§ 549. **General Summary of Doctrine of the Supreme Court as to Estoppel by Recitals.** — In passing from this portion of our subject, we may observe that if we have not mistaken *the meaning and effect of the leading judgments of the Supreme Court* which we have passed in review, they establish the following principles: The purchaser is bound to see that there exists legislative power not in conflict with the State Constitution for the issue of the bonds or commercial securities of the municipal, public, or *quasi* corporation, and is bound to notice the contents and recitals in the instruments; but if such bonds are duly executed by the proper officers, and if these officers are, by the true construction of the legislative enactment in that regard, invested with the power to decide whether conditions precedent have been performed, and the bonds contain a recital that such conditions have been complied with, or a recital which implies such compliance, whether the preliminary conditions consist of facts *in pais* or facts of record, — the issue of the bonds, under such circumstances with such a recital, is conclusive against the municipality as to the fact or facts recited or implied in the recital, and estops it, in an action by an innocent holder for value, before due, to show the contrary. This is the doctrine of the Supreme Court of the United States; and the point in which it differs from the general line of decisions in the State courts is in regard to the evidence of compliance with conditions precedent. In all the cases in the Supreme Court of the United States, that tribunal has held that the municipal or local officers were constituted the judges to decide whether antecedent or preliminary steps or conditions had been complied with, and that their decision, stated or implied in the recital, was conclusive against the corporate maker when the bonds have found their way into the hands of innocent holders. The view which holds the local officers a tribunal authorized to make so important a decision rests not alone upon an express declaration of the legislature to that effect, but may be "gathered," by construction, from the supposed intent and purpose of the legislature. Many of the State courts, but not all of them, have taken a somewhat different view. They agree that mere *irregularities*, not relating to the essence of the power, will not affect a *bona fide* holder; but inasmuch as there exists no general power to issue such securities, and as the fact of compliance or non-compliance with conditions precedent is usually a matter of which there is a record, the purchaser of such securities is bound to ascertain whether the power to issue them existed or had arisen, especially where this depends upon matters of which a record is required to be made. The subject is full of difficulties. If the

latter view is sustained, it has the effect to impair the ready salability and market value of the securities. If the former, it has the effect of enabling the local officers in power for the time being to perpetrate, without any effectual preventive in many cases, the most outrageous frauds. On principle, it would seem that the legislative intent to invest local officers, by means of a false recital, with a power so tremendous ought not to be held to exist, unless it is declared or plainly implied, and that more caution in the purchase of these securities than is required by the doctrine of the Supreme Court would promote the interests both of the maker and the purchaser.[1]

§ 550 (423). **State Court Decisions relating to Municipal Bonds and the Power to issue them; Conditions precedent.** — Some of the leading differences relating to the law of municipal railway aid bonds between the Federal and State courts have already been mentioned. Having surveyed with minuteness the course of decision in the Federal courts, a brief reference will now be made to the adjudications of State tribunals. The authority to subscribe to the stock of a railroad corporation may be *made conditional* on certain previous steps being taken, as, for example, a prior authorization of the act by a majority of the qualified voters of the municipality or district to be affected, or a recommendation in its favor and a designation of the amount by a grand jury, and the statute may be so framed as to evince the legislative intention to be that *no power* to subscribe or issue bonds shall exist unless this be done.[2] Thus, where the act authorizing a town to borrow money to

[1] This section stands as in the last edition. Nothing has been decided that clearly requires any change in it. The decisions referred to in sec. 529 *a*, *supra*, tend, perhaps it can only be said that they *tend*, to show that there are or may be certain facts of such a nature, of which a public record is required, that a purchaser may be bound to take notice of them. See *supra*, secs. 527–530.

