

tween the parties for a promise, express or implied, and the court will not unravel the transaction to discover its origin. The plaintiffs could prove their case under the agreement without producing any evidence that their business was illegal.

Subject to exception, the plaintiffs introduced their books and certain reports relative to their business, purporting to have been made by the defendant, as treasurer, to the directors at their monthly meetings, and also the evidence of Hall, an expert accountant who examined the plaintiff's books after the decease of Chapman. The books and papers tended to show that Mark Scott was treasurer of the company from 1886 to 1892. These and the testimony of Hall tended to show that while Scott was treasurer there was a shortage in the cash account of \$4,093.69, and from the time the defendant became treasurer to March 1, 1894, there was a further shortage of \$3,520.19. This evidence was competent to show the amount of the defendant's defalcation, and the exception is overruled.

The referee assessed the plaintiffs' damages in the sum of \$3,520.19, that being the amount of shortage in the treasurer's cash account chargeable to the defendant, with interest from March 24, 1894, and there should be judgment for the plaintiffs on the report. At the hearing, the plaintiffs claimed that the defendant was holden for the entire shortage in the treasurer's cash account under his agreement, but did not claim that he was liable upon Scott's bond which he signed as surety. A promise to pay Scott's deficit contained in the agreement would have been void as without consideration, and this claim was properly disallowed.

*Judgment for the plaintiffs.*

PIKE, J., did not sit: the others concurred.

Rockingham, }  
June, 1896. }

STATE v. MARTIN.

An indictment charging that the respondent "did unlawfully make and put up a pretended lottery called policy" sufficiently describes the offence.

INDICTMENT, charging that the respondent "did unlawfully make and put up a pretended lottery called policy, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state." Motion to quash.

*Louis G. Hoyt*, solicitor, for the state.

*Calvin Page*, for the defendant.

CLARK, J. "In a complaint or indictment in any case arising under the preceding sections, a lottery may be described as a pretended lottery, which shall be sufficient, whatever the proof may be; and it shall not be necessary to allege or prove, upon trial, who is the owner of the property, nor who manages, conducts, or draws the lottery, or participates therein." P. S., c. 270, s. 4. The game of policy being a lottery, the indictment sets forth all that is required under the statute. It charges the defendant with an offence in the words of the statute, and describes to him the particular kind of a lottery he is charged with making and putting up. *State v. Follet*, 6 N. H. 53; *State v. Clarke*, 33 N. H. 329; *State v. Moore*, 63 N. H. 9; *Commonwealth v. Wright*, 137 Mass. 250; *Commonwealth v. Sullivan*, 146 Mass. 142.

*Motion denied.*

All concurred.

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Rockingham, }  
June, 1896. }

TUTTLE v. LANGLEY.

In the absence of a written contract, one who occupies a farm at an annual rental is to be deemed a tenant at will from year to year, and as such is entitled to the hay grown upon the land.

A general report of a referee in favor of a party whose conduct in carrying on a farm is brought in question, is equivalent to a finding that he did all that good husbandry required.

TROVER, for hay. Facts found by a referee. Early in 1890, the plaintiff and one Haley, who owned a farm in Exeter, had negotiations with reference to a lease of the farm to the plaintiff for the term of five years. Haley agreed to give a lease for that term for \$150 a year and allow the plaintiff to sell some of the hay raised on the farm, provided it was done so as not to injure the farm; meaning if any hay was sold, manures or other fertilizers should be bought and used. No agreement in writing or memorandum was made or signed at this time. The plaintiff moved on the farm about April 1, 1890. Haley died December 21 of the same year, no written lease having been executed. A