tion, then the same shall be made, otherwise not." The second section empowered and required the authorities of said municipalities to levy and collect a tax, and make such provisions as might be necessary for the prompt payment of the *appropriation* under the provisions of the law. The town voted on the 20th day of November, 1869, that it would make a donation, provided the company would run its railroad through the town. On the 20th of June, 1870, the company gave notice of its acceptance of the donation. On the 2d of July, 1870, the new Constitution of the State went into operation, by which it was ordained that "no city, town, township, or other municipality shall ever become *subscribers* to the capital stock of any railroad or private corporation, or make *donation* to, or loan its credit in aid of, such corporation; provided, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such *subscriptions,* where the same have been authorized under existing laws by a vote of the people of such municipalities prior to such adoption." On the 9th day of October, 1871, the bonds in suit were executed and delivered as a donation to the railroad company; and the question was whether there was any existing authority to make the donation and issue the bonds. The Supreme Court, after pointing out that the authority given to the town of Concord by the act of March 7, 1867, was not to subscribe for stock, but to make an appropriation or donation, which distinction is also taken in the provision of the Constitution above quoted, held that no donation could be made, under the act of 1867, until after the completion of the location and construction of the road through the town; that the vote of November 20, 1869, in favor of an appropriation, was not an appropriation or donation; that the power to make such donation was annulled by the Constitution on July 2, 1870, and that there was at that date no contract *in esse* between the town and the railroad company which stood in the way of the operation of the constitutional prohibition. As to the effect of the vote of the town, of November 20, 1869, and the acceptance of the railroad company of June 20, 1870 (both of which, it will be observed, were before the Constitution went into operation), the court observed: "But the town was not empowered to make the donation until the road was located and constructed through the town. It had no authority to make a contract to give; and the acceptance was an undertaking to do nothing which the company was not bound to do before the authority of the town to make a donation, or to engage to make a donation, came into existence. What is called the acceptance of the railroad company cannot be construed as an engagement to

locate and build the railroad through the town. It amounted to no more than saying, 'If we build our road through your town, we will receive your gift.' There was, therefore, no consideration for the town's promise to give, even if the popular vote can be considered a promise. There was no contract to be impaired. A contract should be clearly proved before it invokes the protection of the Federal Constitution. We conclude, then, that at the time the donation was made, there was no authority in the municipality to make a donation to the railroad company, and consequently no authority to issue the bonds. It follows that the bonds and coupons are void."[1]

§ 540. **Same subject. Mode of Subscription; when Subscription Complete.** — Power by legislative act *to the board of supervisors of a county to subscribe* an amount not exceeding a given sum to the stock of a specified railroad company, and to issue bonds in payment therefor, without requiring the sanction of a popular vote, but *with a proviso that the bonds shall not be issued until the road is open for traffic,* gives complete authority to the county to subscribe for the stock, or to make a binding agreement to subscribe therefor preparatory to a final subscription. The proviso that the payment of the subscription should be postponed until the railroad should be opened does not limit the power to subscribe, or to enter into an agreement to make the subscription before the road is completed. And it was held that a *resolution of the board of supervisors,* made when the power to subscribe existed or had arisen, *that the county subscribe a given sum* to aid in the construction of the road of the company, without any subscription on the books of the company, amounted to a subscription, or, at all events, to a legal undertaking to subscribe, which, when assented to or accepted by the company, became a binding contract, which the county could not revoke, and which could not be impaired by any subsequent prohibition of the Constitution or the legislature without the assent of the railroad company.[2]

[1] In *Iowa* it is held that if money be expended before the repeal of a statute, upon the faith of the tax provided for by it, the repeal does not invalidate the tax and it may be collected. Burges *v.* Mabin, 70 Iowa, 633; *approved* Barthel *v.* Meader, 72 Iowa, 125.

