issued.[1] Taxpayers may enjoin the issue of illegal warrants or scrip.[2]

§ 505 (413). **Payable out of a Particular Fund.** — If by law a particular claim *is to be paid out of a special fund*, a warrant or order issued therefor should be made payable out of such fund; if made payable from the treasury generally by the officers issuing it, the corporation is not bound by their act.[3] An order or warrant, concluding with the words "and charge the same to the account of Union Avenue," is payable out of the particular fund indicated, and is not a claim against the corporation.[4] But the distinction must be observed between orders payable out of a particular fund, and those which evidence a general corporate liability, but are directed to be charged to a particular account.[5]

[1] Pulaski County *v.* Lincoln, 4 Eng. (9 Ark.) 320 (1849); Webster County *v.* Taylor, 19 Iowa, 117; Paris Tp. Trs. *v.* Cherry, 8 Ohio St. 564 (1858); Glastenbury *v.* McDonald, 44 Vt. 450 (1872). In *Mississippi* a board known as the board of police are authorized by law to audit and allow, upon due proof, all claims against the county; and counties in that State cannot be sued directly. The action of the board in allowing claims for matters of county charge, and in ordering warrants to issue therefor, is final and conclusive on the county, in the absence of fraud, until it is reversed or vacated. Carroll *v.* Board, &c., 28 Miss. (6 Cush.) 38 (1854). But the weight of authority is otherwise. Shirk *v.* Pulaski County, 4 Dillon, 209 (1877). *Effect of issuing new orders for old.* See Clark *v.* Des Moines, 19 Iowa, 199; Chemung Canal Bank *v.* Chemung Co. Sup., 5 Denio (N. Y.), 517; Lake *v.* Trustees, 4 Denio (N. Y.), 520; Shirk *v.* Pulaski County, 4 Dillon, 209 (1877). On warrants or orders the *statute of limitations* does not begin to run until payment is denied. Justices of Bibb Co. Inferior Court *v.* Orr, 12 Ga. 137 (1852). See Carroll *v.* Tishamingo County Board of Police, 28 Miss. 38; De Cordova *v.* Galveston (bonds), 4 Tex. 470; Kenosha *v.* Lamson (coupons), 9 Wall. 478; *supra*, sec. 487, note; Baker *v.* Johnson County, 33 Iowa, 151. In *Nebraska*, county warrants are not within the limitation statutes. Brewer *v.* Otoe County, 1 Neb. 373.

[2] Colburn *v.* Chattanooga, Tenn.; s. c. 17 Am. Law Reg. N. S. 191; *post*, secs. 914, 921, 923.

[3] Tippecanoe Co. Comm'rs *v.* Cox, 6 Ind. 403; Campbell *v.* Polk County, 49 Mo. 214 (1872); Boro *v.* Phillips County, 4 Dillon, 216, 223 (1877), citing text; *post*, chap. xx.

[4] Lake *v.* Williamsburgh, 4 Denio, 520 (1847), remedy of holder discussed; distinguished from Kelly *v.* Mayor, &c. of Brooklyn, 4 Hill (N. Y.), 263; and see McCullough *v.* Brooklyn, 23 Wend. (N. Y.) 458; Cuyler *v.* Rochester, 12 Wend. (N. Y.) 165; Argenti *v.* San Francisco, 16 Cal. 255, and note remarks of *Field*, C. J.; Martin *v.* San Francisco, *Ib.* 285; Kingsberry *v.* Pettis Co., 48 Mo. 207 (1871). An instrument in this form:

DECEMBER, 31, 1836.

City of Brooklyn, ss. To the City Treasurer. Pay A. L. or order $1500 for award No. 7, and charge to Bedford road assessment, &c.

J. T., *Mayor.*
A. G. S., *Clerk.*

Held, 1st. Negotiable, and not payable out of any special fund. 2d. The corporation was not discharged by failure to present and give notice, no damage or injury being sustained in consequence of the omission. Kelley *v.* Brooklyn, 4 Hill (N. Y.), 263 (1843); Steel *v.* Davis County, 2 G. Greene (Iowa), 469; Campbell *v.* Polk County, 3 Iowa, 467.

