

ORIGINAL CIVIL.

Before AMEER ALI J.

1936

Mar. 26, 27, 30.

KSHITEENDRA NATH RAY CHAUDHURI

v.

MADANESHWAR CHATTERJI.*

Wagering contract—Sweepstake—Principal and agent—Prize money received by agent on account of a wagering contract—Right of principal to recover—Indian Contract Act (IX of 1872), s. 30.

Section 30 of the Indian Contract Act does not disentitle a principal to recover from his agent the prize money received by him on account of a wagering contract.

W a member of the Calcutta Turf Club purchased a ticket in the Derby sweepstake organised by the club for his employee M. The ticket drew a horse and the holder of the ticket became entitled to a prize money. Before the money was handed over to M, K claimed that the ticket had in fact been purchased for him through his agent M to whom he had paid the price. In a suit by K for a declaration that he was entitled to the prize money and for an injunction against M, M contended that the suit was to recover money won on wager and was barred by s. 30 of the Indian Contract Act.

Held that the suit was competent and M was liable to make over the prize money to K.

De Mattos v. Benjamin (1) relied on.

Dorabji Jamssetji Tata v. Edward F. Lance (2) distinguished.

ORIGINAL SUIT.

The material facts and arguments of counsel appear from the judgment.

N. C. Chatterjee and *K. Basu* for the plaintiff.

P. N. Chatterjee and *Saroj K. Dutt* for the defendant.

AMEER ALI J. This suit relates to a ticket taken in the Derby sweepstake organised by the Royal Calcutta Turf Club for the year 1934.

* Original Civil Suit No. 1164 of 1934.

(1) (1894) 63 L. J. (Q.B.) 248. (2) (1917) I. L. R. 42 B. C. m. 676.

The undisputed facts are as follows: The defendant Madaneshwar Chatterji, who was at all material times a clerk in the cash department of the Imperial Bank, applied for a ticket on May 23, 1934, through his superior, the accountant of the bank, Mr. Wright, giving as *nom-de-plume* "Annapurna."

1936

Kshiteendra Nath
Ray Chaudhuri
v.
Madaneshwar
Chatterji.
Ameer Ali J.

On June 5, 1934, a Tuesday, the draw was announced, and ticket No. 08090, the ticket which Mr. Wright obtained for Madaneshwar Chatterji, drew a horse called "Bondsman", a non-starter.

On June 9, 1934, Kshiteendra Nath Ray Chaudhuri, the plaintiff, claimed that the ticket had been obtained for him and that Rs. 10 had been paid to Madaneshwar Chatterji by his father for the purpose of applying for a ticket through Mr. Wright.

On June 15, 1934, Mr. Wright stated in correspondence that he claimed no interest in the ticket or the prize, the ticket having been obtained by him for Madaneshwar Chatterji.

By June 22, 1934, Mr. Wright had received the prize money amounting to Rs. 4,435-8. He stated his intention of making this over to Madaneshwar Chatterji, but withheld it at the request of the plaintiff until an injunction was obtained. I have not the order before me, but an injunction was granted by this Court.

Mr. Wright has left India and the money now remains with the accountant of the Imperial Bank for the time being, Mr. Wright claiming no interest therein.

There are two utterly divergent stories as to what happened. These, in outline, are as follows: According to the plaintiff, the plaintiff's father an old but active and very intelligent man, saw the defendant on May 23, 1934. He did not know the defendant before, but ascertained that he was the uncle of another clerk who had previously obtained a ticket for the plaintiff. The plaintiff's father says that he handed the defendant Rs. 10 to obtain a

1936
 Kshiteendra Nath
 Ray Chaudhuri
 v.
 Madaneshwar
 Chatterji.
 Ameer Ali J.

ticket through Mr. Wright giving the *nom-de-plume* "Annapurna", that the defendant promised to do so and asked him to call on the following Thursday. That was May 31st. The plaintiff's father did not find him in the bank on the 31st as the defendant was away on leave in connection with his daughter's marriage.

On Saturday, 2nd June, according to the plaintiff, a *gomastâ* called Durga Pada Bhattacharjya was sent to the defendant at Uttarparha with a letter asking for the ticket and a certificate. The letter as tendered before me (Ex. H) contains writing purporting to be that of the defendant, which, if genuine, is fatal to the defendant's case. According to Durga Pada this writing was made in his presence.

June 4th was a holiday.

