the prosecutor of Cooper. He occupied-it is difficult to know from the report whether the Watch Committee sat on a bench like the one we have in this Court, or were seated at a table-at all events the chief constable sat at the table or on the bench (whichever it was) and continued to sit there even after Cooper was turned out of the room, as Mr. Bell was in this case. There were other reasons—and excellent reasons-that the appeal should succeed and it did, and therefore the observations which I must deal with were obiter. They however form part of considered-and extremely well considered-judgments and, though dicta, are entitled to the very highest respect. Both Lord Justice Greer and Lord Justice Scott were emphatically of the opinion that the doctrine that justice must seem to be done is applicable to tribunals such as Watch Committees, and consequently that the mere presence of the chief constable while the members of the committee were deliberating vitiated the decision of that committee. The remaining member of the Court of Appeal (McNaghten J.) did not share this opinion and it is evident that the learned trial Judge (Singleton J) did not share it either. In a subsequent case indirectly connected with Cooper v. Wilson Mr. Justice Tucker

expressed the view that he must follow the guidance this case gives him and did not express the slightest doubt or hesitation about these dicta. In the Court of Appeal one member was common to the Court which decided Cooper v. Wilson, that was Lord Justice Scott, and the others were Mackinnon and du Parcq L. JJ. Neither of them expressed their dissent from these dicla and it must be assumed that they were inclined to agree with them. They, being dicta are not strictly binding on the puisne Judges in England, still less on me, although they are entitled to, and I do hold them in, the highest respect.

27. If, however, one scans the judicial field still further it is material to look at Lesson v. General Council of Medical Education and Registration (1889) 43 Ch. 366. The only facts I need go into are these:- A medical practitioner was arraigned before the General Medical Council for acting as "cover" for an unqualified person called Cornelius Bennett Harness, who subsequently figured in the case of Alabaster v. Harness, The prosecutors were the Medical Defence Union. Of a body of twenty-seven members who sat to hear the case two were members, though not active members, of that Union. It is quite clear that if the General Medical Council had been in a strict legal sense a Court of justice, even that amount of possible bias in its constitution would have vitiated the proceedings. The extraordinary lengths to which the Courts have, very rightly, gone in guarding themselves against not merely bias but against any suspicion of bias are well illustrated by cases such as Dimes v. Grand function Canal (Proprietors of) (1852) 3 H.L.C. 759 where a decision of Lord Cottenham was set aside by his successor on its being discovered that Lord Cottenham (unknown to the appellant) held a few shares in the defendant company which fact he had no doubt completely forgotten, and which as his successor said could not conceivably have influenced his decision in any way; and a quite recent decision in our own Court in P.D. Shamdasani Vs. The Central Bank of India Limited, , where the late Chief" Justice quashed a taxation by an officer of the Court who when he conducted the taxation was indebted to the Central Bank of India, a fact which was unknown to the people who were actually concerned in the taxation, though it must have been known to some officials of the bank.

28. Applying those principles, if the General Medical Council had been a Court of law, the presence of two persons who were parties, albeit technically parties, amongst its members would have necessarily vitiated its proceedings; but Mr. Justice North and the majority of the Court of Appeal, consisting of Cotton and Bowen L. JJ., reached the opposite conclusion as regards the General Medical Council. A passage from Lord Justice Bowen''s judgment is, I think, well worth reading (p. 384):

As the Lord Justice has said, nothing can be clearer than the principle of law that a person who has a judicial duty to perform disqualifies himself for performing it if he has a pecuniary interest in the decision which he is about to give, or a bias which renders him otherwise than an impartial judge. If he is an accuser he must not be a

judge.

Pausing there for a moment I have already found ass a fact that Major Nabi Khan, who may be regarded as the accuser in this case, was not one of the judges. To proceed with the judgment (p. 384):

Where such a pecuniary interest exists, the law does not allow any further inquiry as to whether or not the mind was actually biased by the pecuniary interest. The fact is established from which the inference is drawn that he is interested in the decision, and he cannot act as a judge. But it must be in all cases a question of substance and of fact whether one of the judges has in truth also been an accuser.

