EXCHEQUER

PEARCE v BROOKS (1866) LR 1 Ex 213

April 17 1866

Full text

Editor's comments in red.

FACTS The defendant, a prostitute, was sued by the plaintiffs, coach-builders, for the hire of a brougham. There was no evidence that the plaintiffs looked expressly to the proceeds of the defendant's prostitution for payment; but the jury found that they knew her to be a prostitute, and supplied the brougham with a knowledge that it would be, as in fact it was, used by her as part of her display to attract men.

POLLOCK CB:

... I have always considered it as settled law, that any person who contributes to the performance of an illegal act by supplying a thing with the knowledge that it is going to be used for that purpose, cannot recover the price of the thing so supplied. If, to create that incapacity, it was ever considered necessary that the price should be bargained or expected to be paid out of the fruits of the illegal act (which I do not stop to examine), that proposition... has now ceased to be law.

Nor can any distinction be made between an illegal and an immoral purpose; the rule which is applicable to the matter is, Ex turpi causa non oritur actio, and whether it is an immoral or an illegal purpose in which the plaintiff has participated, it comes equally within the terms of that maxim, and the effect is the same; no cause of action can arise out of either the one or the other...

If, therefore, this article was furnished to the defendant for the purpose of enabling her to make a display favourable to her immoral purposes, the plaintiffs can derive no cause of action from the bargain. I cannot go with Mr Chambers in thinking that everything must be found by a jury in such

a case with that accuracy from which ordinary decency would recoil. For criminal law it is sometimes necessary that details of a revolting character should be found distinctly and minutely, but for civil purposes this is not necessary. If evidence is given which is sufficient to satisfy the jury of the fact of the immoral purpose, and of the plaintiffs' knowledge of it, and that the article was required and furnished to facilitate that object, it is sufficient, although the facts are not expressed with such plainness as would offend the sense of decency. I agree with my Brother Bramwell that the verdict was right, and that the rule must be discharged.

MARTIN B:

I am of the same opinion... The plea states first the fact that the defendant was to the plaintiffs' knowledge a prostitute; second, that the brougham was furnished to enable her to exercise her immoral calling; third, that the plaintiffs expected to be paid out of the earnings of her prostitution. In my opinion the plea is good... [If] there is evidence that the brougham was, to the knowledge of the plaintiffs, hired for the purpose of such display as would assist the defendant in her immoral occupation, the substance of the plea is proved, and the contract was illegal...

PIGOTT B:

I am of the same opinion... If a woman, who is known to be a prostitute, wants an ornamental brougham, there can be very little doubt for what purpose she requires it. Then the principle of law expressed in the maxim which my Lord has cited governs the case...

BRAMWELL B:

I am of the same opinion. There is no doubt that the woman was a prostitute; no doubt to my mind that the plaintiffs knew it; there was cogent evidence of the fact, and the jury have so found. The only fact really in dispute is for what purpose was the brougham hired, and if for an immoral purpose, did the plaintiffs, know it? At the trial I doubted whether there was evidence of this, but, for the reasons already stated, I think the jury were entitled to infer, as they did, that it was hired for the purpose of display, that is, for the purpose of enabling the defendant to

pursue her calling, and that the Plaintiff knew it...

Full text

POLLOCK CB:

We are all of opinion that this rule must be discharged. I do not think it is necessary to enter into the subject at large after what has fallen from the bench in the course of the argument, further than to say, that since the case of Cannan v. Bryce, cited by Lord Abinger in delivering the judgment of this Court in the case of M'Kinnell v. Robinson, and followed by the case in which it was so cited, I have always considered it as settled law, that any person who contributes to the performance of an illegal act by supplying a thing with the knowledge that it is going to be used for that purpose, cannot recover the price of the thing so supplied. If, to create that incapacity, it was ever considered necessary that the price should be bargained or expected to be paid out of the fruits of the illegal act (which I do not stop to examine), that proposition had been overruled by the cases I have referred to, and has now ceased to be law. Nor can any distinction be made between an illegal and an immoral purpose; the rule which is applicable to the matter is, Ex turpi causâ non oritur actio, and whether it is an immoral or an illegal purpose in which the plaintiff has participated, it comes equally within the terms of that maxim, and the effect is the same; no cause of action can arise out of either the one or the other. The rule of law was well settled in Cannan v. Bryce; that was a case which at the time it was decided, I, in common with many other lawyers in Westminster Hall, was at first disposed to regard with surprise. But the learned judge (then Sir Charles Abbott) who decided it, though not distinguished as an advocate, nor at first eminent as a judge, was one than whom few have adorned the bench with clearer views, or more accurate minds, or have produced more beneficial results in the law. The judgment in that case was, I believe, emphatically his judgment; it was assented to by all the members of the Court of King's Bench, and is now the law of the land. If, therefore, this article was furnished to the defendant for the purpose of enabling her to make a display favourable to her immoral purposes, the plaintiffs can derive no cause of action from the bargain. I cannot go with Mr. Chambers in thinking that everything must be found by a jury in such a case with that accuracy from which

ordinary decency would recoil. For criminal law it is sometimes necessary that details of a revolting character should be found distinctly and minutely, but for civil purposes this is not necessary. If evidence is given which is sufficient to satisfy the jury of the fact of the immoral purpose, and of the plaintiffs' knowledge of it, and that the article was required and furnished to facilitate that object, it is sufficient, although the facts are not expressed with such plainness as would offend the sense of decency. I agree with my Brother Bramwell that the verdict was right, and that the rule must be discharged.

