No. 14805

Supreme Court of Illinois

Supervisors of Marshall County

vs.

Cook

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 251

J. W. Middleton & Co., Stationers, 196 Lake St.

1865

Supreme Court of Illinois
3d Grand Division
April term A.D. 1865.

The Board of Supervisors of Marshall County vs Washington E Cook. } Appeal from Marshall.

The appellants may claim to be permitted to make the following suggestions in addition to those already made as the represents a large amount of capital in this application to test the validity of the bonds in question.

It will be seen by the record that the appellants issued $100 000. of their bond which are at interest, and the county of Stark issued $50 000 as may be seen by the record in the case of Johnson vs The county of Stark decided in 24 Ill, and referred to in the points heretofore made, and other counties have done the same, so it will be seen there is not only large interests involved in the questions presented as well as important principals of law.

The courts have decided the questions presented in this case somewhat variously, and a fair inquiry into the decisions will show them to stand in this relation to the points made

The Supreme Court of the United States has by several decisions directly upon

the points decided universally in favour of the validity of the bonds, and coupons; and so have the District courts generally, excepting in cases where they have followed some of the State courts, where they are located, in which cases the Supreme Court has universally overruled their decisions, and declared it to be the settled rule of that Court to inforce these obligations even if in doing so they refuse to follow the State courts in their construction of the law.

Pennsylvania has at last adopted the same rule, and so has Ohio, Connecticut, Wisconsin, Kentucky, England, and the authorities refered to upon the question of estopel in the brief.

And the Supreme Court of Iowa having finally decided against the validity of the bonds, has been overruled in their decisions by the Supreme Court of the United States in the following language used by the latter court found in one of its opinions.

The Supreme Court of Illinois in the case of Johnson vs Stark Co refered to in the brief, & found in 24 Illinois, is clearly a decision in favour of these bonds, as the Stark Co bonds are identical with these in question, as will clearly appear

from that case as reported. That case in all its features, is precisely like this, as any one will see by close scrutiny. But there is a case in 25 Ill, refered to by appellants, which lays down a different rule, but if the arguments in the two cases be compared, and the reasons given for & against the points made in the cases, it will be seen that the Stark Co case, throws the other far in the shade. It shows there was investigation in the latter case, while the other was passed over, without even reference to the authorities or any comments showing careful deliberation.

This is all there is of the authorities, though at first glance one might suppose the New York cases & the Missouri case decided similar points, but they certainly do not. Either side might with propriety use the New York cases, as the courts argue the points both ways; while the language in the Missouri case is an obiter dictum merely.

These are believed to be all the authorities extant upon the subject, and it is easy to determine where the weight of authority is.

The courts will at this day, in making a decision upon ~~a~~ points like this, seek to establish a rule which will result in the greatest amount of good, to those to be affected by it, without confining

themselves to technicalities, or precident when not adopted to the age & surroun-ding circumstances.

The courts, as well as the Legislature, should keep pace with the age in which they act, in establishing the law; for courts after all have more to do with ~~with~~ furnishing for the people, rules of law, for their government than the Legisla-ture.

The rights of individuals, must often give way to that of the Public as a rule of necessity, and always, when the Public good requires it.

The question arises in this case, whether it is better that these bonds be sustained, for the public good, or held to be invalid, on account of a mere imaginary ineq-ulonity in issueing them, which can really do no one any injury. It cannot be shown, by any process of reasoning that the County could be injured, by the inequlonity while it can be clearly demonstrated, that the public generally would be, by holding them void.

It is the interest, even, of the people who are liable upon these bonds, that they be held to be good. It should be every ones object to make them certain securities, & encourage the free circulation

thereof, as thereby they are made more valuable.

The people of this County cannot carry on the vast enterprises of the present age, without them. And sooner, or later, the rule insisted upon, by the appellee, must be adopted.

The people liable to pay these bonds, would blush to repudiate these obligations were it in their power. They with the people generally detest any thing like repudiation. They would look upon it as a barefaced contemptible swindle, after they have acquiesced so long, & recieved all the benefits, and taxed these very bonds as property.

The people of the County voted for the subscription, issued them, sold them, transfered them, recieved the consideration, appropiated it, and paid interest thereon, eight years, and now, they turn around upon the holders, & say we done this wrongful act, imposed upon you, deceived you; and therefore because we have done this, we should be released from these obligations, & without any remuneration to you. We committed the fraud upon you, but you must suffer the consequences. What an absurdity the statement of such a case presents to a court of justice!

No wonder the courts ridicule the doctrine. And no wonder the Supreme Court of the United States refuse to follow the decisions of the State Courts, in disclaiming the points contended for by appellants

It is to be hoped that on so momentous a question, the Courts will agree, and establish a certain rule at least, which will put this question at rest.

And it would look reasonable at least, after so many highly respectible courts, have determined the question, that the Courts not having difinitely settled the points, should conform to the precidents so reasonable, & just, when by so doing the interests of society will be protected.

While these courts having first settled the questions, could hardly be expected to yield the point to subsequent decisions, unless some good, & just, reason could be shown, why they should be overruled, even by courts holding as high a position as themselves.

Burns & Cummins
For Appellees

231-150

The Board of
Supervisors of
Marshall Co
vs
Washington Co

Bonds Made
by Assessor

Filed May 1. 1865
L Lemmon Clk

~~1814~~ 162
231 180

Board Supervrs.
of Marshall Co
vs
W. Co. Coote

Appellants brief

Filed May 5. 1864
L Sclamdorf

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION

APRIL TERM THEREOF, A. D. 1864.

BOARD OF SUPERVISORS OF MARSHALL COUNTY, *Appellant*,
vs.
WASHINGTON E. COOK, *Appellee.*
} Appeal from Marshall.

BRIEF OF APPELLANT.

This is an action of *assumpsit* brought by appellee against appellant, on a certain Railroad Cupon, made by order of said Supervisors, and attached to the Bond of the County made in Sept. 1856, payable to the Western Air Line Railroad Company, and issued in payment of a subscription by the County to the capital stock of said Railroad Company.

The defence set up by the County is, that the Board of Supervisors made the subscription and issued the bonds without authority of law, no election having been held as required by the Act of 1849, as a prerequisite to the subscription by the Board.

The appellee, by his replication, seems to admit the original invalidity of the bonds, for the reason set up in the plea; but says that the bonds, though issued without authority, have been ratified by the county, and the acts of ratification are: first, excepting the stock and the benefits of a stock-holder; second, paying the interest on the bonds, through its Board of Supervisors.

He also insists that he is a *bona fide* holder of the bond and cupon, before maturity, and without any notice of the fact set up as a defence,

other than such constructive notice as would be given by the records of the County Court and Board of Supervisors.

This statement presents the questions:

Had the Board of Supervisors authority under the law to make the subscription and issue the bonds?

Could the Board of Supervisors, after having issued the bonds without authority, by any subsequent action of their own, ratify the bonds so as to make them binding upon the county? And has this been done?

Is not the appellee bound to take notice of the county record, and, if it appears therefrom that the necessary and proper steps had not been taken to give the Board authority to issue the bonds, is he not an assignee with notice, and in the same condition that the Railroad Company would be if the bonds were still held by it?

Then, first, had the Board of Supervisors authority under the law to make the subscription and issue the bonds?

We say they had not, and think the answer is sustained both by sound principles and the authorities.

I.

The *Board of Supervisors* were the proper tribunal to order the election to be held, to vote whether the county would make the subscription, and not the *County Court.*

A.—The Board of Supervisors were the legitimate successors to all the powers which, previous to the adoption of township organization, were vested in the County Court. "The powers of the county as a body politic can only be exercised by the Board of Supervisors thereof, or in pursuance of a resolution by them adopted."

Scates, Treat & Black. Stat. p. 336, sec. 4.
People vs. Brown *et al.* 11 Ills. 482.
Prettyman vs. Supervisors, 19 Ills. 412.
Clark vs. Supervisors, 27 do. 305.

These authorities clearly establish that the Board of Supervisors *alone* have the authority to order the election, if authorities are necessary, as we understand this point is conceded by the counsel for appellee.

II.

The election in this case having been ordered by the County Court, a tribunal having no authority to do so, is absolutely void, as also every subsequent step thereunder, and incapable of ratification by the county authorities.

A.—The powers of a county, under our township organization law, are limited and strictly defined, and the exercise of any corporate power not enumerated, or necessary to the exercise of the powers enumerated, or such as may be specially given by law, are *expressly prohibited.*

Scates, Treat & Black. Stat. p. 335, Art. 15.

B.—This is the exercise of a power specially given by law, and can only be exercised in the manner pointed out in the law, and the provisions of the law must be substantially followed. The law expressly provides that no subscription shall be made, or bonds issued, or debts contracted, until an election shall be held in such county, and a majority of the legal votes of the county shall have voted in its favor, taking as a basis the votes cast at the last preceding general election; and the judges of the County Court shall give at least thirty days notice of the election, in the same manner as notices are given for the election of State and County officers, and the notice shall specify the company in which the stock is proposed to be taken, the amount proposed to be subscribed, and the length of time the bonds are to run, and the interest they are to draw.

Scates, Treat & Black. Stat. 950.

Until these prerequisites of the statute were complied with, the Board had no authority to make the subscription. And further—not only was there a total want of authority, but there was, to make the case more plain, an express prohibition, both by the general township organization law and the Act of 1849, and the contract by the Board was *mala prohibita*, and as completely void as if it were a contract *mala in se.*

Chitty on Cont. 600.
10 N. H. 377
17 Mass 258.
22 Pick. 181.

The contract in this case would not only be void as a contract *mala prohibita*, but is void as being the contract of a corporation which are *ultra vires*—a contract which the Board had no authority under the law to make. It must be kept in view that the Board of Supervisors are not, within any proper legal sense, the agents of the county. The relation of principal and agent does not exist between them. They are the agents of the law, and look to the law for their authority to do every act

which they perform; and the question as to whether the act is lawful, depends, not upon whether the people may approve it, but did the law, at the time it was done, authorize it? By this test, we apprehend, must *this* and every other act of the board be judged, and by it the contract must stand or fall.

In Clapp vs. Cedar Co., 5 Clark (Iowa,) 12,—which was a case where the County Judge had issued bonds, he being the proper person to do so under the code, the Court say: "The County Judge does not derive his authority from the county, but from the law, and the county can not revoke them." In Iowa also it was necessary to submit the question of subscription to the voters of the county.

Let us examine the authorities on the question as to the nature and effect of acts and contracts of corporations which are not within the corporate powers.

Allen, J., in 19 Barb. 52, says:

"But acts of a corporation, not within the corporate powers, *ultra vires*, are void, and the contracting parties are not estopped by the contract itself from alleging their invalidity, when they are sought to be enforced." And he refers to 3 Kern. 599.

