



ON APPEAL

FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN :

PARAMOUNT BETTING LIMITED Appellants

- and -

THE ATTORNEY GENERAL FOR JAMAICA  
and THE COLLECTOR GENERAL Respondents

CASE FOR THE RESPONDENTS

Record

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1. This is an appeal from the judgment of the Court of Appeal of Jamaica (Luckhoo and Graham-Perkins, JJ.A., Edun, J.A. dissenting), dated the 20th December, 1972, which dismissed the Appellants' appeal from a judgment of the High Court of Jamaica (Henry, J.) dated the 4th June, 1971 in relation to an originating summons dated the 15th April, 1971, and taken out by the Appellants for the determination of a question of the construction of Section 3 of the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) Amendment Order, 1968.

p.36  
pp.19-26  
p.26  
p.26-35  
pp.12-16

pp.1-2

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2. The question raised in the said summons was the following, namely: 'Whether the provisions of Section 3 of the Betting Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) (Amendment) Order 1968' (hereinafter referred to as '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 dealing with overseas horse racing and engages only in transactions dealing with local horse races.'

p. 2

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3. Paragraph 3 of the 1968 Order amended Paragraph 3 of the Betting Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) Order, 1967 (hereinafter referred to as 'the 1967 Order') which now provides as follows :

'3.(1) A monetary contribution shall be payable by every bookmaker who in any levy period conducts a business which includes betting transactions on overseas horse races, so, however, that nothing in this Order shall be construed as -

- (a) requiring a bookmaker to pay a monetary contribution in respect to any bookmaking transaction made prior to the commencement of this Order;
- (b) affecting monetary contributions which are levied under any other Scheme established under the Act.

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(2) The monetary contribution payable by each bookmaker shall be a levy at the rate of six pounds per week in respect of each betting office operated by him or by any servant or agent of his.

(3) For the purpose of this paragraph

(a) a betting office shall be deemed -

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(i) to be opened as soon as a betting office licence in respect thereof is in force; and

(ii) to continue to be operated until the person to whom the betting office licence in respect thereof was granted (hereinafter referred to as 'the licensee') or any person succeeding to the rights of the licensee under the Act or any regulations made thereunder notifies the Collector General in writing that the office is closed and submits the licence (if in force) for alteration or cancellation, and

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(b) the week during which any betting office commences or ceases to operate shall for the purpose of the levy be deemed to be a week.'

pp.2-4

4. The Appellants' said summons was supported by an affidavit sworn by their managing director, one Frank Spaulding, in which he deposed to the following, among other, facts: that the Appellants operated licensed betting offices at

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p.3 11.9-12

- which betting transactions were conducted on both local and overseas horseracing; that the Appellants operated 35 betting offices at which betting transactions were conducted on local horseracing only and not on overseas horseracing; that the Collector General had demanded to be paid a levy at the rate of £6 (~~\$~~12) per week in respect of the 35 betting offices at which no betting transactions were conducted on overseas horseracing; that the Collector General had issued a summons in the Resident Magistrate's Court, Sutton Street, Kingston to collect various amounts claimed to be due and owing from the Appellants under the levy scheme, the interpretation of which was in dispute. Two letters were exhibited to the said affidavit, one (Exhibit "A") dated the 21st September, 1968, from the Appellants to the Respondents and the other (Exhibit "B") dated the 17th November, 1969, the Respondents' reply.
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5. In his judgment Henry, J., decided that the question raised in the Appellants' summons should be answered in the affirmative. The learned judge stated his view of the effect of the 1967 Order as amended by the 1968 Order in these terms:
- 'To my mind what the Order does - and quite properly does - is to impose the levy on bookmakers of the category described and to provide by reference to the betting offices operated by those bookmakers the basis on which the levy is to be assessed. It is to be observed that the levy is imposed not on the betting office but on the bookmaker. Accordingly in my opinion a bookmaker who falls within the category described is liable to pay the appropriate monetary contribution calculated by reference to the number of betting offices operated by him or his servant or agent, regardless of whether or not betting transactions on overseas horse races are carried on in all these betting offices.'
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6. The Appellants appealed to the Court of Appeal of Jamaica. The appeal was heard by Luckhoo, Graham-Perkins and Edun, JJ.A., and judgment was given on the 20th December, 1972, dismissing the Appellants' appeal (Edun, J.A. dissenting).
7. In his judgment Luckhoo, J.A. considered
- pp.3 11.13-17
- p.3 11.26-31
- p.4 11.5-10
- pp.5-8  
pp.8-11
- pp.12-16
- p.16.11.33-34
- p.16.11.19-32
- p.36 11.21-30
- pp. 19-26

