

is clearly not in that predicament; so it may be, that the first branch of the section only applies where *the loser* has actually paid the money over to *the winner*.⁸ And in *Ridgely v. Riggs*, 4 H. & J. 358, it was held that a speculating contract as to the price of stock was not a wager inconsistent with the policy of the law, and avoided under the Act of 1813, ch. 84.⁹ See *Rouake v. Short*, 5 E. & B. 904, for an instance

⁸ **Legality of wagers—Revocation of wagers.**—At common law wagers were legal. By the Statutes of Anne and Charles various forms of betting were made illegal and no action could be maintained on such wagers by the winner either against the loser or against the stakeholder. Where a wager was not illegal, it seems doubtful from the cases whether the defendant could revoke before the event, or whether he must abide it. Where, however, the wager was illegal, the depositor could revoke and recover back his money on giving notice to the stakeholder at any time before the latter paid over the money to the winner, and this whether such notice was given prior or subsequent to the event. But if the event came off and the money was paid over to the winner by the stakeholder before he received notice of revocation, the depositor could not reclaim it. *Hampden v. Walsh*, 1 Q. B. D. 189. Cf. *Diggie v. Higgs*, 2 Ex. D. 422; *O'Sullivan v. Thomas*, (1895) 1 Q. B. 698. See also *Baxter v. Deneen*, 98 Md. 204, 208, and note 17 *infra*.

⁹ **Gambling transactions in stocks.**—A contract to sell stock, or marketable securities, to be delivered at a future day is not invalidated by the fact that at the time of the contract the vendor neither had the stock in his possession, nor had entered into any contract to buy it, nor had any reasonable expectation of becoming possessed of it by the time fixed for the delivery, except by going into the market and purchasing it. The same is true of other property, such as for example, gold or wheat, a contract for the sale of which would be satisfied by the delivery of any property of the description bargained for. *Quære*, as to a similar contract for the sale of a specific chattel? *Appleman v. Fisher*, 34 Md. 551; *Burt v. Myer*, 71 Md. 467; *Nes v. Union Trust Co.*, 104 Md. 21. Such a contract is, however, invalid if under its guise the real intent of the parties is merely to speculate in the rise and fall of prices and the goods are not to be delivered. *Richter v. Poe*, 109 Md. 24.

There is again a broad and well recognized distinction between a speculative contract for the sale of stocks on margin, which is valid, and a gambling contract, which is invalid. Where the intent of the parties is that there shall be no delivery of the stock but that one party is merely to pay to the other the difference between the contract price and the market price at the date fixed for executing the contract, it is a gambling contract upon which no action can be maintained. *Richter v. Poe*, 109 Md. 20; *Hoogewerff v. Flack*, 101 Md. 371; *Baxter v. Deneen*, 98 Md. 181; *Billingslea v. Smith*, 77 Md. 504; *Burt v. Myer*, 71 Md. 467.

Although the transaction is legal in form, it can be shown to be a mere gambling transaction in fact. *Stewart v. Schall*, 65 Md. 289; *Cover v. Smith*, 82 Md. 586. And since the law assumes the validity of the