

**Ferd Dawson Calvin** - - - - - *Appellant*

v.

**John Henry Brownlow Carr and others** - - - - - *Respondents*

FROM

**THE SUPREME COURT OF NEW SOUTH WALES**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 15TH JANUARY 1979**

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*Present at the Hearing :*

LORD WILBERFORCE  
VISCOUNT DILHORNE  
LORD HAILSHAM OF SAINT MARYLEBONE  
LORD KEITH OF KINKEL  
LORD SCARMAN

*[Delivered by LORD WILBERFORCE]*

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This is an appeal from a judgment of Mr. Justice Rath sitting in the Equity Division of the Supreme Court of New South Wales dismissing an action brought by the appellant Mr. Calvin against the respondents. The action was brought in order to obtain a declaration and an injunction restraining the defendants from giving effect to a disqualification of one year imposed on the appellant under the Rules of Racing of the Australian Jockey Club.

On 13th March 1976 a horse called Count (sic) Mayo, of which the appellant was part owner, ran in the Eastlakes Handicap, Second Division, at Randwick Racecourse. The race was run over 1,200 metres. Count Mayo was a well-bred three-year old with some useful form in New Zealand. This was his first public appearance in Australia. He was trained by Mr. Cummings, whose foreman in charge on the day in question was Ronald Thomas Dawson: he was ridden by Peter William Cuddihy. Count Mayo attracted support in the betting market and was backed down to short odds. But he ran poorly: though finishing strongly he only achieved fourth place, thus disappointing his backers, some of whom no doubt vocally expressed their feelings. This running not surprisingly provoked an enquiry by the Stewards. They interviewed the jockey, the foreman, the trainer and the appellant. A film of the race, or of part of it, was shown and they saw films of the horse's running in New Zealand and received statements from the Stipendiary Stewards, jockeys, the chief handicapper and a racing commentator in that country. They made an intensive investigation into various bets said to have been placed on the horse on 13th March including a bet of \$(A)6,000 which the appellant claimed he had made. The enquiry followed a predictable course. The Stewards' *prima facie* opinion was that the horse had not

run a straight course, that the jockey had made his effort too late, had not used his whip or ridden the horse out. The jockey claimed that the horse hung towards the outside, that he had ridden according to instructions to hold the horse up and not to use the whip because to do so might cause the horse to swerve, but that he had ridden it out with hands and heels. The appellant accepted that the horse had run according to his instructions, but said that he wanted the horse to win, though he was not quite fit, and that he had backed it.

On 20th March the Stewards decided, and so informed those concerned, including the appellant, that they proposed to bring charges under Rule 135 of the Rules of Racing which is as follows:—

- “(a) Every horse shall be run on its merits.
- (b) The rider of every horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win or to obtain the best possible place in the field.
- (c) Any person who in the opinion of the Stewards has breached, or was a party to breaching, any portion of this Rule may be punished, and the horse concerned may be disqualified.”

On 26th March after further evidence had been heard, they announced their decision that the jockey was guilty of an offence against Rule 135(a) and that the appellant was a party to the breach. They disqualified him for one year. This had serious consequences; in particular, the appellant was unable during that period to run or enter any horse and he lost his membership of the Australian Jockey Club.

Mr. Calvin, as he was entitled to do, appealed to the Committee of the Australian Jockey Club. So did Mr. Dawson and the jockey Cuddihy. The Committee opened the hearing of the appeal on 9th April 1976. The appellant was represented by Counsel, and Mr. Falkingham, Q.C., appeared with Mr. Reynolds to assist the Committee. The transcript of the proceedings before the Stewards was put in at the outset without objection, subject to some corrigenda. The Chairman of the Stewards and the other Stewards, with one exception, gave evidence. All persons who gave evidence before the Stewards were in attendance and available for cross-examination and several of these were called. Other witnesses also gave evidence, including Mr. Poulsen the Senior Stipendiary Steward in New Zealand. The appellant, Dawson and Cuddihy were all called and cross-examined. The film of the race and films of the horse's performance in New Zealand were shown in the presence of the parties. Submissions were made by Counsel. On 12th April 1976 it was announced that the Committee dismissed the appeals of the appellant and Cuddihy but allowed the appeal of Dawson.

