Kimball v. Windsor Raceway Holdings

[1972] O.J. No. 1851

[1972] 3 O.R. 307

28 D.L.R. (3d) 149

Ontario
High Court of Appeal

Addy, J.

May 12, 1972.

Morris Kamin, Q.C., and Lorne Morphy, for plaintiff.

J. Brown, Q.C., for defendant.

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1 **ADDY, J.**:-- The plaintiff was licensed by the Ontario Racing Commission, hereinafter referred to as O.R.C., and the Canadian Trotting Association, hereinafter referred to as C.T.A., as a groom, trainer and driver of standardbred horses and had been racing standardbred horses at the raceway of the defendant, since 1968, when he first obtained these licences. He had also been renting stalls, which were available on the raceway, during the race meets.

2 The defendant company operates the raceway and for the purposes of this trial it has been agreed that it is also an association holding licences issued by the two above-mentioned authorities to operate a standardbred raceway. It is, in fact, the best one for winter racing. The racing season there now lasts over seven months. The plaintiff made an application for stall space, for eight horses, for the meet commencing in October, 1970, and on September 9, 1970, he received from the director of racing of the defendant company a letter advising him to the effect that there was no stall space available. The letter, filed as ex. 4 in the case, did not, in my view, constitute an outright refusal but merely informed the plaintiff that there was a shortage of space and invited him to apply at a later date. The plaintiff immediately phoned the director of racing and informed him that he would be shipping the horses in for each race, since stall space was not available, and he wanted to enter certain horses during the race meets. He was then advised, by the director of racing, that they did not want him at all at the racetrack. On receiving this advice from the director of racing, who was one Joseph DeFrank, the plaintiff phoned the president of the defendant company, one Mr. Rowe,

who in turn informed him that he would automatically follow the advice of his director of racing. It is quite clear from the evidence also that the defendant company, through its racing director, Mr. DeFrank, subsequently barred horses which were trained by the plaintiff and which were owned by other people, even after the plaintiff ceased to drive them, and even though they would have otherwise qualified for racing at the track under the track rules and under the rules of the C.T.A.

3 The plaintiff sued the defendant raceway and, pending trial of the action, obtained an interim injunction, which was granted by my brother Osler, J., restraining the defendant from preventing him from racing horses which otherwise qualified. An important factor in this case is the fact that the defendant operates a track of such high standard that it is much preferred by horse owners because of the quality of the horses being raced there, the size of the purses available and the fact that no other track of similar quality is available in the immediate area. The evidence also indicated that the only other track of similar quality, which was favoured by horse owners of the area, was in the State of Ohio and that the tracks at London, Ontario, or Garden City were not comparable and that, on the whole, any trainer or driver of standardbred horses, who could not race at Windsor, would be unable, practically speaking, to earn his living in that trade anywhere near this area of the Province. In barring the plaintiff from engaging in his calling on its raceway the defendant, in fact, barred him from the area known as the backstretch, which is fenced off, guarded and reserved for the paddocks and stalls of horses, the offices, other accommodation and services pertaining to horse-racing, and for personnel involved in horse-racing such as owners, drivers, trainers, grooms, racing judges, officials and administrators.

4 The plaintiff sued the defendant company for general, special and punitive damages and for an order obliging the defendant to continue to receive horses, which the defendant wishes to drive, providing, of course, that the horses qualify pursuant to C.T.A. and track rules. The action is based on the allegation that, although the raceway is owned by a private corporaation, it has not a full and unfettered right of deciding who, among those duly licensed persons engaged in the trade or occupation of racing, should be allowed entrance to the backstretch or to use the track.

5 This allegation is, first of all, founded on the argument that considerable sums of public moneys are spent, annually, by way of direct subsidy to racetracks in Ontario. Evidence indicated that $1,700,000 was expended for this purpose last year. I was rather surprised, if not shocked, to hear that the provincial Government had, last year, granted as a gift to the defendant the sum of $280,000 for purse money for horse-racing and that similar sums had been so granted in the past years. It appears that the purse for the winning horse, at the defendant's main track meet last year, amounted to $50,000. The evidence at trail indicated that the total value of the defendant's raceway plant amounted to some $5,000,000.

