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GAMBLING AND THE LAW

John Drzazga

This is the first of a series of articles which will appear in this Journal dealing with various kinds of gambling that are prevalent in many parts of the country. The author is a sergeant with fourteen years of service on the New York City Police Department and a graduate from the Blackstone College of Law. During the period 1939 to 1941 he was assigned to gambling investigations and appeared on numerous occasions as an expert in gambling cases in the local courts.—EDITOR.

INTRODUCTION

The object of this series of articles is to provide a condensed work on the various forms of gambling, techniques used by gamblers, methods of cheating, laws pertaining to gambling, mechanical and other devices used for gambling, and the enforcement of the various laws prohibiting or restricting gambling. This treatise should prove of interest and of value to those concerned with the enforcement of statutes prohibiting or restricting gambling, and others who may be concerned in the investigation of these violations. The articles although not a complete manual on gambling, do cover the most common methods of gambling. Albeit, many books have been published on criminal investigation and the modus operandi of the criminal, few books have been published on our gambling statutes and the modus operandi of the persons who engage in gambling as a profession.

The legal discussion is based chiefly on New York State law, although some cases are cited from other jurisdictions which are similar to New York law or which may be of some influential value. In other instances cases are cited for comparison purposes to show the difference in the law of the various states mentioned.

GAMBLING

Gambling is a statutory crime. A crime is generally defined as an act or omission prohibited by law. Gambling offenses as a general rule are crimes of the grade known as misdemeanors, but in a few exceptions, as in the State of New Jersey, they are felonies.

The various state legislatures have enacted statutes defining gambling and specifying which acts shall constitute violations of the anti-gambling statutes. With a few exceptions, minor statutory offenses are not punishable by law unless they are accompanied by a state of mind called the "mens rea" (guilty mind). Statutory crimes may not require a criminal intent, and in minor crimes, this intent has been abrogated by the state legislatures. This also applies to gambling

in many instances. Nor does ignorance of the law excuse a gambling offense.

Public cooperation is of utmost importance and has a vital bearing upon the success of the enforcement of anti-gambling statutes. Laws restricting or prohibiting gambling whether they are aimed at book-making or pool-selling, slot machines, lotteries, dice games, card games, policy, or any other form of gambling, are far from popular with the general public. No material reduction in gambling offenses can be anticipated unless there is a change in public opinion about the seriousness of these offenses. Gambling is a trait of human nature that cannot be overcome by mere legislation prohibiting or restricting such vice. Education of the public as to the futility of attempting to obtain any pecuniary gain by beating the professional gambler may be of some value in suppressing or reducing gambling.

The exploits of the professional gambler are far from spectacular. They are a menace to society even without the crooked schemes they have developed to fleece the public. Different factors hamper enforcement of gambling statutes, and these differ with the various localities in this country. Among some of the factors hampering enforcement of gambling statutes are inadequate laws, political corruption, public indifference, donations by gamblers to charities, etc. Public indifference is the principal cause why gambling flourishes openly. Public indifference encourages disregard of gambling statutes and their enforcement and at times may have a tendency to create antagonism toward organized government.

Albeit the exploits of the professional or common gambler are not as spectacular as the exploits of other criminals, they may nevertheless be equally harmful if not more so. Frequently, they spread their tentacles into the homes of the poverty stricken, who can least afford such pastime. This illusion for the poverty stricken as a short cut to quick riches eventually is bound to lead only to greater hardship. The professional or common gambler is firmly entrenched in our midst and will remain so as long as the public is willing to take a chance on the prospect of acquiring some pecuniary gain far in excess of the amount invested. The prospect of gain is always an incentive to gambling. Gambling is one of the most lucrative and profitable enterprises in existence in the present times. Many citizens see no harm in placing a wager or bet with some handbook, or other professional gambler and by this conduct create a sentiment against rigid enforcement of anti-gambling statutes.

The state has a vital interest in the welfare of its citizens and may

properly exercise its police power to enact legislation to protect the welfare of its citizens. But, the state itself often creates a hypocritical situation by legalizing gambling at a certain designated place, but making it illegal at other places. The Idaho and Montana statutes permitting slot machines in clubs are an example. Another example is legalization of gambling at race tracks only, and the taking of a share of the proceeds gambled at the race track. Not only does the state receive a share but often the municipality wherein the race track is situated, as in the case of the City of New York imposing a five per cent tax on pari-mutuel pools at race tracks.¹ This has a tendency to make many persons believe that gambling is not morally wrong or the state would not permit it at race tracks or use it as a source of revenue.

