

"The evidence shows that the lands in controversy cost about six thousand dollars, and that there was loaned on them as security two thousand two hundred and twenty dollars. The deed executed by Whittaker to Mrs. Saunders was a quitclaim deed and was recorded, and it states that the consideration received for the lands was five dollars. Was not this fact sufficient to put any prudent man on inquiry? Is it possible that any sane man, having good title to land worth two thousand or six thousand dollars, would sell it for five dollars? The question suggests its own answer. Add to this the fact that the conveyance executed was a quitclaim deed, and the conclusion that Mrs. Saunders did not acquire a good and valid title, in the absence of an explanation, would be irresistible. It was at least sufficient to have put appellants on inquiry, which, if they prosecuted with ordinary diligence, would doubtless have led to actual notice of the facts as shown by the evidence in this case. But they prosecuted no inquiry, and it follows that they are not *bona fide* purchasers without notice."

Furber having no title, his quitclaim to Dunn passed none. As the defendants never had any title to lose by laches, it is unnecessary to consider that question. The decree of the circuit court is affirmed.

TOWNSHIP OF WASHINGTON v. COLER et al.

(Circuit Court of Appeals, Eighth Circuit. July 5, 1892.)

No. 33.

1. TOWNSHIPS—RAILROAD AID BONDS—AUTHORITY TO ISSUE—CONSTRUCTION OF STATUTE.

Laws Kan. 1876, c. 107, authorizing municipal townships to subscribe for railroad stock, requires (section 1) a petition by two fifths of the taxpayers, asking the county commissioners to submit to the township electors a proposition of subscription; such petition to designate (section 2) the amount of the stock, "the terms of payment," and other conditions of the subscription; the proposition to be accepted (section 5) by two thirds of those voting at the election held for that purpose, and the bonds to have coupons attached "as may be required by the terms of said proposition;" the county commissioners to levy a tax (section 6) "sufficient to pay the interest on such bonds as the same shall become due, and to create a sinking fund sufficient to pay such bonds at maturity;" the principal of the bonds to be made payable (section 13) "at any time that may be fixed in the proposition voted on," not exceeding 30 years. Section 14 declares, among other things, that to the said bonds shall be attached coupons for annual installments of "the principal and interest accruing from time to time by the terms of the bonds." *Held* that, in view of the prior provisions, the language quoted from the last section did not require that all bonds issued under the act should provide for annual payments on the principal, but merely that, if the proposition voted on provided for such annual payments, coupons therefor should be attached; and the township had authority, by proper proposition, vote, etc., to issue bonds, the whole principal of which should not mature until 30 years.

2. SAME—ESTOPPEL—RECITALS.

In an action by an innocent purchaser against a township on railway aid bonds, which on their face refer to the act authorizing their issuance and specifically recite the taking of each step required thereby, the township is estopped to allege invalidity of the bonds on any ground except that they were issued in violation of some constitutional or statutory requirement.

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

Statement by SANBORN, Circuit Judge:

W. N. Coler & Co. brought suit in the United States circuit court for the district of Kansas against the township of Washington, in the county of Chautauqua, Kan., upon a large number of coupons detached from a series of bonds issued by the board of county commissioners of that county, on behalf of the township of Washington, on July 1, 1886. The plaintiffs recovered judgment for \$5,803.46. The defendant sued out its writ of error to reverse this judgment, and the only question presented by the assignment of errors, and argued here, is whether the law under which these bonds were issued restricted the power of the defendant, and those authorized to issue bonds on its behalf, to the issuance of bonds that provided for the payment of an installment of the principal annually, commonly called "installment bonds." The case was tried below by the court upon an agreed statement of facts, from which it appears that the plaintiffs were innocent purchasers for value before maturity, and owners of the coupons sued upon and the bonds from which they were detached. One of the bonds and coupons reads as follows:

Number	Dollars,
_____.	500.
STATE OF KANSAS.	COUNTY OF CHAUTAUQUA.
TOWNSHIP OF WASHINGTON.	

