

Arthur Andrew Cipriani and others - - - - - *Appellants*

v.

Macdonald Burnett - - - - - *Respondent*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 17TH NOVEMBER, 1932.

Present at the Hearing :

LORD ATKIN.

LORD TOMLIN.

LORD MACMILLAN.

[*Delivered by* LORD MACMILLAN.]

Their Lordships are invited in this case to assume the novel duty of adjudicating as to the winner of a sweepstake. The law of Trinidad is apparently less stringent than that of the United Kingdom on the subject. There the Gambling Prevention Ordinance (Laws of Trinidad and Tobago, 1925, ch. 28) by Section 10 enacts as follows :—

“ Every sale or contract for the sale of a lottery ticket is hereby declared to be void and no action shall be maintained by any person in respect of any such sale or contract, except by the purchaser for the return of the money or other consideration, if any, paid thereon.”

But by Section 15 it is provided that—

“ Nothing in this Ordinance contained shall apply to any lottery or sweepstake organised and controlled by the Trinidad Turf Club or by any racing club or association affiliated to the Trinidad Turf Club at or in connection with any race meeting held under the auspices of any such club or association.”

The sweepstake which has given rise to the present appeal was organised and controlled by the New Union Park Turf Club, a racing club affiliated to the Trinidad Turf Club, in connection with their Easter race meeting in 1931, and being thus a sweepstake of the character described in the section just quoted, its legality was not called in question.

In order to understand how the controversy arose it is necessary to describe briefly the system on which the sweepstake was conducted. Tickets bearing a serial letter and a serial number were issued by the promoters and sold to the public, and the winning tickets were subsequently ascertained by a draw. The apparatus of the draw consisted of (1) a revolving sphere in which were placed a number of small balls, each marked with a letter corresponding to one of the series of letters on the tickets, and (2) a board on which were fixed in a row four revolving discs bearing equally spaced round their circumferences ten figures from 0 to 9, each disc being so placed in relation to a flexible pointer that when the disc came to rest after being spun the pointer indicated a particular figure on the circumference. There were also a number of sealed envelopes each containing the name of a horse which was running at the race meeting. The method of operating the apparatus was to revolve the sphere and then by opening a trap in the bottom of it to release one of the lettered balls which it contained. This gave the serial letter of a ticket. Simultaneously the four discs on the board were spun and when they came to rest the four numbers indicated by the pointers were read off, and in this way the serial number of a ticket was obtained. The combined letter and number were then displayed on a blackboard in presence of the assembled public and written on one of the sealed envelopes. The process was repeated until each envelope had been marked with a letter and number. At the conclusion of the race meeting the envelopes were opened and the owner of the ticket whose letter and number corresponded to the letter and number written on the envelope which was found to contain the name of the horse which had obtained the highest aggregate of points at the meeting was declared the winner of the first prize, which consisted of 25 per cent. of the pool. There were also prizes consisting of diminishing percentages of the pool for each of the next seven horses, and 10 per cent. of the pool was divisible among the holders of the tickets representing the remaining horses. The balance of the pool, amounting to $38\frac{1}{2}$ per cent., was apportioned in stated percentages to the sellers of tickets, the horse-owners, charity, the Turf Club Fund, and expenses. The tickets, in addition to showing the manner in which the pool was to be distributed, bore on their face *inter alia* the following printed matter :—

“ This ticket is sold subject to the condition that in the event of any dispute arising with respect to any matters connected with drawing of the sweepstake or the awarding of the prizes the decision of the Stewards of the Trinidad Turf Club thereon shall be accepted as final.

“ Payments will be made on horses in the order of running as placed by the Judge, subject to the result of any objection that may be made within a fortnight of the races having been run.

* * * * *

“ The decimal method of drawing will be used.”

