Judgment Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. 1977/P031

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| BETWEEN | PHILLIP PALMER | PLAINTIFF |
| AND | GOLDEN HORSE BETTING LTD. | DEFENDANT |

Heard: March 1, 1979; July 1, 12, 13, 18, 31, 1979; December 20, 1979

COR: THE HONOURABLE MR. JUSTICE R. O. C. WHITE

Mr. Raphael Codlin and Miss Audrey Tapper for plaintiff.

Mr. Huntley Munroe, Q.C., and Dr. L. G. Barnett for defendant.

J U D G M E N T

White, J.:

This action has been brought by Phillip Palmer, the plaintiff, to recover from Golden Horse Betting Limited, the defendant, the sum of $12,619.80 which the plaintiff claims he won after placing bets with the defendant on horse races run on the 20th day of November, 1976.

The plaintiff's claim is that on that date at some-time between 10:30 a.m. and 11:00 a.m., he staked, firstly, the sum of $40.00 on three horses to win. The horses were Black Moses, Eleanor Gray and Seducer, which were all written up on Voucher 60037. He also staked the sum of $25.00 on the same horses which are written up on Voucher 60038. The stakes on this voucher also was to win, the expectation being that before the bettor could collect all the horses on each voucher had to win. The bets were described as accumulator bets and were laid at the Race Course Betting Office of the defendant in Clarendon. The plaintiff received a copy of the vouchers which bore his stakes.

The vouchers were written up in the betting shop, which was at the material time being operated by Mrs. Norma Hamilton, the acknowledged agent of the defendant, and her husband, Cecil Hamilton. When the plaintiff and his brother, Amos Palmer, laid their respective bets, on the 20th November, 1976, other persons were in the shop. The plaintiff paid his stake to Mr. Hamilton; Amos Palmer laid his bets with Mrs. Hamilton, on the same three horses as did the plaintiff, but his stake was smaller. Having ascertained that the vouchers correctly stated the bets, the plaintiff and his brother left the shop.

At this stage note should be taken of the procedure which is normally followed by the defendant when bets are laid at any of their branches. This evidence was given by Wayne Chin, the Accountant and Security Officer of the defendant. On the day before the racing programme, Mr. Chin would send to the several agents at the different branches clock bags, books of vouchers and programmes. The books of vouchers are numbered in sequence, and are in triplicate. The original is yellow, and is the one given to the punter. The duplicate is white in colour, and this is known as the clock bag or security copy. It is placed in the clock bag which was described by Mr. Harold Anderson, Inspector attached to the Betting and Lotteries Commission. He said it is a locking device supplied by bookmakers to their agents to secure the second copies of all vouchers issued. These clock bags are supposed to be locked by the bookmaker or his agent at closing time, 12 noon, on the race day. According to Mr. Chin, the clock bag should be closed one hour before the running of the first race. Mr. Chin stated that before sending the clock bags to the betting shop, the clocks are set according to the time at which they are being sent: "I put dial inside of it which informs me the next afternoon at what time it is closed. I set clock winding it and place bag on it." When the bag is closed the bag is to be put on to the timing apparatus, and when closed on the timing apparatus, the time of the closing is

indicated.

The events subsequent to the laying of the bets on the 20th November, 1976, show that strangely enough, the winnings of Mr. Amos Palmer - $3,271.80 - were paid to him on the 21st November, 1976, However, the plaintiff did not recover his winnings - $12,619.80. When he attended on the agent on the 21st November, 1976, the agent told him that the whole book was left out of the bag by accident. He said he reported it and they said they were not paying. This was the evidence given by Amos Palmer. The plaintiff did not say if he was then told why he was not being paid, but I accept that his brother was present when the plaintiff presented the copy of the vouchers upon which he naturally expected to have collected his winnings.

They both subsequently went to the Head Office of the defendant. There they saw Mr. Chin. The plaintiff said he went there on two occasions. On the first occasion, he showed Mr. Chin the vouchers Nos. 60037 and 60038, Exhibit 1. He informed Mr. Chin that he had bought the tickets at the Race Course Office of the defendant, and when he went to collect he was told they were locked out of the bag. At that time, the plaintiff reported, Mr. Chin told him he could not pay as the vouchers came outside of the clock bag.