6 It is true that a great portion of the moneys wagered at racetracks forms an important source of income for the provincial coffers, yet, it does seem strange, in the fact of a professed need for economy in public spending, when there is an ever-increasing demand for public moneys to finance important social programs, that direct subsidies of this nature should be made to a luxury sport such as horse-racing. The concept of annual subsidies for purse money was understandable when they were granted to local racing associations operating racing meets a few days per year at agricultural fairs. The purpose was obviously to encourage these county fairs generally, and horse breeding in particular, in the days before the tractor and the automobile replaced the horse.

7 But whatever might be the philosophy or reason behind the substantial public grants being made at the present to operators of racetracks, I reject as a non sequitur the argument that public

grants of themselves, even if made on a regular annual basis and on a substantial scale, in any way change the private nature of a privately-owned undertaking or limit or restrain the rights which the law has for centuries recognized as belonging to private enterprise. There are today many private undertakings which for various reasons receive assistance from the public purse and their private character is not altered or changed thereby.

8 More cogent reasons why the defendant might not possess an unfettered right to bar the plaintiff from its race meets are to be found in the arguments that the defendant operates a monopoly or quasi-monopoly and the O.R.C. rules and regulations, to which I shall refer later, legally oblige the defendant to accept on its track any person who is duly licensed by the O.R.C. and the C.T.A.

9 The defendant, on the other hand, alleges that it is not operating a quasi-monopoly and in any event, even if it were, it is not for this reason obliged to accept the plaintiff on its premises nor is it obliged to do so under the rules of O.R.C. and, furthermore, if the rules of the O.R.C. purport to create such an obligation then they are ultra vires of the O.R.C. in so far as any such alleged authority is concerned.

10 Much evidence was led on the question as to whether or not the defendant had good and sufficient cause to deny the plaintiff entry to its track and to refuse him the right to engage in any racing activities on the track or in the backstretch. In this regard, the defendant attempted to establish that there had been trouble with two individuals, one being an owner who complained to the director of racing that the plaintiff told him that his horse could not race on the track. The evidence in this case, however, clearly established that the plaintiff was acting quite properly, since he was the trainer of the horse, and felt that the horse was too lame to compete. It turned out that the horse in fact was lame and eventually had to be destroyed by reason of the injury. This complaint was completely unjustified. The other complaint was apparently over a personal dispute, which the plaintiff had with a partner or co-owner, over the proceeds of the sale of a horse. Besides being a personal matter between the two partners and of no concern whatsoever to the track, it turned out that the matter was settled in a freindly fashion and that the plaintiff is still associated with the gentleman concerned, in the training of his horses.

11 The defendant also, through the testimony of the director of racing, one Mr. DeFrank, who was also secretary of racing at the Ohio track, attempted to establish that the plaintiff was an undesirable person, by reason of another incident over a horse, which occurred in Ohio, and also because of four penalties imposed by racing judges in Ohio, against the plaintiff. It turned out, however, that three of the driving penalties, for such matters as impeding the progress of a horse or causing a horse to break or interfering with another driver, were very common everyday riding offences which occurred frequently and were considered rather minor. The only offence of any consequence was that of appearing in a paddock in a non- fit condition by reason of having taken intoxicating beverages. The plaintiff received a 10-day suspension by reason of the last-mentioned violation. The other incident over a horse, which was referred to above, concerned another private dispute which the plaintiff had with a co-owner of a horse that had been claimed in Ohio. The matter was apparently amicably and satisfactorily settled between the parties.

