

heirs, he sold the land, and pocketed the proceeds. If there was any doubt about the matter of heirship, or any fair excuse which, in my judgment, would justify sustaining the validity of this approved deed as against these heirs, I should deem it my duty to sustain it. But the testimony is very clear, and by a multitude of witnesses.

Judgment will have to go for the plaintiffs.

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BISSELL v. TOWNSHIP OF SPRING VALLEY.

(Circuit Court, D. Kansas. June 8, 1886.)

MUNICIPAL CORPORATIONS—BONDS—ACTION—PLEADING—FORGERY.

An allegation that municipal bonds were duly issued and registered is conclusive, on demurrer to a pleading which alleges the forgery of the bonds.

Action to Recover the Money Due on Town Bonds. Answer, alleging that clerk's signature to the bonds was forged. Demurrer to answer.

*Alfred Ennis*, for plaintiff.

*Rossington, Smith & Dallas*, for defendant.

BREWER, J. In this case, an action on township bonds, a demurrer to the first count in the answer has been argued. The petition alleges that the bonds were issued and registered; and, in respect to the registry, as the bonds were issued before the act of 1872 was passed, it details that they were presented to the auditor, by him certified, notice thereof given by him to the officers issuing the bonds, and that by them such notice was entered upon the official records of the bonds. The first count in the answer avers that the signature of the county clerk to the bonds was forged, and that the seal of the county was not affixed by him.

A case between the same parties, upon the same issue of bonds, went to the supreme court of the United States, and is reported in 110 U. S. 162, 3 Sup. Ct. Rep. 555, in which the same answer was presented, a demurrer to it overruled, and that ruling sustained by the supreme court. But in the opinion then filed that court said that the averments of the petition respecting the auditor's certificate and the registration were insufficient, in that they did not show that notice was given by the auditor to the officers who had in the first instance issued the bonds, or that such notice had been entered upon the official record. That averment is in this petition. In other words, counsel have framed this petition to meet the very omissions which the supreme court noticed. So the demurrer will have to be sustained, for a completed registration is conclusive of the validity of bonds as against such a defense as this. *Lewis v. Commissioners*, 105 U. S. 739.

Of course, the question as to *res judicata*, which is presented in another count, is not affected by this decision.

The demurrer will be sustained, and leave given to file an amendment to answer within 60 days.

UNITED STATES *ex rel.* FIELD v. TOWNSHIP OF OSWEGO, LABETTE Co.

(Circuit Court, D. Kansas. June 10, 1886.)

1. MUNICIPAL CORPORATIONS—BONDS—MANDAMUS—JUDGMENT—SATISFACTION.

A writ of *mandamus* to enforce collection of judgment against a municipality on its bonds is in the nature of, and is legally equivalent to, the statutory writ of execution.

2. SAME—STATUTE OF LIMITATIONS.

The right to prosecute the writ for such a purpose is limited to the same period of time within which execution may be sued out on a judgment against individuals.<sup>1</sup>

Motion to Quash Writ of *Mandamus*.

*S. E. Brown*, for plaintiff.

*Perkins & Morrison*, for defendant.

BREWER, J. These are judgments rendered on township bonds 10 years ago. The last proceedings upon these judgments were in 1878, and they were *mandamus* proceedings against the township officers. Thereafter, from 1878 until 1885, more than six years, the plaintiffs and relators took no action thereon. Last fall an alternative writ was sued out against the county commissioners of the county of Labette. The question is whether those judgments were alive, so that any proceeding could be had to enforce them. It is settled in this state, both by statute and decisions, that a judgment becomes dormant in five years, and that an execution issued thereafter is absolutely void. It is true that the statute provides that no execution shall issue against a county, but the proceeding by *mandamus* is one in the nature of an execution for enforcing the collection of judgments against a municipality. I think, by all fair analogies, the same rule applies; and if a party holding a judgment against a municipality permits it to stand, without any effort to collect it by *mandamus* proceedings, for five years, the judgment becomes dormant, and there must be a revivor, which can only be had within a year, before any process can be obtained on that judgment. I cannot think it possible that the legislature, by taking away the right to issue execution against the county, meant that a judgment against a county should remain in

<sup>1</sup> For a full discussion of the question of the statute of limitations, when it begins to run, etc., see *King Iron Bridge & Manuf'g Co. v. County of Otoe*, 27 Fed. Rep. 800, and note, 801-807; and *Barden v. City of Duluth*, *ante*, 14.