On this point of vouchers being left out of the bag, Mr. Chin gave evidence stating that on the 20th November, 1976, one Merchant was employed by the defendant as a collector of the clock bags and stakes from the various agents. He returned to Head Office on that day at about 2:30 - 3:00 p.m., bearing, among other things, the clock bag from the Race Course shop. He also handed Mr. Chin some white copies, Exhbit 5, which were not in the bag. Mr. Chin said that when he received these documents, he checked through Exhbit 5 to see if there were any large bets in them. Included among those white copies were copies of Exhibit 1. These were put in evidence as Exhibit 5A. The checking of Exhibit 5 to see if there were any large bets,

induces the comment that in the light of the defence, it seems a very strange thing to have done. It raises the question of the genuineness of the defendant's reply to the plaintiff's claim. Paragraph 5 of the defence suggested that either "the said bets were placed after the relevant races were run and the results known, or the said vouchers were not placed in the clock bags at or by the times required by the rules."

Mr. Chin's attempt to support this allegation of fraud, in reply to the plaintiff's claim, did not succeed. He told me: "No way, I could tell at the time whether the vouchers were written up after racing programmes had started for the day. To say whether that was so I would have had to look through the vouchers. When I got the nine vouchers (Exhibit 5) I looked through them. I was able to tell that there were two vouchers that the results were already determined before the vouchers reached my hand. I have no evidence to say that the vouchers were written up after racing had begun or after closing of the clock bag." Yet, later on he blandly stated: "I was not satisfied that the bets were placed before 12 o'clock."

I did not have the benefit of hearing from either Mrs. Norma Hamilton or Mr. Hamilton. Indeed, Mr. Chin informed me that the shop at Race Course was closed down on either the 21st or the 22nd November, 1976; that was in keeping with his practice whenever he no longer trusts an agent, whenever his honesty and integrity are questioned. Said Mr. Chin, "I find it easier to close the station." So I was left in the position of not being able adequately to test the bona fides of the defendant or Mr. Chin, who I was satisfied was seeking every argument to convince himself that the defendant should not pay the winnings on the plaintiff's bets. I was struck by his further evidence that: "I do not think the plaintiff should be paid; not because the bets are big. My rules and regulations not abided by. And if I were to pay those bets I would not be in business today." I must confess that the oddity of this remark is in its ambiguity. If the witness made it because he was of the

view that fraud was involved, as I have said already, he has not sustained such a charge. This, to the extent that fraud could only have been involved if the bets were proven to have been laid after 12 o'clock, or there had been an attempt to insert them in the clock bag after the closing hour. Mr. Chin has not said that the clock bag did show that the bets had been placed after the legal time. I accept that the plaintiff did lay his bet between 10:30 a.m. and 11:00 a.m. on the 20th November, 1976, and in the absence of positive proof from the defendant, the plaintiff stands untainted by any alleged fraudulent collusion with anyone employed in the defendant's betting shop. On the other hand, the last quoted remark by Mr. Chin is capable of being interpreted as an unreasonable determination not to pay the winnings of the plaintiff. I so find. This is fortified by the evidence of Mr. Chin as to how the matter could have been dealt with in the discretion of the defendant. It was not that he suspected the agent to be fraudulent merely because he did not put the vouchers in the bag. His suspicion of fraud of the agent was based on the agent's failure to carry out certain steps by which the agent could have informed the witness what had happened, and that the vouchers were left out of the clock bag. The agent could have made telephone calls to Mr. Chin himself at Head Office or to one of the directors in May Pen. Or, he could have gone to another agent two miles away to see, if possible, whether that agent would post the omitted vouchers in his bag. Had the agent phoned him, said Mr. Chin, the latter would have enquired how many vouchers there are, and if there were any large bets exceeding $10.00 on any one horse.

