IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

IN COMMON LAW

SUIT NO. C.L. 1155/72

BETWEEN JOHN CHIN PLAINTIFF

A N D WATSON'S (OFF COURSE BETTING LTD). DEFENDANT

Mr. L. Cowan for Plaintiff

Mr. Ronald Williams Q.C., and Mr. Peter Millingen instructed by Clinton Hart for Defendant.

J U D G M E N T

The evidence in this case was heard before me on the 18th - 20th February, 1974 and after listening to the addresses of the Attorneys I reserved judgment.

The Plaintiff is a baker of Content, Retreat, St. Mary, and the Defendant is a company carrying on the business of Book Makers with Head Offices at 40 Half Way Tree Road and with some 67 branch offices all over the country. The Plaintiff sued the Defendant to recover the sum of $9,562.70 which the Plaintiff claims he won on a bet placed with the Defendant, at the Defendant's branch office at Tower Isle on the 1st September, 1972. The Defendant refused to pay the bet and alleged in his defence that the Plaintiff acted in collusion with Glen Pink, the Defendant's servant or agent in the transaction of making the purported wager and in seeking to obtain payment of the alleged wager, and consequently the plaintiff had been guilty of fraud. The particulars in support of the allegation of fraud were to the effect that the Plaintiff had procured the writing of the wager after the result of the races were known and that the Plaintiff procured that a duplicate of the said wager be included in the agent's return of

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of sales with the intent that the duplicate of the said wager be treated as genuine when it was not.

As an alternative defence, the defendant pleaded that its Rules which governed the making of the wager provided by an express term that no bet would be regarded as such or as having been accepted until it had been locked in the timing apparatus supplied by the Defendant before the set time of the races, and before the results of the specified events were known and that this express term was not complied with in that the Plaintiff's bet was not locked in the timing apparatus before the time set for the specified races or at all and accordingly the Plaintiff's purported bet was void and invalid.

In support of his claim the Plaintiff gave evidence and did not call any witness. Mr. Chin said he is a betting man and on Friday evening the 1st September, 1972 while on his bread route, he stopped at the Tower Isle branch of the Defendant's betting office. It was then between 7.30 p.m. and 8 p.m.; the betting office was open and Mr. Glen Pink, the defendant's agent was in attendance. In cross-examination he gave the time as between 8 - 8.30 - 9 p.m., but he could not remember the exact time. One customer was ahead of him and Mr. Chin took a Watson's programme and from it selected five horses scheduled to run in five different races in the English Racing on the following day, 2nd September, 1972. Mr. Chin handed his selections to Mr. Pink who wrote them up on a Watson's Voucher. Mr. Chin paid his stake money of $36,00, received the original of the voucher E103721, received in evidence as Exhibit 1, and went his way. Mr. Chin checked to see that the stake was correctly written and that his five selections had all been correctly written, that the voucher was signed by Mr. Pink and dated the 2nd September, 1972 and then it was that he left. The whole operation had taken no more than 15 minutes. Mr. Chin saw that there was printed words on the voucher Exhibit 1 but he did not read them. He did

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not observe whether there were Rules displayed in the betting office and none was specifically brought to his attention.

It was about 4 p.m. - on Saturday that Mr. Chin returned to the betting office to check on the result of the races. He found the betting office to be open, he saw Mr. Pink there and he learned of the success of all of his five selections. Mr. Pink advised the Plaintiff to return the following Monday, 4th September, 1972, to collect his winnings. As arranged, Mr. Chin attended at the betting office at Tower Isle on Monday morning. He saw Mr. Pink, he saw a Pay-Out slip which had come from the Defendant's head office showing that Voucher E103721 had won $9,562.70 but Mr. Chin did not get any money. There was a note against his winnings requesting him to come to head office to collect his cheque and in addition Mr. Pink explained that such large winnings were invariably dealt with at head office. Thither Mr. Chin drove and after a short interval he was shown into the office of Mr. Anthony Watson, the Managing Director of the Defendant company.

