Kribben, Christian v. Haycraft, Eliza 1858 St. Louis 396/10

Old Box 595/27

Eliza was to pay for services in commutation of sister's hanging sentence $500 (Sarah)
commuted to imprisonment

Filed 1857
March 1858
Affirmed
Richardson

A = H.N. Hart
R = G. Marshall

26
396
Demurrer to a petition

O = void b/c against public policy

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* St Louis Court of Common Pleas *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the Saint Louis Court of Common

wherein Christian Kribben was plaintiff and Eliza Haycraft was defendant

in an action of

hath intervened, to the great damage of said plaintiff manifest error as by Cro complaint we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the Seventh day of September in the year of our Lord one thousand eight hundred and fifty Seven

Wm S. Glanville
CLERK.

$1.50 paid by C. Kribben.

State of Missouri }
County of St. Louis } ss

I Charles H Hicks Clerk of the St. Louis Court of Common Pleas within and for the County aforesaid in obedience to the command of the within writ, herewith transmit a full true and complete transcript of the record and proceedings in the within named cause as fully as the same remain in my Office

In Testimony Whereof I hereto set my hand and affix the seal of said Court at Office in the City of St. Louis this 9th day of September AD 1857

C H Hicks. clerk

State of Missouri }
County of St. Louis } ss. Be it remembered that heretofore, to wit; on the 31st day of May A.D. 1856 there was filed in the Office of the Clerk of the St. Louis Court of Common Pleas, within and for the County aforesaid a certain petition which is in the words and figures following to wit;

(1)

Christian Kribben plaintiff }
vs } In the St. Louis Court of Common
Eliza Haycraft defendant } Pleas October Term 1856

Petition.

St. Louis County.

Plaintiff states that defendant by her certain instrument in writing or obligation herewith annexed promised in consideration of the services to be rendered by plaintiff in and about procuring a commutation of the sentence against her said defendant's Sister Sarah, then under sentence to be hung and for the affection and love the said defendant bore to her said Sister, to pay to plaintiff or order on demand the sum of five hundred dollars, as soon as the said sentence for hanging should be commuted by the Governor of the State of Missouri into imprisonment in the Penitentiary or otherwise; the said instrument further provides that unless the sentence should be commuted the said plaintiff should have nothing for his said services,

Plaintiff further states that he did assist and render services under the said obligation of defendant in and about procuring from the Governor of the

(2)

State of Missouri, a commutation of said sentence of hanging passed upon said Sarah Copley of said defendant into imprisonment in the Penitentiary which was granted by the Governor of the State of Missouri! Yet the said defendant although a legal demand has been made of her for the payment of said sum of five hundred dollars in said instrument or obligation expressed has failed and refused, and still fails and refuses to pay the same or any part thereof. Therefore plaintiff prays judgment against defendant for said sum of five hundred dollars with interest

Henry N Hart
for Pltff

State of Missouri }
County of St. Louis } Christian Kribben plaintiff makes oath and says he believes the above petition and the matters as therein stated are true

Chrs. Kribben

Sworn to and subscribed before me this 28th. May 1856

Bertram Kribben
Notary Public

Seal

Thereupon issued the following Summons to wit;

Summons

County of St. Louis }
The State of Missouri,

To the Sheriff of St. Louis County, Greeting;
We command you to summon Eliza Haycraft to appear before the Judge of our Court of Common Pleas on the first day of the next term thereof to be held in the City of St. Louis, within and for the County of St. Louis on the second Monday of October next then and there to answer the complaint

(3)

of Christian Kribben as set forth in the annexed petition; and have you then and there this writ;
Seal Witness Charles W Hicks clerk of our said Court with the seal thereof hereto affixed at office in the City of St. Louis this 31st day of May in the year of our Lord eighteen hundred and fifty five.

C. W. Hicks Clk.

Shff's Return

Thereupon the Sheriff made the following return "Executed this writ in the County of St. Louis the 31st day of May 1855 by delivering a copy of the writ and petition as furnished by the Clerk to Eliza Haycraft

Turner Waddow Sheriff
By Charles Picker Deputy.

And afterwards to wit; on the 13th day of October AD 1855. the following demurrer was filed to wit;

Demurrer

"The defendants demurrers to the petition of the plaintiff on the following grounds to wit;
Because it appears from the petition that the contract upon which plaintiff sues and seeks to recover for services alleged to have been rendered is void and illegal and against public policy

Jno. A. Goodlett
atty for Deft.

And afterwards the following further proceedings were had in said cause to wit;

Tuesday October 28th 1855

Demurrer sustained & Judgt.

