

12686

No. _____

Supreme Court of Illinois

Nash

vs.

Monheimer

71641  7

~~16~~ ~~47~~

John E. Nash

vs

Marx & Bonheim

25

1886

1858

~~X~~

Presumed

Pleas before the Hon^{ble} M. C. Hollister judge
of the ninth judicial circuit, of the Circuit Court, of the
State of Illinois, at the October Term of Said Circuit
Court, for the County of Bureau. begun and held at the
Court House in Princeton, within and for Said County
on Tuesday the second day of October in the year
of our Lord one thousand eight hundred and
fifty five.

Present Hon^{ble} M. C. Hollister Judge
Circuit M. Fisher Clerk
Stephen G. Paddock Sheriff
W. H. L. Wallace States atty

To wit on the 1st day of said term
Mary Monheimer

vs
appeal
John E. Nash

Now Comes the Plaintiff by Counsel and
stops his attorney and moves the Court to dismiss the
appeal herein for want of a sufficient Bond, and the
defendant Comes by Peters his attorney and enters his motion
for leave to file an amended ^{bond} herein, which cross motion
is allowed and leave given to Said defendant to file
an amended appeal bond herein. Defendant files his
amended bond herein, which is approved by the
Court. By agreement of parties a jury is waived, and
this Cause is submitted to the Court for trial, and
after hearing the evidence, and argument of Counsel

the Court being fully advised in the premises doth
find for the Plaintiff, and doth assess his damages
at the Sum of Twenty five dollars. whereupon said
defendant, by his said attorney move the Court for
a new trial herein. which said motion is overruled
by the Court. It is therefore considered by the
Court that the said Plaintiff have and recover of the
said defendant, the said Sum of Twenty five dol-
lars his damages aforesaid, together with all his costs
and Charges in and about his Suit in this behalf
expended as well in this Court, as in the Court below,
and that he have execution therefor. On motion
of said defendant, by his attorney an appeal is allowed
to the Supreme Court by filing an appeal bond, with
William McKee, Security in the Sum of One
Hundred dollars, within thirty days from the last
day of the present term of this Court.

Copy of Appeal Bond To Supreme Court.

We none all men by these presents that we John Q
Kash, as principal and William McKee as security
both of the County of Bureau and State of Illinois,
are held and firmly bound unto Mary Manhamer
in the penal Sum of One hundred Dollars, current
money of the United States for the payment of which
well and truly to be made we bind ourselves
our heirs executors and administrators, jointly severally

and firmly by these presents - Witness our hands
and Seals this 20th day of October AD 1855.

The Condition of the above obligation is
such that whereas the Said Marx Monheimer did
on the Second day of October AD 1855, in the Cir-
cuit Court in and for the County of Bureau Recieve
a judgment against the above bounden John E. Nash
in a certain appeal, for Twenty five dollars damages
and

dollars and

Cents Costs

of Suit. from which Said judgment of the Circuit
Court, the Said John E. Nash, has prayed for and
obtained an appeal to the Supreme Court of Said
State. Now if the Said John E. Nash shall duly
prosecute his Said appeal with effect, and shall
moreover pay the Amount of the Judgment Interest
and damages and Costs, rendered or to be rendered
against him in Case the Said judgment shall be
affirmed in the Said Supreme Court. Then this obli-
gation to be void, Otherwise to remain in full
force

John E. Nash (Seal)

William McKee (Seal)

Copy of Defts Bill of Exceptions.

Marks Monheimer

vs

John Nash.