The pari-mutuel turnover in 23 states in 1948 had amounted to \$1,600,012,159.² This form of gambling is presumed to give the bettor honest gambling. The association controlling the race track supervises this form of gambling and retains certain profits fixed by law therefrom. "Breakage" is also pocketed by the track, except for the tax imposed thereon, if any.

Commercialized gambling exploits man's weakness for games of chance and often leads to other crimes. Embezzlement, larceny, and crimes of violence have frequently been connected with gambling. The professional gamblers are often identified with other unsavory criminal characters. In spite of the percentage being in favor of the professional gambler or gambling house, dishonesty and cheating have often been resorted to.

The old adage, "There is no honor among thieves" can well be applied to gamblers. Slot machine operators have been known to steal each others machines, and have often resorted to intimidating merchants to throw out the machine of one operator and to install the machine of another operator.

Lotteries and other forms of gambling conducted by eleemosynary, religious, fraternal, veteran, and other organizations, openly and in defiance of the gambling statutes, tend to breed contempt not only for gambling statutes but other laws as well.

Many suggestions have been offered to license gambling as a solution to this evil. Although there is at present a sentiment throughout the country to license gambling, this has been achieved wholly only in the State of Nevada, and partially in some states. Licensed gambling is by no means a solution to a complicated problem, as it leads to an

1. New York City Administrative Code, Chapt. 41, Sec. S41-2.0.

2. American Racing Manual, 1949 ed., Triangle Publ., Inc.

increase in prostitution and other vices. The needy as usual suffer the most. Legalized gambling also is an attraction to the undesirable element, who make it their business to squat in the community where it exists.

BOOKMAKING, HOW IT OPERATES

Bookmaking originated in England about two centuries ago. At first, the bookmakers had based their odds, after deducting a percentage, on reports of clockers, stable information, and past performance records. Prior to the advent of the pari-mutuel system, which had been invented by a French handbook, the bookmakers fixed their own odds arbitrarily. A certain percentage of the receipts had been deducted before fixing the odds, so that the bookmakers could not lose, regardless of the results of the race. The bookmaker was in reality a stakeholder who clipped a share off the receipts for the services he had rendered the gambling public. They are banned now at all race tracks in this country.

At present, the bookmakers operate outside of the race tracks and hire runners on a commission basis to assist them. Their pay off or odds are now based on the pari-mutuel prices at the race tracks, and they will pay off the player as soon as they hear the results of the races announced over the radio, or receive them over the ticker tape machines or by other means. The handbook will accept any wager the player cares to place with him. Where large amounts of money are wagered on one horse, he will lay off the bets with another bookmaker or at a race track pool. The bookmakers usually limit the odds to twenty to one for win, ten to one for place, and five to one for show. The odds may vary with different bookmakers. To increase the odds, a nationally known prominent bookmaker, had introduced so-called "insurance" in horse race bets. Where the insurance which is ten per cent of the amount of the wager, is paid in addition to the bet, the bookmaker will pay up to thirty dollars to win, twelve dollars to place, and six dollars to show. The odds on the Daily Double are limited to fifty to one.

In horse race betting, different terms are used to denote the various wagers. When two or more horses are owned by the same person, they are coupled as an "entry" and treated as one horse. The "Daily Double" is a play on two different horses in two different races which are designated by the racing association. The first and second races are usually designated in order to insure early attendance by the racing fans, and thereby induce them to wager more money. The more money wagered, the more money the association earns. The Daily Double

bets are in addition to the regular betting. "Across-the-board" bets are the equivalent of the pari-mutuel "combination" ticket, and it means that the bet covers win, place, and show. "Parlay" bets are those where money won by one or more horses is applied to another horse or horses. The odds on parlays are limited by some books to twenty-five to one for a win parlay, fifteen to one for a place parlay, and ten to one for a show parlay. The so-called "Round Robin" bet is a series of two horse parlays on all possible combinations of three or more horses run in different races. The "if" bet is dependent upon the result of the first horse selected. "If" the horse wins, the money won, or any designated part thereof, is placed on another horse or horses. A "reverse" bet is one where the order of the horses is reversed in the second part of an "if" bet. "Back-to-back" bet is another name often used for a reverse bet. Bets are also made on post positions, two horses in one race, and jockeys. But these are uncommon in New York.