They had a conversation which started pleasantly enough. It transpired that both men had attended the same school. Mr. Watson asked the Plaintiff some questions. He wanted to know if the Plaintiff had placed bets at the Tower Isle branch before and the amount that it was usual for him to bet; where he got the racing form from which to make his selections; what time he got the racing forms in the nights; whether he would be able to recognize any earlier betting vouchers made by him at the Tower Isle branch. Mr. Chin did not like the tenor of the questions. He labelled them rude. He said that Mr. Watson was alleging that he, the Plaintiff was a thief; that the nature of the questions led him to believe that Mr. Watson was making insinuations against him. Consequently, the Plaintiff took up his voucher Exhibit 1 from Mr. Watson's desk, and demended that he be paid his winnings without further ado. Mr. Watson did not pay. He said he would not, until he had spoken to his agent Pink. When Mr. Watson gave evidence for the Defendant

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he had a fuller recollection of this conversation.

The Plaintiff's next step was to return to Mr. Pink at the Tower Isle branch office, and in his own words he raised "one hell" with Mr. Pink for his money. Mr. Pink comforted Plaintiff by saying he was going to head office on the following day when presumably he would clear up any difficulties.

On Tuesday, September 9, 1972 the Plaintiff returned to the Defendant's head office. There he saw Mr. Pink and again demanded payment from Pink. The Plaintiff was frank. He said, "I saw Mr. Pink in an office. I went in to Mr. Pink, cursed a few bad words, and told him I wanted my money".

Later that day Mr. Watson came into the office and had an interview with Mr. Pink. This lasted for over an hour; all this while Mr. Chin was waiting patiently. Then his patience ran out, and he barged into Mr. Watson's office and demanded his winnings. He did not get paid. What happened was that an enorvous man appeared in front of Mr. Chin. Mr. Chin's pleas fell on deaf ears as this man ordered him from Mr. Watson's office. Mr. Chin did not dare tangle with this huge fellow so he returned to Tower Isle, copied the Paying Out Slip which showed his calculated winnings and then consulted his Attorney.

The cross-examination of the Plaintiff was directed to show that the Plaintiff had had such a course of dealings with the defendant through its agent at its Tower Isle branch office, that he was familar with the defendants rules. Mr. Chin said he had placed bets at the Tower Isle branch office between five and ten times over a number of years, that he had received vouchers similar to Exhibit 1, on each occasion but that he had never at any time read these vouchers. The Plaintiff admitted that although he know that all bets which he made with the defendant were governed by the Defendant's rules, he did not at any time make any effort to determine what those rules were. It just did not interest him to determine what those Rules were and he did not think that he ought

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to read the printed words on the voucher. The Plaintiff said he knew that there was a limit of $10,000.00 that could be won on each bet; that he got this knowledge, he thought from the Gleaner but not from an advertisement therein containing the defendant's Rules. He certainly did not get this information from reading the voucher Exhibit 1 or one similar to it. Mr. Chin did not know if there was a large set of Rules exhibited on the wall of the Tower Isle branch office, which wall is opposite to the entrance door.

It was further sought to show in cross-examination that the Plaintiff knew that a copy of the betting voucher was to be locked in the Defendant's timing apparatus before the races were run and before their results were known. The witness said he supposed it was the agent's responsibility to put the copy in the security bag i.e. the copy of the voucher which he had received. He knew that it was the practice at that branch for the copy to be put in the security bag and he supposed that the Security bag could be called a timing apparatus. The witness said he knew on the 1st September, 1972 that the purpose of putting the copy in the security bag was that the copy could be locked in the bag and provide evidence that a voucher corresp0nding to that copy had been issued or made. He went on to say that he did not know on the 1st September, 1972 that it was a rule of the Defendant that a copy of the voucher should go in the security bag, nor did he know that ~~it~~ this was the practice of the defendant company. This last statement was in direct contradiction to what he had earlier said was his knowledge of how the security copy was treated.

In re-examination the witness was asked:-

Question: "Did you expect your bet to be placed in the timing apparatus after you had placed it?"

Answer: "I don't know what he would have done with it."

Later on the witness said he did not know anything about timing apparatus referred to by the attorney for the defence.

