§ 516 (416 *a*). **Same subject.** — Under the *line of decision in the several States* heretofore adverted to, sustaining the constitutionality of municipal railway aid bonds,[1] millions upon millions of these securities have been issued by townships, counties, and cities in the different States, and sooner or later their issue has been often followed by attempts to escape payment. The misrepresentations which have oftentimes induced the issue of the bonds, and the disappointment arising from the over-estimated benefits of the railroads to the localities which aided their construction, make the attempts to avoid payment of the bonds not unnatural, and more excusable than they would otherwise be. The judicial history of these attempts is found in the law reports of the different States and in those of the Federal tribunals; and a comparison of their judgments shows such a diversity of opinion upon some important questions connected with such securities as to render it most expedient to refer separately to the decisions of the two classes of courts. It is particularly material to notice with some fulness and care the opinions of the Supreme Court of the United States, since, for the reasons above mentioned, the course of this tribunal and of the State tribunals has been such as to draw to the Federal courts in most of the States nearly all of the litigation arising from this source. Wherein the State courts and the Federal courts differ, and wherein they agree, will best appear by referring to some of the principal adjudications.

§ 517 (416 *b*). **Iowa Muncipal Bond Cases.** — In the well-known *Iowa municipal railway aid bond cases*,[2] the bonds were issued *after* the State Supreme Court had affirmed the constitutional power of the legislature to authorize their issue, and *before* the same court had reversed its holding in this respect; and in these cases the Supreme Court of the United States held it was at liberty to take, and

object, and that no sufficient case of clear and irreparable injury was shown to justify the enjoining of the issue of the bonds. *Ante*, chap. vi. sec. 153 *et seq.*

[1] *Ante*, sec. 153 *et seq.*

[2] Gelpcke *v.* Dubuque, 1 Wall. 175 (1865); Thomson *v.* Lee County, 3 Wall. 327 (1865); Havemeyer *v.* Iowa County, *Ib.* 294; Rogers *v.* Burlington, *Ib.* 654 (1865); Mitchell *v.* Burlington, 4 Wall. 270; *ante*, sec. 516; Lee County *v.* Rogers, 7 Wall. 181 (1868); Butz *v.* Muscatine, 8 Wall. 575. King *v.* Wilson, 1 Dillon C. C. 555 (1871), gives a review of the decisions of the State and Federal courts upon the subject of municipal railway aid bonds in Iowa. That obligations of contracts cannot be impaired by *subsequent decisions*, see, also, Chicago *v.* Sheldon, 9 Wall. 50; City *v.* Lamson, *Ib.* 477 (1869); County of Randolph *v.* Post, 93 U. S. 502; Am. L. Ins. Co. *v.* Bruce, 105 U. S. 328; Pana *v.* Bowler, 107 U. S. 529; Oregon *v.* Jennings, 119 U. S. 74; Concord *v.* Robinson, 121 U. S. 165. The five cases last cited, distinguished in German Sav. Bank *v.* Franklin Co., 128 U. S. 526 (1888); Parmlee *v.* Chicago, 60 Ill. 267 (1871).

it did take, the view which obtained in the highest judicial tribunal of the State at the time the bonds were issued; and hence it adjudged that the bonds were binding upon and enforceable against the municipalities and counties, although the Supreme Court of the State was at the same time holding that, under the Constitution and laws of Iowa, the bonds were utterly void. Subsequently the Supreme Court of the United States went further, and held that such bonds in the hands of innocent holders are valid, although the State Supreme Court had held otherwise, the latter basing its judgment, however, upon the general principles of the law, and not upon any special and peculiar provision of the Constitution of the State.[1] It seems to be the doctrine of the United States Supreme Court upon this subject, that it is not *concluded* by the decisions of the State courts in any case where they are first made *after* the bonds are issued and have been sold in the markets; and such is undoubtedly its doctrine in all cases relating to this class of securities, where the questions involved do not turn upon the construction of peculiar provisions of the State Constitution and laws.[2] It has not decided that it would hold valid bonds issued *after* the Supreme Court of the State had held them to be invalid, and it would not probably so hold, since such a doctrine is not necessary to protect the innocent owners of such securities, and would involve the consequence of the Federal courts setting up a policy in a State contrary to its Constitution and laws as expounded by its authorized and rightful tribunals.[3]

[1] Olcott *v.* Fond du Lac Sup., 16 Wall. 678 (1872); *ante*, sec. 511, note.

