and notorious, hostile and exclusive, during the year 1873, and if the jury further believe from the evidence that Jacob Elton cultivated that portion of the land in controversy lying north of the ditch thereon under a lease from the plaintiff for one or more years between 1879 and 1884, then your verdict must be for the plaintiff."

But the trial court qualified the last instruction by the following statement, to wit:

"That is what I am asked to give and that is what I give you with this qualification: This is true, unless said Flannagan had possession of the land as before described for a period of ten consecutive years, either before 1873 or thereafter, before the commencement of this suit."

The plaintiff also asked the trial court to give the following instruction:

"If [the jury] believe from the evidence that John Flannagan lived on land situate near the southwest corner of Fort Omaha during one or more years between 1870 and 1874, and while living at such place he did not exercise such visible acts of ownership over the land in controversy in this suit as to make his possession thereof actual, open, and notorious, hostile and exclusive, during one or more years between 1870 and 1874, and if the jury further believe from the evidence that Jacob Elton cultivated a portion of the land in controversy under a lease from the plaintiff for one or more years between 1879 and 1885, then your verdict must be for the plaintiff."

The court gave this latter instruction as requested, but added thereto the following qualification:

"Provided, the said Flannagan did not have continuous possession of the land as before defined and described herein for ten consecutive years either before 1873 or thereafter, or during that time."

Another instruction, of similar import, that was asked by the plaintiff, was also given by the court, but with a like limitation or proviso, which the court added of its own motion. Complaint is made of the action of the trial court in modifying the foregoing instructions as above indicated.

Inasmuch as the plaintiff offered evidence tending to establish the hypothesis of fact on which the foregoing instructions were predicated, we think that they might well have been given without any modification or proviso. But in view of the fact that the jury returned a special verdict, as they were authorized to do under the Code of Nebraska (Consol. St. Neb. 1891, §§ 4813, 4814), we are not prepared to admit that the action complained of was a material error. The most that can be alleged against the instructions after the modification thereof is that the court assumed that there was some evidence tending to show that Flannagan had been in possession of the property for 10 years prior to 1873, whereas there was no evidence that he entered into possession of the premises before the year 1865. If the verdict had been a general verdict, there would doubtless be some ground for the contention that the jury may have been misled by the false assumption contained in the instructions; but, as the jury found specially, and in accordance with the defendant's evidence, that Flannagan entered into possession of the property in 1865, it is obvious that they were not misled, and that the error complained of was not prejudicial to the plaintiff. Moreover, the special finding by the jury negatives the hypothesis on which the several instructions were based, namely, that Flannagan's possession was not an

actual, adverse possession for one or more years between 1870 and 1874, and was not an exclusive possession for one or more years between 1879 and 1885. The jury manifestly found, in accordance with Flannagan's contention, that he constantly maintained his possession from 1865 to 1885, and that he neither abandoned the property between the years 1870 and 1874, nor acknowledged a right of occupancy on the part of Jacob Elton, or any other person, between the years 1879 and 1885.

When the jury are required by the court to return a special verdict, it is both unnecessary and improper to give instructions upon general principles of law applicable to the case, because the jury are supposed to find and report all the material facts without any instructions as to what will be the legal result of their finding. But, if such instructions are in fact given, and they prove to be erroneous, they will not, ordinarily, affect the verdict. If the verdict returned is a special verdict, erroneous instructions given to the jury touching the rules of evidence that should influence their action may be so far material and important as to justify a reversal; but that result will never follow from the giving of erroneous instructions relative to general rules of law, if the judgment actually rendered, as in the present case, was clearly warranted by the special verdict. Railroad Co. v. Frawley, 110 Ind. 18, 9 N. E. 594; Elliot, App. Proc. § 645, and cases there cited. The instructions now under consideration did not relate to rules of evidence, nor to the mode and manner of weighing the testimony; and for that reason it cannot be said that they had any prejudicial influence upon the verdict. It follows from these views that the modification of the instructions in the respects complained of constitutes no sufficient ground for reversing the judgment, even though we should concede that, if the verdict had been general, the instructions as modified would have been erroneous and misleading.