On June 5th, it is common ground that the plaintiff's father and the defendant met in the bank, but the respective stories are very different.

The defendant says that having received his ticket from Mr. Wright and having been told that it had drawn a horse, on his way to some obscure portion of the bank he met the plaintiff's father, announced to him that his ticket had won a horse, that it would all be found in the "Statesman" together with the *nom-de-plume*, and he also suggests that he told the plaintiff's father that if he had only sent the money he might also have drawn a horse. This refers to what the defendant says happened at his first interview with the plaintiff's father, indeed the only other interview. The defendant says that the plaintiff's father, Jay Chandra Babu, came on the 24th May, that he had no money with him, and that he said that he would send his *gomastâ* with the money the next day, and that the *gomastâ* never came. He says further that, on June 5, 1934, the plaintiff's father asked him whether his *gomastâ* had not brought him the money and certain other questions. Those are briefly the divergent stories.

The onus is undoubtedly on the plaintiff. He did not get a receipt for the Rs. 10, and this is perhaps the strongest point in favour of the defendant. Mr. Chatterjee relies also upon certain improbabilities, namely, the mention of Thursday when the defendant must have known that he would not attend the bank that day and the fact that Durga Pada at Uttarparha did not insist upon the certificate being signed. He relies also on the fact that no evidence has been produced in the way of books as to the payment of Rs. 10.

As regards the letter of June 2nd, the defendant suggests that the language is suspicious and indicates manufacture for the purposes of this case. He comments on the improbability of the statement as to the whereabouts of the ticket. With regard to this letter Mr. Chatterjee relies upon expert evidence. I have no doubt that the expert called is a conscientious and painstaking man, but I think the task which he undertook, especially with his knowledge or absence of knowledge of Bengali as a writing, was too ambitious. The writings look different. But the point is that the expert was only able to compare with the disputed document a writing made in the attorney's office for the purpose of the case, and as I have no doubt, a writing made after considerable practice. The expert has pointed out that the genuine writing or writing in the attorney's office is far more shaky. This I think might well be accounted for either by the fact of illness or by the fact of intentional change. But the expert has also pointed out certain differences of calligraphy, the importance of which I am unfortunately not in a position to judge. I can, of course, understand the difference made by the omission of the dashes at the end of the line. But the difference between the rounded curve and what I may call the straight curve of one letter, and the difference between "tha" and "a", although shown to me are, rather difficult for me to appreciate. It appears to me, however, that both these are differences which it would not be difficult to adopt. In my opinion, having

1936

*Kshiteendra Nath
Ray Chaudhuri
v.
Madaneshwar
Chatterji.
Amecr Ali J.*

1936

Kshiteendra
Nath Ray
Chaudhuriv.
Madaneshwar
Chatterji.

Ameer Ali J.

regard to the materials before the expert it would be totally unsafe to rely in this case upon expert evidence. I think it certainly would be a reckless piece of forgery on the part of a man who has never seen any of the defendant's writing. I hold the pencil writing to be that of the defendant.

As regards the witnesses, those on the part of the plaintiff were undoubtedly good. The plaintiff and his father both come of a respectable class and it is difficult to conceive of their having been parties to a deliberate fraud upon a fortunate or an unfortunate man, and I myself thought that the *gomastâ* was also speaking the truth.

The suggestion is, and I think the only possible suggestion, that the old father sent the *gomastâ* with Rs. 10, that the *gomastâ* stole it and deceived his master, and the plaintiff's father being incensed with the defendant supported his son's case with false evidence and with a forged document. I am not prepared to believe that. I do not believe that the *gomastâ*'s story is false, and in substance I think the affair took place more or less as described by the plaintiff's father.

With regard to the defendant, there is in his favour the undoubted fact that he only took one ticket and that he was in the habit of taking tickets on his own account. I do not rely upon his demeanour. He is suffering from illness. I was not, however, impressed by his manner of giving evidence, *e.g.*, his particularity as to detail. His story as to what happened on June 5th, strikes me as the more improbable.

I think what happened was that the defendant who happened to have certain heavy demands upon his purse felt that he was morally entitled to a proportion of the win, that he pressed the plaintiff's father, but he found him obdurate, and that he therefore made up his mind to exercise pressure by retaining the ticket until he got a definite promise of payment. Then came the injunction. He went to a pleader and finally found himself in a position from which he

could not withdraw—the defendant in a High Court suit.

With regard to the pleadings and the issues, I shall have to say something. The point of fact is obvious and I have decided it. There is, however, a point of law.

