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In that view, I find upon the preliminary point raised by the defendant that the valuation agreed upon by the majority of the committee appointed by Government is the valuation expressed to be determined and so made binding upon both the parties to the resumption term in the Sanad.

Upon the first preliminary issue, which is really merely introductory, I hold as a matter of form rather than substance that the three persons named therein were not arbitrators but constituted a committee of valuers contemplated in the resumption clause of the Sanad. On the second I have already found. It is unnecessary to find upon the third issue.

The suit will now be dismissed with all costs.

Solicitors for the plaintiffs: Messrs. *Edgelow, Gulabchand Wadia & Co.*

Solicitor for the defendant: Mr. *E. F. Nicholson.*

Suit dismissed.

G. G. N.

ORIGINAL CIVIL.

Before Mr. Justice Marten.

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July 3.

SIR DORABJI JAMSETJI TATA, KT. (PLAINTIFF) v. EDWARD F. LANCE
AND OTHERS (DEFENDANTS).⁸

Indian Contract Act (IX of 1872), section 30—Bombay Act III of 1865, section 1—Lottery—Sanction of Government of India—Effect of sanction to save criminal prosecution—Sanction cannot override Imperial Acts or Acts of Indian Legislature defining civil law—Contract to purchase a ticket in a lottery though sanctioned by Government is void—Injunction cannot be granted in support of a void contract—Motion—Costs.

O. C. J. Suit No. 630 of 1917.

In April 1917, the Western India Turf Club organised a War Loan Lottery having previously obtained the sanction of the Government of India for such undertaking as a special case. The tickets in the said lottery from No. 1 onwards were offered to the public, at Rs. 10 each. The plaintiff being desirous of securing a particular ticket bearing the number 15315 purchased the same through one of the agents of the Club, who had the disposal of such ticket. A receipt for Rs. 10 was passed to the plaintiff in which the number of the ticket was entered. As the book containing the ticket had not been sold to that number the agent of the Club agreed actually to hand over the ticket itself when he got to the particular number in the book. Through some mistake the book containing the particular ticket was sent to Calcutta where it was issued and delivered to defendant No. 3. The plaintiff insisting on having the ticket purchased by him applied to the Club for its delivery to him. The Club thereupon decided to withdraw the ticket 15315 altogether, to return the plaintiff's money paid in respect of that ticket and to issue a new ticket 15315A to the 3rd defendant. The 3rd defendant altered the number of the ticket to 15315A but the plaintiff declined to abide by this arrangement. The plaintiff then sued the Club and 3rd defendant for an injunction and order restraining the 1st defendant, the Secretary of the Club, and 2nd defendant, a member of the Club, on behalf of himself and all other members of the Club from withdrawing ticket No. 15315 from the lottery and from paying the amount of any prize drawn by that ticket or any other ticket substituted in place thereof to the 3rd defendant :

Held, (1) that the effect of the sanction of the Government of India being merely to save any prosecution under the criminal law, so far as the civil law was concerned the Government had no power to overrule the Imperial Acts or the Acts of the Indian Legislature which determined the rights of parties ;

(2) that having regard to the first portion of section 30 of the Indian Contract Act which provided "that agreements by way of wager are void" the contract in question was an agreement by way of wager and was consequently void ;

(3) that the contract sued on was also one of the character mentioned in the first portion of section 1 of Bombay Act III of 1865 and was, therefore, null and void ;

(4) that no injunction could be granted in support of a void contract.

MOTION for injunction:—

In April 1917, the Western India Turf Club advertised to the public a War Loan Lottery started by

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the Club with the sanction of the Government of India. The tickets in the said lottery from No. 1 onwards were offered to the public at Rs. 10 each and it was announced that several prizes of varying values would be given to the holders of the tickets who drew the same under the *modus operandi* adopted by the Club for ascertaining the winning tickets. The whole amount subscribed was to be given away in prizes in shape of Government War Loan Bonds after deducting 5 per cent. thereout for expenses.

