sider the principal due; and, 3, that the decree was not modified by deducting therefrom $1120.60.

As to the first error assigned, it is sufficient to say that no application was made for time to answer, and it nowhere appears that the failure to conform to the rule has resulted in harm to the appellants. In *Allis* v. *Insurance Co.*, 97 U. S. 144, we said we would not reverse a decree for an immaterial departure from technical rules when we could see that no harm had been done. Here it is not pretended that the appellants have any other defence to the action than such as they set up in their plea, or presented to the court in their application for a modification of the decree. Upon both these defences they were fully heard, and the case is now here for review, with a sufficient record to enable us to pass upon all the questions presented. Under such circumstances it would be clearly wrong to reverse the decree because time was not given to file a formal answer, setting up what already appeared in the case.

We agree with the court below that the election by the bondholders to consider the principal sum due was sufficiently proven by the bringing of the suit by the trustee and the production of the bonds at the hearing.

The laws of Minnesota put no limit on the rate or amount of interest for which the parties may contract in writing. The contract in this case was to pay the fifteen per cent in advance, and the continuance of the loan for the five years was made dependent on the prompt payment of the semiannual interest at the rate of seven per cent. *Decree affirmed.*

Mr. M. Lamphrey and *Mr. C. K. Davis* for appellants. *Mr. H. R. Bigelow* for appellee.

O'REILLY *v.* EDRINGTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

No. 246. October Term, 1879. — Decided April 19, 1880.

The agreement of compromise between the parties which is referred to in the opinion was competent evidence and properly received as such, although not set forth and relied upon in the pleadings.

The case is stated in the opinion.

Mr. Chief Justice Waite delivered the opinion of the court.

O'Reilly, as assignee in bankruptcy of Edrington, Jr., and Steele,

filed a bill in equity in the District Court for the Southern District of Mississippi, to foreclose a lien in the nature of a mortgage in favor of Edrington, Jr., on an undivided two-thirds of what was known as the Shipland plantation. In his bill he alleged it was important that the taxes on the property be paid from year to year, as the same should accrue; "that taxes in arrears be also paid; and that all clouds upon the title be removed; and that the said lands be redeemed from any tax sales." It was then alleged "that William H. Edrington, Jr., and Henry C. Edrington, as administrators of Eliza M. Edrington, deceased, and Charles S. Jeffords claim to have some equitable claims upon the lands aforesaid for money advanced by them for the payment of taxes, the exact nature and extent of whose claims are unknown to your orator." The prayer was, among other things, "that the rights of the defendants, Charles S. Jeffords, and William H. Edrington, Jr., and Henry C. Edrington, as administrators of Eliza M. Edrington, deceased, if any they have, be ascertained, declared, and settled." The administrators, defendants, appeared the day the suit was begun and filed an answer and cross-bill. The cross-bill set forth, in substance, that the lands had been sold for taxes, and conveyed to one Richardson, April 10, 1872; that Richardson had also paid the taxes on the lands for 1870; that the payments by Richardson were, for 1870, $1244.08, and at the tax sale, $1754.87; that on the 29th of May, 1872, Mrs. Edrington, the deceased, paid Richardson for a deed of the lands to her $3142.89, being the amount advanced by him, and interest thereon $143.94, and that she afterwards paid the taxes of 1872, amounting to $1907.11. The prayer was that the administrators might be decreed to have a lien on the lands, and that O'Reilly, the assignee, be required to pay to them the several amounts so advanced.

O'Reilly answered the cross-bill, admitting all the allegations except as to the amounts paid. As to these proof was demanded, but for such amount as should be found due it was admitted that the administrators were entitled to the relief they asked. On the 28th of May, 1875, a decree was entered finding the amount due on the mortgage debt and ordering a sale of the property. As to the cross-bill and tax claims all questions were reserved for future adjudication, and the decree in the principal suit was "without prejudice to said parties in asserting their claims either against the proceeds of said lands, when paid into the court, or against the

lands themselves, in case the assignee shall become the purchaser thereof." On the 2d of December, the cause was referred to a master to ascertain and report the facts as to the tax claims, and he reported that payments had been made precisely as stated in the cross-bill, but that the taxes so paid covered the whole of the lands, and not two-thirds only. The whole amount paid was $5050.01. He also reported that O'Reilly objected to refunding the taxes of 1870, which had been paid by Richardson before sale, and that he claimed he was not, under any circumstances, chargeable with more than two-thirds of the whole amount, as his lien covered only that part of the land. He also reported that the administrators offered in evidence before him an agreement, of the date of April 30, 1874, between O'Reilly, as assignee, and the counsel of the Edringtons, but objection being made by O'Reilly it was not considered by him. By this agreement, "to avoid further expensive litigation," a compromise of all matters in controversy between the parties was effected, by which among other things, O'Reilly, as assignee, was to pay the administrators "such sums of money as were paid by said Eliza M. Edrington, in purchasing the tax-title to said plantation, and such further sums as have been paid by her or her heirs and administrators in the payment of taxes for and on account of such plantation," and the administrators were to release all claims. This agreement was made subject to the approval and confirmation of the District Court in Bankruptcy. On the coming in of the report the agreement was approved by the court, and a decree entered to the effect that whenever the administrators should tender the assignee "deeds of quit-claim of all their interest in the lands described in the pleadings, including the one-third interest in said lands not sold under the decree rendered herein," the said assignee should pay to them, from the proceeds of the sale then in his hands, the sum of $5050.01.

From this decree O'Reilly appealed.

The principal objection to the decree below is that it was made on the basis of an agreement of compromise entered into before the suit was begun, when that agreement was not set forth and relied on in the pleadings. The case brought up by the appeal is that made by the cross-bill, where all the several items of tax claim are set out, showing what were for taxes paid and what for purchases at tax sales. In the answer no objection was made because the claim included the taxes on the whole property, or because those

for 1870 were paid before a sale. All O'Reilly required was proof of amounts, and that being made the right to the relief asked was conceded. No exception was taken to the amount as reported by the master. The questions as to liability for the taxes of 1870, and for the full amounts paid, rather than two-thirds, were first raised at the hearing on the reference. When those questions came to be considered by the court, the agreement of compromise, after having been examined and approved, was received as evidence that the full amount should be allowed. While the agreement was not directly sued on, the amount it called for was claimed in the cross-bill. No defence was set up in the answer inconsistent with what had been agreed to, and, as the agreement has been perfected by the approval of the court, we see no reason why it may not be used in evidence to show that, for a valuable consideration, the assignee has waived the objections he now makes to the amount of the recovery. The decree, as rendered, is not for the specific performance of the agreement, but is one in which the rights of the administrators are "ascertained, declared and settled," in accordance with the prayer of the original bill, and establishing a lien on the lands for the taxes paid, and requiring the assignee to refund the amount expended, as asked for in the cross-bill. *Affirmed.*

Mr. W. K. Ingersoll, *Mr. A. P. Morse* and *Mr. A. B. Pitman* for appellant. *Mr. G. Gordon Adam*, *Mr. Thomas J. Durant* and *Mr. C. W. Hornor* for appellees.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, PETITIONER.

ORIGINAL.

No. 8. Original. October Term, 1880. — Decided May 2, 1881.

Mandamus will not lie when there is an ample remedy by appeal if the case is put in a condition for it.

THIS was an application for a writ of mandamus. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This is a petition for a writ of mandamus to compel the Circuit Court of the United States for the Northern District of Illinois to hear and determine whether a master of the court shall execute to the relator a deed for certain lands bought under a sale ordered