[2] Mercer County *v.* Pittsburgh & Erie Railroad Co., 27 Pa. St. 389 (1856); Mercer County *v.* Hacket, 1 Wall. 83; Aurora *v.* West, 22 Ind. 88 (1864); *ante*, sec. 153 *et seq.*; City and County of St. Louis *v.* Alexander, 23 Mo. 483 (1856). In this last case the provision requiring a submission of the question to the voters "before the subscription hereby authorized shall be made," was held not merely directory, but mandatory. Where the enabling act requires the amount to be specified, a vote not specifying definitely the amount is, as to the immediate parties, void. State *v.* Saline County, 45 Mo. 242 (1870), following Mercer County *v.* Pittsburgh & Erie R. R. Co., 27 Pa. St. 389, and Starin *v.* Genoa, 23 N. Y. 439 (see *infra*), and distinguishing Knox County *v.* Aspinwall, 21 How. 539, and Flagg *v.* Palmyra, 33 Mo. 440. It should be remarked, however, that the case above referred to (State *v.* Saline County, 45 Mo. 242, 1870) was *mandamus* to compel the relator to deliver the bonds, and to assess taxes to pay interest on bonds which had been issued, and the writ was denied because the amount of bonds to be issued was not specified; but subsequently, in The State

pay for the stock subscribed expressly provided that the officers thereof should "have *no power*" to do so until the written assent of two-thirds of the resident taxpayers had been obtained, this was held by the Court of Appeals of New York to be a condition precedent, without which the power did not exist.[1]

v. Saline County, 48 Mo. 390 (1871), it was held that such bonds, when in the hands of an innocent holder for value, could be collected. What, in the opinion of the Supreme Court of *Missouri*, such a holder must show in the way of compliance with precedent conditions, in order to recover, see the case of Carpenter *v.* Inhabitants of Lathrop, 51 Mo. 483 (1873). This case seems in spirit, if not in effect, to depart from the earlier cases in that court upon this subject. See Railroad Co. *v.* Platte County, 42 Mo. 171, where permissive words respecting an election to authorize subscriptions were held to be imperative. In St. J. & D. C. R. R. Co. *v.* Buchanan Co., 39 Mo. 485, the words that the county court, after an affirmative vote by the people, "shall have power to subscribe," were held to leave it discretionary with the court whether to subscribe or not. In the case of The People, *ex rel. v.* Tazewell County, 22 Ill. 147, it was held, under the general law of the State, that it was discretionary whether the county should subscribe all or but a portion of the amount voted by the citizens, and that county authorities might impose any proper conditions they might choose. So where the legislature, without conditions, provides for submitting the question of subscription to the voters of a township, the electors have the power to vote to subscribe on any conditions they may see proper to annex. People *v.* Dutcher, 56 Ill. 144 (1871); see also People *v.* Logan County, 45 Ill. 162; Veeder *v.* Lima, 19 Wis. 280 (1865); Chicago, B. & Q. R. R. Co. *v.* Aurora, 99 Ill. 205; Memphis, K. & C. Ry. Co. *v.* Thompson, 24 Kan. 170. But such conditions must not violate any express provision of law or any general rule of public policy. Coe *v.* Caledonia & M. Ry. Co., 27 Minn. 197; Hoyt *v.* Braden, 27 Minn. 490. Where the statute, as a condition precedent to the issue of bonds, required a vote of the majority of the *qualified voters*, it was held that a vote of the electors registered and voting at a regular election under the charter was intended, and that the city authorities had no power to order a new registration. Smith *v.* Wilmington, 98 N. C. 343. *Post*, chap. xx.

[1] Starin *v.* Genoa, 23 N. Y. 439 (1861); Gould *v.* Sterling, *Ib.* 439, 456; distinguished on this point from Bank of Rome *v.* Village of Rome, 19 N. Y. 20. Under the act it was held that the *onus* was on the plaintiff to show affirmatively the written assent of the requisite number of taxpayers; and the manner in which this must be shown is considered at length. But see Bissell *v.* Jeffersonville, 24 How. 287; Knox County *v.* Aspinwall, 21 How. 539; Mercer County *v.* Hacket, 1 Wall. 83, heretofore referred to. In The People *v.* Mead, 36 N. Y. 224 (1867), the decision in Starin *v.* Genoa, and Gould *v.* Sterling, above cited, was adhered to by the Court of Appeals, though it was admitted that a contrary ruling as to the evidence of the assent of the taxpayers had been made by the Supreme Court of the United States, in favor of similar bonds in the hands of *bona fide* holders, and the case was distinguished from Murdock *v.* Aiken, and Ross *v.* Curtiss, 31 N. Y. 606. Starin *v.* Genoa, and Gould *v.* Sterling have been expressly disapproved, as we have seen, by the Supreme Court of the United States, as respects the *bona fide* holders of bonds. Venice *v.* Murdock, 92 U. S. 494 (1875). See *supra*, sec. 526, note. Illustrating text, see Benson *v.* Albany, 24 Barb. 248.