[5] Clark *v.* Des Moines, 19 Iowa, 199, 222; Edwards on Bills, 143; Pease *v.*

§ 506 (414). **Interest on Corporate Indebtedness.** — The rule in respect to *interest on debts* against municipal corporations does not ordinarily differ from that which *applies to individuals*.[1] Under the Missouri statute, providing generally that creditors shall be allowed interest at the rate of six per cent per annum, &c., it is held that county warrants draw interest after presentment to the treasury and refusal of payment by the treasurer, the court regarding the general statute as to interest broad enough to embrace all debtors, counties as well as individuals.[2] But in Illinois it is held that the debts of municipal corporations are payable at the treasury of the body; that interest on coupons — that is, interest on interest — cannot be recovered, unless there be a special agreement to that effect, since such corporations are not named in the act regulating interest. The court remarks: "Whatever power these corporations may possess to contract for the payment of interest, in the absence of any express legislation on the subject, we are of opinion that their indebtedness, in the absence of such agreement, does not bear interest.[3] If such instruments (coupons) could in any event draw interest without an express agreement, it could only be after a proper demand of payment. Until a demand is made, such a body is not in default. They are not like individuals, bound to seek their creditors to make payments of their indebtedness."[4] The general and sound

Cornish, 19 Me. 191; Campbell *v.* Polk Co., 3 Iowa, 467; Union Co. Comm'rs *v.* Mason, 9 Ind. 97; Bayerque *v.* San Francisco, 1 McAll. C. C. R. 175; Bull *v.* Sims, 23 N. Y. 570; Montague *v.* Horan, 12 Wis. 599. In an action on a county order payable out of the three per cent fund, "as fast as the same shall accrue to the county," it *must be alleged* that the county has received money from the specific fund named applicable to the order in suit, or that the order was fraudulently drawn upon a fund in which the county had no assets. Union Co. Comm'rs *v.* Mason, 9 Ind. 97 (1857). See chapter on Mandamus, *post*.

[1] Langdon *v.* Castleton, 30 Vt. 285 (action on book account).

[2] Robbins *v.* County Court, 3 Mo. 57 (1831); State *v.* Pacific, 61 Mo. 155 (1875). In *Iowa*, coupons on county and city bonds are held to *draw interest*. Rogers *v.* Lee County, 1 Dillon C. C. R. 529. See Evansville, &c. R. Co. *v.* Evansville, 15 Ind. 395; Hollingsworth *v.* Detroit, 3 McLean, 472; Pruyn *v.* Milwaukee, 18 Wis. 367. If under authority to issue bonds with eight per cent interest, bonds be issued drawing twelve per cent, they are valid and bear interest at the statutory rate. Quincy *v.* Warfield, 25 Ill. 317. *Usury.* That usury can be predicated of a sale or issue by a corporation of its securities, see Danville *v.* Sutherlin, 20 Gratt. (Va.) 555 (1871); Lynchburg *v.* Norvell, 20 Gratt. (Va.) 601 (1871); Clark *v.* Des Moines, 19 Iowa, 199. May be made *payable outside the State*. Meyer *v.* Muscatine, 1 Wall. 384; Maddox *v.* Graham, 2 Met. (Ky.) 56.

[3] South Park Commissioners *v.* Dunlevy, 91 Ill. 49; Pekin *v.* Reynolds, 31 Ill. 529; People *v.* Salomon, 51 Ill. 52; Chicago *v.* People, 56 Ill. 327 (1870); Chicago *v.* Allcock, 86 Ill. 384; Cook *v.* South Park Commissioners, 61 Ill. 115.

[4] Pekin *v.* Reynolds, 31 Ill. 529 (1863); S. P. Chicago *v.* People, 56 Ill. 327 (1870); People *v.* Tazewell County, 22 Ill. 147; Johnson *v.* Stark County, 24 Ill. 75. But if made payable at a place other than the treasury, the bonds are not void, but

view, however, is that coupons when due are regarded as in the nature of an independent claim, and draw simple interest, and only simple interest, unless otherwise expressly provided, from the date of maturity.[1]