[2] *Ante*, sec. 515, and note.

[3] King *v.* Wilson, 1 Dillon C. C. R. 555 (1871); Commercial Bank *v.* Iola, 2 Dillon C. C. R. 353 (1873). See, however, on this subject, Butz *v.* Muscatine, 8 Wall. 575 (1869); Olcott *v.* Fond du Lac Sup., 16 Wall. 578.

Since the text was written the Supreme Court of the United States has distinctly decided, in accordance with the prediction therein, that as to bonds issued after a construction of the State statute by the Supreme Court of the State, such construction is authoritative and binding upon the Federal courts. This subject is fully examined and discussed in German Sav. Bank *v.* Franklin County (Ill.), 128 U. S. 526, 538 (1888). In this case bonds were issued after the Supreme Court of Illinois had construed the act under which they were issued. Referring to this, Mr. Justice *Blatchford*, giving the opinion of the Supreme Court, says: "This interpretation [of the Supreme Court of Illinois] accompanied all bonds subsequently issued into the hands of whoever took them, whether a *bona fide* holder or not. This court must recognize this decision of the Supreme Court of Illinois as an authoritative construction of the statute, made before the bonds [in suit] were issued, and to be followed by this court." Douglass *v.* County of Pike, 101 U. S. 677; Burgess *v.* Seligman, 107 U. S. 20; Green County *v.* Conness, 109 U. S. 104; Anderson *v.* Santa Anna, 116 U. S. 356. In Douglass *v.* County of Pike, *supra*, *Waite*, C. J. (p. 687) says: "After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself." *Ante*, secs. 511, 515, and notes; *post*, sec. 525, note; Scotland County *v.* Hill, 132 U. S. 107 (1889).

§ 518 (416 *c*). **General Result stated.** — As preliminary to a more immediate view of some of the leading cases decided by the Supreme Court of the United States upon municipal railway aid securities, it may be observed that the *general result of its decisions* has been very clearly summarized in one of its judgments relating to bonds of this character. "Bonds, payable to bearer," says the learned justice who delivered the opinion of the court, "issued by a municipal corporation to aid in the construction of a railroad, if issued in pursuance of a power conferred by the legislature, *are valid commercial instruments;* but if issued by such a corporation which possessed *no power* from the legislature to grant such aid, they are invalid, even in the hands of innocent holders. Such a power is frequently conferred *to be exercised in a special manner*, or subject to certain regulations, conditions, or qualifications; but if it appears that the bonds issued show by their *recitals* that the power was exercised in the manner required by the legislature, and that the bonds were issued in conformity with those regulations and pursuant to those conditions and qualifications, proof that any or all of those recitals are incorrect will not constitute a defence to the corporation in a suit on the bonds or coupons, if it appears that it was the sole province of the municipal officers who executed the bonds to decide whether or not there had been an antecedent compliance with the regulation, condition, or qualification which it is alleged was not fulfilled."[1]

It is definitely settled by this court that mere *irregularities* in the exercise of the power will not avail as a defence against an innocent holder for value, and that the only defence open against such a holder is the *want of power to issue the bonds.* Obviously, then, the most important inquiries to be considered are those which relate to the question, *when* the power exists or arises; *who* is to decide whether it existed or had arisen when the bonds were issued; and what will *estop* the corporation which issued them to set up in defence a non-compliance with antecedent or preliminary conditions: and it is these inquiries that we shall seek to illustrate by a reference to the leading decisions of the courts in cases which have arisen for judgment.