Be it Remembered that this Cause
Came on for trial before the Circuit Court of Bureau

Said Oct. 30 1855
C. Mc Fisher Clerk

County Illinois, at the October Term A.D. 1855,
of said Court, a jury was returned and the Cause
submitted to the Court upon the following agreed
Statement of facts. "This Cause was originally instituted
before a Justice of the Peace of said County, and
appealed to the said Circuit Court." The Plaintiff
brought suit against the defendant on the following
demand to wit: "John Nash To Mary Monheimer
Or - 1855. To Cash now on Wager by said Nash &
Monheimer. That he Nash could make a certain
horse rack one half mile in one & a half minutes
said horse on trial failing to make that time, \$25.00

It was admitted that in pursuance of a contract
between the said parties which is substantially set
out in said Statement, that the horse of the Plaintiff
was racked on said Wager within the Corporation
of the Town of Princeton in said County by the defend-
ant previous to the institution of said suit - and
said horse failed to rack one half mile in one and
a half minutes, that no place where the said horse
should be racked in said Wager was specified in
the Contract or Wager between the parties, but that
when said horse was so racked upon said Wager
the Plaintiff was present and made no objection to
said Racking of the horse being within the Corporation
of said Town. It was further admitted upon said
trial by the parties to the suit, that said Town
of Princeton was a legally incorporated Town, under

the laws of this State, at and before the time of said test or trial of the Speed of the Plaintiff's horse, and that an ordinance of said Town had been duly and legally enacted and published, and was still in full legal force and effect - at and before said test or trial, which prohibited furious riding or driving of horses within the incorporated limits of said Town, and that the Speed with which said horse was rode on said trial was such that he sacked one half mile in one minute and 34 seconds along one of the Streets of said incorporated Town - which was all the evidence in the Case, the Court found the same for the plaintiff, and rendered judgment for the Plaintiff, for Seventy five dollars. To which the said defendant then and there accepted at the time said decision was so made, the defendant made a motion for a new trial, which the Court overruled. To which said decision of the Court, in overruling said motion for a new trial the said defendant then and there accepted at the time said motion was overruled. And the said defendant prayed the Court to sign and seal this his bill of exceptions, and make the same a part of the record which was done accordingly.

W. F. Hollister (Seal)

State of Illinois
Barren County SS. I Edward M. Fisher

Clerk of the Circuit
within and for said County in the State
aforesaid do hereby certify that the foregoing is
a true copy of the Record in the above
entitled Cause as of file & of Record in my
office

In witness whereof I have
hereunto subscribed my name
& affixed the Seal of said
Court at Princeton in said
County this 14th day of May
A.D. 1856 Edward M. Fisher
Clerk

Clerk's fee
Copy of Record \$ 2.00
Cfft & Seal 35.
\$ 2.35

~~711~~ 47

28

Mary Monheimer

vs

John C. Nash

Copy of Record

Filed June 12. 1856

W. Leland

Clerk

Supreme Court 3^d Grand Division.

April Term 1858

John E. Nash

vs.

Marks Monheimer

} Appeal from Bureau.

Argument for Appellee.

The first point made by the appellant is hardly worthy of notice, inasmuch as the record fairly shows, that the horse which was raked, was the one upon which the wagon was laid.

In reply to the 2^d point made in the appellants' argument, we have only to say, that the contract did not require the race to be made in the streets of Princeton (where it in fact was run), but the place was selected by the appellant himself, and though by so raking, he violated the ordinance of Princeton, and subjected himself to the penalty therein provided, we apprehend that this would not invalidate the contract, nor constitute a matter of defense, nor admit Nash to take advantage of his own wrong.

The 3^d point, which is the real question in this case, whether ^{a wager on} a horse race is recoverable under the laws of this State, is the one which we desire particularly to call the attention of the Court.

It is hardly necessary to suggest to this Court, that bets on Horse-racing were never

deemed illegal either by the common law of England, or the civil law of Rome. nor under any of the English Statutes, if fair, and not excessive, or not over the sums specified in the Statutes.

The appellant in his argument says, that the authorities declare bets on horse races illegal and void.

We do not find them so.

Let us analyze the cases he cites, and see if they sustain him in his position. and in order to ascertain this matter clearly let us glance at the provisions of the leading English Statutes, under ^{which} most of the cases he cites have arisen.

The Statute of 16 Charles 2. C. 7 declares void all wagers on Horse-races over £100.

