

The defendants pleaded that an assignment of half-pay was void by Law. That the principal obligation being null its accessory, the security, was also invalid.

For the defence it was contended that from motives of public policy, the full or half-pay of officers of government, in all countries, was not transferable. That the contract having to be performed in England, as well as its being a matter of public law, the transfer was by the law of England, entirely null and prohibited. *Stone vs. Lidderdale*, *Anstruther's Reports*, 2 vol., page 553; *Flarty vs. Olden*, 3 T. R. page 681. That even if regulated by the French law, the rule was the same, *Loyseau des offices*, Liv 4, cap. 8, No. 70; *Papin*, tom. 1, page 648. That being prohibited by law, it was one of those transactions, the nullity of which, not depending on the personal incapacity of the officer to bind himself, but on the subject matter not being alienable it could not, in law, support a guarantee which became void from the mere effect of the nullity of the principal obligation; that the contract being null, the surety was completely deprived of recourse against the principal debtor which he ought to be able to have for his indemnity.

The plaintiff contended that the nullity, if it existed, was one of personal incapacity in Clarke, to make such a transfer, which leaving a natural obligation subsisting, it was susceptible of a guarantee. That, moreover, there were other stipulations in the transfer susceptible of guarantee, the failure of compliance with which, gave the plaintiff a right of action, and finally that Clarke was not an officer of the regular army, but of a militia corps which had been disbanded.

ROLLAND, Chief Justice :—

Half-pay is not assignable because it cannot be seized. The officer has no control over it, but he makes a valid agreement with a party that he will procure that party his