§ 519. **Condition precedent to Exercise of Power; Popular Vote; Non-compliance with Condition Precedent; Recital; restraining Issue of Bonds.** — Generally, the power of the municipality, county, or other local civil subdivision of the State, to subscribe for the stock of railway companies, and issue bonds in payment, is conferred upon certain officers, not absolutely but *on the condition of a previous approving popular vote*, or the assent of a majority or of some greater proportion of the resident taxpayers. If this sanction is given, then the officers, by the usual legislation, are authorized to make the subscription and to issue bonds in payment therefor. A very common defence to such bonds consists in a denial that the condition precedent, *i. e.*, the approving vote, the assent of the taxpayers, or whatever else it may be, has, in fact, been complied with; and hence, as contended, the power to issue the bonds did not exist, or never arose.[1]

Where the legislation is of this character, — namely, requiring compliance with some such condition before issuing the bonds, — the Supreme Court of the United States does not hold, as we understand its decisions, that the power can be rightfully exercised unless the condition precedent has been performed. As between the immediate parties, the municipality and the railroad company, doubtless, the inquiry is open, and fully open, whether the condition on which the rightful exercise of the power depends has been complied with; and if it has not been, on due application the issue of the bonds will be enjoined,[2] or if they are in the hands of the original party or of holders with notice, an action to enforce the bonds may, if no estoppel exists, be successfully defended.[3] Want of power is a good defence against a railroad company, endeavoring to enforce by *mandamus* the execution and delivery to it of such bonds by the municipality.[4] In a suit by the payee, or by a person not

[1] St. Joseph Township *v.* Rogers, 16 Wall. 644 (1872), opinion by *Clifford*, J. In general throughout this work the author has not referred at length in the text to particular cases, but the importance of this subject, as well as the impossibility of otherwise presenting it with the requisite fulness and accuracy, has induced him to depart to some extent from his usual course.

[1] Mere informalities in the returns of such an election not prejudicing substantial rights, failing to comply with statutory requirements which are directory only, and clerical errors, will not defeat an appropriation in aid of a railroad. Irwin *v.* Lowe, 89 Ind. 540. Further, as to statutory requirements in respect of municipal bond elections, see State *v.* Harris (Mo.), 23 Eng. & Am. Corp. Cases, 43, 47, note, and cases. In the case of State *v.* Harris, *supra*, the statute of Missouri was construed to require two-thirds of the qualified voters of the county to attend, not merely two-thirds of the votes actually cast. But see *ante*, sec. 44, note, 157, note.

[2] So where a city voted to issue bonds in aid of a railway when the track was laid and the cars running on sections of ten miles each, "provided, the eastern terminus, general offices, and headquarters of said railroad should be in" the city, the court refused a writ of *mandamus* to compel their issue, for the reason that it did not appear that these conditions had been fulfilled. State *v.* Minneapolis, 32 Min. 501.

As to the duty of enjoining the issue of bonds on the pain of being estopped to set up irregularities in the exercise of the power, see *post*, secs. 547, 548.

[3] Chambers County *v.* Clews, 21 Wall. 317, 321 (1874); Madison *v.* Smith, 83 Ind. 502, approving the text.

[4] Lamoille Valley R. Co. *v.* Fairfield, 51 Vt. 257.

an innocent holder, there is no legal ground for maintaining that the action of the local officers in issuing the bonds, or any recital that they may make therein, will conclude the question whether the condition precedent has been performed; and there is no decision of the Supreme Court of the United States in conflict with this statement of the law, but several which distinctly establish it.[1]

§ 520. **Estoppel by Recital to show Non-compliance with Conditions Precedent; Knox County v. Aspinwall.** — When the bonds have been issued and sold in the market, and before maturity have come for value, and without notice, into the hands of innocent holders, another element of great importance is, according to the doctrine of the Supreme Court, introduced into the transaction, as respects compliance with conditions precedent, — *the element of estoppel.* This is so important in its practical relations to the subject as to require careful and minute consideration. Conceding that the rightful exercise of the power to issue the bonds depends upon a condition precedent, for example, a popular vote in favor of the proposition, *when, how, and by whom is it to be ascertained whether the condition precedent has been performed?* Is it to be ascertained, once for all, before the bonds are issued? Or is it open to inquiry and contestation in every action upon a coupon or bond? Is the municipality estopped, in favor of a *bona fide* holder of the bonds, from setting up this defence? and in what cases will the estoppel be available in favor of the holder? These are grave questions, and cases involving them have been frequently before the Supreme Court, — the first and leading case being The Commissioners of Knox County *v.* Aspinwall.[2]

[1] Chambers County *v.* Clews, *supra.* That court has several times adverted to the duty of the corporation or taxpayer to interfere by injunction to restrain the issue of bonds where the statute has not been complied with. *Injunction lies to restrain issue of bonds* where there has been a material departure from the statute. Union Pac. R. Co. *v.* Lincoln County, 3 Dillon C. C. R. 300 (1873); Same *v.* Merrick County, *Ib.* 359; State *v.* Montgomery, 74 Ala. 226; McClure *v.* Oxford Township, 94 U. S. 429; Portland & Oxford Central Railroad Co. *v.* Hartford, 58 Me. 23. "In cases arising *before* the issue of the bonds, estoppel has no place, and the sound doctrine is, that compliance with all substantial or material conditions is essential." *Ib. Ante,* sec. 163, and cases cited.

