No. 13510

Supreme Court of Illinois

Stevens.

---

vs.

S A
Thorp.

71641 7

184

STATE OF ILLINOIS,

SUPREME COURT;

Third Grand Division.

No. 327.

329

Vs

1861

Copy

" 2575 "

" Bill Circuit Court

" Henry K Stevens
appellant

vs

" Bernhard W Sharp
appellee

" Certificate of questions
" to be submitted to the
" Supreme Court

" Filed April 22nd 1861
" B F Russell
" Clerk.

"Will Circuit Court

"Henry N Stevens = Appellant

"vs

"Burnard W Sharpe = Appellee

"The following is admitted and agreed to be the facts in the case

"In August A.D. 1860 Plaintiff and one Braden both then and now Citizens residents and Voters of the State of Illinois made a wager of $1000, each on the result of the then approaching Presidential Election. Plaintiff betting $1000, that S A Douglas would be elected the next President of the United States, and Braden betting $1000, that he (Douglas) would not. "Said Plaintiff and Braden placed $1000. Dollars each in the hands of Defendant as Stake holder for the parties aforesaid

"That some few days before Suit brought, and long before Election. Plaintiff demanded of the Defendant the $1000 Dollars, which he said Plaintiff had deposited with defendant as Stake holder

"Defendant refused to deliver up to said Plaintiff said $1000. Dollars, thereupon said Plaintiff brought Suit in an action of assumpsit for the recovery of the said $1000 Dollars, the money so deposited by said Plaintiff with the said defendant as Stake holder as aforesaid

"Whereupon said Plaintiff recovered a judgment for the sum of $1000. dollars

"From which said Judgment said

" defendant appealed to the Supreme Court
" The question presented for the decision
" of the Supreme Court is, was this bet void
" as being in violation of the Statute or the
" common Law, or against public policy
" We the undersigned, attorneys for the
" respective parties in the above entitled suit
" do hereby certify that the foregoing is the
" only question of law to be submitted to the
" Supreme Court

" Dated 5th April AD 1861

" Parks & Elwood
" attorneys for appellant

" E C Fellows
" attorney for appellee

State of Illinois }
Bond County } ss

I Benjamin F Russell Clerk of the Circuit Court in and for said county in the State aforesaid do hereby certify that the above is a true and correct copy of a paper filed in my office on the 22d day of April AD 1861 in a suit as above entitled -

In testimony whereof I have hereunto set my hand and affixed the Seal of our said Court at Greenville this 14th day of October AD 1861

B F Russell
Clerk

neral election law, probably as a mere matter of convenience. Sess. L. 1839, p. 109. It may refer to Presidential elections, by other reasoning; but, in view of the history of its enactment, and the mode of the revision of 1845, does its accidental location and connexion tend to prove it?

We hold that the bet in this case is neither within the letter nor the spirit of the law.

I. Not within the letter, certainly.

1. The election of Presidential electors is not an election of any *person* as President. Political usage and public expectation, making it probable that certain electors will vote for a certain man do not affect the legal proposition. The election of President and Vice President takes place at Washington, under the constitution and laws of the U. S.

2. To encounter the prohibition in the statute, the bet must be upon the "*result*" of an election held under the constitution and laws of the State of Illinois. Suppose Sharp had been indicted, under this statute, for betting on the election of Douglas as President—not on the success of the Douglas electoral ticket in Illinois, but on the election of 152 electors, with or without Illinois as the case might be. Could the indictment be sustained? And yet he can only maintain this suit on grounds which would subject him to a fine equal in amount to this very judicious bet.

Can it be said, with any approach to accurate language, that a bet on the result of the choice of the electoral college at Washington, acting under the constitution and laws of the U. S., which may not, and in this case really was not affected by the vote of Illinois, was a bet on the result of an election under the constitution and laws of Illinois? A mere statement of the question in a distinct form furnishes an answer. It might as well be said, that a bet on the election of Speaker of the house of representatives, which might or might not be affected by the election of members of congress in Illinois, was obnoxious to this statute.