Mr. Chin himself would take all particulars of the bets and would by this probing decide to pay the punter , once it is proved to him that the bets were sold before the first race. All this information would have been given before the running of the first race. On his own say so, as if to strengthen his allegation of fraud, Mr. Chin said that when the

collector brought in Exhibit 5, he asked the agent "why he did not telephone or had stopped in May Pen at one of the Director's office to notify us at head office." According to the witness, the attitude of the collector was very nonchalant which arosed his suspicions that something was not right with the batch of vouchers, Exhibit 5. I did not have the opportunity of hearing and seeing Mr. Merchant in the witness box.

It seems to me that the discretion residing in the defendant would never be resolved in favour of the bettor. "Assuming that a voucher put in before 12 noon and for some reason the agent and bearer from head office could not satisfy me of the honesty and reasons why these were left out, and no attempt made to contact me or a director of the company for some two and a half hours, I would not pay." "On the other hand, if some valid and reasonable explanation could have been offered, I surely would have given it some consideration after discussion with company's lawyers." Evidently, the odds were always against the punter!

The present is a case of a punter who in good faith goes to a betting shop where he lays bets. Following his offer, the accredited agent of the bookmaker receives the stake money in pursuance of the business of receiving or negotiating bets at declared odds. To evidence this receipt, an authentic voucher is written up and handed to the punter. The voucher sets out the details of the horses and the amount staked. The punter having received his voucher, and ascertaining that it correctly records the details of the betting transaction, leaves the betting shop secure in what he thinks is the knowledge that he has laid a bet which will enable him, if he wins to collect his winnings. The plaintiff said he knows nothing about the clock bag. Mr. Anderson, the Inspector of the Betting, Lotteries and Gaming Commission, expressed the view that the punter has no control over the locking of the clock bag. There was no evidence from him as to how the Commission regards the usage of the clock bag. The clock bag is not legislated for as an instrument in the betting transaction. Regulation 13 of the Betting, Gaming and Lotteries Regulations made under the Betting, Gaming and Lotteries Act 1965, prescribes the format of betting vouchers issued

by a bookmaker, while Regulation 10 sets out the procedure to be followed at a betting transaction. The evidence shows that the defendant in that regard followed the Regulations.

By Regulation 13, betting vouchers issued by a bookmaker shall be in triplicate, and shall bear such letter and serial numbers and any other marks as may be prescribed from time to time by the Commission. The Commission may in its absolute discretion dispense with the requirements. Separate vouchers shall be issued in respect of (a) horse races conducted in Jamaica, (b) horse races conducted outside of Jamaica; and (c) other events.

Confining myself to the facts of this case, dealing with horse racing conducted in Jamaica, I find that Regulation 10 sets out the procedure to be followed, prescribing as it does that "every bookmaker's permit shall be subject to the following conditions and such other conditions as the Commission may stipulate in the permit." So far as material, Regulation 10 makes it obligatory on the bookmaker to (a) prepare in triplicate in respect of all bets accepted by him on horse races held in Jamaica, vouchers in the Form set out as Form No. 8 in the Schedule to the Regulations; (b) dellver the original of each such voucher to the person making such bet; (c) deliver to the Commission the duplicate copy of each such voucher together with other stated documents, and shall indicate on the duplicate of each winning voucher, the sum paid out in respect of that voucher; (d) keep the triplicate of each such voucher and make it available at all reasonable times for the inspection of the Commission or by any other person authorised in that behalf by the Commission.

The holder of the permit is enjoined to see that his servant or agent authorised to carry on the operations of the permit holder complies with that procedure.

It is well to point out at this stage that I was not told that the defendant bookmaker's permit contained any condition allowing the use of the clock bag. What I was told was

that the Betting, Gaming and Lotteries Commission had ratified the Rules of the Golden Horse Betting Limited in which Rules are found references to "Clock bag", "Timing Apparatus", "Time Bag", "Locked bag" (see Rules 3, 8, 52, 54 and 55). It could be a moot point whether the clock bag is a part of the legal parphernalia in a betting transaction.

By Rule 52 of the Golden Horse Betting Limited, the agent must not accept any offer unless he has in his possession a clock bag supplied by the company, and not yet locked by him. Each offer received by the agent must be recorded in writing on a voucher supplied to him by the company. (Rule 53) He it is who "must deposit all security copy vouchers in the locked bag supplied by the company on or before the time stated in our Programme . (See Rule 3)" In addition, the agent must lock the security copy vouchers at a time previous to the time of the race as stated in Rule 55 (sic), and must ensure that the timing apparatus is in proper working order.