§ 507. **Implied Power to borrow Money and issue Commercial or Negotiable Paper considered.** — Much conflict of opinion has existed in the American courts touching the *implied power* of public and municipal corporations *to issue commercial or negotiable instruments*, that is, instruments free from equities in the hands of innocent holders for value. In respect of *public* or *quasi* corporations, such as counties, &c., as distinguished from *municipal* corporations proper, the general current of authority is against the proposition that, as ordinarily organized, they possess any such implied power. And the power is not incident to the authority to make specified expenditures or to make local improvements, but it may be implied, where there is nothing to rebut it, from other powers, such as the express power to borrow money.[2]

But in view of the more complex and diversified powers usually conferred upon chartered or municipal corporations proper, there has been a stronger tendency on the part of the courts to hold that

only this provision in them. Sherlock *v.* Winnetka, 68 Ill. 530 (1873). *Post*, sec. 514, note. In Madison County *v.* Bartlett, 1 Scam. (2 Ill.) 67, it was held that counties were not liable to pay interest on their orders or warrants, not being named in the statute regulating interest, and the common-law not allowing it to be recovered. So in *Pennsylvania*. Allison *v.* County, 50 Pa. St. 351. In that State a county is not suable on its warrants, but suit must be on original claim. *Ib.* In *Ohio* coupons due semi-annually have been held to bear interest after maturity. Wilson *v.* Neal, 23 Fed. Rep. 129. In *California* when no provision is made for interest, both municipal bonds and their coupons bear interest after maturity at the rate fixed by law, whether the coupons are detached or not. Nash *v.* El Dorado County, 24 Fed. Rep. 252; *post*, chap. xx.

A city issued warrants or orders on its treasurer, payable when funds should be collected therefor from certain tax sales, with interest. The funds being collected the common council ordered the treasurer to notify holders of warrants, by publication in the official paper, to present the same for payment, and that interest would cease after a certain day. It did not appear that plaintiff knew of such publication, though duly made. It was held that the city was liable for interest on the warrants owned by plaintiff down to the time of their presentation. Read *v.* Buffalo, 74 N. Y. 463. Nor can it set up in bar of an action to recover a debt due from it, that it was once willing and offered to pay it; nor can it stop interest upon its obligations by publishing a notice in a newspaper that such interest will cease after a certain date, when the warrants bear interest. *Ib.;* see, also, Hummel *v.* Brown, 24 Pa. St. 311.

[1] *Supra*, sec. 486.

[2] Police Jury *v.* Britton, 15 Wall. 566 (1872). The ordinary powers possessed by counties, as agencies of the State in the administration of public affairs, do not give the incidental authority to issue negotiable bonds and coupons. See Lynde *v.* Winnebago County, 16 Wall. 6.

Distinction between *public* and *municipal* corporations, in the sense referred to in the text, see *ante*, secs. 22, 54, 58, 66.

such corporations, as usually existing in this country, have an incidental or implied power to issue commercial securities. The line of argument is substantially this: Trading and commercial corporations have this power as an incidental means of effecting their objects, why not municipal corporations as well? Municipal corporations are clothed with large powers, which naturally, if not necessarily, oblige them to use credit or to create debts; therefore, if they may create debts, they may borrow the money to pay them; and if they may borrow money, they have the incidental power to do like other borrowers, namely, give a negotiable bill, note, or bond therefor. The whole argument is, in our judgment, unsound. It is true that in this country private business corporations are usually considered to have the incidental power to borrow money or give negotiable paper as an evidence of their indebtedness, but in England it is held that express power is necessary to enable even railway corporations to draw, indorse, or accept bills of exchange.[1] But admit that the American doctrine is otherwise,[2] and that it is rightly so, still there is no resemblance between private and public or municipal corporations in this regard. The latter are simply agencies of government. They are not organized for trading, commercial, or business purposes. They have, in general, but one mode of meeting their liabilities, and that is by taxation, and it is upon this resource that creditors must be taken to rely. For hundreds of years in England such corporations have existed, without it ever being contended that they could, without express authority, issue commercial paper. Private corporations are much more vigilant and watchful of their interests than it is possible for public or municipal corporations to be. The frauds which unscrupulous officers will be enabled successfully to practise, if an implied and unguarded power to issue negotiable securities is recognized, and which the corporation or the citizen will be helpless to prevent, is a strong argument against the judicial establishment of any such power. And the argument is unanswerable, when it is remembered that in ascertaining the extent of corporate powers there is no rule of safety but the rule of *strict* construction;[3] and that such an implied power is not necessary, however convenient it may be at times, to enable the corporation to exercise its ordinary and usual express powers,

[1] See observations of *Byles*, J., in Bateman *v.* Mid-Wales Railway Co., Law Rep. 1 C. P. 510 (1866). *Ante*, sec. 488.

