

Case No. 7,219.
[3 Dill. 402.]¹

JANUARY v. JOHNSON COUNTY.

Circuit Court, D. Kansas.

1874.

MUNICIPAL BONDS—STATUTE AS TO LEVYING TAXES TO PAY SUCH BONDS
CONSTRUED.

The act of the Kansas legislature approved March 9, 1874 (Laws 1874, p. 45, § 7), was intended to change the mode of levying and collecting taxes to pay municipal bonds and not to validate or make binding upon municipalities bonds which would otherwise be void.

Action [by D. A. January] on county bonds issued in aid of a railroad company. Answer, setting up a sufficient defence as against the company and alleging notice thereof to the plaintiff. On demurrer to the answer it was contended by the plaintiff that the bonds in suit had been validated by section 7 of chapter 39 of the Laws of Kansas, approved March 9, 1874, (Laws 1874, p. 45), amendatory of chapter 68 of the Laws of 1872. The language of section 7 is as follows: "It shall be the duty of the proper officers of any county, city or township, in which bonds have been heretofore issued, for any of the purposes mentioned in the act to which this is amendatory, annually, at the time when other taxes are levied, to levy and cause to be collected a sufficient tax to pay the interest on all such bonds as the same shall become due, and also for the purpose of creating a sinking fund for the final redemption of such bonds."

Grant & Smith, for plaintiff.

Cobb & Cook, for the county.

DILLON, Circuit Judge. As the act in which this section is found does not profess in its title or body to be a curative act, and as when comparing this act with the act of 1872 which it amended, it appears to have

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been the purpose of section 7 to change the mode of levying and collecting the taxes, it is my opinion that it was not intended to have, and does not have, the effect to make binding upon the county, bonds which would otherwise be void. Demurrer overruled.

See *Thayer v. Montgomery Co.* [Case No. 13,870], and cases there stated in note.

¹ [Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.]