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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 57/81

BEFORE: The Hon. Mr. Justice Zacca - President
The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice Ross, J.A.

BETWEEN	ALFRED WILLIAMS	PLAINTIFF/APPELLANT
A N D	CORNWALL BETTING SERVICES LIMITED	DEFENDANT/RESPONDENT

Mr. G. Robinson for appellant

Mr. A. Gilman for Respondent

28th, 29th April, 1983 & 18th January, 1984

ROSS J.A.

The respondent company operates the business of bookmakers and has several betting shops, one of which is located at 3 North Street, Montego Bay. The appellant frequently bets on horse races and for some years had been placing these bets with the respondent company at the above shop; every Saturday morning the appellant would go to this betting shop and get a race programme on which were listed the names of all the horses in each race for that day together with other information including the names of the jockeys and trainers. The appellant is illiterate and so he would take the form home; there his daughter would read for him the information on the programme, particularly the number and the name of each horse in each race. After hearing this information, he would return to the betting shop and place his bets.

On Saturday, 22nd January, as was his custom, the appellant went to the betting shop and obtained a race programme which he took home and had his daughter read to him, after which he returned to the betting shop and placed his bets. One of the bets made by the appellant was a "double event" bet; this is so called because the bettor must name the winning horse in each of two consecutive races. A part of the appellant's bets won; among others he had picked the horse "Veronica" to win the first race, and the horse "Bellina" to win the second race, and each horse won its race.

A very large dividend of $4,886.50 was declared on this "double event" at the Caymanas race track where the race took place, and as the appellant had two tickets he thought he had won $9,773.00. In the past the betting shop had paid to winners of bets the dividend declared at the Caymanas race track. But when on the following Monday he attended at the head office of the company to collect his winnings he was offered a mere $102.00 which he rejected out of hand.

How did this come about? The respondent was a member of the Bookmakers Association and at a meeting of the association earlier in January 1977, the members had agreed that they would limit the maximum odds payable on "double event" bets and certain other bets to 50 to 1. This decision took effect on Saturday, 22nd January, 1977, on which date a notice to that effect was published in the Racing Weekly and also on the stencilled race programmes issued by the respondent. Some 20 copies of the Respondents' race programmes for Saturday, 22nd January, 1977 were put in evidence by the respondent at the trial and each carried at the bottom of the second page the following:

> "Notice
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> "The odds payable on any D/E, S/F, or quinilas are limited to 50 to 1 and no odds higher than this will be paid to the bettor in respect of any such bets."

The plaintiff/appellant at the trial put in evidence as Exhibit 2 the race programme which was handed to him at the respondent's betting shop on the morning in question; this programme differed from those put in evidence by the respondent in that what appeared at the bottom of the second page was:

> "Notice
>
> "The odds payable on any D/E S/F, or quinilas are:"

It was clear that in copying this second page the paper had slipped in the copying machine and so the other lines did not appear on the paper.

The plaintiff sued to recover $9,773.00 which he claimed to have won on his bet. The defendants relied on the new limitation of 50 to 1 odds, and said they had tendered the sum of $102.00 - this was all that was due.

At the trial in the Supreme Court judgment was awarded in favour of the defendant/respondent and from this judgment the plaintiff has appealed. His grounds are as follows:

> "1. The learned Judge misdirected himself in law in holding that Rule 32 of the defendant's Rules as contained in exhibit 3 enabled the Defendant to amend its rules without strict adherence to the provisions of publication of all amendments contained in Rule 30 thereof.
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> 2. The learned Judge misdirected himself in law in holding that the partially obliterated notice on the back of exhibit 2 was sufficient notice of the exemption clause relied upon by the defendant.
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> 3. There was no evidence upon which the learned Judge could safely find that a notice was written on the notice board of the defendant's agent's betting shop notifying the public of the said exemption clause.
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> 4. The learned Judge misdirected himself in law in holding that the defendant had done all that was sufficient to bring the said exemption clause to the attention of the plaintiff.
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> 5. The judgment of the learned Judge was unreasonable in the light of the evidence."

Dealing with Ground 1, the plaintiff's betting voucher exhibit 1 on its face bore the legend: "Maximum payment on any voucher $10.000.00 on completion of bet. All bets are subject to the company's rules." The original rules by which the respondent operated are set out in exhibit 3, and rules 30 and 32 to which reference is made provide as follows:

> "30. All bets made are subject to our rules and such amendments or additions thereto made by us and published before the date of the bet in all our betting shops at a prominent place to be read for a period of not less than thirty days, and these rules and such amendments and additions govern all wagers between our patrons and ourselves."

