

## APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1887.  
July 27.

HORMASJI MOTABHAI, (ORIGINAL PLAINTIFF), APPELLANT, v. PESTANJI DHANJIBHAI, (ORIGINAL DEFENDANT), RESPONDENT.\*

*Contract—Illegal contract—Contract entered into in violation of the law—Partnership—Illegal partnership—Right of partner to sue for a share—Contract Act (IX of 1872), Secs. 23, 24—A'bkari Act (Bombay Act V of 1878), Sec. 45—Breach of license—Penalty.*

A contract entered into for the purpose, or with the necessary effect, of defeating a statute will not be enforced or recognized by the Courts, at any rate where both parties stand *in pari delicto*.

A. and B. took a liquor contract from the Government. By the terms of their license they were forbidden to take a partner, and under section 45 of the Bombay A'bkari Act (V of 1878) they were liable to a penalty of Rs. 100 for a breach of their license. C. entered into partnership with A. and B. with full knowledge of the conditions of the license, and afterwards filed a suit for an account of the partnership transactions.

*Held*, that C. was not entitled to any relief, having entered into the partnership in direct violation of the law.

APPEAL from the decision of Khán Bahádur B. E. Modi, First Class Subordinate Judge of Surat, in Suit No. 3 of 1883.

This was a suit for an account and for the winding up of a dissolved partnership. It was alleged in the plaint that the defendants 3 and 4 had taken up a liquor farm from the Collector of Surat for the year 1881-82, and had subsequently admitted the plaintiff and the other parties to the suit as partners in the business. The plaintiff demanded an account, but was refused. He claimed Rs. 5,025 as his share of the profits of the business.

The defendants pleaded (*inter alia*) that according to the terms of the license granted by the Collector they were forbidden to sublet the farm or admit any partner in the business; that under the A'bkari Act (Bombay Act V of 1878) they were liable to a penalty of Rs. 100 for doing any act in contravention of the terms of the license; that the partnership entered into with the plaintiff was illegal, and that, therefore, the suit would not lie.

\* Appeal, No. 115 of 1884.

The Subordinate Judge found that the partnership-agreement was opposed to the terms of the license issued by the Government, and, therefore, held that it was illegal and void under section 23 of the Indian Contract Act (IX of 1872). The suit was accordingly dismissed with costs.

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Against this decision the plaintiff appealed to the High Court.

*Jardine* (with him *Máneksháh Jehángírsháh*) for the appellant :—The plaintiff's admission as a partner in the business was, no doubt, a breach of the license. That would justify a cancellation of the license, but would not affect the plaintiff's claim for a share in the profits. The defendants, who have taken our money, must render an account, or else return the money—*Joseph v. Solano*<sup>(1)</sup>.

*Káshínáth Trimbak Telang* (with him *Shántáráam Náráyan*) for the respondents :—The partnership-agreement, being directly opposed to the terms of the license, is illegal. Sections 32 and 45 of the Bombay A'bkári Act (V of 1878) cover a case like this. The Act imposes a penalty for a breach of the license. The plaintiff, who was himself a licensee, was fully aware of the terms of the license. He entered into the agreement with full knowledge of its illegality. The agreement is, therefore, void—Lindley on Partnership, Bk. I, Ch. v, sec. 2, p. 104 (5th ed.); *Sykes v. Beadon*<sup>(2)</sup>.

WEST, J.:—In this case the plaintiff sued the defendants for an account of partnership transactions. The defence is that the partnership having been entered into in violation of the law, no obligation was constituted by it. The defendants Nos. 3 and 4 took a liquor contract from the Government, and, by the terms of their license, were forbidden to take a partner. By taking the plaintiff as a partner they consequently became liable to a penalty of Rs. 100 under section 45 of the A'bkári Act (Bombay Act V of 1878). The plaintiff has himself been a licensee, and must be familiar with the terms embodied in the usual form, which was made use of in the present case. In entering into partnership with the defendants, therefore, he was consciously taking part in a breach of the law prohibited by a penalty. The

(1) 9 Beng. L. R., 441.

(2) L. R., 11 Ch. Div., 170.

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case of *Sykes v. Beadon*<sup>(1)</sup>, referred to in argument, shows that a contract entered into for the purpose, or with the necessary effect, of defeating a statute will not be enforced or recognized by the Courts, at any rate where both parties stand *in pari delicto*. The Indian Contract Act, secs. 23, 24, involves the same principle, which may be indeed gathered also from the judgment of Sir R. Couch in *Joseph v. Solano*<sup>(2)</sup> relied on for the appellant. See, too, *Cannan v. Bryce*<sup>(3)</sup>; Story on Bailments, sec. 158 (7th ed.); Story on Partnership, sec. 6 (5th ed.)

The case of *Gordon v. Howden*<sup>(4)</sup> is identical in principle with the one before us, and in that case the House of Lords refused to give effect to a secret partnership for pawnbroking contrary to the terms of the Statute 39 and 40, Geo. III, cap. 99.

We, therefore, confirm the decree of the Subordinate Judge. Each party is to bear his own costs throughout.

*Decree confirmed.*

(1) L. R., 11 Ch. Div., 170.

(3) 3 B. & AL., 179.

(2) 9 Beng. L. R., 441.

(4) 12 Cl. and Finnelly, 237.

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Birdwood.*

1887.

August 11.

DA'DA'PA', (ORIGINAL APPLICANT), APPELLANT, v. VISHNUDA'S AND OTHERS, (ORIGINAL OPPONENTS), RESPONDENTS.\*

*Insolvency—Insolvent debtor—Unfair preference—Civil Procedure Code (Act XIV of 1882), Sec. 351.*

A creditor can put pressure on his debtor to get payment of his claim, notwithstanding that the debtor may be in embarrassed circumstances. But a debtor, who gives an unfair preference to one creditor by giving him a large proportion of his property, so as to reduce the *aliquot* share of the other creditors, acts fraudulently, and no title is given to that particular creditor as against the assignees who represent the creditors generally.

A. filed a suit and obtained a decree against B. During the pendency of the suit, and only four days before the decree was passed, B. assigned by way of mortgage nearly the whole of his property to one of his creditors C. The assignment was made, not to secure a fresh advance, but in consideration of past debts

\* Appeal from Order, No. 2 of 1887.