No. 8692

Supreme Court of Illinois

Franklin Casey

vs.

Joseph Gorden, et al

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State of Illinois }
St Clair County } Pleas and Proceedings had in the Circuit Court, with in and for the County of St Clair before the Hon. Wm H Snyder Judge of the twenty fourth judicial Circuit, whereof the said County of St Clair forms a part.

Be it remembered that Franklin Casey on the 28th day of August AD. 1857 filed in the office of the Clerk of said Court his Declaration which as afterwards amended is in words and figures following to wit.

State of Illinois } SS.
St Clair County } of the September Term of the St. Clair Circuit Court AD. 1857.

Joseph Gordon and Francis Gordon Defendants in this suit were summond to answer Franklin Casey the Plff in this suit of a plea that they render unto the said Plaintiff the sum of one hundred and sixty dollars, debt which they owe to and unjustly detain from him as he saith.— And thereupon the said Plff by R. F. Wingate his Attorney complains of the said Defendants.

For that whereas the said Defendants heretofore to wit: on the 11th day of Oct. 1852 at the County of St Clair and State of Illinois made their certain promissory note in writing by the names and abrevi-

ations of Joseph Gorden and J. M Gorden and then and there delivered the same to the said Plaintiff the date whereof is the day and year last aforesaid, and thereby on or before the first day of March eighteen hundred and fifty three, promised to pay the said Plaintiff the said sum of one hundred and sixty dollars, provided Franklin Pierce (who was misdiscribed in said Note by mistake as Franklin) was elected President of the United States, for value received of him the said Plaintiff by them the said Defendants. And the said Plaintiff avers that Franklin Pierce was on the day of 185 elected President of the United States of all which the said Defendants had notice, by means whereof and by force of the Statute in such case made and provided the said Defendants then and there became liable to pay to the said Plaintiff the said sum of one hundred and sixty Dollars above demanded and in the said promissory note specified, according to the tenor and effect of said promissory note. And although the said sum of money in the said promissory note specified has been long since due and payable, according to the tenor and effect of the same, yet the said Pltff in fact says, that the said Defts or either of them (although often requested so to do) did not nor would pay the said sum of one hundred and sixty dollars in the said note specified or any part thereof to the said plaintiff in manner aforesaid or otherwise how-

soever, but hath hitherto wholly neglected and refused so to do, whereby an action has accrued to the said Plaintiff to have demand and have of & from the said Defendants the said sum of $160.00. in the said promissory note specified, at the County & State aforesaid.

Yet the said pltff in fact says the said defendants or either of them (although often requested so to do) to pay the said plaintiff the said sum of $160.00. or any part thereof have and each of them have wholly failed, neglected and refused to the damage of the said plaintiff of one hundred Dollars — And therefore he brings his suit &c

R. S. Wingate
Atty for pltff

whereupon on the same day to wit: 28 August 1857 the following Summons was issued.

State of Illinois } Set.
County of St Clair } The People of the State of Illinois
To the Sheriff of said County, Greeting.

We command you to summon Joseph Gorden and Francis M Gorden if they can be found in your County, to be and appear in the St Clair Circuit Court on the first day of the next term thereof, to be holden at the Court house in the City of Belleville, in said County, on the third Monday of September next then

and there to answer unto Franklin Casey of a plea that they render unto him the sum of $ 160.00. which they owe to and unjustly detain from him to his damage as he says of $ 100.00.

And not to fail under the penalty of what the law directs. And this writ you shall have at our said Court with your return endorsed thereon.

Witness William S Thomas, Clerk of said Court, and the seal thereof hereto affixed at office this 28th day of August AD. one thousand eight hundred and fifty seven.

L.S.

Wm S Thomas

which was returned with the following endorsement thereon, to wit: The Defendants not found in my County Septr 11. AD 1857.

G C Hart Shff St C C.

And on the September Term AD 1857 of said Court the following Order was entered of Record to wit:

Franklin Casey
vs
Joseph Gordon & Francis M Gordon } Debt.

On the third Saturday

it is ordered by the Court that this cause be continued.