In 3 Kern. 638, Comstock, J., in speaking on this same subject matter, says:

"But to say that he is estoppped by the instrument itself, simply because he has made it *and a third party has dealt with it*, is only asserting, in another form, that fraud, mistake, duress, illegality, want of consideration, *or want of authority*, when the act is one of pretended agency, is no defence."

The above was a case where the agents of a bank issued certificates of stock, when all the stock authorized to be issued by their charter had been issued, and delivered them to a party who was knowing to the facts and to the fraud in issuing them, and who transfered them to an innocent holder; and the Court held them void in his hands, for want of *power* in the bank to issue them.

In 7 Ohio, 331, a case cited by Mr. Williamson, the Court say:

"It is true, that when public officers exceed the powers vested in them by general laws, their acts are no longer official but void."

"If the instrument, alleged to be a contract, was entered into by defendant's officers in a manner not authorized by law; in a manner in

which they had no power to bind the corporation, then the stipulations in that contract did not bind the defendants for any purpose."

This was a case when the corporatian was setting up its want of authority as a defence to an action brought on a contract.

Brady vs. Mayor of New York City, 2 Bosworth Rep. 180.

This case was afterwards affirmed in the Court of Appeals.

20 N. Y. 312.

Wells, J., in Farmers' Loan and Trust Co. vs. Carroll, (5 Barb. 649,) quoted with approved in Brady vs. Mayor, &c., says:

Where a corporation relies upon a grant of power from the Legislature to do an act, it is as much restricted to the mode prescribed by the Legislature for its exercise, as to the thing allowed to de done."

Again in same case, Brady vs. Mayor, &c.:

"Those who deal with corporations whose mode of dealing is prescribed in their charter, must take notice of such prescription at their peril."

"Where officers of a municipal corporation do an act in excess of the corporate powers, the corporation is not bound; and when the statute, under which a corporation acts, restricts its action to a particular mode, none of the agents through whom the corporation acts can bind it in any other than the mode prescribed.

Those who deal with a corporation the mode of whose action is thus limited, must take notice of the restriction in its charter, and see to it that the contracts on which they rely are entered into in the manner required by the charter."

Abbott's N. Y. Digest, 98, *title Contract*, and numerous cases there cited.

"Where a specific act is directed to be done by a particular agent, it must be done by that agent."

These cases enunciate the true principles as applicable to all corporations, and should be applied with a more liberal construction in favor of a *quasi* or ~~putative~~ public corporation than to any other when sued upon a contract, and for this there are many forcible reasons.

First, a man is compelled to be a member of such a corporation. It is not a liability or responsibliy of his own choosing, but he is placed in it for the purpose of government. It is not a trading corporation, nor are any of its acts or contracts made for the purpose of gain, but are limited to such as may be proper and necessary in the political adminis-

tration of its affairs, and its contracts, are therefore necessarily few and simple in their character.

Second. Its charter, or the law by which it is governed in the exercise both of its corporate and political powers, is always public, it forms a part of the statute laws of the State, of which every man is as much bound to take notice as of the criminal law of the land.

Third. All its acts and proceedings are open to the examination and scrutiny of the public, and all, or nearly all, are a matter of record in the public offices of the county; so that the rule can be applied with less danger of doing third parties injustice, than in cases where the charters are private acts, and their manner of doing business is more complicated and less open and notorious, and at the same time the rights and interests of a large number of involuntary, confiding and unsuspecting corporators can not be tampered with nor jeopardized by those who fill official positions. A rigid adherence to this old and sound rule, is the only protection of the people against official abuse, ignorance, and corruption. Disregard it, and individual rights are swallowed up in corporation corruption.

But there is another class of authorities bearing on this same subject which are more directly in point, and apply the rule above enunciated.

Pierce on American R. R. Law, 123, says:

"The provisions of the act authorizing municipal corporations to subscribe for shares in the stock of a Rail Road company, and to issue bonds in payment thereof, must be complied with, and if not followed, the bonds will be void in the hands of the company."

In New York, where it was necessary to file the consent of two thirds of the tax payers of the town in the county Clerk's office before making the subscription, the Court say:

"The utmost that the purchasers of the bonds were required to ascertain was, that such R. R. Co. had been organized, and the assent and affidavit required by statute filed, that there was apparant authority to execute the bond, and these things only were necessary to such apparent authority.

Gould vs. Venice, 29 Barb. 451.

In Mercer Co. vs. Pittsburg, &c., 27 Penn. State Rep. 39, where the law authorized the county commissioners to make the subscription it having been first recommended by the grand jury, and the grand jury did recommend a subscription "not exceeding $150,000," and the commissioners made a subscription under the recommendation, the Court

held that the recommendation of the grand jury was not sufficiently certain and definite, that they should have fixed the amount, and that the subscription and bonds issued were void for want of authority in the commissioners.

In Clapp vs. Cedar Co., 5 Clark, (Iowa,) 15, it is decided that bonds issued by a county in payment for R. R. stock are negotiable instruments, but not binding on the county, if issued without authority of law. The Court says:

"It is a paper executed by a public officer, on behalf of the public, and there must be authority for it to stand upon."

In New York the law required a good and unencumbered title to be conveyed where a county purchased lands for county purposes. The supervisors took a title which was imperfect: held that the selection was inoperative; held also that a contract made with builders for the erection of buildings thereon for county purposes is unauthorized, and the contractors have no claim on the county for the erection of the buildings.

Gillespie vs. ———, 23 Barb. 370.

In Missouri, also, this question has been before the courts in City and county of Saint Louis vs. Alexander, 23 Mis., 513. The language of the Act there which authorized the subscription was not so direct and positive in its terms requiring the vote to be taken, as is the law in this state, as will be seen upon comparison; yet the court say, "We do not consider this requisition to test the sense of the majority of the qualified voters, as to the propriety of the subscription before it can be made by the city, as merely directory. It is a declaratory, positive prerequisite. It must be complied with before the power can be rightfully exercised. The act here cannot be done lawfully if this prerequisite be not complied with; it must be observed and obeyed in order to give vitality and legal effect to the act to be afterwards performed."

In the same case, in speaking of the county subscription, which was made without a valid election, the same having been held before the law went into effect, the court say:

"It was illegal in our opinion for the County Court to subscribe the stock under this Act, without taking the previous necessary step of submitting the question to the voters of the county, and the Act must be in force before such a step could lawfully be taken."

In Aspinwall vs. Commissioners, 22 Howard, 374, was a case from Indiana, where a vote was taken which resulted in favor of the subscription, and subsequently the constitution of Indiana was amended so as

to prohibit counties from taking the stock, and after the change in the constitution, the county made the subscription and issued the bonds, and they passed into the hands of innocent holders. The court say:

"We have arrived at the conclusion that both these questions presented to us by the court below must be answered in the negative, with some reluctance, as, for aught that appears in the case, the subscription to the stock by the Board of Commissioners was made and the bonds issued in good faith to the Railroad Company, and also sold by it and purchased by the plaintiffs in confidence of their validity; but after the best consideration the court has been able to give the case, it has been compelled to hold, for the reasons above stated, that the subscription was made and the bonds issued in violation of the constitution of Indiana, and therefore without authority and void."

It can make no difference as to the invilidity of a contract whether it is prohibited by statute or constitutional law. They both rest on the same foundation—"*without authority*," and necessarily "void." The conclusion follows the premises in all cases.

We come now to the examination of the decisions of this State.

"The words 'such authorized subscription' necessarily refer to the authority conferred by a majority of the voters ascertained by the election provided in this section. The vote resulting in favor of such subscription or purchase, is necessary to authorize the County Judges or City Counsel to act, and is a limitation upon the discretionary power conferred by the first section, *as without such vote they cou'd not subscribe, whatever might be the desire of the citizens of the County or City.*"

Supervisors vs. People, &c., 25 Ills. 181, was a *mandamus* to compel the county to issue bonds, and also a suit in *assumpsit* by the assignee of a coupon which had been issued. The defence was that the Board of Supervisors had ordered the election and issued the bonds, and there was in that county a special Act in force giving this power to the County Court."

The court held that the bonds issued were void, and refused to grant the writ. The court say:

"As well might the sheriff or the Circuit Court have undertaken to perform these acts and execute these bonds, as this Board of Supervisors. There was a total want of authority, and the acts were *consequently void.*"

In this case, both the election was ordered and the bonds issued by the improper authority; but we conceive that the difference between it

and the case at bar are immaterial. The Board of Supervisors could as well adopt the Act of a political caucus in calling and holding the election, as that of the County Court. It could with the same propriety be said that the County Court could go on, having held the election, and make the subscription, and thereupon the Supervisors could take up the unfinished work and complete it. This is not the law. That which is done by a tribunal without authority, is not done at all. And the Board of Supervisors could no more adopt this election held by the County Court, than they could dispense with the election entirely. It *might be* an index to the feelings of the people,—"an informal ballot," to use a convention phrase; but without the election required by law, the Board could not make the subscription, "whatever might be the desire of the citizens of the county."

"Courts of justice cannot regard the wishes of a majority of the members of a corporation, unless expressed in a valid form in conformity with the by-laws and charter."

German vs. ———, 14 Louisana, 811.

Bearing on this question is the language of the court in Clark vs. Supervisors, 27 Ills. 309. "The Board had ordered the election; canvassed the vote; decided that a majority had determined upon subscription, and had resolved that the county would take the stock and issue the bonds. In all this they were exercising a power delegated by the General Assembly, *and this power they could not have delegated to any other person or tribunal.* Its exercise was confided to them alone, and they only could execute it legally."

But we now come to the last authority which we shall cite on this branch of the case, and that is the case in the 27 Ills. 310, above referred to, and which we consider entirely conclusive of the question.

In that case the court say:

"The case under consideration presents the question, whether bonds issued under such a vote (that is, a vote ordered by County Court, and bonds issued by Supervisors) and in the hands of innocent holders, are *void*, or are only voidable, and may be ratified by subsequent acts of the county, acting through its constituted authorities, and is capable of being ratified whether any act has been done having that effect. If an election were held without warrant of law, or if it were ordered by a person or tribunal having no authority, there could be no doubt that the whole proceeding would be absolutely void. *Such an election and every subsequent step would be unauthorized and void, and therefore* INCAPABLE *of* RATIFICATION *by the county authorities.* But an election held under

the authority of an order of the proper authorities, and in the main conforming to the requirements of the statute, but wanting in some particular not essential to the power to hold an election, and acquiesced in by the people and approved by their agents the county authorities, would render bonds thus issued binding when in the hands of innocent holders."

It does seem to us that it is impossible for a court to use plainer language. It needs no comment or explanation; and if the court should reverse this cause, it would only have to repeat the above as a sufficient opinion in this case.

The court then proceed to discuss what they call an irregularity, submitting two propositions at once, and in overruling the objection they say: Now in this case there was no want of authority to order the election, but simply an erroneous mode of submitting the questions.

