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JUDGE GRIER'S CHARGE.

In the Circuit Court of the United States for the Western District of Pennsylvania.

WILLIAM M'COY *vs.* THE COUNTY OF WASHINGTON.

1. The Pennsylvania Act of 12th April, 1851, authorizing the County of Washington to subscribe to the stock of the Hempfield Railroad, and to issue in payment for the subscription, the bonds of the county, is not a violation of either the constitution of the State or of the United States.
2. The issue of coupon bonds was authorized by the Act.
3. It is not necessary in a suit by the holder of the bonds or the coupons to show that a subscription was in fact made, the bond reciting the fact.
4. Parol evidence of an agreement between the Railroad company and the Commissioners of the County, that the county should not be called upon for the interest, is inadmissible to affect the right of the holder of the coupons to recover.
5. A county, as a municipal corporation, may be sued in the courts of the United States.
6. The holder of a coupon bond payable to bearer, being a citizen of a different State from the defendants, and entitled to sue in the courts of the United States, though the previous holder of the bond might not have been so entitled to sue.
7. Coupons are *prima facie* evidence that the holder is also the holder of the bond from which they are cut, or else was so when they were separated.

This was an action against the county of Washington upon sixty *coupons*, for thirty dollars each, on bonds of the county of Wash-

ington, issued by the commissioners of that county to the Hempfield Railroad.

It appeared, amongst other things, on the trial of the case, that the commissioners of the county at the time of the issue of the bonds, objected to signing them because they did not contain on their face the provision of the Act of Assembly authorizing their issue, which makes it the business of the company to pay the interest on the bonds, till such time as the road shall be completed; this objection, was however, removed by a distinct understanding with the President of the road, who pledged the company to carry out the provision of the statute in good faith. They also denied that any subscription had ever been made by the county to the capital stock of the road, or that any certificate of stock had been issued to the company. It was proven, however, that the county had voted the stock at every election held since the execution and delivery of the bonds.

Geo. P. Hamilton, Esq., appeared for the plaintiff, and

Messrs. Thomas Williams, Braden and Hopkins, for the defendants.

The charge to the jury was delivered by GRIER, J:

Gentlemen of the jury: The case on which you have now to render your verdict is an action of debt for interest due on certain bonds, called coupon bonds, issued by the commissioners of Washington county.

The declaration sets forth, that the defendants "made certain coupon warrants, or promises to pay, in writing," in the form following:

"Washington county bonds—Warrant for thirty dollars interest on bond, No. 108, payable in the city of New York, on the 15th of May. 1857.

For the commissioners,

A. SILVY, Clerk."

Sixty of these coupons, for thirty dollars each, payable at different dates, are claimed to be due and owing to the plaintiff as lawful holder.

The defendants plead they did not assume, and are not so indebted.

To support the issue, the plaintiff has given in evidence—

1. An Act of Assembly, passed on the 12th of April, 1851, which, in sections 7, 8, 9, and 10, authorizes the citizens of Washington, at the next, or some subsequent general election, to decide by ballot whether or not the commissioners of said county shall subscribe in its behalf, four thousand shares in the capital stock of the Hempfield Railroad Company, the returns of this election to be certified to the Court of Quarter Sessions, and if the judges thereof ascertain that there is a majority in favor of such subscription, they shall make an order on the commissioners to make the subscription.

The commissioners are authorized to borrow money to pay said subscription, and to execute bonds or promissory notes in the name of the county, transferable on the books of the commissioners: these bonds to bear an interest of six per cent., payable semi-annually, and may be received as cash by the Hempfield Railroad Company, in payment of instalments.

2. The plaintiff has given in evidence also, a certificate from the Court of Quarter Sessions, showing that such election was held, and that the citizens of Washington had decided, by a large majority of votes, in favor of making such subscription.

The will of the people of Washington county being thus ascertained, another Act of Assembly was passed on the 12th of February, 1852, authorizing the commissioners to subscribe 4,000 shares to the capital stock of the company; to borrow money in behalf of the county, and to make provision for the payment of the principal and interest of money so borrowed, as in other cases of loans to corporations.

The commissioners are authorized also to issue certificates of loan or bonds in the name of the county, bearing an interest of six per cent. payable semi-annually, and transferable as may be directed by the commissioners.

