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Civil Procedure—Enforcement of Fiduciary Obligation by Contempt Proceedings—Per Curiam

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ChamPERTY—Question for the Jury

Section 274 of the Penal Law provides that an attorney shall not take an assignment of a debt with the intent and for the purpose of bringing an action thereon. In past decisions it has been held that the violation of this section would require a dismissal of the cause of action on such a claim⁵⁸ on the theory that no person can maintain an action on a right he obtained illegally.⁵⁹

In *Sprung v. Jaffe*,⁶⁰ an action on a debt, the defendant pleaded as a defense that the plaintiff, an attorney who had taken as assignment of the debt, had violated section 274. The plaintiff in turn moved for a summary judgment which was granted by the trial court. The lower court is justified in granting a motion for summary judgment only if it appears that the defense is not real but feigned.⁶¹ On appeal the Court held that plaintiff's admission that he was an attorney and that he had taken the claim by assignment raised a question of fact as to his intent and purpose in taking the assignment.⁶² Therefore, the lower court erred in granting summary judgment. The majority reasoned that the purpose of the statute is to prevent an attorney from encouraging or promoting ill feeling and strife by securing the ownership and control of a demand of *any kind* for the purpose of bringing a suit thereon.⁶³ It therefore rejected the dissent's argument that section 274 is not applicable if he buys a claim which cannot be defended in good faith.

Enforcement of Fiduciary Obligations by Contempt Proceedings—Per Curiam

Section 505 of the Civil Practice Act permits the enforcement of fiduciary obligations by contempt proceedings.⁶⁴ Where a mother sued her daughter for an accounting on the grounds of the conversion of trust funds, the fact that the Court did not find it necessary to order an accounting, since the amount converted was readily determinable, did not mean that the mother could not have the benefit of the type of judgment which an accounting would have resulted in—one enforceable by force of contempt and not merely by execution.⁶⁵

58. *Browing v. Marvin*, 100 N.Y. 144, 2 N.E. 635 (1885); *Morgan Munition Supply Co. v. Studebaker Corp.*, 226 N.Y. 94, 123 N.E. 146 (1919).

59. *Hall v. Gird*, 7 Hill 586 (1844); *Baldwin v. Laston*, 2 Barb Cr. 306 (1847).
60. 3 N.Y. 2d 539, 169 N.Y.S.2d 456 (1957).

61. *Curry v. Mackenzie*, 239 N.Y. 267, 146 N.E. 375 (1925).

62. *Carpenter v. Cummings*, 20 Misc. 661, 46 N.Y.Supp. 252 (City Ct. 1897).

63. *Ransom v. Cutting*, 188 N.Y. 447, 81 N.E. 324 (1907).

64. N. Y. CIV. PRAC. ACT, §505 provides:

In any of the following cases a judgment may be enforced by serving a certified copy thereof upon the party against whom it is rendered, or the officer or person who is required thereby or by law to obey it; and, if he refuses or wilfully neglects to obey it, by punishing him for a contempt of the court: . . . 5. Where the judgment requires a trustee or person acting in a fiduciary relationship to pay a sum of money for a wilful default or dereliction in his duty. . . .

65. *Pieper v. Renke*, 4 N.Y.2d 410, 176 N.Y.S.2d 265 (1958).