Where, by statute, the *signature of a particular officer is essential* to the validity of bonds issued in payment of a subscription to railway stock, bonds issued without such signature are not the bonds of the municipality, and recitals in them showing the provisions of the statute and compliance therewith *will not estop* the municipality from denying their validity. Bissell *v.* Spring Valley Township, 110 U. S. 162. Mayor's signature held to be essential; ex-mayor's signature insufficient. Coler *v.* Cleburne, 131 U. S. 162 (1889), noted *ante,* sec. 509, note.

[2] Commissioners of Knox County *v.* Aspinwall, 21 How. 539 (1858). See further reference to this case, *infra,* sec. 524, note.

§ 521 (417). **The Case of the Commissioners of Knox County v. Aspinwall,**[1] respecting the liability of municipal and public corporations on their negotiable railway aid bonds, deserves to be particularly noticed, as it stands in the order of time at the head of the important line of decisions of the Supreme Court on this subject. The action was by a *bona fide* holder for value of certain coupons attached to negotiable bonds issued by Knox County, Indiana, in payment of a subscription to railroad stock. The defence was that the bonds were not binding upon the county because the county commissioners possessed no power to execute them. By statute, the county commissioners were authorized "to take stock in the railroad, payable in county bonds, such as had been issued, *provided a majority of the qualified voters* of said county, at a designated election, *shall vote for the same.*" The ground upon which the want of power to execute the bonds was placed by the county was the omission to comply with the requirement of the statute in respect to the *notices* for the election (which the statute provided should be held on a fixed day), at which a vote was to be taken for and against a subscription to the stock of the railroad company. It was admitted in the case that the notices, such as the statute prescribed, were not given; and the court seemed to concede "that this would be decisive against the authority of the county to issue the bonds, were it not for the question which underlaid it; and that is, Who is to determine whether or not the election has been properly held, and a majority of the votes cast in favor of the subscription? . . . Is it," the court inquires, "to be determined by the court, in this collateral way, in every suit upon the bond, or coupon attached, or by the board of commissioners, as a duty imposed upon it before making the subscription?" The court was of the opinion, and so decided, that the county commissioners were the proper judges whether or not a majority of the votes in the county had been cast in favor of the subscription to the stock, and whether or not the election had been properly held, and that these questions cannot be determined collaterally in an action upon the bonds or coupons, at least when brought by a *bona fide* holder for value. The court, in assigning the reasons for this holding, speaking through Mr. Justice Nelson, say: "The right of the board [of county commissioners] to act in execution of the authority [conferred by the statute] is placed upon the fact that a majority of the votes had been cast in favor of the subscription; and to have acted without first ascertaining it, would have been a clear violation of duty; and the ascertainment of the

[1] 21 How. 539 (1858).

fact was necessarily left to the inquiry and judgment of the board itself, as no other tribunal was provided for the purpose. The board was one, from its organization and general duties, fit and competent to be the depositary of the trust thus confided to it. The persons composing it were elected by the county, and it was already invested with the highest functions concerning its general police and fiscal interests. . . . We do not say," he adds, "that the decision of the board would be conclusive in a direct proceeding to inquire into the facts previously to the execution of the power, and before the rights and interests of third parties had attached; but after the authority has been executed, the stock subscribed, and the bonds issued and in the hands of innocent holders, it would be too late, even in a direct proceeding, to call it in question. Much less can it be called in question to the prejudice of a *bona fide* holder of the bonds in this collateral way." [1]

