

Co. Ct.]

CARLETON V. MILLER.

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neither justifiable nor excusable, and the crime is murder, and you, therefore, ought to find a true bill for murder against one or both of the prisoners. You will perhaps be good enough to say whether, with reference to the mate Stephens, there is evidence which will satisfy you that he was abetting or aiding or sanctioning the conduct of Dudley. If so you will find a true bill against him. In his statutory examination on oath he says that the master (Dudley) selected Parker as being the weakest, that he agreed to this, and the master accordingly killed the lad. Unless you disbelieved him, therefore, you will find a true bill against him as well as Dudley. I may say that Captain Dudley seems to have made no secret of what has taken place, and to have voluntarily furnished all the evidence against himself, although it is quite true that the course taken by the magistrate, very properly, in making Brooks a witness supplies also evidence for the prosecution. The case having taken place on the high seas, and being a case of British subjects, is one which, by statute, is triable here. No person who has read the details of this painful case but must be filled with the deepest compassion for the unhappy men who were placed in this frightful position. I have only in this preliminary stage to tell you what the law is, but if you should feel yourselves bound to find the bill, I shall then take care that the matter shall be placed in a form for further consideration if it become necessary. I think I am bound to do this after the report of the cases I mentioned in Puffendorf and in the American reports, and the report of the Criminal Law Commissioners. The matter may then be carefully argued, and if there is any such doctrine as that suggested, the prisoners will have the benefit of it. If there is not, it will enable them, under the peculiar circumstances of this melancholy case, to appeal to the mercy of the Crown, in which, by the constitution of this country (as a great lawyer points out) is vested the power of pardoning particular objects of compassion and softening the law in cases of peculiar hardship.

The grand jury eventually returned a true bill for wilful murder against Dudley and Stephens.—*Law Journal*.

CANADA REPORTS.

ONTARIO.

COUNTY COURT OF THE COUNTY OF YORK.

CARLETON V. MILLER.

Replevin—Gambling transaction—Imp. Stat. 9 Anne cap. 14.

In an action of replevin to recover a watch worth \$100, staked upon a game of cards between plaintiff and defendant, the stakes having been taken by defendant before the alleged event of the game. *Held*, that Imp. Stat. 9 Anne cap 14, is in force in this country, though repealed in England, but that the plaintiff could not rely on sec. 2 of that act "to recover back money or chattels exceeding £10 in value lost at cards," as his action was not founded upon the statute,

Held, further, that independently of the statute, that the illegal contract being executed, and the plaintiff *in pari delicto* with the defendant, he could not recover.

[Toronto, June 30.]

This was an action of replevin. It was alleged by the plaintiff that the defendant wrongfully took from him a gold watch and that he wrongfully, etc. detains the same, etc.; and the plaintiff claimed \$150 damages for the alleged detention.

MACDOUGALL, J.J.—The case was tried before me with a jury at the last sittings of the County Court, and after hearing the evidence of the plaintiff and his principal witness, I refused to allow the case to proceed further, and dismissed the action with costs.

In term *J. K. Kerr*, Q.C., moved for a rule calling upon the defendant to show cause why a new trial should not be ordered upon the ground that the plaintiff had established his title to the watch in question, and that I should not have withdrawn the case from the jury. A notice of motion for a new trial upon the same grounds was also served upon the defendant's solicitors. I granted the rule and upon the return thereof

James Tilt, Q.C., showed cause.

The facts of the case so far as the evidence given establishes them, certainly reveal a most singular condition of morality in the community where the parties reside.

The plaintiff it appears having met the defendant engaged with him in what is known as a game of pool for money stakes. At the game which is one involving a certain amount of skill, the plaintiff was successful, and won from the defendant \$20. Later in the day or evening the defendant, anxious to retrieve his fallen fortunes, (the plaintiff being unwilling to give him his revenge at pool,)