It becomes clear from the evidence that the purpose of the time clock bag system is to prevent bets being written up after closing hours or after racing has begun. It was introduced to prevent and offset fraud by bettors acting in collusion with the employees of the betting companies. But at the same time, the utmost vigilance should be maintained to see that the system is not used by the bookmaker to prepetrate fraudulent practices on a bettor whose conduct is above reproach.

To point out that there is no legislation authorising the use of the clock bag is not to discount its value as a protection against fraudulent betting; nor do I disregard its intended purpose as not being important. In so far as the instant case is concerned, I am not convinced that the resort to it in the context of the facts of the case is justified. The procedure which was outlined by Mr. Chin for rectifying a situation which he contended had arisen in this case does not, to my mind, avail him against the plaintiff's claim. The procedure is a mere internal matter which in fact is deterimental to an honest and genuine punter, who expects to be paid his winnings by a bookmaker who, when he receives

or negotiates for bets with the bettor, certainly holds himself out as intending to pay winnings on whatever bets are laid with him directly or through his agent and without fraud on the part of the bettor. The bookmaker, it must be stressed, in a legal betting transaction, such as now obtains in Jamaica, is himself expected to act without fraud.

It was contended by Dr. Barnett, for the defendant, that I should consider the evidence particularly in the light of the conditions, stated on each voucher which read as follows:

> " 1 All bets are made subject to our rules and to amendments or additions thereto made by us and published before the date of the bet in any daily newspaper and these rules and such amendments and additions govern all wage is between our patrons and ourselves.
>
> 2. All bets made at our branches or agencies are subject to our rules, and to the conditions governing bets made at - our branches or agencies.
>
> 3. Our rules and the conditions governing bets made at our agencies or branches are on display in each of our betting shops, and copies are available on application to our Head Office or to any Betting Shop.
>
> 4. The maximum payable on the Betting Voucher and/ or to any client in respect of one day's racing is $10,000. Please check your voucher and see that what is written is what you want. This is your responsibility NOT OURS. "

Rule 6 of the Golden Horse Betting Company Limited stipulates that "the vouchers as written shall be the offer of the client to make with us the bet therein written." It must be borne in mind that such an offer relates to the out come of a future event, upon which the defendant, as a bookmaker, carries on the business of receiving or negotiating bets at declared odds. S. 2(1)(a) of the Betting, Gaming and Lotteries Act, 1965. It cannot be gainsaid that by making this offer the plaintiff has evinced the intention to create legal obligations which may be made binding by acceptance. This is the expectation of any reasonable person, especially against the background that betting and wagering contracts in Jamaica have been legalised by the Betting, Gaming and Lotteries Act, 1965. What is striking

is that the defendant itself by giving the voucher acknowledging the receipt of the stake money, and holding that stake money in the first instance in respect of the outcome of the future event, without more, can be said to have accepted at that time the offer of the punter. In fact, the punter has to lay his bet before the race and within the prescribed hours. Indeed, Regulation 11 of the Betting, Gaming and Lotteries Regulations, 1975, specifically provides that:

> " A bookmaker shall not in respect of any horse race accept bets on any such race, other than laid off bets, after the time prescribed for the acceptance of such bets. "

The defendant's attempts at asserting that the plaintiff laid his bets outside of the prescribed hours has already been found by me not to have any substance, because I do not believe the defendant's witness.

