It is urged that the plaintiff cannot, in this action, avoid the receipt on the grounds relied upon, but that it can only be avoided by a bill in equity for that purpose. The complaint anticipated the defense based on the receipt, and alleged that it was procured from the plaintiff by fraud, and at a time when she was incapable of transacting any business. The defendant took issue on this allegation. The jurisdiction of the court to determine this issue was not challenged in the trial court, and cannot, therefore, be raised in this court. We have recently had occasion to consider this question (Railway Co. v. Harris, 63 Fed. 800), and content ourselves with referring to what was there said without repeating it here. We are not to be understood as intimating that, if the defendant had interposed a timely objection to the jurisdiction of the lower court to try this issue, the objection would have been of any avail.

Finding no error in the record, the judgment of the circuit court is affirmed.

BERGMAN et al. v. BLY.

(Circuit Court of Appeals, Eighth Circuit. January 2, 1895.)

No. 467.

1. LIMITATION OF ACTIONS—PAYMENT ON NOTE BY ONE OF TWO JOINT MAKERS.
   Payment made on a joint and several promissory note, executed and payable in Wyoming, by one of the two makers thereof, does not operate to prevent the running of the statute of limitations of that state as to the other maker. Cowhick v. Shingle (Wyo.) 37 Pac. 689, followed.
2. FEDERAL COURTS—CONSTRUCTION OF STATE STATUTES.
   The construction placed upon a state statute by the supreme court of the state is obligatory on the federal courts, such construction being, in effect, a part of the text of the statute itself.

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

This was an action by Damon Gaylord Bly against Isaac Bergman and Colin Hunter on a promissory note. The court directed a verdict for plaintiff. Defendants now bring error.

A. C. Campbell (R. W. Breckons, on the brief), for plaintiffs in error.

T. F. Burke (Charles H. Potter, on the brief), for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

CALDWELL, Circuit Judge. This action was brought in the circuit court of the United States for the district of Wyoming, by Damon Gaylord Bly, the defendant in error, against Isaac Bergman and Colin Hunter, to recover the contents of a promissory note, of which the following is a copy:

"$5830.00. Cheyenne, Wyoming, October 10th, 1886.

"Twelve months after date, for value received, we jointly and severally promise to pay to the order of Angeline Bly fifty-eight hundred and thirty

00-100 dollars at the banking house of Morton E. Post & Co., with interest at one per cent. per month from date until paid, interest payable semiannually.

"Due Oct. 10-13, 1886. Isaac Bergman.
"Colin Hunter."

The defendants answered separately. The only issue raised by the defendant Bergman's answer was that the interest on the note had been paid up to July 1, 1891, instead of January 1, 1891, as claimed by the plaintiff. The defendant Hunter alleged in his answer that he signed the note as surety for Bergman, and, among other defenses, pleaded the statute of limitations as follows:

"(1) Defendant alleges that no payment has been made upon said note by him, or with his knowledge or consent, at any time since the same was executed and delivered, and that the period of five years has elapsed since the said note became, by its terms, due and payable."

The sections of the statute of limitations of Wyoming upon which this plea rests read as follows:

"Sec. 2368. Civil actions, other than for the recovery of real property, can only be brought within the following periods, after the cause of action accrues.

"Sec. 2369. Within five years an action upon a specialty or any agreement, contract or promise in writing." * * *

"Sec. 2381. When payment has been made upon any demand founded on contract or a written acknowledgment thereof, or promise to pay the same has been made and signed by the party to be charged, an action may be brought thereon within the time herein limited, after such payment, acknowledgment or promise."

The circuit court directed the jury to return a verdict for the plaintiff against both defendants for the amount of the note and interest thereon from January 1, 1891. Upon a consideration of the evidence, we are satisfied that this instruction, so far as relates to the defendant Bergman, was right The only question in the case requiring serious consideration arises on the defendant Hunter's plea of the statute of limitations. The interest on the note was paid up to January 1, 1891, by Bergman, the principal in the note, and under the Wyoming statute, this payment of interest confessedly precluded the bar of the statute of limitations from attaching in Bergman's favor. Did such payment have a like effect as to the defendant Hunter? The circuit court held that it did, and this ruling is assigned for error.

The question for decision is this: Does a payment made on a joint and several promissory note, executed and payable in Wyoming, by one of the two makers thereof, operate to prevent the running of the statute of limitations of that state as to the other maker? The supreme court of that state has recently answered this question in the negative in a well-considered opinion, reviewing many of the cases on this subject. Cowhick v. Shingle (Wyo.) 37 Pac. 689. The court rests its decision upon its construction of the statute of limitations of the state, as well as upon the general rule of law. Counsel have with commendable diligence collected and cited to the court, and discussed at much length, the numerous decisions on both sides of this vexed question. Courts in this country and in England have discussed it pro and con so long and so often that there remains nothing new to be said on the subject. It would be an affectation of