[2] Town of Concord *v.* Portsmouth Savings Bank, 92 U. S. 625 (1875); Livingston County *v.* Portsmouth Bank, 128 U. S. 102, 126 (1888); Scott *v.* Hansheer, 94 Ind. 1; *infra,* sec. 540, note. A municipal corporation which issued its bonds to a railroad company *formed by consolidating* two other companies was held estopped to deny the validity of the consolidation. Young *v.* Township of Clarendon, 26 Fed. Rep. 805. See *infra,* sec. 541. In a case where a subscription was made to a railroad company by a city, payment to be made when ten miles of the railroad was completed, and the charter of the company

But before any subscription is made, or before any contract to subscribe is completed, the authority to subscribe may be repealed or taken away by legislative or constitutional provision.[1] And if the authority to subscribe depends upon a precedent vote of the people, the vote, without a subscription or an agreement to subscribe, does not create a contract, or preclude the repeal of the authority to make the subscription:[2] it is executory until the subscription is actually made.[1] But an actual manual subscription on

required it to complete its line in fifteen years, it was held that an extension of the time within which the line could be completed did not release the subscription. Jacks *v.* City of Helena, 41 Ark. 213.

[1] For the *effect upon incomplete subscriptions of the adoption of constitutional provisions* forbidding or limiting the power to aid railroads, see *infra*, sec. 542, note; and, also, Concord *v.* Robinson, 121 U. S. 165, distinguished, German Bank *v.* Franklin County, 128 U. S. 526, 543 (1888); Katzenberger *v.* Aberdeen, 121 U. S. 172; Oregon *v.* Jennings, 119 U. S. 74, distinguished, German Bank *v.* Franklin County, 128 U. S. 526, 543 (1888); Norton *v.* Shelby County, 118 U. S. 425. The effect of the prohibition in the Constitution of *Missouri* of 1865, of municipal subscriptions in aid of railways without the previous assent of two-thirds of the qualified voters, has been considered in many cases determined in the State courts of *Missouri* and in the Federal courts. The State courts first held that the effect of the constitutional provision was to limit the *future* exercise of legislative power, but did not take away any authority granted and in existence at the time the Constitution of 1865 went into operation. Subscriptions were made and railway bonds issued when this construction prevailed; and the Federal courts held that such bonds were valid. The Supreme Court of *Missouri* afterwards put a different construction on the Constitution; but the Supreme Court of the United States declined to reconsider its former decisions, to the prejudice of *bona fide* holders of bonds issued prior to the change of decision in the State court. The cases on this subject are reviewed by Mr. Justice *Harlan*, in Scotland County *v.* Hill, 132 U. S. 107 (1889).

Illustrative of *the distinction* between the operation of a *constitutional limitation upon the power of the legislature* and of a *constitutional inhibition upon a municipality*, is the case of Norton *v.* Brownsville, 129 U. S. 479 (1888). Here an act of February 8, 1870, authorized Brownsville to issue bonds in aid of a railroad company on a majority vote. May 5, 1870, the amended Constitution took effect, which ordained that "the credit of no city shall be given or loaned to or in aid of any person or corporation, except upon an election to be first held by the qualified voters, and the assent of three-fourths of the votes at said election." May 11, 1870, five days after the amended Constitution took effect, proceedings were initiated to issue bonds, and an election was held under the act of February 8, 1870, at which every vote was cast for the issue of bonds. The bonds recited that they were issued by authority of the act of February 8, 1870. It was held that the power to issue bonds under the act of 1870 not having been acted upon until after the Constitution of 1870 went into effect, such power could not be exercised without further legislation in conformity therewith; the effect of the constitutional prohibition being to annul all unexecuted powers conferred upon the corporation. Whether this would have been the effect if the terms of the act of 1870 and of the constitutional amendment had not been inconsistent, *quære*. See Jarrolt *v.* Moberly, 103 U. S. 580; Kelley *v.* Milan, 127 U. S. 139, 154; *post*, sec. 851 *a*; Norton *v.* Taxing District of Brownsville, 36 Fed. Rep. 99 (U. S. Cir. Ct., W. D. Tenn. 1888).

