

Concede that, and still the concession will not change the conclusion in this case, as the jurisdiction of the court in the foreclosure proceeding is beyond question, and the decisions of the State court prove incontestably that the notice to the *curator ad hoc* was sufficient to support the judgment or decree against the defendant as an absentee from the State.

Apply those rules to the case before the court, and it is clear that the judgment in the motion proceeding affords conclusive proof that the judicial conveyance of the property vested a complete title in the purchaser at the sheriff's sale. Should it be suggested that the judgment rendered in the motion proceeding was subsequent to the appeal from the Third District Court, the conclusive answer to the objection is that the devolutive appeal never operates as a supersedeas. *Arrowsmith v. Durell*, 21 Law Ann. 295; *Walker v. Hays*, 23 id. 176; *Samory v. Montgomery*, 27 id. 50; Code of Prac., arts. 578, 595; Rev. Stat. La., art. 3392.

Tested by these authorities, it is clear that the appeal constituted no legal obstacle to the subsequent jurisdiction of the subordinate court in rendering the judgment in the motion proceeding, from which it follows that there is no error in the record brought here by the present writ of error.

Judgment affirmed.

MR. JUSTICE FIELD and MR. JUSTICE BRADLEY did not sit in this case, nor take any part in deciding it.

UNITED STATES v. SIOUX CITY AND PACIFIC RAILROAD COMPANY.

The ruling in *Union Pacific Railroad Company v. United States* (*supra*, p. 402), that the United States is not entitled to recover if, during the period for which it claims the five per cent of the net earnings of any road, to aid in the construction of which the bonds of the United States were granted under the Pacific Railroad acts, such earnings were absorbed by the interest accruing on the first-mortgage bonds of the company, reaffirmed.

ERROR to the Circuit Court of the United States for the District of Iowa.

The facts are stated in the opinion of the court.

The Attorney-General and Mr. Joseph K. McCammon for the plaintiff in error.

Mr. S. Bartlett and Mr. W. I. Hayes, contra.

MR. JUSTICE BRADLEY delivered the opinion of the court.

This was an action brought by the United States against the defendant in the court below to recover five per cent of its net earnings.

The facts of the case were admitted by the parties, and, amongst others, the following:—

“5. That if the amount paid by the company as hereinbefore stated for interest on its first-mortgage bonds during said time should, under the law, be deducted from the receipts of the company in order to ascertain the net earnings thereof, then there were no net earnings during said time; but if, on the other hand, the said payments of interest should not be deducted from the earnings of the road to ascertain the net earnings, then the net earnings of the road during said period amounted to the sum of four hundred and seven thousand seven hundred and ninety-nine $\frac{50}{100}$ dollars (\$407,799.50).”

It thus appears that, although the company made net earnings to the amount of \$407,799.50, during the period covered by the time in respect of which the suit was brought, yet that they were all absorbed by the interest accruing on the first-mortgage bonds. According to the principles laid down in our decision, *Union Pacific Railroad Co. v. United States* (*supra*, p. 402), the government cannot claim the five per cent which would otherwise be applicable to its subsidy.

Judgment affirmed.

MR. JUSTICE STRONG and MR. JUSTICE HARLAN dissented.