common stock. When the conveyance to Mrs. Wood was made, the company had no title to the lands, and never thereafter acquired any. Mrs. Wood was, therefore, when the decree was entered, a creditor of the old company in the sum of the par value of the bonds paid for the lands, and interest thereon. The bonds of the old company which she paid for the lands extinguished that amount of the bonded debt of the company, and benefited to that amount the old company as well as the new. She demanded payment of her claim arising out of the breach of this warranty from the new company. When this demand was made, the company did not offer or propose to pay her in its common stock. It distinctly and explicitly acknowledged its liability in the event that her title failed, and agreed in writing in that event to pay her the purchase money and 6 per cent. interest. The promise to pay on the happening of the event mentioned was absolute and unconditional. This was a waiver of its right to pay her in its common stock, and it is now too late to withdraw that waiver.

This promise and agreement of the company makes it unnecessary to consider the question of the statute of limitations, for, confessedly, this suit was brought within the period allowed by the statute of limitations. It is immaterial whether this promise is treated as reviving the cause of action which accrued when the deed was made, or as a new and original promise upon a sufficient consideration. In either case the action is not barred.

The plaintiff in error contends that the trustees exceeded their powers in selling lands not included in the land grant to the old company. But when they made the deed the old company claimed these lands under the grant, and had full knowledge that the trustees were selling them, and approved their action, and received the consideration. And the new company also approved the action of the trustees, and for years defended it in the courts. Another contention of the plaintiff in error is that the trustees had no authority to warrant the title to the lands they sold. They were authorized, by the terms of the trust deed, to sell the lands "at such prices, on such credit and terms of payment, and such other conditions as to them shall seem most judicious for the interest of all parties." Under this power they had the undoubted right to make a warranty deed. It was the only kind of a deed they ought to have made. Any other would have been little less than a fraud upon purchasers, as is shown by the facts of this case. The deed was prepared for the trustees' signatures by the officers of the company under the supervision and advice of Platt Smith, an eminent lawyer, who was counsel for the company, and one of its promoters. The trustees did not even receive the bonds paid for the land. They were paid to and received by the officers of the company at Dubuque, where all the business was done.

Another contention of the plaintiff in error is that it is not bound by the contents of the letters which we have quoted; that the president of the company had no authority to bind the company by the promises therein contained. These letters were written either by M. K. Jessup, the president of the defendant company, or by J. B. Dumont, the assistant secretary of the company, by direction of the

president. Mr. Jessup was one of the trustees in the mortgages made by the old company, and as such signed the deed to Brandagee, Mrs. Wood's trustee. He therefore knew all about the business from its inception, and the nature of the obligation assumed by the new company to the creditors of the old. He knew better than any one else all the facts connected with Mrs. Wood's claim, and as president of the company for many years he knew its attitude in reference to this claim. He was familiar with the company's construction of the decree so far as related to its obligations to persons standing in the situation of Mrs. Wood. He was president of the plaintiff in error, the Dubuque & Sioux City Railroad Company, from 1866 to 1887, a period of 21 years. Dumont was assistant secretary from 1864 to 1883, and during a portion of that time was treasurer. Touching his authority as president, Mr. Jessup testifies as follows:

"As president of the Dubuque & Sioux City Railroad Company, I had general charge of all its matters, and conducted its business from the New York office in all matters usually pertaining to a railroad government. I was very particular to consult with members of the executive committee about every important matter pertaining to the company. I consider that I acted with the advice, counsel, and approbation of the directors in everything I did in relation to the company."

Mr. Dumont testifies that the road was leased to the Illinois Central Railroad Company in October, 1867, and that after that time "the affairs of the company were managed mostly from the New York office." All the letters written to Mrs. Wood were written from the New York office. A by-law of the company provides:

"The executive power of the company shall be vested in a president and vice president. The president shall preside at all meetings of the board of directors, be auditor of accounts, and have a general supervision and control over the affairs of the company."

In Thompson's Commentary on the Law of Corporations, the learned author, after collecting and reviewing the authorities on the subject of the powers of the president of a business corporation, says:

"The view deducible from these and other like expressions of doctrine seems to be that the law ascribes to the president of a business corporation the authority of its general agent for the purpose of binding it by contracts made within the ordinary scope of its business, and that, in the absence of notice to the contrary, persons dealing with the corporation may safely act upon that assumption." Thomp. Corp. § 4618.

Continuing the subject, the same author says:

"It is plain from what has just preceded, that, where the president of a corporation acts as the general manager of its business, either by express agreement by the board of directors or by their tacit consent, larger powers may be ascribed to him, even under the theory by which his powers are most limited, on the principle that he is thereby held out by the directors as possessing the ordinary power incident to the office or agency of a general manager, with which they have clothed him." Id. § 4627.

In this case the by-law of the company expressly invested its president with the "general supervision and control over the affairs of the company," and Mr. Jessup testifies that he acted with the advice,

counsel, and approbation of the directors in everything he did in relation to the business of the company. This, of course, includes the business with Mrs. Wood, and is conclusive as to his authority to act in the premises.

The only remaining question is as to the measure of damages. This question, like that of the statute of limitations, is settled by the express promise of the company to pay the purchase money and 6 per cent. interest. Independently of this promise, the proper measure of damages for breach of covenant of warranty in the sale of land, except under special circumstances, which do not exist in this case, is the purchase money and 6 per cent. interest.

The judgment of the circuit court is affirmed.

Ex parte RIEBELING.

(District Court, W. D. Texas, El Paso Division. October 25, 1895.)

CONSTITUTIONAL LAW — JUDICIAL POWER — CERTIFYING COMPENSATION OF INFORMER — ACT JUNE 22, 1874, § 6.

The provision in section 6 of the act of congress of June 22, 1874, that no payment shall be made to an informer furnishing information which leads to the seizure of smuggled goods in a case where judicial proceedings have been had, unless the value of his services shall have been certified by the court or judge for the information of the secretary of the treasury, who, however, shall not be bound by such certificate, is an attempt to confer upon the court or judge a power not judicial, which congress has no power, under the constitution, to require the judiciary to exercise; and, accordingly, the courts and judges are without jurisdiction to make such certificate.

T. T. Teel, for applicant.

MAXEY, District Judge. This is an application made by Max Riebeling, who claims compensation as an informer, for having given original information to the collector of customs of this port to the effect that 120 cans of opium which he pointed out to an inspector had been smuggled into the United States from the republic of Mexico. The information given by the applicant led to the seizure of the opium and the same was duly sold under a decree of the court, and the proceeds thereof deposited by the clerk of the court with the collector of customs, as the law requires.

The application presented by counsel for the applicant concludes with the following prayer or request:

"It is respectfully asked that this claim receive the consideration of this honorable court, and that it be allowed or approved by your honor, under the act of June 22, 1874 (18 Stat. 186), and that a certificate issue therefor, or such order as may be proper under the law."

It appears from the evidence submitted to the court that the claim for compensation was first presented to the treasury department, and by it returned for the action of the court, in obedience to section 6 of the act of congress to which reference has been made. By that section it is provided:

"Sec. 6. That no payment shall be made to any person furnishing information in any case wherein judicial proceedings shall have been instituted, un-