

PART II.—BETTING

SECTION I.—HISTORY OF BETTING LAWS

13. As it provides a useful background against which consideration by any one of the questions referred to us can proceed, and as it may, in some measure, assist those upon whom the task of considering our recommendations may fall by showing how problems analagous to our own have arisen and been dealt with elsewhere, and how the law as it now exists has evolved, we sublend a brief account of the history of betting in England and in New Zealand.

IN ENGLAND

14. In olden times a bet was a valid contract enforcible by the Courts and, as was commented by Lord Justice Fletcher Moulton in *Moulis v. Owen*, (1907) 1 K.B. at page 758, "There is no reason, juridicially speaking, why that should not be so." As he said, the ground for treating gaming contracts (and he must be taken to have included betting in that term) in an exceptional way is to be sought in reasons of public policy. That policy had no application in the ages during which the common law was formed.

15. In the result, therefore, the disabilities under which such contracts labour are entirely derived from statute law.

16. Initially, the main object of the earlier statutory enactments against games was to prevent their interference with the practice of archery on the Sabbath. Apparently the first statute of the kind was an Act of Richard II, c. 6, which was rendered more drastic by 11 Hen. IV, c. 4. By the latter enactment persons of the class of servants or labourers were ordered, "to have bows and arrows and use the same on Sundays and holidays and leave all playing at tennis or football and other games with coits, dice, casting of the stone, kails, and other importune games." This legislation was carried further by Edw. IV, c. 3, which exposed to penalties any occupier who allowed persons to play at the forbidden games on his premises. The most important statute of earlier times, however, was 33 Hen. VIII, c. 9. Its purpose too was to enforce the practice of archery.

17. The earliest statute to deal with gaming properly so called was 16 Car. II, c. 7. Horse-racing was one of the games named in it. The statute was directed not against gaming in general, but only against such gaming as was unfair and excessive. Games of skill and chance were all treated alike. The second section of the Act dealt with the case of persons playing at games other than with and for ready money and losing more