[2] Stratton *v.* Allen, 16 N. J. Eq. 229; McCullough *v.* Moss, 5 Denio (N. Y.), 567; Straus *v.* Eagle Ins. Co., 5 Ohio St. 59; 2 Kent's Com. 229; 1 Parsons' Notes and Bills, 165; *ante*, sec. 488; Desmond *v.* Jefferson, 19 Fed. Rep. 483, holding that a power to purchase property — as a fire-engine — implies power to issue negotiable bonds for the purpose.

[3] *Ante*, secs. 89, 90, 91.

or to carry into effect the purposes for which the corporation is created.

§ 507 *a*. **Same subject. The Author's Conclusions.** — We regard as alike unsound and dangerous the doctrine that a public or municipal corporation possesses the *implied power* to borrow money for its ordinary purposes, and as *incidental* thereto the power to issue commercial securities, that is, paper which cuts off defences when it is in the hands of a holder for value acquired before it is due. The cases on this subject are conflicting, but the tendency is towards the view above presented. The opinion of Mr. Justice Bradley, in a case before referred to,[1] evinces a thorough comprehension of the whole question, and, in our judgment, is sound in every proposition it advances, and must become the law of this country. This view is confirmed by the almost invariable legislative practice in the States to confer, when it is deemed expedient, upon municipalities and public corporations, in *express* terms, the power to borrow money or to issue negotiable bonds or securities; and it is of instruments thus authorized that we now proceed to treat. It is an undisputed doctrine that the power of public and municipal corporations to subscribe to the stock of railway companies and to issue bonds therefor must be *expressly* conferred.[2] The Supreme Court of

[1] The Mayor *v.* Ray, 19 Wall. 478 (1873). It is difficult to understand on what ground the dissenting judges in this case regarded the corporation *warrants* as "negotiable securities of a commercial character." The cases are almost uniform to the effect that such instruments do not partake of the nature of commercial paper, except that by usage and custom, and sometimes by legislative enactment, they pass by delivery. *Post*, sec. 509.

[2] The cases on this point are collected in sec. 161, note. See further on this subject, *ante*, sec. 117 *et seq*.

Particular Statutes Construed. Illinois: Harter *v.* Kernochan, 103 U. S. 562; approved Pana *v.* Bowler, 107 U. S. 529; Kankakee *v.* Ætna Life Ins. Co., 106 U. S. 668; Prairie *v.* Lloyd, 97 Ill. 179; Windsor *v.* Hallett, 97 Ill. 204; Douglas *v.* Niantic Sav. Bank, 97 Ill. 228. *Kansas:* Lewis *v.* Barbour Co. Comm'rs, 105 U. S. 739; Bard *v.* Augusta, 30 Fed. Rep. 906. For construction of the general statute of *Kansas* concerning the subscription by municipalities for stock of railroads and the issue of bonds in payment therefor, see McClure *v.* Oxford, 94 U. S. 429; Anderson County *v.* Beal, 113 U. S. 227; Crow *v.* Oxford, 119 U. S. 215. *Tennessee:* Kelley *v.* Milan, 127 U. S. 139; s. c. below, 21 Fed. Rep. 842; Taylor *v.* Ypsilanti, 105 U. S. 60 (where by the vote authorizing a subscription, consent was given upon certain conditions). *Nebraska:* Read *v.* Plattsmouth, 107 U. S. 568; State *v.* Babcock, 19 Neb. 230; s. c. *Id.* 223. As to liability of *counties* in *Nebraska* for bonds issued by *precincts* and the remedy in such cases, see Davenport *v.* County of Dodge, 105 U. S. 237; Blair *v.* Cuming County, 111 U. S. 363; Rosenbaum *v.* Bauer, 120 U. S. 450; Nemaha County *v.* Frank, 120 U. S. 41. *Infra*, sec. 509. *California:* Liebman *v.* San Francisco, 24 Fed. Rep. 705. *Missouri:* Ogden *v.* Daviess County, 102 U. S. 634; Tipton *v.* Rogers Loc. Works, 103 U. S. 523. *New York:* Thompson *v.* Perrine, 103 U. S. 806; approved Same *v.* Same, 106 U. S. 589; Red Rock *v.* Henry, 106 U. S. 596. *Louisiana:* Hall *v.* New Orleans, 19 Fed. Rep. 870 (a special law relating to New Orleans). *Alabama:* Winters *v.* Montgomery, 65 Ala. 403 (special law relating to Montgomery).

