

**RACING PENALTIES APPEALS TRIBUNAL REASONS
FOR DETERMINATION OF MR D MOSSENSON (CHAIRMAN)**

APPELLANT: AVON MACOMISH

APPLICATION NO: A30/08/115

PANEL: Mr D Mossenson (Chairman)
Mr J Syme (Member)
MR T Mulligan (Member)

DATE OF HEARING: 2 and 18 February 1993

Mr B J Singleton, QC and Mr J F O'Halloran (instructed by Blake Dawson Waldron) appeared for the appellant.

Mr R J Davies, QC appeared for the respondent.

The Stewards of the Western Australian Trotting Association carried out an inquiry at Gloucester Park commencing on 8th December 1992 and continuing on the 21st December 1992 into the analyst's report of the blood sample taken from ADVOCATOR following its winning performance in race 5, the Russell Roberts Discretionary Handicap, which was run at the Northam Trotting Club meeting on Wednesday the 30th of September 1992. The analyst from the Racing Chemistry Laboratory reported the presence of salicylic acid in the sample to the extent of 25.2 micrograms per millilitre of blood. The referee samples were subsequently analysed at the Australian Jockey Club Laboratory and it was reported that the blood contained salicylic acid at 14.8 ug/ml and 24.9 ug/ml.

Mr Macomish, who is the trainer/driver as well as the owner of ADVOCATOR, did not dispute the analysts' reports in relation to the blood sample.

At the inquiry Dr Rieusset, the Association's veterinary consultant, told the Stewards that in his opinion salicylic acid is a drug within the Rules of Trotting, that it quite

often appears in the urine of a horse having come from naturally occurring feed stuffs, but that it is not an endogenous substance in a horse. He further said that the level of 25 was very high and would not have come from feed stuffs. It was his opinion that the level which was found in ADVOCATOR indicated an administration of some form of salicylates and, because of the fact that salicylates are non-steroidal and anti-inflammatory, that it was highly likely to have had an effect on the central nervous system or the muscular skeletal system of the horse. Dr Rieusset was of the opinion that it was not possible for the levels of salicylic acid to be present in ADVOCATOR based on the horse's feeding program at the relevant time.

Mr Stenhouse, Chief of the Racing Chemistry Laboratory, also gave evidence at the inquiry. He told the Stewards that "... if the level is well and truly over the normal levels ... then I guess we have to assume that it's come from some other way rather than feeding, which ... then puts it to being an administration of a prohibited substance."

At the time of the inquiry the only State to have set levels for salicylic acid for the purpose of the Rules of Trotting was South Australia, which had prescribed a level of 6.5 micrograms per millilitre of blood.

At the inquiry the appellant was not able to explain the high level of salicylic acid which was detected in ADVOCATOR's blood. He did address the questions of his movements after the race including his absence from the horse as well as the level of security which was maintained at his stable.

The Stewards came to the conclusion that Mr Macomish should be charged under Rule 364(a) of the Rules of Trotting. Rule 364 states that:-

"Where a swab, blood, urine or other sample taken from a horse is shown to contain a drug or drugs and the Stewards have not given permission for the administration of a drug or drugs -

- (a) the trainer or other person in whose custody or under whose control the horse was at the time shall be deemed guilty of an offence and liable to disqualification for life or any lesser period and/or to a fine in an amount not exceeding \$2,000.

- (b) the horse from which such swab or sample is taken may be disqualified by the stewards from the race or races in which it competed on the day upon which the swab was taken.
- (c) for the purposes of this Rule, the swab, blood, urine or other sample referred to may be either the initial swab, blood, urine or other sample referred to in Rule 360 or the referee sample of the blood, urine or other sample referred to in Rule 360 and in the event of it being shown that the said referee sample contained a drug or drugs for which the Stewards have not given permission for the administration of either at the time the said referee sample was taken or at any other time then it shall be immaterial that no drug or drugs were shown to be contained in the initial sample."

The wording of the charge was as follows:-

"that as trainer of ADVOCATOR, for Race 5, the Russell Roberts Discretionary Handicap, at Northam on Wednesday, the 30th of September 1992, the blood samples taken from the pacer subsequent to the race were shown to contain the drug Salicylic Acid, for which the Stewards have not given permission for the administration of."

Mr Macomish was informed of his rights under Rule 364A which potentially affords a defence to a person so charged as that rule specifies:-

"The -

- (i) owner trainer or other person referred to in Rule 362; and
 - (ii) trainer or other person referred to in Rule 364;
- shall not be guilty of an offence if he shall satisfy the Stewards that he took all reasonable and proper precautions to prevent the administration of a drug to the horse therein referred to."

