

North-West Territories.

NORTHERN ALBERTA JUDICIAL DISTRICT.

SUPREME COURT.

ROULEAU, J.]

McLAUGHLIN v. WIGMORE.

[April 30.]

Illegal contract—Right of action.

Summons to strike out the statement of claim as embarrassing and not showing any reasonable cause of action. It was claimed that the defendants have made a seizure of certain cattle under a chattel mortgage made by the plaintiff and one McArthur, which chattel mortgage was given under the following circumstances: McArthur being committed for trial on a charge of theft before the Supreme Court, applied to the defendants to become his bail, and the said defendants so agreed to the plaintiff, and McArthur would execute the chattel mortgage to indemnify the defendants against their liability on the recognizance. The defendants entered into the recognizance and the plaintiff and McArthur the chattel mortgage.

The plaintiff charged that the said chattel mortgage was given for an unlawful purpose and contrary to public policy, and was therefore absolutely void. The defendants relied on the maxim "In pari delicto melior est conditio possidentis."

ROULEAU, J.: The general rule is that neither of the parties to an illegal contract can invoke the aid of the Court either to enforce the execution of the contract or to recover damages for the breach of it, if executory, or to disturb the condition of affairs when the contract is once executed. This rule is amply enforced in the following cases: *Ex parte Butt*, 4 Ch. Div. 150; *Taylor v. Chester*, 38 L.J. Q.B. 225; *Biggs v. Lawrence*, 1 Rev. Rep. 740; *Thompson v. Thompson*, 6 Rev. Rep. 151; *Edgar v. Carden*, 7 Rev. Rep. 433; *Re Bell*, 14 Rev. Rep. 571; *Simpson v. Bloss*, 17 Rev. Rep. 509; *Roberts v. Roberts*, 20 Rev. Rep. 477; *De Wiltz v. Hendricks*, 27 Rev. Rep. 660, and *Emes v. Barber*, 15 Grant 679. In this case there is no doubt that the contract was illegal because the chattel mortgage was given for an illegal object. It is illegal to become surety in any criminal proceeding in consideration of taking a chattel mortgage or other security, because it takes away from the law and the authority of the law what was intended to be given to it: *Hermann v. Jeuchner*, 54 L.J. Q.B.D. 340. The plaintiff in this case can only support his action by saying: "I can recover, because my cattle and horses are seized under a chattel mortgage which was illegal." This is exactly what the authorities already cited say that a party to an illegal contract cannot do. On the face of the statement of claim the plaintiff bases his action to recover back his horses and cattle on an illegal contract, and therefore his action must be dismissed with costs.

Nolan, for plaintiff.

Muir, Q.C., for defendant.