12 To summarize the allegations of misconduct against the plaintiff, I find that they have not been established. I was not at all impressed by the evidence of the witness DeFrank and that witness Rowe knew nothing at all about the matter except what DeFrank had related to him. Were I obliged, in this case, to merely find whether the defendant had established, on the evidence adduced before me, that the conduct of the plaintiff was in any way prejudicial to the best interest of racing, or that

it interfered with those interests, I would, without hesitation, find that the defendant had failed to do so and the plaintiff would succeed.

13 The case, however, does not turn on this narrow issue. There is a further question as to whether a corporation, which is privately owned and is licensed to operate a standardbred racetrack by the O.R.C., is allowed to bar from its track, any owner, trainer, driver or stable employee who wishes to perform any duties connected with his profession, trade or calling as an owner, trainer, driver or stable employee and who is fully licensed under the O.R.C. and the C.T.A. to do so, without any particular reason or justifiable cause other than the unfettered decision of the management of that particular track that it is desirable to do so in the best interests of the track. If a racetrack operator, in the position of the defendant, is obliged to justify its reasons for excluding such a person from the use of the track further questions arise as to whether such a person is entitled to a hearing, the nature of such a hearing and the applicability, or otherwise, of the rules of natural justice.

14 Section 3 of the Racing Commission Act, R.S.O. 1970, c. 398, reads as follows:

> 3. The objects of the Commission are to govern, direct, control and regulate horse racing in Ontario in any or all of its forms. Section 15 of the said Act is also of some interest and is quoted for convenience purposes:
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> 15. Rules for the conduct of horse racing may be promulgated by the Commission under this Act and any order or ruling issued or made by the Commission under this Act shall be deemed to be of an administrative and not aof a legislative nature.

At the trial of the action, the O.R.C. rules of standardbred racing, 1970, were also referred to, the two most relevant rules being rules 8.01 and 15.02, which read as follows:

> 8.01 Unless otherwise specified in any Commission Rule harness racing shall be conducted in accordance with the Rules and Regulations of The Canadian Trotting Association.
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> 15.02 No person shall operate as an Association racing official, Association employee (except such Association employees as are exempted by the Commission), owner, trainer, driver or stable employee, nor shall anyone practice his profession, trade or calling on a race track without an annual license issued to him by the Commission, and such license shall be honoured as a pass to such part of the grounds as, when and where the licensee is obliged to perform his duties, except the license of an Association employee and an employee of a company, partnership or person with whom the Association has a contract to supply goods or services, and save and except that the Association shall not be obligated to honour any such license as admitting the holder if the holder has a criminal record or has damaged or threatened to do damage to any property on or forming part of the race course property of or occupied by a Racing Association, or if the holder's conduct is deemed by the Association to be prejudicial to or interfering with the conduct of the best interests of racing.

15 As to whether the O.R.C. rules are generally valid, in the sense that their existence has been properly authorized under the Racing Commission Act, the question seems to have been settled in the following cases: Kingston v. Ontario Racing Com'n. [1965] 2 O.R. 10, 49 D.L.R. (2d) 395; affirmed loc. cit. [footnote], and R. v. Ontario Racing Com'n, Ex p. Taylor, [1970] 3 O.R. 509, 13 D.L.R. (3d) 405, confirmed on appeal on other grounds in [1971] 1 O.R. 400, 15 D.L.R. (3d) 430.

16 Without considering for the moment whether or not the specific rules under consideration in this case exceed, in any way, the authority granted by the Racing Commission Act, it seems clear to me that the O.R.C. cannot delegate its rulemaking powers governing racing to the C.T.A. and that, in so far as rule 8.01 would purport to bring into effect any rule of the C.T.A. enacted subsequently to rule 8.01 and to adopt in advance any future rule or regulation of the C.T.A., then rule 3.01, under the principle of delegatus non potest delegare, would be completely ineffective and ultra vires. The O.R.C. has been given power to govern, direct, control and regulate horse-racing in Ontario but has certainly not been given power to delegate that power to an outside body such as the C.T.A. and, thus, abdicate the responsibility which has specifically been given to it by the Legislature. In coming to this decision I am fully aware of the statement of my brother Stewart, J., in Kingston v. Ontario Racing Com'n, supra, at p. 14 O.R., p. 399 D.L.R., where he stated: "Merely to embody the rules of another organization into its own is not in any way delegating the authority to make such rules." I fully agree with the statement as I presume he meant the rules then in existence and not the rules to be enacted in the future, and there is no suggestion in the case that any other interpretation should be applied. An adoption in advance of all the rules to be enacted in the future by another body would, as I stated above, be a clear formal delegation of authority and ultra vires the Racing Commission.

