

SELZ v. UNNA.

[1 Biss. 521.]¹

Circuit Court, N. D. Illinois.

July Term, 1866.²EQUITY—RELIEF AGAINST JUDGMENT AT
LAW—SECRET AGREEMENT—FRAUD UPON
COLITIGANTS—CONTRIBUTION.

BY THE COURT. 1. Where a judgment has been regularly entered against joint defendants, and some have paid their pro rata, on a bill filed by others, setting up a secret agreement between themselves and plaintiffs that if they would abandon the defense, plaintiffs would not call upon them for any part of any judgment they might recover, a court of equity will not grant relief. Such an agreement is a fraud upon their co-litigants, and will not be sustained.

2. Although, generally, contribution cannot be enforced between wrong-doers, still this court will not interfere to assist some of them in escaping such part of the common burden as they are equitably bound to pay.

3. The marshal having collected part of the judgment from some of the defendants, will be permitted to collect the balance from the others, notwithstanding this secret agreement.

4. Although the assignee of a judgment takes it subject to all existing equities, yet such an agreement constitutes no defense against an assignee in good faith, without notice.

NOTE. This case was affirmed by the supreme court, in 6 Wall. [73 U. S.] 327, in an opinion closely following the reasoning and conclusions of the circuit judge, and as the facts are fully stated in the reported case, it is not deemed necessary to publish anything

further here. [The opinion of the circuit judge is nowhere reported.]

¹ [Reported by Josiah H. Bissell. Esq., and here reprinted by permission.]

² [Affirmed in 6 Wall. (73 U. S.) 327.]

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