

7/82

SUPREME COURT OF VICTORIA

TOGNI v TURNBULL**Crockett J****8 February 1982**

GAMING AND BETTING - BETTING ODDS IN RELATION TO A SPORTING CONTINGENCY PRINTED IN A NEWSPAPER - PRINTER OF NEWSPAPER CHARGED WITH PRINTING THE ODDS OF CERTAIN TEAMS' CHANCES OF WINNING THE VFL GRAND FINAL - SUBMISSION OF 'NO CASE' - SUBMISSION THAT WHAT WAS SAID WAS A 'FORECAST' AND NOT PUBLICATION OF 'BETTING ODDS' - SUBMISSION UPHOLD - CHARGE DISMISSED - WHETHER MAGISTRATE IN ERROR: LOTTERIES GAMING AND BETTING ACT 1966, S40(1)(b).

The proviso to s40(1)(b) of the *Lotteries Gaming and Betting Act 1966* provides that the publication in a newspaper of a "forecast of the probable result of any sporting contingency" is not prohibited. The word "forecast" is limited to an estimate before the conduct of a sporting contingency of the outcome of that contingency without the resort to the statement of betting odds. However, the word "forecast" where used in the proviso cannot be interpreted as being of such width as to encompass a statement of 'betting odds'. Accordingly, a magistrate was in error in dismissing an information laid under s40(1)(b) of the Act on the ground that publication of betting odds in a newspaper amounted to a forecast of the probable result.

CROCKETT J: This is the return of an order nisi to review an order of dismissal pronounced in the Melbourne Magistrates' Court on 8 December 1980. The order was made at the conclusion of the hearing of the evidence for the prosecution on an information charging the respondent that on the 29th July 1980 he printed information in writing as to the betting odds in connection with a sporting contingency to wit a football match.

The respondent is the printer of *The Sporting Globe*, a newspaper circulating in Victoria. The article which was printed and which was the subject of the prosecution is one in which there are set out what are said to be the betting odds at the date of the publication of the article in relation to six of the teams in the Victorian Football League competition; those odds being said to be the odds relating to each of those teams' chances of winning the grand final conducted by the League in that year.

The provision under which the prosecution was brought is s40(1)(b) of the *Lotteries Gaming and Betting Act 1966*. The section says, as far as it is here relevant:

"Any person who prints ... or causes to be printed ... any information or advice ...
(b) as to betting odds in connexion with any such sporting contingency ...
shall be guilty of an offence."

By reference to another part of the section it is clear that a "sporting contingency" means any intended sporting contingency in any part of the Commonwealth of Australia.

It was not disputed that the grand final that was later to take place was a sporting contingency as is referred to in the Act. The article is a combination of the author's opinion as to each of the teams' chances and a statement of the specific betting odds assigned to each of the six teams in question. Those odds are said to be those available from football bookmakers. On the face of it, the offence would, accordingly, appear to have been shown to have been committed upon proof of the publication of the article in question and of the respondent's being responsible as the printer of the newspaper in which the article is contained.

However, at the conclusion of the evidence being led for the prosecution, counsel then appearing for the respondent submitted that proviso (a) to be found in sub-section (1) of s40 had application so as to exculpate the respondent from responsibility for the alleged offence. The relevant part of the proviso in question is in these terms:

"Provided that nothing herein contained shall prohibit the publication by any person in a newspaper of a forecast of the probable result of any "sporting contingency."

The exculpatory effect of that part of the proviso is extinguished if the forecast is by way of an advertisement or for valuable consideration. There is no suggestion in this case that what it is said constitutes a forecast was by way of an advertisement or for valuable consideration. The point was successfully taken in the court below, and repeated in this court, that publication of the betting odds amounted to a forecast of the probable result of the 1980 VFL grand final and accordingly by virtue of the terms of the proviso the respondent was relieved from liability for any offence by reason of the publication of the article.

It was submitted for the applicant that the proviso has no application to the present case as "a forecast" cannot be interpreted where used in the proviso as being a term of sufficient amplitude to include the expression "publication of betting odds". The argument for the respondent was simply that it could be so widely interpreted, and, indeed, as the provision in which the term is used is a penal provision, the section should be strictly construed.

In a sense, to state a series of betting odds with respect to contenders in an intended sporting contingency is, at all events, on the part of the person who formulates the betting odds, a forecast by that person of the outcome of that sporting contingency. I am not persuaded, however, that the word "forecast" where used in the proviso can be interpreted as being of such width as to encompass a statement of "betting odds".

The proviso is not limited merely to the provisions to be found in sub-section (1)(e) which seems to be designed to eliminate the publication of information in relation to betting touts. The manner in which it appears in the section suggests clearly enough, as indeed it was contended for the respondent that it did, that it refers to all of the various provisions to be found in sub-section (1). If that is so, as I believe it is, and one were to construe "forecast" as including a statement of betting odds, that construction would have the effect of the proviso's eliminating *ex hypothesi*, the commission of an offence under sub-section (1)(a) or sub-section (1)(b).

That could not possibly be the intention of the legislature and, accordingly, I think that the word "forecast" in the proviso is to be limited to an estimate before the conduct of the sporting contingency of the outcome of that contingency without resort to the statement of what is said to be betting odds in relation to each of the contenders intending to compete in that contingency. Once that conclusion is reached it is sufficient to dispose of the argument relied upon by the respondent.

It is clear, therefore, that the order nisi must be made absolute and the order of dismissal pronounced in the court below set aside. As the hearing did not proceed to the point of calling upon the respondent ordinarily the matter would go back to the Magistrates' Court. However, I have been specifically asked by counsel for the respondent, that should I reach the conclusion to which in fact I have come, I should deal with the matter on the basis that no further evidence is to be called. The penalty provision is to be found in sub-section (4). It provides:

"That any person who contravenes any of the provisions of the section shall be guilty of an offence and liable for a first offence to a penalty of not less than \$100 or more than \$500 or to imprisonment for a term of not less than seven days nor more than three months."

The respondent has not been guilty of any such prior offence and having regard to the general tone of the article at the time of its publication, its topicality and the effluxion of time both since its publication and when the matter was last before the Magistrates' Court, it seems appropriate for me to impose the minimum penalty, which is a fine of \$100. I was invited to consider whether I had the power, and if I did, to exercise it, to adjourn the proceedings but, in all the circumstances, I think that even if I do possess such a power it would be inappropriate to employ it in these proceedings and that justice would be done if the minimum pecuniary penalty would be imposed. Accordingly, it is ordered that the order of dismissal be set aside. In lieu there will be an order of conviction upon the offence charged with the imposition of a penalty of \$100.