tions liberally, so as to prevent the mischiefs intended to be provided against. By Art. 35, sec. 46,[4] (Act of 1838, ch. 392,) bets or wagers on the results of any election in this State are forbidden; by sec. 47,[4] any person so offending is liable to indictment, and to a fine on conviction; and by sec. 48,[4] every deposit of money as a wager or bet upon elections in this State, or elsewhere, shall be forfeited to the county; with reference to which it was decided in Doyle v. Commissioners of Balt. Co., 12 G. & J. 484, that the action might be brought in the name of the Co. Commissioners, that if either party make such a deposit it is forfeited, though the deposit of the other party may not be forfeitable,—that the forfeiture attaches the moment the deposit is made,—that no notice is required to prevent its payment to the parties to the bet, but any such payment is at the risk of the party making it, and that depreciated bank notes were within the Act, see Wroth v. Johnson, 4 H. & McH. 284. This Statute of Charles and the Statute of 9 Ann. c. 14, have been recognized by the Court of Appeals in Gough v. Pratt, 9 Md. 526, as being still in force here.[5]

Perhaps the fair inference is that wagering contracts are avoided by the Code,[6] but no express provision is made by sec. 61,[7] above cited, that the *winner* may not sue a *stakeholder*, in whose hands money may have been deposited to abide the event of a wager, though he cannot sue the loser; but a depositor, repudiating a wager *before it is decided, **479**

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[4] See now Code 1911, Art. 33, sec. 114.

[5] Emerson v. Townsend, 73 Md. 224; Spies v. Rosenstock, 87 Md. 17.

[6] There is a line of English cases which marks a broad distinction between a suit for money won by gaming and a suit upon a new contract not tainted with illegality and made for a good consideration, the basis of which is nevertheless the gambling debt itself. The recent case of Hyams v. Stuart King, (1908) 2 K. B. 697, in the Court of Appeal and decided by a divided court furnishes an excellent illustration. There plaintiff and defendant were bookmakers and had betting transactions together which resulted in the defendant giving the plaintiff a check for the amount of bets lost by him. At the defendant's request the check was held over for a time by the plaintiff and a part of the amount was paid by the defendant. Subsequently a new verbal agreement was made by which, in consideration of the plaintiff agreeing to hold the check for a further time and to refrain from declaring the defendant a defaulter and thus injuring him with his customers, the defendant promised to pay the balance in a few days. In a suit on the new agreement it was held that the forbearance of the plaintiff to sue and to declare the defendant a defaulter constituted a good consideration for the fresh agreement and that the plaintiff was entitled to recover. The principle is that the new agreement is "not to pay the gambling debt but to avoid the consequences of not having paid it." See also Bubb v. Yelverton, L. R. 9 Eq. 471; Chapman v. Franklin, 21 Times L. R. 515; Goodson v. Baker, 98 L. T. Rep. 415; *In re* Browne, (1904) 2 K. B. 133; Goodson v. Grierson, (1908) 1 K. B. 761.

[7] Code 1904, Art. 27, sec. 210.