§ 522 (418). **Comments on Knox v. Aspinwall.** — The author ventures to remark that he believes the decision upon the special facts of the case to be right, and for the reasons thus clearly stated by this able and experienced judge. But as sustaining the decision, a further position by way of argument is taken, which, unless it is to be understood in the limited sense herein suggested, he considers to be untenable, of a most dangerous nature, and subversive of an important principle in the law of agency applicable both to private and public agents. That position is this: that a purchaser of the bonds had a right to assume, from the mere fact that they were issued, that the condition on which the county was authorized to issue them had been complied with, and that a *recital* in the bonds that they were issued in pursuance of the statute amounts to *an estoppel in pais* upon the corporation, of which the officers issuing the bonds were the public agents. That this is the position assumed by the court will appear by the following extract: "Another answer," continues Mr. Justice Nelson, "to this ground of defence is, that the purchaser of the bonds had a right to assume that the vote of the county, which was made a condition to the grant of the power, had been obtained, from the fact of the subscription by the board to the stock of the railroad company and the issuing of the bonds. The bonds, on their face, import a compliance with the law under which they were issued. 'This bond,' we quote, 'is issued in part payment of a subscription of $200,000, by the said Knox County, to the capital stock, &c., by order of the board of

[1] Commissioners of Knox County *v.* Aspinwall, 21 How. 539, 544; *infra*, sec. 524, note.

commissioners, in pursuance of the third section of the act, &c., passed by the general assembly of the State of Indiana, and approved Jan. 15, 1849.' *The purchaser was not bound to look further for evidence of a compliance with the conditions to the grant of the power.*" [1] This principle has been reiterated and this case frequently referred to and followed, and one of the two grounds on which it rests, if not indeed both of them, still has the approval of the court, as will be seen by its subsequent judgments.[2]

[1] *Ib.* 545. If by this it is meant that where the power to issue bonds is given upon the condition of a previous majority vote in favor of the proposition, the public or municipal officers can, where in point of fact *no vote has been taken or the proposition has been voted down*, bind the county by the issue of bonds with false recitals therein, the author feels bound respectfully to insist that, in his judgment, the principle is unsound, and certainly it is one which will entail needless and incalculable injury upon public and municipal corporations. These securities, it is true, are intended to be sold in distant markets, and therefore it cannot reasonably be required that purchasers shall be affected with irregularities, but they ought to be held to ascertain whether the substantial precedent conditions of the power have been, in fact, complied with, and it ought not to be in the power of public officers, unless the decision of this question is by statute expressly or at least plainly committed to them, to bind the corporation for which they act by their mere statements of what is in point of fact untrue.

On grounds similar to those here suggested it has been held by the Supreme Court of *Missouri* that bonds issued where an election is required, but none ever held and no vote taken, are void, because of want of power to issue them, — void in the hands of all persons; but they may be validated by the legislature. Steines *v.* Franklin County, 48 Mo. 167 (1871). *Wagner*, J., in this case reviews the prior adjudications of the United States Supreme Court and of the Supreme Court of the State of *Missouri*, and limits the language used by the judges to the facts before them, and distinguishes between the case of irregularities in an election and no election whatever. See, also, Carpenter *v.* Lathrop, 51 Mo. 483 (1873). But see text, sec. 524, and cases cited in the next note.