The present action was started by the appellant on 13th April 1976. It was brought against, as defendants, the Chairman of the Committee of the Australian Jockey Club as representing the Club, the members of the Committee of the Australian Jockey Club, and the Stipendiary Stewards holding office under the Rules of Racing of the Australian Jockey Club. The claim was for declarations that the purported disqualification of the appellant by the Stewards, and the purported dismissal of the appellant's appeal, were void and for an injunction restraining the defendants from acting upon the basis that the purported disqualification of the appellant was valid.

A number of grounds were put forward to support these claims. As regards the original enquiry it was said that the Stewards had failed to observe natural justice or fairness so that their decision was invalid. As regards the proceedings before the Committee it was said that, as the Stewards' decision was invalid, the Committee had no jurisdiction to hear

or determine an appeal from it, and that the Committee had failed to perform their statutory duty under the Australian Jockey Club Act 1873, s.32. These contentions are essentially those maintained in the present appeal.

In addition, before the trial judge, the appellant contended (i) that there was no evidence to support the Stewards' conclusion that he was a party to a breach of Rule 135 (a), (ii) that upon the evidence adduced no reasonable man could have formed the opinion that the appellant had been a party to such a breach, (iii) that the Committee had failed to observe natural justice and fairness in the appeal, (iv) similarly to contentions (i) and (ii) as regards the Committee. All these contentions were rejected by the trial judge and were not renewed before this Board.

The learned judge decided (1) that in certain specified respects, the Stewards had failed to observe the principles of natural justice and that they might have failed to observe the principles of natural justice in not giving the appellant an opportunity of being heard on the question of penalty. But he also held (2) that the proceedings before the Committee constituted a hearing *de novo* and that the defects in the Stewards' inquiry were thereby "cured".

Before their Lordships the appellant opened his case by attacking the second holding through carefully argued legal submissions. These were presented upon the provisional assumption that the first finding was correct. Upon conclusion of these submissions their Lordships thought it appropriate to hear Counsel for the respondents, in answer to them, and thereafter to hear the appellant's Counsel in reply, before embarking on a consideration of the first question. Having heard these arguments and having come to a clear conclusion upon them, their Lordships did not consider it opportune to hear arguments on the first point. They will deal therefore with the appeal upon the assumed basis that the learned judge was correct in deciding that there had been a failure to observe natural justice in the proceedings before the Stewards. They wish however to make it clear that, while they accept that the principles of natural justice ought to have been observed by the Stewards, yet, having read the transcript of those proceedings, and the learned judge's careful judgment on this point, they appreciate that a substantial argument could be put forward that there was no failure of natural justice at all. They consider it fair to the Stewards to place this on record and to emphasise that some such failure is a matter of assumption only, made for the purpose of enabling the second issue to be decided.

It is now necessary to set the legal framework within which this issue is to be judged.

Horse racing in New South Wales is regulated by the Rules of Racing of the Australian Jockey Club, and by the Australian Jockey Club Act 1873. The Australian Jockey Club is an unincorporated association whose affairs are managed by the Committee.

The Rules consist of (i) the Australian Rules of Racing and (ii) further rules known as the Local Rules. All of these are printed in a book called "The Rules of Racing of the Australian Jockey Club". The following provisions are material:—

*Australian Rules of Racing*

"2. Any person who takes part in any matter coming within these Rules thereby agrees with each and every Principal Club to be bound by them.

"4. Any act done or decision made by a Committee of a Club or by Stewards in the exercise or intended exercise of any right power or authority conferred by or under any of the Rules shall except where otherwise provided in the Rules be final and conclusive."

" 7. The Committee of a Principal Club shall have the control and general supervision of racing within its territory. Such Committee, in furtherance and not in limitation of all powers conferred on it or implied by these Rules, shall have power, in its discretion:—

(a) to hear and decide appeals as provided for in its Rules or by law.

