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In the Supreme Court of Judicature of Jamaica

Suit No. C. L. 1974/L003

Between Euston Lyn Plaintiff

And Watson's (Off Course Betting) Ltd. Defendant

May 14, 1976

Willkie, J. :

The plaintiff is a businessman of May Pen, Clarendon, and the defendant is a company carrying on the business of Book Makers with Head Office at 40 Halfway Tree Road and with Branch Offices islandwide.

The plaintiff alleges that on 31st December, 1971, he placed two bets at the Sevens Road, May Pen, Branch of the company for which he received vouchers Nos. D. 070495 and D. 070496. That both bets won and he was entitled to the sum of $10,895.85. That a term of each of the contracts stipulated that the maximum amount payable to any one client of the defendant in respect of one day's racing is $5,000. By reason whereof the sum of $10,000 is due and owing to the plaintiff by the defendant in respect of these transactions. That on 3rd January, 1972, and on numerous occasions the plaintiff has requested defendant to pay the amount won but defendant has refused so to do.

The defendant in his defence alleges that on 31st December, 1971, the plaintiff purported to place two bets with defendant which bets the defendant's agent, Mrs. Myrtell Lyn (the wife of plaintiff), purported to accept. That Mrs. Lyn issued the two vouchers.

That by express terms of one of defendant's Rules governing the purported bet, it is provided inter alia that bets would not knowingly be accepted from members of defendant's organisation. That plaintiff was such a member and consequently the bets were void and invalid. That in the alternative the plaintiff in making the bets acted in collusion with Mrs. Lyn and is guilty of fraud. That in the alternative that by express term of another of the defendant's rules governing the purported bet it was provided inter alia that the defendant reserved the right to refuse the whole or any part of any investment and disqualify any bet if the defendant was not satisfied with the bona fides of any such investment. That the

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defendant was not satisfied with the bona fides of the plaintiff's bets and, as it was entitled to do, the defendant disqualify the plaintiff's bets.

At the outset the parties agreed:

(1) That the Off Course Betting (1955) Limited Rules dated 25th November, 1968, are the Rules of defendant company which were in existence at the material time.

(2) That if plaintiff succeeds in the action, in respect of both vouchers mentioned in the pleedings, he will be entitled to $10,000.

(3) All material statements of fact necessary to support plaintiff's claim have been admitted by defendant who raise by way of defence:

(a) all allegation of fraud arising out of the construction of the Rules; and

(b) a claim to exception from liability arising out of construction of the said Rules.

The specific Rules allegedly infringed are Rule 1, Rule 74 and Rule 76.

<u>The Rules:</u>

The first question is, do these Rules apply?

Mr. Willisms for the defendant submitted that these Rules were incorporated in and formed part of the contracts because:

(1) Notice of the existence of the Rules are printed on the vouchers.

(2) The Rules were displayed in the shop.

(3) And the plaintiff must have accepted these Rules as part of the contracts.

Dr. Barnett for plaintiff submitted that the Rules were inapplicable because:

(1) Vouchers, exhibit 2, stipulate:

(1) " All bets are made subject to our Rules and to amendments or addition thereto made by us and published before the date of the bet in any Daily newspaper and these Rules and such amendment and additions govern all wagers between our patrons and ourselves. "

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That it was required that the Rules should be made by the defendant company and should be published before the bet in a newspaper and this was not done.

Mr. Watson's evidence is that originally and up to 1971 the company dealing in the business of Book Makers was:

(1) Off Course Betting (1955) Limited.

(2) This company operated under the Rules, Exhibits 1, 3, 4.

(3) These Rules were published in the Daily Gleaner dated Monday, 25th November, 1968, (Exhibit 4).

(4) In 1971, the present company, Watson's (Off Course Betting) Limited took over the assets and liabilities of Off Course Betting (1955) Limited.

