

... of exchange on which the bill was brought was not presented for payment in time, whereby William & Watkins was in law discharged from any liability on account of his endorsement
Judgment Reversed.

437

Court of appeals. June Term 1816.

David Stewart & al

v

Duncan McIntosh

Reports

} Appeal see note Book no. 9 pa 281
Jun 17. 1816. Prnt.
Buchanan, Earle,
Johnson & Martin J.

Mercer for the appellant - The facts which
necessaries are stated in the last Bill of the cap.

3 points occur in this case.

1. The act of Congress did not include
the Fraud of J. Jennings

2. No. rec? by diff. at the Fraud of
Scotts

3. not money aspt. of the illegal Contract

as to the 1. Point - a act of Congress Feb. 1799.
renewal of the act of 13 June 1798

4 Vol. ch 70 pa. 179 This act declares that the port must be
under the achemont. government of France - The Fraud
of Hispaniola not under the gov. of France - no proof
it was so -

438.

The gov. of France assuming the gov. right of gov.^t
don not make it so - No indefeasible right achard
by the inhabitants of the Island - The nature of
the gov.^t of the Island resists the idea - Could not
have been in the contemplation of Congress when
they passed the law to consider this Island as
under the french government. - By doing so we
w^d. be enlarging the french dominions which
our government could not wish to do - The language
of the law exclude the idea of this Island being
included. -

2 Point mo. nec? by diff. at V. T. N. S. & the
diff. could not object there if Cong. cannot object
here -
7 F.R. 241 pass in England cannot recover
on a written agmt. made in Jamaica & was void there
Days Resp . note given in N. Y. Int. 7th C.
renewed in Connecticut calculating the 7th C. Int.
tho' only 6th C. allowed in that state -

The app^t. a mere agent or c^o.? the m^o. for
the app^t. bound to pay it over -

439

If the voyage be illegal yet m^o. Int. to c^o? not

the only of R. allowed in that state -

The app^{te} a mere agent or c? the m^o for
the app^{te}. bound to pay it over -

439

If the voyage be illegal yet m^o to take c? not
take advantage of it. - He was not a citizen of the U.S.

If a wagon deposited with a stake holder
he bound to pay over 5 F.R. 405 Either party may
recover back his stake -

2^{W.} Bch. Rep 1073 m^o. p^o. as a premium
for an illegal insurance maybe recovered
back

2. Com. on Con. 112 of D. Kenya - m^o. c? not
be recovered back said D. Mansfield - But Lord Holt f^o.
it might - where a person receives m^o. on an illegal
cont. &

1 Bos. & Pul. 3. - 296.

4. Burr. 2069.

3. T. R. 418.

Pr. in Chan. 90

Doug. 407.

2 Str. 1249.

7. T. R. 535.

of France as it presented - The
Dip. bound to prove that the Island did
acknow the gov^t of France

441.

Nothing shows that the people acknow. the
gov^t of France - The french gov^t claiming
the gov^t not evid - But it was for the
people to say whether they were under
the Jurisdiction of the french government
If the act of Cong^{rs} had said the Island
was under the gov^t of France it w^d be
suff. - but Cong^{rs} has said no such thing
It was not the right of France to govern the
Island, but it was whether France did actually
govern it - The act of 1800 expressly includes
Islands - But the act of 1799 does not
include the Island - Why omitted in the act
of 1799 if the fact existed - Defacts the
Island independent, of course the people
denied the Jurisdiction of France - There
was islands under the acknow^d jurisdiction
& government of France upon wh. the act of
Cong^{rs} c^d act upon - The words of the act "under
the acknowledged government of France" &c

442.

not that franchise exercised gov^t. But that it was acknowledged by the people -

2^d point. The def. not competent to object here what he d. not object in the Island of St. Thomas - If he bound to pay there he is bound to pay here - If suit bro^g there c^d. not plead the act illegal & have defended himself upon that ground - The def. of that Island c^d. not take notice of an act of Congress to admit the plea that the m^o. was an ^{on land} illegall^y confederation. -

The caps cited as to show the obj^o not sustainable -

The m^o. rec^d. in St. Tho. coming within the laws of St. Thomas -

The law of the place where the obj^o arose "the law to govern" - Nicholson vs Owing &c

3^d point The m^o. not paid over in execution of the contract - nor the same persons to the contract - W^{as} between Allen & William & D. Stewart & sons and them alone

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If the suit was between those persons alone

of the contract - nor the same persons to the contract - W² was between Helen & William & D. Stewart & sons and them alone

443

If the suit was between those persons alone then a diff. cap. - But Diff. below had nothing to do with the contract - He recd the m^o. When the Contract Executory
471 Doug 468. J. Muller J.

When the action is not to enforce the illegal contract, then c. not bound to prevent the party from recovering.

where an oblig. arises viz m^o lent to game with may be recovered back - bca it is not the corrup thing prohibited by the statute - m^o lent to pay the diff. in a stock jobbing transaction recoverable tho the diff. c. not be recovered 3. T. R. 418.