" 8. To assist in the control of racing, Stewards shall be appointed according to the Rules of the respective Principal Clubs, with the following powers:—

(e) To punish any person committing a breach of the Rules, .....

" 135. [already cited above]

" 175. The Committee of any Club or the Stewards may punish;

(k) Any person who has committed any breach of the Rules, .....

" 199. Every person aggrieved by any punishment imposed by the Committee of a Club or an Association or by the Stewards may subject to the Rules appeal to the Committee.

*Local Rules of the Australian Jockey Club*

" 70. (a) Any person appealing to the Committee of the Australian Jockey Club shall within seven days after the decision appealed against has been given, lodge with the Committee or Stewards from whose decision he desires to appeal a notice in writing stating the grounds on which he intends to appeal.

" 71. Subject to the provisions of the Australian Jockey Club Act, the Committee of the Australian Jockey Club may on the hearing of the appeal:—

(a) Remit the matter in dispute to be reopened or reheard by the Committee of the Club or Association or Stewards from whose decision the appeal is brought;

or

(b) Upon the evidence already taken and any additional evidence, which in their opinion it was desirable to admit or obtain, make such order as in their opinion ought to have been made by such Committee or Stewards, or as in their opinion may be necessary to ensure the determination on the merits of the real question at issue;

" 72. Subject as aforesaid the Committee may at its discretion allow the appellant to be represented by counsel on the hearing of any appeal and in any case may have counsel present to assist the Committee.

" 73. Subject as aforesaid no fresh evidence shall be adduced on the hearing of any appeal to the said Committee except by leave of the Committee.

*Australian Jockey Club Act 1873*

" 32. (1) In any of the following cases, that is to say:—

(a) where the stewards of the Australian Jockey Club or the committee or stewards of any other club or race meeting registered by the Australian Jockey Club under the Rules of Racing of the Australian Jockey Club have—

(i) disqualified or warned off any person,

(b) where any body, empowered by the club, in accordance with the Rules of Racing of the Australian Jockey Club, to hear and determine appeals from any decision of the committee or stewards of any club registered as aforesaid which is within the jurisdiction of such body, has dismissed any appeal in respect of any matter referred to in paragraph (a) of this subsection or neglected or refused to hear and determine any such appeal,

any person considering himself aggrieved thereby may appeal to the Committee of the Australian Jockey Club:

Provided that no appeal under this subsection shall lie to the Committee of the Australian Jockey Club unless the appellant has first exercised any other right of appeal which may be conferred on him by the Rules of Racing of the Australian Jockey Club.

(2) (a) Any appeal to the Committee of the Australian Jockey Club under subsection one of this section shall be in the nature of a re-hearing. Such Committee in hearing any such appeal shall sit as in open court.

(b) The decision of such Committee on any such appeal shall be final and shall be given effect to by the stewards of the Australian Jockey Club or the committee or stewards of any other club or race meeting to whose jurisdiction the appellant is subject.

(4) The decision of such Committee on any such appeal shall be upon the real merits and justice of the case and it shall not be bound to follow strict legal precedent.

(5) .....

(b) This section shall be construed as supplemental to and not in derogation of or limited by the Rules of Racing of the Australian Jockey Club".

Although these rules and statutory provisions contain a good deal of repetition and circularity it is clear that they provide a comprehensive scheme or code for the administration of racing and for the exercise of discipline through domestic bodies whose jurisdiction, though reinforced by statute, is founded on consensual acceptance by those engaged in the various activities connected with horse racing. Under this scheme the Committee has general control and powers of supervision. It may exercise disciplinary powers itself, including the power to punish for breach of the rules, or disciplinary powers, including the power to punish, may be exercised by the Stewards. In the latter event, there is an appeal to the Committee, such appeal being in the nature of a re-hearing, and on such appeal the Committee may remit the case to the Stewards, or may make such order as ought to have been made by the Stewards. The Committee has a wide discretion as to the admission of evidence in the appeal, not being limited to the evidence heard by the Stewards.

