an interdict was applied for and refused. Against this recal of the sequestration and refusal of the interdict the Appellant appealed: but as the effect of the above decision was, that he had nothing to do with the estates, these two supplementary or secondary appeals fell to the ground of course.

ENGLAND.

ERROR FROM THE COURT OF KING'S BENCH.

RUBICHON *v.* HUMBLE.

CONTRACT by the owner of a ship, that the vessel shall proceed from the Thames to Martinique, there to take in a full and complete cargo of sugars, rum, AND OTHER WEST INDIA PRODUCE. This contract illegal under the Navigation Act of 12 Car. 2, cap. 18, and 48 Geo. 3, cap. 69, and not helped by the Malta Act, 41st Geo. 3, cap. 103.

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CASE RESPECTING THE COMMERCIAL INTERCOURSE BETWEEN MALTA AND THE BRITISH PLANTATIONS.

Hilary Term, 1811.

THE Defendant in error, Michael Humble, owner of the ship Neptune, brought an action of covenant in the Court of King's Bench, upon a charter party of affreightment, against the Plaintiff in error, Maurice Rubichon, freighter of the vessel.

The ship was hired in November 1809, to proceed from the Thames in ballast, or with a cargo, to Martinique, without waiting for convoy, and there to deliver her cargo, if any, and then to take on board "*a full and complete cargo of sugar, rum, and other West India produce*," and to proceed direct to Malta, without waiting for convoy, and there to deliver the cargo to the agents or assigns of the freighter. *In consideration whereof*, the freighter covenanted to furnish a cargo or cargoes

Terms of the contract.—Ship freighted to proceed to Martinique, and from thence to Malta, with a full and complete cargo of sugar, rum, and other West India produce.

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as above; "and also well and truly to pay or cause "to be paid to the owner or his order, in full for "the hire of the said ship, in the voyage aforesaid, "at and after the rate of forty shillings lawful mo- "ney of Great Britain, per ton, for each and every "ton of the said ship's register tonnage, per calen- "dar month, for every calendar month the said ship "should be kept in the service of the freighter, in "the voyage aforesaid, &c." The declaration stated, that the ship was furnished with every thing needful for such a voyage.

Freighter neglects to furnish cargo at Martinique, and ship proceeds to Malta without.—Action by owner for freight.

The ship proceeded with a cargo to Martinique according to the contract, but the Plaintiff in error neglected to furnish her with a cargo of West India produce; but the declaration stated, that after having remained at Martinique for some time for the cargo, she afterwards sailed to Malta without any cargo, and in every respect completed the voyage according to the engagement of the owner. The freighter having refused to pay, the action was brought to recover the amount of the freight according to the rate above-mentioned for eight months, during which time the vessel had been employed in the voyage. The Plaintiff in error pleaded several dilatory pleas, upon which issue was joined. The issues were tried the sittings after Trinity term, when a verdict was found for the owner (Defendant in error). The Plaintiff in error had, for the purpose of getting the trial postponed, given an undertaking, according to the usual practice, to give judgment as of the preceding Easter term, in case the Defendant in error should recover. In the ensuing Michaelmas term, the Plaintiff in error moved in

arrest of judgment, upon the ground of illegality of the contract; but as he had agreed to give judgment as of a preceding term, the Court thought itself precluded from then entertaining the consideration of the objection; and judgment was given for the Defendant in error—whereupon the Plaintiff in error brought his writ of error.

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Mr. Curwood and *Mr. Richardson* (for the Plaintiff in error.) They had two propositions to maintain: 1st, That this being a contract for freight for carrying on a contraband trade, was therefore illegal. 2d, That being illegal, it could not be enforced, and no damage could be recovered for non-performance.

