PELTZ, SAMUEL v LONG, HENRY W. MARCH 1867 COUNTY OF ST. LOUIS 579/3

OLD 660/15

- REVERSED
- INVOLVED
  - CONTRACTS - NOTES - REBEL ENEMY

In Sup Ct Mo
March T. 1867

Saml Peltz Res
v
Henry W Long Appl^t

Appeal from
St Louis Cir, Ct

Opinion of the Court

This was an action commenced in the court below, on a promissory note made in New Orleans, on the 20th of March 1862, by Long to the firm of Austin, Goodwyn & Co, for the sum of $2323,03 and by them assigned to Peltz the respondent, It is admitted that the note was assigned after maturity, and merely for collection, and that Austin Goodwyn & Co, are the real parties in interest, and no question arises in regard to the rights of the indorsee

The defence set up is, that part of the consideration given for the note was confederate money issued by authority of the States lately in rebellion, and that the

balance was for articles purchased by Long of Austin Goodwyn & Co at a price about three times their value in legal currency, and which were to be paid for in confederate scrip; and also, that the members composing the firm of Austin Goodwyn & Co, were rebels engaged in armed resistance to the lawful authority of the government. Upon a trial before the court without a jury, judgment was rendered for the respondent.

The evidence abundantly proves that Goodwyn was an officer in the rebel service, that he left the camp and went to New Orleans, to make a settlement with Long before the United States forces took possession of that city, and that the note given was the result of the settlement. That he gave to Long five or six hundred dollars in confederate money, which was included in the note, and that the remainder was for articles sold at confederate prices,

and for which confederate money was to be received in payment; That all contracts which are immoral in their nature — or contrary to public policy — or contravene any established interest of society are void and incapable of enforcement must be considered as settled propositions of law. It is not necessary that the contract should be expressly illegal; but whenever it is opposed to public policy, or founded on an immoral consideration, no action can spring out of it — the maxim being ex turpi causa non oritur actio. In such cases the law will not intervene in behalf of parties who present themselves in the attitude of wrong doers, it will not listen to their prayers for relief, but will leave them just where their conduct has placed them. Therefore, Lord Mansfield, in Smith vs Bromley (Doug 695) says: "If the act is immoral in itself, or a violation

of the general laws of public policy, then the party paying shall ~~have~~ not have his action (to recover back the money): for where both parties are equally criminal against such general laws, the rule is *potior est conditio defendentis*" Chancellor Kent, in Griswold v Waddington (16 Johns 486), in one of the ablest opinions that ever emanate from his luminous mind, remarks: "The plaintiff must recover upon his own merits, and if he has none, or if he discloses a case founded upon illegal dealing, and founded on an intercourse prohibited by law, he ought not to be heard whatever the demerits of the defendant may be. There is, to my mind, something monstrous in the proposition, that a court of law ought to carry into effect a contract founded upon a breach of law. It is encouraging disobedience, and giving to disloyalty its unhallowed

fruits. There is no such mischie-
-evous doctrine to be deduced
from the books" ~~[illegible]~~ Lord Alv-
-anley, in Monk vs Abel (3 Bos, &
Pull, 35) declares, that "the princip-
-le to be extracted from the cases
on this subject is, that no man
can come into a British court
of justice to seek the assistance
of the law, who founds his
claims upon a contravention
of the British laws" Such con-
-tracts have a tendency to fam-
-iliarize the mind with fraud,
to weaken and destroy the force
of just and lawful restraint,
and induce a defiance of legal
obligations and ought therefore
to be rejected. They are in the
expressive and characteristic
language of Lord Chief Justice
Wilmot, contracts "to do that,
which is injurious to the com-
-munity, and the reason why
the common law says that such
contracts are void, is for the pub-
-lic good. You shall not stipu-
-late for iniquity." Obligations

arising out of contracts made during the time of the rebellion, and where confederate money was agreed to be taken, or constituted the consideration passing between the parties, have been on several occasions the subjects of litigation.

In the case of Schmidt vs Barker (1 La An 261) the plaintiff claimed from the defendant who was a banker in New Orleans, the sum of four hundred dollars, being the balance which he averred was due to him, on moneys deposited by him in defendant's bank, between the 17th day of January and the 1st day of April 1862. The amount was claimed to be due in legal tender notes of the United States, but the defendant set up in his defence a special contract, by which it appeared that the deposits were received in his bank, at the period stated, only on the condition that the amount was to be drawn for in confeder-

rate currency; it appears from the report that the deposits were made by the plaintiff in the same kind of currency. The court held that the transaction was totally illegal and void, that no cause of action could spring out of it, and gave judgment for the defendant.

The case of Laughlin vs Dean [1 Duvall (Ky) 20] was a suit upon a note, the answer alleged and the defence showed, that the consideration for the note was the purchase of Confederate notes, it was decided that the action could not be maintained and that the policy of the State forbade its courts from aiding either of the parties to a contract for the sale or purchase of Confederate notes. In a very recent case in Mississippi, (Avera vs Robertson) Mr Justice Clayton decided that the issuance of treasury notes by the Congress of the Confederate States was done by virtue of the war power in the

constitution, and was the exercise of a belligerent right, that the abolition of the rebel debt by the superior power, the extinction of the government which created it, and the annulment of the laws which gave it vitality, made it impossible to recover on the notes themselves, and that the condemnation adhered to them even in a secondary transaction. Nor is there any force in the suggestion, that although the plaintiffs may be debarred from recovering so much as is shewn to have been paid in confederate notes, yet that only goes partially to the consideration, and that the balance is good and judgment should be rendered for it. This is not the case where the law allows a distinction to be taken, where the consideration is illegal in part, and there are several promises, founded ~~the~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ on partly legal, and partly illegal ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ considerations. ~~[illegible]~~ It is an entire promise and if any part of the consider

ration is illegal, the whole consideration is void; public policy will not permit a party to enforce a promise which he has obtained by an illegal act or an illegal promise, although he may have connected with this act or promise another which is legal. (1 Pars. on Contr. 5th Ed. 457).

In what light can this court, recognizing as it does, in the fullest and broadest extent the Constitution of the United States, and the laws passed by the Federal Congress as supreme and paramount, view the claim of a party when he comes here and asks indemnity for an act which was calculated and intended to dismember and dismember the general government and destroy the national fabric. To say that his acts and contracts were against public policy, is indeed a very ~~[illegible]~~ ~~[illegible]~~ mild characterization. Money was indispen

able—it was the very sinew, necessary to enable the Confederates to carry on their bloody strife, and prosecute their purpose of dissolving the union, and whoever gave credit to their currency must be adjudged to be a particeps criminis. The plaintiffs sold their merchandise for Confederate money, thus giving it credit, countenance and circulation, and in addition one of them at least, was in open, and armed rebellion giving material and physical aid to sustain its character and ultimately, provide for its redemption, as it was made payable after a treaty of separation between the Confederate and United States. Each part of the transaction adheres to the other, and makes the whole entirely void; no relief can be obtained in a court of justice, and the parties must remain where they have placed themselves by their own conduct

With the concurrence of the other judges, the judgment is reversed.