"Now at this day come the parties by their respective attorneys, and submit the defendants demurrer to the plaintiff's petition to the Court, and the Court being fully advised in the premises, it is considered by the Court that said demurrer be sustained and that the plaintiff take nothing by his suit in this behalf, and that the defendant go thereof

(4)

without day and recover of the plaintiff her costs and charges herein expended and have execution therefor

State of Missouri }
County of St. Louis } ss I Charles H Hicks clerk of the St. Louis Court of Common Pleas within and for the County aforesaid certify the above and foregoing to be a full true and complete transcript of the record and proceedings in the above entitled cause as fully as the same remain in my Office

In Testimony whereof I hereto set my hand and affix the seal of said Court at Office in the City of St. Louis this 9th day of September AD 1857

C. H. Hicks,
Clk.

Index to Transcript

Petition	Page 1
Summons	" 2
Shff's Return	" 3
Demurrer & Dem. sust. & judg.	" 3.
Certificate	" 4

100 [illegible]

27

March. T. 1858

Christian Kribben P.E.

vs Transcript

Eliza Haycraft D.E.

Error to St. Louis Court of Common Pleas

Filed 16 October 1857

Wm S Glanville Ct.

H. N. Hart

Exd.

$2.00 pc by pltff.

C W Meeks clk

100

Joinder Mt. 58/ a pigt. Oct. 57/ defts brief/ opr. stat/ defts. stat/

Affirmed May 26 1858 — Rec. B. p. 443.

Christian Kribben plaintiff in error } Supreme Court
vs } State of
Eliza Haycraft defendant in error } Missouri

And now comes the said plaintiff in error and says that in the acts opinions decisions and judgments of the St Louis Court of Common Pleas there is manifest error in this that the Court erred in sustaining the demurrer to plaintiffs petition filed by the defendant in the Court below. And therefore prays that the same may be revised, reviewed and reversed by this Honorable Court

H. R. Hart

for plff in error.

Supreme Court
Oct Term 1857.

Christian Kibbew
pltff in error
vs.
Eliza Haycraft
deft in error

Assignment in error

Filed 31 Oct. 1857
Wm S Glanville
Clk.

A. R. Stark
for pltff
in error

Christian Kribben
vs
Eliza Hayscraft

In the St Louis Court
of Common Pleas
St Louis County
State of Missouri

To the above named defendant or John A Goodlet
Esqr her Atty of Record.

Please take notice that I have
sued out of the Supreme Court of the State of Missou
=ri a writ of error in the above entitled cause to
the St Louis Court of Common Pleas

Henry A Hart
Atty for Pltff

State of Missouri
County of St Louis } ss

Hermann A W Meisler being duly sworn upon his oath says that he served the within Notice by delivering to the within named Eliza Naycraft a true and correct copy of the within Notice on the 11th day of September AD 1857.

Sworn to and subscribed before me this 31st day of October AD 1857.

John B Comes
Not Pub.

Hermann A W Meisler

Filed 31 October 1857.
Wm L Glennice, Clk.

Christian Kribben plaintiff
against
Eliza Haycraft defendant

No. 100.
In the Supreme Court
Error to St Louis Court
of Common pleas

The defendant by George Marshall her attorney comes and states that there is no error in the acts opinions decisions and judgements of the St Louis Court of Common pleas in this cause in sustaining the demurrer to plaintiffs petition but that all said acts opinions decisions and judgements of said court were just and right and defendant therefore prays that the same may be affirmed by this Court.

George Marshall
Atty for defendant

No. 100.

In the Supreme Court

March Term. 1858.

Christian Kritten
against
Eliza Haycraft

Joinder in error

Geo: Marshall
p.d.

Filed 15 March 1858
Wm S Glanville
Ck.

Christian Kribben plaintiff in error
against
Eliza Haycraft defendant in Error
In the Supreme Court
Error to Court of Common pleas

The defendant in support of the position of the Court below in holding the contract to procure a commutation of the sentence of her sister to be void illegal & against public policy refers this Court to the following Authorities.

In 7th Watts page 153 Hatzfield vs Gulden it is held that "In general all contracts to change the course of trials, or the effect of trials whether to obtain a liberation of a prisoner by money to the jailor, or to obtain a pardon by the use of money directly or indirectly must be void -

The question is very fully discussed in this case - Also Chittys Criminal Law page 4 Vol 1st Perkins notes 5th American Edition New York 1847 - says "Any contract or security made in consideration of dropping a criminal prosecution, suppressing evidence, soliciting a pardon, or compounding any public offence without leave of court is invalid" and refers to 5 East 298-302. 11 East 46. 16 East 301. 1 Campb 46, 55. 3 T.R 17. 2 Esp Rep 643. 3 Esp Rep 253. 7 T.R 475 See Chittys Contracts (3 Amer Ed) 220. Plumer vs Smith 5 New Hampshire 553 - Bell vs Woods 1 Bay 249 McCocks v Olen 5 Vermount 42 Cameron vs McFarland 2 Car Law Rep. Corley vs Williams 1 Bailey 588 Hinesburg vs Sumner 9 Vermount 23 Dee v Moore 2 South, 470 People v Buckland 13 Wendel 592 Haven v Hobbs 1 Vermont 238 -

Robinson v Crawshaw 2 Stew & Porter 276. Burley v Burley 6 N Hamp 200.
See also Storys Contracts against obligations of Law & public duty Story page 501 to 576 second Boston Edition 1847.
Chitty on Contracts Perkins notes Springfield 1844 page 673 et seq Contracts affecting public justice.