In speaking of Schuyler County case, the court say:

"In that case there was no authority to order the election by the body assuming to act. But this irregularity (submitting two propositions at once) only being such as would prevent the bonds from being issued,

The power was not executed by the *body*, nor in the *manner* required by the act of 1849. 2 Bosworth, 173; 3 Duer, 119; 4 Sanford, 221; cases cited in notes to Metropolitan Bank vs. Godfrey, 23 Ill. 579; Rex vs. Croke, 1 Cowper, 26; Davison vs. Hill, 1 East. 64; Rex vs. Mayer, &c., 14 Burrow, 224; 1 John.'s cases, 107; 4 Har. & John., 227; 1 Story's Eq., sec. 96; 8 Barbour, 130, 149; 1 Story's R. 478; 9 Peters, 623; 3 John.'s Chy. 344, 345; 22 Wend. 132; 2 Seam. 79; 4 Wheaton, 77; 2 Barbour, 104, 107; 4 Hill. 76, 86, 92; 1 Hill 114; 4 Peters, 349; 3 Const. 396; 7 Hill, 431; 4 Sedg. 99; 2 Cranch, 127; 11 Ill. 625; 12 Wheaton, 64; 13 Peters, 587.

This is the list of authorities cited by Counsel in the case in 27 Ills

made it. The bare statement of the proposition conveys its own answer. Many of the authorities previously referred to in this brief are in point on this question, and especially the one in 27 Illinois, which we consider decisive. The court say that such a contract is "*incapable of ratification by the county authorities.*"

A contract *mala prohibita* is as incapable of ratification as one *mala in se.* [Story on Cont., 600.]

"A void contract can not be ratified." [Story on Agency, 140, and note, referring to Coke's Litt.]

"A confirmation doth not strengthen a void estate." It may aid one which is voidable, "but it can not work upon an estate which is void in law."

In a case before cited, 27 Penn. State Rep. 390, the court use this language:

"As the commissioners had no original authority to make the subscription, it is scarcely necessary to say, that they possessod no power by any subsequent action to ratify their own unauthorized proceedings." "The officers of a corporation can not ratify their own unauthorized act."

Hotchin vs. Kent, 8 Mich. 526.

States, counties and other municipalities are organized for governmental purposes, with power to pay as they go. If they create debts, they do so under general or special law; without law the creation of a debt is *void*. If a law exists for the creation of a debt, unless such debt is created substantially according to law, no liability attaches to the county; and if void in the first hands, it is always void, and no principle of ratification can be applied as to validate the void act of the State or county authorities. It becomes a dry question of power.

IV.

Can there be *bona fide* holders of these bonds without notice? We answer no.

And it seems that on the plainest principles in an ordinary case of mere agency, without noticing the question of power, that the question must be answered in the negative. If an agent is authorized to do an act upon a certain condition precedent, is not the party dealing with him bound to look to the authority of the agent and know that the condition precedent is complied with?

But this case rests on a stronger reason. The Supervisors derive their authority to act from the law, which is public, and the condition precedent is not only one which is in its nature public, but is also a matter of record in its public offices; and the purchasers of these bonds are bound to look to these records, and if they show *prima facie* that the board was not authorized in law to issue the bonds, then they took them with notice, and stood in no better condition than the original holders.

If authorities on this point are necessary, the following are conclusive:

In the *Iowa* case above cited, the court use this language:

"The purchaser of these bonds was not bound to look behind the record, nor was he bound to look to it that it was true. It is true, as urged by defendant's counsel, that he was to see to it that the bond was issued under authority of law, but when he finds that the records show sufficient for this, he is justified in purchasing."

One who, instead of examining into the validity of proceedings to authorize a local improvement, enters into a contract with a corporation to do the work, and performs it, relying on their representations that their proceedings are regular, can not recover from the corporation damages for such false representations. He might have ascertained its falsity by reference to the records, and to allow him to recover, *would evade the statutory restrictions on the power of the corporation.*

Swift vs. City, (1857) 24 Barb. 427.

Again in same case:

"The provisions of the act were public. The plaintiff is as much bound by them as the city: all the preliminary proceedings leading to the determination of the common council to make the improvement in question were also matters of public record in the office of the City Clerk; as such they were accessible to plaintiff, and he is fairly chargeable with notice of their contents."

Several of the cases cited on other points are also applicable to this point, and there is unbroken current of authorities to the same effect.

In this case the county records showed affirmatively that the election had been held by a tribunal totally without authority; that the first act of the supervisors was the subscription. The plaintiff was bound to take notice of it, and he is not a *bona fide* holder. It is no more binding in his hands than that of the R. R. Company, in whose hands it is admitted they were void.

Each purchaser of a promissory note made by an agent on its face, is bound to see to it that the agent had authority to make the note, and if he takes it without any such inquiry, he takes it at his own peril. The principal would not be bound, let it pass through never so many hands, if his name was signed to it by the agent without authority. Would not the same rule apply with for more force here, for various reasons of a public nature previously adverted to in this brief?

V.

The acts mentioned in the replication do not amount to a ratification. All these acts were done by the same Board of Supervisors who issued the bonds, and no act was done by the people except to pay the tax which was demanded of them and which it was cheaper to pay than to engage in expensive litigation. Where a body politic and corporate, composed of numerous members who rely upon their public officers and servants to protect their rights, and who are generally ignorant both of the law and the facts, is sought to be charged, even if the contract was one which was capable of being ratified, mere acquiescence in the acts of the public officers ought not to prejudice them. They should not be held to the same strict rule as private corporators, organized for purposes of profit and gain, and in which generally every man is on the alert and alive to everything which may affect his interest. Public officers and those who deal with them should be taught that their unauthorized, illegal, and often corrupt acts will not become valid and binding, merely because a confiding and laboring people do not fail to discover and repudiate such acts as promptly as the quick and freqnently unscrupulous dealer in stocks would, under the same circumstances. The people demand that barriers which the law has wisely and humanely erected between them and the acts of their ignorant or corrupt officers shall not be lightly destroyed, but only for weighty and grave reasons, and that those who deal with such officers shall look to the law and see to it that the contract is made under authority, and that the people are not swindled either by the ignorance or corruption of the officers with whom they contract.

In conclusion, we wish to give a short notice to some of the points and authorities which will probably be relied upon by appellee, and especially to notice a brief in the case by Hon. M. Williamson, who decided the case in the Court below, it being the only brief of appellee which we have yet seen.

Most of the points in that brief have been already answered in this, but we wish to examine some of his authorities.

The first case which we wish to notice is the case of Stark Co., 24 Ill. 75. The language of the Court on the question of ratification in this case is not a question of power, but merely the act of the agent of the board in taking up one old bond and issuing several bonds of $1,000 each in its place. They do not question the legality of the subscription, so that no question of *power* and ratification of an act done without authority arose. In this case it is true that the county Court ordered the election, but the point that the election was ordered by the improper

tribunal was not made in that case; on the contrary, the counsel for the county very unadvisedly assumed and admitted that the County Court was the proper tribunal to order the election, as appears from his brief, as published in public papers at the time, and as we have no doubt will appear from an examination of his brief now on file in this Court. The question was for the first time presented to the mind of the Court in the case in the 27 Ill., where it was fairly met and deliberately decided. Counsel seeing no other way of avoiding the effect of that decision will, (as they did in the Court below) insist that it is a mere *dictum*. We do not so regard it. The Court say: That the question was before them. It was the main point made by the county. It is true the Court might have decided the case, and declined to have decided the point, just as it might decline to have decided, more than half the questions which are raised and decided in this Court; but we understand it to be the proper practice, for the Court to decide in every case, upon every question which is raised upon the facts as they appear on the face of the record. The question was fairly and fully presented to the mind of the Court, fully argued and decided without the least hesitation or doubt, and this Court will scarcely, at the demand of these bondholders, recall and overrule that decision, and bid a final adieu to all the time-honored landmarks of the law for the purpose of gratifying the insatiate maw of private corporations for power and plunder, and give free license to them and corrupt officials to plunder the people, until they are full. It is no new principle, no new rule, which we ask the Court to enforce; but principles as old as the common law itself, and which we conceive the good of the public demands should be enforced. And what is the few paltry dollars involved in this principle, to the importance of establishing, and defining the rights of the people correctly? The State could better pay the money herself, than have a decision of this Court laying down such a rule as will have to be adopted to sustain this case. It would be a wrong which would affect the people of every county in the State.

An examination of the case in 8 Ohio Stat. Rep. 401, cited with much apparent confidence on the question of ratification, will show that the court decided that the new constitution did not repeal the law, and the court finds from the facts that the law was complied with in giving the election notices. And that case as an authority falls to the ground.

An examination of the case in 7 Ohio, 331, will show that the Act of the Legislature made the certificates of the Town Trustees of their proceedings filed with the County Auditors, conclusive evidence of the legality of the proceedings, and of the validity of the subscription and bonds, and that the act had been complied with. And this was done, which of course ended the case.

It is true, the court then proceeds to give what they no doubt considered some very good moral advice to the people of the township, but in the course of so doing legal principles for a moment flash across their vision, and they say:

"It is true, when public officers exceed the powers vested in them by general laws, their acts are no longer official, but void."

The case in 8 American Law Reg. 603, and some other cases cited by Williamson, we have not seen, but apprehend that an examination of them will show that they are no more pertinent than the cases in Ohio. In 8 Am. L. R. 693, the court expressly places the ratification on the ground that at the time the City Council ratified the bonds they would have had authority to make the bonds. In 6 Am. L. R. 595, the election was regularly held and subscription made, and the fact as to the amount of the private subscription was not fundamental in its character.

The case in 7 Ohio, 358, is more than answered by the weight of authority in this brief, nearly all the cases cited being cases in which the corporation was setting up the want of authority as a defence; and they only say in that case that a different rule ought to prevail, not that it does, and we are not certain whether they mean that it does, not having examined the case.

In 21 Howard, 544, an election was held under proper authority, and the Court merely refused to examine into the question of irregularities, as would be the case in this state.

In the Schuyler County case, Mr. Williamson failed to notice that there was, in same case, a suit in *assumpsit* on coupon by an innocent holder, and that it was declared void.

We know not what other authorities may be cited by appellee. We presume we shall reply to them in written or oral argument.

S. L. RICHMOND AND
BANGS & SHAW,
Counsel.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

WASHINGTON E. COOK,
Appellee,

vs.

THE BOARD OF SUPERVISORS OF MARSHALL CO., ILL,
Appellants.

Brief and

POINTS FOR APPELLEE.

This is an action of assumpsit brought by the appellee against the appellant upon a coupon for $30, being interest due upon a bond issued to the Western Air Line R. R. Co.

The brief filed herein, and signed, M. Williamson, presents the points made by the pleadings and record in the case, by which it will be seen that two material points may be presented for the opinion and decision of this court.