It being contrary to the navigation laws of the 12 Car. 2, cap. 18, sect. 18, to export sugar and other articles from his Majesty's colonies to any port in Europe, except England, Ireland, Wales, or the town of Berwick upon Tweed, the 48 Geo. 3, cap. 69, was enacted for the purpose of authorizing the exportation of *sugar and coffee* from his Majesty's colonies and plantations to any port direct to Europe, southward of Cape Finisterre, (under certain terms therein mentioned). But by the latter part of the 2d section it is enacted, "That in that case "*no other goods whatever*, except sugar and coffee, "shall be taken on board any such ship or vessel, "unless it be for the necessary use of the said ship "or vessel." And sect. 4, (referring to the second section, which prohibits sugar or coffee from being shipped in any of the colonies or plantations of America, for the purpose of being carried to any port in Europe southward of Cape Finisterre, without

12 Car. 2, sect. 18.—And be it enacted, &c. That from and after the first day of April, &c. no sugars, tobacco, cotton, wool, indigoes, ginger, fustian, or other dying wood, of the growth, production, or manufacture of any English plantations in America, Asia, or Africa, shall be shipped, carried, conveyed, or transported from any of the said English plantations, to any land, island, territory, dominion, port,

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first obtaining a licence,) enacts, "That if there "shall be found any other sugar or coffee, but such "as shall be indorsed on such cocquet or warrant "taken out and delivered as aforesaid, *or any other* "*goods than sugar and coffee* shall be discovered "to have been laden or put on board any ship or "vessel having liberty to trade to parts to the south-"ward of Cape Finisterre by virtue of this act, or "shall be brought to or be shipped on board such "ship or vessel, or shall be put into any hoy, lighter, "boat, or other vessel, in order to be put on board "such ship, before such entry, or taking out such "cocquet or warrant, all such sugar, coffee, and "other goods, shall be forfeited and lost, as also the "hoy, lighter, boat, or other vessel or carriage what-"ever employed in shipping or attempting to ship "any goods other than sugar or coffee, together "with the ship or vessel on which such other goods "shall be laden; and the owner of such sugar or "coffee, or such goods, shall also forfeit double the "value thereof."

or place whatsoever, other than to such other English plantations, as do belong to his Majesty, his heirs, and successors; or to the kingdom of England, or Ireland, or principality of Wales, or town of Berwick-on-Tweed, there to be laid on shore, &c. &c.

The stipulation, therefore, in the above-mentioned charter-party, to take in a complete cargo of sugar, *rum, and other West India produce*, and proceed with the same to Malta, must be deemed illegal and void.

Where part of contract is contrary to Act of Parliament, the whole is void.

The statute is express, that if any other goods than sugar or coffee be shipped, the whole cargo shall be forfeited as well as the ship. In a case of this nature, where any part of a contract is contrary to legislative provision, the whole is void. (See the several cases collected in 1 Saunders' Reports, by Serjeant Williams, '66, note 1.) In *Chater v.*

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Beekett, 7 Term Reports, 204, where a part of a contract would have been valid at common law, but the other part was declared void by the statute against frauds, 29 Car. 2, cap. 3, for not being reduced into writing, the whole contract was held void; so in *Drury v. Defontaine*, 1 Taunton's Reports, 136, Sir James Mansfield said, that if any act is forbidden under a penalty, a contract to do it is now held void. (See also the cases of *Gallini v. Laborie*, 5 Term Reports, 242; *Ribbans v. Cricket*, 1 Bosanquet and Puller's Reports, 264; *Blachford v. Preston*, 8 Term Reports, 89; and *Law v. Hodson*, 11 East's Reports, 300.) It will suffice merely to allude to the principle on which it has so frequently been decided, that no part of a contract militating against the provisions of a statute, can be enforced. It is obvious, that if Courts of Justice were to give effect to such stipulations, they would in effect repeal the statute, since parties, for a larger premium or consideration, would always be found ready to incur the risk of a seizure. It is not, as observed by Lord Mansfield, on the behalf of the individual, but for the sake of the public, that he is allowed to avoid performance of his own contract.

If any thing is forbidden under a penalty, contract to do it is void.

But the stipulation in this particular case, to pay freight, is so entire, that, even supposing it were competent to the Court in point of law to divide the contract, and give the Plaintiff freight for so much of the voyage as was legal, they could not find a principle on which *equitably* to apportion the freight. In the case of illegal voyages, or indeed of any other illegal contract, the party stipulates to give a larger premium or consideration than he

Contract here so entire, that it cannot be divided, though it had been competent to the Court, in point of law, to separate the legal from the illegal part.