In the event then I have to consider the other Rules of the Golden Horse Betting Company Limited. So far as relevant they are:

> " 2. All offers are received by us on the distinct understanding that the Client will abide by these Rules. Whether or not the Client be in possession of our Rules, Leaflets or whether or not he has read these rules.
>
> 3. The writing of the Voucher by or on behalf of the Client shall when it shall have been signed by the Company's agent subject to Rule 10 be deemed to be the offer by the Client to us to accept the wager or bet therein written and shall not be deemed to be an acceptance by us of that wager or bet. The time of the offer shall be the time of the signing of the Voucher by our agent subject to Rule 10. The time of our acceptance of the offer of the bet shall be when the locked bag is unlocked at our head office provided that therein is found the security copy and the timing apparatus indicates that the locking of the Time Bag took place at or before the latest time fixed by our programme for the acceptance of offers to be in respect of any Race named in the bet written on the Voucher for the day's racing on which the security copy discloses the offer to bet is intended and the presence of the security copy in such circumstances shall 'ipso facto' be deemed to be acceptance of the offer.
>
> 6. The Voucher as written shall be the offer by the Client to make with us the bet therein written.
>
> 7. The Voucher is the only binding document of wager and in conjunction with these rules constitute the full terms and conditions covering the wager.

" 8. All locked bags shall be opened by us at our Head Office within 24 hours of receipt of same if the security copy is not present in the lock (sic) bag then no contract of wager shall exist between us and the holder of the voucher and in such circumstances upon presentation to us at our head office of the voucher within thirty (30) days we will repay the stake money.

9. A commission or bet once made cannot be altered or cancelled except by mutual consent.

10 No offer to bet shall be complete and capable of acceptance unless and until there shall have been deposited with us before or at the actual time of making the offer the appropriate amount of money staked according to the voucher. "

Dr. Barnett submitted that my decision should be guided by the rules especially Rules 3 and 8. In the light of this, it is necessary for the plaintiff to show that a contract was concluded. The rules of the defendant are not being put forward as statutory rules, but as indicating conditions under which the defendant is prepared to accept an offer for the placing of bets with them. Dr. Barnett made the unswerving submission that the offer of the punter is subject to the operation of those rules, so that until the security copy of the voucher arrives at the bookmaker and in the clock bag, there is no binding contract. The defendant has expressly stated at what point he accepts, and under what conditions he accepts. He adverted me to the case of Butler Machinery Tool Co. v. Excello Corporation (England) Ltd. /1979/ 1 W.L.R. 301 C.A. This case had to do with the formation of a contract. The plaintiffs in that case were sellers who offered to sell to the defendants a machine tool, but there was a condition that the orders were accepted only on the sellers' terms. The defendants, in their reply, made their own terms and conditions. The sellers were held to have acknowledged the order on the buyers' terms, so that there was no price variation clause in the eventual contract. The Butler Machinery Tool Company case does not assist me in determining anything in this case. The authority cited by Dr. Barnett was a case of offer and counter-offer, finally concluded it was held, when the sellers acknowledged the buyers' terms and conditions. The striking situation there

was what was described as "battle of the forms" apropos of which Lord Denning's opinion at p. 405E is a sample of the views of the English Court of Appeal:

> " The documents passing between the parties have been construed as a whole and as a matter of construction the letter of June 5, 1969, is the decisive document. "

Of course, I am aware that one party may state a condition as to when acceptance is to be deemed effective. Such a case was Robophone Facilities Limited v. Blank [1966] 1 W.L.R. 1428. In that case, there was a contract for the long-term hiring of a telephone recording machine. On the back of the printed form of rental agreement, it was provided that the agreement was only to become binding by signature on the owner's behalf. And the question was whether acceptance was notified to the hirer. Because the agreement on the face of it was properly completed, Harman and Diplock L.JJ. gave their judgments on that fact alone, and so dismissed the appeal of the plaintiff. They were also aided by the fact that the notes of evidence taken by the County Court Judge did not disclose that the question of when the defendants signed the document was ever raised in the County Court. They therefore disagreed with the views of Lord Denning, M.R., in the context of the exact moment at which a contract is made where a written offer contains an express stipulation that the contract is to become binding on the offeree only when his signature is affixed; or as to whether the offer can be withdrawn after signature but before the fact of signature has been communicated; or as to when the offer lapses: per Diplock, L.J., at p. 1441 A-G. And although Lord Denning, M.R., spoke obiter in the circumstances, I will quote him on what is admittedly trite law in so far as in the formation of a contract there must be offer and acceptance of that offer communicated to the offeror. Although he acknowledged that "the plaintiffs signed at some time or the other (for it was produced at the trial complete with signature), but we do not know when the plaintiffs signed. No evidence was given on the

point," Lord Denning, M.R. at p. 1442 C-G explained:

