Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Dines v. *Wolfe, from the Supreme Court of New South Wales; delivered 2nd February*, 1869.

Present:

LORD CHELMSFORD.
SIR JAMES WILLIAM COLVILE.
SIR JOSEPH NAPIER.

THEIR Lordships do not think it necessary to hear the learned Counsel for the Respondent in this case.

This is an Appeal from the Judgment of the Supreme Court of New South Wales granting a new trial; and the only question to be decided is, whether the verdict is satisfactory, and ought to be permitted to stand. The Jury, by their verdict, found that the Plaintiff was entitled to a sum of £500, "being the amount of his stakes deposited to abide the event of a race, inasmuch as the Stewards of the Australian Jockey Club supervised the starting of the horses;" in other words, that the Plaintiff was entitled to his own stakes back again, because the race was run under the auspices of the Jockey Club.

Now, if the race was actually run, it is quite clear that the Plaintiff cannot be entitled to recover back his stakes. The Plaintiff, however, says that the race was the subject of an agreement, and that the race was not run according to that agreement. The agreement is in these terms:—"Mr. Dines agrees to run a match with 'Kyogle' and Mr. Doyle's 'Traveller,' under the following terms and conditions, viz. that the match shall be for £500 a-side, to be run over the Randwick Race Course, fourteen days before the Randwick Autumn Meeting, 1863. Distance, three miles; one event; weight for age. The match to be run under the Australian Jockey Club rules. The match to be

run under the auspices of the Australian Jockey Club. That a deposit of £100 sterling a-side is now placed in the hands of Mr. James E. Wolfe, hereby appointed stakeholder, to bind the match, and that the remainder of the money shall be deposited in the hands of the stakeholder fourteen days previous to the race; and in the event of either party failing to comply with the above conditions, the sum now deposited shall be forfeited to the party fulfilling the terms of the agreement." Then there is a stipulation as to the final deposit.

The Plaintiff gave evidence on the trial, that "When the jockeys went to the scales, after the race, and 'Traveller's' jockey was being weighed, I asked the weight, 8 st. 9 lbs.,—that is the weight for four-year-olds. My horse is four years old, an entire weight 8 st. 9 lbs. My horse carried that weight. Before the jockey left the scales, I protested that the horse was a five-year-old, and had carried four-year-old weights. I had a written protest, and handed it in, because I knew he was a five-year-old. I put a £5 note in with it." This evidence clearly refers, not to the time at which the weighing was taking place, but to the day after the race was run, when, according to a letter to which we have been referred, the Plaintiff protested against the 'Traveller' being declared the winner, stated that he could produce certificates to prove that he was five years old, and enclosed the sum of £5.

Now, if the Plaintiff really thought that the agreement had been broken, and that it would be unfair for the other party to run his horse without being weighted, I think he ought to have refused positively to run the race. But one cannot help observing that he was not unwilling that the race should be run, and if his horse had been the winner, he most undoubtedly would not have objected to receive the stakes, while he had in reserve an objection which he thought might invalidate the race if his own horse were the loser.

But the Plaintiff also objects that the race was not run under the agreement, because the stakes were not deposited with the Treasurer of the Jockey Club. There is no written rule as to the deposit of the stakes with the Stakeholder of the Jockey Club, nor is there any evidence that there is any

inflexible rule upon the subject. All the evidence is contained in a letter written by the Treasurer to Mr. Doyle, in which he says, "I find that the match-money (£1000) has not yet been paid into the hands of the Treasurer of the Australian Jockey Club (Mr. Martyn). As the match is to be run under the management of that body, it is necessary that the money should be lodged with the Treasurer previous to starting."

It appeared by the evidence that it was the Plaintiff who refused to allow the money to be paid over to the Treasurer. Mr. Lackie, who is one of the Judges of the Jockey Club, said, "Before the race, the Stewards doubted about acting, not having the stakes. It was put to the owners and stakeholder that the money should be given to the Treasurer. They were all present. All fell into the arrangement except Dines. Wolfe was agreeable if indemnified. Doyle also consented. The stakes were not handed over. The Stewards thought it better that the race should be run, and the money remain. The race was then run." Therefore, supposing it to be a rule of the Jockey Club that the stakes shall be deposited with their Stakeholder, the Plaintiff agreed to run the race under the rules of the Jockey Club, and of course under this rule as to the deposit of the stakes as one of them. Could he, then, take advantage of his own non-compliance with the rule, to demand his stakes back again? Put the case another way. The Plaintiff agreed to run the race according to the rules; he must therefore be taken to have known that the deposit of the stakes with the Stakeholder of the Club was one of those rules. But he agreed to appoint Wolfe to be the Stakeholder, and he paid his £500 to Wolfe according to the agreement. This sum must be taken to be in Wolfe's hands to abide the event under the agreement; and the agreement incorporates the rules of the Jockey Club. Therefore, the Plaintiff himself, knowing this rule, has expressly agreed that that rule shall not enter into the agreement between him and Doyle, and that the money shall be deposited with another Stakeholder. It is therefore quite impossible that he can, after the race has been run under that agreement, object that the race was improperly run and that it was no race at all, because the money had not

been paid over to the Stakeholder of the Jockey Club under their rules.

