

WAS IT A GAMBLING DEBT?

The decision of English courts on questions arising out of gambling debts are interesting and instructive and show the niceties of law which present themselves to the clear and trained minds of English judges. A decision of this kind was rendered in the early part of last month (July) in the Queen's Bench Division of the High Court of Justice, presided over by Lord Justice BOWEN, which bears out the statement made above. The suit was SHAW vs. ATKINSON, in which the plaintiff, a stock-broker, brought action to recover the sum of £50, the amount of a dishonored cheque given under the following circumstances: Between 1885 and 1888 the defendant had had large Stock Exchange transactions with the plaintiff and from time to time they had played cards and other games together. On October 19 of last year in a game of dominoes the defendant lost £100 and subsequently they played cards at which the defendant lost £127. A settlement of accounts took place some time after this, the defendant being entitled to the proceeds of certain Stock Exchange transactions which had turned out profitably. The plaintiff agreed to take £50 in settlement of all accounts arising out of Stock Exchange transactions and the games referred to, and for this amount the defendant gave his cheque. The cheque was dishonored on presentment and suit was instituted for the recovery of the amount. The defendant met the action by pleading that the cheque was given for a gaming debt and could not therefore be recovered. The plaintiff contended that the transaction was not a gambling one, but on the contrary that consideration had been given for it. His Lordship held that the law did not allow suitors to recover gambling debts, and that had the defendant in this instance proved his allegation that the debt was a gambling one, the defence would have been a good one. True it was the transaction arose out of a gambling transaction, but the question to be decided was whether the cheque was given for a gaming debt. Given for a gaming debt in one sense it was, because, unless there had been a gaming transaction resulting in a loss, the cheque would never have come into existence; but, between the gambling and the giving of the cheque, a transaction occurred, which to his mind, supplied the true consideration for the cheque. There was an open account between the parties in respect of gambling on the Stock Exchange, and upon that there was a sum due to the defendant, who asked for payment. The plaintiff agreed to make the payment on the sole consideration that a cheque was given for a debt which was otherwise irrecoverable at law, and he handed over £89 on the faith of the cheque which the defendant now wished to repudiate. The true consideration was not the gaming debt, but the £89, which, not being recoverable at law, had been paid then and there on the

faith of the cheque being given. In coming to this conclusion he was not straining or stretching the law at all, which he always administered with absolute firmness in connection with gambling debts. To enable the defendant to defeat the claim on the ground suggested would be not merely to let him off the gaming debt, but to put in his pocket £89. Judgment was given for the amount.

AN INSURANCE SUIT.

In the judgment of the Supreme Court of Judicature of England, presided over by the Master of the Rolls Lord ESHER, Lord Justice LINDLEY and Lord Justice BOWEN, in the suit JARVIS vs. The Marine and General Mutual Life Assurance Society, rendered on 5th July last, we have another instance of the absolute necessity which exists for insurance companies coming into court to contest claims being supplied with absolute proof of the allegations on which a charge of fraud or deception is based. In the case in question, the Company contested a claim for £1,000 under its policy, covering the life of Mrs. JARVIS. The policy was effected on April 20th, 1887, and in July following she died, her attending physician certifying that she died from cirrhosis, a disease of the liver caused by drink. The Company's agent who took the application and who drew the declaration had gone to America. The Company resisted the claim on the ground of fraud and conspiracy by the deceased and the agent. The Company contended that these parties had concocted false statements between them in order to deceive and defraud the Company. Mrs. JARVIS had represented herself as healthy and having no disease which would prevent the Company from insuring her life, whereas, in fact, she was addicted to drinking, which had caused a serious disease of the liver for which she had been long attended, and of which she had died. The jury found for the plaintiff. A new trial was applied for before the Divisional Court, and the judges, MATHEW and GRANTHAM, were somewhat divided in opinion on the question whether if there were any misstatements in fact the policy would be defeated, whether the misstatements were willful or not, but the latter being the junior withdrew his objection and the verdict was upheld. Lord ESHER pronounced the judgment in appeal and reviewed the case at length. The jury, said he, found for the plaintiff and the judge who tried the case approved of the finding. Therefore, there was the verdict of a special jury approved of by the judge. It required a very strong case indeed to call upon the Court to say that the verdict was not only against the evidence, but was such a verdict as a jury could not honestly or reasonably have given. There was evidence to disprove the drinking, and as to disease of the liver she would know nothing about it, while her state-

ment as to attendance upon her for jaundice was true in substance. These were questions for the jury and the Court could not set aside the verdict unless satisfied that it was perverse, and that he could not say. Lord Justice LINDLEY said it was sufficient if the answers given by the person insured were substantially true, and the only question was whether the jury had given a verdict which could not reasonably be given. To his mind there was nothing to warrant the court in setting aside the verdict.

In this case we would have been disposed to think that the medical certificate of the cause of death would have had some consideration, but that was a matter for the jury and they thought differently. The whole case shews that the verdicts of juries are not so easily set aside as some lawyers would lead their clients to believe. It also teaches insurance companies that the fullest and most unassailable evidence must be forthcoming before deciding to take a leap in the dark, which all such suits would appear to be.

BOULANGER ON THE WANE.

GENERAL BOULANGER, whose popularity with the people of France was so marked a few months ago, General BOULANGER who aimed at becoming the dictator of France, has realized from the results of last Sunday's elections that his hold on the affections of the French people was not of that permanent nature which he, no doubt, flattered himself it was. Absent from his country and its councils and not daring to return when called upon to do so, he nevertheless aimed at overthrowing the Government, but his efforts have acted with a boomerang effect, and we now find his star at the setting point. In the elections which took place in which he aimed at a controlling influence we find that out of 550 cantons he has been elected for only 21. These elections were for the purpose of filling the vacant seats in the Councils General of France. These are elected for six years, but a moiety retires after the lapse of three years, when their terms may be renewed or not, according as the majority of the electors may decide. There are in all eighty-six Councils General and the elections were to fill forty-three of these. Each department is composed of a given number of cantons, and each canton sends one member to the Council General of the department. The candidate who carries the greatest number of cantons in any department is the successful candidate, and the election being sustained, he is entitled to his place in the Council General of the department for which he is elected. The result under the circumstances is very significant. In a few days he will be deprived of his property and all rights as a French citizen, owing to his refusal to answer the summons recently issued against him. He will be virtually an outlaw. He failed to take the current when it served and thereby lost his venture.