§ 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).

whether the condition precedent has been complied with, their recital that it has been, made in the bonds issued by them and held by a *bona fide* purchaser, is conclusive of the fact and binding upon the municipality, for the recital is itself a decision of the fact by the appointed tribunal.[1] In Bissell *v.* Jeffersonville, it appeared that the common council of the city were authorized by the legislature to subscribe for stock in a railroad company, and to issue bonds for the subscription, on the *petition of three-fourths of the legal voters of the city.* The council adopted a resolution to subscribe, reciting in the preamble that more than three-fourths of the legal voters had petitioned for it, and authorized the mayor and city clerk to sign and deliver bonds for the sum subscribed. The bonds recited that they were issued by authority of the common council, and that three-fourths of the legal voters had petitioned for the same, as required by the charter. In a suit subsequently brought by an innocent holder for value, to recover the amount of unpaid coupons for interest, it was held inadmissible for the defendants to show that three-fourths of the legal voters of the city had not signed the petition for the stock subscription. A similar ruling was made in Van Hostrup *v.* Madison City, and in Mercer County *v.* Hacket. The same principle has recently been asserted in this court, after very grave consideration, and it must be considered as settled. In St. Joseph Township *v.* Rogers, it is stated thus: 'Power to issue bonds to aid in the construction of a railroad is frequently conferred upon a municipality in a special manner, or subject to certain regulations, conditions, or qualifications; but if it appears by their recitals that the bonds were issued in conformity with such regulations and pursuant to such conditions and qualifications, proof that any or all these recitals were incorrect will not constitute a defence for 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.' There

[1] The proposition here stated has been re-asserted and applied in subsequent cases. Anderson County *v.* Beal, 113 U. S. 227; Dixon County *v.* Field, 111 U. S. 83; Northern Bank of Toledo *v.* Porter Tp., 110 U. S. 608; Buchanan *v.* Litchfield, 102 U. S. 278; Lane *v.* Embden, 72 Me. 354; Anderson Co. *v.* Houston & G. N. R. R. Co., 52 Tex. 228; Carrier *v.* Shawangunk, 10 Fed. Rep. 220; Hopper *v.* Covington, 8 Fed. Rep. 777; Irwin *v.* Town of Ontario, 3 Fed. Rep. 49; Phelps *v.* Lewiston, 15 Blatchf. 131. On the other hand a recital of facts which the officers had no authority to determine, or a recital of matters of law, will not estop the municipal corporation. Dixon County *v.* Field, 111 U. S. 83; see this case, *post*, sec. 529 *a*, note.

is nothing in the case of Marsh *v.* Fulton County at all inconsistent with the rule thus asserted. In that case *there were no recitals* in the bonds, and there was no decision that the conditions precedent to a subscription, or to the gift of authority to subscribe, had been performed. The question was, therefore, open. What we have said disposes of the present case without the necessity of particular consideration of the matters urged in the argument of the defendant below. It was inadmissible to show what was attempted to be shown; and even if it had been admissible, the effort to assimilate the case to Marsh *v.* Fulton County would fail. There the subscription was for the stock of a different corporation from that for which the people had voted." [1]

[1] Town of Coloma *v.* Eaves, 92 U. S. 484. In this case, legislative authority was given to the town to make the subscription and issue the bonds on the previous sanction of a popular vote, to be ascertained, as the court construed the enactment, by the officers of the town, who were empowered to execute the bonds. The bonds were executed in due form by the proper officers, and duly registered with the auditor of State. They contained the *recital* that they "*are issued under and by virtue of the act incorporating the railroad company,*" approved March 24, 1869, "*and in accordance with the vote of the electors of said township of Coloma, at a regular election held July* 28, 1869, *in accordance with said law.*"

The scope and effect of the doctrine of the court are shown by the brief separate opinion in the case, given by Mr. Justice *Bradley*, who says: —