the United States has repeatedly adjudged that the grant of power to a municipal corporation to appropriate moneys in aid of the construction of a railroad, where the power is accompanied with a provision directing the levy and collection of taxes to meet such appropriation, and prescribing no other mode of payment, gives no power, but excludes it, to issue negotiable bonds in payment of such appropriation.[1]

§ 508. **Taxation limited to Public Purposes; What are Such; Aid to Railways; Bonds to be paid by Taxation, for What Purposes authorized.** — After the numerous judgments of courts of the highest authority to that effect, it may be regarded as a settled doctrine of American law that *no tax can be authorized by the legislature* for any purpose which is essentially *private*, or, to state the proposition in other words, for any but *a public purpose*.[2] What is a public purpose may not always be easy to determine; but when determined, it constitutes the boundary of the power of taxation. Whether taxation to aid in the building of railways owned by private corporations is taxation for a *public* purpose is a question which has been decided by the courts of last resort in almost every State in the Union, and by the Supreme Court of the United States.[3] Although the doctrine of the constitutionality of such taxation has been vigorously combated, still it must be admitted that the great preponderance of the judicial judgments has been on the side of the

[1] Claiborne County *v.* Brooks, 111 U. S. 400, 406; Wells *v.* Pontotoc Co. Sup., 102 U. S. 631, 632; Ogden *v.* Daviess County, *Ib.*, 634, 639; Concord *v.* Robinson, 121 U. S. 165 (1886).

[2] Loan Assoc. *v.* Topeka, 20 Wall. 655; Curtis *v.* Whipple, 24 Wis. 350; Whiting *v.* S. & F. R. Co., 25 Wis. 167; Allen *v.* Inhab. of Jay, 60 Me. 124; Jenkins *v.* Andover, 103 Mass. 94; Lowell *v.* Boston, 111 Mass. 454; Pray *v.* Northern Liberties, 31 Pa. St. 69; Mayor of New York, *In re*, 11 Johns. (N. Y.) 77; Camden *v.* Allen, 2 Dutch. (N. J.) 398; Sharpless *v.* Mayor of Phila., 21 Pa. St. 147; Hanson *v.* Vernon, 27 Iowa, 47; Cooley Const. Lim., 129, 175, 214; Parkersburg *v.* Brown, 106 U. S. 487 (manufactories); City of Eufaula *v.* McNab, 67 Ala. 588. *Infra*, sec. 510. Bonds issued under a statute to aid a company in improving the water-power of the river for the purpose of propelling public grist-mills, held to be issued to aid in constructing a "work of internal improvement," within the meaning of the statute in question. Blair *v.* Cuming County, 111 U. S. 363. *Aliter* as to steam grist-mills, Osborne *v.* County of Adams, 106 U. S. 181; s. c. 109 U. S. 1; see and compare Township of Burlington *v.* Beasley, 94 U. S. 310; *post*, sec. 736, and cases cited; Cooley on Taxation, chap. iv., "where the purposes for which taxes may be laid" are enumerated, and illustrated by the adjudicated cases.

[3] *Ante*, secs. 153, 157; Rogers *v.* Burlington, 3 Wall. 654; Marshall Co. Sup. *v.* Schenck, 5 Wall. 772, 779; Olcott *v.* Fond du Lac Sup., 16 Wall. 678; Burlington & Mo. River R. Co. *v.* Otoe Co., 16 Wall. 667; Citizens' Sav. & Loan Assoc. *v.* Topeka, 20 Wall. 655; Pine Grove Tp. *v.* Talcott, 19 Wall. 666 (1873).