The Statute of 9 Ann C. 14. does not mention horse races, but we admit, that the cases have considered horse-racing as included under the words "other games" in that Statute, and void if over £10. -

The case cited by appellant, of *Brogden v. Marriott* 3. Bing. N.C. 88. does not sustain the statement made in the appellants argument.

That case was this. A Horse was sold by A to B. for £200 provided he could trot 18 miles in one hour, and if he failed B. was to get him for 1 Shilling.

The Court held this language - "Here £200 was bet, and it is a wager on a game in which more than £10 are at stake, and therefore falls within the Statute of 9 Ann C. 14."

Had it been for £10 or under the Court would have sustained the action.

The case cited of *Synell vs. Longbottom* 2. Wilson 36. was a foot-race for £47. and was held void by 9 Ann. c. 14. being over £10 bet.

The next case cited of *Blaxton vs. Pye* 2. Wilson 309 was a wager of 14 Guineas and held void for the same reason.

The case cited of *Goodburn vs. Mavley* 2 Strange 1159 was a bet of £15 on a race and held void for the same reason, but more of these cases go upon the ground that the wager on the race is illegal, if limited to the amount fixed in the Statute.

The case cited in 4 Wils. was upon a note, and their Statute declared notes given upon racing, void.

We insist that any wager can be recovered, unless it is prohibited by Statute, or is deemed immoral or against public policy, and the weight of authority is clearly that way.

There is no law in this State prohibiting Horse-racing,

as to its immorality, that is settled the other way by the uniform voice and practice of barbarians and civilized man from time immemorial, in battle, in fight and in tournament, and what has always in the most chivalrous times received the approval of women, can hardly be deemed immoral in these degenerate times.

As to sports of the turf being against public policy, or wagers upon them, we think it would be supererogation to argue - because both their morality and utility have been settled by judicial decision.

If there be any law in this State which vitiates a racing-contract, it must be found in the 1st section of our Statute against Gaming.

People, Statute

This court in a leading case, where most authorities on this subject are collated.

Morgan vs. Petit, 3 Scammon 530. Sustains a bet made that Gen. Harrison would receive the Electoral Vote of Kentucky for President.

Our Gaming Statute has not received any construction by this Court, but the 1st section is substantially the same (so far as the subject of this controversy is concerned) as the English Statute of 8 & 9th Victoria c. 109: which provides.

"That all contracts or agreements, whether by parol or in writing, by way of gaming, or wagering, shall be null and void."

This has received a construction by the Common Bench, in the case of *Batty vs. Marriott*, 5 C. B. 828 (Eng. C. L. R. Vol 57 p. 828) and it was there held that a foot race, and a horse race were both lawful games, and wagers on them recoverable.

C. J. Wilde held this language in that case
"It is quite clear that Horse-racing was
not intended to be put down or dis-
courage by that Statute"

In the case of Applegate vs. Colley, in
10 Meeson & Welsby 723. a horse race for
a sweepstakes of £2. each was sustained
and held not to be within the 9 Ann C. 14.

In Hasket vs. Wootan, 1 Hoff & McCord 180.
which was to recover a bet of \$60. on a
horse race, the doctrine is clearly laid
down by C. J. Chever, that a bet on a
horse race may be recovered, but that
case was not sustained, on the ground
however that South Carolina, by statute,
had adopted the 9 Ann C. 14. and this
bet was over £10.

In Barrett vs. Hampton. 2 Brevard R-226
S. Carolina. a bet on a horse-race for
\$20. was sustained.

In Ross vs. Green 4 Harrington R. (Delaware)
308. which was a bet made in Delaware
on a horse race run in Maryland,
the bet was recovered, the Court saying,
that "neither the bet, nor the race is unlawful
or immoral, not being prohibited."

In Dunman vs. Brother 1 Texas R. 89.
the bet was recovered, the Court deciding
on the ground that the legality of a horse
race was recognized by the common law

and was not prohibited by Statute.

