

under the earlier act of 1879. It seems clear that it was the intention of the legislature that this county should have this privilege from the general terms of the acts. But this is placed beyond doubt or cavil by the fact that the act of 1881 provides in express terms, at its close, not that the act of 1879 shall be repealed, not that any of the restrictions or limitations it imposed upon the issue of bonds under that act should be modified or removed, but that those restrictions and limitations should not be construed to apply to the bonds issued under the act of 1881. This was a useless provision, if any part of the former act was repealed by the latter. It conclusively shows that the attention of the legislature was expressly called to the effect of the two acts upon each other, and that after this was done it declined to repeal or modify the earlier act, but left it in full force, and simply provided that it should not limit or restrict the power granted by the later act. The conclusion is inevitable that the legislature intended that the two acts should stand together, each complete, independent, and effective in itself, and that the county of Pratt should have the power to issue its 6 per cent. bonds to refund its warrants under the general law, and to issue its 8 per cent. bonds and exchange or sell them under the special law for the same purpose. No part of chapter 50 of the Laws of 1879 was repealed or modified by chapter 78 of the Laws of 1881. *Pursell v. Insurance Co.*, 42 N. Y. Super. Ct. 383, 394; *State v. Morrow*, 26 Mo. 131, 141.

There is nothing in the defenses in this case to warrant a different result from that reached in *Seward Co. Com'rs v. Ætna Life Ins. Co.*, supra, and upon the authority of the opinion in that case, and of the cases cited therein, the judgment below is affirmed.

BOARD OF COM'RS OF MEADE COUNTY, KAN., v. ÆTNA LIFE INS. CO.

(Circuit Court of Appeals, Eighth Circuit. October 24, 1898.)

No. 1,056.

MUNICIPAL BONDS—ESTOPPEL BY RECITALS—REFUNDING BONDS.

A county which issued bonds containing a recital that they were issued in accordance with the provisions of a statute authorizing counties to refund their indebtedness cannot defeat recovery thereon, by a purchaser in open market in reliance on such recitals, by proof that there was included therein a sum in excess of the actual prior indebtedness of the county, which was prohibited by the statute.

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

S. S. Ashbaugh (F. M. Davis, on the brief), for plaintiff in error.

O. H. Bentley and Rudolph Hatfield, for defendant in error.

Before SANBORN and THAYER, Circuit Judges, and SHIRAS, District Judge.

SANBORN, Circuit Judge. This is an action upon coupons cut from refunding bonds of Meade county, in the state of Kansas, which were issued under chapter 50 of the Laws of that state of 1879 (Gen.

St. Kan. 1889, par. 464). The court below rendered a judgment against the county upon a demurrer to its answer. This answer pleads the same defenses that were made to the bonds issued under the act of 1879 in the case of Board County Com'rs of Seward Co. v. *Ætna Life Ins. Co.*, 90 Fed. 222. The only unique feature in this case is that the plaintiff in error avers in its answer that refunding bonds to the amount of \$23,000 were issued in exchange for void and illegal county warrants, which amount, with interest, to \$22,200, and in payment of \$800 for the services of the holder of the warrants in refunding them, and it claims that all these bonds are void because they were issued in violation of section 1 of chapter 50, that the refunding bonds "shall not exceed in amount the actual amount of outstanding indebtedness." This defense, however, is not available to the county, because the bonds contain a certificate that they were issued in accordance with the provisions of the act of 1879, and they have been purchased by the defendant in error in open market in reliance upon this certificate. It is too late for the county to defeat their collection by proof that its certificate is false, and that the bonds were issued in violation of, instead of in accordance with, this statute. The judgment below is affirmed upon the authority of the opinion in Board County Com'rs of Seward Co. v. *Ætna Life Ins. Co.*, supra, and the cases there cited.

SCAIFE v. WESTERN NORTH CAROLINA LAND CO. et al.

(Circuit Court of Appeals, Fourth Circuit. November 15, 1898.)

No. 266.

1. EVIDENCE—BOUNDARY—STATEMENT OF PERSON SINCE DECEASED.

A declaration of a person since deceased as to a boundary is not admissible, unless it is shown that he was disinterested at the time of making it.

2. SAME—ADMISSIONS—RECORD ON FORMER TRIAL.

A distinct and formal admission of a fact, signed by an attorney of record on a trial, is competent evidence on a subsequent trial of the same case.

3. ADVERSE POSSESSION—POSSESSION OF PART OF LARGER TRACT—LAW OF NORTH CAROLINA.

Under the settled law of North Carolina, the continuous, open, notorious, and unequivocal adverse possession of a small part of a tract of land will mature title to the whole tract within the boundaries of the adverse holder's claim.

4. BOUNDARY—PLAT AS EVIDENCE.

While a plat attached to a grant may be referred to for the purpose of correcting a mistake or resolving an ambiguity in the grant, the grant must control, if it is certain.

5. APPEAL—REVIEW OF INSTRUCTIONS.

The correctness of a special instruction cannot be considered by an appellate court, where the court gave it as qualified or explained by the general charge, and such charge is not in the record.

6. ADVERSE POSSESSION—POSSESSION OF TENANT.

Under the law of North Carolina, a tenant who holds continuous, open, notorious, and unequivocal adverse possession of a definite boundary, however small, within a large tract of land, holds possession for his lessor; and his possession inures to the benefit of the lessor, as to the whole of the land covered by the deed under which he claims title.