the effect of a notice indorsed on the issue, but there may be as to one contained in a separate paper. The rule must therefore be absolute, but without costs.

Wordsworth in support of the rule.

Rule absolute.

1929. 1 K.B. 522.

PELLECAT *v.* ANGELL. Exch. of Pleas. 1835.—A foreigner selling and delivering goods abroad to a British subject may recover the price, although he knows, at the time of the sale and delivery, that the buyer intends to smuggle them into this country.

[S. C. 5 Tyr. 945; 1 Gale, 187; 4 L. J. Ex. 326.]

Drawer against acceptor of a bill of exchange for 63l. 4s. made at Paris, dated 5th April, 1830, payable three months after date to the plaintiff or his order. Plea, that before the acceptance of the said bill of exchange, it was, in parts beyond the seas, in France, agreed between the plaintiff and the defendant, then being a subject of our lord the King, as the plaintiff well knew, that the defendant should buy of the plaintiff divers of his goods, and at a small price, being less than the real value of the same, for the purpose of the defendant getting the same, against the laws of this realm, smuggled into this kingdom, and without any of the duty then payable on the importation thereof being paid thereon: and that the plaintiff did, in pursuance of such unlawful contract, in the said parts beyond the seas, sell the said goods to the defendant for the purpose aforesaid, and the defendant, in the said parts beyond the seas, afterwards, and in payment of the said goods, and for no other consideration whatever, accepted the said bill of exchange; and that he never had any other consideration for accepting or paying the same, or any part thereof. Special demurrer, assigning for cause, that the plea did not state or shew that the plaintiff had any participation in the alleged smuggling of the said goods **[312]** into England, and did not state or shew any other matter or thing to invalidate the contract so made between the plaintiff and the defendant. Joinder.

Humfrey, for the plaintiff. This plea is no answer to the action, inasmuch as it does not shew that the plaintiff took any part in the illegal transaction in question; but, at the most, only that he knew of the illegal purpose. That knowledge does not invalidate the contract. *Holman* v. *Johnson* (Cowp. 341) is a direct authority for the plaintiff. It was there held, that an action lay for goods sold abroad, which were prohibited here, if the delivery was complete abroad, though the vendor knew they were to be run into England. *Biggs* v. *Lawrence* (3 T. R. 454), *Hodgson* v. *Temple* (5 Taunt. 181), *Brown* v. *Duncan* (10 B. & C. 93; 5 M. & R. 114), and *Wetherell* v. *Jones* (3 B. & Ad. 221), are additional authorities in favour of the plaintiff. The plaintiff is not a British subject, and owes no allegiance to the revenue laws of this country. [Bolland, B., referred to *Waymell* v. *Reed* (5 T. R. 599).] There the seller took part in the illegal transaction, by packing the goods in prohibited packages.

Mansel, for the defendant. The contract stated in the plea, and admitted by the demurrer, is a contract to sell the goods at less than their real value, for the purpose of promoting the illegal purpose of smuggling them. It was a part of the contract itself, therefore, that they were to be sold for the express purpose of defrauding the revenue laws. Nor does it appear that the contract was complete abroad; no delivery abroad is stated, or averred in reply by the plaintiff. [Lord Abinger, C. B. You do not say the goods were delivered in England—you ought to have made **[313]** out the illegality.] The contract is illegal if the seller is privy to the illegal purpose. *Catlin* v. *Bell* (4 Campb. 183). Where premises are let for an immoral or illegal purpose, whether it is carried into effect or not, that is sufficient to disable the party from recovering for the occupation of them.

LORD ABINGER, C. B. I am of opinion that this plea is bad. It is perfectly clear that where parties enter into a contract to contravene the laws of their own country, such a contract is void: but it is equally clear, from a long series of cases, that the subject of a foreign country is not bound to pay allegiance or respect to the revenue laws of this; except, indeed, that where he comes within the act of breaking them himself, he cannot recover here the fruits of that illegal act. But there is nothing illegal in merely knowing that the goods he sells are to be disposed of in contravention

of the fiscal laws of another country. It would have been most unfortunate if it were so in this country, where, for many years, a most extensive foreign trade was carried on directly in contravention of the fiscal laws of several other states. The distinction is, where he takes an actual part in the illegal adventure, as in packing the goods in prohibited parcels, or otherwise, there he must take the consequences of his own act; but it has never been said that merely selling to a party who means to violate the laws of his own country is a bad contract. If the position were true which is contended for on the part of the defendant, that this appears upon the plea to have been a contract for the express purpose of smuggling the goods, it would follow that it would be a breach of the contract if the goods were not smuggled: but nothing of the kind appears upon the plea; it only states a transaction which occurs about once a week in Paris; the plaintiff sold the goods, the defendant might smuggle them **[314]** if he liked, or he might change his mind the next day: it does not at all import a contract of which the smuggling was an essential part. I think, therefore, the plea is no answer to the action.

BOLLAND, B. I am of the same opinion. The position advanced by Mr. Mansel was taken in *Biggs* v. *Lawrence*, and is fully answered in the judgment of Lord Kenyon and Mr. Justice Lawrence. I think the distinction pointed out by the Lord Chief Baron, between merely knowing of the illegal purpose, and being a party to it by some act, is the true one.

ALDERSON, B. I am of the same opinion. If the plea disclosed circumstances from which it followed that permitting the plaintiff to recover would be permitting him to receive the fruits of an illegal act, the argument for the defendant would be right; but that ground fails, because the mere sale to a party, although he may intend to commit an illegal act, is no breach of the law.

GURNEY, B. concurred.

Judgment for the plaintiff.

MORRIS *v.* SMITH. Exch. of Pleas. 1835.—It is no irregularity to declare before the expiration of eight days after service of the writ of summons, if the defendant has appeared.

[S. C. 5 Tyr. 523; 3 Dowl. P. C. 198; 1 Gale, 187; 4 L. J. Ex. 184.]

Busby shewed cause against a rule for setting aside the declaration for irregularity. The defendant having appeared to the writ of summons on the seventh day after service, the plaintiff, on the evening of the same day, served him with the declaration. The defendant contended that this was irregular, and that the plaintiff was bound to wait until the expiration of the eight days after service **[315]** of the writ, before he took a further step. [Lord Abinger, C. B. Why is the declaration irregular because it is delivered a day or two sooner than was necessary, the party having appeared?] The Court then called on

Miller, in support of the rule. The proceeding by writ of summons being altogether founded on the Uniformity of Process Act, the party is constrained to act precisely according to the provisions of the statute; and by the proper construction of the 11th and 16th sections taken together, the plaintiff cannot declare until the expiration of eight days after service of the writ.

Per Curiam. The only purpose of sect. 11 was to expedite proceedings, by enabling a party to declare at the expiration of eight days in vacation, instead of being thrown over to the next term. The defendant may wait eight days before he appears; but if he chooses to appear sooner, why should not the plaintiff go on? By the general law of the land, a party may declare as soon as the defendant is in Court.

Rule discharged with costs.