Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Kingston Race Stand, Limited (Defendants), Appellants, v. the Mayor and Council of Kingston (Plaintiffs), Respondents, from the Supreme Court of Judicature of Jamaica; delivered 3rd August 1897.

Present:

LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.
MR. WAY.

[*Delivered by Mr. Way.*]

This is an appeal from an order of the Supreme Court of Jamaica setting aside a judgment for the Defendants and directing a new trial in an action for the recovery of land in which the Appellants were Defendants and the Respondents Plaintiffs. The land sought to be recovered was portion of the Kingston Race Course—part of it being the site upon which the stand is erected and the rest some small paddocks or enclosures adjoining.

The Plaintiffs alleged in their Statement of Claim that the race course was acquired by the Corporation of Kingston under the authority of an Act of the Local Legislature (49 Geo. III. ch. 28) and that it was dedicated to the use of the public by that Statute which contains an express provision to the effect that it was "to be "at all times open from 5 a.m. until 8 p.m. for "the use and recreation of the public." It was further alleged that under or by virtue of Law VIII of 1866 the race course was vested in the

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Churchwardens of the parish of Kingston who allowed the Municipal Board of the City and parish of Kingston to manage it and that ultimately it was transferred to and vested in the Plaintiffs under Law XVI of 1885. The Defendants pleaded possession. The Plaintiffs for some reason or other offered no evidence in support of their allegations although it appears incidentally from documents admitted in the course of the trial that they must have been well-founded. The consequence was that it was not open to the Courts below or to this Board, as the learned Counsel for the Respondents admitted, to entertain questions which would have been worthy of serious consideration if they had not been excluded by the manner in which the case was conducted—such as the question whether it was possible for the Defendants or any one else to defeat the statutory rights of the public—whether the possession of the Defendants such as it was did in fact interfere with the enjoyment of any part of the race course by the public and whether the true view of the position of the Defendants was not that they were merely licensees. The Chief Justice indeed in his judgment on the application for a new trial expressed an opinion that this last question was open as matters stood. But it is difficult to see how that view can be supported in the absence of evidence showing that the race course was vested in the Plaintiffs solely for the purpose of being used and kept for the benefit of the public for whom the Plaintiffs were in fact merely custodians and managers.

However that may be the Plaintiffs came forward at the trial claiming to be owners with the ordinary rights and liabilities of owners and the case was fought on that footing.

It appeared at the trial that for many years the stands for the races were temporary

structures put up before and removed after each meeting but in May 1881 a number of gentlemen styled a Race Committee whom the Appellants represent applied for and in June 1881 obtained from the Municipal Board "permission to erect "a grand stand and suitable enclosures and "paddocks immediately adjoining on such site "on the Kingston Race Course as is delineated "and described in the plan * * prepared at the "instance of such Committee by John Parry Esq. "the City Surveyor" and the resolution granting such leave proceeded to order "that Mr. Parry "do co-operate with the said Committee in such "work at the same time protecting the interests "of the Board and the general public whom "they represent." The Appellants had previously (in March) applied to the Municipal Board for a lease of the land in question for 999 years for racing purposes. This application was refused in August as the Municipal Board was advised that having regard to the Act 49 Geo. III ch. 28 they had no power to comply with it. A copy of the opinion obtained by the Board was sent to the Committee.

Subsequently to the permission being given the Race Committee erected a grand stand and fenced the paddocks and enclosures which are the subject of this action. Early in 1894 the Respondents having made inquiry into the legality of the permission which had been given by the Municipal Board to the Race Committee applied to the Appellants for a rental of 20*l.* per annum and afterwards for possession of the premises. Being unable to obtain any definite reply from the Appellants in the correspondence which lasted over a year the Respondents brought the present action. The writ was issued on the 21st May 1895.

At the trial it was assumed on both sides that the Appellants went into possession as tenants at

will of the Respondents and, the local statutes of limitation being the same as the English, the principal controversy was whether the Appellants had been in possession for 13 years without payment of rent—that is for a year after the tenancy at will began and for the period of limitation afterwards. As to the race stand and the fence by which it was enclosed it was not denied that both had been put up in 1881 or 1882 and that a caretaker for the Appellants had lived upon the premises to which except on race days and other similar occasions the public had no access. As to the paddocks the case was different. The only evidence of the Appellants' possession was their occasional use of the paddocks at races and that they were fenced in by the Appellants. Although several of the witnesses alleged that the paddocks were enclosed when or shortly after the stand was erected others alleged the contrary. Henry Priest for example said "The paddock I know. Up to "1885 that land was not enclosed, nor 1886 "either." This clearly was evidence to be submitted to the Jury on behalf of the Respondents.

The jury having shown a not unnatural reluctance to find for the Respondents they were recalled after their retirement by the learned Judge who directed them that the Respondents had not proved possession by themselves for 12 years before action brought and consequently their verdict should be for the Defendants.

Their Lordships are unable to concur in this direction. There was even upon the aspect of the case which was presented at the trial evidence to be submitted to the jury as to the enclosure of the paddocks which if believed entitled them to find for the Respondents as to part of the land in dispute and the jury ought to have been told that as the title of the Respondents under whom the Appellants' claim was admitted it could only

be displaced by evidence that the Respondents had been out of and the Appellants in undisputed possession for 12 years after the expiry of the alleged tenancy.

On these grounds their Lordships agree in the conclusion at which the Supreme Court have arrived and they will humbly advise Her Majesty to dismiss this appeal of which the Appellants will pay the costs.