Know all men by these presents, that the municipal township of Washington, in the county of Chautauqua, in the state of Kansas, for value received, hereby promises to pay to the bearer, thirty years after date, at the fiscal agency of the state of Kansas in New York city, the sum of five hundred dollars, with interest thereon from date until paid, at the rate of seven per centum per annum, payable semiannually at the fiscal agency aforesaid, on presentation of the proper coupons hereto attached, and at the times therein mentioned, respectively.

This is one of a series of thirty-six bonds of like tenor, date, and amount, numbered from one to thirty-six, inclusive, issued to the Leroy and Caney Valley Air-Line Railroad Company, a railroad corporation of the state of Kansas, in full payment of a subscription by said municipal township of Washington for one hundred and eighty shares, of one hundred dollars each, of the capital stock of said railroad company, said subscription of stock and issue of bonds being made under and by virtue of authority of, and in compliance with, the act of the legislature of the state of Kansas entitled "An act to enable counties, townships, and cities to aid in the construction of railroads, and to repeal section eight, chapter thirty-nine, of the Laws of 1874," approved February 25th, 1876, and the acts amendatory thereof, and other acts upon the same subject, and in pursuance of the authority of a special election regularly warned and held on the 27th day of April, A. D. 1886, and which was duly petitioned for in writing by more than the requisite number of qualified petitioners, and more than two fifths of the resident taxpayers of said municipal township of Washington, and more than the requisite number of qualified voters, and more than the requisite majority of the qualified electors of said township voting in favor of said subscription of stock, and the issue of these bonds in payment thereof, which issue of bonds is in every respect in accordance with, and not in excess of, the limitation prescribed by law.

Executed and issued for and on behalf of said municipal township of Washington by order of the board of county commissioners of said county of

Chautauqua, at Sedan, the county seat, and signed by the chairman of said board, and attested by the county clerk, under the seal of said county, the first day of July, 1886.

Chairman of the Board of Commissioners.

Attest: _____, County Clerk.

[Stamped on face: "\$500."]

THE TOWNSHIP OF WASHINGTON, IN CHAUTAUQUA COUNTY, KANSAS,
\$17.50 will pay the bearer \$17.50
seventeen 50-100 dollars on the first day of Jany., A. D. 1887, at the fiscal agency of the state of Kansas in the city of New York, being interest due on that date on bond No. _____ for \$500, dated July first, A. D. 1886, issued to the Leroy and Caney Valley Air-Line Railroad Company.

Chairman of the Board of County Com'rs.

Attest: _____, County Clk.

[Stamped on face: "1."]

Each of these bonds was duly registered in the office of the auditor of state of the state of Kansas, and bore the following indorsement:

State of Kansas. I, Timothy McCarthy, auditor of the state of Kansas, do hereby certify that this bond has been regularly and legally issued; that the signatures thereto are genuine; and that it was registered in my office according to law this 11th day of January, 1887.

Witness my hand and official seal.

[Auditor's Seal.]

TIMOTHY MCCARTHY, Auditor of State.

Section 1 of the act recited in the bonds, approved February 25, 1876, which is chapter 107 of the Laws of Kansas for 1876, provides that, whenever two fifths of the resident taxpayers of any municipal township petition the board of county commissioners to submit to the qualified voters of the township a proposition to subscribe to the capital stock of any railroad company constructing a railroad through such county, the county commissioners shall cause an election to be held to determine whether such subscription shall be made. Section 2 provides that the petition shall designate the railroad company, the amount of stock proposed to be taken, and the terms of payment, together with the conditions upon which it is proposed to make such subscription. Section 3 provides that the county commissioners shall, upon the presentation of such petition, convene and make an order which shall embrace the terms and conditions set forth in the petition, and fix the time for holding the election. Section 5 provides that, if two thirds of the qualified electors voting at such election shall vote for such subscription, the board of county commissioners shall order the county clerk to make the subscription in the name of the township, and shall cause such bonds, with coupons attached, as may be required by the terms of said proposition, to be issued in the name of such township. Section 6 provides that, whenever any bonds shall be issued in pursuance of the foregoing provisions, it shall be the duty of the board of county commissioners to levy and collect annually a tax on all taxable property in such township sufficient to pay the interest on such bonds, as the same shall become due, and to create a sinking fund sufficient to pay such bonds at ma-