"I dissent from the opinion of the court in this case, so far as it may be construed to reaffirm the first point asserted in the case of Knox County *v.* Aspinwall, to wit, that the mere execution of a bond by officers charged with the duty of ascertaining whether a condition precedent has been performed is conclusive proof of its performance. If, when the law requires a vote of taxpayers before bonds can be issued, the supervisor of a township, or the judge of probate of a county, or other officer or magistrate, is the officer designated to ascertain whether such vote has been given, and is also the proper officer to execute and who does execute the bonds; and if the bonds themselves contain a statement or recital that such vote has been given, then the *bona fide* purchaser of the bonds need go back no further. He has a right to rely on the statement as a determination of the question. But a mere execution and issue of the bonds without such recital is not, in my judgment, conclusive. It may be *prima facie* sufficient; but the contrary may be shown. This seems to me to be the true distinction to be taken on this subject, and I do not think that the contrary has ever been decided by this court. There have been various *dicta* to the contrary, but the cases, when carefully examined, will be found to have had all the prerequisites necessary to sustain the bonds, according to my view of the case. This view was distinctly announced by this court in the case of Lynde *v.* The County of Winnebago, 16 Wall. 6. In the case now under consideration, there is a sufficient recital in the bond to show that the proper election was held and the proper vote given; and the bond was executed by the officers whose duty it was to ascertain these facts. On this ground, and this alone, I concur in the judgment of the court."

In the same case Mr. Justice *Strong*, in the main opinion, after resting the judgment on the principle stated in the text (sec. 524), makes this reference to the case of Knox County *v.* Aspinwall: —

"Indeed, some of our decisions have gone farther. In the leading case of Knox County *v.* Aspinwall, 21 How. 544, the decision was rested upon two grounds. One of them was that the mere issue of

§ 525. **Estoppel by Recital; Failure to give Notice of Election, or Notice for the Required Time.** — As showing the application and effect of the doctrine stated in the preceding sections as to compliance with conditions precedent, — particularly in respect of the very common one of a previous election, or the assent of a given proportion of the taxpayers, — a brief reference may be made to some of the leading decisions of the Supreme Court, in which it is evident that the whole subject again underwent thorough consideration. In Humboldt Township *v.* Long, bonds issued under legislative authority, requiring a popular vote at an election of which thirty days' notice was to be given, and which contained a recital (made by the officers having the power, *as construed*, to determine whether the conditions of fact had been complied with, and to issue the bonds) to the effect that they were "issued *in pursuance of and in accordance* with the act of the legislature," stating

the bonds, containing a recital that they were issued under and in pursuance of the legislative act, was a sufficient basis for an assumption by the purchaser that the conditions on which the county (in that case) was authorized to issue them had been complied with, and it was said the purchaser was not bound to look farther for evidence of such compliance, though the recital did not affirm it. This position was supported by reference to The Royal British Bank *v.* Turquand, 6 Ellis & Blackburn, 327, a case in the Exchequer Chamber which fully sustains it, and the decision in which was concurred in by all the judges. This position taken in Knox County *v.* Aspinwall has been more than once reaffirmed in this court. It was in Moran *v.* Miami County, 2 Black, 732; in Mercer County *v.* Hacket, 1 Wall. 83; in Supervisors *v.* Schenck, 5 Wall. 784, and in Meyer *v.* Muscatine, 1 Wall. 384. It has never been overruled, and whatever doubts may have been suggested respecting its correctness to the full extent to which it has sometimes been announced, there should be no doubt of the entire correctness of the other rule asserted in Knox County *v.* Aspinwall. That, we think, has been so firmly seated in reason and authority that it cannot be shaken."