One is, whether the bonds issued by the county of Marshall, under the general law of 1849, authorizing counties in this state to subscribe to the capital stock of R. R. companies, in pursuance of a call made by the County Court upon the legal voters to determine whether the stock shall be subscribed, wheret he supervisors recognize the fact that the majority of the legal votes have been cast for subscription, and where they issue the bonds and deliver them to the company; and the other is, if they are, for this reason, held to be void, whether the people of the county, by paying interest upon the bonds, selling them and

receiving certificates of stock in the rail road company, voting at the election for directors, and other acts, apparently in good faith as though the bonds were valid, and as though the county intended to comply with the contract, ratifies and confirms the bonds so as to validate them.

The weight of authority seems to be, that the bonds when issued, are binding upon the county as soon as they are delivered to the company and the certificates of stock received, whether other acts confirmatory are done by the county or not.

It might be questionable whether the demurrer of the appellant to the replication of appellee should not be carried back to the plea and sustained, for the reason that it admits every thing to be legally done by the county preliminary to the issuing of the bonds, and in connection therewith, excepting that it alleges that the county court called the election instead of the supervisors, and relies upon this irregularity as avoiding the bonds; but no technicality is relid upon. But it is desirable that these questions should be determined, or at least the latter, as to whether, under all the circumstances, these bonds can now be sustained.

It is an important question, as it is believed that it determines the question as to the validity of several hundred thousand dollars worth of bonds issued and sold and transferred by several of the counties through which this projected road passes.

Assignees or transferrees of such obligations must look to it that the corporation has the power granted by the Legislature to create the obligations; and must see that they do, or purport to, comply with the law upon their face—as all are chargeable with a knowledge of the law; and the defects, if any, upon the face of the bonds. But it is denied that they are chargeable with constructive notice of any thing further.

Certainly the county can not be heard to say it has, in the execution of the power, done an illegal or fraudulent act detrimental to its own interest, and experiment sufficiently to determine whether the investment will be a profitable one; and if it turns out favorably, consumate the contract, but if it proves unfavor-

able or disastrous, cast the burthen upon others having no part n the wrongful act.

The general rule, applicable to all human transactions, is, that the party guilty of the fraud or wrong shall suffer the consequences thereof, if there must be a sacrifice, while the innocent are saved harmless.

To this rule there are a few exceptions. Mr. Storey says, negociable instruments are void in the hands of innocent holders for value, when they are made in contravention of the principles of the common law, or interdicted or prohibited by the statute, or are founded upon some transaction or consideration against sound morals, public policy, public rights or interests.

Storey on Bills, pp. 217, 218, Art. 186.

Even fraud between the original parties is no defence against the indorsee for value before due without notice.

Storey on Bills, page 221, Art. 188.

Chancellor Kent says there are but two cases where such instruments are void, as a general thing, in the hands of an innocent holder; and these are, when they are given for money won at play, ar for a usurious debt. This is stating the general rule.

3 Kent's Commentaries, pages 79, 80.

The general inclination of the legislatures and courts is to lessen the number of cases in which those instruments are held to be void, or even voidable in the hands of assignees chargeable with constructive notice.

The great extent of circulation given to them, renders it necessary that they should be sustained by every fair construction and intendment.

This is a question merely as to whether the transferrees or assignees are chargeable with notice of the irregularity in ordering the election.

Every decision of this court has thus far sustained these county bonds excepting one, where they have been transferred to assignees for value before due, and that is a case where the bonds

upon their face were void. In case of the Supervisors of Schuyler County *vs.* The R. I. and Alton Railroad Company, reported in 25 Ill. 181,—in this case the county court was, by the law, authorized to order the election and issue the bonds, and they were issued by the board of supervisors, and the court says they were issued without the least shadow of authority. As well might the circuit court or the sheriff of the county have issued them. Of course they would be held to be void by every court, and the purchaser would be chargeable with notice of their invalidity; as he would see, upon the face of the bonds themselves, that they were mere forgery.

But suppose the county court had issued these bonds, having recognized the fact that a majority of the legal voters had voted in favor of subscribing the stock, as in the case in hearing; or suppose there had been no election at all, would the bond holder, having purchased for value the bonds before due, be affected by the irregularity? would he be chargeable with notice? Clearly, upon authority he would not, and certainly upon principle he should not.

In the case of Clark *vs.* the Board of Supervisors of Hancock county, decided by this court, and reported in 27 Ill. p 310, and the cases in 21 Ill. 373 and 22 Ill. 147, referred to by the court in the first opinion in 27 Ill., the court declares the doctrine: that where any irregularity occurs in exercising the power conferred by the law which is substantial, as where two separate propositions are submitted to the people together, and where the voters are forced to vote for both or not at all, and where the submission is, by this court, declared illegal and fraudulent, that the tax payers must contest the election, or enjoin the issuing of the bonds, or it will be too late to avoid the payment of the bonds issued in pursuance of such election. It is declared that they must not slumber upon their rights, but must apply for relief in apt time.

In the case in hearing it is admitted that every duty required by the law was performed, except that the call was made by the wrong tribunal. The people met, voted without trammel, freely,

fairly and determined to subscribe the stock, and the proper tribunal on their records declares that the people determined to do so; and they issued the bonds and transferred them, and are to day holding the proceeds of the sale, and they have annually levied, collected and paid interest upon the bonds since 1856, when it is discovered that the enterprise is likely to be a failure, and the county now seeks to repudiate.

Will this court lend its aid to assist the guilty party in throwing the burthen of its own illegal acts upon the innocent?

The county has erected the altar; will the court decree the sacrifice?

It is declared by this court, in the cases referred to in 27 Ill., 21 Ill., 22 Ill. and 19 Ill., that although fraudulent means may have been resorted to in calling the election and conducting the same; yet that the only remedy is a direct proceeding to prevent the issuing of the bonds, by contesting the election or injoining the issuing of the bonds.

Now, bonds issued without an election are certainly as valid as where issued in pursuance of a fraudulent and void election. Fraud is said to vitiate all human transactions between the parties to the transaction. But there are many transactions void in the first instance, which may be ratified and rendered valid so far as to afford a remedy to persons not participating therein.

A. and B. may make a contract which neither can enforce; yet, by their subsequent acts, render themselves liable under it when they have stood by and suffered others to deal with it as though it were valid, and observed silence when they should have spoken or acted.

A. may stand by and suffer B. to sell his property without, in fact, any power or right in B. to do so, and thereby lose his title.

A forged instrument which is negociable may become obliga-

tory upon those who accept it, or indorse it, knowing of the forgery at the time.

If a professed agent draw a draft, or sign a note or bond for his principal, without any authority, and negotiate it, and the principal should, learning of the forgery, pay part of the note or bond when presented, or accept the draft, he would thereby ratify the void act and bind himself to pay the whole.

The acceptor admits conclusively the genuineness of the signature of the drawer, and the agency of the professed agent, and the indorser by indorsement admits the signatures of prior parties, and guarantees the genuineness of the instrument and his title, &c.

Story on Bills Articles 262, 411, 262, 412, 514 and 113.

The same rule applies to instruments transferrable by delivery.

Story on Bills, Art. 111.

And in this respect it makes the case stronger against the party where he knows of the invalidity of the instrument.

It is not perceived why the county might not, by *laches*, delay, aquiescence, part consummation of the contract, ratify its own illegal acts upon the same principle.

Can it make any difference as between the county and assignees for value of these bonds that the purchaser has notice of the irregularity? Is it such in this case as to render the bonds void absolutely? or would they be voidable only?

The object of the law was to have the sanction of the legal voters. This is obtained. A call can make no difference. It will not be assumed that a call would change the vote of the citizen, or cause him to vote other than his sentiments.

That any influence could be brought to bear under a call which would change the result. It is to be presumed they voted their sentiments.

The authorities agree generally upon the point, that purchasers of these bonds are to look only to the law and the instruments.

The case refered to in 21 Howard, is a case directly in point in this case.

In this case the statute of the state authorized the commissioners to issue the bonds in case a majority of the legal voters should vote for, subscription and issuing the bonds; and the county, in a suit upon a coupon, set up the defence that the notice was not given of the election, as required by the act, and other preliminaries not attended to, and the court held that the question could not be raised in this collateral way; and that it was too late to question in any way the eleciion, to defeat the bonds after they were issued. That, as the commissioners were the appropriate tribunal to determine whether a vote had been cast in favor of subscription, and did so determine, and issued the bonds valid upon their face; that no defence could be made to them of this nature, and that the holder of the bonds were only to look to the law and the bond to see that it purported to be issued under the law and in accordance therewith.

Knox Co. *vs.* Aspinwall, 21 Howrrd, 539.

Meyer vs city of Muscatine 1 Wallace U.S. Reps 384 Gelpcke vs city of Dubuque Do 175

In the case of Johnson *vs.* the county of Stark, 24 Ill., the same questions precisely were before this court as in the case in hearing. In that case the record showed that the election was ordered by the County Court, instead of the Supervisors. See page 76 of the report. The objection was made that the order for the election did not conform to the law, see p. 82, and the court specially refer to the fact of the irregularity in giving notice and conducting the election; and the court say:

"It is also alleged that informalities have occurred in giving the notice and holding the election to determine whether the county would or not authorise a subscription to this road, and for that reason the bonds and coupons are void;" and the court then refers to the case of Prettyman *vs.* Tazewell county for authority to show that for such irregularities the tax payers must apply in apt time to prevent the issuing of the bonds, and says: "that we would not, after any considerable delay, inquire whether fraudulent means had been resorted to for the purpose of procuring a favorable result in the election for subscription.

"It would be manifestly against every principle of justice to permit the tax payers and citizens of the county, through their officers, to procure money, labour, or materials upon bonds of the county issued on an affirmative vote of the citizens at an election held in a case authorised by the law, to escape all liability because of some slight informality in conducting the election, which was, or at least might have been, known to every citizen of the county before the bonds were issued.

"Counties have no right to procure all the benefits of an act which they are authorized to perform, recognized and acted upon by them as legal, and then escape all liability, any more than private individuals. They must respond to their legal engagements to the same extent as individuals." And in this case the court says further:

"The whole matter was submitted to the determination of the citizens to be affected by it. They were left perfectly free to choose for themselves, whether they would lend the aid of the county to the enterprise. They have not even a right to complain that they had no choice in the imposition of the burthen."

See p. 90, 24 Ill.

This is understood and acted upon as a decision, in fact as to the validity of most of the county bonds issued to this R. R. Company in the various counties, and rights have been acquired in faith that it is the law of the state, to important to be sacrificed by an overruling of the point settled by the decision apparently clear to all at least.

It cannot be denied that the decision declares the doctrine at least of all the other decisions referred to on the question of ratification, which is, that confirmatory acts, delay, and acquiring all the benefits attainable under the law and the contract, cures irregularities of every kind in creating the obligations, so far as purchasers for value are concerned at least.