This Appeal concerns the interpretation and application of the definitions of "drug" and "prohibited substance" as defined in rule 1 of the Rules of Trotting which were amended effective from the 27 November 1991. Although the definitions have been amended again since then, the definitions at the relevant time were as follows:

"'Drug' in relation to a horse entered for a race shall mean a prohibited substance. In these Rules the word 'drug' shall be used interchangeably with the words 'prohibited substance' and vice versa and shall be deemed to include substances capable by repute of affecting the central or peripheral nervous system, the cardiovascular system, the respiratory, alimentary/digestive, muscular/skeletal or uro/genital systems, all hormones, vitamins administered other than orally, analgesics, tranquillisers, stimulants, depressants, anti-inflammatory drugs, or coagulants, and any substance included as an ingredient thereof any drug or prohibited substance as hereinbefore defined in any quantity and any other substance used

as an ingredient in formulating or preparing such drug or prohibited substance for the purpose of rendering the same in a form suitable for the application and ingestion or administration. Any substance autogenous or prohibited by the Controlling Body whether entirely or beyond prescribed levels, shall be deemed to be a drug or prohibited substance for the purpose of these Rules. For the purpose of determining whether any substance is a drug or prohibited substance under this definition any measure, level or quantity of such substance found by analysis in a horse, shall be deemed irrelevant unless such substance is an endogenous substance in a horse, or the substance has been declared by the Controlling Body to be a drug or prohibited substance if found in the horse to be present at a level prescribed by the Controlling Body.

The Controlling Body hereby declares the following to be prohibited substances:

- (1) Any quantity of sodium bicarbonate or other agent or agents which modify the physiological buffering capacity of the body of the horse, whether alone or in a mixture of substances, which when ingested by a horse is found to have produced a bicarbonate concentration, or total carbon dioxide concentration or blood alkalinity reading of a level to be determined by the Controlling Body or higher level. Any increase in the above readings found on a subsequent test after the horse has remained in its racing stall shall create a presumption that the substance has been administered to the horse for the purpose of affecting its biological systems.
- (2) Any agent reputed to be capable of modifying the physiological buffering capacity of the body of a horse, proved to have modified such physiological buffering capacity."

"'Prohibited substance' means 'drug' present in a horse entered for a race or trial and may be used interchangeably with that word under these Rules."

After pleading not guilty to the charge Mr Macomish was granted an adjournment by the Stewards and the matter did not proceed in a substantive way until a further hearing which took place on 21st January 1993 at which time the Stewards concluded:-

" that under the Rules of Trotting it is proper for us to accept that Salicylic Acid is a drug. Further in respect to the charge we are

not satisfied that you as Trainer of ADVOCATOR have taken every precaution to prevent the administration of the drug. After considering all those points we find you guilty as charged Mr Macomish."

The Stewards then proceeded to disqualify Mr Macomish for a period of twelve months. Mr Macomish subsequently exercised his right of appeal to the Tribunal pursuant to section 13(1) of the Racing Penalties (Appeals) Act. The Stewards opposed Mr Macomish's application under section 17(7) of the Act. Consistent with the firm approach I adopt in relation to convictions for drug offences, I refused Mr Macomish's application for a suspension of operation of the penalty which was imposed upon him.

The amended grounds of appeal are:-

- "2.1 (a) Against the conviction on the charge that the appellant was guilty of an offence under Rule 364(a) of the Rules of Trotting on the grounds that a sample ("the Sample") taken from the horse "ADVOCATOR" (the "Horse") after a race (the "Race") on 30 September 1992 contained a drug namely "Salicylic Acid", for the following reasons:
- (i) there was no evidence on which the second respondents should have relied that the substance said to be Salicylic Acid was a "drug" as defined in the Rules of Trotting;
 - (ii) the respondents should not have been satisfied on the basis of the evidence before them that Salicylic Acid was a "drug" as defined in the Rules of Trotting;
 - (iii) the respondents should have found that Salicylic Acid was an endogenous substance and then ruled that because the first respondent (the Controlling Body) had not prescribed a level of Salicylic Acid as mentioned in the definition of "drug" it was not possible for them to find the Sample contained a "drug";
- (b) The appellant should not have been charged with this offence or having been charged should not have been convicted of this offence;