"32. The Rules may be amended or modified by us from time to time and such amendments or modifications shall form part of these rules as from the date that notice is published that these Rules have been amended or modified. All Rules shall apply to all bets accepted by us and placed with us unless they are completely irrelevant."

It was submitted on behalf of the appellant that the rules governing the operation of the respondent's business on 22nd January, 1977, were those contained in Exhibit 3 and that there was no evidence that they had been amended in accordance with the provisions of exhibit 3, and that consequently the rules in force on 22nd January, 1977, were the rules contained in exhibit 3 and not those in exhibit 4, the respondent's amended rules. The corresponding rules in exhibit 4 are set out in exhibit 5 below.

If the appellant's submission is correct it would have been necessary for the notice advising the public that the maximum odds payable for "double events" etc., was 50 - 1 to comply with the provisions of Rule 30 set out above, that is, the notice should have been published in all the respondent's betting shops for thirty days before it would come into effect.

There was however evidence adduced before the learned trial judge that the rules set out in exhibit 3 had been amended in April, 1976 and that the rules as amended were set out in exhibit 4 as shown above, and further, the amendments made at the time were set out in exhibit 5, a circular sent by the Respondents to all their agents and which reads as follows:

April 14, 1976

"To all Agents

"Kindly note the following amendments to the following Betting Rules: namely Rule 9, Rule 12, Rule 30, Rule 32, which shall read as follows:

Rule 9: A wager made will be deemed to be valid where the voucher contains no alternations or deletions thereon. Cancellations of bet, however, can be made by mutual consent.

"Rule 12: In any bet the client loses as soon as any horse named by him fails to win or place as the case may be unless such bets have been cancelled by mutual consent as is provided for in Rule 9. In the event of such mutual cancellation of the contract, such money as has been staked shall be refunded.

Rule 30: All bets are accepted subject to any amendments, decisions, or directives of the Jamaica Bookmakers Association as shall be imposed from time to time on the several members of the Jamaica Bookmakers Association, and any such amendments, decisions or directives set and published by the Jamaica Bookmakers Association shall be binding between any punter and ourselves.

Rule 32: The rules may be amended or modified by us from time to time and such amendments or modifications shall form part of these rules as from the date that notice is published that these rules have been amended or modified. Any such amendments or modifications shall be as effective and operative as if they had been in effect as from the commencement of these regulations. All rules shall apply to all bets accepted by us and placed with us unless they are completely irrelevant."

The amendments of April, 1976 therefore appear both in those rules and in the circular exhibit 5. At the trial exhibit 5 was not challenged and it was therefore open to the learned trial judge to accept it and to accept also, in the absence of evidence to the contrary, that the amendments referred to in exhibit 5 had been properly effected. As a consequence, Rules 30 and 32 in exhibit 3 would have been replaced by Rules 30 and 32 in exhibit 4, and the notice of the new limitation of odds published on 22nd January, 1977, would have become effective as from that day. It was therefore open to the learned judge to find that Rules 30 and 32 in exhibit 3 had been amended and were now as set out in exhibits 4 and 5, making amendments effective on the day of publication.

Although the learned trial judge did state in his judgment that in his view it was not necessary to publish the rules in all the company's betting shops to make them valid, he did not find that they had not been published in all the company's betting shops and, as I stated earlier,

the evidence that the rules in exhibit 3 had been amended as set out in exhibit 4 and 5 was not challenged at the trial. It does not seem to me therefore that the learned trial judge's opinion as to the necessity to publish at all the company's betting shops affects his decision in any way; in the circumstances of this case it is not necessary to decide whether the learned trial judge was correct, since there was unchallenged evidence that the amendments had been made, and so only the amended rule needed to be examined. Ground 1 therefore fails.

The second ground of appeal, as stated above, is that the learned judge misdirected himself in law in holding that the partially obliterated notice on the back of exhibit 2 was sufficient notice of the exemption clause relied on by the defendant. In his judgment the learned judge referred to the evidence of the appellant's daughter that she read the notice on exhibit 2 to her father, although in re-examination she said that she did not read the notice to her father but only to herself; the learned judge found that the notice appeared on the programme, the appellant's daughter had read it and in the circumstances it was notice to the appellant himself. Although only a portion of the notice appeared on the race programme which the appellant received from the betting shop, there was enough, the judge said, to put him on guard to make enquiries as to the contents of the whole notice.