(5) By resolution passed on 1st April, 1971, Rules of Off Course Betting (1955) Limited were adopted by Watson's (Off Course Betting) Limited and these Rules then:

(6) became the Rules of Watson's (Off Course Betting) Limited.

(7) That this resolution was passed by the directors of defendant company.

These bets were placed between plaintiff and defendant company on 31st December, 1971.

Dr. Barnett's submission, as I understand it, is that:

(1) Even if it is accepted that the Rules Exhibit 1 are the Rules of Watson's (Off Course Betting) Limited (and both parties agred that they are);

(2) these Rules were not published in a newspaper before the bets as required.

What Dr. Barnett is saying is that the publication in the Daily Gleaner dated 25th November, 1968, was a publication of the Rules in relation to a company, Off Course Betting (1955) Limited, and that that publication cannot be construed as satisfying the condition in Rule 1 on voucher exhibit 2 i.e. IT WAS NOT A PUBLICATION OF THE RULES BEFORE THE BET IN RELATION TO WATSON'S (Off Course

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Betting) LIMITED.

That in consequence the non-conformity with this condition by defendant would exclude the applicability of these Rules exhibit 1.

To put it another way, Dr. Barnett is saying:

(a) that exhibit 4, the publication of the Rules in the Daily Gleaner was in respect of Watson's Off Course Betting (1955) Limited;

(b) that when this company went out of existence in 1971 the Rules also went with it;

(c) that when the company Watson's (Off Course Betting) Limited took over the assets and liabilities of the other company it was a completely separate and distinct entity;

(d) it was required to make rules of its own if it so desired;

(e) in adopting the rules that existed at the time of the new company (Watson's Off Course Betting Ltd) was existence of Watson's Off Course Betting (1955) Ltd. the/ for the first time of its existence making rules applicable to this new entity; and

(f) for these rules to be applicable they must be published before the bet;

(g) that the publication in the Gleaner exhibit 4 cannot be said to satisfy the requirements laid down for publication when the new company, Watson's Off Course Betting Limited was incorporated or anytime thereafter;

(l) that these rules could come into effect ONLY if the new company Watson's Off Course Betting Limited PUBLISHED IT as the Rules of Watson's Off Course Betting Limited.

Mr. Williams submitted that it was not open to Dr. Barnett to raise this point as it was not pleaded and it should be given no credence by the Court. In the course of his cross-examination of plaintiff, Mr. Williams had brought to the attention of the Court that the Rules as exhibited in exhibits 1, 3, 4 are all headed Watson's Off Course Betting (1955) Limited. That the defendant in this case is a different company. That this matter had been gone through in suit C.L. 1155/72, heard on 18th - 20th February, 1974, before Rowe, J., when documentary evidence tendered that these Rules were adopted by

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the defendant in this case and that these documents have been mislaid in the Registry.

Whatever the situation, both parties have agreed that exhibit 1 are the Rules of the defendant company at the material time i.e. when the bets were placed.

Mr. Williams submitted in the alternative that reference to Daily newspaper in condition 1 on the voucher exhibit 2 relates to any amendments or additions and not to the body of Rules themselves. If this were not so then if the defendant amended a Rule they would have to publish the new Rules before the amendment or admission.

He referred to exhibit 4 and submitted that exhibit 4 showed that the Rules were published. Conditions on vouchers do not say the rules must be published by the defendant. These Rules published albeit by a different entity (Watson's Off Course Betting 1955 Limited). That on plaintiff's own evidence he clearly knew that there were Rules and he said the customers must read them.

It is indeed accurate that Dr. Barnett never pleaded the non-publication in a Daily newspaper of the Rules by the defendant company.

I am of the view that not having expressly pleaded the non-publication, Dr. Barnett cannot now urge this as a defence and I would reject his contention.

Indeed, Dr. Barnett agreed at the outset that exhibit 4 are the Rules of the company at the material time i.e. the time of the placing of the bets.