David Hagner.

Saml Peltz
v
Henry H Long.

Opinion of the
Court.
Hagner.

Filed May 6th 1867
O T Fishbeck Clk
per E M Carty Dep

Reversed

1.

State of Missouri }
County of St Louis } ss

Be it Remembered that heretofore to wit: on the Sixth day of January A.D. Eighteen hundred and sixty five there was filed in the Office of the Clerk of the Circuit Court within and for the County aforesaid, a Petition in the words & figures following to wit:

Petition.

Samuel Pelty
vs Plaintiff
Henry W. Long
Defendant

In the St Louis Circuit Court
Feby. T. 1865

Plaintiff states that defendant by his promissory note herewith filed dated New Orleans March 20th 1862 promised to pay Austin Goodwyn & Co or order Two Thousand Three Hundred Twenty Three 03/100 ($2323 03/100) Dollars in Ninety days after date for value received. Plaintiff says that said Austin Goodwyn & Co assigned by endorsement & delivered said note to Plaintiff.

Plaintiff states that the whole of said amount with the interest thereon are still due & unpaid & he asks judgment therefor with costs of this suit.

Saml. L. Boyd
Pltfs Atty

Samuel Pelty Plaintiff makes oath & says the above petition & the matters therein as stated he believes to be true.

Subscribed & sworn to before me
this 6th day of Jany A.D. 1865 } Saml Pelty

Witness my hand & seal of Office

5¢ Rev Stamp

seal

F. A. H. Schneider Clk

A True Copy Test F. A. H. Schneider Clk

Thereupon the following Summons issued to wit:

Summons

The State of Missouri,

To the Sheriff of St Louis County — Greeting

We command you to summon Henry N. Long to appear before the Judge of our Circuit Court, 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 first Monday of February next, then and there to answer the Complaint of Samuel Pelty as set forth in the annexed petition: and have you then and there this writ;

Witness F. A. H. Schneider Clerk of our said Court, with the seal thereof hereto affixed, at office, in the City of Saint Louis, this 6 day of Jany in the year of our Lord, eighteen hundred and sixty five.

F. A. H. Schneider Clerk

seal

50¢ Rev St

Upon the back of said Summons is endorsed the following return of the Sheriff to wit:

Shff's Ret.

The within named Henry N. Long

3 not found in my County Feb 6th 1865
John C. Vogel Shff
50¢ By J Willem
D

And afterwards to wit: on the 13th day of March 1865 an Alias was issued in the words & figures following to wit:

Alias Summons

The State of Missouri
To the Sheriff of St Louis County - Greeting

We again command you to Summon Henry N. Long to appear before the Judge of our Circuit Court 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 Last Monday of September next, then and there to answer the complaint of Samuel Pelty as set forth in the annexed petition: and have you then and there this writ.

Witness, F. A. H. Schneider, Clerk of our said Court, with the seal thereof hereto affixed at office, in the City of Saint Louis, this 13th day of March in the year of our Lord, eighteen hundred and sixty five.

F. A. H. Schneider Clerk

(seal)

Upon the back of said Alias is endorsed the following return of the Sheriff to wit:

Shff's Return

Executed this writ in the County of St Louis on the 16th day of May 1865. by delivering a

copy of the writ & petition as furnished by the Clerk to Henry W. Long, the defendant.

John C. Vogel Sheriff
By L. S. Wilkins Dep.

Fee $1.50

And afterwards to wit: on the 2nd day of October 1865 the following proceedings were had to wit:

Samuel Peltz
vs
Henry W. Long } Twenty days additional time given defendant to plead herein.

And upon the 21st day of October 1865 the following proceedings were had to wit:

Samuel Peltz
vs
Henry W. Long } On motion one week's additional time after the twenty second given defendant to answer.

And afterwards to wit: on the 28th day of October 1865 an answer was filed in the words & figures following to wit:

Answer. Samuel Peltz Plff
against
Henry W. Long Deft } Cir. Court Sept. Term 1865.

Defendant for answer to plff's petition says, that at the time of the making and delivery of said note and of the commencement of this suit the said Austin Goodwyn, was an officer in the service of the so called Confederate States, and was

5. engaged in armed rebellion against the rightfull authority of the United States & within the territory proclaimed to be in rebellion against the United States that nothing was paid or given for said note, except pretended paper money called confederate notes or bonds, which were and still are of no value whatever; that said note was executed and delivered without any consideration for the same.

Defendant further states that he has no knowledge or information, sufficient to form a belief as to whether said note was assigned, & delivered to plaintiff as alledged, but if such assignment was made it was after the maturity of said note, and as defendant believes, to evade the law which prevented said Gordeyn & Co. from suing in the Courts of a loyal State & rendered said note invalid; that the payees of said note were within the territory of a State declared to be in insurrection, to wit the State of Louisiana. Wherefore deft prays judgt &c

Geo. P. Strong
Atty for Deft

Henry W. Long the above named defendant, being duly sworn says he believes the foregoing answer & the matters therein as stated, to be true.

H. W. Long

Subscribed & sworn to before me this 16th day of October 1865. Thomas Prentiss Lt. & Provost Marshal

6. I hereby certify that recourse could not be had to a Civil Magistrate competent to administer Oaths

Thomas Preston
1st Lt 113th U.S.C. Infty
Provost Marshal

John Maguire agent of said defendant being duly sworn says he believes the within answer & the matters therein as stated to be true as set forth by said defendant

Sworn to and Subscribed before me Oct 28th 1865 — John Maguire

F. O. H. Schneider Clk

And upon the 26th day of February, 1866. the following proceedings were had to wit:

Leave given to file Am. Answer

Samuel Peltz
vs
Henry W. Long } On motion leave is given defendant to file an amended answer herein.

And afterwards to wit: on the 27th day of February 1866 an Amended answer was filed in the words & figures following to wit:

Amended Answer

Saml Peltz Pltff
vs
Henry W. Long Deft } In the St Louis Circuit Court February Term A.D. 1866.

Defendant by leave of Court, for his Amended Answer, admits the making and delivery of the note in plaintiffs petition mentioned & the

7. endorsement and delivery thereof to plaintiff. But alleges that said endorsement and delivery were made in 1864 and long after the maturity of said note, and that said plaintiff holds said note merely for collection, & in trust for said Austin Goodwyn & Co, who are still the parties beneficially interested in said note.

