with trust money, or severable property, the plaintiff who has established some equitable proprietary interest may take that property out of the bankruptcy; a charge secures the plaintiff's claim against those of the general creditors. There seems to have been no urgent reason for requiring such protection, since it was not suggested that the estate was insolvent; at all events the distinction between the various remedies and their nature was never clearly related to the issues.

J. M. HAYNES.*

ADMINISTRATIVE LAW

Jurisdiction of the courts over domestic tribunals — natural justice

The English courts have long displayed an unwillingness to interfere in the affairs of 'voluntary associations'. The jurisdiction they have exercised over their affairs has been a limited one. This attitude was exemplified by Brett L.J. in *Dawkins* v. *Antrobus*:

> . . . In my opinion there is some danger that the Courts will undertake to act as Courts of Appeal against the decisions of members of clubs, whereas the Court has no right or authority whatever to sit in appeal upon them at all.[1]

Such an attitude was, no doubt, designed to discourage club members from transferring their private feuds to the courts, and it may well be that such matters are better left to the clubs themselves. It is more questionable, however, whether all the organisations classed as 'voluntary associations' should be allowed the same degree of autonomy in their internal affairs.

In *Beale* v. *S.A. Trotting League (Incorporated)*[2] the association was the S.A. Trotting League, an incorporated body constituted in accordance with the provisions of the Lottery and Gaming Act 1936-1956, s. 22(a) (S.A.). The objects of the League are 'to govern control supervise and regulate trotting and trotting racing in the State of South Australia'. The League consisted of one delegate from each club affiliated with the League. The plaintiff Beale was a

* A student at the Faculty of Law, University of Adelaide.

1. (1881) 17 Ch.D. 615 (C.A.), 630.
2. [1963] S.A.S.R. 209.

member of the S.A. Trotting Club (Inc.), a club affiliated with the League. He was also the owner of a horse registered by the League.

The Constitution of the League empowered it to set down rules and regulations in relation to trotting. Under rule 391 the stewards could 'fine disqualify or suspend the trainer and fine or disqualify any other person (including the owner)' who was party to a horse not being raced on its merits. Under rule 541 an Appeal Committee was constituted 'to hear and determine appeals against the decisions of the Stewards'. The plaintiff had been suspended for twelve months under rule 391. His appeal to the Appeals Committee was dismissed. The plaintiff then commenced an action in the Supreme Court, claiming, *inter alia*, a declaration that the disqualification was void. The declaration was granted by Travers J., but on appeal his decision was reversed by Napier C.J., Chamberlain and Hogarth JJ.

The essence of the case for the League was firstly, that there was no right of access to the court, and that Beale was limited to such remedies as he could get from the domestic tribunals of the League, and secondly, that even if there was a right of access, there were no grounds justifying interference with the decision of the stewards or that of the Appeal Committee.

In the opinion of Travers J.,[3] a claim to have access to the courts might be based on alternative grounds, these being the showing of a proprietary interest in the assets of the organisation, or the existence of enforceable contractual rights. To decide the latter question, the nature of the particular association was all important. On the conditions for court intervention all members of the Full Court agreed with Travers J. Thus, Napier C.J. said that while intervention was not limited to protecting 'rights of property', nevertheless 'the jurisdiction [had] not so far been exercised, otherwise than for the protection of the party against some tort . . . or against a breach of contract'.[4] The law was stated in similar terms by Chamberlain J.[5] and Hogarth J.[6]

It was on the application of the law to the case in hand that the Full Court differed from Travers J. The plaintiff had contended that he was a member of the defendant League, and enforceable rights existed between members and the League, and that he also had a proprietary interest in the League and its assets. This conten-

3. *Beale* v. *S.A. Trotting League (Inc.)* [1963] S.A.S.R. 209, at 213.
4. *Id.*, at 230.
5. *Id.*, at 239.
6. *Id.*, at 249.

tion was rejected.[7] Travers J. held that the clubs affiliated to the League were not members of the League, but merely had 'the status of being registered clubs on the register of the League'. Hence the plaintiff, who was a member of a club, could not thereby be a member of the League. Nor, on the construction of the Act constituting the League, could the plaintiff have a proprietary interest in it. However, Travers J. accepted the second contention for the plaintiff, that, though not a member of the League, he was a contracting party with it, the rules of trotting constituting an enforceable contract.[8] The effective control of trotting would require 'something more binding than the legally unenforceable rules of a mere social club'. Travers J. also accepted the third contention of the plaintiff, that submission to the League's tribunals created a contract in terms of the rules.[9] Thus, there was an enforceable contract between the plaintiff and the League, quite apart from any question of a proprietary interest. The plaintiff did have a right of access to the court.[10]