Implicit in that agreement is the proposition that there is acceptance of all the pre-requirements placed on the company before the company can rely on those Rules, and Dr. Barnett's attempt to make the distinction between:

(a) the existence of the Rules; and

(b) the publication of the Rules before it can become effective, particularly when he never pleaded same is untenable.

The whole purpose of the pleadings is to define the issues

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between the parties for the Court's adjudication, and it is clear from the pleadings that the issue of non-publication if it existed when the pleadings were settled was not made an issue until it was raised in Dr. Barnett's address.

My view is strengthened by the argument of Dr. Barnett that:

> " The Off Course Betting (1955) Limited Rules dated 25th November, 1968, are the Rules of defendant company which were in existence at the material time. "

These are Dr. Barnett's exact words.

In exhibit 4 (i.e the publication in the Daily Gleaner) - the date is appended; so Dr. Barnett is referring to the very publication in which these Rules were published.

I therefore reject Dr. Barnett's submission on this point and hold that the Rules of the company at the material time were as per exhibit 4, and was properly published at the material time i.e. before the placing of the bets.

INTERPRETATION OF RULES

NOTICE:

In considering whether the Rules were incorporated into the contracts between plaintiff and defendant it is essential that Notice of these Rules were reasonably brought to the attention of the plaintiff.

The plaintiff in his evidence stated that apart from the vouchers handed him when he placed the bets he got no placard, leaflet or pamphlet from the defendant. That he has noticed a sheet that was put up on the wall. That before he placed his bet no one suggested that he read the sheet. That he goes to the betting shop almost every day and he has never noticed anyone ever reading this sheet on the wall.

In cross-examination the plaintiff agreed he had been Branch Manager of Watson's when Branch was located on Main Street.

He was asked:

Ques: One of your duties was to keep copies of pamphlets with the Rules on them at the Branch?

Ans: They never send any to me so I could not keep them.

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He denied that Rules looking like exhibit 1 was supplied to him at the Branch. He stated that he got no Rules at all.

Witness admitted that he knew the bets were subject to Watson's (defendant) Rules.

He was asked:

Ques: As Branch Manager you made any effort to get the Rules?

Ans: My only interest at that time was to create business and sell all I can.

THE CUSTOMERS MUST READ THE RULES.

Ques: In order for the customers to read the Rules, you would have the Rules in the office?

Ans: I had none. The Rules I refer to are the Rules on the voucher.

He stated that the only Rule he knew was the one on the voucher and that one is where the maximum payable is $5,000.00. He admitted that in those days there was other printing on the voucher but he can't say what it said as he did not read it.

Plaintiff stated when he said the customers must read the Rules in the betting shop all he noticed was no 18 year old must be there and you place your bet and pay for it.

That when he said the customers must read the rules he never told the customers about the Rules that what he means is that the customers must find out what the Rules are governing their bets.

That when he placed the two bets he was a customer. He was asked:

Ques: So you were also under a duty to find out what the Rules were governing the placing of your bet?

Ans: I never go to find out. My only duty was to buy a bet.

I never go to find out. I am not bound to have a duty to read the Rules.

He stated that he did say other customers had a duty to look up the Rules when they place their bets. That when he is a customer he also has a duty to look up the Ruls that govern the bet. He stated that he did notice a sheet put up on the wall of

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the betting shop.

He stated that when he was manager at Main Street there were no sheet on the wall but when the shop removed to Sevens Road there was a sheet looking like exhibit 3 on the wall of the shop (exhibit 3 is a copy of the Rules). That this was on the public side of the counter. He saw none on the seller's side of the counter. He stated that when he placed his bet there was a placard like exhibit 3 hanging on the wall but he did not read it. That it contained the Rules.

Of course, Mr. Gauntlett, Manager of the Security Department stated when he visited the Branch he checked to see if Rules are available at the office. He stated that during 1971, Rules and placards were desplayed on the wall in the shop at Sevens Road. There were two such placards. One on the customers' side and the other on the wall behind the counter.