MARTIN B:

I am of the same opinion. The real question is, whether sufficient has been found by the jury to make a legal defence to the action under the third plea. The plea states first the fact that the defendant was to the plaintiffs' knowledge a prostitute; second, that the brougham was furnished to enable her to exercise her immoral calling; third, that the plaintiffs expected to be paid out of the earnings of her prostitution. In my opinion the plea is good if the third averment be struck out; and if, therefore, there is evidence that the brougham was, to the knowledge of the plaintiffs, hired for the purpose of such display as would assist the defendant in her immoral occupation, the substance of the plea is proved, and the contract was illegal. When the rule was moved I did not clearly apprehend that the evidence went to that point; had I done so, I should not have concurred in granting it. It is now plain that enough was proved to support the verdict.

As to the case of Cannan v. Bryce, I have a strong impression that it has been questioned to this extent, that if money is lent, the lender merely handing it over into the absolute control of the borrower, although he may have reason to suppose that it will be employed illegally, he will not be disentitled from recovering. But, no doubt, if it were part of the contract that the money should be so applied, the contract would be illegal.

PIGOTT B:

I am of the same opinion. I concurred in granting the rule, not on any doubt as to the law, but because it did not seem clear whether the

evidence would support the material allegations in the plea. Upon this point, I think that the jury were entitled to call in aid their knowledge of the usages of the day to interpret the facts proved before them. If a woman, who is known to be a prostitute, wants an ornamental brougham, there can be very little doubt for what purpose she requires it. Then the principle of law expressed in the maxim which my Lord has cited governs the case. It cannot be necessary that the plaintiffs should look to the proceeds of the immoral act for payment; the law would indeed be blind if it supported a contract where the parties were silent as to the mode of payment, and refused to support a similar contract in the rare case where the parties were imprudent enough to express it. The plaintiffs knew the woman's mode of life, and where the means of payment would come from, and to require the proposed addition to the rule would be to make it futile. As to the expressions of Lord Ellenborough which have been relied on, I think they were only meant to give an illustration of what would be evidence of the plaintiffs' participation in the immoral act, and that we are not overruling anything that he has laid down.

BRAMWELL B:

I am of the same opinion. There is no doubt that the woman was a prostitute; no doubt to my mind that the plaintiffs knew it; there was cogent evidence of the fact, and the jury have so found. The only fact really in dispute is for what purpose was the brougham hired, and if for an immoral purpose, did the plaintiffs know it? At the trial I doubted whether there was evidence of this, but, for the reasons I have already stated, I think the jury were entitled to infer, as they did, that it was hired for the purpose of display, that is, for the purpose of enabling the defendant to pursue her calling, and that the plaintiffs knew it.

That being made out, my difficulty was, whether, though the defendant hired the brougham for that purpose, it could be said that the plaintiffs let it for the same purpose. In one sense, it was not for the same purpose. If a man were to ask for duelling pistols, and to say: 'I think I shall fight a duel to- morrow,' might not the seller answer: 'I do not want to know your purpose; I have nothing to do with it; that is your business: mine is to sell the pistols, and I look only to the profit of trade.' No doubt the act would be immoral, but I have felt a doubt whether it would be illegal; and

I should still feel it, but that the authority of Cannan v. Bryce M'Kinnell v. Robinson concludes the matter. In the latter case the plea does not say that the money was lent on the terms that the borrower should game with it; but only that it was borrowed by the defendant, and lent by the plaintiff 'for the purpose of the defendant's illegally playing and gaming therewith.' The case was argued by Mr. Justice Crompton against the plea, and by Mr. Justice Wightman in support of it; and the considered judgment of the Court was delivered by Lord Abinger, who says (p. 441): 'As the plea states that the money for which the action is brought was lent for the purpose of illegally playing and gaming therewith, at the illegal game of 'Hazard,' this money cannot be recovered back, on the principle, not for the first time laid down, but fully settled in the case of Cannan v. Bryce. This principle is that the repayment of money, lent for the express purpose of accomplishing an illegal object, cannot be enforced.' This Court, then, following Cannan v. Bryce, decided that it need not be part of the bargain that the subject of the contract should be used unlawfully, but that it is enough if it is handed over for the purpose that the borrower shall so apply it. We are, then, concluded by authority on the point; and, as I have no doubt that the finding of the jury was right, the rule must be discharged.

With respect, however, ta the allegation in the plea, which, as I have said, need not be proved, and which I refused to leave to the jury, I desire that it may not be supposed we are overruling anything that Lord Ellenborough has said. It is manifest that he could not have meant to lay down as a rule of law that there would be no illegality in a contract unless payment were to be made out of the proceeds of the illegal act, and that his observation was made with a different view. In the case of the hiring of a cab, which was mentioned in the argument, it would be absurd to suppose that, when both parties were doing the same thing, with the same object and purpose, it would be a lawful act in the one, and unlawful in the other.

POLLOCK CB:

I wish to add that I entirely agree with what has fallen from my Brother Martin, as to the case of Cannan v. Bryce. If a person lends money, but with a doubt in his mind whether it is to be actually applied to an illegal

purpose, it will be a question for the jury whether he meant it to be so applied; but if it were advanced in such a way that it could not possibly be a bribe to an illegal purpose, and afterwards it was turned to that use, neither Cannan v. Bryce, nor any other case, decides that his act would be illegal. The case cited rests on the fact that the money was borrowed with the very object of satisfying an illegal purpose.