

INSTITUTE
OF
ADVANCED
LEGAL
STUDIES

1 15 OF 1973

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL, JAMAICA

BETWEEN :

PARAMOUNT BETTING LIMITED Appellant

- and -

THE ATTORNEY GENERAL and THE COLLECTOR
GENERAL Respondents

10 CASE FOR THE APPELLANT

Record

1. This is an appeal from a judgment dated the 20th December 1972 of the Court of Appeal of Jamaica (Luckhoo and Graham-Perkins JJ., Edun J. dissenting) dismissing an appeal from a judgment dated the 4th June 1971 of the High Court of Jamaica (Henry J.) whereby the question posed in the Originating Summons was answered in the affirmative and in favour of the Respondents.

p.19

p.12
pp.1-2

20 2. The abbreviations in the left hand column describe the statutes and orders listed in the right hand column, the material parts of which are contained in the pocket at the end of this Case:

"1965 Act" The Betting Gaming and Lotteries Act 1965

"the 1965 Regulations" The Betting Gaming and Lotteries Regulations 1965

"1965 Order" The Betting Gaming and

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	Lotteries (Bookmakers Levy Scheme) Order 1965	
"the 1967 Order"	The Betting Gaming and Lotteries (Bookmakers Levy Scheme) (Overseas Horse Races) Order 1967	
"the 1968 Order"	The Betting Gaming and Lotteries (Bookmakers Levy Scheme) (Overseas Horse Races) (Amendment) Order 1968	10
3.	Paragraph 3 of the 1967 Order (as amended by paragraph 3 of the 1968 Order) imposes a levy in respect of a business which includes transactions on overseas horse races and the issue in this case is whether the Appellant, who is a bookmaker within the meaning of that term in the 1965 Act and subsequent Orders, is liable to pay such levy in respect of betting offices from which no such business is conducted.	20
4.	The relevant facts which are not in dispute are as follows:-	
	(1) At all material times the Appellant was in business as a bookmaker and operated a number of betting offices. Betting office licences in respect of all such premises had been issued under Section 9 and the First Schedule to the 1965 Act.	30
	(2) In the levy period 1968/69 (which was the period of one year beginning with 1st April 1968 and ending 31st March 1969) the Appellant conducted no betting transactions on overseas horse races from 35 of his offices.	40
	(3) On the 21st September 1968 the Appellant wrote to the Collector General	

informing him that it did not and did not intend to conduct any business which included transactions on overseas horse races at these 35 offices. The Appellant accordingly submitted the relevant betting office licences for alteration to that effect - alteration (not cancellation) because the Appellant did not intend to cease its business in respect of local horse races at those offices.

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(4) On the 17th November 1969 the Collector General replied to this letter referring to the opinion of the Law Officers of the Crown to the effect that in their view there was no provision in the legislation for such alteration of licences and that the Appellant was liable to pay levy under the 1967 Order (as amended by the 1968 Order) in respect of all its betting offices and not just those from which it conducted a business which included betting transactions on overseas horse races.

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p.8

(5) The Collector General then commenced proceedings in the Resident Magistrates Court to recover the full amount of the levies demanded but these proceedings were adjourned sine die by consent in order that the relevant question of construction could be determined by the High Court of Jamaica as provided by the Judicature (Civil Procedure Code) Law Chapter 177 of the Laws of Jamaica. On the 15th April 1971 the Originating Summons was taken out by the Appellant and the Attorney General of Jamaica was joined in the proceedings as a necessary formality by virtue of the Crown Proceedings Law of Jamaica.

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p.4,11.5-10

p.13,11.14-26

p.1

(6) The question of construction raised by the Originating Summons was:

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p.2,11.4-12

"Whether the provisions of Section 3 of [the 1968 Order] require a bookmaker to pay a levy under this Order with respect to a betting office operated by the bookmaker when such betting office does not engage in transactions

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dealing with overseas horse racing
and engages only in transactions
dealing with local horse races."

p.13,11.3-13
p.19,1.39-
p.20.1.5

It has been accepted by both Courts below that the reference, in the above question, to Section 3 of the 1968 Order should be construed as a reference to paragraph 3 of the 1967 Order (as amended by the 1968 Order).

pp.12-16
p.16,11.33-34

5. In the High Court of Jamaica Henry J. answered the question posed in the Originating Summons in the affirmative. In his judgment the words in paragraph 3(2) of the 1968 Order, which impose a levy on a bookmaker "in respect of each betting office operated by him" etc., should not be given "an unnecessarily restricted meaning" so as to apply only to betting offices operated for the transaction of business including transactions on overseas horse races. Further, in his