turity. Section 7 provides that, whenever any sum of the foregoing taxes collected for interest or sinking fund shall remain in the hands of the treasurer after paying all the interest due, the board of county commissioners for such township shall cause the treasurer to buy up the bonds at their market value, not exceeding par. Section 10 provides that all the township taxes levied upon the property of and collected from any company to which aid is extended under the provisions of this law shall be applied exclusively to the payment of the coupons, and to provide a sinking fund for the payment at maturity of the principal of the bonds issued by such township. Section 13 provides that the principal of the bonds of such township shall be made payable at any time that may be fixed in the proposition voted upon, not exceeding 30 years from their date. Section 14 provides that all bonds issued under the provisions of this law shall be made payable at the fiscal agency of the state of Kansas in the city of New York, and shall be registered in the office of the auditor of the state of Kansas, and to the said bonds shall be attached coupons for annual installments of the principal and the interest accruing from time to time by the terms of said bonds, which shall be receivable as they shall become due for taxes due the county, township, or city issuing such bonds which were levied to pay the interest and installments on such bonds.

The petition of the taxpayers to the county commissioners to submit the question of the issuance of these bonds to a vote, provided that the principal of said bonds should "mature and be payable thirty years from the day upon which they are executed;" the proposition for the issuance of the bonds submitted to and carried by the vote of the people contained the same provision.

Joseph G. Waters, for plaintiff in error.

Charles Blood Smith, (*Rossington, Smith & Dallas*, of counsel,) for defendants in error.

Before CALDWELL and SANBORN, Circuit Judges, and SHIRAS, District Judge.

SANBORN, Circuit Judge, after stating the facts as above, delivered the opinion of the court.

The act recited in the bonds (chapter 107, Laws Kan. 1876, under which these bonds were issued) gave the authority to and imposed the duty on the county commissioners of determining whether the various provisions of the act and the various terms of the proposition adopted had been complied with before they issued the bonds. They did determine that there had been a full compliance with these terms and provisions, and so recited in the bonds, and it is conceded by counsel for the defendant that it is estopped by these recitals, as against the plaintiffs, to claim that the bonds are invalid on any other ground than that upon their face they appear to have been issued in violation of some constitutional or statutory restriction. *Chaffee Co. v. Potter*, 142 U. S. 355-364, 12 Sup. Ct. Rep. 216; *Town of Coloma v. Eaves*, 92 U. S. 491; *Lake Co. v. Graham*, 130 U. S. 674-681, 9 Sup. Ct. Rep. 654.

It is not claimed that these bonds were issued in violation of any restriction of the constitution, and the only provision of statute which is claimed to so restrict the power of the board of county commissioners to issue these bonds as to make them void is the clause contained in section 14 of the act, which reads as follows: "And to the said bonds shall be attached coupons for annual installments of the principal and interest accruing from time to time by the terms of said bonds." If this clause contained the only reference in the law to the time when these bonds should mature, there might be some force in the defendant's contention; but the entire law must be considered, and the intent of the legislature drawn, not from a single clause, but from the entire body of the act. When this is done, the claim of the defendant is seen to be utterly without foundation. Section 13 of the act expressly provides that the principal of the bonds "shall be made payable at any time that may be fixed in the proposition voted upon, not exceeding thirty years from their date." Section 2 provides that the petition for the submission of the proposition to subscribe for stock shall state "the terms of payment" therefor. Section 3 provides that these terms of payment shall be submitted to the vote of the people as a part of the proposition. Section 5 provides that, if the proposition is carried by the vote of the people, the county commissioners shall cause such bonds, with such coupons attached, as may be required "by the terms of said proposition" to be issued. Doubtless a proposition might have been submitted and carried to issue bonds which should provide for the payment of annual installments of the principal, but the terms of the proposition actually submitted and carried did not so provide, but provided for the issuance of bonds whose principal should be due in 30 years from their date, and in view of the express provision of section 13, that the principal "shall be made payable at any time that may be fixed in the proposition voted upon, not exceeding thirty years from date," it is very clear that the clause in section 14, that "to the said bonds shall be attached coupons for annual installments of the principal and the interest accruing from time to time by the terms of said bonds," cannot be held to mean more than that if the proposition submitted and the terms of the bonds issued in compliance therewith provide for the payment of the principal in annual installments, then coupons for such installments shall be attached to the bonds; and, as neither the proposition nor the terms of the bonds in this case did require the payment of any installments of the principal before the entire principal became due, no such coupons were necessary, and this clause had no application to these bonds.