Where the statute gives the power to issue bonds when *a majority of the taxpayers whose names appear upon the last preceding tax list, or assessment roll, as owning a majority of the taxable property in the corporate limits*, make application to the county judge, by petition, &c., such a petition is essential to the jurisdiction of the county judge, and the authority conferred by the act will, on *certiorari*, be

§ 551 (424). **State Court Decisions; Conditions Precedent.** — So, under an act providing "that no subscription or purchase of stock shall be made, or bonds issued, by any county or city, creating a debt for the payment of such subscription, unless a *majority of the qualified voters* of the county or city shall vote for the same," it was held that bonds issued without an election, or where the election was called by the wrong authority (as by the county court instead of the county board of supervisors), are void, *for want of power to issue them*, in whose hands soever they may be, and are not validated by the levy of taxes and the payment of interest thereon.[1]

required to be exercised in strict conformity with the act in its letter and spirit. The petition, it was held, must be that of the taxpayers, and it is erroneous to count as petitioners those whose names are affixed, in their absence, under previous verbal authority. In such proceedings, where there are no provisions to the contrary, competent common-law evidence of the facts to be established should be produced before the county judge, and this officer cannot act upon his personal knowledge. The People *v.* Smith, 45 N. Y. 772 (1871). *Ante*, sec. 515, note.

By its charter a city was authorized to take stock in railroads, "*provided*, that no stock shall be subscribed or taken by the common council, unless upon the petition of two-thirds of the residents of said city who are freeholders of said city." It was held, in an action by the railroad company against the city on the contract of subscription, that it was the *duty of the common council* to determine whether the requisite number of the freeholders of the city had petitioned for the subscription, no other tribunal having been provided for that purpose; and, having passed upon that question, their determination is conclusive, unless it may be set aside in some direct proceeding for that purpose. Evansville, Ind. & C. Straight Line R. R. Company *v.* Evansville, 15 Ind. 395 (1860), following and applying Knox County *v.* Aspinwall, 21 How. 539. See also Bissell *v.* Jeffersonville, 24 How. 287 (1860); Mercer County *v.* Hacket, 1 Wall. 83; compare, however, Veeder *v.* Lima, 19 Wis. 280 (1865); Duanesburgh *v.* Jenkins, 40 Barb. 574; Society, &c., *v.* New London, 29 Conn. 174; State *v.* Saline County, 45 Mo. 242 (1870). Subscriptions to turnpike roads by the county judge, under acts of the legislature, were held unauthorized and void, it being admitted that an amount of stock sufficient, with the aid of county subscriptions, to complete each mile of road, had not been taken by *private subscription*, as required by the statutes. Clay *v.* Nicholas Co., 4 Bush (Ky.), 154. Where there is a danger of a misapplication of funds subscribed, a court of equity, and it seems a court of law, should refuse to enforce a subscription until the corporation properly secures the appropriation of the bonds, or their proceeds, in accordance with the terms of subscription. Cumberland & O. R. R. Co. *v.* Washington County, 10 Bush (Ky.), 564 (1874).

Where a municipal corporation has power to make a donation in aid of a railroad, to levy and collect taxes to pay it, or to borrow money to pay it and to issue bonds to meet the loans, the railroad company has a claim for money only, and cannot compel a municipal corporation to issue bonds for it; on the other hand, it cannot be compelled to take bonds in payment of the donation. Chicago, D. & V. R. R. Co. *v.* St. Anne, 101 Ill. 151. *Ante*, sec. 515, note.