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p.15,11.12-26

p.15,11.26-33

judgment, the words in paragraph 3(3)(a)(ii) of the 1968 Order referring to the submission of a licence for "alteration" when the office is "closed" should not be construed as referring to closure for the purpose of conducting any particular type of business: closure (the learned judge thought) referred to physical closure of the premises (e.g. during temporary building operations), for neither the 1965 Act nor the 1965 Regulations made thereunder

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p.15,1.33-
p.16,1.4

"suggested that there [was] any intention [of the Legislature] to permit the issue of betting office licences of limited application" i.e., restricting user of the premises to particular types of transaction or excluding particular types of transaction. The learned judge agreed that, by the 1967 Order, the Minister had exercised his power under Section 17(2) of the 1965 Act to divide bookmakers into different categories by creating a category defined by reference to the business carried on (i.e. a business which included betting transactions on overseas horse races); but he did not consider that the application of the 1967 Order (as amended by the 1968 Order) to betting offices in which no business in respect of overseas horse races was transacted involved any improper exercise by the Minister of his statutory power.

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p.16,11.5-34

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The learned judge made no order as to costs.

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p.16,1.35

6. In the Court of Appeal of Jamaica Luckhoo J. (with whom Graham-Perkins, J. agreed) delivered judgment dismissing the appeal with no order as to costs. After setting out the history of the legislation Luckhoo, J. concluded that there was nothing in the Act or the Regulations which recognised a distinction in the grant or restriction in the operation of a betting office licence; that the particulars to be included in returns could not be decisive and that Henry, J.'s construction of paragraph 3 of the 1967 Order (as amended) was correct. Edun, J. dissented holding that the 35 betting offices were "closed" within the meaning of the 1967 Order (as amended) for the purposes of a business including transactions on overseas horse races. He decided that the mere absence of express provisions or regulations for the endorsement of betting office licences could not determine the matter, and, having regard to his construction of the 1965 Act and subsequent Orders, held that it was the duty of the Minister or the rule-making authority to make the necessary provisions to effectuate the Appellant's claim.

pp.19-26

p.35,11.38-39
p.20,1.9-
p.24,1.8
p.24,1.31-
p.25,1.2

p.25,11.15-28
p.25,1.4-
p.26,1.5
pp.26-35
p.30,1.43-
p.31,1.7

p.32,1.2-
p.34,1.30

7. The Appellant respectfully submits that the judgments of both Henry, J. and Luckhoo, J. are wrong. The various Orders that have been made imposing the levy have been made in exercise of the powers conferred by Sections 16-18 of the 1965 Act and in particular Section 17(2) thereof which authorises the establishment of a levy scheme under which bookmakers are divided into different categories, and for the amount of the levy payable by any particular bookmaker to depend on the category into which he falls. Initially under the 1965 Order the levy applied only to bookmakers who conducted a business which included betting transactions on local horse races. A levy of a fixed amount together with a percentage of the stakes placed on local horse races was payable. The category for the purposes of the said Section 17(2) was a bookmaker who conducted such a business. The scheme of the provisions was that levy should be payable by reference to a business that was relevant for the purposes of the levy (cf. Section 18(2) of the 1965 Act). The 1967 Order (as unamended by the 1968 Order) created a new category of a bookmaker

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conducting another relevant business i.e. a business that included transactions on overseas horse races. Levy was payable at a fixed percentage of the amount staked on such races. This division meant that levy was payable by reference not only to a bookmaker who conducted such a business but by reference to the business itself (cf. paragraph 2 of the 1965 Order: "in respect of each horse racing day in relation to which he conducts business as aforesaid"; and paragraph 3(2) of the 1967 Order, as unamended, "all stakes on bets accepted by the bookmaker in his business"). Thus, for the purposes of the levy, and in particular Section 18(2) of the 1965 Act, it is submitted that a bookmaker could have two relevant businesses, one which included transactions on local horse races and another which included transactions on overseas horse races, and that part of his total operations, by reference to any particular premises, could be regarded as outside the ambit of one or the other if he did not conduct the relevant business from the particular premises.

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8. The 1968 Order amended the rate of levy payable. The reference in the amended paragraph 3(2) of the 1967 Order to "each betting office operated by him" should in its context be construed as referring to an office being operated for the purpose of the relevant business in paragraph 3(1) and the reference to an office being "closed" in paragraph 3(3) of the 1967 Order (as amended by the 1968 Order) should, consistently, be construed as referring to an office being closed for the purpose of operating such business. If closure in the said paragraph 3(3) meant physical closure it would have been unnecessary to deem the particular office to be closed. Any other construction of these provisions would have the effect that a mere amending order purporting to change the rate of levy payable had extended the scope of the charge and had extended it in such a way as to make the Order ultra vires the power conferred by Section 17(2) of the 1965 Act.