[2] The cases in which Knox County Comm'rs *v.* Aspinwall has been cited and followed or applied, are: Bissell *v.* Jeffersonville, 24 How. 287 (1860); Woods *v.* Lawrence County, 1 Black, 386 (1861); Moran *v.* Miami County, 2 Black, 722, 724 (1862); Mercer County *v.* Hacket, 1 Wall. 83 (1863); Gelpcke *v.* Dubuque, *Ib.* 175, 203; Van Hostrup *v.* Madison, *Ib.* 291; Meyer *v.* Muscatine, *Ib.* 384, 393; Cincinnati *v.* Morgan, 3 Wall. 275; Rogers *v.* Burlington, *Ib.* 654; Marshall County Sup. *v.* Schenck, 5 Wall. 772 (1866); Lexington *v.* Butler, 14 Wall. 284 (1871); Grand Chute *v.* Winegar, 15 Wall. 371 (1872); Lynde *v.* Winnebago County, 16 Wall. 6; Kenicott *v.* Jefferson County Sup., *Ib.* 452; St. Joseph Tp. *v.* Rogers, *Ib.* 644; Pendleton County *v.* Amy, 18 Wall. 297; Coloma *v.* Eaves, 92 U. S. 484 (1875); Venice *v.* Murdock, *Ib.* 494; Moultrie *v.* Rockingham T. C. Sav. Bank, *Ib.* 631; Marcy *v.* Oswego Tp., *Ib.* 637; Humboldt Tp. *v.* Long, *Ib.* 642; Randolph County *v.* Post, 93 U. S. 502; Callaway County *v.* Foster, *Ib.* 567; Leavenworth County *v.* Barnes, 94 U. S. 70; Douglas County Comm'rs *v.* Bolles, *Ib.* 104; Johnson County Comm'rs *v.* January, *Ib.* 202; Same *v.* Thayer, *Ib.* 631; Scotland County *v.* Thomas, *Ib.* 682; East Lincoln *v.* Davenport, *Ib.* 801; Cass County *v.* Johnston, 95 U. S. 360; San Antonio *v.* Mehaffy, 96 U. S. 312; Same *v.* Barnes, *Ib.* 316; Warren County *v.* Marcy, 97 U. S. 96; Macon County *v.* Shores, *Ib.* 272; Nauvoo *v.* Ritter, *Ib.* 389; Daviess County *v.* Huidekoper, 98 U. S. 98; Schuyler County *v.* Thomas, *Ib.* 169; Hackett *v.* Ottawa, 99 U. S. 86; Weyauwega *v.* Ayling, *Ib.* 112; Calhoun

§ 523. **Author's Statement of Rule.** — Notwithstanding *the broad language in some of the opinions*, to the effect that where under any

County Sup. *v.* Galbraith, *Ib.* 214; Wilson *v.* Salamanca, *Ib.* 499; Orleans *v.* Platt, *Ib.* 676 (citing among other cases Royal British Bank *v.* Turquand, 6 El. & Bl. 325); Lyons *v.* Munson, 99 U. S. 684; Anthony *v.* Jasper County, 101 U. S. 693; Roberts *v.* Bolles, *Ib.* 119; Pompton *v.* Cooper Union, *Ib.* 196; Douglass *v.* Pike County, *Ib.* 677; Darlington *v.* Jackson County, *Ib.* 688; Foote *v.* Pike County, *Ib.* 688; Menasha *v.* Hazard, 102 U. S. 81; Ottawa *v.* Portsmouth Nat. Bank, 105 U. S. 342; Northern Bank *v.* Porter Tp., 110 U. S. 608 (1883); Cary *v.* Ottawa, 8 Fed. R. 199; Third Nat. Bank of Syracuse *v.* Seneca Falls, 15 Fed. R. 783 (1883); Nicolay *v.* St. Clair County, 3 Dillon, C. C. 163 (1874); Huidekoper *v.* Buchanan County, *Ib.* 175; Mygatt *v.* Green Bay, 1 Biss. C. C. 292; Smith *v.* Clark County, 54 Mo. 58, 81; St. Louis *v.* Shields, 62 Mo. 247; Wilkinson *v.* Peru, 61 Ind. 1; Black *v.* Cohen and Shorter *v.* Rome, 52 Ga. 621 (1874); Webb *v.* Herne Bay Comm'rs, L. R. 5 Q. B. 642; *In re* Imperial Land Co. of Marseilles, L. R. 11 Eq. 478; Bargate *v.* Shortridge, 5 Cl. H. L. C. 297; and a certificate of the proper officer that the bonds have been duly issued and the signatures are genuine, and that the same have been duly registered in his office according to law, cannot be contradicted by evidence that there was actually no registration in his office. Rock Creek Tp. *v.* Strong, 96 U. S. 271.

Estoppel to set up irregularities in issue of bonds by reason of the subsequent *payment of interest.* Marshall County Sup. *v.* Schenck, 5 Wall. 772; compare Marsh *v.* Fulton Co., 10 Wall. 676; Eminence *v.* Grasser's Exrs., 81 Ky. 52; Aroma *v.* Auditor, 15 Fed. Rep. 843; Oswego First Nat. Bank *v.* Walcott, 7 Fed. Rep. 892; Whiting *v.* Potter, 2 Fed. Rep. 517; Parkersburg *v.* Brown, 106 U. S. 487; see also Portsmouth Sav. Bank *v.* Springfield, 4 Fed. Rep. 276.