Hubert Saunderson, Route Checker, stated that he took copies of the Rules to the shop. Small and large. The small copies were desplayed on the counter; the large desplayed on the wall. He stated at the shop there were two placards with the Rules, one placed on the wall behind the counter and the other on the left hand side of the wall.

I find that I cannot accept Mr. Lyn's evidence that he was not familiar with the contents of the Rules. He was the Manager of the shop at Main Street and he participated in the running of the shop. I find as a fact that he was familiar with the Rules. He knew of their existence and knew their contents. His ascertion that he never read them I cannot accept. Of course, it matters not whether he read the Rules or not.

The vouchers exhibit 2 clearly refer to Rules in bold print. He admits that he knew the Rules were exhibited on the wall but he did not read them. I would hold that the printed notice on the vouchers which referred to the Rules were sufficient to bring the plaintiff's attention to these Rules and even if plaintiff did not read the Rules in such circumstances he would be bound by them.

See Watkins vs. Rymill (1883) 10 Q.B.D. 178.

I would hold therefore that plaintiff was bound by the Rules that these rules were incorporated with and formed part of the contracts between plaintiff and defendant and plaintiff is bound by them.

Rule 3 which reads:

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" 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 desplayed in our Betting shop; "

would bind the plaintiff even if he had not read them providing he had sufficient and reasonable notice of the existence of the Rules and I have already held this to be so.

We come now to dealwith the specific Rules allegedly breached.

RULE 1:

" We reserve the right to accept or refuse any Bet wholly or part thereof that may be offered to us. BETS WILL NOT KNOWINGLY BE ACCEPTED from any person under 18 years of age, OR FROM MEMBERS OF OUR ORGANISATION. We are not responsible for any inaccuracy or omission on our printed Programme and reserve the right to rectify clerical errors. We do not hold ourselves responsible for the incorrect writing out of any Betting Voucher which is a free Service given to our clients. It is the sole onus of our clients or their agents to ascertain that their requirements have been accurately recorded to their satisfaction by carefully checking any Betting Voucher that has been written out for them. No allowance will be made or any claim be entertained if clients fail to comply with this rule. WE RESERVE THE RIGHT TO REFUSE THE WHOLE OR ANY PART OF ANY INVESTMENT AND DISQUALIFY ANY BET IF IT IS ILLEGIBLE OR AMBIGUOUS OR IF WE ARE NOT SATISFIED WITH THE BONA FIDES OF ANY SUCH INVESTMENT. "

The portions in BLOCK LETTERS are those defendant is alleging have been breached.

(a) " BETS WILL NOT KNOWINGLY BE ACCEPTED FROM MEMBERS OF THE ORGANISATION."

The entire import of the rules is to ensure that bets are honestly made. The whole business of Book Makers seem fraught with an ever present danger of dishonesty and collusion and this is no doubt why these rules are laid down. What then do the words "Members of the Organisation" mean? Clearly, it must include all persons who have access to the preparation of vouchers. The timing bags i.e. the persons in direct control of the internal administration of the Betting shop. Were it not so then these persons would control all the facilities for making fraudulent bets. Such persons could easily prepare vouchers of bets on races already run and the rusult of which were already known. In this context can it be said that the plaintiff was a member of the defendant's organisation?

THE EVIDENCE:

MERRICK WATSON, Managing Director of defendant company gave evidence. He stated that the company operates Betting shops through agents who are paid percentage of commission on sales and by salaried employees. That the distinction between agent and salaried employee is that the agent has to be licensed by the Collector General. The salaried employee apparently is not so licensed.

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He stated that all agents and salaried employees are members of the organisation. He stated that, when he refers to defendant's organisation he means "people who are employed in one capacity or the other to the organisation the assets and real estate of the organisation."

He stated he knew the plaintiff and his wife 12 - 15 years ago, when the plaintiff was appointed by his father as Branch Manager of the May Pen Branch of Off Course Betting 1955 Limited. That this Branch was situated at Main Street, May Pen.