[2] Aspinwall *v.* County of Jo Daviess, 22 How. 364 (1859); U. P. R. R. Co. *v.* Davis Co., 6 Kan. 256 (1870); State *v.* Saline Co., 45 Mo. 242; Jeffries *v.* Lawrence, 42 Iowa, 498 (1876); Bound *v.* Wis. C. R. Co., 45 Wis. 543; *ante*, sec. 70;

post, sec. 866, note, and cases there cited; Harshman *v.* Bates County, 3 Dillon C. C. R. 162, note; affirmed 92 U. S. 579; German Bank *v.* Franklin County, 128 U. S. 526 (1888). The law on this subject is thus stated and the cases referred to and distinguished, by Mr. Justice *Strong*, in The Town of Concord *v.* Portsmouth Savings Bank, *supra*:—

"This case [although between the same parties] differs very materially from the case of The Town of Concord *v.* The Portsmouth Savings Bank, No. 43, of this term. [*Supra*, sec. 539.] In that, we held that the bonds were void because the legislative authority to issue them as a donation to the railroad company had been annulled by the Constitution of the State before the donation was made. . . . But *a subscription on the books of the company was unnecessary*, for that which amounted to a subscription had been made in December, 1869. The authorized body of a municipal corporation may bind it by an ordinance, which, in favor of private persons interested therein, may, if so intended, operate as a contract, or they may bind it by a resolution, or by vote clothe its officers with power to act for it. The former was the clear intention in this case. The board clothed no officer with power to act for it. The resolution to subscribe was its own act, its immediate subscription. Western Saving Fund Society *v.* The City of Philadelphia, 31 Pa. St. 175; Sacramento *v.* Kirk, 7 Cal. 419; Logansport *v.* Blakemore, 17 Ind. 318. In Clarke County Court Jus. *v.* Paris, W. & Ky. R. Turnp. Co., 11 Ben. Monroe (Ky.), 143, it was ruled that an order of the county court, by which it was said the court subscribed, on behalf of Clarke County, for fifty shares of stock in the turnpike company, if concurred in by a competent majority of the magistrates, was itself a subscription, and bound the county. There was no subscription on the books of the company; but the Court of Appeals said, "We cannot, therefore, regard this order as a mere offer or pledge to subscribe the fifty shares in this particular road, but as actually taking, and in substance and legal effect subscribing for that number of shares. So in Nugent *v.* The Supervisors of Putnam County, 19 Wall. 241, it was said *that to constitute a subscription by a county* to stock in a railroad company, it is not necessary that there be an act of manual subscribing on the books of the company. These cases lead directly to the conclusion that the action of the board of supervisors in December, 1869, was in substance and in legal effect a subscription. And if this conclusion could not be reached, it would make but little difference to the present case, for it could not be doubted that the action of the board was at least an undertaking to subscribe, and this was assented to or accepted by the railroad company. The resolutions were entered of record by the clerk and president of the railroad company, and the company made an appropriation of the bonds to be received in payment of the subscription, by a contract made on the 15th of April, 1870. In either aspect of the case, therefore, there was an authorized contract existing between the county and the railroad company when the new Constitution came into operation. No matter whether the contract was a subscription or an agreement to subscribe, it was not annulled or impaired by the prohibitions of the Constitution. The delivery of the bonds was no more than performance of the contract. For these reasons, it is in vain to appeal to the decisions made in Aspinwall *v.* The County of Jo Daviess, 22 How. 364, and The Town of Concord *v.* The Savings Bank, decided this term. In neither of those cases was there any contract made before the authority to make one was annulled. We do not assert that the constitutional provision did not abrogate the authority of the board of supervisors to make a subscription for railroad stock. On the contrary, we think it did. But we hold that contracts made under the power while it was in existence

[1] *Ib.*; Cumberland & O. R. R. Co. *v.* Barren Co. Court, 10 Bush (Ky.), 604 (1874); Shelby Co. Court *v.* Cumberland & O. R. R. Co., 8 Bush (Ky.), 209.

the books of the company is not necessary to entitle the county to the stock, or to bind it as a subscriber thereto.[1]