The Railroad company are to receive these bonds as cash in payment of the stock subscribed: "and the said company are also to pay or provide for the payment of the interest accruing upon said certificates of loan or bonds, until the said railroad shall be completed." The railroad company is moreover authorized to guarantee the payment of the principal and interest of the bonds.

In pursuance of this authority the commissioners executed and delivered to the railroad company 200 bonds of $1,000 each, and fifty of $500 each, with interest coupons annexed.

[The learned judge here read one of the bonds, with guarantee of the railroad company and coupons.]

These bonds, in order to give them more value in the market, are made payable to the holder, and thus by contract made negotiable by delivery. If the commissioners had power to bind the county for the payment of the principal and interest of a bond, transferable by delivery, the coupons which are appended to them, are the appointed evidence, by the agreement of the parties, to show who is entitled as holder of the bond to receive the interest due at a particular date. They are attached to the bonds for the convenience of the officers of the county, and to facilitate their negotiation, and thereby add to their commercial value. The obligation to pay the interest is to be found in the bond, not in the coupon. They are not in words an instrument in writing of a commercial nature, and having their negotiability by virtue of the law merchant. In terms, these warrants are not made payable to any particular person or his order, or even to bearer. They partake of the nature of the peculiar instrument to which they are attached. They are intended by the parties to be evidence of debt in the hands of the holder, and proof of payment when in possession of the debtor. They pass by delivery, and by the contract of the parties and the usage of the country are sufficient evidence of a debt to the holder as against the obligors in the bond. They are of modern invention, and should have the effect intended by the parties and be governed by the usage of the country, and not by sharp rules of law applicable to instruments of a different nature. The possession of them is therefore prima facie evidence, that the holder of them is holder of the bond, or was so at least when they were cut off, and as such, entitled to receive the interest. See *Ohio* vs. *Commissioners of Clinton county*, 8 Ohio State Reports, (Ritchfield), 280.

The plaintiff has produced the bonds to which the coupons were attached, with the exception of seventeen. Their execution is proved and admitted, and that they were delivered to the railroad company

in payment for stock and to be used by them to raise money for the construction of the road. There is no allegation, or proof of any fraud practiced by the parties in the transaction. The plaintiff has shown a prima facie title to recover, if you believe the evidence, which will entitle him to your verdict, unless the defendant has established some sufficient defence, which we will now consider.

1st. It is contended—

"1st. That the county of Washington being merely a subordinate political division of the State of Pennsylvania, is not a citizen of this State, within the meaning of the Constitution or the act of Congress, and therefore not suable in this court."

To this we answer, that though the metaphysical entity called a corporation, may not be physically a citizen, yet the law is well settled, that it may sue, and be sued in the courts of the United States, because it is but the name under which a number of persons, corporators, and citizens may sue and be sued. In deciding the question of jurisdiction, the court look behind the name to find who are the parties really in interest. In this case, the parties to be bound by the judgment, are the people of Washington county. That defendant is a municipal corporation and not a private one, only furnishes a stronger reason why a citizen of another State, should have his remedy in this court, and not in a county where the parties against whom the remedy is sought, would compose the court and jury to decide their own case. This point is therefore overruled.

2d. It is objected, moreover, to the jurisdiction of the court—

"2d. That the plaintiff being in the position of a mere assignee of the chose in action sued upon, and the same being a case wherein a suit could not have been prosecuted in this court to recover the contract if no assignment had been made thereof, this court has, under the act of Congress, no cognizance of a suit for the recovery thereof."

This would be a valid objection, if the plaintiff claimed as endorsee of a citizen of the State of Pennsylvania. But he does not claim title through any such assignment, but as holder of the bond to whom the defendants have directly covenanted to pay the bond and interest. The indebtedness declared on results from the peculiar nature of the security. The defendants have agreed to pay the interest to the

holder of the bond, as well as the principal, and having not done so, they are directly indebted to such holder for refusing to pay according to contract.

3. We will next consider the question involved in the three following points:

"3d. That the County of Washington being a public corporation, erected for purposes of local government alone, and standing upon no contract between the legislature and the citizens, and the said Hempfield Railroad Company being a private corporation merely, organized for purposes of trade and commerce, and as a common carrier of merchandise and passengers beyond the limits of said county, the commissioners thereof were not, therefore, authorized to embark either the credit or property of the people of said county in the hazards of such an enterprise, without their unanimous consent.