And afterward to wit: on the 20 October AD 1857 the following Summons was issued:

State of Illinois } Set.
County of St Clair } The People of the State of Illinois

To the Sheriff of said County. Greeting.

We command you to summon Joseph Gordon & Francis M Gordon if they can be found in your County, to be and appear in the St Clair Circuit Court on the first day of the next term thereof to be holden at the Court house in the City of Belleville, in said County, on the first Monday of December next, then and there to answer unto Francis Casey of a plea that they render unto him the sum of $160.00, which they owe to and unjustly detain from him to his damage as he says of $100. And not to fail under the penalty of what the law directs. And this writ you shall have in our said Court with your return endorsed thereon.

Witness William S Thomas Clerk of said Court, and the seal thereof hereto affixed at office this 20 day of October AD. one thousand eight hundred and fifty seven.

(L.S.)

Wm S Thomas Clk

which Summons was returned with the following endorsement thereon to wit: The within named Defendants not found in my County Nov. 27th. 1857

G C Hart Shff St Cl. C
By Fred. Ropiequet Deputy

And at the December Term AD 1857 of this Court the following Order was entered on Record to wit:

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Franklin Casey

vs } Debt

Joseph Gordon & Francis M Gordon

On the first Monday it is ordered by the Court, that an alias Summons issue and that this cause be continued.

And afterwards on the 11th day of December 1857 the following Pl. Summons was issued

State of Illinois, Sct.
St Clair County } The People of the State of Illinois
To the Sheriff of said County, Greeting.

We command you ~~to~~ heretofore to summon Joseph Gordon & Francis M Gordon if they can be found in your County, to be and appear in the St Clair Circuit Court on the first day of the next term thereof to be holden at the Court House in the City of Belleville, in said County on the third Monday of April next then and there to answer unto Franklin Casey of a plea that they render unto him the sum of $160.00 which they owe and unjustly detain from him to his damage as he says of $100.00. And not to fail under the penalty of what the Law directs. And this writ you shall have at our said Court with your return endorsed thereon. Witness William S Thomas, Clerk of said Court and the seal thereof hereto affixed at office this 11th day of Decr AD. one thousand eight hundred and fifty seven.

L S

Wm S Thomas Clk

which said summons was returned with the following endorsement thereon viz: Served by reading to Joseph Gordon Dec 11th 1857 the other Defendant not found in my County April 9th 1858.

G C Hart Shff. & Cl. C.
by Frederick Rapiequet Deptly

And on the 19th day of April AD 1858 the following plea was filed viz:

Joseph Gordon & Francis M Gordon
Ats.
Francis Casey

And the said Defendants come & defend the wrong & injury when &c, & for plea in this behalf say, that it is verily true, as the Pltff saith in his declaration, that these Defendants did execute the conditional promissory note or instrument sued on, but say there was a condition expressed in said written instrument or note to the effect that the same was to be paid on or before the first day of March 1853. Provided Franklin Pierce was elected President of the United States & if not, then the same was to be null and void. And the said defendants say that Franklin Pierce was not elected President of the United States. — Wherefore the said conditional note long since became null & void, & of this they put themselves upon the country

J Baker
Atty for Joseph Gordon

& the Pltff doth the like
R. T. Wingate
for Pltff.

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And afterwards to wit: at the April Term AD. 1858 of said Court the following Order was entered upon Record viz:

Franklin Casey
vs } Debt.
Joseph Gordon & Francis M Gordon

On the second Tuesday comes the Plff by R. T. Wingate his Atty & on his Motion leave is given by the Court to amend his Declaration. And on the third Saturday this cause is continued.

And at the September Term AD 1858 of said Court the following Order was entered upon Record viz:

Franklin Casey
vs } Debt
Joseph Gordon & Francis M Gordon

On the first Monday Leave is given by the Court to the Plff to amend his Declaration On the third Saturday the Court orders that this cause be continued.