It is also insisted by the plaintiff that the trial court should have rendered a judgment in his favor because he was an innocent purchaser of the premises in controversy under the mortgage which was executed in his favor by E. B. Taylor on July 28, 1871. This contention, however, is based on the ground that Flannagan was out of possession when the mortgage was executed, and what we have already said concerning the effect of the special verdict is a sufficient answer to the claim that the plaintiff was an innocent purchaser. The jury have found, on what we must regard as sufficient evidence to support the finding, that Flannagan was in possession of the property during the year 1871, and that such possession was actual, open, notorious, exclusive, and hostile. This finding therefore disposes of the claim now made that Flannagan did not have such possession of the premises on July 28, 1871, as was essential to notify purchasers and incumbrancers of his equity, and to put them on inquiry as to his rights.

It is finally contended that the circuit court erred in admitting certain evidence, which is said to have been incompetent, and prejudicial to the plaintiff. The testimony to which this contention relates consists in part of declarations made by E. B. Taylor, in his

lifetime, to third parties, which tended to show that he had given the land in controversy to Flannagan; and in part of declarations made by Flannagan while he was in possession of the property, which tended to show in what character he was then occupying and holding it. Concerning the latter class of declarations, it is sufficient to say that we have no doubt of their admissibility. The testimony was relevant and competent for the purpose of showing that Flannagan claimed to be the owner of the property in fee simple; that such claim was made openly to all inquirers, and that it was not kept secret. The better view is that such declarations, when made in good faith by persons who are at the time in possession of land or tenements, are verbal acts, which may be admitted for the purpose of showing the character of the possession, whether they are in disparagement of the declarant's title or otherwise. Burgert v. Borchert, 59 Mo. 80, 87; Martin v. Bonsack, 61 Mo. 556, 559; Darrett v. Donnelly, 38 Mo. 492, 494, 495, and cases there cited. See, also, Greenl. Ev. (15th Ed.) § 109, and cases there cited. The other declarations that are said to have been made by E. B. Taylor in his lifetime, concerning the admission of which complaint is now made, were proven by the testimony of three witnesses, to wit, C. A. Baldwin, P. O. Hawes, and G. W. Ambrose. The declarations or admissions of Taylor which were proven by Baldwin were so proven in response to questions which appear to have been propounded by counsel who represented the plaintiff, and no motion was made to exclude the testimony after it was elicited. Moreover, no exception was taken, so far as the record shows, to the objectionable testimony that was elicited from the witness Hawes. For these reasons no question arises upon the record touching the competency of the admissions made by Taylor which were proven by the testimony of the witnesses Baldwin and Hawes. We are only called upon, therefore, to decide as to the admissibility of the statement said to have been made by Taylor to Ambrose in the lifetime of the former. This statement was made, as it seems, in the year 1868, and was a statement, in substance, that he, Taylor, owed Flannagan some money, and had not been able to pay it, and that he had accordingly given Flannagan some portion of his land in the northern part of the city of Omaha, which was the section of the city in which the land in controversy is situated. The testimony in question tended to prove that Flannagan had taken possession of the property in dispute as owner under a parol contract of sale, and, inasmuch as the admission was made some years before the execution of the mortgage under which the plaintiff claimed title, and was an admission made against the interest of the party making it, who had since died, we think that it was properly received in evidence. Dickerson v. Chrisman, 28 Mo. 135, 139; Wynn v. Cory, 48 Mo. 346; Greenl. Ev. §§ 147–149.

The result is that an examination of the record has failed to convince us that any substantial error was committed during the progress of the trial, wherefore the judgment of the circuit court is hereby affirmed.

OTIS v. PENNSYLVANIA CO.

(Circuit Court, D. Indiana. January 3, 1896.)

No. 9,223.

RAILROAD AID ASSOCIATION—ACCEPTANCE OF BENEFITS—RELEASE OF CLAIM.

Where a railroad relief association, composed of associated companies and their employés, is in charge of the companies, who guaranty the obligations, supply the facilities for the business, pay the operating expenses, take charge of and are responsible for the funds, make up deficits in the benefit fund, and supply surgical attendance for injuries received in their service, an employé's agreement, in his voluntary application for membership, that acceptance of benefits from the association for an injury shall release the railroad company from any claim for damages therefor, is not invalid as being against public policy, or for want of consideration or mutuality.