The appellant's attorney submitted that as the full notice was never read to the appellant there was no sufficient notice to the appellant and in support of his submission he referred to:

> "Parker v. South Eastern Co., (1877) 2 C.P.D. 416 (1874-80) All England Reports Reprints 166, and
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> Sugar v. London Midland & Scottish Railway Co., (1941) 1 A.E.R. 172

Both these cases deal with contracts resulting from the issue of left luggage and railway tickets. In both cases the issue was whether what the Railway Company had done was reasonably sufficient to bring the limitation or exemption to the notice of the ticket purchaser. That issue has been dealt with here by the learned judge, and it is unnecessary to

further refer to these cases.

As was pointed out by the respondent's attorney, the contract in this case cannot be equated with the ticket cases. Here, the contract is concerned with legalised gambling under the provisions of a particular Act, which does not require a bookmaker to have any rules at all as to the odds offered nor does the Act purport to fix the odds at which bets are placed. The odds at which bets are placed are to be agreed between the bookmaker and the bettor. The bookmaker indicated clearly the odds that he was offering and the bettor accepted them by placing his bet.

Here, the appellant is told by his daughter who reads the programme to him that there is a notice at the end of the Race Programme which states "the odds payable on any D/E, S/E or quinilas are, the appellant as well as his daughter must be assumed to know that D/E meant double event and that this notice related to a part of the bet the appellant was placing and so he should enquire what this notice stated before placing his bet.

I find no reason to differ from the learned Judge and this ground likewise fails.

In ground 3 the appellant says that there was no evidence upon which the learned Judge could safely find that a notice was written on the notice board of the defendant's agent's betting shop notifying the public of the said exemption clause. There is the evidence of the agent at the betting shop that he wrote the notice on the board and the learned judge accepted his evidence. There are aspects of this witness' evidence which may be open to criticism, but it was a matter for the judge and he accepted the evidence. It would be necessary to publish this notice in the betting shop only if the amendments were not in force, as the old rules (exhibit 3) require publication in the betting shop, but the amended rules merely require that notice of the amendment of the rules be published; it does not specify how or where the notice should be published. Consequently as there was evidence from which the learned Judge could find that the notice was published in the race programme and

the Racing Weekly, that would be adequate publication for the purposes of the rules as amended. I have earlier referred to the evidence of the amendment of the rules which it was open to the Judge to accept and which having regard to his decision he must have accepted. This ground therefore also fails.

The second and fourth grounds of appeal may be taken together; the second ground is that:

> "The learned Judge misdirected himself in law in holding that the partially obliterated notice on the back of exhibit 2 was sufficient notice of the exemption clause relied upon by the Defendant."

The fourth ground of appeal is that:

> "The Learned Judge misdirected himself in law in holding that the defendant had done all that was sufficient to bring the said exemption clause to the attention of the Plaintiff."

These grounds would seem to me to be a question of fact rather than of law. The learned judge found that the respondent's agent had written the notice on the notice board; he found that the race programme with one exception (the appellant's notice - exhibit 2) had the notice printed at the end of the programme; he found also that by chance the race programme given to or taken by the appellant had only a part of the notice limiting the odds but that what appeared on the appellant's copy of the race programme was sufficient to put him on his guard and alert him to make inquiries; and finally the judge found that the appellant was illiterate but that he had always arranged to have his literate daughter read to him the contents of the race programme and that on the day in question she had done so .

The court was urged to find that because the appellant was illiterate and the respondent's agent was aware of it there was some extra burden on the respondent's agent to bring the notice to the appellant's attention. No doubt there may be cases in which this would be so, but in this case the appellant had his arrangement to take home the race programme to be read by his daughter to him, and this was an arrangement which had worked satisfactorily for some years. It must be borne in mind that illiteracy is a handicap and not a privilege.

Again I would say that these grounds fail.

The fifth ground of appeal is that the judgment was unreasonable in the light of the evidence. In the course of dealing with grounds 1-4 above it seems to me that there was evidence before the learned trial judge on which he could have made his decision and I can find no good reason for interfering with that decision.

The appeal therefore fails, the judgment of the learned trial judge is affirmed and the respondent is to have his costs paid by the appellant.