And afterwards to wit: on the 15th March 1859 the following pleas were filed to wit:

Joseph Gordon & Francis M Gordon
vs }
Franklin Casey

And the said Defts for further plea in this behalf say they did not

undertake & promise in manner & form as the said Plff has above thereof complained against them & of this they put themselves upon the Country. J Barker

Atty for Joseph Gordon

Notice to Plff is hereby given that on the trial of said cause the said Defts will give in evidence that the note sued on grew out of a bet between the said Plff & the said Joseph Gordon on the result of a presidential election & was given as evidence & security for a wager on such result, & that the parties to said bet or wager were at the time of making such wager & at the time of the election on which the same was made, citizens of the State of Illinois & entitled to vote at the election on which such wager was made & that said wager was made before said Election was held.

J Barker Atty for Jos Gordon

And at the March Term AD 1859 of said Court the following Order was entered upon Record viz:

Franklin Casey
vs
Joseph Gordon & Francis M Gordon } Debt

On the fifth Wednesday it is ordered by the Court that this case be continued.

And afterwards to wit: at the September Term 1859 the following Order was entered on Record viz:

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Franklin Casey
vs
Joseph Gordon & Francis M Gordon } Debt

On the second Saturday by consent of parties this case is submitted to the Court for trial. After hearing the evidence the Court renders Judgment for Plff for $223.00 and costs of suit. And now the Defts by Baker their Atty except to the Decision of the Court and move the Court for a new trial; which motion is by the Court denied; and Leave is given to the Defendant Joseph Gordon to appeal to the Supreme Court, by filing his Appeal Bond in the penalty of $400.00 with Michael Keith as security within thirty Days from to day.

Whereupon on the 8th day of October 1859 the Deft by his Attorney John Baker tenders to the Court his Bill of Exceptions, which was examined by the Court approved & signed by the Court and is in words & figures as follows to wit:

Franklin Casey
vs
Joseph Gordon & Francis M Gordon } In the Circuit Court of St. Clair County Septr Term 1859.

Be it remembered that the said cause coming on for trial, the same was by consent tried by the Court without the intervention of a Jury. That on the trial thereof the Plff offered & read in evidence

a promissory note or instrument in writing of which the following is a true Copy. viz

$160 On or before the first day of March eighteen hundred and fifty three I promise to pay Franklin Casey or order the hundred and sixty Dollars Provided Franklin A Pierce is elected President of the United States if not this obligation to be null and void for value received.

Paps House October 11th 1852

Joseph Gordon

F M Gordon

The parties then introduced a statement of facts in writing which was agreed by the parties to be taken as evidence in said cause, and of which the following is a true Copy to wit:

Casey
v. } Statement of facts
Gordon

The parties being together at Illinois town, St Clair Co. The Plff had a horse which he held & was offering to sell at $80 — Deft Joseph Gordon proposed giving Plff $160 — for the horse provided Pierce was elected President of the United States of America, Plff agreed to the proposition and delivered the horse to said Gordon; whereupon & in pursuance thereof said Gordon and his Codeft executed the note and delivered the same to Plff. The said Plff & Defts were at the time of the above

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transaction residents and voters in the State of Illinois, where the same took place, and at the election at which Pierce was elected. That Pierce was elected President as in the Plffs Declaration alleged.

R. T. Wingate
Atty for Plffs

T. Baker for Defs

The Court then found for the Plffs & gave Judgment for the Plff for two hundred and twenty three Dollars, to which the Defts excepted at the time. The Defts next moved the Court for a new trial which motion was overruled by the Court, to which overruling the Defts excepted at the time. The foregoing was all the evidence introduced on the trial of said cause. This bill of exceptions being signed by the Presiding Judge in term time.