- (c) The method of analysis used in this case provides such varying results of the same sample that it should not be relied upon safely to provide an accurate analysis or as the basis of a finding of guilt;
 - (d) the finding against the appellant was against the evidence and the weight of the evidence.
- 2.2 The second respondents should not have admitted into evidence letters written by J M Bourke or Craig J Suann as neither of them was available for cross-examination by the appellant.
- 2.3 The second respondents should have found that the appellant had taken all proper precautions to prevent the administration of a drug to the Horse and accordingly by virtue of Rule 364A(ii) was not guilty of an offence.
- 2.4 The Grounds of Appeal against the Penalty are that the Penalty was excessive having regard to the following:
- (a) the appellant had no intention to defraud or to profit from betting or otherwise from any improper action;
 - (b) there was no evidence upon which the second respondents were entitled to conclude that the presence of the substance in the Horse affected the result of the Race;
 - (c) all of the other circumstances of the case;
 - (d) the character and past record of the appellant; and
 - (e) the economic effect which the penalty will have on the appellant in the future."

At the hearing of the appeal the Tribunal granted leave to the appellant to introduce further evidence from Dr Rieusset whom the appellant had subpoenaed. In the course of answering questions from Counsel for the appellant, Dr Rieusset expressed the belief that endogenous substances come from within the body of an animal itself. When comparing endogenous substances with autogenous substances he stated that he had "a lot of difficulty in differentiating between the two... and I believe that they are very much the same". Dr Rieusset believed that for an animal to have salicylic acid in its system it had to come from outside, not from within the animal. He explained that when a horse eats food the digestive system of the horse reacts

upon the compound and in the course of its digestive system salicylic acid is released.

Dr Rieusset stated that if there is a distinction between autogenous and endogenous it is a distinction that he did not understand, but he maintained his belief that salicylic acid was not endogenous. He acknowledged that he recognised there was a difference between substances such as cortisone and adrenalin, which are produced by the organs without any other assistance, and a substance like salicylic acid and that for salicylic acid to be present in a horse it must come from the outside and not from within the animal.

Counsel for the appellant largely relied on the decision of the Full Court of the Supreme Court of Western Australia in the Application by Roderick John Chambers against the Western Australian Trotting Association and others (No. 1684 of 1992) which was heard on the 7th day of August 1992 and delivered on 20th day of November 1992. In the Chambers matter a writ of certiorari was issued to quash a determination of the Tribunal involving the interpretation and application of the same definitions of "drug" and "prohibited substance", as is relevant to Mr Macomish's appeal, in circumstances where there had been an administration of sodium bicarbonate and no levels had been prescribed. In his detailed reasons for decision His Honour Chief Justice Malcom identified the approach which was adopted by the applicant, namely that on a proper construction of the definition, sodium bicarbonate could only constitute a drug when found in a horse to be at or above the level which had been prescribed by the Controlling Body. On the other hand it was submitted on behalf of the Association and the Stewards by way of reply that sodium bicarbonate was a drug as defined in the first part of the definition because it was capable of affecting one or other of the horse's relevant systems.

Commencing on page 25 of his reasons the Chief Justice analyses the complicated and uncertain language of the definition of "drug" and although he spells out that naturally produced substances are "autogenous", whereas substances that grow from within are "endogenous", for the purposes of deciding the matter it was not necessary to draw a distinction between the two. It is however clear both from the

reasons as well as from a close reading of the definition that in order for the latter part of the definition, where the words "autogenous" and "endogenous" appear, to make sense there must be a distinction between the two types of substances. It is helpful because of the tortuous language used in the definition and relevant to my determination to quote from page 29 onwards of the Chief Justice's reasons:

"The dichotomy between an autogenous or endogenous substance, on the one hand, and a substance specifically and separately prohibited, on the other, is apparent in this part of the definition. Although the construction which I have suggested is compelling, it is not without difficulty. Omitting the alternative, the definition first provides in the relevant part that "any substance autogenous...shall be deemed to be a drug or prohibited substance for the purpose of these rules". Standing alone, those words would produce the surprising result that a self-produced substance in a horse would constitute a drug. Consistently, however, with the earlier part of the definition, the relevant part of the definition proceeds to add a reference to quantity. Thus, the quantity of the substance found by analysis in a horse is deemed to be irrelevant, unless the substance is an endogenous substance in a horse, or has been declared to be a prohibited substance "if found in the horse to be present at a level prescribed by the Controlling Body".