The pari-mutuel system is now used at the different race tracks in this country with the sanction of the divers state governments which derive some revenue from this form of betting. An Automatic recording machine known as the totalizer is used at the various race tracks in the operation of the pari-mutuel pools. The first electrified model of this machine was used in Auckland, New Zealand. This recording machine is composed of three parts; one part prints and issues tickets, another part is a giant adding machine, and the third is an indicator or display part. Tickets are sold at different windows, depending upon the amount wagered, and whether it is a win, place, show, or combination ticket. The sales are recorded in a separate room. The odds are fixed by means of charts which had been prepared in advance and are based on the total number of dollars bet on a race and on each horse. In New York State, ten per cent (the commission and tax) are first deducted from the whole amount bet on a race, and a further deduction is made of the amount bet on a horse. The remainder is divided by the amount bet on a horse, thus giving the odds which will be quoted. The association's take is four per cent, and the balance is the tax. The pay off in all plays is to the nickel on each dollar wagered or to ten cents on each two dollars wagered. The difference consisting of the odd cents is known as the "breakage," of which the racing association gets forty per cent, and the balance goes to the state.

There is a "messenger" service at the race tracks, where uniformed messengers pass among racing fans who do not care to leave their seats to stand in line at the pari-mutuel windows. They issue a receipt for every wager. The tickets are purchased by the messenger at a

window maintained for that purpose, and they correspond to the bets taken. The messenger also cashes the tickets and pays off the racing fans. A certificate betting window is maintained for bettors who leave early. The certificates are redeemable the following day.

The race track bettors follow nearly all the selections that they can lay their hands on. The racing handicappers and touts do not back their opinions with their own money as they would be bankrupt in practically no time at all. The handicappers and so-called experts whose selections are published in newspapers and "scratch" sheets would not be working on a salary basis for the publisher of the newspaper or "scratch" sheet if their selections were fool-proof. Horses are to the race track gambler, what drugs are to the drug addict. It appears to be an addiction which cannot be overcome easily. Even though without funds, the race track gambler will still pick horses and follow the different selections, but cannot back them financially. The player who picks a winning horse, does not take a bookmaker's money away from him, but money which had been left with him by another player who had lost.

The old tricks of jockeys' pulling horses or drugging horses are not as prevalent as they were some years back. Various systems have been devised to beat the races, but if they are so good, why do the inventors of these ideas sell them to the players to make money? Why don't they clean up themselves? Their motives are far from altruistic! Some tipsters who furnish information for a percentage of the money won, give the name of a different horse to each player on their sucker list, so that the tipsters cannot lose as some winning horses are bound to be among the losers given out. They are sure to collect a percentage from the happy winner! But what about the losers? It's just too bad. Pyramiding has also been suggested as a sure way of beating the races, that is doubling your bet on each race.

"Ink" bets are a sure way of beating the bookmaker, and for this reason many bookmakers refuse to accept them. "Ink" bets are bets which are written in ink instead of pencil. The bettor who places the "ink" bet with the bookmaker may place bets involving small amounts of money for two or three days before he makes the "killing." When the time is ripe, he will place an "ink" bet on a horse running in a late race. The name of the horse, etc., are written in disappearing ink which will vanish completely after about twenty minutes. The bet is made only a short time before the race. The "ink" bet also has another bet written in invisible ink of the same color. This bet is on a horse which had run that day and had won an early race. The

invisible ink will appear on the slip about the same time that the disappearing ink vanishes. An inexperienced bookmaker is often astonished to find that he has in his possession a winning slip on a horse in an early race, and yet he is sure that he received the slip with a bet on horse in a late race. The color of the ink usually used in the "ink" bets is a dirty gray which might be mistaken for pencil in a poorly illuminated horse room. Where the bookmaker accepts verbal bets only, or makes his own notations of bets received on a racing program or "scratch" sheet, this scheme will not succeed.

Three or more persons are required in another scheme to take the bookmaker to the cleaners. A pocket transmitter is used to broadcast racing results from the race track to a confederate located in the vicinity of the race track, who in turn relays the message to another person near a bookmaker. The bet is made before the results reach the bookmaker. The transmitting of races over television will make this scheme unworkable unless the bookmaker is not equipped with a television set.

THE LEGAL ASPECTS OF BOOKMAKING

The laws against bookmaking or pool selling vary in the different states as do the laws against other forms of gambling. Where one form of gambling may be legal in one state, it may be illegal in another state. The New York statute³ which prohibits pool selling and bookmaking provides:

