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From a Horse Race to a Court Case

The Kentucky Derby is a reminder that disagreements over wagers have often prompted lawsuits.

By Randy Maniloff

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Sonny Leon rides Rich Strike to win the 148th running of the Kentucky Derby in Louisville, Ky, May 7, 2022. PHOTO: JEFF ROBERSON/ASSOCIATED PRESS

The 149th Kentucky Derby will take place Saturday, continuing a long tradition of horse racing and, often, gambling. The latter has meant that lawyers have had a long history with the sport. Here are a few stories.

After a man named Criswell lost $320 on a horse race, he believed the contest had been fixed. He sued. A Louisiana jury concluded that he was right and awarded him the return of his wager, plus an additional $320 for the amount that he would have won had the race been run fairly. The Louisiana Supreme Court, in Criswell v. Gaster (1826), reversed the windfall. Because the wager was based on fraud, the court observed that "nothing could have been lost on it, and consequently nothing could be won."

John Moore and Raphael Johnston bet $200 on a race between their horses. They agreed that if either decided not to run his horse, the other would get $100. Race day came and Johnston's horse refused to leave the starting line. Moore's horse ran the required distance. Johnston sued for the return of his wager. But in Moore v. Johnston (1852), Louisiana's high court held that the $100 payment applied only if the horse was withdrawn from the race prior to its start.

William Deming lost a wager to James Wade on a horse race in Indiana. Deming sued Wade to recover the loss, citing an Indiana statute that required the winner of money from betting on a "game" to return it to the loser. Wade argued that the law didn't apply because horse racing isn't a "game." Indiana's Supreme Court disagreed. While conceding that a "game of horse racing" is an "awkward phraseology," the tribunal in Wade v. Deming (1857) explained that the statute must be interpreted with its purpose in mind: "The same vicious principle runs through all bets."

In a further display of expansive statutory construction, the Tennessee Supreme Court held in *Goldsmith v. State* (1858) that a law prohibiting the running of a horse race on a public highway applied to a sweepstakes between mules. "Horse," the court concluded, can be "a generic name, including all animals of the horse kind." Nor was the absence of a bet on the contest a defense. The justices concluded that the mischief sought to be prevented—"danger and annoyance . . . to ladies and others who might be passing over a public highway"—existed with or without a wager.

In Indiana, a man named Watson was found guilty of allowing his horse to be run in a race along a public highway. A witness testified that two horses were running as fast as they could with many people present. But one of the riders claimed he had simply galloped with another horse at half-speed, neither of the horses were whipped, and there was neither a wager nor judge involved. The Indiana high court in Watson v. State (1851) concluded that this and the rest of the trial testimony was sufficient to uphold the conviction.

When it comes to horse racing, lawyers also vie for the winner's circle.

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