In the case of Mygatt and Mygatt *vs.* The City of Green Bay, decided in the district court of the U. S. for the district of Wisconsin, there was an act of the Legislature authorising the city

Board to subscribe stock and issue bonds to aid in the construction of a plank road, and the city board passed resolutions directing ~~in~~ the manner of issuing the bonds and directing in the whole proceedings.

But the bonds were issued contrary to the authority of the resolutions of the board, and were held valid. And it was held by the court that the purchasers were not bound to look beyond the law and the bonds, and were not chargeable with notice of the resolutions or directions of the board.

8 American Law Register, page 271.

In the case of the city of Bridgeport *vs.* The Housatonic R. R. Company, 15 Conn, R. 475, the bonds of the city were issued for interest payable semi-annually, when it was directed to be paid annually, and it was held that the bonds were valid in the hands of purchasers for value.

In the case of the Commonwealth *ex rel.* R. G. Hamilton *vs.* The Select and Common Council of the City of Pittsburgh, reported in the 8 American Law Register, 286, where the ordinances passed in pursuance of the law directed that the bonds in question should be issued by the Mayor when subscriptions to the amouut of $350.000 was subscribed to the capital stock of the R. R. Company, to which the bonds was to issue; that the survey and location should first be made of the R. R. and agreed upon; that the money raised from the sale of the bonds should be expended on the end of the road next the city; that the councils should appoint three of their number asa committee to control and sell or dispose of the bonds; it was decided by the supreme court of Pennsylvania, that the bonds issued without an observance of any of the restrictions and conditions provided for, were valid in the hands of the assignees for value. And it was there held that, although the bonds recited the fact of certain resolutions being passed, and although the councils were to cause the bonds to be issued, and direct in the matter by the charter, the purchaser was not chargable with constructive notice of the ordinances, and was not bound to see that they were com plied with. See pages 299 and 300.

In the case of Charles Seeley *vs.* The City of Racine, decided in the district court of the U. S. for the district of Wisconsin, published in 8 American Law Register, 603, where the constitution of the state requires all laws passed to be published before they take effect, and where stock was subscribed, and bonds issued to a R. R. Co. purporting to be issued in pursuance of an act of the Legislature and of ordinances of the city, the bonds being issued and transfered before the law was published and in force, were held to be valid, as the bonds recited the passage of the act and both parties acted upon the assumption that the law was passed, and that the purchaser was only bound to look to the recitations in the bonds. See pages 605 to 608. The citizens had done acts in this case confirmatory of the bonds.

The doctrine that the purchaser is to look beyond the law and the obligations cannot be maintained.

If he is chargeable with constructive notice of any of the proceedings of municipal corporations in creating the obligations made by them under the power which is a matter of record, then he is chargeable with all the record contains upon the subject which is material. It is folly to say he must take notice of one material matter and can close his eyes upon others.

This court has decided that where the record of the county shows that two seperate propositions are submitted to the people under the act of 1849, and they are compelled by the submission to vote for subscribing stock to two Rail Road Companies together, or not for either, where it is admitted to be a fraud upon the voters, that it does not vitiate the bonds in the hands of purchasers for value before due.

And yet, if the purchaser is to look to the record, he has notice of the fraud, which vitiates all transactions, as the record contains the order of submission.

Hundreds of millions of dollars' worth of these bonds are in circulation in this country and Europe, and they are constantly being transfered among all classes of business men and capitalists, thousands of miles from the place of issue, and where men cannot be presumed to be acquainted with the mode of creating

these obligations in all the details throughout the country.—And to establish the doctrine that purchasers are to look into the record to see that every petty officer has complied with the power conferred by the law, is to destroy the negotiability and value of such negotiable instruments as are made by these corporations. None will deal in them if they are to go into the investigation of all the minutia of these proceedings, or to investigate the question at all, whether the record shows a compliance with the law; as the investigation would be almost endless, uncertain and expensive.

A copy of the records and the laws would have to accompany every little coupon, or obligation, and every little dealer would have to employ counsel and institute investigation. And if courts vacillate upon these questions, the investigation would be more uncertain, expensive, and tedious. Each Yankee would go to Europe with a cargo of law and documentary evidence accompanying his bonds.

The great business world of this age wants a different rule.—And the necessity is becoming greater and greater, as these instruments increase, and dealers increase.

And the tendency of the decisions is to give currency to them, and support them by every fair construction.

In the case of Moran *vs.* the Commissioners of Miami County, decided by the Supreme court of the United States, and reported in 2 Black. 722, the court quote their former decision in 21 Howard, 539, with approval, as they do the case of the Royal British Bank *vs.* Tarward, 6 Ellis and Blackburn, 327, decided by the Queen's Bench; also the case of Bissell *vs.* the City of Jeffersonville, and declare the doctrine as the settled doctrine of that court, founded on the authorities there cited, that municipal corporations issuing bonds like the bonds in question are estopped from denying what is recited in the bonds, where they have power at all to issue them, and they are transferred for value; and the following authorities maintain the doctrine generally, that whatever is recited in the bonds of the parties

to such obligations, which is material estops them from denying the matters recited.

Gerard vs. Bradley, 7 Indiana, 600.
Reeves vs. Andrews, 7 Indiana, 207.
Francis vs. Porter, 213.
May vs. Johnson, 3 Indiana, 448.
Tremble vs. State, 4 Black. 435
8 Blackford, 258.
Ryan vs Vallandingham,7 Indiana, 416.
24 How. 375.
23 How. 318.
29 Corwin 103.
8 Black. 47.

The court say, in 2 Black., that corporations are as strongly bound as individuals are to a careful adherence to truth in their dealings, and cannot, by their representations or silence, involve others in erroneous engagements, and then defeat the calculations and claims their own conduct had superinduced. (Page 723.) See also 23 How. 400.

The case in 2 Black. also decides that the bond holders who took them for value, are only to look to the law granting the power to issue the bonds, and need look no further if the bonds import a compliance with the law; and to the same effect is the case of the Commissioners of the County of Knox *vs.* Wallace, 2 How. 546.

And it is held in 2 Black. referred to, p. 729, that although the pleas set up equities between the original parties, of which the purchaser had notice at the time of purchase, yet, as the bonds are contradictory of such equities upon their face, it cannot affect the purchaser.

And it is decided that these bonds are commercial securities by the same case, and transferrable by delivery; and to the same effect is the case of Johnson *vs.* The County of Stark, referred to.

If there could be any question whether the county would be estoped from contradicting what it is said to conclusively admit, by its recitations in the bonds as against the first purchaser with notice of the equities as declared by the authorities referred to, there certainly cannot be any doubt that it has cured all defects at least by 7 or 8 years of acquiescence in the subscription made by the legally constituted authorities, the supervisors

and by the people themselves, in all the acts they have done, calculated to induce others to believe that they intended, in good faith, to comply with the obligations.

Both the supervisors and the people of the county have done every act possible for them to do thus far to ratify the subscription of the stock and issuing the bonds.

Suppose the acts of the supervisors of the county were, in the inception, unauthorized, can not the unauthorized acts be ratified? If they can not, by such acts as are done by the county in this case, then a door is thrown open by which corporations and individuals may, by their own frauds and illegal acts, gain advantage over others, and appropriate their property, for which there is no remedy. Their deception, their fraud, is, by the law, made a shield to protect them from those they have deceived and defrauded.

There are but few obligations or contracts so defective that long acquiescence will not cover.

And there are but few cases where courts will allow a contracting party to turn his own fraud to his advantage.

A subsequent ratification in law is equal to a previous authority, and the unauthorized acts of agents may be, it is apprehended, ratified in this as in other cases.

Angell & Ames on corporations, 304.
7 Ia. 548.
Chitty on Contracts, 9th American Edition, 202, 472.
Kent's Com. 616.
Plantes's Bank vs. Yhorp, Smede & Marshall's Rep. 75.

The appellant's authorities, outside of the decisions of this court, on which they rely principally are the following:

The case of Gelaspie *vs.* Broas, 23 Barbour.

In this case the Legislature erected a new county—appointed commissioners to select a site for county buildings—to obtain

and perfect title therefor; and a building committee to procure the erection of the buildings.

The commmissioners purchased a site, and took a title imperfect, contrary to the act of the Legislature, and the committee procured buildings to be erected by complainants, and drew orders for the price upon the county commissioners, and the county authorities refused to accept the orders or to adopt the acts of the commissioners or committee, or to use the lot or buildings. But the county authorities obtained another site, and ordered other buildings and appropriated a portion of the funds levied for the payment of the price of the buildings to the purpose of paying for the latter buildings; and the complainants sought to injoin such appropriation and cause it to be paid to them. But it was held they could not so do. That they contracted with professed agents for the county, and were bound to see that they, acting for the public, had power to contract, and that, as the title was defective, the committee had no power to build upon the lot, and that the county was not bound for buildings erected thereon; but that the committee were personally liable. Of course the original contracting parties were bound to know whether or not the agents of the county had power to bind the county.

In the case of Gould *vs.* The Town of Venice, 29 Borbour, 442, it will be seen the law authorizing towns to take stock in Rail Roads, and issue bonds, upon the commissioner obtaining two-thirds of the resident persons in the town to consent in writing thereto, and file the same with his affidavit of the fact with the town clerk; and it is decided by the court, as the petition of plaintiff, praying for an allowance of interest due on the bonds, as his bonds showed that there had been a full compliance with the law, and the prerequisites had been observed in getting the consent and filing the evidence, &c., that he was entitled to the relief. The court do not say that the prerequisites were indispensable, and intimate no opinion upon that point, but simply decide the case before the court. The court declare the bonds commercial securities, transferrable by delivery, and in the hands of innocent holders subject to no equities existing between the original contracting parties; and to the same effect is the case in 5 Clark, Iowa Reports.

In the case of Swift *vs.* The City of Williamsburg, 24 Barbour, 427, it is decided that the plaintiff having contracted with the City Council to do certain work upon the streets, when he had done part of the work, and quit the job because he had ascertained that the charter required the Council to tax the property along the streets to be improved, and get the labor performed upon the presentation of the petition of one-third of the property owners upon the street, and giving notice thereof, &c., providing that there was no remonstrance of the other property holders, which pre-requisites had not been observed by the council, and they consequently were not authorized to raise the funds by taxation to pay for the labor; could not recover of the city damages on account of being misled by the acts and declarations of the city authorities.

It is but a reiteration of the doctrine that parties contracting with professed agents of municipal corporations must, at their peril, see that the agent has the authority to bind the principal.

In the case of The Farmer's Loan and Trust Company *vs.* Cornell, 5 Barbour, 649. The claim of the plaintiff against the Company was founded upon a certificate issued by the company, which the company had no power to issue; and it was held that the certificate was not a commercial security, and that the holder for this reason was not protected, but was chargeable with notice of the want of power; and looking to the charter, which all must look to, he would see the want of authority to do the acts. The case of Mechanic's Bank *vs.* The N. Y. & New Haven R. R. Co., cited by appellant, is to the same effect.

