case referred to (People v. Hamill, 143 Ill. 666, 17 N. E. 799, and 29 N. E. 280), that the section was unconstitutional because not embraced in the title, and not germane to the subject of the act in which it is found. That decision was announced June 16, 1888, and, while it is alleged in the declaration that the plaintiff purchased his bonds at an earlier date, the finding of facts contains nothing upon the point, except that "the plaintiff's intestate was the holder before due * * * of the coupons * * * declared on in this suit, * * * due, respectively, July 1, 1888, and January 1, 1889." There was therefore a period of 15 days between the date of the decision and the date when the first coupons became due, within which, presumptively with knowledge of the decision, the plaintiff could have made his purchase of the bonds; and, the burden of proof in this particular being upon the plaintiff, the special finding must be read as if it expressly stated that the purchase was made during that time. Wesson v. Saline Co., supra; Sneed v. Milling Co., 20 C. C. A. 230, 73 Fed. 925. The essential question before us, therefore, is, to what extent are the parties to this case concluded by the decree in chancery of June 5, 1881? It is found that the St. Louis & Southeastern Railroad Company, and "the unknown owners and holders" of the 200 bonds of the county, "were duly served with publication notice of the pendency of the suit as provided in section 12 of chapter 22 of the Illinois Statutes, relating to practice in courts of chancery." It could hardly be and we do not understand that it is asserted that in such a case notice by publication can give jurisdiction over nonresidents of the state where the suit is brought. Pennoyer v. Neff, 95 U. S. 714; St. Clair v. Cox, 106 U. S. 350, 1 Sup. Ct. 354. Whether in this instance the parties described as unknown were or were not domiciled within the state, and were brought, by force of the pub lished notice, within the jurisdiction of the court, does not appear; but as between the county, which brought the suit, and Jackson, who, after being allowed to intervene, was made a defendant by name, and not only answered denying the allegations of the bill, but filed a cross bill affirming the validity of the bonds, there can be no question that the decree is conclusive, and that the plaintiff, as assignee of Jackson, was entitled to the judgment awarded him. To that extent the case is essentially the same as that adjudged in Franklin Co. v. German Sav. Bank, 142 U. S. 99, 12 Sup. Ct. 147. Here, as there, the validity of the bonds was put directly in issue by the pleadings, and was determined adversely to the county. Here, it is true, the finding says that the constitutionality of section 20 of the act for the incorporation of the railroad company "was not drawn in question, passed upon, or decided" in the chancery cause; but that is a mistaken conclusion of law, rather than a finding of fact. Under the issues joined, both upon the bill and the cross bill, the validity and force of that section, equally with any other enactment referred to in the recitals of the bonds, were necessarily within the scope of inquiry, whether actually considered or not, and therefore were determined by the decree, in which, according to the finding, Jackson's bonds were specified by number, and all declared valid. The question of the validity of those bonds, therefore, is not open to reconsideration.

Cromwell v. County of Sac, 94 U. S. 351; Nesbit v. Riverside Independent Dist., 144 U. S. 610, 12 Sup. Ct. 746; David Bradley Manuf'g Co. v. Eagle Manuf'g Co., 18 U. S. App. 455, 7 C. C. A. 442, 58 Fed. 721.

The other six bonds do not come within the estoppel, because it does not appear that they were held by any one who was a party to the decree; and the plaintiff in error is not in a situation to ask, as he does, that, in order to uphold them, we disregard the decision of the supreme court of the state, and follow the earlier ruling of the United States circuit court in the chancery suit. It does not appear that he obtained the six bonds, either directly or remotely, from an innocent holder for value; and, as already stated, it must be assumed that he did not buy them until after the state court had declared them invalid. The judgment of the circuit court is affirmed.

CHICAGO, R. I. & P. RY. CO. v. LEE.

(Circuit Court of Appeals, Eighth Circuit. September 21, 1896.)

No. 753.

CARRIERS—WHO ARE PASSENGERS—EVIDENCE.

Where the court, on an issue as to whether one injured in a railroad accident was a passenger on the train, admitted evidence that a few minutes before the accident the conductor of the train looked into the car where plaintiff was, addressed him, and remarked that he would be back soon, it was error to exclude evidence by one of the brakemen that the conductor, who was killed in the accident, did not go to the box car in which plaintiff was riding, while he was in charge of the train, and did not know that plaintiff was riding therein. Caldwell, Circuit Judge, dissenting.

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

W. F. Evans (M. A. Low and J. E. Dolman, with him on the brief), for plaintiff in error.

J. R. McClure, for defendant in error.

Before CALDWELL, SANBORN, and THAYER, Circuit Judges.

SANBORN, Circuit Judge. On October 8, 1894, while the defendant in error, Ray Lee, was riding on a box car in one of the freight trains of the Chicago, Rock Island & Pacific Railway Company, the plaintiff in error, the train was derailed, and the defendant in error was injured. He sued the railway company for the damages resulting from this injury. The case was tried to a jury. The two principal issues presented by the pleadings were: First, whether or not the plaintiff was a passenger of the railway company at the time of his injury; and, second, whether or not his injury was caused by the negligence of the railway company. The defendant in error produced his evidence in chief, and rested. The plaintiff in error then produced its evidence in defense, and rested. There was then no evidence in the case to the effect that the conductor or any of the trainmen in charge of the freight train when