proposed a game of cards. This was ultimately agreed upon and the parties met with some friends at a room in a livery stable, where they played cards, the result of the gambling being that the plaintiff, apparently not too much encumbered with ready money, lost his watch, he having put it up as a stake against $100 in money, put up by the defendant.

It will be somewhat the reverse of edifying to learn of some of the steps taken by the plaintiff and his friends to prepare for the game of cards. The plaintiff's own account of it is charming in its frankness. He says some one came to him and asked him to play cards, but that he objected, because as he puts it, "if he had any money those who were likely to play with him would put up a job on him and take his money." One Simpson it appears was the individual who endeavoured to persuade the plaintiff to play, and he (Simpson) seems to have been ready with a suggestion to meet the difficulty urged by the plaintiff, and said he would arrange it so that the plaintiff would not get the worst of it. These two worthies with the assistance of another man, named Lucas, who possessed apparently similar tastes and instincts retired to a room, and having procured a new pack of cards, sat down together and deliberately set to work and marked these cards, one by one, in such a manner that, if they were played with, the plaintiff would be able to know exactly what cards his opponents or opponent held. This arrangement being successfully completed and the marked cards carefully placed back in their original package, so that they might appear as a pack newly purchased, the plaintiff withdrew all his objections to playing, and equipped for a fresh encounter, he repaired with his two friends, Simpson and Lucas, to the livery stable, where he understood he would meet his former adversary, the defendant, and there and then afford him the revenge for which he (the defendant) was supposed to be thirsting.

The parties met, and it seems that some games were played at first in which other persons joined. It does not appear what was the result of this portion of the evening's entertainment, but the plaintiff having ordered in some liquids to soften the asperities of the game, after a round or two of drinks, speedily found himself face to face with his old antagonist, the defendant, engaged in a game of euchre. The game Simpson says was to consist of ten points, and the stakes were to be $200, or $100 each. The plaintiff not having that amount in ready money with him put his gold watch (with assent of the defendant) to represent his (the plaintiff's) $100. The cards used in playing were the marked cards. Simpson says that it was a rule of the game that whoever cheated lost the game.

The plaintiff and defendant played two games, neither of which decided the question as to who was winner. Simpson says the defendant accused the plaintiff of cheating but after disputing over the matter twice agreed to commence over again, and play a third or final game which it was mutually agreed should be *square*. The defendant —*Simpson and the plaintiff both state this*—was unaware that the cards were marked.

Before the third and final game was concluded the defendant again accused the plaintiff of cheating and gave up playing, claiming the stakes as forfeited to him—and gathering them up from the table—apparently without remonstrance at the time—went out. Both parties had been drinking, and the plaintiff declares, that he was unaware that he had lost his watch until the next day.

Upon these facts the plaintiff seeks to recover his watch or damages for its detention.

The action is not an action brought upon the Statute of 9 Anne, cap. 14. sec. 2, to recover back money or chattels exceeding £10, in value lost at cards. The plaintiff does not found his claim upon the statute at all. He simply claims for a wrongful taking of his goods, and for their wrongful detention. I do not think that he can claim the benefit of this statute (which appears to be in force in this Country though repealed in England by Imp. 8–9 Vict. cap. 109), except in an action founded upon the Statute: *Thistlewood* v. *Cracroft*, 1 M. & S. 500.

The plaintiff and defendant played at an illegal game for money or goods. I think that the money or goods having changed hands upon the event of such illegal game, in which the plaintiff himself was admittedly taking a most atrociously unfair advantage of the defendant by playing with marked cards, he cannot ask a Court to assist him to recover back his money or goods. The illegal contract was executed and the plaintiff *in pari delicto* with the defendant. He cannot therefore recover: *Andree* v. *Fletcher*, 3 T. R. 266; *Taylor* v. *Chester*, L. R. 4 Q. B. 309.

From the plaintiff's own statement his cause of action appears to rise *ex turpi causâ*, and he has no right to be assisted.

It is urged by Mr. Kerr that the game was not finished, and that the defendant therefore possessed himself of the watch improperly by taking it off the table; and that, though perhaps not guilty of stealing, the event never happened—illegal though it was—which gave the right to the defendant to take or claim the watch as his. The answer to this view, it appears to me is most conclusive. The