§ 541. **Same subject. Completed Subscription; Effect of Consolidation of Railway Companies on validity of Subscription.** — The authority to make a subscription and to issue bonds in payment therefor *may, if it has never been executed, be revoked by any event* which has the legal effect to extinguish the power. Thus, where the power to subscribe depends upon a precedent popular vote and the vote is had in favor of Company A, which under a general law of the State consolidated with Company B, and formed thereby a new company, C, which consolidation was effected *before* any subscription or contract for subscription was made, and the only subscription made was to the consolidated company, without any new election, it was held that the subscription was unauthorized, and that the bonds which recited these facts were void, even in the hands of a *bona fide* holder for value. The ground of the decision was that the authority to make the subscription ceased with the extinction of the company in whose favor the vote was had, such extinction being the legal consequence of the consolidation.[2] This

were valid contracts, and that the obligations assumed by them continued after the power to enter into such contracts was withdrawn. The operation of the Constitution was only prospective. Indeed, it is expressly ordained in its schedule that 'all rights, actions, prosecutions, claims, and contracts of the State, individuals, or bodies corporate, shall continue to be as valid as if this Constitution had not been adopted.' It is hardly necessary to say that, under the act of the general assembly, the authority to make a subscription was coupled with an authority and a duty to issue county bonds for the sum subscribed. No action of the board was needed after the subscription was made."

[1] Cass County *v.* Gillett, 100 U. S. 585.

[2] Harshman *v.* Bates County, 92 U. S. 569 (1875). The grounds of the judgment of the court on this point are thus succinctly stated by *Bradley*, J.: —

"Another objection to the validity of the subscription for which the bonds were given in this case is, that the township voted a subscription to one company and the county court subscribed to another. This is sought to be justified on the ground that the former company became consolidated with another, thereby forming a third, to whose stock the subscription was made. This consolidation was effected under a law of *Missouri* authorizing consolidations, and declaring that the company formed from two companies should be entitled to all the powers, rights, privileges, and immunities which belong to either; and it is contended that this provision of the law justified the county court in making the subscription without further authority from the people of the township. But did not the authority cease by the extinction of the company voted for? No subscription had been made. No vested right had accrued to the company. The case of The State *v.* Linn County Court, 44 Mo. 504, only decides that if the county court refuses to issue bonds after making a subscription, a *mandamus* will lie to compel it to issue them. There the authority had been executed and a right had become vested. But so long as it remains unexecuted, the occurrence of any event which creates a revocation in law will extinguish the power. The extinction of the company in whose favor the subscription was authorized worked such a revocation. The law authorizing the consolidation of railroad companies does not change the law of attorney and constituent. It may transfer the vested rights of one railroad company to another, upon a consolidation being effected; but it does not continue in existence powers to subscribe for stock given by one person to another, which, by the general law, are extinguished by such a change. It does not profess to do so, and we think it does not do so by implication. As sufficient notice of these objections is contained in the recitals of the bonds themselves to put the holder on inquiry, we think that there was no error in the judgment of the circuit court; and it is, therefore, affirmed."

Same case in circuit court, 3 Dillon C. C. R. 150; s. p. McClure *v.* Oxford, 94 U. S. 429; Bates County *v.* Winters, 97 U. S. 83 (1877); s. c. again, 112 U. S. 325 (1884), and see Livingston County *v.* Portsmouth Bank, 128 U. S. 102 (1888), where the same statutes are considered, and the court refused to apply the doctrine of Harshman *v.* Bates County, 92 U. S. 569, and Bates County *v.* Winters, 97 U. S. 83. See *supra*, sec. 540, note; State *v.* Garroute, 67 Mo. 445, where the court say the consolidation does not operate to transfer to the latter the franchises and unexecuted rights of former companies so as to authorize a subscription to be made to the Hannibal & St. Joseph Railroad Co. without a popular vote; and such subscription is void. The consolidation operated an extinction of the original company, and the power to subscribe thereto perished with the company. In such case there could be no innocent purchasers of the bonds. *Ib.* See reference to this case in Livingston County *v.* Portsmouth Bank, 128 U. S. p. 128 (1888). See also Menasha *v.* Hazard, 102 U. S. 81. In *Iowa* it is held that the alienation of a railroad before its completion works a forfeiture of a tax voted in its aid, the decision being based upon the provisions of a statute requiring that the taxpayers shall receive stock in the corporation to the amount of taxes paid by them. Held also, that the collection of taxes in such cases may be enjoined at the suit of a taxpayer. Manning *v.* Matthews, 66 Iowa, 675; Blunt *v.* Carpenter, 68 Iowa, 265.

