Privy Council Appeal No. 15 of 1973

Paramount Betting Limited – – – – – *Appellant*

v.

The Attorney General for Jamaica and another – – *Respondents*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH NOVEMBER 1974

Present at the Hearing:

LORD MORRIS OF BORTH-Y-GEST
LORD WILBERFORCE
LORD HAILSHAM OF SAINT MARYLEBONE
LORD CROSS OF CHELSEA
LORD SALMON

[*Delivered by* LORD CROSS OF CHELSEA]

This is an appeal from a judgment of the Court of Appeal of Jamaica (Luckhoo and Graham-Perkins JJ.A., Edun J.A. dissenting) given on 20th December 1972 which dismissed an appeal by the appellants Paramount Betting Limited from a judgment of the High Court of Jamaica (Henry J.) given on 4th June 1971 on an Originating Summons taken out by the appellants against the respondents the Attorney General of Jamaica and the Collector General for the determination of a question of construction of the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) Order, 1967, as amended by the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) (Amendment) Order, 1968.

The orders in question were made under the Betting, Gaming and Lotteries Act, 1965. That Act provides that no one shall act as a bookmaker on his own account unless he is the holder of a bookmaker's permit authorising him so to act and also that subject to certain exceptions no premises shall be used for the purpose of the effecting of betting transactions save by the holder of a betting office licence relating to such premises or any servant or agent of his. Bookmakers' permits and betting office licences have to be renewed each year. By section 16 of the Act the Minister is empowered to establish by order schemes for the assessment, collection, allocation and application, in accordance with the provisions of the Act, of monetary contributions from bookmakers. Section 17 provides (*inter alia*) that monetary contributions required to be made by bookmakers pursuant to such a scheme shall be paid by way of a levy in respect of each levy period to which the scheme relates—the

expression " levy period " being defined as a period of twelve months beginning with the 1st April in any year—and section 18 provides (*inter alia*) that any person who intends to carry on any business the carrying on of which involves or may involve any sums becoming payable by him by way of bookmakers' levy shall inform the Collector General of his intention and when he first uses any premises for the purpose of his business " make entry " of those premises with him. The section also provides that any person for the time being carrying on such a business as aforesaid shall keep and preserve such books, records and accounts relating to his business as may be prescribed by the Collector General. The Betting, Gaming and Lotteries Regulations, 1965, made under a power conferred on the Minister by s.43 of this Act prescribed (*inter alia*) a number of forms to be used for the purposes of the Act. The form of Betting Office Licence runs as follows: " This is to certify that . . . of . . . in the Parish of . . . the holder of bookmaker's permit No. . . . is hereby authorised to use . . . (insert address and description of premises) in the Parish of . . . as a betting office ".

By the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) Order, 1965, in exercise of the powers given to him by sections 16, 17 and 18 of the Act the Minister provided that a monetary contribution should be payable by every bookmaker who in any levy period conducts a business which includes betting transactions on horse races held in Jamaica. Subject to certain special provisions to which it is not necessary to refer the levy takes the form of a percentage of the total amount of all stakes on bets accepted by the bookmaker in respect of horse races held on any horse racing day—as defined in the order—and the order provides that within 14 days of the end of each week in which a horse racing day occurs the bookmaker shall make a return to the Collector General in the form set out in the Schedule to the order accompanied by payment of the amount of the levy appearing to be payable in respect of the week to which the form relates. By the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) Order, 1967, the Minister imposed a levy on betting transactions in respect of overseas horse races which was *mutatis mutandis* broadly to the same effect as that imposed by the 1965 Order on betting transactions in respect of horse races in Jamaica though the percentages and the purposes to which the levy was to be devoted were different. In 1968, however, it was decided that the levy in respect of overseas horse races should no longer be a monetary contribution based on the total stakes on bets accepted but instead should be a monetary contribution based on the number of betting offices operated by the bookmaker in question. This change was effected by the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) (Amendment) Order, 1968. The relevant provisions of the 1967 Order as amended by the 1968 Order run as follows:

" Levy

" 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 betting transaction made prior to the commencement of this Order;

(*b*) affecting monetary contributions which are levied under any other scheme established under the Act.