"Any person who engages in pool-selling, or bookmaking with or without writing at any time or place; or any person who keeps or occupies any room, shed, tenement, tent, booth or building, float or vessel, or any part thereof, or who occupies any place, or stand of any kind, upon any public or private grounds within this state, with books, papers, apparatus or paraphernalia, for the purpose of recording bets or wagers, or of selling pools, any person who records or registers bets or wagers or sells pools or makes book, with or without writing, upon the result of any trial or contest of skill, speed or power of endurance of man or beast, or upon the result of any political nomination, appointment or election; or upon the result of any lot, chance, casualty, unknown or contingent event whatsoever; or any person who receives, registers, records or forwards or purports or pretends to receive, register, record or forward in any manner whatsoever, any money, thing or consideration of value, bet or wagered, or offered for the purpose of being bet or wagered, by or for any other person, or sells pools, upon any such results; or any person who, being the owner, lessee or occupant of any room, shed, tenement, tent, booth or building, float or vessel, or part thereof, or of any grounds within this state, knowingly permits the same to be used or occupied for any of these purposes, or therein keeps, exhibits or employs any device or apparatus for the purpose of recording or registering, such bets or wagers, or the selling

3. New York Penal Law, Sec. 986.

of such pools, or becomes the custodian or depository for gain, hire or reward, or any money, property or thing of value, staked, wagered or pledged upon any such result; or any person who aids, assists or abets in any manner in any of the said acts, which are hereby forbidden, is guilty of a misdemeanor."

The provisions of this law do not apply to pari-mutuel betting at race tracks which the legislature legalized. The California statute⁴ is somewhat similar with one exception, it makes the player equally guilty, whereas, under the New York statute, the player is excluded.

Tennessee law⁵ outlaws bookmaking as well as pari-mutuel betting. To maintain or keep a place wherein wagers on horse races are made is a felony under the Tennessee law.⁶ To promote betting within the state, upon a horse race to be run in another state, where it is lawful to bet on such a race, is gaming and punishable as a misdemeanor.⁷

In New York, betting in itself, although not lawful, is not, with the exception of betting on a prize fight (or in the game of policy), a crime; but public and professional gambling has been made criminal.⁸ A distinction has always been observed between betting or gambling and maintaining a gambling house or a place to which people resort to gamble. While at common law wagers and bets on different subjects were legal and might be enforced, a gambling house or a resort for gamblers was a public nuisance for which its keeper could be prosecuted. The same distinction has been made in this state where ordinary betting has never been made a crime,⁹ except as above mentioned. The provisions of the New York law apply to the professional operators and not the players.¹⁰ The law does not include those who place their own bets with bookmakers, but the professional gamblers only.¹¹ And so one who makes a bet with another upon the result of a game of golf about to be played between them and records or registers said bet on a card does not violate the law, which is confined to recording of bets of all comers as a practice or business.¹² But one who makes a practice of receiving money bet or wagered on a horse race violates the statute,¹³ and one who receives a sum of money in payment of an oral bet made by him with another at a race track on a race then and there

4. California Penal Code, Sec. 337a.

5. Tenn. Code, Sec. 11287.

6. Tenn. Code, Sec. 11289, 11290.

7. *Williams v. State*, 92 Tenn. (8 Pick) 275, 21 S.W. 662.

8. *Peo. v. McDonald*, 177 A.D. 806, 165 NYS 41 (1917).

9. *Peo. v. Stedeker*, 175 N.Y. 57 (1902).

10. *Peo. v. Greckoff*, 68 NYS2d 290 (1947).

11. *Peo. v. Morett* (1947) 272 A.D. 96, 69 NYS 2d 540; *Peo. v. Goldstein*, 65 N.E. 2d 169, 295 N.Y. 61 (1946).

12. *Peo. ex rel. Sterling v. Sheriff, etc.*, 60 Misc. 326, 112 NYS 154 (1908).

13. *Peo. v. DeVito*, 267 A.D. 914, 47 NYS2d 195 (1944).

to be run does not violate the statute.¹⁴ A writing is not an essential element of pool selling or bookmaking.¹⁵ The statute directed only against professional gamblers and not against bettors, does not prohibit ordinary betting, even if repeated from day to day, nor is it bookmaking to make a series of bets in the ordinary way.¹⁶ Pool selling on ball games also constitutes a violation of this statute.¹⁷ Where one had the bettors register and record the bets, and took, kept and used the records so as to make them his own, he was held to be engaged in bookmaking within the meaning of the statute and may be convicted of the crime although he operated only four days and on occasions. He cannot escape liability on the theory that he was a private gambler. It is not necessary to circulate the terms of the bets he would accept if the information was orally imparted to the public.¹⁸ Bookmaking on a walking match is a violation of this law.¹⁹

