

1950

Present: Gunasekara J.

CHARLES, Appellant, and KANDIAH (Inspector of Police, Galle),
Respondent

S. C. 1,155—M. C. Galle, 14,547

*Betting on Horse-racing Ordinance (Cap. 36)—Unlawful betting—Hearsay
—“ Instruments of unlawful betting ”—Proof thereof—Sections 2, 3 (3), 16, 17.*

The accused was charged with having committed an offence punishable under section 10 of the Betting on Horse-racing Ordinance by receiving or negotiating a bet on a horse-race other than a taxable bet in breach of section 3 (3) of the Ordinance. It was alleged that the accused received or negotiated an “ All on ” bet on three horses proposed to be run in races in India and Ceylon on a certain date. A witness, W, who edited a newspaper called the “ Sporting News ” gave evidence that according to his information two of the horses mentioned in the alleged bet were due to run in races that were to be held in India on that date. This was information which, according to him, was contained in telegrams purporting to have been sent by his correspondents in India as information obtained from various racing clubs in that country.

Held, that the evidence of W was inadmissible in the absence of any circumstances that would bring it within any of the exceptions to the rule against hearsay.

Held further, that a document could not, upon the interpretation given to it by the witnesses alone, be accepted as an “ instrument of unlawful betting ” within the meaning of sections 16 and 17 of the Betting on Horse-racing Ordinance. Such documents should, unless where secondary evidence of their contents is permissible, be produced for the inspection of the Court.

APPEAL from a judgment of the Magistrate's Court, Galle.

H. V. Perera, K.C., with *Nihal Gunasekere* and *E. A. G. de Silva*, for the accused appellant.

S. S. Wijesinha, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

June 27, 1950. GUNASEKARA J.—

The accused appellant was charged on two counts with having committed offences punishable under section 10 of the Betting on Horse-racing Ordinance (Cap. 36) by (1) receiving or negotiating a bet on a horse-race other than a taxable bet in breach of section 3 (3) of the Ordinance, and (2) by possessing instruments of unlawful betting "in breach of section 17 (a) (b)."

He was convicted and sentenced to a fine of Rs. 200 on the first count and Rs. 50 on the second. At the hearing of the appeal Crown Counsel stated that he could not support the conviction and I made order allowing the appeal and acquitting the appellant.

Section 17 does not create an offence but a presumption of law and the conviction on the second count is therefore obviously wrong.

The first count relates to an incident that was observed by the two police officers, Inspector Kandiah and Sergeant Perera, who entered the appellant's boutique at noon on August 6, 1949, under the authority of a search warrant issued under section 15 (1) of the Ordinance. As they stepped into the boutique they saw a man named William hand something to the appellant, who was seated at a table six feet away from the entrance. The Inspector asked the appellant for it and the appellant handed to him two folded slips of paper (P2) inside which were a two-rupee note and a fifty-cent note. Each of the slips of paper had the following writing on it:—

W	{	W	{	True Love	}	Place	
-/50		-/50		Green Lady			1/-
		-/50		Gul Jan Al Iraq			

On the first count the case for the prosecution is that when the appellant received from William these documents and currency notes he received (in the words of the police report to the court and the charge) an "All on" bet of Rs. 2.50 on three horses (1) True Love (2) Green Lady (3) Gul-Jan-al-Iraq proposed to be run in races in India and Ceylon on August 6, 1949," or negotiated such a bet.

A clerk of the Ceylon Turf Club who was present on duty at a race-meeting held by that club in Colombo on August 6, 1949, deposed that a horse named Gul-Jan-al Iraq ran in the fifth race at that meeting. A witness named Wijesekere, who described himself as the acting editor of a newspaper called the "Sporting News", gave evidence to the effect that according to his information "True Love" and "Green Lad" (not "Green Lady") were two horses that were due to run in races that were to be held in India on August 6, 1949. This was information which, according to him, was contained in telegrams purporting to have been sent by his correspondents in India as information obtained from various racing clubs in that country. Upon this evidence the learned Magistrate held that "True Love" and "Green Lad"

were names of horses proposed to be run in races to be held in India on August 6, 1949. He also held that "Green Lady" in P 2 was a mistake for "Green Lad".

