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## SUPREME COURT OF VICTORIA

**STOIKOS v JAMES and MURDOCH**

Jenkinson J

28th October 1981

**GAMING AND BETTING - ADVERTISEMENT PLACED IN NEWSPAPER REFERRING TO A SYSTEM OF BETTING ON HORSE RACES - OFFENCE TO PRINT INFORMATION ABOUT A SYSTEM OF BETTING ON AN INTENDED SPORTING CONTINGENCY - DEFINITION OF "SPORTING CONTINGENCY" - MEANING OF "INTENDED SPORTING CONTINGENCY" - WORKS MANAGER AND BUSINESS MANAGER OF NEWSPAPER CHARGED WITH OFFENCE - JUDICIAL NOTICE ABOUT HORSE RACING - 'NO CASE' SUBMISSION UPHOLD BY MAGISTRATE - CHARGES DISMISSED - WHETHER MAGISTRATE IN ERROR: LOTTERIES GAMING & BETTING ACT 1966, S3, S40(1)(e)(i).**

An advertisement placed in a newspaper referred to a system of betting on an intended sporting contingency, being horse races. Charges were later laid against the Works Manager and Business Manager of the newspaper alleging that they caused to be printed information whereby it was made to appear that a person will give information or advice as to a system or manner of betting on a horse race. At the hearing, it was submitted that "intended sporting contingency" referred to a specific event, presently intended to be held, at a particular time and place, whereas the system of betting which was advertised, was not related to a particular horse race, but to any horse race. The Magistrate upheld this submission and dismissed the charges. Upon appeal—

**HELD: Appeal in relation to the Works Manager dismissed. Appeal in relation to the Business Manager upheld. Dismissal set aside. Remitted to the Magistrate for further hearing and determination.**

**The word "intended" in s40(1)(a) of the *Lotteries Gaming and Betting Act 1966* comprehends horse races which persons interested in horse racing expect to find distributed through the racing calendar. The system of betting advertised, was applicable to some at least, of those intended horse races. The publication of the advertisement constituted a contravention of the provision specified in each information. Accordingly, the Magistrate was in error in dismissing the charge laid against the Business Manager. The evidence justified a finding that the Manager caused the advertisement to be printed and was sufficient to support a conviction for the offence.**

**JENKINSON J:** ... s40(1)(e)(i) of the *Lotteries Gaming and Betting Act 1966* provides:

"40(1) Any person who prints sends gives publishes or disseminates or causes to be printed sent given published or disseminated any information or advice whether by any form of writing whatsoever or by radio broadcast television transmission or cinematograph—

(a) as to betting on any intended sporting contingency in any part of the Commonwealth of Australia;....

(e) wherein or whereby—

(i) it is made to appear that such person or any other person either in Victoria or elsewhere will if required—

give information or advice directly or indirectly to any system or manner of betting on any such sporting contingency ... shall be guilty of an offence: ... "

Section 3 provides that, unless inconsistent with the context or subject-matter, "sporting contingency" includes "any event or contingency of or relating to any horse race or other race fight game sport or exercise ..."

Each of the respondents was concerned, in the course of his employment, in the publication on 12th April 1980 of an issue of a weekly newspaper known as *Melbourne Truth*. Malcolm Robert Murdoch was charged that on the 12th day of April 1980 at Melbourne he did cause to be printed information in writing wherein it was made to appear that a person will, if required, give information or advice directly or indirectly as to a system or manner of betting on a sporting contingency, to wit, a horse race. The information against Keith Lindon James was that on the same date he did print information in writing similarly described.