4th. That if the same was done under the authority of an Act of the Legislature, and without such consent, the County Commissioners were *pro hac vice* the agents of the legislature only, and the contract so made was not the contract of the people of the said county.

5th. That as an exercise of mere power on the part of the legislature, in thus practically compelling the people of one county to build railroads in another, and taking the freehold of the citizen without his consent for such a purpose, by authorizing a heavy incumbrance thereupon, the said Act of Assembly was no legitimate exercise of the taxing or of any legislative power; inconsistent with the principles of natural justice, with the rights of property, and the fundamental law of every free government, and at war with the great principles enunciated in our Declaration of Rights, and equally at war with the spirit and letter of the Constitution of the United States."

These three points may be said to contain a condensed argument against the constitutional power of the legislature to authorize the commissioners to bind the people of the county to pay debts incurred in these disastrous speculations.

This is the great question in the case, and if it were a new one which this court were compelled to decide without the light of precedents, we should feel oppressed with its magnitude and importance. But happily, we are relieved from this responsibility. The supreme court of your State, the tribunal to whom alone is committed the high function of declaring the constitutional powers of the legislature, have decided this question, and to that decision this court and all the good citizens of the Commonwealth are bound to submit, a

the declared law of the land. Although, in the course of this trial, I may have expressed opinions which I *possibly* might have entertained had I been compelled to meet this as a new question; as a member of this court, I must instruct you that the law in question is constitutional, and that the commissioners of the county had power and authority to bind the county in conformity with the provisions of the acts already referred to; and if the bonds have been so issued and put in circulation, the county is bound by law, as well as by every principle of moral rectitude, to pay them to the bona fide and honest holders. Without further enlarging on this subject, let me refer all who feel desirous to have correct opinions on this subject, in a moral point of view, to an opinion lately delivered by the learned and able chief justice of your State.

The following points will be considered together:

"6th. That if the instruments sued on here, or the bonds with which they are connected, were intended for circulation from hand to hand as a marketable commodity, they are bills of credit within the meaning of the prohibition contained in the first clause of the tenth section of the first article of the Constitution of the United States.

7th. That the act of Assembly of February 14th, 1852, authorizing the subscription by the Commissioners of Washington county, to the capital stock of the Hempfield Railroad Company, if the same amounted in effect to a lien upon the freehold of the citizen who holds under a patent from the Commonwealth, it is a law impairing the obligation of the contract between the State and the citizen, and is therefore in conflict with the first clause of the tenth section of the first article of the Constitution of the United States.

8th. That the said recited acts of Assembly, in assuming the power to take the property of the citizen without his consent for a merely private purpose, is equally a violation of the fundamental principles of Republican government, and is therefore in conflict with the fourth section of the fourth article of the Constitution of the United States."

I. In answer to the first of these propositions, I instruct you that the Constitution of the United States does not forbid States or corporations from borrowing money and giving proper securities therefor, and that such securities are not bills of credit within the meaning of the Constitution.

II. Nor does a law authorizing a county to borrow to make a railroad on the credit of the county, and to be paid by the imposition of a tax on the citizens thereof, infringe that article of the Consti-

tution of the United States which forbids a State to make any "law impairing the obligation of contracts."

III. Nor is the Act of Assembly in question in violation of "the fundamental principles of republican government, and therefore in conflict with any article of the Constitution of the United States."

9. The ninth proposition of the defendants is,

"That if the act, under the authority of which this subscription is claimed to have been made, originated in the Senate, then, upon the principles on which such legislation has been sustained in this State, the act itself, as a money or revenue bill, would be unconstitutional under the twenty-first section of the first article of the Constitution of this State."

To this I answer, that there is no evidence that said act originated in the Senate; and if it did, it is not unconstitutional for that reason. It is not a bill to "raise revenue" for the State.

10th. The tenth instruction prayed for, is as follows:

"That the instruments declared on import no contract, in their terms, with the holder thereof by the defendant in this suit to pay the moneys referred to therein, and are not so executed as to charge the defendants under the laws of this State."

The coupons *per se* "do not import a contract in their terms with the holder," but taken in connection with the bond to which they were attached, they do; and from the established usage and contract of the parties, they constitute the proper evidence of indebtedness to charge the defendants.

"11th. That if the papers in question were originally a part of a bond, or bonds, containing a stipulation for the payment of the interest referred to therein to the holder of the said bond, the remedy, if any, would be upon the bond itself, and the plaintiff must have set out and shown his ownership, and alleged an agreement on the part of the defendants to pay the same, in order to entitle him to recover."