3 McLean 100.

10 Johnson 405.

We think therefore that the judgment
of the Court below should be affirmed.

Oliver C. Gray,
Atty. for Appellee.

No. 25.

Supreme Court.

John Nash

vs,

Markus Monheimer

Argument and
authorities for
Appellee

Filed April 22. 1858
L. Liland
Clk.

Oliver C. Gray
Atty pro appellee

Supreme Court 3 Grand Division
April Term 1888

John C. Stacks

vs.

Mary Monheimer

Brief of points and authorities.

A wager upon a Horse-race is recover-
able, unless prohibited by Statute.

3 Scumnow 530. &
cases there cited -
1 Holt & McCord 180.

2 Breard R. 226.

14 Harrington R. 308

1 Texas R. 89.

3 McLean 100

5 C. B. 828.

10 M & W. 723

O. C. Gray.

Atty. pro Appellee.

No. 25-

Supreme Court

Nash

vs.

Montgomery

Brief of
Appellee

Filed April 22, 1858
S. Leland
Clk

O. C. Gray
Atty. Geo. Appellee

STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, A. D. 1857.

Appeal from Bureau County Circuit Court.

JOHN NASH vs. MARKS MONHEIMER.

THIS was originally a cause brought before a Justice of the Peace of Bureau county, by the appellee against the appellant, and taken by appeal to the said Circuit Court, in which there was judgment for the appellee, and the appellant, who was the defendant in the Court below, brings the case to this Court by appeal. The facts of the case are fully set out in the Bill of Exceptions, taken in the case by the appellant, as follows, to wit:

Marks Monheimer }

vs.

John Nash. }

Be it remembered, that this cause came on for trial before the Circuit Court of Bureau county, Illinois, at the October term, A. D. 1855, of said Court. A jury was waived, and the cause submitted to the Court upon the following agreed state of facts: "This cause was originally instituted before a Justice of the Peace of said county, and appealed to the said Circuit Court. The plaintiff brought suit against the defendant on the following demand, to wit: "John Nash to Marks Monheimer, Dr. 1855.—To cash won on wager, by said Nash and Monheimer, that he, Nash, could make a certain horse rack one-half mile in one and a half minutes—said horse on trial failing to make the same, \$25.00." It was admitted that, in pursuance of a contract between the said parties, which is substantially set out in said statement, that the horse of the plaintiff was racked on said wager within the corporation of the town of Princeton, in said county, by the defendant, previous to the institution of said suit, and said horse failed to rack one-half mile in one and a half minutes; that no place where said horse should be racked on said wager was specified in the contract, or wager between the parties, but that when said horse was so racked upon said wager, the plaintiff was present and made no objection to said racking of the horse, being within the corporation of said town. It was further admitted upon said trial, by the parties to this suit, that said town of Princeton was a legally incorporated town, under the laws of this State, at and before the time of said test or trial of the speed of plaintiff's horse, and that an ordinance of said town had been duly and legally enacted and published, and was still in full legal force and effect, at and before said said test or trial, which prohibited furious riding or driving of horses within the incorporated limits of said town; and that the speed with which said horse was rode on said trial or test was such that he racked one half mile in one minute and 34 seconds, along one of the streets of said incorporated town." Which was all the evidence in the case. The court found the issue for the plaintiff, and rendered a judgment for plaintiff for twenty-five dollars, to which the defendant then and there excepted, &c. The defendant also moved for a new trial, which the Court overruled, to which the defendant excepted.

Upon this record the appellant makes the following assignment of errors, to wit:

- 1st. The Court erred in finding for the appellee.
- 2d. The Court erred in overruling appellant's motion for new trial.
- 3d. The Court erred in not finding for the appellant and rendering a judgment in his favor and against the appellee for costs.

Wherefore the appellant prays that the said judgment may be reversed, and the appellant restored to his rights, &c.

PETERS & FARWELL,
Attorneys for Appellant.