[1] Marshall County *v.* Cook, 38 Ill. 44 (1865), commenting on and distinguishing Mercer County *v.* Hacket, 1 Wall. 83, and Gelpcke *v.* Dubuque, *Ib.* 175. See, also, Shoemaker *v.* Goshen, 14 Ohio St. 569; Berliner *v.* Waterloo, 14 Wis. 378; Veeder *v.* Lima, 19 Wis. 280 (1865); Dunnovan *v.* Green, 57 Ill. 63; St. Joseph Township *v.* Rogers, 16 Wall. 644 (1872); S. P. as to ratification, Marsh *v.* Fulton County, 10 Wall. 676 (1870); Hancock *v.* Chicot Co., 32 Ark. 575 (1877). The corporation is

But *this view was denied to be sound by the Supreme Court of the United States*, which decided that an innocent holder for value of such bonds was entitled to recover upon them. The only defect in the execution of the power was that the election was ordered by the wrong authority; and the Supreme Court held that the conduct of the county in retaining the stock, and in levying taxes and paying interest for a series of years, estopped it to set up as a defence that the bonds were invalid, and it refused to follow the judgment of the Supreme Court of the State, which had held the same issue of bonds to be void.[1]

§ 552 (425). **Same subject.** — In a case in Ohio, where the legislature authorized "the county commissioners of *any county through or in which* a railroad might be located, to subscribe to the capital stock of the said company," and, for the purpose of paying therefor,

estopped — where the power to issue existed — from setting up *irregularities* in the issue of the bonds, after repeated payments of interest thereon. Keithsburg *v.* Frick, 34 Ill. 405; Jasper County *v.* Ballou, 103 U. S. 745; Schaeffer *v.* Bonham, 95 Ill. 368; Han. & St. J. R. Co. *v.* Marion County, 36 Mo. 294; Mercer County *v.* Hubbard, 45 Ill. 139; Beloit *v.* Morgan, 7 Wall. 619 (1868); Schenck *v.* Marshall Co. Sup., 5 Wall. 772; compare Marsh *v.* Fulton County, 10 Wall. 676. The municipal authorities, on *mandamus* or other proceedings to compel them to make subscription to the railroad company, may show that the election was influenced by it and its employees, by bribery and corruption. People *v.* San Fr. Sup., 27 Cal. 655 (1865); Butler *v.* Dunham, 27 Ill. 474; *post*, chap. xx. *What is a majority of votes.* People *v.* Chapman, 66 Ill. 137 (1873); Decker *v.* Hughes, 68 Ill. 33 (1873). Subscription cannot be made without an affirmative vote. People *v.* Cass Co., 77 Ill. 438 (1875). The presumption is that the vote cast at an election held according to law, is the vote of the whole number of legal voters, and this presumption cannot be rebutted by proof of the number of votes cast at an election held in the preceding year. St. Joseph *v.* Rogers, 16 Wall. 664; Melvin *v.* Lisenby, 72 Ill. 63 (1874).

[1] Marshall County Sup. *v.* Schenck, 5 Wall. 772 (1866); Redd *v.* Henry Co. Sup., 31 Gratt. (Va.) 685, approving text. The Supreme Court of Illinois holds that since the Constitution of 1870 the *onus* is on the holder of the bonds to show that they were lawfully issued; and that they are void if the conditions on which the issue was authorized are not complied with. Town of Prairie *v.* Lloyd, 97 Ill. 179; Town of Eagle *v.* Kohn, 84 Ill. 292; Richeson *v.* People, 115 Ill. 450; Eddy *v.* People, 127 Ill. 428 (1889). *Ante*, secs. 530, and note, 539, 540. Where the legal voters of a city voted in favor of a railway subscription, to be paid in city bonds, upon the condition, among others, that the railroad should be *completed within the county on or before a certain date*, and before the expiration of that time, but after the *Illinois* Constitution of 1870 went into effect, the city council, by an order, and without further action by the voters, *extended the time for the completion of the road* within the county, the Supreme Court of the State was of the opinion that bonds issued in payment of the subscription were in violation of the condition, and were void, for the reason that the extension was not authorized by the legal voters, and the city, under the new Constitution, had no power to make a new contract in regard to such subscription. It was accordingly held that a tax levied to provide money to pay interest on the bonds could not be collected. Eddy *v.* People, 127 Ill. 428 (1889).