This proposition is answered in the negative, for reasons already stated; and see also the case in 8th Ohio Reports, already referred to. By the contract of the parties, these coupons are made evidence that the amount of interest stated is due from the county to the holder thereof.

"12th. That the bonds issued by the defendants in payment of their supposed subscription to the capital stock of the Hempfield Railroad are to be construed in accordance with the terms of the act of Assembly under which the same were issued, and that, under the said act, the defendants would not be liable for the payment of interest until the completion of said road."

The commissioners had their authority from the act, and that act authorizes them to borrow money to pay for the stock, "to make provision for the payment of principal and interest," and to issue bonds in the name of said county, bearing an interest of six per cent payable semi-annually." The provision that the railroad company should bind themselves to guarantee the principal and interest, and should pay it till the road is completed, does not annul the obligation of the bond; as between the county and the corporation, the county has a right to call on them to pay the interest. But as between it and the bondholders the contract of the county is to pay both principal and interest. The guarantee of the railroad company adds to the security, but cannot detract from it. The commissioners have not misconstrued the act, or abused their powers in binding the county for the payment of the interest, but pursued its true meaning and intent. On this point, see also a case in point already referred to in 8 Ohio State Rep. 280.

13th. The thirteenth proposition is:

"That if the said bonds were issued upon an agreement by the company from which they have been purchased, that the defendants should not be called upon to pay the interest thereon, but that the same was to be paid by the company itself until the road was completed, it was an agreement, in effect, that the bonds should bear no interest so far as the defendants are concerned; and the same not being negotiable securities within the law merchant, are subject to all the equities which existed between the original parties, and the holder was bound to inquire before purchasing, and is affected with notice of the said agreement."

The written instruments show the contract of the parties, the parol testimony admitted cannot affect it. What answer would it be, to an action on a note or bond, for the defendant to plead, that when he signed it his co-obligor agreed to lift it, and that he should never be troubled about it.

14th. The fourteenth proposition is:

"That to entitle the plaintiff to recover in this case, he must first have shown an actual subscription in the manner prescribed by the act incorporating the said company, or at least an actual subscription of some sort by the commissioners; and that in the absence of any subscription, or of the issue and delivery of any certificate of stock by the said company, the issue of the bonds was without authority of law, and the defendants are not liable in this suit."

This proposition cannot be admitted. The bond recites that it was for subscription to the stock. The witness has proved that they were delivered in such payment. Whether there was literally a subscription, or written *promise to pay*, is of little importance if it was paid; also whether the county has got a certificate of stock, was a matter with which the holder of the bond had no concern, and is not bound to prove. If the county has no certificate, it can obtain it by suit, if refused. It cannot now plead the negligence of its own agents in the management of its business to avoid payment of its obligations. For anything that appears, they have it, or can get it, and in absence of proof, the presumption is that they have it.

"15th. That if no subscription was actually made by the commissioners in the manner indicated by the law, no subsequent vote of theirs by proxy, supposing the same to have been duly proved, could cure the infirmity, or operate as an estoppel against the defendants."

This has been sufficiently answered in our remarks on the fourteenth proposition. If the bonds were delivered in payment for the stock, there is no infirmity to be cured.

"16th. That taking the papers sued on to be warrants, or certificates of loan under the Act of Assembly, it was essential to their validity, as such, that they should be signed by the commissioners themselves, or a majority of them, and attested in the former case by their clerk, and authenticated in the latter by the seal of the county."

To this we answer, that the obligation of defendants to pay both principal and interest, is to be found in the bonds, (as already explained) which are properly executed by the commissioners, and bind the defendants to pay the interest as well as the principal.

"17th. That there is nothing in the act authorizing the said subscription to warrant the issue of any other securities than the bonds or certificates of the county therefor in sums not less than one hundred dollars each, but that, on the contrary, assuming the instruments sued on to be promises or certificates of debt or loan, and to have been otherwise well executed, they are in direct violation of the provision which forbids the issue of any certificates for a less amount than one hundred dollars, and are, therefore, not obligatory on the defendants.—Act of 1852."

The answer to this proposition is, that the commissioners have issued no other securities than the bonds, and, as already stated, the coupons are made for the convenience of the officers, and as evidence that the holder is the person entitled to receive interest due on the bond described therein.