violation of law, rehypothecated said certificates, stock and bonds and caused the same to be sold and disposed of to satisfy certain indebtedness then due and owing by them, the said Henry S. Louchheim and Frederick Leser, and therein and thereby embezzled and converted to their own use said certificates, stock and bonds to the damage of said Joseph K. Chew $10,000."

The substance of the statement is that the defendants bought for the plaintiff certain bonds of the Philadelphia, Reading & New England Railroad Company (describing them with as much particularity as the circumstances allow) and 50 shares of stock in the Bergner & Engel Brewing Company, for which they took and held certificates; that the plaintiff furnished means, in advance, to pay a large part of the price, and subsequently paid nearly all the balance; that the object of the purchase was not speculation but investment; and that it was stipulated that the defendants should not part with or encumber the property, but safely hold it for the plaintiff, until the balance of purchase money should be paid; that the plaintiff subsequently tendered the balance and demanded possession of the property which demand was refused; and that the defendants wrongfully converted the property to their own use.

Were these allegations supported by the evidence—that is, might the jury have found them to be so supported? The motion for nonsuit was based on the assertion that there is no evidence of the purchase of certain, identified, bonds for the plaintiff, nor that certificates of stock were procured and held for him, as the statement alleges; and furthermore that if this were otherwise the plaintiff could not recover because he was not entitled to possession of the property at the time of the alleged conversion. The testimony describes the bonds with as much particularity as the circumstances allow, and as much as the statement does; and shows the defendants' admission that they had bought and were holding them for the plaintiff. As respects the stock certificates we think the evidence would have justified a finding that the defendants had procured and held them as claimed. It shows the defendants' written reports that they had purchased the stock; their repeated declarations that they had it, and were holding it for the plaintiff; that they had received dividends on it for him, and further that they had received several payments on account of the balance due for it. In the common course of dealing, certificates accompany the purchase of stock; they are the usual, if not the only evidence of purchase, transfer and title. It would seem clear therefore that the plaintiff was fully justified in understanding from the defendants' reports and declarations that they had, and were holding the stock for him, and that the jury would have been justified in finding this to be true. How could they have the stock, without having the certificates? What right had they to payments on account if they had not the certificates? Had the jury found, as it might, that the reports and declarations were virtual representations that the certificates had been procured and were held for the plaintiff, and that payments on account were thus obtained, it should have found the defendants to be estopped from denying the truth of the representations.

The conversion is clearly shown. Was the plaintiff entitled to possession of the property when it occurred? It is unimportant whether this event be referred to the date of the defendants' assignment for the benefit of their creditors, or to an earlier period when they pledged it for their own benefit. We are not called upon to consider whether this disposition of the property would have been justifiable in the absence of a stipulation that they should not part with it; with the stipulation it was clearly wrongful. The relation of the parties was that of bailor and bailee. The property was the plaintiff's, and the obligations of the defendants were the same as they would have been if he had delivered it to them to hold for the balance of purchase money. The defendants' transfer of it, whether for the payment of their debts, by the assignment, or previously to secure money borrowed, was a fraudulent conversion, which instantly terminated the contract of bailment, and vested the right of possession in the plaintiff. The right accrued, therefore, simultaneously, at least, with the act of conversion. Indeed it may justly be said that the entrance upon this fraudulent act vested him with the right. It was held in abeyance by the contract alone, and when that was terminated it no longer availed them for any purpose. In Berge & Co. v. Foster, 42 Leg. Int. 313, the syllabus which accurately states the decision is as follows: "Where oil held as collateral security, is sold without the owner's consent, before the debt matures, trover may be sustained." Reynolds v. Cridge, 131 Pa. St. 189 [18 Atl. 1010] decides the point in the same way. It is unimportant that the question was not discussed in either case. The defendant in each appears to have conceded the point. Brisben v. Wilson, 60 Pa. St. 452, is substantially in point. See, also, Cooley, Torts, 449, 450; 2 Hill. Torts (3d Ed.) 100–102; 2 Am. & Eng. Enc. Law, 58, 59; 2 Am. & Eng. Enc. Law, 741–743, 784, 785, and footnotes to the several pages.

The effect of the plaintiff's tender, and demand of his property, shortly before suing, need not be considered. One of the defendants only being present at the time, it would not affect the other so as to justify this suit against him. Whether it would justify the suit against the one of whom the demand was made, under the circumstances shown, may be open to doubt.

These questions were sprung upon the able trial judge under circumstances which afforded no opportunity for examination or reflection, and it is not surprising therefore that his first impression should have been such as he adopted.

The judgment must however be reversed.

RUCKER v. BOLLES.

(Circuit Court of Appeals, Eighth Circuit. April 19, 1897.)

No. 790.

1. FEDERAL COURTS—JURISDICTION—DIVERSE CITIZENSHIP—EVIDENCE OF CITIZENSHIP.
   For the purpose of proving that a plaintiff was a citizen of a certain state when his suit was filed, he may be asked the direct question of what state he was a resident at such date; but such question is improper when propounded to a third party, since such third party can only form an opinion of the plaintiff's intentions as to citizenship from his acts and declarations, which should be passed upon by the jury uninfluenced by the opinion of the witness.
2. SAME.
   The fact that a party, in executing legal instruments, described himself as a citizen of a certain state, is evidence to show that at that time he regarded himself as a citizen of the state.
3. SAME.
   The determination of the citizenship of a party, where dependent upon the question of intention to abandon one residence and take up another, is for the jury, under proper instructions.
4. CHAMPERTY AND MAINTENANCE.
   The assignment of a portion of a claim in suit, in good faith, for a money consideration, the assignor retaining entire control of the suit, is not void either under the statute of Colorado concerning maintenance, or at common law, although the assignee have no previous interest in the claim.
5. SAME.
   A bona fide contract for the assignment of a part of a claim in suit is not rendered invalid because the ulterior motive of one of the parties is to prevent a compromise of the claim, and to prolong the suit, in order to annoy and embarrass the defendant therein.
6. RELEASE AND DISCHARGE—CONSIDERATION.
   The consideration for a release from a contract may consist in something detrimental to the party released as well as in something beneficial to the other party.

In Error to the Circuit Court of the United States for the District of Colorado.

This suit was brought by Richard J. Bolles, the defendant in error, against Atterson W. Rucker, the plaintiff in error, in the circuit court of the United States for the district of Colorado, the action being founded upon the following contract, to wit:

"This agreement, made this 16th day of April, A. D. 1892, by and between A. W. Rucker, of the county of Arapahoe, and state of Colorado, party of the first part, and Richard J. Bolles, of the city of New York and state of New York, party of the second part, witnesseth: That said party of the first part in consideration of the sum of twenty-seven thousand five hundred ($27,500) dollars, to him in hand paid by the said second party, the receipt of which is hereby acknowledged and confessed, has and does hereby sell, assign, and convey unto said second party, his heirs and assigns, one-fourth (¼) of the amount of any judgment that may or shall be recovered by said first party in a certain cause or proceeding now pending in the district court of the county of Arapahoe, in the state of Colorado, wherein said A. W. Rucker is plaintiff, and Harvey Young, Jerome B. Wheeler, and others are defendants, in which action said plaintiff seeks to recover an interest in the Aspen Lode mining claim, situate in Pitkin county, in said state of Colorado, and an accounting and judgment for the value of the ores and minerals taken from said premises, and for a conveyance of an interest in said premises and the value of certain interests therein sold by defendant Wheeler; hereby selling and conveying one-fourth of any

judgment for money that may or shall be found or entered in said cause in said court, or in any court to which the same may or shall be removed; also in and to all contracts and agreements relating to said cause of action to the extent of one-fourth (¼) of all moneys that shall or may be collected or otherwise, but no part of the interest or title that shall be recovered in and to said lode mining claim shall be held to be assigned under this contract. Said first party further agrees that he will prosecute said action, and all actions and proceedings relating thereto that are now pending or that shall hereafter be begun, to a final determination, at his own proper costs. Said party hereby reserves the right to settle said cause for a sum not less than three hundred thousand ($300,000) dollars, one-fourth (¼) of which shall belong to and be paid to said second party upon his compliance with the terms hereof. In consideration of which said second party agrees to and with said first party that upon the final determination of said cause in the courts in which it is now pending, or in any court or courts to which it may be removed or appealed, and all proceedings relating thereto or affecting said cause, he will pay to said first party an additional sum sufficient to make a total payment hereunder of twelve and one-half (12 and ½ per cent.) per cent. of the amount of said judgment, and all moneys belonging thereto, and shall receive one-fourth (¼) of all moneys collected upon said judgment and all moneys deposited in court or in any manner collected under or by virtue of said proceeding, which additional sum shall be paid within ninety (90) days after the second party shall have received notice of the final determination of all such proceedings: provided, if said second party shall not pay said additional sum within said time, or shall elect not to do so, said first party shall repay to said second party the said sum of twenty-seven thousand five hundred ($27,500) dollars, with interest thereon from this date at 8 per cent. per annum, which payment shall be made by said first party from the first proceeds received by said first party in said action or in settlement or compromise of the same or any part thereof, but not otherwise: provided, also, that in any settlement or compromise made of said cause said second party shall receive a sum of not less than seventy-five thousand ($75,000) dollars upon paying the further sum of ten thousand ($10,000) dollars. It is further agreed that the said first party reserves the control and management of said cause, subject only to the limitations herein. This contract shall extend to and bind the heirs and assigns of each party hereto. In witness whereof the parties hereto have set their hands and seals the day and date first above written.

"A. W. Rucker.
"Rich. J. Bolles."

The complaint averred, in substance, that after the execution of the aforesaid contract and the payment to the defendant, Rucker, of the sum of $27,500, mentioned therein, the said Rucker, in the suit brought by him against said Harvey Young and Jerome B. Wheeler and others, recovered a judgment against said Wheeler in the sum of $801,670; that an appeal was taken in said suit to the supreme court of Colorado; that while it was so pending on appeal and undetermined it was compromised by said Rucker without the plaintiff's knowledge or consent; that by virtue of said compromise agreement, the said Rucker received from the said Wheeler a sum not exceeding $300,000, and that thereafter the plaintiff had duly tendered to the defendant the sum of $10,000 in addition to the sum of $27,500 first paid. In view of the premises, the plaintiff, Bolles, demanded a judgment against the defendant for the sum alleged to be due to him under the provisions of the aforesaid agreement.

The defendant demurred to the complaint on the ground that the same did not state a cause of action, but the demurrer was overruled, whereupon he filed an answer, which contained five pleas or defenses. The first defense was a denial of certain material allegations contained in the complaint. The second defense averred that both the plaintiff, Bolles, and the defendant, Rucker, were citizens and residents of the state of Colorado, and that the suit for that reason was not within the jurisdiction of the federal court. The third, fourth, and fifth pleas were as follows:

"(3) For further answer, the defendant alleges that prior to the execution of the contract set forth in the complaint herein the said Jerome B. Wheeler, named in said complaint, had commenced an action, which was then pending

in one of the courts of the state of Colorado, against the plaintiff and one J. J. Hagerman and others as defendants, in which action said Wheeler sought to recover of and from the said defendants, to wit, the plaintiff herein, said Hagerman, and others, a large sum of money, and that the plaintiff and his co-defendants aforesaid, on or about the date of the making of said contract between the plaintiff and the defendant herein, knowing and being informed of the pendency of the suit in the district court of Arapahoe county between this defendant and the said Wheeler and others mentioned and referred to in the complaint herein, for the purpose of preventing a compromise and settlement of said action between this defendant and said Wheeler, and to protract and prolong the said litigation so pending between this defendant and said Wheeler, came to this defendant, and offered and proposed as an inducement to this defendant to prosecute his said suit against said Wheeler and others to final judgment, and not to compromise or otherwise discontinue the same during the pendency of said litigation between the said Wheeler and the plaintiff, Hagerman, and others aforesaid, to aid and assist this defendant with money sufficient to enable him to further prosecute the said suit against said Wheeler; and the plaintiff and the said Hagerman agreed to further assist the defendant in the prosecution of the said suit and litigation against said Wheeler with further advances of money, and in other ways, and that they would not in any wise aid or assist said Wheeler or the opponents of this defendant in his said suit and litigation. And defendant further avers that the contract set forth in the complaint was drawn up by the plaintiff, and a portion of the money therein agreed to be paid to this defendant was furnished him by the plaintiff and said Hagerman for the purpose and with the intent on the part of the plaintiff and said Hagerman of intermeddling in and prolonging the said suit and litigation between this defendant and said Wheeler and others, and preventing an early settlement or compromise of the same; and the money so paid to the defendant by them was furnished and advanced for that purpose, and for the further purpose of compelling the said Wheeler to settle or discontinue the said action against the plaintiff, said Hagerman, and others. And defendant further avers that said money was so advanced and agreed to be advanced by them to aid and assist this defendant in the prosecution of his suit in the complaint mentioned and referred to, and that neither the said plaintiff nor the said Hagerman had any interest in or concern with the said suit or the subject-matter of the same. And defendant further says, in consideration of the said promises and agreements of the plaintiff and said Hagerman, it was agreed between them and this defendant that the defendant should and would assign to them the one-eighth part of any money judgment that might be recovered in his said action against said Wheeler and others, and of any moneys that might be collected and received upon said judgment, or any compromise or settlement of the same upon the full and faithful performance by the plaintiff and said Hagerman of their several promises and agreements aforesaid, and not otherwise; that the said agreement so drawn up by the plaintiff and signed by him and the defendant, and set forth in the complaint herein, was so drawn and executed for the purpose of expressing the said contract and agreement aforesaid, which is the true meaning, purpose, and intent of the same, and the same was so understood, regarded, and treated by the plaintiff and defendant. Defendant further says that said promises of the plaintiff and said Hagerman to advance and furnish other moneys in addition to the moneys paid by them as aforesaid, and to aid and assist defendant in the prosecution and conduct of his said suit and litigation, and their further promise and agreement not to render aid or assistance to his opponents, form the material part of the consideration for the making of said contract and agreement with the plaintiff. Defendant further alleges that after the making of said agreement, the plaintiff and said Hagerman failed and refused to pay to the defendant the moneys agreed by them to be furnished and paid, or to aid or assist him in other ways, or in any ways in the conduct and prosecution of his said suit and litigation, but, on the contrary, they thereafter interfered and meddled in said litigation on behalf of said Wheeler and against the defendant, and rendered aid and assistance, by advances of money and otherwise, to the said Wheeler in that behalf, and gave agreements and promises to said Wheeler of additional and further aid therein; so that the defendant was finally induced and compelled to settle and compro-

mise the said judgment against said Wheeler for a very small and inconsiderable sum and portion of the same.

"(4) For further answer, defendant alleges that subsequent to the making of said contract the plaintiff stated to the defendant that he did not desire to be further bound by the terms and provisions of said contract, or to perform the same, or to make any further advances or payments to the defendant as he had agreed to do as aforesaid, in consideration of the said contract of assignment, and then and there, at the request and solicitation of the plaintiff, and for divers good and sufficient considerations thereunto moving from the defendant to the plaintiff, it was agreed by and between the plaintiff and defendant that the said contract of assignment, and all rights and interests of said plaintiff therein or thereunder, should cease and terminate, and that the plaintiff and the said Hagerman should have no further interest in said lawsuit or cause of action, or any judgment therein, or moneys realized therefrom; and said contract, and every part thereof, was thereupon rescinded by the plaintiff and defendant.

"(5) For further answer, defendant alleges that, subsequent to the making of the contract of assignment set forth in the complaint and the several agreements hereinbefore in the several defenses of this answer set forth, the plaintiff failed and refused to perform or carry out the said contract of assignment, or any of the agreements aforesaid on his part, and absolutely and finally refused to perform the same, or to be further bound thereby, and utterly renounced, rescinded, and abandoned the same, and all and every part thereof, and thereupon released the plaintiff from the same and all the obligations thereof."

The plaintiff below demurred to the aforesaid defenses Nos. 3 and 4, which demurrer was sustained. The issue presented by the second plea—as to whether the plaintiff, Bolles, was a citizen of the state of New York, as alleged in his complaint, or a citizen of the state of Colorado—was first tried to a jury, which found and determined that he was a citizen of the state of New York. The case, upon its merits, was then submitted to a jury on the issues made by the first and fifth of the aforesaid defenses, the trial of said issues resulting in a verdict and judgment in favor of the plaintiff below, in the sum of $70,040. To reverse that judgment the defendant below has prosecuted a writ of error to this court.

J. E. McKeighan (S. D. Walling and T. M. Patterson with him on the brief), for plaintiff in error.

Joel F. Vaile (Edward O. Wolcott with him on the brief) for defendant in error.

Before SANBORN and THAYER, Circuit Judges, and LOCHREN, District Judge.

THAYER, Circuit Judge, after stating the case as above, delivered the opinion of the court.

The first question to be considered is whether any error was committed on the trial of the plea in abatement relative to the citizenship of the plaintiff, Bolles. In this behalf it is assigned for error that the trial court permitted the plaintiff to testify, in response to a direct question, that he was a citizen of New York up to April or May, 1894, and that it also permitted two other witnesses to testify that he was a citizen of New York prior to the spring of the year 1894. With respect to this assignment, it is only necessary to say that, in our opinion, no material error was committed in allowing the plaintiff himself to testify that he was a citizen of the state of New York up to a given date. Citizenship is largely a matter of intention. When a citizen of a state has removed to another state, it is a very common

practice to permit him to declare what his intentions are with respect to making the latter state his permanent place of abode. It is his intention to make the place to which he may have removed his permanent place of domicile which determines whether he has become a citizen of that state, and definitely abandoned his former residence. As a general rule, a person's intentions in that respect can be ascertained in no other way than by his declarations, and for that reason he is permitted to state what his intentions are or were, when the fact becomes material in a judicial proceeding. Such statements, as a matter of course, are not conclusive on the question of his intention, but we have no doubt that they are competent evidence in the party's own favor. When the plaintiff testified, therefore, that he was a citizen of New York up to April or May, 1894, it was but another form of stating that his intention to abandon his residence in New York and to take up his abode in Colorado was not formed until the latter date. We perceive no objection to such testimony, coming as it did from the plaintiff himself. But a different view must be taken of similar testimony which was elicited from third parties, to wit, from the witnesses Palmer and Edsall. These witnesses had no knowledge of the plaintiff's intention to remain a citizen of New York, except as that intention was manifested by his acts, and they should have been required to state the facts within their observation on which their opinion that he was a citizen of New York prior to the spring of the year 1894 was founded. The jury were equally as competent as these witnesses to decide whether the observed facts indicated a purpose on the part of the plaintiff to remain a citizen of New York until the time stated, and it was the province of the jury to decide that question uninfluenced by the opinions of witnesses.

Another specification of error is that the trial court erred in permitting the plaintiff to show that in a deed for certain property which the plaintiff bought in June, 1893, and in a will which he made in October, 1893, he was therein described as "Richard J. Bolles, of the city of New York." We are not able to say that this evidence was erroneously admitted. It tended to show that at the date of these instruments the plaintiff regarded himself as a citizen of New York, and had not formed the intention of making his home in Colorado. It was relevant testimony for the purpose last stated, and ought not to have been excluded, unless the trial court was satisfied that the plaintiff had thus described himself as a citizen of New York for the purpose of influencing the decision in this case on the question of citizenship. As the suit at bar was not brought until December, 1893, and as the answer raising the issue of citizenship was not filed until July 2, 1894, there seems to be no adequate ground for the inference that the testimony in question was manufactured for the purpose last stated.

Nor are we able to say that there was any error in the instructions on this branch of the case. With reference to the issue of citizenship, the material parts of the charge were as follows:

"Now, citizenship is a matter of residence and intention. If one come from the state of New York, or from any other state, to this state, and in coming he has no intention to return to New York, but intends to take up his residence

and reside here permanently, he thereupon and at once simply allies himself to this state, and becomes a citizen of this state. But one may have a residence in one state while his citizenship continues in another state. If he comes here for a temporary purpose, or if he be undecided at the time of coming as to whether he will return to New York and continue to live there, or take up his residence here, he will not become a citizen of the state of Colorado until he has decided to make his permanent residence and acquire citizenship in this state. So that it is entirely true that the intention and the residence must unite in order to form what is called in law a permanent domicile, which is equivalent to citizenship. And so, if the plaintiff, * * * in coming to this state, had no intention, at the time of his coming or afterwards, to acquire a residence, and become a permanent citizen of the state, if it was his desire to maintain his citizenship in the state of New York, he would not acquire a residence or citizenship here until he made up his mind to reside here permanently, and to abandon his residence and citizenship in the state of New York. Residence is generally described as the place where one lives. It means literally, according to its derivation, a sitting down and staying for a time; and so, when one goes to another place from that in which he has his permanent home, and sits down there for a time, but not with the intention to remain there permanently, it is said that, while he has his residence in that place, he still remains a citizen of the place from whence he came. I do not think it necessary for me * * * to advert to any of the evidence in the case. You have heard it all. It was all received with intent that you should be able to determine when, if at all, the plaintiff became a citizen of this state. It is said that this was at the time he made up his mind to reside here permanently, and abandoned his residence in New York, * * * in the early part of the year 1894, which was after this suit was brought. You will remember that it has been stated a number of times in your hearing that this suit was brought on the 6th of December, 1893. If, upon all the evidence before you, you are of the opinion that he did in fact make up his mind to become a resident and citizen of the state of Colorado prior to that time, * * * then, of course, your finding should be for the defendant. But if you are of the opinion that he did not become a citizen of the state—that is to say, that he did not abandon his home and residence in New York—until the spring of 1894. * * * then he could bring his suit in this court as he did."

The instructions, as thus given, were applicable to the facts proven on the trial. They fully covered the point in issue, and any further instructions on the question of citizenship, if such instructions had been given, would have served to confuse, rather than to enlighten, the jury.

Passing to the merits of the controversy, the first question to be noticed is whether the trial court erred in sustaining the demurrer to the third and fourth defenses stated in the answer. The fourth plea to which the demurrer was addressed averred, in substance, that the contract on which the suit was founded had been canceled and discharged by mutual agreement of the parties thereto. It is suggested in argument that the allegation that the contract was canceled by mutual agreement of the parties is merely an inference of the pleader from the fact first alleged in the plea that on a certain occasion the plaintiff, Bolles, had stated to the defendant, Rucker, that he did not desire to be further bound by the provisions of the agreement. It is urged, in substance, that the plea is bad, because it avers no more than that such a statement was at one time made by the plaintiff to the defendant. But obviously this is not a correct view, for, after that fact is stated in the plea by way of inducement, the pleader proceeds to allege in clear and concise language that it was thereupon agreed by and between the plaintiff and the defendant, for a good

and sufficient consideration, moving from the defendant to the plaintiff, that the agreement in question should be terminated, and that the interest thereby acquired by the plaintiff, Bolles, in the suit against Wheeler and others should cease and determine. We perceive no reason why the plea did not state a good defense to the action, such defense consisting in a mutual agreement made by the parties before this suit was commenced to the effect that each party would discharge the other from the obligations imposed by the contract on which the suit is founded. Such an agreement was clearly pleaded according to its legal effect, and, in our judgment, the demurrer to the fourth plea should have been overruled.

A more debatable question is whether the demurrer to the third defense was properly sustained. By that defense the pleader endeavored to show that the contract in suit was void for champerty and maintenance. We are of opinion that the contract on its face was not void on either of the grounds last mentioned, whether the question be considered in the light of the Colorado statute concerning maintenance, or in the light of the common law as generally understood and enforced in this country. The agreement, by its terms, purports to be no more than a sale by Rucker to Bolles of a one-fourth interest in a judgment for money which he (Rucker) might recover in a pending lawsuit. Bolles did not agree to furnish any aid or assistance in the prosecution of the suit against Wheeler, or to interfere with the litigation in any way, the agreement being, on the contrary, that Rucker should prosecute said suit at his own proper cost and expense. Nor was there any agreement that Rucker should devote the money which he had received from Bolles to the further prosecution of the suit against Wheeler and others. The former was at full liberty to appropriate it to any other use which he saw fit, and, for aught that appears, he may have devoted it to other uses. Furthermore, Rucker did not bind himself not to compromise the pending suit if he received a favorable offer of compromise, which he desired to accept, the only stipulation in that behalf being that, if the suit was compromised, Bolles should receive not less than $75,000 on paying to Rucker an additional $10,000. The purpose of this stipulation would seem to have been not to prolong the litigation, but to secure to Bolles an adequate return for his money, considering the character of the investment. We are not able to say that this contract discloses an officious intermeddling by a third party in a suit which in no wise concerned him, with a view to promote litigation, within the meaning of the Colorado statute on the subject of maintenance,[1] for, according to the modern view, a person has a right to assign an interest in a chose in action which he happens to own, and this right exists although the claim happens to be at the time in litiga-

[1] "If any person shall officiously intermeddle in a suit at common law or in chancery, that in nowise belongs to or concerns such person, by maintaining or assisting either party with money or otherwise, to prosecute or defend such suit, with a view to promote litigation, every such person so offending shall be deemed to have committed the crime of maintenance, and upon conviction thereof, shall be fined and punished as in cases of common barratry. * * *" Mills' Ann. St. Colo. 1891, § 1299.

tion. The old rule that choses in action are not assignable has not only been abolished, but the prevailing doctrine is that causes of action for torts to property, real or personal, which survive to executors or administrators, are also assignable. Snyder v. Railway Co., 86 Mo. 613; Pom. Rem. & Rem. Rights, § 147. Under a variety of circumstances which may be supposed, a man might find it necessary to sell or hypothecate an interest in a claim which happened to be in litigation for the purpose of raising money wherewith to prosecute his business successfully, or to assert or defend his rights in the courts; and it would be a great hardship if he were denied the right to raise money by such means, or if money so obtained could not be recovered. We can perceive no reason, therefore, founded either on considerations of public policy or the terms of the Colorado statute, why the contract sued upon should be pronounced invalid.

It is insisted, however, that the plea avers certain facts, not disclosed by the contract itself, which render it invalid. A careful analysis of the plea will show, we think, that the only fact tending to overthrow the agreement which the plea avers is that the plaintiff, Bolles, proposed to buy, and did purchase, an interest in the claim against Wheeler, for the purpose of preventing a compromise of the claim and prolonging the suit that had been commenced to enforce it. The question then arises whether the agreement is rendered unlawful by the motive which prompted one of the contracting parties to execute it, although the contract, when judged by its provisions, is valid and enforceable. The law furnishes some examples, notably in the case of fraudulent conveyances, where an agreement, otherwise valid, may be avoided because of the motive which induced the parties to execute it. So, when it appears that a contract for the sale of a commodity is merely colorable, and made to cover a gambling transaction, no delivery of the commodity sold being intended by either party, the law pronounces the same to be void. Such contracts are held invalid on account of their fictitious character, because neither the vendor nor the vendee intended to do what they in terms agreed to do, but rather to lay a wager on the rise and fall of prices. It is also true that a contract valid on its face may be impeached by showing that the consideration on which the promises, or some of them, rest, was the doing of an act which was either unlawful, immoral, or opposed to public policy, or a promise to do acts of that kind. All of this is familiar law. Ordinarily, however, a contract which is valid on its face, in that it does not require either party to do an act that is unlawful, immoral, or opposed to public policy, will be enforced, regardless of the motive which may have inspired one of the parties to execute it. The ulterior motives of the parties to a contract are usually immaterial when the thing agreed to be done is lawful, and does not injuriously affect the public welfare, and the consideration paid or promised for doing the act contemplated was not illegal. West Plains Tp. v. Sage, 32 U. S. App. 725, 16 C. C. A. 553, and 69 Fed. 943. It is manifest from the averments of the plea that the contract in suit was neither fictitious nor colorable. The parties to the agreement evidently intended to do precisely what it bound them to do, nothing more and nothing