17 Subsections (a), (b), (l) and (q) of s. 11 of the Racing Commission Act, above referred to, read as follows:

> 11. The Commission has power,
>
> (a) to govern, direct, control and regulate horse racing in Ontario in any or all of its forms;
> (b) to govern, control and regulate the operation of race tracks in Ontario at which any form of horse racing is carried on;
> (l) to make and promulgate rules for the conduct of horse racing in any of its forms;
> (q) to do such things relating to horse racing in any or all of its forms, or to the operation of race tracks at which horse racing is carried on, as are authorized or directed by the Lieutenant Governor in Council.

18 Counsel for the plaintiff argued rather forcibly that, because the rules of the Racing Commission had not been approved by Order in Council, they were completely inoperative as rules. My brother Stewart, J., in the case of Kingston v. Ontario Racing Com'n, supra, at p. 14 O.R., p. 399 D.L.R., dealt with the question as to whether the fact that the Commission rules have not been published under the Regulations Act, R.S.O. 1960, c. 349 (now R.S.O. 1970, c. 410), renders them ineffective; he held that it would not. His decision was affirmed by the Court of Appeal on May 4, 1965. Similarly, I see nothing in s. 11, or in s. 15, of the Act which deal with the Commission's rule-making powers to require that its rules be approved by Order in Council. Section 3 of the Act states that the Commission is set up for the express purpose of governing, directing, controlling and

regulating horse-racing in Ontario. Section 14 provides that the Lieutenant-Governor may make regulations with respect to matters that are considered necessary for the carrying-out of this Act and s. 11(q), above quoted, also mentions the powers of the Lieutenant-Governor in Council but this, in my view, is merely a catch-all section which requires the action of the LLieutenant-Governor in Council for such things related to horse-racing as are not specifically covered by the other subsections of s. 11 or by s. 15. I therefore hold that the rules are valid, although not approved or published by Order in Council.

19 The question considered in the present case is, of course, clearly of a completely different nature than the one considered in the cases of R. v. Ontario Racing Com'n, Ex p. Morrissey, [1970] 1 O.R. 458, 8 D.L.R. (3d) 624; Kingston v. Ontario Racing Com'n, supra, or R. v. Ontario Racing Com'n, Ex p. Taylor, supra, the appeal being reported in [1971] 1 O.R. 400, 15 D.L.R. (3d) 430. In these cases the RAcing Commission purported to suspend and prohibit horse trainers from practising their trade or profession for specified periods, while the present case deals with the question of whether a trainer can be barred from a particular track by the owners or operators of that track. The last three above-mentioned cases fall in line with the category of cases dealing with bodies exercising judicial or quasi-judicial functions, e.g., Board of Education v. Rice et al., [1911] A.C. 179, and R. v. Architects' Registration Tribunal, Ex p. Jaggar, [1945] 2 All E.R. 131. These cases deal with situations where a person is prohibited from practising a trade or profession without the approval and consent of a professional or trade-governing body.

20 Similarly, the plaintiff was, in no way, the employee or agent of the defendant and, therefore, cases referring to termination or non-renewal of contracts of employment for casue or otherwise, are not applicable in any way.

