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 beuutiful 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

*internal improvement* for which bonds might under the statute legally be issued to aid in building. The court held that "all bridges intended and used as thoroughfares are public highways, whether subject to toll or not, and that county bonds which have been issued under a statute authorizing the issue of such bonds in aid of an internal improvement are valid when given for the building of a bridge which is a thoroughfare, though tolls are charged thereon by the county. Whether the county has the right to demand tolls over a bridge which is a thoroughfare will not affect the validity of county bonds issued to aid in the construction of the bridge."

§ 511. **The Law of Railroad Aid Bonds; the Law on this Subject as developed in the Federal Courts.** — Where the policy of burdening the future has been sanctioned by the legislature, the courts have to deal with the legal rights of the municipality on the one hand and with those of the holders of its obligations on the other. The determination of their legal rights involves inquiries as com-

the tolls; but the works are public and subject to public regulation, and the entire public has the right to use them. These principles are so elementary in the common law that we can hardly open our books without seeing them recognized or illustrated. Of course there may be private bridges as there may be private ways, and they are put in the same category by the text-writers; but all bridges intended and used as thoroughfares are public highways, whether subject to toll or not. Regularly, all public bridges are a county charge, and the county is bound to erect and maintain them; but others may be charged with this duty, and a toll is the commonest of means for obtaining compensation for its performance. In Angell on Highways it is said that public bridges may be divided into three classes: 'First, those which belong to the public, as State, county, or township bridges, over which all people have a right to pass without or with paying toll: these are built by public authority at the public expense, either of the State itself or of a district or portion of the State. Secondly, those which have been built by companies (like turnpike and railroad companies), or at the expense of private individuals, over which all persons have a right to pass on the payment of a toll fixed by law. Thirdly, those which have been built by private individuals, and which have been surrendered or dedicated to the use of the public.' Chancellor *Kent* says, 'The privilege of making a road or establishing a ferry, and taking tolls for the use of the same, is a franchise, and the public have an interest in the same; and the owners of the franchise are answerable in damages if they should refuse to transport an individual without any reasonable excuse, upon being paid or tendered the usual rate of fare.' In the same connection he enumerates in this class of franchises, ferries, bridges, turnpikes, and railroads. In our judgment the bridge in question is a public bridge and a work of internal improvement within the meaning of the statute." In Dawson Co. *v.* McNamar, 10 Neb. 276 (1880); s. c. 4 N. W. R. 991, it was held that under the statute of *Nebraska* a *court-house* is not an internal improvement, and that a recital in the bonds that they were issued under authority of the aforesaid "internal improvement acts" did not invalidate the bonds, inasmuch as there was implied authority found elsewhere in the Act, whose provisions had been substantially observed. *Steam grist-mill* not an internal improvement. *Supra*, sec. 508, note. *Water-power for public grist-mill* is such a work. *Supra*, sec. 508, note.



plicated as they are important. The law on this subject is substantially the growth of the last few years. The decisions in the various State and Federal courts are very numerous, and on some points conflicting.[1] It is impossible, were it even desirable, to

[1] *Ante*, chap. vi. sec. 153 *et seq.* Since the decision of the Supreme Court of *Michigan*, in The People *v.* Township Board of Salem, 20 Mich. 452; s. c. 9 Am. Law Reg. (N. S.) 487, before mentioned (*ante*, sec. 157), the question arose in the United States circuit court for the Western district of *Michigan*, in an action on municipal railway aid bonds, whether the Federal court was *concluded* by the judgment of the Supreme Court of the State, and if not, whether the holder of bonds issued in full compliance with the statute could recover thereon. *Emmons*, Circuit Judge, in an elaborate opinion, holds, as to bonds issued *before* the decision of the Supreme Court of the State, that the Federal courts are not concluded thereby, and that the constitutional power of the legislature to authorize their issue, in the absence of special limitations, must be regarded as settled, at least as respects the Federal tribunals. The opinion displays great research and learning, and will be found reported under the name of Talcott *v.* Township of Pine Grove, vol. i. Bench and Bar (N. S.), 50 (1872). The Supreme Court of *Michigan* adheres to its opinion on this subject in the later case of The People *v.* State Treasurer, 23 Mich. 499. The course of reasoning of *Emmons*, J., in this case is coincident with that of the Supreme Court of the United States in the case of Olcott *v.* Fond du Lac Sup., 16 Wall. 678 (1872). In the case just mentioned the circuit court of the United States, sitting in *Wisconsin*, decided that since the Supreme Court of that State had held a certain act under which the bonds in question were issued to be unconstitutional, and had never holden otherwise, that this construction, though given after the bonds were issued, was binding upon or should be followed by the Federal courts. But the Supreme Court of the United States was of the opinion that, inasmuch as the decision of the State Supreme Court was not based upon any special and peculiar provision of the State Constitution, but upon general principles of law, and related to contracts, the case was not one in which the decision of the State court had any other than a persuasive force; and it reversed the judgment of the circuit court, and held that the bonds could be enforced.