"to borrow the necessary amount of money, for which they shall issue their negotiable bonds," &c., it was decided to be a defence to an action on the bonds (though by a *bona fide* holder) that the railroad was "never made or located through or in the county;" that it was "located and completed so as not to touch the county." The defence was held good, upon the ground that the authority to issue the bonds never existed.[1] Other cases have been decided upon similar grounds.[2] It is the general doctrine of the State courts that not only is express authority requisite, but that the *substantial requirements of the law must be observed*;[3] while in the Federal courts the failure to comply with the requirements, or rather the decision of the local officers, especially when embodied in the recitals of the bond that such requirements have been complied with, is, as we have seen, no defence against the *bona fide* holders of such bonds.

§ 553 (426). **General Result stated.** — It may be remarked, in conclusion, that *this general survey of the adjudications* shows some

[1] Treadwell *v.* Hancock Co. Comm'rs, 11 Ohio St. 183 (1860), reviewing and criticising Aspinwall *v.* Knox County Comm'rs, 21 How. (U. S.) 539, approved in Bissell *v.* Jeffersonville, 24 How. (U. S.) 287 (1860). Compare Purdy *v.* Lansing, 128 U. S. 557 (1888), cited *infra*. In Veeder *v.* Lima, 19 Wis. 280 (1865), Treadwell *v.* Commissioners and Gould *v.* Sterling, before cited, are approved, and Aspinwall *v.* Commissioners and Moran *v.* Miami County are criticised. Compare State *v.* Van Horne, 7 Ohio St. 327; reaffirmed, State *v.* Union Township Trustees, 8 Ohio St. 394, 401. The two cases last cited (7 Ohio St. 327, 8 Ohio St. 394) do not intend, probably, to assert the principle that the non-action of the taxpayers or inhabitants will supply a *want of power*, in the just sense of that expression, in the trustees to subscribe for the stock, or estop the *quasi* corporation from making the defence of *ultra vires*, if it existed.

Under a charter authorizing counties "through which" a given railroad "may pass" to subscribe to its stock, it was held that a county between the termini of the road might subscribe without waiting until the route was located, or built within the county. Woods *v.* Lawrence County, 1 Black (U. S.), 386 (1861). In *Minnesota* the agreement to issue the bonds must be perfected before the construction of the road intended to be aided. State *v.* Highland, 25 Minn. 355.

[2] Under the New York Act of 1871, chap. 298, which requires all the counties through which the road would pass to be designated and the road located, before the bond of any town can be issued in aid thereof, this requirement is held *to go to the question of power*, and bonds issued without previous action of the board of directors of the company, adopting the entire route, and designating all the counties through which the road would pass, are void. Purdy *v.* Lansing, 128 U. S. 557 (1888); approving People *v.* Morgan, 55 N. Y. 587; Mellen *v.* Lansing, 20 Blatchf. 278.

Bonds issued where a valid condition precedent imposed under legislative authority was disregarded, and there was no specific recital covering the point, held to be void for want of power. German Bank *v.* Franklin Co., 128 U. S. 526 (1888). See nice distinctions there drawn in the cases on this subject.

[3] Lamoille, &c. Co. *v.* Fairfield, 51 Vt. 257; People *v.* Waynesville, 88 Ill. 469; Sykes *v.* Columbus, 55 Miss. 115; Delaware Co. *v.* McClintock, 51 Ind. 325 (1875); Harding *v.* Rockford, R. I. & St. L. R. R. Co., 65 Ill. 90 (1872).

difference of judicial opinion (chiefly in cases involving the rights of innocent holders of negotiable municipal securities) respecting the evidence of compliance with conditions precedent, and as to what will estop the municipality from showing non-compliance in fact with such conditions. Yet, aside from these differences, the courts all agree that such a corporation may successfully defend against the bonds in whosesoever hands they may be, if its officers or agents, who assume to issue them, had, in the sense already explained, no legislative *power* to do so.[1] The officers of such corporations possess no general power to bind them, and have no authority except such as the legislature confers. If the statute authorizes such a corporation to issue its bonds *only* when the measure is sanctioned by a majority of the voters, bonds issued without such a sanction (either in fact, or according to the decision of authorized officers, or some authorized body or tribunal), or when voted to one corporation and without authority of law issued to another, are void, into whosesoever hands they may come.[2] This is the sound and true rule of law on this subject, and the one which has had the uniform approval of the State courts in this country, and it has also received the high sanction of the Supreme Court of the United States.[3] The distinc-