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In cross-examination it was suggested to the Plaintiff that Mr. Watson had a conversation with the Plaintiff after Mr. Watson had spoken to Mr. Pink, and that Mr. Watson told the Plaintiff that the Plaintiff's version as to the time when the voucher was purchased differed from the account given by Mr. Pink. It was specifically put to the Plaintiff that Mr. Watson told Plaintiff that Mr. Pink had said the bet was bought on the morning of Saturday the 2nd September, 1972. The Plaintiff denied that this conversation took place between Mr. Watson and himself and denied that he had ever bought the bet on the Saturday 2nd September, 1972. He said he was no-where near that betting office on 2nd September, 1972 until about 4 p.m. when he went to check on his bet.

The cross-examination sought to show that both by law and in practice, the Defendant's betting office at Tower Isle closed physically on Saturdays by about 1.30 - 1.45 p.m. To this the Plaintiff did not agree. His account is that he has seen that betting office open all day on Saturdays.

THE DEFENCE

In his opening speech Mr. Williams drew the Court's attention to the fact that he had carefully refrained from making any suggestion to the Plaintiff dealing with paragraphs 4 and 5 of the defence. Those were the paragraphs which alleged collusion between the Plaintiff and the Defendant's agent, Glen Pink and that the bet was written up after the results of the races were known. Mr. Williams admitted that he did not have any specific instructions from any witness which would conclusively establish fraud. It was in those circumstances, said he, that he did not think it right to put these suggestions to the Plaintiff. Mr. Williams argued that it did not mean that that defence was to be treated as abandoned. If it can be established it would have to be by way of inference and the Court's view of the credibility of the Plaintiff. In his closing address Mr. Williams submitted that in the absence of Mr. Pink it was virtually impossible for the Defendant to prove fraud by direct

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evidence. He asked the Court to infer fraud from the circumstances of the case. This the Court declines to do.

It is convenient to deal here with the evidential burden as it relates to questions of fraud. Fradulent conduct must be distinctly proved and it is not allowable to leave fraud to be inferred from the facts. Davy v. Garrett 7 Ch. D. p. 489. In the 7th Edition of Kerr on Fraud and Mistake, the learned author states on page 672.

> "The law in no case presumes fraud. The presumption is always in favour of innocence and not of guilt. In no doubtful matter does the Court lean to the conclusion of fraud. Fraud is not to be assumed on doubtful evidence. The facts constituting fraud must be clearly and conclusively established. Circumstances of mere suspicion will not warrant the conclusion of fraud. The proof must be such as to create belief not merely suspicion."

It is true that fraud can be proved by circumstantial evidence just as well as it can be established by direct evidence. Parfitt v. Lawless (1872) 2-3 L.R.P. and D. at 462. That proof must be on the clearest and most indesputable evidence. In McCormick v. Grogan (1869-70) 4 L.R. English and Irish Cases 82 at page 97 Lord Westbury said.

> "My Lords, the jurisdiction which is invoked here by the appellant is founded altogether on personal fraud. It is a jurisdiction by which a Court of Equity, proceeding on the ground of fraud, converts the party who has committed it unto a trustee for the party who is injured by that fraud. Now being a jurisdiction founded on personal fraud, it is incumbent on the Court to see that a fraud, a malus animus, is proved by the clearest and most indesputable evidence. It is impossible to supply presumption in the place of proof, nor are you warranted in deriving those conclusions in the absence of direct proof, for the purpose of affixing the criminal character of fraud which you might by possibility derive in a case of simple contract."

A party who is quite unable to face another and put to him

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that he acted in a fradulent manner can in no wise come to the back door and ask the Court to squeeze out of the the circumstances this damaging finding of fraud. It would be mischievous if this could be done. It would be oppresive if a Plaintiff who had been given no opportunity while he was in the witness box to deny that he acted fradulently were to be found by a Court, from an examination of certain circumstances, to have been guilty of fraud. Counsel for the defence in this case should have abandoned the defence of fraud as soon as it was manifest to him that he had no proper instructions on which to proceed on this issue.

The main defence relied on by the Defendant as stated earlier, was that by the express terms of the defendant's Rules governing the purported wager, it was provided that no bet would be regarded as such or as having been accepted until it had been locked in the timing apparatus supplied by the defendant before the set time of the races and before the results of the specified events were known. The defendant alleged that the Plaintiff bets were not locked in the defendant's timing apparatus at all and were accordingly void and invalid.

For the defence the witness called were Mr. Anthony Watson the Managing Director of the Defendant Company; Mr. Gauntlett its Chief Security Officer; Mr. Nicholson its Route Collector for the North Coast Route which included the Tower Isle branch; Mr. Reid its Data Processing Manager, and Miss Lilleith Lawrence its Security Clerk.