Rights in respect of negotiable bonds, accruing under a construction given by the highest court of the State will not be affected in the Federal court by a subsequent change of decisions in the State court. Anderson *v.* Santa Anna, 116 U. S. 356 (1885). In suits upon negotiable bonds issued *before* any construction of the State laws by the State Supreme Court, the subsequent construction of those laws by such court is not conclusive on the Federal courts. Anderson *v.* Santa Anna, *supra.* A constitutional provision requiring that two-thirds of the qualified voters shall assent requires only two-thirds of those actually voting at the election. Carroll County *v.* Smith, 111 U. S. 556; following St. Joseph Township *v.* Rogers, 16 Wall. 644; County ot Cass *v.* Johnston, 95 U. S. 360 (*ante*, sec. 44, note); disregarding Hawkins *v.* Carroll County, 50 Miss. 735, the bondholders' rights having been acquired before such decision was made. *Post*, secs. 515, 517, and cases, cited.

In Gilchrist *v.* Little Rock, 1 Dillon C. C. R. 261, and in Ranlett *v.* Leavenworth, *Ib.* 263, the circuit court of the United States for the eighth circuit, prior to any decisions of the Supreme Courts of the States of *Arkansas* and *Kansas* as to the constitutional validity of municipal railway aid bonds, declined to pronounce such bonds in the hands of *bona fide* holders to be void for the want of authority in the State legislature to authorize their issue. *History of the well-known Iowa municipal bond cases.* King *v.* Wilson, 1 Dillon C. C. R. 555. The word "aid" as used in the statute of *Nebraska* includes the power to make "donations" to railroads. State *v.* Babcock, 19 Neb. 230.

compass within the limits of a single chapter all the learning, and to refer to all the cases, upon the subject of municipal securities. It will not be attempted. By reason of the greater favor with which the rights of the holders of such securities have been regarded by the Supreme Court of the United States, the volume of municipal bond litigation has of late years taken place in the Federal courts. It is, therefore, necessary to consider the law on this subject as determined by the Supreme Court of the United States; and our object will be to show exactly the doctrines and principles which have received the sanction of that tribunal, and to illustrate, as far as needful, their application in particular instances, referring incidentally or for further illustration to the decisions of the State courts on the subjects or topics discussed. The Supreme Court of the United States has upheld the rights of the holders of municipal securities with a strong hand, and has set a face of flint against repudiation, even when made on legal grounds deemed solid by the State courts, as well as by municipalities which had been deceived and defrauded. That such securities have any general value left is largely due to the course of adjudication in respect thereto by the Supreme Court, and the reliance which is felt by the public that it will stand firmly by the doctrines it has so frequently asserted.[1]

§ 512. **Form of Bond; Condition.** — Municipal bonds, in the usual form, containing words of negotiability, with coupons attached, are absolute, and not conditional, promises to pay, and hence *are negotiable with all the incidents of negotiability.* Such bonds are held to be negotiable notwithstanding they contain such a recital as the following: "This bond is issued for the purpose of subscribing to the capital stock of the Fort Scott and Allen County Railroad, *and for the construction of the same through the said township,* in pursuance of and in accordance with an act of the legislature of the State of Kansas, entitled 'An Act to enable municipal townships to subscribe for stock in any railroad, and to provide for the payment of the same, approved February