competency of such legislation, in the absence of special constitutional restraint.[1] And therefore the legislature may authorize subscriptions by municipalities to the stock of railway corporations, or donations to them, and provide for the payment of such subscriptions or donations[2] by the issue and sale of the negotiable bonds of the municipality. But a statute which authorizes the issue of bonds to be paid by taxation to aid certain individuals or classes, or in aid of the *manufacturing enterprise* of individuals or private corporations, is void, this being, within the meaning of the rule, a *private*, as distinguished from a *public* purpose, although in a remote or collateral way the local public might be benefited thereby.[3] The execution of the powers of local government and administration ordinarily conferred upon municipal corporations, such as improving highways and streets, constructing water-works, gas-works, markets, preserving the public health, and the like, are of course public purposes; and upon legislative authority being given, negotiable bonds may be issued therefor. What will constitute sufficient authority for the issue of such bonds will be considered further on.

§ 509. **Different Classes of Bonds; Implied and Express Power to issue; Recitals; Mode of Pleading.** — Negotiable securities of the kind here referred to have been issued by *municipal corporations proper* (generally under an *express* power to aid railways, or for gas-works, water-works, or specified local improvements, but sometimes under an *implied* power); and *by counties*, usually under express power (generally to aid railways, or for public buildings, bridges, or improvements[4]); and *by organized townships* which are parts of

[1] In Pine Grove Township *v.* Talcott, 19 Wall. 666, 677, Mr. Justice *Swayne* says that such legislation has been sustained in nineteen out of twenty-one States. As respects legislative power, *donations* and subscriptions for stock stand on the same ground. Town of Queensbury *v.* Culver, 19 Wall. 83 (1873).

If it be allowable to judge of a legal principle by its fruits, the dissenting and minority judges on this question will find much to confirm the conviction that their views were sound. But it is useless to fight that battle over again; it has been fought and lost. All that is left is the contemplation and contrast of what might have been and what is.

[2] Wood *v.* Oxford, 97 N. C. 227. The Constitution of *Texas* prohibits municipal corporations from making appropriations or donations, or loans of credit to private corporations. Cleburne *v.* Gulf, Colorado, & S. F. Ry., 66 Tex. 457; *ante*, sec. 157.

[3] Authority to borrow money "to be expended in developing the *natural advantages of a city for manufacturing purposes*," does not warrant the issue of bonds as a donation to an individual to aid in developing the water power of the city. One who holds such bonds with notice of the facts cannot recover upon them. Ottawa *v.* Carey, 108 U. S. 110; *ante*, sec. 161.

[4] In several of the States power is given to municipalities or counties to issue bonds to *aid* works of "*internal improvement.*" And under this generic term, the question has arisen, What are works of internal improvement? The Supreme Court of *Alabama*, in defining the phrase "internal improvements," says: "Where internal improvements under State authority are spoken of, it is universally understood that works within the State, by which the public are supposed to be benefited, are intended; such as the improvements of highways and channels of travel and commerce." Wetumpka *v.* Winter, 29 Ala. 660.

The legislature of *Nebraska* passed an act "That any county or city in the State of *Nebraska* is hereby authorized to issue bonds to *aid* in the construction of any railroad or other work of *internal improvement*, to an amount to be determined by the county commissioners of such county, or the city council of such city, not exceeding ten per cent of the assessed valuation of all taxable property in said county or city, *provided* the county commissioners or city council shall first submit the question of issuing bonds to a vote of the legal voters of said county or city, in the manner provided by chapter ix. of the Revised Statutes of the State of *Nebraska* for submitting to the people of a county the question of borrowing money." Session Laws of 1869, page 92. Under this act, a county and a precinct issued bonds to build a bridge across the Platte River, and on an application by a taxpayer to restrain the collection of taxes levied to pay interest on such bonds, the Supreme Court of *Nebraska*, construing the above act in the light of the legislation of the State, held that a *bridge* was a work of "internal improvement" within the meaning of the statute, and that under the power to *aid*, the county might itself construct the bridge. Union Pacific Railroad Co. *v.* Colfax County, 4 Neb. 450 (1876); s. c. 3 Cent. Law Jour. 287; *infra*, sec. 510, and note.

In *Montana* it is held that the legislature may authorize the creation of county indebtedness for public roads. Wilcox *v.* Deer Lodge Co., 2 Mont. T. 574.