case differs from Nugent *v.* The Supervisors of Putnam County[1] in the material circumstance that in that case the subscription to one of the constituent companies was *before* the consolidation, while in this one it was *afterwards*. In this case there was nothing but a bare vote before the consolidation, which, without more, creates no contract between the municipality and the railroad company; while in the Putnam County case there was a subscription in addition to the vote, before the consolidation; and the right, having become vested in the railroad company, may be transferred to another on an authorized consolidation being effected. Where the consolidation is provided for or contemplated by the legislation of the State in force when the subscription is made, a subsequent consolidation, in pursuance of the enactment, does not have the effect to invalidate the subscription. This principle was distinctly settled in the Putnam

[1] Nugent *v.* The Supervisors of Putnam County, 19 Wall. 241. See Ray Co. *v.* Vansycle, 96 U. S. 675, where a subscription by the county authorities to another company was sustained and the doctrine of estoppel applied. See also, Cass Co. *v.* Gillett, 100 U. S. 585; Harter *v.* Kernochan, 103 U. S. 562. One subscription does not exhaust the power. People *v.* Waynesville, 88 Ill. 469. Irregularities no defence. Roberts *v.* Bolles, 101 U. S. 119; Empire Tp. *v.* Darlington, 101 U. S. 87.

County case just cited;[1] and such existing legislative authority to change the organization controlled the decision, and constituted, in the judgment of the court, the ground of distinction between that case and the oft cited case of Marsh *v.* Fulton County.[2] Indeed, the Supreme Court has since gone farther, and has frequently decided, where at the date of the vote in favor of the constituent company there exists a statute authorizing its consolidation with another company, that such consolidation does not necessarily extinguish the power to subscribe given by the vote, and that bonds issued to the consolidated company under such vote are, or might be valid.[3]

§ 542. **There must be a Valid Legislative Act as the Basis of the Power; Construction of Special Powers.** — A purchaser of municipal bonds is bound, as has already been incidentally shown, *to take notice of any provisions of the Constitution or legislation of the State relating to the power* of the municipality to issue them; and if the act conferring the power is in conflict with the Constitution, the bonds are void, even in the hands of a *bona fide* holder for value.[4] And the purchaser must also notice the provisions and extent of the legislative enactments on the subject.[1] Thus where authority was given to certain counties lying *north* of

[1] 19 Wall. 241. The principle was followed and applied in Thomas *v.* Scotland County, 3 Dillon C. C. R. 7; s. c. 94 U. S. 682, and in Washburn *v.* Cass County, 3 Dillon C. C. R. 251, and the bonds held valid notwithstanding the consolidation. A change in the name of the company will not invalidate the subscription. Reading *v.* Wedder, 66 Ill. 80.

[2] Marsh *v.* Fulton County, 10 Wall. 676. In People *v.* Granville, 104 Ill. 285, an act providing that the liability of municipal corporations which had voted aid to railroads should cease on a certain date, after which no bonds should be issued in virtue of any previous vote, was held to be a statute of limitation, not impairing the obligation of contracts; and a *mandamus* to compel the issue of bonds after that date was refused.

[3] County of Scotland *v.* Thomas, 94 U. S. 682 (1876), distinguishing Harshman *v.* Bates County, 92 U. S. 569; s. p. Scotland County *v.* Hill, 132 U. S. 107 (1889); East Lincoln *v.* Davenport, 94 U. S. 801 (1876); Wilson *v.* Salamanca, 99 U. S. 499 (1878); Menasha *v.* Hazard, 102 U. S. 81 (1880); Harter *v.* Kernochan, 103 U. S. 562 (1880); New Buffalo *v.* Iron Co. 105 U. S. 73 (1881). The cases on this subject are carefully stated and considered by *Blatchford*, J., in Livingston County *v.* Portsmouth Bank, 128 U. S. 102 (1888), distinguishing and limiting, if not, indeed, overruling Harshman *v.* Bates County. *Ante*, sec. 540.