[1] "The *Federal courts,* which have with great unanimity sustained the validity of municipal bonds, should hesitate long before accepting the forced and narrow interpretation contended for by the defendant. These solemn obligations, issued to invite the investors of the world, should not be invalidated except for grave and serious infirmities. Even if the question were a doubtful one, a construction should be given to the statute which upholds the bonds, rather than one which turns them to ashes in the hands of the *bona fide* holder." *Coxe,* J., in Rich *v.* Town of Mentz, 18 Fed. Rep. 52. To same effect, Shelley *v.* Charles County, 17 Fed. Rep. 909, per *McCrary,* J.



25, 1870;' and for the payment of the said sum of money and accruing interest thereon, in manner aforesaid, *upon the performance of the said condition,* the faith of the aforesaid Humboldt Township, as also its property, revenue, and resources, is pledged;" the court holding that the construction of the road through the township was not a condition upon which payment was to be made.[1]

[1] Humboldt Township *v.* Long, 92 U. S. 644 (1875); 3 Cent. Law Jour. 494. *Infra,* sec. 513, and note. In giving its judgment, in the case above cited, the court says: "Relying upon this clause of the certificate, the township contends that the construction of the railroad through the township was a condition upon which the payment was agreed to be made. We think, however, this is not the true construction of the contract. The construction of the road as well as the subscription for stock was mentioned in the recital as the reasons why the township entered into the contract, not as conditions upon which its performance was made to depend. It was for the purpose of subscribing, and to aid in the construction of the road, that the bond was given. The words 'upon the performance of the said condition' cannot, then, refer to anything mentioned in the recital, for there is no condition there. A much more reasonable construction is, that they refer to a former part of the bond, where the annual interest is stipulated to be payable at a banker's, 'on the presentation and surrender of the respective interest coupons.' Such presentation and surrender is the only condition mentioned in the instrument. But that stipulation presents no such contingency as destroys the negotiability of the instrument, It is what is always implied in every promissory note or bill of exchange, that it is to be presented, and surrendered when paid. As well might it be said that a note payable on demand is payable upon a contingency, and therefore non-negotiable, as to affirm that one payable on its presentation and surrender is, for that reason, destitute of negotiability." See also, Hotchkiss *v.* Nat. Banks, 21 Wall. 354 (1874). *As to form of bonds, seal, place of payment and delivery,* see cases cited Daniel on Neg. Instr., secs. 1492–1499. Cannot be issued in blank as to date. Jackson Co. Sup. *v.* Brush, 77 Ill. 59 (1875).

Power to *substitute* other bonds. Lynde *v.* Winnebago County, 16 Wall. 6; McKee *v.* Vernon, 3 Dillon C. C. R. 210.

*Coupons; Form of Instrument.* — Maker suable thereon in assumpsit, where the bonds are made by the defendant corporation and refer to the coupon, though the latter, signed by the agents of the corporation, is in the form of an order or check on a bank named therein. Town of Queensbury *v.* Culver, 19 Wall. 83 (1873). Cases as to the form of coupons, see Daniel on Neg. Instr., secs. 1492–1496. May be made payable *beyond limits of the State,* unless specially restrained by statute. Lynde *v.* Winnebago County, 16 Wall. 6. Coupons when severed from the bonds are independent claims and may be sued on as such. Knox Co. Comm'rs *v.* Aspinwall, 21 How. 539, 546. *Supra,* sec. 486, note. Limitations of actions on. Clark *v.* Iowa City, 20 Wall. 583; *supra,* sec. 486, note. When payable to bearer or order are negotiable instruments. *Ib.;* Aurora City *v.* West, 7 Wall. 82; Gelpecke *v.* Dubuque, 1 Wall. 175. Instance where form of coupon was held not to give it a negotiable character. Myers *v.* York, &c. R. R. Co. 43 Me. 282; but *quære,* and see Woods *v.* Lawrence County, 1 Black, 386.