[1] Construction of the *Missouri township* railway aid act of March 23, 1868, and the rights and remedies of the bondholder. Jordan *v.* Cass Co., 3 Dillon C. C. R. 185; Same *v.* Same, *Id.* 245; Washburn *v.* Cass Co., *Id.* 251; Harshman *v.* Bates County, *Id.* 150; 92 U. S. 569 (1875); s. c. 3 Cent. Law Jour. 367, referred to at large, *infra*. Construction of *Kansas* legislation. Thayer *v.* Montgomery Co., 3 Dillon C. C. R. 389, and note.

Precinct bonds, supra, sec. 507, note.

[2] Thus a power to issue bonds of $1000, each bearing interest at six per cent, will not authorize the issue of bonds of a different amount and at a greater rate of interest, as eight per cent. Taxpayers of Milan *v.* Tennessee Central R. R. Co., 11 Lea, 329. A power to subscribe to the stock of a railroad a certain sum "payable in not exceeding four years by annual assessments," and authorizing the issue of bonds in anticipation of the collections, held not to warrant the issue of bonds payable in ten years. Norton *v.* Dyersburg, 127 U. S. 160. In this case it was contended that the town should be held liable as upon non-negotiable bonds or notes, treating the issue of the negotiable bonds as an excess of authority only, and not invalidating the loan as agreed upon. But the court said: "It is a sufficient

counties, under express authority, and usually as a means of aiding the construction of railways; and *by school districts*, under express power, to raise money to erect school-houses. In some of the Western States, counties have been legislatively made the agents for the *inhabitants of non-incorporated townships*, and in Missouri for "strips of territory" to issue bonds in the name of the county, but to be paid out of the property within the specified township or designated territorial limits or strip of country.[1] Reference is made to this subject here in order to observe that where the bonds or securities are issued under an express power, the legislative act, being the only source of the authority, measures and limits the power it confers,[2] and the same principle applies to the instruments issued under

statutory authority by *any* of these classes of corporations, or *quasi* corporations. But in respect to all these corporations and *quasi* corporations, except, possibly, municipal or chartered corporations proper, there is, we suppose, no solid ground to contend that they have any inherent or general power to issue commercial securities, and the true doctrine is that they can only do so by virtue of express legislative authority, which *must* exist in fact and which ought regularly to be recited in the bond. And in respect to municipal or chartered corporations, our opinion, as shown in a preceding section, is that they also have no such inherent power, and no power whatever except so far as conferred expressly or by fair implication. This is an important principle; and it results therefrom that there is no presumption in favor of the power to issue such securities, especially on the part of *quasi* corporations; and it would seem to follow that if the bonds of municipal or public corporations contain no recital as to the authority for their issue or their purpose, there is no presumption in favor of their validity, and it devolves on the holder to aver and show by evidence *aliunde* that the bonds were issued for some purpose authorized by statute. And hence, also, *as a matter of pleading*, the authority or power to issue the bonds in suit ought to appear on the face of the declaration, or by some recital in the bonds made part thereof; that is, it should thus appear that they were issued for some purpose authorized by statute.[1]

answer to this proposition to say that this suit is brought solely for a recovery upon the bonds and coupons, and no question growing out of the liability of the town for the subscription to the stock can be inquired into in this suit."

[1] Thayer *v.* Montgomery Co., 3 Dillon C. C. R. 389, and note; Kennard *v.* Cass County, *Ib.* 147; Nashville *v.* Ray, 19 Wall. 468.

Mode of declaring on bonds and coupons. Kennard *v.* Cass County, 3 Dillon C. C. R. 147, and cases cited in note on p. 150; Thayer *v.* Montgomery County, *supra*. A declaration on bonds against a municipal corporation having no general authority to issue commercial paper, to be sufficient on demurrer, must show, either by averment or in the copies of the bonds annexed, that the defendant had power to issue them. It is not sufficient to allege generally that it had full power and authority to execute the bonds. Hopper *v.* Covington, 118 U. S. 148.