No complete set of facts can be given which will show the kind of evidence required in all classes of bookmaking. The evidence required to sustain a conviction for bookmaking depends upon the circumstances in each individual case. In a case based on circumstantial evidence, a police officer observed the alleged bookmaker on a certain street corner for a period of thirty-five minutes, during which time five persons approached him and each handed him a dollar bill after consulting a "scratch" sheet, which was not done in a furtive manner. The courts held that the evidence in this case did not warrant a conviction.²⁰ But in another case where the officer observed men approach the bookmaker, consult "scratch" sheets and hand him money; and on arrest the officer found a "scratch" sheet with pencil notations indicating horses and bets, such evidence was held to be sufficient to warrant a conviction for bookmaking.²¹

Legal technicalities frequently aid the gambler and result in a dismissal of the complaint or information. One of the most common, is the failure to allege in the information that the place where the bookmaker operated "was not a licensed race track." An information for bookmaking is fatally defective when it fails to aver that room kept and occupied by the defendant was not on a running or trotting track

14. *Peo. ex rel. Collins v. McLaughlin*, 128 A.D. 599, 113 NYS 188 aff'g 60 Misc. 306, 113 NYS 306 (1908).

15. *Peo. v. Carpenito*, 55 N.E.2d 754, 292 N.Y. 498 (1944).

16. *Shillitani v. Valentine*, 53 NYS2d 127 (1945).

17. *Peo. v. Wright*, 165 NYS 386, 100 Misc. Rep.205 (1917).

18. *Peo. v. Salomon*, 174 A.D. 144, 160 NYS 942 aff'd 221 NY 502 (1916).

19. *Murphy v. Bd. of Police of N.Y.*, 11 Abb.N.C.337 (1882).

20. *Peo. v. Carpenito*, 55 N.E.2d 754, 292 N.Y. 498 (1944).

21. *Peo. v. Camio*, 165 Misc. 134, 300 NYS 264 (1937), *Peo. v. Gilbert*, 280 N.Y. 685, 21 N.E.2d 194 (1939); *Peo. v. Zavier* (1947), 189 Misc. 266 (1947)(N.Y.).

authorized by statute.²² Information for the crime of bookmaking must allege that offense was not perpetrated within environment of race track, and it is sufficient if it recited that place occupied by defendant was not a race track.²³ An information is insufficient if it fails to allege that crime of bookmaking did not occur at licensed race track.²⁴ The right of search is incidental to the right of arrest, and no warrant is required where a crime is committed in the presence of the arresting officer. And so where the crime of having in possession illicit papers and maintaining rooms for gambling purposes was committed in the presence of police officers, they were authorized to open defendant's desk and search, seize, and carry away the papers without a search warrant.²⁵

Betting on dog races is included in the New York statute.²⁶ The sale and repurchase of options on racing dogs is a mere camouflage for taking bets on the outcome of the dog races, and illegal.²⁷ Under Missouri law,²⁸ a person receiving a bet on a horse race is a party to a gambling contract, and it is immaterial whether he acted for himself or an undisclosed principal. In prosecution for violating a statute relative to races, it is not necessary to show that the race was run.²⁹ Betting on any race either by men or animals violates an Arkansas statute prohibiting betting on games.³⁰ Horse racing for prize, premium, or purse is prohibited by statute in North Dakota.³¹ Under the Florida statute³² selling certificates entitling purchaser of a ticket on the dog winning the race to participate in purse, created by buying certificates on dogs, is considered gaming.³³

In a pari-mutuel pool there is an arrangement for betting by which some donors would receive more than they contributed, while others would lose contributions. "Purse, prize, or premium" is ordinarily a valuable thing offered for winner of contest for which the donor does not compete. The donor of the purse, prize, or premium has no chance to gain it back, but each party interested in stake, bet, or wager has chance of gain and takes risk of loss. And so based on these facts,

22. *Peo. v. Silver*, 251 A.D. 309, 296 NYS 781 (1937)

23. *Peo. v. Wilson*, 4 NYS2d 592 (1938).

24. *Peo. v. Rubenstein*, 299 NYS 36 (1937).

25. *Peo. v. Henry*, 185 NYS 644.

26. New York Penal Law, Sec. 986.

27. *Reed v. Littleton*, 275 N.Y. 150 (1937).

28. Mo. Rev. St. 1919, Sec. 3536; *State v. Stolberg*, 2 S.W.(2) 618 (1928).

29. *Peo. (Calif.) v. Ghio*, 255 P 205 (1927).

30. *Fox v. Harrison*, 135 S.W.(2) 618 (Ark.).

