

long before his purchase from complainant, and some time before he received the contract of August 28th, which he did not disclose to complainant. The case comes clearly within the rule of *Brooks v. Martin*, *supra*.

But it is further insisted by defendant that the claim is stale; that these transactions were in 1882, while this suit was not commenced until 1886; that in 1883 it became generally known that large bodies of ore were being taken out of the mine, and therefore complainant should have commenced this action earlier. It is enough to say in reply that there is not a syllable of testimony tending to show that complainant knew of the fraud practiced upon him until just before the commencement of this suit, and then only through some family trouble of the Patricks, in consequence of which certain letters were brought to his knowledge. He himself positively testifies that he had no suspicion of anything wrong. I do not understand that the mere fact that property which has been sold for a small sum a few months thereafter is found to be of exceeding value creates any suspicion of bad faith on the part of the purchaser, or casts any duty upon the seller to institute immediate inquiries to see if he has not been defrauded. On the contrary, he who acts in good faith generally presumes that the party with whom he has been dealing has acted in like good faith, and may safely rest upon that presumption until facts are called to his attention which indicate the contrary.

I think that that is about all I need to say. My conclusions rest but slightly upon the testimony of the complainant, but are reached almost entirely from the testimony of defendant, and those written matters of letter and contract which suffer nothing from failure of memory, but speak with the same language so long as they endure. My conclusion is that the sale made in October, 1882, cannot be sustained; that the complainant is entitled to a decree setting aside that sale, declaring him the owner of five forty-eighths of the property, and ordering a conveyance thereof by defendant, and an accounting. I see no reason for any decree as to James Patrick, and the bill as to him will be dismissed.

SHANNON v. BRUNER.

(Circuit Court, E. D. Missouri, E. D. September 18, 1883.)

ASSIGNMENT—OF UNEARNED FEES—BY MASTER IN CHANCERY.

An assignment of his fees, made by a master before they are earned, is void as against the successful party to the suit, who had advanced the amount to the master.

On Motion of J. B. Johnson.

U. M. Young and *Albert Blair*, for complainant.

Martin, Laughlin & Kern, for motion.

Hough, Overall & Judson and Geo. H. Knight, for defendant.

BREWER, J., (*orally.*) In the case of *Shannon v. Bruner* these facts appear: The master was allowed \$400 for his services, and the costs were taxed against the complainant. Thereafter one J. B. Johnson filed a motion, asking that the complainant be required to pay those costs into court, and that the \$400 allowed to the master be turned over to him; he claiming that he had an assignment thereof from the master. That assignment is attached to his motion, and appears to have been made before the fees were earned. The defendant in the case resists this motion, claiming that the fees belong to him, as he himself had already advanced them to the master. Now the petitioner insists that, as the master is not resisting his motion, it is purely a question between him and the defendant, and therefore the equities are to be considered, and not the validity of the assignment under which he (the petitioner) claims. We think not. This petitioner has no standing in this court, except by virtue of that assignment. If that assignment gives him no right to the fees, then his motion ought not to be sustained. Like any other plaintiff, he stands upon the strength of his own title, and it is nothing to him whether the adversary has title or not. Now, can an officer make an assignment in advance of his fees or his salary? The law is very clear that he cannot. Public policy has affirmed the necessity of securing to every public officer, when earned, his fees or his salary, unhindered by any present legal attack or any previous voluntary assignment. There are many cases, both in England and in this country, affirming the necessity of upholding such public policy. It is familiar law that you cannot garnish an officer's salary; and the same public policy which forbids that, prevents him, before he has earned his salary or done the work which entitles him to the fees, from making a voluntary transfer of them. The case of *Bliss v. Lawrence*, 58 N. Y. 442, contains a quite lengthy discussion upon this question, and a citation of many authorities. There is, a single dissenting opinion in this country,—in Wisconsin,—and one or two cases from Massachusetts, which, perhaps, tend in the other direction. But the general voice of the authorities, both across the water and here, is that no voluntary assignment can be sustained, by a public officer, of fees or salary yet to be earned. That being the case, we hold that this assignment is void. The transfer being void, the petitioner has no standing in this court, and the motion will be denied.

LOAGUE v. TAXING DISTRICT OF BROWNSVILLE.

(Circuit Court, W. D. Tennessee. July 28, 1888.)

MANDAMUS—TO MUNICIPAL BOARDS—JUDGMENT—RES ADJUDICATA.

No defense can be made to a writ of *mandamus* issued upon a judgment by default against a municipal corporation which might have been made to the original suit upon the coupons. *Held*, therefore, where bonds, issued without legislative authority, were invalid, that the defendant corporation was bound by a judgment by default upon the coupons, and could not set up as a defense to the *mandamus* that there was no act commanding the tax to be levied, this being the same defense as the other, when it depends upon the want of authority to issue the bonds, as in this case.

Application for *Mandamus*.

The intestate recovered judgment in this court against the defendant corporation by default. This is an application for a *mandamus* against the officials charged with the duty of levying taxes to enforce a sufficient levy to pay those judgments. To the writ return is made that there is no act of the legislature commanding the levy; that the act of February 8, 1870, c. 55, authorizing the bonds, upon coupons from which the judgments were rendered, was abrogated by the new constitution of Tennessee, going into effect May 5, 1870; and that by the same act so abrogated, and not by any other act whatever, were the defendants to this writ authorized to levy the taxes claimed by the writ. The plaintiff moved to quash this return upon the ground that it was not a sufficient defense, since by the judgments themselves the defense was precluded as already adjudicated between the parties.

Craft & Cooper, for plaintiff.

Smith & Collier and *Bond & Rutledge*, for defendant.

HAMMOND, J., (after stating the facts as above.) After the decision in *Devereaux v. Brownsville*, 29 Fed. Rep. 742, the alternative writ issued in this case, and the defendants make return that the act under which the bonds were issued was abrogated by the new constitution of this state of 1870, and this before the election was ordered, or the bonds issued, whereby they are void; and that by this act only were they ever charged with any duty to levy taxes to pay said bonds. Thus the same questions are presented as in the other case of *Norton v. Brownsville*, ante, 99, (just determined by this court.) It is not necessary to repeat the facts of that case, which was heard with this for convenience, and both upon the same agreed state of facts, filed in the record. We there held that the bonds were invalid, and directed a verdict and judgment for the defendant corporation upon the ground that the new constitution, which went into effect before the bonds were issued, abrogated the act of the legislature authorizing them. *Norton v. Brownsville*, supra. But in this case the plaintiff contends that this defense was settled against the defendant by the judgment by default; that these questions are in this case *res judicata*, and can be no longer open to the defendant. To this an-