The first issue arising in this appeal is whether the Committee had any jurisdiction to enter upon the appeal. The appellant's proposition is that it had not, for the reason that the Stewards' "decision" was, on the assumption stated, void. A condition precedent, it was said, of an appeal was the existence of a real, even though voidable, decision.

This argument led necessarily into the difficult area of what is void and what is voidable, as to which some confusion exists in the authorities. Their Lordships' opinion would be, if it became necessary to fix upon one or other of these expressions, that a decision made contrary to natural justice is void, but that, until it is so declared by a competent body or court, it may have some effect, or existence, in law. This condition might be better expressed by saying that the decision is invalid or vitiated. In the present context, where the question is whether an appeal lies, the

impugned decision cannot be considered as totally void, in the sense of being legally non-existent. So to hold would be wholly unreal. The decision of the Stewards resulted in disqualification, an effect with immediate and serious consequences for the appellant. This was a fact: the appellant's horses could not run in, or be entered for, any race; the appellant lost his membership of the Australian Jockey Club and could be excluded from their premises. These consequences remained in effect unless and until the Stewards' decision was challenged and, if so, had sufficient existence in law to justify an appeal. An analogous situation in the law exists with regard to criminal proceedings. In *Crane v. Public Prosecutor* [1921] 2 A.C. 299 there were irregularities at the trial which had the effect that the trial was "a nullity". Nevertheless an appeal was held to lie to the Court of Criminal Appeal. Lord Atkinson said

"The fact that the trial.....was rightly held to be.....a nullity does not disentitle him, under s.3 of the Criminal Appeal Act, 1907, to appeal against it. He is still a person convicted on indictment within the meaning of that section, since those words cannot mean validly convicted, otherwise the statute would be futile and unworkable". (p.323)

and Lord Sumner

"It was a mis-trial, and in truth no trial at all. All the same convicted Crane was and to all appearance convicted on an indictment".

He could appeal to the Court of Criminal Appeal.

"Were it otherwise Crane, who has never had a legal trial at all though imprisoned under sentence on the strength of it, would have to serve his time and apparently be without remedy". (p.331)

This case was applied by the High Court in *Russell v. Bates* (1927) 40 C.L.R. 209.

Passing from this analogy to authorities directly relevant in the field of civil proceedings their Lordships consider that these support the proposition that a decision of an administrative or domestic tribunal, reached in breach of natural justice, though it may be called, indeed may be, for certain purposes "void" is nevertheless susceptible of an appeal. *White and others v. Kuzych* [1951] A.C. 585 was a trade union case where an investigating committee had acted contrary to natural justice in finding the appellant guilty of offences against the union byelaws. He did not appeal, as he might have done under the rules, to the Federation, but brought an action in Court for a declaration that his expulsion was invalid. This Board held that the original conclusion was a "decision" within the relevant appeal rule so as to be subject to appeal to the Federation. The judgment may, if their Lordships may respectfully say so, be open to the comment that in an earlier passage it raises but does not answer the question whether "the conclusion of a judicial tribunal acting within its jurisdiction, which is arrived at in a way which amounts to a denial of natural justice, [is] appealable, or, on the contrary . . . is simply void and thus not subject to appeal at all"—a passage which it is not easy to reconcile with the holding that the committee's conclusion was appealable as a decision within the rules. The latter holding however would support the respondent's contention in the present case, since here too, the appellant appealed under the rules. A clearer authority is this Board's decision in *Annamunthodo v. Oilfields Workers' Trade Union* [1961] A.C. 945 which will have to be analysed more fully later. For present purposes it is enough to state that this judgment recognises the appealability of the original decision which, in the result, the Board set aside as having been reached in breach of natural justice.

