

Case No. 1,561.  
[42 How. Pr. 283.]

IN RE BLOOIHINGTON.

Circuit Court, D. Illinois.

April 1, 1871.

MUNICIPAL CORPORATIONS—BONDS—INNOCENT PURCHASER—DEFENSES.

[A municipal corporation is liable on its road improvement bonds in the hands of innocent purchasers, although such bonds were put forth in violation of a condition that they should only be issued upon a certain amount of work being done.]

At law.

DRUMMOND, Circuit Judge. When, under certain circumstances, it is conceded, as in the case here, that a corporation or municipality has the power to issue bonds, then, when these bonds or coupons attached are in the hands of innocent persons, who have paid value for them, the question is, whether it is competent for the municipality to set up that those conditions have not been complied with. In most of these cases it is declared that, in order to enforce the issuing of these bonds, there must be an application made to the municipality by the voters and it is only when this is done that the municipality has a right to issue the bonds. When such application is made, the proper number of voters is a precedent to the issuing of the bonds. The power to determine whether the application has been made in the proper way, and by the proper number of voters, rests with the municipality or its agents; and when they have acted, although it is a condition precedent to the issuing of the bonds, the municipality cannot say that it has acted without authority,—without this particular condition having been complied with. This rule runs through all authorities. Now, as we understand, the objection is made here that one of the conditions upon which these bonds were to issue was, that they should not be issued except upon a certain amount of work being done upon the road. It is conceded by the defense that if the facts are peculiarly within the cognizance of the parties, that other persons—innocent purchasers—are not bound to inquire into the existence of these facts. How is it here? Now, whether or not the application was made by the proper number of voters is a matter of public notoriety, and ought to be a matter of record; yet, as we say, it is not necessary for a bona fide purchaser of a bond or coupon to inquire into that, and go behind the bond to ascertain whether this condition has been complied with or not. Why should there be in such a case as this any greater necessity for inquiring as to how much work has been done? Must the purchaser go upon the road and ascertain whether the ties have been laid down, and the road put in running order, when the law declares that the bonds shall not be issued, except those facts exist when the bonds have been issued by the agents of the municipality?

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Why is a party any more obliged in that case than in the other to ascertain the facts? Although their case shows that the business was somewhat loosely done, and that certain facts were not spread upon the record as they should have been, yet that fact would not make it necessary to go and ascertain whether every contingency had occurred precedent to the issuing of the bonds. The law presumes that the agents of a public corporation will act in conformity with the law, and the corporation must indorse the acts of its agents. These agents have done what the law authorized to be done, and issued the bonds. The bonds bear on their face the fact that they were issued in conformity with the law; and when an innocent purchaser looks upon them in the market, and buys them with this evidence of legality upon their face, it is not competent for the municipality to turn round and say that its agents did not act as they ought to have done,—that they did not comply with the certain conditions with which they were required to comply. This is a rule of universal application which has been repeatedly settled by the decisions of the supreme court of the United States, and has been uniformly acted on for a series of years. It would be reversing all the rules that have existed a long time, to say that it is competent now for the town of Bloomington to come in and say that “our agents have issued these bonds before they were authorized to issue them.” When the bonds were issued the town of Bloomington took the responsibility of the acts of its agents, and outside parties dealing with bonds in the market were not obliged to look into the hidden things which were done or not done by the agents of the municipality.

It is for these reasons, as we understand them, that the plaintiffs are authorized to recover in these cases. Let judgment enter for the coupons, with interest on them since their maturity.