21 An operator of a racetrack is not a person who, at common law, is deemed to be engaged in a public calling such as an innkeeper or a common carrier and who is, by common law, obliged to serve the public without discrimination. No such common law obligation ever attached to racetracks or other places of amusement. I have read with interest the as yet unreported decision of my brother Fraser, J., in the case of Adrian Messenger Services and Enterprises Ltd. et al. v. The Jockey Club Ltd. et al., heard in the Supreme Court of Ontario in September, 1971, and released on February 15th of this year [since reported [1972] 2 O.R. 369, 25 D.L.R. (3d) 529]. I agree with his views as expressed in that case and note that he refused to follow the decision of Galligan, J., who, in the same case, granted an interim injunction against the defendants on the grounds that they were operating a monopoly or quasi-monopoly and, therefore, had not the right to bar the plaintiffs from the club premises, the plainteiffs being members of the public and being engaged in a lawful occupation of delivering bets gratuitously for members of the public to the track.

22 There were two English cases, Allnutt et al. v. Inglis (1810), 12 East 527, 104 E.R. 206, and Simpson v. A.-G et al., [1904] A.C. 476, which were not cases involving common carriers as such, yet where the English Courts held that the defendant, in each case, was not entitled to deal with his business or his private property by discriminating against a member of the public. The first of the above-mentioned cases concerned a company which had by various statutes obtained what, in fact, was a monopoly over certain types of warehouses used to store goods in bond without duty being paid to the Government while the goods were in storage, it being impossible to store the goods wlsewhere without such duty being paid; the second case involved a defendant who possessed certain rights over locks in a public canal system. It is to be noted, however, that, although these were not common carrier cases, they were both cases dealing with the public transportation system. In the

first case the public right of landing goods imported from abroad and in the second case the public right of using a public canal were being restricted. Although, reference was made to the question of monoply I believe that the cases really turned on the question that a well-established basic public right was being affected and interfered with. The situation is practically identical to the case where a person, association or company is granted, by a public body, a right or privilege and, generally, an exclusive right or privilege, which it dod not possess at common law and which right or privilege is granted for a public purpose. Typical examples are companies with franchises to use public streets and highways to distribute gas or electricity or water to the public. Even though they are essentially private companies, whose main object is to further the interest of their shareholders, they obviously are acting either as agents of, or partners of the state and are performing a service on behalf of the state and, therefore, cannot discriminate between customers.

23 The situation regarding the defendant, however, is entirely different. It possesses, at common law and as of right, the privilege of operating a racetrack. The Province through the Racing Commission, for purposes of revenue and also for purposes of control for the protection of the public, or for both, chose to restrict such right and to regulate and license it. This does not constitute, in any way, the plaintiff a servant, agent or partner of Government in the promotion of a public purpose. Neither the Legislature by the Racing Commission Act nor the Racing Commission by its regulations has granted the defendant anything which it did not possess as a basic right; the Act and the regulations merely regulate limit, control and restrict a pre-existing right. The defendant, is therefore, in an entirely different position from the other types of private corporations who are granted by Government or a public body a right which they did not possess at common law.