And for a further defence, defendant alleges that said note was given in settlement of an account between defendant & said Austin Goodwin & Co, amounting to the sum of twenty three hundred twenty three 00/100 dollars or thereabouts, which accrued in the City of New Orleans, in the State of Louisiana where said Austin Goodwyn & Co & this defendant were in business: that said account was in part for Oyster Cans, purchased of said Austin Goodwyn & Co by defendant, & in part for confederate scrip, or notes passed and used as money, loaned by said Austin Goodwyn & Co to defendant, that in making up the amount of said account, said tin ware, was put in and charged at three times its actual value, with the understanding & agreement that the amount thereof would be received in confederate scrip, or currency used as money, and that when said note was given, & when it became due and payable, said scrip was worthless, that it was issued illegally and in defiance of law, and in aid of a rebellion against the government of the United States—

That at the time said account accrued and when said note was given, the City of New Orleans and the State of Louisiana were held under the power and control of armed insurgents, engaged in rebellion against the lawful authority of the United States, that a large & extensive combination of persons engaged in such rebellion, existed, known as the Confederate States of America; that said States had a large Army, & had levied war against the United States:

Defendant further states that said Austin Goodwyn & Co were aiding and abetting said rebellion, & at the time said account was made, & when said note was given, said Goodwyn was an Officer, in said confederate Army, and was actively engaged in resisting the lawful authority of the United States. That there was no consideration for the greater part amounting to about thru fourths of said note; and that defendant has always been and still is ready to pay the same in confederate scrip, or currency, in the manner understood and agreed upon between defendant & said Austin Goodwyn & Co. when said note was given.

But defendant alleges that by reason of the treason, & disloyalty of said Austin Goodwyn & Co, & particularly of said Goodwyn, said plaintiffs assignors have no right to bring a suit in this Court, & that the assignment

9.

of said note to plaintiff was without consideration and for the purpose of evading the law, & enabling said Austin, Goodbyn & Co to escape the consequences of their treason.

Therefore defendant prays judgment &c

Geo. V. Strong
Atty of Deft

Geo. V. Strong Atty of defendant being duly sworn says he believes, from the testimony already taken in said cause, & from statements of defendant, the foregoing amended answer & the matters therein to be true.

Geo V. Strong.

And afterwards to wit: on the 16th day of March 1866 a Judgment was rendered in the words & figures following to wit:

Judgment

Samuel Pelty
vs
Henry N. Long } Now at this day come the parties by their attorneys and waiving a jury submit this cause to the Court upon the pleadings and proof and the Court after hearing the same, being fully advised in the premises, finds the issues herein joined in favor of the plaintiff and assesses his damages at the sum of two thousand eight hundred and forty three 03/100 Dollars. It is therefore considered by the Court that the plaintiff recover of the defendant the damages aforesaid as

assessed together with his costs herein expended and have execution therefor. Motion for New Trial filed.

And afterwards to wit: on the 19th day of March 1866 the following proceedings were had to wit:

Mo. for New Trial Over'd

Samuel Pelty
vs
Henry W. Long } The Court having heard and fully considered the defendants motion for a new trial herein doth order that said Motion be overruled.

And upon the 24th day of March 1866 the following proceedings were had to wit:

Appeal to General T.

Samuel Pelty
vs
Henry W. Long } On motion of the defendant by his attorney, an appeal is allowed him to the General Term from the judgment herein rendered.

Bill of Exceptions filed by the defendant. Which said Bill of Exception is in the words & figures following to wit:

Pelty
vs
Long } In the Saint Louis Circuit Court February Term 1866.

Bill of Exceptions.

Be it remembered that at the trial of this case the Plaintiff read in evidence the deposition of J. J. B. Fetherston'h which is in the words & figures following to wit:

J. J. Fetherston'h of lawful age, being

.11. sworn and examined on the Part of the plaintiff deposeth and saith.

Deposition of Featherstonh

That he is acquainted with the firm of Austin Goodwyn & Co of this City; that said firm is composed of Austin, Goodwyn and E.B. Hogan that they have been in business in this City for many years, but how many he does not know.

Question by Plffs Attorney? Mr Featherstonh will you state whether you were or not employed by said firm to make out a transcript of the account of W.H. Long from their books.

Ans. That they requested him to make such a transcript, and that Document marked B. is the account, is his handwriting.

Note. G. W. Christy Atty for Deft. objects to the introduction of the document marked B as evidence on the ground that the same is not the best evidence, the original being in existence and further, that Austin, Goodwyn & Co being the real parties in interest cannot make evidence for themselves

Direct examination continued on Part of Plff.s and that said Document marked B herein before referred to, is a true and correct copy from their books.

I am well acquainted with the handwriting of E.B. Hogan a member of said firm of Austin, Goodwyn & Co

The Plaintiffs counsel, here introduces the

The hand-in-bracket not read

checks marked "C. & D" made part hereof, and the counsel for Deft objects to the same for the reasons given above.

Testimony of Witness resumed: said checks were drawn by E. B. Hogan, for said firm and that the same are genuine and I know that to be his signature of said firm name; and in reference to the note marked A now introduced and made part of said witnesses testimony, or referred to therein, he says that he knows that the filling up and indorsement of the name of Austin Goodwyn & Co is in the handwriting of said E. B. Hogan and that said endorsement is the signature of said Hogan as a member of said firm of Austin Goodwyn & Co.

Cross examined by George W. Christy Atty for Defendant

He has no personal knowledge of the Party Plaintiff in this suit, and beyond the information obtained from the Books of Austin Goodwyn & Co in his capacity of Copyist, he has no knowledge of the Defendants business transaction with Austin Goodwyn & Co, and that he has no personal knowledge of the circumstances under which the note marked A was given by the Deft H. W. Long beyond what the Books show. And he further states that he has no personal knowledge of where the members of the firm of Austin Goodwyn & Co were residing

13. in March / 62.

Jas. T. B. Featherston'h

Certificate of Stringer. I, Charles Stringer, a Notary Public in and for the City of New Orleans, Parish of Orleans, and State of Louisiana, aforesaid duly commissioned and qualified, do hereby certify, that Jas T. B. Featherston'h the Deponent in this case, whose place of residence is in this City, State of Louisiana, was by me sworn to testify the whole truth, of his knowledge touching the matter in controversy in the cause aforesaid, and that his deposition was reduced to writing by me and subscribed by him in my presence, on the sixteenth day of January (1866) Eighteen hundred & sixty six, between the hours of 8 o'clock in the forenoon and 0 oclock in the afternoon, at the Store of Messrs Austin Goodwyn & Co, Number One Front Levee in the City of New Orleans and State of ~~New Orleans~~ Louisiana.

In testimony of all of which I hereunto sign my name and affix my official seal at New Orleans, Lou. on this Sixteenth day of Jany 1866.

Chas Stringer
Not Publ.

Seal & 5 ct Rev Stamp

Fees $10.00 pd by Aff

United States of America (Copy of Seal)
State of Louisiana

These are to certify, that Charles Stringer whose name is subscribed to the instrument of writing

herein annexed, is and was at the time of signing the same Notary Public in and for the Parish of Orleans in this State, and that his attestation to the same is in due form of law and by the proper officer.

