

NOVEMBER 15TH, 1907.

C. A.

REX v. MOYLETT AND BAILEY.

*Criminal Law—Keeping Common Betting House—Peripatetic Bookmakers Making and Recording Bets on Racecourse of Incorporated Association—No Booth or other Structure — “House, Office, Room, or other Place”—Criminal Code, secs. 227, 228.*

Case stated for the opinion of the Court by the police magistrate for the city of Toronto, after conviction of the defendants on a charge of keeping a disorderly house, to wit a common betting house, at the Toronto Woodbine race track. The charge was laid under secs. 227 and 228 of the Criminal Code, R. S. C. 1906 ch. 146, which correspond with secs. 197 and 198 of the former Code.

The case was heard by MOSS, C.J.O., OSLER, GARROW, MEREDITH, J.J.A., and ANGLIN, J.

C. H. Ritchie, K.C., and T. C. Robinette, K.C., for defendants.

J. R. Cartwright, K.C., and E. Bayly, for the Crown.

MOSS, C.J.O.:—The findings of fact set forth in the stated case raise once more, though under a somewhat different aspect, the vexed question as to the meaning and effect of secs. 227 and 228 of the Code. We had occasion to consider them recently in . . . Rex v. Saunders, 12 O. L. R. 615, 8 O. W. R. 534, affirmed in the Supreme Court, 38 S. C. R. 382. In the present case the question is free from the complications introduced by sec. 204, now 235 (2).

The most important findings of fact are the following, viz.:—

The Ontario Jockey Club, a duly incorporated racing association, own and control the Woodbine racecourse. The bets upon which the Crown seeks to convict the defendants of the offence charged were made upon the racecourse upon races being run during the actual progress of a race meeting. During the race meeting those of the general public