Wm H Snyder (Seal)

And afterwards to wit: on the 24th day of October AD. 1859 the following Appeal Bond was filed viz:

Know all men by these Presents that we Joseph Gordon & Michael Keith are held and firmly bound unto Francis Casey in the penal sum of four hundred Dollars which sum well & truly to pay we bind ourselves

our heirs, our executors & administrators firmly by these presents. The condition of the above obligation being, that whereas the said Francis Casey did at the September Term of the Circuit Court of St Clair County AD 1859 obtain a Judgment against the above bounden Joseph Gordon and one Francis M Gordon for two hundred and twenty three Dollars & costs, from which said Joseph Gordon prayed an appeal to the Supreme Court of the State of Illinois. Now if the above bounden Joseph Gordon shall well and truly pay said Judgment & costs interest & damages in case said Judgment shall be affirmed & shall also duly prosecute said appeal then this obligation to be void otherwise it shall remain in full force and effect.

Witness
Wm S Thomas

Joseph Gordon (Seal)
Michael his × mark Keith (Seal)

State of Illinois }
St Clair County } I William S Thomas Clerk of the Circuit Court within and for the County of St Clair and State of Illinois hereby certify the foregoing to be a true and correct Copy of the Declaration together with the exhibit thereto and also of all the pleas and proceedings had in said Court in the above entitled cause, as the same appears on file and on Record in my office.

Witness my name & the seal of said Court hereto affixed at office in Belleville this 6th day of November AD. 1859.

Wm S Thomas Clk
By Peter J Hawk Deputy

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Joseph Gordon pltff in error
vs
Franklin Casey defendant
In the Supreme Court
of the State of Illinois
first grand div.
Nov. Term, 1859

And the sd pltff in error by L. Butler, his atty, says there is manifest error in the Record & proceeding of said cause below, in this

1. The court below erred in rendering the judgment which it did in the cause below
2 the court erred in not rendering judgment for the defs.
3 the Record shows that the suit was for the recovery of a wager on the Result of a Presidential Election between pltff. & def. in error who were both voters at sd election & the court erred in rendering judgment for the recov-

ery of such wager & sd Plff.
for the aforesaid & other manifest
errors prays that said judgment
may be reversed &

J J Gurley
Atty for Plff in Error

Joinder in error

Lamar Haizlip & Chas R S Bond
Attys for Defendant

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Franklin Casey

vs

Joseph Golden &
Francis M Golden

Appeal from St Clair

Filed Nov. 14. 1857 –
A. Johnston Clk
Docketing Paper $5.00
Fees $3.75

Joseph Gordon
vs
Franklin Gasey

J. Baker for Applnt.

1. The Note sued on ~~it was~~ was given to secure a wager on the result of a Presidential election between competent voters thereof, & as such is void at common law because contrary to public policy.

"Wagers upon the result of an election have always been considered as void on both sides of the Atlantic, as being contrary to sound policy, & tending to impair the purity of elections" 2d Parsons on Contracts 262 note h; & authorities there cited.

A wager between two voters before the poll is begun on the result of an election of a member of Parliament is illegal as being against public policy 3d Starkie 1233 note g; & authorities there cited.

To the same purport see Chitty on Contracts 429 & note 3, & authorities there cited.

In Bunn vs Riker 4 Johns 435 which

was a suit against a stakeholder of money put up on the result of a gubernatorial election, the court say; "A wager between two voters, with respect to the election of a member of parliament, laid before the poll began, was decided to be illegal, on the ground that it was corrupt, & against the fundamental principles of the British Constitution; that it was a gaming contract, not to be encouraged, & of a dangerous tendency (Allen vs Hearne 1 Term. Reps. 56) If for such reasons, a bet of this description was considered to be void in England, how much is their force increased, when applied to an analogous case in our own country, in which the very existence of every department of the government depends upon the free & unbiased exercise of the elections franchise". See note a at the end of the case & authorities there cited.