Given under my hand, and the seal of the State of Louisiana, at the City of New Orleans this seventeenth day of January A. D. 1866, and of the Independence of the United States of America the ninetieth.

Seal

5¢ Rev stamp

J. H. Hardy
Secretary of State

Exhibit "A"

Exhibit "A" referred to in said Deposition of J. P. Featherston'h is in the words and figures following to wit:

$2323 03/100 New Orleans Mch 30th 1862

Ninety Days after date I promise to pay to the order of Austin Goodwyn & Co ——
Twenty Three Hundred & Twenty three 03/100 Dollars
at ——
Value received

No Due —— H. St. Long

Endorsed upon the back thereof "Austin Goodwyn & Co"

~~Exhibit "B" referred to in said Deposition of J. P. Featherston'h is in the words and figures following to wit:~~

Exhibit "C"

Exhibit "C" Referred to in said deposition is in the words & figures following to wit:

No 581 New Orleans Oct. 13. 1860

Citizens Bank

Pay to Mr. H. W. Long or order One hundred & twenty Five dollars

$ 125-00 Austin Goodwyn & Co

Upon the back thereof indorsed as follows

H. W. Long Norton & Macaulay

Exhibit "D"

Exhibit "D" referred to in said deposition is in the words & figures following to wit:

No 863 New Orleans March 20 1862

Citizens Bank

Pay to Mr. H. W. Long or order

Five Hundred dollars ——— 100 dollars

$ 500 — Austin Goodwyn & Co

Upon the back indorsed — H. W. Long

So far as it related to the signature of Note and Check and proof of signature of Indorsers.

The defendant read in evidence the deposition of Henry Lohman which is in the words & figures following to wit: Examination in chief

Deposition of Lohman

Henry Lohmann of lawful age being duly sworn and examined on the part of the defendant deposes & says — In March 1862 I resided in New Orleans, had resided there about five years, I was working for Mr Long at that time as a Clerk he carried

17. on an oyster business. I now reside in Helena Arkansas. I knew Austin, Goodwyn & Co dealers in hardware and all kinds of tin ware. I know of some transactions between Defendant and Austin Goodwyn & Co about March 1862 and prior to that time. The firm of Austin Goodwyn & Co were furnishing Mr Long with Oyster cans and had been for some time previous. I know how the account was closed. Mr Long sent me down to see, if Mr Goodwyn was there. Mr G- was not at his store. I found at the Store, that he was in Camp and Mr Long and myself went down to the Camp and met him there. He started up town to his store with us and there a settlement was made and money paid over to Mr Long some five or six hundred dollars, I do not know the exact amount as I paid no particular attention to that. The money that was paid at that time, which I saw was paid in Confederate money there was no other money in circulation at that time. Then the whole account including this Confederate money, was closed up by a note, I do not believe, that I can state the exact amount of that note but I believe it was for twenty two or twenty three hundred dollars, (admitted by counsel to be the note now in suit). The rest of the account for which that note was given was for tin ware, oyster-cans. The firm Goodwyn & Co charged either three and one quarter or three and a half dollars

per dozen. This was the price in confederate money. The year before the same article was worth in good money one dollar & 15 cents and one dollar and a quarter per dozen. I do not know, what this note was to be paid in, but I judge it was to be paid in confederate money. All transactions at that time in New Orleans were based in confederate currency. New Orleans was at that time under confederate government. Goodwyn was under arms in Camp in the Confederate service. He was either Captain or Lieut. I judge he was Captain of a rebel company. He had on a rebel gray uniform. All the soldiers in that Camp were rebel troops, there were no federal troops in New Orleans at that time. At this time the federal Government had forces endeavoring to capture New Orleans. The object of those rebel rebel soldiers was to defend the place against the federal troops and United States authorities.

Cross Examination by Mr Boyd Esq

I am now keeping store for Mr Platter & Co. Mr Long has no interest in that store, does not live there, he lives at Little Rock Arkansas. I came up here on business purchasing goods. Came with several others, Mr Long was not one of the Party, he came up three or four days before I did, I met him on second street yesterday. Mr Long had been trading in New Orleans

89 five or six years before March /62. I know he had been living there a long time. He left there on the 7th or 8th of April of the same year. This was the year the note was given.

This account had been standing about five or six months, it might have been longer. I could not say for certain, whether the account had ever been closed up before. There were some five or six hundred paid Mr Long at that time. I believe it was borrowed by the defendant of Austin, Goodwin & Co, but I do not know that it was, but Mr Long received it. I do not know what Mr Long did with the money. The account was closed, the money paid over on the day the note was given. Mr Goodwyn represented the firm of Austin, Goodwyn & Co. I do not know whether Mr "G" or one of the Clerks drew the note, as I paid no attention to that. I know that it was confederate money, because I saw Mr Goodwyn pay over to Mr Long some five or six hundred dollars in confederate money or notes.

Question: Will you swear positively, that you saw a single dollar of confederate money paid Mr Long, by any member of the firm of Austin Goodwyn & Co at that time? Ans. I did, it was all confederate money and I saw it paid.

That was the only transaction they had at that time, closing the account, paying the money and giving the note.

The bills I judge were five and twenties. I did not

see every one of them. I did not examine this money. I did not see each seperate bill.

Question. You say, that you did not examine this money, did not see each seperate bill, how then can you swear that it was all confederate money?

Ans, Because it was easily distinguished from other money, it was all white paper such as I never saw used for money before, it was almost as white as writing paper. I never saw any such money before or since.

Mr Long made no objections to receiving this paper at the time, that I know of. I do not know whether he paid his debts with the same kind of money. I had been his Clerk for four months or more, but he made all purchases himself and was his own cashier. If he had any confederate money, he would pay that out first, I should have done so. I left New Orleans on the same day Mr Long did. Mr Gordwyn's Regt was called the confederate guard. It was called a State Guard. He was stationed at the Portchartrain Railroad a short distance from town. There was no action between the federal and confederate troops while I was in New Orleans. I could not say how long Mr Gordwyn remained in the service after that. I could not say who was the company of Austin, Gordwyn & Co, all I know was Austin, & Gordwyn. There was no money in circulation at that time except

~~37~~ 21

confederate money); bankers may have had and handled other money, but none of it came into circulation. None of the issues of the bank were in circulation at that time that I saw, but I will not state positively that they were not in circulation, because some men might have handled them and I not see it, I saw nothing but confederate money myself. I handled a couple of hundred dollars a day, sometimes more. Mr Long was doing business there and I would sometimes go collecting on boats or about the house, I may not have handled that much each day.

