

Freetown
Sept. 16,
1963

Betts J.

[SUPREME COURT]

LEMUEL E. BECKLEY

Plaintiff

v.

M. EVANS

Defendant

[Mag.Ct. No. 1/63]

Tort—Agreement not to report accident to police—Ex turpi causa oritur non actio—Road Traffic Act (Cap. 132, Laws of Sierra Leone, 1960), s. 47 (1) (d).

On January 27, 1963, plaintiff's car was damaged in an accident which was caused by defendant's negligence. After the accident, plaintiff agreed not to report the accident to the police in consideration for defendant's agreeing to pay for repairing plaintiff's car. This agreement was contrary to section 47 of the Road Traffic Act, which provides:

"(1) If in any case, owing to the presence of a motor vehicle on a road, an accident occurs whereby injury or damage is caused to any person or property . . . the driver of the vehicle shall—
... (d) in every case report the accident to a police station as soon as reasonably practicable and in any case within 48 hours thereof."

When defendant failed to pay for the repairs, plaintiff brought suit against him in a magistrate's court. The magistrate ruled that the action could not be maintained because of the illegality of the agreement, but stated a case for the opinion of the Supreme Court.

Held, that plaintiff's action could not be maintained because of the illegality of the agreement not to report the accident to the police.

Cases referred to: *Taylor v. Crowland Gas and Coke Co.* (1854) 10 Ex. 293; 156 E.R. 455; *Bailey v. Harris* (1849) 12 Q.B. 905; 18 L.J.Q.B. 115; 116 E.R. 1109; *Collins v. Blantern* (1767) 2 Wils. 341, 347; 95 E.R. 847, 850.

Samuel Hudson-Harding for the plaintiff.

Shakib N. K. Basma for the defendant.

BETTS J. This is an appeal by way of case stated by the learned trial magistrate, court No. 2. There are two points submitted for the consideration of the Supreme Court, viz.:

"1. Where parties agree that, in consideration of both refraining from reporting an accident in flagrant breach of the provisions of section 47 of Cap. 132, one party will pay for repairing the other's car, is such an agreement not illegal and void ab initio?

"2. Can the injured party, or party considering himself the injured party, abandon his illegal agreement and propose to sue on his original cause of action?"

It is conceded by counsel for the plaintiff/appellant that point one is illegal and void as it contravenes section 47 (1) (d), which states:

"... the driver of the vehicle shall in every case report the accident to a police station as soon as reasonably practicable and in any case within 48 hours thereof."

To arrive at the true significance of this legislation it is necessary to consider whether it is intended merely to inflict a penalty on the defaulting party for the benefit of the revenue or whether it is for the protection of the public. It has to be admitted that an extremely wide range of damage can arise to the person, property or animal of other users of the road from motor vehicles, and unless these accidents, some of which may be fatal, are brought to the notice of the police, members of the public will be in a position to make use of the normal thoroughfares only at great hazard to themselves and their property. This legislation is obviously for the public good and, therefore, if any contract is entered into for its avoidance, such contract is illegal and void, and no action will be maintainable under it: *Taylor v. Crowland Gas and Coke Co.* (1854) 10 Ex. 293; 156 E.R. 455; *Bailey v. Harris* (1849) 12 Q.B. 905; 116 E.R. 1109.

It was argued for the plaintiff/appellant that the engagement was severable. The first point dealt with a contract and the second point with a tort, and that the doctrine of *ex turpi causa oritur non actio* does not extend to a *tort*. The case of *Collins v. Blantern* (1767) 2 Wils. 341, 347; 95 E.R. 847, 850 did not posit this principle. It considered this doctrine in relation to a contract but did not say it has no application to a *tort*. It may, however, well be that if the transactions are severable the doctrine will not apply. But are they in this case?

The principle underlying this case is that there should be no report to the police on a matter of public policy and thereby to avoid court action being taken—presumably because of the waste of time involved.

Having secured the agreement to rule out court action by the police—which is against public policy—it is difficult to see how the court can support an action which in effect says: “Although I have unlawfully avoided court action by the police I am going to institute an action, for my benefit, with reference to the original accident.”

In such a case I agree with an aspect of the *ratio decidendi* in the case of *Collins v. Blantern*, already referred to, when it is said: “But we are all clearly of opinion that the whole of the transaction is to be considered as one entire agreement.” From this it is also clear that the second point is covered by the maxim *ex turpi causa*. I hold that the trial magistrate was right in his finding. This application is dismissed with costs.

S. C.

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BECKLEY

v.
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