Again, section 6 of this law provides that it shall be the duty of the county commissioners to levy and collect annually a tax "sufficient to pay the interest on such bonds as the same shall become due, and to create a sinking fund sufficient to pay said bonds at maturity." Section 7 provides that when there remains in the hands of the treasurer any part of the moneys collected from this tax, after paying "all the interest due," the board of county commissioners shall cause the treasurer to buy up the bonds at their market value, not exceeding par. And section 10

provides that the taxes levied upon the property of any company, aided under the provisions of this law, shall be applied to the payment of the coupons, and "to provide a sinking fund for the payment at maturity of the principal of the bonds issued by such township." If the legislature intended by this law that installment bonds only should be issued under it, no sinking fund would be either necessary or useful. A tax could be, and naturally would be, levied each year for the amount necessary to pay interest and the installment of principal coming due the succeeding year, and no surplus funds would be accumulated to buy bonds before maturity. The fact that a sinking fund was thus provided for is very persuasive that bonds could be issued under this law, the entire principal of which would fall due at one time; and when this law is compared with others passed by the same legislature, which do provide for the issuance of installment bonds, and it is found that in those laws no provision for a sinking fund is made, it becomes almost conclusive. Chapter 37 of the Laws of Kansas for 1876 provides for the issuance by the county of Wyandotte of \$123,000 of funding bonds, payable in installments. It declares the exact amount that shall be payable in each year, and directs a levy annually of a sum sufficient to pay the interest and the installment coming due the succeeding year, but makes no provision for any sinking fund. Chapter 38, Laws Kan. 1876, authorizes the city of Lawrence to issue bonds payable in not more than 30 years from their date, and provides that, "if said bonds shall be made payable in annual installments, they shall have separate coupons attached for such installments as they fall due." It also provides that the mayor and council shall levy in each year a sum sufficient to pay the installments, if the bonds are made payable in installments, and that if they are not they shall levy a sum sufficient to provide a sinking fund for the redemption of the bonds at maturity. Chapter 49, Laws Kan. 1876, authorizes the counties of Douglass, Franklin, and Anderson to issue bonds in certain amounts, "each payable in equal semiannual installments," and provides that a tax shall be levied in each year sufficient to pay the interest and the installment of principal falling due in the succeeding year, and makes no provision for a sinking fund. Chapter 50, Laws Kan. 1876, provides that the city of Chetopa may issue bonds in certain amounts, "payable in equal annual installments," and that a levy of a tax shall be made in each year sufficient to pay the interest and the installment of the principal falling due in the succeeding year, but makes no provision for a sinking fund. In each of these acts authorizing the issuance of installment bonds only, the times of payment and the amounts of the installments are expressly fixed, and it is made the duty of the proper officers to levy and collect each year taxes just sufficient to pay the interest and the installment of principal falling due the ensuing year, but no sinking fund is provided for; while by chapter 38, in which authority is given to the city of Lawrence to issue either installment bonds or bonds the entire principal of which shall fall due at one time, as the people may elect, the policy of the legislature is made plain by the fact that this act provides that in case installment bonds are issued, no sinking