It is admitted that the horse was ridden in the corporation of the town of Princeton, in said county, by the defendant, previous to the institution of said suit, and said horse failed to rack one-half mile in one and a half minutes; that no place where said horse should be racked on said wager was specified in the contract, or wager between the parties, but that when said horse was so racked upon said wager, the plaintiff was present and made no objection to said racking of the horse, being within the corporation of said town. It was further admitted upon said trial, by the parties to this suit, that said town of Princeton was a legally incorporated town, under the laws of this State, at and before the time of said test or trial of the speed of plaintiff's horse, and that an ordinance of said town had been duly and legally enacted and published, and was still in full legal force and effect, at and before said said test or trial, which prohibited furious riding or driving of horses within the incorporated limits of said town; and that the speed with which said horse was rode on said trial or test was such that he racked one half mile in one minute and 34 seconds, along one of the streets of said incorporated town." Which was all the evidence in the case. The court found the issue for the plaintiff, and rendered a judgment for plaintiff for twenty-five dollars, to which the defendant then and there excepted, &c. The defendant also moved for a new trial, which the Court overruled, to which the defendant excepted.

25

JOHN NASH
vs.
MARKS MONHEIMER.

*Abstract and Assignment
of Errors.*

FILED

3 Seams - 529
8 Leases - 10-
6 Rich 44
19 Rich 144
18 Pa State 329
8 Scatter 594
15 English & SR 204
3 Mc Lane
10 Pottery at 228
2 Mills 309
4 Mo: 336
4 11 599

John Nash
Mark Monheimer } appeal from Bureau.

The question presented in this Cause is whether a wager upon a horse race is recoverable under the laws of this State. The Court below decided that such a wager was valid in this State, and rendered judgment in favor of the appellee, for the amount of such wagers,

It is insisted that the Judgment of the Court below is erroneous for three reasons

1st That there was no proof that the plaintiff won the wager. The wager was upon a certain horse, the defendant sacked plaintiff's horse, but there was no proof that such horse was the one upon which the wager had been made,

2^d That there was no cause of action even if such wagers were legal, because, the trial or test of speed upon which the plaintiff claimed to recover was within the limits of an incorporated town, and in violation of an ordinance of such town. But it will be insisted that the contract did not require that such trial of the horses speed, should be within the limits of said Corporation, and that therefore the place where said trial was had, is no objection to the plaintiff's right to recover, but such can not be the case, for the plaintiff has to recover if at all, upon the result of an act which violated an ordinance of said town, and was therefore illegal. the contract alone, does not give a cause of action, but if there is one it is the result of said horse race within the Corporation of Princeton, and the plaintiff if he can recover, recovers

upon an illegal cause of action, in which he consented to such illegality, Suppose that a bet was made in another Country or State ~~upon~~ whether A. could not beat B at a certain game of cards, and that where the bet was made it was legal, and no place was fixed by the bet where the game should be played but it was played in Illinois, where all such bets are illegal, Could there be a recovery in this State upon the result of such game? If there could not be, then the plaintiff could not recover this wager, merely because the place of the trial of the horses speed was not fixed in Princeton by the bet or wager.

3^d All bets ^{or wagers} on horse races are illegal and void, So says the authorities, "A Wager whether a horse can trot 18 miles within an hour is illegal, because it tends to create disturbance,

Story on Contracts Sec 567, Brogden v Lamont 3 Bing N.C. 88, S.C. 2 Scott 712 -

A shooting match is gaming 8 Blackf 403

A horse race is a game 8 Blackf 332,

A bet upon a horse race is gaming Wharton's Forms 598.