Reexamination by Defts Counsel, G. P. Strong Esq

If any other currency had been in circulation I would have been apt to see or notice it. I do not know how long the account had been running nor what the monthly bills were. Mr Long had both a wholesale and retail business. I could not say what kind of currency was in common circulation while this bill was running up, as I do know, how long that was. Mr Long generally paid up his bills every month, saw the parties come in and do so generally about this time. I saw a man by the name of Hogan he was about the house of Austin Goodwyn & Co, saw him in at Mr Long's but do not know what he was doing there, as I paid no attention to that, it seems to me as though he had been there about the first of the

month, but this I cannot positively say, as he may have come in in the middle of the month occasionally. Confederate money had been the principal currency from a short time after the confederates had taken possession of New Orleans. The confederates took possession of New Orleans sometime in the summer of 1861, about that time I saw the first troops there. Mr Long and myself went to Memphis, when we left New Orleans in April 1862. Mr Long got sick in Memphis, I went to Fort Pillow, he remained in "M" a long time, till after the City was taken by the United States troops. He then came to St Louis. This was shortly after he got well, that he came to St Louis. Mr Long never was in the confederate service that I know of he always was a Union man, was tried for being a Union man in New Orleans, it was an uncomfortable place for loyal men. I leave tonight or to-morrow morning for Helena, Ark, it is my fixed place of residence.

Henry Lohman

Subscribed and sworn to before me on the sixteenth day of January 1866.

Fred T. Ledergerber
Notary Public St Louis Co. Mo.

Plaintiff admitted that the Note belonged to Austin Goodwyn & Co and was only indorsed to him for collection after maturity. This was all the evidence in the case.

~~24~~ 23

Defendants Instructions

Defendant moved the Court to declare the Law as follows:

If the jury believe from the evidence that this suit is instituted in fact for the benefit of the payee of the note sued on, that said payee has been an enemy of the United States during the rebellion and has resided in up to the time of the institution of this suit continued to reside in the the so called confederate States then the plaintiff cannot recover.

If the jury believe from the evidence that a part of the consideration of the note sued on was paper money issued under or by authority of persons, laws, or corporations, for the purpose of aiding persons in rebellion against the government of the United States in carrying on their treasonable designs then the plaintiff cannot recover.

If the jury believe from the evidence that a part of the consideration of the note sued on was confederate money then the plaintiff cannot recover.

Which the Court refused, to which ruling of the Court the Defendant at the time excepted.

Plaintiff moved the Court to declare the Law as follows:

Plff's Instructions

No. 1 Although it appear that the Plaintiff holds the note in question for collection merely still he is entitled to bring suit upon the same & to recover thereon provided the payees thereof were so entitled.

No 2. Although the Jury believe from the evidence that a portion of the consideration of the note in question was "pretended paper money called Confederate notes or bonds" & that the same were void in law & finally became worthless in fact, still the Plaintiff is entitled to recover if it be believed that the said notes or bonds were actually current at the time Defendant so received them, unless the defendant further show that the identical notes or bonds so received by him proved worthless in his hands or that he was compelled to take them back from those to whom he had paid them.

No 3. The plaintiff is entitled to recover unless the defendant show affirmatively that one or more of the payees of said note did after the 17th day of July 1862 "engage in, aid or abet the rebellion against the Govt of the United States" & did not within sixty days after the proclamation of the President dated 25th July 1862 "cease to aid, countenance & abet such rebellion"; or that one or more of said payees were at the time of the commencement of this suit residents of or within a State declared to be in insurrection & of a portion thereof not excepted by Proclamation of the President.

The Court declared the law as above requested by Plaintiff to which the Defendant at the time excepted. Judgment was rendered for Plaintiff. A motion for New trial with reasons was filed in due time as follows:

25

Motion for New Trial

Samuel Peltz pltff
vs
Henry W. Long Deft

St Louis Circuit Court
No 105 Feby Term 1865

The defendant come in moves the Court to set aside the judgment or grant a New Trial in this case for the following reasons to wit:

1st Because the finding of the Court is against Law & Evidence.

2nd Because the Court refused legal or competent instructions asked for defendant.

3d Because the Court gave illegal instructions in behalf of plaintiff

Geo T. Strong
Atty for Deft

The motion was overruled to which the Defendant at the time excepted and prays the Court to sign seal and deliver this Bill of Exceptions which is accordingly done.

Sam Reber
Judge &c

Proceedings at Gen'l T.

And afterwards to wit: on the 31st day of March A.D. 1866 at the General Term of said Court the following further proceedings were had to wit:

Samuel Peltz
vs
Henry W. Long

It is ordered by the Court that the appeal herein be continued until the next Term of this Court.

~~42~~
26

And afterwards to wit: on the 30th day of May 1866 the following proceedings were had to wit:

Samuel Peltz
vs
Henry W. Long } Now comes the defendant and files his affidavit for an appeal and on his motion an appeal is allowed him to the Supreme Court from the Judgment rendered herein, he therefore files a bond for appeal which is approved by the Court.

Which said Affidavit for Appeal is in the words & figures following to wit:

Affidavit for Appeal

Samuel Peltz Pff
vs
Henry W. Long, Defr } In the St Louis Circuit Court

George P. Strong the attorney of defendant in the above entitled cause, being duly sworn, states that the appeal prayed for and taken in said cause is not made for vexation or delay, but because affiant believes that the appellant is aggrieved by the Judgment or decision of said Court

Geo. P. Strong.

Sworn to and subscribed before me (May) 30th 1866

Fr. A. H. Schneider Cl

And which said Appeal Bond is in the words & figures following to wit:

Appeal Bond

Know all men by these Presents, that we Henry W. Long as principal, and Charles Northrup & Joseph S. Nanson & Joseph B. Fenby

7/3
27

as sureties are held and firmly bound unto Samuel Pelty in the sum of fifty seven hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our Seals, and dated at St. Louis, this twenty ninth day of May A. D. 1866.

The condition of the above obligation is such, that whereas the said Long has appealed from the judgment rendered against him and in favor of said Pelty in the St Louis Circuit Court, for the sum of twenty eight & forty three dollars and three cents, together with costs.

Now, if the said Appellant will prosecute his appeal, with due diligence, to a decision in the Supreme Court, and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St Louis Circuit Court to give; and, if the judgment or any part thereof be affirmed, will comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against him by the Supreme Court, then this Obligation shall be void, otherwise it shall remain in full force and effect.

Henry W. Long (seal)
by Charles Northrup Atty in fact (seal)
Charles Northrup (seal)
S. S. Manson (seal)
Jos. B. Fenby (seal)

Approved May 30th 1866
F. A. H. Schmidt
CX

Bill of Exceptions

Upon the 24th day of (May) 1866, a Bill of Exceptions was filed in the words & figures following to wit:

Samuel Peltz Peff } In the St. Louis Circuit Court, In General Term.
vs
Henry St. Long Defr } April Term A.D. 1866.

