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Gaming: Disposition of Money Seized in a Gambling Raid

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as collateral heirs and "descendants of mine," but not to any possible spouse she might acquire during her journey through life; and if all such issue should be extinct at her death, then to the collateral heirs of the testator—or, in other words, his heirs as determined at the death of the survivor of the first takers.¹¹

The only logical explanation of the court's decision springs from the fact that the testator's desires were not carried out. The daughter, Inez, did not die intestate, but devised her whole estate to one Carrie V. Harris, admitted herein as one of the parties defendant; the estate was not to descend within his own family as he had desired, and either the decision of the lower court or this court was necessary to do justice.

In short, arriving at a result before inventing reasons to support it, and ignoring the time honored doctrine that "hard cases do not make good law," here, once again we find a court, this time in Mississippi, straining the ordinarily accepted rules of construction to carry out what they presume to be the testator's primary purpose, and it is submitted, probably doing complete justice.

Michael J. Donnelly.

GAMING: DISPOSITION OF MONEY SEIZED IN A GAMBLING RAID.—Plaintiffs, owners of a gambling establishment, were arrested in a gambling raid. In the course of the raid, the sheriff and his deputies seized from the tables at which plaintiffs were seated certain dice, dominoes, playing cards, lottery tickets and money in the amount of \$6,248.35. Thereafter, plaintiffs were charged with violation of the gaming statutes¹ and upon arraignment, they pleaded guilty to the charges and paid the fines imposed.² The county filed a petition in the superior court praying for an order authorizing destruction of the gambling paraphernalia and forfeiture of the money. Plaintiffs in turn brought suit against the sheriff and the district attorney for the return of the money. The two cases were consolidated and tried on the same evidence. The superior court ordered confiscation of the gambling paraphernalia but with respect to the money, it denied both the county's petition for forfeiture and also plaintiff's prayer for its return.³ The court found that the money was seized from gambling tables where it was "in use in gambling games" in violation of the state gaming laws and that the law will not lend its support to a claim founded on its own violation. The petition by the county was dismissed in accordance with the statutory provisions limiting the scope of forfeitures.⁴ From this judgment, the plaintiffs appealed. The Supreme Court of California affirmed the holding of the lower court.

The holding of the California court results in an unusual legal paradox—that the county could not become the owner of the money through forfeiture and, though the county is now holding the money, the plaintiffs (original owners) cannot recover possession from the county.

However, the California court was confronted with the settled principle of law that a party to an illegal transaction cannot come into a court of law and ask to have his illegal objects carried out; nor can he set up a case in which he must neces-

¹¹Boston Safe Deposit & Trust Co. v. Blanchard, *supra* note 10.

¹Calif. Pen. Code, § 330.

²Calif. Pen. Code, § 330 (a fine not less than \$100 nor more than \$500, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. Plaintiffs here were fined \$250.)

³Lee On v. Long, 37 Cal.2d 499, 234 P.2d 9 (1951).

⁴Calif. Pen. Code, § 325, § 335a, § 2604, *infra* note 14.

sarily disclose an illegal purpose as the groundwork for his claim.⁵ This rule is not limited in California to the parties to the illegal transaction. It is applicable also when an attempt is made to set up a claim against a third party based on a violation of the law.⁶

Following this principle, the court reached the conclusion that since the plaintiff's claim was based on an illegal transaction, they could not recover the money seized.

The majority of the courts that have considered this specific problem have held, contra to the instant case, that in the absence of statute providing for its disposition, an operator of seized gambling devices may recover the money found therewith.⁷ In support of this view, it has been said that this money is not a gambling device⁸ or a part thereof⁹ within the purview of the statutes providing for their seizure and destruction, and that the purpose of such statutes is to prevent the use of gambling devices and not to raise revenue.¹⁰

The principle that the law will not assist a party to an unlawful transaction should not bar recovery for the reason that the cause of action does not arise from the gambling transaction.¹¹ However, the California court in the instant case said that the plaintiffs were not able to invoke this rule, taking the view, it seems, that the plaintiff's cause of action could not arise without the pleading of the illegal transaction. The pleading necessary will not be discussed here. It must be recognized, however, that if the pleading of the illegal transaction is not a requirement to the establishment of the plaintiff's cause of action, the holding of the California court will be without effect.¹²

The decision of the case in question results in a practical forfeiture of the money seized. No one can argue nor accept the concept that the money will merely remain in limbo. The money is in the county treasury and no one may recover it. In effect the money has been forfeited to the county.

Statutes regarding forfeiture have traditionally been construed strictly.¹³ The California statutes as to forfeiture admittedly do not cover the money seized in this case.¹⁴ Yet, in the face of these principles plus the strictness in applying provisions

⁵17 C.J.S., Contracts, § 272, p. 656 (the cases seem to support this statement of the law).

⁶Schur v. Johnson, 2 Cal.App.2d 680, 683, 38 P.2d 844 (1934); Asher v. Johnson, 26 Cal. App.2d 403, 413, 79 P.2d 457 (1938), as said in the Asher case: "If the plaintiff cannot open his case without showing that he has broken the law, the court will not assist him, whatever his claim in justice may be upon the defendant." Thus, it seems to create a disability in the plaintiff.

⁷Kearney v. Webb, 278 Ill. 17, 115 N.E. 844 (1917), said it was unnecessary for plaintiffs to plead an illegal contract to recover. Chappel v. Stapleton, 58 Ga.App. 138, 198 S.E. 109, noted in 23 Minn.L.Rev. 976 (1938), slot machines seized with money inside. The money was ordered returned. People v. Mettleman, 155 Misc.Rep. 761, 281 N.Y.Supp. 474 (1935), money seized along with gambling equipment in a safe. Cf. State v. Falgren, 176 Minn. 346, 223 N.W. 455 (1929). Contra: Dorrell v. Clark, 90 Mont. 585, 4 P.2d 712 (1931).

⁸People v. Mettleman, *supra* note 7, Miller v. State, 46 Okla. 674, 676, 149 Pac. 364 (1915).

⁹State v. Falgren, *supra* note 7.

¹⁰State v. Falgren, *supra* note 7.

¹¹Kearney v. Webb, *supra* note 7, to the effect that if plaintiff can make out a prima facie case, then the rule of illegal transaction cannot be invoked by the defendant as a defense. Dorrell v. Clark, *supra* note 7 (dissenting opinion).

¹²The illegal transaction rule being the deciding factor in the case.

¹³Chapman v. Aggeler, 47 Cal.App.2d 848, 119 P.2d 204 (1941); 12 Cal.Jur., § 3, p. 633-34; 23 Am.Jur., § 5, p. 37, such construction seems well settled throughout the United States.

¹⁴Calif. Pen. Code, § 2604, "No conviction of any person for a crime works any forfeiture of any property, except in cases expressly imposed by law." Calif. Pen. Code, § 335a, money found within seized gambling machines. Calif. Pen. Code, § 225, moneys or property to be distributed by lottery.