

HORTON *vs.* THE STATE.

An indictment for betting money on a game of cards, is not sustained by proof of the betting of property.

*Appeal from Prairie Circuit Court.*

JOHN HORTON was indicted in the Prairie Circuit Court for bet-

ting a large sum of money, to wit: one dollar, on a game of cards commonly called seven-up.

Defendant pleaded not guilty, and the case was submitted to a jury. The evidence was, that the defendant bet a saddle on the game, against a pistol and a dollar put up, by one George A. Eagle, who was indicted with him. The jury found the defendant guilty, he moved for a new trial, which the court refused, and he excepted and appealed.

The cause was tried below, before the Hon. WM. H. FIELD, Judge.

BERTRAND, for the appellant, relied upon the variance between the charge and the proof, and cited *Arch. Cr. Pl.* 120. *Dig.* 367, *sec. 8.* *Hany v. The State*, 4 *Eng.* 195.

CLENDENIN, Attorney General, contra.

Mr. Justice SCOTT delivered the opinion of the Court.

In this case, the State having proceeded against the defendant for betting money, did not sustain the charge by proof that he bet property. To bet property, is a distinct offence under our statute. (*Dig. p.* 367, *sec. 8.*) The court below ought to have granted the motion for a new trial. Let the judgment be reversed, and the cause remanded.

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