

13981

No. _____

Supreme Court of Illinois

Barber

vs.

Wolf

State of Illinois
Supreme Court } June Term
Southern Circuit Division } as 1871.

Henry Baehr, app^t
et al. }
vs. } Appeal from
Christian Wolf } St. Clair.

Argument for Appellant

Referring to our brief filed at the first hearing of this case at the June Term as 1870 as to all the points discussed at that time, we propose in this argument to limit ourselves to the consideration of the question whether the ^{alleged} "Contract", upon which appellee seeks to recover, was valid, or whether it was void as being against public policy.

It is true that appellant has not in the first instance insisted ~~that~~ upon the point, but has steadily contended that the equities were so strongly in his favor that his success was assured without the assistance of the rule of law which prohibits courts from enforcing

contracts which tend to impede the administration of justice, or are in their nature immoral. Since, however, the Court has indicated its pleasure to hear counsel on this point, and as its discussion and consideration may facilitate the labor of deciding on the equities, we will briefly give our views on the question, still insisting most respectfully that appellant is entitled to a decree in his favor on the evidence and arguments heretofore submitted.

1 Agreements or contracts in contravention of public policy are void, and the Court will not enforce them when executory, nor relieve a party from loss by having performed it in part.
Chitty on Con. 575.

Richardson v. Mellish 2 Bing. 242

Roche vs O'Brien, Ball & B 338

Wilson v. Spencer, Randolph 76

2 Any contract which can impede or prevent the due course of public justice, is void.
Chitty on Con. 581 and authorities there cited.

3.

If any part of an entire consideration is illegal, as against public policy or morals, the whole is void.
Kahn vs. Humberts 9 Ind. 490

Sumont vs. Sufore 27 " 262

Craig vs. State of Missouri 4 Peters 410

Barthe " Nutt, adm. 4 Peters 184

Pratt vs. Oliver 1 McLean 300

Foote vs. Emerson 10 Verm. 344

Woodruff vs. Hinman 11 " 592

Pratt vs. Adams 7 Paige 616

Lanham vs. Patterson - Ch. L. N. Vol. III No. 31

authorities might be multiplied on this point, and we apprehend it will not be disputed.

4.

where a debtor makes a voluntary conveyance of property in front of his creditors, or the promise of the fraudulent grantee to recover to the grantor on demand, such promise will not be enforced in equity, because of the moral turpitude of the transaction.

Jackson vs. Marshall, 1 Murph. 323

These four propositions of law we think cannot be controverted. They may logically be considered together, as they all originate from the maxim

of the Civil Law, *ex turpi causa
non oritur actio*.

Assuming, then, that the above
principles of law are recognized by the
Court, we will now attempt to show
that the case at bar is governed by
them.

We claim that the contract between
Wolf and Sachs was in contravention
of public policy and calculated to
impede and prevent the due
administration of public justice,
because it contemplated the flight
of Wolf, and the forfeiture of the
bond.

If it is the policy of the law that
offenders against the law should be
punished, ~~and~~ any contract which
has for its object or partial object
the flight of our accused of crime
& indicted by a grand jury, so as to
be beyond the reach of the officers
of the law when he should be
tried, clearly contravenes this policy
& is void.

In the first place Wolf cannot now
be heard to say that he did not
intend to flee the country, for, as he

did in fact escape the trial by long continued absence, ~~and~~ the intention will be presumed, for in law it is always presumed that ~~and~~ that which is done, was intended to be done. He thus stands self-convicted.

We refer to the record to show more clearly his intention, as follows: Baehr says in his answer: Abs. P. 2 Rec. P. 20 "Wolf had made up his mind to flee the country." Further Abs. P. 2 Rec. P. 21: "I was to go security for \$900 - to be forfeited by Wolf running away."

Testimony of Wolf's employment. Abs. P. 2 Rec. P. 30. "They (Baehr wife) told me to sign my land over to them until the trial was over And after the trial of Fritz, they would return the land to me. I took their advice and went away." on the same page above, he says: "They told me I would be put into jail again and the bail would be so high they could not give it." Abs. P. 4 Rec. P. 36 - I left because Baehr told me I would be put in jail.

I. had Counsel employed,"
From these extracts it will be seen
that Wolf openly avows the fact
that the escape from incarceration
and trial was one element in the
contract, ^{the} ~~purpose~~ ^{subject}
for which he at least made the
agreement. With the same cunning
shown by him throughout
this cause, under the guidance
of his counsel, he attempts to
palliate his criminality in this
transaction and ~~attempts~~ to shift
the responsibility upon Baehr, by
the repeated [&] statement that Baehr
induced him to do so & so -

This is obviously untrue, as could
be easily demonstrated by a compa-
rison of this testimony and
the relative intelligence displayed
by each. But as it cannot in any
manner affect the decree in this
case, we will merely allude to it.

Testimony of Geo. C. Bismeyer,
Abs. P. 4 Rec. P. 39 & 40 - "Wolf and his
sister Mrs Baehr came to me and
wanted me to write a deed from
Wolf to Baehr. I refused, because it

was not intended to be in good
Faith."

This was immediately before the deed was made by another justice of the peace, perhaps less conscientious, Andrew J. McNeil, another witness for Wolf says, Abs. p. 6 Rec. p. 67. My understanding was that Wolf gave Baehr his bond, to bail him out; it was the general understanding that they (Wolf & those inside with him) would go to the penitentiary; Baehr told me that if Wolf never came back he was to have Wolf's property, but if he came back & he was released from paying the bail bond, Wolf should have the land back."

The result of the trial of those who together with Wolf were charged with the murder of Stulow, shows that it was well for Wolf, as he valued his personal liberty, that he did escape. The testimony of McNeil shows that two of those who stood the trial, Fritz and Jones, went to the penitentiary, and one only escaped - Wolf, and yet counsel for maintain that in this case his innocence is

established, because, forsooth, he
himself swears to it, and because
the prosecuting attorney, almost ten
years after the murder ~~was~~^{had been}
committed, the witnesses scattered
or dead, and no one feeling
sufficient interest to prosecute,
thought it best to collect the bail
and dismiss the proceedings
Wolf. The fact of his flight is
sufficient to overcome any
pretense of his innocence.

How strange it is that only those
who were guilty should stand their
trial, while Wolf, conscious of his
innocence, should run away!

P. M. Nelson, Wolf's strongest witness,
Abs. p. 6 Rec. p. 80 &c, admits that
Wolf gave Baer all his personal
property for Baer to hold until
Pritz trial was over or until Wolf
returned". His ~~absent~~^{absence}

proposed absence was always
spoken of by all the witnesses who
pretend to know any thing
about the contract.

From all this testimony and
the facts and circumstances

surrounding the case, we must
conclude ~~that~~ ~~that~~ ~~of~~ ~~fact~~ ~~that~~
that the contract between these
parties had this one object
especially in view: to enable
Walt to flee from justice, and
he says himself that he did
leave the country before his trial
and only returned when he
could reasonably suppose that
all feeling about the murder of
Hulion, if not all recollection of it,
had died out in the neighborhood.

There being the facts, we
submit that they bring this case
within that ~~class~~ law originating
"ex turpi causa", and the Court
will not relieve complainant,
even were his claim for relief in other
respects founded on equity.

G. D. A. K. K. K.
Counsel for Henry Baer.

Henry Baer
Capt et al
^{vs.}
Christian Wolf.

Appeal from
St. Clair.

Re argument for
affidavit

June Term 1841

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