Record

p.24 11.8-20	the argument of the Appellants that paragraph 3(2) of the 1967 Order as substituted by paragraph 3 of the 1968 Order imposed a levy on a bookmaker who conducted a business which included betting transactions in respect of overseas horse races only in relation to such betting offices operated by him or by any servant or agent of his as engaged in betting transactions dealing with overseas horse races and not in respect of betting offices operated by him or by any servant or agent of his as engaged in betting transactions otherwise than in respect of overseas horse races. Luckhoo, J.A. said that the Appellants had urged that the reference in paragraph 3(3) of the 1967 Order as amended by the 1968 Order to the submission of a betting office licence to the Collector General for alteration in the event of the betting office being closed was to a betting office being closed for the purpose of accepting betting transactions on overseas horse races while remaining open for the purpose of accepting betting transactions on local horse races.	10
p.24 11.21-30	Luckhoo, J.A. could see no warrant for such a construction of paragraph 3(3). There was nothing in the Betting, Gaming and Lotteries Act, 1965 (No.34) or in the regulations made thereunder, including the 1967 Order and the 1968 Order, which recognized such a distinction in the grant, or in the operation, of a betting office licence. In Luckhoo, J.A.'s view what was contemplated by paragraph 3(3) was the closure of a betting office because it was no longer required for conducting the bookmaker's business in which case the licence would be cancelled or because it was closed temporarily for business, for example, for structural alterations, in which case there would be an alteration of the period during which the licence was operative. The betting office would not be deemed under paragraph 3(3) to be continued to be operated while the office remained closed.	20
p.24 11.38-40		
p.24 11.31-38		
p.24 11.40-47		
p.24 11.47- p.25 1.2		30
p.25 11.36-44	8. In Luckhoo, J.A.'s view paragraph 3(2) of the 1967 Order as amended by the 1968 Order meant that a bookmaker who in any levy period fell within the category of bookmakers contemplated by paragraph 3(1) must pay a levy at the rate of £6 per week in respect of each and every betting office operated by him or by any servant or agent of his in the levy period regardless of whether betting transactions on overseas horse races were conducted at some only	40
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- of those offices. The learned judge agreed with the conclusion of Henry, J.. p.25 1.44-  
p.26 1.5
9. Graham-Perkins, J.A. agreed with the judgment of Luckhoo, J.A.. p.26
10. In his dissenting judgment, Edun, J.A., said that the word 'closed' in paragraph 3(3), should not be given the restricted meaning of a 'temporary suspension' of the operation of a betting office. The learned Judge therefore failed to see why, if there was a betting office licence in force in a particular betting office, business could not be conducted on local horse races only and be considered as 'closed' in respect of operations on overseas horse races if the particular bookmaker notified the Collector General to that effect. pp.26-35  
p.30 1.43  
p.31 1.2  
p.31 1.37 -  
p.32 1.1
20. In the learned Judge's view, the absence of any provisions in the regulations or elsewhere for the endorsement of betting office licences to show that the licence was in respect of local or overseas races or both did not help the Collector General. In the learned Judge's view section 17 of the Betting, Gaming and Lotteries Act, 1965, in giving the Minister authority to make ancillary provisions as he considered desirable to give effect to the levy scheme (by providing, inter alia, for bookmakers to be divided into different categories for the purpose of the levy and for the issue by the Collector General of notices in relation to and certificates of exemption from the levy) gave the Appellants a legal right to be entitled to an exemption from paying a levy in the category of business which he did not operate and in respect of which he earned no income upon which such levy could be based. In Edun, J.A.'s view, it was the duty of the Minister to make ancillary provisions to give effect to the different categories then involved in the levy scheme and for the amount payable by way of the levy by any particular bookmaker to be determined by reference to the category into which his business fell. p.32 11.29-37  
p.32 12-28,  
37-42
30. In Edun, J.A.'s view the Appellants properly claimed an exemption from the levy. The learned Judge concluded that paragraph 3 of the 1968 Order did not require a bookmaker to pay a levy of £6 per week in respect of each betting office operated by him provided (i) he did no p.33 11.33-38
40. In Edun, J.A.'s view the Appellants properly claimed an exemption from the levy. The learned Judge concluded that paragraph 3 of the 1968 Order did not require a bookmaker to pay a levy of £6 per week in respect of each betting office operated by him provided (i) he did no p.33 11.38-45  
p.35 11.2-11  
p.35 11.12-23