*How signed.* — The coupons, where the bonds are properly signed and sealed, may be *signed by a printed fac-simile* of the maker's autograph, adopted for the purpose, although there is no statute authorizing it. Pennington *v.* Baehr, 48 Cal. 565; s. c. 2 Cent. Law Jour. 92; see McKee *v.* Vernon Co., 3 Dillon C. C. R. 210; Lynde *v.* County, 16 Wall. 6; State *v.* Terrebonne Parish Police Jury 30 La. An. 287; Neeley *v.* Yorkville, 10 S. C. 141. *Mistakes corrected in equity.* Where a town voted to issue railway aid

§ 513. **Such Bonds are Negotiable Securities.** — The *following doctrines are too well settled* to be any longer open to question. A *bona fide* purchaser of negotiable paper for value, before maturity, takes it freed from all infirmities in its origin, unless it is absolutely void for want of power in the maker to issue it, or its circulation is by law prohibited. Municipal bonds, payable to bearer, are subject to the same rules as other negotiable paper.[1] A purchaser of a municipal bond from a *bona fide* holder, who obtained it for value before maturity, takes it free from equities, though he himself may have had notice thereof.[2] An overdue and unpaid coupon for interest, attached to a municipal bond which has several years to run, does not render the bond and the subsequently maturing coupons dishonored paper, so as to subject them, in the hands of an innocent purchaser for value, to defences good against the original holder.[3] A *bona fide* purchaser for value of negotiable

bonds to run 20 years, with the right to pay them in 10 years, and the bonds were printed and issued, by mistake, without the option clause, a proceeding in equity to correct them, brought by the town against holders who had purchased them with full knowledge of the facts, was sustained. Town of Essex *v.* Day, 52 Conn. 483.

[1] Cromwell *v.* Sac Co., 96 U. S. 51 (1877); *ante*, sec. 512; Baes *v.* Hewitt, 20 Wis. 460; Gorgier *v.* Mieville, 3 B. & C. 45; Brooks *v.* Mitchell, 9 M. & W. 15; Goodwin *v.* Robarts, L. R. 1 App. Cas. 476; Goodman *v.* Harvey, 4 A. & E. 870; Burnham *v.* Brown, 23 Me. 400; Oridge *v.* Sherborne, 11 M. & W. 374; United States *v.* Union Pacific R. R. Co., 91 U. S. 72; Miller *v.* Race, 1 Burr. 452; White *v.* V. & M. R. Co., 21 How. 575; Moran *v.* Miami County, 2 Black, 722 (1862); Mercer County *v.* Hacket, 1 Wall. 83; Gelpcke *v.* Dubuque, 1 Wall. 175; San Antonio *v.* Lane, 32 Tex. 405; Lexington *v.* Butler, 14 Wall. 282; St. Joseph *v.* Rogers, 16 Wall. 644 (1872); Humboldt *v.* Long, 92 U. S. 642; Macon Co. *v.* Shores, 97 U. S. 272; Calhoun Co. Sup. *v.* Galbraith, 99 U. S. 214; Comm'rs *v.* Block, 99 U. S. 686; Block *v.* Bourbon Co. Comm'rs, 99 U. S. 686; Marshall Co. Sup. *v.* Schenck, 5 Wall. 784; New Providence *v.* Halsey, 117 U. S. 336; Ottawa *v.* First Nat. Bank of Portsmouth, 105 U. S. 342; Wilson County *v.* Third Nat. Bank of Nashville, 103 U. S. 770; Burleigh *v.* Rochester, 5 Fed. Rep. 667. A municipal bond in the usual form is not rendered non-negotiable by a provision that it should be "payable at the pleasure of the obligor at any time before due." Ackley School District *v.* Hall, 113 U. S. 135 (1884). *Supra*, sec. 512. Bonds *payable on the completion of a railroad* and to bearer only, held not negotiable as being payable on a contingency which might never happen, and for want of certainty as to the payee. Blackman *v.* Lehman, 63 Ala. 547. As to negotiability of *coupons* which are due, detached from municipal bonds not due, see Thompson *v.* Perrine, 106 U. S. 589. An ordinary municipal bond, negotiable in form, is "a promissory note negotiable by the law merchant," within the meaning of the Act of March 3, 1875, which allows instruments of that class to be sued on in the *Federal courts*, by an assignee, notwithstanding the assignor could not have sued thereon in such courts if no assignment had been made. New Providence *v.* Halsey, 117 U. S. 336 (1885); Ackley School District *v.* Hall, 113 U. S. 135. Colorable and collusive transfers to citizen of another State of bonds and coupons will not give the Federal court jurisdiction. Farmington *v.* Pillsbury, 114 U. S. 138.