That plaintiff operated this Branch until approximately the first quarter of 1969. There were difficulties between plaintiff and the then company over plaintiff not remitting the profits of the Branch to Head Office as a consequence, the witness went to May Pen to a house which he understood to be Mr. & Mrs. Lyn's home. He saw both Mr. & Mrs. Lyn there. That he demanded the profits from Mr. Lyn. He was told that Mr. Lyn did not have it he had gambled it away. That he told plaintiff in the circumstances he would have to discontinue the agency. That Mrs. Lyn started crying and explained that the commissions earned at the Branch was an important source of income to plaintiff and asked that plaintiff be given a chance. That Mrs. Lyn stated she worked in a Bar but would surrender to a great extent the time she spent there and she would be able to assist in the Betting shop because of its opening hours. That she would be able to assist plaintiff in the shop as the cashier and plaintiff could continue the promotions. That they would jointly operate the shop. Mr. Watson said he agreed to the arrangement whereby Mr. & Mrs. Lyn would be joint operators of the shop but Mrs. Lyn alone would handle the cash and be responsible for remittances to Head Office and Mr. Lyn would deal with promotion etc. This was in about April, 1969, At about this time the Branch removed from Main Street to Sevens Road, May Pen. The defendant company at that time was named Off Course Betting (1955) Limited and operated under the Rules exhibit 1.

In 1971, a new company took over the assets and liabilities of Off Course Betting (1955) Limited. This new company was named Watson's Off Course Betting Limited and continued to operate under the Rules, exhibit 1.

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The plaintiff denied that he was a joint manager with his wife of the shop at the time of the bet. He admits he was manager of the shop while it was at Main Street, May Pen, up until Election 1969. He stated that Merrick Watson did complain that he was not sending in the profits the Branch was making. He denied that Watson did speak to his wife and himself at their home in May Pen. He denied that arrangements were then made for his wife and himself to be joint managers thereafter. He stated that he assisted his wife in the shop as any husband would do i.e. he took bets and wrote up vouchers and signed same as agent of defendant.

LESLIE GAUNTLETT was called by defendant. He is Manager of Security of the defendant company and Route Supervisor, for about ten years. In the course of his duties he visits the Branches and hear any complaints the agents have; and see that the Branch is supplied with equipment necessary for its operation and check white copy vouchers which are retained by the Branch and later sent on to Head Office. He stated that the Betting Vouchers are made up in triplicate. Pink copy is given to the customer, yellow copy is locked in the security bag and sent to Head Office. White copy is disposed of as above i.e. when sent in it is checked against the security bag copy. That he knew Mr. & Mrs. Lyn from around 1968. He visited the Branch when it was at Main Street, May Pen. Mr. Lyn was then the agent and Mrs. Lyn assisted him in its operation then around 1969, they became joint managers at Main Street where they stayed until about August 1969, and then they went to Sevens Road. That as far as he was aware they managed the Branch jointly. He saw them whenever he went there; that whoever was there would deal with him at Sevens Road. He would go there and inspect the Branch, see that the necessary equipment was there which would include Vouchers, Rules, machines, carbon paper etc. He would take away the white copies of vouchers and take it back to Head Office, deal with complaints of the managers. He stated that if Mrs. Lyn was not there he would deal with Mr. Lyn in all respects and when Mrs. Lyn was there and Mr. Lyn was not he would deal with Mrs. Lyn in all respects. He stated that as

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far as he was concerned, there was no distinction in the managerial function between Mr. & Mrs. Lyn.

HUBERT SAUNDERSON Route Collector employed to defendant company gave evidence. He stated his duty was to collect the clocks and programmes, agents' cheques, Rules and collect clock bags and cash from the Branches. He has been Route Collector since 1966 and his route included the Branch in May Pen. That he knows Mr. & Mrs. Lyn. First knew them at Main Street Branch. That Mr. Lyn was in charge of that Branch. The Branch removed to Sevens Road and Mr. & Mrs. Lyn were in charge of that Branch. He visited the Branch twice daily every day at Sevens Road. He stated both Mr. & Mrs. Lyn managed the Branch at Sevens Road. That he says this because Mr. & Mrs. Lyn wrote bets and anyone would collect the salary cheque, when he takes it out to them. When he takes cash he gives it to anyone in the shop, Mr. or Mrs. Lyn.

