

ered personal property. Section 2353 of the Revised Statutes provides that personal property shall, in all cases, be subject to execution upon judgment against the purchasers for the purchase price, and shall not be exempt except in the hands of *bona fide* purchasers for value; and the argument which is made by counsel is very plausibly and forcibly put: That this personal property passed into the hands of the railroad company. It did not pass into the structure, but remained personal property. But for the action of this court in taking possession by its receivers, it could have been seized and sold on execution upon judgment rendered for this claim against the railroad company; and that as the court, by its action in seizing the property, has intercepted that remedy, equitably, it should now order payment out of the assets.

Whatever force there might be to that proposition in some cases, I think here it is not applicable. All that could be claimed under those provisions, giving them full force, is that the specific property which passed into the hands of the railroad company should be liable to seizure and sale. For instance, if a locomotive was sold, that specific locomotive might be seized and sold in satisfaction of a judgment for the price, but no other personal property could also, by virtue of these provisions, be seized and sold. Now, the testimony fails to show that this specific personal property remained in possession of the railroad company, and passed into the hands of the receiver. All that the testimony discloses is that whatever personal property the company then had did pass into the hands of the receiver. This property, as against which the master refused a lien, was sold and delivered months before. Knowing well the hard usage—the wear and tear—which such property in the hands of a railroad company receives, can it be said that we are to presume that all that property remained in existence, and all of it passed into the hands of a receiver? Further, property which is once used deteriorates in value; and, subjected to the hard usage which such property would receive in railroad use, would largely and rapidly deteriorate. If we look upon this as a claim for the entire \$2,200, is it not fair to say that the value of the property remaining in the hands of the company, if it did remain, was not in excess of this \$1,541 which was allowed as a prior lien? Would it be just to the other claimants—to others having secured liens or equitable liens—to give to this party, out of the assets of the company, full payment for their entire claim, as though that property still remained in the hands of the company in its original perfect condition, unworn and not deteriorated in value? I think not.

It seems to me that all that equitably could be claimed, giving full force to the argument which counsel have made, is to sustain the award of a lien for over two-thirds, as has been given by the master; and that the exceptions to the report of the master should be overruled, and the report confirmed.

CHAMBERLAIN v. CHICAGO, B. & Q. R. Co.¹

(Circuit Court, E. D. Missouri. March 24, 1886.)

STATUTE OF LIMITATIONS — MISREPRESENTATIONS BY PHYSICIAN AS TO EXTENT OF INJURY.

Where a person through whose negligence another has suffered an injury, places the injured party in the care of a doctor who has previously been the physician of both, and the physician misleads his patient as to the extent of his injuries by false and fraudulent misrepresentations, such misrepresentations will not prevent the statute of limitations from running.

At Law. Demurrer to petition.

A. A. Paxson and A. R. Taylor, for plaintiff.

H. H. Trimble, for defendant.

BREWER, J., (*orally*.) In the case of *Chamberlain against The Chicago, Burlington & Quincy Railroad Company* there is a demurrer to the petition. The petition alleges that the defendant is a resident of the state of Illinois; that in 1875 the plaintiff was injured while a passenger on one of its trains. This suit was brought in 1885, more than 10 years after the injury. The Missouri statute of limitations is five years. *Prima facie* it is a bar. Of course, generally, the *lex fori* controls as to matters of limitation. There are two exceptions named in the statute: One, "if the defendant be out of this state before, or depart after, the cause of action commences," (section 3236;) but that applies only when the defendant is a resident of the state. "If at any time, when any cause of action herein specified accrues against any person who is a *resident* of this state, and he is absent therefrom,"—clearly that does not apply. The other provision is: "If any person, by absconding or concealing himself, or by any other improper act, prevents the commencement of an action." It is alleged in the petition, to bring the case within that exception, that the defendant put the plaintiff, after the injury, under the care of one Dr. Ransom, its physician and surgeon, who was also the physician, or had been prior thereto, of the plaintiff; and that Dr. Ransom represented to him falsely and fraudulently that the injuries from which he was suffering did not result from that accident, but from syphilis; and that he was not aware for eight years, and until about two years prior to the commencement of this action, that these injuries from which he was suffering resulted from the accident.

The petition alleges that the car was thrown from the track, and that the plaintiff was rendered unconscious, and that when he became conscious he was either crawling out or being helped out of the car by some parties present, and that his bowels were black and blue. Then he goes on stating the character of his injuries. From that time the natural action of his bowels ceased, and he has suffered an-

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar.