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Gaming -- Conflict of Laws -- Statutory Liability of Winner for Penalties

N. A. Townsend Jr.

idence, on a motion first made after a verdict is taken, thus leaving the federal courts free to conform to the prevailing state practice sanctioning such procedure.[14] On the other hand, if it is thought that the common law test of the meaning of the right by trial by jury should be retained, the Supreme Court might, under the recent congressional grant of authority to make rules of procedure to govern the federal courts in actions at law,[15] promulgate a rule providing for reserved rulings on motions during the trial, thus making available in all the federal courts, irrespective of the practice of the state wherein sitting, the procedure for judgments *non obstante veredicto* on the evidence approved by the instant case.

KENNETH W. YOUNG.

Gaming—Conflict of Laws—Statutory Liability of Winner for Penalties.

In Georgia there is a statute which authorizes the loser in a gambling transaction to bring suit at any time within six months for the recovery of the amount lost, and if he neglects to bring this action within the allotted period any person may sue the winner and recover the amount involved in the wager, one-half for himself and one-half for the county educational fund.[1] With this statute as the basis of his action the plaintiff alleged that in 1930 the defendant entered into a gambling contract in Fulton County, Georgia, with Lloyds Insurance Co. of London, England, the forfeit to be $2500 in case "Bobby" Jones won the four major golf championships during that year; that Jones won the four championships; that the money was paid; and that although six months had expired the loser had not brought suit to recover its loss. The appellate court reversed the lower court's ruling which sustained the defendant's demurrer on the ground that the allegation that the contract was made in Georgia was sufficient to give the court jurisdiction.[2]

[14] It has been pointed out that such an interpretation is an unnecessary one: Scheidt v. Dimick, 70 F. (2d) 558, 564 (C. C. A. 1st, 1934) (Mr. Justice Morton, dissenting, said, "I do not think that the Constitution prohibits improvements in the machinery for administering justice or restricts our procedural methods to those in use in the days of hand looms and sailing ships."); Funk v. U. S., 290 U. S. 371, 384, 54 Sup. Ct. 212, 216, 78 L. ed. 369, 376 (1933) (Mr. Justice Sutherland, speaking for the majority, said, "An adoption of the common law in general terms does not require, without regard to local circumstances, an unqualified application of all its rules; the rules have been controlling in this country only so far as they are suited to and in harmony with the genius, spirit and objects of American institutions; the rules of the common law considered proper in the eighteenth century are not necessarily so considered in the twentieth.").

[15] 48 STAT. 1064, 28 U. S. C. A. §723b (1934 Supp.).

[1] GA. CODE ANN. (Michie, 1926) §4256.

[2] Tatham v. Freeman, 180 S. E. 871 (Ga. 1935).

The act involved in the principal case was adopted in 1765, and it seems to have been derived from the English statute of 8 Anne, c. 14.[3] Similar statutes, some of which authorize the informer to recover treble the amount involved in the illegal transaction, have been enacted by other American jurisdictions.[4] Collusion between the informer and the loser for the purpose of increasing the latter's recovery has been held an adequate defense for the winner,[5] and a fictitious suit between the winner and the loser will not bar the informer's right of action.[6] Where the disabilities of married women have been removed, it is considered proper for the wife of the loser to bring the action as informer.[7] In New York, however, the only persons competent to sue as informers are those who are charged with the care of the poor in the community.[8] Usually the informer is required to divide his recovery with some county agency.[9] Further, as the chart will indicate, gambling is generally regarded as a criminal offense,[10] and many states by statute authorize the loser to recover his loss by means of a civil action against the winner.[11]

The decision in the principal case is predicated upon a point of procedure, but the facts motivate an inquiry along different lines. Where was this contract made—in England or in Georgia? Assuming that it was made in England where this type of betting is legal, could the defendant be subjected to the penalties of this Georgia statute? From the brief statement of facts it is impossible to determine whether the defendant in Georgia made an offer to wager via the mails, by cable, or through an agent, or whether he accepted the offer to wager on specified terms which was circulated throughout the world by the insurance company. If the latter possibility were the fact the court might consider the contract as made in Georgia, since the last act necessary to complete it was performed there. Thus as the *lex loci contractus* would control,

[3] Neal v. Todd, 28 Ga. 334 (1859); Cole v. Applebury, 136 Mass. 525 (1884).

[4] For example, ILL. REV. STAT. (Cahill, 1933) c. 38, §310.

[5] Kiser v. Walden, 198 Ill. 274, 65 N. E. 116 (1902); Cole v. Applebury, 136 Mass. 525 (1884).

[6] Staninger v. Tabor, 103 Ill. App. 330 (1901).

[7] Johnson v. McGregor, 157 Ill. 350, 41 N. E. 558 (1895). For cases decided prior to the removal of the married women's disabilities, see Moore v. Settle, 82 Ky. 187 (1884); Spiller v. Close, 110 Me. 302, 86 Atl. 173 (1913).

[8] CONS. LAWS OF N. Y. (Cahill, 1930) c. 41, §989.

[9] For example, ILL. REV. STAT. (Cahill, 1933) c. 38, §310.