Turning next to decisions of the High Court, the point now under consideration was dealt with in 1913 in *Meyers v. Casey* 17 C.L.R. 90. This was a horse-racing case where the Stewards, without jurisdiction to

do so, purported to disqualify the appellant, as well as his horse. The appellant appealed, unsuccessfully, to the Committee, without taking the point that the Stewards had no jurisdiction. The Court held that the Committee had power to entertain the appeal even though the Stewards had no jurisdiction to make the decision. Isaacs J. said this:—

“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 . . .” (p.116).

In *Australian Workers' Union v. Bowen* (1948) 77 C.L.R. 601, another trade union case, the decision of the first domestic tribunal, which expelled the plaintiff, was held to be contrary to natural justice on grounds of bias. The plaintiff appealed to the annual convention which, it was held, gave fresh authority to the expulsion decision (this point will be discussed later). Their Honours clearly thought that the annual convention had jurisdiction to entertain the appeal—see per Latham C.J. p.618, Rich J. p.619, Dixon J. (with whose judgment Starke J. concurred) p.632.

In the New Zealand case of *Denton v. Auckland City* [1969] N.Z.L.R. 256, though mainly concerned with the right of the complainant to seek relief from the Court after appealing to an administrative Board (and on this point following *Annamunthodo's* case), the Court appears to have decided that the Board had no basis on which it could entertain an appeal because the original decision was void. If this is so, the case is out of line with other authorities and their Lordships would not be able to follow it. *Pillai v. Singapore City Council*—see below—does not appear to have been cited.

For these reasons based on authority and principle Their Lordships do not accept the appellant's argument that the Committee had no jurisdiction to entertain the appellant's appeal.

The appellant's second argument can be stated, for purposes of description, as being that such defects of natural justice as may have existed as regards the proceedings before the Stewards, were not capable of being cured by the appeal proceedings before the Committee, even though, as was not contested before this Board, these were correctly and fairly conducted. The respondent contends the contrary. This part of the argument involved consideration of a wide range of authorities of this Board, and in Australia, Canada, England and New Zealand. As regards decisions of this Board a conflict was said to exist between *Annamunthodo's* case (*u.s.*) and *Pillai v. Singapore City Council* [1968] 1 W.L.R. 1278, each of which has been followed by other decisions. There was also said to be a conflict between *Annamunthodo's* case, and the High Court in *Australian Workers' Union v. Bowen* (*u.s.*), a conflict giving rise to difficulties for Australian State Courts. Other individual decisions were cited which it appears difficult to reconcile.

Although, as will appear, some of the suggested inconsistencies of decisions disappear, or at least diminish, on analysis, their Lordships recognise and indeed assert that no clear and absolute rule can be laid down on the question whether defects in natural justice appearing at an original hearing, whether administrative or quasi-judicial, can be “cured” through appeal proceedings. The situations in which this issue arises are too diverse, and the rules by which they are governed so various, that this must be so.

There are however a number of typical situations as to which some general principle can be stated. First there are cases where the rules provide for a re-hearing by the original body, or some fuller or enlarged form of it. This situation may be found in relation to social clubs. It is not difficult in such cases to reach the conclusion that the first hearing is superseded by the second, or, putting it in contractual terms, the parties

are taken to have agreed to accept the decision of the hearing body, whether original or adjourned. Examples of this are

*De Verteuil v. Knaggs* [1918] A.C. 557, 563;

*Posluns v. Toronto Stock Exchange* (1966) 53 D.L.R. (2d) 193;

*Re Clark and Ontario Securities Commission* (1966) 56 D.L.R. (2d) 585;

*Re Chromex Nickel Mines Ltd.* (1970) 16 D.L.R. (3d) 273; and see also

*Ridge v. Baldwin* [1964] A.C. 40, 79 per Lord Reid.

At the other extreme are cases, where, after examination of the whole hearing structure, in the context of the particular activity to which it relates (trade union membership, planning, employment etc.) the conclusion is reached that a complainant has the right to nothing less than a fair hearing both at the original and at the appeal stage. This was the result reached by Megarry J. in *Leary v. National Union of Vehicle Builders* [1971] Ch.34. In his judgment in that case the learned judge seems to have elevated the conclusion thought proper in that case into a rule of general application. In an eloquent passage he said:

"If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? . . . As a general rule . . . I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body." (p.49.)