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In Smyth vs McMasters, 1 L Browne (Pa) which was on a wager on a gubernatorial election, & in which it did not appear whether the bet was

before or after the poll was closed, or whether the parties thereto were voters, the court say: "This is a wager on the election of a chief magistrate, & if ever a wager deserved reprobation, it is one of this description. In the State of New York, it has been decided, after argument, that a wager of this kind, whether laid before or after an election, cannot be recovered; & without adopting all the reasoning of the court, in those cases, we have no hesitation in saying, we concur in both decisions. . . . . Popular suffrage, is the very essence of freedom, & cannot be protected by tribunals of justice with too much vigilance & firmness. Those external impressions that have a tendency to disturb its orderly & regular motions, should be discountenanced, as repugnant to the vital interest of the Country. To the usual motives that actuate voters, it would be monstrous to permit pecuniary considerations to be mingled. . . . . The issues of an election might eventually become

a matter of speculation & profit, like a horse race, rather than an acquisition to the freedom & happiness of the people. Where a man has actually voted, prior to his laying a wager on the election, he is not indifferent to the result. Though he himself cannot become a corrupt voter, he may be induced, under the influence of the wager, to corrupt others....
The constitution of our state declares that elections shall be free. The body of the voter shall be equally free from constraint, & his mind from insuperable bias. A wager that a certain person will be elected, puts the mind as completely into trammels, as a state of duress puts the body of the voter. The mind cannot act freely, as long as the man is held in bondage to his mercenary views & engagements" &c

In Worth vs Johnson 4 Har. & McH. (Md) 245, which was a suit for a wager on a Sheriffs election the Court say:

"It is a fundamental principle of our constitution that elections should be free; & the election of a sheriff is of great importance to the community, & ought to be free from corrupt & undue influence; & such wagers if countenanced by the Court would certainly have a malignant & evil tendency, by making the parties, their connexions & friends, partisans in the election, & creating an interest & views incompatible with the general good & sound policy" &c ~~which in part promoted by selecting those men~~

In Visher vs Yates 11 Johns. I 8, which was a suit against a stakeholder to recover money put up on a bet between legal voters at the election of Governor the Court say, "The wager in this case was illegal. This was so decided in Bunn vs Riker (4 Johns. Reps. 426) & that decision was afterwards repeated in Lansing vs Lansing (8 Johns. Reps. 454) And when we consider the importance of popular elections to the constitu-

tion & liberties of this country, & that the value of the right depends upon the independence, moderation, discretion & purity with which it is exercised, we cannot but be disposed to cherish a decision which declares gambling upon such elections to be illegal, as being founded in the clearest & most incontestable principles of public policy."

In Dennison vs Cook 12 Johns. 376 which was a suit on a wager ~~between qualified~~ upon a gubernatorial election the Court say: "It was admitted on the argument that the plaintiff had the qualifications of an elector of governor. This admission is decisive against the action upon the wager. It was held in Bunn vs Riker (4 Johns. Rep. 426) that where either of the parties was an elector, the wager was illegal, on the ground that it was corrupt, & against the fundamental principles of the

constitution".

In Brush vs Keeler 5 Wend. 250 which was a bet on votes for governor, made after election, the court held that the wagers cannot be recovered.

In Stoddard vs Martin 1. R Rhode I. 4-5 - which was a bet on the election of Senators of United States, between parties not members of the legislature but citizens of the State, the court held the wager illegal as against public policy: they say; "The strong hold of freedom in our country is in the freedom of our elections. Destroy this, & our freedom is at an end. Whatever tends to this destruction, in the remotest degree, ought to be resisted here, with a determination that admits of no compromise. Wagers on elections, whether by the people or the general assembly, have this tendency directly."

In Rust vs Gast 2 Cow 169

which was a bet between two voters, after the poll was closed on the election of Governor, the court held that such a wager is against sound policy. See particularly the powerful reasoning against all such wagers in note a at the end of the case.

In Lawlor v Meyers 1 Bailey (S.C.) 4 9, which was a wager on the result of the election of President of the United States, made after the election of members of the legislature, but before the legislature had chosen the College of Electors, the court held the wager illegal as against public policy: the Recorder, whose opinion was concurred in by the court said: "It gives each bettor a pecuniary & therefore improper interest in the election or defeat of a presidential candidate. It is true that neither of the parties had a voice in it, but the country has a deep in-

terest in preserving the perfect purity of this election, & whatever gives a citizen an improper motive to promote or obstruct the elevation of a candidate tends to affect that purity. "No matter" to use the language of Lord Ellenborough in Gilbert vs Lykes, "how infinitely remote the probability of any mischief in fact arising from it, it is deemed void on account of its tendency" 16 East 158"

