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CONTRACTS - ILLEGALITY - ENFORCEMENT OF CONTRACT DECLARED "INVALID" BY STATUTE

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CONTRACTS — ILLEGALITY — ENFORCEMENT OF CONTRACT DECLARED “INVALID” BY STATUTE — Plaintiff was injured while in the employ of defendant. Thereupon the defendant agreed to give the plaintiff employment for life if he would not prosecute the claim before the State Industrial Commission. After thirteen years plaintiff was summarily discharged. The time having elapsed for filing a claim with the Industrial Commission, he brought

this action for breach of contract. Statutes of Oklahoma provide that no agreement to waive the right to compensation shall be valid and that claims shall not be released.¹ The lower court awarded plaintiff \$3,000 damages. Defendant appealed. *Held*, the rule that invalid contracts will not be enforced does not apply where the statute which makes the contract invalid is for the protection of one of the parties and non-enforcement will defeat the purpose. *Oklahoma Portland Cement Co. v. Pollock*, (Okla. 1937) 73 P. (2d) 427.

It is true that, generally speaking, invalid or illegal contracts cannot be enforced by either party to them,² regardless of whether they have been executed in whole or in part.³ Lord Mansfield points out, however, that such a rule was not promulgated for the benefit of defendants, "but it is founded on general principles of policy."⁴ This being true, it follows that the general rule will have certain exceptions dictated by public policy.⁵ Some courts, exercising their prerogative of statutory interpretation, have enforced contracts made in contravention of a statute on the ground that the legislature did not intend to make them non-enforceable,⁶ yet it is generally held that such contracts are void.⁷ In the name again of legislative intent, contracts entered into by parties not legally doing business in a state are enforced in some jurisdictions.⁸ Perhaps as a result of such reasoning one clear-cut exception to the rule has developed, namely, that if refusal to enforce an illegal contract will harm the person for whose benefit the statute invalidating the contract was passed, then the con-

¹ Okla. Stat. (1931), § 13371: "No agreement by an employee to waive his right to compensation under this act shall be valid"; § 13372: "Claims for compensation or benefits due under this Act shall not be assigned, released or commuted except as provided by this Act."

² 2 CONTRACTS RESTATEMENT, § 598 (1932); 5 WILLISTON, CONTRACTS, rev. ed., § 1630 (1937).

³ *Arkansas State Highway Commr. v. Keaton*, 187 Ark. 306, 59 S. W. (2d) 481 (1933); *Vock v. Vock*, 365 Ill. 432, 6 N. E. (2d) 843 (1937); 3 WILLISTON, CONTRACTS, § 1762 (1931); *Cole v. Manning*, 79 Cal. App. 55, 248 P. 1065 (1926).

⁴ Quoted in *Harris v. Runnels*, 53 U. S. 79 at 85, 13 L. Ed. 901 (1851).

⁵ *Parrot v. Gulick*, 145 Okla. 129, 290 P. 48 (1930); *Vock v. Vock*, 365 Ill. 432, 6 N. E. (2d) 843 (1937); 5 WILLISTON, CONTRACTS, rev. ed. § 1630 (1937); *Murphy v. Paul*, 192 Wis. 93, 212 N. W. 402 (1927); *Forbes v. City of Ashland*, 246 Ky. 669, 55 S. W. (2d) 917 (1932); *Walsche v. Sherlock*, 110 N. J. Eq. 223, 159 A. 661 (1932).

⁶ *Reconstruction Finance Corporation v. Central Republic Trust Co.*, (D. C. Ill. 1936) 17 F. Supp. 263; *Hartford Fire Ins. Co. v. Knight*, 146 Miss. 862, 111 So. 748 (1927); *Harris v. Runnels*, 53 U. S. 79, 13 L. Ed. 901 (1851); *Turney v. J. H. Tillman Co.*, 112 Ore. 122, 228 P. 933 (1924).

⁷ *Citizens Bank & Trust Co. v. Mabry*, 102 Fla. 1084, 136 So. 714 (1931); *Salmon v. D. A. Schulte, Inc.*, 154 Misc. 139, 276 N. Y. S. 535 (1934); *Duck Island Club v. Dredge & Construction Co.*, 330 Ill. 121, 161 N. E. 300 (1928); *Green v. School District*, 356 Ill. 216, 190 N. E. 267 (1934); *Board of Commissioners v. Miller*, 132 Kan. 52, 294 P. 863 (1931); *McManus v. Fulton*, 85 Mont. 170, 278 P. 126 (1929); 2 CONTRACTS RESTATEMENT, § 580 (1932); 3 WILLISTON, CONTRACTS, §§ 1763, 1765, 1766 (1931).

⁸ 39 YALE L. J. 874 (1930); 3 WILLISTON, CONTRACTS, § 1771 (1931).

tract will be enforced.⁹ However, the cases cited to support this exception are not cases where the statute expressly provides that no such agreement shall be valid as does the Oklahoma statute in the principal case.¹⁰ The possibility of construing the statute was thus cut to a minimum in the instant case, but nevertheless the court held that it was not intended to prevent enforcement of this agreement. It is submitted that the Oklahoma court has gone farther than do the courts which say that the statutory "void" means "voidable."¹¹ Moreover, the principal case falls clearly within the reason for the exception to the general rule of non-enforceability. Confusion results from careless statements of the general rule by courts as though it were absolute.¹² An examination of the cases where such a mistake is made, however, will reveal that public policy as exemplified by legislative mandate or public morality is in those cases best served by non-enforcement of the contract. In short, the broad rule stated in them is necessarily limited by the facts of the particular case.

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⁹ 3 WILLISTON, CONTRACTS, § 1770 (1931); 5 WILLISTON, CONTRACTS, rev. ed., § 1632 (1937); 2 CONTRACTS RESTATEMENT, § 601 (1932), states it as follows: "If refusal to enforce or rescind an illegal bargain would produce a harmful effect on parties for whose protection the law making the bargain illegal exists, enforcement or rescission, whichever is appropriate, is allowed." Accord: *Cameron v. International Alliance*, 119 N. J. Eq. 577, 183 A. 157 (1935), writ of certiorari denied 298 U. S. 659, 56 S. Ct. 681 (1935); *O'Conner v. Bankers Trust Co.*, 159 Misc. 920, 289 N. Y. S. 252 (1936); *Monroe v. Smith*, 39 S. D. 518, 165 N. W. 532 (1917); *American Surety Co. v. Haid*, 325 Mo. 949, 30 S. W. (2d) 100 (1930).

¹⁰ See note 1, supra.

¹¹ 5 WILLISTON, CONTRACTS, rev. ed., § 1630 (1937).

¹² *Arkansas State Highway Comm. v. Keaton*, 187 Ark. 306, 59 S. W. 481 (1933); *John E. Rosasco Creameries, Inc. v. Cohen*, 249 App. Div. 228, 292 N. Y. S. 1 (1936); *Booker T. Washington Burial Ins. Co. v. Roberts*, 228 Ala. 206, 153 So. 409 (1934); *Mees v. Grewer*, 63 N. D. 74, 245 N. W. 813 (1932); *Crawford v. McConnell*, 173 Okla. 520, 49 P. (2d) 551 (1935); *Cole v. Manning*, 79 Cal. App. 55, 248 P. 1065 (1926); *Boliver v. Monnat*, 135 Misc. 446, 238 N. Y. S. 616 (1929).