(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 purposes of this paragraph—

(*a*) a betting office shall be deemed—

(i) to be operated 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

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

4. Payments of amounts due on account of the levy shall be made to the Collector General in accordance with the following procedure—

(*a*) within fourteen days of the end of each week the bookmaker shall make a return to the Collector General in the form set out in the Schedule hereto;

(*b*) the form shall show—

(i) amounts of all bets accepted by the bookmaker in his business during the said week in relation to overseas horse races;

(ii) amounts of all such bets laid off by the bookmaker with a second bookmaker;

(iii) amounts of such bets as are void bets;

(iv) amounts of all bets in connection with overseas horse races accepted by the bookmaker in his business as laid off bets from a first bookmaker;

(v) the number of betting offices operated within the meaning of sub-paragraph (2) of paragraph 3 during that week;

(vi) a declaration signed by the bookmaker and a report signed by an independent accountant as respects the accuracy of the particulars furnished; and

(vii) an assessment of the amount due in respect of that week on account of the levy;

(*c*) if no bets were accepted by the bookmaker in his business during the said week in respect of overseas horse races the bookmaker shall nevertheless make the return aforesaid indicating that no bets were so accepted;

(*d*) the form shall be accompanied by payment of the amount of the levy as appears from the form to be payable pursuant to this Order in respect of the week to which the form relates.

. . . . . .

(Paragraph 4)

SCHEDULE

THE BETTING, GAMING AND LOTTERIES ACT, 1965
(Act 34 of 1965)

THE BETTING, GAMING AND LOTTERIES (BOOKMAKERS' LEVY SCHEME) (OVERSEAS HORSE RACES) ORDER, 1967

(To be sent to the Collector General at his Head Office within fourteen days of the end of each week)

Return of Bets and Levy

Levy Period ending 31st March, 19.....

Name of Bookmaker..... Address.....

Permit No..... Return for week ending Saturday the.....

day of.....19.....

Trading Name.....

(1)	(2)		(3)	(4)	(5)		(6)		(7)
	Voucher numbers per book		Amounts of bets entered into	Void bets	Bets in column (3) validly laid off		Bets received as validly laid off by another bookmaker		Total of amounts in column (3) less amounts in columns (4) and (6)
	From	To			Amount	Book-maker	Amount	Book-maker	
Overseas horse race meeting at..... on ....(date)									
Total...									

Number of betting offices operated within the meaning of sub-paragraph (2) of paragraph 3 of the Order during the week.....

Levy enclosed in the amount of £..... in respect of the above number of betting offices.

I hereby declare—

(*a*) that the above is a full and true account of all the bets accepted by me or on my behalf in respect of overseas horse races at the meetings on the dates specified above and that the amounts of the laid off and void bets are correctly stated and that such void bets are not due to the mutual consent of the parties to the bets and that the number of betting offices operated by me and by my servants or agents is correctly stated; and

(*b*) that the amount of the levy shown above has been computed in accordance with the Scheme applicable to this levy period.

Dated this day of 19

.....

(Signed by Bookmaker)"

The appellants Paramount Betting Limited operate 100 betting offices in Jamaica but 35 of these offices only conduct business in relation to local horse racing. When the Amendment Order came into force the Collector General required the appellants to make a monetary contribution of £6 a week in respect of all their 100 betting offices but the appellants contended that the contribution was only payable in respect of the betting offices at which overseas business was transacted and sent in the betting office licences relating to the 35 offices which transacted only local business for " alteration " under paragraph 3 (3) of the amended order to show that they were closed for overseas business. As the Collector General maintained his view as to the construction of the order and declined to make any alteration in the licences, on 15th April 1971 the appellants took out an Originating Summons to which they made the Collector General and the Attorney General defendants asking for the determination of the question

> " WHETHER the provisions of Section 3 of the Betting, Gaming and Lotteries (Bookmakers' Levy Scheme) (Overseas Horse Races) (Amendment) Order, 1968, 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 ".