[2] Cromwell *v.* Sac Co., 96 U. S. 51 (1877). *Ante*, sec. 486.

[3] Cromwell *v.* Sac Co., 96 U. S. 51



securities before their maturity may recover against the maker the full amount of them, though he may have paid for them less than their par value.[1]

§ 514. **Lis Pendens not applicable.** — Another doctrine established in reference to such securities is that the *principle of lis pendens* is not applicable thereto. There may be actions pending regarding the bonds, but this will not affect the purchaser with constructive notice. It is a general rule that all persons dealing with real property are bound to take notice of a suit pending with regard to the title thereof, and will, at their peril, purchase the the same from any of the parties to the suit. But this rule does not apply to negotiable securities purchased before maturity.[2]

§ 515. **Course of Decision in the Supreme Court of the United States.** — In municipal bond cases the Supreme Court of the United States does not hold itself concluded by decisions of the State courts made *after* the bonds have been negotiated, unless possibly where the question is one exclusively depending upon the construction of local and peculiar provisions of the State Constitution or enactments.[3] It has rejected, when necessary to protect

(1877); Goodman *v.* Simonds, 20 How. 343; Murray *v.* Lardner, 2 Wall. 110; Nat. Bank of N. A. *v.* Kirby, 108 Mass. 497.

[1] Cromwell *v.* Sac Co., 96 U. S. 51 (1877); Lay *v.* Wissman, 36 Iowa, 305; Nat. Bank of Mich. *v.* Green, 33 Iowa, 140; Park Bank *v.* Watson, 42 N. Y. 490; Fowler *v.* Strickland, 107 Mass. 552; Stoddard *v.* Kimball, 6 Cush. (Mass.) 469; Allaire *v.* Hartshorne, 1 Zab. (21 N. J. L.) 665; Williams *v.* Smith, 2 Hill (N. Y.), 301; Chicopee Bank *v.* Chapin, 8 Met. (Mass.) 40. As to power of a city or municipality to sell, or to agree to sell, or dispose of its bonds or obligations for less than their par value. Memphis *v.* Brown, 20 Wall. 289 (1873); Shirk *v.* Pulaski County, 4 Dillon, 209 (1877); Mayor of Nashville *v.* Ray, 19 Wall. 468 (1873).

[2] Leitch *v.* Wells, 48 N. Y. 586; Stone *v.* Elliott, 11 Ohio St. 252; Kieffer *v.* Ehler, 18 Pa. St. 388; Durant *v.* Iowa Co., 1 Woolw. 69; Winston *v.* Westfeldt, 22 Ala. 760; Olcott *v.* Supervisors, 16 Wall. 678; National Bank *v.* Texas, 20 Wall. 72; Minns *v.* West, 38 Ga. 18; Warren *v.* Marcy, 97 U. S. 96; Warren *v.* Post, 97 U. S. 110; Warren *v.* Portsmouth Sav. Bank, 97 U. S. 110; Orleans *v.* Platt, 99 U. S. 676; Cass Co. *v.* Gillette, 100 U. S. 585. The pendency of a suit relating to the validity of negotiable paper not yet due is not constructive notice to subsequent holders thereof before maturity; and this rule cannot be changed by State laws or decisions, so as to affect the rights of persons outside the State. Enfield *v.* Jordan, 119 U. S. 680 (1886). Scotland County *v.* Hill, 132 U. S. 107 (1889). Although it is held by the Supreme Court of *Illinois* that a municipal corporation cannot lawfully make its obligations payable at any other place than the office of the treasurer (*ante*, sec. 506, note), yet if thus made payable, it does not affect the validity of the bond, or charge the *bona fide* holder with notice of judicial proceedings between a previous holder and a municipality so as to work an estoppel. Enfield *v.* Jordan, *supra*.