Here the question would be, as regards Major Nabi Khan, whether an accuser ever became a judge. The judgment proceeds (p. 384):

The question which has to be answered by the tribunal which has to decide-the legal tribunal before which the controversy is waged-must be: Has the judge whose impartiality is impugned taken any part whatever in the prosecution, either by himself or by his agents? I think it is to be regretted that these two gentlemen, as soon as they found that the person who was accused was a person against whom a complaint to the Council was made by the society to which they subscribed, arid to which they in law belonged as members, did not at once retire from the Council.

I cordially endorse that expression of regret as applied to the present case. It is most regrettable that Major Nabi Khan and Mr. Reid did not retire from the room when Mr. Bell went out. But nothing is easier, or less helpful, than being wise after the event. The judgment proceeds (p. 385):

I think it is to be regretted, because judges, like Caesar''s wife, should be above suspicion, and in the minds of strangers the position which they occupied upon the Council was one which required explanation. Whatever may be the result of this litigation, I trust that in future the General Medical Council will think it reasonable advice that those who sit on these enquiries should cease to occupy a position of subscribers to a society which brings them before the Council. But having said that, I come back to the point which we have to decide, whether these two gentlemen took any part whatever in the prosecution either by themselves or by their agents.

And he came to the conclusion that they did not, that is that the judges in question were not prosecutors. Conversely, my finding of fact is that the prosecutors here were not judges. It is quite evident that Lord Justice Bowen, Lord Justice Cotton and Mr. Justice North would not, had they been alive and sitting in the Court of Appeal which decided Coopet v. Wilson, have gone to the length of the dicta of Greer and Scott L. JJ., but would have contented themselves with answering the question whether the presence of the chief constable at the committee''s deliberations had in fact had any influence on its decision. It seems, as far as one can judge, reasonably, clear from the judgment of Mr. Justice Maugham (afterwards Lord Maugham, Lord

Chancellor) in Maclean v. The Workers'' Union (supra) which I have already referred that he also would not have entirely agreed with those dicta. As far as I can tell from his judgment he is definitely of the opinion that not everything which applies to Courts of law in this connection should be applied with absolute strictness to domestic tribunals, and a very recent authority is a case the only report of which that is available is in Mews Digest (1943) 207/8 Noakes v. Smith [1943] 107 J.P. 101 from which it does seem that another extremely eminent and careful English Judge, Mr. Justice Lewis, has not followed those dicta to the full length. He seems to have entertained the question whether a person who improperly remained in the room had influenced the committee or not. He came to the conclusion that the decision of the tribunal in question was not so influenced and decided against the party impugning it. His judgment, if correctly summarized in the Digest, seems to me flatly inconsistent with the dicta in question.

29. Well, that means that there are ranged on one side, for one view of the law, Lord Justices Greer, Scott, Fry, Mackinnon, du Parcq and Mr. Justice Tucker. On the other side Lord Justice Cotton, Lord Justice Bowen, Maugham J. (who afterwards became Chancellor), Mr. Justice McNaghten, Mr. Justice North, Mr. Justice Singleton and Mr. Justice Lewis.

30. Well, I have to decide one way or the other, and I have the satisfaction of knowing that if I do go wrong, I shall be erring in very distinguished company. The question must largely depend on the opinion of the ordinary man in the street. Is there something in the mere fact of the stipendiary stewards remaining in the room during the deliberations whether or not they influenced the decision, after the other side has gone out, which is so repugnant to ordinary ideas of fair play that, whatever happens, what is done is unfair? According to two very eminent and extraordinary fair minded Englishmen (Lord Justices Greer and Scott) the answer is "Yea." On the other hand (apart from Lord Justices Cotton and Bowen and Maugham, Lewis and North JJ., and looking only at Cooper''s case for the moment) there never was a fairer minded Englishman than Singleton J. or for that matter a fairer minded Irishman than McNaghten J., and they both took the opposite view.