Be it remembered that when this cause, was called for hearing upon appeal from the judgment of said Court, in Special Term, the appellant read the evidence introduced upon the trial at Special Term, as embodied in the Bill of exceptions heretofore filed in said cause,

(See Bill of Exceptions Page 10.)

And said cause having been regularly continued, to this twenty eighth day of April, & the Court being now sufficiently advised, doth order and adjudge that the judgment heretofore rendered at Special Term in said cause, be and the same is hereby affirmed, which judgment affirming said judgment at Special Term, is in the words & figures following to wit:

Affirmance of Judgment

Samuel Peltz }
vs
Henry St. Long } Now come the parties by their respective attorneys and the Court being sufficiently and advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the Circuit Court of St. Louis County at Special Term, be in all things affirmed, and stand in full force and effect, and that the defendant pay the

~~46~~
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costs of this proceeding and that execution issue therefor.

To which decision of the Court affirming said judgment the defendant did then and there except & asks that this his bill of exceptions may be signed, which is done.

C. B. Lord
Presiding Judge

State of Missouri }
County of St Louis } ss

I, A. J. C. Schneider Clerk of the St Louis Circuit Court within and for the County aforesaid certify that the above and foregoing is a full, true and complete Transcript of the records and proceedings in the above entitled cause as fully as the same remain on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Office this 27 day of July A.D. Eighteen hundred and sixty six.

J. A. J. Schneider Clk

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March Term 1867

Samuel Peltz appellee

vs | Transcript

Henry St. Long appellant

Boyd Pltff Atty

Geo. P. Strong defr

Filed Sept 24th 1866
C. F. Tilleback
Clk

$18.00 Peter Strong
$ ~~27.00~~ Paid by appellee

Assignment of Errors filed
1867 April 22 Orge Sub. Stat. Quiet 7 G. 4 Tuesday Res filed
" 21 Aug 6 Reversed

Saml Peltz appellee
201. vs
Long appt

IN SUPREME COURT,
Oct. TERM, 1866

AND now comes the said appellant and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said appellant assigns the following, to-wit:

1. That said Court admitted improper and illegal testimony offered by appellee
2. That said Court rejected proper and legal testimony offered by appellant
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by appellant
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the plaintiff, appl.e when it should have been rendered for the deft. appellant

That said Court overruled the motion for a new trial, made by appellant

Geo. P. Strong
Atty of appt

And now come the said appellee and, for joinder in error, says that there is no error in the record and proceedings of said Court below in said cause as assigned by said appellants

Saml. S. Boyd
Atty for appellee

201

Sup. Court
Oct. T. 1866

Saml Peltz
vs
Henry W. Long appt.

Assignment of Errors

Filed Oct. 16, 1866
O. T. Fitzhugh
Clk

Geo. P. Strong
Atty of Appt

Samuel Peltz.
Respdt.
v.
Henry W. Long.
Applt.

In the Supreme Court
State of Mo.
Appeal from the
St Louis Circuit Court.

Statement

At the Feby. Term 1865 of the St Louis Circuit Court the Respondent instituted suit in the usual form against the Appellant upon a promissory note of the tenor following, viz:

$2323.07/100. New Orleans March 20 1862

Ninety days after date I promise to pay to the order of Austin, Goodwyn & Co. Twenty Three Hundred & Twenty Three 07/100 Dollars at - - - -
Value Received
to-date. (Signed) H. W. Long
(Endorsed)
Austin, Goodwyn & Co.

The Appellant filed an answer: Admitting the making & delivery of the note in suit: Denying there was any consideration for same "except pretended paper money called Confederate notes or bonds which were & are still of no value whatever"; Averring that at date of said note Goodwyn was an officer in rebel service, engaged in armed rebellion

& within a State proclaimed to be in rebellion & that all the payees were residents in such a State save the State of Louisiana. This was verified by Appellants own affidavit. At the February Term 1866 an amended answer was filed admitting in addition that the Respondents was the holder of the note for collection; averring it was given in settlement of an account between Long & Austin, Goodwyn & Co accruing while both were in business in New Orleans: That said account was "in part for oyster cans purchased of Austin, Goodwyn & Co by Defendant & in part for Confederate scrip or notes passed & used as money loaned by Austin, Goodwyn & Co to Defendant"; that "said tin ware was charged at three times its actual value with the understanding & agreement that the amount thereof would be received in Confederate scrip" & that "when said note was given & when it became due & payable said scrip was worthless"; that "it was issued illegally & in defiance of law & in aid of the rebellion". It also contained the allegation in regard to Goodwyn being in armed rebellion &c. & averred that about three fourths of the note was without consideration. This answer was verified by the affidavit of George P. Strong the Appellants Attorney.

Upon the trial before the Court a jury being waived, the Respondents offered the note in evidence admitting Austin, Goodwyn & Co were the owners & that he held it for collection. The Appellants then read the deposition of Henry Lohman as follows:

Was working for Long in oyster business at New Orleans in 1862 - Austin, Goodwyn & Co were hardware dealers there & furnished Long with cans &c. Knew how account was closed - Long & I went to camp where Goodwyn was & he came back to store & settlement was & some $500. or $600. in money paid Long - Saw it all paid in Confederate money - No other in circulation at the time - Then the whole account including this Confederate money was closed by the note in suit - Don't know what note was to be paid in. The rest of the account was for his wife. Goodwyn was under arms in Camp - A rebel camp.

Cross Ex

Now live in Helena. Long in Little Rock - Long had been trading in New Orleans five or six years before March 1862. Long left there 8th April 1862 & went to Memphis Account had been standing 5 or 6 months perhaps longer - Don't Know it had ever been closed before - The $500. or $600. was money

borrowed by Levy. The account was closed + money paid over on same day note was given. There was no other transaction. Know it was in Confederate notes. Did not count it, or see each separate bill, or examine the money. Levy made no objection to receiving it. Goodwyn's Regiment was called the Confederate Guard + was stationed on Pontchartrain Railroad short way from town. There was no action between the rebels + Federal forces while I was in New Orleans. Can't say how long Goodwyn remained in service. No money but Confederate money in circulation at that time. Won't say there were no bank issues.

Re. Ex

Can't say what money was in circulation while account was running, not knowing how long it had been unsettled. Levy remained in Memphis till after it was taken by the Federal forces. Know he always was a Union man.

This was all the evidence introduced by the Appellant.

In rebuttal Respondent read portions of the deposition of J. T. Featherstonh as follows:

Firm of Austin, Goodwyn + Co. composed of Austin, Goodwyn + E. B. Hogan

Exhibit "D" is in handwriting of E.B. Hogan & I know the signature to be that of the firm of Austin, Goodwyn & Co

Exhibit "D"

No 883. New Orleans March 20 1862

Citizens Bank Pay to Mr. H. W. Lang or Order Five Hundred Dollars

$500.00 (Signed) Austin, Goodwyn & Co

(Endorsed)

H. W. Lang.

This was all the evidence.

