

Can. Rep.

THE BETTING QUESTION—FAGAN V. WILSON.

[C. L. Cham.]

so with bets made by individuals *inter se*. Permit them to be recovered by process of law, and then, were a fraudulent, unfair, or improper transaction to come before the courts, we can see no good reason why they should not be able to deal with it, in this, as in any other case. Perhaps, after all, the chief reason why the courts have regarded gambling cases, as they are called, with antipathy, is because they think that if in any way encouraged an undue proportion of such cases would be brought before them. Even if this were likely to occur, it is imagined that part of the duty of our judges is to superintend the social life of the people, but as a matter of fact, there is really no danger of such a state of things arising, and for very obvious reasons. No better would resist payment unless he had a good defence to the claim, for to do so would be to ruin his credit and social position at once and for ever. And it is clear, on the other hand, that in the vast majority of betting transactions no points of intricacy or delicacy can arise.

It was thought by some that this question would have formed a subject of discussion in the last Session of Parliament, and although that has not happened, the time must soon come for it to be carefully and comprehensively reviewed by the Houses. We hope that then the unequal pressure of a great portion of the enactments now obtaining will be noticed, and that some return to the ancient common-sense doctrine of the law on wagers and bets may be attempted, of which we should have the less fear if we could feel certain that our law-makers, bearing in mind the fact that all Englishmen are conservative where their pastimes are concerned, and the length of time during which racing and betting have gone hand in hand as twin national institutions, would also reflect seriously on the proposition laid down by a great modern thinker,* that "A philosophy of laws and institutions not founded on a philosophy of national character is an absurdity."

—*Law Magazine.*

* John Stuart Mill.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

FAGAN V. WILSON.

Transmission of depositions—Certified copies.

Held that sec. 193 of C. L. P. Act permits the transmission of certified copies of depositions; an application to transmit the originals was therefore refused.

[Jan. 12, 1876.—MR. DALTON.]

W. R. Mulock applied for an order to transmit original depositions to the clerk of assize, to be used as evidence in a case then pending.

The ground on which the application was made was that certified copies of depositions were not admissible as evidence under C. L. P. Act s. 193, which enacts that "examination, and depositions certified under the hand of the judge, or other officer or person taking the same, shall without proof of the signature be received and read in evidence." Reference was made to an unreported case in which it was said that *STRONG, J.*, had held that this section did not permit the use of certified copies as evidence. The same view is taken in the note in *Harr. C. L. P. Act p. 270*.

MR. DALTON—The object of the section seems to have been simply to provide that depositions should be admissible as evidence at a trial, without reference to the question whether they were originals or not. It is greatly to be desired that there should be an authoritative decision on the point. In my opinion it would be quite sufficient to produce the certified copies at the trial. In *Flett v. Perrins*, L. R. 3 Q. B. 536, an examined copy of answers to interrogatories was received in evidence in a different suit from that in which they were originally taken. I must refuse the order.*

Order refused.

[* *Mr. Harrison* in his note says: "The meaning cannot be that office copies given out should be certified by the judge, or other officer or person, taking the same; for the officer takes the original examination or depositions, and not office copies." The wording of the section seems conclusive that the learned annotator and *Mr. Justice Strong*, were correct in their view. It might be desirable to permit certified copies to be used, but the section as it stands does not seem to contemplate it. Eds. L. J.]