Now, what happened on the occasion in question was this. Mr. Cipriani, one of the present appellants, who is the president of the Club and mayor of Port of Spain, presided at the draw, which was held in public on 2nd April, 1931, and the procedure above described was followed. No question arises as to the drawing of the serial letters, but objection has been taken to the manner in which the figures were declared. What Mr. Cipriani did was to spin the four discs on the board, which lay facing him on a table, and when the discs stopped to read off from right to left the figure which each pointer indicated. Among the letters and figures thus ascertained was B 9351, which was the distinguishing mark of the ticket owned by Mr. Guevara, one of the present appellants, and as B 9351 was written upon the envelope subsequently found to contain the name of the first horse, Mr. Guevara was accordingly declared to be the winner of the first prize. If Mr. Cipriani had read off the figures from left to right the winning ticket would have been B 1539, which is the distinguishing mark of the ticket owned by Mr. Burnett, the present respondent.

On 13th April, 1931, Mr. Burnett's solicitor wrote to the secretary of the New Union Park Turf Club, claiming payment of the first prize on his client's behalf on the ground that at the draw the winning number had been incorrectly declared as B 9351, owing to the figures having been wrongly read from right to left, whereas it should have been declared as B 1539, as it would have been if the figures had been properly read from left to right. Proceedings were subsequently taken in the Supreme Court of Trinidad and Tobago by Mr. Burnett against Mr. Cipriani and others as representing the Club in which he claimed a declaration that ticket B 1539 was the first prize ticket and that he was the holder of it and an order for payment to him of the amount of the first prize accordingly. Mr. Guevara, as the holder of ticket B 9351, which had been declared to be the winning ticket, was allowed to intervene as a co-defendant. Defences were lodged in which the defendants, in addition to maintaining that the holder of ticket B 9351 had been declared to have drawn the horse which scored the highest number of points and was consequently entitled to the first prize, founded upon the terms of the sweepstake as set out on the tickets, and submitted that it was thereby made a condition precedent of any right of action by the holder of a ticket that any dispute connected with the drawing of the sweepstake or the awarding of the prizes should first be determined by the final decision of the Stewards of the Trinidad Turf Club and that as the dispute which had arisen

was one connected with the drawing of the sweepstake or the awarding of the prizes, and there was no decision thereon by the Stewards, this condition precedent had not been satisfied. The case came before the learned Chief Justice, Sir Charles Frederick Belcher, who, after hearing evidence and argument, pronounced judgment, declaring that as the holder of ticket B 1539 the plaintiff was entitled to the first prize in the sweepstake, and ordering the defendants (other than Guevara) to make payment to him of the amount thereof. Leave to appeal to this Board having been granted, the matter is now before their Lordships.

In their Lordships' view, the question which must be determined in the first place is whether the plaintiff (now the respondent) had, in the absence of a decision in his favour by the Stewards of the Trinidad Turf Club, any right of action at all. The ticket, which embodies the contract on which he sues, expressly requires him, as a condition of the sale to him of his ticket, to accept as final the decision of the stewards of the Trinidad Turf Club on any dispute arising with respect to any matters connected with the drawing of the sweepstake or the awarding of the prizes. The dispute between the parties is plainly of such a character, but the respondent gives the go-by to this condition, subject to which he purchased the ticket, and asks that the Court shall substitute its judgment for that of the stewards of the Trinidad Turf Club. Their Lordships are of opinion that he is not entitled to do so.

The learned Chief Justice states the question to be "whether the true construction of the first paragraph printed in the sweep ticket here is that it is such a provision as to fall within the principle of *Scott v. Avery* (1856, 5 H.L. Cas. 811), so that the decision of the stewards is a condition precedent of any action, which would then strictly speaking be not on the original contract, but on the stewards' award as appointed arbitrators; or whether the clause is mere matter of procedure for ascertaining the parties' rights, with nothing in it to exclude a right of action on the contract itself, but leaving open to the defendant club an application to stay the proceedings under Section 4 of the Arbitration Ordinance (Cap. 77)." His answer is that the clause "does not in its true construction require the plaintiff to go to arbitration as a condition precedent to action or mean that he has no cause of action except upon such decision as the stewards may give."

