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The applicant, from his affidavit filed in these proceedings, is aged 28 years. He is a licensed race horse trainer. On March 19, 1980 there was a race meeting at Caymanas Park. A certain horse, "Starwars", trained by the applicant had been entered for the eighth race. It was, however, declared a late non-starter by the Stewards because contrary to the declaration made by the applicant that the horse would be shod for the race in "exercise plates" it was discovered to be shod as to two feet with "racing plates". No permission had been given for any alteration in the declared shodding by the Stewards of the meeting who are the competent authority to permit any such alteration.

A complaint was made by the Stewards of the meeting to the Jockey Club of Jamaica Limited to whom the functions under the "racing rules" had been delegated by the Jamaica Racing Commission. The Jockey Club duly held an inquiry on the 8th April, 1980 arising out of which the applicant was found guilty of corrupt practices and "warned off" for two years.

The applicant appealed this decision of the Jockey Club to the Jamaica Racing Commission which is the statutory body established by the Jamaica Racing Commission Act to control horse-racing in Jamaica and which is the competent authority to entertain appeals from decisions of the said Jockey Club given in exercise of powers delegated to them by the Commission under section 26 of the Act.

In entertaining appeals the Commission is given the under-mentioned express statutory powers, namely to -

- (a) dismiss the appeal and confirm the decision; or
- (b) allow the appeal and set aside the decision; or
- (c) set aside the decision and substitute therefor such other decision as the Commission may think proper;

- (d) allow the appeal and direct that the proceedings in respect of which the decision (the subject of the appeal) was made be reconducted either by the person who made that decision or such other person as the Commission may decide.

I have set out fully the powers of the appellate tribunal, namely the Commission, for ease of reference when I come to deal with Dr. Barnett's submission on the efficacy of the appeal process to cure defects, if any, in the original hearing, which could give rise to a claim that the rule of natural justice enshrined in the principle audi alteram partem had been breached.

Returning to the chronology of events, the applicant for the purposes of his appeal filed through his Attorney-at-Law both original and supplementary grounds of appeal which paraphrased, hopefully without injustice to the verbatim grounds of appeal, are, in so far as is here relevant, as hereunder, namely:

- (a) the applicant was not given proper or distinct charges upon which he could prepare and put forward his defence;
- (b) the hearing was prejudicial and unfair in that it developed into an inquisitorial exercise.

The other grounds of appeal were to the effect that the evidence lacked sufficiency and/or weight to justify the findings and conclusions of the Jockey Club.

At the hearing of the appeal Mr. Ian Ramsay who appeared for the applicant argued in extenso the above grounds of appeal. He tendered the notice summoning the applicant to the meeting by the Jockey Club which was stated to be for the hereunder purpose, namely:

" for the purpose of an enquiry by the Stewards into the following matter - 'Re Starwars' which was declared a late non-starter for the 8th race on the 19th March, 1980".

The notice concluded with an intimation to the applicant that he could bring all persons who could give evidence relating to the

incident.

Mr. Ramsey delved copiously into the record of evidence which was taken in the proceedings before the Jockey Club in exemplification of the many points in his submission. He tendered documentary evidence in lieu of a witness whom he was given liberty to call.

In regard to the sentence imposed by the Jockey Club he took full advantage of the opportunity afforded him of seeking to persuade the Commission that the sentence was exceptionally harsh especially as the applicant was not informed before, or at the hearing, that the charge he was there to answer was one which was in breach of rules 16 and 247.

In the end the appeal was dismissed and the decision of the Jockey Club was confirmed.

It is against this background that the applicant comes before this Court for the finding and sentence of the Jockey Club to be quashed.

The grounds on which the order of this Court is sought are lengthy and argumentative, but it is possible to extract therefrom the gravamen of the complaint against the Jockey Club which were -

- (a) That the proceedings of the Jockey Club were vitiated and the finding and sentence given therein rendered void because there was a breach of the rules of natural justice for that:
 - (i) The applicant knew of the charge only "eo-instanti" with his conviction since the notice summoning him to the meeting bore no resemblance to, and could not on a fair reading thereof, be taken as the preferment of a charge.
 - (ii) Secondly, the proceeding was irregular and a farce because no evidence was called to establish the primary facts against him. Only a report was read.