The "Information in writing" to which each charge referred was shown by the evidence to be an advertisement on page 15 of the newspaper published on that date. What was advertised under the name "Aus-Pro", for the price of \$69.50, was not accorded much description in the

advertisement. "Aus-Pro" can be sent, the advertisement implied, through the post (for \$3.50 or less). It is referred to as a "system", in the sense of a system of betting on horse races. Equestrian Publishing Pty Ltd is represented to be the vendor. The advertisement includes a representation of what might be taken for two consecutive pages of an open book on which words descriptive of several kinds of horse race run in Australia ("welter" and "novice", for example) and numerals are printed. The inference might be drawn that what is thus represented is part of "Aus-Pro". But I do not think that I should draw that inference. The use, in some unspecified way, of "Aus-Pro" is said in the text of the advertisement to have enabled punters to make a profit from betting on a substantial number of horse races run in Victoria during a period of nine months in 1979. The opinions of several persons are recorded in the advertisement that "Aus-Pro" will enable punters to bet profitably on horse races.

From the terms of the advertisement I would infer that "Aus-Pro" is, or includes, a document in which there is a communication in writing (probably printed) concerning the means by which, in the professed opinion of the unidentified author of the writing, the probable winners of horse races to be held in Victoria (and, perhaps, elsewhere in Australia) may be forecast. I would also infer that the communication offered for sale does not purport to deal with the forecasting of the winner of a particular race, intended to be run at a specified time and place, by a process of selection among particular race horses identified in the communication, but rather that what is offered to be communicated is a method – or perhaps several methods – of selection applicable to several kinds of horse race commonly run in Australia, and applicable to any field in such a race of horses concerning each of which the age and "form" (and, perhaps, the sex and the breeding) are known ...

Counsel for the respondents submitted that in each case the evidence did not establish a *prima facie* case of a contravention of the fourth paragraph appended to s40(1)(e)(i) because the advertisement made it appear that the vendor of "Aus-Pro" would, by sale of "Aus-Pro", give information or advice as to a system or manner of betting, not on any particular horse race which it was then intended should be run at a particular time and place, but on any horse race – or, perhaps, on any horse race of a particular kind – which might at any time be run in Victoria.

Whether or not the advertisement made it clearly to appear that what was being offered did relate to horse races generally or to several classes of horse races, and not to particular horse races already arranged to be run at set times and places, the advertisement certainly did not, in my opinion, make the contrary appear. And the words "wherein or whereby" in s40(1)(e) confine the court hearing a charge of a contravention of s40(1)(e)(i) to the "information or advice" to which the introductory clause of sub-section (1) refers, as the only material upon which to determine whether "it is made to appear" that an act specified in any one of the four clauses appended to that sub-paragraph will, if required, be committed.

The submission made to the learned Magistrate, and accepted by him, rested on the presence in s40(1) of the word "intended"... That word, which is imported into the second, third and fourth of the clauses appended to s40(1)(e)(i) by the word "such", restricted each of the activities contemplated by the expression "sporting contingency" (that is, "horse race or other race fight game sport or exercise") to a specific sporting event as to which an intention had been formed that it would be held at a particular time and place, it was submitted, Excluded from the class defined by the expression "intended sporting contingency", according to the submission, was a sporting event of the holding of which an expectation might reasonably be entertained, but to hold which at a particular time and place an intention was not shown to have been formed. It is expected that several first class cricket matches will be played in Victoria next year, and that several races for two year old fillies will be run. But the expression "intended sporting contingency" presently comprehends only such of those events as can be identified as presently intended to be held at some particular time and place, according to the submission ...

... One may be confident that the legislative intention was to qualify by the word "intended" the words "horse race or other race fight game sport or exercise" in the definition of "sporting contingency", not the words "event or contingency" in that definition. In order to give effect to that intention, I would understand the expression "intended sporting contingency" as meaning event or contingency of or relating to any intended horse race or other intended race, fight, game, sport or exercise ...

... The word "intended" imports more than futurity. It would operate, no doubt, to exclude from the reach of s40(1)(e)(i) offers of advice concerning the probable result of – or concerning a system of betting on – a sporting contest of a kind which no-one expected or intended would be held, as for example a game of football supposed to be played in October 1981 between Carlton and a Western Australian club team, or a match race imagined at a race meeting in October 1981 between only two of the horses entered for the Melbourne Cup.