In further explanation we may add that the *recital* in Knox County *v.* Aspinwall was in these words: "This bond 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 commissioners, *in pursuance* of the third section of the act, &c., approved January 15, 1849." The act required the previous sanction of a majority of the qualified voters of the county, and the defence was failure to comply with the statute in respect to the *notices* for the election. And the proposition which has been doubted elsewhere, and from which Mr. Justice *Bradley* dissents, is contained in the following sentence, extracted from the opinion of Mr. Justice *Nelson* in that case, who, after quoting the foregoing recital in the bond (which, it will be seen, does not *expressly* state that there was an election), says: "The purchaser was not bound to look further for evidence of a compliance with the conditions to the grant of the power." In Moran *v.* Miami County, 2 Black, 722, 732, the court say: "We think and adjudge that the recitals in the bonds are conclusive [of compliance with the precedent condition], constituting an estoppel *in pais* upon the defendants in this suit." Other cases to the same effect in the Supreme Court will be adverted to as we proceed. In Marcy *v.* Oswego Township, 92 U. S. 638 (1875), the doctrine as contained in the text (sec. 524), was reasserted almost in the same language.

it, were held not to be invalid in the hands of a holder for value, before due, without notice, *because the election was held within less than thirty days* after the date of the order providing for it.[1] The principle adopted, and the reasoning of the court by which it is sustained, lead, it would seem, logically to the conclusion (although there is, perhaps, no case in the Supreme Court where the *facts* required a direct decision of the point) that, where the power to issue the bonds is given upon the condition of a previous vote in favor of the proposition, the public or municipal officers can, *where no vote whatever has been taken, or the proposition has been voted down*, bind the county or municipality by the *false recitals* in such unauthorized bonds, provided they are issued by the officers entrusted by the statute with the power. Under such a doctrine, limitations upon the exercise of the power, intended to prevent fraud, and to secure a compliance with the conditions upon which the bonds are authorized, are of little practical value, and will frequently prove illusory. So, in Coloma *v.* Eaves, *supra*,[2] — a case

[1] Humboldt Township *v.* Long, 92 U. S. 642. The court thus state the ground of its decision: "The board of county commissioners, who caused the bonds to be issued, were constituted the authority to determine whether the conditions of fact, made by the statute precedent to the exercise of the authority granted to execute and issue the bonds, had been performed, and their recital in the bonds issued by them is conclusive in a suit against the township brought by a *bona fide* holder." (So held, also, in Marcy *v.* Township of Oswego, 92 U. S. 638.) "In so ruling we but decided what had often before been decided, and what ought to be regarded as a fixed rule. Applying it to the solution of the question now before us, it is plain that the bonds are not invalid because *all the notice* of the popular election was not given which the legislative act directed. The election was a step in the process of execution of the power granted to issue bonds in payment of a municipal subscription to the stock of a railroad company. It did not itself confer the power. Whether that step had been taken or not, and whether the election had been regularly conducted, with sufficient notice, and whether the requisite majority of votes had been cast in favor of a subscription, and consequent bond issue, were questions which the law submitted to the board of county commissioners, and which it was necessary for them to answer before they could act. In the present case the board passed upon them and issued the bonds, asserting by the recitals that they were issued 'in pursuance of and in accordance with the act of the legislature.' Thus the plaintiff below took them, without knowledge of any irregularities in the process through which the legislative authority was exercised, and relying upon the assurance given by the board that the bonds had been issued in accordance with the law. In his hands, therefore, they are valid instruments." See Town of Elmwood *v.* Marcy, 92 U. S. 289 (1875); St. Joseph Township *v.* Rogers, 16 Wall. 644 (1872); Anderson Co. Comm'rs *v.* Beal, 113 U. S. 227; Lincoln *v.* Cambria Iron Co., 103 U. S. 412; American L. Ins. Co. *v.* Bruce, 105 U. S. 328, distinguished in later case of German Sav. Bank *v.* Franklin County, 128 U. S. 526, 541 (1888). *Ante*, sec. 517, note.

