

laws of Florida. The declaration contained 10 counts, some of which were upon notes made by the defendant to Charles C. Deeming, treasurer, and indorsed by him to plaintiff. Other counts alleged that the plaintiff, at the defendant's request, released the Florida Construction Company from indebtedness in amounts specified, and that defendant thereupon promised to pay such indebtedness. The last three counts were the common counts for money paid out and expended, money lent, and on account stated. Various motions and demurrers were passed upon by the circuit court, and numerous amendments were made to the declaration. The defendant ultimately filed pleas to all the counts. To these pleas replications were filed, and, the issues being finally joined, the case was tried before a jury, resulting in a verdict for the plaintiff for \$86,291.41. Defendant made a motion for a new trial, and plaintiff entered a remittitur for \$17,588.37. A new trial was denied, and judgment entered against the defendant for \$68,693.04. Defendant then sued out this writ of error. There were 26 specifications of error. No opinion appears to have been filed by the circuit court upon any of the questions ruled upon.

T. M. Day, Jr., for plaintiff in error.
John Wurts, for defendant in error.

Before PARDEE and McCORMICK, Circuit Judges, and BRUCE, District Judge.

PER CURIAM. A careful examination of the record in this case shows no error warranting the reversal of the judgment of the circuit court, which judgment appears to be in accordance with, and fully supported by, the evidence. Judgment affirmed.

LADD v. MISSOURI COAL & MINING CO.

(Circuit Court of Appeals, Eighth Circuit. February 28, 1895.)

No. 420.

TRIAL—RECEPTION OF EVIDENCE—OFFER TO PROVE.

On an issue as to the acceptance of a proposed contract for the sale of lands, plaintiff offered to prove a conversation between witness and one M. The offer was not accompanied by any statement as to what the conversation was, or that it was material to the issue, and it did not appear from the record that M. was defendant's agent in the matter of the proposed sale. *Held* insufficient to sustain an exception to the exclusion of the testimony.

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

Action by William M. Ladd against the Missouri Coal & Mining Company to recover damages for breach of contract. The court directed a verdict for defendant, and plaintiff brings error.

Upton M. Young, for plaintiff in error.
James A. Seddon and Chester B. McLoughlin (James L. Blair and T. J. Rowe, with them on the brief), for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

CALDWELL, Circuit Judge. This action was commenced in the United States circuit court for the Eastern district of Missouri by William M. Ladd, the plaintiff in error, against the Missouri Coal & Mining Company, the defendant in error, to recover \$34,637 damages for the breach of an alleged contract of

brokerage. At the close of the testimony, by direction of the court, the jury returned a verdict for the defendant, upon which final judgment was rendered, and thereupon the plaintiff sued out this writ of error. The petition alleges that the defendant was the owner of certain lands in Lincoln county, Mo., which are particularly described, and that on or about the 12th day of January, 1892, the defendant entered into a brokerage contract with the plaintiff, by the terms of which the plaintiff was to have the exclusive right to sell these lands until July 1, 1892, for a sum not less than \$60,000, and for his services in making the sale the plaintiff was to have one-half of all he sold the land for above \$60,000, and was to receive \$3,000 commission before beginning to divide with the defendant the excess over \$60,000. It is alleged: That the exclusive right of the plaintiff to sell the lands on the terms mentioned was extended from time to time up to and including the 15th day of November, 1892, and that on the 3d day of November, 1892, the plaintiff sold the lands to Azel F. Hatch on the following terms, namely: \$5,000 to be paid in cash on execution of the contract of sale; \$20,000 to be paid on the 1st day of March, 1893, upon delivery of a good and sufficient warranty deed; and the balance to be paid in four equal annual payments, with interest at 6 per cent. per annum, payable semi-annually, to be secured by notes and trust deed on the lands. That Hatch prepared an agreement embracing the terms of sale agreed upon by the plaintiff and Hatch, which was forwarded by the plaintiff to the defendant for its approval on the 8th of November, 1892, and that the defendant, prior to the 15th of November, 1892, accepted the same, and promised to execute it, but afterwards neglected and refused to do so for an unreasonable length of time, and until Hatch withdrew his offer to purchase. Though the record is somewhat voluminous, the case rests in a small compass. It is not claimed by the learned counsel for the plaintiff in error that the plaintiff at any time found a purchaser for the land on the terms specified at the time the land was put into his hands for sale. The lengthy correspondence carried on between the parties shows that a sale upon any other terms was subject to the defendant's approval. The plaintiff's contention is that he sold the land to Hatch, and that the defendant, by and through its agent, one Murdock, accepted the terms and approved the sale prior to the 15th of November, 1892, the date on which the plaintiff's authority to sell the land terminated. Hatch's proposition to purchase was in writing in the form of an agreement to be signed by the defendant, but which Hatch did not sign. The plaintiff claims that Murdock, acting as agent for the defendant, approved and accepted this agreement, though he did not sign it. Unless the plaintiff can maintain this claim, he has no cause of action, for it is quite clear from the pleadings and evidence that neither this nor any other sale of the property negotiated by the plaintiff was ever accepted by the defendant, or any other person authorized to act for it, prior to the expiration of the plaintiff's authority. The plaintiff relies exclusively on the alleged

sale to Hatch, and insists that he was prepared to prove, and offered to prove, that Murdock did approve and accept for the defendant the terms of sale agreed upon between the plaintiff and Hatch, and that the court erroneously excluded this evidence. Whatever the fact may have been, the record does not support this contention. On this subject the record discloses that while the plaintiff was on the stand as a witness, the following proceedings took place:

"Q. You also stated that on November 13th Mr. Murdock returned in the afternoon to your office? A. I did. Q. And you handed him the proposed contract with Mr. Hatch? A. I did. (Plaintiff offers to prove by his witness the conversation between him and Mr. Murdock relating to the contract, which conversation was had at St. Louis on November 14, 1892, but, defendant objecting, the court sustained the objection, and refused to allow plaintiff to testify to any conversation between him and said Murdock on November 14th, save such as related to the transmission of the contract from St. Louis to Port Henry, to which action of the court in so ruling plaintiff then and there duly excepted.)"

It will be observed that all that the plaintiff offered to prove was "the conversation between him and Murdock relating to the contract." This offer was not accompanied by any statement as to what that conversation was, or that it was material to any issue then being tried. The insufficiency of the exception is rendered apparent by a single consideration. If this court should reverse the case because the witness was not permitted to state the conversation, what is there in this record to show or suggest that upon another trial, when the witness is allowed to state the conversation, a single word of it will be material to the case or admissible in evidence? The offer to prove the "conversation," without some statement as to what it was, and showing its materiality, was too general to be made the foundation of a valid exception. The rule is well settled that the bill of exceptions must show the materiality of the evidence which was tendered and rejected. The evidence rejected, or a statement of what it tended to prove, must appear in the bill of exceptions. *Packet Co. v. Clough*, 20 Wall. 528; *Railway Co. v. Smith*, 21 Wall. 255; *Thompson v. Bank*, 111 U. S. 529, 4 Sup. Ct. 689; *Clement v. Packer*, 125 U. S. 309, 8 Sup. Ct. 907; *Patrick v. Graham*, 132 U. S. 627, 10 Sup. Ct. 194; *Lyon v. Batz*, 42 Mo. App. 606; *Bener v. Edgington*, 76 Iowa, 105, 40 N. W. 117. Moreover, it does not appear from the record before us that Murdock was the agent of the defendant for the purpose of selling the land, or that he had any authority to approve or confirm any sale thereof made by the plaintiff. It results that the circuit court did not err in directing the jury to return a verdict for the defendant, and its judgment is therefore affirmed.

QUAKER CITY NAT. BANK v. NOLAN COUNTY.

(Circuit Court of Appeals, Fifth Circuit. December 11, 1894.)

No. 234.

VALIDITY OF COUNTY BONDS—CONSTITUTIONAL RESTRICTIONS—BONA FIDE PURCHASERS.

Francis v. Howard Co., 4 C. C. A. 460, 54 Fed. 487, and Millsaps v. City of Terrell, 8 C. C. A. 554, 60 Fed. 193, followed. Citizens' Bank v. City of Terrell (Tex. Sup.) 14 S. W. 1003, and Nolan Co. v. State (Tex. Sup.) 17 S. W. 823, approved.

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

This was an action by the Quaker City National Bank, of Guernsey county, Ohio, against the county of Nolan, Tex., to recover on coupons cut from certain bonds issued by that county. The case was tried to the court, without a jury, upon an agreed statement of facts. This statement of facts, which is of great length, will be found incorporated in the opinion rendered in the circuit court by Rector, District Judge, and reported in 59 Fed. 660. That court held that the bonds were invalid, under the constitution of the state, and that plaintiffs, though purchasing in the open market for value, were affected with notice of their invalidity. Judgment was accordingly rendered for defendant. Plaintiff brings error.

John J. Butts, for plaintiff in error.

W. W. Leake, for defendant in error.

Before PARDEE and McCORMICK, Circuit Judges, and BRUCE, District Judge.

McCORMICK, Circuit Judge. The questions involved in this case are not open questions in this court. On reasoning which we have approved, and still consider sound and sufficient, both of the vital propositions submitted have been decided by the supreme court of Texas adversely to the contention of the plaintiff in error. Citizens' Bank v. City of Terrell, 78 Tex. 456, 14 S. W. 1003; Nolan Co. v. State, 83 Tex. 183, 17 S. W. 823; Francis v. Howard Co., 4 C. C. A. 460, 54 Fed. 487; Millsaps v. City of Terrell, 8 C. C. A. 554, 60 Fed. 193. We have read with care and interest the learned and able brief submitted for the plaintiff in error, but are unwilling to open the questions which we have settled on full argument of counsel, and careful consideration by the court. The judgment of the circuit court is affirmed.

BLUM v. BOWMAN et al.

(Circuit Court of Appeals, Fifth Circuit. December 31, 1894.)

No. 326.

DEEDS—DESCRIPTION.

In an action of ejectment the question at issue between the parties depended upon the location of a line described in a grant by courses and