

with the absolute title to the land, congress could not annex any condition to that title, nor limit the use to which the land might be devoted. Especially is this true as to the land in dispute here, as before the passage of that later act the title to such land had passed from the city of Denver by its deed to Machebeuf, and from Machebeuf to Morgan and his grantees.

4. The patent of November 15, 1873, conveyed and vested the legal title to the land described in the city of Denver, and not in Joseph E. Bates, the mayor, and his successors. Under the provisions of the charter of the city of Denver quoted in the answer in this case, the city of Denver was empowered, in its corporate name, to acquire and hold the title to lands for public purposes, and to sell and convey the same. It was under no disability, therefore, in respect to the power to receive and hold the title to the land conveyed by this patent. Although the grant by the patent was in terms to "said Bates, mayor, in trust for the city of Denver, and to his successors and assigns forever," such trust was a mere naked, passive trust, under which the entire beneficial use, possession, and control vested at once and absolutely in the city of Denver. Under the English statute of uses (27 Hen. VIII. c. 10), which is part of the common law in this country, the use was executed on the delivery of the patent, and the complete legal title, at law and in equity, passed at once to, and vested in, the city of Denver, as the *cestui que use*.

5. It follows that, if the allegations of the answer are true, the title to the land in question passed by the deed of the city of Denver to Machebeuf, and from Machebeuf, by deed, to Morgan. The demurrer should have been overruled. The judgment is therefore reversed, and the cause remanded for further proceedings.

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LANYON v. EDWARDS et al.<sup>1</sup>

(Circuit Court of Appeals, Fifth Circuit. February 2, 1897.)

No. 545.

**CONSPIRACY AND COLLUSION—TRESPASS.**

A petition in an action for alleged conspiracy and collusion, from which it appeared that the acts complained of as trespasses were committed by defendants in the execution of the judgment of a state court and in enforcing a valid mortgage, *held* not sufficient to state a cause of action.

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

W. H. Brooks, for plaintiff in error.

H. P. Drought, for defendants in error.

Before PARDEE and McCORMICK, Circuit Judges.

<sup>1</sup> Petition for rehearing denied April 14, 1897.

PARDEE, Circuit Judge. This is an action brought by the plaintiff in error against the defendants in error for alleged conspiracy and collusion. The prayer for relief is as follows:

"Plaintiff prays citation to issue in due form to defendants (if same has not already been done) to answer this petition and cause of complaint, and that on final hearing thereof plaintiff have and recover judgment of defendants for the various sums and amounts sued for herein, and for all costs, and for special and general relief, and to be restored to his proper rights in the possession of his estate, or, in the alternative, have judgment for his several causes of damage, as set forth in this petition."

The second amended original petition on which this prayer for relief is based is voluminous in immaterial, if not irrelevant, history, is redundant in conclusions of law and of fact, and is deficient in specific facts sufficient to constitute a cause of action. As well as we can understand the petition, the plaintiff seeks to recover for damages to real estate and for the conversion of personal property, resulting from, as alleged, the conspiracy, collusion, force, and fraud of the defendants in prosecuting and procuring a certain judgment to be rendered against him in the state court, and in obtaining the possession by assignment of a certain mortgage bearing on petitioner's lands, but conceded to be due and owing, which judgment and mortgage the defendants caused to be enforced through seizure of the petitioner's lands and personal property, to the injury of the lands and the loss of the personal property.