The Full Court found, on the other hand, that the plaintiff had no right of access to the court. Napier C.J. agreed with Travers J. in rejecting the plaintiff's first contention.[11] He also rejected the second contention. In his opinion the rules were 'not promulgated as the terms of a contract, but as a code for the regulation and control of the sport or business of trotting'.[12] The sanction behind the rules lay in the imposition of fines. These were not recoverable by legal process, but an 'Unpaid Forfeit List' was equally effective in its own way. On the third contention Napier C.J. expressed no final opinion, finding this unnecessary for reasons which appear below.[13] Chamberlain J. did not discuss any of these contentions, since the claim failed on its merits anyhow.[14] Hogarth J. agreed with Napier C.J. and Travers J. on the first point.[15] On the second point he recognised the possibility of a contract in terms of the rules Since, however, the plaintiff was not a member of the League, it was necessary to show knowledge of the existence of the rules and agreements, express or implied, to be bound by them.[16] His Honour found that there was not sufficient knowledge of the contents of the

7. *Beale* v. S.A. *Trotting League (Inc.)* [1963] S.A.S.R. 209, at 214, 215.
8. *Id.*, at 215-217.
9. *Id.*, at 217.
10. *Id.*, at 218.
11. *Id.*, at 230.
12. *Id.*, at 231.
13. *Id.*, at 232.
14. *Id.*, at 248.
15. *Id.*, at 249.
16. *Id.*, at 250.

rules to enable him to infer *consensus ad idem*.[17] Nor could a contract be implied from the submission to jurisdiction.[18]

Thus, on the preliminary issue of access to the court the Full Court adopted the traditional approach and showed no inclination to mitigate its rigours. Both Napier C.J. and Hogarth J. required clear proof of the existence of a contract, and were unwilling to imply a contract from the circumstances of the case.

Quite apart from showing a right of access to the court, it was also necessary for the plaintiff to convince the court that the decision of the stewards should be reversed.

Travers J. held[19] that the plaintiff had a right to complain of any failure to observe 'the rules of natural justice'. As His Honour said: 'There is a singular lack of unanimity in the judicial descriptions of the court's function.'[20] The test to be applied by the court was an objective test—was there evidence reasonably capable of supporting the decision? Although some of the authorities supported the test of honesty, that subjective test was relevant only in the sense that the court would intervene more readily if *mala fides* were suspected. Thus, the court must restrict itself to an objective test, and would not in applying this test substitute its view of the correct finding on the available material. Applying this test, Travers J. found that there was no evidence on which the stewards could reasonably have found that the horse was not driven on its merits.[21] As well as satisfying this test, the rules of natural justice must be observed. Perhaps because the decision was already found to be unreasonable, His Honour did not find it necessary to state these requirements in detail. The hearing was defective, however, at least in the failure to make the issues clear to the party accused, to enable him to present an adequate defence.[22] The result was that there was not a 'fair and proper inquiry', the rules of natural justice were not observed, and there was no evidence reasonably capable of supporting the decision. The League was in breach of its contract, and the suspension was void.[23]

As was said above, the Full Court on appeal found that there was no right of access to the court. It also found that even if there were, the rules of natural justice had been complied with, and that there was evidence reasonably capable of supporting the decision.

17. *Beale* v. *S.A. Trotting League (Inc.)* [1963] S.A.S.R. 209, at 251.
18. *Id.*, at 252.
19. *Id.*, at 218.
20. *Id.*, at 219.
21. *Id.*, at 223.
22. *Id.*, at 224.
23. *Id.*, at 228.

Napier C.J. was of the opinion that Travers J. was 'far too legalistic' in his approach. His Honour referred to the Court of Appeal decision in *Ridge* v. *Baldwin* as supporting the view that the requirements of natural justice depended on the nature of the case.[24] Where a tribunal was acting within its authority:

> . . . all that natural justice requires is (1) that it should act in good faith, and that the party charged should (2) know the substance of what is charged, and (3) have an opportunity of answering it.[25]

He was satisfied that these requirements were observed. But even had he decided to the contrary, the decision may still have been valid, since he inclined to the opinion that the action of the stewards was of an executive rather than a judicial nature.[26] The Court of Appeal decision in *Ridge* v. *Baldwin* was relied on here, but this point has since been overruled by the House of Lords.[27]

Chamberlain J. stated the requirements of natural justice in similar terms. He rejected the test of reasonableness. Relying on *A.W.U.* v. *Bowen*[28] he held that the tribunal was merely required to act honestly.[29] This they had done. Similarly, the rules of natural justice were satisfied. Although the plaintiff was not 'told in so many words' of the charge, he must have been aware of the object of the inquiry. The essential element was the opportunity to present a defence, and this the plaintiff had.

