

3 & 4 Vict. c. 5 (1839), repealed so much of 13 Geo. II. as related to horse-racing. Before this Act it was decided that steeple-chases were legal (*Evans v. Pratt*, 1 Dowl. N. S. 505), and also trotting matches along a road (*Challand v. Bray*, 1 Dowl. N. S. 788; 3 M. & G. 18). "It has been termed the new charter of horse-racing" (*Evans v. Pratt, supra*). Some time after its passing the celebrated case of *Applegarth v. Colley*, 10 M. & W. 728, was decided. This case was cited in argument as being in the plaintiff's favour, but it is not an authority here, being founded upon 3 & 4 Vict. c. 5, which is clearly not in force in Ontario.

Soon after this decision, and in consequence of it, very many *qui tam* actions were brought by common informers against a large number of sporting men in England for the penalties under the statutes of Charles and Anne, and 7 & 8 Vict. c. 3, afterwards extended by 7 & 8 Vict. c. 58, was enacted, which had the effect of stopping all these proceedings. It further provided that no common informer, but only the actual loser, or his representatives, could commence any proceedings for the penalties under the former statutes.

Then came 8 & 9 Vict. c. 109, which, as it were, consolidates and amends all former statutes relating to wagers and games, so that, in England, there are now no longer any restrictions with regard to racing; and transactions of this description are governed by the same laws as all other contracts: but this Act is not in force or been enacted in Ontario.

The only other English Act is 42 & 43 Vict. c. 18, by which it was declared that horse-racing within ten miles from Charing Cross in London should be unlawful, unless licensed, as therein provided.

There are no statutes of Canada or Ontario bearing upon the subject; except, in Ontario, the Agricultural and Arts Act, R. S. O. c. 39, s. 86, prohibits the carrying on of horse-racing during the days of any exhibition by any Association or Society formed under the Act, or within five miles of holding the same. Section 87 imposes a penalty of \$50 or thirty days' imprisonment upon any persons guilty of a violation of this section.

This Act is openly and flagrantly violated. The object thereof and that of the old statutes is defeated; and I take it that any device such

as calling these contests "Speeding in the Ring," or any other name, would be regarded by the courts as an evasive subterfuge.

There is also the Statute of Canada (R. S. O. 159), imposing penalties upon various classes of people engaged in betting, wagering, pool-selling, etc., but specially excepting stakeholders in any legal horse-race.

There are not many cases in our own courts in which the subject is discussed or considered.

The first of these is *Sheldon v. Law*, 3 O. S. 85. A bet B £75 to £50 upon a horse-race, and deposited the money in the hands of C, as stakeholder. They did not own either of the horses which were to run, and this bet was the only sum up on the event. A, having lost, gave C, notice not to pay over the money to B, but C did so. *Held*, that A could recover the deposit from C, because the wager was illegal as contrary to 13 Geo. II. c. 19. ROBINSON, C.J., in the course of his judgment, says: "I can see no pretence for contending that the statutes referred to (Anne and the two statutes of Geo. II.) are not in force here." This case was decided in 1833.

Cronyn v. Widder, 10 U. C. Q. B.; 12 Geo. II. c. 28 (the Lotteries Act), has been assumed to be in force in Upper Canada by reason of our adoption of the Criminal Law of England, as it stood in 1792. The statute 13 Geo. II. c. 19, against horse-racing has, in like manner, been held to be in force in Upper Canada, and has, in several cases, been acted upon. We are bound to hold 12 Geo. II. c. 28, to be in force; first, because it comes within our adoption of the Criminal Law of England, and next, because this statute, and other statutes of a like nature, and resting on the same footing, have been treated in our courts as being in force" (per ROBINSON, C.J., pp. 360, 361). "The provisions of that statute are considered in force, although they may have been frequently disregarded or evaded" (per MCLEAN s. c. 365).

Corby v. McDaniels, 16 U. C. Q. B. 356, and *Marshall v. Platt*, 3 U. C. P. p. 13, are to the same effect.

Fulton v. James, 5 U. C. C. P. P. 182, decided that a trotting match for £50 between two horses driven in harness, is a legal horse-race within the statutes 13 Geo. II. c. 19, and 18 Geo. II. c. 34. The court, having held in this case that the race was legal because the horses