[4] Harshman *v.* Bates County, 92 U. S. 569 (1875), distinguished, Bates County *v.* Winters, 112 U. S. 325; Lamoille Val. R. R. Co. *v.* Fairfield, 51 Vt. 257; Allen *v.* Louisiana, 103 U. S. 80; Jarrolt *v.* Moberly, 103 U. S. 580; Wells *v.* Pontotoc Co. Sup., 102 U. S. 625; Ogden *v.* Daviess Co., 102 U. S. 634; *supra*, sec. 529 *a*; *post*, sec. 553. As the decision in the first case is supposed to invalidate all the bonds issued under the Township Aid Act of *Missouri*, of March 23, 1868, said to amount to nearly $3,000,000, the point on which the act was decided to be unconstitutional will be stated. The Constitution of 1865, Art. II. sec. 14, prohibited such subscriptions "*unless two-thirds of the qualified voters* of the" municipality issuing the bonds "*shall assent thereto.*" The Township Aid Act authorized the issue of bonds "if two-thirds of the qualified voters of the township voting at such election are in favor of the subscription." The Supreme Court held that there is a broad difference between the Constitution and the act, — the former requiring the assent of two-thirds of the qualified voters of the municipality, while the latter requires the assent of only two-thirds of the qualified voters who vote at the election. The same case, in the court below, decided on another ground, — the constitutional question being made for the first time in the Supreme Court, — is reported in 3 Dillon C. C. R. 150. Post *v.* Supervisors, 105 U. S. 667; South Ottawa *v.* Perkins, 94 U. S. 260. In these two cases an act authorizing the issue of municipal bonds which had been passed in conformity with the requirements of the Constitution of *Illinois* was declared void by the Supreme Court of the United States, following the uniform decisions of the State court, and the bonds issued in pursuance of it were held to be invalid even in the hands of those who took them for value, and in the belief that they had been lawfully issued.

Effect of constitutional provision adopted in 1870 on existing powers to aid railways in *Mississippi*. *Infra*, sec. 544, note; Calhoun Co. Sup. *v.* Galbraith, 99 U. S. 214; Woodward *v.* Calhoun Co. Sup. (U. S. Dist. Court for *Mississippi*, *Hill*, J.), 2 Cent. Law Jour. 396. In *Ohio*, Cass *v.* Dillon, 2 Ohio St. 607; State *v.* Union Tp., 8 Ohio, 394. In *Missouri*, State *v.* Sullivan Co. Court, 51 Mo. 531; Kansas City, St. J. & C. B. R. R. Co. *v.* Nodaway Co. Court Jus., 47 Mo. 349; State *v.* Same, 48 Mo. 339; State *v.* Macon Co. Court, 41 Mo. 453; Smith *v.* Clark County, 54 Mo. 58; State *v.* Greene County, 54 Mo. 540; Thomas *v.* Scotland County, 3 Dillon C. C. R. 7; Nicolay *v.* St. Clair County, *Ib.* 163; Huidekoper *v.* Dallas County, *Ib.* 171; Jordan *v.* Cass County, *Ib.* 185; Foster *v.* Callaway County, *Ib.* 200; Henry County *v.* Nicolay, 95 U. S. 619; Callaway County *v.* Foster, 93 U. S. 567; Louisiana *v.* Taylor, 105 U. S. 454; Ralls County *v.* Douglass, *Ib.* 728; Scotland County *v.* Thomas, 94 U. S. 682; Macon County *v.* Shores, 97 U. S. 272. See, also, Cass County *v.* Gillett, 100 U. S. 585, affirming Henry County *v.* Nicolay, 95 U. S. 619; Jarrott *v.* Moberly, 5 Dill. 253; Howard County *v.* Paddock, 110 U. S. 384.