Mr. Gauntlett testified that as Chief of Security, he despatched Rules to all the Defendant's 67 branches throughout Jamaica. In April, 1971 he assisted in checking certain parts of the Defendant's Rules, saw to their being printed in large and small copies and then to their eventual distribution. Mr. Gauntlett identified a copy of the "small" rules which were intended for distribution to patrons at betting offices and a copy of the "large"

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rules which were for display in betting offices. Mr. Gauntlett's evidence was that when he last visited the Tower Isle Branch Office in mid August, 1972 two sets of the large rules were displayed in that office - one on the wall facing the entrance door and one on the wall behind the place reserved for the agent. After some objection from Mr. Cowan both sets of Rules were admitted in evidence by the Court. The Route Collector Mr. Nicholson said he saw the large set of Rules hanging in the Tower Isle branch office on the night of 1st September, 1972 and he saw the large rules and some small ones in the same branch office about 1.45 p.m. on the 2nd September, 1972.

The point of difficulty in this case arises from an examination of these Rules. Mr. Watson gave evidence that in 1971, the Defendant company bought out the Shares in a company known as "Off Course Betting (1955) Limited. The Defendant by a resolution of its directors decided to adopt and use the Rules which had been in use by Off Course Betting (1955) Limited. As a consequence the Rules which were exhibited in the betting offices of the Defendant and which were available at the head office of the Defendant for inspection were headed in block letters:-

"Off Course Betting (1955) Ltd :- Rules

25th November, 1968."

Clauses 2 and 3 of these Rules provide as under:-

(2) "No bet will be regarded as such or as having been accepted until it has been locked in the timing apparatus supplied by us before the set time of the race(s) and before the result(s) of the specified events are known."

(3) "All bets are received by us on the distinct understanding that the client will abide by these Rules whether or not the client claims to be in possession of our Rule Leaflets, or whether or not he has read these rules displayed in our Betting Shops."

The evidence satisfies me that copies of these Rules were displayed on the walls of the betting office at the Tower Isle branch office

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of the Defendant. The actual set of Rules then displayed were not produced as the evidence is that new Rules were substituted for those Rules in 1973 and that the old Rules were taken into Kingston and destroyed. In any event a check made for the Tower Isle set of Rules proved to be fruitless.

Was the Plaintiff's bet placed in the Defendant's timing apparatus? The defendant's agent at Tower Isle was supplied with a Clock bag on the night of the 1st September, 1972. Mr. Nicholdson arrived at Tower Isle and whereas the time at which he arrived might be relevant in another context - suffice it to say that for these purposes, there is no doubt that he did carry and leave a clock bag at that office on that night. Interesting as the actual working of the Clock bag was, when demonstrated before me, I can pass on by saying that it is a device which effectively shows the time at which a particular bag is locked into it and when once locked at the branch office it can only be opened in the Security room at the head office of the Defendant. Miss Lillieth Lawrence whose testimony I unhesitatingly accept swore that she observed when the "clock" of the Clock bag from Tower Isle was opened on the 2nd September, 1972, that she took the Clock bag which had not been interfered with by anyone after its opening, and processed its contents and that the Voucher E103721 was not in that bag. Indeed it was said that the yellow or "Security" copy of Voucher E103721 has never been seen by anyone at the Defendant's head office and this I accept as the truth.

A white copy of the Voucher E 103721 was received from Tower Isle branch on the 2nd September, 1972 in an envelope. That was the proper method of transportation for such a copy of the voucher and this was the copy which was used for computations of winnings in the defendant's head office. It is a rule of the Defendant company to check all white copies which show a win of more than $40.00 with the Security copy from the Clock bag to determine if Rule 2 of its Rules has been complied with. Mr. Reid of the Defendant company duly carried out this check and when he failed

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to find the yellow copy he reported by telephone to Mr. Anthony Watson.

