## WHITE et al. v. IOWA NAT. BANK OF DES MOINES.

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

No. 533.

WRIT OF ERROR—LIMITATIONS.

Under Act March 3, 1891, § 11, a writ of error must be sued out within six months in order to authorize a review by the circuit court of appeals.

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

Writ of error, sued out by Stephen V. White, Franklin W. Hopkins, and S. V. White & Co., to review a judgment in favor of the Iowa National Bank of Des Moines, Iowa. Writ dismissed.

C. H. Gatch (C. A. Dudley and N. E. Coffin were with him on the brief), for plaintiffs in error.

A. B. Cummins (Carroll Wright was with him on the brief), for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

SANBORN, Circuit Judge. This court has no jurisdiction of this case. The writ of error was sued out on July 9, 1894, to review a judgment of dismissal of the action which was rendered on October 18, 1893. No motion for a new trial was made in the court below, and the judgment was final on that day, more than eight months before the writ of error was issued. Section 11 of the act of March 3, 1891, which created this court, and gave it the right to review the judgments of the circuit courts, provides:

"That no appeal or writ of error by which any order, judgment, or decree may be reviewed in the circuit courts of appeals under the provisions of this act shall be taken or sued out except within six months after the entry of the order, judgment, or decree sought to be reviewed." 26 Stat. 829, c. 517; 1 Supp. Rev. St. p. 904.

The writ must, accordingly, be dismissed, and it is so ordered.

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## CITY OF ANTHONY v. WOONSOCKET INSTITUTION FOR SAVINGS.

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

No. 534.

APPEAL—HARMLESS ERROR.

In an action against a city on interest coupons, the city cannot complain of error in admitting the coupons, without proof of their execution, if it subsequently itself offered evidence amply sufficient to establish the due execution and delivery of the bonds to which the coupons were attached.

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

Geo. B. Crooker, F. C. Raney, Kos Harris, and R. R. Vermilion, for plaintiff in error.

W. H. Rossington and Charles Blood Smith, for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

THAYER, Circuit Judge. This suit was brought by the Woonsocket Institution for Savings, the defendant in error, against the city of Anthony, the plaintiff in error, to recover the sum of $2,850, the same being the amount due as interest on certain municipal bonds that were issued by the city of Anthony on October 1, 1888. The interest sued for was evidenced by certain coupons attached to the bonds, and the present action was founded upon the coupons, which were filed with the petition as exhibits. On the trial of the case the plaintiff below offered the coupons in evidence without proving their execution, and the defendant below objected to their introduction, on the ground that they were "incompetent, irrelevant, and immaterial." The trial court overruled the objection, and subsequently rendered a judgment in favor of the plaintiff for the amount due on said coupons, with accrued interest.

The only error assigned upon the present record, which can be noticed, is the action of the court in overruling the objection to the admission of the coupons in evidence. The Civil Code of Kansas provides that:

"In all actions, allegations of the execution of written instruments and indorsements thereon, of the existence of a corporation or partnership, or of any appointment or authority, or the correctness of any account, duly verified by the affidavit of the party, his agent or attorney, shall be taken as true unless the denial of the same be verified by the affidavit of the party, his agent or attorney." 2 Gen. St. Kan. 1889, par. 4191.

In the present case the defendant city had denied the execution of the coupons in suit by a plea duly verified by affidavit, and it was therefore incumbent on the plaintiff to prove the due execution of the coupons before they were admitted in evidence. But the error complained of in admitting the coupons without proving their execution was subsequently cured and rendered immaterial by the action of the defendant city in offering evidence in its own behalf, which was amply sufficient to establish the due execution and delivery of the bonds to which the coupons in suit were attached. It offered testimony which clearly showed that the bonds from which the coupons in suit had been detached were duly executed and delivered by the defendant city on October 1, 1888, to a banker by the name of W. H. Hurd, to take up and refund certain certificates of indebtedness and city warrants that were then held by said Hurd, and constituted an indebtedness on the part of the city. There was other evidence in the case which showed that the bonds thus issued to said Hurd were subsequently sold by him to the firm of Spitzer & Co., and that they were afterwards purchased by the present plaintiff, the Woonsocket Institution for Savings, and were held and owned by it at the commencement of the present action. Under these circumstances, it is manifest that the defendant city is not in a position to complain of the action of the trial court in permitting the coupons to be read in evidence without antecedent proof of their execution, and, as no other error is assigned upon the record which can be reviewed, the judgment of the circuit court is affirmed.

