der the order of court is not to preclude the defendants from making any further defenses that they can make, in as full a manner as they could have made them if this order had not been made and the money had remained in court. Nor shall the payment to the plaintiffs be regarded as any acknowledgment by them that no more is due than the amount so paid under the terms of this contract; and all questions of costs and interest and the actual amount due shall be reserved until the final determination of the case, and this payment shall be held to be only a satisfaction pro tanto of the amount ultimately found due the plaintiffs under the terms of the contract. Also, out of abundant caution, the decree will contain a reservation of the right of the court to compel the plaintiffs to repay the money if it should turn out upon final hearing that the defendants are entitled to have it refunded to them. Ordered accordingly.

SARANAC LAND & TIMBER CO. v. ROBERTS, Comptroller.

(Circuit Court, N. D. New York. November 12, 1897.)

No. 3,110.

SALE FOR TAXES—CONCLUSIVENESS OF TAX DEED—VALIDITY OF STATUTE.

Laws N. Y. 1885, c. 448, making tax deeds which had been on record for two years prior to the passage of the act conclusive evidence of the regularity of the sale, and all proceedings prior thereto, if not assailed by direct proceeding within six months after the taking effect of the law, is, according to its principal intent and effect, a statute of limitations, and is not repugnant to any provision of the constitution of the United States. Turner v. People, 18 Sup. Ct. 38, followed.

This was an action of ejectment by the Saranac Land & Timber Company against James A. Roberts, as comptroller of the state of New York. A demurrer to the complaint on the ground that the court was without jurisdiction was heretofore overruled. See 68 Fed. 521.

Frank E. Smith and Weeds, Smith & Conway, for plaintiff.

T. E. Hancock, G. D. B. Hasbrouck, E. H. Leggett, and John H. Burke, for defendant.

COXE, District Judge. I am of the opinion that this cause must be decided in favor of the defendant upon the authority of People v. Turner, 145 N. Y. 451, 40 N. E. 400, affirmed by the supreme court of the United States, October 18, 1897. 18 Sup. Ct. 38. By these decisions the constitutionality of chapter 448 of the Laws of New York of 1885 is affirmed and its validity as a curative act and as a short statute of limitations is fully recognized. The defects involved in the Turner Case were similar to, and, in some instances, identical with those relied on by the plaintiff in the case at bar. Assuming these defects to be proved, they were irregularities which were cured by the act of 1885. The plaintiff has failed to show either the payment of the taxes or that they were levied without legal right. In other words, it has failed to show jurisdictional errors such as would render the assessment proceedings void and which the legislature had no power to remedy. The court cannot adopt the view of

the learned counsel for the plaintiff in his ingenious effort to prove that the constitutionality of the act of 1885 is still an open question. His argument is sufficiently answered by the plain and unequivocal language of the supreme court, as follows:

"It was argued in behalf of the plaintiff in error that the statute was unconstitutional, because it did not allow him any opportunity to assert his rights, even within six months after its passage. But the statute did not take away any right of action which he had before its passage, but merely limited the time within which he might assert such a right. Within the six months, he had every remedy which he would have had before the passage of the statute. If he had no remedy before, the statute took none away. From the judgments of the court of appeals in the case at bar, and in the subsequent case of People v. Roberts, 151 N. Y. 540, 45 N. E. 941, there would appear to have been some difference of opinion in that court upon the question whether his proper remedy was by direct application to the comptroller to cancel the sale, or by action of ejectment against the comptroller or the forest commissioners. But as that court has uniformly held that he had a remedy, it is not for us to determine what that remedy was under the local constitution and laws."

The plaintiff has failed to prove that it "is seised in fee simple and entitled to the possession" of the lands in dispute. The complaint is dismissed, with costs.

CHICAGO, ST. P., M. & O. RY. CO. v. BELLIWITH.

(Circuit Court of Appeals, Eighth Circuit. November 15, 1897.)

No. 869.

1. CONTRACTS—PARTY UNABLE TO READ.
   If one cannot read a contract which he is about to execute, it is as much his duty to procure some reliable person to read and explain it to him before he signs it as it would be to read it himself if he were able to do so, and his failure to obtain a reading and an explanation of it is such gross negligence as will estop him from repudiating it on the ground that he was ignorant of its contents. One who has received the benefits of a written contract in silence cannot escape its burdens by proof that he did not know and did not inquire what these burdens were when he assumed them.
2. PRINCIPAL AND AGENT—NOTICE.
   Notice to and knowledge of an agent or attorney, acquired and present in his mind while he is exercising the powers and discharging the duties of his agency, are notice to and knowledge of his principal.
3. CONTRACTS—FRAUD AND MISTAKE.
   A written instrument cannot be avoided for fraud or mistake unless the evidence of the fraud or mistake is clear, unequivocal, and convincing.
4. TRIAL IN FEDERAL COURTS—DIRECTING VERDICTS.
   The judges of the federal courts are not required to submit a question to the jury merely because there is some evidence in support of the case of the party who has the burden of proof, but at the close of the evidence it is their duty to direct a verdict for the party who is clearly entitled to it, when it would be their duty to set aside a verdict in favor of his opponent if one were rendered. At the close of the evidence there is always a preliminary question for the judge,—not whether there is literally no evidence, but whether there is any substantial evidence, upon which the jury can properly render a verdict in favor of the party who produces it.
5. ADMISSIBILITY OF EVIDENCE—HEARSAY—WAIVER OF SETTLEMENT.
   Where a railroad company, through its attorney, made a settlement with one claiming damages for personal injuries, and took a release from him, *held*, that testimony that a claim agent of the company, who was not present at such settlement, had afterwards said to the witnesses that the company had never made any general settlement with the claimant, but had only given