There is a question whether the words in the passage commencing "if found in the horse" apply both to an endogenous substance and a substance declared to be a prohibited substance. In my opinion, although much of the drafting of the definition is inelegant and confusing, the intention seems to be to declare that substances not falling within the earlier part of the definition, if autogenous or prohibited by the Controlling Body, would be deemed to be a drug for the purposes of the Rules, but only if found in the horse to be present at a level prescribed by the Controlling Body.

In the case of an autogenous or endogenous substance, the quantity would necessarily be relevant on the issue of administration. If an endogenous substance were found to be in a horse at a level within the normal range of levels naturally occurring, this would tend to negate any allegation of the administration of such substance. Further, the administration of such substance in a quantity which maintained the relevant level within the range which occurred naturally in a horse would not result in the substance being deemed to be a drug within the meaning of the definition.

Finally, the definition provides that:

"The Controlling Body hereby declares the following to be prohibited substances:

- (1) any quantity of sodium bicarbonate or other agent or agents which may modify the physiological buffering capacity of the body of*

the horse, whether alone or in a mixture of substances, which when ingested by a horse is found to have produced a bicarbonate concentration, or total carbon dioxide concentration of blood alkalinity reading of a level to be determined by the Controlling Body or higher level. Any increase in the above readings found on a subsequent test after the horse has remained in its racing stall shall create a presumption that the substance has been administered to the horse for the purpose of affecting its biological systems.

- (2) *any agent reputed to be capable of modifying the physiological buffering capacity of the body of a horse, proved to have modified such physiological buffering capacity."*

Given that sodium bicarbonate is an endogenous substance, the measure, level or quantity of such substance would be necessarily relevant before sodium bicarbonate could be said to constitute a drug for the purposes of the definition. Hence, the necessity for further definition by way of prescription of a level. In any event, without the assistance of some further definition, some difficulty would be caused if the matter was taken no further. In any case involving the alleged administration of sodium bicarbonate it would be necessary to prove that the quantity of sodium bicarbonate exceeded that which occurred naturally and to such an extent that the quantity of sodium bicarbonate present would bring the substance within the scope of the definition. In such circumstances both the characterisation of the sodium bicarbonate as a drug under the definition and the proof of administration would be difficult.

It is apparent that in order to overcome these difficulties, the Controlling Body made the declaration with respect to sodium bicarbonate and similar agents which is contained in the final part of the definition. In doing so, the Controlling Body seems to have considered that it was necessary or appropriate to declare that any quantity of sodium bicarbonate which, when ingested by a horse, was found to have produced, for example, a total carbon dioxide concentration reading of a level to be determined by the Controlling Body or a higher level would bring sodium bicarbonate within the scope of the definition of "drug".

It is common ground that the Controlling Body has not made a determination of any relevant level as contemplated by the declaration contained in this part of the definition. It follows, in my opinion, that to the extent that the purpose of the declaration was to prescribe a relevant

quantity of sodium bicarbonate for the purposes of the definition, the Controlling Body has failed to do so. Alternatively, to the extent to which the purpose of the declaration was to declare sodium bicarbonate a prohibited substance if found in the horse to be present at a level prescribed by the Controlling Body, the declaration is ineffective because no such level has been prescribed. In both cases a further step by way of prescription is contemplated, namely the determination of a relevant level by the Controlling Body.

Mr Davies QC, on behalf of the Association and the Stewards, sought to overcome this difficulty by limiting the purpose, scope and effect of the declaration at the end of the definition to merely facilitating proof of administration. From that it followed that as, in the present case, administration had been admitted, the omission to prescribe a level was irrelevant because there was evidence that sodium bicarbonate was a substance capable of producing carbon dioxide which in turn affected one or other of the horse's relevant systems. Consequently, sodium bicarbonate constituted a drug for the purposes of the definition because it fell within the wider meaning of "drug" in the earlier part of the definition.

I am unable to accept this argument because sodium bicarbonate is an autogenous or endogenous substance. Consequently, it can only constitute a drug within that part of the rule which specifically refers to an autogenous or endogenous substance. The effect of the declaration is that sodium bicarbonate, whether regarded by the Controlling Body as an endogenous substance or as one specifically and separately prohibited, is only a "drug" for the purposes of the definition if found to have produced a reading of a bicarbonate concentration, total carbon dioxide concentration or blood alkalinity of a level "to be determined by the Controlling Body". It follows that, in the absence of such a determination, sodium bicarbonate does not constitute a prohibited substance for the purposes of the definition.

...

In my view it was not open to the Association or the Stewards to rely on the second part of the declaration and contend that the decision of the Tribunal could be supported on that new ground."