The provisions of the Constitution which require the assent of two-thirds of the qualified voters of a county to a subscription on its behalf for stock in a corporation, do not apply to cases where such subscription is made for stock in a railroad company pursuant to the power conferred by its charter granted prior to the adoption of that Constitution, notwithstanding the contemplated road is a branch road, the construction of which, although authorized by such charter, is undertaken as an independent enterprise under the act of March 21, 1868, entitled "An act to aid in the building of branch railroads in the State of Missouri." Cass County *v.* Gillett, 100 U. S. 585; Scotland County *v.* Hill, 132 U. S. 107 (1889); *ante*, sec. 540.

[1] German Savings Bank *v.* Franklin County, 128 U. S. 526, 538 (1888). "When the Savings Bank purchased the bonds, it was, *notwithstanding the recitals on the face of them*, chargeable with notice of the Act of April 16, 1869 [which contained provisions which invalidated the bonds, but which Act was not recited or referred to in the bonds], and of the construction which had then been given to it by the Supreme Court of Illinois prior to the issue of these bonds, in Town of Eagle *v.* Kohn, 84 Ill. 292." *Ib. per Blatchford*, J., pp. 537, 538. *Post*, sec. 545, note. "Every person dealing with such a corporation *must, at his peril, take notice of the existence and terms of the law* by which it is claimed the power to issue such bonds is conferred. The power to issue such bonds is derived exclusively from the legislative authority of the State, and the laws which confer them enter into and form a part of the bonds themselves. The holder of a municipal bond is chargeable with notice of the statutory provisions under which they are issued." *Wallace*, J. National Bank *v.* St. Joseph, 31 Fed. Rep. 216. In this case a statutory

the Missouri River, a subscription made and bonds issued under such authority by a county *south* of the river are void in the hands of everybody.[1]

provision authorizing the city to call in bonds and pay the same at any time, and providing that upon tender of the principal the interest should cease, was held to be effective as against a holder for value before maturity. Citing Ogden *v.* County of Daviess, 102 U. S. 634; Anthony *v.* Jasper County, 101 U. S. 693; Northern Bank of Toledo *v.* Porter Tp., 110 U. S. 608. *Infra*, sec. 543.

[1] Sherrard *v.* Lafayette County, 3 Dillon C. C. R. 236 (1875). The case was briefly this: By an act of the legislature of *Missouri*, a company was incorporated with power to construct a railroad from the town of Louisiana, which is situated on the Mississippi River, *north* of the Misssouri River, *to* a point on the Missouri River, and the county court of any county in which *any part of the route* of said road should lie was authorized to subscribe stock to the company, without a vote of the people. Afterwards the new Constitution of *Missouri* went into effect, prohibiting the General Assembly (1) from creating corporations by *special* act, except for municipal purposes; (2) from authorizing any county, &c., to become a stockholder in, or loaning its credit to, any company, association, or corporation, *unless two-thirds of the qualified voters should assent thereto*. Subsequently to this the legislature passed an act purporting to *amend* the charter of the said railroad company, which provided that the county court of any county in which any part of the line of said railroad might be located might subscribe to the stock of said company and issue bonds, &c. Under this act, the county court of Lafayette County, a county lying wholly *south* of the Missouri River, issued *without a vote of the people*, the bonds from which the coupons here sued on were detached, and several instalments of interest had been paid on them. *Held*, 1. That the amendatory act from which authority to issue these bonds is claimed is a *special* act, in effect creating a new corporation, and is hence inhibited by the State Constitution. 2. That it was not competent for the legislature, by extending the route of the proposed road beyond the point designated in the original charter, to authorize a county *south* of the Missouri River to incur indebtedness in aid of the road, without a two-thirds vote as required by the Constitution. 3. That since there was an entire want of power to issue the bonds, they were void even in the hands of innocent purchasers. 4. That the fact that the county court had paid interest on these bonds did not estop it from afterwards setting up their invalidity. But see Burr *v.* Chariton County, 12 Fed. Rep. 848.

Construction of special power. The act which authorized the issuing of the bonds to pay the county subscriptions to a railway company directed that the bonds so issued should be made payable to "the president and directors of the railroad company, and their successors and assigns." The bonds issued were made payable to "the railroad company or bearer." It was held that the power granted was sufficiently pursued, and that the bonds so issued were valid. Woodward *v.* Calhoun Co. Sup. (U. S. Dist. Court for *Mississippi*, *Hill*, J.), 2 Cent. Law Jour. 396 (1874). Special act held to control general act. Chicago, B. & Q. R. R. Co. *v.* Otoe County, 16 Wall. 667 (1872).