At the very outset, I asked Mr. P. N. Chatterjee for the defendant whether he wished to take the point of “wager,” and, if I recollect rightly, at that time he did not. Later, he thought better of it and at that stage Mr. N. C. Chatterjee for the plaintiff objected on the ground that it was not pleaded. I did not insist upon a formal amendment of the written statement. I asked Mr. Chatterjee in connexion with this point of law to press counsel for the plaintiff to formulate his case with greater legal precision, because I did anticipate difficulty. Mr. N. C. Chatterjee, however, was satisfied to leave matters as they were. I remember asking Mr. P. N. Chatterjee for the defendant to press counsel for the plaintiff to state whether his case was founded upon constructive trust or upon agency and so forth. I think now that it would have been better if I had insisted upon the defendant amending, and allowed the plaintiff to amend. On the other hand, I think that the matter is capable of being worked out on the pleadings as they stand.

The relief claimed is a declaration that the plaintiff is the owner of the Royal Calcutta Turf Club Derby Sweep ticket No. 08090 of 1934, and, secondly, that the plaintiff is entitled to the prize money thereof; also the equitable relief by injunction.

The plaint is similar in language to that in the case *Dorabji Jamsetji Tata v. Edward F. Lance* (1). It is, however, less appropriate to the facts. The plaintiff in the Bombay case was seeking to obtain a particular ticket. In this case as I think, legally speaking, the ticket is an unimportant matter. It cannot, as it seems to me, be regarded as a document

1936

*Kshiteendra
Nath Ray
Chaudhuri*

v.
*Madaneshwar
Chatterji.*

Ameer Ali J.

1936

Kshiteendra
Nath Ray
Chaudhuriv.
Madaneshwar
Chatterji.

Ameer Ali J.

of title of any kind. The action, however, in this case, on the facts which are set out in the plaint, can be based upon other considerations—considerations of agency or trust, or money had and received. That brings me to the nature of the transaction.

This sweepstake is a “lottery” or “scheme for distributing prizes by lot or chance.” It appears to me to involve a wager or series of wagers between the contributors. See Halsbury, Vol. 15, page 606. So I have assumed in this case that there is a contract of wager between A, A.A., the Turf Club or its members, and B, Mr. Wright.

For the purpose of deciding this case it is not necessary to determine whether privity of contract was established between A., A.A., and C. or D., through B. But in point of fact, from the circumstances that tickets have to be taken “through” members, I assume that the sweepstake is confined to members of the Turf Club, *i.e.*, that the only parties to the contract, valid or otherwise, are the members who apply for the tickets.

In practice the circle is very much wider, because these members take tickets “for” outsiders. In this case B, Mr. Wright, took a ticket for C, his employee Madaneshwar Chatterji. Madaneshwar handed him ten rupees, and the ticket was “for” Madaneshwar. The process extends further. In this case Madaneshwar received the money from the plaintiff D. In this case, on the ticket taken by Mr. Wright with the money so received, Mr. Wright drew the prize of Rs. 5,400. I assume that Mr. Wright, and Mr. Wright only, could draw that prize. I assume that the “number” is given to the member, and that the mere fact that the member hands on the ticket to somebody else is a matter between the member and that somebody else. There is no assignment of any chose in action.

Mr. Wright received the money and was about to hand over the money to Madaneshwar, when this suit was filed and the injunction sought.

In my view (this anticipates a point made by Mr. Chatterjee), provided there is a substantive right to the money on the part of the plaintiff, I consider that the plaintiff is entitled to come to this Court and ask for a declaration and the injunction. If there is a legal right to this money, if Madaneshwar receives it, I consider that the plaintiff under appropriate circumstances can ask for specific relief in order to keep the money from Madaneshwar's actual hands. .

The whole question depends upon whether there is such a substantive right.

With regard to the law, Mr. P. N. Chatterjee was at first disposed to rely upon the dissenting judgment of Fletcher Moulton L.J. in *Hyams v Stuart King* (1) and upon the judgment of the Chief Justice of Bombay in *Dorabji Jamsetji Tata v. Edward F. Lance* (2).