When m^o not p^d over by the state holden both parties might recover back his stake - But if p^d over c. not recover - Mistake holden c. not keep the m^o. bca the bet or contract was illegal & no more can the appellee here keep the m^o. he has received -

When money p^d. to a third person upon an illegal contract, it may be recovered by the person for whose use he recd. it. 2 Com. 112 - also 1 Bos. & Pul. 296. &

Boj & Paul. 3. marginal note contain the decision.
296.

The appellee need the m. free from any
 thing illegal for the purpose of paying it over
 to the app^t. - our acts allude to Citizens of
 the U. S. -

Martin on the same side - cited 2 Wils. 309: - ~~fact~~ ^{debt}
 lost a bit requested the ^{debt} ~~debt~~ to pay it for him
 w^h he did & this act? to recover the m. & p. &
 the fruit sustained -

Haper for appellee. - The applicⁿ of the principles
 of law alone in question -

Laws might always be violated by the
 intervention of an agent.

Whether the trade was forbidden by the
 act of congress? - Reads the act of Feb. 9. 1799
 further to suspend it - "after 3rd mar 1799 no ship or
 vessel shall within the territories bc. within the act how
 gov. of 3rd description

territory - or 445.

1 any port or place - 3 or to any place in the West Ind.

act of Congress - reads the act of Feb. 9. 1799
further to suspend &c - "after 3rd mar 1799 no ship or
vessel &c within the territories &c. within the acknow
gov. of 3 description

territory - or 445.

1 any port or place - 3. or to any place in the West Ind.

1 Territory of France might take in dependence -

2. or dependence.

3 places conquered by the French arms remaining
under the gov^t of France

Three fold description

1. old France

2. Colonies

3. places conquered &c. occupied &c.

only question whether St. Domingo in 1799
came within either of the above descriptions
was St. Domingo a dependency of France? This
cannot be denied - often decided so by our
our Gov^t to take notice of the political state of
foreign countries - to do so must resort to what
our government consider it, where the fact doubtful.
as to the people of St. Domingo attempting to become
independent and so a chthon? by the mother Country
not to be notice by our Gov^t or our Courts - The
government of St. Domingo never a chthon? due to or
independently France - If our country were to
say so w^d be involving our Gov^t in a dispute with
France -

446.

The public acts of governments to be taken notice of by Ct. - If a treaty between G. B. & France & the former cedes an island to the latter, then our Ct. bound to notice - but our gov^t. notices it. When contentions between mother country & its colonies our gov^t. stands neuter - But considers the colony as under the gov^t. of the mother country.

§ T. R. 405 has been cited.

He takes a distinction between the appellee and the state holder, agents &c. in the several cases cited by the app^t. - Here the appellee was the agent of the parties & apprized of the illegal voyage & privy to the ^{illegal} transaction, aiding & assisting in it.

He takes up the several cases cited and comments upon them.

The demand here arises out of an illegal contract aided & assisted by the agent & privy to the whole transaction. The m^o. came to his hands as such agent & with full knowledge.

Com. on Cont. 109 over ruled the decision 1d.

Ray 89

Dough. (note)

447.

~~attention in supls. for the~~

The m^o. came to his hands as such agent & privity to the whole transaction
Com. on Cont. 109 over ruled the decision 12^d.
Ray 89 Dougl. (note 1)

447.

~~Attaction in reply. See this case. Note Book no. 100~~

1 Bos & Pull. 296. Op^os of two of the Judges, Ch. J. Eyre
when the parties ^{have} "been concerned" ⁱⁿ or promoting an
illegal contract then there can be no recovery

O. T. R. 61, decided in 1794, to show how
variable the English Judges have been on this
subject.

Winder in reply - The appellee only an agent
for a sp. purpose - Hall consigned the vessel
to Wood one of the houses of McIntosh & Wood
If appellee an agent he was made so by
Hall and not by the appellants. The
consignment not to McIntosh as a partner of
McIntosh & Wood - ~~McIntosh~~ Wood ~~not~~ absent
& McIntosh was there who rec^d. in the absence
of Wood - The consignment to go to Inly in the
event of Woods absence - Inly sold & paid the
m^o. over to McIntosh as a partner of Wood -

448.

Nothing in the case to show that Apple had anything to do in the transaction but to transform the vessel into a Danish vessel of colour - The illegal voyage had nothing to do with Apple - The illegal transaction was the trade - nothing more - the sale of the cargo vessel not illegal - The act of Congress did not operate upon anything but the illegal voyage -

To enable the Apple to take advantage hereunder, ^{is} a party criminal. - Who are criminals under the act. - none but residents of the U.S.

Martin also in reply - See his argument in note book n^o. 9. fol 308.

June 19. 1826. Judge affirmed -
Buchanan, J. dissents

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Court of appeals. June Term 1826.