Their Lordships agree that the question is one of construction, but in their view the learned Chief Justice has misconceived the effect of the condition printed on the ticket. It is not essential in order to exclude a right of action at law that the contract should in terms prescribe that the award of the specially constituted tribunal shall be a condition precedent of any legal proceedings. In *Scott v. Avery* (*cit. sup.*) the contract so prescribed, and the action was held not to be maintainable in the absence of an award, but Lord Campbell in his speech referred to *Brown v.*

Overbury, 1856, 11 Ex. 715, as being identical in principle, and in the latter case, where the Court refused to entertain a claim for the prize in a sweepstake on a horse race, in the absence of a decision by the stewards as to the winner, the clause in the rules of the race provided no more, according to the report, than that any dispute as to the race was to be decided by the award of four stewards. Baron Alderson pointed out (at pp. 716-7) that—

“Every contract must be determined according to the circumstances belonging to it. This is one of racing and the universal practice has been that in order to ascertain who is to have the stakes, it must first be determined who is the winner, not in the opinion of a jury, but of the persons appointed to decide it, viz., the judge or the stewards.”

Baron Martin at pp. 717-8 said :—

“The judgment of the stewards in the case of a horse race must necessarily be conclusive ; they are expressly appointed to decide the matter, and there is no appeal from them. It is a condition precedent to the plaintiff's right to recover that he obtain the judgment of the stewards.”

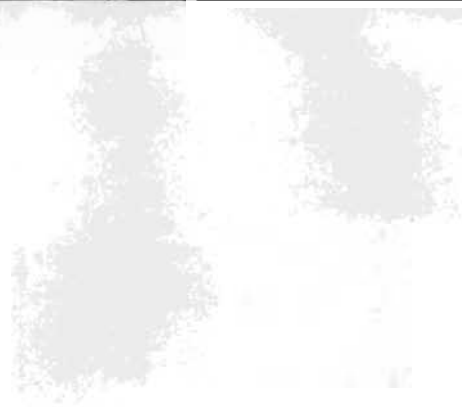
Reference may also be made to the case of *Dines v. Wolfe*, 1869, L.R. 2 P.C. 280, before this Board, where it was pointed out at pp. 289-90 that a rule of the Australian Jockey Club referring any question as to the age of a horse to the final decision of the stewards, excluded any such question from the consideration of a jury.

Their Lordships recognise that in *Brown v. Overbury* the dispute was as to which horse was the winner, whereas in the present case the dispute is as to what was the number of the winning ticket which was drawn, but the one type of question is as appropriate as the other for the determination of the stewards. It is a condition of the legality of a sweepstake in Trinidad that it shall be “controlled” by the club which organises it, and the provision in this case as to the manner of determining disputes connected with the drawing of the sweepstake is a reasonable exercise and incident of that control. Their Lordships accordingly read the condition on the ticket, having regard to “the circumstances belonging to it,” as a condition precedent, the fulfilment of which is essential before any action for the stakes can be entertained by the Courts. The respondent produces no decision in his favour by the stewards of the Trinidad Turf Club, by whose decision he contracted to be bound. Having thus failed to fulfil the condition precedent of his right to sue, he cannot be heard to ask that the Court instead of the stewards should decide the dispute which he has raised. He claims that by the rules of the game he was entitled to be declared the winner, while he at the same time declines himself to abide by the rules.

Such being their Lordships' judgment, it becomes unnecessary for them to pronounce upon the merits of the dispute or to follow the learned Chief Justice in his acute analysis of the facts. It may be that the machine was not operated as it was intended to be worked, but it is at least satisfactory to note that there is no suggestion that Mr. Cipriani's

mistake, if mistake it was, in the method of declaring the figures, was made otherwise than in good faith. It appears that throughout the draw he read all the figures the same way, namely, from right to left, and, that being so, the result was just as fortuitous as if he had read them all from left to right. The sweepstake, as their Lordships have observed, was controlled by the Club, and there would appear to have been nothing to prevent the Club, through its representative, from deciding in which way the figures should be read, provided that the decision preceded the ascertainment of the figures. It would certainly be improper for the person conducting the draw to decide, after the figures were known by the discs coming to rest, in which order he would read them, for that would plainly introduce an element of choice into a process intended to depend for its result entirely on chance.

Their Lordships will humbly advise His Majesty that the judgment of the Chief Justice of 15th June, 1931, be recalled and the action dismissed. The appellants will have their costs here and below.



ARTHUR ANDREW CIPRIANI AND OTHERS

v.

MACDONALD BURNETT.

DELIVERED BY LORD MACMILLAN.

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