The tickets in the said lottery were handed for sale to various agents, one of whom was the firm of Messrs. Thomas Cook & Son. The plaintiff, Sir Dorabji Jamsetji Tata, Kt., being desirous of acquiring a particular ticket, viz., No. 15315, and finding that the said ticket had been handed to Messrs. Thomas Cook & Son offered to buy the same from the latter who accepted the said offer. The plaintiff thereupon paid Rs. 10 to Messrs. Thomas Cook & Son who on 18th April 1917 passed a receipt as follows:—"Received of Sir D. J. Tata the sum of Rs. 10 only for ticket No. 15315." The said ticket was not then delivered to the plaintiff as it was in a book of which the earlier tickets were not then sold. Messrs. Thomas Cook & Son, however, promised that immediately the earlier tickets were all sold, they would deliver the ticket No. 15315 to the plaintiff. Some time after, the plaintiff asked Messrs. Thomas Cook & Son to deliver the said ticket to the plaintiff when he was informed that the book containing the said ticket had been through mistake sent to Calcutta and that Messrs. Thomas Cook & Son had wired to their Calcutta agents not to part with the said ticket but to return the same to Bombay. On further inquiry Messrs. Thomas Cook & Son intimated to the plaintiff that the said ticket had been sold and delivered to the 3rd defendant W. H. S. Halley of Assam.

On 6th June 1917, the plaintiff through his attorneys called upon Messrs. Thomas Cook & Son to hand over the said ticket to the plaintiff. In the correspondence that followed, Messrs. Thomas Cook & Son expressed their inability to hand over the said ticket to the plaintiff, and repudiating all liability on their part offered to refund to the plaintiff Rs. 10, which the plaintiff declined to accept.

The plaintiff submitted that the property in the said ticket had passed to him, that Messrs. Thomas Cook & Son were holding the ticket on behalf of the plaintiff and as his trustees and that the 3rd defendant had not acquired any right, title or interest to or in the said ticket by reason of the subsequent sale to him by Messrs. Thomas Cook & Son's agents at Calcutta. On the 14th June 1917, the plaintiff through his attorneys gave notice to the 1st defendant Edward F. Lance as Secretary of the Western India Turf Club War Loan Lottery, that in case the said ticket should draw a prize at the lottery the said Club should not pay the amount of such prize to any one except the plaintiff. By their attorneys' letter, dated 21st June 1917, the Club intimated to the plaintiff that in order to avoid any dispute the Club had withdrawn No. 15315 altogether from the lottery, that they were writing to the 3rd defendant informing him of the withdrawal of the said number and that the number of the ticket had been changed to 15315A, and that in conclusion the Club offered to return to the plaintiff Rs. 10 on the ground that the ticket No. 15315 having been withdrawn was not available for sale. The plaintiff declined to receive Rs. 10 from the Club, contending that the Club had no right to withdraw the ticket bearing No. 15315 of which the plaintiff was the rightful owner. The plaintiff submitted that whatever the Club might have done with regard to the ticket purchased by him and wrongfully

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handed over to the 3rd defendant, the plaintiff's right to have the ticket No. 15315 put in at the lottery with the other tickets for drawing the prizes could not be affected by such action to the prejudice of the plaintiff. The plaintiff said that he had no objection to the Club issuing a ticket bearing No. 15315 to the 3rd defendant or any other person so long as the ticket No. 15315 was treated by them as a valid existing ticket owned by the plaintiff.

The plaintiff prayed (a) that it might be declared that he was the owner of the ticket No. 15315 or of any ticket substituted in place thereof, (b) that the 3rd defendant might be ordered to hand over to the plaintiff ticket No. 15315 or any ticket substituted in place thereof which was in the possession of the 3rd defendant, (c) that the 1st and 2nd defendants, (the 2nd defendant being a member of the Club and sued on behalf of himself and all other members of the Club) might be restrained by an order and injunction of the Court from withdrawing ticket No. 15315 from the lottery, (d) that in the event of ticket No. 15315 or any ticket substituted in place thereof drawing a prize at the lottery, the plaintiff might be declared to be the owner of the prize and the 1st and 2nd defendants might be ordered to pay the amount of such prize to the plaintiff, and (e) that pending the decision of the suit the 1st and 2nd defendants might be restrained by an order and injunction of the Court from paying the amount of any prize drawn by ticket No. 15315 or any ticket substituted in place thereof to the 3rd defendant.