## HOPPENSTEDT et al. v. FULLER et al.

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

No. 597.

1. JURISDICTION—AVERMENT OF CITIZENSHIP—CONFESSION.
Where the answer to the averment that plaintiffs are "citizens of the state of W., and residents therein," only puts in issue the question whether the plaintiffs "reside" in that state, the averment that they are "citizens" of the state—the essential jurisdictional fact—is confessed.

2. REDEMPTION FROM MORTGAGE SALE—VALIDITY.
The clerical error of a sheriff in affixing the wrong date to a certificate of redemption does not affect the validity of the redemption.

3. REVIEW ON APPEAL—OBJECTION NOT RAISED BELOW.
If plaintiffs in error admitted a mistake in the date of a certificate of redemption, and made no objection to its admissibility on that ground, they cannot make such objection for the first time in the appellate court.

4. SAME—PRESUMPTION.
In the absence of anything in the record to show the contrary, it will be presumed that the findings of the lower court were based on admissions or competent evidence, and that there was no objection to the admission of any evidence tending to prove the facts found.

5. SALE UNDER MORTGAGE—REDEMPTION BY JUDGMENT CREDITOR.
A holder of a junior mortgage who did not, within the year allowed for redemption, file the notice required by statute of his intention to redeem from a sale under a senior mortgage, cannot object that a redemption by a judgment creditor was based on an affidavit which included two judgments, only one of which was a lien on the land.

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

The defendants in error, M. E. Fuller, John A. Johnson, and Edward M. Fuller, brought this action in the United States circuit court for the Second division of the district of Minnesota, against the plaintiffs in error, H. F. Hoppenstedt and Ernst Bierman, to recover a quarter section of land. A jury was waived, and the court made the following special findings of fact and declarations of law:

"One F. W. Bierman entered the land under the timber act of congress, and received a patent for the same February 3, 1888. On April 25, 1888, he and his wife executed a mortgage of the premises to one C. K. Gilbert, and on February 8, 1889, executed a second mortgage thereon to one Barnhard H. Franzen. Both mortgages were duly recorded about the time they bear date. On April 27, 1891, the latter mortgage was purchased by the defendant Hoppenstedt, and he also purchased the Gilbert mortgage on May 13, 1891, which was assigned to him, and all the instruments were duly recorded. Default having been made in the Gilbert mortgage the owner, Hoppenstedt, foreclosed by advertisement under the statute, and it was sold June 29, 1891, and bid in by him for the sum of $323.91, which was the amount due. On April 5, 1890, the firm of Fuller & Johnson obtained a judgment against F. W. Bierman for the sum of $691.40, and $11.00 costs. This judgment was obtained upon notes executed before the patent issued to Bierman under the timber culture act, and, by the terms of that act, the judgment obtained would not be a lien upon this property. On February 23, 1891, Spicker Bros. obtained a judgment against Bierman for the sum of $157.17, which was duly assigned to Fuller & Johnson, and became a lien upon the land in question. On June 28, 1892, Fuller & Johnson, the survivors of the old firm of Fuller & Johnson, one of the partners having died, filed through their agent, Peterson, notice of an intention to redeem from the sale under the Gilbert mortgage, in time under the statute; and the same agent also, on June 29, 1892, made an affidavit stating the amount due on the two judgments owned by