

ORIGINAL CIVIL.

Before Mr. Justice Chari.

W. BANVARD

v.

M. M. MOOLLA.*

1928
Nov. 30.

Wagering contract, void but not illegal—Collateral transactions arising out of wagers—Cheque given for promise to refrain from having drawer declared a defaulter—Consideration—Contract Act (IX of 1872), s. 30.

A wagering contract, under the Indian Contract Act, is void to the extent that no Court will enforce such a contract, but it is not illegal. A collateral agreement, therefore, based upon a transaction which was originally a wagering transaction, is not on that account illegal.

A cheque, arising out of a betting transaction, but given in consideration of a person's promise to refrain from posting the drawer of the cheque before the Turf Club and having him declared a defaulter, is valid, and for good consideration.

Hyams v. Stuart King, [1908] 2 K.B.D. 696; *Leicester & Co. v. Mullick*, 27 C.W.N. 442—referred to.

Doctor for the plaintiff.

E Maung for the defendant.

CHARI, J.—The facts of this case are perfectly clear. The defendant owed money to the plaintiff in respect of certain betting transactions which apparently took place at the end of November 1927. Some time in December the defendant having made default in payment of the amount due, except a sum of Rs. 600, the plaintiff began pressing him for payment and sent two of his assistants to get the money from the defendant. They apparently did not succeed, in getting anything from him, and some time about the third week of December Abraham, one of the assistants of the plaintiff, went and told

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the defendant that unless he paid up his master the plaintiff threatened to post him. The defendant pretends that he does not know the rules of the Turf Club in this respect, but I have not the least doubt that he knows everything about them. The defendant thereupon gave a cheque post dated to the 15th of January. On that day or on the next day he wrote to the plaintiff asking him not to present the cheque and promising to make payment of Rs. 1,000 on the succeeding Friday and the balance in the succeeding month. The plaintiff did not post the defendant as he could have done, and I am satisfied that the consideration for the passing of the cheque is the plaintiff's act in refraining from posting him before the Turf Club and bringing him on the list of defaulters of the Turf Club, which is the punishment inflicted in such cases.

The next question for consideration is the legal question whether the plaintiff is entitled to recover on the cheque in these circumstances. It is alleged that the consideration for the cheque was an illegal consideration. The cheque was given for a collateral purpose, namely to induce the plaintiff to refrain from posting the defendant, and there is nothing in section 30 of the Contract Act which makes a promise based on such a consideration illegal. In the case of *Leicester & Co. v. S. P. Mullick* (1), the facts were somewhat similar to the facts in this case. There a hundi was passed and the person in whose favour the hundi was passed had already reported to the Turf Club, but agreed in consideration of the passing of the hundi to withdraw his name and prevent him from being posted as a defaulter. In *Hyams v. Stuart King* (2), the facts were exactly similar to those in the present

(1) (1922) 27 C.W.N. 442.

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

case, the consideration there being a promise to ~~refrain~~ from declaring the giver of the cheque a defaulter. This was held to be a good consideration. The case in 27 Calcutta Weekly Notes therefore practically disposes of the defendant's contention, but Mr. E Maung, who appears for him, argues that the Calcutta case proceeded more or less on the English decisions which themselves were based upon a different Act. Some of the provisions of the English Gaming Act are undoubtedly different from the Indian Act, but the principles applied are the same both in England and in this country. As a matter of fact at page 447 in *Leicester's* case the Calcutta High Court disposes of an argument based upon section 30 of the Indian Contract Act that that Act makes agreements by way of wager illegal. The learned Judges of the High Court pointed out that the sections of the Contract Act make a wagering contract void to the extent that no Court will enforce such a contract and not illegal. The collateral agreement therefore based upon a transaction which was originally a wagering transaction is not on that account illegal. I am therefore satisfied that there has been good consideration for the passing of the cheque in that the plaintiff ~~refrained~~ from making any report against the defendant to the Rangoon Turf Club.

There will therefore be a decree for Rs. 2,200 and costs.

[The defendant preferred an appeal which was dismissed by Heald and Mya Bu, JJ. under O. 41, R. 11 of the Civil Procedure Code.]

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