II. Not within the mischief designed to be prevented by the statute. The mere transfer of money or property on future contingencies, (except in the forms of gaming,) is not prohibited by law. Hence many bets are tolerated. For example, bets on elections in other states have been declared lawful by this Court. 3 Scam. 529. The prohibition in our statute is based simply on the idea that the practice tends to endanger the purity of the ballot box, by making the vote of the citizen depend on his pecuniary interest, or stimulating him to undue activity in political contests by the hope of gain. Daily observation will justify the assertion that the statute does not stop betting, and that betting is but an inappreciable element of mischief at the polls. But if there be any real mischief in it, it is confined exclusively to local and inferior elections, where the election districts are so small, that the personal exertions of

individual men, it can be supposed, might directly influence the result. State elections, though hardly coming within this description, are yet swept within the rule for the sake of simplicity and uniformity. It is preposterous to apply this theory to Presidential elections;—to suppose that a bet on a result, depending on so immense a combination of causes as a national contest involves, could mischievously influence it.

If these views be tenable, the plaintiff in this suit ought not to have recovered, and the judgment should be reversed.

PARKS & ELWOOD,
Attorneys for Appellant.

329 – A. No. 184

Henry K. Stevens

vs

Bernhard A. Sharp

Agreed Case

arguments of appellant & appellee. –

Filed Oct. 7. 1861

L. Leland

Clerk

Referred

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

HENRY K. STEVENS, Appellant,
vs.
BERNHARD U. SHARP, Appellee. } *Appeal from Will.*

AGREED CASE.

The following is admitted and agreed to be the facts in the case.

In August, A. D. 1860, plaintiff and one Braden, both then and now citizens, residents and voters of the State of Illinois, made a wager of $1,000 each on the result of the then approaching Presidential election. Plaintiff betting $1,000 that S. A. Douglas would be elected the next President of the United States, and Braden betting $1,000 that he (Douglas) would not.

Said plaintiff and Braden placed $1,000 each in the hands of defendant, as stake-holder for the parties aforesaid.

That some few days before suit brought, and long before election, plaintiff demanded of the defendant the $1,000 which he, said plaintiff, had deposited with defendant as stake-holder.

Defendant refused to deliver up to said plaintiff said $1,000. Thereupon said plaintiff brought suit in an action of assumpsit for the recovery of said $1,000, the money so deposited by said plaintiff with the said defendant as stake-holder, as aforesaid. Whereupon said plaintiff recovered a judgment for the sum of $1,000.

From which judgment said defendant appealed to the Supreme Court.

The question presented for the decision of the Supreme Court is, was this *bet* void, as being in violation of the statute or the common law, or against public policy.

We, the undersigned, attorneys for the respective parties in the above entitled suit, do hereby certify that the foregoing is the only question of law to be submitted to the Supreme Court.

PARKS & ELWOOD,
Attorneys for Appellant.

E. C. FELLOWS,
Attorney for Appellee.

Dated 3d April, A. D., 1861.

POINTS.

It is admitted on the part of the appellant, that if the Court adheres to its decision made in the case of *Gordon* vs. *Casey*, 23d Ill. R. p. 70, then the judgment of the Circuit Court in this case must be affirmed.

This Court, in the case referred to, expressly laid down the doctrine that a bet on the result of a Presidential election is void, as being in violation of the statute.

In that case, as in this, it was contended that the law of 1845, prohibiting the betting on elections, had no reference and was not intended to apply to the election of Presidential electors. And it seems to me that the reasoning of the Court in that case is not only philosophical but conclusive upon the subject.

A wager upon the event of an election is void at common law, and as against public policy.

1st Story on Contracts, § 567, and cases there referred to.

Such being the law as applicable to this case, the judgment of the Circuit Court ought to be affirmed.

E. C. FELLOWS,
Attorney for Appellee.

ARGUMENT FOR APPELLANT.

The recovery in this case was resisted before the publication of the 23d vol. Ill. Rep. containing the decision in case of *Gordon* vs. *Casey*. That decision is undoubtedly adverse to the appellant, and if adhered to must dispose of the case.

It has been supposed, however, not disrespectful to submit the question again to the Court.

1. Betting on elections is lawful in the State of Illinois, except so far as it is forbidden by the statute on the subject. 3. Scam. 530. Whatever may be the popular notions in regard to it, it would seem fair to argue, that the legislature had undertaken to regulate the whole subject matter of betting on elections; and the statute it has seen fit to enact, *forms for us the standard and measure of our public policy*. 3 Scam. 161; 13 Ill. 546.