[1] *Ante*, chap. vi. sec. 163. The provisions of a railroad charter made it lawful for certain counties to subscribe stock on a majority vote, and, on such vote being had, made it the *duty* of the county commissioners to subscribe for stock and issue bonds therefor. Accordingly a vote was had, resulting in favor of a subscription; *after* the vote, but *before* the subscription was actually made and the bonds issued, counties were prohibited by law from subscribing for stock, unless paid for in cash. It was held that the power to subscribe and the vote did not constitute a contract within the meaning of the clause of the Constitution making contracts inviolable; that until the subscription was actually made the contract was unexecuted; and that bonds thus issued were void, even in the hands of innocent holders for value. Aspinwall *v.* Daviess Co. Comm'rs, 22 How. (U. S.) 364 (1859); Eddy *v.* People, 127 Ill. 428 (1889); *ante*, sec. 70; Marsh *v.* Fulton County, 10 Wall. 676; Hayes *v.* Holly Springs, 114 U. S. 120; Merchants' Bank *v.* Bergen County, 115 U. S. 384, when a *bona fide* holder, for value, of bonds, containing no recitals, issued in excess of the number authorized by law and as security for a personal debt of an officer, was held to have no claim upon the county whose bonds they purported to be.

[2] *Ante*, chap. vi. sec. 163; *supra*, secs. 529 *a*, 542.

[3] Marsh *v.* Fulton County, 10 Wall. 676 (1870). Speaking of this subject, Mr. Justice *Field*, in the case just cited, delivering the opinion of the court, says: "But it is earnestly contended that the plaintiff was an innocent purchaser of the bonds, without notice of their invalidity. If such were the fact, we do not perceive how it could affect the liability of the county of Fulton. This is not a case where the party executing the instruments possessed a general capacity to contract, and where the instruments might, for such reason, be taken without special inquiry into their validity. It is a case where the power to contract never existed; where the instruments might, with equal authority, have been issued by any other citizen of the county. It is a case, too, where the holder was bound to look to the action of the officers of the county and ascertain whether the law had been so far followed by them as to justify the issue of the bonds. The authority to contract must exist before any protection as innocent purchaser can be claimed by the holder. This is the law even as respects commercial paper, alleged to have been issued under a delegated authority, and is stated in the case of Floyd Acceptances, 7 Wall. 666. In speaking of notes and bills issued or accepted by an agent, acting under a general or special power, the court says: 'In each case the person dealing with the agent, knowing that he acts only by virtue of a delegated power, must, at his peril, see that the paper on which he relies comes within the power under which the agent acts. And this applies to every person who takes the paper afterwards; for it is to be kept in mind that the protection which commercial usage throws around negotiable paper cannot be used to establish the authority by which it was originally issued.'" And in this case the bonds of the county of Fulton, though negotiable in form, and not disclosing or reciting their purpose or origin, were held void, in the hands of *bona fide* holders, for want of authority in the county to issue them, having been voted to one corporation and delivered (according to the view of the court) to another and distinct corporation. See also, Lewis *v.* Barbour Co. Comm'rs, 3 Fed. Rep. 191; noted *supra*, secs. 529 *a*, 531, note; *supra*, sec. 524. See Society, &c. *v.* New London, 29 Conn. 174; compare People *v.* Mead, 36 N. Y. 224; Adams *v.* Memphis & L. R. R. Co., 2 Coldw. (Tenn.) 645; Lynde *v.* Winnebago County, 16 Wall. 6 (1872); Steines *v.* Franklin County, 48 Mo. 167 (1871); Livingston County *v.* Weider, 64 Ill. 427; s. c. 5 Chicago Legal News, 265; Burr *v.* Carbondale, 76 Ill. 455 (1875).

[1] Maddox *v.* Graham, 2 Met. (Ky.) 56; Commonwealth *v.* Pittsburgh, 43 Pa. St. 391; San Antonio *v.* Lane, 32 Tex. 405.

