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Liquor Control Laws as Sanctions

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CONTRACTS

LIQUOR CONTROL LAWS AS SANCTIONS

Plaintiff's intestate purchased the securities and capital stock of a brewery corporation. Since the public authorities would not issue a permit to him to manufacture and sell beer, the investment was made in the name of a dummy agent. The agent sold the property to defendant, who, by various means, made the securities worthless. Plaintiff sued for conversion and inducing breach of contract. Held, plaintiff can not recover since the original transaction was destructive of the purpose of the local liquor control statute.¹

Contracts in violation of licensing statutes enacted for the protection of public morals are void.² Goods sold or money lent, in violation of such statute cannot be recovered.³

In the principal case, the license itself was fraudulently obtained. The statute provided penalties for persons making false statements in the applications for licenses but these penalties applied to the procurer of the license and not to plaintiff's intestate.⁴ However, courts generally treat such a transaction as illegal even though a statute only inflicts a penalty on the offender. This is because a penalty implies a prohibition although there are no prohibitory words in the statute.⁵

Furthermore, the statute in the principal case expressly declares that the various provisions were enacted for the protection, health, welfare and safety of the people of the state.⁶ Thus, in the light of

¹ *Flegenheimer v. Brogan*, 30 N. E. (2d) 591 (N. Y. 1940) The plaintiff's intestate was better known as the notorious Dutch Schultz.

² *Loranger v. Jardine*, 56 Mich. 518, 23 N. W. 203 (1885); *Lewis v. Welch*, 14 N. H. 294 (1843), *Handler v. Peter Doelger Brewing Corp.*, 173 Misc. 173, 17 N. Y. S. (2d) 275 (Sup. Ct. 1940); *Griffith v. Wells*, 3 Denio 226 (N. Y. 1846).

³ *Goldring v. Johnson*, 65 Fla. 381, 62 So. 212 (1913); *Koppitz-Melchers Brewing Co. v. Behm*, 130 Mich. 649, 90 N. W. 676 (1902); *Romano v. Bono*, 168 Misc. 897, 6 N. Y. S. (2d) 204 (Sup. Ct. 1938).

⁴ NEW YORK ALCOHOLIC BEVERAGE CONTROL LAW, L. 1934, c. 478, § 130, "Any person who shall make any false statement in the application for a license or a permit shall be guilty of a misdemeanor." Section 110, "The name and residence of each person interested, or to become interested in the business covered by the license for which the application is made, together with the nature of such interests, and if such applicant be a corporation, the names of its directors or other governing body, the names of its officers and stockholders if it be a stock corporation, and the state under the laws of which it is organized."

⁵ *Handler v. Peter Doelger Brewing Corp.*, 173 Misc. 173, 17 N. Y. S. (2d) 275 (Sup. Ct. 1940); *Sturms v. Truby*, 245 App. Div. 357, 282 N. Y. S. 433 (4th Dep't 1935); *Griffith v. Wells*, 3 Denio 226 (N. Y. 1846)

⁶ NEW YORK ALCOHOLIC BEVERAGE CONTROL LAW, L. 1934, c. 478, § 2, "It is the purpose of this chapter to carry out that policy in the public interest. The restrictions, regulations and provisions contained in this chapter are enacted by the legislature for the protection, health, welfare and safety of the people of the state." This section has been interpreted to give the state strict control

the purpose for which the statute was enacted, it seems that the legislative intent was clearly to prohibit this type of transaction.⁷

A dissenting opinion in the principal case would allow recovery on the grounds that the suit is in tort for conversion and the plaintiff technically could establish his title to the property without the aid of an illegal transaction. In cases where recoveries in conversion were granted, titles were proved through a conditional sale agreement,⁸ an implied bailment,⁹ or in replevin where a subsequent wrongful taking was independent of an illegal transaction.¹⁰ Recovery is generally denied where the plaintiff must claim title through a bailment for an illegal purpose¹¹ or a contract of sale declared void by express statute.¹²

In the principal case the money was invested for the purpose of fraudulently obtaining a license to manufacture beer which is analogous to bailment for an illegal purpose. Furthermore title can be claimed only through the dummy agent in whose name the securities are registered. Thus, plaintiff can prove only beneficial title and even that must be proved through the illegal transaction.

As courts will not aid immoral or illegal acts,¹³ courts have enforced or refused to enforce contracts in particular cases by employing subtle distinctions as to whether illegality was collateral,¹⁴ or remote, or whether a new consideration had arisen.¹⁵ Since legislative policy expressed in statutes should determine decisions in contract law,¹⁶ the majority correctly gave weight to the statute in the principal case, notwithstanding the fact that the suit was in conversion.

A.M.H.

CORPORATIONS

ULTRA VIRES ACTS IN INDIANA

The Indiana General Corporation Act provides: "Each corporation shall have the *capacity* possessed by natural persons, but shall have *authority* to perform only such acts as are necessary, convenient

of the sale and manufacture of alcoholic beverages. *Handler v. Peter Doelger Brewing Corp.*, 173 Misc. 173, 17 N. Y. S. (2d) 275 (Sup. Ct. 1940).

⁷ *Romano v. Bono*, 6 N. Y. S. (2d) 204 (1938); RESTATEMENT, CONTRACTS (1932) § 580.

⁸ *Pelosi v. Bugbee*, 271 Mass. 579, 105 N. E. 222 (1914).

⁹ *Matsa v. Katsoulas*, 192 Wis. 212, 212 N. W. 261 (1927).

¹⁰ *Martin v. Hodge*, 47 Ark. 378, 1 S. W. 694 (1886).

¹¹ *Duffy v. Gorman*, 64 Mass. 45, (1852); *Funk v. Gallivan*, 49 Conn. 124, (1881); *cf. Dwight v. Brewster*, 18 Mass. 50 (1822).

¹² *Myers v. Meinrath*, 101 Mass. 366 (1869); *Parker v. Latner*, 60 Me. 528 (1872); *Woodman v. Hubbard*, 25 N. H. 67 (1852); *cf. Stewart v. Davis*, 31 Ark. 518 (1876); *Hall v. Corcoran*, 107 Mass. 251 (1871).

¹³ *Holman v. Johnson*, 98 Eng. Rep. 1120 (K. B. 1775).

¹⁴ *Rosasco Creameries v. Cohen*, 276 N. Y. 234, 11 N. E. (2d) 908 (1937).

¹⁵ *Armstrong v. Toler*, 11 Wheat. 258 (U. S. 1826).

¹⁶ *Gellhorn, Contracts and Public Policy* (1935) 35 Col. L. Rev. 679.