1931 *Present:* **Macdonell C.J.**

WIJESURIYA *v.* LYE.

553—P. C. Colombo, 27,646.

Betting on Horse-racing (Taxation) Ordinance—Accepting money to put on totalizator—Negotiating a bet—Ordinance No. 9 of 1930, s. 3 (3).

A person who receives money, merely for the purpose of making a bet on behalf of another at a totalizator, on a race-course, does not negotiate a bet other than a taxable bet, within the meaning of section 3 (3) of the Betting on Horse-racing Ordinance, No. 9 of 1930.

APPEAL from a conviction by the Police Magistrate of Colombo.

H. V. Perera, for accused, appellant.

Crossette Thambiah, C.C., for Attorney-General.

October 9, 1931. MACDONELL C.J.—

This was a case under the Betting on Horse-racing (Taxation) Ordinance, 1930 (No. 9 of 1930). The facts were that a decoy went with a marked Rs. 5 note to the accused who admits that, prior to this Ordinance, he was a bookmaker. It is not disputed that the decoy wrote in duplicate a list of three horses and the figures Rs. 5, that he handed these two lists in a bar to the accused who wrote the number 203 in each, giving back one duplicate to the decoy and retaining the other, nor that one of these duplicates and the marked Rs. 5 note were found on the accused, together with a portion of a newspaper, containing an article estimating the chances of certain horses in the day's races, and a piece of paper with sums of money written on it; accused was not cross-examined as to this piece of paper. The accused was arrested almost immediately after his meeting with the decoy. The only conflict of testimony of any importance between the decoy and the accused was as follows:—The decoy said "I did not speak to him . . . . I did not tell the accused to go and

[1] *(1917) 19 N. L. R. 378 at 381.*

put the money on these horses . . . . There was no necessity for me to speak as I knew that this is the way 'All on' betting was done . . . . There was no need for talk as it is a matter of routine. We each understood what we were about." The accused, on the other hand, said "On 16.5.31 L. S. Fernando came and wanted me to take a bet for him and handed me these slips (the duplicates referred to above). I told him I was not accepting any bets now, so he asked me to take the money and bet for him on the race-course if I was going . . . . If I had not been going to the races I should not have accepted the money. I did it to oblige him and should have put the money on the totalizator . . . . I wrote 203 on the slip for purposes of identification . . . . I wrote 203 just for fancy's sake." Thus, according to the decoy, the accused made a bet with him; according to accused, he simply took the decoy's money and promised to put it on the totalizator for him that day at the race-course. It is conceded that if the decoy's version as to what occurred is correct, the accused received or negotiated a bet on a horse-race other than a taxable bet, section 3 (3), and was liable to a penalty under section 10.

The question is, is the decoy's version to be accepted? Now the only prosecution witness as to what occurred was this decoy, an accomplice in contravention of section 3 (3). It has been laid down again and again—see particularly Per Garvin J. in *Caldera v. Pedrick*[1]—that it is unsafe to convict on the uncorroborated evidence of a decoy a *fortiori* of an accomplice. It was argued that in this case the evidence of the decoy was corroborated by an admission of the accused, namely, the fact that he wrote the number 203 on the duplicate slips, for this tended to show that the decoy's version was correct that accused himself made a bet with him. But it was conceded in argument that, whichever story was true, an identifying mark would be a reasonable precaution, *e.g.*, to prevent a dispute later on as to the amount handed over or as to the names of the horses. Then the fact of the number 203 having been written on the slips is consistent with the decoy's story but is also not inconsistent with that of the accused. If so, I fear it cannot be regarded as corroboration. It was said that the accused's explanation why he had put on the duplicates the number 203 and not any other number was a lame one, but does this go far enough as corroboration if it is conceded that putting an identifying number on these duplicate slips would be a reasonable precaution, whichever story was true? It was also pressed in argument that on a proper direction, namely, a warning that the sole evidence was that of an accomplice, the verdict of guilty would not be upset. But there is nothing in the judgment here to show that this point was appreciated at all; the fact that the sole prosecution witness to the incident was a decoy or an accomplice is not mentioned anywhere in the judgment. Then it will be difficult to accept the decoy's version, above all, since the accused's evidence seems to fall short of providing the corroboration which, even if not absolutely necessary, is certainly desirable.

But it was argued that even if the accused's story has to be accepted, namely, that he took Rs. 5 to put it on the totalizator for the decoy witness, still the accused had "received or negotiated a bet on a horse-race other

[1] *5 Times L. R. 70.*

than a taxable bet ", and was liable accordingly. This necessitates an examination of section 3 (1). It would appear that for a bet to be a taxable bet the following conditions must all be present:—It must be a bet of not less than Re. 1 on a horse-race at a race meeting held on a registered course, made otherwise than on credit by a person acting on his own behalf, on the day on which the race is run, at a totalizator worked by the certificte holder within an enclosure, room, or place set apart for the purpose. If any one of the above conditions is absent, then the bet so made would not be a taxable bet. It was argued that the accused by receiving this money to be put on the totalizator " received or negotiated a bet ", that, as between him and the decoy, the betting transaction was complete, and that as the bet has not been made " at a totalizator worked by a certificate holder within an enclosure, room, or place set apart for the purpose ", it was a bet other than a taxable bet. But to test whether this be so one must read section 3 (3) with 3 (1); to be a bet the bet must be " made ", and a bet could not be made, I apprehend, merely by handing money to a person for him to put it on the totalizator. If there were no procedural disabilities on the enforcement of wagering contracts in Courts of Law, then the evidence the decoy would have to lead to prove his claim against accused on a common money count for " money received by defendant for the use of the plaintiff ", would be quite different according as the accused had omitted to put the money for the decoy on the totalizator at all or according as he had put it on, had received the decoy's winnings and then failed to pay them over; in the one case it would be a claim for the return simply of the Re. 1 received by the accused, in the other it would be a claim not for the return of the Re. 1 at all—that *ex hypothesi* would have gone into the totalizator for good—but of its proceeds, the winning dividend which the totalizator had paid out, in all probability a sum different in amount from the Re. 1 and in any event stamped with a different character and claimable by reason of different facts. But the main point is, was this a bet made and if so between whom? When A entrusts money to B for B to make therewith a bet with C for the behoof and at the risk of A, can B so receiving A's money be said to have made a bet with A? I think not, both on the general meaning of the term bet, and on the words of this section, taking section 3 (3) with section 3 (1). Clearly no bet had yet been made on the totalizator that could not be disputed. I must conclude then that, accepting the accused's story, he did not make a bet at all, or bring himself within the Ordinance, and as I have said above I do not think that there is the corroboration of the decoy's story that would make it safe to accept his version and so to convict.

In my opinion this appeal must be allowed and the conviction set aside.

Set aside.