

ARMOUR, C.J. FALCONBRIDGE, J., }
STREET, J. }

[Oct. 25.

STRATFORD TURF ASSOCIATION v. FITCH.

Gaming—Sale of betting privileges on race-course—Illegality—Criminal Code, s. 204—Lease of race-course by incorporated to unincorporated association.

Appeal by defendants from order of the Judge of the County Court of Wentworth refusing to set aside judgment for the plaintiffs and direct a new trial of an action in a Division Court to recover \$101 and interest, as the balance due from the defendants to the plaintiffs under an agreement for payment by the defendants of \$607 in consideration of their being given the exclusive betting and gaming privileges at the race-meeting to take place on the track at Stratford on the 25th and 26th August, 1896. The plaintiffs were the lessees for 1896 of the Stratford Athletic Company, Limited, an incorporated association, who owned the race-course. No evidence was adduced to show that illegal betting or gaming was in contemplation of the parties to this agreement at the time it was made. The defendants contended that the cause of action was in reference to a gambling transaction.

Held, that the betting or gaming to be carried on under the agreement would not necessarily be illegal under Criminal Code, s. 204, for the provisions of that section are not to extend to bets "made on the race-course of an incorporated association during the actual progress of a race-meeting," nor would it be necessarily illegal apart from this section. The betting and gaming contemplated by the agreement were to be made on the race-course of which the plaintiffs were the lessees during the actual progress of a race-meeting and this was the race-course of an incorporated association, the Stratford Athletic Company, and it was not the less so, within the meaning of s. 204, by reason of the lease to the plaintiffs; the object of the Legislature apparently being to reserve the race-courses of incorporated associations as places where betting might be made during the actual progress of a race-meeting without the betters being subject to the penalties of that section.

Wallace Nesbitt, for the defendants.

Teetzel, Q.C., for the plaintiffs.

Province of New Brunswick.

SUPREME COURT.

BARKER, J. }
In Equity. }

[Oct. 19.

FERGUSON v. FERGUSON.

Foreclosure—Mortgagee in possession—Judgment pro confesso—Reference.

On a motion in a suit for foreclosure and sale, where the mortgagee had been in possession, to take the bill pro confesso for want of an appearance, a reference was ordered to take the accounts before a sale would be decreed.

G. G. Gilbert, Q.C., for the motion.