

accordance with established usage, and it has been accordingly held not to be illegal for surviving partners to continue to carry on business under the old name.(e)

2. A partnership is illegal if formed for the purpose of deriving profit from a criminal offence, *e. g.* from smuggling, robbery, theft, &c.(f) A curious instance of a partnership between two highwaymen is said to have come before the courts in \*the early part of the last century, [\*138] and to have been referred to by Lord Kenyon. As the case is not to be found in the reports, an abridged note of it is given below.(g) but there is some doubt whether it actually occurred. Real or fictitious, it is a good illustration of an illegal partnership of the class in question.

3. A partnership is also illegal if formed for a purpose forbidden by statute, although independently of the statute, there would be no illegality. At one time a distinction was taken between *mala prohibita* and *mala in se*, but this distinction has very properly long ceased to be recognized as of any value for legal purposes. What judicial tribunals have to regard is the law they are called on to administer; and what is forbidden, by that law is illegal, whether it \*is also forbidden by the laws [\*139] of morality and religion or not.(h)

Whether a partnership is illegal by virtue of any particular statute obviously depends upon the construction of the statute in question. With reference however to those statutes which prohibit unqualified persons from carrying on certain trades or businesses, it may be observed, that such statutes are not infringed by an unqualified person who does

(e) See *Bunn v. Guy*, 4 East, 190; *Aubin v. Holt*, 2 K. & J. 66; *Lewis v. Langdon*, 7 Sim. 421; and compare *Thorburny v. Bevil*, 1 Y. & C. C. 554.

(f) See *Biggs v. Lawrence*, 3 T. R. 454; and *Stewart v. Gibson*, 7 Cl. & Fin. 707, as to smuggling. The last case is instructive, on account of the care taken to conceal the true nature of the illegal transactions.

(g) *Everet v. Williams*, (2 Pothier on Obligations, by Evans, p. 3, note citing, *Europ. Mag.* 1787, vol. 2, p. 360,) is said to have been a suit instituted by one highwayman against another for an account of their plunder. The bill stated that the plaintiff was skilled in dealing in several commodities such as plate, rings, watches, &c.; that the defendant applied to him to become a partner; that they entered into partnership, and it was agreed that they should equally provide all sorts of necessaries such as horses, saddles, bridles, and equally bear all expenses on the roads and at inns, taverns, or alehouses, or at markets or fairs; that the plaintiff and the defendant proceeded jointly in the said business with good success on Hounslow Heath, where they dealt with a gentleman for a gold watch, and afterwards the defendant told the plaintiff that Finchley, in the county of Middlesex, was a good and convenient place to deal in, and that commodities were very plenty at Finchley, and it would be almost all clear gain to them; that they went accordingly, and dealt with several gentlemen for divers watches, rings, swords, canes, hats, cloaks, horses, bridles, saddles, and other things; that about a month afterwards the defendant informed the plaintiff that there was a gentleman at Blackheath, who had a good horse, saddle, bridle, watch, sword, cane, and other things to dispose of which he believed might be had for little or no money; that they accordingly went and met with the said gentleman, and after some small discourse they dealt for the said horse, &c.; that the plaintiff and the defendant continued their joint dealings together until Michaelmas, and dealt together at several places, *viz.*, at Bagshot, Salisbury, Hampstead, and elsewhere, to the amount of 2000*l.*, and upwards. The rest of the bill was in the ordinary form for a partnership account. The bill is said to have been dismissed with costs to be paid by the counsel who signed it, and the solicitors for the plaintiff were attached and fined 50*l.* a-piece.

(h) See *Aubert v. Maze*, 2 Bos. & P. 371.