67 Vt. 586
Supreme Court of Vermont.

BALLARD
v.
BROWN.

July 17, 1895.

Exceptions from Windsor county court; Ross, Chief Judge.

Assumpsit by Charles B. Ballard against W. C. Brown. Judgment for plaintiff. Defendant excepts. Affirmed.

West Headnotes (2)

[1] **Gaming and Lotteries**
Horse and dog racing; pari-mutuel betting

Trotting for a purse or premium is not a game within R.L. § 4308, declaring it illegal to win or lose by play of hazard at any game; the act of which this was a part having specifically prohibited betting on horse races, and this provision having at the time of the revision been placed under another section.

1 Cases that cite this headnote

[2] **Gaming and Lotteries**
Horse and dog racing; pari-mutuel betting

Trotting for a purse or premium is not trotting for a wager, which is prohibited by R.L. § 4305, as amended by Acts 1888, No. 156; the words "a purse or stake" having been omitted from the original law by the amendment.

3 Cases that cite this headnote

Attorneys and Law Firms

***485** W. E. Johnson and William Batchelder, for plaintiff.

F. W. Baldwin, for defendant.

Opinion

ROWELL, J.

The letter from Taylor to the defendant, offered in evidence and excluded, is not before us, nor its contents stated. We cannot, therefore, say whether it was admissible or not, even though authorized by the plaintiff, which does not appear, and was not offered to be shown. Ainsworth v. Hutchins, 52 Vt. 554.

In the fall of 1889 plaintiff and defendant agreed that plaintiff's horse should trot in a race then soon to be had at a fair in Barton, and win it, and that defendant should pay him therefor $100, and keep him and his horse and driver. The race was for a purse offered by the Orleans Fair–Ground Company, an organization chartered under the laws of the state. The horse trotted in the open to all race, and won it; but none of the purse for which the race was trotted was to go to the plaintiff, and none of it did go to him. The parties further agreed that, if the plaintiff would procure other horses to trot in the races, defendant would pay him therefor such further sum as they should agree upon. Plaintiff procured another horse to trot in the races, for which they agreed that defendant should pay him $8. The races were trotted under the auspices of said company, of which the defendant was treasurer, and both horses won purses, that were not paid. The horses were entered by Taylor, who had authority to enter plaintiff's horse in races and to drive it therein. It is claimed that plaintiff cannot recover, for that the transaction in which he engaged was a wager, and therefore within R. L. § 4305, as amended by No. 156, Acts of 1888, which imposes a penalty for trotting or racing a horse for a wager of anything of value, and for causing or aiding in causing such a trot or race; and for that it was a play or hazard at a game, or a betting on such play or hazard, and therefore within R. L. § 4308, which provides that a person who wins or loses money or other valuable thing by play or hazard at any game, or by betting on such play or hazard, shall incur a penalty. Section 4305, before it was amended, prohibited trotting and racing, not only for a wager of anything of value, but also for "a purse or stake," and the amendment consisted in leaving out the words "a purse or stake." This indicates that the legislature thought that trotting for a wager and trotting

for a purse or stake were different things, for it can scarcely be supposed that the amendment was made merely for brevity's sake, and that the purpose was to take the latter out of the statute and retain the former in it. Subsequently, in 1892, for greater certainty in regard to trotting for a purse or stake, it would seem, as no other purpose is obvious, the legislature enacted that agricultural societies, corporations, and associations, authorized under the laws of the state to hold public fairs for the competition of horses in respect to speed, may offer premiums or purses for success in such competition. Thus it has become the settled policy of the state to allow the offer and payment of purses and premiums for success in the competition of horses as to speed,—a policy very different from that which prevailed in 1823, when section 4305 was first passed, as will be seen by reading that act, which condemned the practice very severely, visited it with heavy penalties and forfeitures, and enjoined its strict enforcement. But in later years a great interest has been awakened in the matter of improving the products of the herds, the flocks, and the field, the great promoters of which are the agricultural societies, the horse breeders' associations, and kindred organizations of the day, which have come to be fixed institutions among us, and are approved of, fostered, and sustained by the people generally, and looked upon as necessary for the best good of the interests they are designed to promote; and our legislation has conformed the law to this changed public sentiment by permitting, as aforesaid, the offer and payment of premiums and purses for success in the competition of horses as to speed, which stands in the same category as like offers and payments for success in the competition of horses as to walking or driving, and in the competition of oxen as to strength, and the like. We quite agree with the legislature that trotting for a wager and trotting for a purse or stake are different things. A "wager," as the term is used in the statute, is a bet, which is a pledge, as of money, to be paid to another in a certain event, the other pledging to pay a forfeit in the contrary event. This is practically the definition this court gave of ***486** "wager" in Edson v. Pawlet, 22 Vt. 291. It is obvious that trotting for a purse or stake is not a transaction of that kind, but, as was said of the case cited, more properly belongs to the class of "no cure, no pay, cases." Nor is trotting for a purse or premium a game within the meaning of section 4308. That section was originally passed in 1787, and was part of an act that prohibited, among other things, tavern keepers, etc., from keeping in or about their houses and premises any cards, dice, bowls, shuffleboards, or billiards, or any instrument for gaming, and from suffering persons resorting to their houses to use or exercise any of said instruments for money, goods, or liquor, and also prohibited persons from playing at any such games on any bet or wager, and from betting or wagering money or goods on any horse racing or other sport. This portion of that statute was kept together till the Revision of 1839, when the matter of betting on horse racing was disconnected and placed elsewhere, and the substance of the rest of it was embodied in sections 10, 11, c. 101, of that Revision, which have come down as sections 4307 and 4308 of the Revised Laws. Said section 11 of the Revision retained, after the words "play or hazard," the words "at cards," etc., and had the further words "or any other game or games whatever"; as a substitute for all which section 4308 has the words "at any game," which do not enlarge the former scope of the statute in this regard, and embrace no game that was not before embraced within it, of which, it is clear from this review, that trotting for a purse was not one, but was a separate and distinct thing under the statute. This being a matter of construction, reference to the cases cited from other states, in which it is held that such trotting is a game within their statutes, would afford us little aid, because of the difference between their statutes and ours in history, enactment, and wording. Hence the races in which plaintiff's horses participated were not unlawful, nor the contract he made wagering. Judgment affirmed.

All Citations

67 Vt. 586, 32 A. 485