The most effective attempt at reciting the facts in relation to his claim is the following paragraph from his petition:

"That to further harass and persecute the plaintiff the said defendants, Edwards and Brought, by collusion, force, and fraud, did seek to oust plaintiff from his rightful and lawful possession of said lands and personal property as aforesaid; did institute suit, or cause said suit to be instituted, in the 45th district court of Bexar county, Texas, on the — day of —, 1890, to harass and persecute plaintiff, and did so of the 4th day of November, 1892, by force, fraud, and collusion, and by means of undue local influence on the jury, or some of the jurors, trying the said cause in the 45th district court of Bexar county, Texas, by having one of the jurors, named C. P. Coch, to remonstrate with one of the witnesses sworn for plaintiff, viz. A. W. Smith, that he had given in his estimate of the value of the land too low, which remonstrance was given while the jury were considering of their verdict; and by sundry acts of collusion and of fraud not known to plaintiff did further carry on said suit in the 45th district court of Bexar county, Texas; and by and together with such acts of collusion and fraud did procure a judgment in said 45th district court of Bexar county, Texas, on the 4th day of November, 1892, against the plaintiff for nine thousand nine hundred and ninety-three (\$9,993.63) dollars and sixty-three cents."

The facts actually stated in the petition with reference to the trespass to the lands and the conversion of the personal property, while perhaps sufficient to warrant an action for damages, yet clearly appear by the context to have been acts committed by the defendants in the execution of the judgment of the state court, and in enforcing the mortgage above referred to. To the second amended original petition the circuit court sustained a general exception and 11 special exceptions and, as the plaintiff declined to further amend, dismissed the suit. The petitioner below sued out this writ of error, and assigned for our consideration the following:

"The court erred in sustaining defendant's general exception and defendant's eleven special exceptions to plaintiff's second amended original petition filed herein, and dismissing said cause, and rendering judgment final against the plaintiff."

We have given careful consideration to the brief filed by the learned counsel for the plaintiff in error, and have considered in the most favorable light the plaintiff's second amended original petition, but we do not find reversible error in the ruling assigned, nor any error patent on the face of the record. The judgment of the circuit court is therefore affirmed.

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NATIONAL BANK OF COMMERCE v. RIETHMANN et al.

(Circuit Court of Appeals, Eighth Circuit. March 1, 1897.)

No. 828.

STATUTES—RETROACTIVE OPERATION—ATTACHMENT.

The Colorado act of 1887 amending the statute relative to attachments by dropping out one of the grounds of attachment, does not have a retroactive operation, so as to affect pending attachments.

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

This was an action at law brought by the National Bank of Commerce of Kansas City, Mo., against John J. Riethmann, George W. Riethmann, and Napoleon Wagner upon a promissory note, in which an attachment was issued. The court sustained a motion by defendants to quash the attachment, and plaintiff brought this writ of error.

This action was begun in October, 1894. The Colorado statute relative to attachments (Sess. Laws Colo. 1887, p. 121, §§ 91, 92) provided that upon issuing the summons or filing the complaint in an action on contract, or at any time afterwards before judgment, a writ of attachment against the unexempt property of the defendant might issue, upon filing in the office of the clerk of the court an affidavit of the plaintiff, his agent or attorney, or some creditable person for him, setting forth that the defendant is indebted to such plaintiff, stating the nature and amount of the indebtedness, as near as may be, and alleging one or more of the several enumerated causes for attachment, one of which causes was as follows: "Thirteenth. That the action is brought upon an overdue promissory note, bill of exchange, or other written instrument for the direct and unconditional payment of money only, or upon an overdue book account." After the filing of the complaint, and upon the filing in the office of the clerk of the court of an affidavit for attachment conforming to all the requirements of said statute, and alleging as cause for the attachment that the promissory note of the defendants upon which the action was founded, and which was also described in said affidavit, was overdue from a date prior to the filing of the complaint, a writ of attachment in due form in said action was on October 25, 1894, duly issued, under the seal of the United States circuit court for the district of Colorado, wherein said action was pending, directed to the marshal of said district, and that said marshal on the same day, in obedience to and by virtue of said writ, duly attached and levied upon property, real and personal, of one of the defendants in said action. Afterwards the legislature of Colorado, by an act approved April 8, 1895, and which took effect July 6, 1895 (Sess. Laws Colo. 1895, p. 143), purporting to amend the aforesaid act of 1887 "so as to read as follows," re-enacted the said act of 1887 verbatim, except that the thir-