CONTRACT—WARRANTY—CONTRACT BY WAY OF WAGERING—8 & 9 VICT., C. 109—INSURANCE CONTRACT, 14 GEO. III., C. 48, S. 2.

In *Carlill* v. *The Carbolic Smoke Ball Co.* (1892), 2 Q.B. 484, the plaintiff sought to recover £100 which the defendants had advertised they would pay to any person contracting influenza after using their carbolic smoke balls for two weeks according to the directions supplied therewith. The plaintiff used one of the smoke balls as directed for two weeks, but afterwards contracted influenza. The defendants resisted payment on various grounds: First, that there was no contract between the parties; secondly, if there was a contract it was void, as being a wagering contract within the meaning of 8 & 9 Vict., c. 109; and, thirdly, if there was a contract and it was not a wagering contract, it was an insurance contract, and void under 14 Geo. III., c. 48, s. 2, for not containing the name of the person for whose benefit it was made. Hawkins, J., before whom the action was tried, delivered a considered judgment, holding that there was a valid contract, and that the daily use of the ball was a sufficient consideration to support the promise, and that it was not within the provisions of either of the Acts above referred to, and he therefore directed judgment to be entered for the plaintiff for the full amount claimed with costs. The learned judge considered that one essential element of a wagering contract was absent because in no event could the plaintiff lose anything.

PRINCIPAL AND SURETY—ALTERATION OF SURETY'S POSITION—RELEASE OF SURETY—FRAUD OF PRINCIPAL AS AFFECTING RIGHTS OF SURETY.

*Mayor of Kingston* v. *Harding* (1892), 2 Q.B. 494, was an action brought against the defendants as sureties for certain contractors for the construction of sewers for the plaintiffs. The defendants contracted that the contractors for the works would "well and truly" execute their contract. By the terms of the contract with the principals, the plaintiffs were entitled to superintend the work through their engineer, and it was also provided that the plaintiffs were to be at liberty to retain a certain percentage of the contract price until the engineer should have given his final certificate, and that the principals and the sureties should not be released from liability until this final certificate had been given. The contractors did a portion of their work in a defective manner, and fraudulently concealed the defective work so as to prevent its being discovered. The engineer, in ignorance of the defect, gave his final certificate, on which the percentage retained was paid over to the contractors. The jury found that the engineer's certificate had been obtained by fraud, but also that the plaintiffs had neglected properly to superintend the work. On this state of facts the court gave judgment for the plaintiffs, from which the defendants appealed to the Court of Appeal (Lord Esher, M.R., and Bowen and Smith, L.JJ.), contending that the payment over of the moneys authorized to be retained had prejudiced them and that they were therefore released. But the Court of Appeal upheld the judgment for the plaintiffs, on the ground that the payment having been induced by the fraud of the principals, against which the sureties had guaranteed the plaintiffs, the sureties were not released thereby, and that the mere failure of the