The contention of the appellants advanced before the Courts below and the Board was that the words, " 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 any servant or agent of his " in paragraph 3 (2) of this amended order must be read as referring only to betting offices operated for overseas business in the week in question. To read them as including betting offices at which only local business was transacted would—it was urged—lead to absurd results. Paragraph 3 (1) imposes the levy on every bookmaker who at any time in the levy period—a period from 1st April to 31st March—conducts a business which includes the acceptance of bets on overseas horse races. If the contention of the Collector General was right it would follow—it was said—not only that a bookmaker who in a given week operated a number of betting offices only some of which were open for overseas business had to pay a levy of £6 in respect of each office in that week but also that if in a later week in the same levy period he closed all his offices to overseas business and confined himself to accepting bets on local horse races he would still have to pay £6 a week in respect of all his offices for the rest of the levy period. Indeed it would seem to follow—so it was argued—that if he only began to engage in overseas business in the middle of a levy period he would make himself retrospectively liable to pay £6 a week in respect of each of his offices for every week from the beginning of the period. It was incredible that the Legislature could have intended such results to follow. Moreover the construction contended for by the appellants was—it was said—supported by the use of the word " alteration " in paragraph 3 (3) of the order. The effect of the order was to divide the betting offices of a bookmaker who carried on only local business in some offices but both local and overseas business in others into two classes for each of which a different form of licence was appropriate and the intention behind paragraph 3 (3) was to enable such a bookmaker to remove such of his offices as carried on no overseas business from the scope of the order by getting them endorsed with a note to the effect that the holder was only licensed to carry on local business on the premises in question.

Counsel for the appellants argued his case strenuously and ably but their Lordships agree with Henry J. and the majority of the Court of

Appeal that the words " each betting office operated by him " in paragraph 3 (2) of the order as amended cannot be read as limited to betting offices operated for the purpose of overseas business. They have no hesitation in rejecting the suggestion that the literal construction of the words in question might involve the result that a bookmaker who started to carry on overseas business in one or more of his betting offices in the middle of a levy period would become liable retrospectively to pay the overseas levy in respect of all his betting offices as from the start of the period. Paragraph 3 (1) only begins to " bite " on a bookmaker when he begins to carry on overseas business. The question whether a bookmaker who has come within the charge by carrying on overseas business remains liable to it for the rest of the levy period even if he ceases to carry on any overseas business is more difficult. It may well be that the Legislature did not envisage this possibility at all. If and when such a case arises it will have to be considered whether the words " a levy at the rate of six pounds per week " in paragraph 3 (2) can be read as meaning " a levy at the rate of six pounds per week in which any overseas business is transacted ". Their Lordships express no opinion on this point. But assuming in favour of the appellant that a bookmaker who has once become liable to the overseas levy will have to go on paying it for the rest of a levy period even if he ceases to carry on any such business, that fact would, in their Lordships' judgment, be quite insufficient to justify the limitation of the clear words " each betting office operated by him " to " betting offices operated for the purposes of overseas business ". If the Legislature had meant the words to be so limited they would surely have said so. Such a construction would indeed, as their Lordships see it, be inconsistent with paragraph 3 (3). The purpose of that sub-paragraph is obviously to avoid the possibility of disputes as to whether a betting office was or was not being operated during any given week. It is to be deemed to begin to be operated as soon as a licence in respect of it is granted and to continue to be operated until the holder submits the licence for alteration or cancellation because the office is closed. The reason why the word " alteration " is used as well as the word " cancellation " is, their Lordships think, probably to meet the case where the closure is only temporary—as for instance to enable repairs to be carried out—and the holder wishes the licence to revive after an interval. But, however this may be, it is difficult to see how paragraph 3 (3) (*a*) can be read consistently with the gloss which the appellants suggest should be put on the words " each betting office operated by him " in paragraph 3 (2). One would have to read paragraph 3 (3) (*a*) (i) as saying that a betting office should be deemed to begin to be operated for overseas business as soon as a betting office licence in respect of it is in force; but there are not two forms of betting office licence, one for local business only and the other covering overseas business as well. There is only one form of licence and an office must be deemed to begin to be operated for the purpose of paragraph 3 as soon as that licence is granted whether or not there is any intention of carrying on any overseas business on the premises. For these reasons their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellants must pay the respondents' costs of the appeal to the Board.

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In the Privy Council

PARAMOUNT BETTING LIMITED

v.

THE ATTORNEY GENERAL FOR JAMAICA AND ANOTHER

DELIVERED BY

LORD CROSS OF CHELSEA

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