

POLYDOROS CONSTANTINOU,

Appellant-Plaintiff,

v.

YIANNIS PANAYI AND ANOTHER,

Respondents-Defendants.

(Civil Appeal No. 4675).

POLYDOROS
CONSTANTINOU
v.
YIANNIS PANAYI
AND ANOTHER

Contract—Gaming—Wager—Recovery of the stake from a stakeholder—Loser of a wager may demand his stake back, from the stakeholder before it has been paid over to the winner—Stakeholder personally liable if he disregards such demand of the loser and hands the stake to the winner—Section 30 of the Contract Law, Cap. 149—Cf. Section 30 of the Indian Contract Act, 1872 and section 18 of the English Gaming Act, 1845.

Wager—See above.

e money—Stakeholder—Liability—See above.

Statutes—Interpretation—Section 30 of the Contract Law, Cap. 149.

Section 30 of the Contract Law, Cap. 149 reads as follows:-

“30. Agreements by way of wager are void; and no legal proceedings shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made”.

In this case, the Supreme Court, allowing the appeal, held that on the true construction of section 30 of The Contract Law, Cap. 149, the loser of a wager is entitled to demand his stake back from the stakeholder before it has been paid over to the winner, and the stakeholder is personally liable if he disregards the demand of the loser and hands the stake to the winner.

Appeal Allowed.

Cases referred to:

Hampden v. Walsh [1876] 1 Q.B. 159;

Digle v. Higgs [1877] 1 Ex. D. 422;

Trimble v. Hill [1879] 5 A.C. 342;

Strachan v. The Universal Stock Exchange Ltd. [1895]
2 Q.B. 697, at p. 705.

Appeal.

Appeal against the judgment of the District Court of Paphos (Papadopoulos D.J.) dated the 21st November, 1967 (Action No. 825/66) by virtue of which plaintiff's claim for the sum of £5.-, being a stake on a wager, was dismissed.

P. Papageorghiou, for the appellant.

Elias Panayides, for the respondents.

The judgment of the Court was delivered by :-

TRIANAFYLLIDES, J. : In this case the appellant-plaintiff appeals against the judgment of the District Court of Paphos, in action No. 825/66, by virtue of which a claim of the appellant, against both respondents-defendants, for the sum of £5, was dismissed.

At the conclusion of the hearing of the appeal counsel for the appellant stated that he did not insist on pursuing the appeal as against respondent 1.

The amount of £5, claimed by the appellant, came into the hands of respondent 2 as follows:

On the 5th June, 1966, appellant and respondent 1, who were in a rather merry mood, started joking between them and as a result the appellant was challenged, by respondent 1, to drink two bottles of brandy without being affected by it; the challenge was accepted and it was agreed that the appellant would drink the two bottles of brandy that very same evening, within a space of four hours; the loser would pay the winner £5.

What may have started as a joke ended up, thus, in a bet, seriously intended, and each of the two participants i.e. the appellant and respondent 1, deposited £5 with respondent 2, as stake-holder.

For reasons into which we need not enter, the consumption of two bottles of brandy by the appellant was not attempted

at on that evening, and he requested respondent 2 to return to him his £5.

Respondent 2 did not do so and, on the contrary, he paid over such amount to respondent 1.

The learned trial Judge found that the appellant was not entitled to succeed in his claim for the recovery of his £5; in doing so the Judge relied on the provisions of section 30 of the Contract Law, Cap. 149.

We are of the opinion that the decision of the trial Court involved an erroneous application of the said section.

Section 30 of Cap. 149 is practically identical, in its material part, with section 30 of the Indian Contract Act 1872; and the latter provision has been interpreted as not precluding the loser of a wager to claim back his deposit, from the stakeholder, before it is paid over to the winner (see Pollock & Mulla on the Indian Contract and Specific Relief Acts, 8th ed. p.p. 245-265).

Also, our section 30 is closely similar, in its material part, to section 18 of the English Gaming Act, 1845 (8. & 9 Vict. c.109); and it was held in England, in applying the said provision, that a loser of a wager may demand his stake back from the stake-holder before it has been paid over to the winner, and the stake-holder is personally liable if he disregards the demand of the loser and hands the stake to the winner (see The Law of Contract by Cheshire & Fifoot, 6th ed. p. 271; *Hampden v. Walsh* [1876] 1 Q.B. 159; *Diggle v. Higgs* [1877] 1 Ex. D. 422; *Trimble v. Hill* [1879] 5 A.C.342; and *Strachan v. The Universal Stock Exchange Ltd. (No. 2)* [1895] 2 Q.B. 697, at p. 705).

In the circumstances, therefore, the appellant was entitled to recover from respondent 2 the amount of £5 paid to him as a stake-holder and requested back from him before it was paid over by him to respondent 1.

In the result, this appeal is allowed so that there shall be judgment against respondent 2 for £5 in favour of the appellant, with full costs here and below, and it is dismissed without costs in so far as it concerns respondent 1, in view of the statement of counsel for the appellant that he did not wish to pursue it as against respondent 1.

Appeal allowed.
Judgment and order as to costs in terms.

1968
April 30

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