In the case of the City and County of St. Louis *vs.* J. H. Alexander, 23 Missouri, 513, no question was presented to the court for its determination as to whether bonds of municipal corporations, in the hands of assignees for value before due, are protected, or whether irregularities can be cured, which might defeat the bonds as between the original parties.

The City and County sought by their bill to have an account against Alexander, trustee, and to injoin him form selling the Ohio & Mississippi R. R. property under a trust deed, contrary to law and to the detriment of complainants, stockholders in said road, who had issued to the R. R. Co. bonds which they

alleged and insisted were valid, to the amount of $700,000, and *received* stock in lieu thereof.

While defendant, Alexander, set up that complainants were not stock holders, as the law authorizing subscriptions required the voters to sanction the issuing the bonds, &c., similar to the act of Illinois, before they could be issued. The court first hold that $500,000 of the bonds were valid, as, at the time of subscription, there was no law in force requiring an election; and that, as to the subscription of the $200.000, there was no law in force at the time of subscribing the stock and issuing the bonds authorising the act. That the law under which the election was ordered and held was passed at the time, but did not take effect till after the subscription. But the court in argument do hold, that an election under the law would be a necessary prerequisite to the issuing of the bonds under the law; and say the law is peremptory, as it provides that the bonds shall not be issued unless the vote is taken.

But the rights of innocent holders of the bonds were not insisted upon, and the question was in no way presented, and the court did not notice it. It is unfair to deal with men's rights in a court of justice, without a hearing.

This decision cannot be authority in this case, although it is apparently more favorable to the appellant's view of the case than any other probably to be found in the books. It stands unsupported by precedent.

In the case of Mercer County *vs.* The Pittsburgh and Erie R. R. Company, decided by the supreme Court of Pennsylvania, (27 Penn. State R. 330) it appears that, by the law authorising the subscription and bonds, the grand Jury of the county were to recommend the Co. Commissioners to snbscribe the stock and issue the bunds; which subscription was to be accepted by the R. R. Company, with the conditions and restrictions named in the act, before the R. R. Company could appropriate the benefits of the subscription. And the grand jury did not designate the amount of the subscription, but left it discretionary with the commissioners; neither did the R. R. Company accede

to the terms provided by the law or the subscription, which was conditional till after the law under which the subscription was made was repealed. A portion of the bonds issued, as it is said, in fraud of the rights of the county, were delivered to the company, and by them transfered to purchasers for value, and a part retained by the company. And the county filed a bill against the company as one of the contracting parties to cause them to deliver up for cancellation the bonds in their hands; and the court so ordered; remarking that, as to these bonds, no rights of innocent holders intervened to prevent the decree, and that no acts had been done by the county or its agents, the grand jury, confirmatory of the void acts of the commissioners; intimating that the acts might, by acquiescence and delay, be ratified.

The doctrine of this case is not denied so far as it applies to the original contracting parties. The object of the proceeding was to interpose the only remedy before the rights of innocent persons intervened to cut off all redress on behalf of the county.

It is the doctrine of the courts of that state, as all others where the point has directly arisen, that it is too late to apply for the remedy when the bonds have fallen into the hands of purchasers for value, as has been shown.

The supreme court of the United States recently have sustained the bonds issued by the city of Dubuque, which may be seen by the following synopsis, published in the papers, the opinion being not yet reported.

This was a suit upon coupons, issued by the city of Dubuque to the Dubuque and Western R. R. Company, and the law authorized the issuing of the bonds with the consent of 2-3 of the citizens assembled upon notice. The defence partly was placed upon the grounds of non-compliance with the law in the preliminary steps to be taken in obtaining the authority from the citizens to issue the bonds, and the court refer to their former decisions upon this point hereinbefore cited with approval, and the court say: if the city had power under the law in any way to issue the bonds, the *bona fide* holders have a right to pre-

sume that they were issued under the circumstances which gave the city authority to issue them, and that they were no more liable to be impeached in the hands of such holders, than any other commercial paper.

The court decide that, by universal consent and usage, these bonds are treated as commercial paper.

Also, that in cases like these the court does not find itself bound to immolate truth, justice and law for the sake of following the decisions of the state courts, although the decisions of the state courts are generally followed upon construction of their statutes by that court.

It will be seen that there is an inclination everywhere to uphold these securities, as it would be destructive of their value to hold them invalid for mere informality in the proceeding of officers generally authorized to create them; as they are not to be presumed to be well acquainted with the law or their duty in this respect.

BURNS & CUMMINS,
For Appellee.

~~184~~ 231-180

W. E. Cook
as
Board Sup. Co's
of Marshall Co

Appellees Briefs
+ Points

Filed May 10, 1864
L. Leland Clk

Supreme Court. Illinois
Third Grand Division
April Term 1864

Board Supervisors Marshall County Appellant
vs
Washington & Cook Appellees
} Appeal from Marshall

It is stipulated in this cause that it may be passed on the docket and shall not be taken up except by consent before the 1st Mon provided either party may call it up sooner if necessary to do so in order to have it heard at this term, it being the intention that this agreement shall in any case operate to prevent a hearing at this Term

Bangs Thom & Offer clerks
for Burns & Cummins
for Appellees

~~1864~~ 231

Supervisors

vs.

Cook

Stipulation

Filed Apl. 27. 1864.
L. Leland
Clk.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

THE BOARD OF SUPERVISORS OF MARSHALL COUNTY, STATE OF ILLINOIS, Appellants,
vs.
WASHINGTON E. COOK, Appellee.

Appeal from Marshall.

ABSTRACT OF THE RECORD.

1 This was an action of *assumpsit*, brought by appellee against appellant, to the Jan. Term, A. D. 1864, of the Circuit Court of said county.

2 Declaration filed 15th Jan. 1864. Counts on one R. R. coupon for $30 attached to its Bond, made by county, by Chas. S. Edwards, chairman of Board, and W. E. Cook, Clerk.

Plea filed Jan. 26th, 1864, as follows:

3 After commencement, and says that on the 28th day of February, A. D. 1853, at said county, the county Court in and for the county of Marshall aforesaid made and caused to be entered of record an order in the letters and figures following, to wit:

IN THE MATTER OF THE WESTERN AIR LINE RAIL ROAD COMPANY.

Now, at this term, it is ordered by the court, that the clerk of this court issue notices for the several townships of the county of Marshall, to vote for or against (at the annual town meeting in April next) a subscription of one hundred thousand dollars to the capital stock of the Western Air Line Rail Road Company. That afterwards, to wit, on the 5th day of April, A. D. 1853, at, &c., at the time and on the day named in said order, and under and in pursuance of the same, and of no other authority or order, notice having been duly posted of such election, an election was held in the several towns in said County, at the usual places of voting in the respective towns in said county, at which election the qualified voters of said county voted for and against the subscription

by said county of one hundred thousand dollars to the capital stock of said Rail Road Company; said election being duly conducted and the returns made as required by law, except that the same was ordered to be held by the county court of said county. That a majority of the legal voters in said county, taking as a basis the number of votes polled at the then last preceding general election in said county, were cast at said election in favor of the said subscription. And the defendant further in fact saith, that, at a meeting of the board of supervisors of said county, held at the court house in said county on the 14th day of November, A. D. 1854, the said board made and entered of record an order, that the said county subscribe to the capital stock of said Rail Road Company the sum of one hundred thousand dollars, and the chairman of said board was, in the same order, ordered and empowered to subscribe said amount of stock to said Rail Road Company; and defendant saith, that said chairman did afterwards, to wit, on the 15th day of Nov. 1854, subscribe said amount to the capital stock of said Rail Road Company, for and in the name of said county; and defendant further in fact saith, that, at the September term, A. D. 1856, of the said board of supervisors, the following order was made and entered of record by said board, to wit:

"Ordered by the board, that bonds of the county of Marshall, issued to the amount of forty thousand dollars, be issued to the Western Air Line Rail Road Company in such sums as the said Western Air Line R. R. Company may require, not less than one thousand dollars each, payable in twenty years, in the city of New York, with interest at the rate of six per cent. per annum, said interest payable semi-annually in the city of New York, on the first days of March and September in each year after the year A. D. 1856, in payment of the eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth instalments on the subscription of said board to the capital stock of said Rail Road Company; and that said bonds be signed by the chairman of this board, and attested by the clerk of the county court, with the seal of said county attached; and that there shall be attached to said bonds coupons for the interest that may become due thereon; and that said bonds be delivered to said company upon said company giving to said county an obligation in writing, sufficient to indemnify the said county against all loss and expense in transmitting the principal when due, and interest on said bonds, the sufficiency of said indemnity to — a bond approved by the board, conditioned that additional security be given whenever it may be required
6 by the board of supervisors, as now required by law on official bond.

"Ordered, that the vote on issuing county bonds of forty thousand dollars to the Western Air Line Rail Road Company be made matter of *record*, which is as follows: Affirmitive—Henry L. Crane, A. S. Sherwood, S. P. Hawthorn, B. W. Halsted, Amasa Garrett, Charles S. Edwards. Negative—Thomas Ellis, J. C. Townsend, Albert Ramsey, Bernard Fowler and Samuel Camp."

And defendant in fact saith that afterwards, to wit, on the — day of September A. D. 1856, at said county, said Charles S. Edwards, chairman of said board, made and signed the said bond No. nine, for one thousand dollars, and the said coupon on which plaintiff sues, attached thereto, for and in behalf of the said county, under and by virtue and in pursuance of the said order of said board of supervisors, and under no other authority. And the said bond and coupon was then and there attached by the county clerk of said county and county seal, and then and there delivered the same to the said Rail Road Company; which last mentioned coupon so made as aforesaid is the same coupon mentioned in plaintiff's declaration, and not other or different; and defendant avers that, at the time of the making of said order by said county court, to wit, on the 28th day of February A. D. 1853, at, &c., and since that time, the said County has been organized into townships, and acting under township organization, under the laws of the state.

7 And the defendant further avers, that the said board of supervisors of said county did not, at any time, order any election to be held in said county for the purpose of taking the votes of the legal voters of said county for and against subscribing to the capital stock of said Rail Road Company. Defendants aver that the said board of supervisors never, at any time previous to the 14th day of September 1854, made any order or took any action on the subject of subscribing to the capital stock of said Rail Road Company.

Wherefore defendant says that the said bond and coupon are null and void, and not authorized to be issued by law, and that the said chairman and clerk had not, at the time of signing the said coupon, any authority to bind defendant, in manner and form as plaintiff hath alleged in his declaration. All of which defendant is ready to verify; wherefore defendant prays judgment, &c.

BANGS & SHAW,
Att's'y for Defendant.

Demurrer to plea filed and withdrawn, and leave given to file replication.

