

realized on said claim as follows: For my own compensation in and about the prosecution of said claim, and for the use of any advances of money I may make, I am to retain thereof the sum of fifty dollars; I am also to retain all sums of money that I may advance in the prosecution of said claim; next, I agree to pay out of the proceeds of said recovery the reasonable fee of the attorneys and agents employed to prosecute said claim, or such fee therefor as may be agreed upon, if any agreement for a specific amount shall be agreed upon, and the balance of said recovery I agree to pay to the said J." It was held that the cause of action was assignable; that the assignment and agreement did not constitute barratry, champerty, or maintenance; and that V. was entitled to maintain an action for damages against the railway company in his own name.

A contract between an attorney and his client that the attorney shall prosecute a claim at his own cost, for a share of the recovery, is champertous and illegal. *Martin v. Clarke*, 8 R. I. 389.

Where an attorney was employed to bring an action, the client agreeing to give or allow and pay him the first \$50 collected by him therein, held not champertous. *Scott v. Harmon*, 109 Mass. 237.

An agreement by which a defendant in attachment assigns to his attorney the property attached, in consideration of his services in the suit, and in prosecuting a contemplated action of damages on account of the attachment, stipulating for his own diligence in the attachment suit, and giving the attorney the entire management and control, is not void for champerty or maintenance. *Ware's Adm'r v. Russell*, 70 Ala. 174.

In *Stanton v. Haskin*, 1 *McArthur*, 558, R. & S., attorneys at law, agreed to conduct a suit in chancery for the recovery of lands claimed by H. and wife, who agreed to give them one-third of whatever land or money might be received. A decree was obtained in favor of H. and wife for the lands, and also for the rents and profits. In a suit to enforce the agreement for an undivided third of the land so recovered, the court held that the contract was champertous and therefore void.

The New York Code contemplates a case in which the action might never have been brought but for the inducement of a loan or advance offered by the attorney, and where the latter, by officious interference, procures the suit to be brought, and obtains a retainer in it. *Fowler v. Callan*, (N. Y.) 7 N. E. Rep. 169.

For a full discussion of the general subject of champerty, see *Courtright v. Burnes*, 13 Fed. Rep. 317, and note by Judge SEYMOUR D. THOMPSON, 323-329.

2. FRAUDULENT CONVEYANCE—KNOWLEDGE OF GRANTEE. For an exhaustive discussion of the question of fraudulent conveyance, and therein of the knowledge of the grantee, see *Platt v. Schreyer*, 25 Fed. Rep. 83, and note, 87-94.

## FLINT v. COUNTY COM'RS REPUBLIC CO.

(Circuit Court, D. Kansas. 1886.)

### 1. TAXATION—VOID SALES—ACTION TO RECOVER MONEY PAID—PLEADINGS.

Under Kansas tax laws of 1868, § 120, a party seeking to recover from the county money paid at tax sales, the tax title having failed, must show return of tax certificates, or an offer to return them, before suit brought.

### 2. SAME—LIABILITY OF COUNTIES—RETURN OF CERTIFICATES.

Counties are entitled to the actual return and surrender of certificates issued at illegal tax sales, before being called upon to refund money paid them on such sales.

Action by holder of tax certificates to recover purchase money on failure of tax title, land not having been liable to taxation at time of sale. Defendants demur.

*F. M. Clark*, for plaintiff.

*T. M. Noble*, for defendants.

BREWER, J. The demurrer must be sustained. The defendant is under no obligation to return taxes upon failure of tax titles, except

as some statute requires it. *Commissioners Lyon Co. v. Goddard*, 22 Kan. 389. Before the county can be held liable, default on the part of the treasurer must be alleged, or some interference with him by the commissioners. *Commissioners Saline Co. v. Geis*, 22 Kan. 381. The plaintiff must rely on section 120 of the tax laws of 1868, for without that the statute of limitations would plainly bar. This provides that if the county clerk discovers that the land ought not to be conveyed, he shall not convey it; and also that the county treasurer shall, on the return of the tax certificate, refund the tax money. This petition does not allege when, if ever, the county clerk discovered that the land ought not to be conveyed, or that the tax certificate was ever returned, or offered to be returned. Whether the first matter is a fatal defect need not be determined. The second is vital. Perhaps the failure to return was one of the reasons why the treasurer refused to pay, and the commissioners to make any provision for payment. The lack of funds is not shown to be the only reason for refusal. Only inferentially does it appear that any demand was ever made on the treasurer; the demand is alleged to have been made upon the county.

Leave is given to file an amended petition, with leave to answer.

---

SCHULER v. ISRAEL and another. (Consolidated Cases.)<sup>1</sup>

(Circuit Court, E. D. Missouri. June 22, 1886.)

1. JUDGMENTS—NOTES.

Where judgment is recovered on a note, it is merged and extinguished, and a second judgment cannot be recovered thereon against the same party, in another district.

2. CHECKS—DECREE AGAINST BANK.

The drawer of a dishonored check is not entitled to be credited with the amount of an unpaid decree recovered by the payee against the drawee.

3. ASSIGNMENT FOR BENEFIT OF CREDITORS—SALES ON CREDIT.

A general assignment for the benefit of creditors, directing the assignee to dispose of the property conveyed with all reasonable diligence, "by public or private sale, for the best price that can be obtained, and convert the same into money," *held*, not to authorize sales on credit.

4. SAME—CONFLICT OF LAWS.

An assignment valid where executed, is valid in other states, if not in conflict with the rights of creditors residing therein.<sup>2</sup>

At Law. Consolidated cases.

Suits on check drawn and note made by J. N. Israel in the name of C. W. Israel & Co. Demurrers to answers of Israel and the Laclede Bank, garnishee.

The facts, as they appear from the pleadings, are substantially as follows: At the time of the transactions here involved, J. N. Israel

<sup>1</sup>Reported by Benj. F. Rex, Esq., of the St. Louis bar.

<sup>2</sup>See note at end of case.