

double taxation, as were the two taxes assessed upon the plaintiffs' ice in *Winkley v. Newton*, *supra*.

This result is also in accord with the general trend of the authorities upon the subject. As said in *Hartman's Case*, 70 N. J. Eq. 664, 667: "The great weight of authority favors the principle adopted by the New York court of appeals, holding that the tax imposed is on the right of succession under a will, or by devolution in case of intestacy; and that as to personal property, its *situs*, for the purpose of a legacy or succession tax, is the domicile of the decedent, and the right to its imposition is not affected by the statute of a foreign state, which subjects to similar taxation such portion of the personal estate of any non-resident testator or intestate as he may take and leave there for safe keeping, or until it should suit his convenience to carry it away." In addition to cases already cited, see: *Hopkins' Appeal*, 77 Conn. 644; *Bridgeport Trust Co.'s Appeal*, 77 Conn. 657; *Matter of Swift's Estate*, 137 N. Y. 77; *Matter of Houdayer*, 150 N. Y. 37; *State v. Dalrymple*, 70 Md. 294; *Eidman v. Martinez*, 184 U. S. 578, 581; *Dos Passos Inher. Tax*, s. 29; *Dacey Conf. Laws* 682, *et seq.* But see *In re Joyslin's Estate*, 76 Vt. 88.

Exception overruled: appeal sustained.

All concurred.

Hillsborough, }
Nov. 5, 1907. }

ATTORNEY-GENERAL (*ex rel.* BRODERICK & a.) v. BARRY & a.

The local executive committee of a political party are not public officers, and cannot bring an information in the nature of *quo warranto*, in the name of the attorney-general, to determine a controversy as to membership.

A dispute as to the membership of a local executive committee of a political party must be decided by some tribunal within the party; and when it has been so determined, the court will make such decree as is necessary to enforce the rights of the regularly constituted members.

The state committee and the state convention of a political party are its regularly constituted tribunals to determine the membership of the local executive committee in any town.

INFORMATION, in the nature of *quo warranto*, to determine what persons constitute the local executive committee of the democratic party in Ward 5, Manchester. The relators were recognized as

such committee by the democratic state convention and are now recognized by the state committee of that party. Facts agreed. Transferred without a ruling at the request of the parties by *Peaslee, J.*, from the January term, 1907, of the superior court.

James A. Broderick, for the relators.

Burnham, Brown, Jones & Warren, for the defendants.

YOUNG, J. Although a political campaign affects the public and is in that sense public business, the fact that it is the business of the members of the local executive committee of a political party to conduct such campaigns does not make them public officers. *Attorney-General v. Drohan*, 169 Mass. 534; *Greenough v. Lucey*, (R. I.) 66 Atl. Rep. 300. Neither does the fact that chapter 93, Laws 1905, imposes certain duties on the members of such committees make them public officers. The law regulates the method of conducting many other kinds of business, but it has never been suggested that the persons who conduct a business so regulated are public officers. This disposes of the case in its present form. *Meehan v. Bachelder*, 73 N. H. 113. But the relators suggest that if they have misconceived their remedy they shall move for leave to amend by discontinuing as to the attorney-general; and as it is assumed that such a motion, if made, will be allowed as a matter of course, the question the relators seek to raise in this proceeding has been considered.

The caucus act (Laws 1905, c. 93) neither provides who shall constitute the local executive committee of a political party, nor how they shall be elected or appointed, and therefore it has no bearing on the question under consideration. As there are no other statutory provisions on the subject, when there is a dispute as to who are the regularly elected members of such a committee in a particular town or ward the question must be decided by some tribunal within the party; for who are the proper persons to conduct a campaign is not a question for the court, but for the party, to settle. *Moody v. Trimble*, 22 Ky. L. R. 692. When the question has been determined by the proper tribunal within the party, the court will make such a decree as is necessary to enforce the rights of the regularly constituted committee. *Attorney-General v. Drohan, supra*.

There can be no doubt but what "the state committee and the state convention of a party are its regularly constituted" tribunals to determine whether the relators or the defendants are the local executive committee (*In re Fairchild*, 151 N. Y. 359; *Cain v. Page*, 19 Ky. L. R. 977; *Phillips v. Gallagher*, 73 Minn. 528;

State v. Lindahl, 11 No. Dak. 320); and it is agreed that both of these tribunals have considered that question and decided it in favor of the relators. Consequently, when their motion to amend is allowed there will be a decree in their favor.

Case discharged.

All concurred.

Hillsborough, }
Nov. 5, 1907. }

WARREN & a. *v.* HAYES & a.

SAME *v.* DIXON.

A mortgage given to secure an indorser of the mortgagor's note is not discharged as matter of law by payment of the obligation, but subsists for the benefit of an assignee thereof who advances funds for the defrayal of the original loan.

The equitable right of an innocent mortgagee for value is, to the extent of the loan, superior to the right of the mortgagor's grantor whose conveyance was induced by fraud; and the lien of such mortgagee is not invalidated by a subsequent conveyance to him of the mortgagor's equity of redemption, in satisfaction of the mortgage debt.

A principal is chargeable with his agent's knowledge of a particular transaction only so far as the latter's acts with respect to it were within the scope of his authority.

A principal who has knowledge of his agent's unauthorized act and accepts a benefit therefrom is estopped to repudiate the agency.

BILLS IN EQUITY, the first to avoid a fraudulent conveyance, and the second to remove a cloud from the plaintiffs' title. There was a decree for the plaintiffs in the first action against all the defendants except Mrs. Dixon, and the second action was dismissed, and the plaintiffs excepted. Transferred from the January term, 1907, of the superior court by *Peaslee, J.*

The plaintiffs were induced to convey the property in question to Hayes' grantor by the fraud of the defendants in the first action. Hayes mortgaged it to one Jennings. The mortgage purported to be made to secure the payment of Hayes' note for \$3,500, payable to Jennings on demand, but was in fact made to secure Jennings for indorsing a note for Hayes. That note was paid at maturity, but the mortgage was not discharged, and it was subsequently