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IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL No. 29/73

B E F O R E : The Hon. Mr. Justice Fox - Presiding
The Hon. Mr. Justice Edun - J. A.
The Hon. Mr. Justice Grannum - J. A. (Ag.)

R. v. Esmond Williams

Mr. Peter Millingen for the Appellant
Mr. K. A. Atterbury for the Crown

4th May, 1973

FOX, J.A.,

Paramount Betting Ltd. is a betting company with offices at 109 Barry Street, Kingston. The Company accepts bets on foreign and local horse races at its office. For this purpose the company employs clerks. In October last year there were four such clerks employed to the company. Their duties were to write up bets in books of betting vouchers in triplicate, numbered consecutively. Each voucher would record the name of the horse, date of the race and the stake. The particular clerk who wrote up the voucher would initial and give the original to the bettor. The second copy of the voucher was put in clerk's bag. The third copy remained in the book for accounting purposes. The stake is paid to the clerk who wrote up the voucher. At the end of the day all clerks would pay over monies received to a cashier, Dorothy Lee.

The Company also employed calculators. In October, eight persons were employed as calculators. Included amongst them was the accused. The duties of the calculators were to calculate bets and to look out for discrepancies, referred to in the evidence as "over-sights". The Company kept at its offices a book, referred to in the evidence as the English results book, in which were recorded winning and placing horses in English races. The results of the races were heard in the office, apparently by some form of tele-communication, as they were being run.

It was the duty of Keith Davis, the Manager of the Company, to ensure that these results were recorded in the English result book. In the discharge of this duty he was assisted by a clerk who wrote up the book under his supervision. If a bettor had a winning bet which was over-sighted by any one of the calculators, he could complain to a calculator who would make a check. If satisfied that the bet was a winning bet, the calculator would make an entry in a book referred to in the evidence as an over-sight book. The entry recorded the amount of the winnings payable on that particular bet which had been over-sighted.

Dorothy Lee the cashier had the responsibility of making payments to bettors. She would make payments on winning vouchers presented to her by bettors and on over-sight bets recorded in the over-sight book by the particular calculator who had made the relevant over-sight entry. The calculator would bring the over-sight book to her for payment to be made.

The appellant was convicted by the Resident Magistrate for Kingston on all four counts of an indictment charging him with obtaining money by false pretences. The particulars in each count allege that on four separate occasions - one on the 9th September, two on the 23rd September and a fourth on the 4th of October 1972 the appellant obtained money by falsely pretending that the relevant vouchers were over-sight win bets and that the amounts were due on that voucher. The evidence for the Prosecution established that each of these four relevant entries in the over-sight book was in the hand writing of the appellant and that each entry recorded as a winning voucher was in fact, when compared with the result book, a losing voucher.

This position came to the attention of Keith Davis on the 4th October 1972. On that date a clerk at the Company, Marie Kelly, wrote up a bet for the appellant at his request. At the time she so wrote up the voucher, the appellant did not pay to her the stake of \$9.00 which was due. She kept the original, marked it "not paid" and put it in the drawer of another clerk named Miss Daley. Dorothy Lee

said that on the 4th of October at about 3:45 p.m. she was in the cashier's cage. The appellant brought her the original of the voucher which had been written up that day by Marie Kelly. He told her that it was a winning voucher, that it was his, and he asked to be paid \$27.80 which he entered in the over-sight book and initialed. She then paid him the money. Later that same day Dorothy Lee spoke with Keith Davis and gave him the original voucher in evidence Exhibit 1 which she had received from the appellant that day. Davis checked the result book and discovered that the bet was a losing bet. Davis then made a further check back for a period of about six months of the over-sight book with the result book. As a consequence, he discovered further that three other over-sight entries in the over-sight book recorded as winning vouchers in the handwirting of the appellant were, in fact, losing vouchers. In her evidence, Dorothy Lee said further that in relation to these three other vouchers she had made payments to the appellant on representations made by him which she believed, that they were winning vouchers.

On the 5th of October 1972 Keith Davis spoke to Williams at the office. He showed him all four relevant vouchers, the English result book and the over-sight book and pointed out the discrepancy which he had discovered in relation to all four vouchers. The appellant said in relation to the voucher of the 4th October, Exhibit 1 that he had made a mistake and that the relevant entry for that voucher in the over-sight book was also a mistake. The appellant said in relation to the other three vouchers that he did not know how it had happened. He offered to pay back the \$27.80 which had been paid to him by Dorothy Lee on voucher, Exhibit 1. Keith Davis rejected this offer and in due course reported the matter to the Fraud Squad. The police came to the office of the Company, apparently in the afternoon of the 5th of October. Before their arrival, the appellant left the office and never returned!

At the end of the Crown's case, Mr. Millingen, who appeared for the appellant at the trial, contended that all the documents which had been tendered in the case were inadmissable and submitted that there

was no case to answer. The Court ruled that a prima facie case had been made out and the defence rested.

On appeal, Mr. Millingen repeated his contention that all the documents received in evidence were inadmissible on the ground that they infringed the hearsay rule. There is no merit in this contention, and it is rejected. The complaint which has required some consideration was that there was no sufficient evidence to say (i) that money was paid to the accused by Dorothy Lee on the three occasions prior to the 4th of October 1972, and (ii) that the alleged false pretences operated on Dorothy Lee to cause her to pay the monies to the appellant.

The first complaint is based upon a sentence in the printed evidence which records Dorothy Lee as saying that "before 4/10/72, I don't remember if I made any other payments to accused". She was after this shown the over-sight book and referred to the entries therein of the three payments prior to the 4th of October. She then said that she had made payments to the appellant as a result of the representations made to her which she believed. Mr. Millingen said that this subsequent evidence was in the nature of a re-construction and should not have been accepted by the Magistrate. We have given careful consideration to this complaint and have come to the conclusion that it was open to the learned Resident Magistrate to accept the evidence of Dorothy Lee and Keith Davis on this aspect of the case.

The second complaint is based upon a statement made by Dorothy Lee in cross-examination that she thought "bet was a winning bet after I paid the money". Taking her evidence as a whole, we are of the view that there was material from which the judge could have concluded that the false pretences of the appellant as alleged in all four counts had operated on the mind of Dorothy Lee to induce her to part with the monies as alleged in the count.

In the light of these considerations the appeal is dismissed, the convictions and the sentences are affirmed.