The Court at request of the Respondent gave the following instruction:

No 1 Although it appear that the Plaintiff holds the note in question for collection merely, still he is entitled to bring suit upon the same & to recover thereon provided the payees thereof were so entitled.

No 2. Although the jury believe from the evidence that a portion of the consideration of the note in question was "pretended paper money called Confederate notes or bonds" & that the same were void in law & finally became worthless in fact, still the Plaintiff is entitled to recover if it be believed that the said notes or bonds were actually current at the time Defendant so received them, unless the Defendant further show that

the identical notes or bonds so received by him proved worthless in his hands, or that he was compelled to take them back from those to whom he had paid them.

No. 3. The Plaintiff is entitled to recover unless the Defendants show affirmatively that one or more of the payees of said note did after the 17th day of July 1862 "engage in, aid or abet the rebellion against the Government of the United States" & did not within sixty days after the Proclamation of the President dated 25th July 1862 "cease to aid, countenance & abet such rebellion", or that one or more of said payees was at the time of the commencement of this suit resident of, or within a State declared to be in insurrection & of a portion thereof not excepted by Proclamation of the President.

All the instructions asked by the Appellants being refused the Court gave judgment for Respondents for $2843 07/100. This being affirmed at General Term an appeal was taken to this Court.

Points.

The decision of this case rests upon the propriety of the instructions given for the Respondent. The first instruction is settled by the decision of this Court too well to need any argument. The consideration of the remaining instruction resolves itself into three parts. 1st The power of the parties to contract at all — 2d Their power to make this particular contract + 3d The power to bring suit to enforce the contract, in the Courts of a loyal State.

I Could the payees + Appellants enter into any contract.

I Had they been subjects of a foreign power at war with the U.S. Their right to enter into contracts would be unquestioned. And being citizens of the U.S. residing in a rebel State they have the same power to contract unless there is some express prohibition in the laws of the U.S. The laws passed in regard to commercial intercourse must govern in this case. They only

II prohibit commercial intercourse, meaning thereby to include all contracts, between citizens of ~~the~~ an insurrectionary State + a "Citizen of other States + other parts of the U.S."

Laws U.S. 1861 p. 257 § 5
Proclamation " Appendix V.

II. This does not include intercourse or contracts made, with citizens of same State not within the lines of the U.S.

Laws U.S. 1863 & '64 p. 376 § 4.

**II** Was the contract in question valid?

I It having been shown that the parties could could contract it follows that the same rules of law are applicable to their contract when made as would have been had there been no civil war.

II In determining whether an act is illegal, fraudulent or against public policy & thereby rendering a contract void, Courts can not take into consideration the greater or less injury that may result from such act. If it is illegal, or fraudulent or against public policy it matters not how evil may be the consequences, or how little injury may result, the contract is equally void in either case.

**I**

III This contract was not illegal, fraudulent or against public policy.

1 Wallace. Rep. p. 73.
3 " " " 377
11 Howard " " 520.
17 Wendell " " 170.

11 Wheaton. Rep. p. 272.
1 Watts & Serg. " " 315.
5 Taunton " " 182.
13 Mass. " " 33.

IV. Civil war existed in this country after the 13th July 1861 & the people of the rebel States were all enemies & "owed a qualified allegiance to the State of their domicil & their persons & property are subject to its laws"

2 Blacks Rep. 635.

Consequently if they contract they must do so subject to the laws of their domicil & if Confederate notes are the only money in circulation they must base their contracts on these & pay & receive them in their transactions

V. There was no failure or want of consideration.

37 Missouri Rep. 371.
9 Indiana " 135.
1 Morris " 312.
5 Florida " 150.
1 N. H. " 174.
23 Pick. " 283.
2 Hill " 606.
Smith on Contracts 87
Addison " " 227.
3 Indiana Rep. 39.
8 Yerger " 176

III Could the payees bring suit in a loyal State.

I. They lived in New Orleans which since 1st January 1863 has been exempted from among the insurrectionary districts & its inhabitants. Therefore, saving their liability to be punished for their treason, were on the same footing as any other citizen of the U.S. in respect to their right to a status in Courts of a loyal State.

Laws U.S. 1862 & '63 Appendix iii
" " 1863 & '64 " i

II. Punishment for treason is well defined & prior to 17th July 1862 the guilty party before conviction had all the rights of other citizens & among them the right to a standing in Court. This is evident from the following:

Laws U.S. 1861 & '62 p. 591 § 6.
" " " " Appendix IV.

III The Act of July 17th 1862 has no application here for there is not one little of evidence to prove these payees amenable to its provision. The simple allegation of the facts therein set forth are constituting

a bar will not suffice, there must be positive proof of the facts by the party relying upon them as a bar. Even if it be believed that one or more of the payees was in arms prior to 17 July 1862, no presumption follows that he continued so, but on the contrary every legal presumption is in favor of innocence + that he obeyed the law.

**IV.** There is no evidence that a single dollar in Confederate money was ever paid by these payees to the Appellant. But on the contrary it is most certain that a Check (Exhibit "D") was the only money or representative of money received by Appellants when he gave the note in suit.

No 80

Sup. Crt. State of Mo

Saml Peltz Respdt

v.

Henry W. Long
Appelt

Brief of Respdt

Filed April 22. 1867
O T Fishback clk
per E M Carty Dep

Saml. S. Boyd
Respdt Atty

Saml Peltz Plff. } In the Supreme Court of Missouri.
H. W. Long. Deft. & Appt. } March Term 1867.

Defts Brief.

The Contract which was entered into by deft. with plaintiff, when he gave this promissory note, for tin ware, at its supposed value in Confederate Money, and for a loan of Confederate money, was illegal, & against public policy, inasmuch as it aided in giving value & circulation to these "Confederate notes," which were issued under the Authority of Armed insurgents, and were used to carry on & support a treasonable Conspiracy against the government of the United States.

It was therefore a Contract, void, as being ~~the~~ in Contravention of the established interest of Society, and against public policy.

1 Story on Contracts. §§. 545. 546. 569. 587 112. p. 716.
Con. W. enemy. — {for ill. Bk notes} {either party may take ad. of ill. Con.}
" 608. " 610. " 615. " 624. " 461.

Contracts against public policy.

Tool Co. vs Norris, 2 Wallace, U.S. Sup. Ct. 45.

1 Parsons. on Con. (5th Ed.) p. 456. 7. (Book 1. Ch. 1. S. 12)

Brown vs Tarkington 3 Wall.ce U.S. Sup. Ct. 377.

Brooks vs Martin 2 Wal. 70 p. 79.

Schmidt vs Barker. 17 Lou. Ann. R. 261

Laughlin vs. Dean 1 Duvall. (Ky.) R. 20
Armstrong vs Toler 11 Wheat. 258.