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9. It is submitted that the construction of the amended paragraph 3 of the 1967 Order set out above is further supported by the reference in the amended paragraph 4(b)(v) thereof to "betting offices operated within the meaning of sub-paragraph (2) of paragraph 3 during that week". It is submitted that the

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Legislature would not have used such underlined words simply to refer to the fact that "operated" applied to "operated by him [the bookmaker] or any servant or agent of his" (as Henry, J. thought). This conclusion is further reinforced by the retention of items (i)-(iv) in paragraph 4(b) and paragraph 4(c) of the 1967 Order notwithstanding the amendments made by the 1968 Order.

p.15,11.20-26

10 10. Henry, J. said that he could find nothing in the 1965 Act or the Regulations made thereunder to suggest that there was any intention on the part of the Legislature to permit the issue of betting office licences having limited application. But Section 43 of the 1965 Act (to which no reference was made by the learned judge) empowers the Minister to make regulations generally for the better carrying out of the objects and purposes of the Act, including regulations prescribing the form and manner in which applications for licences shall be made and the form of such licences, and the 1965 Regulations so prescribe. Neither the form of application for a betting office licence (Form No. 10) nor the licence itself (Form No. 11) nor the register required to be kept by the Collector General under Regulation 11 (Form No. 12) refer to the nature of the business transacted or to be transacted at the relevant premises; but neither do the 1965 Regulations nor the 1965 Act contain any provision for the alteration of licences (by endorsement or otherwise) whether alteration refers to physical closure (as Henry, J. and Luckhoo, J. thought) or change of user (as the Appellant contends). The scheme of the Act has not therefore on any view been adequately implemented by the Orders and Regulations made thereunder and Edun, J. was right in refusing to allow the Respondents to rely (in effect) on the Minister's failure to make adequate regulations following the introduction of the 1968 Order in support of their claim for levy.

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It is submitted that the reference to "alteration" in paragraph 3(3)(a)(ii) of the 1967 Order (as amended) must, in its context, refer to an alteration in the licence that is relevant for the purposes of the levy scheme.

p.15,1.49-
p.26,1.4

p.15,11.26-33

p.24,1.21-
p.25,1.2p.33,1.32-
p.34,1.30

11. It is finally submitted that the argument which has found favour with the majority of the judges below fails to construe the provisions of

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the 1967 Order (as amended) in the light of the object and purpose of the 1965 Act and the establishment of the levy schemes pursuant to the powers conferred by Sections 16-18 thereof.

12. The Appellant humbly submits that the appeal should be allowed, that the judgments of Luckhoo and Graham-Perkins, JJ. and the Order of the Court of Appeal of Jamaica should be set aside, that the question asked in the Originating Summons, was properly understood, should be answered in the negative and that the Respondents be ordered to pay to the Appellant its costs of this appeal, of the appeal in the Court of Appeal of Jamaica and of the proceedings in the High Court, for the following among other

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REASONS

(1) BECAUSE the Appellant did not carry on a business including transactions on overseas horse races from the 35 betting offices listed in its letter of the 21st September 1968 which betting offices were therefore "closed" for the purposes of the 1967 Order (as amended).

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(2) BECAUSE properly construed by reference to its object and purpose and to the power conferred by the 1965 Act, the 1967 Order (as amended) did not extend the charge to levy (as opposed to altering the rate of levy) so as to apply to betting offices not operated for the purpose of a business including transactions on overseas horse races.

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(3) BECAUSE the levy scheme (set up by the relevant Orders pursuant to the power conferred by Sections 16-18 of the 1965 Act) imposes the levy by reference to a business carried on by a bookmaker and for the purposes of this scheme a bookmaker may be regarded as carrying on more than one relevant business.

(4) BECAUSE the reasoning of the judgments of Henry, J. in the High Court and Luckhoo and Graham-Perkins, JJ. in the Court of Appeal of Jamaica is not well founded.

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BARRY PINSON

JOHN GARDINER

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C A S E FOR THE APPELLANT

TRAVERS SMITH, BRAITHWAITE & CO.,
3, Throgmorton Avenue,
London, E.C.2.

01-588 5811 GJP/BJ

Solicitors and Agents for
Winston Spaulding of Jamaica