[3] Gelpcke *v.* Dubuque, 1 Wall. 175 (1865); Havemeyer *v.* Iowa County, 3 Wall. 294; Thompson *v.* Lee County, *Ib.* 327; Lee County *v.* Rogers, 7 Wall. 181. See particularly on this point, Olcott *v.* Fond du Lac Sup., 16 Wall. 678 (1872);

the *bona fide* holders of such securities, narrow and rigid constructions of statutes and charters authorizing the creation of such debts.[1]

Butz *v.* Muscatine, 8 Wall. 575, explained; Carroll Co. Sup. *v.* United States, 18 Wall. 71; Chicago *v.* Sheldon, 9 Wall. 50; Pine Grove Tp. *v.* Talcott, 19 Wall. 666; Elmwood *v.* Marcy, 92 U. S. 289 (1875); Anderson *v.* Santa Anna, 116 U. S. 356; Claiborne County *v.* Brooks, 111 U. S. 400; Taylor *v.* Ypsilanti, 105 U. S. 60, following Douglass *v.* County of Pike, 101 U. S. 677, where Chief Justice *Waite* said, "The rights of the parties are to be determined according to the law as it was judicially construed to be *when* the bonds in question were put on the market as commercial paper." New Buffalo *v.* Cambria Iron Co., 105 U. S. 73; Ralls County *v.* Douglass, 105 U. S. 728; Foote *v.* Johnson Co., 5 Dill. 208 (1878); Cass Co. *v.* Johnson, 95 U. S. 360; Cutler *v.* Board, &c., 56 Miss. 115; Vicksburg *v.* Lombard, 51 Miss. 126; *ante*, sec. 511; *post*, sec. 517; Kenosha *v.* Lamson, 9 Wall. 477; Campbell *v.* Kenosha, 5 Wall. 194 (1866). Read last two cases in connection with Foster *v.* Kenosha, 12 Wis. 616, which, in effect, is overruled or disregarded. See on this point Steines *v.* Franklin County, 48 Mo. 167; Columbia County *v.* King, 13 Fla. 451.

In speaking of the *force of the State court decisions* in the Federal courts in this class of cases, Mr. Justice *Strong*, in Venice *v.* Murdock, 92 U. S. 494 (1875), holds this language: "It is argued, however, that the New York decisions (Starin *v.* Genoa; Gould *v.* Sterling, 23 N. Y. 439, 456) are judicial constructions of a statute of that State, and, therefore, that they furnish a rule by which we must be guided. The argument would have force if the decisions, in fact, presented a clear case of statutory construction. But they do not. They are not attempts at interpretation. They would apply as well to the execution of powers or authorities granted by private persons as they do to the issue of bonds under the statute of April 16, 1852. They assert general principles, to wit, that persons empowered to borrow money and give bonds therefor, for the purpose of paying it to an improvement company, are not authorized to deliver the bonds directly to the company, — a doctrine denied in this court, in the Supreme Court of Pennsylvania, and even in the Court of Appeals of New York. People *v.* Mead, 24 N. Y. 124; The Town of Venice *v.* Breed, 65 Barb. 597. They assert, also, that where an authority is given to an officer to execute and issue bonds (on the assent of two-thirds of the voters of a town, the assent to be obtained by the officer, and filed in a public office, with an affidavit verifying the assent), the verification amounts to nothing, subserves no purpose, and that a *bona fide* holder of the bonds is bound to prove that the requisite number of voters did actually assent. They assert this as a general proposition. They do not assert that the statute so declares, or that such is even its implied requisition. There is, therefore, before us no such case of the construction of a State statute by State courts as requires us to yield our own convictions of the right, and blindly follow the lead of others, eminent as we freely concede they are." *Infra*, sec. 517.

