

they were made. The objections of fact therefore fail. This brings me to the consideration of the legal objections to the plaintiff's claim. I am of opinion that neither of them can be sustained. At common law, wagers are not illegal, and before the passing of 8 & 9 Vict., c. 109, actions were constantly brought and maintained to recover money won upon them. The object of 8 & 9 Vict., c. 109 (passed in 1845) was not to render illegal wagers which up to that time had been lawful, but simply to make the law no longer available for their enforcement, leaving the parties to them to pay them or not as their sense of honor might dictate. Accordingly it was by the 18th section enacted in these words: "All contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void, and no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager." There is nothing in this language to affect the legality of wagering contracts, they are simply rendered null and void, and not enforceable by any process of law. A host of authorities have settled this to be the true effect of the statute. I will mention only one or two. In *Fitch v. Jones*, 5 E. & B. 238, it was expressly so decided, Erle, J. saying: "I think that the defendant might without violating any law make a wager. If he lost he might without violating any law pay what he had lost." In *Hill v. Fox*, 4 H. & N. 359, the same learned judge said that the parties do not violate any law by making a bet; but the law will not assist the winner in enforcing payment of it. In *Ex parte Pyke*; *Re Lister*, 38 L. T. Rep., N. S. 923; 8 Ch. Div. 754, I observe the Master of the Rolls, at p. 757, is reported to have spoken of gaming or betting being illegal. I feel sure that the learned judge must have been misunderstood; and in his judgment in *Lynch v. Goodwin*, 26 Solicitor's Journal, 509, he expressly stated that a bet was void, but not illegal. But although the law will not compel the loser of a bet to pay it, he may lawfully do so if he please; and what he may lawfully do himself he may lawfully authorize anybody else to do for him; and if by his request or authority another person pays his lost bets, the amount so paid can be recovered from him as so much money paid to his use. In *Rosewarne*

*v. Billing*, 9 L. T. Rep., N. S. 441; 33 L. J., C. P. 55; 15 C. B., N. S. 316, the defendant had employed the plaintiff to make in his own name wagering contracts respecting mining shares, and the plaintiff accordingly made them and paid certain differences on such shares, and brought his action to recover from the defendant (his employer) the money so paid. In giving judgment for the plaintiff, Erle, C. J., said: "It is clear that though the defendant was not liable to pay the sums due under these wagering contracts, he might do so if he chose; and if a party loses a wager and requests another to pay it for him, he is liable to the party so paying it for money paid at his request." *Oldham v. Ramsden*, 44 L. J. 309, C. P., is to the same effect; so is *Ex parte Pyke*; *Re Lister*, *ubi sup.*, in which an appeal by the trustee under *Lister's* bankruptcy against the registrar for allowing a proof by Barrett for money lent and paid by him at *Lister's* express request in discharge of lost bets at Tattersall's was dismissed by the Court of Appeal. The request or authority to make such payments may be either expressed, or implied from usage or from the nature of the dealings between the parties themselves. If a person authorizes another to bet for him in his own name, an implied request to pay if the bets are lost is involved in that authority. For this too there is abundance of legal sanction. In *Bubb v. Yelverton*, 24 L. T. Rep., N. S. 263; L. Rep., 9 Eq. 471; 19 W. R. 739, which was a suit for the administration of the estate of the Marquis of Hastings, deceased, Lord Charles Ker claimed a sum of 850*l.*, for money paid for the marquis for bets made and lost on his account, it was held by Lord Romilly, M. R., that a request to bet implied an authority to pay the bet if lost, and that Lord Charles Ker was entitled to prove against the estate of the marquis for the amount paid; see also *Oldham v. Ramsden*, *ubi sup.*, *Rosewarne v. Billing*, *ubi sup.*, and lastly, *Lynch v. Goodwin*, *ubi sup.* I am not aware that this last case has been reported in any of the regular reports at present. In the present case I find as a fact, that at the time the defendant gave the authority to make the bets, he gave also an implied authority to pay them if they should be lost. The defendant however contended, that assuming wagering contracts not to be illegal, and that a person who employs another to bet gives that other implied