

answers that they were void, and evidence touching the circumstances of their execution was introduced. That issue was, consequently, in litigation. If the trial court had assumed to pass upon the question of the validity of the releases, and had decided it erroneously, either upon a misconception of the law or of the evidence, it is entirely plain that the adjudication, so long as unreversed, would have been final, and that question could not have been reopened in any subsequent litigation between the same parties. The trial court held that the releases were without effect on the rights of the parties, and, even though that decision was erroneous, it was final between the parties until reversal; and if it be assumed that the opinions of the appellate courts should be treated as a reversal of that decision, and that both of these courts erroneously held the releases to be valid, these determinations are final between the parties upon that question. The complainants have had their day in court, before tribunals having jurisdiction to settle their rights, and, even if there has been a miscarriage of justice, they must submit. "Interest reipublicæ ut sit finis litium."

The proposition that their rights have been disposed of without due process of law is too preposterous to merit discussion. They have had a trial according to the settled course of judicial proceedings. They have been heard, and heard *ad libitum*, though without avail.

In granting the order for a preliminary injunction, the court below was mainly influenced by the decision of Judge Wheeler, rendered upon a demurrer to the complainants' bill. 88 Fed. 713. It is altogether probable that, if all the facts which appear in the present record had been before the learned judge who decided the demurrer, he would not have reached the conclusion that the former adjudication was not a bar to the present suit. However that may be, inasmuch as we are satisfied that the complainants cannot ultimately prevail upon the case made by their bill, we conclude that they are not entitled to preliminary relief.

The order is accordingly reversed.

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CITY OF MILWAUKEE v. SHAILER & SCHNIGLAU CO.

(Circuit Court of Appeals, Seventh Circuit. February 7, 1899.)

No. 535.

APPEAL—REVIEW—QUESTIONS PRESENTED BY RECORD.

A case cannot be reviewed, on assignments of error relating to the admission or exclusion of evidence and the instructions given and refused, where the bill of exceptions does not purport to contain all the evidence, and, as is shown by references made thereto in the charge of the court, omits important testimony touching the points of controversy, though it is certified to contain all the material evidence.<sup>1</sup>

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

<sup>1</sup> For necessity of including evidence in bill of exceptions, see note to *Ladd v. Mining Co.*, 14 C. C. A. 248.

Carl Runge and C. H. Hamilton, for plaintiff in error.  
James G. Flanders, for defendant in error.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge. This action was brought by the Shailer & Schniglaue Company, defendant in error, as the assignee of Shailer & Schniglaue, to recover the value of "machinery, tools, and material comprising one tunnel plant at Milwaukee," alleged to have been converted to its own use by the city on or about the 15th day of October, 1893.

The first, second, third, and fourth specifications of error, which alone are relied upon in the brief for the plaintiff in error, have relation to the admission and exclusion of evidence and to instructions refused and given. Each specification is objectionable, because it embraces jointly more than one proposition and question, and some of them in other respects fail of compliance with rule 11 of this court (31 C. C. A. cxlvi.; 90 Fed. cxlvi.) in respect to the assignment of errors; but an insuperable obstacle to a consideration of any of the questions discussed is that the bill of exceptions does not purport to contain all the evidence in the case, and clearly does not contain all that was important touching those questions, though it is certified by the judge of the court below that it "contains all the material evidence offered by either party on the trial." The court directed a verdict in favor of the plaintiff, leaving to the jury to determine only the amount of the recovery, and, in the course of the charge, in explanation of the peremptory direction, made a number of references to evidence which is not found in the bill. For instance, it is stated that "it appears, by undisputed testimony, that after removing such of the property as they [the agents of the city] did remove to some other places, they treated the property as though it belonged to the city,—exercised dominion over it,"—and that the court held to be a conversion. We find evidence that, after notifying Shailer & Schniglaue to remove their property, the agents of the city, in order to get it out of the way, and to store or protect it, removed it into sheds, or other places of storage near by, and afterwards used some of it, but not all, in the prosecution of the work on the tunnel. That any dominion over that not used was ever asserted in hostility to the rights of Shailer & Schniglaue, or their assignee, we find no evidence in the record. The court, in considering which party was guilty of a breach of the contract, also commented at large upon the evidence touching the conduct of the parties in reference to the work and cessation of work, both on the shore end of the tunnel and at the crib; but the evidence referred to is not included in the bill. Much of it presumably was the same as that rehearsed in the statement of the case in *City of Milwaukee v. Shailer*, 55 U. S. App. 522, 28 C. C. A. 286, and 84 Fed. 106. The pleadings, judgment, and opinion of the court in that case were put in evidence in this, and are set out in the record; but, as the judgment was not pleaded as an adjudication, it can be regarded only as prima facie evidence of the facts or issues determined, and the other evidence referred to remained ma-