[2] 92 U. S. 484; followed in Pana *v.* Bowler, 107 U. S. 529; last case distinguished in German Sav. Bank *v.* Franklin County, 128 U. S. 526. See Rouede *v.* Jersey City, 18 Fed. Rep. 719.

from Illinois, — where the local officers of the town were empowered by the statute to issue bonds, provided a majority of the voters of the town voted for the subscription, — which fact, the statute provided, shall appear by the statement of the town-clerk, filed with the county clerk, showing the vote given, the amount voted, and the rate of interest; it was held, in favor of a *bona fide* owner of the bonds issued containing a recital of an election, that such an owner need not look beyond the recitals made in the bonds by the local officers authorized to issue them for evidence of the existence of the facts *in pais* thus recited, the decision and declaration of that decision in the bonds being conclusive upon the town. The court said: "After all, this is not an open question, as between a *bona fide* holder of the bonds and the township, whether all the prerequisites to their issue have been complied with. Apart from and beyond the reasonable presumption that the officers of the law, the township officers, discharged their duty, the matter has passed into judgment. The persons appointed to decide whether the necessary prerequisites to their issue had been completed have decided and certified their decision. They have declared the contingency to have happened on the occurrence of which the authority to issue the bonds was complete. Their recitals are such a decision, and beyond those a *bona fide* purchaser is not bound to look for evidence of the existence of things *in pais*. He is bound to know the law conferring upon the municipality power to give the bonds on the happening of a contingency, but whether that has happened or not is a question of fact, the decision of which is by the law confided to others, to those most competent to decide it, and which the purchaser is, in general, in no condition to decide for himself." The Supreme Court, while asserting its adherence to the previous decisions on this subject, has declared its unwillingness to enlarge or extend them.[1]

[1] Recitals by officers invested with authority to determine whether precedent conditions have been performed, that the bonds have been issued "*in pursuance of*," or "*in conformity with*," or "*by virtue of*," or "*by authority of*," the statute, have been held, in favor of *bona fide* purchasers for value, to import full compliance with the statute, and to preclude inquiry as to whether the precedent conditions have been performed before the bonds were issued. "But in all such cases, as a careful examination will show, the recitals fairly imported a compliance, in all substantial respects, with the statute giving authority to issue the bonds. We are unwilling to enlarge or extend the rule, now established by numerous decisions." Mr. Justice *Harlan*, School District *v.* Stone, 106 U. S. 183; see also Moulton *v.* Evansville, 25 Fed. Rep. 382. A recital that bonds are issued "*under*" the provisions of a certain statute simply asserts that they are subject to or controlled by the statute, and puts a purchaser upon notice to acquaint himself with its provisions and limitations. In this case the municipality was held not to be estopped from showing that the bonds were void for conflicting with a constitutional provision limiting municipal indebtedness, which was also contained in the statute. Bates *v.* Independent School District, 25 Fed. Rep. 192. As to effect of the constitutional provision in such case, see *infra*, sec. 529 *a*. A recital that bonds were issued "in pursuance of law" was held not to estop the town from showing that it did not have a population large enough to be within the terms of a certain act, it not appearing that the officers issuing the bonds were required by law to ascertain the population. Kelly *v.* Town of Milan, 21 Fed. Rep. 842; but compare with School District *v.* Stone, *supra*. Where bonds are issued under proper authority, with recitals showing that they conformed to the requirements of the statutes authorizing their issue, and that the city was liable for them, the city is estopped as against an innocent holder for value from showing that it had imposed conditions upon its liability, even when the statute provided for conditions, and that the bonds should not be binding until the conditions were performed. Am. L. Ins. Co. *v.* Bruce, 105 U. S. 328. But this case, on the ground that its recital of compliance with the statute was specific, and on the further ground that the bonds were issued prior to the decision of the Supreme Court of the State adversely construing the statute, was distinguished in German Sav. Bank *v.* Franklin County, 128 U. S. 526, 541 (1888).

[1] Venice *v.* Murdock, 92 U. S. 494 (1875); Rock Creek Tp. *v.* Strong, 96 U. S. 271; Mobile Sav. Bank *v.* Oktibbeha Co. Sup., 24 Fed. Rep. 110; McCall *v.* Hancock, 10 Fed. Rep. 8; Montclair *v.* Ramsdell, 107 U. S. 147 (deciding also that a holder of bonds is presumed to have acquired them for value and in good faith; and that when in a suit upon them it is necessary for him to show that value was paid, his title will be sustained if he proves that any previous holder paid value). In The People *v.* Mead, 36 N. Y. 224 (1867), the decision in Starin *v.* Genoa and Gould *v.* Sterling, referred to in the text, was adhered to by the Court of Appeals of New York, although the court admitted it was contrary to the decisions of the Supreme Court of the United States as to the evidence of the assent of the taxpayers. In Venice *v.* Murdock, *supra*, Mr. Justice *Strong*, speaking of Starin *v.* Genoa and Gould *v.* Sterling, says: "These decisions are in conflict with the rulings of this court in Bissell *v.* Jeffersonville, 24 How.