The plaintiff immediately after filing the plaint on 29th June 1917 took out a notice of motion for *interim* injunction in terms of prayers (c) and (e) of the plaint. The lottery was advertised to be drawn on 2nd July 1917 at 3-30 p.m. The motion came on for hearing on 2nd July 1917 about 2 p.m. when it was adjourned for a day for

argument on a question of law, the drawing of the lottery without ticket No. 15315 being in the meanwhile restrained till the decision of the Court on the motion.

The motion was argued on the 3rd of July 1917.

Affidavits were put in on behalf of the plaintiff and the 1st defendant. The 3rd defendant residing at Assam was not served when the notice came on for hearing.

The plaintiff's affidavit was a formal affirmation of the various recitals in the plaint.

The 1st defendant in his affidavit stated that after receiving the plaintiff's attorneys' letter of the 14th June 1917 he acting under the advice of the solicitors of the Western India Turf Club had the disc bearing No. 15315 withdrawn from the lottery and destroyed and had another disc bearing No. 15315A printed and substituted for disc No. 15315 and notice of such withdrawal had been given to the 3rd defendant who had purchased ticket No. 15315, that the 3rd defendant was authorised to change the number of his ticket to No. 15315A, that it was impossible to have another ticket bearing No. 15315 printed before the advertised time for the announcement of the drawing of the tickets, that effect could not be given to prayer (c) of the plaint and that he had no objection to the granting of an injunction restraining him and defendant No. 2 from paying the amount of any prize that might be drawn by ticket No. 15315 or any other ticket substituted in its place to defendant No. 3.

C. H. Setalvad, Strangman (Advocate-General) and *Taraporevala*, for the plaintiff.

Weldon, for defendants Nos. 1 and 2.

Setalvad:—The Western India Turf Club has no power to cancel the ticket No. 15315, having once represented

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that the ticket would participate in the drawing. The ownership of the ticket on which the plaintiff rests his case will be decided after the hearing of the suit on merits. By substituting another ticket the plaintiff is clearly deprived of the chance of drawing a prize. No difficulty can be pleaded by the Club in restoring the ticket No. 15315 as no person will be affected thereby. Drawing may be postponed without prejudice to any ticket-holder until disc No. 15315 is cast and put in.

Weldon:—Whatever the result of this suit may be, the defendants intend to carry out their undertakings in this lottery, but they contend that inasmuch as no suit can be maintained in respect of a lottery, no injunction such as is sought by the plaintiff can be granted on motion. The contract in suit is void under section 30 of the Indian Contract Act and under Bombay Act III of 1865. The sanction granted by the Government for the lottery merely bars any prosecution under the Penal Code, section 294A. It cannot affect the civil rights of the parties. Neither the Contract Act nor the Act of 1865 have been repealed expressly or impliedly by the sanction. The plaintiff never had possession of the ticket in question. Under section 21 of the Specific Relief Act the plaintiff would not be entitled to an injunction, even if the suit were maintainable. His remedy would be damages: see *Chaplin v. Hicks*^(a). The chance of drawing a prize may be determined by applying the law of averages. As a matter of fact the plaintiff had suffered no damage. The ticket No. 15315 not being in the possession of the defendants, they cannot be directed by injunction to deliver it to the plaintiff.

Setalvad, in reply:—Bombay Act III of 1865 is *ultra vires* of the local Legislature inasmuch as it purports to take away the jurisdiction of a High Court.

^(a) [1911] 2 K. B. 786.

[MARTEN, J. :—Is it your contention that this Act is *ultra vires* in whole or in part?]

In so far as it prevents the bringing of suits on a wagering contract in the High Court, it is *ultra vires*. Section 30 of the Indian Contract Act affects suits for the recovery of money won on wager. The plaintiff's suit as framed at present is not for money but for a declaration that he is the owner of the ticket No. 15315. Section 30 of the Indian Contract Act ought to be read as a whole and not in parts.

[MARTEN, J. :—Can the plaintiff succeed if the Court holds that section 30 of the Indian Contract Act renders all agreements by way of wager void, and the remaining portion is read separately and not as one whole?]