2. The main question then is, is a bet upon a Presidential election forbidden by a fair construction of sec. 52 of the 37th chapter of R. S. entitled "ELECTIONS?"

The context in which the provision stands in the R. S. of 1845, we submit, is hardly significant of the purpose and intention supposed by the Court in *Gordon* vs. *Casey*. Had the whole been enacted as a *new* law, such a construction would not have been without force. But the section in question was originally enacted as a separate and independent law; and in the compilation of 1845, was taken in at the end of the ge-

neral election law, probably as a mere matter of convenience. Sess. L. 1839, p. 109. It may refer to Presidential elections, by other reasoning; but, in view of the history of its enactment, and the mode of the revision of 1845, does its accidental location and connexion tend to prove it?

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I. Not within the letter, certainly.

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2. To encounter the prohibition in the statute, the bet must be upon the "*result*" of an election held under the constitution and laws of the State of Illinois. Suppose Sharp had been indicted, under this statute, for betting on the election of Douglas as President—not on the success of the Douglas electoral ticket in Illinois, but on the election of 152 electors, with or without Illinois as the case might be. Could the indictment be sustained? And yet he can only maintain this suit on grounds which would subject him to a fine equal in amount to this very judicious bet.

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3229 – a No. 184

Henry K. Stevens
vs
Bernhard A. Sharp

Agreed Case
Arguments of Appellant
& Appellee.

Filed Oct. 9. 1861.
L. Leland
Clerk

State of Illinois
Supreme Court in & for the Third
Grand Division of said State

Henry K. Stevens
vs
Bernhard A. Sharp
} Appeal from Will

William Oxman
being first duly sworn on oath says that on or about the 15th day of May A.D. 1861 certain papers in the above entitled cause consisting of an agreed case & points & arguments of Appellant & Appellee were placed in his hands, by J. B. Rice, to be printed. Affiant further states that he caused seven printed copies of said papers to be made. Affiant further states that the foregoing is true, complete, & full copy of said papers so given to affiant by said Rice to be printed as aforesaid. Affiant further states that said papers so given to affiant to be printed as aforesaid became lost or destroyed while in the office of affiant and that affiant has made thorough search for said papers through his office but is unable to find said papers. And affiant believes that said papers have been wholly lost or destroyed

Wm Oxman

Subscribed & sworn to before me this 11th day of October A.D. 1861.

L. Leland Clerk of said Supr. Court

by J. B. Rice Dep.

neral election law, probably as a mere matter of convenience. Sess. L. 1839, p. 109. It may refer to Presidential elections, by other reasoning; but, in view of the history of its enactment, and the mode of the revision of 1845, does its accidental location and connexion tend to prove it?

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State of Illinois } ss
Supreme Court in & for the Third
Grand Division of said State

Henry K. Stevens
Appellant.
vs
Bernhard U. Sharp
Appellee

Appeal from Will.
April Term A.D. 1861

J. B. Rice being first duly sworn on oath says that he was during the April Term of said Supreme Court A.D. 1861 and is now a deputy Clerk of said Supreme Court. Affiant further says that on the ~~twenty~~ fifth day of last April as appears by the Clerk's docket for said Supreme Court ~~a transcript or~~ an agreed statement of the ~~record of the Circuit Court~~ above entitled cause was filed in the Clerk's Office of said Supreme Court and the above entitled cause was placed upon the docket for said April term of said Supreme Court. Affiant further states that on or about the fifteenth day of last May ^ Affiant cannot state the precise day Affiant by leave of the judges of said Supreme Court withdrew the papers filed in the above entitled cause consisting of said agreed Statement of the above entitled cause and the arguments or briefs of Appellant

Henry K. Stevens

vs.

Bernhard M. Sharp

~~Affidavit~~

Affidavit

Filed Oct. 11, 1861

L. Leland

Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

HENRY K. STEVENS, Appellant,
vs.
BERNHARD U. SHARP, Appellee. } *Appeal from Will.*

AGREED CASE.

The following is admitted and agreed to be the facts in the case.

