

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 74 of 1992

BETWEEN: THE HON. MR. JUSTICE CAREY, P. (Ag.)
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE WOLFE, J.A.

BETWEEN	CHARLES OFF BETTING COMPANY LIMITED	DEFENDANT/APPELLANT
A N D	DELROY WHITE	PLAINTIFF/RESPONDENT

Gordon Robinson for the appellant

Clarke Cousins for the respondent

March 22 and April 2, 1993

WOLFE, J.A.:

This is an appeal from the judgment of Panton, J. who, by an order dated the 10th day of July, 1992, adjudged the appellant liable to pay the respondent "Nineteen thousand three hundred and forty dollars plus interest at 6% from the 30th day of June 1990 to the 10th day of July 1992." We dismissed the appeal and promised to reduce our reasons into writing. We now do so.

This was, indeed, a very simple and straightforward action. The respondent on the 30th day of June, 1990, wagered with the appellant, who is a bookmaker, the sums of three hundred dollars (\$300) and one hundred dollars (\$100) for a "Quinella" and "Exacta" bet respectively on the thirteenth race of the day. There was no dispute between the parties that the respondent won both bets. The "Quinella" bet, when calculated, paid a dividend of thirteen thousand two hundred and sixty dollars (\$13,260) whereas the "Exacta" bet paid a dividend of nine thousand three hundred and forty dollars (\$9,340).

On the Monday following the race day, the respondent

presented his vouchers for payment. Payment was refused. The respondent thereafter commenced proceedings to recover the sum due and owing.

At the hearing before Panton, J. the appellant contended that there was no valid contract between the parties and further thereto that the entire transaction was steeped in fraud in that the bets were placed after the results of the race were known to the respondent.

The issue at the hearing was, therefore, a straight question of fact. Was the bet placed after the results of the race were known? If the answer to the question was in the affirmative, then the contract would be invalid having been fraudulently entered into.

In its attempt to establish fraud the appellant called two witnesses in the persons of Delores Minott, the clerk who wrote the bets and Rohan Daley, a race commentator, a self-confessed fraudster. Daley testified at the hearing that he, acting in concert with other persons, delayed the commentary on the race which was being run in England. The results having been made known to him by telex, he announced the results for the benefit of his co-conspirators by a code known as the "2 down", whereupon the conspirators would place their bets. The commentary would then be made. Daley said this was the system employed in respect of the thirteenth race on the 30th day of June, 1990.

For Panton, J., the choice was between the respondent who had not been implicated in the alleged fraud and Daley, a self-confessed rogue whose evidence was uncorroborated. The learned trial judge preferred the evidence of the untainted respondent to that of the self-confessed fraudster. This preference was amply supported by the evidence and cannot be properly disturbed.

Further, there is no evidence to support the contention that the offer by the respondent to contract was refused by the appellant and that the said refusal was communicated to the respondent. The learned trial judge found that the offer was

accepted, thereby creating a binding contract. In my view, this was an incontrovertible finding.

For these reasons, I was unable to find any merit in the two grounds which were filed, namely:

- "(1) That the Judgment was unreasonable in light of the evidence,
- (2) That the Learned Trial Judge erred in holding that a valid contract existed between the Plaintiff and the Defendant in light of the terms of the Defendant's Rules governing the acceptance of offers to bet by customers."

GORDON, J.A.:

I concur.

CAREY, P. (Aq.):

I entirely agree that the appeal should be dismissed, the judgment of the court below affirmed with costs to the respondent, for the reasons given by Wolfe, J.A.