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That in cases of illegal contracts, Courts are bound to give that decision which tends to destroy the inducement to enter into such contracts.

otherwise would; consequently it may be inferred, that, on account of the Plaintiff's covenant to receive a cargo of *rum*, the Defendant agreed to pay a larger freight for the entire use of the ship; the Plaintiff cannot therefore be allowed freight, even on the outward voyage, because that would probably be too large a reward merely for the use of the ship during that part of the voyage. The ship was hired for an illegal purpose, and therefore the decision at common law, that a party cannot recover any thing whatever, seems applicable. (See *Girardy v. Richardson*, 1 Espinasse's Cases, *Nisi Prius*, 13.) In whatever shape a question on an illegal contract arises, Courts of Judicature are bound to give that decision which tends to destroy the inducement of parties to enter into such contracts; and the best course must obviously be, in cases of this nature, not to allow the party to recover any remuneration whatever. Even in cases where there is no illegality in the contract, if the party do not perform every thing on his part, there are many cases of conditions precedent, in which, though a partial benefit has been conferred, yet, on account of the non-performance of the whole bargain, no partial remuneration is recoverable. In the present case, the Defendant in error neither did nor could legally perform his entire contract. If, therefore, it can be established, that on the face of his declaration the voyage was in part illegal, it is submitted that a writ of error is sustainable.

It appears on the face of the declaration, that the ship was hired to carry *rum and other West India produce from the isle of Martinique to the island*

of Malta; and as the Court are bound to take notice of the situation of these places, falling within the prohibition in the statute against carrying produce of his Majesty's colonies and plantations in America to a port in Europe southward of Cape Finisterre, the objection is certainly on the record, and may be taken advantage of by writ of error.

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In that case, the averment in the declaration, that the ship was provided with all things needful for such a vessel, and for the said voyage, would not avail; for unless some statute authorised it expressly, even the King's licence could not legalize the violation of the Act of Parliament, (See *Shiffner v. Gordon*, 12 East, 296; and the observations of Sir James Mansfield, in the case of *Toulmin v. Anderson*, 1 Taunton's Reports, 231,) consequently, in point of law the ship could not have been provided with all things needful for the voyage, and the above allegations cannot avail.

King's licence, without authority of statute, cannot legalize the violation of an Act of Parliament.

It was also submitted, that the stipulation to sail without convoy was illegal, and contrary to the statutes 38 Geo. 3, cap. 76, and 43 Geo. 3, cap. 57, and consequently the said charter-party was illegal and void.

It might perhaps be said that both Martinique and Malta were plantations belonging to his Majesty, and might therefore lawfully trade between each other. But the word plantations must be understood of plantations *ejusdem generis* with those previously mentioned, such as arose from colonization, factories, &c., among which Malta could not be included. It also appeared from the whole of the act, that it applied only to plantations in Asia,

Meaning of the word *plantations* in the Navigation Acts.—Malta not properly a plantation.

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15 Car. 2. c. 7, sect. 5, 6. 5. "And in regard his Majesty's plantations beyond the seas are inhabited and peopled by his subjects of this his kingdom of England," &c. &c. 6. "No commodity of the growth, produce, &c &c. of Europe, shall be imported into any land, island, plantation, colony, territory, or place, to his Majesty belonging, in Asia, Africa, or America, (Tangier only excepted,) but what shall be *bona fide* &c. laden and shipped in England, Wales, or town of Berwick-on-Tweed."

Africa, and America; whereas by the act 41 of the King, cap. 103, Malta was declared to be in Europe. If Malta should be held to be in Africa, it was not strictly a plantation; if in Europe, the direct intercourse between it and the plantations was forbidden by the navigation laws; and in all articles except sugar and coffee by 48 of the King, cap. 69. In the act of 15 Car. 2, cap. 7, the distinction between plantations in Asia, Africa, and America, and the dependencies of this country in Europe, might be clearly traced. The 4th section of the act 48 of the King was so strong that it would have rendered this traffic illegal, even if it had not been so before, as it confined the liberty to trade, as there stated, to the articles of sugar and coffee exclusively, and prohibited the trading even in rum, which was not mentioned in the original Navigation Act, not being then manufactured. Yet the present contract was to carry rum *and any West India produce.* It might be said that the act 48 of the King was an enabling statute, and merely legalized that which was not legal before, and took away no benefit; but it did take away some benefit, as it rendered the ship and cargo in some cases liable to confiscation. The regulations of the Malta trade under 41 of the King did not prevent the prohibition extending to it as far as concerned British trade. The proclamations had only rendered it a free port in regard to neutrals. This must have been the extent of the permission to regulate, given to his Majesty by the act 41; otherwise he might have superseded the whole of the navigation laws.

