1970 *Present :* H. N. G. Fernando, C.J.

S. P. A. PERERA (Inspector of Police), Appellant, *and* K. M. H. MOHIDEEN, Respondent

S. C. 506/68—J. M. C. Colombo, 36814

Betting on Horse-racing Ordinance (Cap. 44)—Section 3 (3) (b)—Prosecution thereunder—Quantum of evidence—Newspaper reports—Admissibility in evidence—Evidence Ordinance, s. 114.

Where, in a prosecution under section 3 (3) (*b*) of the Betting on Horse-racing Ordinance for unlawfully betting on a horse which was expected to run at a race meet in England, the oral and documentary evidence establishes that the accused entered into a wagering contract, newspaper reports in the issues of the *Times* of London are admissible evidence of the fact that the named horse did run in the particular race. Such evidence is admissible under section 114 of the Evidence Ordinance.

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

V. S. A. Pullenayegum, Senior Crown Counsel, with *S. C. B. Wadugodapitiya*, Crown Counsel, for the complainant-appellant.

G. E. Chitty, Q.C., with *T. W. Rajaratnam*, for the accused-respondent.

Cur. adv. vult.

October 3, 1970. H. N. G. FERNANDO, C.J.—

The accused in this case was charged that he did on 21st April 1967 "receive or negotiate a bet on a horse race to wit : an all-on bet one rupee win, one rupee place, on a horse named 'St. Mungo' proposed to be run in a race meet (Spring Meeting Stakes) in England on 21st April 1967 from D. L. Tudor Peiris of Walana, Panadura, other than a taxable bet in breach of section 3 (3) (*b*) of the Betting on Horse Racing Ordinance, Chapter 44". The learned Magistrate acquitted the accused despite the fact that he accepted as true the evidence adduced by the prosecution, and this appeal is against the order of acquittal.

The prosecution established the following facts :—

(*a*) on 21.4.1967, a news sheet (P4) called the Grand Sporting News purported to contain the names of horses to run at a Race Meeting at Thirsk in England, and among these names was "St. Mungo", as being a runner in the 4th race ;

(*b*) on that day, a decoy went to the accused's premises, showed him the news sheet P4, and asked him whether the horse St. Mungo will run ; the accused then referred to the news sheet and replied that this horse will run at Thirsk ;

(*c*) the decoy gave the accused a marked two-rupee note and asked the accused to place a bet Re. 1 for win and Re. 1 for place ;

(*d*) the accused then wrote out and handed to the decoy the chit P3 which reads as follows :—

" Thirsk (4)

1/- St. Mungo 1/- 1729

(2/-) "

(*e*) the Police subsequently found in the accused's possession the marked currency note, and a chit book which contained the duplicate of the chit P3.

(*f*) issues of the London Times of 21.4.1967 published the name " St. Mungo " as a " declared runner " in the 4th race at the Thirsk Race Meeting of that day, and issues of 22.4.1967 announced that St. Mungo ran un-placed in that race.

In a careful judgment, the learned Magistrate held that the accused must be acquitted because the prosecution had failed to prove that " the horse St. Mungo was proposed to be run in the race mentioned in the charge ". This fact in his opinion was not proved by means of the reports in the news sheet P4 and in the issues of the London Times, because those reports would only be hearsay evidence of that fact and were therefore not admissible to prove it.

The Magistrate relied on the judgment in *Charles v. Kandiah* [1] decided by Gunasekara J. The question in that case was whether two names, which appeared on what purported to be a betting slip, were the names of horses which were to run at a race meeting in India. The only evidence on this point was that of a witness who described himself as the Editor of a newspaper published in Ceylon and called the Sporting Times. This witness stated that he had received information from correspondents in India, who, so the witness said, in turn had received their information from Racing Clubs in India, to the effect that two horses bearing the names appearing on the betting slip were due to run in races in India on the relevant date. With respect, I entirely agree with Gunasekara J. that the evidence of the witness was hearsay and inadmissible as proof of the fact in question. The learned Magistrate was therefore right in holding that the reports in the London Times and in P4 could not be lawful proof of the fact that a horse named St. Mungo was a runner in the race referred to in the charge in the present case. But he wrongly thought that a subsequent judgment, on which the prosecution relied, had accepted a newspaper report as proof of a fact stated therein.

