

IN RE TOWN ET AL.

{8 N. B. R. 38.}¹

District Court, E. D. Michigan.

1873.

CONTRACTS—NOTES—ILLEGAL
 CONSIDERATION—LIQUOR SALE—BRINGING
 ORIGINAL PACKAGES INTO STATE—SALE IN
 STATE—CONSTITUTIONAL LAW.

A note was given in settlement of a balance due upon a previous account for spirituous and intoxicating liquors, part of the consideration of which was based upon the sale of liquors in original packages. There was also another note given for liquors bought in Massachusetts. *Held*, that as to the part of the first note which was based upon the sale of liquors in original packages, it was not in violation of the laws of Michigan and was valid; but as to the balance, there was nothing to take it out of the statutes of the state prohibiting the sale of spirituous and intoxicating liquors.

{In the matter of Richard, Mary, and S. R. Town, bankrupts.}

The question decided, arose on the certificate of Register Hovey K. Clarke, of issues of law and fact relative to the claim of Messrs. George W. Torrey & Co., of Boston, Mass. These creditors proved and filed with the register their account, claiming as due to them from the estate of said bankrupts a balance of about four hundred and forty-nine dollars, a portion of which was founded upon a note for one hundred and seventy-four dollars and sixty-two cents, and the balance upon an open account in part for spiritous liquors. A note was given in settlement of a balance due upon a previous account for spirituous and intoxicating liquors, a portion of which was sold and delivered in the original imported packages. But nothing was made to appear as to the manner and place of sale of the balance of the liquors for which the note was given.

LONGYEAR, District Judge. So far as the consideration of the note was based upon the sale of

liquors in original packages, it was not in violation of the laws of Michigan and was valid; but as to the balance of the consideration of the note there was nothing to take it out of the statutes of Michigan prohibiting the sale of spirituous and intoxicating liquors, and it was therefore illegal. The note having been given in Michigan, where the said statutes prevail, and the consideration being in part in violation thereof, the said note, according to the terms of the said statute, was void in toto. As to the open account, it appeared that so far as it was based upon a sale of spirituous and intoxicating liquors, the same was sold at Boston, Mass., upon the written note of the bankrupts, duly stamped. The note was made and signed in Michigan, and sent by mail to G. W. Torrey & Co., at Boston, their place of business. The sale was completed in Massachusetts, it was a Massachusetts contract, and was not affected by the Michigan statute, and that the sale being valid in Massachusetts must be held to be valid here. It is consequently ordered that so much of the claims of Torrey & Co., as was based on the note of one hundred and seventy-one dollars and six-two cents must be disallowed and expunged, and the balance of their claim must be allowed to stand as a debt against the estate of said bankrupts.

{See Case No. 14,112.}

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