In their Lordships' opinion this is too broadly stated. It affirms a principle which may be found correct in a category of cases: these may very well include trade union cases, where movement solidarity and dislike of the rebel, or renegade, may make it difficult for appeals to be conducted in an atmosphere of detached impartiality and so make a fair trial at the first—probably branch—level an essential condition of justice. But to seek to apply it generally overlooks, in their Lordships' respectful opinion, both the existence of the first category, and the possibility that, intermediately, the conclusion to be reached, on the rules and on the contractual context, is that those who have joined in an organisation, or contract, should be taken to have agreed to accept what in the end is a fair decision, notwithstanding some initial defect.

In their Lordships' judgment such intermediate cases exist. In them it is for the Court, in the light of the agreements made, and in addition having regard to the course of proceedings, to decide whether, at the end of the day, there has been a fair result, reached by fair methods, such as the parties should fairly be taken to have accepted when they joined the association. Naturally there may be instances when the defect is so flagrant, the consequences so severe, that the most perfect of appeals or re-hearings will not be sufficient to produce a just result. Many rules (including those now in question) anticipate that such a situation may arise by giving power to remit for a new hearing. There may also be cases when the appeal process is itself less than perfect: it may be vitiated by the same defect as the original proceedings: or short of that there may be doubts whether the appeal body embarked on its task without predisposition or whether it had the means to make a fair and full enquiry, for example where it has no material but a transcript of what was before the original body. In such cases it would no doubt be right to quash the original decision. These are all matters (and no doubt there are others) which the Court must consider. Whether these intermediate cases are to be regarded as exceptions from a general rule, as stated by Megarry J., or as a parallel category covered by a rule of equal status, is not in their Lordships' judgment necessary to state, or indeed a matter of great importance. What is important is the recognition that such cases exist, and that it is undesirable in many cases of domestic disputes, particularly in which an enquiry and appeal process has been established,

to introduce too great a measure of formal judicialisation. While flagrant cases of injustice, including corruption or bias, must always be firmly dealt with by the Courts, the tendency in their Lordships' opinion in matters of domestic disputes should be to leave these to be settled by the agreed methods without requiring the formalities of judicial processes to be introduced.

Their Lordships now comment on the principal authorities.

*Annamunthodo's* case was a trade union case. It is not, in their Lordships' judgment, a case of "curing the defect" at all. The General Council had acted invalidly in expelling the appellant through a rule (11(7)) under which he had not been charged. It would seem clear that the Annual Conference, which had appellate functions, had no more power to use the rule in order to expel him. Thus the same defect existed at both instances (cf. *Fagan v. National Coursing Association* (1974) 8 S.A.S.R. 546 for another example). The argument in the case turned only on whether Rule 11(7) created merely a penalty or a fresh charge, and on whether the appellant having appealed to the Annual Conference had lost his right to go to the Court. It does not support a general proposition that defects at first instance cannot be "cured" on appeal.

*Pillai v. Singapore City Council (u.s.)* was a case of administrative bodies concerned with the dismissal of an employee. The decision of the Board against the employee was put on cumulative grounds: first that the employee was not entitled to require that the rules of natural justice should be observed in proceedings leading to his dismissal; secondly that the rules of natural justice, if applicable, had not been breached; thirdly that if the rules of natural justice had been breached at first instance, the defect was cured on appeal. There had been a rehearing by way of evidence *de novo* which cured the initial defect.

Their Lordships regard this as a decision that in the context, namely one of regulations concerning establishments procedures, justice can be held to be done if, after all these procedures had been gone through, the dismissed person has had a fair hearing and put his case. It is thus an authority in favouring the existence of the intermediate category, but not necessarily one in favour of a general rule that first instance defects are cured by an appeal. Their Lordships are also of opinion that the phrase "hearing of evidence *de novo*", though useful in that case, does not provide a universal solvent. What is required is examination of the hearing process, original and appeal as a whole, and a decision on the question whether after it has been gone through the complainant has had a fair deal of the kind that he bargained for.