[2] Commonwealth *v.* Pittsburgh, *supra*; Gilchrist *v.* Little Rock, 1 Dillon C. C. 261; Danielly *v.* Cabaniss, 52 Ga. 211 (1874); Black *v.* Cohen, *Ib.* 621.

The Supreme Court of the United States has held, in an action on negotiable bonds issued by a public corporation, that where the defendant has shown *fraud in the origin or inception* of the instruments, this will throw upon the holder the burden of showing that he gave value for them before maturity. Smith *v.* Sac County, 11 Wall. 139 (1870), *Clifford*, J., dissenting; Montclair *v.* Ramsdell, 107 U. S. 147; Pana *v.* Bowler, 107 U. S. 529, 542.

When *special authority to borrow money* or to subscribe to the stock of a railroad company will *impliedly repeal existing charter limitations* upon the amount of indebtedness that may be contracted by a municipality, or upon the rate of taxation. See Amey *v.* Allegheny City, 24 How. 364 (1860); Butz *v.* Muscatine, 8 Wall. 575 (1869); *ante*, sec. 162, and cases there cited.

Mode of *enforcing payment* of municipal bonds. See chapter on Mandamus, *post*. The authority to levy and collect special taxes to pay bonds authorized to be issued cannot be withdrawn or repealed by the legislature to the prejudice of the holder of such bonds. Von Hoffman *v.* Quincy, 4 Wall. 535 (1866); *ante*, chap. iv.; *post*, chap. xx. Where bonds of a county are

tion, however, must be remembered, between want of power to issue the bonds and irregularities in the exercise of the power, which latter are unavailing against the *bona fide* holder without notice of the irregularity.

§ 554. **Defences; Waiver of Irregularities in Issue of Bonds, &c.** — Defences grounded on corporate neglect, or technical in their nature, are not favored when the bonds are in innocent hands.[1] The issue of the bonds raises a presumption that conditions precedent, imposed by *ordinance*, have been complied with or waived.[2] This is

certainly so where the bonds recite in substance that they are issued under and pursuant to the enabling act.

§ 555. **Where Lost or Stolen.** — Having stated the law of municipal bonds, it may be useful to give a synopsis of the principles applicable to negotiable securities, including such bonds, when lost or stolen.

A negotiable bond stolen and its number altered by the thief has been held to be good in the hands of a *bona fide* holder, who purchased it for value.[1] Negotiable bonds or coupons, although stolen, are collectible by a *bona fide* holder who took them for value in the usual course of business, before maturity and without notice.[2] If, however, the instrument is incomplete, as if any essential part is left in blank, and is afterwards filled up by the thief, or holder under the thief, no recovery can be had; as, where in an incomplete instrument the place of payment was left in blank, and, before it was filled up by the authorized officer, the bonds were stolen.[3] A

legally authorized to be issued by a vote of the people, and, by the law authorizing the vote, it is provided that the bonds shall be executed by certain officers, and countersigned by the treasurer of the county, it was *held*, that the omission of the treasurer to countersign the bonds is a mere defect in the execution of them, which a court of equity would, in the absence of a remedy at law, ordinarily supply, and that an injunction restraining the collection of taxes for the payment of such bonds should not be allowed. *Breese*, C. J., and *McAllister*, J., dissenting. Melvin *v.* Lisenby, 72 Ill. 63.

Township Railroad Aid Act of Missouri held unconstitutional. Webb *v.* Lafayette Co., 67 Mo. 353; Ranney *v.* Bader, 67 Mo. 476; State *v.* Brassfield, 67 Mo. 331. But the Federal courts, as to bonds previously issued, refused to follow the State court decisions. Foote *v.* Johnson County, 5 Dillon C. C. R. 281 (1878); Douglass *v.* Pike County, 101 U. S. 677 (1879). The law of New York intended to legalize the acts of commissioners to aid railways was declared unconstitutional. Horton *v.* Thompson, 71 N. Y. 513. The Supreme Court of the United States declined to follow the ruling in Horton *v.* Thompson, *supra*, and it held the same act to be constitutional and the bonds in question to be validated by it. Thompson *v.* Perrine, 103 U. S. 806. See *supra*, sec. 544.