fund shall be provided for, but, in case bonds the entire principal of which shall fall due at one time are issued, a sinking fund shall be provided for. In chapter 107, the act under which the bonds in question were issued, there is no provision fixing the amount of any installments of the principal or the times when they shall fall due, there is no provision for levying taxes to pay any installment; but there is a provision for the levy of taxes to provide a sinking fund, there is a provision for buying bonds before they mature, and an express declaration that the bonds issued under this act shall be made payable at any time that may be fixed in the proposition voted upon. The conclusion is irresistible that authority was intended to be and was here conferred to issue these 30-year bonds, and the judgment must be and is affirmed, with costs.

ROSENSTEIN *et al.* v. TARR *et al.*

(Circuit Court, D. Massachusetts. July 20, 1892.)

No. 3,467.

1. SUPERSEDEAS BOND—LIABILITY ON.

A *supersedeas* bond, conditioned according to the statute for prosecuting an appeal with effect and answering all damages and costs, covers not merely compensation for the delay arising from the appeal, but also the amount of the decree appealed from, so far as the latter directs the payment of money by appellant to appellee.

2. SAME—INTEREST—MONEY DEPOSITED IN COURT.

But in an action on the bond neither the principal nor sureties can be mulcted beyond what was adjudged as the result of the appeal; and where a sum deposited in court by a receiver was there retained pending an appeal, and no provision was made for interest thereon in the mandate or the decree entered in pursuance thereof, no such interest could be recovered in an action on the *supersedeas* bond.

3. SAME—LIABILITY OF SURETIES—EFFECT OF TRUSTEE PROCESS.

A decree for the payment of money by defendant to complainant was affirmed on appeal, and the decree entered in pursuance of the mandate allowed interest from the date of the appeal. Notice was at once given to the sureties on the *supersedeas* bond that plaintiff looked to them for payment of the decree. Two days later the sureties were summoned as trustees in a suit against the plaintiff, but gave no attention to the same, and were defaulted therein. *Held* that, as they were in actual personal default to plaintiff from the date of receiving the notice, they could not escape payment of interest to him because of the trustee process, especially as they did not set aside and cause to remain idle any fund to meet the decree or the judgment in the trustee action.

4. SAME—FEDERAL AND STATE COURTS.

No restraint or embarrassment can lawfully be put on the enforcement of judgments or decrees of the federal courts, by means of trustee process issued by a state court; and, as execution could have issued against the principal debtor upon the decree entered in pursuance of the mandate, the enforcement of such decree against his sureties could not be prevented by the trustee suit, for while execution could not have gone against them, they were so intimately connected with him as to stand in the same position.

At Law.

This is an action of contract upon a bond. The facts, as agreed upon, were, in substance, as follows: A suit in equity had been brought by the plaintiffs in this suit against Joseph J. Burns and Robert Tarr, one of

the defendants, to wind up a partnership. A receiver had been appointed, and he had paid into the registry of the court a large sum of money, to await the disposal of the suit. On May 6, 1886, it was decreed that the amount in said registry be paid over to the plaintiffs, and it was further decreed that the said defendants pay to said plaintiffs \$1,679.14, together with interest thereon from the date of said writ, and cost of this suit, amounting in all to \$3,105.28. An appeal to the supreme court of the United States was taken by the said defendants, and a *supersedeas* bond was filed, in which Joseph J. Burns and Robert Tarr are principals and William C. Dolliver and John S. Dolliver are sureties, in the penal sum of \$8,000, conditioned to answer all damages and costs if they fail to make their plea good. Joseph J. Burns died during the progress of the suit. Robert Tarr and the said sureties are the defendants in this suit upon the bond. The supreme court affirmed the decree of the circuit court in said case, and thereupon the mandate in said supreme court issued, commanding said circuit court that such execution and proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding. A decree was accordingly entered June 28, 1890, by the circuit court, affirming its previous decree, with costs and expenses, as provided in said mandate. Execution upon and in accordance with said decree of June 28, 1890, was issued July 10, 1890, which execution is in no part satisfied. Notice was given the sureties on the aforesaid bond, and received by them July 2, 1890, of the decree of the said supreme court, and that the plaintiffs looked to them for payment of the amount of the decrees, including interest and costs from the date of the appeal. But the said sureties paid no attention to the notice.

