

and wife continuously during those years in the same home, recognized as such by each other and by all in whose society they lived, he providing as husband for her and she taking care of the household duties, both visiting her friends and being introduced, when with them or traveling, as husband and wife. While in that relation he took out an insurance in her name as Mrs. Nellie Brooks. The mere name cannot change the fact of the mutual relations of the parties. The fact that no ceremony took place at the time the relation was entered upon does not prevent them, under the decisions of this court, as well as the supreme court of the state, from being adjudged as husband and wife; and, being in such a relation, she had an insurable interest, and can maintain this action.

As far as the other defense is concerned, that he was a gambler instead of a steam-boat man, the facts are that he had been a steam-boat man, but, perhaps, during the last few years prior to his death, had ceased to go up and down the river. But that fact was known to the company at least as early as May 24, 1883. After that it sent its notices for assessment, which were directed to him and paid by her, and thus the knowledge of the fact, even if a material fact, and such as to vitiate the policy, having been brought home to the company, any objection on that account was waived by it. Indeed, it is questionable whether, under the statutes of the state of Missouri, referred to by counsel in his brief, that otherwise would constitute any defense, because it does not appear that it was material to the risk, and no tender of moneys received on account of the policy was made by answer or on the trial. The decree, therefore, will go for the complainant as prayed.

SHELLEY v. ST. CHARLES COUNTY COURT and another.¹

(Circuit Court, E. D. Missouri. September 20, 1884.)

1. MUNICIPAL BONDS—BONDS NOT "ORDERS."

Bonds issued under the act of the general assembly of Missouri concerning the reclamation of swamp lands, approved March 14, 1870, are not "orders" or warrants within the meaning of section 8 of the act of March 3, 1869, and are payable at maturity, regardless of the order of their presentation for payment.

2. SAME—PROMOTION OF SUITS FOR COLLECTION OF TAXES—EQUITABLE LIEN.

The fact that delinquent taxes, levied for the payment of county bonds of a certain class, have been collected and paid into the county treasury through the instrumentality of an attorney, acting for a holder of bonds of that class, does not entitle such bondholder to a lien upon the funds so collected,

Mandamus. Demurrer to return.

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

This is a proceeding by *mandamus* against the judges of the county court of St. Charles county, in the state of Missouri, and the treasurer of said county, to enforce the satisfaction of a judgment rendered in this court upon certain bonds and coupons issued by St. Charles county, under the act of March 14, 1870, for the improvement of certain swamp lands. The relator alleges that said treasurer has \$1,687.50 in his hands, which should be applied towards the payment of said judgment, and that the payment of said sum upon the bonds merged in said judgment has been demanded and refused. In answer to an alternative writ of *mandamus*, directed to him and said judges, said treasurer has made a return in which he substantially admits the possession of \$1,687.50 as proceeds of a tax levied to pay the bonds in judgment merged; but, in denial of relator's rights to a peremptory writ, said treasurer sets up that the taxes levied in pursuance of the act of 1870, for the payment of bonds and coupons issued thereunder, became in great part delinquent for the years 1873 to 1877, inclusive; that from sales made under execution issued on judgments rendered upon suits brought by the collector to recover the same, certain moneys were collected, out of which the attorneys for the collector, as well as the collector himself, retained as fees certain sums in excess of the legal allowance, which sums so illegally retained were refunded on suit brought by the county court, and paid into said treasurer's hands, and constitute the fund now in his possession; that the suits instituted for the recovery of said taxes and illegal allowances were promoted by one Theodore McDearmon, an attorney who represented two parties, who together owned \$5,500 of bonds issued under said act, and which matured before those merged in the relator's judgment; that payment of said fund upon the bonds merged in the relator's judgment had been refused, when demanded, because of the aforesaid facts, and because said McDearmon had previously, and before said fund came into said treasurer's hands, demanded payment of the bonds owned by his clients, and the demand, though refused, had been duly noted as required by law. In conclusion the respondent states that he is ready and willing to pay over said sum to the proper party, but does not know whether it should be paid to the relator or McDearmon's clients. To this return the relator demurs.

E. B. Sherzer, for relator.

Dyer, Lee, & Ellis, for respondent.

BREWER, J., (*orally*.) In the *mandamus* proceeding against St. Charles county, as far as the proceedings are now concerned against the treasurer, there are two questions presented by him: *First*, that under the law of 1869, which provided for the issue of warrants, they were to be paid in the order of their presentation to the county treasurer, and the provisions of that law are invoked on behalf of the fund now in the hands of the county treasurer. We do not think that law applicable. The law of 1870 provided for the issue of bonds running through a certain series of years. There is a vast

difference between bonds and warrants. Warrants are general orders payable when funds are found, and there is propriety in the rule providing that they shall be paid in the order of presentation, the time of presentation to be indorsed by the treasurer on the warrants. But bonds are obligations payable at a definite time, running through a series of years. They are payable when the time of their maturity arrives, independent of any presentation. So we think, impliedly, the law of 1870 does away with that restriction as to payment in order of presentation. The other question is that there is a sort of equitable lien on these funds in favor of the holders of some other claims, by reason of the fact that this fund was brought to the treasury through the instrumentality of the attorney of such claimants. We fail to see how that lien can exist. There was a legal duty to collect this fund, and, if urged by and at the instance of some other party, that fund was collected, such urgency or interference or effort on his part does not give to him an equitable lien on the funds. So we think the *mandamus* must go directing the county treasurer to pay over this money.

CASE OF THE UNUSED TAG.

In re AH KEE.

(Circuit Court, D. California. September 22, 1884.)

1. CHINESE IMMIGRATION—CUSTOM-HOUSE TAG—CERTIFICATE—ACTS OF 1882 AND 1884.

A Chinese laborer, in September, 1883, went back to China, after obtaining from the custom-house officer a "tag" entitling him to the certificate required by the act of 1882, but without procuring the certificate itself, and in August, 1884, returned to the United States and sought to land by virtue of his "tag." *Held*, that the act of 1884, which declares that the certificate issued to the laborer should be the only evidence permissible to establish his right to re-enter the United States, was as applicable to the certificate issued under the act of 1882, as to a certificate issued under the act of 1884, and that he was not entitled to re-enter.

2. SAME—REMOVAL OF CHINAMAN UNLAWFULLY RETURNED—DUTY OF STEAM-SHIP COMPANY.

The acts of congress, both original and amendatory, contemplate that parties unlawfully bringing here Chinese laborers prohibited from landing shall take them back to the country from which they are brought, or, at least, beyond the jurisdiction of the United States; and a steam-ship company cannot escape from this duty by the departure of the vessel on which they are brought, or any change in its officers or management. .

Per FIELD, Justice.

3. SAME—HABEAS CORPUS—RELEASE OF CHINAMAN ON BAIL—DEPARTURE OF VESSEL—REMANDING TO MASTER ON RETURN OF VESSEL—REFUSAL OF MASTER TO RECEIVE HIM—PENALTIES.

When, on proceedings by *habeas corpus* to test the right of a Chinese laborer to re-enter the United States, his body is produced in court, the court may order that he continue in the custody of the party detaining him, or commit