terial. *David Bradley Mfg. Co. v. Eagle Mfg. Co.*, 18 U. S. App. 349, 6 C. C. A. 661, and 57 Fed. 980.

However, if the judgment could be deemed a complete estoppel on the question which party was guilty of an infraction of the contract, the plaintiff in error cannot complain that the question was taken from the jury; and, on the other hand, if, as the plaintiff in error contends, the judgment is not only not conclusive, but, in view of the ruling of this court whereby it was affirmed on another ground, is not even evidence of a breach of the contract by the city, then still more is it now essential to a review of the ruling on that question that the evidence considered by the court below should be before us. The judgment is therefore affirmed.

Judge SHOWALTER did not participate in this decision.

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ROSENPLAENTER v. PROVIDENT SAV. LIFE ASSUR. SOC. OF NEW YORK.

(Circuit Court, W. D. Tennessee, W. D. January 7, 1899.)

1. LIFE INSURANCE—CONSTRUCTION OF POLICY—TERM INSURANCE.

A life insurance policy in terms insuring the holder for one year from its date, but containing a provision for its renewal from year to year during the life of the assured by the payment of successive annual renewal premiums, is not an entire contract for the life of the assured, but is a valid "term insurance contract for one year," within Laws N. Y. 1892, c. 690, § 92, which is specially excepted by that section from its general provision that no policy shall be declared forfeited or lapsed for nonpayment of premiums without the prescribed notice to the insured.

2. SAME—STATUTES REGULATING FORFEITURES—EFFECT OF REPEAL.

Laws N. Y. 1877, c. 321, providing that no policy of life insurance should be declared forfeited unless a prescribed notice should be served on the insured, did not become a part of the contracts created by policies subsequently written in the state, so that its repeal impaired the obligation of such contracts, but was merely a regulation for the government of insurance companies, belonging to the class of remedial statutes which it is competent for the legislature to enact, repeal, or amend, making the same applicable to existing contracts, without affecting the obligation of such contracts.

On Demurrer to Declaration.

The defendant issued a policy of insurance upon the life of Carlos G. Rosenplaenter, in favor of his wife, Mary Anna, the above-named plaintiff. It is dated on the 1st day of April, 1889, is for the sum of \$10,000, and payable, at the death of the life assured, to the beneficiary. The consideration named, besides the conditions and agreements indorsed upon the back of the policy, is: "The payment of the first annual premium on this policy, and in semi-annual equivalents of \$168.60, each payable on the first days of April and October, respectively,"—in consideration of which payment the defendant company promises to pay the plaintiff the sum of \$10,000 "within 90 days after the acceptance of satisfactory proof, at its office in the city of New York, of the death of Carlos G. Rosenplaenter, \* \* \* provided such death shall occur before twelve o'clock noon on the first day of April, A. D. 1890." The following is one of the stipulations of the policy: "And the said society further agrees to renew and extend this insurance upon like conditions during each succeeding year of the life of the insured from date hereof upon the