- (iii) Thirdly, the applicant was given no real opportunity to reflect on the report before he was called upon to give his testimony.
- (iv) Fourthly, he was given no real opportunity, fairly to present his case because the inquisitorial procedure adopted by the Jockey Club was disabling rather than conducive to a fair presentation by him.
- (b) The Jockey Club had no jurisdiction to find the applicant guilty of corrupt practices in the absence of a specific charge and fair and adequate notice thereof.

The essence of the first complaint is that there should have been a formulated charge which specified the racing rule which was breached with particulars of the Act or Acts constituting the breach. This requirement it is contended, is one facet of the audi alteram partem principle. By breaching this principle the applicant, it is contended, was a misled soul at the inquiry. While believing he was there to help in the inquiry he was being perniciously prosecuted.

Learned Attorney for the applicant cited as authority in support of the need for a formulated charge the case of Arthur Sharpe v. The Jamaica Racing Commission (1974) 12 J.L.R. page 1319. This case is no authority for the imperative of a formulated charge. The fact that in that case there was a formulated charge of "improper and threatening behaviour towards the Operation Steward D while he was performing his duties as an authorised person appointed by the Commission" does not say or imply that had there been a less precise formulation the decision of the Commission would have been struck down notwithstanding that any alternative notice sent to Mr. Sharpe was otherwise sufficient to apprise him of what was to be enquired into.

Both learned Attorneys cited passages from DeSmith's Judicial Review of Administrative Action (3rd Edition) pages 171 - 176, under the rubric "Content of the audi alteram partem rule". One Attorney referred to this to substantiate the need for prior notice of formulated charges; the other Attorney referred to it to show that there is no such rigid and inflexible rule. It would appear that both learned Attorneys can find

support in the authoritative exposition of the learned author, because while he postulated that "prima facie, failure even to attempt to give prior notice to a person against whom prejudicial allegations are to be made, or whose interests will suffer detriment by what is proposed, will vitiate the subsequent proceedings", he cited exceptions derived from statute, and also exceptions founded on case law. One such exception founded on case law is formulated thus, "where the person claiming to be aggrieved must be assumed to have known or did in fact know what was being alleged or what was likely to happen to him". In the latter circumstances the requirement of a notice does not arise.

This latter exception appears to have been secreted from cases, among which is Russell v. Duke of Norfolk [1949] 1 All E.R.109 at pp. 117 - 118.

Dr. Barnett in submitting that there has been no breach of the rules of natural justice in relation to the form of the notice and the procedure at the inquiry relied on Section 25 of the Jamaica Racing Commission Act which conferred on the Commission complete discretion in the procedure it adopted. The section provides as follows:

" 25(1) The person or persons holding the investigation (hereinafter in this section referred to as "the tribunal") shall do so in such manner and under such conditions as the tribunal may think most effectual for ascertaining the facts of the matter under investigation."

Further, Dr. Barnett cited the Racing Rules which provide a code for the conduct of races. These Rules are made under statutory authority, namely under Section 22 of the Act. Provision is made in these Rules for the procedure to be adopted for dealing with breaches, namely summary proceedings and penalty in relation to lesser breaches, without prior notice, and a report by the Stewards of race meetings to the Jockey Club for investigation by the latter in the case of the more serious breaches attracting more condign punishment.

The applicant being a horse trainer holding a licence from the Commission must be assumed to know the Racing Rules and the

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procedure prescribed therein for investigating alleged breaches and in particular that the report of the Stewards of a race meeting of a breach, for investigation by the Jockey Club connotes that it is considered a serious offence. He was the trainer of the horse "Starwars"; he knew that it had been declared, not on his application, a late non-starter; he knew the reason why the horse had been declared a late non-starter, namely that he as a trainer had declared the horse to run in "exercise plates" but that it had been presented for racing in "racing plates". He knew that the racing public at least was interested in knowing the type of plates the horse would be running in, and that if the notice required to be affixed in a conspicuous location, easily visible to the public, stated that the horse was running in "exercise plates" when in fact it had on "racing plates" the public would be deceived and that the public could well lose confidence in horse racing.

