

court to proceed to trial thereon, and to grant relief, must be determined under the Iowa statutes. Of the subject-matter of the action the Polk district court unquestionably had jurisdiction. And all the parties to the action were present in court, with pleadings filed in the action and counsel taking part in the trial. The court had jurisdiction of the parties. The construction of the Iowa statutes, as to the force and effect of pleadings in said action, is peculiarly the province of the Iowa courts. "The construction given to the statute by the highest court of the state should be followed by this court." *Moore v. Bank*, 104 U. S. 625. "The construction given to a statute of a state by the highest tribunal of such state is regarded as a part of the statute, and is binding upon the courts of the United States." *Leffingwell v. Warren*, 2 Black, 599. And when, as in this case, the decision is supported by the unbroken line of decisions of the state supreme court, the federal courts would accept the state construction, even though that might conflict with the decisions which the federal courts had made in cases before it, wherein a like point of construction was involved. *Bucher v. Railroad Co.*, 125 U. S. 555, 8 Sup. Ct. Rep. 974. And even upon matters of general law, such as the construction of commercial law and like matters, not directly the result of state legislation, the federal courts hesitate to adopt a construction with reference to actions brought before them from any state, when such construction would have, within that state, a different effect from that flowing from the construction adopted by the state court. "Even in such cases, for the sake of harmony and to avoid confusion, the federal courts will lean towards an agreement of views with the state court, if the question seems to them balanced with doubt." *Burgess v. Seligman*, 107 U. S. 20, 2 Sup. Ct. Rep. 10. I find that the plea in bar is in point. It is well taken and fully sustained by the evidence. Let decree be entered herein dismissing complainant's bill, and, on defendant's cross-bill, establishing defendant's title to the real estate in controversy, and quieting the title in him.

NASHUA & L. R. CORP. v. BOSTON & L. R. CORP. et al.

(Circuit Court, D. Massachusetts. March 16, 1892.)

1. MASTERS IN CHANCERY—TAKING AN ACCOUNT—LAW OF THE CASE.

When a question as to the date from which interest shall run has been decided by the court after full hearing, on a motion for final decree, such decision is binding on a special master to whom the cause is subsequently referred to take an account, and cannot be again raised by exceptions to his report.

2. SAME—REPORT—EFFECT OF PRIOR SUPREME COURT DECISION.

When the supreme court has decided that plaintiff is entitled to a full accounting in respect to a given series of transactions, upon definite principles of liability, the master's report in respect thereto is not subject to exception because it awards a sum exceeding the amount named in the bill, and it is immaterial whether the bill is amended.

In Equity. Suit by the Nashua & Lowell Railroad Corporation against the Boston & Lowell Railroad Corporation and others for an ac-

counting. For prior reports, see 8 Fed. Rep. 458; 19 Fed. Rep. 804; 27 Fed. Rep. 821; and 10 Sup. Ct. Rep. 1004. The hearing is now upon exceptions to the report of the special master. Overruled.

Francis A. Brooks, for complainant.

Josiah H. Benton, Jr., for defendants.

COURT, Circuit Judge. On July 21, 1891, this case was referred to a master to take an account under the mandate of the supreme court, directing the circuit court to take further proceedings in accordance with the opinion of that court. 136 U. S. 356, 10 Sup. Ct. Rep. 1004. The master upon this accounting finds that the complainant is entitled to recover from the defendant the sum of \$29,676.41, with interest from May 19, 1890, the date of the mandate, to the date of the final decree herein. To this report both parties filed exceptions. The complainant's exceptions relate to the question of the time from which interest should be computed upon the sum found due. Under the first exception, it is claimed that interest should have been reckoned from the date of the commencement of suit, April 17, 1880. In the second exception, it is claimed that interest should be allowed from the times the several sums of money belonging to the complainant were appropriated by the defendant.

Some months before the case was referred to the master, upon complainant's motion for a final decree, this question of interest was fully heard by the court upon the record and the evidence in the case, and upon due consideration thereof, and of the arguments and briefs of counsel, the court held that the complainant was only entitled to interest from the date of the mandate. The master properly based his finding upon this decision of the court. After a full hearing by both parties and a decision by the court, this question was not open before the master, but the master was bound to follow the ruling of the court. The complainant's exceptions, therefore, are overruled.

The first exception of the defendant relates to the amount of \$29,676.41 found due by the master. The defendant contends that the amount should have been \$26,124, which is the specific sum mentioned in the bill of complaint. Although at first inclined to the opinion that no greater amount than the last sum mentioned could be recovered without amending the bill, upon further consideration I am satisfied that upon the bill as it stands, in view of the opinion of the supreme court, the complainant is entitled to a full accounting with respect to those matters wherein the defendant was held liable by the supreme court, even if the sum should prove to be in excess of the amount named in the bill. In this view, it became immaterial whether or not the bill was amended. I therefore hold the master's finding to be correct, and overrule this exception.

The remaining exceptions of the defendant, in view of the opinion I have already expressed, become, it seems to me, unimportant. The motion to recommit is denied, exceptions are overruled, and the master's report confirmed.

UNITED STATES *v.* INSLEY *et al.*

(Circuit Court, D. Kansas. February 29, 1892.)

1. BAIL-BONDS—FORFEITURE—HOW COLLECTED.

Proceedings in the federal courts in Kansas, to enforce a forfeited bail-bond given in the federal court against the sureties, must be by action after the end of the term, as provided by Gen. St. Kan. c. 82, § 153, and a judgment entered during the term, upon motion merely, after an entry of forfeiture and the issuance of a *scire facias*, is void.

2. REVIVOR OF ACTIONS—MARSHAL'S DEED.

When a judgment debtor dies after a levy on lands, the action must be revived before a valid deed can be made.

In Equity. Bill by the United States against Martha Insley and others for an accounting and to redeem lands. Decree quieting title in defendant Insley.

J. W. Ady, U. S. Atty., for plaintiff.

J. D. McClevery, for defendants.

RINER, District Judge. This is a bill for an accounting, and to redeem lot 1, block 104, in the city of Ft. Scott. In July or August, 1869, Joseph H. Roe and C. A. Ruther were arrested upon a complaint charging them with violating the internal revenue laws of the United States. On the 3d of August, 1869, they were placed under bond for their appearance before the United States district court for the district of Kansas, with one M. McElroy and one Charles Bull as sureties. The bond or recognizance is in the following language:

"Know all men by these presents, that we, Joseph H. Roe, C. A. Ruther, and M. McElroy and Charles Bull, are jointly and severally held and firmly bound unto the United States of America in the penal sum of two thousand dollars, lawful money, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, and assigns, firmly by these presents. Witness our hands and seals this third day of August, A. D. 1869. The conditions of the above obligation are that if the above bounden Joseph H. Roe and C. A. Ruther shall each of them be and appear, in his own proper person, before the United States district court, in and for the district of Kansas, at the next term thereof, and on the first day of said term, there to answer to a charge of willfully and knowingly violating the internal revenue laws of the United States, and shall not depart said court without leave, and shall abide the judgment of said court therein, then the above obligation to be void; otherwise to be and remain in full force and effect.

C. A. RUTHER. [Seal.]

"J. H. ROE. [Seal.]

"M. McELROY. [Seal.]

"CHAS. BULL. [Seal.]

"Subscribed in my presence and approved this Aug. 3, 1869, at Fort Scott, Kansas.

W. A. SHANNON, U. S. Com'r."

On the 12th day of October, 1869, that being the second day of the term, a forfeiture of this recognizance in due form was taken, and an order for a writ of *scire facias* was issued, returnable October 30th. On the 6th of November, 1869, and at the same term, a motion was made