FINDINGS OF FACT

I accept the evidence of Mr. Watson that he did have the conversation with Mr. & Mrs. Lyn at their home in May Pen and agreed arrangements whereby they would jointly manage the shop. I reject the evidence of plaintiff in this regard. I am also satisfied that Mr. Lyn at the time when he placed the bets was at that time joint manager of the Branch with his wife.

Mr. Watson in his evidence defined defendant's organisation to mean:

> " People who are employed in one capacity or the other to the organisation and the assets and real estate of the organisation. "

I would hold that plaintiff came within definition I have outlined above although plaintiff operated as an independent person and was being paid a percentage of commission on sale. Plaintiff when performing the duties of manager of the shop in fact represented the defendant company.

I find as a fact therefore that the plaintiff was "a member of defendant's organisation. "

Mr. Williams submitted that the plaintiff being a member of the

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defendant's organisation. That the bet was void as being in breach of Rule 1. That Mrs. Lyn had no authority to accept such a bet from plaintiff as both of them knew that plaintiff was a member of the defendant's organisation and the Rule prohibited such bets.

RULE 74:

> " The Agent has no authority to make any bets which do not comply with the foregoing provisions and if he attempts to make any such bet, the bet will not be good and valid. For the sake of clarity it is declared that a bet made through the Agent is only a good and valid bet with the Company when the provisions hereinbefore set out shall have been duly and properly complied with. "

RULE 76:

> " 'Agent' as used in these conditions shall include and also mean 'Branch Manager'. "

I agree with this submission and hold that both Mr. & Mrs. Lyn well knew that such bets were prohibited under Rule 1 and yet went on in an attempt to complete the bets. I hold that these bets are void and invalid.

Mr. Williams also submitted in the alternative that plaintiff in making the transaction is guilty of fraud.

In paragraph 8 (a) (b) (c) (d) of his defence the particulars of fraud were pleaded and read:

> " (a) - Placing the said bet with the said Mrs. Myrtell Lyn at a time when both of them knew that the plaintiff was a member of the defendant's organisation.
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> (b) - Placing the said bets with the said Mrs. Myrtell Lyn at a time when they both well knew that they were both acting in breach of the defendant's said Rule.
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> (c) - Procuring that the said Mrs. Myrtell Lyn should accept the said bet at a time when they both well knew that in so doing they were both acting in breach of the defendant's said Rule.
>
> (d) - Seeking to obtain payment of the alleged bet well knowing that the said bet had been placed by the plaintiff and accepted by the said Mrs. Myrtell Lyn in breach of the defendant's Rule. "

The evidential burden is on the defendant to establish fraud. In the judgment of Rowe, J., in the unreported case of John Chin vs. Watson's (Off Course Betting) Limited C. L. 1155/72, tried on 18th - 20th February, 1974, the law on fraudulent conduct and the essentials of proof of same were succiently marshalled thus:

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" It is convenient to deal here with the evidential burden as it relates to questions of fraud. Fraudulent 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 manner does the Court lean to the conclusion of fraud. Fraud is not to be assumed no 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 circumstancial 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 indisputable 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 indisputable 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.' "

Is there evidence in the case to satisfy the tests laid down above?