He received a summons which specified the subject matter to be enquired into by the Jockey Club. It cannot be said that he could in any way be misled as to why he was being summoned. The only issue remaining, having regard to these background facts, was whether in breaching the Rules he was acting bona fide but negligently, or it was a deliberate and intentional act to deceive the public and/or derive some unjustified benefit for himself. He clearly, in my view, came within the case-law exception where there was no need for prior notice of any detailed or precisely formulated charge.

The record of proceedings before the Jockey Club speaks eloquently to the fact that the applicant knew precisely what he was there for, namely that the matter being investigated related to his conduct in attempting to mislead the public. In concluding his testimony, and without any suggestions whatever from the Jockey Club, he said, and I quote:

" I don't want you to think that I was trying to mislead the public or anybody".

In regard to the procedure adopted at the hearing, the reports were read. Mr. McKenzie who had put in the report to the Jockey Club was called upon to verify if the report read was a true report of what he had submitted. His answer was in the affirmative. By his answer he adopted the report which amounted to the same thing as if he had been called on

to report the events of the day in question. The applicant was then called upon to answer to the specific issue or charge which in the words of the Chairman was, "Why your horse was wearing racing plates when it was declared to race in exercise plates."

The applicant did not ask for any time to reflect and/or to gather together the points in his explanation, and from his dissertation, it appears no time was needed. There was no apparent difficulty in making his presentation. What the records and the notice show is that he had sufficient time, between the date of the notice and the hearing, to marshal such supporting evidence as he desired, namely a letter from one Dr. Bradford. This latter documentary evidence effectively silences any complaint that he did not know what charge he had to answer, and/or was not afforded a reasonable time within which to prepared and deliver his defence.

Finally, on this aspect of the matter I do not see anything fundamentally wrong in the Jockey Club asking the applicant questions directed to the better elucidation of the explanation given. In these domestic proceedings it would be wrong to expect the procedure to be equated to a trial in the Supreme Court where silence of the judge is regarded as a desirable attribute. Even here it is not always discernible.

The questions asked by the panel members were in my view designed to clear up manifest inconsistencies and contradictions in the explanation given, and in no way resulted in any prejudice to the applicant.

I find that there has been no breach of the Rules of natural justice based on the alleged insufficiency of the notice to disclose to the applicant that it was a charge he had to meet, nor has there been any breach of the said Rules on any of the subsidiary grounds argued therewith. Equally, having regard to the nature of the appellate proceedings and what actually took place there, any defect as to the insufficiency of the notice, if there was such, would in my view have been cured. The opportunity afforded the applicant there to agitate fully his views is not and cannot be a matter for complaint.

In regard to the other main ground of complaint it is to the effect that the Jockey Club had no jurisdiction to find the applicant guilty of corrupt practices in the absence of a specific charge therefor.

On this ground learned Attorney for the applicant in substance is saying that, even if contrary to his first main submission, the notice was sufficient to apprise the applicant of the charge, that could only be for a breach of Rule 113. It would not be a notification of a charge of corrupt practices which attract so severe a penalty. There has thus been a breach of the Rules of natural justice in proceeding against him without any such charge whatsoever. The Jockey Club has no jurisdiction to do so.

Learned Attorney cites Annamunthodo v. Oilfield Workers' Trade Union [1961] 3 All E.R. 624 in support of his submission, also Ridge v. Baldwin [1963] 2 W.L.R. 939. In my view neither of these cases are apposite or relevant to the facts in this case. In the Annamunthodo case the domestic tribunal had formulated specific charges which led only to a fine. It was held that it could not, without notice, resort to other charges which lead to far more severe penalties. In Ridge v. Baldwin there was neither a charge formulated before or at the meeting of the Watch Committee, nor an opportunity given to Mr. Ridge to be heard before the communication of conclusions adverse to him.

In this case there is no question of a lesser charge for breaching Rules 113 and 198 per se. Once the matter is reported for investigation by the Jockey Club they are considered serious offences. The breach of the Rule regarding "declaration for entry" of a horse, once found to be deliberate and intentional leads, without proof of anything more, inexorably to the conclusion that it was done to deceive the public.

