BETS UNDER THE BETTING CONTROL ACT.

Section 5 of the Betting Control Act 1954[1] appears as a further complication in the already confused state of the law relative to the enforceability of gaming contracts, and relative to the enforceability of securities given for such contracts. Hitherto it has been important, at least when considering the enforceability of securities, to distinguish between the gaming contract and the wager. The gaming contract was a wager on "games or pastimes", such as cards, dice, tennis, bowls, cock fighting, horse racing, foot racing, etc.; the wager dealt with the outcome of any other future uncertain event. But the Betting Control Act creates what might be called a specialised type of gaming contract which it refers to as "a bet." The verb "to bet" is defined by the Act, in substance, as a wager on any race, and the word "race" is defined to mean a race of any kind by horses whether ridden or driven. A bet, therefore, is a gaming contract restricted to horse racing.

Sec. 5 of the Act makes it lawful for persons to bet by way of wager or gaming on races, and provides that the act of so betting "does not of itself constitute a contravention of the law." So far as I am aware, it never did constitute a contravention of the law in the sense of being penal—that is, of course, so long as no question of keeping a betting house or gaming house arose. The mere act of entering into a gaming contract has not, I think, ever been made punishable by statute, nor was it an offence at common law.

Sub-sec. 2 provides that "No bet or transaction arising out of or in connection with a bet shall be enforceable at law." It is difficult to appreciate the purpose of this sub-section; it is also rather difficult to appreciate its meaning and to assess its effect on the law as it previously stood. As between the parties a wager—which, of course, includes a gaming contract—is made null and void by sec. 12 of the Police Act Amendment Act (No. 1) 1893[2]. A bet as defined by the Betting Control Act is a contract by way of gaming within the meaning of sec. 12 of the Police Act Amendment Act, and by force of that Act it would not be enforceable as between the parties. It would, therefore, seem that sec. 5 (2) of the Betting Control Act does not as between the parties to the bet or wager add anything to the existing law.

[1] No. 63 of 1954; see *infra*, 350-353.
[2] No. 10 of 1893.

It will be noticed that the sub-section is not restricted to the bet itself, but is extended to any transaction arising out of or in connection with the bet. Such a transaction is also unenforceable. As a question of interpretation one must ask whether a cheque or other security given in connection with a bet would be a transaction arising out of or in connection with the bet, and to answer this question it is probably permissible to have regard to the existing state of the law.

Under the (English) Gaming Act 1835,[3] which was adopted in this State in 1844,[4] all securities given in consideration of a gaming transaction "shall be deemed and taken to have been made, drawn, accepted and given or executed for an illegal consideration." The effect of this Act is now well established. A third party holding a cheque having its origin in a gaming transaction can now sue on it if he can make good two deficiencies, *viz.*, if he can show that he or some previous holder has given good consideration *and* he takes in good faith so as to remove the taint of illegality. The purpose of the enactment is also well known, namely, to protect third parties who, prior to the Act, might find themselves in possession of a security which by force of 9 Anne c. 14 (1710)[5] was absolutely void.

It is apparent from this brief history that if a cheque is a transaction connected with a bet within the meaning of sec. 5 (2) of the Betting Control Act, then by force of that sub-section it is unenforceable and the consequence would be, I think, that it would be unenforceable not only as between the parties to the original bet, but also in the hands of a third party irrespective of whether the third party had given value or not, and irrespective of whether he took in good faith or not. From this, of course, it also follows that if the cheque is such a transaction the law today with respect to securities given for bets would be the same in effect as it was under 9 Anne c. 14.

It is obvious that the policy of the Betting Control Act is to liberalise the legislative attitude towards this particular type of gaming. If this is so, it is unlikely that the legislature intended that a cheque given for the payment of a bet would be a useless security in the hands of a holder in due course. For this reason, I think the sub-section should be read down in such a way as to exclude securities from the matters comprehended by the expression "transaction arising out of or in connection with a bet."

If this interpretation is right, it may be asked, what function do those words perform? Would it not have been sufficient merely to have

3 5 & 6 Will. IV, c. 41.

4 By 7 Vict. No. 13.

5 Reprinted in THE STATUTES REVISED (3rd ed., 1950) 506 as 9 Anne c. 19.

said that no bet shall be enforceable at law? I think the answer to this question can be gathered by reading sec. 12 of the Police Act Amendment Act 1893. It is well known that this section has two limbs; the first is directed to the wager itself, and the second is directed to the subject-matter of the wager, so as to catch collateral transactions such as that sued upon successfully in *Hyams v. Stuart King*.[6] In my view, the words referred to are inserted so as to prevent these collateral transactions from being set up as independent contracts; they are a statutory recognition of the soundness of *Hill v. William Hill (Park Lane) Ltd.*[7] A subsidiary contract as sued upon in that case would not be a bet, but it would be a transaction arising out of a bet, and for this reason would be unenforceable.

If my interpretation of the sub-section is correct, then all that can be said of it is that it has made no alteration in the previously existing law, and has only been inserted by way of excessive caution—as it may otherwise have been suggested that sec. 5 (1) of the Act had, so far as bets were concerned (at least when those bets were carried out in accordance with the Act), impliedly repealed sec. 12 of the Police Act Amendment Act.

It is rather surprising that the Gaming Act 1835 was not repealed, at least so far as bets validly made under the new Act were concerned. The position then would have been that a security given for a bet, if made under the Act, would be the same as a security given for a wager not being a gaming contract. It could then be enforced by a third party holding for value, and good faith would be immaterial.

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6 [1908] 2 K.B. 696.

7 [1949] A.C. 530.

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