Even with the benefit of these learned and detailed reasons the matter is not entirely free from doubt partly due to the ambiguous wording of the definitions and also due to the uncertainty in the evidence before the Tribunal as to what is the difference between endogenous and autogenous substances. Despite this doubt, I am satisfied that the interpretation approach which was pursued by the appellant is the preferred one. I believe that it would be wrong to repeat the error which occurred in the Chambers appeal and treat salicylic acid as a drug under the first part of the

definition. I am of the opinion that for salicylic acid to be classified as a drug or a prohibited substance for the purposes of the Rules of Trotting as they existed at the relevant time, that substance must be found in a horse to be present at a level prescribed by the Controlling Authority. In other words I am satisfied that salicylic acid, like sodium bicarbonate soda, does not fall within the earlier part of the definition and that it is only treated as a drug for the purpose of the definition depending upon the level prescribed. The quantity of salicylic acid like sodium bicarbonate in a horse is relevant to the administration as both are an autogenous or an endogenous substance.

It is regretted that the handing down of the Tribunal's determination was not able to be arrived earlier, particularly as the appellant was originally refused a stay. It is noted however, that the appellant's application for suspension of the disqualification was not renewed when the matter first came before the Tribunal and arguably the provisions of the Act do not prevent a party reapplying in the event of new or other relevant circumstances coming to light following a refusal to grant a stay at the time of lodgment of an appeal.

For the reasons set out above I am satisfied that the Stewards erred in accepting that salicylic acid was a drug. The question whether or not proper precautions had been taken to prevent administration of the substance in these circumstances becomes irrelevant.

I would uphold the appeal.



D. MOSSONSON (Chairman).
05.04.93



RACING PENALTIES APPEALS TRIBUNAL REASONS
FOR DETERMINATION OF MR J SYME (MEMBER)

APPELLANT : AVON MACOMISH

APPLICATION NO.: A30/08/115

PANEL: Mr D Mossenson (Chairman)
Mr J Syme (Member)
Mr T Mulligan (Member)

DATE OF HEARING: 2 and 18 February 1993

IN THE MATTER OF an appeal by Mr A Macomish against the determination of the Western Australian Trotting Association Stewards on 21 January 1993 imposing a twelve months' disqualification under Rule 364.

Mr B J Singleton QC and Mr J F O'Halloran (instructed by Blake Dawson Waldron) appeared for the Appellant.

Mr R J Davies QC appeared for the Stewards.

Rule 364 states:

"Where a swab, blood, urine or other sample taken from a horse is shown to contain a drug or drugs and the Stewards have not given permission for the administration of a drug or drugs-

- (a) the trainer or other person in whose custody or under whose control the horse was at the time shall be deemed guilty of an offence and liable to disqualification for life or any lesser period and/or to a fine in an amount not exceeding \$2000.

- (b) The horse from which such swab or sample is taken may be disqualified by the stewards from the race or races in which it competed on the day upon which the swab was taken."

At a hearing before the Stewards the Appellant was charged as follows:

"That as trainer of ADVOCATOR, for Race 5, the Russell Roberts Discretionary Handicap, at Northam on Wednesday, the 30th September 1992, the blood samples taken from the pacer subsequent to the race were shown to contain the drug Salicylic Acid, for which the Stewards have not given permission for the administration of."

The Appellant appealed against his conviction.

Mr Macomish was found guilty of an offence under Rule 364(a) as being the trainer of a horse shown to have contained a drug. This drug was specified to be Salicylic Acid. At the time of the conviction the Rules did not lay down a maximum permitted level of Salicylic Acid.

It is stated that Salicylic Acid is an autogenous or endogenous substance. That is one which is produced within the horse's system either of itself or by the action of the body upon certain foodstuffs. The evidence on this point before the Stewards and before the Tribunal, is not clear or conclusive.

There is room for doubt as to the nature of the detected substance, whether it is endogenous, or autogenous. It may indeed be neither.

The Stewards erred in admitting the letters of Drs Bourke and Suann, thus denying to the Appellant the right to cross-examine.

In Chambers v WATA 20 November 1992 in the Supreme Court, the Hon Chief Justice supports the view that an autogenous or endogenous substance must be detected at a prescribed level to be deemed to be a "drug".

In the present instance the doubt as to the autogenous/endogenous character of the substance should be resolved in the Appellant's favour.

If it is held that the detected substance is autogenous/endogenous, and it should be noted that the Hon Chief Justice in Chambers v WATA above does not distinguish between these terms for this purpose, then in the absence of a prescribed level the substance cannot be deemed to be a "drug".