Hogarth J. agreed substantially with Napier C.J. and Chamberlain J. on these issues. He made the same error as Napier C.J. in holding the decision of the stewards to be 'of administrative or executive nature rather than judicial', and decided that no inquiry was in fact necessary. However, the inquiry which was held had satisfied the requirements of natural justice.[30]

The result was then, that the appeal to the Full Court was allowed, and the suspension stood.

The case is noteworthy for the agreement over the relevant legal rules and the widely divergent application of them to the facts of the case. The latter quite possibly reflects a difference in attitude

24. [1962] 1 All E.R. 834 (C.A.), 844. The point was unaffected by the overruling of this decision by the House of Lords ([1963] 2 All E.R. 66).
25. [1963] S.A.S.R. 209, 233.
26. *Ibid.*
27. See *Ridge* v. *Baldwin* [1963] 2 All E.R. 66 (H.L.).
28. (1948) 77 C.L.R. 601, 629 *per* Dixon J.
29. [1963] S.A.S.R. 209, 242.
30. *Id.*, at 253, 254.

to the role of the courts in relation to the affairs of voluntary associations. As was mentioned above, cases such as *Dawkins* v. *Antrobus*[31] were emphatic in their disclaimer of any general right to intervene in the affairs of voluntary associations. Dissatisfaction has been felt with the contractual and proprietary tests. This has manifested itself in suggestions that the tests be abolished altogether, or in a liberal application of the tests.

An American writer, Chafee,[32] rejects the finding of a property interest as largely a fiction, and as being unsatisfactory anyhow since it is (or should be) an immaterial factor in deciding whether intervention is allowable. The contract theory is also unsatisfactory when applied to an unincorporated body. Chafee concludes that the interest which is protected is in fact the member's relation to the association. As he himself admits, this theory receives no support judicially. He is supported by Lloyd,[33] who argues that because of the economic importance of many voluntary associations, for example, trade unions, that intervention be based simply on public policy. The court is of course confronted with conflicting policies in this field. Many such bodies require a considerable degree of autonomy for their efficient working. At the same time, their economic importance to their members requires some degree of external supervision—this seems undeniable. To base this supervision on contract or proprietary interests seems unduly restrictive. Even where these conditions are interpreted liberally, difficulties are encountered in classifying a member's interest under one of these divisions. In *Beale* v. *S.A. Trotting League (Incorporated)* the court was precluded from going beyond the common law rules. At the same time, only Travers J. seemed willing to use them liberally. Neither Napier C.J. nor Hogarth J. appeared inclined to do anything other than look for a contract consciously entered into with full knowledge of all terms.[34] The notion of a contract implied from submission to the tribunals seemed most likely to lead to a relaxation of the common law rules, but this also failed to find favour.

Accepting then that the plaintiff must work within this limiting framework, the grounds on which the court will interfere are also important. Again, there was substantial agreement on the requirements of natural justice, and the court's formulation of these is supported by the House of Lords in *Ridge* v. *Baldwin*.[35] The very

31. (1881) 17 Ch.D. 615 (C.A.).
32. 'The Internal Affairs of Associations Not for Profit' (1930) 43 Harv. L.R. 993.
33. 'Disqualifications imposed by Trade Associations – Jurisdiction of Court and Natural Justice' (1958) 21 M.L.R. 661, 664.
34. See [1963] S.A.S.R. 209, especially at 250-252.
35. [1963] 2 All E.R. 66.

generality of these rules, and the importance of the facts of the particular case, make it difficult to criticise their concrete application. The mere fact, however, that a tribunal is not bound by strict rules of procedure should not lead to any relaxation of the rules—quite to the contrary where proceedings are more subject to the will of the tribunal. Since the authorities reject the requirement of reasonableness the plaintiff can rely only on *mala fides*. Once again, it is doubtful whether such a high degree of autonomy is acceptable in the case of such bodies.

One can only conclude that the present law allows a plaintiff only rudimentary protection. While the protection is capable of being extended by judicial action, the chances of success remain relatively slight. One can only agree with Lloyd[36] that this is a field of law in need of development, but the scope for judicial development appears limited.

J. J. DOYLE.*

36. (1958) 21 M.L.R. 661, 667, 668.

* A student at the Faculty of Law, University of Adelaide.