Wijsekere's evidence was clearly hearsay, and before it was admitted there was no finding by the learned Magistrate as to the existence of any circumstances that would bring it within any of the exceptions to the rule against hearsay. Thus the finding that P 2 contained the names of two horses that were to run in races to be held in India was based on inadmissible evidence.

Upon another point too the learned Magistrate has based a conclusion on inadmissible evidence. The two police officers stated that they found "betting slips" in the possession of seven or eight persons other than the appellant who were in the boutique at the time of their entry, and also some "betting slips" and cash in the possession of a brother of the appellant who too was seated at a table in the boutique, and that all these persons were being charged separately. It is apparent from the context that by a "betting slip" was meant a document used or intended to be used as a record of unlawful betting on a horse-race, which would be an "instrument of unlawful betting" within the meaning of the Ordinance. The documents themselves were not produced for the inspection of the court and no evidence was given of facts that would entitle the prosecution to adduce secondary evidence of their contents. By referring to them as "betting slips" without producing them the witnesses did even more than give inadmissible secondary evidence of their contents, for they gave their interpretation of the documents; and it appears from the judgment that the learned Magistrate accepted that interpretation of documents that he had not seen and the contents of which had not been proved, thereby unwittingly substituting the witnesses' decision for his own. The verdict is in part based upon this evidence as to the finding of the "betting slips" which the learned Magistrate refers to as "incriminating evidence". There can be no question as to the highly incriminating effect of such evidence; for by the combined effect of sections 16 and 17, if any instrument of unlawful betting is found in premises entered under the authority of a search warrant issued under section 15 (1), then any person who is found there "shall be presumed, until the contrary is proved, to be guilty of the offence of unlawful betting on a horserace". The learned Magistrate has based on inadmissible evidence a finding of fact that raises a legal presumption of guilt.

The rest of the evidence on which the conviction is based is evidence to the effect that on the table at which the appellant was seated were found two books, P 3 and P 3a, a sheet of paper P 4, and two copies of the "Sporting News" P 5. The books P 3 and P 3a are described in the evidence and the judgment as "chit books". Each had a piece of carbon paper inside it, and some of the pages had been written on and the rest were blank. The writing consists of a series of figures in four columns without any words to indicate what they mean. The paper P 4 contains some writing on it and is described by the Inspector in his evidence as "a sheet of paper from an exercise book with names of

Horses written in duplicate". The learned Magistrate holds that these documents "prove convincingly that the accused was actively connected with the business of betting when the police party raided his shop", and that "P 3 and P 3a indicate to anyone with only a slight knowledge of racing that the numbers appearing on the used pages were of treble bets". He also holds that the documents were instruments of unlawful betting.

Section 2 of the Ordinance (as amended by Ordinance No. 55 of 1943) enacts that—

" 'instrument of unlawful betting' means any article or thing used or intended to be used as a subject or means of unlawful betting on a horse-race, or any document used or intended to be used as a register or record or evidence of any unlawful betting on a horse-race."

Neither a list of horses nor a newspaper purporting to publish racing news is necessarily an instrument of unlawful betting, and the learned Magistrate has not stated why he holds that P 4 and P 5 fall within this definition. He may be right in his view that P 3 and P 3a contain a record of bets on horse-races but he has omitted to state how that conclusion is reached. Moreover, he has apparently omitted to consider whether that is the only reasonable interpretation of the documents, and if so whether they cannot be records of betting that is not unlawful. In regard to each of the documents P 3, P 3a, P 4 and P 5, the learned Magistrate should have directed his mind to the question whether it had been proved beyond reasonable doubt that it was an "instrument of unlawful betting" as defined in the Ordinance. Apparently the need of such a direction was not evident after the learned Magistrate had arrived at the finding regarding the "betting slips" that raised a legal presumption of guilt.

These defects of misdirection and improper admission of evidence appear to me to be sufficiently serious to vitiate the conviction. It is therefore unnecessary to consider a further argument urged by Mr. Perera that there was no sufficient evidence as to the meaning of the writing P 2 which William handed to the appellant.

Appeal allowed.