Estoppel by former final judgment on demurrer: Where, in an action upon coupons from bonds issued in aid of a railway, a final judgment in favor of the municipality was entered upon plaintiff's demurrer to its answer setting up facts showing that the bonds were *never executed by it*, the plaintiff was held to be estopped to deny the matters so determined when suing the same municipality upon other coupons from the same bonds subsequently maturing. Bissell *v.* Spring Valley Township, 124 U. S. 225; compare Cromwell *v.* Sac County, 96 U. S. 51. The former action of Bissell on *other coupons* of the *same issue of bonds* is reported in 110 U. S. 162. After the opinion of the Supreme Court in the case of the same plaintiff (reported 124 U. S. 25) had been printed, and during the term, the author, having been employed as counsel for the plaintiff, filed a petition and argument for a rehearing of the opinion holding the judgment in the former action to be an estoppel. He urged, upon an examination of the pleading in the first record, (*a*) that it was *not* adjudged therein that the bonds were never signed by the proper officer, but that it was only adjudged that if the bonds were registered and purchased by the plaintiff, as alleged in his petition, this is in law no answer to the plea that the clerk did not sign the bonds or authorize any one else to sign them for him; (*b*) that the adjudication in the first suit is no bar to a suit upon *other* coupons when the plaintiff proposes to establish as a fact for the first time that the clerk, being ill, did authorize the bonds to be signed in his name by his brother, who was also his deputy, and that they were signed accordingly. The petition for a rehearing was overruled, and no further opinion was filed. The importance and difficulty of the question seem to justify this further statement concerning the cause which does not appear in the reports. The extent to which the doctrine of estoppel is *seemingly* carried in this case, the author suggests with deference, goes beyond the line of the principle of previous adjudications in the same court, and to an extent which deserves further consideration as to its soundness.

Estoppel by retaining *proceeds of bonds.* Pendleton County *v.* Amy, 13 Wall. 297 (1871). *Post*, sec. 547.

circumstances the *power* exists in the corporation to issue negotiable securities, the *bona fide* holder has the right to presume that they were duly issued, yet when the *facts* of the cases in which such language is used are considered, we are unable, after a careful review of the decisions of the Supreme Court, to say that they lay down the doctrine that *merely* by recital in the bonds the corporation will, under all circumstances, in favor of an innocent holder, be estopped from showing that in point of fact no election whatever was holden, or that any other condition precedent to the exercise of the power has not been complied with. If upon a true construction of the legislative enactment conferring the authority, the corporation or certain officers, or a given body or tribunal, are invested with power to decide whether the condition precedent has been complied with, then it may well be that their recital of their determination of a matter *in pais* which they are authorized to decide will, in favor of the bondholder for value, bind the corporation.[1]

§ 524. **Qualification of last Section by the Supreme Court.** — "This," says Mr. Justice Strong, in Coloma *v.* Evans, referring to the language of the author in the last preceding section, "is a very cautious statement of the doctrine" of the Supreme Court. And he adds, "It may be re-stated in a slightly different form. Where legislative authority has been given to a municipality, or to its officers, to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with power to decide

[1] The language in this section stands as in a previous edition; but it must now be regarded as authoritatively qualified by the judgment of the Supreme Court of the United States, referred to in section 524. See Oregon *v.* Jennings, 119 U. S. 74, where Mr. Justice *Blatchford* said, "The supervisor and town clerk . . . were the persons entrusted with the duty of deciding, before issuing the bonds, whether the conditions determined at the election existed. If they have certified to that effect in the bonds, the town is estopped from asserting, as against a *bona fide* holder, that the conditions prescribed by the popular vote were not complied with." In this case the terms of the vote were that the bonds should not be issued and the vote should be void unless the road should be completed by a specified day, and the bonds specially recited that it was so completed, though the fact was otherwise. Oregon *v.* Jennings was distinguished in German Savings Bank *v.* Franklin County, 128 U. S. 526, 543 (1888).

That bonds recite, as the authority for the issue, *a wrong act of the legislature*, does not necessarily invalidate them, if it can be shown that they were in fact issued under an act conferring the power. Anderson Co. Comm'rs *v.* Beal, 113 U. S. 227; Johnson Co. Comm'rs *v.* January, 94 U. S. 202, distinguished; Crow *v.* Oxford, 119 U. S. 215 (1886).