On July 10, 1890, the aforesaid sureties were duly summoned as alleged trustees of the plaintiffs in this case in a writ brought against the plaintiffs in this case, returnable before the superior court in the county of Essex and commonwealth of Massachusetts, but the case was later removed to this court, where it is now pending, on the ground that these plaintiffs—the defendants in said action—were residents of another state. The aforesaid sureties did not appear and answer as alleged trustees, and were defaulted in the state court. The aforesaid sureties, William C. and John S. Dolliver, were and are copartners at Gloucester. Since July 11, 1890, they had had a balance in the bank to be drawn upon, varying from \$2,894.71 to over \$4,000, and had also had in their office safe about \$500 constantly, and they had always been ready and able to pay the amount legally due from them on said bond. The aforesaid money was kept for the uses of their business, and especially for the payment of the amount due on said bond; and they had received no interest on the money in said bank and safe. However, as said alleged trustees, they had set apart no money to await the decision of the court in said trustee process, or to be applied to the payment of said bond, separate from the money used in their business. It was agreed that the condition of the bond had been broken, and that judg-

ment might be entered in favor of the plaintiffs against the defendants for the penal sum therein named.

The question here raised for the court is, for what shall the execution issue? Shall the execution issue for an amount including (1) the amount of the decree appealed from of May 6, 1886; (2) interest on the amount left in the registry of the court from the date of the decree appealed from; (3) interest on the further amount of the final decree of June 28, 1890; after the trustee process was served on the aforesaid sureties, July 10, 1890?

W. F. & W. S. Slocum, for complainants.

E. J. Hadley and B. F. Butler, for delendants.

PUTNAM, Circuit Judge. There is no doubt that a *supersedeas* bond, conditioned according to the statute for prosecuting an appeal with effect and answering all damages and costs, covers not merely compensation for the delay arising from the appeal, but also the amount of the decree appealed from, so far as the latter directs the payment of money by the appellant to the appellee. *Catlett v. Brodie*, 9 Wheat. 553; *Jerome v. McCarter*, 21 Wall. 17.

It appears that there has been no judgment nor decree, by either tribunal, directing payment of any interest, or other damages for delay, with reference to the amount in the registry of the court. It is elementary that, in a suit on a *supersedeas* bond, neither the principals nor the sureties can be mulcted beyond what the courts have adjudged as the result of the appeal to which the bond was incident. Whatever questions may be raised in some courts as to recovery in actions on injunction bonds of damages not assessed in the principal suit, none such are admitted here. If plaintiffs claim interest on the fund in the registry, they were holden to establish their claim in the original proceeding as a condition precedent to any demand for it here, though it is probable the circuit court had no authority in this suit to award such interest after the mandate was received. *Ex parte Washington & G. R. Co.*, 140 U. S. 91, 11 Sup. Ct. Rep. 673. But, on the other hand, the decree entered June 28, 1890, expressly provided that complainants should receive interest from that date on all sums which the original defendants were ordered to pay them. This was authorized by Rev. St. § 966.

The original respondents were in legal default from the instant the decree was entered; and their sureties, who are also defendants in the present suit, were in actual and personal default from the instant they received (July 2, 1890) the letter from complainants' attorneys demanding payment of the decree, and particularly so after the expiration (July 8th) of the 10 days within which the issue of an execution was forbidden. The trustee process set up by defendants was not served till July 10, 1890. There is nothing in the case showing that either surety set apart any fund with which to discharge his liability on the *supersedeas* bond or in the trustee suit, or had on deposit any amount beyond what was reasonable and usual for his current business needs, or that either has

not kept his whole capital active and fruitful, with such margins only as are common and convenient for such pursuits as these sureties are shown to have been in. There is no proof nor suggestion that the other defendants have had on hand any moneys for any purpose whatever. Under these circumstances, it is difficult to see what equity any of these respondents has for disallowance of interest to the loss of the complainants. They were all in actual personal default before the trustee process was served, and have been in such position that they profited by the delay to an amount presumably equal to the legal rate of interest.