§ 526. **Condition Precedent; Onus Probandi; Estoppel by Recital.** — In another important case, it appeared that legislative authority was given to certain officers of a town to borrow money to aid the building of a railway, and to issue bonds therefor, *provided the written assent of two-thirds of the resident taxpayers* should be previously obtained by said town officers, and filed in the county clerk's office, with an affidavit of such officers verifying such assent. A list of assenting taxpayers was filed in the clerk's office, and also the required affidavit; bonds were issued, and were in the hands of a holder for value: on the trial the question arose whether the plaintiff must prove the signatures to the assent to be genuine, and it was held by the Supreme Court of the United States, denying Starin *v.* Genoa, and Gould *v.* Sterling, cited in the note, that no such *onus* rested on him; that the town officers were created a tribunal to determine whether two-thirds of the resident taxpayers had assented, and that on their decision the purchaser might rely, without looking further; and that the town was concluded, in favor of an innocent holder, from denying that the condition precedent had been performed.[1]

§ 527. **Estoppel by Recital to set up Defence of an Over-issue contrary to the Enabling Act.** — Among the limitations, or attempted limitations, upon the exercise of the power to issue

287 ; Knox County *v.* Aspinwall, 21 How. 539 ; Mercer County *v.* Hacket, 1 Wall. 83, and other cases which we have cited. They are in conflict also with decisions in other State courts. Society for Savings *v.* New London, 29 Conn. 174 ; Evanville, I. & C. S. L. R. Co. *v.* Evansville, 15 Ind. 395 ; Knox County Commissioners *v.* Nichols, 14 Ohio St. 260. We have carefully considered the reasons given for the judgments in the *New York* cases, without being convinced by them. They ignore the paramount purpose for which the bonds were authorized by the legislature, and they treat the written assent of the taxables as the authority to the township officers, when, in fact, the power was given by the legislature, and it was only left to the town to determine by the action of two-thirds of the resident taxables whether the supervisors and commissioners might act under the power. In Gould *v.* Sterling the legislative act required no affidavit to be filed with a statement of the assenting taxpayers, and in Starin *v.* Genoa the affidavit filed was regarded as merely verifying that the persons whose names appeared on the assents comprised two-thirds of all the resident taxpayers. But it is obvious that if no more than this was meant by the required affidavit, it was wholly useless, for the assessment rolls of the township would have shown as much." The case, Venice *v.* Murdock, is so important in overturning, so far as the Federal courts are concerned, the judgment of the Court of Appeals of *New York*, and as respects the proposition it establishes, that we reproduce the additional reasons given by the Supreme Court in support of its judgment. "It is very obvious," says *Strong*, J., "that if the act of the legislature which authorized an issue of bonds in aid of the construction of the railroad on the written assent of two-thirds of the resident taxpayers of the town, intended that the holder of the bonds should be under obligation to prove by parol evidence that each case of the two hundred and fifty-nine names signed to the written assent was a genuine signature of the person who bore the name, the proffered aid to the railroad company was a delusion. No sane person would have bought a bond with such an obligation resting upon him whenever he called for payment of principal or interest. If such was the duty of the holder, it was always his duty. It could not be performed once for all. The bonds retained in the hands of the company would have been no help in the construction of the road. It was only because they could be sold that they were valuable. Only thus could they be applied to the construction. Yet it is not to be doubted the legislature had in view and intended to give substantial aid to the railroad company, if a sufficient number of the taxpayers assented. They must have contemplated that the bonds would be offered for sale, and it is not to be believed they intended to impose such a clog upon their salableness as would rest upon it if every person proposing to purchase was required to inquire of each one whose name appeared to the assent whether he had in fact signed it." In later cases the Court of Appeals adheres to its position. Cagwin *v.* Town of Hancock, 84 N. Y. 532 ; Town of Lyons *v.* Chamberlain, 89 N. Y. 578 ; Craig *v.* Town of Andes, 93 N. Y. 405 ; *infra*, sec. 550, note. In a suit by taxpayers to declare void bonds issued in aid of a railroad, on the ground that conditions precedent had not been complied with, *the burden of proof* is upon the plaintiffs. Connor *v.* Green Pond, W. & B. R. R. Co., 23 S. C. 427. Where the validity of a subscription depends upon its ratification "by a majority of the taxpayers," proof of that fact, in a suit upon bonds which recite that they were issued in payment of the subscriptions, may be made by the poll books and the proceedings of the council, showing the result by a certificate of the election officers. It is not necessary to prove that each person voting was a lawful voter. Hannibal *v.* Fauntleroy, 105 U. S. 408.