From this analysis it appears that there is no real conflict between the cases of *Annamunthodo* and *Pillai*. The situations to which they applied are different: neither lays down a rule contradicted by the other.

First, as regards Australian decisions, *Meyers v. Casey (u.s.)* provides clear support for the intermediate position, and applies it to a voluntary, consensual situation (viz. the rules of the Victoria Racing Club) similar to the present. The judgments, particularly that of Isaccs J., perceive the necessity to look at the whole of the accepted rules, and to decide whether the parties have agreed to accept the results of the totality of the procedure, if at the end the procedure is fair.

*Australian Workers' Union v. Bowen* (1948) 77 C.L.R. 601—a trade union case—is an authority supporting the intermediate position. The Convention (the appeal body), it was held, had complete authority over the whole question of expulsion and it was for it to decide whether the findings, and the dismissals from membership, should be set aside, varied or confirmed (per Dixon J. p.632). The principle stated is clear: the application may differ from that decided in *Leary's* case (*u.s.*).

Secondly, *Twist v. Randwick Municipal Council* (1976) 51 A.L.J.R. 193, a case arising under the Local Government Act 1919 (N.S.W.) and concerned with a demolition order, contains a passage (p.196-7) in the judgment of Mason J. where his Honour expresses preference for the judgments of this Board in *Pillai* and of the Canadian decisions in *Re Clark and Ontario Securities Commission (u.s.)* and *King v. University of Saskatchewan* (1969) 6 D.L.R. (3d) 120 over the cases of *Denton* and *Leary*. The whole passage is close to their Lordships' views. The views of Barwick C.J., shortly expressed, are to the same effect (p.195).

Thirdly there are two New South Wales cases which support the proposition that denial of justice in a domestic tribunal cannot be cured on appeal: these are *Hall v. New South Wales Trotting Club* [1976] 1 N.S.W.L.R. 323; *Ethell v. Whalan* [1971] 1 N.S.W.L.R. 416. These are in part at least on the basis that *Annamunthodo's* case establishes such a rule, and that it is a binding decision in New South Wales. But in their Lordships' view the former is not the case. *Meyers v. Casey* and *Pillai's* case were not cited, and the decisions cannot be regarded as authoritative on the point under discussion.

Fourthly there are Canadian decisions. Reference has already been made to *Re Clark and Ontario Securities Commission* (1966) 56 D.L.R. (2d) 585 and *King v. University of Saskatchewan* (1969) 6 D.L.R. (3d) 120. These support the respondent's position. The appellant relied on *Re Cardinal and Board of Commissioners of Police of City of Cornwall* (1973) 42 D.L.R. (3d) 323, a decision based on a distinction between an appeal procedure and one by way of hearing *de novo*. Their Lordships would regard it as a decision on the facts: on principle it is not easy to reconcile with *Pillai's* case.

Finally there are cases in New Zealand. *Denton's* case has already been referred to: it was reviewed together with other New Zealand cases by the Court of Appeal in *Reid v. Rowley* [1977] 2 N.Z.L.R. 472—a case concerned with trotting. The decision was that an appeal to a domestic or administrative tribunal does not normally cure a breach of natural justice by a tribunal of first instance *so as to oust the jurisdiction* of the Courts to redress such breaches, but that the exercise of such a right of appeal is a matter that may be taken into account by the Courts in considering the grant of discretionary remedies. This decision was reached, as the judgment of Cooke J. shows, after examination of the cases of *Annamunthodo* and *Pillai*, and other relevant English and Canadian cases. In general their Lordships find that the approach of that case is in line with that sought to be made in this judgment. It may be that the Court adopted a more reserved attitude as regards the effect, after a denial or breach of natural justice at first instance, of a full examination on appeal. In one passage it is said:

“ . . . the conferment of wide powers on a domestic or statutory appeal tribunal, including power to rehear the evidence orally, is not enough to insulate the appellate jurisdiction automatically from the effects of a failure of natural justice at first instance ”. (p.482)

Their Lordships agree, and have given their reasons for concluding, that in this field there is no automatic rule. But they do not understand the Court of Appeal to be subscribing to a view that cases of “insulation” or “curing”, after a full hearing by an appellate body, may not exist: on the contrary Cooke J. expresses the opinion that the Court, in the exercise of its discretion, when reviewing the domestic or statutory decision, should take into account all the proceedings which led to it, the conduct of the complaining party and the gravity of any breach of natural justice which may have occurred. This, though perhaps with some difference in emphasis, is their Lordships' approach.

It remains to apply the principles above stated to the facts of the present case. In the first place, their Lordships are clearly of the view that the proceedings before the Committee were in the nature of an appeal, not by way of an invocation, or use, of whatever original jurisdiction the Committee may have had. The nature of the appeal is laid down by the Australian Jockey Club Act 1873, s.32, and by the Rules. Under the Act, the appeal is to be in the nature of a re-hearing—a technical expression which does little more than entitle the Committee to review the facts as at the date when the appeal is heard (see *Builders Licensing Board v. Sperway Construction Pty. Ltd.* (1976) 51 A.L.J.R. 260, 261 per Mason J.), not one which automatically insulates their findings from those of the Stewards. The decision is to be “upon the real merits and justice of the case”—an injunction to avoid technicalities and the slavish following of precedents but not one which entitles the Committee to brush aside defective or improper proceedings before the Stewards. The section is then required to be construed as supplemental to and not in derogation of or limited by the Rules of Racing. This brings the matter of disputes and discipline clearly into the consensual field. The Rules of Racing (Local Rules 70–74) allow the Committee to take account of evidence already taken and of additional evidence, and confer wide powers as to the disposal of appeals.

In addition to these formal requirements, a reviewing Court must take account of the reality behind them. Races are run at short intervals; bets must be disposed of according to the result. Stewards are there in order to take rapid decisions as to such matters as the running of horses, being entitled to use the evidence of their eyes and their experience. As well as acting inquisitorially at the stage of deciding the result of a race, they may have to consider disciplinary action: at this point rules of natural justice become relevant. These require, at the least, that persons should be formally charged, heard in their own defence, and know the evidence against them. These essentials must always be observed but it is inevitable, and must be taken to be accepted, that there may not be time for procedural refinements. It is in order to enable decisions reached in this way to be reviewed at leisure that the appeal procedure exists. Those concerned know that they are entitled to a full hearing with opportunities to bring evidence and have it heard. But they know also that this appeal hearing is governed by the Rules of Racing, and that it remains an essentially domestic proceeding, in which experience and opinions as to what is in the interest of racing as a whole play a large part, and in which the standards are those which have come to be accepted over the history of this sporting activity. All those who partake in it have accepted the Rules of Racing, and the standards which lie behind them: they must also have accepted to be bound by the decisions of the bodies set up under those rules so long as when the process of reaching these decisions has been terminated, they can be said, by an objective observer, to have had fair treatment and consideration of their case on its merits.

In their Lordships' opinion precisely this can, indeed must, be said of the present case. The appellant's case has received, overall, full and fair consideration, and a decision, possibly a hard one, reached against him. There is no basis on which the Court ought to interfere, and his appeal must fail.

The respondents took other points against the appellant, notably that, having elected to take his case to the Committee on appeal, he had lost his right of resort to the Court. Their Lordships need say no more of this argument than that it appears to present difficulties both on the authorities and in principle. But they need come to no conclusion upon it.

They will humbly advise Her Majesty that the appeal be dismissed. The appellant must pay one set of costs to the respondents.

**In the Privy Council**

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**FERD DAWSON CALVIN**

**v.**

**JOHN HENRY BROWNLOW CARR  
AND OTHERS**

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**DELIVERED BY  
LORD WILBERFORCE**