

of the payment of the \$30, unknown to the plaintiffs; that the plaintiffs' policy became null and void, and was no longer binding on them by reason of the prior insurance; that the defendants' falsely and fraudulently made a statutory declaration that there was no insurance on the property other than that of the plaintiffs, in full reliance upon which the plaintiffs paid the \$30.

Held, having regard to s. 94 of the Division Courts Act, R.S.O., c. 51, that the nature of the action was to be determined by these particulars, and from them it appeared that it was in tort, and not in contract; and, as the sum sought to be recovered exceeded \$20, either party was entitled under s. 154 to require a jury.

And the County Judge having set aside the defendants' notice requiring a jury, an order was made prohibiting him from proceeding in or trying the action.

W. E. Middleton for the plaintiffs.

W. H. Blake for the defendants.

Chancery Division.

Div'l Court.]

THE QUEEN *v.* GILES.

[Dec. 20, 1894.]

Criminal case reserved—Statement of case by County Judge.

This was a case reserved by the judge of the County of Peel for the opinion of the Divisional Court of the Chancery Division.

The case was as follows:

"The defendant was tried before me in the above court on the 12th day of October and 9th day of November, 1894, upon a charge of keeping a disorderly house, to wit, a common betting house, in the village of Port Credit, in the said county, on the 25th day of July, 1894, within the meaning of ss. 197 and 198 of the Criminal Code, 1892. The facts appear by the evidence taken at the trial, and upon the commission issued herein; the whole of such evidence, with the exhibits, are attached, and form part of the case. Upon such evidence I convicted the defendant of the offence charged, and reserved a case for the opinion of the Court of Appeal, being the Chancery Division of the High Court of Justice. The question for the opinion of the court is as follows: Having regard to the evidence and the provisions of the said sections, and also the provisions of s. 204 of the said Code, ought the defendant to have been convicted? My judgment herein is attached hereto for the information of the court."

The case came before the Chancellor and Ferguson and Meredith, JJ.

B. B. Osler, Q.C., for the defendant, moved for the judgment of the court on the case.

J. R. Cartwright, Q.C., for the Crown.

THE CHANCELLOR: I notice that the judge has not found the facts, and has not stated the question of law intended to be reserved for the opinion of this court. He refers to all the evidence adduced, which would necessitate our passing, not only upon the law, but also on the facts.

Osler, Q.C.: The case is framed in accordance with that in *Reg. v. Smiley*, 22 O.R. 686. The facts are not in dispute, and the question is really simply a question of law arising upon s. 204 of the Criminal Code.