*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Trimble v. Hill, from the Supreme Court of New South Wales; delivered December 16th, 1879.*

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Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS Appeal arises in an action brought by the Appellant, Mr. Trimble, to recover from the Defendant a sum of 200*l.* deposited with him to abide the event of a match between a horse of the Plaintiff and another horse belonging to Mr. Glenister. The agreement under which the deposit was made, or so much of it as is material, is in these terms: "4th April 1877. Mr. Glenister agrees "to run Gaffer Grey against Mr. Trimble's Beacon "for the sum of 500*l.* a side, 200*l.* of which "is deposited in the hands of George Hill, which "said deposit money will be forfeited unless the "whole of the stake is made good on Monday "evening, the 10th day of April, between the "hours of 8 and 10 p.m." Before the day fixed for the race, the Plaintiff gave notice to the Defendant that he revoked the authority to pay over the money, and demanded the return of it. The question upon these short facts arises on the 8th section of the Colonial Act, 14th Victoria, No. 9, which is in the same terms as the 18th section of the Imperial Act, 8th and 9th Victoria, cap. 108. The enactment is: "And be it "enacted that all contracts or agreements, "whether by parole or in writing, by way of

" gaming or wagering shall be null and void, and " that no suit shall be brought or maintained in " any Court of Law or Equity for recovering " any sum of money or valuable thing alleged to " be won upon any wager, or which shall have " been deposited in the hands of any person to " abide the event in which any wager shall have " been made: Provided always, that this enactment " shall not be deemed to apply to any subscription " or contribution or agreement to subscribe or con- " tribute for or towards any plate, prize, or sum of " money to be awarded to the winner or winners " of any lawful game, sport, pastime, or exer- " cise." This enactment annuls all contracts by way of gaming or wagering; thus abolishing the distinction between legal and illegal wagers which had frequently raised vexed questions for the consideration of the Courts. All wagers, so far as actions to enforce them are concerned, are declared by it to be null and void. There can be no doubt that the contract in question is a contract by way of wagering; it is in fact a wager, as stated by the Chief Justice below, on one horse against the other. The only question is whether it is taken out of the operation of the general enactment by the proviso. The meaning of this proviso has been considered in several cases in the English Courts. In the case of *Batty* v. *Marriott*, 5 C. B., 819, where an agreement analogous to the present was made and money deposited to abide the event of a foot-race, it was held that a foot-race being a legal pastime, the agreement was within the proviso. This decision did not meet with entire acquiescence when it was brought before the Courts in subsequent cases. It is unnecessary to refer to these cases, because the decision itself has been distinctly overruled by the Court of Appeal in the recent case of *Diggle* v. *Higgs*, 2 L. R., Ex. D., p. 422. In that case the agreement related to

a walking match, and was to the same effect as that in the present action. It was decided that an agreement of this kind, being a contract of wager, was not an agreement to subscribe or contribute for or towards any prize or sum of money within the true meaning of the proviso, which, it was held, applied to subscriptions and contributions other than wagers. It is not disputed by the two Judges forming the majority in the Court below that this decision was directly in point, but their own opinions not agreeing with it they declined to follow its authority.

Their Lordships think the Court in the colony might well have taken this decision as an authoritative construction of the statute. It is the judgment of the Court of Appeal by which all the Courts in England are bound, until a contrary determination has been arrived at by the House of Lords. Their Lordships think that in colonies where a like enactment has been passed by the Legislature the Colonial Courts should also govern themselves by it. The Judges of the Supreme Court, who differed from the Chief Justice, were evidently reluctant to depart from their own previous decision in a case of *Hogan* v. *Curtis*, but they might well have yielded to the high authority of the Court of Appeal which decided the case of *Diggle* v. *Higgs*, as the English Court which decided *Batty* v. *Marriott* would have felt bound to do if a similar case had again come before it.

Their Lordships would not have felt themselves justified in advising Her Majesty to depart from the decision in *Diggle* v. *Higgs* unless they entertained a clear opinion that the construction it has given to the proviso in question was wrong, and had not settled the law; since in their view it is of the utmost importance that in all parts of the empire where English law

prevails, the interpretation of that law by the Courts should be as nearly as possible the same. Their Lordships, however, do not dissent from, nor do they desire to express any doubt as to the correctness of, that decision, which, it may be assumed, has settled the vexed question of the construction of a not very intelligible enactment.

The case of *Diggle* v. *Higgs* also decided that the Statute does not preclude the party who has revoked the authority given to the stake-holder from recovering the money he had deposited; the Court of Appeal agreeing with a previous decision to the same effect of the Court of Queen's Bench in *Hampden* v. *Welsh*, L. R., 1 Q. B. D., 189.

Their Lordships find that by the Colonial Act, 22 Vict., No. 18, sect. 94, the Supreme Court is empowered, upon an appeal from a District Court, to order judgment to be entered for either party; and they are of opinion, the facts being undisputed, that the judgment, for the reasons above given, should have been entered for the Plaintiff.

Their Lordships will therefore humbly advise Her Majesty to reverse the judgment of the Supreme Court, and to direct that the nonsuit be set aside, and judgment entered for the Plaintiff for the sum of 200*l.*

The Respondent must pay the costs of this Appeal.