The plaintiff stated that he had won before and was paid. That on the third day after he won his bets no money came for him and he asked his wife for it. That she told him they (Head Office) spoke to her over the electronic machine that she is to come to Kingston on the 3rd. She went to Kingston and when she returned she told him Watson is not paying him his winnings. His wife and himself went to the Head Office in Kingston. There he did not ask for his winnings. He spoke to no one. That he has never spoken to anyone at Head Office about not being paid his winnings. He was asked why

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and stated that he had won before and the money came through his wife and he had no authority to ask the company for the money. That he never spoke to anyone at Head Office as he was paid when he won before. He denied that the reason why he never asked anyone was because he knew he was wrong in placing bets at Watson's when he knew he worked with the organisation. However, in answer to the Court he stated in direct contradiction to what he said before that he had gone to Watson's and ask for his money and they said they are not paying it. Later in further cross-examination, he stated he did say earlier that he never went to Head Office and ask for his money from anyone at Watson's. That from the day of the bet up till now he has not personally been to Watson's Head Office in Kingston and ask anybody for the money. That he did not ask anyone for his winnings at Watson's as when told that they refused to pay he took the voucher to Mr. Ian Ramsay, Attorney-at-Law, to have the matter dealt with. A letter of demand was later written on behalf of plaintiff to the defendant by plaintiff's legal adviser.

Mr. Watson, in his evidence, stated that on the English Races run on 1st January, 1972, he noticed a large number of unusaul large winning bets. That it was unprecedented and unusual. As a result he instructed the route supervisor to contact Mr. and Mrs. Lyn with a request that they come into Kingston for questioning about these unprecedented large winnings. That Mrs. Lyn came in on the Monday 3rd January, 1972. That he spoke to her and pursuant to his investigation he closed the Branch on 3rd or 4th January, 1972.

I find that:

(1) There can be no dispute that Mrs. Lyn was a member of defendant's organisation at the time the bets were placed.

(2) I find as a fact that the plaintiff was a member of defendant's organisation at the time.

(3) Both Mr. & Mrs. Lyn knew this when the bets were placed by plaintiff and accepted by Mrs. Lyn.

(4) Both were well aware of the Rules of the defendant in

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relation to the placing of and the acceptance of bets by members of the organisation.

(5) An inspection of the vouchers exhibit 2 reveals that the names of persons placing the bets are not recorded on them. They both must have known this.

(6) The irresistable inference is that they both conspired together in the placing and accepting of these bets well knowing that the bets breached the Rules.

I would hold that the defendants have established that the plaintiff is guilty of fraud. The bets would therefore be invalid under this head.

Mr. Williams also submitted that the bets were invalid as an express term of the Rule governing the bets; it was provided as follows:

> " We reserve the right to refuse the whole or any part of any investment and disqualify any bet if the defendant is not satisfied with the bona fides of any such investment. "

Dr. Barnett challenged this contention. He submitted that after a bet is placed and accepted by defendant and locked in the clock bag the defendant cannot then disqualify the bet. This clause, if the interpretation of Mr. Williams be accepted then the defendant would be free to disqualify any winner after the results of the race are known by merely saying they are not satisfied with the bona fides of the bet.

Rule 2 of the defendant company reads:

> " 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. "

What Mr. Williams is contending is that the bet having been accepted by defendant and even after the results are known the company under this Rule has the power to disqualify the bet. The Company under this Rule purports to have the power to refuse the whole or any part of the offer to bet. But under the company's Rule 2, the bet i.e. the wager is complete when it is locked in

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the timing bag. The contract is then complete. After the contract of wager is validly made, what is the position?

I am of the view that the company could not then unilaterally disqualify any such bet on the ground that they were not satisfied with the bona fides of any such investment.

To accept this interpretation would be to put in the hands of the company power to discharge the legitimate liability created against the company as a result of winnings on a valid wager. Such a result would be inequitable and iniquitous.

There is nothing to prevent the company, however, in a situation such as has arisen in this case, to attack the bona fides of any such investment in any action brought against them on any bet, then it would be open to the company to adduce evidence of fraud or that a person is a member of their organisation or of a fundamental breach of the Rules and thereby seeks to impeach the validity of the wager.

For the above reasons I would hold that the plaintiff's claim must fail.

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