p.35 11.24-26  
business in overseas horse races;  
(ii) he so notified the Collector General  
and submitted his licence for alteration, and  
(iii) if he did so, he could not be denied  
redress in a court of law upon failure of the  
Minister to provide procedural forms. He was in  
favour of allowing the appeal.

pp.35-36  
13. The Court of Appeal dismissed the  
Appellants' appeal, ordering that each party  
should bear its own costs. 10

14. The Respondents respectfully submit that  
this appeal ought to be dismissed and the  
Judgments of Henry, J., in the High Court and of  
Luckhoo, and Graham-Perkins, JJ.A., in the Court  
of Appeal were correct. It is respectfully  
submitted that the 1967 Order as amended by the  
1968 Order properly makes no distinction for the  
purposes of paragraph 3(1) and (2) between betting  
offices in which betting transactions on overseas  
horse races are carried on and those in which only  
betting transactions on local horse races are  
carried on. It is respectfully submitted that on  
a proper construction of paragraph 3(1) a  
bookmaker conducting a business which includes  
betting transactions on overseas horse races is  
liable to pay a contribution calculated in  
accordance with paragraph 3(2), whether or not  
only some of the betting offices operated by the  
bookmaker engage in betting transactions on  
overseas horse races. 20 30

15. It is respectfully submitted that the  
Appellants did not, and were not entitled in the  
circumstances of this case or at all to, claim  
exemption under the 1967 Order as amended by the  
1968 Order. It is respectfully submitted that  
the 1967 Order as amended by the 1968 Order makes  
proper provision for giving effect to the levy  
scheme under the Betting, Gaming and Lotteries  
Act, 1965.

16. The Respondents respectfully submit that  
the Judgments of the High Court and of the Court  
of Appeal of Jamaica are right and ought to be  
affirmed and this appeal ought to be dismissed  
for the following (among other) *with costs.* 40

R E A S O N S

1. BECAUSE on a proper construction of  
paragraph 3 of the 1967 Order as

amended by the 1968 Order a bookmaker who in any levy period conducts a business which includes betting transactions on overseas horse races is liable to pay a levy in respect of each betting office operated by him or by any servant or agent of his whether or not betting transactions on overseas horse races are conducted only at some of those betting offices.

2. BECAUSE Henry, J.'s affirmative answer to the question posed by the Appellants' originating summons was right.
3. BECAUSE the Appellants did not, and/or were not entitled (in the events which happened) to, claim exemption from the levy.
4. BECAUSE the Appellants were liable to pay the levy on all betting shops operated by them having regard to the fact that they conducted a business which included betting transactions on overseas horse races.
5. BECAUSE of the other reasons given by Henry, J., and Luckhoo, J.A..

STUART N. MCKINNON

No. 15 of 1973

IN THE PRIVY COUNCIL

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PARAMOUNT BETTING LIMITED      Appellants

- and -

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CASE FOR THE RESPONDENTS

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