> " It is clear that the document although called an agreement was an offer. It could be revoked by Mr. Blank at any time before it was accepted by the plaintiffs; see Financings Limited v. Stimson /1962/ 1 W.L.R. 1184; /1962/ 3 All E.R. 386 C.A. In order to be binding, someone duly authorised would have to sign it as accepted on behalf of the plaintiffs; and moreover their acceptance would have to be communicated to Mr. Blank. The general rule undoubtedly is that when an offer is made, it is necessary in order to make a binding contract, not only that it should be accepted, but that the acceptance should be notified, see Carlill v. Carbolic Smoke Ball Co. /1893/ 1 Q.B. 256 per Lumley, L.J. (ibid 262); Entores Limited v. Miles Far East Corp. /1955/ 2 Q.B. 427; /1955/ 2 W.L.R. 48; /1955/ 2 All E.R. 493, C.A., per Parker L.J., p.336. Clause 14 (that the agreement should become binding on the plaintiffs only upon acceptance thereof by signature on their behalf) does not dispense with the necessity of notification. Signing without notification is not enough. It would be deplorable if it were. The plaintiffs would be able to keep the form in their office unsigned and then play fast and loose as they pleased. Mr. Blank would never know whether or not there was a contract binding them to supply or him to take. Just a mental acceptance is not enough; Felthouse v. Bindley (1863) 11 C.B.N.S. 869, not is internal acceptance within the company's office. "

In Financings Limited v. Stimson, the agreement stated that it should become binding on the finance company only upon acceptance by signature on behalf of the finance company. So that the question arose whether the dealer was the agent for the finance company to the extent that he had ostensible authority to receive the hirers' revocation of his offer to purchase the motor car, considering that such revocation took place before the date when it could be properly assumed that the finance company had signed the agreement. The overriding question was whether there was a concluded contract for the purchase of the motor car before such revocation. It was on these facts that Lord Denning, M.R., took a realistic view of the position and

he described the dealer as in many respects and for many purposes the agent of the finance company. And although "finance companies often put clauses into their forms in which they say the dealers are not their agents," Lord Denning rejected such clauses as "often not worth the paper they are written on. Nobody can make an assertion of that kind in an agreement so as

"to bind the courts, if it is contrary to the facts of the case. We all know that people often try to put clauses in a tenancy agreement so as to say it is a licence and not tenancy; but the courts take no notice of it if it is contrary to the truth. So also if they put into one of these agreements a clause that the dealer is not their agent."

The rationale of the passages immediately quoted above underlines very clearly my previous remarks on the transaction which I have been considering. The necessary communication of acceptance must be before the occurrence of the essential ingredients of the agreement. If the defendant is right, he could, to his advantage, correctly await the outcome of the event, and decide at that time whether to accept or not. Be it noted that the contention in this case was initially that because of Rule 3, there was no contract, because there was no acceptance. I am of the decided opinion that would be an unfair interpretation of the facts to so hold. The fact of the matter is that the defendant has sought to bind the courts to a course of action which in itself is contrary to the principles upon which the court always acts, despite the fact that the task of inferring an assent and of fixing the precise moment at which it may be said to have emerged is oneof obvious difficulty. Nevertheless, as pointed out by Cheshire and Fifoot, Law of Contract (7th ed.) at p. 36:

> " Judges will always seek to implement and not to defeat reasonable expectations .... In particular, they will not be deterred from proclaiming the existence of a contract merely because one of the parties, after agreeing in substance to the proposals of the other introduces a phrase or clause which, when examined, is found to be without significance. If there appears to be agreement on the essential matters either on the face of the documents or by praying in aid commercial practice or the previous course of dealing between the parties the court will ignore a subsidiary and meaningless addendum. "

See also per Denning, L.J. in Nicolene Limited v. Simmonds [1953] 1 Q.B. 543 at p. 551.