The Plaintiff was in no position to suggest that the "yellow" copy of Voucher E 103721 was in fact locked in the Clock bag and could not effectively challenge the evidence of Mr. Reid and Miss Lawrence on this aspect of the case. The Plaintiff had recourse to the argument that it was the defendant's servant or agent who had responsibility for placing the yellow Voucher in the Clock bag and that the Plaintiff had no control whatsoever over those actions of the Defendant's agent, Mr. Pink. I repeat that I accept the evidence that the yellow or security copy was not enclosed in the defendant's timing apparatus at all.

The defence sought to cast doubt upon the evidence of the Plaintiff by calling Mr. Nicholson to say he did not arrive at Tower Isle with the Clock bag and Racing programmes until betweeen 8.15 p.m. and 8.30 p.m. If that is correct then Mr. Chin could ~~h~~ not have made his selection from Watson's Racing programme at about 7 p.m. Indeed Mr. Chin's evidence is that he could not clearly recall the exact time at which he made his five selections. It could have ~~be~~ been as early as 7.30 p.m. on one of his answers and as late as 9 p.m. on another of his answers. I do not find anything in Mr. Nicholson's evidence which would lead me to believe that Mr. Chin could not have made his selection from a Watson's Racing programme on the night of Friday 1st September, 1972.

A return made by the agent Mr. Pink showed that he had sold tickets commencing with E 103716 and ending at E 103766 all dated 2nd September, 1972. I accept the evidence of Defendant's witness that the security copies of Voucher E 103716 - 103720 were also not locked in the Clock bag. It was contended by Mr. Watson for the Defendant that it was quite impossible for the five vouchers E 103716 -20 to have been sold on the Friday night and for Mr. Chin not to see any of those other client or clients. He did not demonstrate why this was impossible and it must be remembered that

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Mr. Chin said he saw one person ahead of him on the Friday night whom he (Mr. Chin) assumed was buying on the English Races for the following day.

Mr. Watson's evidence is that he had two conversations with Mr. Chin - one on Monday, 4th September, 1972 and the other on Tuesday 5th September, 1972. During the cross-examination of Mr. Chin it appeared to me that only one conversation was being put to Mr. Chin, hence Mr. Cowan for the Plaintiff was careful to re-examine the Plaintiff to find out if Mr. Watson was saying he had already spoken to Mr. Pink or whether it was that he proposed to speak to Mr. Pink.

It appears to me on a careful consideration of all the evidence that the Plaintiff would be entitled to succeed unless the defendant can show that Rule 2 was incorporated in the agreement between the Plaintiff and the Defendant. I arrive at this conclusion as I believe the Plaintiff when he said he bought the bet from the Defendant's agent Mr. Pink at the Tower Isle branch office of the defendant on the night of Friday the 1st September, 1972. I do not place any weight on the fact that Voucher E 103721 is dated 2nd September, 1972 as I accept the explanation of Mr. Chin that he did not querry the date as he knew that it was written in anticipation of the following day's races. The telegram sent by the attorney for the Plaintiff to the Defendant demanding payment for "a bet made on 2nd September, 1972" merely reflects that the alleged winning voucher was dated 2nd September, 1972 and does not assist the Defendant in any of his contentions.

The case was conducted on the basis that Voucher E 103721 was a contractual document. That is clearly so. What the Plaintiff contended was that it was not brought to his attention that the Defendant would be relying on Rules which purported to have been made by Off Course Betting (1955) Limited, as the Rules of Watson's Off Course Betting Limited. It was submitted that the Plaintiff who entered the branch office of the Defendant would know nothing of a

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resolutinn passed by the Defendant's Board of Directors and there was no endorsement whatever on the face of the "Off Course Betting (1955) Limited, Rules" to show that they had been adopted by Watson's Off Course Betting Limited. Further no one specifically brought it to the attention of the Plaintiff that Off Course Betting (1955) Limited Rules, had been so adopted and as a consequence the Plaintiff should not be held bound by something done by the Defendant for his protection and kept secret by him.

He relied on the dictum of Denning L.J. in Spurling (") Ltd. v. Bradshaw (1956) W.L.R. 461 at 466 that:-

> "Some clauses which I have seen would need to be printed in red ink on the face of the document with a red hand pointing to it before the notice could be held to be sufficient;"

and concluded that Rule 2 was a condition which demanded the "red hand" treatment.