Generally a debtor who has been trustee does not pay interest, unless he is shown to have received interest or had expressly promised to pay it. *Abbott v. Stinchfield*, 71 Me. 213; *Huntress v. Burbank*, 111 Mass. 213; *Smith v. Flanders*, 129 Mass. 322; *Norris v. Insurance Co.*, 131 Mass. 294. Yet in *Huntress v. Burbank* the court stated that no demand for payment had been made on the sureties; and it has not been brought to my attention that, in any of the suits cited on this point, it appeared that the debtor was in actual personal default before the trustee process was commenced, as in the case at bar. Therefore, if necessary for me to rule on this point, I hold that, under the particular facts of this case, the defendants are not relieved by the trustee process from payment of interest. I so hold, although the proposition of plaintiffs that interest on the decree in this case arises as on contract, and is not merely moratory, or as damages, seems to be met by the supreme court of Massachusetts in *Clark v. Child*, 136 Mass. 344. On page 348 the court lays down broadly the proposition that, in suits on judgments of the courts of sister states, the plaintiff recovers interest according to the law of the forum, and not according to the law of the state in which the judgment was rendered. This could not be so if interest on a judgment was presumed to run as by contract. It is true that the original judgment in *Clark v. Child* was on a tort, and that the court might on that account have distinguished it from a judgment on a contract where interest was expressly promised. But the rule laid down by the Massachusetts court was broad enough to cover every judgment on every cause of action; and, moreover, in the case at bar it appears that the decree was the result of an adjustment of partnership affairs, as to which interest is a matter only of equity and arises from no express obligation. I do not find that the supreme court has ever ruled directly on this precise proposition, although in *Coghlan v. Railroad Co.*, 142 U. S. 101, 12 Sup. Ct. Rep. 150, it was held that interest on overdue coupons should be computed by the law of the place of payment, which for this purpose was the law of the contract, and not by the law of the forum. The same was ruled in *Cromwell v. County of Sac*, 96 U. S. 51, and *Pana v. Bowler*, 107 U. S. 529, 2 Sup. Ct. Rep. 704. In these cases, however, the suits were directly on the coupons, or for foreclosure, and none of them were on judgments rendered. Moreover, this proposition of the complainants is met, at least for Massachusetts, and therefore for decrees and judgments of the circuit court of the United States within this district, by *Huntress v. Burbank*, *supra*; which went expressly on

the ground that interest on a judgment does not arise from contract, or certainly is not interest of that particular kind which debtors who are trustee are presumably holden to pay.

Except for *Huntress v. Burbank*, *supra*, it would seem clear that the trustee process could not have been maintained by reason of the fourth and fifth clauses of section 34, c. 183, Pub. St. Mass., which clauses, moreover, are declaratory of the common law, and of principles broader than the mere letter of the statute. The court, however, appears not to have considered them, and it seems to have been assumed by all parties that the trustees were chargeable.

I think I must base my decision in this case on a proposition of law which relieves me from further investigating any of the foregoing questions. The original decree was of a circuit court of the United States, and against the principals in the *supersedeas* bond. Since July 8, 1890, execution could properly issue against them, and it could not be lawfully delayed, embarrassed, or controlled by any attachment process from any other tribunal. It is true that execution could issue against only the principals, but, so far as the question involved here is concerned, it is impossible to disconnect the sureties from the other respondents. It would be absurd to rule that the sureties might be holden by a trustee process for the debt due by force of the decree, while by simultaneous proceedings the execution of the circuit court might be levied therefor on the goods of the principal defendants.