Assuming that such an objection might have been *made* (it would have been a very extraordinary thing if it could have been under the circumstances); but assuming that an objection might have existed, can it be contended on the part of the Plaintiff, considering his conduct after the race, that it was competent to him to make such an objection to Doyle being entitled to the amount of the money which depended upon the race? The 67th Rule of the Club (it may as well be mentioned, although the case does not depend upon it) is in these terms: "When the qualification of any horse is objected to before starting, the owner must produce a certificate, or other proper document or evidence, to the Stewards or Clerk of the course before the race is run, to prove the qualification of the horse." It is impossible to avoid the observation that, if the Plaintiff really meant to object to the age of 'Traveller,' he should have followed this rule, and should have stated his objection to the age of the horse, and required the owner to produce a certificate of his age before the starting. He did nothing of the kind. Then the Rule goes on thus: "And, if he should start his horse without so doing, the prize shall be withheld for a period to be fixed upon by the Stewards, at the expiration of which time, if the qualification be not proved to the satisfaction of the Stewards, he shall not be entitled to the prize, though his horse shall have come in first, but it shall be given to the owner of the second horse. When the qualification is objected to after starting, the person making the objection must prove the disqualification." This condition applies to Mr. Dines's case.

The 68th Rule is this: "When the age or qualification of a horse is objected to, either before or after the running, the Stewards shall, if they think fit, order an examination of the horse's mouth by competent persons, and call for all such evidence as they may require, and their decision shall be final." And the 69th: "Any person requiring a horse's mouth to be examined must pay the expense of such examination, unless the horse is proved to be of the wrong age, in which case such expense shall be paid by the owner of the said

horse." Now the Plaintiff says, "I had an objection to this race as being of no value at all—no race at all." But did he stand upon that objection? No! On the day after the race he writes a letter to the Stewards of the Australian Jockey Club in these terms:—"Gentlemen, 'Traveller' having started in this match as a four-year-old, I protest against him being declared a winner. I can produce certificates to prove him five years old. I am, gentlemen, your obedient servant, Richard Dines. I enclose £5."

What is the fair and reasonable effect of this letter under the circumstances of this case? It is perfectly clear that it amounts to an acknowledgment that the race was run under the rules of the Jockey Club, the Plaintiff insisting upon one of those rules and his right to take advantage of it, and to take advantage of it precisely in the manner prescribed by the rules. He remits the question therefore to the Committee of the Jockey Club under these particular rules. The jury, constituting themselves a tribunal of appeal from the Jockey Club, say that they are of opinion that the Stewards of the Australian Jockey Club did not give a full and fair investigation of the circumstances of the case. But by the 68th Rule, the Stewards are to judge of the evidence which is sufficient to satisfy their minds upon the subject referred to them, for "the Stewards shall, if they think fit, order an examination of the horse's mouth, by competent persons, and call for all such evidence as they may require, and their decision shall be final."

Therefore, even supposing the Stewards had dealt with the evidence in a very different manner from that in which they appear to have done, still, they being the judges as to what evidence is to satisfy their minds, they must decide for themselves, and their decision is to be final.

But there was no want of a full examination on the part of the Stewards, but the contrary. The ground for denying that the investigation was a full and fair one is that the Stewards refused to adjourn upon the application of the Plaintiff, who desired to examine further witnesses. It appears that upon the first day of the inquiry the Plaintiff gave his evidence, and handed in several certificates to prove the age, foaling, and branding of the horse.

For what purpose did he require an adjournment? The certificates had been admitted. He had the full benefit of them. They probably were not the best evidence; but there they were, and they were in his favour. He required an adjournment in order that he might examine as witnesses the persons who had sent the certificates and who were up the country. Therefore he only wanted to confirm the certificates by *viva voce* testimony; and we do not think it was at all unreasonable for the Stewards to say, "We have had the certificates. We know precisely all that these witnesses can tell us upon the subject; therefore we require no further evidence than that which is before us, which enables us to come to a satisfactory decision."

The result is this, that the Plaintiff could not under any view of the case be entitled to a verdict. If there were no decision at all of the Stewards, or if their decision was insufficient on any ground, still, if the race was run, the Plaintiff cannot recover his stakes back again. And he could not be entitled to recover the whole of the stakes without a decision in his favour as to the age of 'Traveller,' which he has failed to obtain.

Under these circumstances, there can be no doubt whatever that the New Trial was properly granted by the Supreme Court; and therefore this appeal must be dismissed with costs.