On such a construction the plaintiff may fail. But the section does not forbid an action to recover the ticket, because it has something to do with a transaction which is a wager: see Pollock's Commentaries on the Indian Contract Act for distinction between that Act and Bombay Act III of 1865. The Bombay Act goes much further than the Indian Contract Act with reference to which alone the rights of parties should be decided. Section 30 of the Indian Contract Act leaves untouched the plaintiff's claim in respect of the ticket.

MARTEN, J. :—This is a Notice of motion for an injunction and order in terms of prayers (c) and (e) of the plaint. Those prayers are: (c) that the first and second defendants (who represent the Western India Turf Club) may be restrained by an order and injunction of this Court from withdrawing ticket No. 15315 from the lottery and (e) that pending the decision of this suit the first and second defendants may be restrained by an order and injunction of this Court from paying the amount of any prize drawn by the ticket No. 15315 or any ticket substituted in place thereof to the third defendant.

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Put shortly, the facts are these: The plaintiff purchased through the admitted agents of the defendant Club a ticket bearing the number 15315. Those agents were Messrs. Thomas Cook & Son of Bombay. They had the disposal of this ticket and they gave a receipt to the plaintiff for the Rs. 10 paid in respect of that particular ticket bearing that particular number. But it appears that at that moment the book containing the ticket had not been sold down to that number and so Messrs. Thomas Cook & Son agreed actually to hand over the ticket itself when they got to the particular number in the book. Messrs. Thomas Cook & Son are not before me but they seem by some mistake to have sent the ticket in question to another part of India where it was eventually issued and delivered by another branch of theirs to the third defendant.

Correspondence took place between the plaintiff and Messrs. Thomas Cook & Son, and it appears from that correspondence or from other parts of the evidence that some offer was made by or on behalf of the the plaintiff to the third defendant for this ticket. There was a counter-offer made by the third defendant which was refused: so there would appear to be some value attached to this particular ticket by the plaintiff and the third defendant over and above its face value. Then the plaintiff being unable to obtain the ticket he thought he had bought, applied to the Turf Club, and the decision the Turf Club came to was this. They decided to withdraw this ticket 15315 altogether, to return the plaintiff's money paid in respect of that ticket and to issue a new ticket 15315A to the third defendant. They wrote to the third defendant at the same time asking for his approval, which, I understand, was subsequently given and telling him that if ticket No. 15315A was successful in the lottery, the amount thereof would be paid to the third defendant. Thereupon the plaintiff brought this action;

I should say that the letter of the Club announcing what it had done was written on the 21st June and that this action was not brought till the 29th. But the explanation of that delay, which might possibly have been serious, is this, that the plaintiff was in Kashmir at the time, and that accounts for the delay of a week in taking action. Formal evidence as to this is to be put in by the plaintiff.

As regards the action itself, one can understand the plaintiff feeling that the Club had acted arbitrarily in deciding the dispute substantially in favour of one of the parties without giving either of them an opportunity of being heard, and also in doing an act which the lottery conditions did not empower them to do, viz., to cancel a particular ticket, and that consequently he had been rather harshly treated in the matter. Apart from this factor, I find it strange that parties should attach so much value to a particular ticket so as to come here with a law suit of this nature.

But the point which I have to deal with is really in the nature of a preliminary objection to the whole action, on the ground stated shortly, that the contract on which the plaintiff professes to sue is in the nature of a gaming and wagering contract, and, therefore, no action will lie on it in this Court. It is really unnecessary for me to refer to any Act or authorities for the proposition that apart from some special sanction given by the Government or the Legislature recently, no such action would lie. The Courts of this country do not exist for the purpose of helping gaming and wagering transactions and they resolutely set their faces against any attempts of that sort. But in the present case the lottery prospectus issued by the Turf Club is headed "Sanctioned by the Government of India" and it was not until this morning that I saw what this sanction really consists of. Nobody suggests there is any further

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sanction than what is contained in this document now before me, viz., a letter written by the Secretary of the Bombay Government, Judicial Department, No. 1943 dated the 26th March 1917 and addressed to the Chairman, Bombay Citizens' Executive Committee, Indian War Loan. It is to the following effect :—

" SIR,

With reference to your letter, dated the 15th March 1917, I am directed to inform you that the Government of India have approved of the organization by the Western India Turf Club of the proposed War Loan Bond sweepstake. With the approval of the Government of India, I am accordingly to convey the sanction of the Government of Bombay to this lottery as a special case."