In *Galahitiyawa v. Joseph* [2], where the question was whether the names on two alleged betting slips were the names of horses due to run in races in England on a particular day, Sansoni, C.J. said that reports in the

[1] *(1950) 52 N. L. R. 212.* [2] *(1966) 69 N. L. R. 152.*

London Daily Telegraph and Times, which mentioned horses so named as being runners in two races, were " relevant evidence making it more probable, according to common sense and common knowledge, that the races mentioned were proposed to be run on that day ". The learned Chief Justice also cited his own earlier judgment in *Mihindukulasuriya v. David* [1] where he had in a similar context made the following observations :—

> " The fact of publication of the race programme containing the names of the horses mentioned in the betting slips must be considered in interpreting what those betting slips meant. The only possible interpretation, I think, is that those betting slips were records of unlawful betting on horse races. The use of the newspapers for this purpose does not depend on the contents of the newspapers in regard to the race programme being true. One is entitled to attach some meaning to what appeared in the newspapers in order to throw some light on the meaning of the betting slips."

Because the reasoning of Sansoni C.J. has been wrongly regarded as being in breach of the hearsay rule, I would with respect attempt to explain that reasoning. A bet on a horse-race is a contract of the class well known to the law as a " wagering contract ", although under the present law in Ceylon such a contract is void as being illegal. What the " layer " of such a bet offers is to contract that he will pay a specified sum if a horse named by him does not win a contemplated race ; and the consideration for his offer is that the " taker " of the bet contracts that he will, if the named horse does win the contemplated race, pay a sum of money, the amount of which is either pre-determined or left to be determined by the " starting price " or the Totalizator returns. For such a contract to be effected, there must be a *consensus ad idem* between the parties to lay and take the bet. Thus the real question in a case like the present one is whether there was such a consensus for a bet on a horse expected to participate in a race proposed to be run. Once the Magistrate believed the evidence of the decoy in this case that he intended to place a bet of Re. 1 for win and Re. 1 for place on the horse St. Mungo, and that the accused agreed to take the bet and then wrote out the chit P3, it was established that the two parties agreed to enter into a wagering contract. In other words, the oral evidence and the chit P3 established according to common sense that there was a meaningful, and not a meaningless, transaction.

Hence it became the duty of the Court to ascertain the meaning of the transaction, if the available evidence rendered the meaning clear. The true meaning, according to the decoy, was that the chit P3 recorded the consensus for a wager on a horse named St. Mungo in a race proposed to be run in England, and this consensus was reached because both parties read the news sheet P4 which announced that St. Mungo would run in

[1] *(1956) 57 N. L. R. 382.*

such a race. The probability of such a consensus having been reached became in my view a certainty when the prosecution produced the two issues of the London Times.

Under existing English Law, betting on horse-races is legal, whether on a race-course or in a betting shop, and it is common knowledge that reputable newspapers publish lists of probable runners and also the results of horse races, and that members of the public place bets on horse-races in reliance upon such lists, and settle betting transactions in reliance upon such published results. Sansoni J. was well aware that the lists do not prove that a particular race is proposed to be run, and I myself do not hold that the results published in the Times of 22.4.67 (P17) prove that the race was actually run.

Nevertheless, there is the fact that the London Times announced St. Mungo in its issue of 21st April as a probable runner in the 4th race at Thirsk, and the further fact that the Times of 22nd April announced that St. Mungo ran un-placed in that same race. In the language of s. 114 of the Evidence Ordinance, when regard is had to "the common course of human conduct and private business" in relation to the practice of betting on horse-races, it is surely "likely to have happened" that St. Mungo did run in the particular race. To think otherwise would be to think quite unreasonably that the London Times perpetrates on its readers either stupid pranks or fraudulent deceptions. Even if Sansoni J. did not intend so to hold, I hold that s. 114 entitled a Court to presume from these two reports, in the absence of any evidence or inference to the contrary, that a horse named St. Mungo did run in a horse-race which was actually run at Thirsk on 21st April 1967. That being so, it is an irresistible conclusion, on the evidence which the Magistrate has accepted in the instant case, that the accused did receive a bet on that horse-race.

In view of the conclusion just stated, it is not necessary to consider the correctness of an opinion which I tentatively expressed during the argument of this appeal, which is that the writing and delivery of a chit such as P3 by an accused, in response to an offer to place a bet on a horse-race advertised in a news sheet such as P4, may suffice to establish an admission by the accused that the named horse was expected to be a runner in a horse-race "proposed to be run". If that opinion be correct, a bet which is laid and taken upon a *consensus ad idem* that a named horse expected to run in a horse-race is an illegal bet, even if it is not proved that the race was actually run or proposed to be run.

The acquittal of the accused is quashed. He is convicted of the offence charged, and I sentence him to a fine of Rs. 500, in default to a term of simple imprisonment of 2 months.

Acquittal quashed.