

were entered by the owners, and the stakes were equal to £50, it seems to me logically inevitable that, having recognized what was made legal by these statutes, it follows the court must be bound to take cognizance of what was declared illegal in the same statutes.

Anderson v. Galbraith, 16 U. C. Q. B. 57, follows *Sheldon v. Law*, quoted above. The bet was declared illegal, because neither of the parties owned the horses, and they were not running for any other stakes, and the stakehold was held liable for paying over after he had been notified not to pay them over.

Hastelow v. Jackson, 8 B. & C. 221, is cited by ROBINSON, C.J., as supporting this latter dictum. See also to the same effect *Varney v. Hickman*, 5 C. B. 281.

Wilson v. Cutten, 7 U. C. P., is valuable as showing that the court will consider the Rules of Horse-racing when necessary for a decision. Here the race being for £50, and the horses run by the owners, it was adjudged by the court to be a legal race.

Gorham v. Boulton, 6 O. S. 321: in this case it was held that the decision of the race judges was final, and could not be reviewed by the court. ROBINSON, C.J., characterized the action as being an "attempt to make a court and jury judges over this horse-race instead of the stewards."

Battersby v. Odell, 23 U. C. R. 452, decided that the race in question was illegal under 13 Geo. II. c. 19.

Davis v. Hewitt, 9 O. R. 435, is a decision of BOYD, C., following *Battersby v. Odell*, saying "that this is an illegal contract under 13 Geo. II. c. 19 (because one of the participants was not the owner of the horse he bet upon), is not open to argument."

After careful consideration of all the authorities, I have come to the following conclusions:

1. The law in England in relation to horse-racing, as it stood in 1792, is in force in Canada, and any English statutes passed since that date are not in force here. The Riot Act, passed to prevent the disorderly assembling in the streets of London of supporters of the Pretender, is undoubtedly in force here, as also the Statute of Mortmain. Both these statutes were passed in this reign.

2. The race in question herein is an illegal race, not being for a stake or purse of £50. It was argued that there was such a stake,

being \$200 divided into three purses, but the statutes say that stake is for the "winning horse," the second only saving his entry.

3. In such case the plaintiff cannot bring action for a portion of a stake to which he has alleged he is entitled. He ran his chance of winning first, or some place, and cannot now fairly complain. His only remedy would have been to recover back his entrance money, provided he had demanded it from the proper custodian before the purse was paid over. This he did not do, nor does he ask it in his particulars of claim.

4. The courts will only aid the parties to a legal race when the judges appointed have failed to give a decision, or where they did not comply with, or made variations from, the rules supplied for their government. Here the judges made no decision. Assuming, for argument, that the race in question was legal, the plaintiff could have, notwithstanding this fact, followed up the protest, and brought the matter before the tribunal appointed for such purposes, and obtained their decision, which would have been binding. He did nothing in support of his protest, and let the three weeks go by, within which time he had to make it; and for this reason alone, if no other, I think he is out of court.

As to whether the condition as set out in the advertisement or that in the posters should govern, it seems to me that in all reason the former should have the preference. It was meant to reach the knowledge of horse owners near and far. They were the parties most interested in the race in question. The posters were intended for the general public, and would not reach as many readers as the advertisement published in a largely-circulated journal of sporting news. In this case, however, it does not signify, because the plaintiff had distinct notice that the race was to be run under the conditions by which Winch's horse was eligible.

The defendants, Adams and Christie, are entitled to their costs, if any. I dismiss this action, but I give no other costs against the plaintiff, as the blunder of the other defendant was the cause of the action.

The following English cases may be referred to: *Parr v. Wintringham*, 28 L. J. Q. B.; *Brown v. Overbury*, 11 Ex. 715; *Davis v. Wolf*, 2 L. R. 280; *Smith v. Littlefield*, 15 L. & R.