31. *Erickson v. N.D.State Fair Assn. of Fargo*, 211 N.W. 597 (1927)

32. Fla. Rev. Gen. St. 1920, Sec. 5499, 5514

33. *Reinmuller v. State*, 11 So. 633 (Florida 1927).

pari-mutuel betting on races had been held to be a "game of chance" or "gambling."³⁴

Under the Georgia Law³⁵ a person maintaining a house for the purpose of permitting gaming on dog races is deemed to be keeping a gaming house. Betting on dog races, where the winning dog is one first reaching an imitation rabbit run by electricity, is gaming.³⁶ Keeping of a gaming house is a separate offense independent of criminality of betting carried on therein. Prohibition against maintaining a gaming house is intended to prevent maintenance of a place where persons bet money, whether the subject matter of single bet is or is not made penal. The advising of public by the operator of establishment for gaming on dog races, that he would give any one requesting it coupon entitling him to share in profits, if winning dog was selected, did not prevent place from being gambling house. Nor did the operation of the place in an orderly manner, and attendance by best people, including males and females, prevent place from being gaming house.

The Pari-Mutuel Law, enacted March 31, 1940,³⁷ had legalized pari-mutuel betting at race tracks in New York State. The purpose of this law was to discourage gambling among persons most likely to be injured by it. It was not intended to permit widespread potentially irresponsible betting and wholly unregulated transactions in betting outside race tracks under guise of an agency to perform acts thereby made lawful within a race track.³⁸ Under this law betting is permitted only if conducted at race track, and where the betting departs from the manner prescribed by law, it becomes as unlawful as any other form of gambling. A racing association conducts pari-mutuel betting under a license issued by the State Racing Commission.³⁹ The State Racing Commission is given the power to make rules for the purpose of regulating pari-mutuel betting.⁴⁰ The system of accounting to be employed is prescribed by the State Tax Commission.⁴¹ The acceptance of pari-mutuel bets from minors is not permitted under this law.⁴²

Any sum of money held for payment of outstanding pari-mutuel tickets is held until the first day of April of the succeeding year. Within ten days thereafter any such money remaining unclaimed is paid to the state treasury. If a ticket is presented for payment after the forward-

34. *Pompano Horse Club v. State*, 11 So. 801 (Fla. 1927).

35. Ga. Penal Code 1910, Sec. 389.

36. *Gullatt v. State*, 150 S.E. 825, 169 Ga. 538 (1930).

37. McK. Unconsol. Laws, Sec. 7562.

38. *App. of Stewart*, 174 Misc. 902, 22NYS2d 164 (1940).

39. McK. Unconsol. Laws, Sec. 7563.

40. McK. Unconsol. Laws, Sec. 7566, subd. 1.

41. McK. Unconsol. Laws, Sec. 7566, subd.2.

42. McK. Unconsol. Laws, Sec. 7568.

ing of the money to the state treasury, the association is required to pay the same, and the amount so paid may be charged against unpaid money similarly accumulated on account of pari-mutuel tickets not presented for payment.⁴³

The law also provides for a State Harness Racing Commission⁴⁴ to supervise and regulate trotting races. The laws governing trotting races are almost identical with the laws governing other races.

A few words would be in order here about the use of facilities of the public utility corporations. A telephone corporation cannot be compelled to render service to a subscriber where he is using it to carry on bookmaking or aid in the carrying on of bookmaking.⁴⁵ Such service may also be denied to an apartment house where various tenants use the telephone to place wagers.⁴⁶ A bookmaker's business requires the use of a telephone, and he is at a disadvantage where the use of this service is denied to him. Where only mere suspicion exists that telephone is being used to place bets on horses, this suspicion without any corroborating facts would not justify refusal of service.⁴⁷ Neither could the telephone corporation be held as a violator of the statute, because someone receiving information transmitted over telephone facilities is enabled as a result thereof if so inclined, to violate the statute against bookmaking.⁴⁸ Nor could an employer be charged with a violation of this statute, where he had an employee engaged in receiving racing information from ticker machine, which was communicated to other employees who in turn transmitted it over a telephone switchboard and thus disseminated racing information to subscribers for a weekly charge.⁴⁹ Racing information service agencies require the use of the telephone and teletype. Albeit bookmaking itself is illegal, an agency providing racing information is not criminally liable in the absence of a law prohibiting such service. Pennsylvania and New Jersey have laws prohibiting such service. The telephone corporations in New Jersey, New York, Pennsylvania, California, Connecticut, Massachusetts, Ohio, and few other states have adopted a policy of withdrawing or denying telephone service to persons who would use it to violate laws.

All racing or trials of speed between horses or other animals for

43. McK. Unconsol. Laws, Sec. 7571.

44. McK. Unconsol. Laws Sec. 7593.

45. *Peo. ex rel. Restmayer v. N.Y. Tel. Co.*, 173 A.D. 132, 159 NYS 369 (1916); *Leitner v. N.Y. Tel. Co.*, 277 N.Y. 130, 13 N.E.2d 763 (1936); *Shillitani v. Valentine*, 296 N.Y. 161, 71 N.E.2d 450 (1947).

