

ALBION LEAD WORKS v. CITIZENS' INSURANCE COMPANY.

SAME v. LANCASHIRE INSURANCE COMPANY.

SAME v. HUMBOLDT INSURANCE COMPANY.

SAME v. HOME INSURANCE COMPANY.

SAME v. STANDARD INSURANCE COMPANY.

SAME v. UNION MARINE INSURANCE COMPANY.

(Circuit Court, D. Massachusetts. July 24, 1880.)

1. **INTEREST—DAMAGES—TRUSTEE PROCESS.**—In Massachusetts the intervention of a trustee process will not relieve the defendants from the assessment of interest as damages, where judgment was entered on the debt, after a defence on the merits, during the continuance of the attachment, and no application had been made to continue the action for judgment until the trustee process was disposed of.

LOWELL, C. J. In these cases the defendants agreed to abide the result of the action against the Williamsburg City Fire Insurance Company, in which judgment has now been entered upon the verdict for the plaintiffs. The only question remaining open is whether interest is to be computed upon the amount due in each case, after the expiration of 60 days from the notice and proof of loss. It seems that after these actions were brought the defendants were severally summoned as trustees of the plaintiff corporation in one or more actions in the state courts. Those actions have been disposed of in some way and are not now pending, and there are no existing attachments upon the debts due from the defendants.

I had occasion to notice in *Greenish v. Standard Sugar Refinery*, 2 Lowell, 553, that in Massachusetts, if interest is not due upon a debt by the terms of the contract creating it, but is assessed as damages, the courts do not assess it during the time that payment has been delayed by a trustee process. The theory is that the defendant is not in default during that period, for that it may well be presumed that he would have

paid the debt if he had not been forbidden. *Adams v. Cordis*, 8 Pick. 260; *Oriental Bank v. Tremont Ins. Co.*, 4 Met. 1; *Rennell v. Kimball*, 5 Allen, 356; *Bickford v. Rich*, 105 Mass. 340; *Huntress v. Burbank*, 111 Mass. 213.

In the case last cited, *Morton, J.*, says: "A debtor is not chargeable with interest as damages for delay in the payment of a debt, when such delay is caused by his being summoned as the trustee of the debtor." These words give the reason of the decision; and that reason fails in this case. Here the trustee processes were served upon the defendants after the actions against them were pending, and could not have been pleaded to these actions, nor have delayed payment. *Wallace v. McConnell*, 13 Pet. 136; *Whipple v. Robbins*, 97 Mass. 107. Our Massachusetts statute provides that in such case the pending action shall proceed to verdict or award, but that the court may, for good cause shown, continue the action for judgment until the trustee process is disposed of. Gen. St. c. 142, §§ 18, 19. No application was made to the court here for any such action, and when the appropriate time has come, which is this time immediately before judgment, the trustee process has been disposed of, and no such application is possible.

The defendants were not delayed by the foreign attachment, but were defending the case upon its merits during the whole period of the rise and decay of the trustee processes. They are not, therefore, within those cases which excuse debtors from paying interest when they may be assumed to have been prevented by superior power from satisfying the demand of the plaintiff.

Damages to be assessed, with interest, as usual.

RADFORD, Assignee, v. FOLSOM.

(District Court, E. D. Michigan. June 14, 1880.)

1. **JUDGMENT—ESTOPPEL—SAME CAUSE OF ACTION.**—Where a question is distinctly put in issue, and tried and decided, the judgment operates as an estoppel *as to that question* in any subsequent suit between the same parties, whether the second suit be upon the same or some other cause of action.
2. **SAME—SAME—PARTIES.**—So, when an issue is made in a case and decided, whether with or without trial, the judgment is conclusive between the same parties in any subsequent action for the *same* cause, and as to all questions which were, or *might have been*, raised upon the first trial.
3. **SAME—SAME—DIFFERENT CAUSE OF ACTION.**—But, where a suit is tried and determined, the mere fact that in that suit a question might have been raised, tried, and determined, does not prevent the raising of such question in a suit upon a *different* cause of action.

A. began a suit in Iowa against B., to obtain his possession and quiet his title to certain lands standing in A.'s name. Pending this suit A. conveyed a portion of the lands to C., who intervened as co-plaintiff, and asked that this portion might be set off to her. The case was tried and submitted. Before decision A. was adjudicated a bankrupt, and his assignee was substituted as plaintiff, and the lands still standing in A.'s name were set off to his assignee, but no question was raised as to the validity of the conveyance from A. to C. Subsequently A.'s assignee filed a bill against C. to have the conveyance set aside as a fraud upon A.'s creditors. *Held*, that the proceedings in Iowa were not an estoppel. *Held*, also, upon the facts, that the conveyance was fraudulent and void.

In Equity.

BROWN, D. J. This is a bill brought by the complainant, as assignee of Simeon and Frank Folsom, to set aside two deeds and a mortgage executed by Frank Folsom and wife to Eliza Folsom, the defendant, upon the ground that these conveyances were made by said Frank Folsom and wife at a time when he was hopelessly insolvent, without consideration, and for the purpose of defrauding his creditors, by placing the property beyond their reach. The first conveyance was a deed dated February 18, 1875, conveying to said defendant certain store property situated in the city of Council Bluffs, Iowa. The second was a deed dated October 5, 1875, and