[1] Elizabeth *v.* Force, 29 N. J. Eq. 587; Birdsall *v.* Russell, 29 N. Y. 220; Commonwealth *v.* Savings Bank, 98 Mass. 12; Diamond *v.* Lawrence Co., 37 Pa. St. 353; Crosby *v.* New London, W. & P. R. R. Co., 26 Conn. 121; Myers *v.* York & C. R. R. Co., 43 Me. 362; Clarke *v.* Janesville, 1 Biss. 98; Morgan *v.* United States, 113 U. S. 476 (reversing s. c. 18 Court of Claims Rep. 386), where alteration of numbers of stolen bonds is one of the facts stated, and where the court, while not directly passing upon the legal effect of such alteration, sustained the title of *bona fide* purchasers for value and without notice of the alteration; Brown, Riley & Co. *v.* United States, 20 Court of Claims Rep. 416, construing opinion of Supreme Court on this point in case of Morgan *v.* United States, *supra;* Jones on Railroad Securities, sec. 216; Wylie *v.* Mo. Pac. Ry. Co., U. S. Circuit Court, S. D. N. Y. MSS. Compare Suffell *v.* Bank of England, 9 Q. B. D. 555.

[2] Evertson *v.* Nat. Bank of Newport, 66 N. Y. 14; State *v.* Wells, 15 Cal. 336; Spooner *v.* Holmes, 102 Mass. 503.

[3] Ledwich *v.* McKim, 53 N. Y. 307; Jackson *v.* Vicksburg, S. & T. R. R. Co., 2 Woods, 141.

bona fide holder of such an instrument cannot, by inserting the name of a place in the blank, recover its value.[1] Where the corporate seal of the obligor and the indorsement of the trustees were both wanting when the bonds were stolen, and these were subsequently forged, and in that condition came into the plaintiff's hands, the company was not liable.[2] As a bond takes effect from its delivery, it is presumed that a blank as to the date in an instrument otherwise complete and duly delivered would not affect a recovery.[3] The insertion by the thief of the name of the payee in the blank left for that purpose when the bond was issued and delivered, is not such an alteration as will avoid the bond.[4] The fact of the bond, otherwise negotiable, not being payable to a particular person, does not render it non-negotiable.[5] If *overdue* bonds or coupons are stolen and then come into a *bona fide* holder's hands, he cannot collect their amount.[6] Coupons have been held to be entitled to three days' grace, so that a purchaser, after the time specified for payment, but before the expiration of the days of grace, is deemed a purchaser before maturity.[7] Giving immediate notice of the theft by publication will not of itself deprive the *bona fide* holder of his right to recover.[8] After actual service of such notice, bankers and brokers should retain a memorandum in order to identify stolen bonds if presented.[9]

[1] *Ib.*

[2] Maas *v.* Missouri, K. & T. Ry. Co., 11 Hun (N. Y.), 8.

[3] Pierce *v.* Richardson, 37 N. H. 306; Bills *v.* Stanton, 69 Ill. 51.

[4] Boyd *v.* Kennedy, 9 Vroom (38 N. J. L.), 146; Dutchess Co. Ins. Co. *v.* Hachfield, 1 Hun (N. Y.), 675.

[5] Smith *v.* Clark County, 54 Mo. 58.

[6] Arents *v.* Commonwealth, 18 Gratt. (Va.) 750; Vermilye *v.* Adams Exp. Co., 21 Wall. 138.

[7] Evertson *v.* National Bank of Newport, 66 N. Y. 14; Arents *v.* Commonwealth, 18 Gratt. (Va.) 750 (*holds* that there is no grace).

[8] Seybel *v.* Nat. Cur. Bank, 54 N. Y. 288; Murray *v.* Lardner, 2 Wall. 110.

[9] Vermilye *v.* Adams Exp. Co., 21 Wall. 138. Mere omission to look for such notice several months after publication is no proof of *mala fides*. Raphael *v.* Bank of England, 17 C. B. 161. See Preston *v.* Hull, 23 Gratt. (Va.) 600; s. c. 21 Am. Rep. 699; also see elaborate note by Mr. Stewart to Elizabeth *v.* Force, in 29 N. J. Eq. 587, reversing s. c. 28 N. J. Law, 463.

END OF VOL. I.