In these circumstances the conviction of the Appellant was unsafe, the appeal should be allowed and the conviction and penalty set aside.



JOHN SYME, MEMBER
5 APRIL 1993



**RACING PENALTIES APPEALS TRIBUNAL REASONS
FOR DETERMINATION OF MR T MULLIGAN (MEMBER)**

APPELLANT : AVON MACOMISH

APPLICATION NO.: A30/08/115

PANEL: Mr D Mossenson (Chairman)
Mr J Syme (Member)
Mr T Mulligan (Member)

DATE OF HEARING: 2 and 18 February 1993

IN THE MATTER OF an appeal by Mr A Macomish against the determination of the Western Australian Trotting Association Stewards on 21 January 1993 imposing a twelve months' disqualification under Rule 364.

Mr B J Singleton QC and Mr J F O'Halloran (instructed by Blake Dawson Waldron) appeared for the Appellant.

Mr R J Davies QC appeared for the Stewards.

Rule 364 states:

"Where a swab, blood, urine or other sample taken from a horse is shown to contain a drug or drugs and the Stewards have not given permission for the administration of a drug or drugs-

- (a) the trainer or other person in whose custody or under whose control the horse was at the time shall be deemed guilty of an offence and liable to disqualification for life or any lesser period and/or to a fine in an amount not exceeding \$2000.

- (b) The horse from which such swab or sample is taken may be disqualified by the stewards from the race or races in which it competed on the day upon which the swab was taken."

At a hearing before the Stewards the Appellant was charged as follows:

"That as trainer of ADVOCATOR, for Race 5, the Russell Roberts Discretionary Handicap, at Northam on Wednesday, the 30th September 1992, the blood samples taken from the pacer subsequent to the race were shown to contain the drug Salicylic Acid, for which the Stewards have not given permission for the administration of."

The Appellant appealed against his conviction.

This appeal has been argued on the basis that the Salicylic Acid found in the blood of the horse did not come within the definition of a drug.

Mr Singleton, Counsel for the appellant submitted that the Salicylic Acid found in the horse fitted the terminology of an "endogenous substance" and as no level had been prescribed by the Controlling Body, it could not be termed a drug or prohibited substance.

At page 35, of the transcript he stated -

"and it is clear in our submission from that judgment (Chambers) that he (the Chief Justice) is directing attention to two different forms of the drug being created. One where it is made within itself, within the horse of its own volition. Where something else has occurred, what we would expressly call the implanting into the horse e.g., food and if a drug is created by its normal dietary process, followed by a digestive process which produces a particular drug and that has to be regardless of the amount, that drug is to be viewed

as an endogenous drug".

Mr Singleton makes other references to the judgment of the Chief Justice and the thrust of his submission is that there are "two different forms of the drug being created". Where the drug is created through the normal digestive process then it is "endogenous". Mr Davies disagrees with the statement that it is "endogenous" when the drug is produced through feedstuffs. He also refers the Tribunal to the reasoning of the Chief Justice.

He says at page 41 -

"there is also evidence that sodium bicarbonate is a substance which naturally occurs in the body of a horse. The presence of sodium bicarbonate is related to the concentration of carbon monoxide in the blood".

That is only a reference to the fact that it is the carbon monoxide which is actually mentioned in the sodium bicarbonate.

"While it is not expressly stated it is explicit from the evidence before the stewards that the sodium bicarbonate is an endogenous substance."

This is exactly the opposite use to the one that Mr Singleton wishes to attribute to it. That is requiring the introduction of foodstuffs.

On page 8 of the transcript of the stewards' hearing, Dr Rieussét made the following statement -

"Well it (Salicylic Acid) is commonly in the urine of horses because certain feedstuffs contain certain amounts of Salicylic Acid, but a horse does not naturally produce Salicylic Acid itself. So in fact a horse is quite capable of existing without the presence of Salicylic Acid."

A similar assertion was made before this Tribunal (see page 4 of the transcript) and does not appear to have been

challenged.

Upon considering the dictionary definition of "endogenous" - "growing from within", I am of the opinion that a substance created by the introduction of feedstuffs through the digestive system of the horse does not meet the description of the term "endogenous".

As the Salicylic Acid found in the blood of the horse is not endogenous the substance comes within the definition of a drug or prohibited substance and the defendant has been correctly convicted of an offence under Rule 364.

I would dismiss the appellant's appeal against conviction.

T. E. Mulligan

TED MULLIGAN, MEMBER
5 APRIL 1993