Defendant contends therefore that there is no error in the decision of the St Louis Court of Common pleas.

Geo Marshall
defendants Attorney.

No 100

In the Supreme Court

Christian Knoben pl'ff in Error

vs

Eliza Haycraft deft in Error

Defendant brief

Submitted on brief

Geo Marshall
pa

Filed 10 April 1858
Wm Glavaine
Cl

Codes 3 Col

Christian Kribbea ptff in error } Error to the St Louis
vs } Court of Common Plas
Eliza Haycraft. } In the Supreme Court
Oft in Error March Term 1858

Brief by plantiff in Error.

The only question in this case is whether from the pleadings the court of Common plas ought to have sustained the demurrer in other words was the demurrer well taken to the petition.

Eliza Haycraft had a sister named Sarah - who was indicted, tried and convicted in the St Louis Criminal Court for the crime of murder and under sentence of death. Eliza in consideration of her love and affection for her sister and in consideration of services to be rendered by the plantiff in error (who was & is a lawyer by profession - engaged in the same for a living) entered into a written obligation to the said plantiff engaging his time and services in about procuring from the governor of the State of Missouri a commutation of the said sentence into imprisonment in the penitentiary or otherwise - The plantiff did give his time & legal services under said contract & obligation & the Governor did commute the said sentence of said Sarah from death to penitentiary for life - after all this the said Eliza refused to abide by the said obligation suit was brought upon the said obligation & the defendant demured to the petition - which

demurr the Court sustained -
See Lampleigh vs Braithwait
Hobart's Reports 239.
1 Saunders Reports (1) note 264
I am perfectly satisfied that the rule upon which the Common pleas sustained the demurrer was that this was a contract to solicit a pardon & therefore illegal & void - but I take it otherwise - The trial is hard and a conviction under it - and sentence of death pronounced - a third party steps in & engages the services of a person for the purpose of using all lawful endeavor & the purpose of petitioning the Execution officer for a commutation of the punishment in consideration of which as also the love & affection being sisters she binds herself in a sum certain & asketand to pay - surely this is not within the rule unless the most rigorous & sceptical construction be given to the obligation & the broadest interpretation to the rule laid down - which in a few words are thus: Any contract or security made in consideration of dropping a criminal prosecution, suppressing evidence soliciting a pardon or compounding any public offence without leave of the Court - is invalid -
Upon the petition - I think the Court below clearly erred in sustaining the demurrer -

Henry W Hart
for ptffin error

Christian Kribben

—

Eliza Haycraft

Brief by ptff in error

Filed 12 April 1858
Wm S Glanville
Ch

H L Hart
for ptff in error

Christian Kridden plaintiff in error
against
Eliza Haycraft defendant in error
In the Supreme Court.

Statement of case for defendant.

The plaintiff filed his petition in the St Louis Court of common pleas claiming to recover from defendant five hundred dollars by reason of a contract made between him & defendant by which contract defendant was to pay plaintiff that sum if he would procure or assist in procuring a pardon or commutation of the punishment of her sister under sentence to be hung.

To which petition defendant demurred stating that the contract was void illegal and against public policy which demurrer being sustained final judgment was rendered by said court for defendant and the cause now comes into this court by writ of error sued out by the plaintiff.

Geo Marshall
Attorney for defendant in error.

Christian Kribben
vs
Eliza Hayerapp

Defendants Statement of the case.

Geo Marshall
p.d.

Filed 12 April 1858
Wm S Glanville
Ch.

No 100 Kribben vs Haycraft.

It is a principle of law dictated by the soundest policy that an agreement cannot be enforced by which one person promises to pay another for obtaining or trying to obtain a pardon. Norman vs Cole 3. Espinasse. 253. Hatzfield vs Gulden 7. Watts 152. McGill vs Burnett 7. I. I. March. 640. Wood vs McCann. 6 Dana. 366 — These cases are founded on the ~~[illegible]~~ obvious reason that such contracts are illegal inasmuch as they tend to encourage the use of improper means to accomplish the object. and are in conflict with the intelligent and proper exercise of the pardoning power, But it is insisted that the promise in this case is not to obtain a pardon but a commutation of the punishment and that there is nothing in the contract obnoxious to public policy. The distinction is nominal, for the principle is the same in both cases. and all the considerations that uphold the propriety and wisdom of the rule in one case apply to the other.

The demurrer was properly sustained and the judgment with the concurrence of the other judges will be affirmed

Jno C Richardson

No 100

Kribben

v

Haycraft

Opinion of the Court

affirmed

Filed 26 May 1858
Wm S Glanville
Clk

Rubarth