L. M. Ninde, for plaintiff.
Allen Zollars, for defendant.

BAKER, District Judge. This is an action by the plaintiff, Eugene V. Otis, for the recovery of damages from the defendant, the Pennsylvania Company, for injuries received by him through the negligence of the defendant in employing and retaining in its service a careless and drunken engineer, with full knowledge of his habits, by whose carelessness the plaintiff sustained serious and permanent injuries, without fault on his part. The defendant has answered in two paragraphs. The first is a general denial. The second sets up matter in confession and avoidance. To this paragraph of answer the plaintiff has interposed a demurrer, and the question for decision is, does this paragraph of answer set up facts sufficient to constitute a defense? The gist of this paragraph of answer is the payment to and acceptance by the plaintiff of benefits to the amount of $660 from the relief fund of the defendant's "voluntary relief department" on account of the injuries for which the action is brought, in full payment and satisfaction thereof. It is alleged in the paragraph under consideration that the plaintiff was a member of the relief department mentioned, which is composed of the different corporations forming the lines of the Pennsylvania Company west of Pittsburgh, to which such of their employés as voluntarily become members contribute monthly certain agreed amounts. This department has for its object the relief of such employés as become members thereof in cases of sickness or disability from accident, and the relief of their families in case of death, by the payment to them of definite amounts out of a fund "formed by voluntary contributions from employés, contributions, when necessary to make up any deficit, by the several companies respectively, and income or profit derived from investments of the moneys of the fund, and such gifts as may be made for the use of the fund." The associated companies have general charge of the department, guaranty the full amount of the obligations assumed by them, and for this purpose annually pay into the funds of the department the sum of $30,000 in conformity with established regulations, furnish

the necessary facilities for conducting the business of the department, and pay all the operating expenses thereof, amounting annually to the sum of $25,000. The associated companies have charge of the funds, and are responsible for their management and safe-keeping. Employés of the Pennsylvania Company are not required to become members of the relief department, but are at liberty to do so if admitted on their voluntary written application; and may continue their membership by the payment of certain monthly dues, the amount of which depends upon the respective classes to which they may be admitted; and the benefits to which they may become entitled are determined by the class to which they belong. A disabled member is also entitled to surgical attendance at the company's expense, if injured while in its employ. The plaintiff agreed in his application for membership:

"That the acceptance of benefits from the said relief fund for injury or death shall operate as a release of all claim for damages against said company arising from such injury or death which may be made by or through me, and that I or my legal representatives will execute such further instrument as may be necessary formally to evidence such acquittance."

Each company to the contract also agreed in behalf of itself and employés to appropriate its ratable proportion of the joint expense of administration and management, and the entire outlay necessary to make up deficits for benefits to its employés. It is further alleged that the plaintiff was a member of the relief department when injured, and that there was paid to him by the defendant, through such department, on account of the injuries so received, and in accordance with his application therefor, and in accordance with the certificate of membership so issued to him, and the rules and regulations of the relief department, the sum of $660, being at the rate of $60 per month for 11 months, which he accepted and received as the benefits due to him from the said relief department under his said application and certificate and the rules and regulations of said relief department.

It is strenuously insisted by the learned counsel for the plaintiff that the contract is void, because it is repugnant to sound public policy, and is an attempt by the defendant to exempt itself, by contract, from the consequences of its own negligence; and because the agreement that the payment and acceptance of the benefits should operate to release the company from responsibility for its wrongful act is without consideration, for the reason that the plaintiff, by the payment of his monthly dues, became entitled as a matter of legal right to receive the stipulated benefits as fully as he was entitled to the payment of his monthly wages. As a general proposition, it is unquestionably true that a railroad company cannot relieve itself from responsibility to an employé for an injury resulting from its own negligence by any contract entered into for that purpose before the happening of the injury, and, if the contract under consideration is of that character, it must be held to be invalid. But upon a careful examination it will be seen that it contains no stipulation that the plaintiff should not be at liberty to bring an action for damages in case he sustained an injury through the negligence of the

defendant. He still had as perfect a right to sue for his injury as though the contract had never been entered into. Before the contract was entered into, his right of action for an injury resulting from the defendant's negligence was limited to a suit against it for the recovery of damages therefor. By the contract he was given an election either to receive the benefits stipulated for, or to waive his right to the benefits, and pursue his remedy at law. He voluntarily agreed that, when an injury happened to him, he would then determine whether he would accept the benefits secured by the contract, or waive them and retain his right of action for damages. He knew, if he accepted the benefits secured to him by the contract, that it would operate to release his right to the other remedy. After the injury happened, two alternative modes were presented to him for obtaining compensation for such injury. With full opportunity to determine which alternative was preferable, he deliberately chose to accept the stipulated benefits. There was nothing illegal or immoral in requiring him so to do. And it is not perceived why the court should relieve him from his election in order to enable him now to pursue his remedy by an action at law, and thus practically to obtain double compensation for his injury. Nor does the fact that the fund was in part formed by his contributions to it alter the case. The defendant also contributed largely to the fund under its agreement to make up deficits, to furnish surgical aid and attendance, to pay expenses of administration and management, and to become responsible for the safe-keeping of the funds of the relief department. It had a large pecuniary interest in the very money which the plaintiff received. We are not concerned with the question whether the plaintiff might not have secured a larger sum of money if he had prosecuted his legal remedy for the recovery of damages for his injury. After the injury, the plaintiff was at liberty to compromise his right of action with the defendant for any valuable consideration, however small; and, if he chose to accept a less amount than that which he might have recovered by action, such settlement, if fairly entered into, constitutes a full accord and satisfaction, from which the court cannot, and ought not, to relieve him.