46. *Hegel v. N.Y. Tel. Co.*, 195 NYS 332 (1922).

47. *Shillitani v. Valentine*, 184 Misc. 77, 53 NYS2d 127 *aff'd* 269 A.D. 568, 56 NYS2d 210 (1945).

48. *Shillitani v. Valentine*, 53 NYS2d 127, 184 Misc. 77, modified 71 N.E.2d 210, 269 App. Div. 568, *aff'd* 71 N.E.2d 450, 296 N.Y. 161 (1947).

49. *People v. Kearney*, 265 A.D. 861, 37 NYS2d 676 (1942).

any bet, stake, or reward, unless allowed by some statute, is deemed to be a public nuisance.⁵⁰

There is also an old law in New York which is not well known, and which provides for a penalty to be recovered in a civil action, instituted by the person in charge of the poor, from any person who wins or loses twenty-five dollars or more within a period of twenty-four hours. The penalty consists of five times the amount so won or lost.⁵¹

All wagers, bets, or stakes made upon any race, or upon any gaming by lot or chance, or upon lot, chance, casualty, or unknown or contingent event are unlawful.⁵² Where one made a bet with another that a third person had then in his possession the lease of certain premises, and each bettor deposited the amount of his bet with the stake holder, the bet to be determined within five days, the transaction constitutes an act of gambling as the event was contingent and unknown, and the winning depended upon chance.⁵³

All contracts for or on account of money or property wagered, bet, or staked, are void.⁵⁴ Gaming contracts cannot be recovered on,⁵⁵ and a contract made to provide consideration for a gambling transaction is not enforceable.⁵⁶ A betting commissioner cannot maintain an action for compensation for services rendered, as the contract is illegal, and he who transgresses cannot invoke the aid of the law.⁵⁷ And so with a winner of a wager, he cannot recover amount of wager from loser who chooses to welch.⁵⁸ A loan for the express purpose of gaming cannot be recovered in a legal action,⁵⁹ nor can money be recovered where it was loaned with the knowledge that it was to be staked on a horse race.⁶⁰

A check given to pay losses in a poker game could not be enforced in a legal action, as it was void as a gaming contract.⁶¹ Illegality may be set up as a defense by the maker of a check, who is not a party to gaming in which check was indorsed by payee, and will be sustained, unless, the holder of the check won in gaming can show a bona fide holding.⁶² Maker of check, given on bet on horse which did not run,

50. New York Penal Law, Sec. 987.

51. New York Penal Law, Sec. 990.

52. New York Penal Law, Sec. 991.

53. *Thompson v. Hayes*, 59 Misc. 425, 111 NYS 495 (1908).

54. New York Penal Law, Sec. 992.

55. *Wm. W. Cohen & Co. v. Austin*, 155 N.E. 249 (Ark.) (1927).

56. *Walker v. Walbridge*, 151 Misc. 329, 271 NYS 473 (1934).

57. *Cahill v. Gilman*, 84 Misc. 372, 146 NYS 224 (1914).

58. *Bamman v. Erickson*, 288 N.Y. 133, 41 N.E.2d 920 (1942).

59. *Gawrys v. Papke*, 147 Misc. 639, 263 NYS 519 (1933).

60. *Ruckman v. Bryan*, 3 Denio, 340 (1846).

61. *Moore v. Schwartz*, 142 S.E. 772, 195 N.C. 549 (1928).

62. *Haller v. Workmen's Coop. Bank*, 160 N.E.324 (Mass) (1928).

had been held liable thereon to purchaser for value without notice of illegal contract.⁶³ A check executed in another state to cover a loss in a poker game, may be enforced in New York if it is an enforceable contract in the state where executed.⁶⁴ And so a gambling debt incurred, and evidenced by check made in such other state, where legal, may be enforced in this state. But a contrary rule applies where there is no documentary evidence as in the cause of an action started for the amount of a wager in Louisiana, where the same is enforceable. The action cannot be maintained in New York as judicial comity does not require its enforcement.⁶⁵

Also a promissory note to secure a loan by payee who knew it was to be used to finance bookmaking at race track is void.⁶⁶ Nor can a note given by a person to pay a bet be collected by the payee.⁶⁷

Securities given in any form for money lost at gaming are void.⁶⁸ A check given for a loss at roulette is void,⁶⁹ as well as a note given for a protested check, the latter having been given in payment of a gambling debt.⁷⁰

