for sale, but to an amount equal to the value of the bonds, and they were substantially owners of the bonds.

The extent to which they acted on their own discretion as agents, or under the direction of the orator's firm as principals, is also somewhat questioned. Several communications had passed about these bonds, and the price and time of payment. The defendants sent information that the price would be about 65 per cent. for $100,000, cash, and asked if they should buy at any time before revocation, and send the bonds. They were answered affirmatively, but not to send the bonds. This direction was kept in force; the officers and agents of the railroad company agreed to a sale at 64½ per cent. A purchase at that price was reported, the charge made for the price, and the bonds kept, the difference in amount being an equalization of interest.

The orator's firm did not so direct as to leave the defendants without agency in the transaction of the business. They understood, and had the right to understand, that the defendants were acting for them without any adverse interest. The defendants were in reality sellers, while they assumed to act for the purchasers. Their charge was, "To bot. $100,000 6 % North Carol. Bonds, $63,125." This was a charge as for money paid for the orator's firm to purchase the bonds, instead of, as the fact was, for bonds sold to the orator's firm. The bonds were not poor from the insolvency of the state of North Carolina; they were the result of unconstitutional legislation,—not the bond or obligation of the state at all, nor recognized as such by any department of the state. The defendants did not know that the bonds were void. They supposed them to be good, and were not blamable for not knowing that they were bad. They were declared void by a divided court, but the proceeding in which the decision was made directly affected the bonds, and was as fatal to them as the most glaring defect. This result became known in North Carolina and New York soon after this transaction.

The orator's firm did not get what was bought. They bought bonds as binding obligations of the state; what they got contained no obligation, and were not bonds of the state. They were like counterfeit notes or bills; the supposed maker was not holden. The subject of the sale did not exist, and there could be no valid and binding sale. This is elementary. 2 Kent, Comm. 468. Had the orator's firm known that the defendants were the sellers, and learned that the bonds were void when the defendants did, there seems to be no doubt but that the transaction might then have been repudiated by them. But as they were left by the defendants to suppose the transaction was, there was no way open to them for avoiding it as to the defendants. As the transaction in fact was, a charge of the bonds as sold would have failed; as the transaction was left to appear to them, the charge for money paid for the bonds would be valid. Further, had these bonds been all that they were supposed to be, the defendants could not

act for themselves as sellers, and for the orator's firm as purchasers, and make a valid sale of them. The attempted contract of sale would fail for want of parties to it, unless something should take place afterwards to make it good. This, also, is elementary. Story, Ag. § 211. There never has been any delivery of the bonds, nor anything done with them to confirm any contract. They have always remained with the defendants, and whatever has been done about them has been done by the defendants in their own names. Neither the orator nor his deceased partner has ever ratified the purchase as a purchase from the defendants; for the deceased partner, so far as has been shown, never knew of it, and when the orator became informed of it, he repudiated it. The rights of the parties appear to be the same now as at first.

The rights of the defendants growing out of the character of the bonds have all been preserved, apparently, by their own vigilance. It has been urged that they might have held on to the iron if the purchase of the bonds had been repudiated immediately, and that, therefore, they cannot now be placed as before. But the orator's firm had nothing to do with the iron. That had relation to their obtaining and not to their disposing of the bonds. Had they given notice of the transaction as it was, and that they wished to follow the iron unless the sale was approved, it might have been different in this respect; but nothing of this kind was done. The *status quo*, as between these parties, relates only to the bonds, and to the charge for the money paid for them. That is easily regained.

The question here is not whether the defendants undertook to palm off worthless bonds,—they doubtless understood that they were rendering the money's full worth,—but where this loss should fall. By the law, as here understood, as applied to the facts as they are made to appear, it should fall upon the defendants.

Let there be a decree setting aside the sale, and for a resettlement of the accounts, with costs.

J. M. Atherton Co. *v.* Ives and others.[1]

(*Circuit Court, D. Kentucky.* April 29, 1884.

1. Interstate Comity—Deed of Assignment.
   A deed of assignment between residents of another state, valid according to the laws of the state where executed, is valid as to personal property in Kentucky.
2. Transfer of Personal Property.
   The right of a state to regulate the transfer of personal property within its jurisdiction must be exercised, and the intention to do so clearly expressed by

[1] Reported by Geo. Du Relle, Asst. U. S Atty.