There are no facts found which would justify our drawing an inference as to the enclosure in question here, and the user made of it by the defendants, contrary to that which was held to be the proper one in the Kempton Park case.

In this case it is not and could not be seriously contended that the defendants could be regarded as the owners, occupiers, or keepers of the enclosure.

The contention is that the use made by the defendants of a portion or portions of the enclosure constituted such portions "a place," and made the defendants keepers thereof, within the meaning of the sections. Mr. Cartwright, for the Crown, argued that, taking the statement in the case that the defendants did not occupy a fixed position, but made their bets moving about within a small radius, and there was nothing in or on the ground to fix a place where the defendants could be found, along with the further statement that the bookmaker and his assistants during the betting on each race stood as much as possible about the same spot in a radius of from 5 to 10 feet, the fair inference should be that the defendants had and were keeping "a place" corresponding in its use to a house, room, office, or other structure stationed on the grounds for the purpose of attracting people to it in order to bet—that mingling with other bookmakers and keeping within a radius of 5 to 10 feet was so localizing his business there as to make it a fixed and ascertained spot, and therefore "a place" within the language and meaning of sec. 227. . . . .

Hawke v. Dunn, [1897] 1 Q. B. 579, which in its facts more nearly resembled this case than any other of the numerous cases in which the question has been dealt with in the Courts in England, was expressly overruled in the Kempton Park case. . . . And in every case that can now be regarded as binding authority, there was something more than the mere presence of the persons on the ground to indicate that measure of localization, fixity, and exclusive right of user which is necessary in order to constitute "a place." Dealing with the question of user, Lord Esher, M.R., said in the Kempton Park case, [1897] 2 Q. B. at p. 258: "The facts seem to me to shew that no one of the bookmakers described in the evidence does claim to use and does use any part of the enclosure as his part exclusively as against any one. To say that he uses or claims to use the spot of ground on which he is at the moment standing as his