

3. In the absence of evidence to shew that the proprietors of the hotels had any interest in the game or derived profit therefrom or had knowledge that it was going on, the hotel was not "a house, room or place kept for gain to which persons resort for the purpose of playing at any game of chance or at any mixed game of chance and skill" within the meaning of the Criminal Code, s. 226, (R.S.C. vol. 3, c. 146).

4. Assuming the statute 9 Anne to be in force in Nova Scotia (as to which quere) the money advanced by L. and A. at the request of defendant for the purpose of enabling him to pay his losses, was not a gaming debt within the meaning of the statute, but was recoverable at common law.

W. B. A. Ritchie, K.C., and Mellish, K.C., for plaintiff A. A. Mackay, and J. M. Chisholm, for defendant.

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Full Bench.] THE KING v. BARNES. [Nov. 23, 1907.

*Crown case—Matter touching regularity of trial—Power of judge to reserve case.*

Defendant was indicted and tried for the offence of rape committed upon the person of a girl a few weeks over the age of 14 years. The jury found him guilty with a recommendation to mercy and he was sentenced to be committed to jail for the term of one year. The prisoner before sentence moved for a reserved case upon the affidavits of his solicitor and two of the jurymen to the effect that while the jury were engaged in deliberating upon the case the sheriff of the county, who had been called into the juryroom, made a statement giving them to understand that if they found the prisoner guilty and recommended him to mercy the judge would impose a light sentence. The trial judge reserved a case for the opinion of the Court finding that the statement alleged was calculated to influence the jury in finding the verdict which they did. On argument the preliminary objection was taken that the judge had no right or authority to enter upon or conduct an enquiry into any matter of fact touching the regularity of the trial, which had been concluded, and that the enquiry made by him and his finding of fact touching the alleged acts of the sheriff were without warrant in law and that no case could be reserved or stated in connection with such enquiry.