

making such deduction, if there is yet a balance due the plaintiffs, award them a verdict for that balance. If there is nothing over and above that deduction, and the credit that has been paid, and the money that has been paid to the plaintiffs, still coming to the plaintiffs, you will not award the plaintiffs any more than \$245."

There could be no misunderstanding of this. The items of credit or deduction from plaintiffs' claim which could arise from their non-ownership of any of the timber, the jury was instructed, the defendant was entitled to. Even, therefore, if the instruction as to the \$245 freight charge on the cross-arms was error, the finding of the jury made it innocuous. The plaintiffs were entitled to have the \$245 estimated in the account between them and defendant. The defendant did not deny this, but contended that it and other claims of plaintiffs were canceled by items of countercharge. The jury found against the contention. If it had found a verdict only for \$245, the instruction might have been injurious. In such case, it could be said that the judgment of the jury was constrained by the instruction of the court. But the verdict was for \$1,395.22.

To the second instruction objected to, the criticism of defendant is not justified. It is clear, when all the instructions and the contentions of the parties are considered, that the price or value, as expressed, meant the price or value according to the contract, and as timber, not, as objected by defendant, as stumpage, or value by some other standard.

The defendant also assigns as error the action of the court in denying it a new trial. This is not reviewable in this court on writ of error. There being no error in the record prejudicial to defendant, the judgment is affirmed.

#### BRAUN v. BOARD OF COM'RS OF BENTON COUNTY.

(Circuit Court of Appeals, Seventh Circuit. November 8, 1895.)

No. 242.

#### COUNTIES—INDIANA STATUTE—GRAVEL-ROAD BONDS.

Bonds issued pursuant to the statute of Indiana of March 3, 1877 (Rev. St. 1894, § 6855 et seq.; Rev. St. 1881, § 5091 et seq.), in aid of the construction of a free gravel road, are not obligations of the county issuing them. *Strieb v. Cox*, 12 N. E. 481, 111 Ind. 299, followed.

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

This was an action by George A. Braun against the board of commissioners of Benton county, Ind., upon certain bonds and coupons. Judgment was rendered in the circuit court for the defendant. 66 Fed. 476. Plaintiff brings error. Affirmed.

A. J. Beveridge and W. H. Rossington, for plaintiff in error.

Byron K. Elliott, for defendant in error.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge. The question presented is whether bonds duly issued in pursuance of the act of March 3, 1877 (Rev. St. Ind. v.70F.no.4—24

1894, § 6855 et seq.; Rev. St. Ind. 1881, § 5091 et seq.), in aid of the construction of a free gravel road, are obligatory upon the county by which they were issued. It is not an open question. In the case of *Strieb v. Cox*, 111 Ind. 299, 12 N. E. 481, where the inquiry was whether such bonds were county obligations, within the meaning of a constitutional limitation upon the amount of indebtedness which counties and other municipalities of the state might incur, the supreme court of the state declared the bonds to be "payable out of the particular fund to be derived from the collection of the assessments made on the lands adjacent to such free gravel road, and from no other source." This was the essential point of the case, and is not to be confused with the question—which the court declined to consider—whether, if the bonds were bonds of the county, and were issued in violation of the constitution, and for that reason were void, that fact "would invalidate or avoid the proceedings and orders of the county board for the construction of the free gravel road, or the assessments made on adjacent real estate for the cost of such improvement." This decision seems to have been made without reference to previous rulings to the contrary, upon the same or a similar statute, in *State v. Commissioners of Fayette Co.*, 37 Ohio St. 526, and *Kimball v. Board*, 21 Fed. 145, in harmony with which is the recent decision in *Fowler v. City of Superior*, 85 Wis. 411, 54 N. W. 800; but it was made before the bonds in suit were executed, and, as a construction of a local statute, is controlling. Reference has been made to *State v. Sullivan*, 74 Ind. 121; *Ricketts v. Spraker*, 77 Ind. 371; *Gavin v. Board*, 104 Ind. 201, 3 N. E. 846; *Robinson v. Rippey*, 111 Ind. 112, 12 N. E. 141; *Board v. Fullen*, 111 Ind. 410, 12 N. E. 298; *Board v. Fahlor*, 114 Ind. 176, 15 N. E. 830; and *Loesnitz v. Seelinger*, 127 Ind. 422, 25 N. E. 1037, and 26 N. E. 887,—for expressions that seem to imply county liability upon such bonds, but in none of those cases can it be said that the question was involved or decided. On the contrary, in some of them the doctrine of *Strieb v. Cox* was approved or reasserted, as it has been in the later cases of *Board v. Hill*, 115 Ind. 316, 330, 16 N. E. 156; *Quill v. Indianapolis*, 124 Ind. 292, 299, 23 N. E. 788; *Spidell v. Johnson*, 128 Ind. 235, 25 N. E. 889. The judgment of the circuit court is affirmed.

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ALLEN et al. v. SOUTHERN CALIFORNIA RY. CO.

(Circuit Court, S. D. California. October 21, 1895.)

No. 605.

CITIZENSHIP—EVIDENCE.

One A., a resident of Missouri, in 1892 went to California, and began to work for the S. Ry. Co. In September, 1892, A.'s family, consisting of his wife and two children, followed him to California, his wife, before leaving Missouri, selling most of their household effects, except a few, which she took with her. A. rented and furnished a house in California, in which he resided with his family until his death, early in 1893. After A.'s death, his widow continued to reside in the same house for a month, and then hired another house in the same town, and began taking lodgers, and later hired a house in another town in California, where she continued taking lodgers. In 1893 she brought suit in a state court against