Mode of pleading defences. The plea of the *general issue* in *assumpsit* in States where that mode of pleading is yet allowed, puts in issue the question of the authority of the officers to issue the bonds and the *bona fides* of the plaintiff, but presumptively the plaintiff is a holder for value before maturity, without notice; the contrary must be shown by the defendant. Chambers County *v.* Clews, 21 Wall. 317 (1874); Pendleton County *v.* Amy, 13 Wall. 297. Special plea erroneously held bad considered as amounting to the general issue; and as the erroneous ruling was harmless, the judgment was not reversed. *Ib.* Answer denying that plaintiff is the *owner, holder, or bearer* of the coupons in suit good on general demurrer. Pendleton County *v.* Amy, 13 Wall. 297. *Proof of execution* of bond when denied under oath. Under the legislation of *Alabama, non assumpsit* does not involve the *factum* of the bonds. Chambers County *v.* Clews, 21 Wall. 317 (1874). Corporation may plead *nil debet* and *non est factum*. Grand Chute *v.* Winegar, 15 Wall. 355 (1872). Defence of *non est factum* sustained. Coler *v.* Cleburne, 131 U. S. 162 (1889). Here the statute provided for the issue of bonds by cities, and directed that such bonds *should be signed by the mayor*, and by him forwarded to the Comptroller of the State for registration, and a city, by proper ordinance, authorized the issue of bonds for water-works. The bonds were dated Janurary 1, 1884. The term of the mayor then in office expired in April following, and he was succeeded by a new officer. In July, 1884, the common council, by resolution, requested the ex-mayor, whose name had been engraved on the coupons, to sign the bonds. He did so, adding the word "Mayor" after his signature, and forwarded the bonds to the Comptroller, who duly registered them. In an action upon coupons brought by a *bona fide* holder for value, the Supreme Court of the United States held that as the statute provided for the signing and forwarding of the bonds by the mayor, *the mayor at the time of signing* was the only officer having power to sign and forward them, and that the city could not designate any other person to act in his stead. "*Bona fide* purchasers of municipal bonds must," said the court, "take the risk of the official character of those who execute them." The city is not estopped from defending upon the facts, and these facts established its plea of *non est factum*. This case is controlled by the principle of Anthony *v.* County of Jasper, 101 U. S. 693, and is to be distinguished from Weyauwega *v.* Ayling, 99 U. S. 112, and is held to be analogous to Amy *v.* Watertown, No. 1, 130 U. S. 301.

Remedy at law. A corporation cannot be relieved against its bond in equity if the ground for relief shows a complete defence or an adequate remedy at law. Grand Chute *v.* Winegar (case in equity), 15 Wall. 373.

§ 510. **Bridges as Works of Internal Improvement; Validity of Bonds issued therefor.** — In many States negotiable securities have been issued under statute provisions authorizing *the making of internal improvements*. In a case in the Supreme Court of the United States[1] the question arose as to whether *a toll-bridge was a work of*

[1] Dodge Co. Comm'rs *v.* Chandler, 96 U. S. 205 (1877). *Works of internal improvement defined.* Fremont Building Assoc. *v.* Sherwin, 6 Neb. 48 (1877); Burlington Tp. *v.* Beasley, 94 U. S. 310; Guernsey *v.* Burlington Tp., 4 Dillon, 372 (1877); Lewis *v.* Sherman Co. Comm'rs, 5 Fed. Rep. 269; *ante*, sec. 509, note. In the opinion of the court in The County Comm'rs *v.* Chandler, *supra*, it is said: "In approaching the solution of these questions, the first inquiry that naturally presents itself is, *whether a toll-bridge*, like that referred to, *is a public bridge, and hence a work of internal improvement.* And we can hardly refrain from expressing surprise that there should be any doubt on the subject. What was the bridge built for, if not fit for public use? Certainly not for the mere purpose of spanning the Platte River as an architectural ornament, however beautiful it may be as a work of art; nor for the private use of the common council and their families; nor even for the exclusive use of the citizens of Fremont. All persons, of whatever place, condition, or quality, are entitled to use it as a public thoroughfare for crossing the river. The fact that they are required to pay toll for its use does not affect the question in the slightest degree. Turnpikes are public highways, notwithstanding the exaction of toll for passing on them. Railroads are public highways, and are the only works of internal improvement specially named in the Act; yet no one can travel on them without paying toll. Railroads, turnpikes, bridges, ferries, are all things of public concern, and the right to erect them is a public right. If it be conceded to a private individual or corporation, it is conceded as a public franchise; and the right to take toll is granted as a compensation for erecting the work, and relieving the public treasury from the burden thereof. Those who have such franchises are agents of the public. They have, it is true, a private interest in