citals contained in the two series of bonds from which the coupons in suit were detached showed that the total issue to the Kingman Railroad Company and the Chicago Railway Company amounted to $180,000, whereas the assessed value of county property for the year 1887 was only $520,169. We are of the opinion that because the agreement between the county and the respective railroad companies did not contemplate that bonds should be issued prior to December 31, 1887, and because none of the bonds were in fact issued until August, 1887, it is the assessment for that year (which, under the laws of Kansas, was made as of March 1, 1887) that must control in determining whether the issue was in excess of the amount allowed by law. The assessment for that year being $520,169, the act under which the bonds in suit were executed authorized an issue to the amount of $126,008, and no more. It was held, however, by the supreme court of Kansas, in Turner v. Commissioners of Woodson Co., 27 Kan. 314, that, if more bonds are authorized by a popular vote than can be issued lawfully, such vote is not a nullity, but confers power to issue bonds up to the amount that is authorized by law. If we apply that rule to the case in hand, it is manifest that the plaintiff was entitled to recover on the 32 coupons that were detached from the bonds issued to the Kingman Railroad Company on August 4, 1887, since the 60 bonds issued to that company did not exceed the statutory limit of indebtedness, and were therefore valid obligations of the county. We think, however, without applying that doctrine, that the right to recover extends to all the coupons in suit, and is not limited to the series last mentioned. The plaintiff is armed with all the rights of H. W. Sage and George L. Williams, from whom he purchased the two series of coupons; and he is entitled to rely on the title so acquired, without reference to the fact that he purchased coupons which had been detached from both series of bonds, and was thereby advised, by recitals contained in both series of bonds, that the total issue to both railroad companies amounted to $180,000. Rollins v. Commissioners of Gunnison Co., 26 C. C. A. 91, 80 Fed. 692; Commissioners of Marion Co. v. Clark, 94 U. S. 278, 286. There is no evidence contained in this record that Sage ever owned any of the bonds issued to the Chicago Railway Company, or that Williams ever owned any of the bonds issued to the Kingman Railroad Company; and in the absence of such evidence no presumption can be indulged that either of these parties purchased bonds belonging to both series, and in that way acquired knowledge that the total issue exceeded the amount authorized by law. The facts which Sage and Williams will be presumed to have known concerning the bonds are such as were disclosed by the bonds which they respectively purchased, and such further facts as the law made it their duty to ascertain by inquiry. Chaffee Co. v. Potter, 142 U. S. 355, 12 Sup. Ct. 216. In Dixon Co. v. Field, 111 U. S. 83, 95, 4 Sup. Ct. 315, and Lake Co. v. Graham, 130 U. S. 674, 9 Sup. Ct. 654, it was held that a purchaser of county bonds was charged with the duty of ascertaining the assessed value of county property, where the constitution of the state had limited the amount of county indebtedness that might be contracted to a certain per cent. of the assessed value of county property, and that in such

cases no recital contained in the bonds would relieve the purchaser from the performance of such duty. In Sutliff v. Lake Co. Com'rs, 147 U. S. 230, 13 Sup. Ct. 318, it was decided that a bond purchaser was likewise charged with the duty of examining statements of the county indebtedness for the purpose of ascertaining the amount of such indebtedness, and that knowledge of the amount as shown by the statements would be imputed to him, when such statements were required to be made at intervals, and published and spread upon the records of the county, by the provisions of the very act under which the bonds that he proposed to buy had been issued. Prior to these decisions, however, in Marcy v. Oswego Tp., 92 U. S. 637, where the bonds contained a recital, in substance, that they had been executed and issued by virtue of, and in accordance with, a certain act of the legislature of the state of Kansas, it was held that such a recital rendered it unnecessary for the purchaser of the bonds to ascertain the taxable value of township property, although the act under which the bonds were issued provided "that the amount of bonds voted by any township should not be above such a sum as would require a levy of more than one per cent. per annum on the taxable property of such township to pay the yearly interest." And in a very recent case (Evansville v. Dennett, 161 U. S. 434, 16 Sup. Ct. 613), which was certified to the supreme court from the Seventh circuit, it was held, notwithstanding the fact that the bonds contained a recital that they were issued "in pursuance of an act of the legislature of the state of Indiana, and ordinances of the city council of said city passed in pursuance thereof," that a bond purchaser was not required to examine the ordinances therein referred to, and that knowledge would not be imputed to him of the facts which an examination of the city ordinances pertaining to the bonds would have disclosed. See, also, Wesson v. County of Saline, 34 U. S. App. 680, 20 C. C. A. 227, and 73 Fed. 917, 919.

In view of the broad recitals which the bonds in controversy contain, the result is, we think, that neither Sage nor Williams, nor the plaintiff, for that matter, were charged with the duty of examining the proceedings of the board of county commissioners of Kiowa county which culminated in the execution and delivery of the bonds, and that neither Sage nor Williams is chargeable with knowledge that the county voted, in the aggregate, to both companies, more bonds than it was entitled to issue, because an examination of the proceedings of the board would have disclosed that fact. The bonds which Sage is shown to have purchased advised him by their recitals that the issue amounted to $60,000,—a sum not in excess of the amount authorized by law,—while the bonds purchased by Williams advised him that the issue amounted to $120,000, which was not an excessive issue, when tested by the assessment for the year 1887, of which assessment, it may be conceded, both purchasers were bound to take notice. Chaffee Co. v. Potter, 142 U. S. 355, 12 Sup. Ct. 216. So far as this record discloses, therefore, Sage and Williams were both bona fide holders of the bonds which they respectively bought, and both were entitled to recover thereon against the county. The plain-

tiff has acquired their title to the coupons detached from said bonds, and, on the strength thereof, is entitled to recover on each series of coupons.