The question of the validity of such a contract as that relied upon in the paragraph of answer under consideration is a new one in this court, but it has been considered by a number of reputable courts in other jurisdictions, and, with a single exception, so far as I am advised, it has been uniformly held that such a contract is not invalid for repugnancy to sound public policy, or for want of consideration, or for want of mutuality. In the views expressed in these cases I entirely concur. A review of the cases supporting this view would not be profitable, and I therefore content myself with simply citing them. Owens v. Railroad Co., 35 Fed. 715; State v. Baltimore & O. R. Co., 36 Fed. 655; Martin v. Railroad Co., 41 Fed. 125; Railroad Co. v. Bell (44 Neb. 44, 62 N. W. 314), 11 Am. Ry. & Corp. Rep. 682, and cases cited in note; Donald v. Railway Co. (Iowa) 61 N. W. 971; Lease v. Pennsylvania Co., 10 Ind. App. 47, 37 N. E. 423; Fuller v. Association, 67 Md. 433, 10 Atl. 237; Spitze v. Railroad Co. (Md.)

23 Atl. 307; Graft v. Railroad Co. (Pa. Sup.) 8 Atl. 206; Johnson v. Railroad Co. (Pa. Sup.) 29 Atl. 854; Patt. Ry. Acc. Law, § 424. The single case holding such a contract to be void is Miller v. Railway Co., 65 Fed. 305. The demurrer is overruled, to which the plaintiff excepts.

VICKERS v. CHICAGO, B. & Q. R. CO.

(Circuit Court, N. D. Illinois. December 6, 1895.)

1. MASTER AND SERVANT—NEGLIGENCE—EMPLOYES' RELIEF ASSOCIATIONS—CONTRACT RELEASING MASTER.
   A railroad employé who, upon becoming a member of a voluntary relief association, composed of employés, and to whose funds the railroad company is bound to contribute in case of deficiency, signs, without fraud or undue influence, a contract that in case of injury he shall elect either to take the benefits provided by the association or have his action against the company, cannot avoid the effect thereof on the ground that he signed the agreement without reading it or understanding its purport, and that he was at a disadvantage in dealing with the company. Miller v. Railway Co., 65 Fed. 305, disapproved.
2. SAME—EXERCISE OF ELECTION—IGNORANCE OF FACTS.
   The fact that at the time of receiving relief from the association the employé is not aware of the strength of his case against the company, is ignorant of certain important facts and of the witnesses by whom he can prove them, is to be regarded merely as his misfortune, and does not avoid the effect of his election, in barring an action against the company.

This was an action by Joseph Henry Vickers against the Chicago, Burlington & Quincy Railroad Company to recover damages for personal injuries received in its service. Defendant moved the court to direct a verdict in its favor.

S. K. Daw, for plaintiff.
Chester M. Dawes, for defendant.

ALLEN, District Judge (charging jury). Yesterday afternoon a motion was made in this case in effect that the court instruct the jury to find for the defendant, upon the close of the plaintiff's rebuttal. Several questions have been argued in connection with the motion, and I conceive that it is of great importance, not only to the plaintiff, but as a question of law in a general sense. The ground of the motion substantially is, as presented by counsel for defendant, that the plaintiff, who, before this accident occurred, became a member of the voluntary relief association or relief department of the defendant railroad company, made a contract, in substance, by which he agreed that if he should suffer from accident—receive injury, in other words—he should elect to take the benefits provided by the by-laws and regulations of this relief association, or have his action against the defendant. It is shown in this case that after his serious injury, resulting in the necessary amputation of his left arm (and it is contended—and perhaps that contention is supported by evidence—that he was seriously injured in his spine and the back portions of his body), he received from this fund,—this relief fund,—on account of