This letter is not in the defendants' evidence and I have accordingly directed it to be exhibited to a further affidavit. Now this letter, it is quite clear, would stop the lottery being a criminal offence under the Indian Penal Code. A lottery, unless authorized by Government, renders parties liable to certain punishment by the criminal law. That letter is an authority by Government and it would clearly at any rate have this effect that no prosecution under the criminal law would lie. But the question of the civil law is something entirely different. There one has to see what is prohibited or made void by the civil law, and unless you have some qualifying words of the like nature as those found in the Indian Penal Code, viz., "not authorized by Government", the Government has no power to overrule the Imperial Acts or the Acts of the Indian Legislature by correspondence. Indeed it is not attempted to argue in this case that they have any such power. So really therefore one has to consider whether this action is covered either by section 30 of the Indian Contract Act or by section 1 of the Bombay Act III of 1865.

As regards section 30 of the Indian Contract Act, that provides that "agreements by way of wager are void": and it goes on to provide that "no suit shall be brought

for recovering anything alleged to be won on any wager," &c. In my view these two portions of the section are independent. In other words, I am entitled to take the first part alone, viz., "agreements by way of wager are void", and I have no hesitation in saying that the contract entered into in this case was an agreement by way of wager and that consequently it is void.

In that view it is really immaterial to consider whether this present suit also falls within the latter part of the section, viz., "no suit shall be brought for recovering anything alleged to be won on any wager." It is, however, said this is not a suit brought for recovering anything alleged to be won, because it is only to recover something in the contingent event of the draw resulting in the plaintiff's favour. Now, I have got to remember the foundation of this suit. It is not, in my opinion, the practice to grant specific performance of a contract for merely a piece of paper. In substance the object of this action is to recover the prize, if any, which this particular number, if inserted in the lottery, shall win, and even if the suit at the present moment does not come precisely within the latter portion of section 30, it undoubtedly falls within the spirit of it and I should not grant specific performance in a suit of that nature.

Then as regards the Bombay Act III of 1865, it is said boldly by Mr. Setalvad that this Act was *ultra vires* of the Bombay Legislature and is not binding on parties so far as it purports to affect the High Court. But he admits very frankly that the *ultra vires* portion of the argument applies only to what is stated in section 1 with respect to not allowing certain suits in any Court of Justice for recovering any sum of money paid or payable in respect of a wagering contract. But if section 1 is split up into two portions in a similar way to that in which I have split up section 30 of the Indian

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Contract Act, then this particular contract would fall within the first portion of section 1 of the Bombay Act and the *ultra vires* argument would not affect it.

Now, I do not propose to decide, particularly on a Motion, whether this Act is or is not *ultra vires* of the local Legislature as regards the latter portion of section 1. I have heard no argument on that point and so I will say nothing further about it. But I am quite satisfied that the fair way of reading section 1 is to say that all contracts of a certain character therein mentioned are null and void. I have equally no doubt that the contract sued on in the present case is one of the character mentioned in the first portion of section 1.

Now, what is the result of that? It is this, that I find and hold that under two Acts, one, the Indian Contract Act, and the other, the Bombay Act III of 1865, the agreement in this case is a void agreement. Under these circumstances, I think it follows that I cannot grant an injunction, which, if granted, depends on the validity of the contract. Obviously I cannot grant an injunction in support of a void contract. That being so, this motion must be dismissed and the *interim* injunction granted yesterday must be dissolved.

As regards the costs, I have to bear in mind that this technical point was not mentioned in the evidence and was not raised till the last minute and I think the plaintiff has some ground for thinking that he has been treated rather harshly by either the Club or its agents. Under these circumstances, I think the fair order will be to dismiss the motion without costs.

Solicitors for the plaintiff: Messrs. *Wadia, Gandhi & Co.*

Solicitors for the defendants: Messrs. *Craigie, Blunt & Caroe.*

G. G. N.