Mr. Cowan further submitted that Rule 2 was unreasonable in the sense that it lay with the Defendant to itself commit the breach of the Rule through its agent not locking the voucher in the Clock bag in time or at all and without the defendant expressly providing by rules or otherwise bringing it to the attention of the Plaintiff that the Defendant would not be liable for breaches of contract by its own servants or agents or for their negligence.

It was submitted for the defence that the evidence was overwhelming that the Defendant operated under a set of rules, that those rules were exhibited in the Tower Isle Betting Office, that the rules exhibited in that betting office had been formally approved by the defendant and that those were the rules under which the Defendant was operating. In this state of facts it was submitted that it did not matter that the Rules were headed "Off Course Betting (1955) Limited - Rules." The Voucher Exhibit 1, E103721, made reference in paragraphs 1, 2, 3 to "Our Rules" and paragraph 3 expressly provided in large print:-

> "Our Rules and the Conditions Governing Bets made at our agencies or Branches are on Display in each

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> of our Betting Shops and copies are available on ~~on~~ application to our head office or to any betting shop."

Since these were the only Rules physically hanging in the betting office, the Plaintiff could not say, I have seen them, but as the Rules have a different name from Watson's I am entitled to disregard them.

On the question of notice the defence submitted that there was a course of dealing between the parties as the Plaintiff in making his earlier bets over the years had received similar vouchers, that the printed rules were prominently exhibited in the betting office for one to see as he enters that office and consequently when one considers the content of the Voucher Exhibit 1 -one is driven to the conclusion that either the Plaintiff had actual knowledge of the contents of the Defendant's Rules or that the Defendant had taken reasonable steps to bring the rules to the attention of the Plaintiff.

Mr. Williams quoted with approval the passage from paragraph 593 of Chitty on Contracts, 23rd Edition which is based on the decision in Watkins v. Rymill (1883) 10 Q.B.D. 178 - that:

> "where printed notices are exhibited on premises it is sufficient if the party to be bound has received a printed document which refers him to the notices."

He further relied on Thompson v. London Midland and Scottish Rail Company (1929) A.E.R. Repring 474 for the proposition that even if the Rules were not exhibited in the betting office at Tower Isle, the Defendant would have done enough to state in the Voucher, Exhibit 1, that Rules were obtainable at the Head Office of Defendant there being evidence that rules were always on hand at the head office.

The point which has given me concern is whether the Defendant can properly rely on the Rules which is headed "Off Course Betting (1955) Limited Rules." The Plaintiff has said

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he did not read the rules and consequently he cannot be heard to say that he was misled by the caption. Had he read the Rules and made a conscious decision not to abide by them on the ground that they were not the Rules of the Defendant, one would have expected him to ask the agent, where are the Rules ("Our Rules") which the voucher proclaims are on display in the betting office. There is no doubt as to what the reply would be.

I can find no authority to assist me to resolve this matter. I hold that the Plaintiff was well aware, as he admitted at one stage of his evidence, that the practice at the Tower Isle branch office of the defendant was that bets should be locked in the Clock bag before the running of the race and before the results were known, and I further hold that Rule 2 of the Rules headed;

"Off Course betting (1955) Ltd. Rules",

which were exhibited in that betting office was incorporated with and formed part of the contract between the Plaintiff and the Defendant. I am assisted to arrive at this finding by the repeated reference in the Voucher, Exhibit 1, to Rules, that some of these references were in large and bold type and that there was abundant opportunity for the Plaintiff to familiarise himself with those Rules if he had chosen to do so. I hold that the Plaintiff had been given sufficient notice of the existence of the Rules by the Defendant and that the Rule 2 is wide enough to protect the Defendant whether the non-compliance therewith was due to the wilful neglect of its agent or otherwise. In this regard one must pay special attention to the nature of betting transaction when conducted at a point far away from the head office or other controlling station.

I hold that the Defendant is entitled to rely on the Rules even though it is headed "Off Course Betting (1955) Limited - Rules" as these Rules were openly and prominently displayed over a long period of time in the betting office in a manner not likely to cause confusion or to be a source of misrepresentation

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to prospective bettors and that these Rules had been formally adopted by the Defendant.

Because the Yellow or Security Copy of the Plaintiff's bet was not locked in the Security Bag, the Plaintiff's Claim fails.

There will be judgment for the Defendant with costs to be taxed or agreed.

I.D. ROWE
JUDGE.