8 Replication filed Feb. 9th, 1864.

Precludi non. Because he says, that the said bond and coupon were made by the said Charles S. Edwards, chairman, and Washington E. Cook, clerk, of said board of supervisors, together with ninety-nine other bonds of like import and date of one thousand dollars each, due and payable to said Western Air Line Rail Road Company or bearer, in twenty years after date, with coupons thereto attached, for the interest

thereon, payable semi-annually, *was made* and delivered on or about the —— day of September A. D. 1856, and on said day *was* endorsed and delivered to plaintiff. That ever since the date of said bond, said defendant has paid all interest coming due on the same, as well as on all the other bonds issued, except said coupon on which suit is brought, and for the purpose of paying the same, the said defendant has, for each and
9 every year since said bonds were issued, levied and caused to be collected, of the tax payers and taxable property in said county, the sum of six thousand dollars; which has been semi-annually applied to the payment of said interest on said bonds.

And plaintiff further in fact saith, that said one hundred thousand dollars in bonds was issued and delivered to said Rail Road Company, in payment of one thousand shares of the stock of said Rail Road Company; and that certificates of stock to that amount *was* issued and delivered to defendant and received by *it*, as the consideration for said bonds, which certificates are still held and owned by said defendant; and that, under and by virtue of such certificates, said defendant has participated in the election of the officers of said company, and in all the other benefits and advantages attending the ownership of said certificates of stock.

And plaintiff avers, that the said bonds and coupons and all the other said bonds and coupons were endorsed and transfered before maturing, to assignees for value, without any notice of the fact that the said election had been ordered and held under the order of the said county court, further than the constructive notice—if any such could be implied—to be deduced from the records of the said county court, and the said board of supervisors.

Wherefore the said plaintiff saith, that the said defendant hath, by said acts, and the acquiescence of the people and tax payers of said county, in submitting to the payment of said interest and the collection
10 of said taxes, ratified and confirmed the said bonds and coupons, and that the said coupon is now binding and obligatory upon said defendant.—All of which the plaintiff is ready to verify, &c.

Demurrer to replication filed by defendant, and same overruled by the court.

11 Defendant abiding by demurrer, judgment against defendant for $30
12 damages, and costs, and execution therefor.

Appeal prayed and allowed. Bond in $300 to be filed in 30 days, security to be approved by clerk, by agreement of parties.

13 Appeal bond filed and approved, March 8th, 1864.

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15 ERRORS ASSIGNED.

1st. Overruling demurrer to replication.

2d. Judgment for plaintiff, when, by the law of the land, it should have been for defendant.

201 484

SUPREME COURT,

Third Grand Division,

APRIL TERM THEREOF, A. D. 1864.

SUPERVISORS OF MARSHALL COUNTY
vs
WASHINGTON E. COOK.
} *Appl. from Marshall.*

ABSTRACT.

BANGS & SHAW,

Attorneys for Appellants.

Filed April 20. 1864
L Leland Clk

Pleas before the Circuit Court of Marshall County in the State of Illinois at a term thereof begun and holden at the Court House in the City of Lacon in said Marshall County. On Monday the twenty fifth day of January in the year of Our Lord One thousand Eight Hundred and Sixty four, Present the Hon Samuel C. Richmond Judge of the 23rd Judicial Circuit of the State of Illinois presiding, James St. C. Boal States Attorney for said Judicial Circuit, Joseph R. Taggart Sheriff of said Marshall County & Sheldon Arnold Clerk of said Circuit Court,

Be it remembered that heretofore, to wit on the fifteenth day of January A.D. 1864. a summons was issued out of said Court, which is in the words and figures as follows, to wit,

"The People of the State of Illinois,

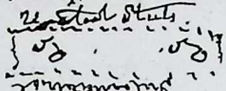
To the Sheriff of Marshall County Greeting,

We commmand you to summon The Board of Supervisors of Marshall County Illinois, to appear before our Circuit Court, on the first day of the next term thereof, to be held at Lacon, within and for the said County of Marshall on the fourth Monday of January A.D. 1864, then and there in our said Court, to answer Washington E. Cook in a plea of Assumpsit, in damages of the sum of two hundred dollars, as he says, Hereof fail not, and make due return of your doings hereon

Seal

Witness Sheldon Arnold Clerk of our said Court

and the seal thereof, at Lacon this fifteenth day of January in the year of our Lord, One thousand eight hundred and sixty four.



Sheldon Arnold Clerk,

Which said summons has an endorsement on the back of the same, in the words and figures as follows, to wit

I have served this writ by reading the same and delivering a true copy of the same to Jason T. Chapman the Clerk of the within described Board of Supervisors of Marshall County, on this the 15th day of January A.D. 1864. as within I am commanded

Joseph R. Taggart,
Sheriff of Marshall Co. Ill.

On the same day to wit, the 15th day of January A.D. 1864. a declaration was filed in said Court, which is in the words and figures following, to wit,

State of Illinois
Marshall County } ss. In Circuit Court of said County,
January Term A.D. 1864.

Washington E. Cook plaintiff in this suit by S. M. Garrett his attorney complains of the Board of Supervisors of Marshall County, State of Illinois the defendants, in a plea of assumpsit. For that whereas the defendants heretofore, to wit, on the first day of September A.D. 1856, at said County, made their certain Interest Coupon in writing, attached to their certain Bond, which Coupon is in letters & figures as follows, to wit, Western Air Line Rail Road Company

$30. Bond No. 35. $30.

The County of Marshall, State of Illinois will pay the bearer thirty dollars, at the American Express Bank in the City of New York, on the first day of September A.D. 1863.

C. S. Edwards Chairman
W. E. Cook Clerk.

3

and then and there delivered the same to the said Western air line Rail Road Company. And the said Western air line Rail Road Company then and there delivered the said instrument in writing to the plaintiff. And plaintiff avers that said E. S. Edwards Chairman of said Board, and W. E. Cook Clerk of the same, were at the time of making and delivering the said instrument in writing, duly authorized and empowered by the Board of Supervisors of said County to execute and deliver the same in manner and form as aforesaid, and bind the said County in that behalf. And plaintiff avers that he presented said instrument and demanded payment thereof of the County Treasurer of said County at his Office in Lacon in said County on the 14th day of January A.D. 1864. and that said Treasurer refused to pay the same. Yet the said defendant has not paid the said sum of thirty dollars to the plaintiff, nor any part thereof, though often requested so to do, to wit, on the 14th day of January 1864. at the County Treasury in said County, but neglected so to do, and refused to pay the same, to plaintiffs damage of two hundred dollars. Wherefore he brings this suit.

L. W. Gossett
Plaintiffs Atty,

Afterwards, to wit. January 26th A.D. 1864. the defendants file their plea in said Court which is in the words & figures following, to wit,

State of Illinois } S.S. In Marshall County Circuit Court
Marshall County } To the January Term A.D. 1864.

Washington E. Cook
v.
Board of Supervisors of
Marshall County Illinois } A Jumpsit.

8

4

And the said defendant comes by Bangs & Shaw its attorneys and defends the wrong and injury when &c. and says that on the 28th day of February A.D. 1853, at said County the County Court in and for the County of Marshall aforesaid made and caused to be entered of record an Order in the letters and figures following, to wit

"In the matter of the Western Air line Rail Road Company } Now at this term it is Ordered by the Court that the Clerk of this Court give notice for the several Townships of the County of Marshall to vote for or against (at the annual Town meeting in April next) a subscription of one hundred thousand dollars to the capital stock of the Western Air line Rail Road Company" That afterwards to wit, on the 5th day of April A.D. 1853. at &c. at the time, and on the day named in said Order, and under and in pursuance of the same, and of no other authority or Order, notice having been duly posted of such election, an election was held in the several Towns in said County, at the usual places of voting in the respective Towns in said County; at which election the qualified voters of said County, voted for and against the subscription by said County of one hundred thousand dollars to the capital stock of said Rail Road Company; said election being duly conducted and the returns made as required by law, except that same was ordered to be held by the County Court of said County. That a majority of the legal votes in said County taking as a basis the number of votes polled at the then last preceding general election in said County were cast at said election in favor of the said subscription. and the defendant further in fact saith that at meeting of the Board of Supervisors of said County held at the Court house in said County on the 14th day of November A.D. 1854. the said Board made and entered of record an Order that the said County subscribe to the capital stock of said Rail Road

Company, the sum of one hundred thousand dollars, and the Chairman of said Board was in the same Order ordered and empowered to subscribe said amount of stock to said Rail Road Company, and defendant saith that said Chairman did afterwards, to wit, on the 15th day of Nov 1854 subscribe said amount to the said stock of said Rail Road Company for and in the name of said County. And defendant further in fact saith that at the September term A.D. 1856. of the said Board of Supervisors the following Order was made and entered of Record by said Board, to wit: "Ordered by the Board that Bonds of the County of Marshall "issued to the amount of forty thousand dollars be issued" to the Western Air Line Rail Road Company in such sum as the said Western Air Line Rail Road Company may require, not less than one thousand dollars each payable in twenty years, in the City of New York, with interest at the rate of six per cent per annum, said interest payable semi annually in the City of New York, on the first days of March and September in each year after the year A.D. 1856, in payment of the eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth & fifteenth instalments on the subscription of said Board to the capital stock of said Rail Road Company, and that said Bonds be signed by the Chairman of this Board, and attested by the Clerk of the County Court, with the seal of said County attached; and that there shall be attached to said Bonds Coupons for the interest that may become due thereon; and that said Bonds be delivered to said Company upon said Company giving to said County an obligation in writing sufficient to indemnify the said County against all loss and expense in transmitting the principal when due, and interest on said Bonds, the sufficiency of said indemnity to a Bond approved by the Board, conditioned that additional security be given whenever it may be required

" by the Board of Supervisors as now required by law on Official
" Bonds." Ordered that the vote on issuing County Bonds of forty
" thousand thousand dollars to the Western Airline Rail Road Company
" be made matter of record, which is as follows: Affirmative
" Henry L. Crane. A. L. Sherwood. S. P. Kenttown. B. W. Halsted,
" Amasa Garrett, Charles S. Edwards. Negative, Thomas Ellis,
" J. C. Townsend, Albert Ramsey, Bernard Fowler, Samuel
" Camp". And defendant in fact saith that afterwards
to wit, on the day of September A. D. 1856. at said
County, said Charles. S. Edwards Chairman of said Board
made and signed the said Bond No. nine for one thousand
dollars and the said Coupon on which plaintiff sues, attached
thereto, for and in behalf of the said County, under and by
virtue and in pursuance of the said Order of said Board
of Supervisors, and under no other authority. And the said
Bond and Coupon was then and there attached by the
County Clerk of said County, and County seal, and then
and there delivered the same to the said Rail Road Com-
pany. which last mentioned Coupon so made as aforesaid
is the same Coupon mentioned in plaintiffs declaration, and
and not other or different, and defendant avers that at
the time of the entering of said Order by said County Court,
to wit, on the 28th day of February A. D. 1853. at and since
that time the said County has been organized into Town-
ships, and acting under Township organization, under the
laws of the State.