bonds, one not unfrequently provided is that the amount voted or issued shall not exceed a specified proportion of the taxable property of the municipality, or such a sum as will require a greater levy of taxes than a specified rate on the taxable property to pay the annual interest on the bonds. The effect of a disregard of a statutory limitation of this character by the officers entrusted by the statute with the exercise of the power came, for the first time, before the Supreme Court in 1875, in a case arising under the legislation of Kansas.[1]

[1] Marcy *v.* Township of Oswego, 92 U. S. 637. The legislative provision is essential to an accurate understanding of the opinion and judgment of the court. The act of the legislature, under which the bonds purported to have been issued, was passed February 25, 1870. Laws of Kan. 1870, p. 189. The first section enacted that whenever fifty of the qualified voters, being freeholders, of any municipal township in any county, should petition the board of county commissioners of such county to submit to the qualified voters of the township a proposition to take stock in the name of such township, in any railroad proposed to be constructed into or through the township, designating in the petition, among other things, the amount of stock proposed to be taken, it should be the duty of the board to cause an election to be held in the township to determine whether such subscription should be made ; *provided* that the *amount of bonds voted* by any township *should not be above such a sum* as would require a levy of more than one per cent per annum on the taxable property of such township to pay the yearly interest. The second section directed the board of county commissioners to make an order for holding the election contemplated in the preceding section, and to specify therein the amount of stock proposed to be subscribed, and also to prescribe the form of the ballots to be used. The fifth section enacted that if three-fifths of the electors voting at such election should vote for the subscription, the board of county commissioners should order the county clerk to make it in the name of the township, and should cause such bonds as might be required by the terms of the vote and subscription to be issued in the name of such township, to be signed by the chairman of the board, and attested by the clerk under the seal of the county.

In Marcy *v.* Township of Oswego, *supra*, the bonds to which the coupons were attached contained the following *recital* : "This bond is executed and issued *by virtue of, and in accordance with*, an act of the legislature of the said 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 25, 1870,' and *in pursuance of and in accordance with the vote* of three-fifths of the legal voters of said township of Oswego, at a special election duly held on the 17th day of May, A. D. 1870." Each bond also declared that the board of county commissioners of the county of Labette, of which county the township of Oswego is a part, had caused it to be issued in the name and in behalf of said township, and to be signed by the chairman of the said board of county commissioners, and attested by the county clerk of the said county, under its seal. Accordingly, each bond was thus signed, attested, and sealed. The bonds were registered in the office of the State auditor, and certified by him in accordance with the provisions of an act of the legislature. His certificate on the back of each bond declared that it had been regularly and legally issued ; that the signatures thereto were genuine, and that it had been duly registered in accordance with the act of the legislature.

The defence to the bonds was that there had been an *overissue*, contrary to the statute. The bond, it will be observed, contains no statement on this point ; but it was held by the Supreme Court that the above quoted recital in the bonds estopped