But I do not think that the word "intended" should be understood to exclude from the operation of the sub-paragraph all sporting contests which have not been arranged. In particular, the word "intended" ought, I think, to be understood as comprehending those many horse races which persons interested in horse racing confidently expect to be conducted during the next few years in Victoria, notwithstanding that many of those races are presently in the contemplation of most followers of racing not as particular events at particular meetings, but as an aggregation of the common classes of horse race (steeplechase and weight for age, for example) which experience has justified them in expecting to find distributed through the Victorian racing calendar. Judicial notice may be taken, I think, not only of those public expectations, but also that those who have the power to arrange race meetings and the races to be run at those meetings have also the intention to make up the racing calendar in general conformity with those expectations. If the word "intended" were understood in that sense, a system of betting on one or more of those common classes of horse race would be within the meaning of the phrase "system ... of betting on any such sporting contingency", in the fourth of the clauses appended to s40(1)(e)(i).

If I were wrong in that opinion and the word "intended" were regarded as limiting the operation of s40(1)(e)(i) to those horse races which, at the time of publication of the advertisement, had been arranged to be held on a particular date at a particular race meeting, yet the advertisement was, in my opinion, "information or advice ... wherein or whereby ... it is made to appear that (Equestrian Publishing Pty Ltd) ... will, if required ... give information or advice ... as to (a) system ... of betting on" an intended horse race. The advertisement for sale of a betting system applicable to any horse race of a particular, common class is, in my opinion, an advertisement of the vendor's willingness to give information as to a system of betting on each horse race which, at the time of publication, has been arranged and is within that class.

Judicial notice may be taken of the facts that on 12th April 1980 a substantial number of horse races were arranged to be run in Victoria on particular dates and at particular meetings, and that most of them fell within a class of race commonly run in Victoria and elsewhere. The system of betting advertised being applicable to some, at least, of those intended horse races, as from the advertisement it would appear the system was, the advertisement of the system for sale did constitute, in my opinion, the publication of advice wherein it was made to appear that the vendor would give information as to a system of betting on those intended horse races, notwithstanding that the system was designed, and was expressed to be, for use in respect of a class or several classes of horse race within which the intended races happened to fall.

My conclusion is that the evidence before the learned Magistrate established that the publication of the advertisement constituted a contravention of the provision specified in each information. The charge against the respondent James was that he "did print" the advertisement ... evidence by the informant of answers by the respondent James to questions the informant had put to Mr. James after publication ...

I said, "What is your position with the company?" He said, "Works Manager"...

I said, "Are you in a position to speak on printing of advertising in *Truth*?"

He said, "Only on quality control and printing of material supplied. I don't have anything to do with composing the material supplied" ...

I said, "Do you recall the ad in question appearing?"

He said, "No, not really. I didn't compose it, or work on the ad at all."....

... In my opinion, this evidence would justify a finding that James was employed, during the period in which the advertisement was printed as part of the issue of the newspaper dated 12th April 1980, to supervise the work of printing the newspaper. But the evidence does not, in my opinion, justify a finding that he did an act which made him a party to the printing of the advertisement. ... I am of the opinion that, although the ground on which the learned Magistrate upheld the submission that Mr James had no case to answer was not sound, his order dismissing the information against

Mr James at the close of the informant's case was justified by the lack of proof that Mr James was party to an offence against s40(1)(e)(i) ...

... The other respondent, Malcolm Robert Murdoch, was proved to have given to questions by the informant the following answers: ...

I said, "What is your position with the company?" He said: "Business manager."...

I said, "Did you give authority to place the ad in the *Truth*?"

He said, "Yes."...

I said, "Did you know what the ad, is in fact advertising?"

He said, "No."....

The information against Mr Murdoch was that he "did cause to be printed" the advertisement. In my opinion the evidence of Mr Murdoch's answers to the informant's questions would justify a finding that he authorised the publication of the advertisement in the *Melbourne Truth*, foreseeing that a consequence of his act of authorisation would be that the advertisement would be printed. Such a finding would support a conviction of "causing" the advertisement to be printed, in my opinion ... The information will be remitted to the Magistrates' Court at Melbourne for further hearing and determination.

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