31. Perhaps it is not a bad test to come down to what happened in this case: it appears that the plaintiff did not think it was one of his grievances until I reminded him of it; the point has been well described as, in this case, a lawyer''s point, but it is not, for that reason only, a bad point.

32. On the whole I am of opinion that the dicta in Cooper v. Wilson should not be followed, still less extended; as already indicated, the position of a stipendiary steward as against the stewards was not identical with that of a chief constable as against the Watch Committee. It is true that they receive some support from Mr. Justice Even in Law v. Chartered Institute of Patent Agents. [1919] 2 Ch. 276 But I have not included him in the list because the facts are so different from those in Cooper v. Wilson and that it is difficult to say with certainty in which camp Mr. Justice

Eve would have been on this particular point.

33. The exact meaning of the expression "natural justice" is fully discussed in Mr. Justice Maugham''s judgment in Maclean v. The Workers'' Union. I certainly cannot attempt to rival his brilliant exposition of the law, but I still do not think that I was very far wrong when I decided in Calcutta in Chandra Bhan Bilolia v. Ganapatrai & Sons [1943] 1 Cal. 156 that when a tribunal has got to act "according to natural justice", it has merely to act impartially and honestly. It must make up its own mind and not, for example, substitute for it the opinion of some one else, or decide the question by spinning a coin, thereby leaving it to the arbitrament of choice. It must do so without any improper or collateral motive, and in doing so it must treat the contending parties equally, giving to neither an. advantage not enjoyed by the other. If in fact it does that, it is acting according to natural justice, whether or not (in my opinion) it not only does that but also appears to do that.

34. The result, therefore, is that the answer to this particular issue, whether the stewards acted in accordance with natural justice, is "Yes."

35. Just for the moment let me assume that I am wrong and that I ought to have followed the opinion of the other school of judicial thought. Suppose 1 am right in thinking that in fact the presence in the room of the stipendiary stewards did not in the slightest degree influence the decision of the stewards, but that owing to the suspicion that it might have created of something unfair being done it vitiates the decision of the tribunal. In that view of the matter, the plaintiff would be entitled to a declaration somewhat in the form he has claimed, and a further order (if he thought it worth while to ask for it) the restitution of the actual licence he formerly held, a piece of paste board now quite valueless. But what of the issue as to his claim for two lakhs? Admittedly there was an implied contract between him and the defendants that his licence should not be withdrawn for misconduct except in accordance with natural justice, and the decision to withdraw it would have been arrived at, technically, in a manner not according to natural justice. Therefore he would be entitled to some damages for breach of contract. But if, in fact, the presence of the stipendiary stewards did not really affect the position at all, then he would not have been one whit worse off than he would have been if they had gone out of the room when they should; the decision of the stewards would still have been the same, with the result that he has not actually suffered any damage at all, if I am right as to the facts. The result, therefore, would be, on the assumption that I am wrong as to the law but right as to the facts, that the plaintiff would be entitled to a declaration that his licence was illegally withdrawn by the club, to the restitution of his 1938/9 license if he asks for it, and nominal damages which I should assess at Re. 1. If I had reached this conclusion, I should have given the plaintiff his costs. But as it is, the suit fails and the last issue must be answered "None." I am not in a position to assess the damages on the assumption that I am wrong both on the facts and the law, because the question of amount of damages was held over by

consent until the question of liability had been determined.

36. I desire, without wishing to assume to dictate to the defendants how their stewards should conduct their affairs, to repeat one thing I have already said. That is, that I do think the stewards would be well advised if in future, to avoid this sort of trouble, they request the stipendiary stewards to leave the room during their deliberations.

37. One other thing; I do not know at all whether, now that the suit is over, the present stewards would consider restoring the plaintiff''s licence if he applies to them in a proper manner. It is a question entirely for them. It is not their fault that his earlier requests were turned down; I feel sure that it is largely due to the unfortunate manner in which he couched his letters. I do not say that they should do, so, but they may well think, now that the club has fought and won, that it would be a graceful act again to allow Mr. Bell to earn his livelihood on the turf, having regard to the length of time during which he has been unable to do so.