In Ball vs Gilbert & Trustee 12 Metcalf (Mass) 400, which was a bet on the result of a Presidential election the last day: "The more precise question here is, whether a wager upon the event of an election to a public office, depending upon suffrage in this Commonwealth is valid, & constitutes a binding contract. It seems to us sufficient to state the question. The answer is

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too obvious to admit of doubt. And it seems to us, that upon principle, such a wager is equally void, whether it be upon the election of an officer of the United States, of the State government, of a county, town, parish, or other aggregate corporation depending on suffrage."

In Hickersons Benson & Workman & Mo. 8. which was a bet on presidential election, in which a horse was bet (& delivered) against five hundred dollars, the court say, "this bet was however, clearly against public policy, & consequently void at common law. Whether a bet be made previously to an election, on its event, or subsequently on some collateral matter connected with the contest, repeated adjudications, both in England & in this country declare such wagers illegal

gal, upon principles of public policy &c"

In Mackin vs Moore 2 Gratt. (Va) 267, which was a suit on a note — defense that it was given for money lent to be bet on Presidential election — the court held that money so lent could not be recovered.

In Tarleton vs Baker 14 Vt. 9, which was a bet on Presidential election made made in Canada by two citizens of Vermont, the court held it illegal the same as if it had been made in the state. They say: "In this state a wager, like the one in question, would be altogether illegal, not only at common law, as tending to promote corruption & a spirit of gaming, & thereon opposed to public policy; but as being moreover expressly prohibited by statute"

In Wheeler vs Spencer 15

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Conn. 27, which was a wager on a Presidential election between two persons entitled to vote for electors of President & Vice President. The Court say: "The Wager therefore in ~~this case~~ the present case, is not only illegal & void at common law, but all gaming & wagering contracts are void by our statute"

In Russell vs Pyland 1 Humph. 131, the doctrine is that a wager on an election is void, whether the parties were electors or not & whether the bet was before or after the election.

In Bettis vs Reynolds 12 Ired. 344 which was a case of a bet on Presidential election. It did not appear that either of the parties were voters: the Court say: "We think it cannot be maintained, although neither of the parties is a voter, & put over

opinion on the broad ground that the wager is against public policy" &c

That wagers on elections are void at common law see further Like vs Thompson 1 Barb. Sup. C. Rep. 313; Lloyd vs Leisenring 7 Watts 2 94; Wagonseller vs Snyder 7 Watts 343; Davis vs Holbrook 1 Louis. Ann. 176; Foreman vs Hardwick 10 Ala. 316; Porter vs Lawyer 1 Herring. 517; Gardner vs Nolen id. 420.

Nor do our Illinois cases tend to support such a wager

In Turton vs Gilliam et al 1 Scam 579, the plfs. were held not to be parties to the bet, & this is the ground on which the case rests.

In Adams vs Wooldridge 2 Scam. 254, which was a suit on a note given on the result of a Presidential

election, brought by assignee before due & without notice, the court expressly waive the question of validity between the original parties, & put the case on the ground that plff. is an innocent assignee.

In Williams vs Smith 3 Scam 5-25, which was a suit on a note payable when W. H. Harrison should be elected President of the United States, the question arose on a demurrer to the declaration; the latter was held good on the ground that the record showed no facts from which it appeared the contract grew out of a bet on the presidential election, & the court say they express no opinion as to the validity of such contracts.

In Morgan vs Pitt. 3 Scam. 5-29 which was a suit for a wager between two citizens of this State on the result

of the presidential election in Kentucky, the court held it good on the ground that the parties were not voters.

11. A wager on a presidential election comes within the meaning & intent of our statute against betting on elections 1 Rev. Stat. 526 sec 52. Such an election, so far as Illinois participates in it is held under the laws of this State. Const. sec. 2. ar. 2. Con. U.S. with Rev. Stat. 515 sec. 1—5.

Joseph R Gordon

vs

Franklin Casey

Defts brief
& arg. of
Defts Atty

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