

Montreal, a fact which Winch admitted. The judges allowed the horses to start, subject to the protest, and first place was awarded to Winch's horse, "Sleepy Dan," plaintiff's horse being fourth. The defendant, Meharry, subsequently paid over first money to Winch, and the plaintiff brings this action on the ground that, Winch's animal being disqualified, his horse is entitled to third money. The judges came to no decision as to which date was to be regarded, the 1st or 30th of June, nor were any steps taken to bring them together to arrive at any decision, and, in fact, the money was paid over apparently without their interference or direction.

The Rules of the Turf Association point out the duty of dissatisfied parties in respect to following up the protest for the purpose of obtaining a decision from the judges, or the appellate tribunal. Under such rules this has to be done within three weeks of the race, after which the stakeholder is at liberty to pay over stake or purse. No such steps appear to have been taken in this case, and it is contended for this reason also the plaintiff is out of court.

DARTNELL, J.J.—Horse-racing, like wagering, is not illegal at common law, and any contracts expressed or implied arising thereout can be adjudicated upon in the courts, unless there is statute law to the contrary.

The statutes of England relating to horse-racing, passed prior to 1792, appear to be in force in Canada, unless varied or repealed by any statutes passed here since that date; but any statutes passed in England varying or repealing such former Acts have no effect in this Province.

Parliament in England during 400 years has passed a series of Acts relating to the subject. These are as follows:—

16 Car. II. c. 7. This is the first statute in which horse-racing is mentioned. Under it, persons winning by fraud or cheating at various sports, including horse-racing, were to forfeit treble the sum or value of the money so won.

9 Anne, c. 14, "Which statute, although repealed in England, is not repealed as regards this Province" (per HARRISON, C.J., *Bank of Toronto v. McDougall*, 28 C. P. 352). Under this Act all mortgages or securities, the consideration of which was for money won at

gaming or betting, are void; the loser of £10 or upwards might sue within three months of the loss; failing, an informer could do so, and recover treble value. The winning of money by fraud was declared an indictable offence, the guilty party to forfeit five times the value, and be punished as for wilful perjury. The word "games" in this Act was held to comprehend horse-racing (*Bank of Toronto v. McDougall*, supra; *Blaxton v. Pyc*, 1 Wils. 309). Therefore, any race for £10 a side or upwards was illegal. It is stated that, after the passing of this Act, "the number of horse-races had very much increased, and in consequence of their being run under £10 a side, and, therefore, for small plates, they had contributed very much to the encouragement of idleness; and the breed of strong and useful horses was supposed to be much prejudiced." These considerations led to the passing of

Geo. II. c. 19. By this Act, all horses were to be entered by their real names, and no person was to start more than one for the same plate, under pain of forfeiting the horse. No plate was to be run for under the value of £50; any person starting a horse for a plate of smaller value was to forfeit £200, and any person advertising such a race was subject to a penalty of £100; arbitrary standards of weights for age were fixed, and every race was to be begun and ended on the same day; second horse was entitled to his entrance money. There was a distinction between a "match" and a "race;" for while a race, if for £50 or upwards, could be run anywhere, matches were required to be run either at Newmarket or Black Hambleton.

18 Geo. II. c. 34, was passed in order, among other things, "to restrain and prevent the excessive increase of horse-races." Under this Act it was made lawful for any person to run any match, or to start and run for a plate worth £50 or upwards, at any weights and at any place, without being liable to the penalties of 13 Geo. II. The stake could be made up by each party putting up £25 a side. (*Bide-mead v. Gale*, 4 Burr. 2432.)

For nearly one hundred years no statutes affecting horse-racing were passed in England.

5 & 6 Wm. IV. c. 4, repealed portions of the statutes of Anne and Charles, but did not affect the statutes of Geo. II.