

the Court refused to aid in enforcing a mechanics' lien for the work done: *Pearce v. Brooks*, L.R. 1 Ex. 213; *Clark v. Hagar*, 22 Can. S.C.R. 570; *Miller v. Moore*, 17 W.L.R. 548 (Alta.).

In *Perkins v. Jones*, 7 Terr. L.R. 103, the plaintiff said to the defendant, referring to a certain named lot: "If you can get me that lot I will build." Accordingly the defendant, a builder by trade, did purchase the lot for the purpose of building a house thereon for the plaintiff; and a few days later the plaintiff entered into a written agreement respecting such lot and house, with the defendant, and paid \$500 cash down. The house was intended for purposes of prostitution, as the defendant knew, and before the defendant had done anything toward building other than "brushing" the lot, the plaintiff gave notice to the defendant that she had decided not to build and demanded an immediate return of the \$500 paid by her: *Held, per curiam*, that there had been part performance of the contract and that subsequently the plaintiff could not recover the money paid by her thereunder. *Quære, per Newlands and Harvey, J.J.*, whether money paid under an immoral contract can be recovered back under any circumstances: *Perkins v. Jones* (1905), 7 Terr. L.R. 103.

The effect of illegality in the matter or purpose of an agreement is to render it wholly void of legal effect; no claim or defence can be maintained, which requires to be supported by allegation or proof of an illegal agreement: *Taylor v. Chester* (1869), 38 L.J.Q.B. 227, L.R. 4 Q.B. 314; *Odessa Tramways Co. v. Mendel* (1878), 47 L.J.C. 505, 8 Ch.D. 235. See *Hyams v. King* (1908), 77 L.J.K.B. 796, [1908] 2 K.B. 696; Leake on Contracts, 6th ed., 564. Either party may repudiate the agreement, with or without alleging a reason, and may afterwards justify on the ground of the illegality: *Cowan v. Milbourn* (1867), 36 L.J. Ex. 124, L.R. 2 Ex. 230.

The objection that a contract is immoral or illegal, as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of contrary to the real justice as between him and the plaintiff. If, from the plaintiff's own stating or otherwise, the cause of action appears to arise *ex turpi causâ*, or the transgression of a positive law, there the Court says he has no right to be assisted: Mansfield, C.J., *Holman v. Johnson*, 1 Cowp. 343.

Illegality which will avoid a contract as against a party will avoid it also as against his representative: *Phillpotts v. Phillpotts* (1850), 20 L.J. C.P. 11, 10 C.B. 85. And the effect of illegality is the same in equity as at law. A contract or instrument which fails in a court of law by reason of its illegality cannot be enforced in equity; although money has been paid and received in respect of that contract. Equitable terms can be imposed on a plaintiff seeking to set aside an illegal contract as the price of the relief he asks; but as to any claims sought to be actively enforced on the footing of an illegal contract, the defence of illegality is as available in a Court of equity as it is in a Court of law: *Thomson v. Thomson* (1802), 7 Ves. 470; *Re Cork and Youghal Railway* (1869), 39 L.J.C.