The Authorities thus cited show that any Contract which is based upon acts prejudicial to the public interests in violating sound Morals, or against public policy, cannot be enforced in the Courts of the Country.
Parties to such Contracts will be left, just where the Court finds them.
No contract could be more offensive to public policy, or good morals than one which had its foundation in transactions for the loan & payment of a spurious Currency, issued & sustained by authority of insurgents in armed rebellion against the lawful government of the Country, — issued for the very purpose of sustaining the rebellion.
And also in transactions respecting the purchase of goods, sold at prices which by express or implied contract was ever to be paid in Confederate money. There must have been another violation of public Law, which only

appears incidentally in the case the goods sold were tin ware & the tin must have been imported. So that this rebel officer was not only dealing in Confederate money, but was also directly or indirectly violating the blockade. But this objection is not essential, as the note in suit is unquestionably tainted with a fatal violation of public duty.

Whoever received this Confederate money, had a direct interest in sustaining the rebellion, by the success of which, alone, the money could have any value.

It is a matter of public notoriety, that the rebellion was sustained for years by the issue, & forced circulation of this Confederate money.

It was made a legal tender for debts. Every man who dared refuse it was proscribed & driven from the Country, or subjected to barbarous treatment, while he remained there. And one of this firm whom now asks this Court to enforce this tainted contract, for his benefit, was actively engaged in compelling the circulation of this treasonable

Currency. The note was given while he was actually engaged in resisting the attempt of the Lawful Authorities, to enter the City of New Orleans.

Could there be a Combination of Circumstances, which would more clearly justify a Court in holding a Contract null & void, & turn a plaintiff out of Court, than is found in this Case?

Geo. P. Strong
Atty of Deft. & Appt.

Petty
vs
Long. Appt.

Deft's Brief.

Filed April 22, 1867
O. T. Freelbach Clk
per E. Mitchell Dep.

Geo. P. Strong
Atty of Appt.

Supreme Court
March Term 1867

Petty
vs
Long.

Statement for deft.

This was an action on a promissory note for $2323.03

Amended page 6.

Defts in his answer alleges that at the time of the giving of this note, one of the payees of the note was a rebel in arms against the lawful authority of the United States, & that said note was given in the territory proclaimed to be in rebellion against the authority of the United States, and that a part of the consideration of said note was rebel money, called Confederate Scrip, & the other part was goods charged at about three prices, with the understanding & agreement that it should be paid for in Confederate Scrip.

That the payees were aiding & abetting the rebellion. That the note was assigned to plaintiff, after maturity, without consideration, & merely for collection, for the payees.

Record pp. 6. 7. & 8.

The case was tried by the Court, & judgt

rendered for plaintiffs, for the full amt of the note, & interest.

By the amended answer the making of the note & the endorsement to plaintiff are admitted.

It is afterwards admitted by pltff. that the note is the property of Austin Goodwyn & Co. & that it was indorsed to him for collection merely, after maturity. Rec. p. 22.

The bill of exceptions contains the dep. of Heatherston'h. to prove endorsement, &c. which amended ans. admits. It also speaks of an account which witness copied from the books of Austin, Goodwyn & Co. This acc. was ruled out, & all the testimony of this witness respecting it.

Henry Lohman, testifies that he was a clerk for deft. & lived in N. Orleans, for a few years, as did deft. Both left in April 1862. Shortly before they left, witness was present at a settlement between Long, & Goodwyn, one of the firm of Austin, Goodwyn & Co. They went to the rebel Camp, & found Goodwyn, who was a Capt. or Lieut. in the rebel service in command of troops that were then in Camp, to defend the City against the attack of the Federal forces, which were coming up the river to attack N. Orleans at

that time, Goodwyn left the Camp, & went with deft. & Witness to the Store of A. G. & Co., & there the account was Closed by this note. The account was made up of Oysler Cans & other tin stock, which was charged at about three times the usual prices before Confederate money became the Currency of the State. Cans that were sold at $1.15 & $1.25 in 1861, were charged in that acct at $3.25 or $3.50. It was understood that this was the price in Confederate money.

Rec. p. 17 & 18.

Witness did not know what this note was to be paid in, but thinks it was Confederate money, as all transactions ~~were~~ in N. Orleans at that time were based on Confederate Money.

At the time this note was given, Austin Goodwyn, loaned Mr Long, the deft., $500, or $600, in Confederate money and this was put into the account, & formed part of the Consideration for the this note was given.

Rec. p. 17.

Mr Long had been a Union Man, was tried in N. Orleans for being a Union Man. Shortly after the note was given we went to Memphis, where

The Court refused to give the following Instructions for deft; See Rec. p. 23.

Deft's Instructions refused.

If the jury believe from the evidence that this suit is instituted in fact for the benefit of the payee of the note sued upon. That said payee has been an enemy of the United States during the rebellion and has resided, and up to the time of the institution of this suit, continued to reside in the so called confederate states then the plaintiff cannot recover.

If the jury believe from the evidence that a part of the consideration of the note sued on was paper money issued under, or by authority of persons, laws, or corporations, for the purpose of aiding persons in rebellion against the government of the United States in carrying on their treasonable designs, then the plaintiff cannot recover.

If the jury believe from the evidence that a part of the consideration of the note sued on was confederate money then the plaintiff cannot recover.

Which the Court refused, to which ruling of the Court the plaintiff excepted.

Plaintiff ~~cannot~~ moved the Court to declare the Law as follows:

Plaintiff's Instructions given.

No 1 Although it appear that the plaintiff holds the note in question for collection merely still he is entitled to bring suit upon the same and to recover thereon provided the payees thereof, were so entitled.

No. 2. Although the jury believe from the evidence that a portion of the consideration of the note in question was "pretended paper money called Confederate notes or bonds" and that the same were void in law and finally became worthless in fact still the Plaintiff is entitled to recover if it be believed that the said notes or bonds were actually current at the time defendant so received them unless the defendant further show that the identical notes or bonds so received by him proved worthless in his hands or that he was compelled to take them back from those to whom he had paid them.

No. 3. The plaintiff is entitled to recover unless the defendant show affirmatively that one or more of the payees of said note died after the 17th day of July 1862 "engage in, aid or abet the rebellion against the Govt. of the United States and did not within sixty days of the proclamation of the President dated 25th July 1862 "cease to aid, countenance and abet such rebellion; or that one or more of said payees were at the time of the commencement of this suit residents of or within a State declared to be in insurrection and of a portion thereof not excepted by Proclamation of the President."

Which instructions the Court gave & deft excepted.

A. Motion for a new trial was duly made, & overruled, & exceptions taken.

The case is brot here on appeal.

Geo. P. Strong
Atty of Deft. Appt

Saml Petty
vs
Henry W. Long.

Statement for Deft.

Filed April 22, 1867
O. Fishback clk
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Geo. P. Strong
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