I have to bear these remarks in mind while examining in greater detail the arguments of Dr. Barnett based as they are on the two unreported decisions of John Chin v. Watson's (Off Course

Betting) Ltd., Suit No. C.L. 1155/72, and Eustace Lyn v. Watson's (Off Course Betting) Ltd., Suit No. C. L. 1974/L003. Dr. Barnett gave a fair summary of the decisions: that a party to whom vouchers such as the ones in the instant case have been delivered and which referred to the Rules of the Betting Company was bound by the provisions of those Rules even if he did not pay any attention to them. A rider should be added that the party will be vound only if it can be said that he has assented to them, or the circumstances are such as to lead to the reasonable inference that the party sought to be bound had reasonable notice of the Rules, Regulations or Conditions. In John Chin v. Watson's (Off Course Betting) Ltd., supra, there were rules similar to those which I have to decide upon. Rowe, J., held:

> " that the plaintiff was well aware, as he admitted at one stage 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 (1958) 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 findings by the repeated reference in the Voucher, Exhibit 1, to Rules, that some of those references were in large and bold types 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 the 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 displaydd 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 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. "

I note that in that case, Rule 2 provided that "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."

Compare Rule 8 in the instant case which I have set out earlier in this judgment.

The plaintiff in the present case said that he knew nothing of the use of time bags in the betting shop. And this although he has always over several years bought bets at the Race Course agency of the defendant. He could not recall ever having read the Rules. There was, he said, no need for him to read them. He could not remember having seen them displayed on the wall of the shop which faces the door of the shop. It has never interested him what are the Rules concerning the purchase of bets. What he was certain of was that he did see that his bet was properly recroded on the voucher which he received as a record of his bet.

On the other hand, the evidence from Mr. Chin was that printed Rules are posted in the various "Golden Horse Betting Limited shops". Over the past twelve years that the Betting shop was operated by his company at Race Course such Rules were displayed. Certainly when last he visited that agency, about one month before the 20th November, 1976, there were two copies of those Rules posted in that shop. There was one on the wall behind the counter and facing the customer. The other on the upright of the counter. According to Mr. Chin, the aforesaid Rules were made by his company and were ratified by the Betting, Gaming and Lotteries Commission.

I accept that the Rules were displayed in the Betting Shop, at the material time, in such a way that as a regular punter the plaintiff would have long been conversant with those Rules. This is a reasonable assumption to make. The fact that he had not read the Rules would not in my view, on the authorities, allow him to say that he did not have sufficient notice of them. Nevertheless, I am not able to accept the other grounds on which Dr. Barnett rested his case.

Arguing from his summary of the authorities, Dr. Barnett submitted that acceptance by a party cannot be found to come into existence when all his actions indicate that what he has so far

done is not with the intention to accept the offer. Futhermore, by analogy with cases in which conditions precedent are laid down for there to be any binding agreement, where one party stipulates a condition precedent that condition precedent has to be fulfilled by the relevant time: Aberfoyle Plantations Limited v. Khaw Bian Cheng [1960] A.C. 115 P.C.

The result was that in this case the very acceptance is made conditional on the voucher being placed in the clock bag and the offer is expressed to take place only when the clock bag is unlocked in the Head Office of the company and the voucher in question is found in the bag.

There are two features of the judgment of Rowe, J., which attract attention. The first is that he unhesitatingly accepted as the truth that the yellow or security copy of the voucher "had never been seen by anyone at the Defendant's head office." So that the defendant in that case was not able to check the white copies with the secutiry copy from the clock bag to determine if Rule 2 had been complied with. The second feature is in this quotation:

> " The plaintiff was in no position to suggest that the 'yellow' copy of voucher E103721 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 which 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. "

Noticeably, Rowe, J., did not deal any further with the implications of this argument for the plaintiff even when at a later stage he repeated the further submission in that regard:

> "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. "

This, with respect, is an important factor. I do not see how this can be ignored when in fact all betting transactions are carried out by agents who could by connivance, design or simple

negligence deprive a punter of his reasonable expectations. Even though the use of the clock bag has been validated by the judgments of Rowe and Willkie, JJ., it seems to me that if the rules in this regard are to be efficaciously fair the punter would have to insist that the security copy of his bet should be placed in the clock bag in his presence and in his view. Alternatively, it should be allowed that the punter himself place the voucher in the clock bag. And the question naturally arises, what would be the punter's rights, if there is a refusal in either event? It is my view that the fact that the punter has actual notice of the Rules of the bookmakers, or is deemed to have had them reasonably drawn to his attention as the result of a course of conduct, is not by itself sufficient to exonerate the bookmaker in the circumstances of agency submitted to Rowe, J., nor in a case such as the one now before me, where the plaintiff was told that the vouchers were left out of the clock bag by accident.

