standing by itself, bind the defendant corporation, as there is no rule better settled than that a person cannot admit himself into office, nor, by simply admitting his own agency, bind his principal.

The issues, therefore, must be found for the defendant.

HALL *v.* UNION PAC. RY. CO.

Circuit Court, D. Colorado. June 18, 1883.)

NEGLIGENCE—WHETHER A QUESTION OF LAW OR FACT—VISIBLE AND OBVIOUS DANGER—CONTRIBUTORY NEGLIGENCE.

Under the circumstances of this case, whether the railroad company was guilty of negligence in allowing a telegraph pole to remain so near to its track that an employe, while in the discharge of his duty, was injured by colliding therewith, is a question for the jury, and the demurrer should be overruled.

HALLETT, J., (*orally.*) The case of Hall against the Union Pacific Railway Company is an action for injuries received by the plaintiff while in the service of the company. He avers that he was a fireman on one of the locomotive engines used on the defendant's road, and that upon one occasion, while engaged in the performance of his duties, it became necessary to take notice of one of the boxes of the tender or engine, which had become heated. He was instructed to do this by the engineer. In leaning out of the car for that purpose he came in contact with a telegraph pole which stood within 12 inches of the car. The negligence alleged against the company is in allowing the pole to remain in that position so near to the road. Upon that question there are conflicting authorities, as is usual in a case of this kind. In some cases precisely the same—one, at least, as to the nature of the obstruction, except that the pole was a little further from the track than this one—the company was held liable for allowing the obstruction to remain there. In other cases in point it is held that such an obstruction, being a visible and obvious danger, the servant must take care of himself. My judgment inclines to the opinion, as to this particular obstruction, it is a question for the jury to determine whether the company was negligent in permitting it to remain so near the track.

The demurrer will be overruled.

KATZENBERGER and others v. CITY OF ABERDEEN.*

(*District Court, N. D. Mississippi, E. D.* April Term, 1883.)

1. POWER OF MUNICIPAL CORPORATIONS TO ISSUE COMMERCIAL SECURITIES.
   A municipal corporation has no power to issue commercial securities coupon bonds, payable to bearer, in payments of subscriptions to the capital stock of a railroad company, unless by legislative authority, either express or necessarily implied.
2. CHARTER OF THE CITY OF ABERDEEN—AMENDMENT OF NOVEMBER 15, 1858.
   The amendment of November 15, 1858, to the charter of the city of Aberdeen, authorizing a subscription to the capital stock of the New Orleans, Jackson & Great Northern Railroad Company, or any other railroad company, contains no authority, express or implied, to the city council to issue bonds to pay the subscription.
3. CONSTRUCTION OF ENABLING STATUTES.
   The history and public policy of the state may be considered in arriving at a proper construction of statutes of this character.
4. CURATIVE ACT OF 1872—ITS EXTENT AND OPERATION.
   The construction of the supreme court of Mississippi that the fourth section of the act of 1872, known as the curative act, was intended only to apply to subscriptions made after the adoption of the constitution of 1869, in pursuance of laws enacted under it, is binding upon this court, and will be adopted by it.

At Law.

Craft & Cooper and *Calvin Perkins*, for plaintiffs.

Sykes & Bristow and *Davis, McFarland & Paine*, for defendant.

HILL, J. Plaintiffs' declaration in this case in substance avers that the defendant is a corporate body created by the laws of the state of Mississippi; that by an act of the legislature of this state, approved November 15, 1858, said corporation was authorized to subscribe and contract with any railroad company for capital stock therein for the use of said city of Aberdeen; that afterwards, under and by authority of the laws of said state, a railroad company was organized by the name of the Memphis, Holly Springs, Okolona & Selma Railroad Company; that afterwards the defendant corporation, by its mayor and selectmen, did subscribe for 1,000 shares, of $100 per share, of the capital stock of said railroad company, and as a part of said subscription, contract, and agreement, did contract and agree to issue to said company in payment of said capital stock its bonds, with interest coupons attached, amounting to $100,000, due and payable 20 years after date; that in pursuance of said contract said subscription was made and said bonds issued, bearing date April 26, 1870, and delivered to said company,—said bonds being made pay-

*Affirmed. See 7 Sup. Ct. Rep. 947.