for value, but a holder without notice; in short, a bona fide holder. Sayles v. Garrett, 110 U. S. 288, 4 Sup. Ct. 90. There is some testimony to show that while Covell still retained possession of the bonds he and the plaintiff had notice that there was to be a contest regarding them. Without considering the effect which this notice would have upon the bona fides of the transaction, if given in the circumstances suggested by the defendant, it is enough to say that the great preponderance of evidence is to the effect that when the notice was given, in the summer or autumn of 1882, the plaintiff was, and for some time had been, the legal owner of the bonds.

Fourth. Covell and the plaintiff were farmers in Vermont. The latter had at one time taught school and was a soldier in the war of the Rebellion. They had prospered in a small way and were men of truth and honor. There is absolutely nothing in their former lives, so far as disclosed by the record, to indicate that they would enter into a conspiracy to defraud the defendant and support it by deception and perjury.

Fifth. The plaintiff's brother who sent him the bonds was a lawyer living in the immediate vicinity of the town of Phelps. Presumably he had cognizance of all the facts. What more natural than that the plaintiff, a farmer, living in another state, hundreds of miles from the scene of bonding, and having no knowledge of the facts, should rely upon the judgment of his brother who, by profession and residence, was well qualified to express an opinion on both the law and the facts?

Sixth. There were no overdue coupons on the bonds or anything about them to excite suspicion or inquiry. For some time after they were sent to the plaintiff the interest was paid in circumstances which might well have led him to believe that it was paid by the town.

Seventh. All of the parties to the transfer are men of standing and character. They all swear to a state of facts which demonstrate the good faith of the transaction. There is no reason for disbelieving them. The plaintiff has sworn that he had no knowledge of any defect in or defense to the bonds and that when he took them he "believed them to be valid and as good as so much gold." There is nothing in the record to justify the court in pronouncing this testimony false.

These reasons might be elaborated still further and others stated, but it is not necessary. The court does not overlook the various facts and presumptions of which the defendant predicates its attack on the plaintiff's good faith. It is sufficient that in order to find with the defendant the court must disregard undisputed testimony and erect in its place a fabric based largely on inference and suspicion.

No part of the cause of action is barred by the statute of limitations. A coupon partakes of the nature of the bond to which it was attached and is not outlawed until the bond itself is outlawed. Lexington v. Butler, 14 Wall. 282, 296.

The plaintiff is entitled to judgment of $2,975 with interest and costs.

ST. LOUIS TRUST CO. et al. v. RILEY.

(Circuit Court of Appeals, Eighth Circuit. September 30, 1895.)

No. 607.

STREET RAILWAYS—MORTGAGE FORECLOSURES AND RECEIVERS—PRIORITIES—DAMAGES FOR NEGLIGENCE.

A claim for damages for personal injuries, caused by the negligence of a street-railway company five months before the appointment of a receiver in mortgage foreclosure proceedings, is not entitled to priority of payment over the mortgage debt out of the earnings accruing during the receivership. Such a claim is not based upon any considerations inuring to the benefit of the mortgage security, or tending to keep the road a going concern.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

This was an intervening petition, filed by W. H. H. Riley, by his next friend, C. C. Riley, in the consolidated suit of the St. Louis Trust Company against the Capital Street-Railway Company, and the Atlantic Trust Company against the City Electric Street-Railway Company, to procure payment out of the earnings of the defendant railway companies of a judgment in the sum of $5,000, recovered against them in an action for personal injuries. The court below held that this claim was entitled to be preferred in payment from the earnings of the property over the lien of the mortgage debt. The two trust companies and the receivers of the roads, S. W. Fordyce and Allen N. Johnson, thereupon appealed to this court.

U. M. Rose, W. E. Hemingway, and G. B. Rose, filed brief for appellants.

William G. Whipple, filed brief for appellee.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

SANBORN, Circuit Judge. Is a claim for damages caused by the negligence of a street-railway company, a mortgagor, five months before a receiver was appointed in a suit to foreclose a mortgage upon its property and income, entitled to be preferred to the mortgage debt in payment out of the earnings of the railroad during the receivership? This is the question presented in this case. It arises in this way. The Capital Street-Railway Company, a corporation, which owned and operated a street railway in Little Rock, in the state of Arkansas, mortgaged its property, franchises, and income on April 2, 1890, to secure the payment of certain bonds it issued. On April 1, 1893, it made default in the payment of interest on these bonds, and on April 19, 1893, upon a proper bill for the foreclosure of the mortgage, a receiver of its property and income was appointed by the court below, and that court subsequently appointed a coreceiver. This corporation had, on March 3, 1891, leased its railroad to the City Electric Street-Railway Company, a corporation, which thereafter operated the railway under the lease. On December 1, 1891, the latter company mortgaged its property, franchises, and income to secure the payment of certain bonds which it