In conclusion, it is worthy of remark that the assessment of property in Kiowa county for the year 1888 was sufficient to warrant an issue of bonds by the county to the amount of $182,379, which is a sum somewhat in excess of the amount actually issued to both companies, and that the contract between the county and the respective companies contemplated a delivery of most of the bonds after the assessment for 1888 had become operative; that is to say, when both roads had been completed past the county seat to the west and south lines of the county. It is quite probable, therefore, that in issuing the bonds in controversy the board of county commissioners acted in good faith, upon the assumption that their validity would be tested by the assessment for the year 1888, rather than by the assessment for previous years. Moreover, the record shows that the county obtained what it bargained for; that it paid the interest on its bonds for five years after they were issued, without questioning their validity, and by doing so doubtless gave them a wide circulation in the market. These considerations, even if they do not alter the legal aspects of the case, to which we have before averted, will at least serve to demonstrate that the rules of commercial law, as applied on the present occasion, work no injustice. The judgment of the circuit court is accordingly reversed, and the cause is remanded to that court for a new trial.

Motion to Modify Judgment.

(October 25, 1897.)

PER CURIAM. A motion has been made in this case to modify the judgment heretofore entered in this court in pursuance of the opinion on file, and to modify the mandate to be issued thereunder so as to direct the circuit court to enter a judgment in favor of the plaintiff below, in lieu of granting a new trial. The motion is based on the ground that as a jury was duly waived, and the case was tried on an agreed statement of facts, and the damages recoverable are a liquidated sum, there is no occasion for a second trial. We are satisfied that the motion is well founded, on the following cases: Ft. Scott v. Hickman, 112 U. S. 150, 5 Sup. Ct. 56; Allen v. Bank, 120 U. S. 20, 7 Sup. Ct. 460; Rolling-Mill Co. v. Rhodes, 121 U. S. 255, 7 Sup. Ct. 882. Redfield v. Parks, 132 U. S. 239, 10 Sup. Ct. 83; Saltonstall v. Russell, 152 U. S. 628, 14 Sup. Ct. 733. Therefore the judgment will be modified as prayed, and the circuit court will be directed to enter a judgment against the defendant county in the sum $3,831.60, with interest thereon at the rate of 6 per cent. per annum from July 1, 1894, to the date of entry.

MIDDLESEX BANKING CO. v. SMITH.

(Circuit Court of Appeals, Fifth Circuit. June 21, 1897.)

No. 593.

1. LIMITATION OF ACTIONS—AMENDMENT TO PETITION—NEW CAUSE OF ACTION.
Where an action is begun before expiration of the period of limitation, an amendment of the petition, after the expiration of such period, whereby the plaintiff, instead of suing for his own benefit, alleges that he sues by the authority and for the use and benefit of a third party, does not change the cause of action so as to subject the suit to the bar of the statute.

2. CROSS-EXAMINATION—REPETITION OF QUESTIONS—DISCRETION OF COURT.
The refusal of the court to permit counsel on cross-examination to repeat a question which has already been asked and answered three or four times is not erroneous.

3. APPEAL AND ERROR—DECISION ON MOTION FOR NEW TRIAL.
The refusal of a federal court to grant a new trial is not assignable as error.

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

This was an action at law by H. H. Smith against the Middlesex Banking Company, a corporation, and H. A. Kahler, to recover a sum of money alleged to have been wrongfully retained by defendant. The plaintiff's petition alleged, in substance, the following facts: One Frank Field, being the owner of a certain lot in the city of Dallas, Tex., on the 11th of July, 1890, executed a deed of trust thereon to secure the Middlesex Banking Company in the payment of two notes aggregating about $20,000, which were due in 1895. On the 3d of February, 1891, the said Field procured a policy of insurance from the Scottish Union National Insurance Company in the sum of $2,000 upon the house situated on the mortgaged lot and the fixtures and personal property therein. On the 12th of September, 1891, Field conveyed the lot and improvements to the plaintiff, Smith, subject to the incumbrances thereon, Smith not assuming the payment of such incumbrances; and on the same day the policy of insurance aforesaid was transferred to Smith, the loss, however, remaining payable to said H. A. Kahler, trustee. On December 10, 1891, the insured property was destroyed by fire, there being two other policies thereon, for $1,000 each, also payable to Kahler, as trustee. The petition then alleged that said Middlesex Banking Company and Kahler, on December 17, 1891, agreed with plaintiff that the money that might be collected on all the insurance policies should be used for the purpose of erecting a brick building upon the lot, "provided, that the building should be of such a character and value that the same will carry $4,000 of insurance." It was further alleged that the Scottish Union National Insurance Company refused to pay its policy, and that on December 17, 1891, it was agreed between plaintiff and defendants that plaintiff should proceed at once to erect the building, and that, when the insurance was collected, it should be turned over to him; that plaintiff did erect a building in accordance with this contract, which cost $5,000 when completed, May 1, 1892, and procured insurance thereon in the sum of $4,000, the policies being payable to said Kahler as trustee. It was further alleged that a suit was brought against the Scottish Union National Insurance Company in the name of plaintiff and defendants, wherein a judgment was recovered, and that in June, 1893, the sum of $2,103.70 was collected thereon by defendants. Plaintiff alleged that he had demanded this sum from defendants, but that they had refused payment, and had converted it to their own use.

The suit was originally instituted in a state court, but was removed into the court below by the Middlesex Banking Company, it being shown that defendant H. A. Kahler, though a resident of Texas, was a mere naked trustee, having no personal interest or liability, and that the said banking company was incorporated under the laws of Connecticut. On February 4, 1896, plaintiff filed his first amended original petition, repeating the allegations hereinbefore set