In August, A. D. 1860, plaintiff and one Braden, both then and now citizens, residents and voters of the State of Illinois, made a wager of $1,000 each on the result of the then approaching Presidential election, Plaintiff betting $1,000 that S. A. Douglas would be elected the next President of the United States, and Braden betting $1,000 that he (Douglas) would not.

Said plaintiff and Braden placed $1,000 each in the hands of defendant, as stake-holder for the parties aforesaid.

That some few days before suit brought, and long before election, plaintiff demanded of the defendant the $1,000 which he, said plaintiff, had deposited with defendant as stake-holder.

Defendant refused to deliver up to said plaintiff said $1,000. Thereupon said plaintiff brought suit in an action of assumpsit for the recovery of said $1,000, the money so deposited by said plaintiff with the said defendant as stake-holder, as aforesaid. Whereupon said plaintiff recovered a judgment for the sum of $1,000.

From which judgment said defendant appealed to the Supreme Court.

The question presented for the decision of the Supreme Court is, was this *bet* void, as being in violation of the statute or the common law, or against public policy.

We, the undersigned, attorneys for the respective parties in the above entitled suit, do hereby certify that the foregoing is the only question of law to be submitted to the Supreme Court.

PARKS & ELWOOD,
Attorneys for Appellant.

E. C. FELLOWS,
Attorney for Appellee.

Dated 3d April, A. D., 1861.

POINTS.

It is admitted on the part of the appellant, that if the Court adheres to its decision made in the case of *Gordon* vs. *Casey*, 23d Ill. R. p. 70, then the judgment of the Circuit Court in this case must be affirmed.

This Court, in the case referred to, expressly laid down the doctrine that a bet on the result of a Presidential election is void, as being in violation of the statute.

In that case, as in this, it was contended that the law of 1845, prohibiting the betting on elections, had no reference and was not intended to apply to the election of Presidential electors. And it seems to me that the reasoning of the Court in that case is not only philosophical but conclusive upon the subject.

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Such being the law as applicable to this case, the judgment of the Circuit Court ought to be affirmed.

E. C. FELLOWS,
Attorney for Appellee.

ARGUMENT FOR APPELLANT.

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It has been supposed, however, not disrespectful to submit the question again to the Court.

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We hold that the bet in this case is neither within the letter nor the spirit of the law.

I. Not within the letter, certainly.

1. The election of Presidential electors is not an election of any *person* as President. Political usage and public expectation, making it probable that certain electors will vote for a certain man do not affect the legal proposition. The election of President and Vice President takes place at Washington, under the constitution and laws of the U. S.

2. To encounter the prohibition in the statute, the bet must be upon the "*result*" of an election held under the constitution and laws of the State of Illinois. Suppose Sharp had been indicted, under this statute, for betting on the election of Douglas as President—not on the success of the Douglas electoral ticket in Illinois, but on the election of 152 electors, with or without Illinois as the case might be. Could the indictment be sustained? And yet he can only maintain this suit on grounds which would subject him to a fine equal in amount to this very judicious bet.

Can it be said, with any approach to accurate language, that a bet on the result of the choice of the electoral college at Washington, acting under the constitution and laws of the U. S., which may not, and in this case really was not affected by the vote of Illinois, was a bet on the result of an election under the constitution and laws of Illinois? A mere statement of the question in a distinct form furnishes an answer. It might as well be said, that a bet on the election of Speaker of the house of representatives, which might or might not be affected by the election of members of congress in Illinois, was obnoxious to this statute.

II. Not within the mischief designed to be prevented by the statute. The mere transfer of money or property on future contingencies, (except in the forms of gaming,) is not prohibited by law. Hence many bets are tolerated. For example, bets on elections in other states have been declared lawful by this Court. 3 Scam. 529. The prohibition in our statute is based simply on the idea that the practice tends to endanger the purity of the ballot box, by making the vote of the citizen depend on his pecuniary interest, or stimulating him to undue activity in political contests by the hope of gain. Daily observation will justify the assertion that the statute does not stop betting, and that betting is but an inappreciable element of mischief at the polls. But if there be any real mischief in it, it is confined exclusively to local and inferior elections, where the election districts are so small, that the personal exertions of

individual men, it can be supposed, might directly influence the result. State elections, though hardly coming within this description, are yet swept within the rule for the sake of simplicity and uniformity. It is preposterous to apply this theory to Presidential elections;—to suppose that a bet on a result, depending on so immense a combination of causes as a national contest involves, could mischievously influence it.