[10] For example, N. C. CODE (1935) §4430. At common law gambling was not considered illegal. *Ex parte* Pierotte, 43 Nev. 243, 184 Pac. 209 (1919).

[11] For example, ORE. CODE ANN. (1930) §43-102. In the absence of statute the loser in a betting transaction cannot recover the money or property lost. F. M. Davies Co. v. Porter, 248 F. 397 (C. C. A. 8th, 1918); Sofas v. McKee, 100 Conn. 541, 124 Atl. 380 (1924). In North Carolina even though we have one statute which renders gambling illegal and another which declares all gambling contracts to be void, it is impossible for the loser to recover the money or property lost at gambling. Dunn v. Holloway, 16 N. C. 322 (1829).

	May the loser recover the money or property lost?	May any third party recover if the loser fails to do so within the statutory period?	Are gambling contracts void?	What, if any, are the criminal consequences of gambling?	May the witness claim the privilege against self incrimination?[21]
Florida[12]	No Statute	No Statute	No Statute	Fine—$100 Jail—90 days	No
Georgia[13]	Yes. Statute of limitations is 6 months.	Yes. Statute of limitations is 4 yrs. Recover amount of loss.	Yes	Misdemeanor	No
Illinois[14]	Yes. Stat. of limit. —6 mos. Minimum am't: $10.	Yes. Recover treble the amount of loss.	Yes	Fine $10 to $100	No Statute
Nevada[15]	No Statute	No Statute	No Statute	Felony one to five yrs. in jail	No
North Carolina[16]	No Statute	No Statute	Yes	Misdemeanor	No
New York[17]	Yes. Stat. of limit. —3 mos. Minimum am't: $25.	Only those charged with care of poor may sue. Treble recovery.	Yes	Fine—Five times am't won	No
Oregon[18]	Yes. Loser may recover double am't lost.	No Statute	Yes	Misdemeanor Fine—$500	No
South Carolina[19]	Yes. Stat. of limit. —3 mos. Minimum am't: $50.	Yes. Recover treble amount of loss.	Yes	Fine—$100 Jail—30 days	No
Virginia[20]	Yes. Stat of limit. —3 mo. Minimum am't: $5.	No Statute	Yes	Fine—$100 Jail—60 days	No

(The above states were selected for purposes of illustration. No complete survey was intended.)

[12] COMP. LAWS OF FLA. (1927) §§7666, 7672, and 8311; COMP. LAWS OF FLA. (Supp. 1934) §4151(74). Pari mutual betting is permitted at licensed tracks in this state.

[13] GA. CODE ANN. (Michie, 1926) §§4256 and 4260; GA. PENAL CODE ANN. (Michie, 1926) §392.

[14] ILL. REV. STAT. (Cahill, 1933) c. 38, §§298, 309, 310, and 316 (10). Pari mutual betting is permitted at licensed tracks in this state.

[15] In Nevada certain types of gambling games may be played at licensed houses. A violation of this law is a felony. However, the act specifically provides against a construction making it illegal for persons to participate in social games for drinks, smokes, or which involve prizes valued at two dollars or less. Pari mutual betting at licensed tracks is permitted. NEV. COMP. LAWS (Hillyer, 1929) §§10201 and 10205.

[16] N. C. CODE (1935) §§2142, 2143, and 4430.

[17] Any person who wins more than $25 by gambling during a 24 hour period is subject to a fine of five times the amount won, which may be recovered in a civil action by the persons charged with the care of the poor in the county where the offense occurred. A similar penalty may be applied where the winner has forced the loser to pay his losses. Where the loser has neglected to exercise his privilege of recovering those sums which he has lost at gambling, the persons charged with the care of the poor may bring a civil action against the winning gambler. If the

the informer might properly sue under the Georgia statute. The problem is more difficult if the facts should indicate that the defendant made an offer to bet which the insurance company accepted in England. In several cases where money was transmitted by telegraph from one state to another for placement as a wager the courts have held that the transaction was completed in the state where the wager was accepted and placed. Consequently if gambling was legal where the bet was placed the gambler in the other state could not be penalized under its laws even though gambling was considered illegal there.[22] However, these cases were expressly disapproved in *Biscayne Kennel Club v. Taylor*[23] where the owner of a Florida dog racing track sought an injunction in the Federal District Court to restrain interference by local officers with his scheme to receive wagers at the track and transmit them by telegraph to Cuba for placement. The petition was denied upon the ground that the plan entailed an obvious attempt to evade the state laws prohibiting gambling. The Supreme Court of Kentucky employed similar reasoning in *Commonwealth v. Crass*[24] where the defendant's demurrer to the jurisdiction of the court was overruled and his conviction for gambling sustained even though the facts indicated that he had crossed into Tennessee to make the wager on an election. Further, the dictates of public policy usually deny the enforcement of gambling contracts by the courts of a state whose statutes frown upon the practice of gaming even though it is agreed that the contract was made in a jurisdiction where gambling was legal.[25]

From these authorities it appears that the gambling transaction which crosses a state line represents an exception to the theory of *lex loci contractus,* and, as applied to the facts of the principal case, it would seem that the plaintiff-informer could bring his action under the Georgia

action is brought under this theory the recovery is limited to treble the amount won. CONS. LAWS OF N. Y. (Cahill, 1930) c. 41, §§989, 990, 992, 995, and 996.