Rule 198 of the Racing Rules confers the power on the Stewards to fine a trainer who seeks an alteration in his entry declaration, whether the alteration is granted or refused. So important is this matter of entry declaration, that any change permitted by the Stewards must be reported to the Commission. The same rule similarly confers power on the Stewards to fine or otherwise deal with a trainer who having declared a horse as a runner in

a race is responsible for the horse not starting. This power of fining must be considered in the context of Rule 7(d)(i)B where it is provided that if the Stewards on reasonable suspicion, are of the opinion that there has been a breach of the Racing Rules, fit for investigation by the Commission, or there is a proved breach, for which a punishment by way of fine in excess of their powers, or a punishment different from that which they are empowered to inflict is warranted, as for example, "warning off" of a trainer, they shall have power in their discretion to report the matter for investigation by the Commission.

Once such a report is made and a person is summoned for investigation by the Jockey Club into his conduct, he must undoubtedly be aware that any decision arrived at adverse to him can result in his being dealt with as a person, who in committing the offence, comes within Rule 16 and the appropriate sub-paragraph of Rule 247. In the applicant's case once he was summoned before the Jockey Club to explain why "Starwars" was presented for racing in "racing plates" instead of "exercise plates" as declared, he must have known that the breach was not being taken as a mere inadvertent breach for which he could have been dealt with and fined by the Stewards, but as a serious one designed to deceive the public, and therefore corrupt, for which he could be warned off. There was no need to append the odious epithet "corrupt conduct in the matter of Starwars", either in the notice or in the formulation of the charge by the Chairman at the hearing in order that the applicant would know the gravity of the offence (which by reference to the record he knew) or the serious consequences which could ensue on a finding of guilt.

Finally Dr. Barnett submits that since the Commission is made the respondent and not the Jockey Club, the court in exercising its discretionary power ought to consider what transpired not only at the proceedings before the Jockey Club but also at the Commission where the whole matter was reviewed. It is only when the matter is viewed from the perspective of two inter-related proceedings that the court should consider whether taking all things into consideration the applicant had or had not a fair opportunity of being heard consistent with the audi alteram partem rule.

He cited Hillai v. City Council of Singapore [1968] 1 W.L.R. 1278, also Glynne v. Keele University [1971] 1 W.L.R. 487 and Calvin v. Carr [1979] 2 A.E.R. 444 in support of the principle that a court can and ought properly to consider the entirety of the proceedings, original and appellate, before saying that a rule of natural justice, the breach of which has been complained about, has remained incurably breached at the end of all such proceedings.

I accept Dr. Barnett's submission and invitation in this respect. Calvin v. Carr above, which considered all the relevant cases for and against the existence of such a principle, found that such a principle exists in relation to some cases. While warning that there is no clear and absolute rule which can be laid down on the question whether defects in natural justice appearing in an original hearing can be cured through appellate proceedings due to the diverse situations in which the question can arise, the court did nevertheless find that in relation to appellate tribunals hearing appeals from investigation into breaches of Racing Rules, which have wide powers of reviewing the facts, with power to remit for further investigation, the arguments in support of such a "curative effect principle" may well be founded.

In this case the appellate powers of the Commission appear extensive, including power to remit. The powers in my view are designed to ensure that in the appeal proceedings an applicant is given full hearing with opportunity to bring further evidence and have it heard. Any breach of the rules of natural justice, if such had existed in the original proceedings, would in my view have been cured in the appellate proceedings.

In concluding my view on this aspect of the matter I will adopt with approval the words of Lord Wilberforce in Calvin v. Carr at pages 451 - 452:

" 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 my view the applicant in this case had a full hearing both at the Jockey Club and before the Commission in relation to a matter of which he was fully aware, and a decision **was** reached against him albeit a hard one. There is no basis for his complaint. The application for order of Certiorari in my view ought to be dismissed.

BINGHAM, J:

Having heard my brother Campbell J, deliver the judgment just read I agree with the reasoning and the conclusions he has arrived at and there is nothing that I could usefully add.

ROSS, J:

I agree with the judgment of my brother Campbell and I have nothing that I can usefully add.

The order of the Court is that the application is dismissed with costs.