Messrs. Scarlet and *Abbott* (for the Defendant in error.) The engagement was to take "a full "and complete cargo of sugar, rum, *and* other West "India produce." The carriage of *rum* was not illegal, for it was not enumerated among the prohibited articles in the Navigation Act of 12 Car. 2. But they rested upon the words, "and other West "India produce," which word *and* was the foundation of their argument, as enabling them to make the contract illegal if they chose. But if Malta was a plantation belonging to his Majesty, the prohibition in the statute 12 Car. 2, did not extend to it. If there was any ambiguity they had only to look at the object; and what could be the object of excluding any territory belonging to the crown of Great Britain, either in Europe or any where else? But if the trade was prohibited by the navigation laws, these were dispensed with by the Orders in Council under the Malta Act. Rubichon knew of this, and wished to take advantage of it. It would be a harsh construction to say, that these orders only extended a benefit to neutrals, which was denied to the subjects of this country. Then came the act 48 of the King, which was not a restrictive, but a permissive statute; not taking away that which was before permitted, but introducing a new trade.

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Lord Eldon. Was it clear that the trade was lawful before?

Lord Redesdale. The object of the Malta Act was to put it on the footing of Gibraltar.

Object of the Malta Act was to put Malta on the footing of Gibraltar.

Messrs. Scarlet and *Abbot.* If Malta was an English plantation within the meaning of the navi-

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Gibraltar not a plantation.

gation laws, the trade was legal. If not such a plantation, the trade was legalized by the Orders in Council under the Malta Act 41 of the King, and the statutes continuing that act, and the liberty was not taken away by 48 of the King.

Lord Eldon. Had it been decided whether Malta was a plantation?

Mr. Curwood. It had been decided that Gibraltar was not a plantation.

Lord Redesdale. Upon this construction, Dunkirk, Toulon, and Calais, if they had remained in our possession, would have been plantations.

Mr. Curwood read a passage from Mr. Reeves' book, which he did not cite as any authority, but merely in explanation of the meaning generally attached to the word *plantation*. It properly signified a place that had been colonized from the parent country.

July 20, 1813. Judgment.

Lord Eldon (Chancellor) stated the case, and said, that he had looked at this contract with great anxiety, in order if possible to find some ground on which it could be supported; because it appeared to him, that in moral justice the original Plaintiff was entitled to recover. But he regretted to have to say, that, speaking as a lawyer, he was unable to discover how the objection could be got over. In this opinion, his noble and learned friends (*Redesdale* and *Ellenborough*,) concurred with him; and the judgment of the Court below must therefore be reversed.

It was accordingly ordered and adjudged, that

the judgment of the Court of King's Bench be reversed. July 20, 1813.

Agent for Plaintiff in error, FLADGATE.
Agents for Defendant in error, PALMER, TOMLINSON, and THOMSON.

FROM SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

HALL—*Appellant.*
ROSS, Esq. of Rossie—*Respondent.*

June 23, 1813.

CONTRACT.—WHERE DAMAGE IS ADMITTED, COMPENSATION MUST BE GIVEN.

RESPONDENT, having let certain fishing stations to Appellant, erects a dock, by which the fishing is injured. Appellant claims a deduction from the rent, on account of damage, which is refused. Question comes before the Court of Session. Majority of Judges of opinion that some damage had been sustained by Appellant, but Court pronounces against his claim; some of those Judges who admitted that he had suffered damage being against him, on ground that the degree of injury could not be exactly ascertained. This judgment held to be erroneous by the House of Lords, on the principle, that where damage is admitted, some compensation is due; and cause remitted, with instructions to ascertain damage in some way or other.

Lease of Rossie fishings from Respondent to Appellant.

THE Rossie salmon fishings in the river Southesk, near Montrose, were let by the Respondent to the Appellant, Hall, at the yearly rent of 600*l.* upon a lease for 21 years. By the terms of the lease, the fishings were let to Hall, "*as they were lately possessed by John Richardson, Esquire;*" and the tenant was allowed "*to adopt any improvement in the mode of fishing, in any of the bays or islands formed by the sea on the island of Rossie, which*