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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.722/84

1245

BETWEEN BISHOP

APPELLANT

AND POLICE

RESPONDENT

Hearing: 11th September, 1984.

Counsel: Bullock for Appellant
Jones for Respondent

Judgment: 17 SEP 1984

JUDGMENT OF SINCLAIR, J.

Bishop was convicted on one charge that with intent to defraud he attempted to use a document capable of being used to obtain a pecuniary advantage, namely, a T.A.B. tote ticket, for the purpose of obtaining for himself a pecuniary advantage. He was in fact charged with another who did not apparently appeal.

The brief facts are that the appellant and his co-offender had invested some money, or at least the co-offender had, on a trifecta and the ticket was not one on which a dividend would have been paid. However, Bishop's co-offender tampered with the ticket and altered the numbers of the runners. On the face of it the ticket then appeared to be a valid ticket for the trifecta in question. Bishop

apparently took the ticket into the T.A.B. office where it had been issued and attempted to cash it but the machine rejected the ticket. During the course of evidence Mr. Kelly, who is the operator of the particular branch of the T.A.B. which was involved, stated that at the time a ticket is issued a bar code is also imprinted upon the ticket so that, when the ticket is presented for payment, if the bar code does not tally with the bar code of a winning ticket, it will be rejected by the machine. In these circumstances, if a customer persists that the ticket is a valid one, Mr. Kelly stated that the only way it could be paid out was for the District Office of the T.A.B. to take over and for them tocheck it against the computer print-out manually.

On behalf of Bishop it was contended that, because the ticket never could be cashed by reason of its not having on it the correct bar code, the ticket was never a document capable of being used to obtain a pecuniary advantage. That submission has an attractive simplicity about it but for reasons which I will now set forth I do not think it is valid.

A similar case came before the Court of Appeal in 1978 in R. v. Hansard (C.A.172/77 judgment 17.1.78). In that case a scheme was devised by one man that a weighbridge clerk employed by a firm whichpurchased scrap metal would provide a weighbridge docket in receipt of scrap metal that

had never been brought to the place. The intention was that the document would be made out in favour of a business owned by Hansard and the originator of the scheme and the weighbridge clerk would share in the payment to be made to Hansard for the imaginery scrap metal. The case against Hansard was that he had agreed to allow his firm to be used for such a purpose. Unfortunately for all of them the trading manager of the vendor company intercepted the fictitious docket. For some reason his suspicions had been arousedand he took steps to discover whether or not metal had in fact been delivered to the firm against the docket. As he suspected, no such metal had been delivered and no payment was ever made to the appellant. I quote from the judgment of the Court of Appeal.

> " Against those brief facts Mr.Buckton has made a short submission which goes to the heart of the matter. It is based upon the provisions of s.229A which provides -
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> 'Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to defraud, -
> (a) Takes or obtains any document that is capable of being used to obtain any privilege, benefit, pecuniary advantage, or valuable consideration; or
> (b) Uses or attempts to use any such document for the purpose of obtaining for himself or for any other person, any privilege, benefit, pecuniary advantage, or valuation consideration.'
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> He emphasises the words 'any document that is capable of being used to obtain...any pecuniary advantage.' Bearing in mind, as he would put it, the clear view of the trading manager that the document related to a fiction (a view which he had from the moment he set eyes on it), it is

> Mr. Buckton's submission that the document was not capable of being used for a pecuniary, or any other advantage. It is an interesting and short point but we are in no doubt that it must fail for the reason that if it were incapable of being used successfully by those involved in this dishonest transaction, it was only because of the factual situation surrounding the document and not because of any legal quality that it possessed. It became impossible to commit the offence only because of the circumstance that the trading manager realised in time that the transaction to which it referred had not taken place. In other words this is one of those cases which falls fairly and squarely within s.72 (1) of the Crimes Act 1961 as follows:
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> > 'Every one who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object, is guilty of an attempt to commit the offence intended, whether in the circumstances it was possible to commit the offence or not.'"

To the same effect is the decision of the Court of Appeal in R. v. Dakers (1980)1 NZLR 747. I stress immediately that in this case, unlike Bishop's, Dakers was not charged with an attempt but was charged with the substantive offence. Dakers' case also involved some totalizator tickets which had been in fact cashed but which had not been cancelled for reasons which are set out in the judgment. However, when the tickets were presented for payment a check was made and it was found that this was the second time that those particular tickets had been presented and that they had already been paid. It was observed by the Court of Appeal that the reason why payment was not made was not because of the nature of the tickets themselves but the system of checking which had been adopted. By the same token, I am of the view that on the face of it the ticket in the present case appeared to be valid and it was only by reason of the

checking system which had been adopted which enabled the operator of the agency to determine that the ticket was in fact invalid. Indeed, in Dakers' case, on referring to the decision in Hansard's case, the Court said that the earlier decision could be applied to the facts of Dakers' case even although Hansard's case concerned merely an attempt, but the Court did go on to point out that in Hansard's case it was the purpose which was unsuccessful. That really is precisely what has occurred here. The purpose was unsuccessful and in any event in my view what occurred falls squarely within the provisions of s.72 (1) of the Crimes Act 1961.

The appeal is accordingly dismissed.

P.Q. Lis J.