24 It has long been settled law that, unless it is clearly and unambiguously expressed in the text of a statute or unless it follows by necessary implication from that text, a statute must not be construed so as to interfere with, abrogate or prejudice basic established rights pertaining to an interest in or title to property: "The canon of construction applicable to such a statute is that it must not be deemed to take away or extinguish the right of the respondent company, unless it appear, by express words, or by plain implication, that it was the intention of the Legislature to do so": per Lord Watson, in Western Counties R. Co. v. Windsor and Annapolis R. Co. (1882), 7 App. Cas. 178 at p. 188 (from N.S.C.A.). Refer also Hand v. Yarmouth L. & P. Co., Ltd., [1926] 2 D.L.R. 611 at p. 615, 58 N.S.R. 430 (N.S.C.A.); Schubert v. Sterling Trusts Corp. et al., [1943] O.R. 438 at p. 445, [1943] 4 D.L.R. 584 at p 591; Glow v. Rural Municipality of Rockwood, [1943] 2 D.L.R. 178, [1943] 1 W.W.R. 641, 51 Man. R. 1 (Man.C.A.); Berton Dress Inc. v. The Queen, [1953] Ex. C.R. 83; Toronto Transit Com'n v. Aqua Taxi Ltd. et al., [1955] O.W.N. 857. These cases follow a long line of English cases among which one might cite: Scales v. Pickering (1828), 4 Bing. 448 at p. 452, 130 E.R. 840; Ex p. Clayton (1830), 1 Russ & M. 369, 39 E.R. 143; Webb v. Manchester and Leeds R. Co. (1839), 4 My & Cr. 116 at p. 120, 41 E.R. 46; Arnold v. Gravesend Corp. (1856), 2 K. & J. 574 at p. 591, 69 E.R. 911; Lang v. Kerr, Anderson, & Co. (1878), 3 App. Cas. 529 at p. 535; Wake et al. v. Redfearn et al. (1880), 43 L.T. 123 at p. 126; Hough v. Windus (1884), 12 Q.B.D. 224 at p. 237 (C.A.); Metropolitan Asylum District v. Hill et al. (1881), 6 App. Cas. 193 at p. 208 (H.L.); Westminster Corp. v. London and North Western R. Co., [1905] A.C. 426 (H.L.); British and Foreign Marine Ins. Co. v. Gaunt, [1921] 2 A.C. 41 at p. 48 (H.L.); Ward v. British Oak Ins. Co., [1932] 1 K.B. 392 (C.A.); Marshall v. Blackpool Corp., [1935] A.C. 16; National Real Estate and Finance Co. v. Hassan, [1939] 2 K.B. 61, [1939] 2 All E.R. 154 (C.A.), and Bankes v. Salisbury Diocesan Council of Education Inc., [1960] Ch. 631.

25 It also follows that to confirm a right of entry, to private premises, the statute must express such a right in clear terms:

Grove v. Eastern Gas Board, [1952] 1 K.B. 77 at p. 82 (C.A.).

26 The granting, by the Legislature, of a power to regulate does not imply a power to change, modify, or abrogate substantive or basic common law rights. Any such power has to be expressly granted. This principle has been clearly recognized by our Court of Appeal in Circosta et al. v. Lilly, [1967] 1 O.R. 398 at p. 401, 61 D.L.R. (2d) 12 at p. 15 (C.A.); refer also Lee v. Showmen's Guild of Great Britain, [1952] 1 All E.R. 1175 (C.A.), and Kennedy v. Gillis et al.; Gillis et al. v. Smith and Kennedy, [1961] O.R. 878, 30 D.L.R. (2d) 82.

27 If there were even a scintilla of doubt as to whether the Commission could, through its regulation-making power, legislate away a substantive right, this question has been conclusively settled and resolved by the Legislature itself when one reads the concluding words of s. 15 of the Racing Commission Act, which I have quoted at the beginning of this judgment.

28 Thus, it is abundantly clear that, altogether apart from the above-mentioned settled principle applicable to the interpretation of statutes as they might affect established private rights, the Legislature specifically provided for the rules of the Racing Commission to be purely administrative and not legislative. This question has also been dealt with, in so far as this particular Act is concerned, in the above-cited cases of R. v. Ontario Racing Com'n, Ex p. Taylor, supra (refer headnote of trial judgment), and Kingston v. Ontario Racing Com'n, supra.

29 Except for the above-quoted Adrian Messenger Services case, which deals with the admission of a member of the public to a racetrack and not with the admission of a person engaged in the business of racing, there is undoubtedly a dearth of reported Ontario or Canadian cases on the subject. There are, however, several interesting American cases decided in various States of the United States. These cases universally reject the idea of any right existing in either a member of the public, or in a person actually employed in a business of racing, such as a jockey or trainer, being entitled to be admitted to the raceway as of right, either on the basis of the fact that the operation might, in fact, constitute a monopoly or a quasi-monopoly or a state franchise granted for public purposes, or on the basis that the track is licensed or controlled by regulations issued by the State or a state racing commission, or on the basis that the operators of the raceway are agents or partners, or administrative agents of the State. The cases which I considered were the following: Garifine v. Monmouth Park Jockey Club (1957), 128 A. 2d 1; Greenfeld v. Maryland Jockey Club of Baltimour (1948), 57 A. 2d 335; Madden v. Queen's County Jockey Club, Inc. (1947), 72 N.E. 2d 697; Martin v. Monmouth Park Jockey Club (1956), 145 F. Supp. 439; Rocco v. Saratoga Harness Racing Ass'n Inc. (unreported), decision of Harvey, J., on July 22, 1971, in the Supreme Court of New York (Saratoga County), and Tamelleo v. New Hampshire Jockey Club, Inc. (1960), 163 A. 2d 10.