And the defendant further avers that the said Board
of Supervisors of said County, did not at any time Order
any election to be held in said County for the purpose
of taking the votes of the legal voters of said County for
and against subscribing to the capital stock of said
Rail Road Company, defendant avers that the said

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Board of Supervisors never at any time previous to the 14th day of September 1854. made any Order or took any action on the subject of subscribing to the capital stock of said Rail Road Company (VI.) (XII.) Wherefore the defendant says that the said Bond Coupon are null and void, and not authorized to be issued by law, and that said Chairman & Clerk had not at the time of signing the said Coupon any authority to bind said defendant in manner and form as plaintiff hath alleged in his said declaration. All of which the defendant is ready to verify. Wherefore defendants pray judgment &c.

Bangs & Shaw
Attys. for Defendant

And now at this day, to wit, the 25th day of January A.D. 1864. a Demurrer is filed in said Court, in the words and figures following,

Marshall County & Circuit Court
thereof January Term 1864.

Washington E. Cook
vs.
The Board of Supervisors
of Marshall County Illinois } Demurrer

And the said Washington E. Cook as to the said plea of the said Board of Supervisors of Marshall County Illinois, by it pleaded, saith that the same, and the matters therein contained, in manner and form as the same is pleaded & set forth is not sufficient in law to bar or preclude him the said Washington E. Cook from having or maintaining his aforesaid action thereof against the said Board of Supervisors of Marshall County Illinois, and that he the said Washington E. E. Cook is not bound by law to answer the same. and this he the said Washington E. Cook is ready to verify. Wherefore he the said Washington E. Cook prays judgment

and his damages by reason of nonperformance of the promises and undertakings in the said declaration mentioned, to be adjudged to him the said Washington E. Cook.

L. M. Garatt

Atty. for Plff.

Afterwards, to wit, February 9th A.D. 1864. a Replication was filed in said Court, in the words & figures following, to wit,

State of Illinois
Marshall County, } the Circuit Court thereof

To the January Term 1864.

Washington E. Cooke
vs.
The Board of Supervisors of
Marshall County Illinois } Replication

And the said plaintiff for replication to defendants plea herein, saith precludi non, because he says that the said Bond and Coupon were made by the said Charles L. Edwards Chairman, and Washington E. Cook Clerk of said Board of Supervisors together with ninety nine other Bonds of like import and date, of one thousand dollars each, due and payable to said Western Air Line Rail Road Company, or Bearer, in twenty years after date, with Coupons thereto attached for the interest thereon, payable semi annually & were made and delivered on or about the day of Sept A.D. 1856. and on said day was indorsed & delivered to plaintiff. That ever since the date of said Bond, said defendant has paid all interest coming due on the same, as well as on all the other bonds then issued, except the said Coupons on which suit is brought, and for the purpose of paying the same the said defendant

has for each and every year, ~~said~~ since said Bonds were issued, levied and caused to be collected of the tax payers, and taxable property in said County, the sum of six thousand dollars, which has been semi annually applied to the payment of said interest on said Bonds. And plaintiff further in fact saith, that said one hundred thousand dollars in Bonds was so issued and delivered to said Rail Road Company in payment of one thousand shares of the stock of said Rail Road Company, and that certificates of stock to that amount was issued and delivered to defendant, and received by it as the consideration for said bonds, which certificates are still held and owned by said defendant, and that under, and by virtue of such certificates, said defendant has participated in the election of the officers of said Company, and in all the other benefits and advantages attending the ownership of such certificates of stock.

And plaintiff avers that the said Bond and Coupon and all the other said Bonds & Coupons were endorsed and transferred before maturity to assignors, for value, without any notice of the fact, and that said election had been ordered and held under the Order of the said County Court further than the constructive notice, if any such could be implied, to be deduced from the Records of the said County Court, and of the said Board of Supervisors. Wherefore the said plaintiff saith that the said defendant hath by said acts and the acquiescence of the people and tax payers of said County in submitting to the payment of said interest, and the collection of said taxes, ratified and confirmed the said Bonds and the said Coupon

and that the said Coupon is now binding & obligatory upon said defendant. all of which the plaintiff is ready to verify.

S. M. Garrett
Plffs. Atty

And now at this day to wit; February 9th A.D. 1864 a demurrer to replication was filed in said Court, in the words and figures as follows, to wit,

Lacon Marshall County

State of Illinois
Marshall County } In Circuit Court of said County January Term A.D. 1864.

Washington E. Cook
Vs.
The Board of Supervisors of said Marshall County } Assumpsit

And the said defendant comes and says that the said replication of the said plaintiff to the plea of the defendant, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that the said defendant is not bound in law to answer the same. And this the said defendant is ready to verify. Wherefore by reason of the insufficiency of said replication in this behalf the said defendant prays judgment &c. &c. if &c.

Bangs & Shaw
attys. for Defendant

~~And now at this day, March 10th 1864, a Rule was filed in said Court, which is in the words and figures as follows, to wit,~~

Tuesday February 9th AD 1864

Court met pursuant to adjournment present the Hon Marion Williamson Judge of the Eighteenth Judicial Circuit of the State of Illinois, presiding, by Exchange with the Hon Samuel C. Richmond Judge of this 23rd Judicial Circuit of the State of Illinois, all the other Officers present as on yesterday,

And now On this day "to wit" February 9th AD 1864 the same being One of the days of said Court of said January Term AD 1864, an Order was Entered of Record which is in the words and figures following "to wit"

Washington E. Co R
vs,
The Board of Supervisors of Marshall County Illinois

Assumpsit,

81 On this day Comes the Plaintiff by S. M. Garatt his attorney and by leave of the Court withdraws his demurrer to Defendants plea herein, and thereupon leave is by the Court given the said Plaintiff to reply instanter, Whereupon Comes John Burns One of the acting Attorneys for the Plaintiff and Enters a motion for leave to reply double, and was argued by Counsel and the Court having Considered said motion and being now fully advised in the premises doth Order that said motion be Overruled, and thereupon Comes the Defendant by Bangs & Shaw its attorneys, and Enters a demurrer to the Replication to Defendants plea herein, and the Court having Considered said demurrer and being fully advised in the premises doth Order that said demurrer be Overruled, and the Defendant abides by its demurrer, Whereupon it is Considered by the

11 Court that the said Plaintiff ought to recover of the

said Defendant his damages by reason of the premises, and neither party requiring a Jury, and the Court being fully advised in the premises doth assess the Plaintiffs damages to the sum of Thirty Dollars, It is therefore Considered by the Court that the said Washington E. Cook have and recover of the said Board of Supervisors of Marshall County Illinois the said sum of Thirty Dollars his damages aforesaid in form aforesaid assessed, also his Costs and Charges in this behalf Expended and that Execution issue therefor, and thereupon Comes the Defendant by its Attorneys and prays an appeal to the Supreme Court of this State, which Appeal is allowed upon Defendants Entering into Bond Conditioned according to Law in the sum of Three Hundred Dollars to be filed in thirty days and the Clerk to approve the said Bond by agreement of the parties,

Afterwards "to wit" March 8th AD 1864, a Bond was filed in said Court which is in the words and figures following "to wit"

Know all men by these presents that We the Board of Supervisors of Marshall County State of Illinois and Henry W. Crane of the County of Marshall in said State are held and firmly bound unto Washington E. Cook in the penal sum of Three Hundred & 00 Dollars for the payment of which well and truly to be made we bind Ourselves our heirs Executors and administrators, Jointly, severally and firmly by these presents, Witness Jason R. Chapman Clerk of the said Board of Supervisors, On behalf of said Board

and the seal thereof of said County at Vacon in said County, and the Board & seal of said this 5th day of March A.D 1864,

The Condition of the above Obligation is such that whereas the said Washington E. Cook Plaintiff did On the 9th day of February A.D 1864, in the Circuit Court of said County in said State at the January term thereof A.D 1864, recover a Judgment against the above bounden Board of Supervisors of said County, Defendant in an action of assumpsit for the sum of Thirty Dollars damages and Costs of suit, from which Judgment the said Defendant has taken an appeal to the Supreme Court of the State of Illinois

Now if the above named Defendant shall duly prosecute his appeal, and shall pay said Judgment, Costs, interest and damages in case said Judgment shall be affirmed, then the above Obligation to be Void Otherwise to remain in full force and Effect

Seal

E. R. Chapman Seal
Clerk of Board of Supervisors
Marshall County Illinois

Henry W. Crane Seal
Alonzo Roberts Seal

On the back of which appeal Bond is an indorsement in the words and figures following "to wit"

"Filed and approved by me March 8th A.D 1864
Sheldon Arnold
Clerk,

State of Illinois } ss.
Marshall County } I Sheldon Arnold Clerk of the Circuit Court in and for said County of Marshall in the State aforesaid. do hereby Certify that the foregoing is a true, Correct, and Complete Copy of the Matters and things therein Contained in said Cause Mentioned therein as appears of Record in my Office

In testimony where of I have hereunto set my hand and affixed the seal of said Court, at Lacon this 22d day of March, AD 1864,



Sheldon Arnold
Clerk.

Clerks fees for Copying Record. $6 50/100
S. Arnold Clk

Board of Supervisors
Marshall Co.
vs.
Washington & Cook

Transcript & Record

April Term A.D. 1864

The Board of Supervisors
of Marshall County
Appellants

vs.

Washington E Cook
Appellee

Appeal from
Marshall

And the said appellants Comes by Bangs & Shaw its Attorneys and says that in the said Record and proceedings in the said Circuit Court against Appellants there is manifest Error in this

First The said Circuit Court Erred in ~~~~ overruling defendants demurrer to plaintiffs replication

Second The judgment of said Court was for plaintiffs. when according to the law of the land it should have been for the defendant.

Wherefore and because of said Errors and others not mentioned Appellants prays that said judgment may be reversed & and appellant be restored to all that he has lost by reason thereof

Bangs & Shaw
Attys for Appellants.

State of Illinois } ss
Third Grand Division }

In Supreme Court
To April Term 1864.

The Board of Supervisors
of Marshall County State
of Illinois,
Appellant
vs
Washington E. Cook
Appellee.

Appeal from
Marshall.
Joinder in Error

And the said Washington E. Cook,
defendant in Error, now comes
and says, that there is no error,
either in the record and proceed-
ings aforesaid; and therefore he prays
that the said Judgment may
be affirmed, and that his costs
may be adjudged to him &c,

By Smith & Garrett
Att'y. for ~~Defendant~~ Appellee

~~Error~~

231 ~~1864~~

The Board of Supervisors

vs.

Washington Is Cook

Transcript of Record

Filed April 19. 1864

L. Leland

Clerk