I now consider the judgment of Willkie, J., in the case of Eustace Lyn v. Watson's (Off Course Betting) Ltd., supra. The central point at issue there was fraud based on the defence that when the plaintiff purported to lay his bet, he contravened a Rule of the defendant which provided, inter alia, that bets would not knowingly be accepted from members of the defendant's organisation. Looking at the matter either from the viewpoint of the plaintiff being a member of the organisation, or at any rate, acting in collusion with his wife, who was employed to the defendant's organisation, the bets laid by the plaintiff at the betting agency which she managed for the defendant were void and invalid. Additionally, it was contended that by the 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 if the defendant was not satisfied with the bona fides of the plaintiff's bets, and, as it was entitled to do, the defendant had disqualified the plaintiff's bet. In the result,

despite the plaintiff's denial that he knew anything of the Rules and was therefore not familiar with the contents of the Rules, the learned Judge held: "that the plaintiff was bound by the Rules. That these Rules were incorporated with, and form part of the contracts between plaintiff and defendant and plaintiff is bound by them." Later in the judgment at p. 16, Willkie, J., dealt with the Rule 2 of the defendant company which stipulates that:

> " 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. "

He opined that under this latter Rule "the bet i.e. the wager is complete when it is locked in the timing bag. The contract is then complete." In the light of this, the stated power of the company to refuse the whole or any part of the bet, and even after the results are known, a power to disqualify the bet, was not upheld by the learned judge. He said:

> " 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. "

These observations, in my view, can appropriately be applied to the facts of the case before me. True, it is that whereas in that case the acceptance of the bet depended on the voucher being locked in the timing apparatus supplied by the defendants before the set time of the race(s) and before the results of the specified events are known, in the instant case "the time of our acceptance of the offer of the bet shall be when the locked bag is unlocked at our head office and the security copy of the voucher is found therein (Rule 3)." If there is non-compliance "no contract

"of wager shall exist between us and the holder of the voucher." And although it is not specifically provided that there should be disqualification the effect of the present Rules is to disqualify a bet valid otherwise in the absence of fraud, but which has not been placed in the clock bag. I hold it to be "inequitable and iniquitous" for a bookmaker to renege where his agent has failed to place the punter's vouchers in the clock bag. The iniquity is shown by Mr. Chin's declaration that had the plaintiff laid his bet at the defendant's head office, he would have been paid. He did not explain why this difference. The fact that the relevant Rules in the instant case go much further than those pronounced upon by Willkie, J., argues very strongly for the cogency of his views in a situation such as obtains in this case.

In the final analysis, one of the factors bearing on the conclusion of this case is clarified by the provision in Regulations 10 and 11 of the Betting, Gaming and Lotteries Regulations, 1975, which I have already quoted. There it is enjoined what procedure should be followed by a bookmaker or his agent when "bets are accepted by him." Certainly, this does not envisage a stage later than the time of the placing of the bets, at which time "the receiving and negotiation of bets" has crystallised and its effect cannot thereafter be deferred in dependence upon whether the bookmaker should approve the laying of the bets.

Another factor in the conclusion is that by the Rules of the defendant company, it undertook that its agent was under a duty to, and would, place the vouchers representing the punter's stake in the clock bag. Failure by the agent to do so is, in my view, a failure to perform a fundamental term of the contract which has effectively deprived the plaintiff of his winnings.

Although the claim is for $12,619.80, the amount recoverable as winnings is, by Clause 4 of each of the Vouchers, Exhibit 1, limited to $10,000. This limit applies to the maximum amount payable on the voucher "and/or to any client, in respect of one day's racing."

So that there will be judgment for the plaintiff for $10,000 and costs to be agreed or taxed.