If these views be tenable, the plaintiff in this suit ought not to have recovered, and the judgment should be reversed.

PARKS & ELWOOD,
Attorneys for Appellant.

329-a No 184

Stevens
vs
Sharp

Agreed Case
Arguments of Appellant
& Appellee.

Filed Oct. 9. 1861
L. Leland
Clk

Supreme Court of Illinois
Third Grand Division

April Term, A. D 1861 at Ottawa

Henry K. Stevens appellant
vs
Bernhard A. Sharp appellee
} Appeal from Mie

State of Illinois }
Mie County } ss

E. C. Fellows being duly sworn says that he is the attorney for the appellee in this case and that the matters presented by the record in the above entitled cause were and are litigated in good faith about a matter in actual controversy between the parties to this suit and that the opinion of the Supreme Court is not sought with any other design than to adjudicate and settle the Law relative to the matter in actual controversy between the parties to the record

E. C. Fellows

Subscribed & Sworn to
before me this 14th day
of October A D 1861. Witness my hand and Seal of
said Court B F Russell
Clerk of Cir Court

Henry. K. Stevens, appellant

vs

Bernhard A Sharp appellee

Affet

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

HENRY K. STEVENS, Appellant,
vs.
BERNHARD U. SHARP, Appellee. } *Appeal from Wills*

AGREED CASE.

The following is admitted and agreed to be the facts in the case.

In August, A. D. 1860, plaintiff and one Braden, both then and now citizens, residents and voters of the State of Illinois, made a wager of $1,000 each on the result of the then approaching Presidential election. Plaintiff betting $1,000 that S. A. Douglas would be elected the next President of the United States, and Braden betting $1,000 that he (Douglas) would not.

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Attorneys for Appellant.

E. C. FELLOWS,
Attorney for Appellee.

Dated 3d April, A. D., 1861.

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2. To encounter the prohibition in the statute, the bet must be upon the "*result*" of an election held under the constitution and laws of the State of Illinois. Suppose Sharp had been indicted, under this statute, for betting on the election of Douglas as President—not on the success of the Douglas electoral ticket in Illinois, but on the election of 152 electors, with or without Illinois as the case might be. Could the indictment be sustained? And yet he can only maintain this suit on grounds which would subject him to a fine equal in amount to this very judicious bet.

Can it be said, with any approach to accurate language, that a bet on the result of the choice of the electoral college at Washington, acting under the constitution and laws of the U. S., which may not, and in this case really was not affected by the vote of Illinois, was a bet on the result of an election under the constitution and laws of Illinois? A mere statement of the question in a distinct form furnishes an answer. It might as well be said, that a bet on the election of Speaker of the house of representatives, which might or might not be affected by the election of members of congress in Illinois, was obnoxious to this statute.

II. Not within the mischief designed to be prevented by the statute. The mere transfer of money or property on future contingencies, (except in the forms of gaming,) is not prohibited by law. Hence many bets are tolerated. For example, bets on elections in other states have been declared lawful by this Court. 3 Scam. 529. The prohibition in our statute is based simply on the idea that the practice tends to endanger the purity of the ballot box, by making the vote of the citizen depend on his pecuniary interest, or stimulating him to undue activity in political contests by the hope of gain. Daily observation will justify the assertion that the statute does not stop betting, and that betting is but an inappreciable element of mischief at the polls. But if there be any real mischief in it, it is confined exclusively to local and inferior elections, where the election districts are so small, that the personal exertions of

individual men, it can be supposed, might directly influence the result. State elections, though hardly coming within this description, are yet swept within the rule for the sake of simplicity and uniformity. It is preposterous to apply this theory to Presidential elections;—to suppose that a bet on a result, depending on so immense a combination of causes as a national contest involves, could mischievously influence it.

If these views be tenable, the plaintiff in this suit ought not to have recovered, and the judgment should be reversed.

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329 A. No-184

Henry K. Stevens
vs
Bernhard U. Sharp

Agreed case
Arguments of Appellant & Appellee

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L. Leland
Clerk