Any person who pays, delivers, or deposits any money, property, or thing in action, upon the event of any wager or bet prohibited by law, may sue and recover same from the winner, stake holder, or other person holding same, or any part thereof, whether such wager be lost or not.⁷¹ In a recent action under this statute, a woman had sued and recovered money bet by her husband with a bookmaker. The husband had assigned his claim to her. Money lost on a horse race may be recovered in the courts.⁷² Assignee of bettor, who daily visited betting places and placed bets, but who did not conduct gambling business, could recover money wagered by bettor with bookmaker on horse races.⁷³ The provisions of this law are not applicable to the professional gambler who may not recover his losses from his customer, either by action or by way of offset.⁷⁴ The law affords the professional gambler no protection at all as to the money he takes in.⁷⁵ The casual

63. *Mintz v. Austin*, 34 NYS 2d 216 (1942).

64. *Thuma v. Wolf*, 130 Misc. 306, 223 NYS 765 rev'd. 132 Misc. 56, 228 NYS 658 (1921); *Bernstein v. Fuerth*, 132 Misc. 343, 229 NYS 791 (1928).

65. *Nielsen v. Donnelly*, 181 NYS 509; 110 Misc. 266 (1920).

66. *Chapin v. Austin*, 165 Misc. 414, 300 NYS 932 (1937).

67. *Andrews v. Empire City Racing Ass'n.*, 170 Misc. 338, 9 NYS 2d 987 (1939).

68. New York Penal Law, Sec. 993.

69. *Cunningham v. Gans*, 79 Hun. 434, 29 NYS 979 (1894).

70. *Hollingsworth v. Moulton*, 53 Hun. 91, 6 NYS 362 aff'd 119 N.Y. 612 (1889).

71. N.Y. Penal Law, Sec. 994.

72. *Bain v. Grillot*, 6 La.App. 325 (1928).

73. *Bamman v. Erickson*, 288 N.Y. 133, 41 N.E.2d 920 (1942).

74. *Watts v. Malatesta*, 262 N.Y. 80, 186 N.E.2d 19 (1933); *Dupper v. Rogan*, 254 A. D. 747, 4 NYS2d 128 (1938).

75. *Hefferman v. Simmons*, 290 N.Y. 449, 49 N.E.2d 523 (1943).

gambler, who has bad character tainted by gambling may recover money lost by betting on horse races, if he does not make gambling a livelihood or a profession.⁷⁶ Receiver in supplementary proceedings on judgment against judgment debtor may recover his lost wagers from betting commissioner.⁷⁷ One who lost money in a card game played in a saloon, could not recover that amount from the saloon keeper, where he did not participate in the game, and where he did not receive any of the money lost.⁷⁸ A demand for the return of money lost is not a condition precedent to the bringing of an action to recover it.⁷⁹

Similar provisions appear in laws of states other than New York. In Ohio, a wife was said to have a cause of action against keepers and owners of a place where her husband lost money.⁸⁰ Tennessee law prohibits the negotiation of a note for value without giving notice to the purchaser that same was issued in connection with a gambling contract.⁸¹ Gambling contracts are void,⁸² and money lost in gaming in Tennessee is recoverable in an action to be brought within ninety days.⁸³ The bettor alone can maintain an action under this section.⁸⁴ After the expiration of ninety days but within twelve months, if the bettor does not start an action, the wife, child, or next of kin can bring the action to recover the money.⁸⁵ Right to recover is not limited to minor children alone of a loser in a gaming transaction, but a recovery may be had for adult children.⁸⁶ Similar anti-gambling laws appear on the statute books of other states.

76. *Galtrof v. Levy*, 174 Misc. 1004, 22 NYS2d 374 (1940).

77. *Marett v. Shannon*, 164 Misc. 790, 300 NYS 1249 (1936).

78. *Federkowitz v. Holoweak*, 168 NYS 4 (1918).

79. *Mendoza v. Levy*, 98 A.D. 326, 90 NYS 748 (1904); *Ruchman v. Pilcher*, 1 N.Y. 392; *Mendoza v. Rose*, 46 Misc. 614, 92 NYS 791 (1905).

80. *Emerine v. Belpash*, 155 N. E. 249 (Ohio 1927).

81. *Michie's Tenn. Code*, Sec. 7818.

82. *Michie's Tenn. Code*, Sec. 7812.

83. *Michie's Tenn. Code*, Sec. 7814.

84. *Swaggerty v. Stokely*, 31 Tenn. (1 Swan) 38.

85. *Michie's Tenn. Code*, Sec. 7815.

86. *Coles v. Morrow*, 130 Tenn. (3 Thomp.) 700, 162 S.W. 577.