

cases provided for in sec. 782 except under the provisions of that section. . . .

But, if this were not so, I should be inclined, having regard to secs. 446 and 852 of the Criminal Code, to consider the offence with which the prisoner was charged, and of which he was found guilty, robbery, not merely theft; the evidence was of theft with very considerable violence.

I would dismiss the appeal.

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APRIL 25TH, 1910.

REX v. JOHNSTON.

REX v. McSWEENEY.

*Criminal Law—Keeping Common Betting Place — Conviction — Evidence to Sustain—Evasion of Statute.*

Cases stated for the opinion of the Court by one of the police magistrates for the city of Toronto upon the summary trial and conviction of the defendants for keeping common betting places.

The cases were heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

T. J. W. O'Connor, for the defendants.

J. R. Cartwright, K.C., for the Crown.

The judgment of the Court was delivered by MEREDITH, J.A.: —In *Rex v. Johnston* there was some evidence upon which reasonable men might find that the defendant kept a common betting place; whether that evidence was, or was not, such as ought to have led reasonable men to such a finding is not a question for this Court, which has power to deal only with questions of law: it was a question for the trial Court only.

The defendant was a barber; two persons, who were strangers to him, went to his place of business on four occasions in connection with bets made with him, and were, as to some of the incidents, taken out of the shop to the public street, with the obvious purpose of bringing the transaction within such cases as *Rex v. Moylett and Bailey*, 15 O. L. R. 348. The betting was upon races taking place at the Empire City race-track, in one of the United States of America, in connection with which races common betting prevails.