

risk has determined, is not recoverable. though the underwriter cannot be compelled to pay the loss: *Marine Insee. Act, 1906, sec. 84*; *Vandyok v. Hewett* (1800), 1 East 97; *Allkins v. Jupe* (1877), 46 L.J.C.P. 824, 2 C.P.D. 375; *Harse v. Pearl Life Assee.* (1904), 73 L.J.K.B. 373, [1904] 1 K.B. 558. But if the premium in such case has been paid or secured by a bill only, there is no remedy on the bill, being the security for an illegal debt: *Ex p. Mather* (1797), 3 Ves. 373. So an underwriter having paid the loss under an illegal insurance cannot recover it back; and though he has only paid it to the broker of the insured, who has not paid it over: *Tenant v. Elliott* (1797), 1 B. & P. 3.

Upon the same principle goods or other property delivered under an illegal agreement or for an illegal purpose, may be reclaimed and recovered back so long as the agreement or purpose remains unexecuted. Where goods were delivered under a fictitious sale for the purpose of protecting the possession whilst the owner compounded with his creditors, it was held that he might repudiate the transaction before the composition had been carried out, and recover the goods from the pretended buyer, or from a subvendee to whom they had been delivered with notice of the illegal transaction: *Taylor v. Bowers* (1876), 46 L.J.Q.B. 39, 1 Q.B.D. 291.

But if the contract is executed and a property either general or special has passed thereby, the property must remain; and upon this ground a lien for work done upon a chattel, though under an illegal contract, is valid; *Scarfe v. Morgan* (1838), 7 L.J. Ex. 324, 4 M. & W. 270. Upon the same principle a conveyance of property executed upon trust for the absolute use of a woman, cannot be set aside upon the ground that it was executed in consideration of illicit cohabitation: *Ayerst v. Jenkins* (1873), 40 L.J.C. 690, L.R. 16 Eq. 275. See *Phillpotts v. Phillpotts* (1850), 20 L.J.C.P. 11, 10 C.B. 85.

No claim can be allowed for compensation or contribution between persons engaged in an illegal transaction: *Jessel, M.R., Sykes v. Beadon*, 48 L.J.C. 522, 11 Ch.D. 197. Where two persons had joined in an illegal wager which they won, and one of them advanced to the other his share of the winnings, which the loser failed to pay, it was held that he could not recover back the sum so advanced, because he could not maintain such claim except through the illegal contract: *Simpson v. Bloss* (1816), 7 Taunt. 246; *Leake on Contracts*, 6th ed., 569.

An exception to the rule, that money paid in execution of an illegal contract cannot be recovered back, is made where the party who paid the money acted under undue pressure or influence on the part of the receiver, and therefore was not *in pari delicto* with the latter: *Lowry v. Bourdieu* (1780), 2 Dougl. 468; *Williams v. Bayley* (1866), 35 L.J.C. 717, L.R. 1 H.L. 200; *Jones v. Merionethshire Perm. Bg. Soc.* (1891), 61 L.J.C. 138, (1892), 1 Ch. 173. And this rule has been applied to money extorted by an abuse of legal proceedings; as where a party paid a sum of money to obtain his release from an arrest under a colourable legal process: *De Cadaval (Duke) v. Collins* (1836), 5 L.J.K.B. 171, 4 A. & E. 858.