30 I accept the reasoning and conclusions arrived at in those cases and feel that they are applicable to this Province. Even though the operation of the racetrack of the defendant does, in fact, constitute a monopoly over standardbred racing meets in the particular area of this Province where the plaintiff wishes to practise his trade, this does not prevent the defendant from discriminating against the plaintiff, providing of course he does not do so on any of the grounds prohibited by the Ontario Human Rights Code, R.S.O. 1970, c. 318.

31 As to the question of monopoly, one might also add that the Government is perfectly at liberty, at any time, to grant as many standardbred racetrack licences to other operators as it deems advisable. But this does not detract from the fact that a monopoly or quasi -monopoly presently exists in fact over a particular area of the Province.

32 Dealing next with the question as to what, if any relief, the plaintiff can obtain from the O.R.C. rules, one must consider rule 15.02 quoted at the beginning of this judgment and on which the plaintiff mainly relies.

33 I have, for reasons already stated, held that the O.R.C. rules, generally speaking, were intra vires that Commission and were valid and effective, even though not promulgated or authorized by Order in Council. When one considers O.R.C. rule 15.02 in the light of the limiting words of s. 15 of the Racing Commission Act to the effect that the rules are to be deemed to be of an administrative and not of a legislative nature, and in the light also of the general principle that a statute must not, in the absence of absolutely clear and unambiguous language to that effect, be interpreted so as to abrogate, limit or prejudice a basic established right, the only interpretation that can reasonably, legally and fairly be put on the text of that particular regulation is that the defendant, under penalty of suffering the sanctions provided for in the O.R.C. rules, or those of the C.T.A. which might have been validly incorporated by reference in the O.R.C. rules, must honour as a pass to its racetrack, all licences issued by the O.R.C. to owners, trainers, drivers or stable employees, for the purpose of allowing them to practise their trade. This is clearly a direction addressed to the operators of racetracks pursuant to the Commission's power to regulate horse-racing. The breach of this direction by the operator of a racetrack renders him subject to whatever sanctions or penalties may be legally imposed by the Commission, but does not create a right in any or all of the licensed personnel to sue in a Court of law, in their own name, for a remedy on the basis of a right acquired by any of them against any operator. The O.R.C. cannot, because it is not clearly so stated in the Act, grant to a third party any right over the business or property of a racetrack operator. This does not mean that the Commission cannot, as a condition to being licensed as a racetrack operator, insist and direct that a licensed operator act in a specified way and, more particularly, accept all O.R.C. licensed drivers, trainers, owners or stable hands.

34 Since the defendant has therefore not been deprived of any of his basic property rights, or the rights or privileges incident thereto, and since the plaintiff has not been granted any basic or personal right over the property or business of the defendant, the remedy which the plaintiff seeks to enforce is clearly not available to him in a Court of law. His forum and his method of obtaining redress is to address himself to the O.R.C. to have it take whatever action it may deem appropriate under the circumstances, against the offending operator, pursuant to the power vested in the O.R.C. and in accordance with its rules and regulations. Should the O.R.C., without justification, refuse to act or consider the complaint, then the plaintiff would have a redress at law against the O.R.C. but not against the defendant.

35 For the above reasons the action of the plaintiff is dismissed with costs.

Action dismissed.