Chitty on contracts 716. (6th American Ed)

The Missouri' statute in regard to gaming, is a verbatim copy of ours, The Supreme Court of that State in *Shropshire vs Glascock & James* 4 Mo Rep 535 & in same vol 599 *Boydton vs Carle*, decided that a horse race was a game within the meaning of their statute, In 2 *Nelson* 36. The Court decided that a foot race is a game within the statute of the 9th Ann against gaming, although the runner runs against time alone, The statute of Mass is like our statute on Gaming, In 2 *Strange* 1159 the Court decided that a horse race was a game, so

also decided in Blaxton vs Pye 2 Nilsen 309 = See
also against the validity of wagers in general
6 Wharton 176, Collier vs Day 2 Vermont 144, &
1 Strobbart 82.

If Wagers can be recovered upon horse races
in an incorporated town, where the racing will
be not only dangerous to ^{the} safety of its citizens
but will attract crowds of disorderly people, then
our laws are most usefully defective. but we think
that this Court can not and will not sustain
the validity of wagers upon horse races
in this state.

Peters & Farwell
attys for appellants

25
Supreme Court
John Nash
vs appeal

Marks Monheimer

Argument & authorities
for appellant

Filed Feb. 25, 1858
J. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, A. D. 1857.

Appeal from Bureau County Circuit Court.

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Be it remembered, that this cause came on for trial before the Circuit Court of Bureau county, Illinois, at the October term, A. D. 1855, of said Court. A jury was waived, and the cause submitted to the Court upon the following agreed state of facts: "This cause was originally instituted before a Justice of the Peace of said county, and appealed to the said Circuit Court. The plaintiff brought suit against the defendant on the following demand, to wit: "John Nash to Marks Monheimer, Dr. 1855.—To cash won on wager, by said Nash and Monheimer, that he, Nash, could make a certain horse rack one-half mile in one and a half minutes—said horse on trial failing to make the same, \$25.00." It was admitted that, in pursuance of a contract between the said parties, which is substantially set out in said statement, that the horse of the plaintiff was racked on said wager within the corporation of the town of Princeton, in said county, by the defendant, previous to the institution of said suit, and said horse failed to rack one-half mile in one and a half minutes; that no place where said horse should be racked on said wager was specified in the contract, or wager between the parties, but that when said horse was so racked upon said wager, the plaintiff was present and made no objection to said racking of the horse, being within the corporation of said town. It was further admitted upon said trial, by the parties to this suit, that said town of Princeton was a legally incorporated town, under the laws of this State, at and before the time of said test or trial of the speed of plaintiff's horse, and that an ordinance of said town had been duly and legally enacted and published, and was still in full legal force and effect, at and before said said test or trial, which prohibited furious riding or driving of horses within the incorporated limits of said town; and that the speed with which said horse was rode on said trial or test was such that he racked one half mile in one minute and 34 seconds, along one of the streets of said incorporated town." Which was all the evidence in the case. The court found the issue for the plaintiff, and rendered a judgment for plaintiff for twenty-five dollars, to which the defendant then and there excepted, &c. The defendant also moved for a new trial, which the Court overruled, to which the defendant excepted.'

Upon this record the appellant makes the following assignment of errors, to wit:

- 1st. The Court erred in finding for the appellee.
- 2d. The Court erred in overruling appellant's motion for new trial.
- 3d. The Court erred in not finding for the appellant and rendering a judgment in his favor and against the appellee for costs.

Wherefore the appellant prays that the said judgment may be reversed, and the appellant restored to his rights, &c.

PETERS & FARWELL,
Attorneys for Appellant.

JOHN NASH

vs.

MARKS MONHEIMER.

*Abstract and Assignment
of Errors.*

FILED

Nash

vs

Monheimer

STATE OF ILLINOIS, SUPREME COURT,

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Upon this record the appellant makes the following assignment of errors, to wit:

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- 2d. The Court erred in overruling appellant's motion for new trial.
- 3d. The Court erred in not finding for the appellant and rendering a judgment in his favor and against the appellee for costs.

Wherefore the appellant prays that the said judgment may be reversed, and the appellant restored to his rights, &c.

PETERS & FARWELL,
Attorneys for Appellant.

JOHN NASH
vs.
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*Abstract and Assignment
of Errors.*

FILED