Where a railroad company procured negotiable bonds to be issued by a town under a statute, which was afterwards declared unconstitutional, and the railroad sold and transferred them to citizens of another State, who, in an action in the Federal court, fixed the liability of the town for the whole issue, it was held that the town had a good cause of action against the railroad company for the amount of the bonds and interest, on the ground that its act in procuring and negotiating the bonds was without authority of law and wrongful. Town of Plainview *v.* Winona & St. Peter R. R. Co., 36 Minn. 505. The soundness of this conclusion is, perhaps, not so obvious as to prevent reagitation of the question. In State *v.* Holladay, 72 Mo. 499, it was held that where a State court had declared certain bonds issued in aid of a railroad void and the courts of the United States afterwards held them valid, the State court cannot deem them such absolute nullities as not to be the subject of compromise.

[1] Gelpcke *v.* Dubuque, *supra*; Meyer *v.* Muscatine (charter authorizing *borrow-*



Against such holders it has given no favor to defences based upon mere irregularities in the issue of the bonds or upon non-compliance with preliminary requirements, not going to the question of *power* to issue them.[1] It has held that the circuit courts of the United States were clothed with full authority, by *mandamus* or otherwise, to enforce the collection of judgments rendered therein on such bonds, and that this authority could not be interfered with to the injury of the creditor, either by the legislature or the judiciary of the States.[2] It has upheld and protected the rights of such creditors with a firm hand, disregarding, at times, it would seem, or holding to be inapplicable, principles which it applied in other cases, and asserting the jurisdiction and authority of the Federal courts with such striking energy and vigor as apparently, but perhaps not actually, to trench upon the lawful rights of the States and the acknowledged powers of the State tribunals. Upon the whole, however, there is little doubt that its course has had the approval of the profession in general and of the public, and the result ought to teach municipalities the lesson that if, having the power conferred upon them, they issue negotiable securities, they cannot escape payment if these find their way into the hands of innocent purchasers. Unfortunately, as will presently appear, the decisions upon this important subject in the Supreme Court of the nation and those in some of the State courts are not in all respects harmonious.[3]

*ing of money*), 1 Wall. 384; Rogers *v.* Burlington, 3 Wall. 654; Van Hostrup *v.* Madison City, 1 Wall. 291; Seybert *v.* Pittsburg, *Ib.* 272. If the Supreme Court cannot be said to have adopted liberal constructions of statutes authorizing the issue of bonds, it may be indisputably affirmed that it has, in such cases, held the municipality firmly to the practical construction it had put upon the enabling acts.

[1] Knox County *v.* Aspinwall, 21 How. 539; Moran *v.* Comm'rs, 2 Black, 722; Bissell *v.* Jeffersonville, 24 How. 287; Marsh *v.* Fulton County, 10 Wall. 676 (1870); Louisiana *v.* Wood, 102 U. S. 294.

[2] Von Hoffman *v.* Quincy, 4 Wall. 535; Galena *v.* Amy, 5 Wall. 705; Riggs *v.* Johnson County, 6 Wall. 166; Butz *v.* Muscatine, 8 Wall. 575. See, also, *post*, chap. xx. on Mandamus, and cases there cited.

[3] The general questions relating to the *power* to aid railways are considered in a previous chapter. Distinction between municipal "donation" to a railroad company and a municipal "subscription" to its stock. Hamilton County *v.* State, 115 Ind. 64 (1888); s. c. 22 Eng. & Am. Corp. Cases, 108, and note; 15 West. Rep. 329. Reference to decisions construing State statutes authorizing municipal aid to railways, as to requisites of petitions, notice, regularity, and sufficiency of elections, see 22 Eng. & Am. Corp. Cases, 19, note, 47, note, 54, note, 71, note. The United States Circuit Court for the Northern District of Ohio, before *Jackson*, J., in the case of Fellows *v.* Walker, Auditor, 39 Fed. Rep. 651, refused to enjoin the issue of municipal bonds under an act authorizing the issue of such bonds by the city of Toledo to secure *natural gas* for public and private use. The court considered the object authorized by the act to be a public, as distinguished from a private,