I think the safe and true ground is that no embarrassment or restraint of the character now in question can be put on the enforcement of judgments or decrees of this court; and in this proposition I seem not only sustained, but governed, by the supreme court in *Wallace v. McConnell*, 13 Pet. 136. As the trustee proceedings could not in any way embarrass the decree or execution of this court, no cognizance of them is to be taken by me at this stage, whatever discretion to grant delay might or might not have been exercised on a motion for that purpose, seasonably made and properly framed. If the defendants, or any of them, are subject to double litigation, the misfortune is not unlike that which happens to many; and they had their remedy, though at some expense and inconvenience. If they have lost it, which is not probable, especially as the suit has by removal been brought under the control of the common-law side of this court, this comes from their inattention to the trustee process, and does not arise from the principles which must control my judgment. Damages will be assessed on the principles of this opinion, without interest on any portion of the fund which was in the registry of the court, and with interest on the full amount of the decree entered June 28, 1890, and without any deductions on account of the trustee proceedings brought in the state court; and execution will issue accordingly.

GOTTLIEB v. THATCHER.

(Circuit Court of Appeals, Eighth Circuit. July 5, 1892.)

1. LIMITATION OF ACTIONS—COLOR OF TITLE—WHAT CONSTITUTES.

A landowner gave a trust deed to secure her promissory note. In an action by a third person against the payee, the note was levied on and sold, the third person becoming the purchaser. He then demanded payment of the maker, which was refused, and he notified her that he would have the land sold under the trust deed, to which she assented. Before such sale, however, she made a direct conveyance to the payee for an expressed consideration equal to the face of the note. The land was afterwards sold by the trustee, and was purchased by the third person, who received a deed conveying on its face the full legal title. *Held*, that irrespective of the question whether the sales of the note and of the land, respectively, were valid in law, this deed was sufficient to give color of title, and, being accompanied with payment of taxes, in good faith, for more than five years, was sufficient to confer absolute title, under the Colorado statute of limitations relating to unoccupied lands. Gen. St. 1888, § 2187.

2. SAME—GOOD FAITH.

The fact that the third person took the advice of counsel, and was advised that the note was subject to levy, and that, having purchased the same, he evidently believed that he had a right to cause the land to be sold for its satisfaction, was sufficient to show that in paying the taxes he relied on color of title obtained in good faith.

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

E. T. Wells, R. T. McNeal, and John G. Taylor, for plaintiff in error.

J. Warner Mills, V. D. Markham, and H. C. Dillon, for defendant in error.

Before CALDWELL and SANBORN, Circuit Judges, and SHIRAS, District Judge.

SHIRAS, District Judge. The defendant in error, Lewis C. Thatcher, brought this action in the district court of Arapahoe county, Colo., for the purpose of determining the title and right of possession to 20 acres of unoccupied land situated in said county and state; and the defendant in the action, Joseph Gottlieb, being a citizen of the state of California, removed the same into the circuit court of the United States for the district of Colorado, where the cause was tried before the court, a jury being waived. Among other defenses, the defendant pleaded that under color of title by him held in good faith he had paid all taxes assessed upon the land for a period in excess of five years before the institution of this suit, and therefore, under the statutes of the state of Colorado, he had become the owner thereof. The court found the facts to be as follows:

"(1) That the title to the property in question was, at and before the 1st day of January, 1874, in Annie C. McCormick. (2) That on January 1, 1874, said Annie C. McCormick and Isaac L. McCormick conveyed the said property to David H. Moffatt, Jr., in trust to secure to Samuel H. Thatcher the payment of a promissory note of said Annie C. McCormick for thirteen hundred and fifty dollars, (\$1,350,) payable two years after date, with interest at twenty per cent. per annum, which said instrument was in the usual form of deeds used in Colorado for the security of money. (3) That said note was indorsed in blank by said Samuel H. Thatcher, and by him pledged to and left with Gray and Eicholtz some time prior to September, 1877, to secure a loan