Power to donate bonds in lieu of lands and right of way. By various provisions of a city charter, the mayor and city council were authorized to make donations of land for the right of way and other privileges to a railroad company, and to expend money for the purpose of acquiring land to be given, and were authorized to borrow money to an unlimited extent, when instructed so to do by a popular vote, and further, to issue bonds to fund any indebtedness of the city, existing or to be created. Under this authority, a railroad company, by reason of complying with certain conditions, became entitled to demand from the city the right of way and depot grounds. The company agreed with the city to accept the bonds voted to procure the right of way and grounds in lieu

§ 543. **Registration of Bonds; Effect of Fraudulent Antedating.** — The history of the issue of municipal bonds in this country shows that conditions imposed by law requiring a popular vote, or conditions in the propositions submitted to the voters, intended to prevent fraud and to secure the actual building and completion of the roads, have been often evaded, and bonds issued without compliance therewith. Such bonds, when negotiated for value, the courts, as we have seen, have held to be binding. To prevent such improper or improvident issue of bonds in the future, the legislatures of some of the States have passed acts *requiring all bonds to be registered* with one of the executive departments of the State before they are issued or negotiated. Thus in 1872[1] the legislature of Missouri, a State in which many fraudulent bonds had been issued, passed an act which provided that "*before* any bond, hereafter issued by any county, . . . shall *obtain validity or be negotiated*," it must be *first* registered by the State auditor, who shall certify thereon that all conditions precedent required by law, and by the contract under which the bonds were ordered to be issued, have been complied with. In the case of Anthony *v.* Jasper County,[2] it appeared that

of the right of way and grounds, and it was held that the city had the power thus to agree, and that the bonds were valid. Converse *v.* Fort Scott, 92 U. S. 503 (1875); s. c. 3 Cent. Law Jour. 449.

A proposition once voted down may be subsequently re-submitted and adopted, unless the act evinces a contrary intention. Soc. for Sav. *v.* New London, 29 Conn. 174; Smith *v.* Clark County, 54 Mo. 58; Woodward *v.* Calhoun County, 2 Cent. Law Jour. 396. In *Kentucky* it is held that municipal corporations are not restricted to one subscription. Tyler's Ex. *v.* Elizabethtown & P. R. R. Co., 9 Bush (Ky.), 510 (1872). Second subscription held valid. *Ib.*

Issue of bonds before law authorizing it took effect. Rochester *v.* Alfred Bank, 13 Wis. 432; Berliner *v.* Waterloo, 14 Wis. 378.

[1] Act of March 30, 1872 (Laws of Missouri, 1872, p. 56).

[2] Anthony *v.* Jasper County, 4 Dillon C. C. R. 136 (1876); s. c. 3 Cent. Law Jour. 321; affirmed 101 U. S. 693. In delivering its judgment, the Circuit Court said: "If the bonds bore date after the act of March 30, 1872, and had not been registered, it is plain, we think, that they would have no '*validity*,' and hence could not support an action in the hands of any person. But they are antedated; and the question is, whether they have validity in the hands of the innocent purchaser. Upon the best consideration we have been able to give, our conclusion is that the bonds cannot be enforced. The case comes within the doctrine, which is well settled, that where a *statute* declares absolutely and without exception that a contract or bond or note is void, it is void into whosesoever hands it may come. This statute declares that no unregistered bond shall be valid or be negotiated. Bonds must *first* be registered. Without registration they '*obtain no validity*.' Such is the statute. A declaration that bonds shall have no validity is equivalent to declaring them to be void. Is the county estopped to set up this defence? We think not. The case is to be distinguished, we think, from those decided by the Supreme Court of the United States, in which it is held that the frauds of the officers cannot be visited upon the innocent bondholder, and falls within the principle of Bayley *v.* Taber, 5 Mass. 286. In that case it was held, where a statute enacted that promissory notes of a certain description, 'made or