

By the first section of the act of 1846 c 109 it is enacted "that the dealing in foreign lottery tickets is absolutely prohibited in this State; and any sale or other disposition of, or offer to sell, or otherwise to dispose of, any such tickets or parts of tickets, or any substitute therefor, directly or indirectly, shall be punishable by a fine of fifty dollars for each offence, to be recovered before any justice of the Peace by action of debt in the name of the State, instituted against the offending party on the suggestion of the Commissioners of Lotteries." And the third section of the act enacts "that all insuring of lottery tickets or parts of lottery tickets, or numbers or certificates of numbers of lottery tickets, either foreign or domestic, is absolutely prohibited in this State; and any person directly or indirectly making or offering, or agreeing to make any such insurance or insuring, or receiving any consideration for insuring for or against the drawing of any ticket or tickets in any lottery, whether authorized by law or not, or receiving any money, goods, or thing in action, in consideration of any agreement, to repay any sum or sums of money, or to deliver the same, or any other goods or thing in action; if any ticket or tickets in any lottery whatsoever shall prove fortunate or unfortunate, or shall be drawn or not drawn, on any particular day, or in any particular order or otherwise howsoever, or promising or agreeing to pay any sum of money, or to deliver any goods or thing in action, or to do, or forbear to do, any thing for the benefit of any other person or persons, with or without consideration, upon any event or contingency dependent upon the drawing of any ticket or tickets, or number or numbers of any ticket or tickets in any lottery whatsoever, shall, for each of said offences, be punishable as is

provided by the first section of this act in regard to the offenders there described."

By the ~~act~~ second section of the act of 1847 c 284, which is a supplement to <sup>the</sup> aforementioned act of 1846, it is enacted "that upon any proceeding for the recovery of any fine imposed by the act to which this is a supplement, the party, from whom it is sought to be recovered, shall be bound to answer on oath any bill of discovery which may be filed against him in the premises, by the Commissioner of Lotteries, in the name of the State, either in the High Court of Chancery or in any County Court as a Court of Equity." Under these enactments the Commissioner of Lotteries having, in the name of the State, instituted, before a Justice of the Peace for the City of Baltimore, six several actions of debt, for the recovery of fines incurred under the third ~~second~~ section of the act of 1846, filed a bill of discovery, on the equity side of Baltimore County Court, to obtain from the defendant, certain information and disclosures in relation to certain memoranda issued by them, and by reason of which he had become liable for the payment of the fines for the recovery whereof the said actions of debt were prosecuted. To this bill of discovery the Appellant interposed a general demurrer, which was overruled by the County Court, and a judgment rendered against him. The only question which arose under that demurrer in the Court below, ~~and~~ or which arises under this appeal is; was the second section of the act of 1847 c 284 a constitutional enactment?

On the part of the appellant numerous objections

have been referred to, to prove, what, in the absence of any special legislation upon the subject, nobody denies, that at common law, no person can be compelled to give testimony which would, show that he had been guilty of a crime or misdemeanor, or subject him to any fine penalty or forfeiture. And that a Court of Equity will not compel discovery in aid of a criminal prosecution; or a penal action. That the Legislature possessed the right of passing the enactments complained of; unless inhibited, from doing so, by some provision in the constitution of Maryland or of the United States, appears not to be denied. The appellant insists that such inhibition is found in the third section of the Declaration of Rights; by which he asserts that the whole common law, as then existing in Maryland was made a part of its constitution, and that no part thereof could be abolished or changed by a mere act of legislation. For this novel and extraordinary proposition, it is only necessary to say, that the third section of the Declaration of Rights furnishes no foundation.

The nineteenth section of the Declaration of Rights, which is as follows; "that no man ought to be compelled to give evidence against himself, in a Court of Common Law, or in any other Court, but in such cases as have been usually practised in this State, or may hereafter be directed by the Legislature", also fails to support the position sought to be maintained by the appellant. The concluding words of the section plainly showing that the power was conferred to the Legislature which has been asserted by it, in the passage of the act of 1847.

There is no other part of the Bill of Rights or constitution of Maryland which the appellant can invoke to his aid in the case before us. And there is no part of the constitution of the United States which gives the slightest colour to the principle for which the appellant contends; unless it be in that part of the fifth article of the amendments thereto, which declares, that no person "shall be compelled, in any criminal case, to be witness against himself." If the proceedings pending before the Justice of the Peace be criminal prosecutions or criminal cases there is the judgment of the County Court clearly erroneous. But what are the proceedings before the Magistrate, in relation to which the bill of discovery before us has been filed? Not criminal cases or prosecutions, but civil actions, actions of debt inter partes; and although the objects of their institution is the recovery of sums or matters; yet in contemplation of law, they are as much regarded as civil actions as if instead of actions of debt, they had been actions for money had and received. For this doctrine see the case of *Acheson vs Brewster* 10 Cranch Rep 382.

The Judgment and order of the County Court affirmed from in this case is affirmed.

12.07. D.S.H.F.

Day

by

His State

Opinion

Filed 20<sup>th</sup> Feby 1849

Dancy C. J.