[18] ORE. CODE ANN. (1930) §§14-739, 14-743, 43-101, and 43-102.

[19] CODE OF LAWS OF S. C. (Michie, 1932) §§1738, 1744, 6308, 6309, 6311, and 6312.

[20] VA. CODE ANN. (Michie, 1930) §§4686, 4780, 5558, and 5559.

[21] This type of statute usually provides that self-incrimination will not excuse the witness and he is protected from prosecution by reason of any testimony which he may give. For example, N. C. CODE (1935) §2143.

[22] McQuesten v. Steinmetz, 73 N. H. 9, 58 Atl. 876 (1904); Lescallett v. Commonwealth, 89 Va. 878, 17 S. E. 546 (1893). But *cf. Ex parte* Lacy, 93 Va. 159, 24 S. E. 930 (1896).

[23] 23 F. (2d) 871 (S. D. Fla. 1927).

[24] 180 Ky. 794, 203 S. W. 708 (1918). Other cases in point are: Brand v. Commonwealth, 110 Ky. 980, 63 S. W. 31 (1901); Commonwealth v. Collins, 181 Ky. 319, 204 S. W. 74 (1918); Tarleton v. Baker, 18 Vt. 9, 44 Am. Dec. 358 (1843).

[25] Maxey v. Railey & Bros. Banking Co., 57 S. W. (2d) 1091 (Mo., 1933); Gooch v. Faucett, 122 N. C. 270, 29 S. E. 362 (1898); Note (1928) 5 N. Y. U. L. REV. 69.

statute even though the contract were made in England. Certain steps were taken by the defendant in Georgia which resulted in a violation of the Georgia law. After all, these statutes providing punishments and penalties for gambling were enacted for the purpose of stamping out this vice, and in view of this policy, the law should not present the opportunity of easy evasion which exists if the gambler is allowed to escape merely because the bet was actually accepted in another state.

N. A. TOWNSEND, JR.

Municipal Corporations—Power to Regulate Taxicabs—Requirement for Indemnity Bond.

A city was given power by its charter "to license and regulate all vehicles operated for hire in the city." *Held,* the city was without authority to require taxicab operators to provide liability insurance or bond to protect the public against negligent operation of the cabs.[1]

In reaching this result the court based its decision on the principle that a municipal corporation possesses only those powers expressly granted, necessarily implied, or essential to its declared objects.[2] But the great majority of courts, although reciting this formula, have reached results *contra* to that of the instant case and have upheld similar ordinances under grants of power no more extensive than that involved in the principal case. Ordinances requiring indemnity bonds of taxicab operators have been upheld under grants of power to "collect a license tax on and regulate hacks,"[3] "to regulate the use of streets,"[4] "to regulate every description of carriages which may be kept for hire,"[5] and "to license, tax, and regulate public hackmen."[6] In the light of these decisions the court in the principal case seems to adopt an unnecessarily

[1] State v. Gulledge, 208 N. C. 204, 179 S. E. 883 (1935). The same ordinance was before the court in State v. Saseen, 206 N. C. 644, 174 S. E. 142 (1934), and was held invalid on constitutional grounds. For a comment attacking that decision see (1935) 13 N. C. L. REV. 222. The constitutional objections were removed from the ordinance before the instant case arose.

[2] Detroit Citizens Street Railway Co. v. Detroit Railway, 171 U. S. 48, 18 Sup. Ct. 732, 43 L. ed. 67 (1897); Smith v. New Bern, 70 N. C. 14 (1874); 1 DILLON, MUNICIPAL CORPORATIONS (5th ed. 1911) §237.

[3] *Ex parte* Counts, 39 Nev. 61, 153 Pac. 93 (1915).

[4] City of New Orleans v. Le Blanc, 139 La. 113, 71 So. 248 (1915); Fenwick v. City of Klamath Falls, 135 Or. 571, 297 Pac. 838 (1931); Greene v. City of San Antonio, 178 S. W. 6 (Tex. Civ. App. 1915); *Ex parte* Sullivan, 77 Tex. Crim. Rep. 72, 178 S. W. 537 (1915); *Ex parte* Bogle, 78 Tex. Crim. Rep. 1, 179 S. W. 1193 (1915); Note (1926) 25 MICH. L. REV. 81. In *Ex parte* Cardinal, 170 Cal. 519, 150 Pac. 348 (1915), an ordinance requiring indemnity bond of taxicab operators was upheld under the city's implied police power to regulate the streets; the ordinance was described as being "purely regulatory in its nature."

[5] Willis v. City of Fort Smith, 121 Ark. 606, 182 S. W. 275 (1916); Commonwealth v. Kelley, 229 Ky. 722, 17 S. W. (2d) 1017 (1929); *Ex parte* Dickey, 76 W. Va. 576, 85 S. E. 781 (1915).

[6] Sprout v. City of South Bend, 198 Ind. 563, 153 N. E. 504 (1926).