The case in Bombay was different upon the facts. There the plaintiff wanted a particular ticket with a particular number, and had arranged to get this ticket with the officers of the Western India Turf Club. The Turf Club issued the ticket with this number to another person. The plaintiff sued for a declaration of title to this particular ticket and for injunction restraining the defendants, the Turf Club, from issuing the ticket to anybody else. In point of fact, therefore, it was a suit for specific performance of a particular wagering contract or of a contract to enter into a particular wagering contract. The actual ticket was of importance in that case. In point of fact the learned Chief Justice based his decision upon the ground that the plaintiff was in substance seeking to enforce a wagering contract.

In this case, it seems to me that legally the ticket is of no importance.

Mr. P. N. Chatterjee in the beginning was disposed to argue that this case came directly under

1936

*Kshiteendra
Nath Ray
Chaudhuri*
v.
*Madaneshwar
Chatterji.*

Ameer Ali J.

(1) [1908] 2 K. B. 696.

(2) (1917) I. L. R. 42 Bom. 676.

1936

Kshiteendra
Nath Ray
Chaudhuri
v.
Madaneshwar
Chatterji.

Ameer Ali J.

s. 30 of the Contract Act in two ways; firstly that it was actually a suit in respect of a contract of wager, and secondly, that it was a suit brought to "recover something alleged to be won on wager."

As regards the first point, clearly it is not a suit on the contract of wager. The prize has been delivered by AAA to B.

The second point is more difficult, and were the matter of construction open to me, I should have held that this suit is to recover something alleged to be won on wager.

It has, however, long been held that the bar to the suit in the second clause is confined to suits brought upon the contract of wager. That is the decision of the Courts in England under the Gaming Act of 1845 and under s. 30 of the Contract Act.

As I understand the law the Courts in England recognise three positions:—(i) The contract of wager between A and B—void, (ii) Contract between A and B, but in substitution or supersession of the original contract, *e.g.*, the case of cheques given upon new consideration in respect of a contract of wager, not really collateral contracts as they are sometimes called, but subsequent or distinct contract when established. *Hyams v. Stuart King* (1); *Leicester & Co. v. S. P. Mullick* (2) (an Indian decision of this class), (iii) Contract of agency between B and C, B having made the contract of wager with A in the capacity of agent for C with the implied contract which follows from such a relationship, for instance, right to indemnity and liability to make over proceeds.

Notwithstanding the Act of 1854, it was held as regards the third class not only that B as agent is

(1) [1908] 2 K. B. 696.

(2) (1922) 27 C. W. N. 442.

entitled to his indemnity, but that he is also bound to pay over the winnings or proceeds. The Act of 1892 abolished the liability of the principal to indemnify the agent in respect of losses. It did not in terms abolish the liability of the agent to pay the winnings. That this is illogical I entirely agree with Page J. [see his observations in the case of *Mitchell v. Tennent* (1)], but I am unable to accept Page J.'s view of the law as binding upon me for two reasons—(a) that the Act of 1892 was not extended to Calcutta, (b) even under the Act of 1892 the liability of an agent to pay over winnings had been re-affirmed. *De Mattos v. Benjamin* (2) followed in later cases.

In Calcutta, therefore, the position, in my opinion, is as it existed in English Courts after the Act of 1845 (clearly set out in the text-book to which I have referred: Halsbury, Volume 15).

That being the position of law, this suit, notwithstanding its object to recover winnings on wager being against an agent or trustee or a person in the position of an agent or trustee in receipt of such winnings is not barred by s. 30, Indian Contract Act.

I think on the facts, the defendant, for the purposes of this suit, is to be deemed to have received the winnings, he had claimed them as his own. Mr. Wright admitted his right to them. It is merely by the intervention of this Court in this suit that money has not actually been received by him. If there is a right to sue the defendant on receipt of the money, I consider that in a suitable case there is also a right to ask for a declaration and prevent the defendant from actually handling the money.

1936

*Kshiteendra
Nath Ray
Chaudhuri*
v.
*Madaneshwar
Chatterji.*

Ameer Ali J.

(1) (1925) I. L. R. 52 Cal. 677.

(2) (1894) 63 L. J. (Q.B.) 248.

1936

*Kshiteendra
Nath Ray
Chaudhuri*
v.
*Madaneshwar
Chatterji*
Ameer Ali J.

I hold that the plaintiff is entitled to the proceeds or prize money allotted to ticket No. 08090 and received by Mr. Wright now with the Chief Accountant of the Imperial Bank. The injunction is made permanent. The plaintiff is entitled to costs.

Suit decreed.

Attorneys for plaintiff: *P. N. Sen & Co.*

Attorneys for defendant: *Mitra & Bural & Co.*

G. K. D.